

PLANNING AND SUSTAINABLE LAND USE COMMITTEE
Council of the County of Maui

MINUTES

November 18, 2021

Online Only Via BlueJeans

CONVENE: 9:00 a.m.

PRESENT: Councilmember Tamara Paltin, Chair
Councilmember Kelly Takaya King, Vice-Chair
Councilmember Gabe Johnson, Member
Councilmember Tasha Kama, Member (out 10:30 a.m.; in 10:50 a.m.)
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member (out 10:49 a.m.; in 11:34 a.m.)
Councilmember Keani N.W. Rawlins-Fernandez, Member (out 10:49 a.m.)
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member (out 10:49 a.m.; in 11:34 a.m.)

STAFF: Wilton Leauanae, Legislative Analyst
Alison Stewart, Legislative Analyst
Richard Mitchell, Legislative Attorney
David Raatz, Deputy Director
Clarita Balala, Committee Secretary
Lenora Dineen, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Axel Beers, Executive Assistant to Councilmember Kelly Takaya King
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Sarah Sexton, Executive Assistant to Councilmember Kelly Takaya King
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez
Jordan Helle, Executive Assistant to Councilmember Yuki Lei K. Sugimura

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
Kathleen Ross Aoki, Planning Program Manager, Department of Planning
Kimberley Willenbrink, Planner, Department of Planning

OTHERS: Dave Jorgensen, Esq.
Vera Sredanovic
Crystal Schmitt
Winston Cheshire

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(2) additional attendees

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR PALTIN: . . .*(gavel)*. . . Aloha kakahiaka and dzień dobry. Will the Planning and Sustainable Land Use Committee meeting of November 18th come to order. The time is now 9:00 a.m. If everyone can please silence their cell phones or any other noisemaking devices, that will help our cause. My name is Tamara Paltin, and I will be your Chair for today's meeting. I'm broadcasting live and direct from the West Maui District Office, which is open to the public, although we are following all the CDC guidelines. And my aide Angela is here with me, and she is more than six feet away. And with us today we have Committee Vice-Chair Kelly King from South Maui. Dzień dobry and aloha kakahiaka.

VICE-CHAIR KING: Aloha kakahiaka and dzień dobry from Poland. That's the Polish greeting. And ohayo gozaimasu. It's a beautiful day here and I'm coming to you from my same spare room, but I'm happy to say I tested negative after being home for three days, so hopefully we'll transition tomorrow and do the Council meeting from the district office.

CHAIR PALTIN: Sounds lovely. Okay. Next up we have Councilmember Gabe Johnson broadcasting from Sweetheart Rock, I'm not sure.

COUNCILMEMBER JOHNSON: Yeah. In the background is Pu'u Pehe, that's right. Dzień dobry, Chair. Dzień dobry, my fellow Councilmembers. I am home alone on the beautiful island of Lānaʻi. We had rain yesterday and boy, did our deer need it. So far little bit cloudy, hopefully praying for more rain. Aloha.

CHAIR PALTIN: Aloha. And we have from the neighborhood, Councilmember Tasha Kama. Aloha and dzień dobry.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair. And dzień dobry to all of my fellow Councilmembers. And it is a beautiful day today, so thank you, Chair.

CHAIR PALTIN: Thank you. Are you in a non-public location?

COUNCILMEMBER KAMA: Thank you for asking. No, I am in my home, in my workspace, and I'm alone. Thank you for asking.

CHAIR PALTIN: And from the island of Molokaʻi we have Councilmember Keani Rawlins-Fernandez. Dzień dobry and aloha kakahiaka.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair, mai Molokaʻi nui a Hina. Is anyone else hearing that feedback?

CHAIR PALTIN: There's a little reverb. Can hear you.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Okay. Let's see, I'm at the Moloka'i District Office alone in the entire office by myself. Okay. What else do I need to say? Yeah. Dzień dobry kākou.

CHAIR PALTIN: Dzień dobry. And from jacaranda country, but she might be in Wailuku, we have Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: I am in Wailuku. I'm at the County Building, 8th Floor, and I'm on this side of the building and Mike Molina is on the other side. So nice to have some company. Good morning, everybody. Dzień dobry. What country are we in?

CHAIR PALTIN: Poland.

COUNCILMEMBER SUGIMURA: Poland.

CHAIR PALTIN: We're in Hawai'i, greeting you with a Polish greeting. Okay. And Councilmember Mike Molina did let Staff know that he would be running a little tiny bit late, so we'll be sure and greet him when he comes in. Mai ka Administration, we have --

COUNCILMEMBER SINENCI: Dzień dobry, Chair.

CHAIR PALTIN: -- Corporation Counsel. I saw Mr. Hopper, but it says Stephanie Chen.

COUNCILMEMBER LEE: Hello. You forgot us.

CHAIR PALTIN: Oh, Council Chair Alice Lee as well. Dzień dobry and aloha kakahiaka.

COUNCILMEMBER LEE: Okay. You forgot both of us, Member Sinenci as well, I think. Anyway, dzień dobry to all...to all of the colleagues and viewing and listening public. I am home in my office alone. Looking forward to your meeting, Chair.

CHAIR PALTIN: Thank you. Sorry, I didn't mean to skip you over. And from East Maui we also have Councilmember Shane Sinenci. Dzień dobry and aloha kakahiaka.

COUNCILMEMBER SINENCI: Dzień dobry, Chair. To our colleagues and to our Polish ohana, mai ka Hikina. I'm here at the Hāna Cultural Center with my EA. We're overlooking Keone o Kapueokahi. Aloha.

CHAIR PALTIN: Aloha. And from looks like Wailuku, but Makawao, Ha'ikū, and Pā'ia, we have Councilmember Mike Molina. Aloha and dzień dobry.

COUNCILMEMBER MOLINA: Aloha and dzień dobry, Madam Chair, my colleagues, and everyone else joining us for our PSLU meeting today. For the record, I'm broadcasting from my Council office in the County Building overlooking beautiful Kahului Harbor. Aloha.

CHAIR PALTIN: Aloha. Okay. And from...so try this again. From the Administration we have

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Deputy Corporation Council Michael Hopper, Planning Director Michele McLean. Our Committee Staff, we have Committee Secretary Clarita Balala, Legislative Analyst Wilton Leauanae, Legislative Analyst Alison Stewart, Legislative Attorney Richard Mitchell, and Assistant Clerk Lei Dineen. We have three items on today's agenda. PSLU-17 Maui Dragon Fruit Farm LLC's Request for a Time Extension and for the Uses Allowed Under the Conditional Permit Granted by Ordinance 4295 (Lāhainā); PSLU-51 Status of Active Conditional Permits; and PSLU-3(1) Implementation of the Countywide Policy Plan and the Maui Island Plan. That's an annual status update. So I believe we do have some testimony, and I'll just read the testimony guidelines at this time. Let's begin with public testimony. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans link as noted on today's agenda. Testifiers wanting to provide audio testimony should call 408-915-6290 and enter meeting code 149 341 846, also noted on today's agenda. Written testimony is encouraged and can be sent via the eComment link at mauicounty.us/agendas. Oral testimony is limited to three minutes per agenda item. When your name is called, please unmute yourself by clicking the video and microphone icons, or if calling in, press star four to unmute yourself. Please be courteous to others, muting video and audio while waiting for your turn. When testifying, please state your name. Please also state if you are testifying on behalf of an organization or are a paid lobbyist. If you have joined this online meeting, Staff will assume you wish to provide testimony and will add you to the list of testifiers. Once you are done testifying, or if you wish to view the meeting without providing testimony, please disconnect from the BlueJeans meeting. You may continue viewing on *Akakū* Channel 53, Facebook Live, or mauicounty.us. Once oral testimony concludes, only Councilmembers, Staff, and designated resources will remain online, and all others will be dropped from the BlueJeans connection. A link to the list of testifiers is posted in the chat. Please be mindful that chat should not be used to provide testimony or to chat with others during the meeting. Members, I would like to proceed with oral testimony. Staff will monitor individuals joining the meeting and will add the person's name or last four digits of the phone number to the testifier's list on Google Docs. Chair will call on individuals in the order as they appear on the list. Disconnected testifiers will be greyed out. Non-testifiers will be struck out or removed from the list. Completed testimony will be highlighted in green. Staff will run the timer. When you hear the timer, that means you've got to wrap up. And Chair will move on to the next person until all testifiers have been called. Okay. So first up on the testifier list we have Dave Jorgensen on PSLU-17. Okay. Mr. Jorgensen, we're ready for your testimony. Please proceed.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. JORGENSEN: Good morning. I assumed I was second after Ms. Schmitt, but if you want to take me first, that's fine. I'm testifying today on behalf of my clients, Vera Sredanovic and her husband Winston Cheshire. It's...I take it as a good omen that the words for today are dzień dobry, which is a very familiar greeting for Ms. Sredanovic. I understand it's Polish, but she's Yugoslavian, so that's...I take that as a good omen. I don't want to take too much of your time. My client has provided all of you with a lot of emails, a lot of information about this matter. You know, I want to say I understand, you know,

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the...the applicant is a farmer and...and we respect the efforts and the hard...hard work that farmers go through; however, they have to follow the rules like everybody else. And based on the videos and the pictures that my client has provided, many of which you guys have seen at other hearings or that have been provided to you by her, there are still some questions my client has. She's asked the questions of the...we believe the proper channels at the County. There's been some level of investigation done. Many of the issues that she's raised have not been addressed yet. So we do ask that this be tabled until all issues have been resolved so that the area can...everybody...everybody out there can live in peace. I understand from a couple people I've spoken to at the County that the applicant may be looking to revise her request, so we don't know what that...if that's true or what that means, but we would be very interested in...in knowing what those revisions may be. I do understand from my client that a couple...the two RVs that were there that youth workers were living in illegally have been removed, so that's...that's a good thing. I also know that a week ago after this matter was posted there was a very loud, long-lasting party on the property that caused problems. So we'll be very interested to hear what the Committee does. And my client will be continuing to at least provide information to you all and to the Planning Department. Again, and I know maybe it seems like this is not true, but they truly want to be good neighbors with everybody out there. But I ask that you...when you think about the issues that have come up, if you were living next to a property . . . *(timer sounds)*. . . where this was going on, how would you feel. Thank you very much for your time and your consideration of this matter.

CHAIR PALTIN: Thank you, Mr. Jorgensen. Members, any questions for the testifier? Member Sinenci, Committee Vice-Chair King, and then Member Molina. Go ahead, Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Mahalo, Mr. Jorgensen. Just for clarification, you represent the neighbor?

MR. JORGENSEN: Yes, yes. I apologize if I wasn't clear. I'm an attorney in Wailuku, and I represent the neighbors.

COUNCILMEMBER SINENCI: Thank you.

MR. JORGENSEN: You're welcome. Thank you.

CHAIR PALTIN: Member King?

VICE-CHAIR KING: Thank you, Chair. Aloha, Dave.

MR. JORGENSEN: Aloha.

VICE-CHAIR KING: Thanks for your testimony. Did you...did you get a chance to look at the agenda and the accompanying documents? Because there was a revised version of the bill on the agenda, so you were...you were saying...

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MR. JORGENSEN: Yeah, I'm not sure...I'm sorry...sorry for interrupting.

VICE-CHAIR KING: No, I just...you had indicated you didn't know what they were asking for, and I think it's in the agenda, so just wanted to see if you had looked at that.

MR. JORGENSEN: I...I reviewed the agenda and many of the documents that were in there. I understood from some conversations yesterday I had that there may be further revisions and maybe I'm...maybe I misunderstood. Maybe what I was being told was what had already been revised. So I...honestly, I'm not sure what the people I was talking to meant. I took it as that there was going to be further requested revisions at this meeting.

VICE-CHAIR KING: Oh, okay. Well, you may be right about that, and I just don't know. I just want to make sure...

MR. JORGENSEN: Okay. Thank you for your question. I'm not sure.

VICE-CHAIR KING: Okay. All right. Thank you, Chair.

CHAIR PALTIN: Thank you. Member Molina?

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Aloha, Mr. Jorgensen. If...in your testimony you mentioned the request for deferral. Just...could you touch on just a couple of key points for the reason you would like this matter...you and your client would like to have this matter deferred?

MR. JORGENSEN: Again, as...as detailed in her communications, there's issues with parties, there's issues with the number of events that are being held, there's issues with prior violations, which many maybe have been cleared up. There's a question of the area of the property which is actually being farmed or attempted to be farmed, which we believe is below the requirement. There's questions about the total area of the land, which we believe kicks it to the State level instead of County level. Those are a few of them.

COUNCILMEMBER MOLINA: Okay. So you feel that if we take action today this...it will just still...these problems will, by not being addressed, in your client's opinion will still cause a problem or a division between your client and the applicant, yeah?

MR. JORGENSEN: Yes. And...and...and with all due respect, I don't mean this in a bad way, but it would be kind of this Committee kicking it down the road to the Council, which is all of you. There's still an opportunity for us to bring up other information, but we'd rather it be addressed now.

COUNCILMEMBER MOLINA: All right. Okay. Thank you, Mr. Jorgensen. Thank you, Madam Chair.

MR. JORGENSEN: You're welcome. Thanks for your question.

CHAIR PALTIN: Thank you, Member Molina. Any further questions from the Members? I have

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a question for you. Two questions. The first question is, I guess, if we defer it, then it remains as status quo. Is that your interpretation?

MR. JORGENSEN: I'm sorry, I should clarify. I'd like you to deny it, but if you're going to make a decision, I prefer it not be done today. So thank you. Sorry, I should clarify.

CHAIR PALTIN: Okay. Okay. So there's that. And then the second question is the conditional permit is mainly about the weddings and the like paid events on the property. There's also a house, a rental house on the property. So I guess my question is, like with the paid events like weddings, there's conditions on the events, but if there's not the events, the residents of the house can have parties, and it can last longer and it's not part of the condition. Like my neighbors do karaoke all night long, you know. So I just was...wanted to clarify that if there's not this conditional permit and the renters have a party, there's not...I mean it's just like me and my neighborhood where every Thursday night we got karaoke, you know. So just wondering about that. Like the conditional permit has these conditions, but a rental house, people are allowed to have gatherings, right?

MR. JORGENSEN: Technically yes, they are allowed to have gatherings within the parameters of, you know, social...social interaction and...and neighborliness and community standards out there. Number one, if...if the applicant...I mean if...if this all ends and it's just a rental house on her property, then that's something the association out there will take action on...the neighborhood...the homeowners' association. And you can't have parties all night, you can't have raves all night with lights and noise and all that, you just can't. I mean, that's...the police will show up to your neighbors, my neighbors, or their neighbors. As far as applying for a CUP or any other kind of discretionary permit, I mean, the general idea is the property has to be in compliance with the other laws of the world, that it's not in isolation that okay, well, we're just looking at this, and you're following the rules for weddings, but we don't care what you're doing over there. So in theory yes, and if it's just guests coming to the tenant's house and having a couple beers and playing some...you know, playing some music and then going home, and that...that's fine. But from the communications that I've seen from the applicant, you know, they're...they're not saying that's what happened, that's what's going on. They're saying well, we have some weddings, but we have farm tours, and then we have dinner, and then we have this, and we have dinner. What was the other thing? The aqua ball tour, and then we have dinner. You know they're basically saying yes, we have events after our other events. They're not saying it gets loud, but my client has video and pictures of the parties. And again, we're not trying to be bad neighbors, it's just my clients have a right to live in peace out there too. So...but yeah, in isolation, the tenants have a right to have guests, that is correct. But --

CHAIR PALTIN: Thank you for that clarification.

MR. JORGENSEN: -- unfortunately, we're not really operating in isolation in this matter.

CHAIR PALTIN: And then in terms of the amount of agriculture being done, they're okay with real agriculture, whether it's planting or livestock, cows, roosters, animals...

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MR. JORGENSEN: My clients are, yes.

CHAIR PALTIN: Yeah.

MR. JORGENSEN: And that it should be 51 percent of the land area.

CHAIR PALTIN: Okay.

MR. JORGENSEN: And it's not.

CHAIR PALTIN: So they don't have any problem with animal noises or animal smells or anything...

MR. JORGENSEN: No, that's...they live out there, I mean that's...they...they respect farming and ag. That's...you know, they understand that. That would be...without overstating, I don't want to speak for them, we've never had this discussion, but I know because I helped them when they...years ago when they bought the property. I...that's what they were looking for, pastoral setting and ag community. So yeah, they don't have a problem with that.

CHAIR PALTIN: Okay.

MR. JORGENSEN: It's more the zipline and the aqua tours and the raves and the weddings and the noise. And the...the youth who, God bless them, I was...I was a rambunctious youth once myself too. But you know, and God bless them all, but it's...you know, they get loud, and they can stay up late, much later than I can.

CHAIR PALTIN: The pigs and roosters, no problem.

MR. JORGENSEN: No problem.

CHAIR PALTIN: (*audio interference*) problem. Got it. Okay. I see Member Sugimura has a question as well.

MR. JORGENSEN: Thank you for your questions.

COUNCILMEMBER SUGIMURA: Thank you, Mr. Jorgensen. So I guess about the party and the noise. So does it go past...maybe we have to...we have to ask your client, but does it go past 10:00? I think 10:00 is the noise ordinance that things should quiet down. I live one block away from the Kula Community Center. So I'm just wondering --

MR. JORGENSEN: Yeah.

COUNCILMEMBER SUGIMURA: -- if the parties stop at 10:00?

MR. JORGENSEN: Miss...sorry, sorry for interrupting. Ms. Sredanovic can clarify. My

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understanding is they go later than that.

COUNCILMEMBER SUGIMURA: Okay.

MR. JORGENSEN: And I mean, obviously different...different events last longer than others, but yes.

COUNCILMEMBER SUGIMURA: Thank you. Thank you very much.

MR. JORGENSEN: Thank you. Can't hear.

VICE-CHAIR KING: Chair, you're muted.

CHAIR PALTIN: Any more questions for the testifier? Seeing none. Thank you so much for your testimony.

MR. JORGENSEN: Thank you very much. Have a good day.

CHAIR PALTIN: You too. Next up we have Vera Sredanovic. We're ready for your three minutes.

MS. SREDANOVIC: Thank you so much, Tamara and Michele, for giving us the opportunity to provide information in support of the CUP violations. I see that also we had 13 of our neighbors write this time, which is great because neighbors are the best witnesses of what's going on here. Our main concerns are not the sources of disturbance, and Jorgensen explained that pretty well. It's weddings, ziplines, and up to 15 transient young adults and more with their friends living at the property and partying. These non-ag-related activities were enabled by the presentation made from the owners that they have more than 51 percent of 27 acres, which they never had. Also, Crystal stated in her email, response to Tamara, that they were no longer in violation of having RVs at the property. While they did remove two RVs, one remained for a while, and then they removed that one, and...but the van that was in between those has been moved and now is tucked away between a structure, a container, and a shed...I mean, a hedge. So the only way to see that one now is from the air, I provided that to you. So that's still there. And it appears that it was also used for housing, which is normal because I don't know how you can house 15 kids in a two-bedroom ohana. She also stated that she didn't have six weddings in December. I provided you the pictures. I can provide the longer videos where you can see the grooms and bride. In prior...prior County meetings, Crystal stated the ziplines and tours are concluded by noon, and I know the permits say that also, but I also have a video showing ziplines running after 5:00 p.m., and we also had our neighbor's testimony that it was done even in the middle of the night. So I'm not sure how Crystal can state that they conclude tours and ziplines by noon, and then also state that four of the September events were ziplines and tours, dinners, so that's after those hours. So that kind of contradicts itself. So I don't know if she's just now confirming she does them after she said she's doing them. So anyway, but as you can see also from her text that I provided to you, she also said that she can have 12 events per quarter, which seems not to be accurate. She stated she can have unlimited

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amounts of picnics. I haven't see any distinctions between, you know, events. And it seems that some weddings are being misclassified or ceremonies. Also, based on the undeveloped land, it seems that the main focus is not really on farming, and we love farming, that's why we moved here. The...the crops that only take nine months, the like dragon fruits to yield, the little section that was burned at the bottom of their lot was replanted only recently. And you know, it's been over three years since the fire. So it seems that ag is just an afterthought because it is a necessary thing to obtain permits for those other activities. This just seems unfair to other businesses who conduct their operations in properly ag zoned areas, and they're paying proper taxes based on those property taxes. They're paying their employees because they can use the ag . . .(timer sounds). . . ag...I'm sorry. Did you want me to finish or...

CHAIR PALTIN: Yeah, if you can please wrap it up.

MS. SREDANOVIC: Oh, okay. Thank you so much. So that's why...as I said, I support the farming. It's unfortunate that this farm doesn't seem to contribute to the *(audio interference)* and opportunities, and it doesn't contribute to food sustainability, which we all support and we would love to have neighbors like that. So thank you so much for considering all of that. And I know sometimes you...there's some other forces that make you make decisions which are contrary to provided information, but if that ever happens and you do decide to proceed with this, we beg to have *(audio interference)*. Crystal stated once that she did live at the property when she had the prior tenants moved, but I think *(audio interference)* and I said yes that would be wonderful because then I wouldn't be hearing her telling me that her kids are asleep in the middle of the night when I call her and they're partying. *(audio interference)*. So I said please move in. So anyway, that...that's my...my two cents. Thank you so much. And I know you work so hard and you have to listen to all of this, which is not fun. Thank you.

CHAIR PALTIN: Thank you. Okay. Members, any questions for the testifier? Member King?

VICE-CHAIR KING: Thank you, Chair. Aloha --

MS. SREDANOVIC: Aloha.

VICE-CHAIR KING: -- trying to see if you're on the screen. I guess we don't see your...your video. But I wanted to ask you, we heard from Mr. Jorgensen that...that...that the illegal RVs are gone, but are all the same people still living there, do you know?

MS. SREDANOVIC: Yes. So I'm sorry, but I've been trying every time to turn my video. It seems when my audio is on it doesn't let me turn the video, so I don't know why you can't see me. I apologize for that. I can try turning off the audio and then...

VICE-CHAIR KING: That's --

MS. SREDANOVIC: Okay.

VICE-CHAIR KING: -- okay.

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MS. SREDANOVIC: So yeah, so they...they had like this whole area--well, I send you a picture if you had the chance to...to review our emails--where they had the RVs, they had the little structure. That...that was an illegal structure that they started to build and then the...the...the Planning...

VICE-CHAIR KING: Right. Well, I...yeah, we heard all that, but I just...my question was, are all the same people still living on the property --

MS. SREDANOVIC: Yes.

VICE-CHAIR KING: -- and where are they living and...

MS. SREDANOVIC: Yes. So they all live there, and that is 15 people or something like that. It's way too many to house at that place. And there's still one van, which of course I'm assuming it's the same van that was in the same group where everybody was living. So now they moved to the property, to the ohana, but they're also partying there, and also partying at the gift shop because it's kind of like spread out now. There's...there's...whole night long you can see lights at the ohana, outside lights which are unshielded, and the gift shop also keeps the lights all night long. Like this morning when I got up at 7:00 a.m. the lights were still on, and all night they were on.

VICE-CHAIR KING: Okay. And then are you...and then are you able to...have you made any complaints to the HOA? You heard from the HOA...

MS. SREDANOVIC: Yes. Yes.

VICE-CHAIR KING: Oh, you have *(audio interference)*.

MS. SREDANOVIC: I did *(audio interference)*.

VICE-CHAIR KING: Do they just...do anything?

MS. SREDANOVIC: So...so HOA kind of...this is kind of funny because I unfortunately had to call police many times. So police would tell me well, did you talk to your HOA? Because these parties...actually, when I did call police, it was at midnight or 1:00 a.m. I never called police earlier than that. And I would...as you heard from those kids, I would flash at them the batteries like flashlight to let them know to stop it because I was...I was trying to be a good neighbor and let Crystal know, she didn't do anything. Then I was trying to work with the kids flashing the lights at them. They wouldn't stop, so then I started calling the police. So I send you the number of...of the report numbers from the police. And the police would tell me well, did you talk to the association? I said yes, I did, but my association says this is a police issue. So then at one discussion with the policemen I also told him that these kids are living there illegally, and I said that there's something going on at the County that they may...may stop that. So he said well, this is a County issue. So everybody kind of points at each other, and we're kind of stuck

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in the middle unfortunately, and...and...and we have...it feels like living next to the fraternity. So you know, it's okay when...

VICE-CHAIR KING: Okay. So did...so did the...the Planning Department come out and talk to you? Because they said they were going to investigate.

MS. SREDANOVIC: No. We...none of the CUP...I...I think what they focused...and I'm not familiar with the process, was only on the RVs, illegal living in illegal structures. So there was no investigation into CUP violations. And I don't know who does that, that's why I'm so sorry I bug you and I send you the information. I send...

VICE-CHAIR KING: That's...that's fine. I think you answered my question. It is supposed to be the Planning --

MS. SREDANOVIC: Thank you.

VICE-CHAIR KING: -- Department, I think, that enforces. All right. Thank you. Thank you, Chair.

MS. SREDANOVIC: Thank you.

CHAIR PALTIN: Any further questions for the testifier? Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Thank you very much for testifying and the information. So you're basically saying when parties happen or the noise, it's past the 10:00?

MS. SREDANOVIC: Yes. That's the only time...I mean, they happen all the time, but the only time I called police is at midnight or 1:00 a.m. because I just don't want to waste the resources. I feel horrible and I apologize every time to the police, but if I can't sleep and I contacted the owner and she's not available and she texted the next day to tell me they didn't party, they told her they were asleep and she believes them, then what am I going to do? It's like (*audio interference*).

COUNCILMEMBER SUGIMURA: Thank you.

MS. SREDANOVIC: You're welcome.

CHAIR PALTIN: Any further questions for the testifier? You guys can hear me, right? Oh, okay.

COUNCILMEMBER SUGIMURA: Yes.

CHAIR PALTIN: All right. So no further questions. All right. Thank you so much for your testimony.

MS. SREDANOVIC: Thank you so much for listening. Thank you.

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CHAIR PALTIN: Next up we have Crystal Schmitt. We're ready for your three minutes. And then Crystal will also be a resource during the item, but she also wanted to provide testimony as well.

MS. SCHMITT: Aloha, Land Use Committee Councilmembers. My name is Crystal Schmitt. My husband Larry Schmitt and I are the owners of the Maui Dragon Fruit Farm. The Maui Dragon Fruit Farm was established in year 2009 with a mission to commercialize organic dragon fruit growth on Maui. We have brought in 16 best varieties of dragon fruit from all over the world. In the past ten years, we have distributed thousands and thousands of dragon fruit cuttings to residents on Maui and other Hawaiian islands to help people to grow dragon fruit in their backyards and to establish a small commercial dragon fruit farms. Dragon fruit has since become more and more available all over Hawai'i. Our focus is on organic farming. Organic farming is very challenging in Hawai'i due to the fact that there are bugs and other insects also enjoy this great weather where we all...all enjoy. On the other parts of the world where winter can occur, the freeze can kill the bugs in the winter. In Hawai'i we do not have that. So bugs multiply all year round. Organic farming is most suited in Hawai'i for small and medium-sized farms because of that. Since we have very limited land resource in Hawai'i, it's even more important that we encourage distributed farming, which means all people who own the land to engage some type of food production. If every family who owns land can produce some food for themselves and maybe for two other families who live in condos and apartments and cannot produce, our goal of food self-sufficiency can much easier to achieve. We also focus on agriculture education, both to our residents and to our tourists. We need to educate our residents, especially our kids, that farming and food production is not other people's business, it's everyone's business. For our farm operation, in addition to try to replant and restore our dragon fruit fields which severely damaged by the fire in the year 2018 due to Hurricane Lane, we're adding more and more other types tropical fruits to diversify. We are also a nursery. We selling succulent plants, dragon fruit cuttings, and we also have a great...great variety of agaves. We also diversified into livestock farming. We have ducks, chickens, and they both produce organic duck eggs and chicken eggs. I'm very, very happy here to tell you today that we are also in the process of establishing an alpaca farm. A herd of alpacas will arrive on our farm first week of January, 2022. Alpaca, another potential great livestock industry for Hawai'i. Livestock farming goes great together with tropical fruit farming. The manure from the alpacas can become great fertilizer for our fruit trees. . . .(timer sounds). . . Hawai'i's weather is very friendly to alpaca since they can grow...they can...we don't have to keep them warm. The other people, places in the mainland, when the winter they have to spend a lot of resources to keep those animals warm which we don't have to do here.

CHAIR PALTIN: If you can wrap it up, that was the three-minute timer.

MS. SCHMITT: Okay. So the alpaca fiber is a great product, which we can export to the mainland and to international like to Japan, Korea and China and all that. It's a great potential for Hawai'i to get into livestock other than cows. We are also excited that with this venture, and we will continue to strive to become a good example of using our

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limited land resources to the greatest potential. Thank you.

CHAIR PALTIN: Thank you. Members, may I ask that you hold your questions until the item comes up, as Ms. Schmitt will also be on as a resource for this item. Okay. Thank you. So everybody can ask questions, it's...let's just get through the testifier list first. Thank you so much for your cooperation. Next up we have Leighton H. Leighton H., we're ready for your three minutes. If you're on still. Okay. After Leighton H. we have the testifier with the last four digits 0208. Let me unmute you on our end. Okay. 0208, we're ready for your three-minute testimony.

MR. CHESHIRE: Good morning. Can you hear me?

CHAIR PALTIN: Yes, we can. If you are watching this on another device, if you can mute that other device. There was a little bit of feedback.

MR. CHESHIRE: Okay. How about now?

CHAIR PALTIN: Much better. Thank you so much. Go ahead.

MR. CHESHIRE: Thank you. Good morning, SLUC [*sic*] and County Councilmembers. My name is Winston Cheshire, and I live next door to the Maui Dragon Fruit Farm. Actually, two sides of our parcel is contiguous with their plot. I would like to point out that Ms. Crystal has not addressed the multiple complaints regarding noise, wedding guest reception counts, tent sizes exceeding applicable fire codes, and onsite housing a temporary non-local workforce. We commend her for being an organic farmer, but she's not addressing the issues that 14 of the neighbors are complaining about. Furthermore, I'm just not sure why weddings and receptions and ziplines and aqua balls are deemed to be permissible on the Maui Dragon Fruit Farm's agriculturally-zoned land when they're in violation of the required 51 percent minimum planting requirement for agricultural land. If you review the initial CUP application, Ms. Crystal stated that they needed to supplement their farm income by operating non-farm related activities, all the while having not planted the minimum required acreage for their 27.4-acre parcel. So in summary, it appears their business model is to operate non-agricultural businesses on agricultural land via a conditional use permit. So this and many other reasons form the basis of my opposition to the SLUC [*sic*] and County Council approval of extension of the CUP. Thank you.

CHAIR PALTIN: Thank you, Mr. Cheshire. Is there any questions? Member King?

VICE-CHAIR KING: Thank you, Chair. Aloha, Mr. Cheshire. Just wanted to find out if your complaints were registered earlier in the past with the Planning Department or the Police Department?

MR. CHESHIRE: Are you referring to the so-called request for service?

VICE-CHAIR KING: Well, if that's how you...that's the normal pathway to...to make a complaint. I know some people, you know, will just call up the Planning Department.

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So I just wondered if you were able to register the complaints about violations of the...the existing CUP.

MR. CHESHIRE: We did not.

VICE-CHAIR KING: Okay. All right. Thank you.

CHAIR PALTIN: Any further questions for the testifier? I had just one question. Do you live on the same property as Vera Sredanovic?

MR. CHESHIRE: Yes, Vera is my wife.

CHAIR PALTIN: Oh, okay. So she made complaints, but you did not?

MR. CHESHIRE: I'm sorry, I didn't hear that. Could you repeat?

CHAIR PALTIN: Your wife made the complaints, but you did not?

MR. CHESHIRE: Yes, she has been cataloguing an extensive number of CUP restriction violations. Is that the question that you want answered?

CHAIR PALTIN: Yes. Thank you. Any further questions for the testifier? Seeing none. Thank you for your testimony. We did get...we got in the chat that Leighton H. was not wanting to testify. So I will make a last call for testifiers. If there's anyone else wishing to testify, please unmute yourself and say your name or indicate in the chat that you would like to testify. Okay. Not seeing anybody raising their hand wishing to testify. Let's see. Members, any objection to close oral testimony at this time?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. So I will now close oral testimony. Any objection to accepting written testimony into the record?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. All right. So testimony is closed. We accepted written testimony.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR PALTIN: Members wishing to speak during today's meeting should say my name and raise their hand so that I may recognize you.

**PSLU-17: MAUI DRAGON FRUIT FARM LLC'S REQUEST FOR A TIME
EXTENSION AND FOR THE USES ALLOWED UNDER THE
CONDITIONAL PERMIT GRANTED BY ORDINANCE 4295 (LAHAINA)**

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(CC 18-34)

CHAIR PALTIN: Our first agenda item is PSLU-17, Maui Dragon Fruit Farm LLC's Request for a Time Extension and for the Uses Allowed Under the Conditional Permit Granted by Ordinance 4295 (Lāhainā). So you guys may remember that we already heard this item, and we got to a first reading...or we got to one of the readings on Council, and then we left it on the Council table, then we recommitted it because of all of this would probably take up a lot of time on a Friday. So after recommitting it, we still are on a Charter deadline for it, so I took it up. And what we were waiting for was an investigation by Planning regarding RVs on the property used as employee housing. And we did get a...we did get a report back from Planning on the update, and an update on the investigation and the item. So at this time I'd like to call up the Planning Department, and if they can explain a little bit about the investigation and the results, and if their recommendation has changed as a result of the investigation. Aloha, Director McLean.

MS. MCLEAN: Aloha, Chair. Aloha, Committee Members. Good morning. The letter that we sent really says all that it needed to say. We conducted the investigation and found that there were some unpermitted activities, and those have since been resolved. And so we've since heard the further statements from...that one of the testifiers made, but we have not had the opportunity to investigate them.

CHAIR PALTIN: And by further statements, are you referring to the 27 acres with not 51 percent being planted, is that what you're referring to?

MS. MCLEAN: That's one of them. And then alleged violations of the existing permit conditions, we have not investigated any.

CHAIR PALTIN: Oh, okay. And so do you have a recommendation at this time?

MS. MCLEAN: A recommendation for the Committee?

CHAIR PALTIN: Yes.

MS. MCLEAN: Well, my understanding, based on the applicant's testimony this morning, and this would need to be verified, would be to allow the...the weddings that are booked, and only those events. We've done this with, for example, short-term rental homes that are in violation. We give them some leeway to honor existing reservations where we have them provide us their event calendar and we allow only existing reservations to be honored.

CHAIR PALTIN: Okay. And then I guess can you clarify for us what would be permitted and what would not be permitted without the conditional permit? Like I believe State law may have changed since they originally got their conditional permit, so they can still do farm tours, they can still sell ag-related products that are not made on...ag or non-ag products that are not made on their farm, as well as those that are made on their farm. Would they still be allowed to do aqua ball without a conditional permit?

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MS. MCLEAN: You're correct about the ag products and ag-related products that aren't grown on the property. Depending on how they sell those, the County has the commercial ag structure option, which is just a registration process. I don't see why she would not be able to obtain those to be able to sell ag products. Of course all the ag activities allowed. The farm tours would be allowed. The Department had previously okayed the aqua ball and the zipline. As you know, the Council passed a bill relating to the zipline, so if the zipline were to continue, it would need the conditional permit. The aqua ball at this point is kind of a grey area. We would encourage that that be covered by the permit if the Council wanted to continue to allow it. Although the Department did previously allow it, it would be a good idea to make it clear. I don't know what her intention is with the aqua ball, if she wanted to continue doing that, but that should be made clear.

CHAIR PALTIN: Okay. Maybe we should hear from Deputy Corporation Counsel Hopper on his interpretation of if the aqua ball can continue with or without...with...without a conditional permit, if he knows. Mr. Hopper, are you there?

MR. HOPPER: Thank you, Chair. I wouldn't know offhand. I guess what, the aqua ball would be considered some type of accessory to the farm use and...and permitted without the...without the permit? Would that be the argument? It's just not a particular...I haven't researched whether aqua balls are a permitted use under the County Code in the Agricultural District. If they're...I mean if that's something that the permit is going to allow, I think that that would be...should be clarified in the permit. But that's not a particular issue that I've researched prior to the meeting.

CHAIR PALTIN: Okay. Thank you. I guess, you know, the...the revised request is they don't want issues with their neighbors, and so they're going to withdraw...sort of withdraw their conditional permit request. But like Director McLean said, they...they wanted to finish out the weddings that they have booked through July. They've cancelled everything after August because they feel that those folks that far out can book another venue. But the folks from July, some of them were rescheduled and, you know, weddings are kind of a...you don't want any bridezilla action or anything like that. So I guess maybe we'll...we'll give Corp. Counsel some time to look into that aqua ball issue, and in the meantime...oh, does anyone have any questions for Director McLean at this time before we bring on Ms. Schmitt? No? Okay. All right. At this time I'd like to designate as a resource Crystal Schmitt of Maui Dragon Fruit LLC [sic]. If there's no objections, I'd like to designate her as a resource person in accordance with Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. No objection. Okay. Ms. Schmitt, we're ready for your opening comments and presentation if you have one, or...

MS. SCHMITT: Sure, sure.

CHAIR PALTIN: Okay.

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MS. SCHMITT: Okay. So we would like to inform you that our intention here today is to withdraw our conditional use permit, the renewal application...the renewal application. The two main reasons we are...that lead us to this decision, the main reason is we would like to make peace with our neighbors. We would rather focus our energy to taking care of our 'āina and do organic farming. We want to use our limited resources and time to produce more organic food and to provide more organic farming education rather than engaging in any kind of counterproductivity or dispute with our neighbors. Our goal is always live in harmony with our natural and our human environment. The second reason we are consider this is because the current conditional use permit we are requesting to renew, it covers three type of things. Number one is the sale of non-agriculture items at our farm, many local items, like t-shirts I'm wearing, stuff like that. Or tell...to sell produce not grown on the farm. And then the number three item is to conduct weddings and other special events. As Ms. McLean mentioned, when we first applied for this permit, those two items are not allowed without the conditional use permit. Due to more agriculture-friendly legislation was passed in the State in recent years, those are allowed now without a conditional use permit. So this particular conditional use permit now is really only cover one item which is conduct weddings and other special events. So our intention is to no longer host weddings at the farm. At this point we have stopped responding to any new wedding venue inquiries; however, we would like to ask your permission to finish the bookings we already have up until July 2022. Weddings are normally booked at least six months, sometimes a year or two years in advance. Our clients has worked really hard for those bookings in the past two years, especially during the pandemic. Some weddings we rescheduled from year 2020, so we would like to ask you permission to extend our compassion and our 'āina and aloha to those kinds. We have already cancelled all the bookings beyond July 2022. We also would like to let you know that the County Planning Department and the County building department both has come and inspected our farm facility, inspect the farm operations in response to the RFS they received in September. Two large RVs has been removed from the farm. The building inspector personally told me before she left that we have no building permit violation at all. When she...you know, she conduct, and left, that's what she told me, she told me she's going to close the case. To our understanding, we're in complete compliance at this point. Me and my husband has been both lived here for almost 30 years now. Our kids were born and raised on Maui. We have seen all the changes over the years. We are very happy and grateful that Maui County now is making great progress towards food self-sufficiency and food security. The current County Administration, from the Mayor to the Council, are all great advocates of sustainability, regenerative tourism, and regenerative agriculture. It is very encouraging to see Mahi Pono is developing a great diverse agriculture base on Maui. Our focus is on regenerative organic farming. We need both conventional farming and organic farming on the island to provide food security. We would like to become a good example for other small landowners in Hawai'i to make our limited agriculture land to be more and more productive. Promoting distributed and backyard organic farming can lead us all to a very strong foundation for food security on our islands. We appreciate all of your help and continued support.

CHAIR PALTIN: Thank you, Ms. Schmitt. Members, questions for the applicant? Member Sinenci?

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COUNCILMEMBER SINENCI: Thank you, Chair. And mahalo, Ms. Schmitt. Yeah, just couple questions. How many alpaca do you have on the property at this...

MS. SCHMITT: We purchased the five.

COUNCILMEMBER SINENCI: Five.

MS. SCHMITT: At this point they're all female. And they're on...they have to get vaccine shots 30 days prior, so they already have the schedule to be arriving to Honolulu on January 5th and to Maui on January 7th.

COUNCILMEMBER SINENCI: Okay.

MS. SCHMITT: That's a start.

COUNCILMEMBER SINENCI: And then your intention is to continue the zipline operation after the...

MS. SCHMITT: Yes. So last Committee meeting, Mr. Molina [sic], I think you might been not there, but we did provide two letters. We got permission to build the zipline before we even started, the same with the aqua ball. As the legal counsel just mentioned, we would hold aqua ball specifically and zipline at the time it's accessory use as part of the farm tours.

COUNCILMEMBER SINENCI: Okay. And then do you have, Ms. Schmitt, some kind of work trade agreement with your workers?

MS. SCHMITT: We do, and the majority of them actually are paid...paid employees, and they do get...you know, actually, you know, you...you heard our testimony of our workers. They're very, very motivated agriculture-interested individuals. We work together, we learn together, we grow together. We're very, very happy family. I'm very proud of those kids. By the way, they don't ever...like I've been telling them, please be respectful. And they're such good kids, they don't stay midnight and party, they don't. I...I don't think so.

COUNCILMEMBER SINENCI: *(audio interference)*

MS. SCHMITT: Yeah.

COUNCILMEMBER SINENCI: So...so their work...work trade is part...is for their rent as well, they work for their rent?

MS. SCHMITT: They...at this very moment they get free housing, free food, plus wages. They --

COUNCILMEMBER SINENCI: Okay.

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MS. SCHMITT: -- that's why they're so happy. But not...that's not correct that 15 of them are all living in the cottage, that's not correct. There are --

COUNCILMEMBER SINENCI: Okay. Thank you.

MS. SCHMITT: -- other houses other where on the island they are living.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Member Sinenci. Any further questions for the applicant? Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Madam Chair. Good morning, Ms. Schmitt. Just real briefly, since the last, I guess, meeting on your application, you've had a chance to directly talk to the neighbors, or has it been done more through your...through your...have you been talking more to the neighbor's attorney? And can you just briefly tell us a little bit what has happened since? I mean, I'm hoping that the...you know, the lines of communication have opened. And also I was going to ask you, would you be open to at least having a sign posted on your property just as a reminder to all what the conditions are, you know, and so forth? Loud music...no loud music after a certain hour and so forth that reflects the concerns of the neighbors?

MS. SCHMITT: Absolutely. Everybody at the farm understand they cannot make any noise after 10:00 p.m. Please read the...please read those police report. The police don't even get out of the car anymore, they...they just show up...it's definitely not midnight. And the last incidents I understand the police were called is when they play video games in their big screen computer. They play video games and then the police showed up, didn't even get out of the car, they know. They...they don't, they're very, very...they don't want to be in trouble. They really don't want to be in trouble. They don't make noise like that. I...I really...but back first of all, we are not aware that our neighbor hired an attorney. That's one of the reason we withdraw because we actually have no resource to do that, and we don't want to get into any kind of battle. Last time when...when my neighbors stop the property, she specifically told...told my guys that Crystal is not allowed to stand in my driveway to try to talk to me. Because I offered, tried to stop, visited her, gave her fruits, and we have a talk. There was...Crystal cannot step on the driveway. But I don't know if that's true because they never told me that, it didn't hear it directly from them. I would love to be having a good conversation. That's one of the reason we're going to not do weddings anymore. If that's really upset you then --

COUNCILMEMBER MOLINA: Okay.

MS. SCHMITT: -- we don't do it. But the other ones --

COUNCILMEMBER MOLINA: Okay.

MS. SCHMITT: -- it's all legal, it's all permitted. It's...you know --

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COUNCILMEMBER MOLINA: Yeah.

MS. SCHMITT: -- we...we trying to survive long-term, we want to just --

COUNCILMEMBER MOLINA: Okay, Ms. Schmitt, thank you.

MS. SCHMITT: -- really focus on farming.

COUNCILMEMBER MOLINA: Thank you. Yeah, you've answered. But yeah, I was just wondering if...so I guess at this point you've never had a lot of direct conversations with the neighbors since the last meeting then, other than just working with the Planning Department, yeah?

MS. SCHMITT: Yes, yes.

COUNCILMEMBER MOLINA: Yeah. Okay.

MS. SCHMITT: I...I...I would love to --

COUNCILMEMBER MOLINA: Okay.

MS. SCHMITT: -- to extend the invitation, actually...

COUNCILMEMBER MOLINA: Okay. Yeah. Okay. All right. Thank you. That's...that's all I wanted to know. And then...and again too, maybe the possibility we could...if we do move forward with this application, just wanted to get your...your take on having a sign, additional signage on your property to indicate the...you know, the conditions that have been set forth, yeah, if we move forward. So all right.

MS. SCHMITT: Okay.

COUNCILMEMBER MOLINA: Okay. All right. Thank you, Ms. Schmitt. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Member King?

VICE-CHAIR KING: Thank you, Chair. So thanks for being here, Crystal. Just a couple questions. So if you still have all these folks living on your property, was...did the Planning Department okay the number of residents you have there? The employees? I know you removed the RVs, but it sounds like they're still living on property.

MS. SCHMITT: No, no, no. They...both obviously removed. The workers, they...some workers move to the cottage, which is...you know, I don't want to say this, you all know, I mean farm dwelling, all the buildings in Launiupoko, every single one are farm dwellings. Farm workers...we probably the only ones actually farm workers live in farm dwelling.

VICE-CHAIR KING: So you have one farm dwelling, and how many people are living in it?

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MS. SCHMITT: I think right now six of them. It's a three-bedroom.

VICE-CHAIR KING: Oh, okay.

MS. SCHMITT: Because there's a loft. But they have other housing. So we...you know, housing is such a big problem here, we probably the only ones...

VICE-CHAIR KING: No, I understand, but I just wanted...I understand that, but there are, you know, laws about that right now so I just want to make sure that that was...that you were in compliance with that. But...and the other thing is we did...we did update for the County our...our rules on zipline. So have you checked with the County ordinance that was recently passed to see if you're in compliance? Because we've had a lot of complaints from other zipline operations in...in...you know, that were too near nearby residences. So...

MS. SCHMITT: Yes, yes. Miss...it is...we have a one-year grace period. The law is passed, I think, August 31st, '21, and then we have a one-year grace period to operate until end of August 31st, 2022 unless a conditional use permit is obtained for that. So we...we have not 100 percent decided that we will pursue that zipline permit or not, we probably will, we'll see. And...but right now we're all...everything is legal, we can still do that until August 31st, 2022 to my understanding.

VICE-CHAIR KING: Okay. And then you're intending...if you don't get the conditional use permit, then you're intending to end the zipline operations?

MS. SCHMITT: Of course. If we don't get the conditional use permit, we cannot.

VICE-CHAIR KING: Okay. All right. Thank you. I think that's all my questions. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. Members, any further questions for the applicant at this time? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Schmitt. Mahalo for being with us today. So we have the photos, and we heard testimony. And so I was just curious, where on the property do you reside? Because it sounds like you may not hear the sounds that your neighbors hear.

MS. SCHMITT: No, we don't reside on the property at all. We reside in Ha'ikū. We have four...three locations we're farming on the island. And as I mentioned before, we used to be the largest organic lettuce producer on the island serving Costco, huge truckload every week. Those bases are in Ha'ikū, that's where we live. And --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. You live...

MS. SCHMITT: -- we commute to there.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. SCHMITT: Yeah. We commute to the farm.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Okay. All right. So because we heard in testimony that basically your neighbors will call you, and then will explain what they're hearing, and then your tenants and staff, farm workers will say something different and you'll take their word over her word. So...

MS. SCHMITT: You know, actually it's not...sorry to interrupt, sorry. It's not that I take their word over her, my neighbor's word...actually, it's the opposite. I always go scolding them. I scolding them, like why do you do this, why did...and they say no, Crystal, we did not, we did not. I mean, it's not like I...of course I trust my neighbors more than my work...you know how that works, you always go scolding your workers. You know, it's not like I definitely just trust them. I...I scold them every time, that's why they're so timid. Those kids are so poor kids, they're so timid, they don't...they cannot do anything. I mean...oh, gosh, I...I...

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. All right. So my question is, how many do you allow on the property after 10:00 p.m.? There's six tenants, but it sounds like there could be more at some points as we heard in testimony.

MS. SCHMITT: Okay. Right now, it's six people living in the three-bedroom, and then there are other places to live. There are...they don't...not live there, they actually commute now to other parts of the island.

COUNCILMEMBER RAWLINS-FERNANDEZ: My question wasn't...my question wasn't how many live there, my question is how many are allowed --

MS. SCHMITT: Six.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- to be there after 10:00?

MS. SCHMITT: I don't know how many are allowed. Actually, that's question I'm going to ask the Planning Department. What is the allowed...

COUNCILMEMBER RAWLINS-FERNANDEZ: No, no, not living, not living, I just mean...I just mean as far as...you know, like you're saying that you want peace and harmony with your...with your neighbors, and so if there's some kind of a policy that your, you know, business established to create that peace and harmony with your neighbors.

MS. SCHMITT: I personally think that a six...it's a very reasonable amount. And I don't...I do think they not making troubles with the neighbors. I really don't think they're making troubles at all. I'm not going to --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

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MS. SCHMITT: -- mention anything else they...they are doing to us because we're not that kind of people, but there is...I don't even want to say it. There is things that we think it's very not aloha. And...but I'm not going to --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. SCHMITT: -- say this in public.

COUNCILMEMBER RAWLINS-FERNANDEZ: All right. So my last question is regarding your enforcement of whatever policies that you have in place. So if you're saying that the six tenants are there and, you know, you're not allowing other farm workers because 15 work there so the other 9, you know, after 10:00 p.m. will have to go back to wherever they reside and not be on the property. That what...what kind of enforcement do you have in place? Can there be some kind of like audio or video, since you don't live on the property, to make sure that they're following the rules? Because I...I...I don't think they're ignorant of the rules, so I don't...I don't know if, you know, like a sign would be enough. I think you would have to kind of have eyes and ears on them to ensure that it's...that you're...you're creating peace and harmony with your neighbors.

MS. SCHMITT: I totally understand. This is what I'm going to do. I'm going to check with the County department how many people allowed legally. And I'm going to sign a...actually a rental agreement, they're not going to be just company housing anymore. And then which...which they're willing to do because they know they're getting a good deal. I'm going to make the property subsidize the rental agreement so it's really nice comfortable for them. Other than that, they have their rights to do...every citizen is required to do. And not dig into their life, they're adults, they're individual people just like every single citizen of Maui County. I'm just going to leave like that. Because everybody have their rights live on Maui, whatever Maui County law governs.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. So I wasn't, you know, saying anything about the six residents. There may be more people on...you know, on your property that you don't know of because you're not there. And so, you know, there's a lot of technology, iHome, you know, you can have on your phone and, you know, with the video surveillance there, and then that way you know for sure, and you don't have to take anyone's word for it because you have like video surveillance.

MS. SCHMITT: Absolutely not going to have video surveillance on my...well, any of my tenants, I'm absolutely not going to have that. That's intrusion of their privacy. They can allowed to have guests, that's their personal life. They're going to be now just regular other people. I'm actually not going to monitor them. I mean, that's...that's...that's not...I'm not going to do that, I'm sorry. They're supposed to abide by whatever law they live, it's their life, not my life. Even my personal kid, even that I don't do, I'm a very...you know, my kids do whatever they like too. I don't govern them either. And they're doing great.

COUNCILMEMBER RAWLINS-FERNANDEZ: All right. Mahalo, Ms. Schmitt. Mahalo, Chair.

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CHAIR PALTIN: Members, any further questions for the test...or the applicant? Okay. Ms. Schmitt, I'm not sure if there was a misunderstanding. I don't think that Member Rawlins-Fernandez meant video surveillance like in their rooms watching what they're doing, but maybe outside like at the entrance to your property to see if there's noise at the boundaries of your property. You know, not...not looking at them or what they're doing, but maybe at your gate...at your gate or the entrance to see if there's people coming in at 1:00 in the morning, or if there's noise past 10:00 p.m. It doesn't need to be pointed at anyone in particular, maybe just the entrance. Is that something that you would be amenable to?

MS. SCHMITT: You know, I'm looking to look into that; however, people coming in the middle of the day, it's their right. For example...let me give example. So one of my workers have two jobs, okay, they work part-time for us. And they work at Down the Hatch, they close midnight. Then they come home. I mean, they...they...there's car traffic coming into the place where they're dwelling. That's...I think it's total reasonable. But I'm willing to definitely to look into that if that...to make my neighbor feel better that we have a monitoring device, but it doesn't mean it is a car coming, it's illegal. It's legal, it's completely legal. But we will look into that, anything you guys thinking if we can implement that, that's good gesture, for sure we will.

CHAIR PALTIN: Yeah, yeah. I mean, I'm not saying that it's not legal to come home at midnight, I used to work restaurants too. I'm just saying like, you know, if you have a device there, you can see if there's loud partying noise after 10:00 p.m. Or you know, if you get robbed or something, it's also good to have surveillance. We have surveillance on our driveway. Just one time my husband's nephew came and ate some food out of the icebox, but at least we knew who it was...you know, like it's not like oh, my goodness.

MS. SCHMITT: You know, you're totally right, you're right. You know, I want to...actually we have agriculture theft happened to us one time. We have 500 pounds of dragon fruit harvested, they're sorted, and was gone overnight, like midnight. So we probably should do that. And yeah, we will install that at the gate. We make sure, you know, they...they are. And again, you know, police report, I did read one, I mean, there's nothing going on. But we...we shouldn't use police report as a resources so we needed provide our own security. Thank you for the advice. We should have done it actually after the dragon fruit theft, we should have done that. So we will definitely look into that. And...and yeah, it will...for sure.

CHAIR PALTIN: Yeah. And...and the one we have, you can look on your phone and you can hear and...like one time we...my son was riding bike in the driveway, and we're like hey, get out of the driveway. You know, so you can talk into it and you can hear the noise back, and so, you know, it's...then if you get a call at 11:30 or 12:00, you just turn on your device and you're like I'm at the border of my property and I don't hear any noise from this surveillance, you know, and then you know and you don't have to take anybody's word. I kind of think that's maybe along the line. She wasn't talking about surveillance of watching what they're doing, but just so that you have that kind of you don't need to take anybody's word for it. Okay. Any further questions for the applicant? Member Rawlins-Fernandez?

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. It might be for you, it might be for Director McLean. Just to clarify, so if the applicants are withdrawing their CUP application, how...and it's been expired for a while...how would they continue to operate to July? With...would it be with a permit or without a permit? But if they're withdrawing their application for the permit, I don't know, if you can clarify for me.

CHAIR PALTIN: Yeah. I think we would need to grant an extension to July, but I'll let Director McLean clarify because I'm just an elected official.

MS. MCLEAN: You might just be an elected official, Chair, but your answer is correct. You...it wouldn't be appropriate for them to withdraw the applicant altogether. I think that they are withdrawing some of their requested uses but then asking that just that one, maybe more, requested uses be allowed. So they're narrowing the scope of their request. And so the extension can be granted just for those particular activities.

CHAIR PALTIN: Does that answer your question, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: It does. I think the question that you asked earlier, it would also need to be clarified that we talked about the aqua ball, if that is...what is that called...

CHAIR PALTIN: Accessory.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you. Accessory to the farm tour.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: And I know Director already gave her response and so did Mr. Hopper, but I don't know who else we would ask to get that clarified. Mahalo, Chair.

MS. MCLEAN: May I...may I comment on that, Chair?

CHAIR PALTIN: Sure. Go ahead, Director McLean.

MS. MCLEAN: Yeah, and the same way that the Department gave the okay for the zipline as an accessory use, and that's not how we're looking at those activities today. Back then, those kinds of things were few and far between and the Department allowed them rather leniently, but if that fresh request came in today, we...well, and the Code has changed, of course, but we would say no, those aren't accessory, you'd need a permit for them. So if the Committee is going to recommend extending the conditional permit and wants to allow the aqua ball, it would be cleaner to state that as one of the allowed uses with...with a termination date, I would think. If the Committee doesn't do that, it puts it kind of in this grey area where it had been okay before, and now we're saying well, it's not okay, but they had been given the approval. So I think it's probably better to just include it and have it be clean.

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CHAIR PALTIN: Okay. Mr. Hopper?

MR. HOPPER: I don't know if that means that there is actually a letter sent stating that there were certain uses that were accessory. If that's the case, it's difficult, even with a conditional permit. I mean, adding that on to clarify that, but if there's already a letter in hand saying that in this case those uses are accessory, you know, that would seem to be the...the...the position at this point. And you know, to change that could result in...in appeals or other actions. But if that's something that's actually been set forth in writing, I mean, I think that that's...that's, you know, for this property anyway, the...the direction they've been given. I guess we would want to review those letters and...and...and look at them. But as far as the...the use would be concerned generally if there's a...if the Planning Department has stated there's a use that's accessory and...and they're operating in accordance with that, that's generally what...you know, that's...that's generally what someone would do to...to have that clarification. And again, there could be different facts and circumstances, and...and...and perhaps the uses may or may not be operated consistent with what was represented to the Department. But generally speaking, you know, that...that would be the determination there. If...if...if it...I...I was proceeding under the assumption that had not been clarified, but if that's actually been sent to them in that letter, then I think that that's...that's generally what we would...would...would look at as far as what the...what the...for the Committee's knowledge anyway, what the allowed uses without the permit would be versus the uses that would need to be included in the permit.

CHAIR PALTIN: So to clarify, if they have a letter from the Department, the aqua ball is a legacy use without a conditional permit?

MR. HOPPER: It...it...I would want to review the letter, but if...if the statement is that there is a letter stating that aqua ball use in certain circumstances is accessory to a permitted use, and...and that would generally be true, yes.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, does that satisfy your question?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Does Director McLean know if that letter included that verbiage and that detail?

CHAIR PALTIN: Director McLean?

MS. MCLEAN: I'm quite...I'm pretty sure that the Department issued a letter okaying the aqua ball. The project planner, Kim Willenbrink, I believe is on the call. Kim, can you confirm that, or can you check that?

CHAIR PALTIN: Ms. Willenbrink?

COUNCILMEMBER RAWLINS-FERNANDEZ: And as a...an accessory to the farm tours then, it wouldn't have an expiration, they could just continue to...

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MS. MCLEAN: Correct.

CHAIR PALTIN: Okay.

MS. MCLEAN: Unless like with ziplines, the Code were to change.

MS. WILLENBRINK: Good morning --

CHAIR PALTIN: Good morning --

MS. WILLENBRINK: -- Chair and Members.

CHAIR PALTIN: -- Ms. Willenbrink.

MS. WILLENBRINK: Hi. Good to see everyone. Yes, I've been following the meeting this morning. And yes, Director is correct, there were two letters issued. I'm not sure if...if other people are aware, but I am...I'm working from home today and unable to access my files for some reason. However, my memory serves me that there was, maybe back in 2010 and 2012, those area...times an aqua ball letter and a zipline letter issued as permitted uses. And so that's what Ms. Schmitt is discussing when she talks about those early letters early on. And then the conditional permit came, and as you all know, that recent zipline legislation that passed. So I don't really have anything else to add other than that, just to concur with what Director McLean is already saying.

CHAIR PALTIN: Okay. Thank you.

MS. SCHMITT: Can I say something?

CHAIR PALTIN: Is it germane to this topic? Yes.

MS. SCHMITT: Yes.

CHAIR PALTIN: Go ahead.

MS. SCHMITT: Okay. So can we get a clear written letter from the Planning Department telling us the zipline is allowed? We're actually hoping, as we mentioned last time, that we can be grandfathered. That's something we would like to seek into, but if that's not possible, then we will apply for conditional use permit. There's one avenue we do want to seek is to see if we can be grandfathered just because we followed the rule, we get the letter, we get the authorization. Another thing is I want to mention here about the zipline since the topic is here...is this. For every single other zipline has nothing to do with farming, they're just in the business of doing ziplining. Where us, it's like a farm with a zipline, we do farming. And we only have one tiny little one because we don't want to become a zipline company. That's the reason. We...when we get authorized, we get authorized five different zipline lines, all permitted, five. One, two, three, four, five. We choose to only do one consciously so we're not...so...and we don't get much business. So it really helpful with everything we do. But I'm just going to stop right there, I just want to

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mention that to you guys.

CHAIR PALTIN: Okay. All right. For the zipline issue, I don't think it can be a legacy use because the law was changed. It sounds like the aqua ball could be a legacy use because the law was not changed. And I think at this time we can go to Member King because I think we've exhausted that other question.

VICE-CHAIR KING: Okay. Thank you, Chair. I did want to point out about the...the law changing. And so...but one of my concerns is if it...if it's a...if anything is a legacy use, if there's a special letter on...on the aqua ball, does that mean that anybody with a farm can have an aqua ball business? Because...and I don't know how you can just allow one farm to do that without a conditional use permit and not say that every other farm on the island has that same authority. But...and then my...so that was one question I had for Director McLean. And the other one is the zipline...the zipline legislation that we passed that had a grace period was for someone with a conditional use permit, wasn't it...that grace period? It wasn't for anybody to be able to do a zipline for another year if they didn't have a permit...or was it?

CHAIR PALTIN: Okay. Director McLean?

MS. MCLEAN: In response to the first question, of course we do try to be consistent in how we review requests. If someone came into today and asked for the aqua ball and we said no, which we would do, they could appeal that and point to Ms. Schmitt's operation as a reason why. And you know, we would make our arguments. The argument would really be two wrongs don't make a right, that...that that prior decision isn't one that we would make today, but it was at the time, and...and we have to honor that, but that doesn't mean we have to continue to do it. And if...if that decision was appealed, we'd have to see if our action is upheld. The zipline bill said that any operation that was given the okay by the Planning Department would...had a year to get a conditional permit. And it made the distinction between the sizes of the parcels. So those that received the okay that are on larger parcels would not have to get a conditional permit if they received approval. The ones on smaller parcels, like Ms. Schmitt's, would have to get a conditional permit, and had a year to do so.

VICE-CHAIR KING: Okay. Okay. So that was because it was an allowable use before we did the legislation, so you were allowing --

MS. MCLEAN: Right, if...if...

VICE-CHAIR KING: -- those to continue (*audio interference*). Okay.

MS. MCLEAN: Right. If...if --

VICE-CHAIR KING: Okay. I...I...

MS. MCLEAN: -- the Department had never given the okay, we would consider it unlawful. But because the --

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VICE-CHAIR KING: Okay.

MS. MCLEAN: -- Department had given the okay, they had that grace period to obtain a permit.

VICE-CHAIR KING: Okay. So even if the Department issued that letter, which you're now saying we're probably not going to issue it at this point for the aqua ball, if the Council decides to put a limit on that and just allow it up until whatever date we're using for the weddings, then that...wouldn't that stand, the Council's decision would stand? Or are you saying that if...once you write a letter that someone can do whatever's in that letter in perpetuity, despite the fact that there may be...because...because, you know, it used to be an allowable use, the zipline used to be an allowable use for Agriculture zone, and then we...we passed legislation. But if we pass...if we pass an extension that puts an end to the aqua ball, that's legislation that we're passing. So does that not apply?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: I think that if there's an accessory use letter in this case, the Council putting it in as a conditional permit and that expiration, I don't think that would affect whether or not the use is accessory. I think that's generally under the Code something that you can do without a permit. If you were going to adopt some type of agricultural use general ordinance similar to the...the ziplines that would look at that with existing operations and making them come in and get conditional permits after a period of time, I think that would be a bit different. But in...in general, if there's an accessory use determination, that would mean that...I mean, depending on the facts of the letter in particular, that that use could continue without...without any additional permits. So I think permitting it and then having it expire would not necessarily affect the ability to continue to do that. Something more comprehensive though, like a zipline ordinance, I think could possibly deal with those...those issues comprehensively. But I don't think adding that to this conditional permit, giving it an expiration date, would supersede that determination which is, you know, based on under the Code, looking at the allowed uses and saying that this is part of those uses that are allowed as a matter of right in the Code. Remember, the zipline changed...

VICE-CHAIR KING: Right, but that...but Mr. Hopper, that wasn't put into the Code, that was a letter from the Planning Department to an individual...individual landowner. So does that...if...does then that apply to every other Ag-zoned landowner? You're saying that that...that makes it an accessory...an okay accessory? Does that mean that anybody who has Ag-zoned land can do that activity?

MR. HOPPER: Well, it would depend on the facts of the letter. If the letter would look at what exactly are you doing on that property, what is the nature of your tour, and what is the accessory use. And the Department, I believe, has done that in multiple circumstances to actually look at the facts of each situation. Certainly, the agricultural zoning ordinance could benefit from additional clarification as to what uses are accessory. I know the departments had issues with, you know, people having people over for...for

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meals and things like that, and whether or not those were events or if they're just friends coming over for meals. It's...it's a general problematic issue. It's...it's I don't think something that the State law would regulate, I think it's a County Code issue. But in this particular case, I think what...what I would offer is that if there was a letter in this particular case saying that this use is allowed without any additional permits, that that's what...that's what the landowner has the ability to do. And...and that's for this particular property anyway, you know, that's what the Department does have the authority to, you know, review the Code and state whether what you're doing is allowed under the Code or you need a permit to do it. I think that's what would govern this particular property in this case.

VICE-CHAIR KING: Okay. But that...but that also is...is conditional in that...isn't it in that if there's a noise violation or neighbor complaints, that that could be terminated by the Director as well?

MR. HOPPER: I think I'd want to look at that letter. Certainly, if the letter outlines here's what you can do...here's what you can do, and they're acting inconsistent with that letter, then yes, there could be a basis to say that you cannot continue that use if it's not consistent with the letter. But again, without seeing it, I can only give general advice on that topic.

VICE-CHAIR KING: Okay. Thank you.

MS. SCHMITT: Can I say something too? Can I say something?

CHAIR PALTIN: Go ahead.

VICE-CHAIR KING: I got my question answered, Chair.

MS. SCHMITT: Can...can I say something?

CHAIR PALTIN: Before you do, we have a copy of the letter dated May 7th, 2012, and I've asked Staff to upload the letter to Granicus for Members' review, as well as Mr. Hopper. So we can do that at this time. Go ahead, Ms. Schmitt. You're muted. Go ahead.

MS. SCHMITT: So I do also want to...first of all, I appreciate all of you guys listen to us. We been operating for a long time now, we're established there. We really had no much complaints at all in the past. Aqua ball is very small operation, it doesn't even generate noise because you go in the ball, few buckets of water, way down a small little track. You don't even hear anything. And also, we're actually very, very far from our neighbor. This particular area is really far. It's like it's so not disruptive, what I'm going to try to say is. And we are operation for a long time. So it's very...very eco-friendly, it's no noise generated because you're inside, nobody can hear you, only you can hear yourself. So it's not like a very...very disruptive operation, put this way, and nobody ever had issues with it. I just want to add to that.

CHAIR PALTIN: Okay. So at this time it's 10:30. The letter is number 8 on Granicus. How

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do Members feel about a ten-minute recess to review the letter? This is like our regular recess time. Okay. All right. What time...oh, it's actually 10:34. So we'll be back at 10:45. Member King?

VICE-CHAIR KING: Yeah, I just looked up number 8, and it's a letter from you, subject, transmittal of informational documents relating to Maui Dragon Fruit.

CHAIR PALTIN: We got the message in the chat, letter is number 8 on Granicus. That's from Ms. Balala. Member Rawlins-Fernandez?

VICE-CHAIR KING: Okay. I see correspondence from Committee Chair, so...

CHAIR PALTIN: Well, our...our Staff is the one that obtained the copy of the letter, so...

COUNCILMEMBER SUGIMURA: To your letter.

CHAIR PALTIN: It's an attachment to my memo in number 8.

VICE-CHAIR KING: Oh, okay. Okay.

COUNCILMEMBER LEE: Yeah.

VICE-CHAIR KING: I was just looking at your letter.

COUNCILMEMBER LEE: It's here.

VICE-CHAIR KING: Okay. I got...I got it.

CHAIR PALTIN: Okay.

VICE-CHAIR KING: Thank you.

CHAIR PALTIN: All right. Member Rawlins-Fernandez, you had your hand up?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to see if I could just ask Director McLean a quick question before we recess. I don't know if I'll be back in time to...to vote. (*Audio interference*) something. So in reviewing the letter, Director McLean, when conditional use permits expire, are the permittees whose permit expired allowed to continue the activity beyond the expiration date?

MS. MCLEAN: As long as (*audio interference*).

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Everyone needs to mute.

VICE-CHAIR KING: Oh, sorry.

MS. MCLEAN: It's been the practice of the Department that when a time extension request is

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submitted in advance of the permit expiration in the time required by the original approval, that even if the permit expiration date comes and the renewal for the...the approval hasn't been issued, that the permit is considered valid until the renewal can be acted on. Because sometimes, you know, whether it's the Department that approves it or the Commission that approves it or the Council that approves it, that can sometimes take a while and we don't want them, you know, to have to stop and all that. And we had actually submitted a bill to that effect to codify that practice. And the Council approved it for some permits, but not all. So we'd like to have that codified, but we haven't been able to do so yet, but we're getting close.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification. I'm just wondering how the weddings were allowed to continue to be booked if the permit expired. That explains it. Mahalo, Director. Mahalo, Chair, for that leeway.

CHAIR PALTIN: Okay. So we'll be back at 10:45. In recess. . . .(gavel). . .

RECESS: 10:37 a.m.

RECONVENE: 10:49 a.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use Committee meeting return to order. The time is 10:49. Folks should have had the opportunity to review the letter by this time. Mr. Hopper, were you able to review the letter?

MR. HOPPER: Yes, Chair.

CHAIR PALTIN: And so it seems like they have a legacy aqua ball use without the conditional permit allowed?

MR. HOPPER: Well, the...the end of the letter...I would first say there's also a letter, November 21st, 2011, that the Department reviewed from the applicant. So that could have relevant representations in it. The letter goes on for two pages sort of listing the...the assumptions made. You know, basically here's what the farm tour will entail. And at the end of the...end, the letter does conclude, based on the above mentioned representations, the Department finds that your proposed project is in compliance with Chapter 205, Hawai'i Revised Statutes, and Section 19.30A. It will be a permitted accessory use with no land use permits required, from 2010. So that's...that's, I think, what...that's what the letter says essentially.

CHAIR PALTIN: And...and so in your interpretation, it's okay to continue it on without the conditional permit?

MR. HOPPER: Yes, as long as it's in accordance with this letter, yes. And again, that's from the Planning Department in 2010. Presumably they've, you know, continued to operate under that letter. And again, the letter has two pages of assumptions and conditions, so it would still need to be consistent with those. I don't know if any of those has changed or if there's a more recent letter. There's also, like I said, the...what it...what it

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sounds like was done, which is I think typical for accessory uses, was there was a letter sent by an applicant saying if we do these things, is this considered an allowed use? And the Department said assuming you do, you know, a fair number of things, then yes, the aqua ball, as a portion of your tour as you set forth, can be considered an allowed use without additional permits. And so it's...it's narrower than you can just do an aqua ball wherever, whenever on the property, I'd say, based on the letter. But I...I think that unless there's been changes to this letter, it does appear that if they didn't have a conditional permit that they could continue to operate at least in accordance with the letter.

CHAIR PALTIN: Okay. Thank you so much. All right. Oh, Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Just clarification. I...I just saw the zipline, I didn't see the aqua ball. Is the aqua ball in the letter?

CHAIR PALTIN: Yeah. The aqua ball letter is dated May 7th, 2012. The zipline one is October 15, 2010.

VICE-CHAIR KING: Keep scrolling down, you'll get to the aqua ball letter underneath the zipline letter.

COUNCILMEMBER SINENCI: And...and then the wedding was the conditional permit?

CHAIR PALTIN: The wedding and the selling of agricultural products not grown on the property and non-agricultural products. But I believe that State law has since changed so that the only thing that they continue to need the conditional permit for is the weddings. And if you look at the last uploaded correspondence from Crystal Schmitt, she has included their bookings out through July 11th. And there are three...six...seven...eight...11 weddings. So the revised bill that's in Granicus was what we were taking to Council the first time. What's up for consideration today is if we want to phase this out and grant them an extension to, say, July 12th, 2022, and allow no more than 11 wedding events that begin no earlier than 12:00 noon and finish no later than 8:00 p.m., with a maximum of 45 attendees and no TVR use. That was some suggested wording from Director McLean. Member King?

VICE-CHAIR KING: Thank you, Chair. So can we ask Member...or...Member...Director McLean if all these conditions that were in her letter are still happening? Or maybe the...because there's...there's...in the letter, it says that there's educational area A that will focus on dragon fruit education, area B that will focus on bananas and papayas, educational area C will focus on pineapple, and D on sugar cane. So are those the things that are being done? Because this whole water ball, whatever it's called, looked like it was supposed to be a tour through these different educational areas. And is that still the case, do they have all those educational areas?

MS. MCLEAN: I would have to defer to either the project planner, Kim Willenbrink, or to the applicant, Ms. Schmitt.

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VICE-CHAIR KING: Okay. Because that would be the determining...that's what Mr. Hopper was talking about, if those conditions --

MS. MCLEAN: Right.

VICE-CHAIR KING: -- are...don't exist anymore, then this letter is void basically.

MS. MCLEAN: Correct, I would agree.

CHAIR PALTIN: Okay. Ms. Schmitt? Go ahead and unmute.

MS. SCHMITT: Okay. So I do want to make one minor correction, the wedding in July 2022 is actually July 12th, not the 11th. I was looking at one typo there, so it's July 12th, not the 11th. That's one thing. Second, yes, Ms. King, those educational all going on. We actually added a lot more to that. We have papayas, we have bananas, we have pineapples, we have all kinds of stuff, chocolate, cacao, and now, you know, we even have now, pretty soon I guess, alpaca. Are all --

VICE-CHAIR KING: Yeah.

MS. SCHMITT: -- all...absolutely, we (*audio interference*).

VICE-CHAIR KING: The aqua ball goes through these different educational areas then?

MS. SCHMITT: No --

CHAIR PALTIN: No, the...

MS. SCHMITT: -- the aqua ball...no, no, no. The aqua ball, it's very, very short. It's just one straight line. On both sides of the aqua ball, we have all those crops planted, plus getting there. The whole part of the farm tour, getting there, they're going to go through all different educational experiences over there. Like we have like a lot of exotic trees like soursop, people saw soursop, they blow their mind, they're like what, what is this fruit? And even though we...actually pack of soursop it's burned, we have more just planted, a lot more. So there's a lot of things. I have people from Honolulu, there's no pineapple actually grow on the ground like that, they think it grow on the tree. I mean like, people love our tours.

VICE-CHAIR KING: Okay. Okay. But...okay, but this...stick to the question. So it was never intended to be part of your farm tour, it was like a side thing? Is that what...

CHAIR PALTIN: No, the...

MS. SCHMITT: No, no, no.

CHAIR PALTIN: Just a moment. Just a moment.

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MS. SCHMITT: It's part of the farm...

CHAIR PALTIN: Just a moment. The letter says that the aqua ball finishes off the tour. And that if they want to, they can walk down the last part, or they can do the aqua ball at the end of the tour.

VICE-CHAIR KING: Okay. So...oh, I see, okay. So that was...that wasn't really the intention was to have the aqua ball be part of the farm tour, it was sort of an accessory thing. Okay.

CHAIR PALTIN: Yeah, it...it finishes off the tour.

VICE-CHAIR KING: Okay. And you are doing all these things that are in here, and it sounds like you're adding some more on? And the aqua ball, what...what hours do you finish with that one? Do you end that during daylight? Because I would imagine that would be hard to operate at night, and the water gets cold.

MS. SCHMITT: No, no, no, we don't do daylight...only daylight, you know, only daylight. I mean, ziplining at night, it's dangerous. You know, like why would we do it at night? So our normal all finish by...before dark.

VICE-CHAIR KING: Sorry, I...I knew that, I understand that. But you know, the problem is that you have neighbors who have said that they've heard the ziplining at night, and you are not on property to be able to verify whether that is actually happening or not. So that's one of my issues with you not living on the property and operating these kinds of tours. So I just...I would assume that the aqua ball would be during the day because I don't think it would be very much fun at night. But the zipline, I'm not sure. Anyway, that's all. Thank you, Chair.

MS. SCHMITT: Thank you. Thank you. We don't do zipline at night, we don't.

CHAIR PALTIN: Okay. I guess the reason that we don't see Member Molina or Member Sugimura is the building...County Building got evacuated. There's some sort of issue with the 9th Floor. So I guess they're...difficult to work from the building sometimes. Let's see, one, two, three, four, five, six...we have six people. Members, do you mind deferring this for now? I'd really like to get those two, at least maybe Member Rawlins-Fernandez back on, before we make a vote on this issue. Mr. Hopper, is it okay to table this and defer it until we get the rest of the Members back?

MR. HOPPER: Well, you still have a quorum, so you could continue, but I think it...if you like as a group, you can decide to...to wait on...on an item, or you could vote to defer, either way. I don't think there would be anything preventing you from taking action if you have a quorum, but you could...I think it's up to the body whether you'd want to...to wait.

CHAIR PALTIN: Yeah, I'd like to hear their discussion on the matter. But in the meantime...so I'd like to table this, if there's no objection, until we at least get a couple of folks back.

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And then maybe in the meantime we can skip ahead to Item PSLU-31...3...PSLU-3(1). I know Chair Lee had asked to hear that during our TIG. Is there any problem with doing that?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. No objection. Okay. Member King?

VICE-CHAIR KING: Yeah. Thank you, Chair. I don't have any objections, but I just wanted to check with Mr. Hopper. There...you know the...the legislation that passed at the State level, which is after we're out of the emergency, states that we cannot continue meetings if everybody's not on screen. I don't know if that applies during this emergency time or not. But maybe Mr. Hopper could just...do you know what I'm talking about?

CHAIR PALTIN: Well, we're still in the emergency proclamation, so maybe that can be a side question when we're not on the meeting time.

VICE-CHAIR KING: Well, I just want to make sure that we're okay to continue with the meeting, even though we can't see two of our Members.

CHAIR PALTIN: Oh, they're not even on the call. They're not...but like he said, we have a quorum, so we're okay. Oh, I see Mr. Mitchell. Did you have something to add?

MR. MITCHELL: Yes. It looks like we're also evacuating the 7th Floor, so would it be possible to take a short recess so we can figure out what's going on?

CHAIR PALTIN: I guess.

COUNCILMEMBER KAMA: Or a long recess, Chair.

CHAIR PALTIN: Okay. Another recess. I mean...

MR. MITCHELL: Yeah, we...we have staffers who are both working remotely and from the 7th Floor, so we're going to lose connectivity with a few more people, if we haven't already.

CHAIR PALTIN: Okay. I'll call a recess at the call of the Chair since I don't know what's going on there.

MR. MITCHELL: We'll have to state a time, Chair, and then if we exceed the time, come back and extend it a bit longer with a specific time.

CHAIR PALTIN: Okay. Can we try ten minutes?

MR. MITCHELL: That should be good enough --

CHAIR PALTIN: Would that be reasonable?

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MR. MITCHELL: -- for me to figure out what's going on.

CHAIR PALTIN: Okay. So we'll come back at 11:12.

MR. MITCHELL: Okay.

CHAIR PALTIN: Meeting is in recess. . . .*(gavel)*. . .

RECESS: 11:02 a.m.

RECONVENE: 11:17 a.m.

CHAIR PALTIN: . . .*(gavel)*. . . Okay. Will the Planning and Sustainable Land Use Committee return to order. The time is 11:17 and I just was gaveling in to say we need to extend our recess because we are waiting for...our Secretary had to evacuate the 7th Floor so she's going to give me a call when she returns.

MR. MITCHELL: You should recess to a specific time, Chair.

CHAIR PALTIN: Okay. So she said give her 15 minutes so I...and that was 15 minutes ago so I will recess until 11:30. Okay.

COUNCILMEMBER LEE: Recess.

CHAIR PALTIN: Recess. . . .*(gavel)*. . .

RECESS: 11:18 a.m.

RECONVENE: 11:34 a.m.

CHAIR PALTIN: . . .*(gavel)*. . . All right. Will the Planning and Sustainable Land Use Committee return to order. It is 11:34, and we had a lot of excitement over here at the County Building, and I guess they got the all clear to return. We got some Staff working remotely. And let's see, where were we? Shall we just take the day off from now or what...what do you guys want to do?

COUNCILMEMBER LEE: How about the whole week? . . .*(laughter)*. . .

CHAIR PALTIN: Just take...take a break.

VICE-CHAIR KING: No objection. No objection.

CHAIR PALTIN: Okay. All right. Given all the hubbub and tonight's evening meeting, this afternoon's 1:30 meeting, if there's no objection, I will just defer all items.

COUNCILMEMBERS VOICED NO OBJECTIONS.

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CHAIR PALTIN: Can I recess until my next Thursday meeting, is that a possibility? Because I mean...oh, okay. So yeah, I mean, I guess we'll just post the same agenda. We heard the testimony. We'll still accept written testimony. And since we didn't make any decision or anything, we're just going to recess this meeting until the next regularly scheduled meeting, which I believe is...my calendar.

COUNCILMEMBER LEE: Not Thanksgiving, huh?

COUNCILMEMBER SUGIMURA: December 2nd.

CHAIR PALTIN: December 2nd. Okay. So we will recess until 9:00 a.m. December 2nd. Is that okay with you, Mr. Hopper and Mr. Mitchell? Mr. Hopper?

MR. HOPPER: I...I believe two weeks is the...the most amount of time. The only purpose of recessing is to not have to take testimony again. If that's your desire, I think you could, but if you just want to have this posted on the next agenda and take testimony again, that's an option as well. You don't have to recess it, so...

CHAIR PALTIN: I think I would like to keep taking written testimony because we've heard quite a bit of oral testimony, if that's all right --

MR. HOPPER: Yeah, I believe --

CHAIR PALTIN: -- with the Members.

MR. HOPPER: -- the rules are...sorry, yes.

CHAIR PALTIN: Okay. All right. Is there any objection with recessing? Member King, followed by Member Sinenci.

VICE-CHAIR KING: I don't have any objection, but if we're going to recess, I...I just wanted to suggest that maybe you could circle back with Mr. Jorgensen. Because I know he had a concern that he didn't know what the changes were going to be, and just see if there are any objections as far as what's been proposed so far, which is moving forward with just this extension for...for these...these few activities.

CHAIR PALTIN: Okay. Yeah. I mean, everybody is free to submit written testimony. We...we did get a little bit pushed back in our timelines, and this is a Charter deadline item, although we're about three years behind the deadline, and the deadline had passed before I even got into office. But yeah, please submit written testimony. Trying to expedite things that are behind the deadline from when I came into office. So that would be a reason. Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Just clarification, that the same exact meeting, no new agenda items added, yes?

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CHAIR PALTIN: Yeah, same exact meeting, recess, we'll...we'll start...start over. Do over.

COUNCILMEMBER SINENCI: Okay. Thank you.

CHAIR PALTIN: So...okay.

MR. MITCHELL: Chair Paltin, if I could just have a moment to just go over the --

CHAIR PALTIN: Sure.

MR. MITCHELL: -- Council Rules. It looks like it might be wiser to defer, and then repost if the recess time...maximum time allowed is 14 days under the rules. So let me just get my eyes on the rule again.

CHAIR PALTIN: And that's Council Rules, not Sunshine Law rules or Sunshine...Sunshine Law rules?

MR. MITCHELL: Correct. The Council Rules.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER LEE: December 2nd is 14 days.

MR. MITCHELL: Yes. It says...Rule 20 says a Council meeting, public hearing, or committee meeting may be recessed to a reasonable date, time, and place, but not more than 14 consecutive calendar days.

COUNCILMEMBER KAMA: Okay.

MR. MITCHELL: So let's be sure we're not more than 14 days for the recess, and then if we are...

COUNCILMEMBER LEE: It hits the 14th day.

MR. MITCHELL: It's the 14th. Okay. All right then.

COUNCILMEMBER KAMA: But we have a holiday, so does that include the holiday?

CHAIR PALTIN: It's a...a holiday is a calendar day.

COUNCILMEMBER LEE: Calendar days, yeah.

MR. MITCHELL: Yeah, it says consecutive days, yeah. If it's exactly 14, then you're fine, Chair.

CHAIR PALTIN: Okay. All right.

VICE-CHAIR KING: I have a quick question --

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CHAIR PALTIN: Sure. Member King?

VICE-CHAIR KING: -- for Remi. Yeah, I just want...so what happens if...if something happens and we can't (*audio interference*) 14th day, what happens? Then it would...it's automatically adjourned or something?

MR. MITCHELL: I'm sorry, Member...Member King, there was a bit...bit of background noise as you spoke, so I didn't quite hear your question.

VICE-CHAIR KING: We're...we're...in the case like this like where we're going to meet on the 14th day, say something happened or someone gets sick or we just for some reason can't meet on the 14th day, what's the procedure? Is it...is it...do we waive the Council Rules and meet in the next week or do we just...is there an automatic adjournment of the meeting?

MR. MITCHELL: Well, I guess you could waive the rules. The rules aren't legally binding, they're meant to be procedural mechanisms for you. So there's no private right of action for not adhering to your rules, with the exception of, you know, the rules pertaining to testimony, which State laws allows us to do by rule. So I guess you --

VICE-CHAIR KING: Okay.

MR. MITCHELL: -- could waive them, yes.

VICE-CHAIR KING: Okay.

CHAIR PALTIN: Okay. Member Johnson?

COUNCILMEMBER JOHNSON: Thank you, Chair. You know, in an effort to help, I...I'll offer switching days with my Committee with yours if you'd like, just to give you more leeway. Even...I mean, I don't know if that's even an issue, but I'll offer it if you guys want, because it is on the 14th day, but it's up to you.

CHAIR PALTIN: And...and your Committee is a nine-Member Committee too, right?

COUNCILMEMBER JOHNSON: That is correct.

CHAIR PALTIN: Okay. Members, what do you think about hearing this on Monday afternoon instead of Thursday morning?

VICE-CHAIR KING: I can do that. We're all...we're all on the meeting in the afternoon anyway.

CHAIR PALTIN: Yeah. Okay. Chair Lee? We can't hear you because you're muted.

COUNCILMEMBER LEE: I don't think it'll give people enough time.

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CHAIR PALTIN: Oh, okay. All right. Member Sugimura?

COUNCILMEMBER SUGIMURA: No, I just wanted to say I'm fine either way. And you're on the 14th day, so you...you qualify.

CHAIR PALTIN: We're good.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: Okay. All right. We'll recess until the next regularly scheduled meeting, which is December 2nd, 2021, 9:00 a.m. We'll see you back. This was a fun exercise in fire drill and rules and whatnot. So sorry to the general public, but you know, that's life, it is what it is, and...and we'll try make it up in Member Kama's meeting and the public hearing. So you know, we're going to be working all day into the night. And hopefully this is no indication of how the rest of the day and night will continue on. Everybody do a prayer cleanse, and we'll see you at 1:30...or five us will.

COUNCILMEMBER LEE: Like this? Like this?

CHAIR PALTIN: Like this.

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: Like some windshield wiper action.

COUNCILMEMBER LEE: Okay. Okay. We're good.

CHAIR PALTIN: All right. We'll see you in couple hours.

COUNCILMEMBER LEE: Meeting in recess?

CHAIR PALTIN: Meeting in recess. Meeting in recess.

COUNCILMEMBER LEE: Recess meeting.

CHAIR PALTIN: Recess meeting. Recess. Recess. . . .(gavel). . .

RECESS: 11:44 a.m.

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APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

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Transcribed by: Daniel Schoenbeck

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CERTIFICATION

I, Daniel Schoenbeck, hereby certify that pages 1 through 43 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 22nd day of December 2021, in Kula, Hawai'i



Daniel Schoenbeck