

No. 24-1327

IN THE
Supreme Court of the United States

SPIRIT OF ALOHA TEMPLE, *et al.*,
Petitioners,
v.
COUNTY OF MAUI,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

BRIEF IN OPPOSITION

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COUNTERSTATEMENT TO QUESTION PRESENTED

Petitioners urge review of a decision of the circuit court which Petitioners allege “conflicts” with a legal standard applied by other circuits and this Court. Petitioners narrowly assert the question is over whether a religious organization making a “substantial burden” claim pursuant to the Religious Land Use and Institutionalized Persons Act [42 U.S.C. § 2000cc, et. seq.] must prove the unavailability of other land for its religious use and/or must prove a municipality’s reasons for denying a land use permit are arbitrary. Rather, Petitioners argue, a court considering the imposition of a substantial burden on religious practice should apply a “totality of the circumstances” test in determining whether a substantial burden has been imposed. This case does not present the issue(s) raised by Petitioners for reasons not the least of which is that the circuit court below *expressly applied the “totality of the circumstances”* test Petitioners advocate.

Moreover, under the legal standard as correctly stated by the circuit court, the determination of a substantial burden is whether *Maui County’s actions* were oppressive on religious exercise, and not whether Petitioners can prove a burden that cannot be mitigated, or whether Petitioners can prove denial of their special permit was arbitrary.

The circuit court correctly concluded under the correct legal standard that the totality of the circumstances in this case did not demonstrate Maui County’s actions were oppressive on Petitioners’ exercise of their faith, or “imposed a significantly great restriction or onus upon such exercise.”

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INTRODUCTION

Over the nearly eleven-years of litigation this case as traversed, and what the Petition for Writ of Certiorari labels a “tortuous path,” the evidence and “totality of the circumstances” adduced at two separate jury trials and two circuit court appeals demonstrated that Petitioners Fred Honig and Spirit of Aloha Temple sought religious protection for what very clearly was a commercial and profit seeking enterprise.

This matter should have culminated with the circuit court’s most recent and sound determination that the County of Maui’s (“Maui County”) denial of Petitioners’ special permit to continue this commercial activity in state and county conservation and agricultural land, even if considered “church” activity, was not “oppressive” or imposing “a significantly great restriction or onus” on Petitioners’ religious exercise.”

The circuit court expressly considered the “totality of the circumstances” in coming to this conclusion.

COUNTERSTATEMENT OF THE CASE

I. Factual Background

On the record of the first of two separate jury trials on two different sets of claims, it was established that in 1994 Petitioner Fredrick Honig bought land in Haiku, Maui zoned for coastal conservation and agricultural use (the “property”). Honig knew the land was subject to environmental protections and reserved for agricultural use. *Spirit of Aloha Temple, et al. v. County of Maui*, 49 F.4th 1180, 1184 (9th Cir. 2022). Honig immediately began developing the land without seeking any permits – clearing, grading, and cutting the contours of the protected coast, cutting in roads, and altering a natural watercourse. *Id.* Honig built

illegal structures on the land and installed illegal cesspools near drinking water wells. *Id.* Honig failed to obtain monitoring and preservation plans required by law for several known Hawaiian archeological sites on the land, including an agricultural terrace, burial crypt, and irrigation ditch. *Id.*

Honig then through a non-profit entity used the property as a venue to conduct commercial weddings, vacation rentals, retreats, and special events, all without required permits. *Id.* Well Being International, Inc., the non-profit entity through which the business was run, eventually registered three trade names; “Maui Gay Weddings,” “A Marriage Made in Heaven,” and “Maui Wedding Planners.” App. 68a, 91a, 94a, 97a, 100a. The property was marketed and advertised for weddings, wedding planning services, and as a wedding venue in the Yellow Pages and on the internet through at least two of the trade names. App. 74a.¹ Honig’s services included helicopter transportation and landings on conservation land for his wedding clients and other guests. App. 78a, 79a, 118a, 143a, 144a.

Approximately 550 tourist destination weddings were conducted on the property by late 2015. *Spirit of Aloha Temple*, 49 F.4th at 1184. The couples who were

¹ The property was advertised on the internet “dream vacation[s],” “personalized retreats,” vacation rental accommodations, and weddings services to include oceanfront “Honeymoon cottages.” App. 68a, 83a-87a, 106a-107a. At least one internet advertisement noted vacation accommodations were available at “Daily & Weekly Rates[.]” *Id.* The property was also advertised as “an ocean front waterfall pavilion for weddings, engagements or vow renewal,” offering “wedding planners and event consultants[.]” “beautiful ocean front cottages[.]” and “six vacation rentals[.]” *Id.* Hospitality services offered included on-site massage, yoga and mediation sessions, and private or group surf lessons were offered as well. *Id.*

married on the property during this period arrived from 46 out of the 50 United States and 7 different countries. App. 103a. All of these business and commercial activities were conducted on the property without any required permits. *Spirit of Aloha Temple*, 49 F.4th at 1148. Later, during an original permitting application hearing on March 23, 2010, HONIG admitted to the Maui Planning Commission (“Commission”) as the approving agency for his permit application, as follows:

MR. HONIG: Yeah, that -- we lost \$20,000. I have -- I am not -- I have a C.P.A. doing our bookkeeping. Everything is kept in there. I have not -- you know, we spent thousands of dollars on advertising trying because our business was going down. And we’re not able to advertise in the papers because of you people. Like otherwise, we could put in the paper let’s have an event here, something like that, but we have not.

So, we spent all of this money on advertising and running a business. And I’m not the greatest businessman. It is not my forte. I’m a monk. App. 80a.

One of Maui County’s Planning Commissioners at this same hearing reported seeing an internet ad marketing \$9,900 wedding packages on the property. App. 81a.

Honig was repeatedly put on notice that these activities required appropriate permits but continued to violate land use regulations. *Spirit of Aloha Temple*, 49 F.4th at 1184.

In 2007 Honig formed Spirit of Aloha Temple, a new non-profit entity to take over the business, and called it a “church.” Spirit of Aloha Temple entered a lease for the property with Honig. App. 145a, 171a. Honig

and Spirit of Aloha Temple then applied for a special permit for a “church, church[-]operated bed and breakfast establishment, weddings, special events, day seminars, and helicopter landing pad.” *Spirit of Aloha Temple*, 132 F.4th at 1148. The County of Maui Planning Commission denied that special permit, noting several buildings without proper permits; general problems with the helicopter pad; and potential adverse impacts to surrounding properties from loud music, helicopter noise, and increased traffic. *Id.*

In 2012 Honig and Spirit of Aloha Temple filed a second application seeking to hold “weekly church service,” “sacred programs, educational, inspirational, or spiritual including Hawaiian cultural events, and spiritual commitment ceremonies such as weddings,” with limitations on the number of attendees. *Id.*

The County of Maui Planning Commission denied the second application.

In its decision affirming the second jury verdict adverse to Honig and Spirit of Aloha Temple, the circuit court reviewed the “totality of the circumstances,” as follows:

When the Commission denied Plaintiffs’ second special-use-permit application, it noted that the proposed uses would increase traffic and burden public agencies. The Commission also noted safety concerns for drivers and pedestrians on Haumana Road.

Haumana Road is a narrow road, between eleven and eighteen feet wide at different parts. In contrast, the average rural or agricultural road is about twenty-two feet wide. Haumana Road contains no streetlights, no sidewalks, no shoulder, and no lane markings. And in

certain places, two cars cannot pass each other unless one pulls off the road.

The Commission found compelling the testimony of several nearby property owners on Haumana Road, who expressed concerns about pedestrian safety. Residents testified that children regularly walk home from school on the road and that the road has several blind turns, which pose a safety issue. Other residents noted concerns about flooding on the road during storms that made the road difficult to pass, although Plaintiffs challenge the severity and frequency of such flooding.

Given the conditions of Haumana Road, the County's concerns about traffic and road safety are well supported in the record and are not arbitrary. *New Harvest*, 29 F.4th at 602. Moreover, the County's reasons for denying the permit have been consistent, and the County has not exhibited "conflicting rationalizations for repeated denials." *Id.* at 603.

It is also undisputed that Plaintiffs were not "precluded from using other sites in the [County]." *Id.* Plaintiffs did not attempt to relocate, nor is there evidence that Plaintiffs even considered other locations, despite being aware of the zoning restrictions and the remoteness of the land. In fact, Honig testified that, when he bought the land in 1994, he was looking specifically for agricultural land. After acquiring the land, he began building immediately, without the required permits. For years, Plaintiffs continued to use the property without complying with the permitting requirements.

See Spirit of Aloha Temple, et al. v. County of Maui, 132 4th 1148, 1157 (2025) (also concluding “the County’s actions have not been significantly oppressive[.]”) (citing *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 602, 603 (9th Cir. 2022)).

Petitioner does not dispute any of these factual circumstances on this appeal.

The evidence introduced at the second jury trial of this case, and the record with the circuit court further established that neither Honig or his alter ego Spirit of Aloha Temple were ever precluded from engaging in the practices and religious gatherings that Honig acknowledged were central and essential to the tenets of his faith.

Honig described the “experience of God consciousness [as] the most important thing” in his faith. App. 124a. This experience involves “com[ing] to the level of our deepest reality[,] to be freed from the bonds of egoism [] – and the illusion of thinking we are all separate.” App. 151a. Honig also designates this experience “unitive consciousness,” and admits that he has not been prohibited from engaging in this meditation practice on his property. App. 124a-125a, 126a. Honig also describes the practices of this belief as group meditation, chanting, pranayama breathing, and yoga postures. App. 153a.

Honig also testified that practicing marriage counseling and performing nuptials [App. 133a, 170a], teaching group meditation [App. 138a, 169a], holding prayer circles [App. 111a, 113a, 119a, 140a, 169a, 170a], were all part of his faith. Honig acknowledged to a jury on September 29, 2023, the second day of trial on Petitioners’ RLUIPA and constitutional claims, that he had been engaged in of all these aforementioned

essential practices and activities on his property since his special permit was denied in 2014. App. 137a.

Moreover, both the pages on Spirit of Aloha Temple's website [*spiritofaloha.org*] and videos on its YouTube channel depict these same essential religious practices and activities occurring on the property since before the denial of the special permit and up to the present day. App. 155a, 162a-168a.²

The practices, activities, and events identified and depicted in the *spiritofaloha.org* webpages and videos on its YouTube channel include "private sacred events," "ceremonial gatherings," "[w]aterfall [b]aptisms," "[m]arriage [p]roposals," nuptials, weddings, group yoga and meditation, fire dancing, group gatherings and prayer, music performances, memorial services, and initiation rites, not exclusively. App. 155a-168a; *see also* footnote 2, above.

In the mix of all of these spiritual practices and faith-based activities, Honig admitted that performing weddings is not essential to the practice of his faith:

A. The goal -- I'm not married to weddings, and that's not my -- the only thing that I can do to serve humanity. My greatest passion is to teach meditation and to teach yoga. So -- and also to have a community of people who are like-minded and to develop the gardens into a botanical garden. App. 123a.

Honig testified that he has distilled the essential tenants of his faith down to a one-page document. App. 147a. Honig testified that anyone can become a member of his faith by signing the document and e-Mailing the

² Defense *Trial Exhibits D-113 and D-115* are the videos from Spirit of Aloha Temple's YouTube channel. *See* App. 111a-120a, 162a-168a.

signed copy to him. App. 148a. Honig estimates that approximately 1200 people have signed the document and joined his faith. *Id.* Honig issues a newsletter to the 1200 members who have signed up for his faith. App. 63a. Honig currently offers services on his property that he considers essential to those who sign up for his faith. App. 60a-61a, 111a-120a.

There is nothing in the Maui County Code or Hawai'i Revised Statutes that otherwise precludes Honig or Spirit of Aloha Temple from engaging in Honig's faith-based practices and activities on his property. Former Maui County Planning Director Will Spence testified at trial that nothing in Maui's zoning code prohibits any persons from engaging in religious practices on their land in the agricultural zone. App. 57a. Maui County Planning Commissioner Wayne Hedani and several other commissioners advised Honig that nothing prevented him from performing wedding services for couples on his property. App. 47a-48a.

Honig, however, does not feel like this is enough, and when asked about how he and Spirit of Aloha Temple are burdened in the practice of their faith, Honig admits he wants a permit to "*advertise*" his services. App. 64a, 80a. When asked if he was prohibited from engaging in his apparent interdenominational beliefs and practices,³ Honig also testified:

³ Honig belatedly claimed to be a "Hindu" monk only *after* initiating this lawsuit in 2013. Nowhere in Plaintiffs' Complaint does it allege that Honig is a Hindu monk, or even Hindu. App. 1a-40a. Nor does the Complaint allege any particular Hindu rituals or religious practices in which Plaintiffs engage, let alone that they have been precluded from engaging in. *Id.* At no time in this litigation have Plaintiffs identified any doctrinal or liturgical Hindu religious practice at all. Rather, Honig claims to recognize

A. Not from my personal use, but I'm restricted only in sharing with a group of people or advertising that I would like to hold a program or an event. That's what I'm not able to do.

Q. Okay. So you can't advertise.

A. That's correct. App. 129a.

Honig otherwise acknowledges that he can broadcast his religious practices and activities to the world through his *spiritofaloha.org* website and YouTube Channel. App. 64a-65a.

Petitioners' counsel also acknowledged the essential commercial character of the activities that Honig and Spirit of Aloha Temple claim have been burdened faith practices:

MR. STORZER: Oh, that's not -- that's not true, Your Honor. What we have established, I believe, or what we're certainly arguing is that commercial weddings -- you know, the County has talked about this idea of commercial weddings. Commercial weddings are okay if you're Ali'i Kula Lavender Farm. Commercial weddings are okay if your other churches as well. So both in terms of religion and religious denomination, commercial weddings are something that the County doesn't have any problem with, but other botanical gardens, commercial weddings are okay.

It's only when you're talking about Spirit of Aloha Temple that somehow commercial

and practice all religions, Hinduism being just one among many. App. 127a-128a.

weddings become[] a problem, whether it's respect to religious denomination or religion generally. App. 54a-55a.

Of course, what this retreating argument by counsel exposed, what counsel was in fact pointing to, is the actual activity that was allegedly burdened by denial of the land use permit, i.e., commercial advertising.

After receiving a substantial quantity of evidence at trial in 2023, the jury found that Honig and Spirit of Aloha Temple failed to prove by a preponderance of the evidence that Maui County substantially burdened Honig and Spirit of Aloha Temples' exercise of religion and failed to prove by a preponderance of the evidence that Maui County discriminated against them on the basis of religion as protected under federal and state constitutional and statutory authority. App. 41a-43a.

II. Legal Background

Throughout what the Petition labels as the "tortuous path," and over the nearly eleven-years of litigation this case has traversed, the evidence and "totality of the circumstances" adduced at two separate jury trials demonstrated that Honig and Spirit of Aloha Temple sought religious protection for what very clearly was a commercial and profit seeking enterprise.

The district trial court below on the facts before it on summary judgment recognized that:

It might be possible to show that a self-proclaimed religion was merely a commercial enterprise, without the underlying theories of man's nature or his place in the Universe which characterize recognized religions. Though litigation of the question whether a

given group or set of beliefs is or is not religious is a delicate business,[] our legal system sometimes requires it so that secular may not unjustly enjoy the immunities granted to the sacred.

See Spirit of Aloha Temple v. Cnty. of Maui, No. CV 14-00535 SOM/RLP, 2023 WL 5178248 at 16 (D. Haw. Aug. 11, 2023), *reconsideration denied*, No. CV 14-00535 SOM/RLP, 2023 WL 5754107 (D. Haw. Sept. 6, 2023), and *rev'd in part*, 132 F.4th 1148 (9th Cir. 2025), and *aff'd in part, appeal dismissed in part*, No. 23-3453, 2025 WL 943143 (9th Cir. Mar. 28, 2025) (quoting *Founding Church of Scientology of Washington, D. C. v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969); *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 189 L.Ed.2d 675 (2014), fn. 28 (“a corporation’s pretextual assertion of a religious belief in order to obtain an exemption for financial reasons would fail.”)).

Forging the “tortured path” of this case, Petitioners concocted and sustained a false dichotomy of “religious” wedding versus “commercial” wedding:

Q. You had mentioned again commercial weddings, and I was going to say just so the jury isn’t confused, again there is no such thing as a, quote, commercial wedding use in Maui County zoning code or in the State of Hawaii’s land use regulations, right?

A. Well, Maui County code has a definition of commercial purpose, and it includes growing, manufacturing, processing, providing services such as weddings, providing services for consideration or profit.

Q. I understand that.

A. So we would look at what Mr. Honig wanted to do. We looked at the history of what had taken place. Again, we went over yesterday the volume of what he wanted to do. And we were looking at websites with advertising, looking at his trade names, and we're going this is a commercial operation. App. 54a.

This false dichotomy was directed at supporting the erroneous and overbroad approach Petitioners take that RLUIPA protects against 1) regulation of any activity that may possibly harbor a scintilla of faith-based or religious conduct, and/or 2) regulation of any activity performed by a religious assembly or institution that purports to support its faith-based or religious mission. On the facts of this case, the alleged protected activity is *advertising*, for what Petitioners admit is commercial conduct incidental to and allegedly in support of faith-based practice.

It was not the intent of the legislature that the protections provided by RLUIPA were to be so broad:

Definition of religious exercise -

The definition of "religious exercise" under this Act includes the "use, building, or conversion" of real property for religious exercise. However, not every activity carried out by a religious entity or individual constitutes "religious exercise." In many cases, real property is used by religious institutions for purposes that are comparable to those carried out by other institutions. While recognizing that these activities or facilities may be owned, sponsored or operated by a religious institution, or may

permit a religious institution to obtain additional funds to further its religious activities, this alone does not automatically bring these activities or facilities within the bill's definition of "religious exercise." For example, a burden on a commercial building, which is connected to religious exercise primarily by the fact that the proceeds from the building's operation would be used to support religious exercise, is not a substantial burden on "religious exercise."

See 146 Cong. Rec. S7774-01, S7776 (2001) (joint statement of Sens. Hatch & Kennedy); *see also Christian Gospel Church, Inc. v. City and County of San Francisco*, 896 F.2d 1221, 1224 (9th Cir. 1990) ("The burden on religious practice is not great when the government action, in this case the denial of a use permit, does not restrict current religious practice but rather prevents a change in religious practice."); *see also Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003) ("[N]o . . . free pass for religious land uses masquerades among the legitimate protections [that] RLUIPA affords to religious exercise.").

It was demonstrated at trial that Honig and Spirit of Aloha Temple have been, are continuously, and freely engage on the land and in the structures which they own, lease, and inhabit, in the practices and activities they claim are essential to their faith. The denial of Petitioners' special permit has not caused any burden, let alone substantial, on Petitioners' ability to do so. *Cf. Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (plaintiff must show that defendant's conduct placed "substantial pressure on an adherent to modify his

behavior and to violate his beliefs,” or that the defendant’s conduct had a “tendency to coerce individuals into acting contrary to their religious beliefs.”). (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450-451 (1988) and *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18 (1981)); see also *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226-27 (11th Cir. 2004) (substantial burden occurs only when “an individual is required to ‘choose between following the precepts of her religion . . . and abandoning one of the precepts of her religion . . . on the other’”—that is, where “a regulation completely prevents the individual from engaging in religiously mandated activity, or . . . requires participation in an activity prohibited by religion[.]”) (quoting *Sherbert v. Verner*, 374 U.S. 398, 404 (1963)).

In *Harper v. Poway Unified School Dist.*, 445 F.3d 1166, 1188 (9th Cir. 2006), *reh’g en banc denied*, 455 F.3d 1052 (9th Cir. 2006), the court articulated the traditional “substantial burden” test under the Free Exercise Clause. See also *Sherbert v. Verner*, 374 U.S. at 402 (“The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, . . . Government may neither compel affirmation of a repugnant belief, . . . nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, . . . nor employ the taxing power to inhibit the dissemination of particular religious views[.]”).

RLUIPA employs the same test. See *Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 701 (E.D. Mich. 2004) (“As several courts have observed, the RLUIPA’s history demonstrates that Congress intended to leave intact the traditional

‘substantial burden’ test, as defined by the Supreme Court’s free exercise jurisprudence.”); 146 Cong. Rec. 7774-01, 7776 (joint statement of Sens. Hatch & Kennedy) (“The term ‘substantial burden’ as used in [RLUIPA] is not intended to be given any broader interpretation than the Supreme Court’s articulation of the concept of substantial burden on religious exercise”).

Although the district court below determined that both Honig and Spirit of Aloha Temple had standing under RLUIPA as “persons,” a jury had already determined that Spirit of Aloha Temple was not entitled to protection as a “religious assembly or institution.” App. 41a-43a.⁴ Nothing in RLUIPA provides that the definition of a “religious assembly or institution” is different for purposes its substantial burdens provision [42 U.S.C. § 2000cc(a)] than it is for the statutes’ discrimination and exclusion provisions [42 U.S.C. § 2000cc(b)]. To interpret the statute otherwise is absurd.

Finally, among the circumstances surrounding Appellants’ substantial burden claim, the factual record supports that where they knowingly bought and leased land in the state agricultural and conservation district, and county agricultural zone, Honig and

⁴ Petitioners did not appeal either of the jury verdicts in this case. See *Sananikone v. United States*, 623 Fed.Appx. 324, 325 (9th Cir. 2015) (“[T]his court may only set aside a jury verdict if ‘it is clear that the evidence and its inferences cannot reasonably support a judgment in favor of the opposing party.’”) (citing *Erickson v. Pierce Cty.*, 960 F.2d 801, 804 (9th Cir.1992)); *Applera Corp.-Applied Biosystems Group v. Illumina, Inc.*, No. C 07-02845 WHA, 2009 WL 8755606, at *2 (N.D. Cal. Mar. 6, 2009), *aff’d*, 375 Fed.Appx. 12 (Fed. Cir. 2010) (“Keeping in mind the clear-and-convincing standard and keeping in mind the deference we must give to jury verdicts, it would be wrong to set aside the verdict. Simply put, Applied did not carry its burden of proof—at least a reasonable jury could have so concluded.”).

Spirit of Aloha Temple had no reasonable expectation that land could be developed and used to advertise for and operate a commercial wedding business, retreat, and event venue, even if questionably designated as a “church.” See *Livingston Christian Schools*, 858 F.3d 996, 1004 (6th Cir. 2017) (“[t]he plaintiff’s own actions have also been found relevant in determining whether a burden is considered substantial. Several circuits have held that, when a plaintiff has imposed a burden upon itself, the government cannot be liable for a RLUIPA substantial burden violation) (citing *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 352 (2nd Cir. 2007)). (emphasis added).

The court in *Livingston Christian Schools* held as a matter of law that the plaintiff imposed a burden on itself when, after its proposed classroom use was denied, it had made an alternative property it owned unavailable to itself by leasing that alternative property to a third-party. In *Andon, LLC v. City or Newport News*, 813 F.3d 510, 515 (4th Cir. 2016), the Fourth Circuit Court held the plaintiffs failed to show a substantial burden as a matter of law, because they “knowingly entered into a contingent lease agreement for a non-conforming property.” See *Andon*, 813 F.3d at 515. Specifically, the plaintiffs entered into a lease with Andon which would have required a zoning variance to a setback requirement for the operation of a church. The variance request was denied. The Fourth Circuit in *Andon* further noted:

We further observe that if we agreed with the plaintiffs that the BZA’s denial of a variance imposed a substantial burden on their religious exercise, we effectively would be granting an automatic exemption to religious organizations from generally applicable land

use regulations. Such a holding would usurp the role of local governments in zoning matters when a religious group is seeking a variance, and impermissibly would favor religious uses over secular uses.

Andon, 813 F.3d at 516 (we emphasize that a critical function of RLUIPA’s substantial burden[s] restrictions is to protect a plaintiff’s reasonable expectation to use real property for religious purposes).

Appellants below misplaced their reliance on having a reasonable expectation of getting their proposed use because of the affirmative recommendation(s) from Maui County’s Planning Department for approval to the Maui Planning Commission. Those recommendations came well over a decade after Honig bought the property in 1994, and several years after Spirit of Aloha Temple in 2011 knowingly entered into a lease for protected conservation and agriculturally purposed land *after* its first special permit SUP2 2007/009 was denied in 2010, the year before.

III. Proceedings Below

Trial of Spirit of Aloha Temple’s “equal terms” claim under 42 U.S.C. § 2000cc(b)(1) commenced on August 6, 2019. On August 23, 2019, a jury rendered a special verdict against Plaintiffs, finding that Spirit of Aloha Temple failed to prove by a preponderance of the evidence it is a “religious assembly or institution.” App. 41a-43a. The jury also found that that Spirit of Aloha Temple was not discriminated against as compared to a nonreligious entity by the Maui County Planning Commission’s application of the relevant zoning criteria when it denied Petitioners’ special permit. *Id.* Plaintiffs did not appeal this jury verdict.

Rather, Plaintiffs appealed to the circuit court from a prior ruling adverse to them on summary judgment, making the contention that Hawai‘i Administrative Rule sub-§ 15-15-95(c)(2), as one of five (5) sub-provisions in the rule giving guidelines for an approving agency to consider when assessing a state special permit application, constituted a facially invalid, unconstitutional prior restraint. The circuit court agreed that the language of subsection (c)(2) allowing for an agency determination whether a proposed special use “adversely affects” surrounding property was too “general, flimsy, and ephemeral[.]” *Spirit of Aloha Temple, et al. v. County of Maui*, 49 F.4th 1180, 1192 (2022).

Importantly, the district court’s summary judgment ruling that Petitioners had appealed from, expressly declined and did not make any determination either way as to the constitutionality of sub-provision (c)(2). *Spirit of Aloha Temple, et al. v. County of Maui*, 384 F.Supp.3d 1231, 1255 (Dist. Haw. 2019). Rather, it held:

[E]ven if subsection 15-15-95(c)(2) does run afoul of the First Amendment (***something this court is expressly not ruling on***), that would not give Plaintiffs an entitlement to receive the requested permit because subsection 15-15-95(c)(3) [which the Planning Commission relied on to deny SUP2 2012/0009] would still present an impediment to such a grant. *Id.*, 384 F.Supp.3d at 1255, *supra*. (emphasis added).

The district court ruled that “the required examination [pursuant to 15-15-95(c)(3)] of the burden on agencies with respect to ‘roads and streets, sewers, water drainage and school improvements, and police and fire protection’ provides a sufficiently specific,

narrow, objective, and definite standard for the Maui Planning Commission to consider.” The circuit court has likewise already observed that the remaining sub-provisions of § 15-15-95(c) are “more specific guidelines” and “more objective criteria[.]” *Spirit of Aloha Temple*, 49 F.4th at 1192.

The circuit court on the first appeal also reversed the district court’s dispositive ruling on the remaining RLUIPA and constitutional claims in Petitioners’ Complaint, where that ruling gave preclusive effect to legal findings by the Maui Planning Commission that it had met the constitutional and RLUIPA standard of strict scrutiny when the Commission denied Petitioners’ special permit. The Panel remanded the case for further proceedings.

The remaining RLUIPA substantial burdens claim, non-discrimination claim, and corollary constitutional free exercise and equal protection claims were on remand tried to a jury commencing on September 28, 2023. On October 11, 2023, the jury rendered a special verdict against Plaintiffs, finding that both Honig and Spirit of Aloha Temple failed to prove by a preponderance of the evidence that Maui County substantially burdened their religious exercise as alleged, under either RLUIPA or under the United States and Hawai‘i State constitutions. (Petition, App. 126a). The jury also found that neither Honig or Spirit of Aloha Temple were discriminated against based on religion under any of these laws. *Id.*

REASONS FOR DENYING THE PETITION

I. The Ninth Circuit Court expressly considered the “totality of the circumstances” in ruling against the substantial burden claim as is consistent with interjurisdictional decisional law

The Petition principally argues that in deciding whether Petitioners’ religious exercise was substantially burdened, the Ninth Circuit Court mistakenly imposed an evidentiary burden on Petitioners to prove that 1) they were “precluded” from exercising their faith at any other location(s), and/or 2) that the denial of their special permit by the Maui Planning Commission was “arbitrary.” Petitioners argue that this requirement of a showing “as a matter of law” is inconsistent with other circuits that consider the “totality of the circumstances” in deciding whether a substantial burden has been imposed.

In its ruling on the principal RLUIPA substantial burden claim the circuit court expressly decided:

Looking at *the totality of the circumstances*, we conclude as a matter of law that *the County did not impose a substantial burden* on Plaintiffs.

Spirit of Aloha Temple, 132 F.4th at 1158. (emphasis added).

The circuit court clearly recognized that the law examines foremost whether *Maui County’s actions* imposed a substantial burden on Petitioners’ religious exercise.

It should be apparent to Petitioners, and it likely is, that the circuit court’s consideration of whether Honig and Spirit of Aloha Temple were “precluded” from

exercising their faith at any other location(s) and whether the denial of their special permit was “arbitrary,” were circumstances considered among a number of others by the circuit court to determine *whether the actions of the Maui Planning Commission were “oppressive”* on Honig and Spirit of Aloha Temples’ exercise of their faith, or “imposed a significantly great restriction or onus upon such exercise.” *Spirit of Aloha Temple*, 132 F.4th at 1156 (citing *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)).

The circuit court expressly noted in its review and decision that:

We consider “the totality of the circumstances,” *including, but not limited to*, whether the County’s reasons for denying the special use permit were arbitrary and could apply to Plaintiffs’ future applications; whether Plaintiffs have ready alternatives or whether those alternatives would require “substantial uncertainty delay, or expense”; whether Plaintiffs were precluded from other locations in the county; and whether Plaintiffs imposed the burden upon themselves.

Spirit of Aloha Temple, 132 F.4th at 1158 (citing *New Harvest*, 29 F.4th at 602). (emphasis added).

With this framework in place, the circuit court considered a comprehensive totality of different circumstances in deciding whether Maui County’s denial of Petitioners’ special permit was oppressive on Petitioners’ exercise of their faith, including:

- The limitations on the use of agricultural land under Hawai‘i law;

- Honig's awareness of the zoning restrictions when he bought the land in 1994;
- Honig's failure to consider any other sites for the alleged religious purpose he intended for the land;
- Honig's immediate clearing, grading, and building on the land without any development permits and his continued use of the property without any land use permits;
- Whether Petitioners' proposed use of the land would burden public agencies to provide private roads and streets, sewers, water, drainage, not exclusively;
- The narrowness of Haumana Road which visitors would use to access Honig's property;
- The Commission's findings that Petitioners proposed use would increase traffic on Haumana Road and burden public agencies;
- The Commission's concerns for the safety of drivers and pedestrians on Haumana Road;
- The absence of any streetlights, sidewalks, road shoulder, and lane markings on Haumana Road;
- The safety of pedestrians and children who regularly walk the road;
- The existence of several blind spots along Haumana Road; and
- The flooding of Haumana Road during inclement weather, not exclusively.

Spirit of Aloha Temple, 132 F.4th at 1157-58.

None of these circumstances were considered as factual or legal showings or evidentiary burdens

required from Petitioners. Rather they were considered in determining whether *Maui County's actions* were oppressive on religious exercise.

The circuit court correctly concluded under the legal standard interjurisdictionally recognized that under these circumstances Maui County's actions were not oppressive as to Petitioners' religious exercise.

II. Petitioners' argument invites this Court to ignore the totality of the circumstances they incorrectly assert the Ninth Circuit Court failed to consider

It should also be apparent to Petitioners that their attempt to narrow and misdirect this Court's focus on whether 1) Petitioners should have considered any other locations for their religious exercise, and/or 2) Petitioners were required to show that the denial of their special permit by the Maui Planning Commission was "arbitrary" "as a matter law" not only misstates what the circuit court held, but invites this court to ignore the totality of the circumstances the circuit court expressly considered.

Nowhere in the circuit court's decision is there language or meaning suggesting Petitioner must show as a matter of law that they were "precluded" from exercising their faith at other sites on Maui-island. Nowhere in the circuit court's decision is there language or meaning suggesting Petitioners must show the Commission's decision was "arbitrary." By this narrow misconstruction of the circuit court's review and decision, Petitioners are soliciting this Court to ignore all of the other circumstances within the totality the circuit court expressly considered when it affirmed the second jury verdict in this case.

CONCLUSION

There is no appropriate question before this Court for review, and the petition for writ of certiorari should be denied.

Respectfully submitted,

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October 14, 2025

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APPENDIX A

IN THE UNITED STATES DISTRICT CIRCUIT
FOR THE DISTRICT OF HAWAII

Civil No. CV14-00535

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI, and MAUI PLANNING COMMISSION,

Defendants.

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and

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COMPLAINT

Plaintiffs SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit corporation, (the “Temple”) and FREDRICK R. HONIG (“Honig”) (collectively, “Plaintiffs”), by and through their attorneys, Durrett, Rosehill & Ma, LLP, hereby complains of Defendants COUNTY OF MAUI, and MAUI PLANNING COMMISSION (collectively, the “Defendants”) as follows:

NATURE OF ACTION

1. This action is commenced by Plaintiffs to redress violations of its civil rights, as protected by the Free Exercise, Free Speech and Equal Protection Clauses of the United States Constitution, 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), and Article I §§ 4-5 of the Hawaii Constitution caused by the Defendants’ burdensome, discriminatory and unreasonable land use regulations

and intentional conduct that has prohibited and continues to prohibit the Spirit of Aloha Temple from conducting religious services and activities in exercise of its religious beliefs in already existing structures on its property at 800 Haumana Road, Haiku, Maui, Hawaii (the “Property”).

2. The Maui County Planning Department (the “Planning Department” or “Department”), based on substantial review, comments by other governmental agencies, and proposed conditions to mitigate any land use impacts, recommended approval of the Plaintiffs’ application for a State Land Use Commission Special Permit (the “Permit”) to allow the religious use. Nevertheless, the Planning Commission denied the Permit based on the affirmative vote of three of its eight members, and the abstaining of two of its members.

3. By its denial of the Plaintiffs’ Permit to conduct religious observances at the Property (which is currently being used as a botanical garden open to the public), the Planning Commission has determined that groups of people may visit the Property for various secular purposes, have the same land use impacts, and to engage in any number of other activities permitted by Maui County Code § 19.30A.050(B)(11), but not to engage in religious observances.

4. Plaintiffs allege that the Planning Commission’s denial of the Permit—which satisfied all criteria under the relevant zoning regulations—was based on misapplication of state and local laws, ad hoc factors specifically and specially designed to prevent religious exercise on the Property, and unequal treatment as compared to similarly situated entities in Maui County.

5. Plaintiffs further allege that the denial of the Permit, which would allow Plaintiffs to operate a place of worship for religious observance, services and education, substantially burdens the Plaintiffs' religious exercise without using the least restrictive means of achieving the compelling governmental interest that the Planning Commission alleges exists to deny the Permit.

6. Plaintiffs also allege that the Planning Commission's application of unwritten and ad hoc "standards," particularly with respect to traffic standards, to deny the Permit constitutes a prior restraint on the Plaintiffs' protected First Amendment activity, does not provide reasonable notice to Permit applicants of whether proposed places of worship meet the standards for a Permit, and is therefore vague and allows for unbridled discretion on the part of the Commission.

PARTIES

7. Plaintiff SPIRIT OF ALOHA TEMPLE, INC. is a domestic nonprofit corporation formed under the Laws of the State of Hawaii on September 17, 2007.

8. Plaintiff FREDRICK HONIG resides at 800 Haumana Road, Maui, Hawaii, and is a licensed minister.

9. Defendant COUNTY OF MAUI is a local governmental entity organized under Hawaii law.

10. Defendant MAUI PLANNING COMMISSION is a Planning Commission established pursuant to Titles 6 and 13 of the Hawaii Statutes.

JURISDICTION AND VENUE

11. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42

U.S.C. § 2000cc *et seq.*, and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction of Counts VIII, IX and X under 28 U.S.C. § 1367(a) for claims brought under Hawaii law.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that all of the events giving rise to the claims herein occurred in this District and the Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS Plaintiffs' Religious Exercise

13. The Spirit of Aloha Temple, Inc., incorporated in 2007, is a religious assembly and institution.

14. The Temple and Honig's religious faith and practices are known as "Integral Yoga."

15. Integral Yoga is a path of integral seeking of the Divine whose adherents believe that all people are in the end liberated out of the ignorance and its undivine formations into a truth beyond the mind, a truth not only of highest spiritual status but of a dynamic spiritual self-manifestation in the universe.

16. Integral Yoga was described in several works in the early part of the twentieth century by Sri Aurobindo, an Indian yogi and guru.

17. Sri Aurobindo's vision, shared by the Plaintiffs, was the evolution of human life into a life divine. He believed in a spiritual realization that not only liberated man but also transformed his nature, enabling a divine life on earth.

18. Integral Yoga International was established in the United States, by Sri Swami Satchidananda in 1966 and is a worldwide religious organization.

19. Adherents of Integral Yoga believe that the goal and the birthright of all individuals is to realize the spiritual unity behind the diversity throughout creation and to live harmoniously as members of “one universal family.”

20. This goal is attained through *asanas* (yoga postures), *pranayama* (extension of the life force), the chanting of holy names, self-discipline, selfless action, *mantra japa* (sacred utterances), meditation, study, and reflection.

21. Honig, also known as Swami Swaroopananda, is a licensed minister and teacher of Integral Yoga.

22. Honig was ordained in 1977 by the acclaimed ecumenical leader, Sri Swami Satchidananda, who was ordained in 1949 by the renowned Sri Swami Sivananda, Founder of The Divine Life Society and The All-World Religions Federation.

23. For twenty years, starting at age 21, Honig lived, studied, taught and served as a monastic member of Satchidananda Ashrams and Integral Yoga Institutes.

24. For the past twenty years, Honig has served the Spirit of Aloha Temple, Botanical Gardens and Bird Sanctuary on the north shore of Maui. The Gardens are dedicated to living in harmony with Nature, through alignment with its 12 Organizing Principles: Peace, unity, gratitude, humility, respect, simplicity, cooperation, honesty, happiness, love, responsibility, and freedom.

25. Plaintiffs believe that these twelve universal truths are the essence of all world religions, and also derive inspiration from the accomplishments of orders from varied traditions such as the Hindu Missions of

Swami Vivekananda, Swami Sivananda and Swami Satchidananda; the Christian missions of Saint Francis, Saint Damian, Mother Teresa, Thomas Merton as well as the Shaker Communities; the Jewish Missions of The Essenes; the Islamic Missions of the Sufis; and the Buddhist Missions of The Dalai Lama and the Tibetan Monasteries.

26. The Spirit of Aloha Temple, Inc., an Internal Revenue Code, Section 501(c)(3) tax-exempt organization, was incorporated as a church in 2007 to further the principles of Integral Yoga, and specifically (as stated in its Bylaws) “No promote Individual and Global Health, Harmony and Well-Being through Education, Instruction, Guidance and Research.”

27. A significant element of the Temple’s ministry is to be a living classroom for sustainable organic horticulture and plant-based nutrition, which is in furtherance of its religious beliefs.

28. In furtherance of these beliefs, the Plaintiffs seek to engage in various religious practices, including holding customary religious services such as weekly meetings and weddings, offering classes on their spiritual beliefs, and holding communal meals.

29. Other than the subject Property, the Temple does not own or operate any other facilities for purposes of its religious worship and exercise.

30. The Plaintiffs have no other location in which to hold weekly church services.

31. The Plaintiffs have no other location to conduct sacred programs, educational, inspirational and spiritual, and spiritual commitment ceremonies.

32. The Plaintiffs have no other location to operate spiritual classes.

33. The lack of a place of worship severely burdens the religious exercise of the Plaintiffs because the Temple lacks any facility to hold its worship services, events and classes.

34. In order to accommodate its religious exercise, the Temple requires a facility that can accommodate its members and others for such religious worship and activities.

35. The Property is uniquely capable of accommodating the Plaintiffs' religious exercise.

The Property and Current Uses

36. The Property is approximately 11 acres located at 800 Haumana Road, Haiku, Maui.

37. The Property is described as Tax Map Key No. (2) 2-8-004:032.

38. The Property is located in the State Agricultural District, Paia-Haiku Community Plan, and the County Agricultural Zone.

39. The Property's Land Use Category is Agriculture.

40. The Property is located within the Special Management Area.

41. The Property is approximately one mile makai of the Hana Highway.

42. It contains a main farm dwelling, second farm dwelling, a potting shed, a building denominated the Waterfall Pavilion, Potting Shed, and other accessory buildings, all duly permitted by the County.

43. The Property is owned by the Fredrick R. Honig Revocable Living Trust (the "Trust").

44. The Trust leases the Property to The Spirit of Aloha Temple, Inc. through a perpetual lease that is recorded with the State Bureau of Conveyances.

45. Currently, the property is used for limited “secular” uses, including a botanical garden, bird sanctuary and staff housing.

46. The Temple operates the Property in accordance with its religious beliefs, which include aligning with “Nature’s Organizing Principles.”

47. The Property is stewarded by a volunteer team of “Nature Guardians,” who see God as Nature and their service to Nature as worship.

48. This also includes promoting Hawaiian plant-based horticulture and nutrition, and restoring the historic Taro Lo’i. Such activities are currently permitted by the Defendants.

49. Plaintiffs additionally seek to use the Property as a “Church” use, which would include religious services, meetings, lectures and events for small numbers of people.

50. The soil productivity rating of the Property according to the Land Study Bureau is mostly “C9” with some “E97” on a scale with “A” being the best agricultural land and “E” the worst. H.R.S. § 205-4.5 provides different use limitations for parcels with various soil productivity ratings, higher scores being more restricted.

51. According to the Land Study Bureau Detailed Land Classification for the Island of Maui (1967), the Property is assigned an overall productivity rating of “C”, indicating moderate productive capacity, and rRR, indicating very low overall productive capacity.

52. The Plaintiffs had previously applied (SUP 2007/0009) for a special use permit to conduct religious activities on the Property, which was denied by the Planning Commission on March 23, 2010 with reconsideration also denied on December 14, 2010. A findings of fact, conclusions of law and decision and order was issued on February 8, 2012.

53. The components of Plaintiffs' proposed religious use at issue in Plaintiffs' special use permit application discussed *infra* are interdependent and inseparable from the current "agricultural" uses of the Property.

54. Providing worship services, classes and ceremonies at another location would be wholly impracticable, given Plaintiffs' religious beliefs and exercise.

55. The Temple does not have any realistic opportunity to purchase land elsewhere on Maui in order to construct its proposed religious facility with botanical use, and any such course of action would involve unreasonable delay, uncertainty, and expense due to the Defendants' land use regulations listed *infra*.

The Relevant Land Use Regulations

56. The Subject Property is located in the State Agricultural District with a Land Use Classification of "Agricultural."

57. A use on the Property must be permitted by the Hawaii Revised Statutes, the Maui County Code, and because within the Special Management Area, by the Community Plan.

58. Permitted uses in the Agricultural District include Agricultural Parks. Permitted accessory uses include Parks and Open land recreation including: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums;

greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; and mountain biking. M.C.C. § 19.30A.050.

59. The Plaintiffs' botanical garden on the Property is a permitted use in the Agricultural District.

60. "Guided garden tours" are permitted on the Property under H.R.S. § 205-2(d)(12) and as an accessory use of "open land recreation" under M.C.C. § 19.30A.050(B)(11).

61. The County has informed the Plaintiffs that "uses such as weddings, special events, seminars, group instructions . . . are not permitted" on the Property.

62. The County has also informed the Plaintiffs that "classes, demonstrations, conferences, and seminars on plant-based nutrition, health and well-being (e.g., yoga, meditation)" are not permitted on the Property.

63. Bed and breakfast homes are permitted in the Agricultural zone in conjunction with a bona fide agricultural operation.

64. Special permit uses in the Agricultural District include, among others, Farmer's markets, Public and quasi-public institutions that are necessary for agricultural practices; Major utility facilities as defined in section 19.04.040 of this title; Open land recreation uses including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, accessory buildings and structures; Cemeteries, crematories, and mausoleums; Mining and resource extraction; Landfills; Solar energy facilities that are

greater than fifteen acres; and Short-term rental homes. M.C.C. § 19.30A.060.

65. H.R.S. § 205-2(d) states “Agricultural districts shall include . . . [a]gricultural tourism on a working farm, . . . [a]gricultural tourism activities, . . . [o]pen area recreational facilities, . . . and [a]gricultural-based commercial operations,” among others.

66. Churches and religious institutions are also permitted as a special use in the Agricultural district.

67. The Plaintiff’s application for a State Land Use Commission Special Permit is governed by H.R.S. §§ 205, 205A and 226, 15-15-95 H.A.R., and Maui County Code Chapter 19.30A.

68. The relevant land use regulations permit Plaintiffs to conduct tours on its property as part of its botanical garden use.

69. The applicable land use regulations do not limit the number of persons that may use the Property for such tours.

70. The Temple does conduct such tours as part of its botanical garden use, with an average of twenty people participating, and up to a maximum of 120 people.

71. The certificate of occupancy for Spirit of Aloha’s multi-purpose tent structure permits occupancy of 176 persons.

72. H.R.S. § 205-6(a) provides that a “clunty planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.”

73. The Maui County Planning Department noted that “[t]he State Land Use Law provides flexibility in allowing for unusual conditions that have evolved

since a property was classified in the State Agricultural District.”

74. Section 15-15-95 of the Hawaii Administrative Rules lists the following guidelines established in determining an “unusual and reasonable use”:

- i. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission;
- ii. The desired use would not adversely affect surrounding property;
- iii. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection;
- iv. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established; and,
- v. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

75. H.R.S. § 205-6(c) states that a “county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter.”

76. Maui County Code § 19.510.070(B) states that the standards for a special use permit to be used by the planning commission required that each of the following criteria must be met:

1. The proposed request meets the intent of the general plan and the objectives and policies of the applicable community plan of the county;
2. The proposed request is consistent with the applicable community plan land use map of the county;
3. The proposed request meets the intent and purpose of the applicable district;
4. The proposed development will not adversely affect or interfere with public or private schools, parks, playgrounds, water
5. The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area;
6. That the public shall be protected from the deleterious effects of the proposed use;
7. That the need for public service demands created by the proposed use shall be fulfilled; and
8. If the use is located in the state agricultural and rural district, the commission shall review whether the use complies with the guidelines established in section 15-15-95 of the rules of the land use commission of the State.

77. Maui County Code § 19.510.070(E) permits the planning commission to “impose conditions on the granting of a request for a special use if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use.”

78. These land use regulations allow the Defendant Planning Commission to make individualized assessments of all applications for Special Permits.

79. The inherently subjective land use regulations governing special use permits give the Defendant Planning Commission broad discretion over any decision on a special use permit application, enabling it to accept or reject applications on a case-by-case basis according to its own unwritten and ad-hoc standards.

80. It is the policy of the State of Hawaii, as described in H.R.S. § 205-41, that “There is a compelling state interest in conserving the State’s agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of: (1) Conserving and protecting agricultural lands; (2) Promoting diversified agriculture; (3) Increasing agricultural self-sufficiency; and (4) Assuring the availability of agriculturally suitable lands,”

81. Furthermore, H.R.S. § 205-6(f) states that “Land uses substantially involving or supporting educational ecotourism, related to the preservation of native Hawaiian endangered, threatened, proposed, and candidate species, that are allowed in an approved habitat conservation plan under section 195D-21 or safe harbor agreement under section 195D-22, which are not identified as permissible uses within the agricultural district under sections 205-2 and 205-4.5, may be permitted in the agricultural district by special permit under this section, on lands with soils classified by the land study bureau’s detailed land classifications overall (master) productivity rating class C, D, E, or U.”

82. H.R.S. § 205-12 states: “The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition

relating to agricultural districts under section 205-4.5 and shall report to the commission all violations.”

83. Additionally, “[a]ny person who violates any provision under section 205-4.5, or any regulation established relating thereto, shall be fined not more than \$5,000, and any person who violates any other provision of this chapter, or any regulation established relating thereto, shall be fined not more than \$1,000.” H.R.S. § 205-13.

84. Thus, Hawaii and Maui law provide for various mechanisms to ensure that their land use goals are protected.

Plaintiffs’ Special Use Permit Application

85. On November 21, 2012 the Plaintiffs filed an application (the “Application”) for a State Land Use Commission Special Permit (SUP2 2012/0032) to hold weekly church services for up to 20 people on Saturdays from 10:00am to 2:00pm, operate a living classroom for nature guardian skills for up to 23 people 4 times per week, and conduct sacred programs, educational, inspirational and spiritual, and spiritual commitment ceremonies such as weddings for up to 80 persons 24 times per year and up to 40 persons 24 times per year at the Property.

86. The Plaintiffs proposed to use the existing structures for purposes of the church use.

87. Groups of people of the same size or larger are currently permitted on the Property for non-religious purpose of visiting the botanical garden.

88. The Plaintiffs amended their application regarding events to request only 12 events per year for up to 20 people, 12 events per year for up to 40 people, 12

events per year for up to 60 people, and 12 events per year for up to 80 people.

89. The Planning Department provided its recommendation to the Planning Commission, recommending approval of the Application, with 21 conditions.

90. After consultation with the Maui County Planning Department, the Plaintiffs agreed to further limit the proposed use as follows:

- i. The classroom was to be limited to use by no more than 24 persons, including staff;
- ii. There were to be no more than four classes per week, all between the hours of 10:00 a.m. and 2:00 p.m.;
- iii. Church services were to be limited to one per week with a maximum of 24 attendees and would usually be conducted on Saturdays between the hours of 10:00 a.m. and 2:00 p.m.;
- iv. No more than 48 church-related events per year, of those no more than half could have between 25 and 40 participants and staff;
- v. No more than two events with 25 to 40 persons could be conducted per month;
- vi. There could be no more than four church-related events per month,
- vii. All church-related events were to take place between 10:00 a.m. and 8:00 p.m.;
- viii. Shuttle buses were to be used to transport participants to the church-related events that involved between 25 and 40 participants;

- ix. The shuttles would use privately owned facilities, not public ones, for drop off and pick up;
 - x. There would be no more than 25 people on the Property except for 59 days a year;
 - xi. The attendance would further be limited by the waste water system's limits;
 - xii. Records of events, dates, attendance and type would be maintained and submitted to two separate County agencies each year. Failure to submit them could result in revocation of the permit;
 - xiii. Obtaining approvals from the State Historic Preservation Division;
 - xiv. Several specific Department of Health Safe Water Drinking Branch Test results for a variety of chemicals and bacteria;
 - xv. Approval of the Department of Health Environmental Health Services Division regarding all food consumed on the premises;
 - xvi. No food was to be prepared on the premises for any event;
 - xvii. A parking plan had to be approved by the Zoning and Enforcement Division and submitted to the Planning Department;
 - xviii. The permit would expire on March 31, 2016, subject to applications for renewal; and
 - xix. A hardened driveway approved by the Fire Department and Department of Public Works.
91. After extensive revision of the Application from November 2012 through February 2014, on February

11, 2014 the Maui Planning Department deemed the application complete and scheduled a public hearing before the Maui Planning Commission for March 25, 2014.

92. On February 21, 2014, Plaintiffs mailed the requisite notice of public hearing to owners and lessees adjacent to the Property and across the street.

93. A notice of hearing on the application was published in the Maui News on February 21, 2014 by the Planning Department.

94. The Planning Department issued a Report and Recommendation (“Recommendation”) that the Permit be issued.

95. The Planning Department noted that no new buildings or structures were proposed, that the church use will use the existing structures in a shared use arrangement, and that “[t]he church is intended to complement and support the existing agricultural uses of the property and the open and rustic setting of the area.”

96. The Department also determined that “[i]f approved with conditions, the applicant will implement mitigative measures to limit impacts on the surrounding area, including noise, traffic and burdens on public service.”

97. State and County agency review comments were provided regarding potable water availability, wastewater capacity, traffic, police and fire department access, archeology, and adherence with the agricultural zoning of the Property.

98. The Department noted that the use would “place little burden on public sewers, water systems, drainage systems or educational facilities.”

99. With respect to the narrow road conditions of Haumana Road, the Planning Department stated: “the Department has worked with the applicant and public safety agencies to limit the number of visitors, events, and hours of events.”

100. With respect to the State zoning statutes, the State Plan, H.R.S.

- i. Improving opportunities to experience natural beauty and biodiversity for present and future generations;
- ii. Educating residents about responsible stewardship and interconnections with the environment;
- iii. Improving land use management;
- iv. Preserving and enriching residents’ quality of life;
- v. Protecting the Island’s natural beauty;
- vi. Improving its economy;
- vii. Strengthening the Island’s sense of place; and
- viii. Protecting and enhancing architectural and landscape characteristics.

101. The Department also considered the Application in light of the local Paia-Haiku Community Plan and again found that it promoted the goals of that land use plan.

102. The Department also reviewed the requirements for a Special Use Permit in the Agricultural District, found in H.R.S. §§ 205 and 205A. It specifically found that the proposed use meets those standards, that it will complement and support agricultural use, and

that it will not adversely affect surrounding property or burden public services.

103. The Recommendation noted that any concern about possible vehicular and pedestrian traffic impact had been addressed by both the Police and Fire Departments. It states that “[i]n light of these comments the Department discussed the matter with public safety agencies and developed conditions to mitigate the effect on traffic and public services.”

104. In order to mitigate traffic impacts along Haumana Road, the Department of Public Safety/Police Department recommended that the number of visitors and hours of operation for church related events be limited. Those limitations were adopted and made part of the Application as finally submitted.

105. Significantly, the Department’s Recommendation quoted the Police Department’s comment as stating: “There is no objection to the progression of this project at this time, from the police standpoint in regards to pedestrian and vehicular movement.”

106. The Recommendation also noted that “the proposed church and agricultural education uses will complement existing agricultural uses of the property using existing buildings and structures.”

107. The Department’s Recommendation included a conclusion of law that “[t]he application for a State Land Use Commission Special Permit complies with the applicable standards for an ‘unusual and reasonable’ use within the State Agricultural District.”

108. With regard to impact on surrounding properties, the Recommendation stated: “If approved with conditions the applicant will implement mitigative measures to

limit impacts on the surrounding area, including noise, traffic and burdens on public service.”

109. That Recommendation further noted that “[c]hurch or related uses are not uncommon in the State Agricultural District under the provisions of a State LUC Special Use Permit.”

110. Plaintiffs’ proposed use would be consistent with the policy goals of H.R.S. § 205-41.

111. However, there was substantial public opposition by nearby residents to the Plaintiffs’ use.

112. On March 25, 2014 the Commission held a public hearing on the Application.

113. During the March 25 hearing and at the request of Planning Commissioner Wakida, William Spence, Director of the Maui Planning Department, testified:

That botanical garden use it’s supposed to—it’s an accessory use listed under in the Agricultural Zoning Code. So whatever farming, whatever agricultural activities are going on as a part of that and that could be, you know, agriculture is pretty broadly defined. They could have people down there to, you know, as with other botanical gardens you could, you know, see the different species and take a tour and those kinds of things.

Minutes of Maui Planning Commission, March 25, 2014 at 72.

114. There are no limitations in the relevant state and county land use regulations that regulate the number of persons who may attend the non-religious use of the botanical garden.

115. There are no limitations in the relevant state and county land use regulations that regulate specifically how persons may arrive at the non-religious use of the botanical garden.

116. At the conclusion of the public hearing, the following comments and motion of the Planning Commission took place:

Mr. Freitas: I'd like to make a motion to deny and I have a . . . (inaudible) . . . reason why I am voting to deny. I run a tow business and road safety is so important to me and that road I feel is not safe with pedestrians walking up and down the highway and people with bicycles and what have you. And I have been on that road with our tow truck and it is a very narrow . . . especially when it rains. So that's my prime reason for making the motion to deny the applicant.

Mr. Medeiros: I second.

Chairperson Lay: Motion by Commissioner Freitas to deny, seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: I concur with Mr. Freitas about the concern for safety on the road. And we've heard from neighbors that they feel the road is unsafe for a certain amount of excess traffic which the applicant sounds like he will generate. And as well, there seems to be some issues raised about water and wastewater that I think are of concern.

Chairperson Lay: Any more discussion on the motion? Director can repeat? Oh, Commissioner Medeiros?

Mr. Medeiros: Yeah, I seconded the motion mostly because while I respect his rights to religion, it's not safe. Okay, maybe the Planning Commission, the State Department of Health recommended all of these things to us as satisfactory, but it's still not safe not to the degree where I would be comfortable with. Okay. I respect human life. I wanna protect it.

Minutes of Maui Planning Commission, March 25, 2014, pp. 80-81 (emphasis added).

117. The motion passed with six ayes voting for denial and two excused. The special use permit was denied.

118. Plaintiffs thereafter requested reconsideration of the denial.

119. The Plaintiffs submitted a reduction in the church events in support of its request for reconsideration as follows: 6 programs per month for up to 4 hours and for up to 24 participants, from 10 a.m. to 4 p.m. and 2 programs per month for up to 6 hours and up to 40 participants (1 from 10 a.m. to 4 p.m, and 1 from 10 a.m. to 8 p.m.).

120. On April 8, 2014, the Commission reconsidered the Application.

121. Plaintiffs again amended their application to further reduce the number and size of church related events that they would hold.

122. A motion to rescind the previous denial passed by a vote of 5 to 1 with 2 excused.

123. Plaintiffs orally amended the Application to reduce the proposed number of church events to include eight per month with a maximum of ten cars per event. Two of the events could have up to 40 people and the remaining six events could have up to 24 people. Seven of the eight events would end by 4 p.m., with the remaining event ending by 8 p.m.

124. The Planning Department again recommended approval of the Application, subject to conditions.

125. At the conclusion of the deliberations on reconsideration, a motion was made to deny the State Land Use Commission Special Use Permit.

126. Initially, in the first vote only two members of the Planning Commission assented to the Motion to deny the permit. Three members abstained. Three members dissented.

127. After this vote, the Planning Commission determined that the Chair needed to vote and could not abstain, so another vote was taken.

128. K. Ball assented in this second vote and voted to deny the application.

129. The second vote was three assents to the Motion, two abstentions, and three dissents.

130. Thus, only three of eight members of the Planning Commission voted to deny the special use permit.

131. However, under the Maui County Planning Commission Rules of Practice and Procedure, § 12-201-24(c), an abstention (unless as a result of disqualification for conflict of interest) is counted as an affirmative vote. Thus the vote to deny the Permit passed 5-3.

132. On October 30, 2014, the Commission issued its Findings of Fact, Conclusions of Law and Decision and Order, SUP 2012/0032. It made the following Conclusions of Law:

- i. “[A]fter hearing testimony from neighbors that live adjacent to or nearby the Property and after questioning the Applicant and Consultant, the Commission concluded that the uses requested in the Application did not constitute an ‘unusual and reasonable’ use in the Agricultural District.”
- ii. “The Commission found that the uses proposed in the Application would adversely affect the surrounding properties in conflict with 15-15-95(2) HAR. The Commission received substantial negative written testimony from nearby property owners on Haumana Road and North Holokai Road. Additionally during the hearing nearby property owners submitted additional oral visual and written testimony regarding concerns about the safety of Haumana Road for both potential visitors and property owners along Haumana Road. The Commission found such testimony reliable and compelling.”
- iii. “The Commission found that granting the uses would increase traffic and burden public agencies providing roads and streets, police and fire protection, in conflict with 15-1595(3), HAR, and gave the following reasons for a denial of the Application on that basis: significant concerns about the narrowness of Haumana Road and vehicle and pedestrian safety both to potential visitors to the property and property owners along Haumana Road and the fact that and the fact that the Property is at the terminus of Haumana Road and therefore traffic to the

Property would negatively impact residents safety and use of Haumana Road.”

133. Thus, the Planning Commission stated that it denied the Plaintiffs’ special use permit based on the traffic impacts of such proposal.

134. The only evidence presented to the Planning Commission regarding traffic, other than that from the government agencies as described above, was the

135. The Planning Commission’s decision and order states that “[t]he Commission was concerned about the number of objection letters received from property owners in the nearby neighborhood and noted the paucity of support letters from adjacent neighbors.”

136. Issues relating to Haumana Road are due to encroachment by adjoining property owners.

137. Safety concerns regarding the Application were addressed and confirmed by government agency comment letters.

138. The Planning Department included as a condition of approval:

That in order to reduce the amount of traffic on Haumana Road, the applicant shall use a shuttle system (vans and limousines) to bring guests to and from the property for all events that will have more than 25 persons in attendance. Every effort should be taken to shuttle or carpool event guests to all activities. Shuttles shall use privately owned facilities, such as hotels, for their operations such as drop-offs and pick-ups.

139. The Plaintiffs were and continue to be willing to accept any reasonable condition to address per-

ceived impacts on traffic and other governmental interests.

140. The Planning Commission was informed about the applicability of RLUIPA to the Application.

141. The County, through its Planning Department, stated that “the Religious Land Use and Institutionalized Persons Act (RLUIPA) is a federal law protecting a person’s religious liberties and right to assembly.”

142. Nevertheless, the Planning Commission determined that the burden on the Temple’s religious exercise was justified by the “compelling” governmental interest in traffic.

143. The Commission’s refusal to permit religious exercise on the Property is irrational, arbitrary, capricious and not rationally related to any compelling governmental interest.

144. The Commission’s stated traffic justification for the denial of the special use permit application is arbitrary, capricious, discriminatory and does not give reasonable notice to applicants of the standards for a special use permit.

145. Plaintiffs made numerous concessions limiting their proposed church use, adequately addressing any purported governmental interests.

146. The proposed church use would have less impact on surrounding properties and governmental interests than the existing, permitted botanical garden use.

147. The Planning Commission had the authority to impose further conditions on Plaintiffs’ proposed use.

148. Another condition recommended by the Planning Department was that the “Maui Planning Com-

mission may modify, suspend or revoke this permit for good cause.”

149. The Planning Department Planner Kurt Wollenhaupt had begun to review potential conditions of approval of the Application, including enforcement of potential conditions and on revising the number of permitted events on the Property.

150. However, the Planning Commission failed to use any less restrictive means of achieving governmental interests and voted to deny the Application outright.

Differential Treatment of Plaintiffs

151. The Maui Planning Department’s Report noted that “[c]hurches or related uses are not uncommon in the State Agricultural District under the provisions of a State LUC Special Use Permit.”

152. Upon information and belief, organized wedding services are conducted at a minimum of five other botanical gardens on the Island of Maui, presumably with appropriate approvals from the Defendants.

153. Upon information and belief, traffic conditions at several of these locations are less safe than at the subject Property.

154. Furthermore, Maui County Code § 19.30A.050.B.11 permits gatherings of many types, without limitation as to size in the Agricultural District and even on the subject Property.

155. Thus, the Commission’s refusal to permit religious exercise on the Property discriminates against religious assembly uses.

156. There are other churches on similar types of roads in Maui County.

157. For example, Kaulanapueo Church and Door of Faith Church in Huelo, Maui are accessed by Door of Faith Road, which at points is approximately 10 feet wide.

158. The denial of Plaintiffs' special use permit was based on no objective criteria or standards for road requirements.

159. The Planning Commission's refusal to allow the Temple to use its facility for religious purposes severely impedes and prevents the Plaintiffs' exercise of its religion.

160. Defendants, through their land use regulations and the actions of the Planning Commission, have rendered the Temple's religious exercise effectively impracticable.

161. The use of the Property as a place of worship would affect interstate commerce, including its use as a site for ongoing fundraising; its receipt of charitable donations from persons working or living outside of the State of Hawaii; providing a place of worship for the families of congregants visiting from other states; providing religious education to individuals from other states; the use of means of interstate communication to facilitate its ongoing operations; the employment of any part-time or full-time employees; the purchase of goods and services related to the Temple's ongoing operations and maintenance; and the hosting of any religious leaders visiting the Temple from out of state.

162. The Defendants' actions described above all took place under color of state law.

163. The harm to the Temple caused by the Defendants' laws and actions, which prevent it from

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operating a place of worship to accommodate its religious needs, is immediate and severe.

164. Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' wrongful laws and actions.

COUNT I

Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — "Substantial Burdens,"
42 U.S.C. § 2000cc(a)

165. Paragraphs 1 through 163 are incorporated by reference as if set forth fully herein.

166. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that places substantial burden on the Plaintiffs' religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT II

Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — "Nondiscrimination,"
42 U.S.C. § 2000cc(b)(2)

167. Paragraphs 1 through 166 are incorporated by reference as if set forth fully herein.

168. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that discriminates against the Plaintiff on the basis of religion and religious denomination.

COUNT IV

Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — “Equal Terms,”
42 U.S.C. § 2000cc(b)(1)

169. Paragraphs 1 through 168 are incorporated by reference as if set forth fully herein.

170. Defendants have deprived and continue to deprive Spirit of Aloha Temple and Frederick Honig of their right to the free exercise of religion, as secured by RLUIPA, by treating the Plaintiffs on less than equal terms as nonreligious assemblies and institutions.

COUNT V

United States Constitution

42 U.S.C. § 1983: First Amendment -- Prior Restraint

171. Paragraphs 1 through 170 are incorporated by reference as if set forth fully herein.

172. The standards set forth in the County of Maui’s zoning regulations governing special permits for places of worship, and the standards applied by the Commission in reviewing and denying Spirit of Aloha Temple and Frederick Honig’s Special Use Permit do not provide a person of ordinary intelligence a reasonable opportunity to understand whether such land uses are permitted or prohibited and, as such, constitutes an unconstitutional prior restraint on Plaintiff’s protected expression and religious exercise under the First Amendment. Such standards unconstitutionally afford the Commission unbridled discretion in its review of a Special Use Permit application for a place of worship.

COUNT VI

United States Constitution
42 U.S.C. § 1983: First Amendment --
Free Exercise of Religion

173. Paragraphs 1 through 172 are incorporated by reference as if set forth fully herein.

174. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by substantially burdening Plaintiffs' religious exercise without using the least restrictive means of achieving a compelling governmental interest, and by discriminating against the Plaintiffs on the basis of religion.

175. Defendants have further deprived and continue to deprive the Plaintiffs of their right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by burdening their religious exercise in a manner that is not rationally related to a legitimate governmental interest.

COUNT VII

United States Constitution
42 U.S.C. § 1983: Fourteenth Amendment --
Equal Protection

176. Paragraphs 1 through 175 are incorporated by reference as if set forth fully herein.

177. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United

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States Constitution, by discriminating against Plaintiffs in the imposition and implementation of their land use regulations.

COUNT VIII

Hawaii Constitution Article I § 4 --
Free Exercise of Religion

178. Paragraphs 1 through 177 are incorporated by reference as if set forth fully herein.

179. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to free exercise of religion, as secured by Article I § 4 of the Hawaii Constitution by substantially burdening their religious exercise without using the least restrictive means of achieving a compelling governmental interest, and by discriminating against the Plaintiffs on the basis of religion.

COUNT IX

Hawaii Constitution Article I § 5
Equal Protection of the Law

180. Paragraphs 1 through 179 are incorporated by reference as if set forth fully herein.

181. Defendants have deprived and continue to deprive the Spirit of Aloha Temple and Frederick Honig of their right to equal protection of the laws, as secured by Hawaii Constitution Article I § 5 by discriminating against Plaintiffs in the imposition and implementation of their land use regulations.

COUNT X

H.R.S. § 91-14 Appeal from Agency Action

182. Paragraphs 1 through 181 are incorporated by reference as if set forth fully herein.

183. Defendant Maui Planning Commission's Final Decision and Order dated October 28, 2014 denying Plaintiffs' Special Use Permit was based on Findings of Fact that were clearly erroneous and not supported by necessary reliable, probative and substantial evidence of the whole record.

184. Finding of Fact No. 68 provides the MPC's basis for denying the SUP application by stating in pertinent part as follows:

The Commission finds that there is evidence of record that the proposed uses expressed in this Application should they be approved would increase vehicular traffic on Haumana Road, which is narrow, winding, one-lane in areas, and prone to flooding in inclement weather. The Commission finds that Haumana Road is regularly used by pedestrians, including children who use the road to access the bus stop at the top of the road. The Commission that granting the Application would adversely affect the health and safety of residents who use the roadway, including endangering human life. The Commission finds that the health and safety of the residents' and public's use of Haumana Road is a compelling government interest and that there is no less restrictive means of ensuring the public's safety while granting the uses requested in the Application.

185. Based on the record of the hearing, this finding of fact appears to solely be based on the anecdotal testimony provided by residents of Haumana Road who neighbor the site of Spirit of Aloha Temple and as such have significant biases to denying Spirit of Aloha's SUP. The Findings of Fact make no mention of

the supplemental evidence of reports from the Maui Police Department and Maui Fire Department, disinterested expert parties, stating that they had no objections to the SUP in regard to pedestrian and vehicular movement. These reports were made based on the original SUP application that included a larger number of events, people and vehicles.

186. Disinterested reports from the Maui Police Department and the Maui Fire Department concluded that vehicular and pedestrian safety were not endangered by the scope of activities proposed in Spirit of Aloha's SUP application.

187. The Maui Department of Planning recommended approval of the SUP application with the reduced events with several conditions.

188. Finding of Fact No. 68 states that Haumana Road is "prone to flooding"; however, the evidence in the record states that the water runs off into a culvert and that the road drains well.

189. Finding of Fact No. 68 states that Haumana Road is "one-lane in areas" and while this is supported by evidence in the record, this statement fails to account for the context that while the asphalt may only be as wide as one-lane in certain areas, the road still is passable as the road maintains a recorded 20-foot right of way and vehicles are able to pass each other by pulling narrowed width is the result of encroachment by property owners along Haumana Road.

190. Finding of Fact No. 67 described the voting results on the Motion to Deny the State Land Use Commission Special Use Permit from the April 8, 2014 Maui Planning Commission meeting. It states that J. Freitas and W. Hedani assented to the Motion; M. Tsai,

I. Lay, and K. Ball abstained; and J. Medeiros, P. Wakida, and R. Higashi dissented. However, the signatures at the end of the Decision and Order include Commissioner Ball's signature in the "In Agreement" category rather than in the "Abstained" category. All other signatures for agreement or disagreement with the Motion corresponded to how the commissioners voted, or abstained, in the minutes of the hearing and as reported in Finding of Fact No. 67.

191. Conclusion of Law No. 5 states, "The Commission found that granting the uses would increase traffic and burden public agencies providing roads and streets, police, and fire protection" No evidence was presented to support the finding that the burden of public agencies providing roads and streets, police and fire protection would be increased.

192. The Maui police and fire departments both provided reports that were in support of the SUP application. Therefore, this finding is not supported by any probative or reliable evidence.

193. Conclusion of Law No. 9 states, "The Commission further found that there were compelling public health and safety issues implicated by the likely significant increase in traffic attributable to the uses proposed by the Application, creating conditions that would be foreseeably dangerous or potentially deadly to drivers and pedestrians, including children walking on the road to and from the bus stop at the top, using the small rural roadway." These findings are not based on probative, reliable and substantial evidence particularly as it pertains to children walking to and from the bus stop since the proposed start & end times for the events included in the SUP Application do not coincide with normal school start/end times.

194. Conclusion of Law No. 9 states, “The Commission found that these compelling public health and safety issues could not be adequately addressed by the implementation of any permit condition or use restriction,” to support its position that the denial of the SUP was the least restrictive means of furthering the compelling governmental interest in protecting the health, lives and safety of the public. However, while the Commission based its findings primarily on the narrowness of Haumana Road, little if any discussion was conducted pertaining to conditions regarding making the road wider or safer. Therefore, less restrictive means were not explored.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. A declaration that the denial of the Spirit of Aloha Temple and Frederick Honig’s Special Use Permit application is void, invalid and unconstitutional on the ground that it violates the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the Hawaii Constitution Article I §§ 4 and 5;

2. A declaration that the standards set forth in the land use regulations governing Special Use Permit applications for religious exercise, and the standards applied by the Commission in reviewing and denying the Spirit of Aloha Temple and Frederick Honig’s Application are an unconstitutional prior restraint on protected expression and religious exercise under the First Amendment;

3. An order sustaining Plaintiffs' zoning appeal pursuant to H.R.S. 91-14, and finding the Planning Commission's action in denying Plaintiffs' Special Use Permit application to be unlawful;

4. An order directing the Planning Commission to grant the Spirit of Aloha Temple and Frederick Honig, Inc. the Special Use Permit necessary to conduct church activities on the Property as applied for in its Application;

5. An order enjoining the Defendants, their officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner that violates the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the equivalent protections of the Hawaii Constitution, and the Religious Land Use and Institutionalized Persons Act, or undertaking any and all action in furtherance of these discriminatory and disparate acts, and specifically enjoining the Defendants to approve all plans and applications submitted by the Plaintiffs in furtherance of its development of the Property without delay;

6. An award of compensatory damages against Defendants in favor of the Spirit of Aloha Temple and Frederick Honig, Inc. in such amount as the Court deems just for the loss of the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the Hawaii Constitution incurred by the Spirit of Aloha Temple and Frederick Honig, and caused by the Defendants' laws and actions;

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7. An award to the Spirit of Aloha Temple and Frederick Honig, Inc. of full costs and attorneys' fees arising out of Defendants' actions and land use decisions and out of this litigation; and

8. Such other and further relief as this Court may deem just and appropriate.

DATED: Honolulu, Hawaii; November 26, 2014.

/s/ Jonathan S. Durrett
JONATHAN S. DURRETT
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Attorneys for Plaintiffs
SPIRIT OF ALOHA TEMPLE
and FREDRICK R. HONIG

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM/RLP

SPIRIT OF ALOHA TEMPLE,

Plaintiff,

vs.

COUNTY OF MAUI,

Defendant.

Verdict Form

We the jury in the above entitled matter find (please mark appropriate blanks):

1) Has Plaintiff Spirit of Aloha Temple proved by a preponderance of the evidence that Spirit of Aloha Temple is a religious assembly or institution?

<hr/>	<hr/>
Yes	No

X

If you answered “Yes” to Question 1, skip question 2 and go to Question 3. If you answered “No” to Question 1, go on to Question 2.

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2) Has Defendant County of Maui proved by a preponderance of the evidence that Spirit at Aloha Temple is not a religious assembly or institution?

_____	_____X_____
Yes	No

Please note that your answers to Questions 1 and 2 cannot both be “Yes,” but they may both be “No” (although they need not be). Go on to Question 3.

3) Has Plaintiff Spirit of Aloha Temple proved by a preponderance of the evidence that, with respect to accepted zoning criteria, Defendant County of Maui treated Plaintiff Spirit of Aloha Temple on less than equal terms as compared to the way the County of Maui treated a similarly situated nonreligious assembly or institution?

_____	_____X_____
Yes	No

If you answered “Yes” to Question 3, skip question 4 and sign and date this Verdict Form. If you answered “No” to Question 3, go on to Question 4.

4) Has Defendant County of Maui proved by a preponderance of the evidence that, with respect to accepted zoning criteria, it did not treat Plaintiff Spirit of Aloha Temple on less than equal terms as compared to the way the County of Maui treated a similarly situated nonreligious assembly or institution?

_____X_____	_____
Yes	No

Please note that your answers to Questions 3 and 4 cannot both be “Yes,” but they may both be “No” (although they need not be). Please sign and date this verdict form.

43a

/s/ [Illegible]

Signature of Jury Foreperson

August 23, 2019

Date

APPENDIX C

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,
Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,
Defendants.

Honolulu, Hawaii
October 6, 2023

TRANSCRIPT OF JURY TRIAL (DAY 8)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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Proceedings recorded by machine shorthand, transcript
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DIRECT EXAMINATION BY MR. BILBERRY 144

* * *

[20] with Swaroop about his application previously?

A In the course of the commission's proceedings, I indicated to him and to the commission that, in my opinion, his activities would not be prevented from happening, in terms of conducting marriage ceremonies between two people.

Q But did you tell him that if it hadn't been for the weddings that you would have rejected his application?

A It wasn't for the –

Q Let me rephrase. Did you tell Swaroop that if it wasn't for the weddings he was conducting on the property that you would have voted to approve the application?

A I never told him that.

MR. LANG: I have no further questions question, Your Honor.

THE COURT: Okay.

Mr. Bilberry.

THE COURT: So this is another witness where I think there is an agreement between the parties, is that right, about Mr. Bilberry's examination including both cross-examination within the scope of Mr. Lang's direct plus whatever direct questioning Mr. Bilberry could do in his own case in chief. Is that the agreement?

MR. LANG: In an effort to speed things along, Your Honor, yes, that is correct.

THE COURT: Okay. Go ahead. 3.

* * *

[32] unless I did not hear the answer to the first question, and counsel appears to be testifying.

MR. BILBERRY: It's cross-examination.

THE COURT: Overruled. Overruled. You can answer. THE WITNESS: Yes.

BY MR. BILBERRY:

Q So you do believe that Mr. Honig's personal activity in marrying a couple on his property is in fact a religious activity?

A Yes.

Q You told Mr. Honig that he was free to do that?

A Exactly. Several people on the commission told him that.

Q Thank you. Did you take into consideration Mr. Honig's religion when you voted to deny his application?

A No.

Q As I understand it, you weren't completely clear what Mr. Honig's religion was?

A Right. I understand that he focuses on 12 principles that he talks about – 12 different areas in his botanical garden that he dedicates to 12 principles which are shared by all religions. And he said his own religion was to worship nature. I don't know how that relates to the 12 principles or the 12 different religions

that he was advocating for each of those areas within his botanical garden.

Q Okay. But you didn't doubt his beliefs?

* * *

[34] Q And he wasn't precluded from doing so, correct?

A No.

Q And, again, you advised him that he was free to take small groups of people onto his property on a botanical garden tour, or for whatever reason, take them to his waterfall pavilion, or anywhere else he wanted to on his property, and perform a wedding ceremony?

THE COURT: Okay, hold on.

MR. LANG: Objection, Your Honor. Leading is one thing. This is counsel testifying, lacks foundation as to taking people to the botanical gardens. I just object to the question as lacking foundation, and counsel is testifying.

THE COURT: Actually –

MR. BILBERRY: I'll withdraw it.

THE COURT: Okay.

BY MR. BILBERRY:

Q You testified earlier that you personally advised Mr. Honig that if he wanted to take a couple on his property with a small group into a botanical garden tour and marry them, he was free to do that?

A Exactly. He's free to do that today.

Q And as far as you recall, his second application was much like the first?

49a

A It was very much like the first. They had deleted some things.

50a

APPENDIX D

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,
Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,
Defendants.

Honolulu, Hawaii
October 5, 2023

TRANSCRIPT OF JURY TRIAL (DAY 7)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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Plaintiffs' Exhibit 47 was received in evidence	16
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* * *

[11] weddings?

A Yes.

Q Have you ever seen any application for a special use permit that involved weddings that was so limited in scope as – as this ultimate request?

A There are always limitations on scope based on the facts of the particular location. But, yes, this is – this is – at least what Fred offered here is – is pretty limited.

Q And again, I think we went over this yesterday, but if he did not abide by these conditions, his permit could have been revoked, right?

A It could have been. That involves a very long process with the Planning Commission and –

Q But he could have lost the permit.

A It's possible.

Q Okay. Mr. Spence, at this point after reconsideration was granted and after the scope of the request went down even further with respect to weddings, because I believe the Planning Commission or Planning Department in general didn't have an issue with the other uses on the property, correct?

MR. BILBERRY: Your Honor, that's – well, never mind. Never mind.

BY MR. STORZER:

Q Let me withdraw that and focus and rephrase that question.

It was mainly the wedding activity that the County was [12] concerned with; is that correct?

A No.

Q I thought that's what you testified to yesterday.

A No, it was – I mean, the special use permit was for all of his activities.

Q For the entire church?

A For the church, for the commercial weddings. You know, we were concerned about the buildings with no building permits. I mean we were concerned with all of that –

Q Okay. And just so –

A – the water system.

Q Just so the jury isn't confused –

MR. BILBERRY: Your Honor, could you ask Mr. Storzer to stop interrupting Mr. Spence?

THE COURT: I – I hear you. I think the witness paused in his answer, so counsel thought he was done.

BY MR. STORZER:

Q Mr. Spence, I apologize if I cut you off. I thought you had finished your answer.

A No worries.

Q But if you have more to add, please do so.

A Okay. Please ask the next question.

Q You had mentioned again commercial weddings, and I was going to say just so the jury isn't confused, again there is no such thing as a, quote, commercial wedding use in Maui County [13] zoning code or in the State of Hawaii's land use regulations, right?

A Well, Maui County code has a definition of commercial purpose, and it includes growing, manufacturing, processing, providing services such as weddings, providing services for consideration or profit.

Q I understand that.

A So we would look at what Mr. Honig wanted to do. We looked at the history of what had taken place. Again, we went over yesterday the volume of what he wanted to do. And we were looking at websites with advertising, looking at his trade names, and we're going this is a commercial operation.

Q I understand, Mr. Spence, but that wasn't my question. My question was, is the term "commercial wedding" a term that exists in any land use regulation that applies here?

A No.

Q Okay. So let me get back to the Planning Commission. After the Planning Commission granted reconsideration and after there was further discussion, and after there was further reduction in the special events to the extent that you haven't seen before with any other application, do you believe that Mr. Honig and the Spirit of Aloha Temple could reasonably have believed that the application could be granted?

A I can't say what Mr. Honig thought.

Q No, I'm asking you, Mr. Spence, do you believe – let me

[70] the basis of religion or religious denomination.

THE COURT: But the only unequal treatment you can point to is the handling of the permit.

MR. STORZER: Oh, that's not – that's not true, Your Honor. What we have established, I believe, or what we're certainly arguing is that commercial weddings – you know, the County has talked about this idea of commercial weddings. Commercial weddings are okay if you're Ali'i Kula Lavender Farm. Commercial weddings are okay if your other churches as well. So both in terms of religion and religious denomination, commercial weddings are something that the County doesn't have any problem with, but other botanical gardens, commercial weddings are okay.

It's only when you're talking about Spirit of Aloha Temple that somehow commercial weddings becomes a problem, whether it's respect to religious denomination or religion generally. I think that that's a very clear argument, and it falls under the nondiscrimination claim.

THE COURT: Right. But the commercial wedding issue is part of denying the permit. So the only action that you're pointing to is denial of the permit, and the denial of the permit was not seen as treatment of Spirit of Aloha Temple on less than equal terms as compared to the lavender farm.

MR. STORZER: But that –

THE COURT: I'm very concerned that we are – you

[119] Q And can you characterize for us what you meant?

A Originally Mr. Honig wanted – I forget, it gets blurry – originally he wanted 48 events every year, some with 80, some with 40.

Q And when you say some with 80 and some with 40, you mean some with 80 people, some with 40 people?

A Yes, with people attending those events. And for a number of months, sometimes daily we will get emails from Mr. Honig changing that. It got very complex. We tried to accommodate him – when I say “we,” I mean the Planning Department – we tried to accommodate him over and over again.

And ultimately we said, Okay, this is what – I’m overanswering. Ultimately the Planning Department said, This is what, you know, we’re – we’re going to recommend, and just drew the line. Because it kept going and going and things changed so often, we just said, Okay, we need to stop this. We’re going to recommend this.

Q And do you have any knowledge or understanding as to whether Mr. Honig had been landing a helicopter on his property?

A Yes. Back in 2000 and – I think it was for that 2007 application, neighbor complaints were that helicopters were flying in brides and grooms and landing on the property.

Q And it’s true that Haumana Road is a single-lane road?

A That’s correct.

* * *

[145] Q Mr. Spence, are ag – sorry, are religious practices precluded in the agricultural district?

A You mean – if I could clarify that, do you mean that people cannot practice religion or their personal beliefs in an ag zone?

Q Yeah, the question is, is an individual or a small group of people, are they prohibited from exercising or engaging in their religious practices in the agricultural zone?

A No, they're not.

Q It does not require a special permit for people to engage in simple religious practices in the agricultural zone?

A No, there – there's no permit required for that.

MR. BILBERRY: Thank you, Mr. Spence.

THE COURT: Okay. He might be redeemed.

MR. BILBERRY: Was that – actually it was more than one question.

MR. STORZER: I counted two, Your Honor.

MR. BILBERRY: Yeah.

THE COURT: Okay, then you know, I don't know about your future.

Mr. Storzer.

MR. STORZER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STORZER:

Q Mr. Spence.

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APPENDIX E

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,

Defendants.

Honolulu, Hawaii
October 4, 2023

TRANSCRIPT OF JURY TRIAL (DAY 6)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

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* * *

[60] about.

Q Okay. Well, he asked you about these last few weddings that occurred in 2011 through 2015 in order to demonstrate that the numbers of weddings you were doing had diminished significantly. Do you recall that?

A Yes.

Q Okay. And you said that you had done a few weddings in these years for close friends and family. Do you remember that?

A Yes.

Q Now, if you look at this summary we have, it shows that the wedding that occurred on September 6, 2011, was a couple from Texas. Do you see that?

A Yes.

Q Who – who were they?

A I can't possibly remember, you know, who I married in 2011, who that would have been.

Q Even if they were friends and family?

A I can't remember things like that.

Q Okay. Do you have friends and family in Texas?

61a

A I have friends and family all over the world. We have 900 members of our organization who don't live in Hawaii.

Q Okay. So when you say "friends and family," you're referring to those 900 people as well?

A Yes.

[61] Q Okay.

A They are my friends and family. I don't have a personal family. My friends and family are the people who are the members of our organization.

Q And you indicated that in addition to the 900 you identified elsewhere than Maui, you have a total of 1200 members?

A Approximately.

Q And those are the people you were referring to when you talk about friends and family.

A Yes.

Q So when you say that you're still providing religious services and engaging in religious practices and religious exercise with friends and family, you mean as many as 1200 people.

A I don't keep regularly – necessarily have contact with all those people, but I consider all those people my friends and family.

Q Right. So when you testified when your counsel was questioning you that you're still providing religious services, religious practices, and religious – and engaging in religious exercise with friends and family, you meant all 1200 of those people, correct?

A Those 1200 people, I – if those people asked me to serve them, I would try to serve those people.

62a

[62] Q Okay, thank you. If you look at wedding number 586 on Defense Exhibit 123, that's a couple from California. Do you see that?

A Yes.

Q Do you know who they were?

A I can't remember. That was – that was over a decade over ago.

Q Okay. And if you look at 587, it was a couple from New Jersey. Do you know who they were?

A No.

Q And if you look at 588, it was another couple from California. Do you know who they were?

A No.

Q And if you look at 590, it does look like there was a couple from Maui. Do you know who they were?

A I can't remember things like that.

Q And then 591, it was another couple from California. Do you remember who they were?

A No.

Q You do indicate – you did indicate that you do issue a newsletter, correct?

A Yes.

Q And you indicated that newsletter goes to all of your members, correct?

A Yes.

[63] Q So it goes to as many as 1200 people?

A Yes.

Q So you have a pretty broad base of members who can participate and can be advised of through these newsletters of events and religious exercises and religious practices that are occurring on your property, correct?

A No, because we don't necessarily send advertisements to those people. We send mostly updates. We just tell them what we're doing. So we're not advertising to them to come and do a program with us. We're not advertising programs. We're more or less in our newsletters giving the news of what we are doing here and what activities have happened, like that when you saw –

Q Okay, that answers the question.

So any of those 1200 members is being advised of what's happening at your property through the newsletter.

A For instance, those videos for the 1920 – for 2021, the highlights, you know –

Q Mr. Honig, we're talking about the newsletter – we're talking about the newsletter right now.

A That's what I'm talking about too.

THE COURT: I thought you were talking about videos now.

THE WITNESS: I'm saying when we – when those videos, the 2021 and 2022 videos, we send them out at New Year's to

* * *

[66] THE COURT: I got your question.

MR. BILBERRY: Sorry, Your Honor.

THE COURT: Overruled.

Answer the question.

THE WITNESS: I'm sorry, you may have to pretty the question.

BY MR. BILBERRY:

Q So you are able to do what you say you want to be able to do as your religious practice, which is engage in practices and exercise that you call religious on your property with groups of 10 to 15 people that you can then broadcast out to the entire world on your web page, your Facebook page, or your YouTube channel, correct?

A We're not able to – if I were to advertise for a – say for a teachers training course that I would like to do at the gardens, I believe that I would be issued a fine for that.

I have never been told by the Planning Department that I have the right to do a teachers training course or even to advertise to do a yoga class. Just to – if I wanted to advertise and say, Come here for a yoga class, I'm not permitted to do that. I am not permitted to advertise for a meditation course to be taught at the gardens.

Q But you are doing – you are doing yoga –

MR. STORZER: Your Honor, I don't think the witness was finished answering the question.

* * *

[69] create an income stream to be able to fulfill its mission. It means that all the money that comes in for – to the organization is used for the purpose of the mission of the organization.

Q Okay, Mr. Honig, when your counsel was asking you about the two videos that showed highlights from

65a

2021 and highlights from 2022, he asked you isn't it true that those videos only show you with groups of two to four people, and you corrected him and you said no, there were groups of about 15 to 20 in those videos in 2021 and 2022, and we saw that there were more than one occasions of those groups.

And you've indicated that those were religious practices, correct?

A Yes.

Q And we saw pictures of groups of 15 to 20 people in the – posed in the religious gesture that you called as indicating namaste, correct?

A Yes.

Q And then we also saw images of the service of food which you called Soulution, which is embracing and sharing vegetarian nutrition that has been going on in '21 and '22?

A Yes.

Q You could broadcast all that live on your YouTube channel, correct?

A Yes.

* * *

[109] modified in the manner I've articulated.

MR. BILBERRY: Okay. Thank you, Your Honor. I would like to publish D-105 to the jury.

THE COURT: You may do so. But you're going to have to skip over that one page.

MR. BILBERRY: Melissa, let's unpublish it, and we'll take out – we can extract page 6 really quickly.

BY MR. BILBERRY:

Q Okay, Mr. Honig –

MR. BILBERRY: Or, Your Honor, I would now request to publish Defense Exhibit 105 to the jury.

THE COURT: Yes.

MR. STORZER: I'm sorry, Your Honor, I didn't notice at the end there appears to be a declaration or something.

THE COURT: No, that will be taken out.

MR. STORZER: Oh, okay.

THE COURT: Right, we had this discussion for a previous exhibit. That's just an authentication.

BY MR. BILBERRY:

Q All right. Mr. Honig, the pages that we have shown you today and which we're going to go through with the jury, this is – these are pages that are on the Spirit of Aloha Temple's web page currently, correct?

A Yes.

Q And the first page we're looking at here is the home page [110] of the website?

A Yes.

MR. BILBERRY: And if you could go to the second page, Melissa.

BY MR. BILBERRY:

Q What we're looking at here is also current content on Spirit of Aloha Temple's website?

A It's just – just a part of it. Like what you're seeing here, I think that there were six items, and this

67a

is just two of the items in that that you put on this page. There wasn't one page that had just these two.

Q Fair enough. But Spirit of Aloha Temple is currently offering private sacred events at the property, correct?

A In certain circumstances.

Q And private sacred events would include events such as the event being depicted in this photograph, correct?

A For members only.

Q Who are these two in the photograph?

A That is a photo of a wedding that happened very long ago, and I don't remember their names, but I was the minister for their wedding.

Q Okay. Do they live here on Maui?

A No.

Q Where do they – where do they come from?

A I don't remember.

68a

APPENDIX F

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,

Defendants.

Honolulu, Hawaii
October 2, 2023

TRANSCRIPT OF JURY TRIAL (DAY 4)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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FREDRICK R. HONIG

RESUMED CROSS-EXAMINATION BY
MR. BILBERRY 5

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* * *

[17] to come to what are the annual reports that were filed by – well, first actually –

MR. BILBERRY: Yeah, go ahead, scroll a little more, Melissa. Okay, right there.

BY MR. BILBERRY:

Q First we're going to come to what are applications for trade names. And we have discussed these before.

So as president of Well Being International, Inc., you applied for several trade names under the name of this aegis or under the name of this nonprofit corporation, correct?

A Yes.

Q And those three trade names were, the first one we're looking at here on the screen, which is Maui Gay Weddings, right?

A Yes.

MR. BILBERRY: And if you scroll down, Melissa, to the next page. Keep going.

BY MR. BILBERRY:

Q Another one you applied again for the –

MR. BILBERRY: Scroll up just a little bit.

BY MR. BILBERRY:

Q The next year 2000 –

MR. BILBERRY: No. Sorry, down – no, up. Upside down.

BY MR. BILBERRY:

[18] Q In 2003, you again applied for a trade name for Maui Gay Weddings, right?

A Oh, is this a different year?

Q I believe so.

MR. BILBERRY: Why don't we scroll back up to the first one so we can double-check the year.

BY MR. BILBERRY:

Q So it looks like you applied for the trade name or Well Being International, Inc., you through you applied for the trade name Maui Gay Weddings in 2002. Do you see that?

A Yes.

MR. BILBERRY: And then if you scroll down again, Melissa, to the next application.

BY MR. BILBERRY:

Q And then it looks like in 2003, you applied again for the trade name Maui Gay Weddings, correct?

A Yes.

MR. BILBERRY: And then if you scroll down, Melissa, to the next application. It looks like in – go on down to the date.

BY MR. BILBERRY:

Q In 2003, you applied for a second trade name, A Marriage Made in Heaven, correct?

A Yes.

MR. BILBERRY: And then if you scroll down to the next [19] application, Melissa.

BY MR. BILBERRY:

Q It looks like you then also applied in 2003 for a third trade name, Maui Wedding Planners?

A Yes.

MR. BILBERRY: And then if you scroll down, Melissa, I believe there may be one more application.

BY MR. BILBERRY:

Q And then in 2007 you applied again for the trade name A Marriage Made in Heaven, correct?

A Yes.

Q And if you look at the –

MR. BILBERRY: Scroll back up to the Maui Wedding Planners application, Melissa. Yeah, right there, keep going. And stop just before Mr. Honig's signature there.

BY MR. BILBERRY:

Q That's your signature on the application, Mr. Honig?

A Yes.

Q And it's dated May 28, 2003?

A Yes, it's my signature.

Q Okay. And this is an application for the trade name Maui Wedding Planners, correct?

A Yes.

Q And when you look at number point 7, it says, “The nature of the business for which the trade name is being used,” and it [20] says “wedding planning and services.”

A The other one said counseling, and this one should –

Q We’re looking at –

THE COURT: You’re talking over each other again. Let him finish.

Go ahead, you can answer.

THE WITNESS: I noticed that all the other ones said counseling and wedding ceremonies or services. This one doesn’t say counseling, it should have, but what it says on here is wedding planning and services.

BY MR. BILBERRY:

Q Right. It says wedding planning and services, correct?

A Yes.

Q And we’ll go ahead and in fairness to you –

MR. BILBERRY: Scroll up to the first one, Melissa, so we can see what Mr. Honig was referring to.

BY MR. BILBERRY:

Q If you look at this one for A Marriage Made in Heaven, it says counseling and marriage ceremonies.

MR. BILBERRY: Okay. And scroll up, Melissa, to the next one.

BY MR. BILBERRY:

Q And if you look at the first application for Maui Gay – or the second application for Maui Gay

Weddings, it says counseling and commitment ceremonies.

* * *

[22] Q Well, okay, let's break it down more. You used the trade name Maui Wedding Planners to advertise for weddings in the Yellow Pages, correct?

A I remember that we did do some advertisement in the Yellow Pages, but I'm not sure if I thought it was under A Marriage Made in Heaven.

Q Well, you did do Yellow Page ads with the trade name A Marriage Made in Heaven as well, right?

A I'm sorry, could you repeat the question?

Q So you did do – you do remember advertising in the Yellow Pages with the trade name A Marriage Made in Heaven, correct?

A I remember that we did at one point advertise in the Yellow Pages because that was before the internet. There was a time that, you know, the internet had – wasn't up yet. And so we did advertise our services in the Yellow Pages, yes.

Q Okay. Well, the first trade name was incorporated in 2002.

A Sorry?

Q Withdrawn.

Okay. So you do recall that you advertised in the Yellow Pages through the trade name A Marriage Made in Heaven, correct?

A I'm not positive which – like I know that we did not advertise for – I believe that that's the one that we advertised for.

[26] THE COURT: So if you're refreshing recollection, tell the witness to close the deposition, ask him to testify with his refreshed recollection. Otherwise, the witness is continuing to look at the deposition. I'm not so sure he's testifying with refreshed recollection. So you continue to say you're refreshing, do the refreshing procedure.

BY MR. BILBERRY:

Q Before you close it, Mr. Honig, let's put a bookmark in there so you can get back to it quickly.

Okay. Now, is your recollection refreshed at having testified that you used the trade name A Marriage Made in Heaven to advertise in the Yellow Pages?

A Yes.

Q And is your recollection refreshed of having used A Marriage Made in Heaven as a trade name to advertise on the internet?

A Yes.

Q And then – let me just – okay.

Is your recollection refreshed at having used the trade name Maui Wedding Planners to advertise in the Yellow Pages?

A I don't recall that.

Q And is your recollection refreshed at having used Maui Wedding Planners to advertise on the internet?

A Yes, we used Maui Wedding Planners on the internet.

[27] Q Okay. But you just don't recall using Maui Wedding Planners in the Yellow Pages.

A I don't recall that.

Q Okay. So you did use both the trade names A Marriage Made in Heaven and Maui Wedding Planners to advertise for weddings on the internet.

A Yes.

Q And you used the trade name A Marriage Made in Heaven to also advertise in Yellow Pages.

A I don't believe we did them both at the same time. We did one, and then we switched to another.

Q Fair enough. But you did use A Marriage Made in Heaven to also advertise in the Yellow Pages at some point.

A Yes.

Q Okay. Mr. Honig, let me ask you, why does an organization with a religious purpose need to have three registered trade names to advertise for weddings?

MR. STORZER: Your Honor, I believe – objection on the lack of foundation. I don't believe it's been established that he used all three to advertise.

MR. BILBERRY: I'll withdraw that question.

BY MR. BILBERRY:

Q Why does an organization with a religious purpose need to advertise on the internet through two trade names, one being A Marriage Made in Heaven and one being Maui Wedding Planners?

* * *

[40] A Yes.

Q And weddings? And weddings?

A I don't see that.

MR. BILBERRY: Maybe scroll up a little bit, Melissa. No, no, I'm sorry. There we go.

BY MR. BILBERRY:

Q Yeah, do you see that, weddings?

A Yes.

Q Okay. And then she's also offering a honeymoon cottage at our oceanfront waterfall nature sanctuary, right?

A Yes.

Q And if you look at the contact, it's MauiWeddingPlanners.com, which is one of your trade names, right?

A Yes.

Q Doesn't "honeymoon cottages available at our oceanfront waterfall nature sanctuary" refer to your property?

A Yes.

Q Thank you.

And if you look at her web page – and again, if you – anytime you want the paper copy so you can scroll at your discretion, but if you look at her wedding page – her website pages advertising for personal retreats, accommodations, cottages, nowhere in these web pages does it mention religious purpose, does it? A religious purpose.

* * *

[42] MR. STORZER: I'm finding it warm.

THE COURT: I'm sorry. I don't know. I'm okay. She'll check the thermometer.

What? You want to call?

She'll call.

MR. BILBERRY: Thank you.

THE WITNESS: Okay.

BY MR. BILBERRY:

Q Okay. So the web pages don't mention the word "religion," correct?

A It doesn't mention, but it's all about what our religion is. She's teaching classes in stress management, yoga, meditation and spiritual weddings, and those are the services that we offer under our mission of Well Being International, which is a spiritual nonprofit organization.

Q And in these web pages your sister through Well Being International, Inc., is also offering vacation rentals, correct?

A Accommodations for people who are partaking in our services.

Q So vacation rentals for people who are getting married on the property?

A Yes.

Q And there's a daily and weekly rate for that, right, according to the web pages?

* * *

[47] A They what?

Q They cleared a space on your property so that they could land the helicopter there.

A No, they did not.

Q You don't recall that there was a space cleared on the property approximately 280 feet from the shoreline with a big "X" marked on it?

A We didn't clear that for that purpose. It was just a lawn that we have – it's still there, it's just a lawn. And we had an X in the lawn. And as I mentioned before, perhaps between five and ten times a helicopter did land there.

Q And one of those times the helicopter landed there, you had flown out the owner of Federal Express to attend a catered lunch event at a waterfall on the property, correct?

A Yes.

Q And you yourself were picked up twice on the property to be flown out to conduct weddings at other locations, correct?

A I only remember one time.

Q Do you remember testifying that it was twice?

A I don't remember that.

Q Okay. Well, we'll just pass on that.

And so you never obtained a permit to have a helicopter land on your property prior to allowing helicopters to bring guests to the property, correct?

MR. STORZER: Objection, lack of foundation.

APPENDIX G

* * *

[103] to be able to do is figure out way a way to preserve it to move it. forward.

CHAIRMAN HEDANI: Thank you very much, Mr. Honig. Any additional questions from the Commission for the Applicant? Mr. Marfdin.

COMMISSIONER MARFDIN: Yeah. You just mentioned you have a negative cash flow.

MR. HONIG: Yes.

COMMISSIONER MARFDIN: Before we went to lunch, there was testimony that you made \$400,000 a year or this.

MR. HONIG: Yeah, that – we lost \$20,000, I have – I am not – I have a C.P.A. doing our bookkeeping. Everything is kept in there. I have not – you know, we spent thousands of dollars on advertising trying because our business was going down. And we're not able to advertise in the papers because of you people. Like otherwise, we could put in the paper let's have an event here, something like that, but we have not.

So, we spent all of this money on advertising and running a business, And I'm not the greatest businessman It's not my forte. I'm a monk, and done my –

CHAIRMAN HEDANI: Mr. Marfdin.

MR. HONIG: I've done my best to, you know, to keep this financially moving.

CHAIRMAN HEDANI: Mr. Marfdin.

* * *

DIRECTOR HUNT: The question, I interpret it is if you deny the application, will Mr. Honig cease his operations? And we can't speak on behalf of Mr. Honig. We can tell you that we will try to enforce the laws that the county has adopted. To be up front, enforcement is a difficult task. And there's been some criticism of the department regarding enforcement in this particular application and others.

And it's a legitimate criticism, but we all have to understand the limitations and constraints that enforcement entails. Gathering evidence is difficult. We have six inspectors for all three islands. We have a past history or culture of permissiveness and turning the other way, looking the other way. Our process is somewhat complaint driven. We have some organizations in our community and even editors of papers that have openly suggested that enforcement of our laws is wrong.

So it's – it's a challenging situation. The department will enforce the law. We've instructed Mr. Honig to cease his operations until he gets the necessary permits. Whether he complies with that or not is up to him.

CHAIRMAN HEDANI: Mr. Starr.

COMMISSIONER STARR: Yeah. I was just looking at an advertisement that was apparently downloaded from the Internet today. It's dated today. I don't know where it [110] came from. But it is advertising for wedding service on this property. I believe it's \$9,900 for the package. And so, it is being – business is being solicited as we speak. And I'm wondering if that is legal. I'm asking the director.

CHAIRMAN HEDANI: Director Hunt.

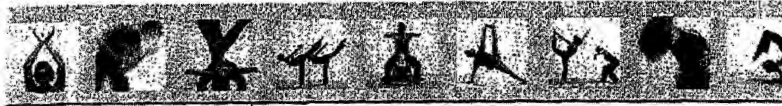
DIRECTOR HUNT: Well, we would have to take a look at the advertisement. I'm not questioning the authenticity of that advertisement, but we have to be objective in our investigation, make sure somebody didn't gin it up or that it's not outdated or whatever. So, I can't make a conclusion as to whether Mr. Honig is operating illegally currently. We will certainly investigate and continue to investigate. I believe the staff planner contacted the enforcement officers, and they have been investigating.

In this particular case, we will talk to our inspectors to make sure that this one is not just sliding through the cracks. Apparently, it needs a little bit more attention without picking on anyone unfairly.

CHAIRMAN HEDANI: Any additional discussion? A question for the director. If the motion to deny is approved, can the Applicant resubmit.

DIRECTOR HUNT: He can resubmit. He would have to go through the process from step one. So, he would have to submit a new application, new fees. We would send that out

83a



Maui Accommodations
Keel Nui Botanical Gardens



Property Description

Our beautiful ocean front cottages have an exquisite view of the ocean from the entire house. A couple can feel like they are on the tropical vacation of their dreams. You wake up in the morning to the sights and sounds of the ocean and nature.

Our ocean front studios have exquisite views of the ocean. from the interior and some have wrap around covered decks. We have many walking paths that go along creek beds, through our botanical garden, past our on site waterfall and along the cliffs edge. During different seasons we have fresh fruit and Rows available.

84a

If you'd like, we can schedule an on-site massage, yoga or meditation session with one of Maui's best. {please inquire about pricing). We also have private and group surf lessons available for never-landers to advanced levels.

Close to us is both "JAWS" the famous big wave surf beach, and 'Twin Falls' a beautiful hiking path that winds along a fresh water stream to two incredible waterfalls.

We are Located only nine miles from Paia. Paia has a wealth of good restaurants, beaches and shopping. Haiku is five miles and Makawao is 15 miles, All a short distance and offer many activities for a tropical vacation.

We can also have an oceanfront waterfall pavilion for weddings, romantic engagements or vow renewal. We have onstaff wedding planners and event consultants. (Please inquire for more information). Plan your next retreat or group function with us.

We have six vacation rentals available on our lovely premises and are able to accommodate up to 12 people in separate private ocean front cottages (two of the cottages are not oceanfront), Please call us for more information.

Please contact directly at following locations

Phone: Carrie 808-542-4100

Email: carrie@mauiestate.com

Website: www.mauiestate.com/cottages

85a

Amenities

Mini-Kitchenettes

Some cottages have outdoor showers and outdoor bathtubs

Washer/Dryer

Lanai

Wireless Internet

Oceanfront- excluding Nature and Tree Cottage

No Pesticides used on property

Bedrooms: 1

Total No. of Guests; 2 Rates

weekday: \$75 - \$200

Week: \$0

Some cottages have indoor & outdoor bathtubs and Indoor and outdoor showers, located on botanical gardens

No Pets Allowed

Smoking Not Allowed

145/night + tax, \$2175/month. Aloha Cottage

135/night + tax, \$2025/month. Garden Level Cottage

200/night + tax, \$3000/month. Angel Cottage

135/night + tax, \$2025/month. Ocean Cottage

135/night + tax, \$2025/month. Tree Cottage (located in tropical gardens)

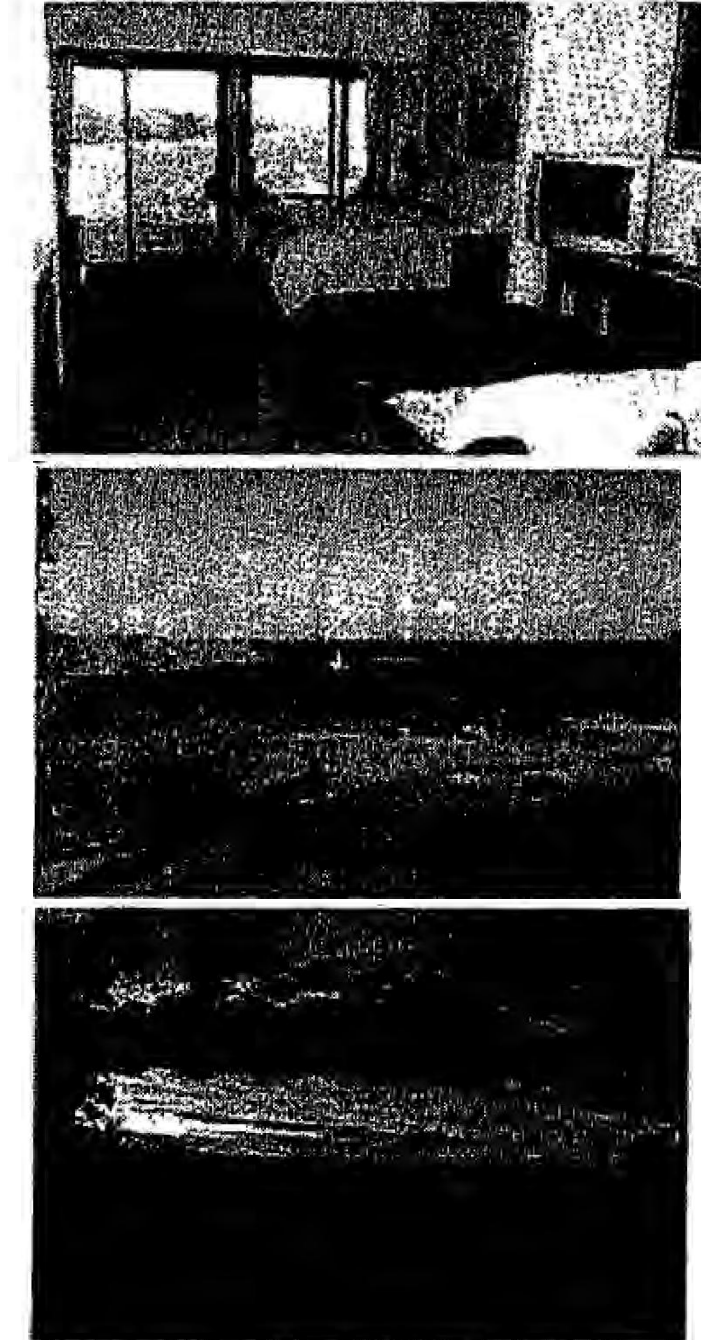
75/night + tax, \$1125/month. Nature Cottage (located in tropical gardens)

60.00 Cleaning Fee for ail rentals; One night free for weekly reservation.

0% Kamaaina Discount w/HI ID. Reservations must be paid in full before arrival.

Note: Until confirmed, rates are subject to change without notice.

86a



87a



155 Haumana Rd. at Hana Highway google.map
yahoo.map

Location: Haiku

It's NOT ok to contact this poster with services or
other commercial interests

88a

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 4D, Honolulu,
Hawaii 96810

APPLICATION FOR REGISTRATION OF
TRADE NAME

(Chapter 482, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

1. Applicant's Name: Well Being International, INC.

Applicants Address: 655 Haumana Rd, Haiku, Hawaii
96708

(Including city, state, and zip code)

2. Registration is (check one) ☒ New OR ☐ Renewal

3. Status of Applicant (check only one):

☐ Sole Proprietor ☒ Corporation ☐ Partnership

☐ LLC ☐ LLP ☐ Unincorporated Association

☐ Other(explain): _____

4. If applicant is an entity, list state or country of
incorporation/formation/organization:

Hawaii

5. Trade Name is: Maui Gay Weddings

6. Applicant is (check one): ☒ Originator of name OR

☐ Assignee (one to whom name was assigned to by
another)

7. Nature of business for which the trade name is being
used: Counseling and commitment ceremonies

89a

I certify, under the penalties set forth in Section 482-3.6, Hawaii Revised Statutes, that (check one):

☐ I am the applicant; or ☒ I am the assistant
(Office Held)

of the applicant named in the forgoing application and that the statements made in the application are true and correct to the best of my knowledge and belief.

Fredrick R. Honig
(Signature)

JUL 23, 2002
(Date)

SEE INSTRUCTIONS ON THE REVERSE SIDE. Application must be certified by the applicant if an Individual. For corporations, application must be signed by an authorized officer of the corporation. General or limited partnerships must be signed by a general partner. For LLC, must be signed and certified by a manager of a manager-managed company or by a member of a member-managed company. LLP must be signed and certified by a partner.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 4002924

CERTIFICATE OF REGISTRATION OF
TRADE NAME

In accordance with the provisions of Chapter 482, Hawaii Revised Statutes, this Certificate of Registration is issued to secure the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of: One (1) year(s) from July 23, 2002 to July 22, 2003

90a

REGISTRATION OF A TRADE NAME WITH THE
DEPARTMENT DOES NOT GRANT YOU THE
OWNERSHIP OF THE TRADE NAME

DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS STATE OF HAWAII

Dated: July 23, 2002

/s/ [Illegible]

(Director of Commerce and Consumer Affairs)

91a

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 4D, Honolulu,
Hawaii 96810

APPLICATION FOR REGISTRATION OF
TRADE NAME

(Chapter 482, Hawaii Revised Statutes)

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1. Applicant's Name: Well Being International, INC.

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96708

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2. Registration is (check one) ☐ New OR ☒ Renewal

3. Status of Applicant (check only one):

☐ Sole Proprietor ☒ Corporation ☐ Partnership

☐ LLC ☐ LLP ☐ Unincorporated Association

☐ Other(explain): _____

4. If applicant is an entity, list state or country of
incorporation/formation/organization:

Hawaii

5. Trade Name is: Maui Gay Weddings

6. Applicant is (check one): ☒ Originator of name OR

☐ Assignee (one to whom name was assigned to by
another)

7. Nature of business for which the trade name is being
used: Counseling and commitment ceremonies

92a

I certify, under the penalties set forth in Section 482-3.6, Hawaii Revised Statutes, that (check one):

- ☐ I am the applicant; or
☒ I am the assistant President
(Office Held)

of the applicant named in the forgoing application and that the statements made in the application are true and correct to the best of my knowledge and belief.

Fredrick R. Honig
(Signature)

APR 14, 2003
(Date)

SEE INSTRUCTIONS ON THE REVERSE SIDE. Application must be certified by the applicant if an Individual. For corporations, application must be signed by an authorized officer of the corporation. General or limited partnerships must be signed by a general partner. For LLC, must be signed and certified by a manager of a manager-managed company or by a member of a member-managed company. LLP must be signed and certified by a partner.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 4002924

CERTIFICATE OF REGISTRATION OF
TRADE NAME

In accordance with the provisions of Chapter 482, Hawaii Revised Statutes, this Certificate of Registration is issued to secure the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of: TEN (10) year(s) from July 23, 2003 to July 22, 2013.

93a

REGISTRATION OF A TRADE NAME WITH THE
DEPARTMENT DOES NOT GRANT YOU THE
OWNERSHIP OF THE TRADE NAME

DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS STATE OF HAWAII

Dated: April 14, 2004

/s/ [Illegible]

(Director of Commerce and Consumer Affairs)

94a

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 4D, Honolulu,
Hawaii 96810

APPLICATION FOR REGISTRATION OF
TRADE NAME

(Chapter 482, Hawaii Revised Statutes)

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1. Applicant's Name: Well Being International, Inc.

Applicants Address: 655 Haumana Rd, Haiku, Hawaii
96708

(Including city, state, and zip code)

2. Registration is (check one) ☒ New OR ☐ Renewal

3. Status of Applicant (check only one):

☐ Sole Proprietor ☒ Corporation ☐ Partnership

☐ LLC ☐ LLP ☐ Unincorporated Association

☐ Other(explain): _____

4. If applicant is an entity, list state or country of
incorporation/formation/organization:

Hawaii

5. Trade Name is: A Marriage Made in Heaven

6. Applicant is (check one): ☒ Originator of name OR

☐ Assignee (one to whom name was assigned to by
another)

7. Nature of business for which the trade name is being
used: Counseling and Marriage ceremonies

95a

I certify, under the penalties set forth in Section 482-3.6, Hawaii Revised Statutes, that (check one):

☐ I am the applicant; or ☒ I am the President
(Office Held)

of the applicant named in the forgoing application and that the statements made in the application are true and correct to the best of my knowledge and belief.

Fredrick R. Honig
(Signature)

APR 14, 2003
(Date)

SEE INSTRUCTIONS ON THE REVERSE SIDE. Application must be certified by the applicant if an Individual. For corporations, application must be signed by an authorized officer of the corporation. General or limited partnerships must be signed by a general partner. For LLC, must be signed and certified by a manager of a manager-managed company or by a member of a member-managed company. LLP must be signed and certified by a partner.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 4002924

CERTIFICATE OF REGISTRATION OF
TRADE NAME

In accordance with the provisions of Chapter 482, Hawaii Revised Statutes, this Certificate of Registration is issued to secure the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of: One (1) year(s) from APR 15, 2003 to APR 14, 2004

96a

REGISTRATION OF A TRADE NAME WITH THE
DEPARTMENT DOES NOT GRANT YOU THE
OWNERSHIP OF THE TRADE NAME

DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS STATE OF HAWAII

Dated: APR 15, 2003

/s/ [Illegible]

(Director of Commerce and Consumer Affairs)

97a

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
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Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 4D, Honolulu,
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96708

(Including city, state, and zip code)

2. Registration is (check one) ☒ New OR ☐ Renewal

3. Status of Applicant (check only one):

☐ Sole Proprietor ☒ Corporation ☐ Partnership

☐ LLC ☐ LLP ☐ Unincorporated Association

☐ Other(explain): _____

4. If applicant is an entity, list state or country of
incorporation/formation/organization:

5. Trade Name is: Maui Wedding Planners FRH

6. Applicant is (check one): ☐ Originator of name OR

☒ Assignee (one to whom name was assigned to by
another)

7. Nature of business for which the trade name is being
used: Wedding Planning & Services

98a

I certify, under the penalties set forth in Section 482-3.6, Hawaii Revised Statutes, that (check one):

- ☐ I am the applicant; or
☒ I am the President of Well Being International, Inc.
(Office Held)

of the applicant named in the forgoing application and that the statements made in the application are true and correct to the best of my knowledge and belief.

/s/ Fredrick R. Honig
(Signature)

May 28, 2003
(Date)

SEE INSTRUCTIONS ON THE REVERSE SIDE.
Application must be certified by the applicant if an Individual. For corporations, application must be signed by an authorized officer of the corporation. General or limited partnerships must be signed by a general partner. For LLC, must be signed and certified by a manager of a manager-managed company or by a member of a member-managed company. LLP must be signed and certified by a partner.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 4013186

CERTIFICATE OF REGISTRATION OF
TRADE NAME

In accordance with the provisions of Chapter 482, Hawaii Revised Statutes, this Certificate of Registration is issued to secure the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of: One (1) year(s) from Jun 29, 2003 to Jun 28, 2004

99a

REGISTRATION OF A TRADE NAME WITH THE
DEPARTMENT DOES NOT GRANT YOU THE
OWNERSHIP OF THE TRADE NAME

DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS STATE OF HAWAII

Dated: Jun 29, 2003

/s/ [Illegible]

(Director of Commerce and Consumer Affairs)

100a

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 4D, Honolulu,
Hawaii 96810

APPLICATION FOR REGISTRATION OF
TRADE NAME
(Chapter 482, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

1. Applicant's Name: Well Being International, Inc.

Applicants Address: 655 Haumana Rd, Haiku, HI
96708, USA

(Including city, state, and zip code)

2. Registration is (check one) ☒ New OR ☐ Renewal

3. Status of Applicant (check only one):

☐ Sole Proprietor ☒ Corporation ☐ Partnership

☐ LLC ☐ LLP ☐ Unincorporated Association

☐ Other(explain): _____

4. If applicant is an entity, list state or country of
incorporation/formation/organization: Hawaii

5. Trade Name is: A Marriage Made in Heaven

6. Applicant is (check one): ☒ Originator of name OR

☐ Assignee (one to whom name was assigned to by
another)

7. Nature of business for which the trade name is being
used: COUNSELING AND MARRIAGE CEREMONIES

101a

I certify, under the penalties set forth in Section 482-3.6, Hawaii Revised Statutes, that (check one):

☐ I am the applicant; or

☒ I am the President (Office Held of the applicant named in the forgoing application, and that the statements made in the application are true and correct to the best of my knowledge and belief.

Fredrick R. Honig
(Print Name)

Fredrick R. Honig
(Signature)

07/16/2007
(Date)

SEE INSTRUCTIONS ON THE REVERSE SIDE. Application must be certified by the applicant if an Individual. For corporations, application must be signed by an authorized officer of the corporation. General or limited partnerships must be signed by a general partner. For LLC, must be signed and certified by a manager of a manager-managed company or by a member of a member-managed company. LLP must be signed and certified by a partner.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 4055386

CERTIFICATE OF REGISTRATION OF
TRADE NAME

In accordance with the provisions of Chapter 482, Hawaii Revised Statutes, this Certificate of Registration is issued to secure the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of five years from July 16, 2007 to July 15, 2012.

102a

REGISTRATION OF A TRADE NAME WITH THE
DEPARTMENT DOES NOT GRANT YOU THE
OWNERSHIP OF THE TRADE NAME

DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS STATE OF HAWAII

Dated: July 16, 2007

/s/ [Illegible]

(Director of Commerce and Consumer Affairs)

103a
Def. Exhibit 88

STATE/COUNTRY	WEDDING NUMBERS
Alabama	4
Alasaka	3
Arizona	21
Arkansas	3
California	134
Colorado	13
Connecticut	3
D.C.	1
Delaware	2
Florida	16
Georgia	11
Hawaii	34
Idaho	3
Illinois	26
Indiana	6
Iowa	7
Kansas	5
Kentucky	5
Louisiana	5
Maine	0
Maryland	7
Massachusetts	10
Michigan	17
Minnesota	19
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Missouri	21
Montana	8
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New Hampshire	1
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New York	13
North Carolina	4
North Dakota	1
Ohio	14
Oklahoma	4
Oregon	17
Pennsylvania	11
Rhode Island	1
South Carolina	1
South Dakota	0
Tennessee	6
Texas	38
Utah	9
Vermont	0
Virginia	8
Washington	28
West Virginia	1
Wisconsin	8
Wyoming	0

Australia	4
Canada	20
England	2
Germany	1
Hong Kong	1
Ireland	1
South Africa	1

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I hereby declare under penalty of perjury that the above is true and correct.

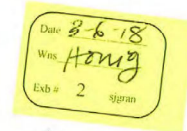
DATED: Wailuku, Maui, Hawaii, April 19 2018

/s/ Brian A. Bilberry
BRIAN A. BILBERRY

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APPENDIX H

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,

Defendants.

Honolulu, Hawaii
October 3, 2023

TRANSCRIPT OF JURY TRIAL (DAY 5)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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United States District Court
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Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript
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PLAINTIFF WITNESS: PAGE NO.

FREDRICK R. HONIG

RESUMED CROSS-EXAMINATION BY MR. BILBERRY 5
REDIRECT EXAMINATION BY MR. STORZER 121

EXHIBIT: PAGE NO.

Defense Exhibit 137 was received in evidence 18
Defense Exhibit D-113 was received in evidence 48
Defense Exhibit 115 was received in evidence 50
Defense Exhibit 122 was received in evidence 52

Defense Exhibits 113, 115, and 122 were received in evidence	61
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Defense Exhibit 4 was received in evidence	118

* * *

[61] go.

THE COURT: But wait, I didn't hear what you said because you were speaking while I was speaking. But in any event, are you done authenticating videos or do we need more time?

MR. BILBERRY: I would like to move Defense Exhibit 110-A into evidence.

MR. STORZER: Objection. Lacks foundation to authenticate it.

THE COURT: There may be stills from this video that maybe I would allow, but at the moment you're only offering this whole video, and I'm going to sustain the objection.

I'm also a little worried about the time it takes to play these videos and what you – as compared to what you might argue as the probative value, which seems maybe disproportionate.

But right now I'm not receiving 110-A. So what has been received are 113, 115 and 122, and we are going to take a break.

(Proceedings were recessed at 10:35 a.m. to 10:56 a.m.)

THE COURT: Okay. So we did resolve some things during the break. I have received in evidence

Defendants' Exhibits 113, 115, and 122, which are videos. (Defense Exhibits 113, 115, and 122 were received in evidence.)

[62] THE COURT: Okay, back to you, Mr. Bilberry.
MR. BILBERRY: Thank you, Your Honor.

Melissa, could you pull up Exhibit D-113, please.
Okay, stop. Okay. Yeah, just hold it there.

BY MR. BILBERRY:

Q Mr. Honig, you indicated –

MR. BILBERRY: Well, actually first, Your Honor, I would like to publish D-113 to the jury.

THE COURT: Okay, you can do that.

(Video played.)

BY MR. BILBERRY:

Q Okay, Mr. Honig, it's accurate that this video depicts events that have occurred on your property where Spirit of Aloha Temple has a lease and operates in the year 2021, correct?

A Correct.

MR. BILBERRY: If you can play the video, Melissa.

(The video was played for the jury.)

BY MR. BILBERRY:

Q Just a few quick questions, Mr. Honig. There were depictions of prayer groups in that video?

A Yes.

Q And those occurred in 2021?

A Yes.

Q What was the music event that we saw?

[63] A Excuse me?

Q There was a music event in the video as well.

A A music event?

Q It looked like there was a musician playing to an audience.

A Oh, yes, that was Sarah Taylor, who was one of our strongest supporters. She's an author of a book from "Vegetarian to Vegan." She's been one of our – a great contributor of ours for many years. She was diagnosed with terminal brain cancer, and she – we hosted for her a – her last ceremony we invited before – while she was still able to move and to function, we invited all of her friends and all of our sangha to do a blessing for her before she passed. And it was one of the most sacred events that I have ever been at.

And if you look at her picture there, she was totally blissful and joyful, even though she died less than two months after that event. And then after she died, her husband and she had chosen to have her ashes buried under the grandmother tree at our garden, and we had another ceremony for her for her funeral.

So that's the type of sacred events that we've – I'm so honored and blessed to be able to offer sacred events like that, and those are the types of events that I want to continue to be able to offer.

Q And you're currently offering them.

[64] A Well, we're offering them only to our closest friends. What people don't know that they could come and get – and also have our services. It's only our members who we're really able to serve right now because we can't advertise or let people know of our services. So it's just by only word of mouth right now.

Q Okay. So your members, I believe you indicated there were 1200 earlier last week?

A Well, out of those, approximately 250 to 300 of them live in Maui, and the others are scattered all over the world.

Q Okay. So for those two or 300 that live on Maui, you're currently able to offer sacred events for them, correct?

A Only if they are able to know that we are able to do it. But for those people if they – at this moment what they ask us can I do something for you, then we attempt to offer that service.

Q And that includes prayer groups?

A Yes.

Q And spiritual gatherings?

A Yes.

Q What was the event with the fire dancers?

A That was a friend of ours had a – like a milestone birthday, and they asked if they could host a vegan picnic party with fire dancing to celebrate their – their milestone birthday, and we were honored to host them. And they fed us, [65] you know, delicious vegan fire pizza and a dance, and left a beautiful contribution. And we had one of the most beautiful evenings.

Q Was that also a spiritual event?

A Absolutely. It was – you know, like these milestone birthdays in people's lives really – and their friends and family coming together to celebrate that, those milestone events have an enormous benefit in one's spiritual unfoldment.

Q So, just so I understand, there are 200 to 300 local members who are able to currently attend spiritual events and religious events on your property?

A It's not totally that they can because, you know, it's still a questionable thing. Like, we are – we're not – like if they say they want to do a wedding here at the gardens, it's still a risk to us to do that. But we would take – we would undertake that risk that we haven't been authorized by the County to do that. You know, so we are operating as best as we can under the radar.

Q But you are currently able to engage in practices that are essential to your faith on your property?

A In a limited way we are, yes.

Q And that includes the two to 300 local members that come to your property.

A Well, they really don't necessarily come. They're on our mailing list.

[66] Q Well, we viewed in the video groups of people gathering for spiritual events on your property, correct?

A Yes.

Q And those are some of your members?

A Well, at this point they're mostly members. You know, like the one nice thing is if we're able to advertise and reach out, then we're able to reach more people. Right now we're not able to do that.

So our goal is to be as serviceable as possible. Right now we're holding maybe one or two events a month, and so you saw that in the whole year there might have been 20 events. We are not – and because of that,

we're not able to have – you know, to be able to afford to have a program director or to really be able to offer our services. We would like to be able to have classrooms every day. We would like to be able to have teachers training courses and to have – like to be able to teach people and then have that go on YouTube.

So we're able to operate in a very limited format, but not in our full – not to the full extent of our wishes.

Q So you could in fact do teacher training on video and offer it on YouTube, correct?

A Well, you need to be able to have – like in order to do that, you need to be able to attract students who will come. So I would need to advertise and have some people who are there at the gardens who I'm teaching. Then once you're teaching, [67] like say you have a group of 15 students who are there taking a yoga class with you on meditation class, it makes it an interesting video, and then other people can take the same course online wherever they are in the world.

So we want the ability to be able to teach these courses on like a weekly basis where people are coming and taking our courses. We would videotape them and we would have a large audience around the world, and that would help us to fulfill our mission.

Q What was the construction that was going on that we witnessed in the video?

A This was during the COVID period, and we – we were not able to just do our normal events. And so we got a loan from the Small Business Administration, and with that loan we built a greenhouse during that year. You know, so that's how we used that building was a greenhouse that we built during that year of 2021 in order that we had some way to serve during

the time when we were not able to function as we – normally we would.

Q And it looked like there was some paving going on; is that right?

A Oh, yes. Yes, we had the great blessing. You know, the County of Maui has – one of the main reasons why they were obstructing our special use permit, according to them, was they were concerned about safety of our roads on our property. So I didn't want them to have an excuse to deny us our SUP.

* * *

[69] A Yes, but because I know they're concerned about Haumana Road also, I worked tirelessly to keep Haumana Road very safe. You know, like I said, I took care of – the main problem that it had was a clogged drainage ditch, I took care of that. I met with the County engineer and I showed her all nine drainage ditches along the road, and she finally put them on a map and gave them to the Makawao maintenance yard so that now they're able to maintain each of the nine drainage ditches.

And I met with the engineers several times and had them put turnouts over the road where fire trucks can pass each other in critical areas. I had the speed bumps put in. I have them mowed regularly. So I personally make sure that Haumana Road is kept in good condition so that – you know, for all the benefit of all the people on the road, and so the County doesn't have an excuse to limit our church's rights.

MR. BILBERRY: Okay, Melissa, can you pull up the next exhibit, which is Defense 115.

Your Honor, I'd like to publish Defense Exhibit 115 to the jury.

THE COURT: You may.

MR. BILBERRY: Before – I’m sorry?

THE COURT: I thought there was only just going to be the exhibit number.

MR. BILBERRY: I think it’s gone.

THE COURT: It seems to have the file number.

[70] MR. BILBERRY: Oh, I didn’t – I’m sorry, I didn’t notice, Your Honor.

Yeah, it says MP4, which is the file type, I guess.

MR. STORZER: Yeah, no objection to that.

THE COURT: Okay.

BY MR. BILBERRY:

Q Mr. Honig, the video that we’re about to watch are events that occurred on your property in 2002?

A I can’t see from this picture what year you’re talking about. You said 2022?

Q Yes.

A Yes.

MR. BILBERRY: Okay, Melissa, could you play the video, please.

(The video was played for the jury.)

THE WITNESS: Could you make it louder?

BY MR. BILBERRY:

Q Okay. Just a quick few questions, Mr. Honig, and then one more video, and then we’re going to move really quick to try to wrap up.

So in that video of events that occurred in 2002 (verbatim), we saw a couple renewing their wedding vows?

A That was the same couple who came the years before with the helicopter. That was the couple who landed on the gardens for their helicopter for the – I went away with them to marry [71] them at a waterfall with the helicopter.

They came back 20 years after really just to see me. We didn't actually – you know, I did a blessing for them, but it wasn't a formal anniversary. I did my own personal blessing to them, and they came mostly to see me and to support our vision and to say how grateful they were for the marriage ceremony that I offered and how much it meant to them.

Q Maybe I'm mistaken, but the video did indicate that there was a renewal of vows, right?

A Well, it was – it was done just with me and them informally.

Q Okay. And then there were – I think we witnessed two memorial services.

A Yes, that was Sarah Taylor, our beloved – forgive me – who passed. She was a vegan activist who helped the world go vegan.

And the other were Nita and Douglas, who were both members of our advisory board for over a decade. They were enormous supporters of ours financially and emotionally and with their wisdom. And when they passed, their family asked for their ashes to be blessing our gardens, and their ashes were in that beautiful ceremony were buried under the grandmother tree.

Q And that was a religious event?

A Oh – excuse me – that’s the essence of religion is that.

[72] Q And there were prayer groups that occurred in 2022 as well?

A Yes.

Q And there was an initiation. What was the initiation?

A Yes. The – I’m a member of the Holy Order of Sannyas, and the dharma or the duty is to share the tremendous gifts that I’ve been given with the next generation. And those are two of our members who are stepping forward to follow this path of selfless service and are dedicating their lives to selfless service.

And they had – we rewrote the vows that I had – that I read to you that I took. And we made them so that the vows were more aligned with the current generation. And they had a beautiful ceremony that we had together on group Hornama (phonetic), the full moon in July on when sannyas initiation is done. And they embraced the Holy Order of Sannyas. They’re the next generation.

Q This was also a religious event?

A The epitome of a religious event.

Q And then we saw at the end of the video a big sign with lights and you standing between two words that said “Marry me,” correct?

A Yes. That is –

Q There’s no question just yet.

So you are still doing weddings on the property, [73] correct?

A We are only doing them for our members at this moment. And that was not actually a wedding. That was a proposal. That was a couple who came to the gardens for – for the groom to ask the bride to marry her, and that’s where he wanted to do it, in front of the Mother Mary statue at the temple.

Q And did they also get married on your property?

A No, they haven’t yet.

Q But they’re going to be married on your property.

A They may.

Q But you are marrying your members on your property currently.

A If a member asks me to do a wedding for the property, I would say yes.

Q All right. One more video, Mr. Honig. Bear with me.

(The video was played for the jury.)

BY MR. BILBERRY:

Q Mr. Honig, what are we about to witness in this video?

A This is me chanting the Aloha anthem that I composed with the help of my beloved Hawaiian guru Auntie Puanani Mahoe. She taught me the 12 values of the Spirit of Aloha, and she blessed me, and it’s her plaque that you saw in the last video.

And those were her family who came for the dedication ceremony. And the 12 values of the Spirit of Aloha, we have a plaque for each one of those at our six gardens, and one plaque

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APPENDIX I

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,

Defendants.

Honolulu, Hawaii
September 29, 2023

TRANSCRIPT OF JURY TRIAL (DAY 3)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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Proceedings recorded by machine shorthand, transcript
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MR. BILBERRY	5
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Defendants' Exhibits 20 and 21 were received in evidence	57
Defendants' Exhibit 130 was received in evidence	108

Plaintiffs' Exhibit 171 was received in evidence 151
 Defendants' Exhibit 11 was received in evidence 164

* * *

[125] going and your yoga classes going, correct?

MR. STORZER: Objection, Your Honor. Mischaracterizing testimony, argumentative, vague. It's characterizing it as a business, and asked and answered repeatedly, I believe.

THE COURT: Hold on.

Okay. You can say if it's correct or incorrect what he said. He asked if it was correct that you couldn't wait to get permits because you needed to get your wedding business going. Is that correct or incorrect?

THE WITNESS: That's incorrect.

THE COURT: Okay, that's the answer. Next question.

BY MR. BILBERRY:

Q How is it incorrect?

A The goal – I'm not married to weddings, and that's not my – the only thing that I can do to serve humanity. My greatest passion is to teach meditation and to teach yoga. So – and also to have a community of people who are like-minded and to develop the gardens into a botanical garden.

So these are – if you look at like other properties build huge mansions, 5,000 square feet –

Q Mr. Honig, there's – there's nothing in the question that leads you to start talking about other properties.

Here is my next question: Do you remember telling the Planning Commission on the record when they considered your

* * *

[128] BY MR. BILBERRY:

Q – Mr. Spence wrote: “After considering the extent of the violations and the amount of time necessary to permit the above, I would have to decline any further work on your permitting needs. I do however suggest you hire a consultant and consult with an attorney.”

Do you see that?

A Yes.

Q Did you do that?

A I didn’t have funds to hire consultants, but I did find volunteers who were happy to serve us.

Q And again, this letter is dated 2002 – withdraw that.

I did miss a – well, I did cover that, I’m sorry.

I want to shift to a different subject. You testified on Wednesday that your beliefs are aligned with a 5,000-year- old ancient order of monks. Correct?

A Yes.

Q And that those beliefs involved a direct experience of God consciousness, correct?

A Yes.

Q And you’ve testified on a number of occasions about what you call your experience of unitive consciousness, right?

A Yes.

Q And that unitive consciousness is where one gives up everything that is considered mine or myself.

[129] A Yes.

Q And then your lawyer asked you what were your religious practices and what did they involve. Do you remember him asking you that?

A Yes.

Q And you said morning meditation. That's one of them, right?

A Yes.

Q And then you said noon meditation, right?

A Yes.

Q And then you indicated there was an evening meditation, right?

A Yes.

Q And then you indicated there were chants.

A Yes.

Q And then you indicated there was an experience of your own inner consciousness.

A Yes.

Q You didn't say anything about weddings at that time when he asked you what were your religious practices.

A You know, there are – I understood when he asked me those questions, like what are my inner personal ones, those practices that I – you just went over, those are practices that I use to prepare myself to be able to serve to the best of my capacity.

[130] And then the other practices are practices of my service. So I in that list was referring to those items that I used to charge myself up and to give myself the energy and the clarity to be able to provide the services that I'm inspired to offer.

Q And you also testified that you had practiced these principles every day for the past 50 years, right?

A Yes.

Q And you were meditating here this morning, correct?

A Yes.

Q And so the denial of your special permit did not preclude you from engaging in any of these practices, correct?

A Yes, that's correct.

Q So as to these particular religious practices, you have not been burdened at all by the denial of your special permit, correct?

A Well, in a certain system I am burdened because the burden that I face is the burden in my service, that I'm not able to serve to the full extent of my capacity or the garden's capacity. So in that way it is a burden to me to have restrictions put on the ways that I'm able to express my service to the world.

Q And let's talk about those restrictions, Mr. Honig. Because your counsel asked you, I believe it was the day before yesterday or maybe it was yesterday, about violations you were

* * *

[157] Q Your counsel – your counsel has a copy.

THE COURT: So you're asking his counsel to give him a copy for him to review over the weekend?

MR. BILBERRY: I'll give you my copy, Mr. Honig.

THE COURT: Okay. He's going to give you a copy.

BY MR. BILBERRY:

Q Is that something you can do?

A Yes.

Q Okay. Do you consider yourself a Shaker?

A I consider myself a Hindu monk, and as a Hindu monk, I see the same truths expressed in other traditions, and I respect and value those traditions even though they may not be my own tradition.

Q I respect and value other religious traditions as well, but my question is –

THE COURT: Okay. Forget the commentary. Just the question.

MR. BILBERRY: Okay, Your Honor.

BY MR. BILBERRY:

Q Let me back up. So you don't consider yourself a Christian monk, correct?

A I'm a Hindu monk who loves Jesus and values very deeply

the Christian traditions.

Q And you're not a Shaker, correct?

A I'm a Hindu monk who values the Shaker traditions.

[158] Q And you're not – well, are you of Jewish faith?

A I am – I am of Jewish faith, and I as a Jew value the Hindu tradition as a clear – a clear expression of Judaism.

Q Are you of the Islamic faith?

A I value very much the Islamic faith.

Q Are you a Buddhist faith?

A I'm a Hindu monk who values very deeply the Buddhist traditions.

Q Do you engage in any Christian religious practices on your property?

A Yes.

Q What are those?

A We celebrate Christmas and Easter, and we have the Mother Mary statue there. I have at the entrance of the reception building, I have a beautiful statue of Jesus. So I value and recognize the one truth expressed in different paths.

Q Okay. Do you want to take a break, Mr. Honig? Maybe we could –

A I'm fine.

Q Are there any practices of the Shaker faith that you engage in on your property?

A They have a love of simplicity, which I value very deeply, and I engage in those values on our property.

Q And are there any Jewish faith practices that you engage in on your property?

* * *

[162] Christian practices that you engage in, the Shaker practices that you engage in, the Jewish

practices you engage in, the Islamic practices you engage in, and the Buddhist practices you engage in, personally you haven't been precluded from engaging in any of those by the denial of your special permit, correct?

A Not from my personal use, but I'm restricted only in sharing with a group of people or advertising that I would like to hold a program or an event. That's what I'm not able to do.

Q Okay. So you can't advertise.

A That's correct.

Q But that's not the same as you can't do it, right?

A Well, if you –

THE COURT: What is "it"?

MR. BILBERRY: That – that question popped into my mind as soon as I asked the question, Your Honor, and I was just about to clarify it.

BY MR. BILBERRY:

Q Nothing in the denial of your special permit precluded you from engaging in any of these religious practices on your property?

MR. STORZER: Objection. Asking for a legal conclusion.

THE COURT: Okay. Sustained.

BY MR. BILBERRY:

Q You do acknowledge that at some point you had a honeymoon

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APPENDIX J

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,

Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,

Defendants.

Honolulu, Hawaii
September 28, 2023

TRANSCRIPT OF JURY TRIAL (DAY 2)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

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FREDRICK R. HONIG

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MR. STORZER 5
CROSS-EXAMINATION BY MR. BILBERRY 99

EXHIBITS: PAGE NO.

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Plaintiffs' Exhibit 102 was received in evidence 11
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Plaintiffs' Exhibit 98 was received in evidence	68
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Plaintiffs' Exhibit 99 was received in evidence	89
Plaintiffs' Exhibit 17 was received in evidence	92
Plaintiffs' Exhibit 8 was received in evidence	94
Plaintiffs' Exhibit 121 was received in evidence	97
Defendants' Exhibit D-124 was received in evidence	156
Defendants' Exhibit 96 was received in evidence	168

* * *

[100] kind as to either address me as Reverend Honig or as Swaroop, I would be very grateful.

MR. BILBERRY: Your Honor, the complaint that was filed in this case was filed by Fredrick R. Honig and Spirit of Aloha Temple. It wasn't filed by Swaroop and it wasn't filed by Reverend Fredrick Honig. So I would – I would ask that I be permitted to refer to the plaintiff as Mr. Honig.

THE COURT: I'm going to let you do that, Mr. Bilberry, but my own thought is that people should be addressed as they would like to be addressed. You can make your choice here, but I do think it's much more courteous to use the name that someone asks to be called. But I will leave this to you.

MR. BILBERRY: Okay. That's fine, Your Honor.

BY MR. BILBERRY:

Q Sir, would you please take a look at Exhibit 135-M.

A Yes.

Q Okay. You indicated this was a marriage counseling event?

A Yes.

Q Okay. Tell us again what's going on here.

A This couple came from Belgium for me to marry them. And they were going to be married two days from that day. They came for that event for me to share with them.

THE COURT: I'm really sorry to interrupt, but,

Mr. Bilberry, I don't know, and you do not need to do this, but [101] the jury is not seeing this document. You had it placed before the witness. Did you want it published?

MR. BILBERRY: Yes, I did want it published to the jury.

THE COURT: Okay. Then it will be. You have to tell me because then the court staff knows.

MR. BILBERRY: Fair enough. Yeah, I'm sorry, Your Honor, I assumed that because it already had been admitted, it might just –

THE COURT: We will not put things in front of the jury unless requested by counsel.

MR. BILBERRY: Fair enough. And thank you for letting me know.

THE COURT: Okay. And I had interrupted the witness who was describing –

MR. BILBERRY: I can reask the question.

THE COURT: Okay.

MR. BILBERRY: Is the document in front of jury?

BY MR. BILBERRY:

Q Okay. Mr. Honig, so you were describing this as counseling –

A Yes.

Q – a marriage counseling event. I believe you said that the couple was married two days later on your property.

A Yes.

[102] Q Okay. And I believe earlier you testified that this was one of a number of photos that show the essence of your religious practices. Is that fair?

A Yes.

Q Okay. And you've testified that you have not been able to engage in any of these religious practices on your property because your SUP was denied, correct?

MR. STORZER: Objection, Your Honor. That misstates the testimony.

BY MR. BILBERRY:

Q Isn't that what you testified to, Mr. Honig?

THE COURT: Okay. He's changing the question. Did you testify –

BY MR. BILBERRY:

Q Aren't we here today because your claim is that because your special permit was denied, you have been precluded from engaging in religious practices on your property?

A We –

Q The question is, isn't that why we're here, yes or no?

A We're here to –

Q Mr. Honig, let me try the question again. We are here today because you claim that you have not been able to get a special permit to engage in the religious practices that are essential to your faith on your property, correct?

MR. STORZER: Your Honor, I'm going to object. Again,

* * *

[105] MR. BILBERRY: Sorry, Your Honor. I'll withdraw the question.

THE COURT: Okay. Okay. Because obviously you can be precluded from doing X, and the inability to do X can be a restriction also. If you mean have you been entirely precluded from any religious practice, you need to clarify that.

MR. BILBERRY: Well, I haven't said entirely precluded from any religious practice, Your Honor, but that does appear to be what the claim is.

THE COURT: No, I – what is the question?

MR. BILBERRY: I'll try it again, Your Honor.

BY MR. BILBERRY:

Q And we'll go back to this specific photo.

You have claimed today, Mr. Honig, that you have been precluded from engaging in this specific practice that you described in this photo because your SU – let me withdraw that and ask it again.

You indicated in this photo you're doing a marriage counseling.

A Yes.

Q And that this couple was married on your property two days after this.

A Yes.

Q This is a practice that is essential to your religious faith.

[106] A Yes.

Q And you claimed that this particular practice that's essential to your religious faith, you have been not – you have not been able to engage in on your property because you were denied a special permit, correct?

A I have – I have answered –

Q That's what this claim is about, isn't it?

A I can answer that if you will allow me to answer it.

Q Well, let me just – can you answer it with a yes or no?

A I cannot answer with a yes or no.

Q Okay. Well, then I'm going to withdraw the question.

Because you said also that this photo was of a religious practice on your property that occurred six years ago, correct?

A Yes.

Q All right. And that would make that – this event having occurred in or around 2018 – '17, '18?

A Yes.

Q And your special use permit was denied in 2014, correct?

A Yes.

Q Okay. So this event that we're witnessing in this photograph occurred about three to four years after your special use permit was denied, correct? It's a yes or no question, Mr. Honig.

A Yes.

[107] Q Let's take a look at Exhibit 135-J.

A I'm sorry, I don't –

Q There is no question before you, Mr. Honig.

THE COURT: J?

MR. BILBERRY: Yes, 135-J.

BY MR. BILBERRY:

Q Mr. Honig, what are we viewing in this –

MR. BILBERRY: Oh, may I publish this to the witness –

THE COURT: You may.

MR. BILBERRY: Or publish this exhibit to the jury.

THE COURT: And you need to put into the record what it is by number.

MR. BILBERRY: 135-J. This is Plaintiffs' Exhibit 135-J.

THE COURT: Okay.

BY MR. BILBERRY:

Q Mr. Honig, what is going on in this particular photograph?

A I'm teaching a meditation program.

Q I believe you indicated this was a women's meditation retreat. Is that correct?

A Yes.

Q And I believe you testified today that this was a group meditation event?

A Yes.

[108] Q And this group meditation event is the kind of event that's essential to your religious practice?

A Yes.

Q You indicated that this particular event occurred six years ago as well; is that right?

A Yes.

Q And you have claimed in this case that you have not been able to engage in this kind of group meditation because you haven't been able to get a special permit, correct?

A I'm not able to answer yes or no.

Q I withdraw the question.

A I need to be able to clarify –

THE COURT: So he's withdrawing the question.

THE WITNESS: I'm sorry.

THE COURT: So you do not need to answer or clarify an answer. There's no question at the moment.

BY MR. BILBERRY:

Q So this event occurred at about six years ago as well, Mr. Honig?

A Yes.

Q And your special permit was denied in 2014, correct?

A Yes.

Q So this event occurred approximately three to four years after your special permit was denied, correct?

I could do the math for you if I need to. Let me do [109] it for you. This is 2023. You indicated that this woman's meditation retreat where you are meditating in a group session here, you said it occurred six years ago, correct?

This is 2023 –

A Yes – yes, it did.

Q This is 2023, so six years ago would have been about 2017.

Do you agree with me? 13 minus 6 is about 17, give or take a few months, right?

A I would like – I don't know how –

THE COURT: Hold on. Hold on.

THE WITNESS: Yeah, sorry.

THE COURT: Did you mean 23 minus 6?

MR. BILBERRY: Yes.

THE COURT: You said 13 minus 6 is 17.

MR. BILBERRY: Oh, I'm the one that's –

THE COURT: This is really bad math, Mr. Bilberry.

BY MR. BILBERRY:

Q So I apologize for my bad math, Mr. Honig. Let's go back and try it again.

This is 2023, correct?

A Yes.

Q And if we subtract 6 years from 2023, that would be 20- – about 2017, correct?

A Yes.

Q And so this event where you have met with the women for a [110] group meditation occurred three years after your special permit was denied in 2014, correct?

A Yes.

Q And this event is essential to your – to practicing your religious faith.

A Yes.

MR. BILBERRY: Melissa, could you please pull up 135-W.

And I would like to publish Plaintiffs' 135-W to the jury?

THE COURT: Okay.

BY MR. BILBERRY:

Q Mr. Honig, what's going on in this particular photograph?

A It's a prayer circle.

Q And what's involved in a prayer circle?

A There is an intention that's launched, and then there is the actual prayer itself.

Q And this is one of the religious practices that's essential to your faith?

A Yes.

Q And you indicated that this particular prayer circle occurred about five years ago.

A Yes.

Q 2023 minus 5 is about 2018?

A Yeah.

[111] Q So this event occurred in or around 2018?

A Yeah.

Q And as with the previous two photographs you looked at, this photograph is an event that occurred on your property?

A Yes.

Q And your special use permit was denied in 2014, correct?

A Yes.

Q So this event, the prayer circle occurred about four years after your special permit was denied, correct?

A Yes.

MR. BILBERRY: Melissa, could you pull up 135-I – Plaintiffs' 135-I, please.

And can I – may we publish Plaintiffs' Exhibit 135-I to the jury?

THE COURT: Yes.

BY MR. BILBERRY:

Q Mr. Honig, what is going on in Plaintiffs' 135-I?

MR. BILBERRY: If you could scroll up a little bit, Melissa, to get the whole photograph.

THE WITNESS: Yeah, it's also a prayer circle.

BY MR. BILBERRY:

Q And you indicated that this prayer circle occurred about seven years ago, correct?

A Yeah.

Q So that would have been in or around 2016?

[112] A Yeah.

Q And this is another practice that's essential to your religious faith, correct?

A Yes.

Q And this event would have occurred two years after your special permit was denied in 2014, correct?

A Yes.

MR. BILBERRY: Melissa, can you pull up Plaintiffs' 135-G, please.

BY MR. BILBERRY:

Q And, Mr. Honig, what is going on in this particular –

MR. BILBERRY: I'm sorry, may we publish Plaintiffs' 135-G to the jury, please?

THE COURT: Yes.

BY MR. BILBERRY:

Q Mr. Honig, this image indicates these are wedding vows at the gardens; is that correct?

A It was a wedding vow renewal.

Q Okay.

MR. BILBERRY: Melissa, could you scroll up so we can see the entire photo.

BY MR. BILBERRY:

Q Let me ask you, who are Michael and Rickie Beckwith?

A Michael Beckwith is a famous minister of Agape Church.

Q I thought I had heard that name before.

* * *

[116] subject to those heavy fines; is that correct?

A No.

Q Okay, correct me.

A The heavy fines and the settlement had nothing to do with the special use permit. Like he didn't say that a condition for lowering the amount of the fine had to do with the applying for a special use permit. No, he didn't require that.

Q Okay. Fair enough. So as I understand it, and we will be looking more at this probably tomorrow, your second application for a special permit followed the application that you submitted in 2007 that was denied, correct?

A Yes.

Q I'm going to address this in a little more detail later.

But you said that you landed a helicopter four to five times on your property.

MR. STORZER: Object. Again, he didn't testify that he landed a helicopter.

BY MR. BILBERRY:

Q Well, okay, you didn't personally fly the helicopter in. I understand that. I apologize.

But you testified today that when you were receiving helicopter service, that a helicopter landed only four to five times on your property, correct?

A I'm approximating that, yeah.

Q Because it was more like ten times, wasn't it?

[117] A It could have been.

Q Okay. So it could have been ten.

A It could have been, yes.

Q Okay. Do you remember testifying that it was ten times previously?

A I don't remember – no, I –

Q You do remember?

A I don't remember the exact number. I know it was a small number. Whether it was five or ten, I don't know. It wasn't a large number.

Q Okay. But today you testified under oath that it was four to five times.

A I'm doing my best to recall what, you know, happened decades ago.

Q Sure. I'm giving you the benefit of clarifying, but now you're saying it could have been as many as –

A It is possible.

Q Let me finish the question. It could have been as many as ten?

A It's possible.

Q Mr. Honig, you testified today that – and Mr. Storzer asked you, How do people learn about your wedding service? Do you remember Mr. Storzer asking you that question?

A Yes.

Q And you testified that it was number one, by God's grace,

* * *

[119] Q Yes.

A No, I – I didn't testify to that. I was talking about the 99-year lease.

Q Okay. When did Spirit of Aloha Temple enter into this 99-year lease?

A That was done about – over four years ago.

Q You do recall that Spirit of Aloha Temple first entered into a lease for the property in or around 2011?

A Yes.

Q And that's not the lease you're talking about when you say the 99-year lease?

A No, that's not.

Q Okay. Then we'll wait and talk about the first lease tomorrow. Or later today.

I want to get into this a little more tomorrow, but you did say some things today that I want to question – ask you about.

You've mentioned the concept of unitive consciousness a number of times today, and I understand that unitive consciousness is the essence of your spiritual practice; is that correct?

A It's the goal.

Q Goal. So all of your spiritual practice is geared towards achieving unitive consciousness.

A That's correct.

[120] Q And you characterize unitive consciousness as awareness and eternal – or awareness of the eternal; is that correct?

A Yes.

Q And you indicated that that state is peace with God?

A Yes.

Q And you indicated that that state is a dissolving into oneness?

A Yes.

Q And you indicated that – again, that unitive consciousness as the goal is the essence of your belief?

A Yes.

Q Are you here today because you have been precluded from achieving or engaging in unitive consciousness by virtue of being denied a special permit in 2014?

A I'm here because I'm not able to teach that to others.

Q Didn't we just see some gatherings on your property that have occurred since your – it's a yes or no question, didn't we see some gatherings, including a meditation with the women's retreat, that occurred after your special permit was denied?

A Yes, there have been –

Q Yes, we did see that, right?

A Yes.

Q That meditation was towards the goal of unitive consciousness?

A Yes.

[127] A No.

MR. BILBERRY: We have in front of us now what is Plaintiffs' Exhibit 132, which is in evidence, and I would ask if we could kindly publish this to the jury?

THE COURT: Yes.

MR. BILBERRY: Is that in front of the jury?

BY MR. BILBERRY:

Q Mr. Honig, you characterized this as a further summary of the essential principles of your faith, correct?

A Yes.

Q And I believe this was distilled down from a two-page summary that was plaintiffs – well, I'll withdraw that. I'm sorry, I don't remember the exhibit number, but we can come back to that.

But this is – this one you testified is the essential principles of your faith distilled down to one page; is that correct?

A Yes.

Q Would it be fair to say this is the essential principles of your religion distilled down to one page?

A Yes.

Q Does the word "wedding" appear anywhere in this document?

A No.

Q Does the word "marriage" appear anywhere on this document?

A No.

[128] Q And the word “vacation rental” doesn’t appear in there either, does it?

A No.

Q And neither does “honeymoon cottage,” does it?

A No.

Q Mr. Honig, is it your testimony today that if I sign this form and date it and give you my email, I can become a member of your religious faith?

A Yes.

Q And that’s all it takes?

A Yes.

Q Mr. Honig, what is a nature garden – guardian again?

A A “nature guardian” is the term that I’ve used to refer to those people who embrace the vision that’s outlined in this document.

Q Do you have an estimate of how many people have signed this document?

A Approximately 1200.

Q Do you have those on file?

A We have the – we have our list of the members of our organization.

Q And they’re all members of your religious faith.

A Yes.

Q Does Spirit of Aloha Temple have a congregation?

A Yes.

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APPENDIX K

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 14-00535 SOM-WRP

SPIRIT OF ALOHA TEMPLE, a Hawaii nonprofit
corporation, and FREDRICK R. HONIG,
Plaintiffs,

vs.

COUNTY OF MAUI and MAUI PLANNING COMMISSION
and STATE OF HAWAII,
Defendants.

Honolulu, Hawaii
September 27, 2023

TESTIMONY OF FREDRICK R. HONIG
PARTIAL TRANSCRIPT OF JURY TRIAL (DAY 1)
BEFORE THE HONORABLE SUSAN OKI
MOLLWAY, SENIOR UNITED STATES
DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs:

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CLARISSE M. KOBASHIGAWA, ESQ.
Durrett Lang Morse, LLLP
Pacific Guardian Center Mauka Tower
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Honolulu, Hawaii 96813

150a

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[2] APPEARANCES: (CONTINUED)

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Official Court Reporter:

Gloria T. Bediamol, RPR RMR CRR FCRR
United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript
produced with computer-aided transcription (CAT).

* * *

[9] A Okay.

THE COURT: Can I ask the witness, you may not be able to hear this, but those of us listening are having a little difficulty because you're too close to the microphone.

THE WITNESS: Oh, sorry.

THE COURT: You can either push your chair back.

THE WITNESS: Okay. I'll sit a different way. I'll sit back.

THE COURT: Okay. Counsel, you can go ahead.

MR. STORZER: Thank you, Your Honor.

BY MR. STORZER:

Q Swaroop, you mentioned the events that occurred after your – after your brother unfortunately passed. Can I ask you how old you were at that time?

A I was 20.

Q You were 20. And how old are you now, Swaroop?

A 72 almost. 71, soon to be 72.

Q And you have been on this path for over 50 years?

A Yes, without a break, you know, every day practicing.

Q Swaroop, can you please tell the jury why you are in the courtroom here today?

A Why I'm in the court today?

Q Yes.

A Well, you know, to me this experience of God consciousness is the most important thing. It's the goal that all humanity [10] has, what we are all here to achieve as humans is to come to the level of our deepest reality and to be freed from the bonds of egoism and the – and the illusion of thinking that we are all separate.

And to me that is the most sacred goal of life, and it is easily being pushed away in our culture now. The culture is being flooded with materialism and flooded with atheism, and we're losing – humanity is losing its moral compass. And I'm committed to relieving suffering in my life as much as possible. I want to do as much good as I can possibly do with my life

experience in every moment and leave this earth as beautiful as possible from my having lived.

And I'm committed to helping humanity regain its innate spiritual wisdom, and also too, I have a vision that it's possible to actually end the institution of war, and to have peaceful ways of mediation so that countries can avoid having to create violence as a means for resolving issues.

Q Swaroop, are you also here on behalf of the Spirit of Aloha Temple?

A Yes, I am representing the Spirit of Aloha Temple as well as religious freedoms for all people in this country and the world. The world mimics what America does, and if we can't practice our religion in America, we won't be able to do it anywhere in the world.

Q Swaroop, what is your role with the Spirit of Aloha

* * *

[28] is just one of the branches.

Until Swami Sivananda's time, most yoga masters taught one or another of those branches, but Swami Sivananda integrated them all into one branch, one yoga that he called the yoga of synthesis. So he taught all the branches in one ashram, which in a way gives a full spectrum for the whole being, the emotions, the heart, the soul, the hand, all in one school.

And when Swami Satchidananda came to this country, he thought that the name that would best suit the dissemination of that wisdom was Integral Yoga, which means that yoga that integrates all the other forms of yoga into one teaching.

Q And is what you've described your own religious beliefs?

A Yes.

Q Are those the beliefs of Spirit of Aloha Temple as well?

A Yes.

Q Did you practice those religious beliefs at the ashrams where you lived?

A Yes.

Q Could you please describe some of those religious practices?

A Okay. We had our first meditation at 4:30 in the morning, and for many years and years I didn't even miss one time getting to those morning meditations. And we would meditate for – we would do chanting together as a group, you know, all [29] in one room in front of an altar. And we did opening chants, and then we did a type of breathing practice called pranayama that is – it's a form of hatha yoga where you first do kind of breathing that energizes the whole being, and then you do an alternate nostril breathing that harmonizes the left and right hemispheres of the brain.

And then we sit in certain postures in a lotus position, and are able to practice the actual meditation experience, which is basically a system of learning to calm the mind so that the mind is not thinking. It's a way of letting the mind be still so that we can experience our own inner consciousness without the experience of thought.

Q How old are these religious practices, Swaroop?

A The wisdom of yoga is over 5,000 years old.

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Q And did you engage in these practices by yourself at points?

A At the ashram?

Q Yes.

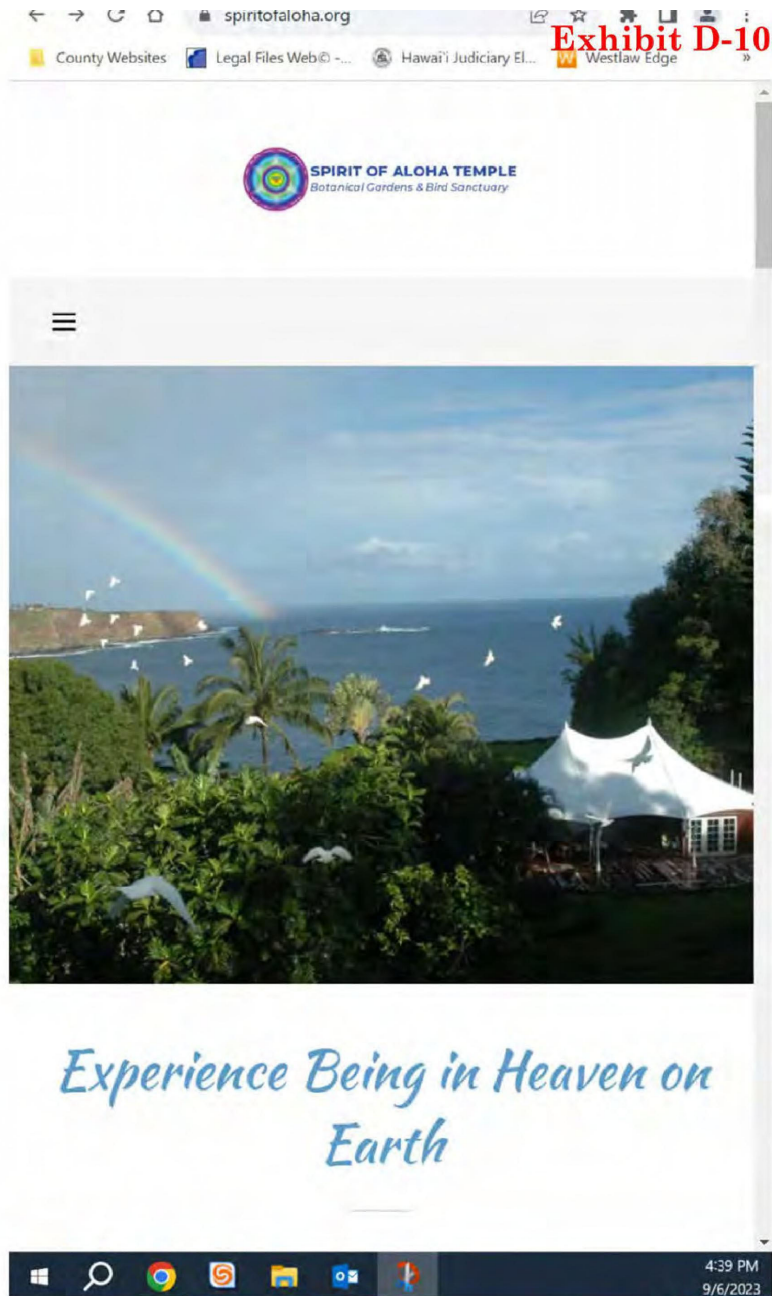
A No, we did them in groups. I mean we did them in the groups, but I would also meditate at times by myself. But we had three meditations per day. We had a morning meditation, a noon meditation, and an evening meditation. So we spent almost two hours a day in meditation practice.

Q And these were in groups?

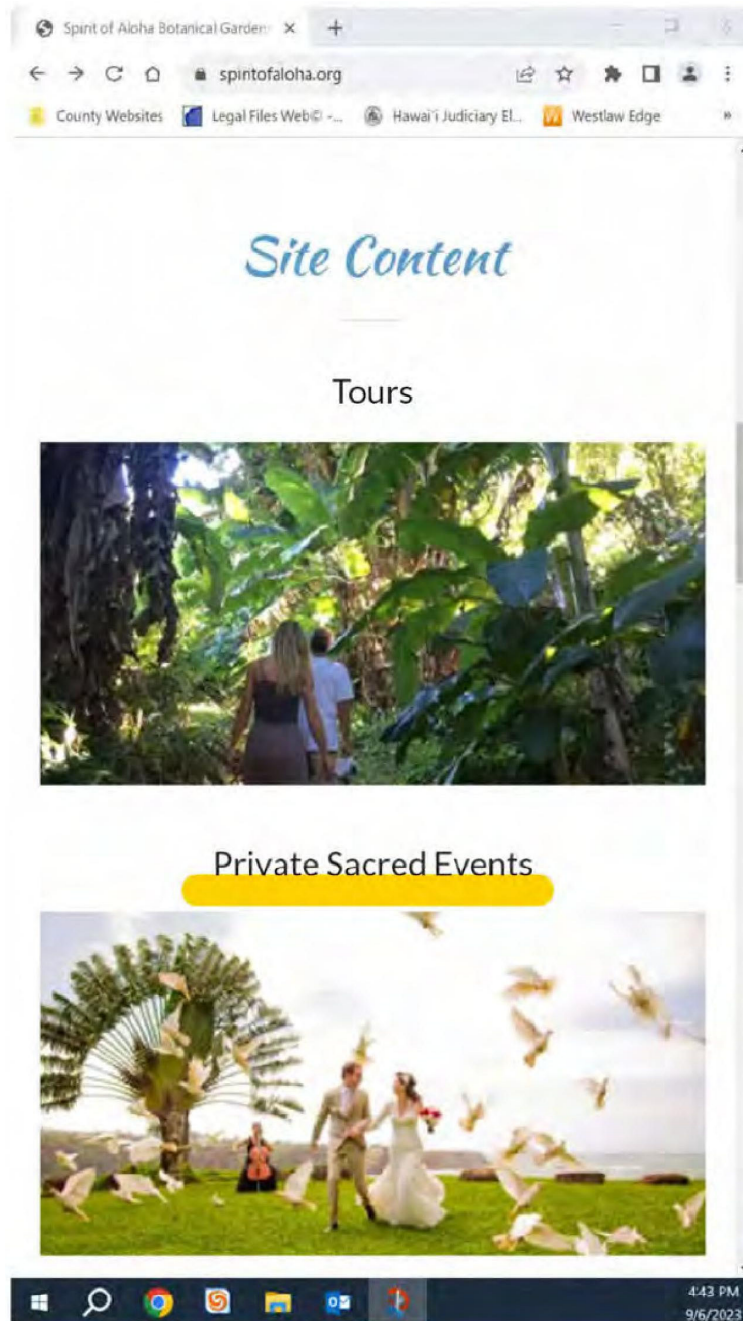
A In a group, yeah.

155a


APPENDIX L



156a



157a



SPIRIT OF ALOHA TEMPLE
Botanical Gardens & Bird Sanctuary

HOMEABOUT▼TOURS & EVENTS▼CONTACTNATURE GUARDIANSHIPMORE▼

Guided Tours


Join us for amazing views and a spiritually uplifting tour of our Oceanfront Botanical Gardens.

Tuesdays 10am-12pm
Includes an invitation to stay longer to enjoy our oceanfront views for a picnic lunch.
Morning Garden Tour: \$118
Tour + Delicious Organic Vegan Lunch: \$158

Thursdays 5-7pm
Enjoy our views at the most magical time of day with a special sunset tour and a dove blessing.
Sunset Garden Tour: \$138


Inquire about our Thursday evening programs from 7-9pm. We often host inspirational speakers and musicians and serve an organic, vegan dinner. A wonderful option to soak up more magic following our Thursday evening sunset tour!

RSVP via email: sarah@spiritofaloha.org




Private Events, Tours & Offerings

Private Tours



Explore our lush jungle gardens, enjoy the waterfall and

Professional Photo Sessions




Capture the magic and natural beauty of The Gardens with

158a

spectacular oceanfront views, feed our doves, peacocks, ducks, budgies and bunnies, and capture beautiful photos.


high-quality photos. Our white doves, peacocks, waterfall, lush jungle landscapes & spectacular oceanfront views provide limitless gorgeous photo opportunities.

Special Events




- Ceremonial Gatherings
- Renewal of Vows
- Waterfall Baptisms
- Photo Sessions
- Marriage Proposals

Retreats



The perfect location for yoga and meditation retreats. The Gardens offers vast oceanfront views, jungle trails by the stream, waterfall meditation, and plenty of natural peace-filled beauty to explore.



**CONTACT FOR
DETAILS & EVENT
BOOKING**

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Tours & Events

spiritofaloha.org/tours-524-events#1d647677-5349-4120-85a3-0f9f31805942

County Websites | Log File WebID... | Hosted Audio B... | Webflow Edge | Search - Summer C... | 162K (On Cloud)... | 162K (On Cloud)... | City of Ordinance... | Event Registration... | Web v4.0p. 3/19/20...


Private Events, Tours & Offerings

Private Tours



Explore our lush jungle gardens, enjoy the waterfall and spectacular oceanfront views, feed our doves, peacocks, ducks, budgies and bunnies, and capture beautiful photos.

Professional Photo Sessions



Capture the magic and natural beauty of The Gardens with high-quality photos. Our white doves, peacocks, waterfall, lush jungle landscapes & spectacular oceanfront views provide limitless gorgeous photo opportunities.


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Registrations & Donations | Spirit of Aloha Temple

spiritofaloha.org/registrations-%25-...

County Websites Legal Files Web Hawaii Judiciary El... Westlaw Edge

SPIRIT OF ALOHA TEMPLE
Botanical Gardens & Bird Sanctuary



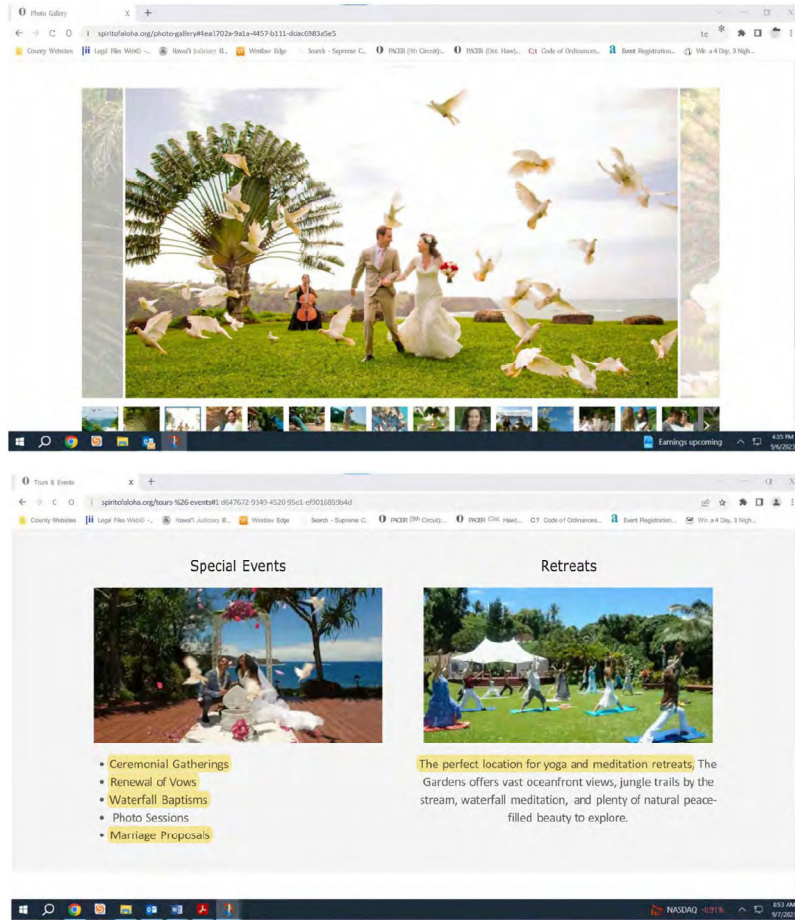
Private Sacred Events

For details on booking your private sacred event at Spirit of Aloha Temple & Nature Sanctuary, please contact us via the link below.

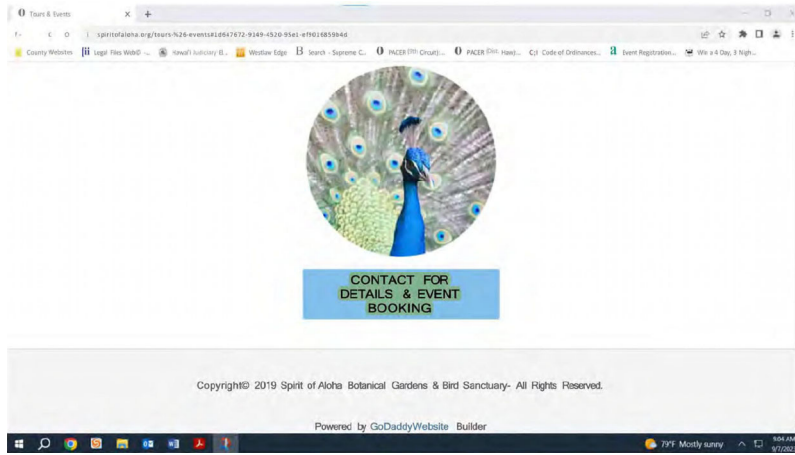
CONTACT

10:03 AM
9/7/2023

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162a

APPENDIX M

**2021 SPECIAL EVENTS AND RELIGIOUS PRACTICES
CURRENTLY BROADCASTING ON YOUTUBE**



Def. Exhibit D-113



Def. Exhibit D-113

163a



Def. Exhibit D-113



164a



165a



Def. Exhibit D-113

166a

APPENDIX N

***2022 SPECIAL EVENTS AND RELIGIOUS PRACTICES
CURRENTLY BROADCASTING ON YOUTUBE***



Def. Exhibit D-115



Def. Exhibit D-115

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168a



Def. Exhibit D-115



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APPENDIX O

Friends of the Gardens Aloha Prayer Circle



PLAINTIFF'S
EXHIBIT
135 I

Guiding Meditation at Womens' Retreat



PLAINTIFF'S
EXHIBIT
135 J

170a

Offering Marriage Counseling



PLAINTIFF'S
EXHIBIT
135 M



1.24
PLAINTIFF'S
EXHIBIT
135 W

171a

APPENDIX P

LAND COURT REGULAR SYSTEM
(AREA ABOVE RESERVED FOR RECORDING
INFORMATION)

After Recordation, Return by ☒ Mail or ☐ Pick-up
Phone #: _____

FILL IN NAME AND ADDRESS BELOW:

Fredrick R. Honig
800 Haumana Road
Haiku, Hawaii 96708

DOCUMENT CONTAINS 5 PAGES

Spirit of Aloha Temple
Attn: Fredrick Honig
800 Haumana Road
Haiku, Hawaii 96708

December 1, 1011

Spirit of Aloha Temple, Inc. Lease Agreement

Location: TMK 2-8-004-032 800 Haumana Road,
Haiku, Hawaii 96708 (Referred herein as
"The Gardens")

Landlord: Fredrick R. Honig, Trustee of:
The Fredrick R. Honig Revocable Living
Trust
800 Haumana Road
Haiku, Hawaii, 96708
(808) 572 2300

Tenant: Spirit of Aloha Temple, Inc.
EIN: 26-1201056
(808) 572-4100
800 Haumana Road
Haiku, Hawaii, 96708

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Lease Premise: All land, buildings and improvements on the 11 acres as represented in the property's enclosed Map. Also see enclosed property Meets and Bound description.

Use of Premises: As Botanical Gardens in accordance with Agricultural zoning and Maui County ordinances.

Rental Rate: \$5000. /month

Rental Payment: Rent is due on the first day of the month. If rent is more than 10 days late, a fine of \$100, will be due. If rent is not paid within 60 days, Landlord has option of terminating lease.

Percentage Rent: None.

Utilities: Tenant shall be responsible for all its own separately metered and billed utilities. Tennant shall also be responsible for maintenance and repairs to well and water system.

Security Deposit: A one months security deposit. Which will be refunded if lease is fulfilled and premises left clean and undamaged. Tennant also agrees to be responsible for any damage done to the property that exceeds this security deposit.

General Excise Tax: Tenant shall pay the Hawaii State General Excise Tax on all monies received by landlord as rent or expenses through this lease.

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Term: Lease Begins on December 1, 2011.
This lease is for 8 (eight) Years or
until. December. 1, 2019.

However, if no change is made by
either party, this lease will be
extended for another 8 years or
until December 1, 2027.

Tenant Responsibilities: Tenant shall be responsible
for the security, cleanliness,
and timely maintenance and
repair of all buildings and
improvements leased. This
includes but is not limited
to: Electric and Phone
Systems Well and Water
Systems, Entry Gate, Fire
Sprinklers, Security Systems,
Irrigation Systems, Tent
Structures, Roads and Trails.

Tenant shalt also be respon-
sible for all Grounds care
which includes but is not
limited to: regular watering,
mowing, weed warming,
trimming, pruning, organic
fertilizing, raking and sweep-
ing. Tenant agrees to main-
tain The Gardens organically
as defined by the Hawaii
Organic Farmers Association.

Capitol improvements: Any construction or changes
to the property including
plantings, must be approved
by the landlord. This

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includes any color changes
for stains or paints.

To Terminate the lease: Either Tenant or Landlord
may terminate this lease
agreement with written
notice of at least 6 months.

Insurance: Tenant agrees to carry full
insurance covering damage
to the buildings of the
property, as well as liability
insurance for any activities
conducted. Tenant Agrees to
have this policy also insure
Fredrick Honig and Affiliates

- 1) Fire damage insurance to the full value of each
building,
- 2) Personal & ADV injury insurance (\$2,000,000.) Two
million Dollars.
- 3) General Aggregate insurance (\$2,000,000.) Two
million Dollars.

Fredrick R. Honig, Trustee of Fredrick IL Honig Rev.
Living Trust:

Fredrick R. Honig, Trustee of Fredrick R. Honig Rev.
Living Trust:

Signature:

/s/ Fredrick R. Honig

Date:

December 24, 2011

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Fredrick R. Honig, Spirit of Aloha Temple, Inc.
President:

Signature:

/s/ Fredrick R. Honig

Date:

December 24, 2011

STATE OF HAWAII
COUNTY OF MAUI

On this 24th day of December, 2011, before me
appeared Fredrick Honig to me known to be the
person(s) described in and who executed the foregoing
instrument and acknowledged that he executed his
free act and deed.

/s/ Brenda A. Chong

Notary Public, State of Hawaii

My commission expired: 11/27/2013

[Notary Public Seal BRENDA A. CHONG NOTARY
PUBLIC No. 05-732 STATE OF HAWAII]

Notary Certification

Date: 12/24/2011 No. of Pages: 3 State: Hawaii, Second
Circuit

Document Description: Spirit of Aloha Temple Inc.
Lease Agreement

Printed Name of Notary:

Brenda A. Chong

Notary Signature:

/s/ Brenda A. Chong