

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on November 6, 2019
Commencing at 9:00 a.m.
Planning Department Conference Room
First Floor, 250 South High Street
Wailuku, Maui, Hawaii 96793

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

SP19-410 SACRED EARTH ASSEMBLY (MAUI)

Consider Petition for Special Permit In the
matter of the Application of Dr. Lew Abrams and
Maria De Abrams on Behalf of the Sacred Earth
Assembly to obtain a State Land Use Commission
Special Permit to operate the Sacred Earth
Assembly, a non-profit, interfaith church, in
the State Agricultural District located at
3505 Hana Highway, Haiku, Island of Maui,
Hawaii, Tax Map Key (2) 2-8-003:075 (por)

V. Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair
3 NANCY CABRAL, Vice Chair
4 DAWN N.S. CHANG
5 EDMUND ACZON
6 GARY OKUDA
7 LEE OHIGASHI
8 ARNOLD WONG

9 STAFF:

10 PATRICIA OHARA, ESQ.
11 Deputy Attorney General

12 DANIEL ORODENKER, Executive Officer
13 RILEY K. HAKODA, Planner/Chief Clerk
14 RASMI AGRAHARI, Planner

15 DAWN APUNA, ESQ.
16 Deputy Attorney General
17 LORENE MAKI, Planner
18 For State Office of Planning

19 MICHAEL HOPPER, ESQ.
20 Deputy Corporation Counsel
21 MICHELE McLEAN, Director
22 TARA FURUKAWA, Planner
23 For County of Maui

24 LESLIE ICZKOVITZ, ESQ.
25 1350 Ala Moana Blvd., Ste. 2304
Honolulu, Hawaii 96814
For Sacred Earth

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.

2 This is the November 6, 2019 State Land
3 Use Commission meeting.

4 Our first order of business is adoption of
5 our October 24th and 25th, 2019 minutes. Are there
6 comments or corrections of those minutes? If not, is
7 there a motion to approve the minutes?

8 VICE CHAIR CABRAL: I will move to approve.

9 CHAIRPERSON SCHEUER: Commissioner Cabral
10 has moved to approve. Is there a second?

11 COMMISSIONER OHIGASHI: Seconded.

12 CHAIRPERSON SCHEUER: Seconded by
13 Commissioner Ohigashi.

14 Any discussion on the motion? If not, all
15 in favor say "aye"; anybody opposed? The October
16 24th and 25th minutes are unanimously adopted.

17 Commissioners, are there any corrections or
18 comments on our October 31st minutes? Seeing none,
19 is there a motion to adopt?

20 COMMISSIONER OHIGASHI: Move to adopt.

21 CHAIRPERSON SCHEUER: Moved by
22 Commissioner Ohigashi. Is there a second?

23 COMMISSIONER WONG: Second.

24 CHAIRPERSON SCHEUER: Seconded by
25 Commissioner Wong.

1 Any discussion on the motion to adopt our
2 October 31st minutes? All in favor say "aye",
3 anybody opposed? The motion carries.

4 Our next agenda item is the tentative
5 meeting schedule. Mr. Orodener.

6 EXECUTIVE OFFICER: Thank you, Mr. Chair.

7 Tomorrow we are to be on Maui as well at
8 the DOT Highways facility for Waikapu 48 Investment
9 A04-746, Consolidated Baseyards LLC A04-748, and
10 Spencer Homes Inc., A04-750.

11 On November 20th, we will be on Oahu for
12 the Poma'ikai matter and the Waiawa matter.

13 And on the 21st of November we will also be
14 on Oahu for the Motion to Intervene and the Hawai'i
15 Memorial Life Plan matter.

16 On December 4th, we will be back here on
17 Maui for Pu'ulehua.

18 On December 17th, we will be on Kaua'i for
19 the Hokua matter, that's December 17th and 18th.

20 January 8th we will be on Kona for the U of
21 N Bencorp and HHFDC.

22 On January 22nd, we will again take up the
23 Hawaiian Memorial Life Plan; and on January 23rd.

24 February and March calendar are currently
25 open.

1 CHAIRPERSON SCHEUER: Thank you. Are there
2 any questions for Mr. Orodenker? Seeing none.

3 I'll take this opportunity, since there is
4 a lot of folks in the room who we do not normally
5 see, to very briefly explain a little bit about who
6 the State Land Use Commission is.

7 We are nine possible Commissioners, one
8 vacancy right now. There are eight seated
9 Commissioners with us today. We are all volunteers.

10 For those of us up for reappointment, you
11 have an opportunity to talk about how great or awful
12 we are to the state senate when that comes up. We do
13 this on our own time as volunteers in order to
14 fulfill the duties of the State.

15 Our next agenda item is a meeting on Docket
16 No. SP19-410 Sacred Earth Assembly (Maui) to consider
17 Petition for Special Permit in the matter of the
18 Application of Dr. Lew Abrams and Maria De Abrams on
19 behalf of the Sacred Earth Assembly to obtain a State
20 Land Use Commission Special Permit to operate the
21 Sacred Earth Assembly, a non-profit, interfaith
22 church, in the State Agricultural District located at
23 4505 Hana Highway, Haiku, Island of Maui, Hawaii.
24 Tax Map Key (2) 2-8-003:075 portion thereof.

25 Will the Parties please identify themselves

1 for the record?

2 MR. ICZKOVITZ: My name is Leslie
3 Iczkovitz, attorney for Dr. Lew Abrams. In the room
4 are Dr. and Mrs. Abrams.

5 DR. ABRAMS: I'm Dr. Lew Abrams, and this
6 is Maria Abrams.

7 MR. HOPPER: Michael Hopper, Deputy
8 Corporation Counsel representing Maui County. With
9 me is Michelle McLean, Planning Director, and Tara
10 Furukawa, planner. We only have one microphone, so
11 we are going to have to pass this.

12 CHAIRPERSON SCHEUER: We do appreciate the
13 use of space.

14 MS. APUNA: Deputy Attorney General, Dawn
15 Apuna on behalf of State Office of Planning. Here
16 with me today is Lorene Maki.

17 CHAIRPERSON SCHEUER: Let me update the
18 record. On June 5th, 2017, the County of Maui
19 Planning Commission received the Applicant's State
20 Land Use Commission Special Permit (SUPI)
21 Application.

22 On July 3rd, 2019, the Commission received
23 an inquiry letter from the Maui Planning Department
24 Director regarding whether or not the County may
25 process HRS Chapter 205 Special Permits without Land

1 Use Commission review for uses which are limited to
2 less than 15 acres, but on which the parcel proposed
3 use is greater than 15 acres, where the use may not
4 be limited to the footprint presented in the
5 Petition.

6 On August 1st, 2019, the Commission
7 provided its response to the inquiry.

8 On August 13th of this year the Maui
9 Planning Commission reviewed the SUPI and approved it
10 subject to conditions listed in its approval notice
11 letter.

12 On October 10th, 2019, the Commission
13 received the Maui Planning Commission's proceedings
14 on this matter from the Maui Planning Department.

15 On October 30th the Commission mailed and
16 emailed the November 6-7, 2019 Land Use Commission
17 meeting agenda notice to the Statewide, email and
18 Maui mailing lists.

19 From October 30th through November 5th, the
20 Commission received public testimony on this matter,
21 noted it for the record, and posted it to its
22 website.

23 For all members of the public, I will
24 remind you that this Commission proceeding is to
25 consider this 2019 SUPI 2019/0001 County Permit which

1 was approved by the Maui Planning Commission subject
2 to conditions.

3 Let me go over our procedures for this
4 docket.

5 First, those individuals desiring to
6 provide public testimony for the Commission's
7 consideration will be asked to identify themselves
8 and will be called in order to our witness box where
9 they will be sworn in prior to their testimony.

10 I believe there are a number of people who
11 have signed in to testify; is that correct?

12 So first any individuals who are going to
13 be desiring to testify, you're going to come up to
14 the witness box, which is next to our court reporter.
15 I will swear you in. You will swear or affirm that
16 the testimony you will give is the truth. You'll
17 then state your name and address for the record and
18 then proceed with your testimony.

19 I may ask you to summarize your testimony
20 if it appears we need to move the proceedings along.

21 After completion of the testimony, I'll ask
22 for the Applicant to make its presentation. After
23 the Applicant's presentation, there will be
24 questioning by the Commission, then presentations by
25 the Office of Planning. And -- pardon me, and Maui

1 County.

2 After that, the Commission can ask any
3 other questions of any of the parties. And following
4 that, we will go into deliberation.

5 From time to time I will take short
6 recesses, as might be necessary for us and for our
7 court reporter to take breaks.

8 Is that clear to all the parties, our
9 procedures for today?

10 MR. ICZKOVITZ: Yes.

11 MS. APUNA: Chair, I would like to ask if
12 after the public testimony I might be able to address
13 a procedural or preliminary procedural issue for this
14 matter which might be more efficient? It's regarding
15 the jurisdiction of this Commission on this matter.

16 CHAIRPERSON SCHEUER: Any objection from
17 the other parties?

18 MR. HOPPER: No, not for me, not from the
19 County of Maui.

20 MR. ICZKOVITZ: We have submitted a letter
21 to the Commission questioning jurisdiction, but we
22 have no --

23 CHAIRPERSON SCHEUER: Do you have any
24 problem with us changing the order and allowing the
25 Office of Planning to raise a jurisdictional issue

1 prior to presentation by --

2 MR. ICZKOVITZ: No objection.

3 CHAIRPERSON SCHEUER: We can do that.

4 MS. APUNA: Thank you, Chair.

5 CHAIRPERSON SCHEUER: Our first testifier
6 is Robin Vanderpool, followed by Katherine Morgan.

7 MR. ICZOVITZ: I do have one question.
8 I've been told that we have a right to cross-examine
9 the testifiers. Do we do that at the time --

10 CHAIRPERSON SCHEUER: So, yes. The way --
11 thank you.

12 The way our proceedings goes is that when
13 there is a witness, I will swear them in, they will
14 state their testimony. You will then have a chance
15 to ask any questions of the witness followed by the
16 County followed by Office of Planning, followed by
17 the Commissioners.

18 So to those of you, if you're coming up to
19 testify, do not give your testimony and try to run
20 off. We might have questions.

21 Do you swear or affirm the testimony you're
22 about to give is the truth?

23 THE WITNESS: Yes, I do.

24 CHAIRPERSON SCHEUER: Please state your
25 name and address for the record and proceed.

ROBIN VANDERPOOL

Was called as a witness by and on behalf of the Public, was sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: I'm Robin Vanderpool. I live at 320 Waipolani Road in Haiku.

I have been privy to the growth of this farm and church project for the last perhaps eight years, involved in the construction of it.

I'm just here this morning to support the church and the farm and Dr. Abrams and his wife. I've known them for about eight or nine years, and they have taken this 14-acre property and created a beautiful farm and church upon this property.

What I would like to spend my time on is in watching over the creation of this Sacred Earth Assembly and farm, I've noticed how not only is Dr. Abrams a pillar in our community, but they've been very conscientious about its impact on the surrounding community.

So this property is out on a point, you might say. It's very far away from any neighbors, and I don't see that there's any negative impact at all on any of the surrounding homes or residential

1 structures around, or the people around.

2 So I know this was approved by the County
3 Planning Department, and I'm just here in support of
4 this project.

5 CHAIRPERSON SCHEUER: Is that it?

6 THE WITNESS: That's it.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Mr. Vanderpool.

9 Any questions of the witness from the
10 Applicant?

11 MR. ICZKOVITZ: No.

12 MR. HOPPER: No.

13 MS. APUNA: No.

14 CHAIRPERSON SCHEUER: Commissioners?
15 Commissioner Chang.

16 COMMISSIONER CHANG: Thank you very much
17 for your testimony.

18 I would like to ask you, you seem to have
19 known them for as long as they have owned the
20 property.

21 What kind of farming activities do they do
22 on the property?

23 THE WITNESS: What type of farming?

24 COMMISSIONER CHANG: Yes.

25 THE WITNESS: I guess you would call it

1 organic farming and permaculture. It's just a really
2 beautiful place, and they have workshops and teaching
3 people. And, of course, they have the interfaith
4 church activities.

5 COMMISSIONER CHANG: I'm more interested in
6 the farming activities.

7 What do they actually grow on the property?

8 THE WITNESS: Little of everything, teas,
9 edibles, vegetables, fruits and various --

10 COMMISSIONER CHANG: Is it for commercial
11 purposes, or what do they do with their farming
12 products, do you know?

13 THE WITNESS: This I don't know.

14 COMMISSIONER CHANG: Okay. Thank you very
15 much.

16 CHAIRPERSON SCHEUER: Are there others?

17 Mr. Vanderpool, would you please come back
18 to the microphone. I think there's another question.

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you very much,
21 Chair.

22 And, Mr. Vanderpool, please excuse me being
23 kind of not proper to you because I have to speak
24 into the microphone looking towards you.

25 Let me preference my questions just so that

1 you don't read too much into it.

2 First of all, please don't take my
3 questions as indicating I have a view one way or the
4 other on any of the issues here.

5 THE WITNESS: I can hear you.

6 COMMISSIONER OKUDA: But the court reporter
7 might not be able to, so that's why I have to ask.

8 And please don't take my questions to mean
9 that I have any views on religion or anything like
10 that.

11 In fact, just so that everyone is clear, my
12 background, so people can make a determination of
13 bias, when I was very young, I used to attend the
14 Buddhist church. But I just don't attend any
15 organized religion.

16 But the reason why I'm asking you these
17 questions, and I'm only speaking for myself
18 personally, I think there might be some
19 constitutional issues here, so I just want to get
20 some information from you.

21 How long have you been a resident on Maui?

22 THE WITNESS: Oh, 45 years.

23 COMMISSIONER OKUDA: And have you attended
24 or participated in any churches on the Island of Maui
25 over the years or decades you've lived here? And I'm

1 not asking whether you are actually a member, but
2 whether you participate in these churches so I can
3 determine the extent of your personal knowledge with
4 respect to these few questions I'm going to ask after
5 this.

6 THE WITNESS: Yes, I have. And I'm a bible
7 scholar, you might say, religious scholar in
8 comparative religions.

9 COMMISSIONER OKUDA: And the reason I'm
10 asking these questions, I don't want to get too
11 technical here, because us lawyers are always being
12 accused of being technical, and not looking at really
13 reality.

14 Let me ask the question here, and these are
15 specifically about the conditions being proposed by
16 the County of Maui on Sacred Earth.

17 And before I get to that, there's no
18 question in your mind that Sacred Earth is a church;
19 correct?

20 THE WITNESS: That's not for me to answer.

21 COMMISSIONER OKUDA: The supreme court, I
22 believe in one of their cases, the Hawaii Supreme
23 Court indicated that, you know, you look to like the
24 dictionary definition of what a church is, and it can
25 include very broadly place of worship. And it

1 doesn't say the worship has to be of any specific
2 denomination.

3 So do you agree or disagree that Sacred
4 Earth would fit that definition?

5 THE WITNESS: I believe they have a church
6 charter.

7 COMMISSIONER OKUDA: Let me ask you about
8 the specific conditions here, and I'm paraphrasing
9 some of these things.

10 Special Condition 4 essentially limits the
11 time of, and I quote, church or religious activities.

12 In all your years living here in the County
13 of Maui, have you ever seen or do you specifically
14 know of any other church where the government has
15 limited the time when church or religious activities
16 could take place?

17 THE WITNESS: I'm not sure of the statutes.

18 COMMISSIONER OKUDA: Personal knowledge,
19 where, for example, a church has told you we can't
20 have services at this time because the government has
21 told us we can't have services at this time?

22 THE WITNESS: I don't recall.

23 COMMISSIONER OKUDA: Okay, that's fine.

24 With respect to Special Condition No. 5,
25 which limits the days that the church can hold church

1 or religious activities.

2 In all your years living in the County of
3 Maui have you ever personally known of a church where
4 the government has told the church the days when they
5 can or cannot hold church or religious activities?

6 THE WITNESS: That's a very good question.
7 And, no, I don't.

8 COMMISSIONER OKUDA: Let me ask you this.
9 Special Condition No. 6, which allows the County to
10 inspect the church property simply by presenting
11 credentials to inspect. In other words, no probable
12 cause, no reasonable suspicion.

13 Do you have any personal knowledge of any
14 other church in the County of Maui where the
15 government can just come in and present credentials
16 to inspect the church, even though there's no
17 probable cause or reasonable suspicion that some type
18 of violation of law has taken place?

19 THE WITNESS: No, I don't.

20 COMMISSIONER OKUDA: And if you can bear
21 with me for my last question, and that's regarding
22 Special Condition No. 11, which requires 72 hours
23 notice to neighbors for events with more than 40
24 participants.

25 Do you know, or do you have any personal

1 knowledge, or do you know of any church in the County
2 of Maui that has to give 72 hours notice to neighbors
3 for events with more than 40 participants?

4 THE WITNESS: I know of possible others,
5 but no, I don't know anything about that.

6 But I would say that I'm sure that
7 Dr. Abrams will conform to whatever is asked of him
8 in order to have his church services out on the point
9 there.

10 COMMISSIONER OKUDA: And, again, please
11 don't prejudge my questions.

12 THE WITNESS: No, those are good questions.

13 COMMISSIONER OKUDA: I'm not questioning
14 anyone's good faith about this. I just want to make
15 sure that we, as a government agency, conform with
16 the requirements of the First Amendment and the
17 Hawai'i State Constitution.

18 Thank you, Chair. No further questions.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Okuda.

21 Any further questions for the witness?
22 Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: Have you attended
24 any of the activities on the church?

25 THE WITNESS: Yes.

1 COMMISSIONER OHIGASHI: What kind of
2 activities have you attended?

3 THE WITNESS: Just gatherings and
4 ceremonies. Mostly just small potluck dinners and
5 conversations. It's nondenominational.

6 COMMISSIONER OHIGASHI: Were you ever there
7 when there was more than 100 people or about 100
8 people there?

9 THE WITNESS: I wasn't, no.

10 COMMISSIONER OHIGASHI: Was there ever, to
11 your knowledge, anything greater than 40 people
12 there?

13 THE WITNESS: No, I don't think so.

14 COMMISSIONER OHIGASHI: When you were
15 there, did you go by car?

16 THE WITNESS: Yes.

17 COMMISSIONER OHIGASHI: I just was curious.
18 Where did you park?

19 THE WITNESS: There's parking on the land
20 there.

21 COMMISSIONER OHIGASHI: Where is it? Do
22 you know where it is?

23 THE WITNESS: Where the parking is?

24 COMMISSIONER OHIGASHI: Yes.

25 THE WITNESS: You go onto the property and

1 out to the point. And it's a dirt road, and usually
2 just park on the dirt road. There's sort of a
3 designated small parking area there.

4 COMMISSIONER OHIGASHI: On the dirt road?

5 THE WITNESS: Uh-huh.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Ohigashi.

8 Any further questions for our first
9 witness? If, not, thank you very much.

10 Ms. Morgan, followed by -- excuse me if I
11 mispronounce your name -- Aerie Waters.

12 Aloha, good morning.

13 Do you swear or affirm the testimony you're
14 about to give is the truth?

15 THE WITNESS: I do.

16 CHAIRPERSON SCHEUER: Please state your
17 name and address for the record.

18 THE WITNESS: My name is Karima Katherine
19 Morgan, and I live at 453A Hoala Drive, Kihei.

20 KARIMA KATHERINE MORGAN
21 Was called by and on behalf of the Public, was sworn
22 to tell the truth, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 THE WITNESS: I've been a resident of Maui

1 for almost five years, and I'm here in support of the
2 application.

3 I became acquainted with Dr. Abrams and his
4 wife and the activities on his property very early in
5 my stay here, and it has become a real anchor for my
6 love of the life that's available on Maui for two
7 reasons.

8 1. One of the first things I did was to
9 tour the property and be introduced to the scope of
10 the organic farming and permacultural activities they
11 have there, which I don't have an opportunity to
12 garden in my own home right now, so I'm very much
13 appreciative of people who are taking land that was
14 fallow here, overused, and having turned it into
15 something that is very productive of food.

16 And he can certainly tell you more about
17 the variety of things. But I have been to a number
18 of dinners out at that facility, with the food of the
19 farm being prepared for the meals. And there is an
20 enormous variety, and they use a lot of permaculture
21 activities like having duck ponds where the water is
22 used for fertilizer for some of the crops.

23 It's a very integrated system. So that's
24 been very important to me. I think at a time in our
25 world when we are at such a crisis, we need more and

1 more people knowing how to do that.

2 I have seen on many visits young adults
3 that come there and learn how to do this kind of
4 farming, and I totally support that.

5 In regards to what might be called the
6 future church activities, I have been there to a
7 number of gatherings in celebration of birthdays;
8 celebration of special times of year; in celebration
9 of what I have valued very much, which is a very
10 universal approach to spirituality, where there is no
11 dogmas, there's no specific form that is required,
12 but everyone that's comes there, in my experience,
13 has had a very strong orientation to kind of an
14 earth-based spirituality. A recognition that we're
15 all connected, all connected to each other, all
16 connected to the earth.

17 So those activities have been very valuable
18 to me, and I would entirely support an application
19 for there to be a more formal church there that would
20 allow for these kinds of gatherings to be made a
21 little more available to other people besides the
22 small personal group that's been invited today.

23 CHAIRPERSON SCHEUER: Thank you very much.
24 Are there questions for the witness from the
25 Applicant?

1 MR. ICZKOVITZ: No.

2 MR. HOPPER: No, Mr. Chair.

3 MS. APUNA: No.

4 CHAIRPERSON SCHEUER: Commissioner Cabral.

5 VICE CHAIR CABRAL: You mentioned the type
6 of soil that was there. Can you tell me what was
7 being farmed? It appeared it's been abused in the
8 past or misused.

9 Do you know what the land was being used
10 for prior to the church?

11 THE WITNESS: I think it was pineapple.

12 CHAIRPERSON SCHEUER: Other questions,
13 Commissioners?

14 Commissioner Wong.

15 COMMISSIONER WONG: Just one question. You
16 know, when you went to the site for functions,
17 approximately how many people were there?

18 THE WITNESS: I've been there when there
19 has been a couple dozen people there. I've been
20 there, I would say -- it was a birthday gathering I
21 was at, may have been 50 people.

22 COMMISSIONER WONG: Parking was okay?

23 THE WITNESS: Parking is ample there. They
24 have parking areas off of the road that's right next
25 to the building, quite a perimeter around the

1 building that allows for parking without obstructing
2 the roadway at all.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Wong.

5 Commissioner Okuda.

6 COMMISSIONER OKUDA: Thank you, Chair. And
7 with your indulgence, Chair, if I can just ask and
8 answer with respect to the line of questions that I
9 asked before.

10 I won't go through each of the special
11 conditions that I went over with the prior witness,
12 but do you remember me going through that list?

13 THE WITNESS: I'm familiar with your
14 questions. I haven't been involved in any other
15 churches on this island, so I can't speak to what
16 Maui government's have been in regards to those
17 questions, but I appreciate those line of questions.

18 COMMISSIONER OKUDA: Well, have you ever
19 heard, even secondhand or second or even thirdhand of
20 the County of Maui, or any government agency,
21 imposing similar types of conditions on any other
22 church in the County of Maui?

23 THE WITNESS: I never have, and I'm so
24 surprised that the State would think they have a role
25 in governing a church activity. I have not heard of

1 any.

2 COMMISSIONER OKUDA: Just a short follow-up
3 question about the number of people that might attend
4 or be present on the property.

5 How many years have you lived in the County
6 of Maui, if I may ask?

7 THE WITNESS: Almost five.

8 COMMISSIONER OKUDA: During the years that
9 you've lived in the County of Maui, have you ever
10 heard of a limitation placed by the government on how
11 many members of a church, or people who want to
12 participate in the church, can go onto the church
13 property?

14 THE WITNESS: No, I never have. And I have
15 been in another church I'm just recalling, where
16 there were certainly probably close to 100 people
17 coming for a memorial service, and there was nobody
18 telling them that was too many people.

19 COMMISSIONER OKUDA: Again, I'm personally
20 not advocating violation of any occupancy rule
21 regarding a building, but I'm talking generally of
22 church property.

23 Thank you very much, Mr. Chair.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Okuda.

1 Are there other questions? Thank you very
2 much.

3 Our next witness is Ms. Waters followed by
4 Romy Bugg.

5 THE WITNESS: Aloha, good morning.

6 CHAIRPERSON SCHEUER: Do you swear or
7 affirm the testimony you're about to give is the
8 truth?

9 THE WITNESS: Yes, I do.

10 CHAIRPERSON SCHEUER: State your name and
11 address for the record.

12 THE WITNESS: My name Aerie Waters, and my
13 address os 3173 Hoomua Drive, Kihei.

14 AERIE WATERS
15 Was called as a witness by and on behalf of the
16 Public, was sworn to tell the truth, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: I've known Dr. Abrams and his
20 wife for about 20 years. I really don't know, I've
21 been here on Maui for 42 years, and I've known
22 Dr. Abrams in his capacity as a doctor helping
23 mentally ill, et cetera.

24 Anyway, I know the character of these
25 people, and I've noticed their kuleana is to serve

1 the community, and in many ways, and with the farm
2 opportunity, the Hawaiian saying of Ua Mau ke Ea o ka
3 Aina i ke Pono, meaning the life of the land is
4 perpetuated in righteousness. That came into my
5 mind, and I thought what is righteousness? I
6 thought, well, it's something that serves body, mind
7 and spirit in a most uplifting way.

8 So this farm, Sacred Earth sanctuary meets
9 all of those qualifications that I believe to be
10 righteousness.

11 Feeding people from healthy organic food,
12 that then benefits the land, because the land is not
13 being poisoned, it's being nurtured. It's being
14 stabilized. We've seen where it's happening with
15 land unplanted blowing dirt. I watch it going across
16 all the way to Lanai where it's not planted.

17 So here we have the earth being served,
18 people being served by sharing beautiful organic
19 food. And then the education of young people, and
20 it's really open to any age, but young people come
21 there and learn, as Ms. Morgan was saying, how to
22 grow food properly. And how to work in respect and
23 honor to this earth that is holding and feeding all
24 of us.

25 So it's body. It's mind. It's teaching.

1 It's educating. And then the earth sanctuary part of
2 it is educating our connection, our internal
3 connection. It's not like there's some form of how
4 it is that we connect with our source. It's that we
5 connect with our source.

6 And this is what is nourished at the Sacred
7 Earth Assembly, is that we take time, and we take --
8 find our own way of how do we want to really connect
9 in gratitude. So I would say that is the essence
10 feeling I have of the Sacred Earth Assembly.
11 Whatever the gathering, it's coming together in
12 heartfelt gratitude for all we have been given, and
13 part of that gift is what they share as food in
14 potluck that's grown right there.

15 So that covers education. It covers
16 nurturance on a physical, mental and spiritual level.
17 So Ua Mau ke Ea o ka Aina i ka pono, that the life of
18 the land be perpetuated in righteousness. This is
19 the core value our life in the Hawaiian Islands. And
20 hopefully it will spread far and wide, farther and
21 wider.

22 And these -- Dr. Abrams and his wife are
23 exemplary in our community in offering so much.
24 They've put everything into creating this. And then
25 sharing it with, you know, now a limited number

1 because of legal -- what we're here for today is that
2 this can be shared to those who are thirsty, and
3 many, as we know, are really thirsty today.

4 So I'm just here in support that this go
5 forward. Thank you.

6 CHAIRPERSON SCHEUER: Mahalo. Are there
7 questions from the Applicant?

8 MR. ICZKOVITZ: No.

9 MR. HOPPER: No, Chair.

10 MS. APUNA: No.

11 CHAIRPERSON SCHEUER: Commissioners?

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you very much
14 for your obviously heartfelt testimony.

15 You shared that meals are served there.
16 Are the meals -- are the meals served by the products
17 that are grown on the farm?

18 THE WITNESS: The format has pretty much
19 been potluck. And in the great generosity of spirit
20 that the Abrams have created this sanctuary, they
21 make food from what they grow there as offerings in
22 these potluck different occasions that Ms. Morgan was
23 saying. There's different celebrations of holidays.

24 COMMISSIONER CHANG: Because this is zoned
25 Agricultural land, I'm trying to understand and

1 appreciate what agricultural activities are occurring
2 on the land.

3 So could you describe for me what kinds of
4 agricultural activities are occurring on the land?

5 THE WITNESS: Education.

6 COMMISSIONER CHANG: Agricultural?

7 THE WITNESS: Agricultural education. Young
8 people come and are taught how to do organic farming
9 and how, you know, having ducks, chickens, the things
10 that you can create your own fertilizer to nourish
11 the land in honor and respect for the land, that we
12 don't give it poison, but we give it life and food,
13 and so that beautiful cycle of how to do proper
14 organic farming is offered to people that come, and
15 they offer to learn and help. It's like a hands-on
16 in the dirt education.

17 COMMISSIONER CHANG: What do they grow on
18 the farm?

19 THE WITNESS: Wonderful vegetables. Let's
20 see, I think I've eaten --

21 CHAIRPERSON SCHEUER: One moment. The
22 Applicant, you'll have a chance to present your case
23 after public testimony.

24 THE WITNESS: I think I can remember having
25 a zucchini and a bunch of different wonderful greens.

1 I think there was spinach and -- just these beautiful
2 vegetarian creations that -- of things grown there.
3 Sweet potatoes. Herbal teas that were served with
4 the meals. Salads, all of the greens and I think
5 there -- I mean there is been many, many different
6 celebratory moments there that have included -- so I
7 don't know how specific I can be. A beautiful
8 medley.

9 COMMISSIONER CHANG: Thank you very much.

10 CHAIRPERSON SCHEUER: Thank you.

11 Commissioner Okuda.

12 COMMISSIONER OKUDA: Thank you, Chair, and
13 I apologize for kind of repeating myself. But for me
14 I just want to find out information on what I see is
15 a potential constitutional issue.

16 Same question I asked the prior witnesses.
17 You said you've lived on Maui for 42 years?

18 THE WITNESS: Yes.

19 COMMISSIONER OKUDA: During the 42 years
20 you've lived here on Maui, do you know of any other
21 church which has been subject to restrictions placed
22 by the government of time of when services can be
23 held, days when services can be held, or requiring
24 notice of religious events to be given to neighbors
25 or other people before it can be held?

1 THE WITNESS: I'm probably not like deeply
2 into an organization to know all those details, but I
3 have not heard of that. And I'm trying to think, if
4 there is any -- no, I really can't think of any time
5 in which I've been aware of that happening.

6 COMMISSIONER OKUDA: Thank you very much.
7 Thank you, Chair.

8 CHAIRPERSON SCHEUER: Commissioners, are
9 there further questions?

10 If I may briefly. You mentioned a phrase
11 which is also the State motto Ua Mau ke Ea o ka Aina
12 i ka pono. You provided a common translation with
13 it.

14 Are you familiar with other translations?

15 THE WITNESS: I've heard instead of the
16 life of the land is perpetuated in life, and
17 righteousness I've heard, perpetuated I've heard.
18 I've heard life of the land is --

19 CHAIRPERSON SCHEUER: It's not a test.

20 THE WITNESS: It's all in that vein the
21 translations that I've heard.

22 CHAIRPERSON SCHEUER: Are you familiar with
23 who first said that statement?

24 THE WITNESS: No, who?

25 CHAIRPERSON SCHEUER: Kauikeaouli

1 Kamehameha III upon the restoration of Hawaiian
2 sovereignty after the British government had asserted
3 sovereignty over the Hawaiian Islands.

4 And so actually Ea in that context is not
5 actually translated as "life", but literally the
6 sovereignty of the island is perpetuated through
7 proper acts.

8 THE WITNESS: But it's about proper acts in
9 relation to the land.

10 CHAIRPERSON SCHEUER: In this case it was
11 about foreign power asserting sovereignty over
12 control of Hawaii, and then the fault of that being
13 recognized and the sovereignty by the native
14 government being restored.

15 THE WITNESS: And at the root of all of
16 that would be then respect for the aina, how it was
17 disrespected by foreign powers, and how claiming
18 again to have respect for the land, I would say,
19 would be -- there would be in the motivating drive to
20 even make that the state motto.

21 CHAIRPERSON SCHEUER: Thank you for your
22 testimony.

23 Commissioner Cabral.

24 VICE CHAIR CABRAL: Yes, thank you very
25 much for your involvement and your good information.

1 Because you appear to spend a lot of time
2 there being involved with growing, it appears there
3 is a kitchen on the property also.

4 Are you guys doing any added value, like
5 helping to learn to make preserves or fruits or
6 jellies or canned fruit, can your vegetables,
7 anything like that?

8 Are you able to grow it and take it one
9 step further to preserve it or dry it on the
10 property, or are any of those activities happening
11 there at the church?

12 THE WITNESS: I am probably the wrong
13 person to ask. I really don't know. I'm not
14 actively involved on that level. I've walked the
15 farm and been impressed by what's going on there, but
16 most of the time that I spent there I've come for
17 celebrations. So I'm not really privy to that
18 information. Sorry.

19 CHAIRPERSON SCHEUER: Thank you very much
20 for your testimony. Our next testifier is Romy Bugg,
21 followed by Michelle Drewyer, I believe.

22 So as the Chairperson, one thing I have to
23 navigate and have the privilege of doing is limiting
24 testimony to three minutes. I will note that I've
25 been timing it and everybody has taken their

1 testimony to three minutes. It's the Commission's
2 questions that's much longer.

3 We will take a couple more and then take a
4 ten-minute recess and proceed with further public
5 witnesses.

6 THE WITNESS: Romy Bugg.

7 CHAIRPERSON SCHEUER: Aloha.

8 Do you swear or affirm that the testimony
9 you're about to give is the truth?

10 THE WITNESS: Yes.

11 CHAIRPERSON SCHEUER: State your name and
12 address for the record.

13 THE WITNESS: Romy Bugg, 111 Kahului Beach
14 Road, Unit A214, Kahului.

15 CHAIRPERSON SCHEUER: Thank you. Please
16 proceed.

17 ROMY BUGG

18 Was called as a witness by and on behalf of the
19 Public, was sworn to tell the truth, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: So I've known -- I've been
23 working on the farm for like the last year, last
24 seven months, since spring or March of this year.

25 And I first met Mr. Abrams at Temple of

1 Peace ten years ago. I lived here for like a year,
2 then I moved to Oahu, and been here now for about
3 eight months.

4 CHAIRPERSON SCHEUER: Not to disturb you,
5 if you can maintain a close distance to the
6 microphone.

7 THE WITNESS: So the last seven months I've
8 been working on the farm volunteering my time on
9 Wednesdays, volunteer, and learning how to work and
10 cultivate organic foods. Maintaining the property.
11 I've been to two or three gatherings there.

12 I volunteer my time, I like being on the
13 property. I like how I feel when I'm there. I try
14 to hang out on the property as much as I can. I like
15 the way I feel when I'm there.

16 CHAIRPERSON SCHEUER: Thank you very much
17 Are there questions from the Applicant for
18 the witness?

19 MR. ICZKOVITZ: No questions.

20 MR. HOPPER: No, Mr. Chair.

21 MS. APUNA: No questions.

22 CHAIRPERSON SCHEUER: Commissioners?
23 Commissioner Wong.

24 COMMISSIONER WONG: I'm not from this
25 island, so I don't know the area that well. I see

1 pictures of it, but how far is it from the ocean?

2 THE WITNESS: I'd say halfway between the
3 ocean and Hana Highway.

4 COMMISSIONER WONG: Less than a mile.

5 THE WITNESS: Yeah, yeah. Haiku by Jaws,
6 there is a store there called Jaws something market
7 right down the street.

8 COMMISSIONER WONG: So you've only been
9 there for a year. Have you been to any of the
10 functions there?

11 THE WITNESS: Uh-huh.

12 COMMISSIONER WONG: And some of the
13 functions some people said had 20 people, 30 people.

14 THE WITNESS: Uh-huh.

15 COMMISSIONER WONG: The egress going into
16 and out of the church area onto Hana Highway, does it
17 back up, or people -- is it congested?

18 THE WITNESS: No. Off of Hana Highway
19 there's a -- it's an ocean-makai turn towards kai.
20 And it's a big cul-de-sac. I assume maybe two or
21 three properties share that cul-de-sac, that street.
22 Then you go down the hill on a gravel dirt road where
23 the farm is.

24 COMMISSIONER WONG: Thank you, Chair.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Wong.

2 Are there other questions, Commissioners?

3 Commissioner Chang.

4 COMMISSIONER CHANG: Thank you, I
5 appreciate your testimony.

6 You mentioned that over the last several
7 months you've been actually volunteering on the farm
8 on a regular basis?

9 THE WITNESS: Uh-huh.

10 COMMISSIONER CHANG: Do you help with any
11 of the organic farming?

12 THE WITNESS: Yeah. There is some flowers
13 that are cultivated.

14 COMMISSIONER CHANG: What kind of flowers?

15 THE WITNESS: Dragon -- I'm not too much on
16 -- dragon something. I've seen a lot of ginger root,
17 and tumeric and some tea blends, fruit trees.

18 COMMISSIONER CHANG: Thank you very much.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Chang.

21 Are there other questions? If not, thank
22 you very much for your testimony.

23 Our next testifier is Michelle Drewyer. We
24 will then take a ten-minute recess, followed by
25 testimony from Dawna Richmond and Judy Levy.

1 Aloha.

2 THE WITNESS: Thank you for coming to Maui
3 today.

4 CHAIRPERSON SCHEUER: Do you swear or
5 affirm that the testimony you're about to give is the
6 truth?

7 THE WITNESS: I do.

8 My name is Michelle Drewyer.

9 MICHELLE DREWYER

10 Was called as a witness by and on behalf of the
11 Public, was sworn to tell the truth, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 THE WITNESS: I am a next door neighbor to
15 Mr. Abrams. I have been on my property, which is
16 4495 Hana Highway, since 2005 we built our house.

17 I'm hoping that you all have had time to
18 look at the exhibits that I have posted on the
19 website.

20 For the last ten years since Mr. Abrams has
21 moved in, before that, it was very quiet. We are all
22 ag.

23 Jerome Labat has posted a letter. He owns
24 two properties. We share the same street. I share
25 the same driveway with Mr. Labat and Mr. Abrams.

1 There have been other testifiers, Malone
2 who lives on the property who also shares the same
3 driveway. Tim Robins who is adjacent, and many
4 various folks from the subdivision have opposed it.

5 We don't oppose the farm. We encourage
6 farming. I have a lot. I do a lot of ag on my
7 property.

8 What we oppose is the last decade of
9 concerts, parties, traffic, noise pollution. It's
10 been constant. And I pulled together and posted
11 things. I didn't post them in the internet, but I
12 found them on the internet, invitations. These are
13 paid events. These parties also have ticket sites.

14 So it's not just a couple people for
15 potluck. There have been -- and I posted videos of
16 cars backed up onto Hana Highway. Every car that
17 comes to Mr. Abrams' parties, events, concerts,
18 passes my house. Every car passes it twice, on the
19 way in and on the way out. Same with Mr. Labat.

20 There are safety issues. The intersection
21 where our driveway meets Hana Highway, there's a very
22 blind curve right before it. I often have to even
23 not stop. I continue onto Manawai and turn around
24 and enter the driveway that way, because I'm
25 concerned about being rear-ended.

1 And it goes on all night, you know, like
2 the New Year's parties. They go on all night. If
3 you look at the advertisements that they posted over
4 the last ten years, they're weekend events. They're
5 camping events.

6 It's simply not what he's portraying it to
7 you folks to be. It's not a simple church service
8 where 30 people come and go. They cone the driveway,
9 you know. There's signs all over the place. It's a
10 mess. It's like a total nuisance to everyone who
11 lives near him.

12 I just urge you to really -- you know, if
13 this was a case where Mr. Abrams wanted to start a
14 church, and we didn't already know what kind of
15 activities went on, I would say okay, give him a
16 chance. Let's see. Give me your permit, let's see
17 what happens.

18 But we know. We know from his violations,
19 you know, \$524,000 in fines. I mean, look at the
20 violation reports. They concerned concerts. They
21 concerned -- there was a kitchen there. This is an
22 ag building. Its zoned for ag storage. He shouldn't
23 have had any of these people in this building. It's
24 not zoned for occupancy. He has no Certificate of
25 Occupancy.

1 So the impact it has on all of us in the
2 neighborhood is huge. And he wants to start a
3 church, I don't begrudge him that. I just ask that
4 he do it in a neighborhood that is zoned for that.

5 I don't want to live next to a concert
6 hall, and that's what I have.

7 It's very emotional too for all of us,
8 because it's -- you know, we're in a neighborhood.
9 And I haven't made formal complaints because I'm an
10 attorney, and I know what happens when neighbors
11 start suing each other. It's horrible. So I
12 haven't.

13 But I don't want him to have a license to
14 hold these events that have been happening over the
15 last ten years.

16 And to your question, I guess it's
17 Commissioner Chang, about limits on churches and
18 times and days, I would say, you know, it's an ag
19 zoned neighborhood, special management.

20 So I think that neighbors and the
21 surrounding area that is a criteria that he not
22 disturb the area around him. Those were legitimate
23 concerns that the Maui Planning Commission had, that
24 the time that these things were happening was going
25 well into the early morning hours. I mean, he has

1 the right to have a church if he wants to have it in
2 an appropriate area. I'm saying the farm is an area
3 for where he has it. The church, no. Because the
4 church is really a venue for him to hold concerts and
5 weddings, and everything else he's advertised that
6 he's done.

7 CHAIRPERSON SCHEUER: May I ask you to
8 summarize your testimony.

9 THE WITNESS: I'm totally opposed to the
10 granting of a Special Permit for the church. I think
11 that it negatively impacts every neighbor and every
12 neighbor except for one person who is, I guess, a
13 religious teacher who attends their services, has
14 opposed it. And has stated how negatively it has
15 affected our neighborhood.

16 CHAIRPERSON SCHEUER: Thank you for your
17 testimony.

18 Any questions from the Applicant?

19 CROSS-EXAMINATION

20 BY MR. ICZKOVITZ:

21 Q Ms. Drewyer, you're a lawyer. How long
22 have you been an attorney on Maui?

23 A 30 years.

24 Q You're aware of procedures before the Maui
25 Planning Commission?

1 A I am.

2 Q Were you aware that there was room for open
3 public testimony at the May 28th hearing meeting of
4 the Maui Planning Commission?

5 A I am.

6 Q Did you testify? Did you have an
7 opportunity to testify and give testimony while the
8 record was open regarding your opinion regarding the
9 Special Use Permit?

10 A Like I said, I have been reluctant to speak
11 publicly or to make a complaint. It should be known
12 that Mr. Abrams controls my ocean view, which he's
13 made very apparent to me. So I have been very
14 careful about my complaints. I wish I would have
15 testified.

16 Q So you had the opportunity to testify?

17 A I did.

18 Q You chose not to testify?

19 A I did.

20 Q And you knew that the testimony would be
21 closed at the end of that hearing, correct?

22 A Yes. And I'm here today to testify.

23 Q Did you ever ask the Maui Planning
24 Commission to reopen the record to allow your
25 testimony?

1 A No. I wrote a letter.

2 Q So you wrote a letter to the Maui Planning
3 Commission after you knew public testimony was
4 closed?

5 A I'm not sure when I wrote it.

6 Q When did you submit that letter?

7 A I'm not sure of the date.

8 Q Did you submit it on Friday afternoon at
9 4:00 o'clock in the afternoon, before a Tuesday Maui
10 Planning Commission?

11 A Like I said, I'm not sure of the date.

12 Q Now, you referred to all these events. Can
13 you please point to the record any evidence
14 whatsoever of any event that you say was in violation
15 of their zoning violation? The record before you.

16 Did you receive a copy of, because I
17 noticed that the Maui Planning Commission sent you a
18 complete copy of the record. So please let me ask
19 you. So you make all these accusations. You make
20 all these conclusions. But all that matters is what
21 is in the record.

22 So the Abrams believe that you're just
23 exaggerating and making these things up.

24 COMMISSIONER OHIGASHI: Mr. Chair.

25 CHAIRPERSON SCHEUER: Commissioner

1 Ohigashi.

2 COMMISSIONER OHIGASHI: Sorry to interrupt.

3 I think this is badgering. I'm going ask
4 the Chair to control the proceedings.

5 Mr. Iczkovitz has a right to ask questions.
6 Ask your questions, but not to preface it.

7 CHAIRPERSON SCHEUER: Sure, I agree.

8 MR. ICZKOVITZ: I withdraw.

9 Q So I just would like to ask the witness to
10 identify the particular events in the record that
11 you're referring to, instead of making just broad
12 based statements.

13 COMMISSIONER OHIGASHI: Objection. Again,
14 come on, ask the question simply.

15 CHAIRPERSON SCHEUER: I believe the
16 question for the witness is:

17 Can you identify specific events that are
18 in the record in front of the Land Use Commission
19 which was handed to us by the Planning Commission of
20 Maui.

21 THE WITNESS: I believe that those who did
22 testify, Tim Robbins, Frederito Malone, Mr. Labat,
23 all neighbors testified to various events that were
24 held on drumming into the night. Back up of cars.
25 All of these things.

1 I'm personally aware of many events that I
2 saw hundreds of cars pass my driveway. I've heard
3 and listened to the dogs barking.

4 CHAIRPERSON SCHEUER: If I may. I think
5 the question, despite the long preface to it from
6 counsel, was very simple.

7 Are any of these events that you're
8 personally aware of, can you point to them as
9 existing in the record?

10 THE WITNESS: I don't have the record
11 before me.

12 CHAIRPERSON SCHEUER: It's the record that
13 we have received as posted to the State Land Use
14 website.

15 THE WITNESS: Right. Which I object to
16 also because the Maui Planning Department did not
17 include a lot of the letters that other neighbors
18 wrote. They were rejected. And I object to my
19 testimony, my letter and Mr. Labat's exhibits being
20 stricken because Mr. Abrams' attorney asked the Maui
21 Planning Commission to strike them and they did. So
22 you don't have a complete record actually.

23 CHAIRPERSON SCHEUER: So just to clarify
24 your point.

25 You submitted information to the Maui

1 Planning Commission on this matter.

2 But that is not in the record that was
3 transmitted to us?

4 THE WITNESS: Yes. No.

5 CHAIRPERSON SCHEUER: Are there anything
6 further?

7 MR. ICZKOVITZ: Yes.

8 CHAIRPERSON SCHEUER: Okay, but I'm going
9 to ask you to please limit it to simple questions.
10 Don't badger the witness.

11 MR. ICZKOVITZ: I understand, Mr. Chairman.

12 Q So you submitted information via email
13 after the close of the May 28th hearing, a letter to
14 the Commission. Is that correct?

15 A I'm not sure if it's after. I submitted a
16 letter that you later asked to strike.

17 Q And then Mr. Labat also submitted a letter
18 and also submitted 100 pages of documents; correct?

19 A Yes, he did.

20 Q And the Maui Planning Commission ruled
21 those documents, that I had the right to
22 cross-examine both you and Mr. Labat regarding the
23 letters you submitted and the documents that --

24 A No, that's not true. The Maui Planning
25 Commission, when you asked them if you could

1 cross-examine us, they said they hadn't the right to
2 compel us to come in to be cross-examined.

3 CHAIRPERSON SCHEUER: Hold on.

4 This is not going to be super helpful to
5 this Commission to hear two different versions of
6 what each of you think the Maui Planning Commission
7 did.

8 Can you ask questions about things that the
9 witness has personal knowledge of and relates to her
10 testimony?

11 Q (By Mr. Iczkovitz): Did you accuse
12 Dr. Abrams of stealing water?

13 A I have not accused him. I have -- we share
14 a common well. I don't see how this is relevant
15 either to the church. This issue is really --

16 CHAIRPERSON SCHEUER: You may decline to
17 answer the question.

18 THE WITNESS: I decline.

19 Q (By Mr. Iczkovitz): You had an opportunity
20 to show up at the August 13th hearing to respond to
21 questions that I was going to give you regarding --

22 A This is asked and answered.

23 Q I'm just asking --

24 CHAIRPERSON SCHEUER: Excuse me, both of
25 you, at a minimum for the sake of our court reporter,

1 you cannot interrupt each other.

2 THE WITNESS: I had an opportunity to show
3 up and testify. I chose not to testify then because
4 I really didn't want to create any more disharmony in
5 the neighborhood. But I'm testifying now, and I
6 don't appreciate your badgering.

7 CHAIRPERSON SCHEUER: Commissioner
8 Ohigashi.

9 COMMISSIONER OHIGASHI: My understanding of
10 the purpose of asking questions at this juncture is
11 for the purpose of clarifying testimony.

12 CHAIRPERSON SCHEUER: That is correct.

13 COMMISSIONER OHIGASHI: This is not
14 cross-examination.

15 CHAIRPERSON SCHEUER: That's correct.

16 COMMISSIONER OHIGASHI: And the technique
17 used for cross-examination should not be permitted in
18 this matter.

19 CHAIRPERSON SCHEUER: So the last
20 instructions I gave for counsel for the Applicant was
21 to ask questions related to the witness' testimony.

22 MR. ICZKOVITZ: I will relate directly to
23 them.

24 Q So, Ms. Drewyer, you said these activities
25 go on all night?

1 A They have, yes.

2 Q When was the last time that happened?

3 A It hasn't happened in awhile. Well, last
4 New Year's Eve, but since 2015, I believe Mr. Abrams,
5 that's when he acquired all those fees and fines from
6 the county. He's been a little more quiet in his
7 activities.

8 Q So I'm waiting for the answer. When was
9 the last time that happened that you had a problem?

10 A New Year's Eve last year.

11 Q And is your understanding that New Year's
12 Eve parties are not --

13 CHAIRPERSON SCHEUER: That is not related
14 to the testimony.

15 Q (By Mr. Iczkovitz): So the --

16 A October 30th there was a party that lasted
17 well into the evening this year.

18 Q Do you have any evidence of that?

19 A I was there. I was at my house.

20 Q What time did it end?

21 A I went to bed before it ended.

22 Q What time did you go to bed?

23 A This is after we've had meetings and after
24 they have been told that they couldn't --

25 CHAIRPERSON SCHEUER: I'm losing my

1 patience.

2 Q (By Mr. Iczkovitz): You mentioned safety
3 issues, a blind curve. Have you seen the pictures of
4 the intersection and --

5 A I've taken pictures of my own. I live
6 that. I do it every day. I know how dangerous it
7 is.

8 Q Do you have a -- point to a picture -- do
9 you have any evidence to present to the Commission
10 that it's dangerous other than your personal --

11 CHAIRPERSON SCHEUER: Can you please
12 confine your questions to the witness' testimony?

13 Q (By Mr. Iczkovitz): Other than New Year's
14 Eve, have there been any activities that have gone on
15 past 10:00 o'clock?

16 A Over the last ten years there have been
17 hundreds of activities that have gone on, some all
18 night, some all weekend.

19 Q Do you have any evidence of any particular
20 date where that happened?

21 A Yes. I submitted many exhibits into the
22 record for the Council Members to see what was
23 advertised. What went on over the last decade.

24 Q So you're saying you submitted to the
25 record, but they're not in the record; is that

1 correct?

2 A I submitted advertisements that I have --

3 CHAIRPERSON SCHEUER: Hold on, hold on.

4 One more time. Just her testimony today.

5 Do you understand?

6 Q (By Mr. Iczkovitz): Yes.

7 You mentioned ticket sites. Do you have
8 any evidence to present?

9 CHAIRPERSON SCHEUER: No, no, no. You may
10 ask her for clarification as to statements that she
11 has made. You may not ask her for evidence of
12 anything that she said, that's not standard for a
13 public witness in this kind of proceedings.

14 MR. ICZKOVITZ: Thank you, Mr. Chair.

15 CHAIRPERSON SCHEUER: Do you have anything
16 further?

17 MR. ICZKOVITZ: Yes.

18 You mentioned 524 --

19 CHAIRPERSON SCHEUER: How much longer?

20 MR. ICZKOVITZ: Less than five minutes.

21 Q You mentioned 524,000 in fines. Where did
22 you get that information?

23 A From the county site, and from County
24 Department submittal which is in the record.

25 Q And were all those, as far as you know,

1 where all those issues resolved?

2 CHAIRPERSON SCHEUER: You may ask her --
3 you may ask the witness for clarification as to the
4 statements that she made in her testimony.

5 MR. ICZKOVITZ: Can I ask where in the
6 record the \$524,000 --

7 CHAIRPERSON SCHEUER: No. You may ask her
8 if she meant that, whether she was particularly
9 referring to something. That's it. You can't ask
10 her to produce evidence.

11 MR. ICZKOVITZ: I can't ask her where in
12 the record she's coming up with those numbers?

13 CHAIRPERSON SCHEUER: No.

14 Q (By Mr. Iczkovitz): And the information
15 regarding all the neighbors who allegedly are against
16 this, these neighbors, do they have any evidence in
17 the record other than what was submitted?

18 CHAIRPERSON SCHEUER: Again --

19 MR. ICZKOVITZ: I'll withdraw. I'm done.

20 CHAIRPERSON SCHEUER: Good. County?

21 MR. HOPPER: No questions. Just a
22 suggestion. If there is a reference to the record,
23 if you are taking additional public testimony, I
24 think the Commissioners could ask if the witness has
25 their own basis for the testimony, you can certainly

1 determine that now as this is testimony. Just a
2 suggestion.

3 I know there is a record and there is
4 discussion of the record, but --

5 CHAIRPERSON SCHEUER: There is a record and
6 we are confined to that record.

7 MR. HOPPER: If you're taking testimony in
8 considering that though, unless that's not going to
9 be part of the record, and you can rely on that,
10 presumably the testimony is going to be added to your
11 record. If it's not, then this would all be
12 disregarded.

13 But to point out that if there is an option
14 you can get this additional information from the
15 witness if that is something that you're interested
16 in.

17 CHAIRPERSON SCHEUER: Thank you, Mr.
18 Hopper.

19 Office of Planning.

20 MS. APUNA: No.

21 MR. ICZKOVITZ: If I may just make one
22 request to the Commission to not accept the letters
23 that were submitted after the close of testimony --

24 CHAIRPERSON SCHEUER: Your procedural
25 request is noted.

1 Commissioners? Commissioner Ohigashi.

2 COMMISSIONER OHIGASHI: My question is
3 mostly functional.

4 You live next to the property?

5 THE WITNESS: I do.

6 COMMISSIONER OHIGASHI: And can you
7 describe generally there is a driveway that's your
8 driveway. Is there a common road going into the
9 property or --

10 THE WITNESS: Yes, there is a common road,
11 a private drive that the four properties share, Mr.
12 Labat has two properties, I have a property, and Mr.
13 Abrams has a property.

14 So it's one common drive with a cul-de-sac
15 at the bottom, which -- and they abut Hana Highway.

16 COMMISSIONER OHIGASHI: Is there a portion
17 of that road that enters into Mr. Abrams' property?

18 THE WITNESS: The road serves all four
19 properties. So as you turn off Hana Highway onto the
20 private road, turning towards the ocean, you're going
21 down the driveway. Mine is the first left. You go
22 down to the cul-de-sac, and Mr. Labat's property is
23 on the right side of the road, and Mr. Abrams is the
24 farthest person off the cul-de-sac at the bottom.

25 COMMISSIONER OHIGASHI: In these activities

1 that are conducted over the last ten years that
2 you've mentioned, have -- where do the cars park?

3 THE WITNESS: The cars go right by my
4 house, and then park on Mr. Abrams' property. And
5 then I see and hear all of the lights.

6 COMMISSIONER OHIGASHI: I'm just curious
7 where they park.

8 THE WITNESS: Abrams' property.

9 COMMISSIONER OHIGASHI: Do they park on the
10 common road?

11 THE WITNESS: They used to. That's why he
12 cones off the road now.

13 COMMISSIONER OHIGASHI: All of that is
14 confined to his property?

15 THE WITNESS: Yes.

16 CHAIRPERSON SCHEUER: Commissioner Cabral.

17 VICE CHAIR CABRAL: In regards to that
18 roadway, someone else mentioned something about
19 gravel. Is your common driveway paved or gravel?

20 THE WITNESS: The common drive is paved.
21 The gravel portion is on Mr. Abrams' property. So
22 every car that comes down leaves the paved property
23 and enters onto his property which is gravel, so that
24 is the noise pollution Mr. Labat was referring to in
25 his letter and also Mr. Malone. I also hear it from

1 my house.

2 It's been represented to you that, you
3 know, we're so far away and they're so far away at
4 that point, but that's not true. The gulch amplifies
5 the noise, we hear everything. So every car that
6 crunches on the gravel, I hear.

7 Dogs, they have five dogs. Every time a
8 car goes by, the dogs bark. Every time a car leaves,
9 the dogs bark. This is not something that just
10 occurs like once a week. This is daily coming and
11 going, and it's not all farm traffic.

12 I mean, there's belly dancing classes, yoga
13 classes and a multitude of activities that happen on
14 that property that is not church related.

15 And everything that is happening on that
16 property in that building right now shouldn't be
17 happening, because it doesn't have a certificate of
18 occupancy, and it's still occurring even through
19 these hearings.

20 You know, when they're asking for a Special
21 Permit, they're still violating the law.

22 VICE CHAIR CABRAL: Thank you very much.

23 I do have an email we received. We got a
24 whole pile of these emails, and I think yours is in
25 here.

1 You're Michelle Drewyer, with two LLs,
2 Drewyer, D-R-E-W-Y-E-R. I have an email from you.
3 Thank you. A letter that's been part of an email, a
4 large number of them are together. Most of the rest
5 of them are all in favor, but you have yours. I've
6 read that.

7 THE WITNESS: There were quite a few that
8 were submitted in opposition also.

9 CHAIRPERSON SCHEUER: Anything further?

10 VICE CHAIR CABRAL: No, that's it.

11 CHAIRPERSON SCHEUER: Commissioner Wong.

12 COMMISSIONER WONG: I have just one
13 question.

14 How far is your house to the ocean,
15 approximately?

16 THE WITNESS: I don't know in distance.
17 There's -- I don't know, because Mr. Abrams' property
18 is in front of mine, and then there is property in
19 front of his. And it's north shore, so it's all
20 cliffs.

21 COMMISSIONER WONG: That's all. Thank you.

22 CHAIRPERSON SCHEUER: Commissioner Chang.

23 COMMISSIONER CHANG: Thank you for your
24 testimony. I know this is a little awkward.

25 I'm going to ask you a procedural question.

1 You're a lawyer. You were aware that the record on
2 this matter before -- let me ask you.

3 You're aware that the Land Use Commission
4 is confined to the record provided by the Maui County
5 Planning Commission?

6 THE WITNESS: Yes.

7 COMMISSIONER CHANG: And it is somewhat
8 awkward. Our own procedures, we take public
9 testimony prior to us hearing the actual arguments on
10 the matter. So in this matter, the Planning
11 Commission had a hearing on May 28th, 2019; is that
12 your understanding?

13 THE WITNESS: I believe so.

14 COMMISSIONER CHANG: And I heard your
15 testimony earlier was that you did not provide any
16 testimony at this point in time.

17 THE WITNESS: I did not.

18 COMMISSIONER CHANG: Then they had another
19 meeting it appears on June 25th, 2019. Did you
20 attend that hearing?

21 THE WITNESS: I'm not sure if I did. I
22 didn't attend all of them because I was working.

23 COMMISSIONER CHANG: When did you become
24 aware -- when you submitted some additional
25 testimonies that you wanted some letters and some,

1 you know, material to the Planning Commission.

2 When were you aware that they were not
3 included in the record?

4 THE WITNESS: When I saw the record.

5 COMMISSIONER CHANG: When did you see the
6 record?

7 THE WITNESS: Once it was transmitted to
8 you folks.

9 COMMISSIONER CHANG: So you weren't aware
10 in the last -- Planning Commission decision-making
11 was an on August 13th.

12 THE WITNESS: No, I had assumed that they
13 had taken all the letters and put them in the record.
14 When I looked at the record, it was very incomplete.

15 COMMISSIONER CHANG: And you did not
16 participate in that August 13th Maui County Planning
17 Commission.

18 THE WITNESS: No.

19 COMMISSIONER CHANG: Okay. Thank you very
20 much.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Chang.

23 Commissioner Okuda?

24 COMMISSIONER OKUDA: This is kind of
25 awkward. Thank you, Ms. Drewyer, for testifying; and

1 thank you very much for taking the time, because even
2 in what might seem contentious issues, it's really,
3 really, really important that everyone come out here
4 and give their position, because if we don't hear all
5 sides, and we don't hear argument from all sides, you
6 know, we may not make the best decision we have to
7 make under the law. So thank you very much for
8 coming out here.

9 You might have noticed in the vein of the
10 prior questions I asked, one of the things, one issue
11 that I'm having a little bit of trouble with is what
12 standard we have to apply if we're dealing with a
13 church as an Applicant.

14 And tell me whether or not you agree with
15 this. I'm quoting from this federal law called
16 Religious Land Use and Institutionalized Persons,
17 which is found at 42 United States Code Section
18 2000cc.

19 What that federal law seems to do is
20 summarize what the standards are that government
21 agencies have to follow when dealing with religious
22 institution or churches in making decisions?

23 And what it basically says is that we're
24 supposed to determine first of all -- well, let me
25 just read it.

1 It says: No. 1, General Rule. No
2 government shall impose or implement a land use
3 regulation in a manner that imposes a substantial
4 burden on the religious exercise of a person
5 including a religious assembly or institution, unless
6 the government demonstrates that imposition of the
7 burden on that person, assembly or institution.

8 Sub paragraph (a) in furtherance of a
9 compelling government interest; and subparagraph (b)
10 is the least restrictive means of furthering that
11 compelling government interest.

12 Does that sound familiar as far as the
13 constitutional standard that government agencies,
14 like the Land Use Commission, have to apply if we're
15 dealing with land use rules to be imposed on
16 religious institutions?

17 THE WITNESS: No. I don't think that --
18 and you can refer this to corporation counsel --
19 we're here because it takes a Special Use Permit to
20 have a church in an Ag zone. So they have to show --
21 one of the most important things that they have to
22 show is does it negatively affect the surrounding
23 area. And they have. So I think they're apples and
24 oranges.

25 The first step is to apply -- they first

1 have to see, is it an appropriate use where they're
2 asking to have it? And my response is no. It does
3 negatively affect all the adjacent landowners. So I
4 don't know how planning is coming up with their
5 recommendation that it doesn't, because we've all
6 testified that it does.

7 As far as your federal law, I think that
8 would be something that you would consider if the
9 church were in an area zoned for a church, and then I
10 think the government would have problems placing
11 restrictions. But you don't have to grant the permit
12 just because they're a church.

13 COMMISSIONER OKUDA: I'm not saying we have
14 to grant the permit. My question goes to more the
15 standard which is applicable. Let me ask you this.

16 THE WITNESS: I'm not an expert, and I'm
17 not here testifying on church law or that statute.

18 COMMISSIONER OKUDA: I was just inquiring
19 because I notice, and most -- we generally try to
20 read every single piece of paper that's in the
21 record. And I noticed and I read your submission
22 very carefully, and I noticed your letterhead
23 indicated you were attorney of law. So I was just
24 finding out if you had any information regarding
25 that.

1 Let me ask you this about the requirement
2 of least restrictive alternative. It's very clear in
3 my view that Hawai'i Supreme Court made clear that
4 just because you're a church, it doesn't give you
5 exemptions from certain types of zoning or building
6 requirements.

7 Like, for example, there was the Korean Dae
8 Won Sa, or what we call the Palolo Valley case, where
9 the supreme court said just because you're a church,
10 you can't have your roof exceed the height
11 limitations. There's the Charles Marsden versus --

12 CHAIRPERSON SCHEUER: Commissioner,
13 respectfully.

14 COMMISSIONER OKUDA: We have -- we are not
15 trying to say church gets away with anything.

16 My question is this. Is it possible to
17 remedy the problems you see being raised by
18 enforcement of other laws, like, for example, the
19 noise statute, common law nuisance --

20 THE WITNESS: I understand your question,
21 and I'll just say this.

22 No, I don't think it is. I don't think
23 that any of those restrictions that were placed on by
24 the Maui Planning Commission on the Special Use
25 Permit when they approved it, I don't believe that he

1 will follow any of those.

2 I've got ten years of my neighbor holding
3 events that shouldn't have been held there in an Ag
4 farm that doesn't even -- is not even supposed to
5 have people in it.

6 It's a 7000-plus foot party barn. So he's
7 been breaking the law now for ten years. And so your
8 question to me, can we put reasonable restrictions on
9 this? You can put them on there. And then it's
10 going to be up to the neighbors to police it. And
11 that's going to be more of a burden on us, and it's
12 going to create even more, you know, neighborly good
13 will when we have to make police reports at 12:00 in
14 the morning because he's having a concert, or call
15 the zoning department the next day or on Monday
16 because all weekend we had events happening.

17 Like I said, if this was a person coming in
18 who has not had this illegal activity occurring on
19 his property for a decade asking for a chance, I
20 would say, okay, let's give him a chance. But that's
21 not case. So, no, I don't think any restrictions
22 will work.

23 COMMISSIONER OKUDA: Okay, thank you very
24 much.

25 CHAIRPERSON SCHEUER: Commissioner Aczon.

1 COMMISSIONER ACZON: Thank you, Chair. I'm
2 sorry to hear about the trouble, but how many
3 property owners are using that common road?

4 THE WITNESS: There's four, actually four
5 lots, so there's actually Mr. Labat, Mr. Malone,
6 myself and Mr. Abrams.

7 COMMISSIONER ACZON: There is a lot of
8 incidents that you kind of mentioned. During those
9 incidents, what action did you take?

10 THE WITNESS: I, like I said, I haven't
11 taken any actions other than to call Mr. Abrams and
12 try to work things out. And I've done that over the
13 past ten years.

14 And the dog barking thing, it just goes on
15 and own. So, for example, your lights --

16 COMMISSIONER ACZON: Did you call in
17 enforcement --

18 THE WITNESS: No.

19 COMMISSIONER ACZON: What about your
20 neighbors?

21 THE WITNESS: My neighbors in Manawai did,
22 and they had complaints.

23 COMMISSIONER ACZON: So you didn't see any
24 police officers?

25 THE WITNESS: There were police reports

1 made and that's in the record.

2 COMMISSIONER ACZON: So they're all in the
3 record?

4 THE WITNESS: It's in the Violation Section
5 of the Planning Department.

6 COMMISSIONER ACZON: Thank you.

7 CHAIRPERSON SCHEUER: Commissioners, are
8 there any other questions? If not --

9 MR. ICZKOVITZ: May I cross-examine?

10 CHAIRPERSON SCHEUER: No. That's not how
11 our procedures go.

12 It is 10:35 and we are going to take a
13 15-minute recess to 10:50.

14 THE WITNESS: Thank you.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: It's 10:50 and we're
17 back on the record.

18 I'm, as a point of privilege as the Chair,
19 I'm going to say something right now.

20 A couple weeks ago we went through two days
21 of Land Use Commission hearings related to Mauna Kea.
22 I think you're all familiar with the high stakes
23 controversies going on on the mountain there, and the
24 very intense emotional issues on all sides related to
25 that. Yet in two days we have managed to hold a

1 hearing with less acrimony than we had in the first
2 part of this hearing.

3 It is possible to have respectful
4 discussions about difficult issues, and I will highly
5 encourage myself in my own heart, my fellow
6 Commissioners and all the parties to conduct
7 ourselves in a manner that is appropriate.

8 Commissioner Aczon, you asked for a chance
9 to ask a question.

10 COMMISSIONER ACZON: Mr. Chair, permission
11 to address the Petitioner's legal counsel.

12 CHAIRPERSON SCHEUER: Please, go ahead.

13 COMMISSIONER ACZON: Mr. Iczkovitz, I don't
14 really appreciate you following a testifier or
15 witness, following the testifier or the witness and
16 yelling at them. For me it's intimidation, just
17 personal opinion.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Aczon.

20 We still have a number of people signed up
21 to testify on this matter. Dawna Richmond, followed
22 by Jody Levy, followed by Christiane Douglas.

23 Aloha, good morning.

24 Do you swear or affirm the testimony you're
25 about to give is the truth?

1 THE WITNESS: Yes.

2 DAWNA RICHMOND

3 Was called as a witness by and on behalf of the
4 Public, was sworn to tell the truth, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 THE WITNESS: My name its Dawna Richmond,
8 241 Manawai Place. Manawai is the subdivision east,
9 straight east of Mr. Abrams' property.

10 And I am the president of our homeowners
11 association. I did write a letter. None of us knew
12 about the hearings, proceedings that are going on,
13 because we are further than 500 feet away from the
14 property. But we can always hear what is going on up
15 there.

16 So we did write a letter once we found out
17 what was going on. I wrote the letter on August 5th.
18 We had other people in the association that also
19 wrote letters but they were rejected.

20 I don't know if our association letter is
21 in the proceedings or not, but I did bring it. But
22 we are opposed to it, because, as Michelle stated
23 before, there have been several parties that go into
24 the night. It has been quiet since 2015 after
25 several -- our neighbors have -- sorry, I'm very

1 nervous.

2 CHAIRPERSON SCHEUER: We haven't lost a
3 witness ever.

4 THE WITNESS: Thank you very much.

5 Our neighbors down below, they weren't able
6 to come today. She is not feeling well. And she did
7 have some complaints. So I think everything since
8 2015 has been settled down since then. But before
9 that, there were definitely parties that went on all
10 night, especially New Year's Eve.

11 I did listen to the testimony. I think it
12 was in May, televised or recorded, and I noticed that
13 Mr. Abrams was talking about New Year's Eve party and
14 he said it ended at 10:00, and most people don't have
15 New Year's Eve parties that ended at 10:00. But he
16 stated that to you, and I kind of laughed because it
17 did go on all night.

18 Even his brochure said drumming into the
19 night and even the next day, and they were going to
20 have a prayer ceremony the next morning. And it did
21 go all night and all day the next day. Just drumming
22 all night long.

23 I can hear it. This is not -- I'm not
24 lying here. We can hear it. And it's just -- it's
25 like I said, it's been quiet lately because of the

1 infractions from before which I believe that's why
2 it's kind of quieted down.

3 I agree that having all this farming is
4 wonderful. We have a farm too. We have hundreds of
5 trees and things that we grow. So we appreciate the
6 farm, and all the people who want to come to their
7 farm and look at it. But changing the code from
8 Special Management Area to having a church where we
9 have no recourse if this stuff keeps going on. If
10 they start up again, we have no recourse.

11 And I know we talked about putting
12 limitations on it. I don't know that you can do
13 that. Do we go back to calling the cops all the
14 time? Or because of a church, do we not even have
15 that option any more?

16 Here are a couple of the fliers that went
17 out.

18 CHAIRPERSON SCHEUER: You can give them to
19 the clerk.

20 THE WITNESS: These are parties that they
21 were charging money for. And there's a PA system,
22 and bands. It's great having a party, but it's --
23 having a party and you're not in it, and having to
24 listen to it all night is not exactly fun.

25 CHAIRPERSON SCHEUER: Is that the

1 conclusion of your testimony?

2 THE WITNESS: Yes.

3 CHAIRPERSON SCHEUER: Thank you very much.

4 Mr. Iczkovitz?

5 MR. ICZKOVITZ: May I see those documents?

6 CHAIRPERSON SCHEUER: Yes, copies will be
7 shared. And then will be posted to the Land Use
8 Commission website.

9 THE WITNESS: I sent those also to -- yeah.

10 CHAIRPERSON SCHEUER: Do you have questions
11 for the witness, Mr. Iczkovitz?

12 MR. ICZKOVITZ: Yeah, I do.

13 CHAIRPERSON SCHEUER: Confined again.

14 CROSS-EXAMINATION

15 BY MR. ICZKOVITZ:

16 Q Do you know what year these documents were?

17 A 2015. As I stated before, 2015 was when
18 everything kind of calmed down.

19 Q Did you ever call the police about the
20 complaint about noise?

21 A No.

22 Q Did you ever once call the owner of the
23 farm to complain about noise?

24 A I didn't know who it was.

25 CHAIRPERSON SCHEUER: Again, Mr. Iczkovitz,

1 can you confine your questions to her testimony? So
2 the first question you asked was a reasonable and
3 helpful one. She produced something, you wanted to
4 know the date.

5 MR. ICZKOVITZ: I'm just getting at the
6 fact that she is saying there was noise. I'm asking
7 if she ever called the police or submitted a
8 complaint to the County regarding these alleged
9 violations. She is saying it happened all the time.
10 All I'm asking, did she ever actually complain about
11 it to a County authority. I'm not trying to be
12 aggressive, I'm just asking if she felt it was so --

13 CHAIRPERSON SCHEUER: Please proceed.

14 THE WITNESS: No, I'm not a complainer.

15 MR. ICZKOVITZ: I have no more questions.

16 CHAIRPERSON SCHEUER: County.

17 MR. HOPPER: No.

18 MS. APUNA: No.

19 CHAIRPERSON SCHEUER: Commissioners?
20 Commissioner Cabral.

21 VICE CHAIR CABRAL: In regards to your
22 homeowners association, is that a formal association?
23 So like when you buy your land, you know that you
24 have to share together in this association?

25 THE WITNESS: Yes.

1 VICE CHAIR CABRAL: It's not one that you
2 made up?

3 THE WITNESS: No. We have had the
4 association for over 25 years.

5 VICE CHAIR CABRAL: So when you buy, you're
6 a member whether you like it or not.

7 Is the prior testifier, is she in that same
8 homeowners association?

9 THE WITNESS: No.

10 VICE CHAIR CABRAL: So it's a separate
11 subdivision in a sense?

12 THE WITNESS: Yes.

13 VICE CHAIR CABRAL: Thank you very much.

14 CHAIRPERSON SCHEUER: Commissioners, any
15 questions? Commissioner Chang.

16 COMMISSIONER CHANG: Thank you very much
17 for being here this morning.

18 I just would like to ask you whether you
19 provided similar testimony to the Maui County
20 Planning Commission at any of its previous hearings?

21 THE WITNESS: No. I didn't know there were
22 any. We weren't informed of any.

23 COMMISSIONER CHANG: How did you know about
24 today's hearing?

25 THE WITNESS: I was told by a neighbor.

1 COMMISSIONER CHANG: Thank you very much.

2 CHAIRPERSON SCHEUER: Further questions,
3 Commissioners?

4 Only because it's come up for other
5 witnesses, how long have you lived on Maui and in
6 Haiku?

7 THE WITNESS: We have lived on the property
8 for 23 years.

9 CHAIRPERSON SCHEUER: Thank you very much.

10 Our next witness is Judy Levy, followed by
11 Christiane Douglas, followed by Taya Raine.

12 Good morning, Ms. Levy.

13 THE WITNESS: Good morning.

14 CHAIRPERSON SCHEUER: If I've called your
15 name, there is a chair next to the witness' chair so
16 you can be ready.

17 Do you swear or affirm the testimony you're
18 about to give is the truth?

19 THE WITNESS: Absolutely yes, sir.

20 CHAIRPERSON SCHEUER: Please state your
21 name.

22 JUDITH E. LEVY

23 Was called as a witness by and on behalf of the
24 Public, was sworn to tell the truth, was examined and
25 testified as follows:

DIRECT EXAMINATION

THE WITNESS: My name is Judith E. Levy. My address is 11 Uakoko Place in Haiku. I've been a resident on Maui almost 11 years and I've had the privilege of being introduced to Dr. Abrams. We met at Temple of Peace, and I saw the quality of people these were, and I was very happy I had found my tribe.

I attended many wonderful gatherings, holiday gatherings. I'm 72 years' old. We're grateful that those of us -- I would say that the majority of people that I've seen as we've gone for Thanksgiving, and the New Year's Eve gatherings, are people over 50s and 60s, so it's really a very precious sanctuary for us to know that we can have a place to go.

It's a vegetarian potluck for Thanksgiving, which I'm very grateful for. The New Year's Eve gatherings have been very spiritual, that's why I appreciate them. This is not a "woo, whoop it up" evening. Yes, there is music and we dance, and it's a beautiful spiritual event.

We stop at 11:30. We have beautiful devotional moments. Sometimes our Reverend Kedar is there from Temple of Peace to join us. We

1 spiritually bring in a new year, and it's very
2 precious. Something I look forward to.

3 I really take issue with some of the
4 previous testimony of some of the neighbors. I must
5 say I have never ever witnessed any back up of
6 traffic. I have helped at New Year's Eve. I've been
7 at the gate. There has never been any back up. It's
8 not a dangerous place to make a turn. It's the
9 biggest cul-de-sac I've ever seen, never been any
10 danger whatsoever to pull in there. Very easy to
11 spot.

12 And it's a very glorious space. There's
13 more than plenty of parking on the land. We have
14 never had a problem with parking back up onto the
15 road. We drive very carefully and respectfully.
16 This is beautiful sacred land.

17 I'm a substitute teacher. Also I took a
18 day off today to come here because this is very
19 important to me that this place be honored and that
20 it get Special Use Permit as a church, because to me
21 it is a spiritual sanctuary that I look forward to
22 attending.

23 I'm a member of the farmers' union as well,
24 so I'm beyond thrilled that they are training new
25 farmers. We need to be modeling sustainability on

1 this island for the planet, and they're doing it.

2 They're shining examples of having a
3 permaculture installation that could feed hundreds of
4 people. So the goals are exemplary. The qualities
5 of what these people's intention are to serve the
6 community has been very evident, and I'm very
7 grateful to call them my friends, and to look forward
8 to these wonderful family gatherings.

9 CHAIRPERSON SCHEUER: Thank you very much.

10 Questions for the witness.

11 MR. ICZKOVITZ: No.

12 MR. HOPPER: No.

13 MS. APUNA: No.

14 CHAIRPERSON SCHEUER: Commissioners?

15 Commissioner Cabral, followed by

16 Commissioner Chang.

17 VICE CHAIR CABRAL: You reference you work
18 at the gate or something, and the cul-de-sac is
19 large. So you're talking, once you drive down is
20 this gate where it enters off of the Hana Highway, or
21 down where you enter off the cul-de-sac?

22 THE WITNESS: Onto their property, further
23 down. So there isn't a backup.

24 VICE CHAIR CABRAL: The question previously
25 was the concern up at the highway. So it's two

1 different locations. Thank you.

2 THE WITNESS: I felt like that was
3 misleading.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Cabral.

6 Commissioner Chang.

7 COMMISSIONER CHANG: Good morning, Ms.
8 Levy. Thank you for being here.

9 Did you provide similar testimony before
10 the Maui Planning Commission?

11 THE WITNESS: I was able to come twice to
12 do that.

13 COMMISSIONER CHANG: How did you know about
14 those hearings?

15 THE WITNESS: I'm a friend. I'm a friend
16 of the community. We have a pretty loving community
17 that wants to see this magical place continue to
18 serve and broaden its scope.

19 COMMISSIONER CHANG: So the Abrams told you
20 about the Planning Commission hearings?

21 THE WITNESS: Someone in the community let
22 me know that it was happening today, and it was
23 important to me.

24 COMMISSIONER CHANG: Thank you very much.

25 CHAIRPERSON SCHEUER: Anything further,

1 Commissioners?

2 If not, thank you very much for your
3 testimony.

4 Christiane Douglas followed by Taya Raine.
5 Good morning.

6 THE WITNESS: Good morning.

7 CHAIRPERSON SCHEUER: Do you swear or
8 affirm that the testimony you're about to give is the
9 truth?

10 THE WITNESS: Truth, yes, yes.

11 CHRISTIANE DOUGLAS

12 Was called as a witness by and on behalf of the
13 Public, was sworn to tell the truth, was examined and
14 testified as followed.

15 DIRECT EXAMINATION

16 THE WITNESS: I know that I have a
17 three-minute limit, and I want to read you my points
18 because I want to make them all.

19 My name is Christiane Douglas. I live on
20 424 Kapakalua Road in Haiku. I'm the co-founder of
21 the SHAKA Movement, the Community Farmland Initiative
22 and Maui Pono Network.

23 And I believe that you're about to make a
24 very, very important decision here today, and I
25 really hope that you will make it in favor of giving

1 the Abrams couple the possibility to have a church on
2 their land.

3 So I feel that it's really -- you've been
4 given a very big responsibility. I'm honestly very
5 shocked about what I just heard from the two ladies
6 that are unhappy with what's going on.

7 So let me get into a different speed,
8 otherwise I'll never make it here.

9 It's because the owners had the well-being
10 of the whole community at heart when they took a huge
11 part of their money and invested in building a temple
12 with the intention to invite and serve people of all
13 colors and creeds, that's why I feel it deserves our
14 support.

15 You may be somewhat unaware of the role
16 that Ahimsa has already played with all of the
17 volunteer efforts, private initiative and good will
18 that the owners have dedicated toward the common good
19 with the building and generous sharing of the temple.

20 I have known the owners for 15 years now,
21 and they have truly impressed me with their
22 generosity of heart. They have been willing to first
23 open their own home for community gatherings and
24 started services. And when it became too small, then
25 they went on to Sunday morning gatherings. And then

1 they went on to spend their own money to build a
2 bigger temple for the community and services for a
3 healthy future for Maui, and the people they love and
4 care for so much.

5 They are amongst the most soft spoken,
6 gentle people I've ever known, and I'm sure they will
7 do anything they can to take their neighbor's needs
8 into consideration and remove their concerns
9 concerning the church status.

10 And in listening to the two ladies here,
11 they acknowledge that since 2015 they have been
12 extremely careful to abide by all the noise and time
13 requests.

14 So in all, from what I've seen, the space
15 that they have been providing with their temple has
16 already truly served the community, and it's a great
17 responsibility for you today to decide how it may
18 continue.

19 Concerns that neighbors may have voiced
20 around parking or potential reckless driving,
21 questionable company or noise disturbance resulting,
22 I believe, are based in fear of potential problems
23 rather than they are based in prior real experience
24 with any of these.

25 I think these concerns are purely

1 hypothetical. So I want to just say why I think
2 there's nothing to worry about in those areas.

3 First of all, the temple is way down on the
4 property, and so the land surrounding offers ample
5 space to provide all the visitors with the necessary
6 parking.

7 CHAIRPERSON SCHEUER: If I can ask you to
8 start to summarize? It's been three minutes.

9 THE WITNESS: Oh, okay.

10 So I've been at many events that have truly
11 served the community. They have held free -- we were
12 able to have the SHAKA movement and GMO Moratorium
13 events there. I feel that they're really serving the
14 spirit of aloha and acting on behalf of the common
15 good, and joining people of all walks of life, all
16 creeds. And so it's an open heart place.

17 I really would like to say to the lady here
18 also who just testified that she's always welcome.
19 Everyone can feel welcome there.

20 And I would love for you to give him the
21 church status so that they can have larger gatherings
22 so that they can spread the word about all the
23 beautiful ways that we can come together.

24 And I hope that you will read this last
25 time, this letter. I wasn't on island, so I couldn't

1 testify in person, but there is more here to read.

2 CHAIRPERSON SCHEUER: And you have a copy
3 of that for us?

4 THE WITNESS: Yes. You have the copy
5 already in your -- yeah. Because, you know, there
6 have been celebrations of life. There have potluck
7 gatherings. So many different ways that they have
8 been generous. My husband's birthday celebration.

9 You know, so many ways and I have never
10 seen anybody charge for anything. If people wanted
11 to make a donation, there was a donation basket, but
12 nobody has ever been asked to pay for any of these
13 things. That's a misinformation. I can say that
14 from my own experience.

15 CHAIRPERSON SCHEUER: Thank you very much.

16 Questions for the witness?

17 MR. ICZLPVOTZ: No questions for the
18 witness.

19 MR. HOPPER: No.

20 MS. APUNA: No.

21 CHAIRPERSON SCHEUER: Commissioner Chang.

22 COMMISSIONER CHANG: Did you testify at any
23 of the Planning Commission hearings?

24 THE WITNESS: I was off island, so I
25 couldn't come in person, so I wrote a letter.

1 COMMISSIONER CHANG: How did you know about
2 those hearings?

3 THE WITNESS: Well, through our community
4 network.

5 COMMISSIONER CHANG: When you say your
6 community network, what network is that?

7 THE WITNESS: Well, it's big. I'm
8 personally -- the Temple of Peace. We also
9 personally do send out locally about all events that
10 we consider worthwhile. Its called Maui
11 Events-Mandala, but we are also the organizers of the
12 Earth Day Festival once a year.

13 COMMISSIONER CHANG: Did the Abrams ask you
14 or tell you about the hearings?

15 THE WITNESS: I spoke with them about a
16 different issue, so they mentioned to me, yes.

17 COMMISSIONER CHANG: One last question.
18 How did you hear about today's hearing?

19 THE WITNESS: In speaking with the Abrams,
20 yes.

21 COMMISSIONER CHANG: Thank you.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Chang.

24 Commissioner Ohigashi, followed by
25 Commissioner Cabral.

1 COMMISSIONER OHIGASHI: I'm a little
2 confused about the testimony, about the part where
3 you said that they constructed this temple on the
4 property.

5 THE WITNESS: Yes.

6 COMMISSIONER OHIGASHI: That's the temple
7 that exists now?

8 THE WITNESS: Yes.

9 COMMISSIONER OHIGASHI: And that's the one
10 that's part of this application?

11 THE WITNESS: That's where the church
12 gatherings will be held. Before --

13 COMMISSIONER OHIGASHI: That's what I'm
14 trying to clarify.

15 THE WITNESS: I knew them.

16 COMMISSIONER OHIGASHI: My question is,
17 simply is that: Was this a temple prior to this
18 application? Was this building constructed as a
19 temple prior to this application?

20 THE WITNESS: It was -- I believe it was,
21 you know, to hold space for people, folks, you know,
22 to gather, and as a place also to educate I believe
23 about sustainable practices.

24 COMMISSIONER OHIGASHI: Were you in on the
25 planning for the building?

1 THE WITNESS: No. I was -- I known them
2 since they had gatherings in their living room.

3 CHAIRPERSON SCHEUER: Commissioner Cabral.

4 VICE CHAIR CABRAL: When you first
5 introduced yourself I got impression that you had
6 something to do with the farming or some kind of a
7 farm organization.

8 THE WITNESS: In the way that, yes, we
9 founded the SHAKA Movement, Sustainable Hawaiian
10 Agriculture for the Keiki and the Aina.

11 And it took it upon itself to address and
12 educate about the GMO issue with the pesticides being
13 spread, and GMOs on the island, yes.

14 VICE CHAIR CABRAL: I just needed
15 clarification. Thank you very much for your input.

16 CHAIRPERSON SCHEUER: Anything further,
17 Commissioners? If not, thank you very much.

18 Our next witness is Taya Raine followed by
19 Kedar St. John.

20 Aloha, good morning.

21 THE WITNESS: Aloha, good morning.

22 CHAIRPERSON SCHEUER: Do you swear or
23 affirm that the testimony you're about to give is the
24 truth?

25 THE WITNESS: I do.

1 CHAIRPERSON SCHEUER: Please state your
2 name and address.

3 TAYA RAINE

4 Was called as a witness by and on behalf of the
5 Public, was sworn to tell the truth, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 THE WITNESS: Taya Raine, 124 Keoniloa
9 Street.

10 I'm a little bit nervous being up here. So
11 I came to Maui in 2015 from the Big Island. And I
12 was in the middle of divorce at the time. I'm going
13 to make my testimony a little bit more personal
14 because I feel like I could repeat a lot of what has
15 already been said. Sitting here I tried to think
16 about what was most useful.

17 So at that time I came here with all four
18 of my children on my own. And I kind of thought that
19 there would be lots and lots of people that would
20 really just welcome us in.

21 And I really didn't find that to be the
22 case. But the one place that I could go was the
23 Ahimsa Farm. And the first time I went there I was
24 just welcomed in such a beautiful way that having
25 come from the Big Island where there was a much

1 greater sense of community for me and my children, I
2 really felt like we had come home. And my children,
3 they range in age. At the time they were five,
4 eight, 12 and 14.

5 And this was a place that we could go and
6 be shown around the property that was growing food,
7 being welcomed to pick food from the trees. And
8 there were birds, love birds, ducks and just a real
9 feeling of coming back to the earth.

10 And since that time, we attend many, many
11 of their gatherings, and I've as always just felt
12 very welcome. There's never been, in my experience,
13 a charge other than to donate, which I think is a
14 common practice for any church facility. There's
15 never been any issue with parking in my experience.
16 The road is very bumpy coming in, so there's no way
17 you can drive in and out of that place quickly and
18 create noise.

19 It is a place a lot of elders come, and
20 that to me has been important. I was born in
21 Kentucky, and I was raised around a lot of elders.
22 And as the experience here in the islands, there can
23 be a great gap, and it's hard to find that way to
24 connect the generations. For my children to be
25 around elders who have knowledge and wisdom and

1 kindness that are in some ways maybe aunties and
2 uncles to them, it's been really important.

3 It's a place -- during these gatherings
4 there is no alcohol -- I'll try to wrap it up -- so
5 my children can be there safely. I feel like they're
6 safe. Other children they can play around and play
7 hide and seek. There is a pool table. There are
8 things that they can do together when we're all
9 praying.

10 And I think it's important for me to just
11 to touch on that before I close, but not being
12 Christian or Buddhist, a lot of us have a more
13 eclectic view of our spirituality. I have native
14 American blood, and when I go to the Ahimsa Farm
15 there is a lot of honor of that lineage in addition
16 to the Jewish ways.

17 They really try to call on so many
18 different lineages. And I find that there are very
19 few places on Maui where any of us can go who really
20 want to be in prayer and worship.

21 And to me that's very, very important.
22 It's kind of a central part of my life to be in
23 prayer. And it's really the only place I can go
24 where I feel safe. I can close my eyes. I can pray
25 in my own way, and feel like there's a sanctuary for

1 that. So I feel like what they're offering our
2 community has value for many generations, and
3 hopefully if this gets approved, for generations to
4 come. Thank you.

5 CHAIRPERSON SCHEUER: Thank you very much.
6 Questions for the witness?

7 MR. ICZKOVITZ: No questions.

8 MR. HOPPER: No, Mr. Chair.

9 MS. APUNA: No.

10 CHAIRPERSON SCHEUER: Commissioner Cabral.

11 VICE CHAIR CABRAL: I'm from the Big
12 Island, so mahalo, thank you for your positive
13 comments there.

14 CHAIRPERSON SCHEUER: I saw Commissioner
15 Cabral jumping up and down during that portion. Got
16 her excited. You could have just talked about
17 horses.

18 VICE CHAIR CABRAL: Right.

19 CHAIRPERSON SCHEUER: Other questions,
20 Commissioners? Thank you very much.

21 THE WITNESS: You're welcome. Thank you.

22 CHAIRPERSON SCHEUER: Our next witness
23 Kedar St. John, followed by Alan Lott, followed by
24 Jonathan Yudis, who is the last person signed up.

25 THE WITNESS: Respected Land Use

1 Commissioners, it's a great honor to be in your
2 presence.

3 CHAIRPERSON SCHEUER: Thank you.

4 Do you swear or affirm the testimony you're
5 about to give is the truth?

6 THE WITNESS: I do.

7 KEDAR ST. JOHN

8 Was called as a witness by and on behalf of the
9 Public, was sworn to tell the truth, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: My name is Kedar St. John.
13 I have lived here on Maui for the last 30 years. I'm
14 director of the Temple of Peace in Haiku. We have a
15 half acre right on the main road.

16 Our church has been in existence, the
17 church building has been in existence since 1938. I
18 have lead weekly religious services four of the
19 19 years.

20 Starting off doing house churches, as we
21 call it, at the Abrams' family home, for many years
22 before we actually got our sanctuary.

23 I offer my support to Sacred Earth as
24 simply a request to regular weekly religious
25 services, special holiday gatherings and potlucks,

1 the rights of passage ceremonies for community
2 members.

3 I also support Sacred Earth plans to host
4 visiting teachers from numerous religious and
5 spiritual lineages once the SUP is granted.

6 I've known Dr. Abrams and his wife for more
7 than 22 years and have valued his friendship and
8 weekly participation in our weekly Sunday service at
9 the Temple of Peace in Haiku.

10 We have collaborated in countless prayer
11 ceremonies and spiritual celebrations. He was one of
12 the very first people I ordained as a minister in our
13 church as part of a lineage dating back to Joseph of
14 Aramathea.

15 I rely on Dr. and Mrs. Abrams to lead our
16 Sunday services when I am called out of town. I can
17 attest to his outstanding character and am confident
18 that he will provide inspiration and leadership for
19 the Sacred Earth Assembly.

20 The environment and proposed church
21 building at Ahimsa Sanctuary is very conducive to our
22 growing community. The fact that Sacred Earth
23 Assembly will be located at organically certified
24 Ahimsa Sanctuary Farm is consistent with its
25 commitment to earth-based spirituality. The farm

1 demonstrates natural farming and stewardship on a
2 practical level which supports Sacred Earth
3 Assembly's mission. Sacred Earth Assembly is a
4 valuable resource for Maui. The building and
5 surrounding land on Ahimsa Sanctuary Farm is ideally
6 suited to provide a safe, spacious, uplifting setting
7 for interfaith worship services.

8 Please grant the permission necessary for
9 Sacred Earth Assembly to operate to its full
10 potential on this beautiful property.

11 May I take a sip of water?

12 CHAIRPERSON SCHEUER: You're right at three
13 minutes.

14 CHIEF CLERK: Excuse me. No, that's not
15 for you. Don't help yourself to my water.

16 THE WITNESS: Thank you.

17 I just wanted to also point out that His
18 Holiness the Pope talked about the degrading of the
19 church. And in the age of science denying, it's very
20 important for the body of the church to send to the
21 community the ability to be able to grow food for
22 themselves, organic foods to nourish them and their
23 families.

24 So I think this is a perfect combination
25 that there is agriculture being done on there for ten

1 years. Beautiful agriculture, and the addition of
2 the church building would be a very great value to
3 this community.

4 CHAIRPERSON SCHEUER: Thank you, Reverend.

5 Are there questions?

6 MR. ICZKOVITZ: No.

7 MR. HOPPER: No.

8 MS. APUNA: No.

9 CHAIRPERSON SCHEUER: Commissioners?

10 Commissioner Cabral.

11 VICE CHAIR CABRAL: Since you've been
12 involved with the activities of the church or the
13 building since its inception or its initial
14 construction, am I clear from what I'm reading that
15 it's actually been built as an agricultural
16 structure, but then it's been built for agriculture,
17 but it's being used as a church or place of worship?

18 THE WITNESS: Informal church gatherings
19 have taken place, yes. For instance, like the New
20 Year's Eve celebration, Thanksgiving celebration.
21 Celebrations of life for our elders who crossed over.
22 Different things like that, yes.

23 VICE CHAIR CABRAL: Okay, thank you very
24 much.

25 CHAIRPERSON SCHEUER: Further questions for

1 Reverend St. John? Commissioner Chang.

2 COMMISSIONER CHANG: Thank you very much
3 for being here this morning and providing your
4 testimony. I have a few questions.

5 You seem to be very familiar with the
6 property and their activities, is that correct?

7 THE WITNESS: Correct.

8 COMMISSIONER CHANG: Can you describe for
9 me what is -- what kind of structures are on the
10 property?

11 THE WITNESS: The Abrams' personal home is
12 there. The large building, community building is
13 there, the bond as it's called.

14 There are a few little, I think, like
15 greenhouse. There's a couple of little bali houses.

16 COMMISSIONER CHANG: Where do they -- a lot
17 of the testimony was about these gatherings,
18 potlucks.

19 Is there a place they cook all these foods,
20 in their kitchen, or a place to cook?

21 THE WITNESS: Well, potluck, people bring
22 their foods. Sometimes catered, people bringing
23 catered food.

24 COMMISSIONER CHANG: Are you a surrounding
25 neighbor? Do you live nearby?

1 THE WITNESS: No, I'm way up in Haiku.

2 COMMISSIONER CHANG: It sounds as if you
3 were saying this land is really ideal for the farming
4 activities.

5 THE WITNESS: Agriculture, absolutely it's
6 agricultural land. And they've done a fantastic job
7 at not only demonstrating how to grow for our
8 community. Every Sunday I'm talking to my
9 congregation saying how important it is that we make
10 a connection with the earth; that we're not science
11 deniers. That we are very much into malama aina.
12 And that's very much our position in regards to
13 having this building become a church building.

14 COMMISSIONER CHANG: One last question.
15 Did you provide similar testimony before
16 the Maui Planning Commission?

17 THE WITNESS: I did. Yes, I did.

18 COMMISSIONER CHANG: How did you hear about
19 those hearings?

20 THE WITNESS: I'm very much on top of every
21 single thing going on about this.

22 COMMISSIONER CHANG: Did the Abrams tell
23 you about the hearings?

24 THE WITNESS: Of course.

25 COMMISSIONER CHANG: Thank you so much for

1 your testimony.

2 CHAIRPERSON SCHEUER: Commissioner
3 Ohigashi.

4 COMMISSIONER OHIGASHI: I'm just curious.
5 You indicated that there would be visiting teachers
6 at the, I guess, at the church facility.

7 THE WITNESS: Did I say -- sorry.

8 COMMISSIONER OHIGASHI: Visiting teachers?

9 THE WITNESS: Yes.

10 COMMISSIONER OHIGASHI: Would those be
11 housed there?

12 THE WITNESS: I don't believe so, no. I
13 have teachers coming in all the time.

14 COMMISSIONER OHIGASHI: I understand. I'm
15 just curious if part of the plan was for these
16 visiting teachers to be housed there on the farm?

17 THE WITNESS: To my understanding there is
18 no facility for that.

19 COMMISSIONER OHIGASHI: Okay. Just wanted
20 to know.

21 CHAIRPERSON SCHEUER: Anything further,
22 Commissioners?

23 Reverend, what is your understanding of the
24 proper pronunciation of the name of the town that you
25 live in?

1 THE WITNESS: Hi-e-ku (phonetic).

2 CHAIRPERSON SCHEUER: Thank you.

3 Our next witness is Alan Lott, followed by
4 Jonathan Yudis.

5 Are there any other individuals of the
6 public wishing to testify in this matter besides the
7 two gentlemen I mentioned?

8 Good morning.

9 THE WITNESS: Good morning.

10 CHAIRPERSON SCHEUER: Do you swear or
11 affirm the testimony you're about to give is the
12 truth?

13 THE WITNESS: Absolutely. Thank you all
14 for coming.

15 CHAIRPERSON SCHEUER: Please state your
16 name and address.

17 ALAN LOTT

18 Was called as a witness by and on behalf of the
19 Public, was sworn to tell the truth, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: I am Alan Lott, 575 Haiku
23 Road.

24 I've known the Abrams for at least
25 15 years, maybe longer. I've known them. They have

1 become dear friends. I speak to their character,
2 their very generous character.

3 First thing, what has been said before, but
4 they're just incredible human beings, wonderful
5 elders. I really admire them and respect what
6 they're doing. And we are not living in normal
7 times. Another report came out just the other day,
8 another report. Thousands of scientists all over the
9 world are saying we are facing a real climate
10 emergency.

11 This is something being done. They're
12 actually doing something positive as has been stated
13 so many times by different people in different ways.

14 So many wonderful things are being done on
15 this land, and so many more potential can be
16 happening. We are so blessed to have this family and
17 this community here. I am so sorry about the
18 acrimony earlier. It was painful to watch the
19 interaction. And I'm sorry, I'm hopeful that we can
20 work this out. I'm hopeful that the neighbors can
21 find peace with each other.

22 What other hope do we have? This is not
23 normal times. We really have to rise to the
24 occasion. I've never paid. I love the events that
25 have occurred, the Christmas -- I go to bed often

1 little bit earlier. Sometimes it goes -- but it
2 becomes quieter during the night. Like the New
3 Year's celebration, it becomes quieter after
4 midnight. It does get quieter. And you have to
5 drive slow on that road. I don't want to damage my
6 wife's car.

7 So I'm just very mindful, it's a love
8 offering basis. It really is. I don't want to go on
9 and on. I love these people dearly.

10 I appreciate your time and energy. Please
11 do the right thing. Grant the Special Use Permit.
12 And I pray for resolution in healing with the
13 neighbors, because we can all get along. I really
14 believe it's possible.

15 CHAIRPERSON SCHEUER: Thank you for your
16 testimony.

17 Questions?

18 MR. ICZKOVITZ: No.

19 MR. HOPPER: No.

20 Ms. Apuna: No.

21 CHAIRPERSON SCHEUER: Commissioners?
22 Commissioner Chang.

23 COMMISSIONER CHANG: Thank you very much,
24 and I'll keep my questions very short.

25 You talked about you're so grateful that

1 this property is here. If they didn't have the
2 church, would they continue to grow, do the
3 sustainable ag?

4 THE WITNESS: Yeah, perhaps, but I don't
5 know how they can support them. This is like -- they
6 poured all their savings into making this happening.
7 They poured so much savings into acquiring the land,
8 developing it, and with the structures, it would be
9 very hard I would think. They've invested so much
10 money into this.

11 COMMISSIONER CHANG: When you say so much
12 money, this being the church?

13 THE WITNESS: Yes. Yeah, I would say so.

14 COMMISSIONER CHANG: People don't pay, they
15 don't pay, so they're getting money back --

16 THE WITNESS: Infrastructure. Well, I
17 don't know if they get money back from the church,
18 but from the land itself I would hope over time. I
19 think the church would contribute, I would say, but
20 I'm not an authority in this area.

21 COMMISSIONER CHANG: Do you live around the
22 church?

23 THE WITNESS: I live in Haiku.

24 COMMISSIONER CHANG: And you believe this
25 land continues to be valuable for agricultural

1 purposes?

2 THE WITNESS: Oh, absolutely. I love the
3 papayas and the tea, some of the best tea I've ever
4 had in my life. Awesome.

5 CHAIRPERSON SCHEUER: Wait, wait.

6 THE WITNESS: I'm sorry, sorry. I'm not
7 used to this.

8 VICE CHAIR CABRAL: I don't want you to
9 feel like you're on the hot seat. We're trying to
10 get a picture of what's going on, because we're
11 really being asked to determine a zoning situation I
12 think, more so than a personal preference situation
13 or religious situation.

14 So you said to do the right thing. Would
15 you think that basically in doing the right thing,
16 that one would follow the laws of the community and
17 the County and the State when you're doing the right
18 thing? Do you follow the laws?

19 THE WITNESS: Absolutely, but I think that
20 in taking in account of the law, there's always the
21 spirit of the law above the letter of the law. Both
22 are important, but I think truly the spirit of the
23 law is what the essence, you know, what this is
24 about.

25 VICE CHAIR CABRAL: Okay.

1 And you commented too wanting to have the
2 neighbors get along with themselves.

3 THE WITNESS: I would love to see a
4 mediation.

5 VICE CHAIR CABRAL: My concern is that it
6 seems like the neighbors aren't coming to the party.
7 So when you're at the party, you don't hear the loud
8 noise, because you're part of the loud noise, so it's
9 not a disturbance to you.

10 Not knowing the land, are there any large
11 trees that could be planted without blocking
12 anybody's view or breezes? Or is it possible that
13 things could be done to separate the land in a
14 physical barrier that would help control sound?

15 THE WITNESS: I would be speculating.
16 That's not my area of specialty. But there's always
17 things that can be done, it's just a question of the
18 money, the investment in the money. They have
19 already poured so much in. How much more, and what
20 would really be effective to make a difference.

21 So I think community interaction would be a
22 good thing to do, you know, to bring people together.
23 It's happened before. Even in war zones people have
24 gotten to together and have true convictions. But I
25 think it's entirely possible, where there's a

1 willingness with all the parties. If all the parties
2 are willing to be together, I think it's entirely
3 possible.

4 VICE CHAIR CABRAL: Thank you.

5 THE WITNESS: Thank you for your questions.
6 Anyone else?

7 CHAIRPERSON SCHEUER: I'll handle that
8 part.

9 Thank you for the correct pronunciation of
10 Haiku.

11 Do you know any of the meaning of Haiku?

12 THE WITNESS: I know the poetry, the form
13 of the poetry.

14 CHAIRPERSON SCHEUER: Not haiku, that's the
15 Japanese poetry.

16 Haiku can mean a short break, or can mean
17 to speak abruptly, which is not necessarily
18 irrelevant to our proceedings.

19 THE WITNESS: Thank you for enlightening
20 me.

21 CHAIRPERSON SCHEUER: Jonathan Yudis, and
22 are there any other members of the public wishing to
23 testify today? If not, I will close public testimony
24 after Mr. Yudis.

25 Good morning.

1 Do you swear or affirm the testimony you're
2 about to give is the truth?

3 THE WITNESS: Yes.

4 CHAIRPERSON SCHEUER: Please state your
5 name and address for the record and proceed.

6 THE WITNESS: Jonathan Yudis, 198
7 Holomakani Place, Kula, Hawai'i.

8 JONATHAN YUDIS

9 Was called as a witness by and on behalf of the
10 Public, was sworn to tell the truth, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Let's see. So aloha
14 everybody. I just want to say thank you to the
15 Commissioners, because I've been here for different
16 times, testimony and things, and appreciate your
17 service to the County.

18 And I'm here to testify on behalf of the
19 Ahimsa Sanctuary Farm, and also speak to the
20 integrity of Dr. Lew Abrams and Mirayah. I've lived
21 on this island for a decade, and I've known them
22 almost as long.

23 So I've brought my family to the farm. I've
24 shown my children the fishponds and the sustainable
25 agriculture. And really appreciate the land. I feel

1 like these are true lovers of the earth, the aina,
2 and want to give back to the community and teach
3 sustainable practices.

4 I also think it's really important because
5 I don't think it's in a lot of our wheelhouses when
6 you hear like an earth-based church. I think a lot
7 of us are familiar with church, and we're familiar
8 with farming, but the two don't seem synthesized.
9 They're not together.

10 So I think it's easy to have the
11 perspective of why don't they just do the farm? And
12 what is the church? And what are these parties?

13 I think anybody that has been at spiritual
14 religious services at churches has experienced maybe
15 a gospel choir singing celebrations in connect to
16 prayer. And I think it's important to recognize that
17 this is no different than that.

18 This is a church which is celebrating the
19 planet itself, the aina itself, and trying to teach
20 how our commitment of the planet, our love of the
21 planet, our love of taking care of the land is a
22 spirituality in and of itself.

23 So I wanted to share that with everybody. I
24 also wanted to speak to their integrity, because I
25 also want to honor the neighbors. We all have

1 neighbors. I don't think anybody appreciates noisy
2 neighbors, but my experience of the Abrams and this
3 community is one of the utmost integrity. I feel
4 like they've done everything possible to honor the
5 previous Commission guidelines, and I feel like what
6 we are doing today is trying to make a decision for
7 the present and the future.

8 So I think as long as there would be
9 guidelines that could be met, and they were honored,
10 that the neighbors would be satisfied and moving
11 forward, this could be a healthy thing for the
12 community.

13 So, yeah, that's basically my testimony
14 that I wanted to share.

15 CHAIRPERSON SCHEUER: Mahalo.

16 Questions for the witness?

17 MR. ICZKOVITZ: No questions.

18 MR. HOPPER: No, Chair.

19 MS. APUNA: No questions.

20 CHAIRPERSON SCHEUER: Commissioners? If
21 not, thank you very much.

22 THE WITNESS: Thank you, guys.

23 CHAIRPERSON SCHEUER: So public testimony
24 on this matter is now closed.

25 Office of Planning, you had requested to

1 have a consideration taken out of order.

2 MS. APUNA: Yes, Chair, I did, but I will
3 withdraw that request and go in order after the
4 Applicant's quick presentation.

5 CHAIRPERSON SCHEUER: So our proceedings is
6 for the Applicant to present. About how much time
7 did you want? I need to juggle a necessary break to
8 feed ourselves and things like that.

9 MR. ICZKOVITZ: I think we would like to
10 have Dr. Abrams make presentation for maybe
11 15 minutes, and then I would like to make a summary
12 presentation for five or ten.

13 CHAIRPERSON SCHEUER: Just a one-minute
14 recess before I swear you in.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: Do you swear or
17 affirm the testimony you're about to give is the
18 truth?

19 THE WITNESS: I do.

20 LEW ABRAMS

21 Was called as a witness by and on behalf of the
22 Applicant, was sworn to tell the truth, was examined
23 and testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: My name is Dr. Lew Abrams.

1 I'm a licensed clinical psychologist. I've been in
2 practice on the island for about 22 years. I have
3 devoted by my life to be of service as a
4 psychotherapist, and I also have other interests.

5 I've been involved with the Temple of Peace
6 for about 20 years. We used to host the early stages
7 of the gathering of the Temple of Peace in our home,
8 our previous home up on Awalau Road. And I've also
9 developed a parallel interest in organic farming and
10 permaculture, and that was one of the reasons why we
11 moved to a larger property down from Awalau Road
12 which was -- is a two-acre parcel.

13 When we encountered it, it was pretty much
14 depleted old pineapple land. It was one small citrus
15 orchard already planted and a house on it. And we
16 put our heart and soul into rejuvenating and
17 restoring these soils, planting fruit orchards. More
18 than 200 fruit trees, coconut orchards. We built
19 aquaculture fishponds. We built a greenhouse. We
20 opened up a main garden where we brought in many
21 amenities to restore the microbiotic life and mineral
22 content to these depleted pineapple soils. We
23 planted windbreaks and privacy breaks initially
24 bamboo along the windward side of the property. Also
25 to provide some privacy from the neighbors.

1 We have many types of bananas, papayas,
2 citrus orchards and we also are specializing, our
3 first valued added product is a soothing herbal tea
4 blend.

5 We've learned that farming and directly
6 selling the produce is a negative game. It's very
7 difficult to meet the expenses that it take to weed
8 and feed and harvest if I had gone to the farmer's
9 market, although we have brought our produce to Mana
10 Foods, and I do supply a couple of restaurants up in
11 Lahaina, where I work at the West Maui Counselling
12 Center, so I bring boxes of tumeric and ulu and such,
13 but that doesn't really add up to too much.

14 We're hoping to develop more of our value
15 added products, and I did bring our first sample of
16 of our soothing herbal tea blend that I just wanted
17 to offer you guys to see what it is that we're --

18 CHAIRPERSON SCHEUER: So the gift is
19 greatly appreciated, and there are obviously general
20 restrictions on public officials receiving gifts
21 during a hearing from people who are seeking a
22 decision from us.

23 THE WITNESS: I was mainly wanting to show
24 you the labeling.

25 CHAIRPERSON SCHEUER: That's fine. I want

1 to be clear. Person to person the gesture is very
2 appreciated, but within the structures of the system
3 we are working in, it would not be appropriate.

4 THE WITNESS: I respect that. I would like
5 you to look at the labeling because -- maybe can we
6 just pass one sample around, because we are a
7 certified organic farm, and they regulate everything
8 that goes in our products, every ingredient must be
9 certified organic. And they have some very specific
10 requirements about how the ingredients are described
11 and how the organic certification is denoted, so on
12 and so on. I wanted you to take a look at that.

13 We also have taken the opportunity to share
14 some information about the underlying value system
15 that we have built on our farm on, which is the name
16 of our farm Ahimsa, which means nonviolence or
17 non-harming.

18 We interpret that to mean honoring all life
19 is sacred. So our goal is to grow healthy food in a
20 way that enhances the life force of the land and
21 rebuilds the soil as opposed to depleting it.

22 We don't use any chemicals, fertilizers or
23 pesticides. We try to grow the amendments that we
24 need to restore the soil right next to the orchards
25 and the gardens so that we don't have to have a

1 negative impact on global warming by shipping in
2 fertilizers from the mainland. We try to grow crops
3 like comfrey, beterberg (phonetic), lourisidian
4 (phonetic) where we can chop and drop it like a
5 mulch, a fertilizer around the trees.

6 So we implemented a permaculture design.
7 It's not on a scale to be a large scale commercial
8 farm, but it is a demonstration project where we can
9 educate people who come and hopefully inspire them to
10 take some of these ideas and apply them in their own
11 home gardens, or even on the balcony of a condo. So

12 That's an important piece of what we are
13 offering at the farming level.

14 We also have been a host of various
15 community potlucks and gatherings for 30 years,
16 wherever we have lived, we have opened up our home
17 for full moon, vegetarian Thanksgiving. And when we
18 we moved to this property. We saw it as a potential
19 to really expand our agriculture, and also to have a
20 lot of space around where we could create a place
21 where people could gather without impacting the
22 neighbors too significantly.

23 So the building that we built is a
24 multipurpose building. It is zoned as an
25 agricultural workshop for drying and processing the

1 herbs, like are present in the herb tea. And also we
2 planted a lot of different kinds of bamboo, so it
3 also was described for growing bamboo for musical
4 instruments and toys.

5 But we did build it also as a place for
6 people to come and gather. Sort of a multipurpose
7 place.

8 I really appreciate having this opportunity
9 to come before you, and the fact that you guys are
10 volunteers, and I want to hopefully impart an
11 appreciation for what we are doing. We're trying to
12 make a positive difference in this world by, a part
13 of the value system inherent in the Sacred Earth
14 Assembly is to recognize that human beings are
15 stewards for the planet for future generations.

16 And this is very consistent with malama
17 aina, the core Hawaiian value of taking care of the
18 land so that we pass on something vibrant and
19 beautiful for future generations.

20 And so as stewards of this planet, we need
21 to figure out two main things. One of them is how to
22 grow healthy food without depleting or polluting the
23 environment. And we need to generate energy in a
24 sustainable way that doesn't contribute to global
25 warming.

1 So we do have demonstrations of both those
2 things. We have a photovoltaic system, and a
3 vertical access wind generator. So when I take
4 people around on our permaculture farm tours, I get
5 to educate and inspire people to move in that
6 direction.

7 And then we have a variety of foods that we
8 are growing, both fruit orchards, herb gardens, a
9 greenhouse, which we have used more lately to avoid
10 rat lung disease problem on the island. Any greens
11 that are consumed raw have the potential to transmit
12 rat lung disease because of the relationship between
13 slugs and rats. And we do have them on our property.

14 So for lettuces, we grow them in the
15 greenhouse. And we use the greenhouse as a place to
16 start our other plants so we can put them out in the
17 field.

18 So the parallel development of our ministry
19 arises out of our relationship with the Temple of
20 Peace which is an interfaith ministry that honors
21 many different paths, so that's something that
22 Reverend Kedar St. John and our family sort of are
23 resonant with.

24 So we, over the last 20 years, have helped
25 with the Sunday services there. And it's in a fairly

1 small parcel of land, and so in part of our rationale
2 for acquiring this large -- stretching to buy a
3 25-acre parcel, was so that we would have the
4 possibility of inviting the community to come out and
5 gather and learn about growing food and generating
6 energy in that way.

7 I am concerned about the complaints raised
8 by the neighbors. I feel that there was some
9 misrepresentation and exaggeration on the level of
10 impact that we have had on them. I have been very
11 attuned and meticulous about trying to accommodate to
12 the requests, especially of Michelle Drewyer, by
13 hearing her concerns.

14 Basically they come down to this one
15 stretch of driveway, which is actually our land. The
16 shared driveway is a flag lot that is part of our
17 property, and they have an easement, the Drewyers and
18 Jerome Labat have an easement to use that. It's
19 actually a very short little stretch of driveway that
20 exposes the Drewyers, and to a lesser extent the
21 Labats.

22 I actually do have some pictures that were
23 in that record. I don't know if I can pass them
24 around, but you can see there is really only about
25 100-foot view from Michelle Drewyer's where cars

1 drive off the Hana Highway, and then they're already
2 on our land, because we own the driveway, but they
3 disappear from their view onto our property and
4 around our loop gravel drive to get to the lower
5 portion of our land where our farming activities
6 happen, and where this agricultural building is built
7 that we are proposing to seek approval for church
8 activities.

9 And there is a natural division. The upper
10 portion or the southern portion of our property is
11 where our home is, and it's fenced in. We have a
12 private garden and some orchards there. But it's
13 really quite separate from the lower area where the
14 various farming activities happen.

15 So there's no -- a lot of people don't even
16 know that our house is on the property. Once you
17 leave the cul-de-sac and drive down to the lower
18 portion, you're on the farm, and where our greenhouse
19 is, and where our aquaculture ponds are, fruit
20 orchard, coconut orchard, and our main garden field.

21 So that concern about activities on the
22 14.8 acres, bleeding over and extending to the other
23 portion of our land really is a nonissue. We have
24 agreed to confine the church services to the building
25 itself.

1 And then we're hoping to get more volunteer
2 help on the farm from people who are interested in
3 learning to grow food sustainably. And that kind of
4 activity will be in the vicinity of this agricultural
5 building, hopefully soon to be church building. But
6 it would certainly not displace or interfere with
7 agriculture in any way. In fact, it will allow us to
8 expand.

9 We have had the problem of not having
10 enough money to hire farm help to weed and feed and
11 harvest and bring it to market. And so we're hoping
12 that as more and more people take an interest, we'll
13 have people like Romy, who testified earlier, that
14 recognized what we are doing, offered to volunteer
15 and help us with our agricultural activities.

16 We have been holding every Wednesday from
17 9:00 to 1:00, open volunteer farm workday where we've
18 done education about sustainable regenerative
19 agriculture, and where I get to invite people, many
20 times the young folks, to come out and I put them to
21 work in the garden, and also show them some of the
22 permaculture design elements, and then make a
23 vegetarian lunch for them.

24 And I'm hoping we will get more help from
25 people as they learn more about it.

1 So that issue of it displacing or taking
2 away agriculture really doesn't apply, because our
3 ministry is an earth-based spirituality where
4 learning to grow food without polluting the earth is
5 essential for passing on healthy planet for future
6 generations.

7 I've been very attentive to making sure we
8 always stop our gatherings at a reasonable hour, and
9 I was very surprised to hear this reoccurring theme
10 of drumming all night long. That does not conform to
11 my experience in any way. Whenever we have had like
12 Thanksgiving, potlucks, we always make sure to stop
13 any amplified music by 9:30, and 10:00 is when we end
14 the gathering.

15 The only exception is on New Year's we have
16 had annual New Year's Eve celebrations. It has
17 involved a celebration with music and so on, but we
18 stop at 11:30 and go into a more of a sacred space,
19 prayerful mode.

20 Reverend Kedar St. John brings the peace
21 flame from the Temple of Peace. And we have the
22 ceremony for praying for peace in the world. We
23 light the sacred peace flame, and we have a prayerful
24 moment. And that's been something that I've gotten a
25 lot of feedback about, that people, many of whom are

1 elders who come to our place, I'm 59, and it's not
2 like a wild party house like it was being described
3 by Ms. Drewyer.

4 We have many mature elders. In fact, I
5 think there's 17 letters of support in the record
6 from people over 65. And so I wanted to set the
7 record straight in terms of the nature of what we are
8 doing.

9 And I have been very conscientious about
10 making sure we do, and I've made other efforts to
11 appease Michelle Drewyer. She was concerned about
12 the cars coming onto our property and driving onto a
13 portion of loop road that went across her viewplane.
14 And in response to that -- actually within two days I
15 happened to have a bulldozer on the property -- we
16 created a large berme that made it so that as cars
17 exit our land, the lights do not shine into her
18 property.

19 But that actually wasn't sufficient for
20 her. She just didn't like to have cars driving
21 across her viewplane, even though it was on our
22 property. And so we ended up setting aside maybe
23 three acres of land adjacent to her property that we
24 have left as an unused no man's land to create a
25 buffer for her.

1 It's important to note too that her house
2 is 1500 feet from the site of the proposed church,
3 and she's told me many times that she cannot see or
4 hear anything that happens in that building. She's
5 mainly concerned about the cars turning off of the
6 Hana Highway and going on our shared driveway for
7 about 100 feet before they disappear onto our
8 property.

9 And she has made some mention also of our
10 dogs barking. We have done our best to keep them
11 quiet when we have people come, they're watch dogs,
12 they do bark for a minute, but it's not incessant
13 nuisance barking. And my wife is home almost all the
14 time, and she quiets them.

15 It's important to know we are not the only
16 ones with dogs in the neighborhood. Michelle has
17 three dogs. Freddy next door has two dogs. And
18 sometimes the dogs will trigger each and they'll
19 start howling and barking, but we do our best to
20 close them down.

21 I want to point out on agricultural land
22 animal sounds are part of it and allowed, so I really
23 don't think that should be a reason to withhold our
24 ability to have church on our land.

25 And I want to mention about Manawai. Just

1 recently I understood that there was an email chain
2 sent out to the neighbors of the Manawai Home
3 Association. That's a street that's at least three
4 quarters of a mile. It shows up in some of these
5 pictures. It's quite far from our property.

6 And the only person I know on Manawai is
7 Ram Dass, the spiritual teacher who is among the
8 people who submitted letters of support. And I
9 believe the only letters that are contained in your
10 record that were submitted on time when testimony was
11 opened from people on Manawai is the letter from
12 Richard Albert or Ram Dass, who has been to our
13 property on a number of cases.

14 In fact, we built a disability ramp so that
15 he could have access with his wheelchair. He had a
16 stroke, so he needs to be able to bring his
17 wheelchair into our property. So we are set up with
18 ADA disability access.

19 I guess it is -- from the testimony of the
20 folks from Manawai, I guess they can hear some music
21 playing from our place across the gulch and across
22 the half mile they live before their street comes. I
23 cannot believe that it would be that disturbing, or
24 how it could be very loud. Maybe they can hear some
25 music in the distance.

1 And as they also testified, those louder
2 gatherings haven't happened since 2015. And part of
3 that is related to my sons. We have two sons that
4 are 25 and 31 years old now, and they do have a
5 musical band called Wolf Child. They have records
6 and they're on You Tube and so on. They used to be
7 living with us. And they would practice music in
8 their teenage years. And they went through a period
9 where they played electric guitar quite loud and so
10 on.

11 But I would always make sure they would
12 stop by 10:00 o'clock even when they were practicing.
13 But it's been some years since they lived on our
14 property. They live mostly in Seattle now and are on
15 tour. So I think perhaps some of the louder
16 disturbances that people are referring to are not
17 reflective of our current situation, but are really
18 reflective of a time five or six years in the past.

19 CHAIRPERSON SCHEUER: Dr. Abrams, I'm not
20 trying to stop you, just marking that it's been about
21 15 minutes.

22 THE WITNESS: So I've made accommodation,
23 we have made accommodations. We actually rerouted
24 the access point to the lower portion of our farm to
25 direct traffic away from Michelle Drewyer's

1 viewplane.

2 We've cut down some trees that had grown up
3 into her viewplane, as soon as she expressed concern
4 about that. I've really done my best to try to work
5 with her, and it has been quite challenging.

6 The conditions that have been suggested by
7 the Maui Planning Commission, and that were passed,
8 are things that we feel that we can live within.

9 I was concerned about them stipulating
10 exactly which days we can meet, that one of the Maui
11 Planning Commissioners said, well, we got to give at
12 least one weekend day to the neighbors where they can
13 count on there not being gatherings. So we ended up,
14 the condition that was imposed to have Saturdays
15 services only six times of the year, and even though
16 I asked for a curfew of 10:00 o'clock to end our
17 services, they imposed the condition of having any
18 amplified music end by 9:00 p.m.

19 And the numbers were set for our regular
20 weekly services up to 40 people; and then for holiday
21 celebrations, up to 100 people, depending on the
22 occupancy of this building.

23 So we're in the process of installing,
24 getting designed and installing a fire sprinkler
25 system that will then allow us to have a certificate

1 of occupancy. Up until now an agricultural workshop
2 hasn't required that, but in order to have the
3 permission to hold public gatherings as a church, we
4 need to increase the fire protection for this
5 building, even though it already has a fire stand
6 that has amazing pressure, we are still being asked
7 to incur quite a bit of an expense to put in this
8 fire sprinkler system.

9 We are in that process getting it designed,
10 and hopefully we will be doing a fund raiser to
11 hope -- to be able to afford that.

12 But the Special Use Permit that was granted
13 from the County goes into effect after the
14 certificate of occupancy is granted, which comes
15 after the fire sprinkler system has been installed
16 and inspected by the fire marshal.

17 So that's when we hope to begin regular
18 weekly church services. What we have been doing up
19 until now for more informal gatherings of friends,
20 community potlucks, birthday celebrations with the
21 spiritual value. I do try to open our gatherings
22 with prayer, a universal interfaith prayer, but it
23 hasn't been a formal regular church service, which is
24 in part where we're asking for you all to endure, so
25 that we can have a regular gathering.

1 I am committed to honoring any concerns
2 that are raised by the neighbors. I've only gotten,
3 I think, one or two calls from any neighbor other
4 than Michelle Drewyer, and whenever anyone has
5 expressed a concern, I'm very willing to turn down
6 the music, close up the building, close the doors and
7 windows to keep the sound contained.

8 It's not like I've been flagrantly ignoring
9 the complaints of my neighbors. And it's important
10 to know that the property next to us owned by Jerome
11 Labat, who is not here today, but he did submit a
12 letter. His main residence is in California. Here's
13 rarely on the property, maybe five or ten -- I don't
14 know exactly -- but very few days a year is he
15 actually present.

16 Then also Ms. Drewyer sends us a request to
17 endorse her request to turn her place into a
18 short-term vacation rental. And she has moved into
19 town. Most of the times I see her dogs are not there
20 a lot of the time, and I believe she is intending to
21 turn her place into a short-term rental, so she will
22 not be present as much as she has in the past.

23 If you look at the situation on the map and
24 so on, we did choose the furthest most spot on our
25 property. It's on the plateau surrounded by gulch on

1 three sides. That gulch is 150 feet deep and maybe a
2 quarter or half a mile at places of untamed jungle.
3 It's almost like we have a mote and natural
4 protection around this building that we are proposing
5 for church. And there no neighbors right there. The
6 closest neighbor is more than 1000 feet away.

7 And we also planted bamboo in such away to
8 create a sound and visual barrier. We have a
9 semi-circle to do our best to contain what we do in
10 that building, another accommodation we made to the
11 neighbors.

12 I saw just in the last couple of days there
13 was a letter submitted by a former neighbor, John
14 Cahill. I don't know if it is formally allowed into
15 the record. It just came into the record a couple
16 days ago. But I was really surprised because he said
17 that he has asked that, you know, he was expressing
18 concern about us building the temple building in his
19 viewplane, and that we flagrantly ignored that.

20 And said we -- you know, he just
21 mischaracterized what happened, because when we were
22 laying out the area for the temple, he came over and
23 said, this building is going to be in my viewplane.
24 Can you put this somewhere else?

25 I said there's one more site out on the

1 point. So we agreed and did move the building to
2 accommodate his request, yet he submitted the letter
3 to the contrary.

4 And similarly, we rerouted the visitors
5 coming into our property to avoid Ms. Drewyers' point
6 of view, and he framed it that we did it to keep cars
7 away from our own homes, which is absolutely opposite
8 of the case, because it routed the cars right by our
9 home.

10 So there are some misrepresentations and
11 inaccuracies and exaggerations, I believe, of how
12 much impact would our activities have had in the past
13 and may have in the future.

14 And I'm committing to honoring whatever
15 conditions you all set, or that have been set by the
16 Maui Planning Commission. And I do think it's an
17 important part of the service that we provide in
18 addition to inspiring people of all ages to grow food
19 in a natural way.

20 This earth-based interfaith spirituality is
21 very inclusive, and so we're inviting people of any
22 religious bent who share the value of honoring the
23 earth and who see human beings as stewards of the
24 planet for future generations to affirm our common
25 heritage.

1 We are all children of one planet and we
2 all want to have grandchildren that have fresh water
3 to drink and good food to eat. So it's the great
4 common denominator that allows people of different
5 beliefs to find some union and solidarity around
6 growing food, generating energy, and protecting our
7 planet for the future generations.

8 In that sense it is a welcoming circle for
9 people of any age, any belief system, and hopefully
10 will inspire and become a demonstration project for
11 people who want to learn more about growing food.

12 And hopefully addressing the food
13 sovereignty issue on this island. You know, we
14 import about 85, 90 percent of the food here. And
15 there is a lot of depleted land there in the
16 sugarcane areas and the old pineapple areas that have
17 had a lot of abuse.

18 And we're demonstrating that it is possible
19 to regenerate the soil by introducing microorganisms,
20 worms and using fishponds, where the nutrient waters
21 from the ponds helps to irrigate and fertilize the
22 surrounding area.

23 So we are providing an example that
24 hopefully will be part of the solution that this
25 island needs.

1 While inviting people to come together, and
2 in a shared celebration of life. So the ministry
3 invites people to come together to share locally
4 grown food, to celebrate holidays, like we've had our
5 annual Thanksgiving vegetarian potluck for 30 years.

6 Sometimes we have maybe 50, 75 people that
7 turn up. We have this amazing feast without needing
8 to kill any animals, and a beautiful time with the
9 children.

10 So we're celebrating holidays. We're
11 sharing locally grown food, and we also do rights of
12 passage for community members. Like it was
13 mentioned, we had a number of birthday celebrations.
14 We had a friend who had ALS who was dying of Lou
15 Gehrig's disease, and she got to have her celebration
16 while she was still alive. And her three
17 ex-husbands, and all her grandkids were there.

18 We just recently held a memorial for Auntie
19 Pua Mahoi, local kanaka maoli elder who really was a
20 dear friend, and her whole extended family came out.
21 We offered that as a free offering to the community.

22 We've hosted some of the organizing
23 meetings that took on Monsanto, GMO problems, and so
24 on.

25 So we are asking for your support and

1 recognition that we're doing something positive and
2 worthwhile on this island, and any concerns about the
3 neighbors I'm very willing to abide by the conditions
4 that are imposed.

5 I ask for you to support what we're doing
6 and let us leave today with a Special Use Permit.
7 It's been -- we went through three hearings before
8 the Maui County Planning Commission. I submitted the
9 initial application more than two years ago, and it's
10 been quite a journey. And I'm really optimistic that
11 we'll be able to work out something here with you all
12 today. Thank you.

13 CHAIRPERSON SCHEUER: Thank you.

14 Commissioner Wong?

15 COMMISSIONER WONG: We've gone been going
16 for more than an hour. The court reporter needs a
17 break, but also I would like to also consult with the
18 board's attorney on questions and issues pertaining
19 to the board's powers, duties, privileges and
20 liabilities, so I was wondering if we could --

21 CHAIRPERSON SCHEUER: Lunch break as well
22 as executive session, Commissioner --

23 COMMISSIONER WONG: This is regarding the
24 public witness' testimony today, and what is record
25 and what is not considered record.

1 COMMISSIONER OHIGASHI: Second.

2 CHAIRPERSON SCHEUER: Thank you.

3 So the motion has been made by Commissioner
4 Wong, seconded by Commissioner Ohigashi to consult
5 with the board's counsel regarding, under HRS 92-4,
6 and particularly it talks about the nature of public
7 testimony and a hearing on a Special Use Permit.

8 If we go into executive session, we will
9 combine this with a lunch period for the
10 Commissioners.

11 Mr. Hakoda, when will lunch be available to
12 us?

13 CHIEF CLERK: I can make a run to pick it
14 up.

15 CHAIRPERSON SCHEUER: So about 15 minutes
16 or so? Does it work for the parties if we reconvene
17 back here at 1:00?

18 MR. ICZKOVITZ: Yes.

19 CHAIRPERSON SCHEUER: Is there discussion
20 on the motion before us? There was a second,
21 Commissioner Ohigashi seconded it. Thank you
22 Commissioners.

23 Any discussion on the motion? If not, all
24 in favor say "aye". Anybody opposed? The motion
25 carries. The Commission will go into executive

1 session.

2 We will lead the executive session at some
3 point during lunch, and then we will reconvene in
4 public session at 1:00 o'clock.

5 (Executive session and noon recess.)

6 CHAIRPERSON SCHEUER: Aloha, it's 1:01 and
7 we're back on the record.

8 When we left for executive session and our
9 break, Dr. Abrams had concluded his testimony, and
10 then a motion was made by Commissioner Wong to go
11 into executive session.

12 Are there questions before we proceed with
13 Commission questions?

14 Any questions from the County?

15 MR. HOPPER: No, Mr. Chair.

16 CHAIRPERSON SCHEUER: Office of Planning?

17 MS. APUNA: Yes, actually I did have a
18 couple of questions.

19 CROSS-EXAMINATION

20 BY MS. APUNA:

21 Q Thank you for your testimony, Mr. Abrams.

22 When we look at Exhibit A, which is the
23 map, we understand it's broken into three parts, A, B
24 and C.

25 A No. So this is Lew Abrams responding.

1 The map was originally drawn up when we
2 thought about condominiumizing, but we never did that.
3 So those are residue labeling on the map, but that is
4 not the case.

5 Q But for purposes of this Special Permit, I
6 think there is a section A, section B and section
7 C -- or Section A that part of parcel closest to the
8 highway --

9 A Right, that's where our home is.

10 Q Part B is where the farm is, is that
11 correct?

12 A B and C together have farming activities.

13 Q And the Special Permit from what you
14 understand covers parcel B and C; is that correct?

15 A It depends on which map you choose to
16 accept. But, yes, it's predominantly B and C.

17 Q So B includes the farm, is that correct?

18 A As well as C has farming as well, but
19 there's a lot of farming activity on B, yes.

20 Q And so my question is why does B, which is
21 a farm, require a Special Permit?

22 Isn't it just agricultural use? So do you
23 need a Special Permit for that area?

24 A It's true. The primary focus of our
25 Special Use Permit is the agricultural building

1 that's out on the point. That would be under the
2 part C, but because we're inviting people to
3 participate in learning about farming and
4 regenerative farming, we included 14.8 acres around
5 that building. But the activities that people will
6 be involved in will be agricultural. Yes.

7 So it's not essential, but it's the area
8 where we'll let people get their hands in the soil
9 and learn.

10 Q So there will be agricultural activities,
11 but are there other nonagricultural activities on the
12 farm that justify this Special Permit including that
13 area?

14 A Predominantly it's all agricultural
15 activities on -- it looks -- it would be parcel C.
16 We did build a medicine wheel that's out in the
17 field, which is a stone ring where prayers would
18 be -- could be made. That would be more
19 church-related activity.

20 But, no, there's nothing that congregants
21 would participate in outside the building that would
22 not be related to agriculture.

23 Q But it's not solely agricultural uses on
24 the farm? I'm just trying to understand what
25 justifies this Special Permit to extend upon the farm

1 area, which is, from what I'm hearing, mostly
2 agricultural uses.

3 A Right. Well, it's integrated in that the
4 earth-based spirituality that we're encouraging
5 people to embrace, involves learning how to grow food
6 naturally.

7 So we included the farm area so that people
8 can participate. But we also have a business that
9 isn't the ministry that is a farm called the Ahimsa
10 Sanctuary Farms LLC. And we, you know, have orchards
11 and such, and harvest and bring stuff to market.

12 Q Right. So those are the agricultural uses.

13 But are you saying that the spiritual
14 practices are not agricultural uses, and therefore,
15 that is why you require a special permit for that
16 farm area?

17 A No, it's all integrated. So the actual
18 services, like prayer ceremonies, will happen in the
19 building. That was what got established at county
20 level.

21 Q Which is in C?

22 A Labelled C, yes.

23 Q Is it not possible to just get this Special
24 Permit for lot C, and not have it for lot B? Because
25 lot B does not seem to have any nonagricultural uses

1 that would require a Special Permit.

2 A It could have been possible to go for that,
3 but we decided to go up to what was allowed of the
4 just under 15 acres.

5 There are some outbuildings, farm workshops
6 and stuff that are included in B and C, and the
7 future ohana that we're applying for. And at some
8 point, as was questioned about visiting teachers and
9 stuff, it would be nice to be able to have a place to
10 offer a visiting teacher to stay.

11 Right now when some people like that come
12 through, we put them up in our home.

13 Q So it might be that some of the
14 nonagricultural uses may spill into lot B; that's not
15 even necessarily a true statement.

16 A Lot B has predominantly agriculture on it,
17 that's where the fishponds are.

18 CHAIRPERSON SCHEUER: If I may, when you're
19 referring to lots, these are not lots of record,
20 correct, you're referring to?

21 THE WITNESS: No.

22 MS. APUNA: I think it was an earlier -- I
23 guess the Applicant can explain, but it was for a
24 different use --

25 CHAIRPERSON SCHEUER: In your questioning,

1 it might be slightly confusing when reading the
2 transcript that you're referring to them as lots.

3 Q (By Ms. Apuna): Elements, element A, B and
4 C.

5 A Right. We use this map, which was surveyed
6 and laid out for condominiumization, so they are
7 labeled as A, B, and C, but they're not formally
8 subdivided.

9 Q But it helps for us to reference what is
10 going on in the Special Permit?

11 A Yes.

12 Q Thank you. No further questions.

13 CHAIRPERSON SCHEUER: Commissioners,
14 questions for Dr. Abrams?

15 Commissioner Chang.

16 COMMISSIONER CHANG: Thank you very much
17 for being here this afternoon. I just have a couple
18 of questions.

19 One, is your -- is everything that you told
20 us here today part of the testimony that you provided
21 to the Planning Commission?

22 THE WITNESS: Yes, I believe so.

23 COMMISSIONER CHANG: So is it your -- is it
24 also your position that the application for your
25 Special Use Permit of 14.8 acres is accurate?

1 THE WITNESS: Yes.

2 COMMISSIONER CHANG: So you are not
3 proposing to use more than 14.8 acres?

4 THE WITNESS: Definitely not.

5 COMMISSIONER CHANG: Was your determination
6 intentional in keeping it under 15 acres?

7 THE WITNESS: Yes, to avoid being before
8 the State Land Use Commission.

9 COMMISSIONER CHANG: That's a really good
10 point. Did your counsel raise that question, or you
11 raise that question before the Planning Commission?

12 THE WITNESS: We did. We challenged the
13 whole referral to the State Land Use Commission
14 because it seemed to be based on the letter exchange
15 between Ms. McLean and the head of the State Land Use
16 Commission based on a hypothetical description of our
17 case, which was not accurate; and the factors that
18 were delineated in that letter that would warrant a
19 referral to the Land Use Commission, were if our
20 special use activities would replace or displace
21 agriculture, which clearly they do not; or if the
22 activities would spill over beyond the 14.8 acres,
23 which there's no reason that they would.

24 COMMISSIONER CHANG: So you are -- it is
25 your consistent testimony that your application is

1 accurate at 14.8 acres, that is the area that you are
2 including for this Special Use Permit?

3 THE WITNESS: Yes. That was from the very
4 beginning, two, three years ago when we submitted our
5 original application. The only thing that has
6 changed, it's still 14.8 acres, but some adjustment
7 of whether or not to include the driveway leading
8 down to that farm area, so to address that, we
9 submitted a second map that sliced off a little of
10 the land that's down in the gulch, inaccessible
11 200 feet down in a jungly gulch and added that same
12 amount to accommodate the driveway.

13 So we submitted two maps either way, if you
14 wanted to include the driveway, we can go with the
15 map that does that or not.

16 COMMISSIONER CHANG: Is your property within
17 the Special Management Area?

18 THE WITNESS: It is.

19 COMMISSIONER CHANG: And are the buildings,
20 the structures that you have on the property right
21 now, have they all been permitted?

22 THE WITNESS: Yes. We went through that
23 SMA project, submitted plans for every single little
24 shed and outbuilding.

25 COMMISSIONER CHANG: I'm also hearing from

1 you that --

2 THE WITNESS: Could I add one thing?

3 The agricultural building that is currently
4 built as an agricultural workshop, we did submit that
5 through the SMA process asking for approval to making
6 it a church, and that was approved and is on our SMA
7 plan.

8 COMMISSIONER CHANG: Thank you for that
9 clarification.

10 Is it also your testimony that the land
11 that's being proposed, this 14.8 acres that is being
12 proposed for this church use, is it also suitable for
13 agricultural use as well?

14 THE WITNESS: It is. We're regenerating
15 the depleted pineapple soil. It was rated like C or
16 D which is not best. But we are growing food on
17 that. We brought in a lot of amendments and we're
18 working on it. The first five years it hardly
19 produced anything. It was all about regenerating the
20 soil.

21 And still many of our trees are still
22 keikis and not really producing -- you know, in
23 another ten years we will have bumper crops of
24 citrus, coconuts.

25 COMMISSIONER CHANG: Let me ask you a

1 procedural question.

2 There were some of your neighbors who said
3 they didn't know about the Planning Commission
4 hearings. Did you notify any of your neighbors of
5 the meeting?

6 THE WITNESS: We sent out registered letter
7 for every neighbor within 500 feet.

8 COMMISSIONER CHANG: Are the neighbors that
9 were here today, are they within 500 feet?

10 THE WITNESS: Michelle is. The folks from
11 Manawai are about three quarters of a mile away, so
12 they didn't appear on that radius of what we needed
13 to notify.

14 COMMISSIONER CHANG: So Michelle Drewyer,
15 she did receive notification from you of the Planning
16 Commission hearings?

17 THE WITNESS: I believe so. We sent it
18 out, yes.

19 COMMISSIONER CHANG: All right. Thank you
20 very much. I appreciate your testimony.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Chang.

23 Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: SMA Permit process,
25 you said you identified it as a church use, is that

1 right?

2 THE WITNESS: Proposed future church use.

3 COMMISSIONER OHIGASHI: Was there an
4 indication at that time whether or not the permit was
5 issued with that, doing an analysis, environmental
6 analysis, SMA analysis as a proposed church?

7 THE WITNESS: Yeah. That was part of our
8 SMA Application. We worked with Keith Scott. Met
9 with him several times and told them what we hoped to
10 accomplish and submitted revised maps and got every
11 little shed and outbuilding. Yeah, it was all part
12 of that.

13 COMMISSIONER OHIGASHI: Is that part of the
14 record today?

15 THE WITNESS: Is our SMA plan part of the
16 record? I know that I testified in the County
17 Planning to the degree that we have Special
18 Management Area approval. I don't know -- I don't
19 recall seeing the actual paperwork in there.

20 COMMISSIONER OHIGASHI: Now, the other
21 thing I wanted to ask you about was: Technically,
22 these boundaries that you're indicating, those are
23 files -- sorry, I will endeavor to speak loudly, all
24 in caps.

25 THE WITNESS: Yeah, I hear you.

1 COMMISSIONER OHIGASHI: In your original
2 filing you indicated -- and that's part of the
3 Planning Commission or the Planning Department's
4 first report, the first thing in the report.

5 There was a map indicated that the Planning
6 Department had relied upon to determine the uses as
7 part of the application; is that right?

8 THE WITNESS: I believe so.

9 COMMISSIONER OHIGASHI: And if I remember
10 correctly, reading the record, it appeared that
11 somewhere in either August, at the August meeting,
12 that you submitted another map?

13 THE WITNESS: Yes, a revised map.

14 COMMISSIONER OHIGASHI: And do we know if
15 that map is part of the record?

16 THE WITNESS: The revised map is definitely
17 part of the record.

18 COMMISSIONER OHIGASHI: How do we know
19 that?

20 THE WITNESS. There's two of them.

21 Because I handed them out to the
22 Commission, both of those maps.

23 COMMISSIONER OHIGASHI: Was there a ruling
24 by the Commission to accept it as part of the record?

25 THE WITNESS: I believe so. It appeared

1 that it was accepted, yeah.

2 COMMISSIONER OHIGASHI: That's your
3 recollection?

4 THE WITNESS: Yes.

5 COMMISSIONER OHIGASHI: If your counsel can
6 point me to a point in the record, I would be glad to
7 figure out later on.

8 And in that submittal, what you did was
9 included the roadway, the second submittal, you
10 included the roadway into the calculations.

11 Is that right?

12 THE WITNESS: Right, because that issue --

13 COMMISSIONER OHIGASHI: Wait, wait.

14 You included that, and you trimmed off some
15 of the, I guess, parts of the gulch so it still
16 remained 14.8?

17 THE WITNESS: Yes.

18 COMMISSIONER OHIGASHI: Do you -- I
19 couldn't find any kind of finding that the Planning
20 Commission did in order to make that determination
21 that it was 14.8 acres.

22 Are you familiar with any part of the
23 record or any findings that they issued concerning
24 that?

25 THE WITNESS: Well, the initial map that I

1 had presented was --

2 COMMISSIONER OHIGASHI: I'm not asking you
3 about your maps. I'm just asking, do you recall in
4 the record there was a finding by the Commission that
5 the second map constituted 14.8 acres?

6 THE WITNESS: I believe we left it open to
7 the Commission which way they wanted to go, because
8 there was some ambiguity about whether or not the
9 driveway should be included.

10 So we gave them both options. If they did
11 want to include the driveway, we got a version of the
12 map that is 14.8 acres. And that calculated by our
13 architectural drawing, using his computer to figure
14 out where the 14.8 acres would fall if we were to
15 include the driveway.

16 And so I know that both options were
17 offered to the Planning Commission. I seem to recall
18 that our attorney asked them to make a finding and
19 accept which map, but there was some uncertainty
20 about whether driveways, traditionally, apparently,
21 at least at County level, driveways have not been
22 included.

23 And there was testimony by the Assistant
24 Director of Planning to that degree. And so I
25 believe we offered, whichever one was going to work

1 basically. But they're both 14.8 acres according to
2 the software program that our architectural drawer
3 who worked with this map determined.

4 COMMISSIONER OHIGASHI: I was interested in
5 OP's, Office of Planning's questioning of you
6 concerning the different sections.

7 And it sounds like what you're saying is
8 that the agricultural pursuits on B is related to
9 church uses on C.

10 THE WITNESS: There is agricultural uses on
11 B and C. We have coconut orchards --

12 COMMISSIONER OHIGASHI: I understand. I'm
13 asking a specific question.

14 The reason why you asked to extend this
15 beyond the C portion, is that on that B portion
16 you're conducting agricultural uses and those
17 agricultural uses are integral to your church; is
18 that the reason?

19 THE WITNESS: Yeah, I think so. Also just
20 for future possibilities down the line.

21 At some point we're thinking about maybe
22 offering training, administrative training in Sacred
23 Earth Assembly. We would like to be able to possibly
24 have land that we can bring in some future ministers.

25 It was just to maximize the options as this

1 church develops over time, we have sons that are
2 going to carry this into the future. And so we
3 wanted to get the largest range of possibilities
4 staying under the 15 acres.

5 COMMISSIONER OHIGASHI: I see.

6 And so then is it your plan to extend
7 construction within the C area?

8 THE WITNESS: Not at this time.

9 COMMISSIONER OHIGASHI: I understand. But
10 is it your --

11 THE WITNESS: Actually where we would
12 imagine putting a seminary would be actually in the
13 area near where the church is, so that is C. But we
14 don't have any plans drawn up for that, nor do we
15 have a budget. We have no budget to build anything.

16 COMMISSIONER OHIGASHI: What about the B
17 section?

18 THE WITNESS: B section. No, we have Act
19 203 building there that we've asked to be accepted as
20 an ohana, so we have a permit about that, but that's
21 not related to the church at this time.

22 COMMISSIONER OHIGASHI: You mentioned this
23 that your sons will be taking over. So is this use
24 going to extend?

25 THE WITNESS: I hope so. We had asked for

1 five years of approval, but the Maui County Planning
2 Commission would only grant us one.

3 COMMISSIONER OHIGASHI: Is it your intent
4 to have the church there permanently?

5 THE WITNESS: Yes. I built that church to
6 last with stucco, and major foundation, footings with
7 board cement. That thing is going to last at least
8 100 years.

9 COMMISSIONER OHIGASHI: As such, would you
10 be considering a boundary amendment rather than
11 Special Use Permit, so that it would be under the
12 control of the County as an Urban District permitting
13 a church?

14 THE WITNESS: No, I never asked that.

15 COMMISSIONER OHIGASHI: Your lawyer is
16 shaking his head no.

17 THE WITNESS: When we read the agricultural
18 rules that church use is allowed with a Special Use
19 Permit, so I didn't think there was any reason to
20 change the boundary -- I didn't even know about that.

21 COMMISSIONER OHIGASHI: There are pursuits
22 you can do, right? You can get a permit that is
23 inherently or maybe temporary use, and has to be
24 renewed every so often. And there is a boundary
25 amendment that would be permanent and allow you the

1 existing use.

2 My question to you then is that which
3 appears to be the least restrictive mechanism of
4 permitting a church to be built?

5 THE WITNESS: I guess I would have to learn
6 more about the boundary issue. I'm not familiar with
7 that.

8 I was concerned that we were limited to
9 only one year, even though the County Planning
10 Department recommended approval for five years which
11 allows for fundraising and planning and so on, and
12 it's been two-and-a-half years since we submitted the
13 application, so I would prefer to have a longer
14 period that the Special Use is granted for.

15 And if there are some advantages to revise
16 the boundary -- oh, I know what that might be about.
17 Our parcel of 25 acres is not allowed to have any
18 further subdivision, because it was spun off from an
19 original 75 acres, and we got the largest parcel of
20 that subgrouping, and written into our deed is that
21 it can't be subdivided and sold.

22 That's one of the reasons we looked in the
23 condominimization issue, but we decided not to do
24 that.

25 COMMISSIONER OHIGASHI: I have no

1 questions.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Ohigashi.

4 VICE CHAIR CABRAL: You just based a
5 comment that in the future you would like to build
6 another house, or you got plans for an ohana house
7 under ohana permitting, I guess, to build a second
8 house that might be for ministers or people in
9 training live?

10 THE WITNESS: Currently just as a second
11 farm-worker's dwelling.

12 VICE CHAIR CABRAL: That is the correct
13 lingo, I think.

14 So then you just also just now mentioned
15 you would like to build maybe a building, a seminary
16 for multiple people to be able to get training.

17 So I'm trying to get a vision of your
18 bigger plan is to have a church so that you would
19 have more church buildings and more church services,
20 and more church, you know, a rather large campus.

21 THE WITNESS: I would hope it would grow
22 possibly, but we have no immediate plan or budget to
23 do any of that.

24 VICE CHAIR CABRAL: The concern I have is
25 that once you get the zoning or the permits to do it,

1 then the door is starting to open in that regard.

2 I'm just trying to figure out what your
3 vision and your plans are. Thank you very much.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Cabral.

6 Commissioners? No further questions,
7 Commissioners? If I may.

8 So I understand correctly, based on the
9 information you provided to us and transmitted to us
10 by the County that this property is less than fully
11 developed; is that correct?

12 There is ag, but there is not like
13 buildings all over or roads all over?

14 THE WITNESS: It's 25 acres, 8 of it is
15 down in the gulches where it's really hard to get to.
16 And there's open pasture lands that we haven't
17 planted out fully with orchards, but we do have
18 orchards and gardens and fishponds and greenhouse
19 already up.

20 CHAIRPERSON SCHEUER: I didn't see it in
21 all of what was transmitted to us.

22 Was there any examination of existence of
23 any historic trails or other kinds of --

24 THE WITNESS: When we originally got the
25 permit to put up the agricultural building that we

1 are asking to be approved for church use, there was a
2 study about Hawaiian burial and bones and the
3 Anthropological Society, we had to get someone out
4 there and they reviewed it and concluded that there
5 was nothing that would preclude us using the parcel
6 in part because it had been used for 20 or 30 years
7 for commercial pineapple, and they tilled it already.

8 So there was nothing that we were going to
9 do that was going to affect that.

10 CHAIRPERSON SCHEUER: So is that study is
11 part of the documents in front of us?

12 THE WITNESS: I belief there is a sheet in
13 there from that office saying that they had no
14 concerns and we could go forward.

15 CHAIRPERSON SCHEUER: So maybe you or your
16 counsel can point to that study.

17 So there's a duty this Commission has.
18 Actually other boards and commissions have in a court
19 case called Ka Pa'akai o ka aina. Are you familiar?

20 THE WITNESS: I'm not.

21 CHAIRPERSON SCHEUER: So we have to make
22 specific findings as to the scope and identity of any
23 traditional and customary native Hawaiian practices
24 that may exist in the area that we are making a
25 decision on.

1 If any exist, the impact of any proposed
2 use on them, and if there is the impact, the actions
3 that may be taken if there is such an impact.

4 And it is possible in areas that are
5 historically heavily used for other purposes, such as
6 agriculture, that those practices and resources no
7 longer exist on the property. But we are required
8 under this court decision to make documentation of
9 that fact in our decisionmaking.

10 So I'm trying to understand on the record
11 as presented to us whether there is any specific,
12 what are often referred to as Ka Pa'akai findings.

13 THE WITNESS: I believe down in the gulches
14 there was like old Hawaiian, evidence of lo'is. And
15 so we're hoping to restore that some day and get to
16 grow taro when the water is restored.

17 Right now the East Maui Irrigation Ditch
18 basically steals the water that would be coming down
19 the two gulches on either side of the main plateau
20 where our land is, and takes it around to the dry
21 side of the island.

22 CHAIRPERSON SCHEUER: The Haiku Ditch is
23 adjacent to the property?

24 THE WITNESS: It actually is in a tunnel
25 right under it. And daylights in the gulch. There's

1 like avocado trees and things down in there that
2 makes one think that it could be a useful
3 agricultural zone.

4 CHAIRPERSON SCHEUER: So you are aware that
5 there is stuff in the ditch that is possibly
6 traditional lo'i kalo terraces?

7 THE WITNESS: Really not terraces. There's
8 a streambed that has been impinged upon by the ditch
9 that takes the water, instead of letting it flow to
10 the sea, it gets caught in this cement pipe
11 basically, and taken around. And our hope is to
12 restore that flow.

13 CHAIRPERSON SCHEUER: Thank you very much.

14 THE WITNESS: So there is this finding in
15 the record that my attorney is just -- it's page 12
16 archaeological, historic and cultural resources.
17 Should I read it?

18 It should be noted that there is no
19 construction associated with the proposed church use,
20 hence, the application was not transmitted to the
21 Department of Land and Natural Resources, State
22 Historic Preservation Division for review and
23 comment. Because the property is located within the
24 Special Management Area SHPD has reviewed
25 applications transmitted previously.

1 In a comment letter dated December 3rd,
2 2009, which is when we began construction on that
3 building, SHPD noted that an archeological inventory
4 survey was conducted by Scientific Consultant
5 Services in 1996. Three historic sites were
6 identified, but the two closest to the project area
7 are the discontinuous road segments and the Haiku
8 Ditch. A plantation era irrigation ditch that is
9 still utilized and recommended for preservation
10 through avoidance and protection.

11 It was also determined that there would be
12 no effect on historic resources. Previous
13 correspondence that SHPD has provided is attached as
14 Exhibit 22.

15 CHAIRPERSON SCHEUER: So, Mr. Iczkovitz,
16 maybe you can point to exactly where in our materials
17 that is.

18 THE WITNESS: It says page 12.

19 MR. ICZKOVITZ: Page 12 from Ms. McLean,
20 Department of Planning report.

21 THE WITNESS: It is in the report.

22 MR. ICZKOVITZ: Dr. Abrams, just read from
23 page 12 of the Maui Planning Commission report
24 submitted on Docket No. SUP2 2017/0011. That's page
25 12 of that report submitted by Ms. McLean.

1 CHAIRPERSON SCHEUER: Okay. Thank you.

2 Last thing I'll just say in reference to
3 something you said, from the benefit of serving three
4 years on the Oahu Island Burial Council, I understand
5 that it sometimes -- often is said, oh, this area was
6 in ag, it was plowed, never going to find anything.
7 We found burials on Oahu beneath sugarcane fields
8 that were cultivated for over a century, beneath
9 sidewalks in Urban Honolulu, beneath buildings in
10 Urban Honolulu.

11 It is absolutely not the case that just
12 because something has been used agriculturally that
13 there is not a chance of finding something.

14 THE WITNESS: I can just say that in the
15 various trenching and things of digging holes and
16 planting trees we have never come across anything.

17 And if we did, we would treat it with the
18 utmost respect and call in the archaeologist. I
19 would want to honor the host culture.

20 CHAIRPERSON SCHEUER: Anything else,
21 Commissioners? If not, Mr. Iczkovitz, you can
22 proceed with your argument.

23 THE WITNESS: Thank you. Appreciate the
24 time.

25 MR. ICZKOVITZ: At this time we are asking

1 the Land use Commission to approve the Special Use
2 Application for the Abrams to operate their Sacred
3 Assembly Church, 14.8 acres of their 25 acre --

4 COURT REPORTER: You need to slow down and
5 speak really clearly.

6 MR. ICZKOVITZ: This request is based upon
7 the record that was developed before the Maui
8 Planning Commission over three hearings, after
9 multi-year process.

10 The Maui Planning Department has
11 recommended approval with the restrictions and
12 conditions specified at the August 13th Maui Planning
13 Commission meeting to address any potential adverse
14 effect upon the neighbors. They added these
15 conditions, that was the purpose for that.

16 State Office of Planning is also
17 recommending approval with the same conditions
18 including there will be no adverse effect upon the
19 neighbors.

20 And as Dr. Abrams said, this is an
21 interfaith church that treats the aina as sacred.
22 And the more church use, the more church goers, will
23 increase the agricultural activity.

24 With regard to the public comments that
25 were submitted by some of the neighbors the last few

1 days, we believe that all these comments relate and
2 their allegations are not relevant, but many are
3 untrue, and the fact is that there have been
4 conclusions that were included, but there are no
5 specific facts.

6 The letters that were sent from the people
7 in Manawai was sent after the hearing was closed on
8 May 28, sent to the Maui Planning Commission. The
9 Maui Planning Commission did not accept these letters
10 in their record, and there is no reason for this
11 Commission, we submit, to accept these letters,
12 because again, these are just conclusions, not citing
13 facts.

14 And we would note that the last time they
15 had a problem was New Year's Eve five years ago.

16 And I want to note that the only document
17 in the record of Manawai is from Ram Dass who is a
18 spiritual teacher to millions of people around the
19 world. And his letter is strongly in favor of the
20 Special Use Permit, and talks about all of the
21 wonderful things that Dr. Abrams and his wife have
22 done for this community.

23 And I submit, if you read the record, the
24 41 letters of support from community records, the
25 dozens of people who show up to testify or sign

1 petitions in favor. But the concerns raised by the
2 neighbors are fear-based exaggerations of what might
3 occur in the future.

4 But the Abrams have considered the
5 neighbors, and always ending the gathering by 10:00
6 p.m. That's the testimony. The fears expressed are
7 not based on reality.

8 And no one has tried to cite a single fact
9 that any evidence of any events that may have
10 violated zoning within the last four or five years.

11 MR. ABRAMS: Can I interrupt just for a
12 second. There are 27 letters, not 41.

13 MR. ICZKOVITZ: Total of 41 if we add them
14 all.

15 CHAIRPERSON SCHEUER: Procedurally we can't
16 really take in comments from the back. You are
17 certainly welcome to lean over and try and get the
18 attention of your counsel and have him say something.

19 MR. ABRAMS: All right. Thank you.

20 MR. ICZKOVITZ: The record before this
21 shows the testimony of the people who showed up,
22 shows all the letters that were submitted before the
23 May 28th hearing, at the May 28th hearing, and at the
24 August 13th hearing. And the support from the
25 community is overwhelming.

1 We believe that he has all the
2 qualifications necessary to get a Special Use Permit.
3 The findings have been that there will be no adverse
4 effect on the neighbors.

5 And with regard to the -- I don't know if I
6 should address the issue now about the other
7 driveway. What happened on June 25th is that
8 discussion -- I can cite pages -- discussion was held
9 as to whether or not the Maui Planning Commission had
10 jurisdiction over this matter. And after discussing
11 at length the Commission decided that they're the
12 ones that had jurisdiction.

13 Then at the August 13th hearing, after the
14 interchange between Ms. McLean's letter, and Mr.
15 Orodenker's, there was an indication that the
16 Commission is now, even though at the June 25th, Mr.
17 Hart, the Maui Planning Commission, specifically said
18 in the past the driveway -- the access has never been
19 used as part of -- considered to be part of the
20 Special Use.

21 Based upon that, Maui Planning Commission
22 said we have jurisdiction. After the interchange of
23 letters back and forth, it appears that the Land Use
24 Commission may be changing their policy and requiring
25 the access road to be part of Special Use, be

1 considered part of the acreage to keep it under 14.8
2 acres.

3 So the record has clearly delineated the
4 map submitted on June 25th is the 14.8 acres as
5 determined by the architect precisely, that does not
6 include the driveway.

7 The map that was submitted and discussed
8 specifically on August 13th, said if you want it, if
9 the Commission has a new policy that includes the
10 driveways as part of the Special Use, here is 14.8
11 acres that includes the driveway.

12 So it's really up to the Commission. This
13 is really a good opportunity to clear up perhaps for
14 the County, if you include the access road, which you
15 now said is your policy, because it hasn't been in
16 the past, then please use the map we submitted on
17 August 13th, because that includes 14.8 acres
18 including the driveway with no evidence whatsoever in
19 the record that the use, that the church use will
20 expand beyond 14.8 acres. No evidence in the record
21 to suggest that.

22 So we believe that the -- and even if you
23 wanted to go beyond the 14.8 acres, if you make that
24 finding, we are in front of the Land Use Commission,
25 that if you still approve based upon what is in front

1 of it. But we don't believe there is anything in the
2 record to find that because there is no findings made
3 by the Maui Planning Commission or anywhere else that
4 indicates the church use will expand beyond the 14.8
5 acres.

6 Without such a finding, we submit
7 definitely our map that includes the driveway
8 addresses what the Maui Planning Commission is
9 concerned about and what the Land Use Commission
10 possibly be concerned about.

11 And based upon that, we submit that we ask
12 that the Land Use Commission approve this Application
13 with the Special Conditions as provided and specified
14 by Maui Planning Commission.

15 CHAIRPERSON SCHEUER: Thank you.

16 Commissioners? Commissioner Okuda.

17 COMMISSIONER OKUDA: Thank you, Mr. Chair.

18 Mr. Iczkovitz, good to see you after 30
19 years. You probably don't remember me.

20 Anyway, part of the problem I personally am
21 having with this case, there's really no delineated
22 specific Findings of Fact and Conclusions of Law. In
23 other words, we haven't been presented with a
24 decision or proposed decision or anything from the
25 Maui Planning Commission that clearly spells out

1 these are the specific findings, these are the
2 references to the record where these findings are
3 found; these are the conclusions of law with citation
4 to specific authority.

5 So a lot of the things we're trying to
6 search and guess. And me personally, I'm getting a
7 fear that, you know, under those circumstances, we
8 might make a mistake, not only to the detriment of
9 your client, but to the detriment of other people in
10 the community.

11 For example, everyone seems to agree we're
12 dealing with a church here, correct?

13 MR. ICZKOVITZ: A private church.

14 COMMISSIONER OKUDA: A religious
15 institution.

16 MR. ICZKOVITZ: Well, it's a building
17 that's been used for private gatherings, community
18 gatherings, and the intention has always been with a
19 Special Permit to be able to legally have a public
20 church.

21 COMMISSIONER OKUDA: Where essentially
22 nondenominational religious activities will be taking
23 place as described in the record, correct?

24 MR. ICZKOVITZ: Correct.

25 COMMISSIONER OKUDA: Is there anything in

1 the record which indicates what standard of review
2 the Maui Planning Commission applied when it was
3 reviewing your, your and your client's Application
4 for a Special Permit?

5 When I say "standard of review", I mean
6 whether it's the regular standard that's normally
7 applied by administrative agencies, or whether it was
8 what the courts call strict scrutiny. In fact, let's
9 stop right there so we're all talking about the same
10 thing.

11 You've heard of the term "strict scrutiny",
12 correct?

13 MR. ICZKOVITZ: Absolutely, especially in
14 relationship to --

15 COURT REPORTER: Relation to what?

16 MR. ICZKOVITZ: The Religious Land Use and
17 Institutionalized Persons Act, which Commissioner
18 previously referred to.

19 COMMISSIONER OKUDA: That Act essentially
20 cites what the general constitutional standard is
21 under the First Amendment of the Constitution and as
22 it applies to the State's Fourteenth Amendment, that
23 statute really just recites or repeats what the
24 general standard is under a whole line of United
25 States Supreme Court cases; correct?

1 MR. ICZKOVITZ: Basically, yes. I think
2 the law was passed specifically to clarify that
3 governments -- if governments want to regulate
4 churches and prevent the people from practicing their
5 religion, then they passed the law called RLUIPA that
6 requires the governmental agency to do strict
7 scrutiny. And they have to make sure that they
8 cannot impose a compelling -- I mean, cannot impose a
9 substantial burden on the practice of religion,
10 unless there is a finding that there is a compelling
11 governmental interest to do so.

12 And then if they find such an interest, the
13 requirement under the law and the conclusion is that
14 the restrictions be the least restrictive means as
15 possible.

16 The way Maui County addressed that, and
17 this is specified in Ms. McLean's report and
18 throughout, is that by the Maui Planning Commission
19 addressed -- the only issue is, quote, possible
20 adverse effect on neighbors, because neighbors
21 complained.

22 So the Maui Planning Commission considered
23 all the evidence, and they decided that in order to
24 minimize the effect on neighbors, they were going to
25 make the restrictions that they imposed.

1 So instead of 10:00 o'clock, they imposed
2 9:00 o'clock; instead of five years, they said one
3 one year. Because reality is, what they said is,
4 we're going to give you a shot. We're going to give
5 you one year. And if you do well, then you come back
6 and possibly have fewer restrictions.

7 Chairman Carnicelli specifically said that.
8 We're doing you a favor. You do it for one year, you
9 do it right, and then you can do more. But we just
10 want to give you an opportunity which is what we
11 want.

12 We will show -- it's a requirement of the
13 permit that we have to submit reports of compliance
14 with the conditions which we will do. We will comply
15 with all the conditions. Maui County Planning
16 Commission has already made by decision that there
17 will be no adverse effect on the neighbors by making
18 those changes.

19 As far as requirements of Findings of Fact,
20 Conclusions of Law, I don't know that -- I don't
21 think -- whenever they pass, approve a Special Use
22 Permit and Maui Planning Commission, I could be
23 wrong, but I don't think Findings of Fact,
24 Conclusions of Law are a part of that unless there is
25 a contested case hearing and issues in dispute in

1 which case those issues in dispute have to be to
2 determined by the Commission.

3 Since there weren't issues in dispute
4 because the neighbors did not show up at the last
5 hearing when they were invited to, and the
6 information they submitted about alleged violations,
7 all of them were excluded because you have no
8 information in the record.

9 COMMISSIONER OKUDA: I don't mean to cut
10 you off. And I'm not trying to represent your
11 client, okay. And I can understand that for whatever
12 reason it might include compromise, trying to be a
13 good neighbor, trying to work with the neighbors, you
14 and your client agreed to these conditions.

15 My question is: Is there anything in the
16 record that indicates -- first of all, let me ask you
17 this.

18 Do you believe that the standard that
19 should have been applied in this case should be
20 strict scrutiny?

21 MR. ICZKOVITZ: Only if they are going to
22 deny the application. By granting the application,
23 if they are going to deny it or severely restrict it,
24 then they would have to get (indecipherable).

25 But because it wasn't raised, and because

1 we could live with the restrictions that were
2 imposed, we're saying these restrictions we think are
3 a little onerous, but we believe the Maui Planning
4 Commission has the authority to submit that, they
5 believe that's fair and appropriate to protect the
6 neighbors, and we will live by that.

7 So the need for strict scrutiny would only
8 apply if there was denial, and then they would ask
9 for more fact finding and something for the record so
10 that a court or something could look at it, because
11 if they tried to deny this, then there would be no
12 question it would violate RLUIPA.

13 COMMISSIONER OKUDA: Because the Maui
14 Planning Commission agreed basically with a structure
15 or a form of the order or a formal permit which you
16 and your clients could live with, you basically were
17 waiving any argument or requirement that strict
18 scrutiny be applied.

19 MR. ICZKOVITZ: Right. We have a right to
20 say you don't have the right to limit us to one year
21 and we want to appeal that. Do we have a right to do
22 that? Sure. We are never going to -- we chose not
23 to do that because Dr. Abrams and Mrs. Abrams are the
24 most conflict reverse people. They want to get along
25 with their neighbors. They want to get along with

1 everybody. Their intent has always been solid and
2 from the heart.

3 So we're not asking for strict scrutiny.
4 We are not asking for reduction of the restrictions.
5 We are not asking to take away the Saturday
6 restrictions. These restrictions we will abide by
7 them.

8 Maui County spent three sessions. We spent
9 five hours, six hours with Maui Planning Commission
10 going through everything. And everybody had an
11 opportunity to testify. And based upon this record,
12 and this record which I believe the State Land Use
13 Commission has to make its decision based upon.

14 COMMISSIONER OKUDA: Let me ask you one
15 more question then.

16 Based on the record, were there -- was
17 there any discussion in the record? Because I read
18 all the transcripts and read all the pages, but I
19 couldn't see anything there. So maybe you can point
20 to where in the record there was any discussion by
21 the government entity, or anyone else, about least or
22 more or lesser restrictive means to deal with the
23 complaints that the neighbors were raising?

24 MR. ICZKOVITZ: Well, the history of what
25 happened here is that the -- May 28th hearing --

1 COMMISSIONER OKUDA: I'm just asking you to
2 point to the record where -- and it might not, there
3 might not be anything in the record where there was a
4 discussion about lesser restrictive alternatives,
5 than the conditions that were imposed?

6 And by the way, I understand your position
7 that you would like to just get this thing done,
8 okay. And I'm not trying to create a theoretical
9 thing.

10 But the reason why I'm asking these
11 questions, without prejudging any of the outcome here
12 is, I personally believe the First Amendment, you
13 know, the right of people to practice their religion
14 is fundamental to this country. People have died for
15 those rights.

16 So that's why I'm trying to ask the
17 questions which the supreme court, including the
18 Hawai'i Supreme Court in this case, called State
19 versus Armitage, that says we have to look at. You
20 have a right to waive it, and if you waive it, maybe
21 it doesn't apply in this case.

22 So where in the record was there any
23 discussions by anybody about lesser restrictive
24 alternatives?

25 If the answer is, there's nothing there,

1 that's fine too.

2 MR. ICZKOVITZ: So what happened was this.

3 At the June 25th hearing, Maui Planning
4 Commission went through Ms. McLean's recommendations
5 for the permit. And they went through it and changed
6 almost every one. They changed it from five years to
7 one year. They changed it from 10:00 o'clock to
8 9:00 o'clock, and made other more restrictive things.

9 And we thought, okay, they went around it
10 and said these are really restrictive. They were
11 quite burdensome. They asked Dr. Abrams, are
12 agreeable with these?

13 He said these are really strict, but if
14 this is what it takes to get the permit today, we
15 agree with it.

16 Then the Maui Planning Commission voted
17 four to two to deny it completely. No discussion
18 about strict scrutiny. No discussion about RLUIPA,
19 even though I had mentioned RLUIPA. There was no
20 discussion about that.

21 Then one of the Commissioners moved to deny
22 the permit completely. Again, no discussion about
23 strict scrutiny, no discussion about compelling
24 interest. None of that discussion was raised.

25 At that point I went up and said, excuse

1 me, I need to remind the Commission about the First
2 Amendment of the Constitution, and about the
3 Religious Land Use and Institutionalized Persons Act,
4 because the last time that Maui County Planning
5 Commission denied a Special Use Permit for a church,
6 they did that because the neighbors complained. That
7 happened in 19 -- I mean, 2004. It was the Hale o
8 Kaula case. And Maui County lost that case in the
9 federal district court and was ordered to pay the
10 church attorneys over \$700,000 in legal fees.

11 So I said, please, look to your counsel
12 and, you know, there is a law that you have to apply,
13 that you have to consider. At that point, exactly
14 what happened, there was a little more discussion for
15 about five more minutes. And then one of the
16 Commissioners moved to go into executive session.
17 Executive session happened. Ms. McLean was brought
18 into the meeting. They talked for 45 minutes to an
19 hour. What came back then was, as soon it was
20 reopened. The person who had moved to deny the
21 permit, withdrew the motion. The permit was denied.

22 I was then told that before any of the 104
23 pages that were submitted by neighbors by email after
24 the close of testimony, before that would be
25 submitted to the record, I would have the right to

1 cross-examine those neighbors regarding those
2 documents. And the neighbors were all there,
3 including Ms. Drewyer, and they asked for two-month's
4 time to prepare for the cross-examination. They
5 chose not to show up for that August 13th meeting,
6 and the documents they submitted were excluded as a
7 result, because they were just -- there was no reason
8 to talk to them because they're not in the record.

9 So then what happened over the next few
10 hours, they went through -- again, went through the
11 conditions and decided, and they discussed back and
12 forth, you know, 9:00 o'clock, you know, how many
13 days, whatever else.

14 So, again, there was extensive discussion
15 throughout the record regarding what conditions
16 should be applied to address the neighbors'
17 complaints as far as the church activity.

18 COMMISSIONER OKUDA: Thank you, counsel.

19 Let me just acknowledge my fellow
20 Commissioner Ohigashi, who's a Maui Commissioner, for
21 pointing out to me the Hale, H-A-L-E, Kaula,
22 K-A-U-L-A, Church versus Maui Planning Commission
23 found at 229 fed sub 2d, 1050 a 2002 case.

24 Thank you very much. Thank you, Chair.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Okuda.

2 Commissioner Chang.

3 COMMISSIONER CHANG: I have a few
4 essentially legal questions.

5 Is it your legal position that the Land Use
6 Commission does not have jurisdiction over this
7 Special Use Permit because the application is for
8 land under 15 acres?

9 MR. ICZKOVITZ: Our position is whatever
10 the Land Use Commission wants to do with this
11 application, we're good with. If you want to say you
12 have jurisdiction based upon the record, we're still
13 asking you to approve the Application based upon it.

14 We're saying there is room for you not to
15 do so because there is no findings in the record from
16 Maui Planning Commission, and indicate that they will
17 go beyond 14.8 acres or that the church use will
18 expand upon 14.8 acres.

19 Mr. Orodener's letter of August 1st I
20 thought was very clear and very well written in that
21 it said that if Maui Planning Commission finds that
22 the church use will go beyond 14.8 acres, then, yes,
23 you have to send it to Land Use Commission.

24 And I can point to the record specifically,
25 me asking the Commission to please make these

1 findings that was requested by Mr. Orodenker one way
2 or another.

3 And the inquiry was made by Mr. Galazin,
4 Deputy Corp Counsel, Dr. Abrams, how is church use
5 going to affect agriculture?

6 I can quote you that page as well. And he
7 gives a very long detailed description that it will
8 not, it will only expand agriculture. That more
9 church will mean more agricultural use.

10 So based upon that record we submit it was
11 not possible for anybody from Maui Planning
12 Commission or anybody else, to make a finding that it
13 would impact upon agricultural use.

14 And there was no findings possible to go
15 beyond the 14.8 acres. But I do not believe that
16 there's any controversy over whether or not the map
17 that is presented to you, includes the driveway,
18 which includes 14.8 acres. And there is nothing in
19 the record to submit that anything is going above
20 14.8 acres.

21 But be that as it may, the one thing we
22 don't want is for this Commission to delay this any
23 further because there's no controversy before this
24 body.

25 The issue is, have we met the

1 qualifications for Special Use Permit? Everyone,
2 County and State has recommended approval. The
3 record is very clear. And we believe that we're
4 entitled to a Special Use Permit based upon the
5 record.

6 COMMISSIONER CHANG: So your testimony, or
7 your legal position is that -- so given what Mr.
8 Orodenker's letter said, that if you're going to go
9 beyond, and starts these possible scenarios, that the
10 Planning Commission, through the guidance of the
11 Corporation Counsel, addressed those specific issues?

12 MR. ICZKOVITZ: Absolutely.

13 COMMISSIONER CHANG: Addressing those
14 issues, it was still within less than 15 acres and
15 it's satisfied?

16 MR. ICZKOVITZ: Yes.

17 COMMISSIONER CHANG: But it is still your
18 position, your legal position that it doesn't matter,
19 it's up to the Land Use Commission whether they want
20 to exercise jurisdiction or not?

21 MR. ICZKOVITZ: Right. I think it's a good
22 time for Land Use Commission to (A) let the Counties
23 know does the access road, does it have to be
24 included within the Special Use, because right now
25 there is a lot of confusion in the County level.

1 COMMISSIONER CHANG: Where in the law -- I
2 mean, where in the rules or law does it refer to the
3 access road? As I read the rules, it just says
4 15 acres.

5 MR. ICZKOVITZ: I can quote the June 25th
6 hearing. Mr. Hart, I can quote you --

7 COMMISSIONER CHANG: No, that's okay.

8 MR. ICZKOVITZ: My memory is, Mr. Hart
9 stated that we've never considered in the past the
10 access road to be part of the Special Use.

11 So that was on June 25th on page --

12 COMMISSIONER CHANG: I'll defer to you on
13 that one.

14 MR. ICZKOVITZ: That was page 37.

15 Then also Mr. Galazin said it was not
16 uncommon for the County to deal with parcels greater
17 than 15 acres, but the special use only uses less
18 than 15. This is not an unusual thing.

19 COMMISSIONER CHANG: So you've answered my
20 question.

21 My next legal question. I'm hearing you
22 say it's up to the Land Use Commission,
23 notwithstanding what the rule say or what the statute
24 says, anything less than 15 acres, it's up to the
25 Commission whether they what to exercise jurisdiction

1 or not. Yes or no?

2 MR. ICZKOVITZ: Yes.

3 COMMISSIONER CHANG: With respect to the
4 testimony we heard today, the public comments,
5 including from Dr. Abrams as well.

6 Do you believe that those are -- those
7 should be considered by the Land Use Commission in
8 its deliberation on the SUP that came up from the
9 Maui County Planning Commission?

10 Do you believe that the public comments
11 that we heard today should be considered in our
12 deliberation?

13 MR. ICZKOVITZ: I believe that the comments
14 from the Manawai Association should not be
15 considered, because they had opportunity to submit it
16 before May 28th. They did try to submit before the
17 August 13th hearing, and the Maui Planning Commission
18 chose not to reopen to allow it in.

19 So, yes. I do not believe that they should
20 be considered. I believe a positive testimony, of
21 course (indecipherable). We're here because we knew
22 that there would be some opposition. And some people
23 said, would you like us to come, and they came to
24 support.

25 If you want to ignore all of it, that's

1 okay too. We want the Commission to rely upon the
2 record from the Maui Planning Commission. That's
3 what we're going with -- we believe it's complete.
4 Map is complete. There are no uncertain issues for
5 the Land Use Commission that has to find any more
6 fact finding or anything else. We believe it's
7 complete.

8 COMMISSIONER CHANG: You say you want the
9 Land Use Commission. Do you believe we have the
10 discretion to consider testimony outside the record
11 that was sent up by the Planning Commission?

12 MR. ICZKOVITZ: You have to push your --
13 Administrative Procedures Act allows you to take
14 public testimony which you just did. And you can
15 consider it. But I believe that the only testimony
16 that is valid is speaking to the record.

17 I do not believe they have any legal
18 justification to add to the record. They can speak
19 to it. They can talk about the record says X, Y, Z.

20 But efforts to come up with more evidence
21 of violation, alleged violation, no. None of those
22 are proper, because it's too late. The record is
23 gone for that.

24 COMMISSIONER CHANG: One last question.

25 Can you confirm that the neighbors received

1 notification of the Planning Commission hearing?

2 MR. ICZKOVITZ: Yes. All the neighbors
3 that were legally required to receive notice received
4 notice.

5 But I will also add that Mrs. Drewyer's
6 boyfriend, Joel Katz, who is a member of the Manawai
7 Association, Ms. Drewyer always knew about this
8 hearing. Her boyfriend must have known about this
9 hearing. And through her boyfriend, the Manawai
10 Association must have known about before the May
11 28 --

12 COMMISSIONER CHANG: What I'm asking, it's
13 not the Land Use Commission hearing, it's the
14 Planning Commission hearings. I want to get a
15 confirmation from you that all of the neighbors that
16 adjoin this property received notification of the
17 Maui Planning Commission hearings on this matter?

18 MR. ICZKOVITZ: Yes.

19 COMMISSIONER CHANG: Thank you very much.

20 CHAIRPERSON SCHEUER: Thank you,
21 commissioner Chang.

22 Commissioner Ohigashi.

23 How's our court reporter doing?

24 COURT REPORTER: I'm doing okay.

25 CHAIRPERSON SCHEUER: We will have to take

1 a break. We will lose the presence for the rest of
2 the day of Commissioner Chang.

3 Commissioner Ohigashi.

4 COMMISSIONER OHIGASHI: I just have a few
5 questions.

6 So I took a look at Exhibit 22 that was
7 referred to in Michelle -- Department of Planning's
8 statement. And the DLNR letter that you're relying
9 upon, or was relied upon, April 24th, 2009,
10 referencing a 1996 survey done in response to a
11 question about wind turbines and solar storage
12 containers on the property.

13 So my questions to you: Has there been a
14 recent review by DLNR that would support this letter
15 as part of the record?

16 (Commissioner Chang leaves.)

17 MR. ICZKOVITZ: I don't believe so. I
18 don't believe that the Maui Planning Department has
19 not asked for one, and no one has asked for one, so
20 the answer is no.

21 COMMISSIONER OHIGASHI: I'm just asking if
22 there was one.

23 MR. ICZKOVITZ: No, not that we know of.

24 COMMISSIONER OHIGASHI: In fact, it would
25 appear that that's the only reference that we can

1 find in the record, is that right, the 2009 letter?

2 MR. ICZKOVITZ: I cannot say I know the
3 record well enough with regard to this particular
4 issue, since this issue has never come up. I've not
5 particularly looked for this.

6 COMMISSIONER OHIGASHI: Well, you seem to
7 be well versed in the record with regard to what is
8 in it and what is not. So I'm asking you, is that
9 the only thing we're relying on?

10 CHAIRPERSON SCHEUER: Hold on. One moment,
11 Commissioner Ohigashi.

12 This is an interchange between you and your
13 counsel for the Applicant, correct?

14 So if you're not speaking into the
15 microphone, and you're not currently called as a
16 witness, I understand you have things to say, but you
17 need to tell your counsel and have him say it.

18 COMMISSIONER OHIGASHI: Is that the only
19 thing in the record at this time?

20 MR. ICZKOVITZ: I believe so, yes. That
21 was what we were asked for, and that's what we did.

22 COMMISSIONER OHIGASHI: I'm a little
23 confused.

24 First you say that the roadway was not
25 included as part of the original submission, is that

1 right?

2 MR. ICZKOVITZ: We are saying 14.8 acres
3 did not include the driveway because we were told
4 that the access road does not -- wasn't included
5 within the Special Use that has been the policy of
6 Maui County always.

7 COMMISSIONER OHIGASHI: Is this policy
8 written?

9 MR. ICZKOVITZ: You would have to ask Ms.
10 McLean. I do not know if it is written. I just know
11 they stated that on the record at the Maui Planning
12 Commission multiple times.

13 COMMISSIONER OHIGASHI: And you relied on
14 Mr. Hart?

15 MR. ICZKOVITZ: I relied on Ms. McLean,
16 because she did not specify anything with regard to
17 that original recommendation. And then when the
18 issue was fully discussed at Maui Planning Commission
19 on June 25th, Mr. Hart spoke to that directly.

20 After he spoke to that directly, Maui
21 Planning Commission accepted that explanation and
22 decided, yes, jurisdiction is proper here at Maui
23 Planning Commission. Did not have to go to Land Use
24 Commission. That was the decision they made.

25 COMMISSIONER OHIGASHI: So there's no

1 specific rule or regulation that you can come up with
2 that establishes your interpretation in regard to
3 Maui Planning Commission?

4 MR. ICZKOVITZ: No. I just know based upon
5 how the County has interpreted it, and now how the
6 Land Use Commission Chairman (indecipherable) --
7 indication that the policy may be changing. We are
8 good with it either way, and maps either way.

9 COMMISSIONER OHIGASHI: You do agree that
10 the roadway is used for activities that had occurred
11 on the property?

12 MR. ICZKOVITZ: The road is used to get to
13 the activities, but there's no dancing or music
14 played on the driveway.

15 COMMISSIONER OHIGASHI: I understand that.

16 MR. ICZKOVITZ: And, again, no agricultural
17 growing on the driveway.

18 COMMISSIONER OHIGASHI: So August 13, 2019,
19 page 61, I pulled this up, and it said, Mr. Abrams,
20 Dr. Abrams answered a question saying:

21 I need to look at the picture. There is
22 near the church building there's ample room for 50 or
23 60 cars on either side of the road that approaches
24 the temple building and goes around the turn to the
25 far north, northern most -- most northwestern section

1 and we have a dedicated parking lot there that can
2 take about 30 cars, and then along the edge of the
3 road approaching the temple building from the ponds
4 to the church building there's room for probably
5 another 75 cars right there; right?

6 MR. ICZKOVITZ: Yes.

7 COMMISSIONER OHIGASHI: So this road is
8 used for activities, for parking purposes?

9 MR. ICZKOVITZ: So the road that goes down
10 to the temple is a road, a driveway that's owned by
11 Dr. Abrams. The places where people park is fully on
12 Dr. Abrams' farm, the property.

13 So there's not -- nothing was changed or
14 added to increase that parking. There's plenty of
15 parking on the Abrams' property.

16 I think the report says room for 50 or 60
17 cars right by the building.

18 COMMISSIONER OHIGASHI: I understand your
19 position and how you might -- but maybe you should
20 be -- we should clarify the record and add this
21 portion that your client seems to be wanting to
22 testify in the record, and the only way I get to open
23 this thing up, to add what your explanation is, is to
24 put it in the record.

25 As I told the Commissioners before, the

1 problem with these cases is that you live and die by
2 the record. And if you're saying that this is not
3 used for purposes and it was in the original
4 application, and there's no indication in the record
5 that shows that the second map that you had drawn has
6 been accepted as part of the record, or even findings
7 that it was accepted as part of the record. I'm at a
8 loss.

9 MR. ICZKOVITZ: If I could just raise
10 something, the issue that's been talked about by the
11 neighbors with regard to the driveway.

12 COMMISSIONER OHIGASHI: I'm not talking
13 about that.

14 MR. ICZKOVITZ: A shared driveway at the
15 top of the cul-de-sac.

16 COMMISSIONER OHIGASHI: Mr. Chair, that's
17 not my question.

18 MR. ICZKOVITZ: I'm still trying to answer
19 your question.

20 What we are saying is that the map that was
21 submitted for June 25th includes 14.8 acres and
22 parking, and does not include the driveway. The map
23 that we submitted on August 13th, includes 14.8 acres
24 that does include the driveway.

25 So the Commission is now saying the

1 driveway must be included as part of the Special Use,
2 the map that we submitted on August 13th, was
3 submitted and fully discussed in front of Maui
4 Planning Commission, is the map that is the right map
5 to go with.

6 COMMISSIONER OHIGASHI: So which part of
7 the record is the map?

8 CHAIRPERSON SCHEUER: If I may.

9 COMMISSIONER OHIGASHI: Mr. Chair, break?

10 CHAIRPERSON SCHEUER: We're going to take a
11 ten-minute recess until 2:25.

12 (Recess taken.)

13 MR. ICZKOVITZ: While corp counsel is
14 speaking, can we circulate the two maps that are the
15 June 25th map and August 13th map?

16 CHAIRPERSON SCHEUER: Yes, that's fine. We
17 were continuing with questioning by the Commission.

18 Questions, Commissioner Ohigashi?

19 COMMISSIONER OHIGASHI: So I'm kind of
20 moving off of that last question that I have.

21 I noticed in the Department of Planning's
22 initial submission that there were no comments
23 provided by the Department of Transportation.

24 Was the Department of Transportation asked
25 for any kind of information and provided any increase

1 of counts or increase of traffic use in the area
2 regarding this church?

3 MR. ICZKOVITZ: I cannot speak from
4 firsthand knowledge. Dr. Abrams can. But my
5 understanding is that it was submitted to the
6 Department of Transportation and they chose not to
7 make any comments on it.

8 COMMISSIONER OHIGASHI: Is there any kind
9 of letter or transmittal in the record that
10 establishes that that was --

11 MR. ICZKOVITZ: I believe that if you give
12 me ten minutes, I could find it.

13 COMMISSIONER OHIGASHI: I could not find
14 anything in the record transmitted to us concerning
15 any DOT response except saying there's no comment.

16 MR. ICZKOVITZ: We are asking Tara
17 Furukawa, who works for the Planning Department, who
18 helped Dr. Abrams with this application. She's the
19 one -- could I read it?

20 I believe the understanding is Department
21 of Transportation was given the opportunity to, and
22 they did not choose to make any comment because they
23 didn't find any problems with clearance on both
24 sides.

25 COMMISSIONER OHIGASHI: I'm just asking

1 what is in the record or not that was transmitted to
2 us, and I have not found in the record itself that
3 was transmitted specific comments from the DOT, so if
4 you do have one, I would like to know.

5 MR. ICZKOVITZ: Exhibit 16 from Joseph
6 Krueger to Evelyn Akau of Maui County. Hi, Evelyn,
7 we reviewed the SUP application, offer one comment.
8 The Applicant shall obtain a permit for any
9 construction or signage within the State
10 right-of-way -- so the answer is, this confirms that
11 it was submitted to them, and it confirms that the
12 only comments they had was related to needing a
13 permit for sign.

14 COMMISSIONER OHIGASHI: Was there any
15 analysis, traffic analysis done with regard to this
16 permit concerning the increase of traffic use? One
17 of the, I guess, one of the concerns that the
18 neighbors raised.

19 MR. ICZKOVITZ: I think that there's -- as
20 I sat through a trial, I believe that there are
21 certain -- if you have viewplanes from the driveway
22 that that's really important, and the viewplanes from
23 the driveway was so wide that the Department of
24 Transportation did not feel that it was an issue.

25 COMMISSIONER OHIGASHI: Was there a traffic

1 analysis done concerning any additional -- that's all
2 I'm asking.

3 MR. ICZKOVITZ: I cannot speak to that
4 because Ms. Furukawa --

5 COMMISSIONER OHIGASHI: Normally the
6 planner doesn't do the traffic analysis. Normally
7 it's the Applicant who does the traffic analysis and
8 provides that information. I'm just curious.

9 MR. ICZKOVITZ: According to page 13 of Ms.
10 McLean's report, access to the project site is a
11 driveway on Hana Highway. There is more than 90 feet
12 of road frontage, so there's adequate visibility for
13 safe turn onto the property from either direction.
14 The Driveway is owned by Ahimsa Sanctuary Farm.
15 (Indecipherable).

16 This was their conclusion. There should be
17 no adverse impacts associated with the proposed
18 request, State Department of Transportation for the
19 comment, the Applicant should apply for a permit for
20 any any signage (indecipherable).

21 COMMISSIONER OHIGASHI: Is that the
22 Department of Planning's conclusion?

23 MR. ICZKOVITZ: Yes.

24 COMMISSIONER OHIGASHI: The question I have
25 is not that. Was there a traffic analysis done

1 concerning this?

2 MR. ICZKOVITZ: They were given the
3 opportunity to do an analysis. They declined.

4 COMMISSIONER OHIGASHI: Who?

5 MR. ICZKOVITZ: State Department of
6 Transportation. They normally, if they have an
7 issue, they will do an analysis.

8 COMMISSIONER OHIGASHI: I'm not sure, but
9 all the applications that have come before me,
10 normally it's the developer that commissions the
11 traffic analysis, whether it be an expensive one or
12 minimum one. I'm just asking if a traffic analysis
13 was done.

14 MR. ICZKOVITZ: And it was determined that
15 it wasn't necessary.

16 COMMISSIONER OHIGASHI: It wasn't done,
17 that's all I'm asking.

18 MR. ICZKOVITZ: It wasn't done. It wasn't
19 done.

20 COMMISSIONER OHIGASHI: There was
21 testimony, I think in the record, that this is a
22 water system that is on an association water system.

23 MR. ICZKOVITZ: It's a private water
24 agreement.

25 COMMISSIONER OHIGASHI: Agreement between

1 several parties, is that right?

2 MR. ICZKOVITZ: Yes.

3 COMMISSIONER OHIGASHI: Was this agreement
4 submitted to the Department of Planning for their
5 review?

6 MR. ICZKOVITZ: I believe that water -- the
7 decision made on the private water, because -- and I
8 would have look --

9 COMMISSIONER OHIGASHI: That's not my
10 question. My question, was that agreement given to
11 the Department of planning by your client?

12 MR. ICZKOVITZ: I do not believe it was
13 requested. I don't think. I believe the Maui
14 Planning Department did conclude, because it was a
15 private water agreement, they have no problem, that
16 the water issue is not for the Maui Planning --

17 COMMISSIONER OHIGASHI: I'm just asking --
18 was there any analysis done by any private engineer
19 or person acting on your client's behalf or
20 commission to do a determination of whether or not
21 that water system was adequate to meet the necessary
22 needs? I'm just asking that.

23 MR. ICZKOVITZ: We do know that Maui County
24 confirmed that it sits on top of an aquifer that can
25 supply 25 --

1 COMMISSIONER OHIGASHI: I'm not asking
2 that. You keep not answering my question.

3 My question is simple. Was a study done
4 concerning what would be the shared impact on the
5 water system upon approval of the parties? Was it
6 done? I'm just asking.

7 CHAIRPERSON SCHEUER: Commissioner Okuda.

8 COMMISSIONER OKUDA: I would like to echo
9 my fellow Commissioner. I think the answer to his
10 question is either yes, no, or I don't know.

11 MR. ICZKOVITZ: If I could allow Dr. Abrams
12 to respond on this, it would be --

13 COMMISSIONER OHIGASHI: He had his turn.

14 MR. ICZKOVITZ: What we're saying is that
15 there was an analysis for the wastewater system that
16 was done at length, and involving the septic. And
17 yes, we can point to the issue regarding how that was
18 addressed for the --

19 COMMISSIONER OHIGASHI: I understand that.

20 MR. ICZKOVITZ: Beyond that, I don't know.

21 CHAIRPERSON SCHEUER: It is okay to say "I
22 don't know".

23 MR. ICZKOVITZ: I just don't know. But if
24 you have any questions, if I need to further
25 research, I will.

1 COMMISSIONER OHIGASHI: I'm just asking
2 that, just trying to get what's going on.

3 CHAIRPERSON SCHEUER: Commissioner
4 Ohigashi, make sure that you're speaking right into
5 the microphone.

6 COMMISSIONER OHIGASHI: Again, I'll try to
7 speak in caps and into the mic.

8 I read in the transcripts and everything
9 like that is that -- let me put it -- that property,
10 one, was the subject of several notices of
11 violations; is that right?

12 MR. ICZKOVITZ: There were several RFSs
13 that were issued for the property. All of them were
14 resolved.

15 COMMISSIONER OHIGASHI: I understand that.
16 And they were resolved by Dr. Abrams and whoever owns
17 that property, paying for the fines or making the
18 corrections necessary; is that right?

19 MR. ICZKOVITZ: I believe so, yes.

20 I just want to point out that the
21 accusation of \$528,000 was not accurate, made by Ms.
22 Drewyer. There was one fine that was resolved \$1,500
23 and it was not related to any activities on the
24 property.

25 COMMISSIONER OHIGASHI: Is the recitation

1 contained in the Department of Planning's 513, I
2 think it was, the first document in our records, is
3 that correct? The recitation of violations?

4 MR. ICZKOVITZ: I would have to go over
5 them one by one with Dr. Abrams, but I don't believe
6 there was anything that is seriously incorrect and
7 all of them were resolved.

8 COMMISSIONER OHIGASHI: Was there any
9 portion of the record that dealt with the effect of
10 these violations upon the Decision and Order issued
11 by the Maui Planning Department?

12 MR. ICZKOVITZ: All the issues were
13 resolved. There was nothing that impacted the
14 decision.

15 COMMISSIONER OHIGASHI: So there is none,
16 right?

17 MR. ICZKOVITZ: None.

18 COMMISSIONER OHIGASHI: And the last thing
19 got to say is more of a comment.

20 I don't think your recitation of Hale o
21 Kaula is quite correct.

22 If I recall, and I read the case, it seems
23 to me, yes, Judge King decided we are going to apply
24 the strict scrutiny request, but dismissed personal
25 places out of it, and that's the County of Maui. And

1 I understand from my recollection and articles around
2 that era that it was a settlement between the County
3 of Maui, and it wasn't they were ordered to pay
4 attorney's fees and cost, it was a settlement.

5 So I'm just pointing out that that is my
6 recollection, that is my reading of it. You don't
7 have to answer that.

8 MR. ICZKOVITZ: That is correct. But it
9 was settlement that was made under duress by the
10 County.

11 COMMISSIONER OHIGASHI: You weren't there,
12 right? You don't know?

13 MR. ICZKOVITZ: He was part of that church.

14 COMMISSIONER OHIGASHI: That doesn't
15 matter. You're here to testify.

16 CHAIRPERSON SCHEUER: Hold on, hold on.

17 COMMISSIONER OHIGASHI: I'm sorry, Mr.
18 Chair. I'm just saying that your characterization of
19 how that case was resolved is not correct.

20 CHAIRPERSON SCHEUER: Commissioner Wong.

21 COMMISSIONER WONG: Just a point of
22 personal privilege. Just a local boy, don't know
23 much. I was taught whenever I went in front of my dad
24 to not get slapped, just say, yes, dad, I know it;
25 no, dad, or I don't know.

1 What happened with your conversation with
2 Commissioner Ohigashi, I think he was getting a
3 little upset. So if you don't know, just say "I
4 don't know".

5 MR. ICZKOVITZ: Thank you.

6 I don't mean any disrespect. I'm just
7 trying to answer the questions.

8 CHAIRPERSON SCHEUER: Commissioners? If I
9 may. Two main things.

10 Mr. Iczkovitz, there are certain guidelines
11 that we're supposed to consider on the issue of a
12 Special Use Permit for the Agricultural District or
13 Rural District; is that correct?

14 Five guidelines in Hawai'i Administrative
15 rules that govern whether or not a Special Use Permit
16 should be issued.

17 MR. ICZKOVITZ: Yes, that's correct.

18 CHAIRPERSON SCHEUER: Do any of those go to
19 the virtuousness or nonvirtuosness of the activity
20 proposed?

21 MR. ICZKOVITZ: I do not believe so. I
22 believe that the issue is one, if it's a church, the
23 question is the only question is do any of those --

24 CHAIRPERSON SCHEUER: Again, let's try --

25 MR. ICZKOVITZ: No.

1 CHAIRPERSON SCHEUER: So I do a lot of my
2 work in front of the State Water Commission, and one
3 of the considerations that they have an issue in
4 certain issuing permits is they use reasonable and
5 beneficial. Here is there the consideration of the
6 proposed use or existing use is somehow in line with
7 county plans, and otherwise beneficial to the
8 communities. But we don't have that standard in here
9 whatsoever.

10 So don't you think that when we make our
11 decisions whether or not we believe, or aligned with
12 the religious practices of the Applicant, or if we
13 disbelieve in them, whether we think that it's great
14 that they've been of tremendous service to the
15 community or whether or not -- all of these are
16 beyond our consideration; correct?

17 MR. ICZKOVITZ: I'm not sure they're beyond
18 the consideration. I believe that the nature of the
19 use, and where it's clearly defined as a church use,
20 and clearly supported by the community elders and
21 religious leaders across the island, I believe that's
22 something that the Land Use Commission should take
23 into account.

24 CHAIRPERSON SCHEUER: And why should we --
25 what law or rule guides us in taking into account

1 that there's other -- that has the support, for
2 instance, of other religious leaders, as you said?

3 MR. ICZKOVITZ: First Amendment would be
4 one.

5 CHAIRPERSON SCHEUER: I think we can not
6 disregard or make a special ruling for or against any
7 particular religion, but whether or not this is a
8 church of five people or 5,000 people, per se, in
9 terms of its supporters is not something that we're
10 supposed to take into account when we make a
11 decision, correct?

12 MR. ICZKOVITZ: We submitted a record I
13 believe that has hundreds of people's support. So I
14 believe that when Maui Planning Commission took
15 testimony -- that they wanted to know what the
16 community believed about this special use.

17 CHAIRPERSON SCHEUER: But is there any
18 where in the law that that is part of what the
19 Planning Commission or this Land Use Commission
20 should consider?

21 MR. ICZKOVITZ: I would --

22 CHAIRPERSON SCHEUER: I mean, I read all
23 the materials delivered to us. I read the petitions.
24 I reviewed all the signatures, but I don't know that
25 that's anything that has any bearing -- I personally

1 believe the testimony that Dr. Abrams and his wife
2 has done a lot of good for the community, but I don't
3 see where it's anywhere in the record that that's
4 part of our decisionmaking.

5 MR. ICZKOVITZ: First of all, in order to
6 be recommended, findings were made by the Maui
7 Planning Department that we met all the plans, all
8 the guidelines for the special management --
9 everything that we needed to address for the County
10 plan, any kind of plan, those findings were made that
11 we are supportive, that we do that.

12 I can quote you for that, if you give me a
13 few moments to go through it.

14 So is there any legal requirement that you
15 take into account? Well, is it a factor in the
16 adverse effect in the community if you have hundreds
17 of people saying we want it? And we disagree with
18 their testimony that the impact is major and there's
19 only a couple of people that say it. I think that
20 the volume and testimony is something that the
21 Commission can take into effect.

22 Is there any law that specifically says
23 what you can consider and what you can't? Not that
24 I'm aware of.

25 CHAIRPERSON SCHEUER: We know there is HAR

1 15-15-95. There are five guidelines.

2 MR. ICZKOVITZ: Right.

3 CHAIRPERSON SCHEUER: It shouldn't be
4 contrary to the objectives sought by Chapter 205 and
5 205A.

6 MR. ICZKOVITZ: Right.

7 CHAIRPERSON SCHEUER: But also the desired
8 use would not adversely effect surrounding
9 properties. Use should not be an unreasonable burden
10 on public agencies to provide roads and streets,
11 sewers, water drainage and school improvements and
12 police and fire protection.

13 MR. ICZKOVITZ: Right.

14 CHAIRPERSON SCHEUER: Unusual conditions,
15 trends, and needs have arisen since the district
16 boundaries and rules were established; and (5) The
17 land upon which the proposed use is sought is
18 unsuited for the uses permitted within the district.
19 That's it, right?

20 MR. ICZKOVITZ: CORRECT.

21 CHAIRPERSON SCHEUER: So when we go into
22 deliberation, for me, the fact that there's been this
23 voluminous testimony talking about how great the
24 operations are and how great the contribution to the
25 community is actually something that we are not

1 really allowed to consider. It's not part of our
2 determination. We're limited to what the law asks us
3 to consider.

4 MR. ICZKOVITZ: I have to ask then are you
5 allowed to consider the negative comments from
6 neighbors as well if we disagree with them? I'm not
7 sure what you're saying you can and cannot consider
8 as a body, when you're inviting testimony, you're
9 listening to it --

10 CHAIRPERSON SCHEUER: We are required to
11 hold testimony under HAR.

12 MR. ICZKOVITZ: Are you able to take
13 anything and add it to the record --

14 CHAIRPERSON SCHEUER: I think we may
15 consider what has been provided in testimony if it is
16 relevant to the decision that we have to make.

17 So my first question which I think you've
18 answered in the affirmative is, we are narrowed down
19 to what the legal guidance in front of us.

20 The second sort of things I have to ask you
21 is, I guess I'm just -- this is partly what came out
22 during Commissioner Ohigashi's questions. I'm a
23 little bit unclear on what -- some of what has been
24 presented in the record as it comes to us. I know we
25 have discussed this extensively.

1 There's two different maps in the record.
2 You've handed those out to us. Thank you very much.

3 Is there anywhere in the record that says
4 this map applies, this map doesn't apply?

5 MR. ICZKOVITZ: We submitted the map. We
6 said what it was for. We asked for it --

7 CHAIRPERSON SCHEUER: Is there anywhere in
8 the record that says which of the maps is governing?

9 MR. ICZKOVITZ: Specifically --

10 CHAIRPERSON SCHEUER: It's a yes or no.

11 MR. ICZKOVITZ: Nothing specific as it
12 relates to, but when they approved the application,
13 they did that with that map as the only map in the
14 record in front of them.

15 CHAIRPERSON SCHEUER: There are two maps in
16 the record.

17 MR. ICZKOVITZ: Two maps, and we said pick
18 which one. We submitted two maps.

19 CHAIRPERSON SCHEUER: I'm begging you.
20 It's a yes or no question.

21 MR. ICZKOVITZ: No, there's nothing
22 specific by the Maui Planning Commission that they
23 accepted.

24 CHAIRPERSON SCHEUER: Thank you.

25 MR. ICZKOVITZ: The third map --

1 CHAIRPERSON SCHEUER: Thank you. Stop at
2 no.

3 The other part is, I understand to the
4 degree I'm able to understand the nature of the
5 church and religious practice that it is very
6 integrated to the agricultural activities and the
7 activities within the proposed -- existing building
8 which is proposed for church use; is that correct?

9 MR. ICZKOVITZ: Yes.

10 CHAIRPERSON SCHEUER: So on a practical
11 level, given the nature of this property, how does a
12 body like us determine, based on whatever map, that
13 those uses and church uses will be confined within
14 14.8 acres?

15 MR. ICZKOVITZ: Because all of the
16 testimony in front of the Maui Planning Commission
17 states that. There is not one word of testimony or
18 evidence that it will go beyond that 14.8 acres.

19 CHAIRPERSON SCHEUER: Is there anything
20 that states how worshipers or congregants will stay
21 within that area? For instance, fences or hedges or
22 signs?

23 MR. ICZKOVITZ: As stated in the
24 Application, and in Ms. McLean's report and in the
25 Office of Planning's letter it confirms that

1 religious activities will take place inside the
2 building.

3 And Dr. Abrams has testified, as in the
4 record, that there will be agricultural activities
5 that take place with the church goers in the areas
6 next to the building.

7 So the 14.8 acres, to go beyond, for the
8 church use to go beyond the 14.8 acres is -- no one
9 has suggested it, there's no evidence of it, and
10 there's no place --

11 CHAIRPERSON SCHEUER: I guess that's what
12 I'm saying. I listened very carefully to Dr. Abrams
13 who spoke to the integrated nature of the
14 agricultural activities with the religious activities
15 on the property. And I believe him when he says
16 that. It makes sense to me. But I don't see -- it
17 talks about the agricultural activities extending
18 over the vast majority of the property.

19 MR. ICZKOVITZ: Well, if I can just quote
20 from one page of the June 25th meeting when Mr.
21 Galazin asked:

22 So thank you and, Tara, do you want to
23 explain to the commission how the department assesses
24 the portion that will be used for any SUP application
25 talking about ag land on 15 acres.

1 Ms. Furukawa, yeah, typically, actually we
2 don't require a survey when somebody comes in for a
3 SUP, they just delineate where the church, where the
4 use will occur.

5 So that basically means that the exact
6 finite boundary does not appear to be something that
7 Maui Planning Commission has ever been concerned
8 about, because they told us on the record that it
9 doesn't need a survey. You can draw it.

10 So if the impact -- the question is will
11 the church activities negatively impact agricultural
12 activity in order to that --

13 CHAIRPERSON SCHEUER: That's not my
14 question.

15 My question is really a policy level
16 question that this body will have to wrestle with,
17 right?

18 If the property was 14.8 acres and the
19 landowner and Applicant did not even own beyond that
20 property, we could say with great assuredness that
21 the permitted use will not extend beyond the edges of
22 the property.

23 However, this is the case where the
24 property itself is much larger, and indeed the nature
25 of the use by the Applicant's own statement, very

1 diffuse. So I'm wrestling with how, as a Land Use
2 Commissioner, regardless -- I personally believe the
3 activity is virtuous, but that's not what I get to
4 rule on, right? I get to rule on the narrow
5 constraints of what the statute gives us.

6 And the amorphous and encompassing nature
7 of the use seems to me to point towards, while
8 14.8 acres was chosen specifically as Dr. Abrams
9 says, to avoid jurisdiction of this Commission, I
10 believe the transcript will show that he said that,
11 that the actual activities go beyond 14.8 acres.

12 MR. ICZKOVITZ: So to repeat. The church
13 use is taking place inside the building. The
14 activities outside the building will be agricultural
15 uses. So if the question is will the church use
16 expand beyond 14.8 acres, I'm submitting that there's
17 no possibility of that happening. There's no
18 evidence of that happening, and no finding of that
19 happening, and no allegation made by anybody of that
20 happening.

21 CHAIRPERSON SCHEUER: I'm just going to
22 state that the earlier testimony of Dr. Abrams was
23 that the agricultural uses were tightly integrated
24 into the religious uses, and that, in fact, it was
25 stated on the record that as an agricultural

1 operation alone, the agricultural operation is a
2 standalone activity, not economically
3 self-supporting, but was intended as part of the
4 religious --

5 MR. ICZKOVITZ: I do not believe that's an
6 accurate characterization of Dr. Abrams' testimony.
7 Because the fact of the matter is that, you know, the
8 farm is a -- one thing that was not raised is that we
9 have a fully implemented farm plan. The finding has
10 been more than 50 percent of the land is currently
11 being used for agriculture. Certification for
12 organic was just renewed. And Dr. Abrams has done
13 everything right as far as building and expanding the
14 ag farm, which is what this Commission wants to make
15 sure that we want to support the agricultural uses,
16 which is what they have been doing.

17 If the concern is using a church to limit
18 or deny agricultural use on agricultural land, the
19 record does not support that in any way. And we
20 believe that the findings made by the Maui Planning
21 Department, decision made by Maui Planning
22 Commission, the recommendation made by the Office of
23 Planning are all in agreement, you don't adversely
24 effect. We're staying within the 14.8 acres. And we
25 believe that the record is very, very clear. You

1 don't have to go beyond the record in order to make
2 the decision that 14.8 acres is delineated in the
3 map.

4 CHAIRPERSON SCHEUER: I have nothing
5 further. Commissioners? If not, Maui County.

6 MR. HOPPER: Thank you, Mr. Chair. I will
7 try to address a lot of these issues that are coming
8 out but I anticipate there will be questions, and
9 hopefully we can try to clarify.

10 As this is an ongoing process, I think this
11 is not going to be the last permit where this issue
12 comes up, because frequently this close to a 15-acre
13 area is an on-going issue. We can have additional
14 clarification there.

15 On this particular permit, County of Maui
16 does recommend approval subject to the conditions
17 imposed by the Maui Planning Commission, as well as
18 any other conditions that the Land Use Commission
19 believes would be appropriate.

20 We do believe the Commission's decision
21 represents the application of HRS 205-6 as required,
22 and an effort also to mitigate the impacts of the
23 project. As you've seen from some testimony and
24 obviously from the record, there were concerns about
25 noise and traffic, and impacts on the property. And

1 I do belief that the Commission conditions were
2 acceptable conditions to mitigate those impacts.

3 As a starting point, and I understand this
4 has been an issue of confusion, the County of Maui
5 believes the appropriate map to use in this case is a
6 map that was submitted on June 12th, 2019 to the
7 Planning Commission. That was submitted. After its
8 first hearing the Planning Commission had questions
9 on what are the precise -- where is the use going to
10 be located.

11 And in response the Applicant submitted CPR
12 map that wasn't actually used to CPR, but at least
13 contained a clearly delineated area of where the uses
14 would be allowed. And they stated the common
15 elements B and C would be part of that, and the total
16 is roughly 14.8 acres.

17 In addition to this, however, subsequent to
18 receiving that map on June 12th, the County did
19 receive a response to the letter from the Executive
20 Officer of Land Use Commission. And in that letter I
21 understand that not necessarily all of the
22 hypotheticals may have been correct in that case.
23 But as one part of that letter, the Executive Officer
24 said, in addition, it says, in addition the combined
25 nonagricultural uses described clearly exceed

1 15 acres if the access road is included, which it
2 should be, as it is essential for the use delineated
3 in the SP application.

4 So with this, on this map, the driveway is
5 an extra .78 acres, which would bring the property
6 over 15 acres.

7 Subsequent to this, there was a map
8 submitted on August 13th by the Applicant. I think
9 it was submitted the day of the meeting. This map --
10 I don't know if you all had a chance to look at it --
11 I don't think that the Commission can rely on this
12 map, or the Land Use Commission or the Maui Planning
13 Commission. It's a hand-drawn map. There is really
14 no way to determine if this is 14.8 acres or
15 different. And we don't believe -- while the
16 Commission did accept this along with the other
17 evidence submitted that day, we do believe that the
18 map that was submitted in response to the
19 Commission's inquiry from the Planning Department on
20 June 12th, this is a more accurate map with the
21 driveway added. We believe that's the map.

22 So because that went over 15 acres, that
23 was one of the reasons the Planning staff transmitted
24 this to you.

25 Another reason is, I think as the Chair

1 sort of mentioned and was discussed in the letter, it
2 was a bit difficult to determine the actual
3 boundaries of the use. We do see that there is
4 testimony on this issue of the use, of the
5 agricultural use being commingled with the church use
6 which is part of the church.

7 It does state that -- this is on page --
8 this is on Mr. Iczkovitz' letter. It's quoting the
9 minutes of one of the August 13th meeting. It does
10 say: Any activity -- this is from Mr. Abrams -- any
11 activity of the church goes on the land outside the
12 temple would also be agricultural in nature, and an
13 important point that I would get more help on the
14 farm with volunteers and be able to educate our
15 congregants about earth-based spirituality, which is
16 part of the underpinning of our ministry since it's
17 in honoring the earth and being stewards for future
18 generations.

19 This was another issue the Commission
20 looked at, and planning staff wanted this forwarded
21 to the Land Use Commission because of that ongoing
22 issue as well.

23 So we do believe in this case Maui County
24 Planning Commission acted to approve the permit on
25 the area map plus the .7-acre driveway.

1 Now, whether or not the Planning Commission
2 -- the Planning Commission voted to approve as
3 recommended, and one of the conditions was to approve
4 based on representations made.

5 The Commission did not say, for example,
6 the use shall take place on the map attached as
7 Exhibit A. That was not done. That's not typically
8 done for a special permit, but it's also not typical
9 to have multiple maps submitted. But we do believe,
10 based on the record, that the map on the 12th was
11 what the Commission relied on, because the map sent
12 on the 13th is not a -- there's no way to tell what
13 the acreage is of that map, and it's simply a
14 hand-drawn line.

15 So that's the County's position as far as
16 what the Commission had adopted in this case and why
17 this is before you.

18 Going on with other issues.

19 With respect to RLUIPA, and we can get into
20 this in more detail -- by the way, I believe
21 Commissioner Ohigashi was correct about the previous
22 case mentioned. The County is also in litigation
23 right now in federal court with another special
24 permit that it denied for church use, and has been
25 successful in that litigation so far, including a

1 jury verdict in its favor, though there are appeals
2 pending.

3 The County's perspective with respect to
4 RLUIPA is that the statutory scheme of HRS 205-6 is
5 still applicable and Land Use Commission rules are
6 still applicable. And the standard of approval of
7 preponderance of the evidence, under HRS 91 for any
8 contested case, is still the applicable standard,
9 that also applies.

10 If a court, after a denial, would review,
11 then they would use strict scrutiny to review the
12 county's action. One of the major issues in the
13 court case that the County is with now is essentially
14 whether or not the County Planning Commission treated
15 that applicant differently than it treated other
16 similarly situated applicants.

17 And we do believe that's a relevant
18 consideration and can be, but we don't believe --
19 RLUIPA certainly applies if there is a church use
20 involved and a religious use involved, but we don't
21 believe that alters the fundamental statutory scheme
22 that you have for the Planning Commission and the
23 Land Use Commission and LUC rules.

24 So I think assessing those impacts, and
25 looking over that as you would a nonchurch use is

1 something you can do to assess those impacts, and
2 determine if the permit can be granted.

3 In this case I think the Maui Planning
4 Commission did that, and did impose conditions to
5 mitigate impacts over the course of three meetings,
6 after hearing a substantial amount of testimony about
7 what the potential impacts could be.

8 And I think you've heard that today, and in
9 the record you've heard that as well.

10 The other issue is whether it's the
11 Planning Commission's determination of whether or not
12 the Land Use Commission gets to review the permit. I
13 think the Commission was a bit hesitant to make a
14 unilateral determination that, yes, it does or does
15 not have to go to the Land Use Commission.

16 If the Commission would, for example, make
17 the determination this doesn't have to go to Land Use
18 Commission, especially after receiving the letter
19 from the Executive Director, we didn't want to be
20 seen as cutting the State Land Use Commission out of
21 these decisions, because we believe under the statute
22 it's statutory.

23 So if the land is for use over 15 acres,
24 the Land Use Commission has concurrent decisionmaking
25 power with the Planning Commission, and so we wanted

1 to make sure that the Land Use Commission would
2 review this.

3 And if the Land Use Commission wishes to
4 determine, based on the record, that clearly this
5 property is under 15 acres, we have no jurisdiction.
6 Then I think that's a Land Use Commission
7 determination.

8 The Planning Commission didn't want to make
9 a unilateral determination saying it does or doesn't
10 have to go, and be seen as cutting the Land Use
11 Commission out of its decision.

12 If there is guidance we can get on ongoing
13 cases for things like this, it's an issue that's been
14 ongoing because applicants, I think, some may feel
15 we're entitled to do a Special Use under 15 acres,
16 and Land Use Commission doesn't review that.

17 So we get up to 15 acres and that's it. In
18 this case we were iffy on what the potential of the
19 use spilling out, and the use of the driveway as an
20 issue.

21 But we did have the information submitted
22 by Mr. Orodenker talking about not just cases like
23 this where the uses may not be clearly delineated,
24 but also other cases.

25 That may go beyond the scope of this

1 hearing in particular, but we wanted to raise this as
2 an issue, because this isn't the last time this is
3 going to come up, and wanted the Commission to be
4 aware of this.

5 At this point, I don't know if -- I don't
6 know if I addressed all of the concerns you would
7 have. We wanted to go into our background of what
8 the Commission, I think, what the Commission action
9 was and why this was forwarded to you as the Land Use
10 Commission.

11 CHAIRPERSON SCHEUER: Thank you, Mr.
12 Hopper.

13 Commissioners, questions?

14 Commissioner Wong.

15 COMMISSIONER WONG: I'm going to ask these
16 questions.

17 Yes or no, was a TIAR done?

18 MR. HOPPER: No.

19 COMMISSIONER WONG: Yes or no, was a
20 cultural impact analysis done?

21 MR. HOPPER: Other than what was in the
22 study, there was separate CIS in addition to that.

23 May I further address that? That's one
24 thing I wanted to address.

25 This was discussed in the staff report, but

1 because this was an applicant for a change in use,
2 there was an existing dwelling, existing properties
3 there. This was an application for change in use
4 that would involve the same structures as would be
5 there before the use.

6 So in that case, the Planning Department
7 did not transmit to SHPD for an update or require the
8 Applicant to do a TIAR or to do a cultural impact
9 analysis. And that was because the nature of the use
10 was not a large subdivision or something like that.
11 It's a change in use of an existing property without
12 any additional construction.

13 So for Ka Pa'akai purposes, I think the
14 statement would be the department did not see
15 evidence of valued cultural resources that would be
16 effected by this application, because the nature was
17 to change the use of a property, but not to, for
18 example, urbanize a property that was ag before.

19 If there is additional requirements that
20 this Commission wants, as far as Ka pa'akai analysis,
21 in a case where the use is being changed like this,
22 we would want guidance from you. But this is
23 something we went over at native Hawaiian law
24 training that Ka Pa'akai analysis, how does it change
25 depending on the impact of the project and the size

1 of the project? Will every developer have to do a
2 cultural impact assessment? What is appropriate for
3 one or the other?

4 So in this case the department did look at
5 the record to see what was there previously from SHPD
6 or other letters, but did not require a new cultural
7 impact statement or a new update of the issues
8 because of the nature of what the application was.

9 If there is something additional you want
10 done in those cases, we can look at that. But we did
11 believe, for Ka Pa'akai, this was sufficient in this
12 particular case.

13 COMMISSIONER WONG: Going back to the TIAR,
14 going off Commissioner Ohigashi's question, there's
15 going to be possible increase in traffic, possible.
16 Did the Planning Commission ever take into account
17 that increase in traffic in the area? Say, hey,
18 maybe we should look at a TIAR?

19 MR. HOPPER: I don't believe the Planning
20 Commission -- I don't know of any case where the
21 Planning Commission has ordered a TIAR, frankly, for
22 any of its permits. You may have an existing one
23 usually from the State Land Use Commission permit, or
24 for a more substantial development, like a change in
25 zoning where in the county code it would says you've

1 got to do a traffic study because of this project.

2 In this case I think they relied on agency
3 comments as well as the record, which was here's how
4 many more people would come in, put in conditions to
5 mitigate that impact as far as how many people you
6 can have in when they can be there, certainly traffic
7 was a consideration there, and approved with those
8 mitigation conditions, but they did not order a TIAR
9 to be done on the project.

10 COMMISSIONER WONG: Going a little off
11 track.

12 Again, I know you said use this map. You
13 were talking previously, use this map. However, it
14 still bothers me in the sense that you got a map that
15 says 14.8 acres. Then the second map, or exhibit
16 that was shown to us just recently, showed another
17 14.8 acres, where they adjusted the size.

18 This is the local boy talking. It looks
19 like someone is fudging something just to keep that
20 number. So what should I think about that?

21 MR. HOPPER: I don't think the Commission,
22 though they admitted the 13th map in evidence, I
23 don't think they relied upon that in making the
24 decision. That map is not a readable map in the
25 County's opinion. It appears to go outside of

1 property lines in cases. I understand it was done by
2 an architect, but I think that the map, because of
3 what you're identifying the map on the 12th, which
4 does delineate a clear area, is the map to use.

5 I don't think the map on the 13th can be
6 used as a map, and I don't think it was relied upon
7 by the Commission in determining the permit area,
8 because it's just not -- it's really hard to say
9 that's an accurate map.

10 I can say that map adds up to 14.8 acres.
11 The other map I can look at the components and see
12 there is 14.8 acres, the driveway is .7 acres. But
13 this map, it's difficult for anybody to say this is
14 14.8 acres.

15 COMMISSIONER WONG: So the next question I
16 have is: There was a statement that was taken during
17 the public testimony about people's testimony was
18 thrown out and not part of the record.

19 Can you explain that? Tell me what was the
20 issue with that?

21 MR. HOPPER: Because this was considered a
22 contested hearing, under HRS 91, and because the
23 Planning Commission in past cases actually had
24 decisions for denial reversed because they did not
25 allow cross-examination of testimony, that they were

1 going to be careful with testimony they admitted.

2 So at a certain point the Commission did
3 close public testimony, and some written letters did
4 come in after that point. And I think it's at the
5 beginning of the August 13th meeting the Chair
6 announces some letters came in, but they would not be
7 considered part of the record, because they came in
8 after public testimony was closed.

9 Again, there may be questions on the
10 Sunshine Law, but HRS 92, if the board is operating
11 under quasi-judicial function, then it's not subject
12 to the Sunshine Law requirement.

13 And so that's what happened there, is that
14 there were letters that were received after public
15 testimony was closed, at subsequent meetings, that
16 were not made part of the record. That's why they
17 weren't transmitted to Land Use Commission.

18 Also one other exhibit. There was an
19 exhibit, you can see it in the record, where there
20 was a vote taken to strike it from the record. It
21 was a Dropbox link where a lot of the items could not
22 be opened, and the concern was maybe some
23 Commissioners could open, maybe they couldn't. They
24 didn't know who saw what evidence. So that was
25 stricken from the record. That was received after

1 public testimony as well.

2 That is what happened to some of the
3 letters that were not received into the record. They
4 also weren't considered by the -- they were also not
5 received and considered by the Planning Commission.

6 To get along with that, some of the written
7 testimony also were not present for cross-examination
8 by the Applicant. Now, that written testimony was
9 allowed earlier, but the ones that were submitted
10 after the date, the Applicant wanted to cross-examine
11 and they weren't present, so their testimony was
12 stricken.

13 COMMISSIONER WONG: Okay. So I'm going to
14 take just my experiences.

15 So let's say I'm going in front of the
16 legislature and somehow my mom got sick, but I
17 submitted written testimony. They would strike that
18 too because of that issue that they cannot talk story
19 with me?

20 MR. HOPPER: Well, the state legislature
21 wouldn't be conducting a hearing under HRS 91. We
22 have cases where we have remands from the circuit
23 court for public testimony-related issue. This is an
24 on-going issue with Maui Planning Commission. The
25 County argued that public testifiers should not be

1 subjected to cross-examination like other witnesses,
2 but the circuit court disagreed and said you have to
3 allow for cross-examination of public testifiers.

4 We were concerned about the chilling effect
5 that would have on testifiers, but we were told by
6 the court they had to allow it and so we do do that.

7 But in this case, the stuff that was
8 excluded there was an opportunity for public
9 testimony and hearing at the first meeting. There
10 was some written testimony that was excluded after
11 that. There was no additional oral testimony taken
12 after the first meeting either, after the public
13 testimony was closed. And there was some oral
14 testimony and letters that were not included in the
15 record transmitted to you, because they were not part
16 of the record that the Maui Planning Commission
17 considered.

18 I mean this, I think, is separate from
19 whether the Land Use Commission today can take
20 additional written or oral testimony to supplement
21 its findings. I don't have an objection to that.
22 The Maui Planning Commission decided we are going to
23 create a record. Here's how we would like to do it
24 as far as evidentiary submissions, and that's the
25 decision they made.

1 I think the way they did it was a good way
2 to balance the -- I suppose it could try to argue
3 that you don't have to have public testimony at all,
4 and give notice to people, if they want to intervene,
5 they can, they become parties. Other than that,
6 public testimony shouldn't be part of a contested
7 case hearing. It should be no different than if I
8 have an appeal before an administrative agency, and
9 it's just me and that agency.

10 But because of the public interest, I think
11 there was public notice in the newspaper. There was
12 notice sent to neighbors. There was public testimony
13 allowed by the written testimony, allowed by the
14 Commission, but it was cut off after a certain date.

15 COMMISSIONER WONG: Just a statement, don't
16 answer, please.

17 This was much clearer to me, and I just
18 want to say thank you.

19 CHAIRPERSON SCHEUER: Commissioner
20 Ohigashi. Thank you, Commissioner Wong.

21 COMMISSIONER OHIGASHI: Arnold is not the
22 only local boy.

23 I'm just kind of curious. The Applicant is
24 saying that Commission decided to accept the second
25 map, and passed it on based on the second map. Is

1 that your understanding of what occurred?

2 MR. HOPPER: Not passed it on based on --
3 there were a lot of documents that were submitted as
4 rebuttal testimony by the Applicant's attorney that
5 day. And the Commission did say we will accept this
6 into evidence. But I do not recall, and I did look
7 at the minutes, discussion of anything saying we are
8 adopting this map. This is the map we're using, that
9 includes the driveway.

10 And like I said, there was not -- in its
11 motion, the Commission did not say we are doing this
12 based on map X. It said based on the representations
13 made. The only actual map with acreages in it was
14 the map on the 12th, and because that was in response
15 to a specific question by the Commission of what is
16 the area we are dealing with. I think that was the
17 better map to use.

18 COMMISSIONER OHIGASHI: I understand what
19 you're saying, but I didn't see that discussion in
20 the record.

21 MR. HOPPER: There wasn't an extensive
22 discussion of -- again, there were a variety of
23 documents that came --

24 COMMISSIONER OHIGASHI: I didn't see that
25 discussion in the record, so I'm just pointing that

1 out.

2 The SMA Permit that we're referring to for
3 that structure, was that issued?

4 MR. HOPPER: I believe, yes, it was.

5 COMMISSIONER OHIGASHI: Was it issued for a
6 church use?

7 MR. HOPPER: It would have been a farm
8 dwelling -- it would be a farm structure.

9 COMMISSIONER OHIGASHI: It would be a farm
10 structure, so it wasn't a permit issued for a church
11 use as the Applicant indicated?

12 MR. HOPPER: No.

13 COMMISSIONER OHIGASHI: That's what I'm
14 kind of wondering. This is a SMA area, is that
15 right?

16 MR. HOPPER: Yes.

17 COMMISSIONER OHIGASHI: Isn't a church more
18 intensive use than a farm structure?

19 MR. HOPPER: There is some clarification
20 here.

21 COMMISSIONER OHIGASHI: I'm sorry, I'm
22 asking you, Mr. Hopper.

23 MR. HOPPER: I think that --

24 CHAIRPERSON SCHEUER: Just to be really
25 clear. The Applicant has presented. We're talking

1 with the County.

2 MR. HOPPER: I think the Special Permit is
3 to approve the church use. I believe that there
4 would not be a need -- the department can look at
5 this, as the department administering the Coastal
6 Zone Management Act, to see if a change in use would
7 be a change in the density or intensity of use that
8 would require another SMA assessment or amendment to
9 the permit terms.

10 But I think at this time the department's
11 position would be that the use permit here would
12 be -- the first step and any assessment of whether
13 they need an amended SMA Permit would be determined
14 by the Planning Department afterwards.

15 The staff planner wanted to clarify that
16 there was a SMA Permit for a variety of structures.
17 It was an after-the-fact permit, because a lot of the
18 stuff was built without a permit in the first place,
19 but it covered the structures as existing, but didn't
20 include the church.

21 COMMISSIONER OHIGASHI: Again, the
22 Applicant was wrong. They haven't gotten a SMA
23 Permit for church use.

24 MR. HOPPER: I wouldn't necessarily say you
25 would need a new SMA permit for a change in use like

1 this. I don't think --

2 COMMISSIONER OHIGASHI: But it wasn't
3 considered?

4 MR. HOPPER: The application, as I
5 understand it, for an SMA Permit did not say --

6 COMMISSIONER OHIGASHI: Yes or no, it
7 wasn't considered?

8 MR. HOPPER: I don't have it before me.
9 I'm getting this from the staff.

10 COMMISSIONER OHIGASHI: My question is --

11 MR. HOPPER: Wait, I'm sorry, the Applicant
12 is contradicting --

13 COMMISSIONER OHIGASHI: I'm not asking him.
14 He's not on record.

15 MR. HOPPER: I want to get you accurate
16 information.

17 COMMISSIONER OHIGASHI: I expect his
18 attorney to control his own client. Isn't that
19 right?

20 So I'm just asking you some questions.
21 And, you know, I'm a simple guy, simple lawyer. I
22 think I took the bar with -- we've got about the same
23 number.

24 So anyway, I'm asking the question. Is the
25 church use that requires more people there, up to 100

1 people, additional cars, a more intensive use?

2 MR. HOPPER: I don't think that would
3 require a new SMA --

4 COMMISSIONER OHIGASHI: I'm asking a
5 definition. I'm not asking you if it's required.

6 MR. HOPPER: Well, there's a statutory
7 definition there that has a legal implication and I
8 would say I don't believe that statutory
9 definition --

10 COMMISSIONER OHIGASHI: Who's going to make
11 that determination?

12 MR. HOPPER: That would be the Planning
13 Department, but I want to get this clarified.

14 COMMISSIONER OHIGASHI: Specifically HRS
15 205A-22 identifies a development as change in
16 intensity of use of land, right?

17 MR. HOPPER: Could you repeat that?

18 COMMISSIONER OHIGASHI: Can you control
19 your client, please?

20 CHAIRPERSON SCHEUER: We can't actually
21 hear the proceedings if you are holding a loud
22 conversation in the room at the same time.
23 Understood?

24 MR. ABRAMS: I do understand.

25 COMMISSIONER OHIGASHI: I'm just asking,

1 that's what HRS 205A-22 says.

2 MR. HOPPER: As development, yes.

3 COMMISSIONER OHIGASHI: So is it your
4 position that you will have to review it to determine
5 whether a new SMA or additional SMA is required?

6 MR. HOPPER: I believe with the change in
7 use, yes, you could have to review it. How HRS
8 205A-22 works is that you have the action that is
9 considered a development. There's a variety of items
10 that are considered not development that are
11 exemptions that the County would look at as part of
12 an SMA assessment.

13 COMMISSIONER OHIGASHI: My minimum
14 understanding of this, because I looked at the
15 exemptions, and I don't think it applies.

16 But besides that, this is a commentary on
17 my part. Would the fact that the intensity of use
18 requiring a review for an SMA Permit bring up the
19 issue of whether a Ka Pa'akai analysis should be
20 done?

21 MR. HOPPER: If it's just the change in
22 use, I wouldn't see why you would do that.

23 COMMISSIONER OHIGASHI: Who would make that
24 determination?

25 MR. HOPPER: This would be the Planning

1 Department, because under the Coastal Zone Management
2 Act, Maui Planning Commission is designated the
3 authority by County Charter, and by rule as stated,
4 the Planning Department would be involved in both
5 enforcement and in processing SMA Applications.

6 COMMISSIONER OHIGASHI: So if I want to --
7 if I have an SMA Permit, and I have an office
8 building, and I get the great idea of saying, hey, I
9 want to make a hotel. And my hotel may affect the
10 neighborhood; may affect water usage; may effect
11 other kinds -- may affect traditional rights of
12 people, because more people are coming on the land.
13 Intensity of use. Would you say that that would
14 require a change?

15 MR. HOPPER: I would say maybe. It would
16 have to be reviewed.

17 COMMISSIONER OHIGASHI: So the record
18 doesn't contain anything, does it, that identifies
19 this change of use as not requiring an additional SMA
20 Permit, because that would be something that the
21 Planning Commission would have to decide?

22 MR. HOPPER: Mr. Chair, the Planning
23 Commission for a State Special Permit wouldn't be
24 making findings, I don't think, on what other permits
25 would be required. I suppose it could say -- it

1 could add a condition that says that if there's any
2 additional, based on the change in use, if there
3 are -- if it has a SMA review done or something by
4 that nature, but I don't know if in granting one
5 permit you would say, you also have to -- I mean the
6 HRS applies regardless of whatever the finding of the
7 Commission is, so if they have to get a new permit or
8 reassessment, they would have to in either case, but
9 that's not something the Commission, that I
10 understand, makes specific findings on nor do I think
11 it's part of the criteria of 205-6 or the LUC's
12 rules.

13 COMMISSIONER OHIGASHI: We do have to
14 consider whether or not this is consistent with 205
15 and 205A under our review, isn't that true?

16 MR. HOPPER: I know that's true of district
17 boundary. I'm trying to refresh my memory for the
18 Land Use Commission rules.

19 COMMISSIONER OHIGASHI: We don't have to
20 worry about 205A on Special Use.

21 MR. HOPER: 205A is going to apply, yes.
22 It does talk about A, the use shall not be contrary
23 to the objectives sought to be accomplished by
24 Chapter 205 and 205A HRS and the rules of the Land
25 Use Commission.

1 COMMISSIONER OHIGASHI: So an inquiry by
2 the Commission that the record be supplemented to
3 include an analysis of that, is not beyond our power,
4 is it?

5 MR. HOPPER: Would they be applying for two
6 SMA permits?

7 COMMISSIONER OHIGASHI: I'm asking that
8 question. Is that condition, asking for a finding in
9 relation to that, say that it is consistent with 205A
10 is not beyond our power?

11 I withdraw the question, Mr. Chair.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner.

14 Are there further questions for Mr. Hopper?
15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.

17 Mr. Hopper, maybe you can educate me a
18 little bit about what Maui County requires, because
19 I'm only a little bit familiar with what the City and
20 County of Honolulu sometimes requires or allow.

21 In an Urban Zone on Maui, can you also have
22 agriculture?

23 MR. HOPPER: It's going to depend on your
24 actual zoning itself. Because underneath the Urban
25 designation by the State there is going to be a

1 County zoning designation and Community Plan
2 designation.

3 I think under Urban technically you can
4 have any underlying zoning. But I don't think -- if
5 the zoning is other than agriculture, I think Rural
6 zoning allows it. I think Agricultural allows it.
7 Some other zoning districts allow it, but not all of
8 it. You could have an Agricultural zone under urban,
9 I believe, depending on the zone.

10 COMMISSIONER OKUDA: If the Applicant here,
11 the church, were to request a boundary redesignation
12 to Urban, and in fact got the Urban designation,
13 could it still continue doing its agriculture?

14 MR. HOPPER: I think that if that's the
15 only thing that changed, that was urbanized, I think
16 it probably could. It would open the door
17 potentially for them to get a change in zoning to
18 something other than agriculture once their district
19 boundary is changed.

20 COMMISSIONER OKUDA: That's correct. But
21 if the applicant, the church in this case, intended
22 because that's part of its theology and its mission
23 in the community and in the world to have this
24 sustainable type of agriculture, it could continue
25 conducting its agricultural use even if the boundary

1 was redesignated to Urban, correct?

2 MR. HOPPER: I think if the zoning was
3 still Agriculture, and the community plan was still
4 Agriculture, yes, I believe they could.

5 COMMISSIONER OKUDA: Wouldn't a church be
6 more appropriate in an Urban designated area,
7 designated by the Land Use Commission, than in an
8 Agricultural area?

9 MR. HOPPER: Generally speaking, yes. But
10 that's why you need a Special Permit, and it's not an
11 outright permitted use under HRS 205. But, again,
12 the Special Permit process in HRS 205-6, I do think
13 is something that's available to church uses, school
14 uses, and has been utilized for those uses
15 historically.

16 COMMISSIONER OKUDA: The Hawaii Supreme
17 Court case involving the Waianae Board dealing with
18 the water park in Kapolei where the Hawaii Supreme
19 Court said it's inappropriate to issue a Special
20 Permit to allow basically an Urban use, meaning a
21 water park on agriculturally designated land.

22 Are you familiar with that case?

23 MR. HOPPER: Yes.

24 COMMISSIONER OKUDA: Do we have that
25 problem or issue here that we're basically, if we

1 grant the Special Permit, we're basically saying,
2 yeah, put this Urban use on ag land, and it looks
3 like, since the testimony was -- or the record seems
4 to indicate even if we ignore the testimony that's
5 been given here by public witnesses, that this
6 building has been constructed to last for a long
7 time.

8 That's really what are we're doing. A
9 Special Permit is really a disguised boundary
10 amendment.

11 MR. HOPPER: If you're looking at the time
12 issue, I understand that, but I wouldn't compare it
13 to a case of a water park.

14 COMMISSIONER OKUDA: I'm not suggesting
15 it's a water park at all, and I'm not even suggesting
16 that it is as extensive as the water park, and I'm
17 not denigrating the social good that the church may
18 bring. It's just, yeah, focus really on time, that
19 really what we're having here is what amounts to a
20 disguised boundary redesignation without the
21 protections and the processes that normally take
22 place with a boundary redesignation.

23 MR. HOPPER: I'm using the discussion of a
24 water park because that was the case where they said
25 you can't really grant a special permit in that case.

1 I don't think that is applicable here. I
2 do think you can grant the permit as long as the
3 criteria are met, and I believe that they are met.

4 That's why I'm saying I don't think the
5 court would reverse the Commission's decision to
6 grant the permit or not. And I don't know if we
7 think you should get a district boundary amendment is
8 sufficient grounds to deny a State Special Permit if
9 they otherwise meet the criteria. I mean, of course,
10 that's a discretionary call by the Commission, but
11 that's within the Commission's position is that in
12 this case this is an appropriate situation to grant a
13 State Special Permit, because the criteria and the
14 statute are met. I understand your point though
15 certainly.

16 COMMISSIONER OKUDA: If I can just shift
17 topic or focus just a bit.

18 Looking at a number of these conditions
19 that --

20 CHAIRPERSON SCHEUER: Excuse me,
21 Commissioner Okuda, about how long -- if you have
22 much longer, I think we're going to take break.

23 COMMISSIONER OKUDA: I think only five
24 minutes.

25 CHAIRPERSON SCHEUER: There is going to be

1 other questions. It is 3:32. We will take a
2 13-minute break to 3:45.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: It's 3:44. We're
5 back on the record. Thanks to everybody, including
6 the Commissioners, especially for their stamina. I
7 know that you if you don't normally come in front of
8 this Commission, this might alternately seem
9 exhausting, brutal, bizarre. I can assure you that
10 to the degree that we take a long time on things,
11 that I've served over six years on this Commission, a
12 real feeling and exercise of duty towards properly
13 implementing the laws that we're supposed to.

14 We were having questions for Maui County's
15 counsel from Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you very much,
17 Mr. Chair.

18 Mr. Hopper, if I can switch gears now and
19 go to a Fourteenth Amendment, equal protection
20 question, since the Fourteenth Amendment require that
21 people's rights of equal protection under the law be
22 protected.

23 You probably heard me ask questions of some
24 of the earlier public testifiers about these various
25 conditions that were included with the Maui Planning

1 Commission's approval, you know, such as Condition
2 No. 4, which limits the time of church or religious
3 activities. Condition No. 5, which limits the days
4 of church or religious activities. Condition No. 6,
5 which specifically allows county inspection by
6 officials who simply present credentials; and
7 Condition No. 11, which requires 72 hours notice to
8 neighbors for events with more than 40 participants.

9 Can you point to any other church in the
10 County of Maui where the County of Maui has required
11 or imposed similar conditions?

12 MR. HOPPER: I believe that -- I know
13 generally of two. One I believe, and this is
14 secondhand, because I did talk to counsel for the
15 Planning Commission before the -- I think within the
16 last two years they granted a permit in Wailuku
17 Country Estates for a church use that had -- I don't
18 know if it's exactly the same conditions, but
19 conditions on the timing and other aspects there.

20 In addition, the case that the County is
21 currently in litigation about right now, Spirit of
22 Aloha Temple case was a proposed church use on ag
23 land, and the Commission denied that permit because
24 it found that the criteria in HRS 205-6 and Land Use
25 Commission rules were not met, and I think that's

1 relevant because I think the Commission does still
2 have a duty and the Planning Commission has a duty
3 under 205-6 in the rules to mitigate the impacts of
4 the projects. And I think that's what those
5 conditions did.

6 And I think any other similarly situated
7 project, again, church use is not allowed on ag land.
8 If you look at 205-2 or 445, you won't find church as
9 an outright permitted use.

10 So I think to grant the Special Permit, it
11 has to go through the process, and in doing that, it
12 does have a duty to impose conditions under 205-6 to
13 mitigate the impacts of the project.

14 So, again, I don't think there's a large
15 number of churches on ag land that come up. Churches
16 that operate on non-ag land, they're subject to
17 general requirements, but they wouldn't have
18 condition because the impacts for that area are
19 already determined to be appropriate because it's
20 zoned for church use.

21 But because they're not zoned for church
22 use here, I think the conditions are appropriate.
23 And in other similarly situated cases, I believe
24 County does look to conditions like this.

25 Again, I don't think they're exactly the

1 same, but I think any other special permit, if there
2 is complaint about traffic, noise, other things, that
3 conditions like this would be imposed.

4 COMMISSIONER OKUDA: Before the County
5 Planning Commission imposed these conditions, what
6 standard of scrutiny did the County use, or what
7 standard of review?

8 Did it use strict scrutiny, or did it use
9 some other standard?

10 MR. HOPPER: I believe the standard of
11 review would apply to judicial review of the County's
12 permit if it was challenged.

13 What the County did was follow the
14 requirements of HRS 91 for a contested case hearing,
15 which would be the person bringing the action bears
16 the burden of proof in persuasion, and that burden is
17 by preponderance of the evidence.

18 So what they reviewed was whether or not
19 the Applicant, as shown by a preponderance of the
20 evidence, that they were entitled to their permit
21 given the statutory scheme.

22 I think that strict scrutiny would apply if
23 the permit got challenged in court. I think the
24 court would look over these conditions with strict
25 scrutiny. I think it would find not irrelevant that

1 the Applicant said we can abide by these conditions.
2 And that's what's ongoing right now with the County
3 and this other church that was denied.

4 But I think what the Commission applied
5 would apply to any other Special Permit, which is
6 already in HRS and in the Land Use Commission's
7 rules.

8 COMMISSIONER OKUDA: So the County did not
9 apply a strict scrutiny standard, correct?

10 MR. HOPPER: No. And I do not believe such
11 would be applicable as far as whether or not it would
12 grant or deny the permit.

13 COMMISSIONER OKUDA: Is there anything in
14 the record which indicates that before the County
15 imposed these conditions on the church Applicant
16 here, there was any investigation, consideration or
17 discussion of lesser restrictive means of dealing
18 with the complaints or problems for which the
19 conditions were intended to mitigate or cure?

20 MR. HOPPER: I think there were three
21 meetings worth of deliberate -- not all
22 deliberations, but substantial deliberation on this.
23 I don't recall at a point in the minutes if someone
24 said maybe we can be less restrictive than this, but
25 I do think it was within the Commission's mind of the

1 right or of the request to do the church use in an
2 area where it's not zoned, and I think that was
3 considered.

4 I don't think it came out and said we're
5 considering other less restrictive means in addition
6 to these conditions. I do believe that this is the
7 Commission's expression of the least restrictive
8 means, and does an evidence of balancing. I think
9 they were constantly sort of discussing with the
10 Applicant when they went through these conditions,
11 whether they are appropriate, and what days the
12 church wanted these on.

13 So while it didn't use the actual words,
14 least restrictive means, I think in questioning back
15 and forth with the Applicant, as far as okay, what
16 can you live with here? What days do you do your
17 services? Do you do them here or there?

18 I believe Commissioner Robinson was one who
19 had a lot of questions on that. I think that back
20 and forth did evidence a discussion that would
21 qualify for showing that this was the least
22 restrictive means to both follow HRS 205-6 and
23 consider any First Amendment or Fourteenth Amendment
24 rights that the Applicant would have.

25 COMMISSIONER OKUDA: Was there a specific

1 discussion in the record, for example, shown in the
2 transcript that there was a conscious decision by any
3 of the Planning Commissioners to discuss least or
4 lesser restrictive means?

5 In other words, to basically specifically
6 and consciously discuss that there are less
7 restrictive ways of accomplishing the goals or the
8 objectives for which these final conditions came out?

9 MR. HOPPER: Less restrictive such as what?
10 As not imposing conditions?

11 COMMISSIONER OKUDA: Well, for example,
12 there is a restriction of the amount of sound based
13 on decibel levels that can cross a boundary line of a
14 property at a certain hour, correct?

15 MR. HOPPER: I think Department of Health
16 has those regulations.

17 COMMISSIONER OKUDA: I believe, you can
18 correct me, but I believe it's 65 decibels during
19 certain periods of time at the boundary line using a
20 weighted B ANSI. Does that sound familiar?

21 MR. HOPPER: Sounds like you know that
22 better than I do certainly.

23 COMMISSIONER OKUDA: Not to make fun of
24 this, it's because our overpaid son who is now a
25 computer guy, ten years ago he had a rock band and

1 the police would come to my house. So I had a sound
2 meter. But the reason why I'm asking this question
3 is a serious reason.

4 I mean, is there any evidence in the record
5 that enforcement of state noise standards would not
6 be as effective or would not be effective in
7 sanctioning or presenting or preventing or
8 mitigating noise which violates the law?

9 MR. HOPPER: They did discuss state noise
10 standards as being applicable during the hours such
11 as on New Year's Eve and other times there. They did
12 have a concern that those standards -- that one of
13 the additional protection of having the timeframe was
14 based on the neighbor's concerns.

15 I think the discussion of least restrictive
16 means started from denial of the permit, which there
17 was a vote for to consider that. And I think that
18 was a starting point. And then those means got less
19 restrictive, and turned into these conditions that
20 you have.

21 I think if you look at the Commission's
22 discussion over the three meetings, it would reflect
23 that. And if the County or Land Use Commission had
24 to go to a court to defend that, I think they could,
25 defend that well on the record to show -- if they had

1 taken it up, allowed people to talk, and then denied
2 it with no explanation, then I think you could argue
3 there is a problem.

4 But in this case I think there was
5 substantial amount of discussion and collection of
6 evidence to determine whether this was the least
7 restrictive means to do this, while still having to
8 deal with the requirements of HRS 205-6, which the
9 Commission can't ignore, even if it's a proposed
10 church.

11 COMMISSIONER OKUDA: And my final question,
12 Mr. Hopper, I agree with a lot of what you say,
13 you're a very knowledgeable person, and you clearly
14 state the law, but don't you think that part of the
15 problem we have here is, especially when you're
16 dealing with a church, the record should be
17 especially clear?

18 I mean, we all strive to have clear records
19 because I think any applicant, any government agency
20 that appears in front of us, that's what they deserve
21 from us. But here with this record, as one of my
22 fellow Commissioners are pointing out, it requires a
23 long explanation of which map is being relied on.
24 There's issues here about whether or not
25 constitutional rights are being implicated. What

1 standards have been used. We're having even
2 questions of what Findings of Fact really support
3 jurisdiction.

4 Wouldn't it actually be better -- and I'm
5 not saying this is what would happen -- but it's just
6 better that this matter just be remanded back to the
7 Planning Commission to frankly just clean this up,
8 because a confused record can lead to litigation,
9 more delay, more litigation, possible liability for
10 people.

11 I mean, now that you sat through all of
12 this, heard the questions, observed the confusion
13 that a lot of us have here, wouldn't it be better you
14 think for the community that this matter just be
15 remanded so that we have clear Findings of Fact,
16 Conclusions of Law. There's clear findings like with
17 the numbers and references to the record where each
18 of these findings come from. Conclusions of Law that
19 have clear statements of what the standard of review
20 that's being used. What's the standard being applied
21 with citation to the authority so that, you know,
22 everybody is clear, you know, what the deal really
23 is; what the approval really is and what it was based
24 on?

25 MR. HOPPER: You have the option under HRS

1 certainly to remand. If you do that, I think, after
2 having three meetings on this, and having a pretty
3 extensive record, the Commission would request, and
4 they're nine volunteers, just like you, they would
5 request what exactly you want from them in addition
6 to what wasn't in the record already?

7 As fair as the RLUIPA issue, I don't know
8 how much clearer that could be, other than using the
9 actual statutory words "least restrictive means", I
10 don't think there's any other additional items that
11 can be added to that discussion.

12 And the County, like I said, in the Spirit
13 of Aloha Temple case, the County has been successful
14 in its lawsuit through motions for summary judgment
15 as well as a jury trial in that case. And I think
16 went through a similar process as far as RLUIPA
17 analysis, as far as what they considered, and what
18 factors they determined in denying that permit.

19 And I think in this case similar factors
20 that were being used to deny that permit, are being
21 used to mitigate the impacts in this case.

22 As far as the other issues, it's within
23 your discretion to remand. The County does not
24 believe it's necessary. We do believe you've got a
25 complete record. As far as actual numbers, Findings

1 of Facts, Conclusions of Law, the Planning Commission
2 does not do that because they're not considered
3 decisions adverse to a party under HRS 91.

4 What you do have is a staff report and it's
5 part of the record as far as the facts, as well as
6 the approval letter with the conditions.

7 If you want something more precise, then we
8 can look at that, but that's not traditionally what
9 has been done with approvals by the Commission,
10 because we don't believe that's required by HRS 91 in
11 those cases.

12 But if there's a remand, we would want to
13 know what issues you would want the Commission to
14 deal with, and we would hope that within the existing
15 record, if it's a matter of clarifying a map or
16 something, we could say, okay, this is the map we're
17 going to use, and send it to you, rather than having
18 to reopen and have another record.

19 Again, three meetings on this. That is not
20 necessarily your issue, and if you're dissatisfied
21 with the record, it's your right to remand. But
22 that's our position at this stage.

23 COMMISSIONER OKUDA: Thank you very much.

24 Thank you, Mr. Chair.

25 CHAIRPERSON SCHEUER: Commissioner Cabral.

1 VICE CHAIR CABRAL: I'm not a lawyer, just
2 a real simple simple person here. But what I do back
3 in Hilo, I manage subdivisions, homeowner's
4 associations, and I enforce house rules and use of
5 land in a lot of ways.

6 And I've got to say, and I think my fellow
7 Commissioners have touched on a lot of the same
8 concerns I have, is that I have the feeling, and I
9 think that's what he just said, but you did some
10 lawyer talk in there. And certainly Mr. Okuda is
11 such a good lawyer.

12 But what I feel like I'm missing is when
13 petitioners or developers come to us and they want to
14 make something that -- something is -- they got the
15 land and they want to do something. They bring us
16 the traffic study. They bring us the water study.
17 They give us the cultural inspection. All of these
18 things have been determined, the water usage --
19 you've got wastewater addressed in your 12 items, I
20 think. But you have CC&Rs, I'm assuming, conditions,
21 covenants and restrictions, you have some kind of
22 homeowner's association. You share a road of some
23 sort. Or you have to share maintenance of that
24 roadway in some way, shape or form.

25 And you share water, right? The water is

1 shared with the other neighbors in someway. So you
2 have some kind of rules and regulations that need to
3 be addressed here. And I feel like I'm missing those
4 basic things. So whether you've got 100 people going
5 down to even do an agricultural use, and you're
6 putting some kind of added value manufacturing plant
7 down there, and you have 100 employees a day going
8 down there, or during certain hours or what have you,
9 you still need to deal with those 100 cars driving in
10 and out of the driveway. Those 100 toilets flushing
11 three times a day. Water coming in and sewage going
12 out. And I feel like I'm missing those basic things.

13 Then my second concern is something like
14 the police. On what basis -- does your county have
15 some kind of a house rule enforcement agency, or that
16 is just really the police?

17 So if they have their noise past
18 11:00 o'clock, or if they have more people than what
19 they're permitted to have on the wrong night of the
20 year. If somebody's funeral service wants to be on a
21 Tuesday instead of the Wednesday or whatever, you
22 know. How is your town is equipped to enforce that
23 type of a problem? I have a big concern there
24 because I want to know, because I do that
25 professionally, and I have a hard time doing it, and

1 I'm private enterprise.

2 So I think I feel like we're missing a lot
3 of, you know, you've addressed the neighbors'
4 concerns, but I feel like we're missing the real
5 basic of why you would allow somebody -- the fact
6 they went in and got the land and then started
7 building all these different buildings, and start
8 changing the use of it without the permit, doesn't
9 mean you have to go back to square one.

10 I'm sorry, I was going to ask you
11 questions, but I think you answered them for Mr.
12 Okuda.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Cabral.

15 Are there other questions, Commissioners?

16 I have a couple for Mr. Hopper. Sorry if I
17 missed it.

18 Is there somewhere in the record
19 transmitted by the Planning Director to us, the
20 actual application?

21 MR. HOPPER: The full application, the
22 original application was not given to the Commission,
23 so it was not submitted to you, the actual full
24 application, because that's something that's not
25 generally transmitted to the Commission. It's

1 difficult to provide.

2 CHAIRPERSON SCHEUER: Planning Commission.

3 MR. HOPPER: To the Planning Commission,
4 and HRS talks about the full record before the
5 Commission being transmitted. And so that
6 application wasn't transmitted. And I think that is
7 consistent with -- we have certainly done other
8 special permits, some that were clearly over 15 acres
9 that were transmitted to you, and I don't believe the
10 full application is ever part of that as well.

11 CHAIRPERSON SCHEUER: I was looking at the
12 language of HAR 15-15-95(b) which says:

13 Special permits approved by the County
14 Planning Commission which require Commission approval
15 must be forwarded to the Commission within 60 days
16 following the County Planning Commission's decision.

17 The county shall assure that prior to the
18 county hearing on the petition for special permit,
19 copies of the special permit petition are forwarded
20 to Land Use Commission which would, I assume, to be
21 equivalent to the application.

22 MR. HOPPER: Again, that's in fact prior to
23 the Planning Commission hearing, I believe.

24 CHAIRPERSON SCHEUER: In any case, we don't
25 have the application in the record, correct?

1 MR. HOPPER: This whole application, no,
2 because, again, the Planning Commission didn't
3 consider it. If you want them in the future --

4 CHAIRPERSON SCHEUER: The question I have
5 is, do we have the record that we need to be able to
6 decide on this or not in regards to that question?

7 I also had looked at the second set of
8 questions, there's three. I had also looked at the
9 same condition placed by the County regarding noise
10 that Commissioner Okuda asked about earlier. Forgive
11 me, just point to me that you've already answered the
12 question, but I think I'm asking a slightly different
13 question than Commissioner Okuda asked.

14 The original recommendation from the
15 Planning Director, which was transmitted to us, had a
16 noise standard, to paraphrase, that was that noise
17 couldn't be heard from outside the property boundary.

18 And then that was changed and in the actual
19 granted permit transmitted to us that noise needed to
20 not exceed the standards held by the State Department
21 of Health for land uses in the agricultural district.

22 Have I understood the record clearly on
23 that, Mr. Hopper, correctly?

24 MR. HOPPER: I did read over the minutes
25 but I don't recall exactly -- let me look at the

1 conditions just to be sure. You have -- do you have
2 have a number on the Planning Department's
3 recommendation?

4 CHAIRPERSON SCHEUER: I believe it's No. 4,
5 but I'm not positive. I can pull it up.

6 MR. HOPPER: Shall not be heard beyond the
7 subject property lines.

8 CHAIRPERSON SCHEUER: So No. 4, and I
9 believe in the final recommended condition, and I
10 believe it was No. 4 in the original.

11 MR. HOPPER: Yeah. So it looks like it
12 went from can't hear it outside at all, to not exceed
13 the State Department of Health noise standards.

14 CHAIRPERSON SCHEUER: So somewhere in the
15 record other than in the discussion of the transcript
16 is there a specific finding that was made as to why
17 that new standard was more appropriate that we can
18 point to?

19 MR. HOPPER: I don't recall. I do remember
20 extensive discussion of the -- not extensive, but
21 discussion of the State Department of Health
22 regulations as sort of a maximum -- of kind of what
23 the law was in general as far as noise was concerned.
24 And that may have been why the Commission changed the
25 two.

1 But, again, I went over the minutes, but I
2 don't have that before me. But I do believe it was a
3 discussion in the record.

4 I can consult with our staff, I just don't
5 remember offhand, but there was a lot of discussion
6 on a variety of these items. The staff planer is
7 trying to look to see maybe --

8 CHAIRPERSON SCHEUER: Mr. Hopper, just to
9 be clear, so I'm not trying to find fault or be
10 difficult at all. But part of what I wrestle with in
11 this is -- even let's say for argument's sake, that
12 we thought this was deserving of just us saying, yes,
13 we agree with the county, we want to issue the
14 Special Use Permit, there are procedural issues that
15 come up.

16 And one is, can we clearly point on the
17 record to specific findings that were made justifying
18 what those conditions were. So that's really what
19 the question is oriented towards?

20 MR. HOPPER: Well, whether you use the,
21 can't be heard outside the property, or using the
22 State Department of Health regulations, the finding
23 would be, in the staff report, that here's the use,
24 the record shows that there were concerns about
25 noise, and a condition was placed on it dealing with

1 noise.

2 I don't know if you would have a separate
3 finding showing here's why we're changing from one
4 language to the other. I think the condition is
5 there's been concerns raised in the record regarding
6 noise, here is a condition to mitigate noise impacts.

7 CHAIRPERSON SCHEUER: So I guess, and I'm
8 not trying to -- I hope I haven't adopted an
9 argumentative tone with you, but I'm just trying to
10 explain what I'm struggling with in trying to
11 understand, which is in my experience and other kinds
12 of dockets as well as dockets like this, the
13 particular mitigation that's proposed is supposed to
14 be tied to Findings of Facts, and Conclusions of Law
15 that show why that's reasonable and why we chose one
16 thing over another.

17 MR. HOPPER: So would you want each
18 condition to reference certain findings?

19 CHAIRPERSON SCHEUER: Typically there
20 should be some kind of relation between the two.

21 MR. HOPPER: I think there is definitely a
22 relationship. Even in Land Use Commission D&O's you
23 have a list of conditions, but they -- I mean they
24 end up corresponding to something in the record, but
25 I don't necessarily say this condition is based on

1 findings X, Y and Z.

2 CHAIRPERSON SCHEUER: As long as they're
3 readily identifiable in the record, that's correct.
4 And that there's nothing contradictory in the record.

5 MR. HOPPER: I think as a Commission, you
6 can sometimes see we've got testimony saying the
7 noise is fine, testimony saying the noise is very
8 bad. So there's a condition to mitigate the noise
9 impact. I think that's relatively straight forward
10 as far as this record, hopefully.

11 CHAIRPERSON SCHEUER: And then the third
12 thing, was a little more discussion regarding Ka
13 Pa'akai and the standards, and when we apply those
14 standards. I really do try, some may disagree, I
15 imagine in my own mind I try to be reasonable and not
16 seek to apply reviews or conditions that are absurd
17 or nonsensical.

18 And I heard what you were saying about that
19 there was not a new physical building that was being
20 proposed with this use, but rather a new use of an
21 existing building. And that's why the county chose
22 to not further make specific findings under Ka
23 Pa'akai. Do I understand you correctly?

24 MR. HOPPER: More so than what was in the
25 staff report, that's correct, not go beyond that.

1 CHAIRPERSON SCHEUER: So I think there are
2 two issues. One, if that was the case, is there
3 sufficient record before us identifying that, so that
4 a party not here, would understand that?

5 The second thing is, and this is a point
6 that I think we may differ on, is that while building
7 of a building might impact certain kinds of
8 traditional and customary practices and cultural and
9 natural resources, changes in use may affect
10 different kinds of traditional and customary
11 practices, even if they don't involve construction at
12 all.

13 And so I think really the duty that's
14 required by the permitting agency to look at, is
15 there any valued natural resource used for cultural
16 practices in the area at all, and not just the
17 property itself, not just the four corners, that may
18 be affected by the proposed use. And if there is,
19 further go down the test.

20 I would just say that my review, for the
21 record, but I'm inviting comment from you, the
22 document from the State Historic Preservation
23 Division included in the transmission to us was a
24 review for, I believe, simply aquaculture pond and
25 one other activity on the part of the property not

1 for the actual use that's being considered now.

2 MR. HOPPER: So what we would want then is
3 what review we would require the Applicant to do in a
4 case where you're changing a use, where we do have
5 the supreme court's case, but there is no rule or
6 statute or anything else that specifies -- I mean, do
7 they have to do a cultural impact statement, and they
8 have to hire a planner who's versed in those areas.
9 Is it sufficient for them send a letter to SHPD?

10 This was done because I think what was in
11 the staff report was what was done again by the
12 Commission and County staff would do for any other
13 application that had a change in use from an ag
14 building to a church.

15 The record did not have any evidence, that
16 I -- other than in that section, that implicated that
17 there were valued cultural resources that would be
18 impacted by this.

19 The question would be, would investigations
20 have to be done beyond this? And we would like your
21 guidance for that because there is certainly not a
22 clear guideline for, in a case like this, what degree
23 of investigation would need to be done by the
24 Applicant before accepting the application.

25 If in the County and the Land Use

1 Commission's view and the Commission failed in that
2 respect for what investigation they would have to do,
3 we would like to know what you would be satisfied
4 with, or what would be something that you would
5 require the Applicant in this case to do.

6 And, again, I think part of it is balancing
7 the risk to those natural resources with the nature
8 of the application and the potential impacts of the
9 project?

10 So, again, whether it's sending a
11 revised -- them sending a revised letter to the SHPD
12 waiting for a response saying something like we're
13 changing this to this, do you think there's going to
14 be impacts that you know of, based on the area; or if
15 there's something else, because this is really an
16 area where when you get to the specifics, it can be
17 difficult to tell applicants here's what you have to
18 do before coming to the Commission.

19 So any assistance you can give there, if
20 you believe this was inadequate, we would take. But
21 I think in this case, the county did what it would do
22 in other cases where the uses are changing, but
23 there's nothing in the record showing there is an
24 impact on the uses which is where Ka Pa'akai would
25 come in and say, well, now you have to protect those

1 interests.

2 But if there is an inadequate investigation
3 to begin with, we would want to know what
4 investigation would you want to be done, what level
5 would you want to be done?

6 CHAIRPERSON SCHEUER: Again, I think I'm
7 looking for common sense practical things that also
8 meet our obligations.

9 Thank you, Mr. Hopper. I have nothing
10 further.

11 CHAIRPERSON SCHEUER: Is there anything
12 more, Commissioners? Are we good to continue on with
13 Office of Planning? Ms. Takeuchi Apuna.

14 MS. APUNA: Thank you, Chair.

15 I think what the Office of Planning wants
16 to address is the procedural review of jurisdiction
17 on this matter, the Commission's jurisdiction, which
18 might also be an issue of an incomplete record.

19 So a few of the Commissioners have touched
20 on this, and it's the issue of whether this Petition
21 is for more than 15 acres, which is the only
22 requirement for this to be in front of you.

23 So it's here and we're here talking about
24 it all day, and you can assume it's 15 acres, but I
25 think that the record is not clear, it's ambiguous.

1 14.8 acres is what we assume the Applicant
2 has put forth as the acreage. And when you look at
3 the County's approval of this Special Permit it's not
4 clear. There's reference to the 14.8 acres within
5 the 25-acre parcel, and there's reference to the
6 portion in the TMK, but it isn't clear; it's not
7 definitive of what we're working with.

8 And then, you know, through the
9 different -- the three hearings there were fits and
10 starts about defining what that meant. I think their
11 Deputy Corporation Counsel said that the Planning
12 Commission needed to determine jurisdiction. And
13 there was the letter from Director McLean to the Land
14 Use Commission for guidance.

15 And I think that the Land Use Commission
16 Director did two things. I think that the Executive
17 Director provided his opinion based on the facts that
18 were provided to him, the limited facts. And that's
19 just an opinion, I don't think it's an analysis or
20 conclusion made by the Commission overall.

21 And the second thing that the letter did
22 was it instructed the County, it urged the County to
23 look at what, or determine the footprint of the
24 Special Permit and the impacts of that Special Use.

25 I think that's what the County needed to

1 do. And so I think the record is ambiguous. And why
2 is this important? It's not just important in order
3 to determine the jurisdiction of this Commission, but
4 it's important to know what the parameters are for
5 the Applicant to know exactly where those boundaries
6 are.

7 It's important for the neighbors to know
8 how far out the Special Permit applies, it's
9 important for the general public.

10 And so what is the role of the Land Use
11 Commission today? And there's only a few things that
12 you can do, but first, when you look at HRS 205-6, it
13 says that the County Planning Commission may permit
14 certain unusual and reasonable uses within
15 agricultural districts other than those which are
16 classified under such protective restrictions as may
17 be deemed necessary.

18 And then from there, so it's saying that
19 the Commission must make this determination, must
20 approve the permit before it comes to the Commission.

21 And when it comes to you, it should be a
22 complete record. It should be a complete approval
23 with basic information, including the acreage or the
24 parameters of the Special Permit. And I think that
25 the record does not show that. We're not clear on

1 what that is.

2 So it's arguable that it could be less than
3 15 acres, based on what the Applicant represented,
4 and the different maps, but it really isn't clear.
5 And I think it's something that at this point the
6 Commission, you know, it can approve, deny or modify
7 or remand. But I do think that the Commission is
8 limited in that it can't say that, it can't make the
9 determination this is over 15 acres. The only thing
10 that the Commission can do when it gets the permit,
11 the Special Permit from the County, that it can
12 impose -- it can either approve, deny or modify, but
13 that modification can only be restrictions, further
14 restricting the use.

15 So if, say the Commission wants to
16 designate the boundary greater than 15 acres, which
17 it's arguably 14.8 at this point, it can't do that
18 because that's the opposite of making it less
19 restrictive.

20 You're expanding the Special Permit area,
21 you're allowing more Special Permit uses in the
22 Agricultural District, that's not less restrictive,
23 that's the opposite of less restrictive.

24 So I think that the Commission, you are
25 limited in the what you can do, and I think that you

1 are probably -- the best route might be to remand and
2 get clarification to eliminate the ambiguity in the
3 record. And if that means that the County finds that
4 it is less than 15 acres, and it doesn't come back up
5 here, I think that's a possibility too.

6 And then -- so I think OP has its position
7 that to be supportive, but I think based on what our
8 procedural issue is, we are going to put a hold on
9 what our position is now as far as Special Permit.

10 One last comment I had. So some of the
11 information on the B element of the map where the
12 Applicant stated that there are agricultural uses,
13 and it wasn't clear why the Special Permit would
14 apply to element B. I think we need to look back, or
15 remind ourselves of what a special permit is for, and
16 that is to allow unusual and reasonable uses in the
17 Agricultural or Rural District, but with these
18 certain protections.

19 So we want to ensure that we protect the
20 Agricultural District when we're looking at special
21 permits. So I don't quite understand, you know, we
22 can kind of change the parameters for a special
23 permit, and allow more or less of the Ag District in
24 there. Basically it should be pretty definitive as
25 far as how we can protect it, or how we can limit the

1 uses, special uses in the Ag District under the
2 Special Permit.

3 Other than that, I think that's it.

4 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

5 Commissioners? Commissioner Ohigashi.

6 COMMISSIONER OHIGASHI: So you're saying
7 that if we do approve it, we can be more restrictive;
8 is that right?

9 MS. APUNA: Yes, you can provide more
10 restrictive conditions on the permit.

11 COMMISSIONER OHIGASHI: Is the Commission
12 able to say we approve only a portion of, the portion
13 where the actual church is?

14 MS. APUNA: I think, based on the record, I
15 don't think you can. I think it's too ambiguous. I
16 think that the Commission, and maybe County is
17 supposed to give you a final approved permit, special
18 permit, and that all those things as far as area were
19 determined. And from there, you could delineate,
20 maybe you could move it in further and make it more
21 restrictive, but I don't know where that's starting
22 at this point. I don't know where the baseline is
23 for that acreage based on the record.

24 COMMISSIONER OHIGASHI: Okay.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Ohigashi.

2 Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you.

4 Similar to Commissioner Ohigashi's
5 question, can we approve the permit but delete
6 certain conditions that we might find not appropriate
7 or not -- well, delete certain conditions?

8 MS. APUNA: Well, deleting -- I'm assuming
9 that these conditions are restricting, so if you
10 delete, you're make it less restrictive. So I don't
11 think you can delete.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Okuda.

14 Anything further for the Office of
15 Planning?

16 MR. HOPPER: Mr. Chair.

17 CHAIRPERSON SCHEUER: Mr. Hopper.

18 MR. HOPPER: You asked for a record
19 reference for how the State Department of Health
20 language got in there.

21 Just to help, I think on the June 25th,
22 2019 minutes page 70 there is discussion of adding
23 the State Department of Health guidelines into the
24 condition. And I think eventually that's what became
25 of the condition.

1 So as far as a reference as to where that
2 discussion happened, that might be helpful to you.

3 CHAIRPERSON SCHEUER: It is helpful, though
4 respectfully, I think part of the challenge of this
5 Commission is not to have to hunt through transcripts
6 to find what we believe might be the basis for one of
7 the conditions.

8 Commissioners, do you have any final
9 questions or comments for the parties for OP?
10 County?

11 Any final questions, Commissioners? If
12 not, then the Commission will now conduct formal
13 deliberations on this matter.

14 I will note for the parties and the public
15 that during our deliberations I won't entertain any
16 additional input from the parties or from the public
17 unless, there's a small exception, that individual or
18 entities are specifically requested to do so by me.
19 And if called upon, comments will have to be limited
20 to the questions asked.

21 Commissioners, let me confirm that each of
22 you have reviewed the record and transcripts for any
23 meeting that you may have missed and are prepared to
24 deliberate on the subject docket. After I call your
25 name, would you signify with either an "aye" or a

1 "nay" that you are prepared to deliberate on this
2 matter.

3 Commissioner Aczon?

4 COMMISSIONER ACZON: Aye.

5 CHAIRPERSON SCHEUER: Commissioner Cabral?

6 VICE CHAIR CABRAL: Yes.

7 CHAIRPERSON SCHEUER: Commissioner
8 Ohigashi?

9 COMMISSIONER OHIGASHI: Aye.

10 CHAIRPERSON SCHEUER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 CHAIRPERSON SCHEUER: Commissioner Wong?

13 COMMISSIONER Wong: Aye.

14 CHAIRPERSON SCHEUER: And I am also
15 prepared to deliberate on this matter.

16 Commissioners, what's your pleasure?

17 COMMISSIONER OHIGASHI: Mr. Chairman.

18 CHAIRPERSON SCHEUER: Commissioner
19 Ohigashi.

20 COMMISSIONER OHIGASHI: I think, I move to
21 remand the matter to County for further hearing, and
22 to specifically make findings regarding the
23 questions -- regarding the area to be covered under
24 the Special Use Permit. To provide us a clear map,
25 clear indication in the record of findings, show us

1 what is the area that we are required.

2 If the County finds that we are not
3 required, then that would answer OP's problems.

4 We also, if we are to continue our review,
5 also request that there be specific findings
6 regarding relating to conditions that have been
7 applied to the record. In other words, what is the
8 basis for all the conditions.

9 Also would like to know whether or not
10 that's the actual use of the church. In other words,
11 is it the -- we're faced with dual interpretations, I
12 believe, on whether or not the actual church and the
13 relationship between the agricultural use and the
14 church. I'm not sure whether or not the 14.8 acres
15 as claimed is going to be -- is required because of
16 church use or not. If there's a finding that says
17 that it's not going to be used, then there should be
18 determination as to what would be the size of the
19 proposal. What would be the size of the necessary
20 Special Use Permit.

21 I think that there should be findings
22 relating to traffic impacts, that appear to have been
23 raised but not really answered by the conditions or
24 any other -- if there are no significant impacts, it
25 should be at least a finding or reflection to the

1 record to say why there isn't.

2 I bring up the water system because it was
3 brought up, and the water system serves these people
4 in the neighborhood. There should be at least a
5 finding that this does not affect the water system
6 and the basis for that finding as to why --

7 COURT REPORTER: As to why?

8 CHAIRPERSON SCHEUER: Commissioner
9 Ohigashi, can you repeat the last?

10 COMMISSIONER OHIGASHI: That the water
11 system for the project, there should be a finding as
12 to whether or not that water system is adequately --
13 adequate for the supply of that -- for the supply of
14 the project without detrimenting the other water
15 users. If it is, it would seem to reflect -- the
16 record should -- it should reflect in the record why
17 there is adequate water.

18 I think that the findings should indicate
19 also what the history of violations identified in the
20 staff report, and explain whether or not that has
21 anything or any relationship to any of the
22 conditions. If it doesn't, it should be at least
23 explained why.

24 I am concerned about whether or not this is
25 an intensity of use. And I believe that a finding to

1 that effect, whether or not it is intensification of
2 use requiring additional 205A safeguard should be
3 addressed in the findings.

4 In addition to that, there should be some
5 definitive statement as to the reason why the
6 determination under the Ka Pa'akai case is not
7 required.

8 So that's my motion?

9 CHAIRPERSON SCHEUER: It's been moved by
10 Commissioner Ohigashi.

11 COMMISSIONER WONG: Second.

12 CHAIRPERSON SCHEUER: Commissioner Wong has
13 seconded the motion as stated by Commissioner
14 Ohigashi.

15 Mr. Orodenker, would you read what the
16 motion is going to state?

17 EXECUTIVE OFFICER: I'm so taken back by
18 that request that -- as far as I could, as quickly as
19 I could write what I have is:

20 It's moved to remand the matter to the
21 County, ask the County for further proceedings to
22 determine what the actual acreage of the Special
23 Permit is, and that questions with regard to, and
24 specific findings be made with regard to the
25 conditions that have -- facts regarding relating to

1 the conditions that have no finding, and what is the
2 basis for the conditions.

3 Whether or not the actual use of the church
4 is related to the agricultural use. What is the
5 actual size of the Special Permit. What traffic
6 impacts need to be addressed, whether or not traffic
7 impacts need to be addressed, and a finding made with
8 regard to those.

9 With regard to the water system, a finding
10 with regard to the impact of users of the shared
11 system, and whether it is adequate for the project
12 without causing detriment to the other users and why.

13 What the history of violations are, and
14 explain whether or not that has any relationship to
15 the conditions on why or why not?

16 Whether or not the Special Permit is
17 intensification of use. And finally, the reason why
18 a determination under Ka Pa'akai is or is not
19 required.

20 CHAIRPERSON SCHEUER: Thank you, Mr.
21 Orodenger.

22 So, Commissioners, we are in deliberation.

23 COMMISSIONER ACZON: You were listening
24 after all.

25 CHAIRPERSON SCHEUER: Commissioner Okuda.

1 COMMISSIONER OKUDA: Can I ask a procedural
2 question?

3 CHAIRPERSON SCHEUER: Yes.

4 COMMISSIONER OKUDA: How many votes do we
5 need for this motion to pass?

6 CHAIRPERSON SCHEUER: Five.

7 COMMISSIONER OKUDA: So all five of us?

8 CHAIRPERSON SCHEUER: There are six of us.
9 Mr. Hopper, I will recognize you briefly.

10 MR. HOPPER: Was part of that motion -- I
11 don't know if it was restated, that if after
12 reviewing the map, the Commission determines the area
13 is under 15 acres, that it would not return to the
14 Commission?

15 CHAIRPERSON SCHEUER: Yes. The motion is
16 constructed really to have two parts. The acreage
17 issue is a threshold issue. If you first -- if this
18 motion passes, and I'm not presupposing that, because
19 on a recent Special Use Permit we went through four
20 motions until we found one that succeeded.

21 But if this motion is the one that passes,
22 the way I understand its construction is:

23 First there is the threshold issue. We
24 need specific clarity on what the acreage is. And
25 should it happen that the Planning Commission

1 decides, you know what, it is clearly under 15 acres,
2 we then have no jurisdiction and none of the other
3 conditions apply.

4 But if it is found to be within our
5 jurisdiction, then we have specific requests for
6 further findings.

7 MR. HOPPER: Thank you for clarifying that.

8 CHAIRPERSON SCHEUER: Did I do well by
9 understanding your motion, Commissioner Ohigashi?

10 COMMISSIONER OHIGASHI: Yes. Can I speak
11 in favor of my motion?

12 CHAIRPERSON SCHEUER: You may.

13 COMMISSIONER OHIGASHI: The reason why I'm
14 making this motion essentially is this, that the
15 threshold question is whether or not we really have
16 jurisdiction as pointed out by OP. And Maui Planning
17 Commission seems to say, yes, we do. And the
18 Applicant seems to say, well, you may or may not, but
19 from -- what I'm not clear about is whether or not
20 jurisdictional issues can be waived.

21 So I think it's important for us to decide
22 whether or not it's 15.5 acres or 15.6 acres or
23 14.8 acres.

24 The second thing is that if you do find
25 that it is before this Commission, I think that

1 Findings of Fact, and Conclusions of Law is necessary
2 for our review. And you may say that it's not
3 required under the statute, you may say that it's not
4 the practice of the Commission, but in order for us
5 to review the record, we would like to know some
6 answers to these questions, and the best way to do it
7 is to create proposed Findings of Fact and
8 Conclusions of Law. It's not unusual for lawyers to
9 do that, and to have them prepare it.

10 So I'm not sure what the reticence of the
11 Maui Planning Commission would be, because
12 essentially if we do have jurisdiction, we are a
13 reviewing body, that requires us to go through a
14 process of review and ask these questions. And what
15 we see -- when we don't see it directly in the
16 record, we have the right to say, hey, we want to see
17 answers to these questions. And essentially those
18 are -- that's the basis of my motion.

19 CHAIRPERSON SCHEUER: Can the Chair, as a
20 privilege, ask you a question about the motion?

21 The motion did not request that the actual
22 application be transmitted to us as well, if it comes
23 forward.

24 COMMISSIONER OHIGASHI: I would be glad to
25 include it, because --

1 CHAIRPERSON SCHEUER: Mr. Orodenker.

2 EXECUTIVE OFFICER: Mr. Hopper is correct
3 to a certain extent. In situations where it's
4 immediately apparent that the application is for over
5 15 acres, the County Planning Commission forwards the
6 entire application, knowing that sooner or later we
7 are going to have to review it.

8 This is isn't that situation. I can ask
9 Maui County Planning Department to forward on the --

10 CHAIRPERSON SCHEUER: For the record,
11 Planning Director is nodding her head in the
12 affirmative that there is not a problem in forwarding
13 the application should this motion pass. Thank you.

14 We are in deliberation. Commissioner
15 Aczon?

16 COMMISSIONER ACZON: Mr. Chair, I fully
17 agree with Commissioner Ohigashi about those
18 information.

19 COURT REPORTER: Speak up, please.

20 COMMISSIONER ACZON: I fully agree with
21 Commissioner Ohigashi with the request of those
22 additional information to make our decision, but what
23 bothers me the most, is after eight hours of this
24 hearing, I'm still not sure of the total acreage that
25 we talking about. We were presented by competing

1 maps which doesn't show really the actual boundaries
2 where it is 14.8 or more than 15 acres. Nothing on
3 those maps convinced me of the specific number that
4 we supposed to be using. So, therefore, I'm going to
5 be supporting the motion.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Aczon.

8 Commissioner Cabral.

9 VICE CHAIR CABRAL: I have a problem with
10 the motion, and most of it I support, but in one
11 regard I'm not really clear on history with the Land
12 Use Commission, but it bothers me.

13 This is really a 25.4-acre parcel. So the
14 fact that we're going to sliver off
15 14-point-something-acres so we can make it easier to
16 do something different because whatever, whatever,
17 and I look at that in dreaded fear for my own County
18 where we've got lots of big ag land, and it would be
19 really easy to buy affordable ag land and sliver off
20 14 acres at a time and make it industrial waste land
21 or something different.

22 And it bothers me because I think that
23 that's contrary to what our job is as the Land Use
24 Commission for the State in trying to keep an eye on
25 the conversion of Agricultural land into different

1 uses.

2 So I would have a problem with that portion
3 of that, because I think it's a 25-acre parcel, not a
4 14-acre parcel. Thank you.

5 CHAIRPERSON SCHEUER: But, Commissioner
6 Cabral, was that speaking in favor of the motion?

7 VICE CHAIR CABRAL: Actually I would have
8 to vote against it, because I am more concerned about
9 that practice of letting people take large parcels of
10 land and sliver off those in order to avoid having
11 the State -- we represent the State not an individual
12 County.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Cabral.

15 Commissioners, we're in deliberations.

16 Commissioner Okuda.

17 COMMISSIONER OKUDA: Mr. Chair, this might
18 be the first time in my life I'm really not sure what
19 I should do, and maybe I can ask for help from all of
20 you for guidance.

21 I agree with Commissioner Cabral about the
22 fact that I have the same fear that we're dealing
23 with an unsubdivided land, and essentially we are
24 allowing a landowner to unilaterally pick and choose
25 when there's going to be subject matter jurisdiction

1 of the Land Use Commission, and when it's not.

2 I'm not saying it's forum shopping, but I
3 think there is a policy question there which I'm not
4 sure how it really comes down, and I would like to
5 hear what everybody else thinks, because that does
6 trouble me.

7 The other part that troubles me, frankly,
8 is the fact that I believe there is a serious
9 constitutional issue here where there is an
10 infringement on First Amendment rights to religion.
11 And, you know, the Hawaii Supreme Court hasn't said
12 just because you're a church, you don't have to
13 follow zoning laws, building codes, you know, noise
14 restrictions, or anything like that.

15 But I really don't see any real evidence or
16 things in the record which indicate that there's an
17 intention to have the type of review which I believe
18 the First Amendment, the Fourteenth amendment and the
19 Hawai'i Constitution requires for the protection of
20 religion.

21 And, yeah, the church is going to be
22 treated differently under that scenario, but I
23 believe that's what the First Amendment requires. So
24 right now I don't mean to be wishy-washy, but these
25 are the two things that are competing in my mind.

1 I see what Commissioner Cabral says that,
2 you know, this is like allowing applicants to
3 unilaterally determine what comes before the Land Use
4 Commission, or when the statute applies and when the
5 statute doesn't.

6 But then at the same time, based on this
7 record which I do agree is not a complete record, I
8 think if I had to make a decision based on an
9 incomplete record, I truly believe there is at least
10 a prima facie case of a violation of the First
11 Amendment.

12 So I'm not sure what to do, so I want to
13 listen to other people some more.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Okuda.

16 Commissioner Wong.

17 COMMISSIONER WONG: Chair, so if I second
18 the motion for remanding it back; if we don't remand
19 it back, we either going to say, "yes", or "no", or
20 add more restrictions.

21 So if we say "yes", the Special Use Permit
22 goes, that is 14.8, whatever this acreage is, we
23 don't know. If we say "no", what happens? Right.
24 If we said it with more restrictions, it's still
25 smaller than the 25 point something acres. But

1 sending it back to the Planning Commission, at least
2 it gives it the opportunity to say, look, this is our
3 statement, it should be, you know, don't parcel it
4 out. Take it as a whole. Or if you're not taking it
5 as a whole, don't come to us, and we won't know about
6 it, but we won't, right? Either way.

7 So either way we have to make a statement
8 now to say, Planning Commission, we are unsure what
9 is the acreage. What's happened. So that's why I
10 second this motion.

11 CHAIRPERSON SCHEUER: Commissioner
12 Ohigashi.

13 COMMISSIONER OHIGASHI: I think the problem
14 is that we do not have a rule, regulation or statute
15 which identifies what 15 acres, and I think that,
16 according to the statutory framework, that that
17 decision is within the County of Maui. The County of
18 Maui should or all of our counties should be the ones
19 to protect the incremental development of property.

20 If they believe that this an incremental
21 development of property, then they should rule it's
22 as such and require them to come to the Land Use
23 Commission for the full 25 acres, if they believe
24 it's for the full 25 acres.

25 But it appears to be by statutory scheme

1 under the County's control, and that's why I make
2 that motion with regard to that.

3 The second part regarding the condition.
4 If the findings and conclusions, the findings
5 prepared by the parties are not able to support the
6 conclusions that they have, then -- or the conditions
7 that are in there -- then we can move to modify by
8 saying that, or we can remand again to say that you
9 don't have the basis. That's assuming that they
10 don't have the basis to support these conclusions to
11 try and rectify the problems that Commissioner Okuda
12 has raised.

13 If there is, to wrestle with the First
14 Amendment issues that have been raised would be more
15 properly, I believe, from the County with the
16 conditions that they believe are justifiable and
17 supported by the record, then they would have to
18 plainly tell us why.

19 If they find that these conditions are not
20 supportable by the record and cannot be, and it
21 violates those First Amendment privileges afforded to
22 the Applicant, then they have to make that decision
23 to reduce or change the conditions.

24 But I don't believe we can modify the
25 conditions as indicated by the Office of Planning.

1 So I think that the pathway that is
2 contained in the motion is the most sensible within,
3 and supported by the statutory framework and the
4 relative roles assigned by that statutory framework
5 to the various parties.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Ohigashi. We are in deliberations.

8 Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you.

10 Mr. Ohigashi, you've convinced me. I,
11 after listening to your explanation, I see your point
12 and agree with it, that when you look at the plain
13 language of the statute, you know, 15 acres or less,
14 or is it less than 15 acres, the magic 15 number is
15 by statute delegated to the County.

16 So I agree with your analysis that other
17 collateral issues by necessity would be delegated to
18 the County also. And that's something we should not
19 get involved with. So you've clarified my thinking
20 and addressed my concerns, so I'll be voting in favor
21 of the motion.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Okuda.

24 Anything further before I speak,
25 Commissioners?

1 I was a bit conflicted as well as stated by
2 Commissioner Okuda, and particularly for the reasons
3 spoken by Commissioner Cabral. Particularly with
4 this proposed use and the nature of this use to me
5 it's really clear, and to me like it is a very
6 virtuous thing, there is not a sharp boundary line as
7 I understood it between the worship practices in the
8 building and the practice of taking care of this
9 property, it is integrated, which I think is a great
10 thing.

11 But to me that means like these lines on
12 paper have relatively little meaning. So that gives
13 me pause, but I believe procedurally the way we have
14 to proceed with the record before us is to remand on
15 the matter that Commissioner Ohigashi has proposed.

16 The reasons why I believe this way, if all
17 you Maui people will forgive me for mentioning an
18 Oahu chief in addition to a Maui chief, Kaka'alaneo,
19 and then Mailikukahi was his contemporary on Oahu,
20 and both of them are famous for being the first chief
21 who really very actively and sharply set out moku and
22 ahupua'a boundaries.

23 And it was really in many, many, many
24 stories was the acts of these chiefs, and it was very
25 clear, when the boundaries were set right, the people

1 thrived. And, you know, without being too arrogant
2 about what we're asked to do, I believe that's what
3 we are asked to do as a Commission. When the
4 boundaries are set right the people thrive.

5 And that's why I get very frustrated when
6 during these kinds of proceedings, when we are
7 looking at, ah, a slight shift, it's kind of -- I
8 much prefer the district boundary amendment. It's
9 very clear what we are trying to do and what we are
10 allowing in some places and not allowing in others.

11 In regard to that, I was thinking about
12 those two chiefs, and thinking about speaking, the
13 invoking of the word "pono" earlier by one of the
14 testifiers. And commonly translated as
15 "righteousness" but it's a word with incredibly deep
16 layered meaning, and one of them is like pono
17 procedures. It's like you have to follow the
18 procedures right.

19 But partly I think what it felt, just funky
20 this whole process is that clearly in their attempt
21 to do good things on this property, there have been
22 violations and there have been broken relationships
23 and other things that have happened with some of the
24 neighbors despite attempts to try and reconcile
25 things as well. But there is some roughness here,

1 right. There is some awkwardness going on in this
2 community. And the only thing I can say regarding
3 that is that I do appreciate -- as a degree in
4 environmental studies, who's been doing environmental
5 problem solving for 30 years, and people looked at me
6 and said, what do you do, recycling? No, no, not
7 quite that. Little more sophisticated than that?

8 That, yes, we need clean food, we need
9 clean energy, but the key to our long-term
10 sustainability is just as much the relationships we
11 build. And that I think partly the difficulty we're
12 having with this is like things not starting from a
13 sort of pono proper place and then proceeding from
14 there.

15 That said, I will be voting in favor of the
16 motion.

17 Is there anything further, Commissioners?

18 If not -- Commissioner Cabral.

19 VICE CHAIR CABRAL: Somewhat in defense of
20 my position and my concerns is because I'm the
21 practical person who lives these lives, it's okay, I
22 can see it coming, the complaints from the neighbors
23 is going to be that the five dogs that are owned by
24 the house -- that live at the house, that is outside
25 of the 15 acres bark nonstop every time a car comes

1 by. And 100 cars have come by today to go down
2 there, and then 100 cars leave.

3 So now the barking regulation is regulated
4 by some county ordinance, I'm sure. And I know what
5 that takes, you have to get it tape recorded that it
6 barks that long, and then take it to the police, and
7 trust me, I try, I try all the time. You do nothing
8 about it and the dog will bark forever.

9 Or if you've got five dogs, they're not
10 regulated because they're outside of the 15 acres,
11 right? But the 15 acres and the activities of what
12 is going on with this Special Use Permit is causing
13 that to happen because you've got 100 cars coming
14 down for some event and then leaving.

15 So I don't see that as separately 15 acres,
16 I see this a 25 acres, and separating that is only
17 going to make it more justifiable to have the
18 problems, because it's really an integrated
19 situation.

20 So that's just my practical world that I
21 live in. So I will still vote against it, just on
22 principle that I think it shouldn't be slivered off.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Cabral.

25 Anything further? If not, Mr. Orodener,

1 please poll the Commission.

2 EXECUTIVE OFFICER: Thank you, Mr. Chair.

3 Commissioners, excuse me if I refrain from
4 repeating the motion again. Generally it's just to
5 remand the matter to county for further proceedings
6 and request certain questions be answered.

7 Commissioner Ohigashi?

8 COMMISSIONER OHIGASHI: Aye.

9 EXECUTIVE OFFICER: Commissioner Wong?

10 COMMISSIONER WONG: Aye.

11 EXECUTIVE OFFICER: Commissioner Okuda?

12 COMMISSIONER OKUDA: Yes.

13 EXECUTIVE OFFICER: Commissioner Cabral?

14 VICE CHAIR CABRAL: No.

15 EXECUTIVE OFFICER: Commissioner Aczon?

16 COMMISSIONER ACZON: Yes.

17 EXECUTIVE OFFICER: Chair Scheuer?

18 CHAIRPERSON SCHEUER: Aye.

19 EXECUTIVE OFFICER: Commissioners Giovanni
20 and Chang are absent.

21 The motion passes with five affirmative and
22 one nay.

23 CHAIRPERSON SCHEUER: There being nothing
24 further today, this meeting will be in recess until
25 9:00 a.m. tomorrow, November 7th. We will reconvene

1 at 650 Palapala Drive in Kahului.

2 (The proceedings recessed at 5:02 p.m.)

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on November 6, 2019, at 9:00 a.m ., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 6th day of November, 2019, in
Honolulu, Hawaii.

/s/ Jean Marie
JEAN MARIE McMANUS, CSR #156