

TRANSCRIPT OF PROCEEDINGS
BEFORE THE MAUI PLANNING COMMISSION
COUNTY OF MAUI
STATE OF HAWAII

The above-entitled matter came on for public hearing on September 11, 2018, at the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui, Hawaii.

PRESENT:

Keaka Robinson, Chairperson
Lawrence Carnicelli
Steven Castro
Tina Gomes
P Denise La Costa
Kelli Pali
Christian Tackett

OTHERS PRESENT:

Michele McLean, Director, Planning Department
David Galazin, Deputy Corporation Counsel, Department of Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works

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Maukele Transcribers LLC
Jessica B. Cahill, CER/CET-708
P.O. Box 1652
Wailuku, Maui, Hawaii 96793
Telephone: (808)244-0776

1 CHAIRMAN ROBINSON: Good morning, everyone. Welcome to the
2 September 11th Planning Commission.

3 There was a question regarding testimony and yielding to
4 people's time. If somebody is unable to testify for a disability,
5 please let us know, we may consider that at that time. If not, we
6 prefer for the people to wait until maybe after that person that they
7 were thinking about yielding time to. Maybe that person's testimony
8 might be extended, and he might be able to have all his testimony
9 done, but we don't normally just yield time, to yield time. It's a
10 precedent setting thing that might be really tough for us in other
11 meetings. And hopefully today, given the agenda, hopefully it will
12 give opportunity for that testifier to happen. So, that's where we
13 stand with that.

14 Testimony is taken after the Applicant has spoken at each
15 agenda item. It is not taken at the beginning before everything of
16 that. So, testimony is only taken at that time. We were waiting for
17 a couple members. We're hoping that they will be able to make it
18 back, some parking issues, but we'll let them jump in and hopefully
19 that will get people here.

20 But who we do have is Commissioner Carnicelli.

21 COMMISSIONER CARNICELLI: Good morning, Chair.

22 CHAIRMAN ROBINSON: Good morning. Commissioner Pali,
23 Commissioner La Costa.

24 COMMISSIONER LA COSTA: Oh, here.

25 CHAIRMAN ROBINSON: Good morning, Commissioner Tackett.

1 COMMISSIONER TACKETT: Good morning, Chair.

2 CHAIRMAN ROBINSON: I have the Director with me.

3 DIRECTOR MCLEAN: Good morning, Chair.

4 CHAIRMAN ROBINSON: Good morning.

5 CHAIRMAN ROBINSON: And I have Corporation Counsel David
6 with me.

7 MR. GALAZIN: Good morning.

8 CHAIRMAN ROBINSON: And we'll jump right into it. Director,
9 first on the Agenda.

10 DIRECTOR MCLEAN: Thank you, Chair. There is one public
11 hearing item on the agenda today. That is a request from MVI LLC for
12 a Community Plan Amendment from Kihei-Makena Project District 12
13 (Maalaea Mauka) to Agriculture District, and a change in zoning from
14 Open Zone, and Road/Street Future Reserve, and R-3 Residential to
15 Agriculture for the Maalaea Agricultural Subdivision consisting of 21
16 agricultural lots and related improvements on approximately 257 acres
17 of land at Honoapiilani Highway, TMK: 3-6-001, Parcel 18 in Maalaea.
18 Paul Fasi is the project planner.

19 MR. FASI: Good morning, Commissioners. Good morning, to
20 the members of the public.

21 CHAIRMAN ROBINSON: Good morning, Mr. Fasi.

22 MR. FASI: In a letter dated July 1, 2018, MVI, the
23 Applicant, transmitted to the Planning Department a revised proposal
24 for the following land use changes:

25 Community Plan Amendment for approximately 257 acres from

1 Project District 12 to Ag, and then there's three smaller requests for
2 a change of zoning. Part one is for -- I don't like to put my back to
3 the public.

4 CHAIRMAN ROBINSON: Okay.

5 MR. FASI: You never know who's going to sneak up behind
6 you.

7 CHAIRMAN ROBINSON: I want the Commissioners would be able
8 to see you that's all.

9 MR. FASI: It's just my survival instinct.

10 CHAIRMAN ROBINSON: Okay.

11 MR. FASI: Can anybody not see me? Okay. The second item
12 is a change in zoning for 14.7 acres from Open Zone to Ag, excuse me,
13 change of zoning for approximately .6 acres from R-3 to Ag, and a
14 change of zoning for approximately 0.8 from Road/Street Reserve Zone
15 to Ag. And all of these are exhibits in the report.

16 The proposed project site is 257 acres total. The project
17 site is located in Maalaea. Its lands is classified Ag by the State
18 Land Use Commission. It is currently designated for Residential
19 Project District 12 use, which allows the development to be
20 residential use.

21 As you recall, the property was previously planned for 1100
22 residential homes based on its current Community Plan Project District
23 12 designation, but due to community concerns, the high density, and
24 potential impact of the project density, the Applicant has decided to
25 amend the community plan to be consistent with the County and State Ag

1 Zoning Maui Island Plan and scaled back the project.

2 So, we have gone from a potential of 1100 homes down to 21.
3 And we wonder why we don't have any houses on Maui. So, this body
4 will review the Community Plan Amendment, Change in Zoning
5 applications, and provide a recommendation on each application,
6 respectively, to the Maui County Council.

7 The Land Use designations is State Land Use Ag. The Maui
8 Island Plan is outside the urban growth boundary. As I mentioned the
9 Kihei-Makena Community Plan is Project District 12. County Zoning is
10 kind of a hodgepodge of Ag with a portion of the property designated
11 Open Zone, Road/Street Reserve, and a small portion of the property
12 designated R-3. And there's a very tiny corner under the Special
13 Management Area.

14 So, the applicable regulations are the Community Plan
15 Amendment, which is reviewed pursuant to Title 2, Chapter 2.8B.
16 Change in zoning, which is reviewed through Title 19, Chapter 19.510.
17 Those are the two regulations we will be considering today.

18 The Maui County Community Plan, the underlying project sites
19 is designated Project 12, as I mentioned before. So, the proposed 21
20 lot Ag is to amend the Community Plan from its current project
21 designation to Ag, is partially in response to the community's desire.
22 As I mentioned earlier, it's interesting the community's desire is
23 coming from all of the condos in Maalaea, some of the most dense areas
24 on Maui to begin with.

25 The 257-acre property is outside the urban growth boundary.

1 It will remain as an Ag use in designation and the Community Plan
 2 Amendment, and Project District 12 to Ag will ensure that it hopefully
 3 will be used for agricultural purposes. County zoning is also Ag.
 4 The majority of the property is already designated Ag. Therefore, no
 5 change is requested for this portion for the majority of it. There
 6 are three smaller portions that will require change in zoning back to
 7 Ag. These are 14.7 acres, .8, and .06 acres.

8 It's the Department's conclusion that this change in zoning
 9 will have no effect on the environment or add to any substantial
 10 increase in use. You're only considering a 21-lot subdivision, even
 11 if the 21 lots are developed with single-family houses.

12 Archaeological resources. Scientific Consultant Services
 13 conducted an archaeological inventory survey back in April of 2005.
 14 The main results of the AIS were three historic sites all related to
 15 sugar cane agriculture, which was the previous use for this parcel of
 16 land. The three sites were the only archaeological sites within the
 17 project area. No burial features or human remains were observed.

18 The following actions were recommended by Scientific
 19 Consultants Services. That with the exception of this one site, there
 20 shall be no further archaeological work necessary within the project
 21 area except for this one site that had the three mounds on it. It's
 22 important to note that the AIS for the project site was approved and
 23 accepted by SHPD on June 29, 2005.

24 The Water Department did comment that there's no County
 25 water servicing the project site or any adjacent properties. The

1 proposed 21-lot Ag subdivision will be served by three existing wells
2 that are privately owned. However, in a letter dated February 27,
3 2018, which is Exhibit 2 in your report, the Water Department
4 commented that the Applicant's three proposed wells, the Pohakea Wells
5 1, 2, and 3, would be competing with the Waikapu Country Town Project
6 well water source and that both projects will be drawing water from
7 the same aquifer. This aquifer has a sustainable yield of three
8 million gallons per day.

9 So, what the Water Department is saying is that there could
10 be a potential that the water being drawn out of the aquifer could
11 exceed the three million gallons per day sustainable yield. They're
12 just not saying that it will, but there's a potential for that in a
13 perfect storm scenario.

14 There was a TIAR that was prepared October 4th, 2017, by
15 Austin Tsutsumi & Associates. This is Exhibit 1a in your report, in
16 the memo from DPW Engineering Division Review Checklist, which is your
17 Exhibit 1a. Basically, the Applicant's responses reflect the comments
18 of DPW and the TIAR. So, they're in concert and Public Works will
19 ensure that the project is according to what they do recommend. And
20 we do have Public Works represented here today.

21 This concludes the Department's report. If there are no
22 questions, I'm going to turn it over to Vince Bagoyo. He is MVI's
23 representative. He has a short presentation of the project. Are
24 there any questions as far as government regulations? Okay.

25 CHAIRMAN ROBINSON: Corp Counsel.

1 MR. GALAZIN: Thank you. I just had a question. When
2 you're talking on page 16 about the February 27th letter from the
3 Water Department, and you noted that the Water Department estimated
4 that the drawing aquifer with the Wailuku Country Town Project could
5 have a potential to exceed the three -- the sustainable yield and that
6 the Water Department will review each building current application for
7 water demand before signing off on each permit, the last sentence says
8 that: "The projected demand outpaces the estimated source
9 availability. It is highly likely that the Water Department will give
10 approval on a building permit." Is that -- that seems contrary?

11 MR. FASI: And, Dave, that's why we pay you the big bucks to
12 catch stuff like that. It's supposed to be unlikely.

13 MR. GALAZIN: Okay. Thank you.

14 MR. FASI: Thank you. I'm going to bring Vince Bagoyo up
15 here, and he'll start his presentation. Thank you.

16 CHAIRMAN ROBINSON: Mr. Bagoyo, before you start, are you
17 comfortable with -- that Commissioner Castro coming in at this time
18 without hearing the Planner's opening remarks. Are you comfortable
19 with us adding in our sixth Commissioner and voting on this?

20 MR. BAGOYO: Absolutely.

21 CHAIRMAN ROBINSON: Okay. Thank you. Commissioner Castro,
22 welcome. Thank you.

23 COMMISSIONER CASTRO: Thank you.

24 CHAIRMAN ROBINSON: Please proceed.

25 MR. BAGOYO: Thank you, Mr. Chairman and Members of the

1 Commission. My name is Vince Bagoyo, and I'm representing the
2 Applicant, which is MVI LLC. I just want to make a brief
3 presentations regarding the project, if I can get this thing to work.

4 Let me just say at the outset, the Applicant is proposing to
5 down zone the property from Project District 12, which allows, as
6 noted by Paul Fasi, which allows the development of approximately 1150
7 within the Kihei-Makena Community Plan.

8 Just to give you a brief summary. The project name is
9 Maalaea Agricultural Subdivision and the Applicant is MVI LLC. The
10 project location is mauka of the Honoapiilani Highway, at Maalaea, TMK
11 3-6-001:018. And the total acreage of the property is approximately
12 257 acres. The current County and State Land Use designation of the
13 property is State Land Use Ag District. The Community Plan District,
14 Project District 12. County zoning is Agriculture. Most of the
15 parcel is agriculture. A small portion of the parcel is Open Space
16 and Road/Street Future Reserve Zone, and R-3 Zone.

17 The proposed Land Use Amendments Community Plan District
18 would be from Project District 12 to Agriculture and a change in
19 zoning, a small portion of the property from Open Space to Ag,
20 approximately 14.7 acres, and from Road/Street Future Reserve Zone to
21 Agriculture, approximately .8, and there's a small portion of the
22 property that's currently zoned R-3 to Agriculture, approximately .06
23 acres. The location -- project location, again, is Maalaea, mauka of
24 Honoapiilani Highway within the West Maui Mountains. This is the
25 proposed Community Plan map. It encompasses, again, 257 acres.

1 The proposed change in zoning, if you note on the south end
2 of the property, it's marked in red, I don't know if you can see it,
3 the Future Reserve Street and Road, and then there's a portion at the
4 very tip as an R-3 Zone, and that's being proposed to be down zoned
5 from R-3 to Agriculture. And an Open Space, approximately 14.7 acres.

6 This is the current preliminary agriculture subdivision site
7 map. If I may, I know there was a letter from the Department of Land
8 and Natural Resources regarding the access to the Pali Trail. There's
9 a couple of options that they have suggested to provide access.

10 Currently, there is a kind of undefined access to the Pali Trail and
11 what the Applicant is proposing to do is to provide access through the
12 new proposed road within the subdivision or along the drainage system
13 that is being proposed. The Applicant has been meeting and been
14 talking to DLNR to come up with an acceptable access to the Pali
15 Trail.

16 This is the aerial photo of the project site. As you can
17 see it's surrounded by ag. In fact, makai of the property is Project
18 District 11, I believe, that is owned by A&B, and it's going to be
19 fallow land that was originally used for the sugar operation.

20 Again, the vision and goal of the Applicant is to change the
21 Community Plan and the Zoning Application to keep the entire project
22 site to agriculture. As noted by Paul Fasi, initially, the Applicant
23 wanted to build workforce housing on the site for about 1100 units.
24 We had several meetings with several community organizations, both
25 Maalaea and the Kihei Community Associations, and their desire is to

1 keep this project site to agriculture.

2 Secondly, is to be consistent with the Maui Island Plan,
3 which designate the project site outside of the growth boundary, which
4 essentially keep the project site to agriculture. And, again, it's
5 consistent with the Land Use Ag District designation. And the
6 proposed 21-lot agriculture subdivision is consistent with the Maui
7 County Code 19.30A.30, which allows the developer or the owner a
8 maximum of 21 agricultural lots.

9 With me, if you have any questions, I have Tom Nance who is
10 our Water Resource Consultant, Stacy Otomo who is a civil engineer,
11 and Tyler Fujiwara from ATA, Austin Tsutsumi, as our traffic engineer.
12 Thank you so much for giving us this time.

13 CHAIRMAN ROBINSON: Thank you. At this time, we'll take
14 public testimony. Can you turn that podium a little bit, please?
15 Thank you. At this time, we're taking public testimony. Lynn
16 Britton. Good morning. You have -- please introduce yourself, and
17 you have three minutes.

18 MS. BRITTON: Good morning. I'm Lynn Britton. I'm an owner
19 of Maalaea Properties since 1984 and also and officer and founder of
20 the Maalaea Village Association, which we created last year after the
21 demise of the Maalaea Community Association. I'm here to represent
22 MVA and to refer you to the written testimony from our Vice President
23 Lyndon (phonetic) Lavelle that was, fortunately, thanks to the office
24 copied for you this morning, and I do apologize for the lateness of
25 the testimony.

1 This morning --

2 CHAIRMAN ROBINSON: Lynn, I apologize, can you please have
3 the mic a little closer to you? We want to make sure your testimony
4 is heard.

5 MS. BRITTON: Thank you, Chairman.

6 CHAIRMAN ROBINSON: Yeah, thank you.

7 MS. BRITTON: So, I just wanted to highlight some of the
8 points in the written testimony. MVA certainly supports the switch
9 from -- the down zoning from property -- from Project District to
10 Agriculture, but, unfortunately, we do oppose the development plan
11 submitted, which would create an agricultural subdivision of the area.

12 Ag is the proper classification, and it should have not have
13 been changed in the Community Plan in 1992. It was inserted at the
14 last minute in the Community Plan process. The windy wild fire prone
15 site on the side of the West Maui Mountains led government officials
16 to rightly designate it outside of the Maui Island Plan Urban Growth
17 Boundary. The purpose of the Growth Boundary is to preserve open
18 space and that is, basically, what we're requesting of the Planning
19 Commission in your consideration.

20 The current efforts under way to address the loss of Maui's
21 remaining open spaces, it would be in the wrong direction to subdivide
22 even for 21 agricultural lots in this crucial area. With the Kihei --
23 excuse me -- Kihei-Makena Community Plan coming up for review within
24 the next two years, the fact that this site is still open, provides
25 future planners an opportunity to make decisions that will impact Maui

1 for generations to come.

2 We request the Maui Planning Commission postpone approval of
3 the MVI proposal until the community and government officials have a
4 chance to pursue the possible purchase of this -- of part or all of
5 these crucial lands. The options for this parcel are many. A wayside
6 park would provide park and bathroom facilities, and parking for
7 carpooling, the Lahaina Trail Head, and emergencies. This would
8 provide a safe turnaround for the frequent emergencies that close
9 Honoapiilani Highway between Maalaea and Lahaina.

10 The location is conveniently located near the Harbor Shops,
11 the gas station, convenience store, restaurants, and the small boat
12 harbor. The existing traffic light provides a consistent and safe
13 pedestrian crossing. The site is also identified as a key site for
14 the possible transit corridor that were included in the Maui Island
15 Plan. Preserving this site in open space, meets the Maui Island Plan
16 goals of preserving key environmental and scenic resources.

17 Additionally, the plan, as submitted, is inconsistent with
18 proposed amendments, whose intention is specifically to prevent this
19 type of subdivision. The pending legislation would, instead,
20 encourage the clustering of smaller lots within the subdivision, while
21 preserving a larger contiguous parcel dedicated to agricultural use
22 and open space -- and/or open space in perpetuity.

23 MVA acknowledges that it is unfortunate that the Spencer
24 family bought the property from the previous landowner, Mike Atherton,
25 who was unsuccessful in his attempt to build housing on the site. The

1 Spencers original intent to provide much needed affordable housing was
2 admirable. However, it is the wrong location for such a development.
3 Atherton is now planning a 1400 use unit housing and commercial
4 development in Waikapu.

5 UNIDENTIFIED FEMALE: Three minutes.

6 MS. BRITTON: A far better location, which appears to be
7 headed toward all processes. The 1400 housing units and an estimated
8 two cars per unit, it will add nearly 3,000 additional cars to
9 Honoapiilani Highway within less than five miles of Maalaea --

10 CHAIRMAN ROBINSON: Can --

11 MS. BRITTON: One more second.

12 CHAIRMAN ROBINSON: -- can you please conclude?

13 MS. BRITTON: Thank you.

14 CHAIRMAN ROBINSON: Thank you.

15 MS. BRITTON: Further adding to the long lines of traffic
16 held up for hours at the Pali when fire or traffic accidents close the
17 -- close the highway. In closing, MVA supports the change from
18 Project District to Ag Open Space. We oppose the 21 residential units
19 and ask you to assist us in keeping the space open for Maui's future.
20 Thank you.

21 CHAIRMAN ROBINSON: Thank you. Commissioners, do we have
22 any questions for Ms. Britton? Seeing none, thank you for your
23 testimony.

24 MS. BRITTON: Thank you.

25 CHAIRMAN ROBINSON: Next testifier Dick Mayer. Please

1 introduce yourself, and you have three minutes.

2 MR. MAYER: Thank you. Dick Mayer. I passed out a thing
3 today. I'm going to be using -- I hope you'll have that in front of
4 you. You were given an option to approve this, approve this with
5 conditions, deny it, or defer it. I'm urging that you approve this
6 proposal, but with conditions. Some very strong -- and that's what
7 I'm going to concentrate on. I've got here several items.

8 Number one, safety. We all know this is a very high fire
9 prone area. So, I've indicated three different items there.
10 Firebreak. That an alert go to anybody buying land there that there's
11 a high wind and potential fire spreading in that area on that -- and
12 then, finally, fire flow. I'm surprised that the Planning Department
13 did not require any water tanks for fire flow protection.

14 Number two, transportation corridor. And I've listed here
15 six items in the Maui Island Plan, which talk about a transportation
16 corridor that would pass through this property along the highway, and
17 I'll talk about that in a minute. And those are all statements that
18 are in the Maui Island Plan, and I've quoted them there for you. It
19 would be from -- essentially, from the airport area, Kahului-Central
20 Maui area to West Maui.

21 Number three, affordable housing. I saw nothing in the
22 report indicating that these 21 units plus 21 ohanas would be in any
23 way affordable, something we all know we need. And I would urge you
24 to put an affordable housing condition that it be placed not in that
25 area, but rather in one of the urban areas and let the developer

1 purchase the land, trade it, credits, or whatever it is, but we do
2 need that affordable housing. They talk about 21 ohanas being put on
3 there. You know that those are all going to be vacation rentals. And
4 so, the ohanas will not be taken care of by those ohanas.

5 Number four, there's a retention basin along the highway.
6 Unfortunately, it does not go all the way along the highway. On the
7 southern end of the project you'll see that the retention basin stops.
8 And I'm urging you to make sure -- put that as a condition that that
9 retention basin go all the way along to protect the aquarium and the
10 triangle -- Maalaea Triangle.

11 I urge that you also put a condition in that there be no
12 further subdivision of this project after the 21 lots are established.
13 In fact, there are even more than 21 lots. If you look at the map,
14 you'll see the 21 house lots, but in addition to that they have
15 retention basin lots, they have a stream flow. They have a number of
16 other lots on that property. I would ask you to check with the
17 attorney. I believe the ordinance says that a subdivision of this
18 size should have no more than 21 lots. It doesn't say 21 residential
19 lots.

20 I would like you to turn over to the second page, the map,
21 for a second. And you'll see in there I've indicated with a black
22 line where the transportation corridor was planned by the Maui Island
23 Plan to be put in there. It never got through -- all the way through
24 the planning process, but that was the route that was indicated to go
25 all the way along, and I put it in as a black line. You'll also

1 notice there on the far left hand side of the retention basin, I've
2 written the words "retention basin" with question marks next to it.
3 That's missing on their subdivision map, and I would urge you to have
4 the retention basin go all the way along that part of the property.
5 It's to protect the aquarium and Triangle area. To stop just before
6 you get to that area would be an error, I think, in protecting what's
7 already very, very valuable property and a major tourist center for
8 our Island.

9 So, I'm urging you to put conditions on this project and not
10 just pass it, although I do think it should be reworded to
11 agriculture. It's an excellent change for the project District, which
12 was never -- should never have been put there. Thank you.

13 CHAIRMAN ROBINSON: Thank you. Commissioners, are there
14 any questions for Mr. Mayer? Seeing none, thank you.

15 MR. MAYER: Thank you.

16 CHAIRMAN ROBINSON: Would anyone else like to testify on
17 this item? Aloha. Good morning. Please state your name, and you
18 have three minutes.

19 MS. CROUSE: Thank you, Commissioner. My name is Zandra
20 Amaral Crouse. Last evening, I had the privilege and the opportunity
21 as a candidate, along with other candidates, to attend the Waikapu
22 Association's forum. And prior to that I went to visit the neighbors
23 and the residents that I have known that their ancestors has lived in
24 Waikapu for over 100 years.

25 Their concerns regarding this project was that they felt

1 | though it's towards Maalaea, they felt that the three to six projects
2 | that are contiguous to each other that are coming up has neglected to
3 | address public safety, traffic, infrastructure. And for this
4 | community that is a real, real concern, because I travel that road
5 | most every day in the morning and in the afternoon and the traffic is
6 | always gridlock. From Waikapu all the way to where I make that turn
7 | by Mud Flats to get on to Honoapiilani Highway heading towards
8 | Lahaina.

9 | They did show a lot of enthusiasm and support for Mr.
10 | Atherton's project, which is also being developed contiguous to this
11 | one, I believe. And the reason for that is because he is creating a
12 | vision for the community. He's creating a community that reflects the
13 | lifestyle of the existing community. He's building a cultural center.
14 | He's building a school. He's putting in roads, the infrastructure.
15 | All of these individuals are all for affordable homes, which is one
16 | thing I feel this project is lacking.

17 | What we need is homes for our children. We do not need
18 | subdivisions that they cannot afford. Who and/or what will be able to
19 | afford to purchase these 21 agricultural lots? I don't think any of
20 | our residents. As Ms. Britton has said -- you know, clustering is a
21 | new concept to me -- us. That has been presented before you before,
22 | and, also, the Council meetings that I have been privileged to attend.
23 | And I think that we should look to that in that it provides affordable
24 | homes, but maintains the culture of the given community, and it
25 | maintains some open space, which gives our families and our residents

1 a life of dignity, a life of maintained lifestyle, and not having to
2 sell of their properties --

3 UNIDENTIFIED FEMALE: Three minutes.

4 MS. CROUSE: -- without giving up who and what we are -- who
5 and what they are. Mahalo.

6 CHAIRMAN ROBINSON: Thank you. Commissioners, any
7 questions? Seeing none, aloha. Thank you.

8 MS. CROUSE: Thank you.

9 CHAIRMAN ROBINSON: Would anyone else like to testify at
10 this moment?

11 MR. BROWN: I'm sorry, I may have signed the wrong sheet.

12 CHAIRMAN ROBINSON: That's okay.

13 MR. BROWN: Please forgive me. Don't start your three
14 minutes until I put this up here.

15 CHAIRMAN ROBINSON: Please introduce yourself. You have a
16 little bit less than three minutes.

17 MR. BROWN: I've given the Gettysburg Address in two-and-a-
18 half.

19 CHAIRMAN ROBINSON: There you go.

20 MR. BROWN: Hello. My name is David Henderson Brown. I'm
21 the Executive Director of Public Access Trails Hawaii, which is the
22 501(c)(3) organization started in 2007. The mission of Public Access
23 Trails Hawaii is research, education, and advocacy for public access
24 to public lands. PATH respects private property rights. As Public
25 Access Trails Hawaii who respects private rights, PATH has no opinion

1 or comment on this subdivision.

2 However, I as a citizen of Hawaii claim a fee simple
3 interest in this land. Hold that thought. Everything else comes from
4 what you have. The 2005 archaeology survey, which Mr. Bagoyo referred
5 to, page 16, says: "There's no doubt that the current project area
6 where (indiscernible) lies as a segment of an important trail system
7 in the early 1800s and probably prehistorically as well. This is the
8 Lahaina Pali Trail." Also, on page 17 the map shows the trail dead
9 ending at this project.

10 Now, two new pieces of information, registered map 767 of
11 February 1880 and registered map 1268 of 1885, show the trail going
12 across this property and touching the Honoapiilani Highway at
13 approximately the North Kihei intersection. These trails were both
14 before 1892. You're aware of the Trails and Road Act of 1892.

15 Exhibit 6, letter from Smith of DLNR to Spence of 28
16 February 2018, says: "Our primary concerns regarding the subject
17 application are that the subdivision excludes the historic trail route
18 through the property, which comprises State lands owned in fee
19 simple." Reply to the exhibit by Spencer to Smith of March 2018,
20 said: "We've been working on it. Our intention is to continue to
21 work on it."

22 I'm not asking for Lahaina Pali Trail access. I am
23 demanding, as a citizen of the State of Hawaii, that the Lahaina Pali
24 Trail be surveyed, and marked, and given its own tax key. At that
25 time, I will have no further comments on a subdivision. Thank you

1 very much.

2 CHAIRMAN ROBINSON: Thank you, David. That was less than
3 two-and-a-half. Commissioners, do you have any questions for Mr.
4 Brown? You recited a couple of maps. Do you have any of those maps
5 with you that we could --

6 MR. BROWN: Yes, I do.

7 CHAIRMAN ROBINSON: -- we could -- okay.

8 MR. BROWN: I'd like to refresh your memory too. This just
9 cries for litigation. Does anybody remember Haleakala Trail? We won
10 that one. This just cries for litigation. I'll give -- if somebody
11 wants to make a copy of those maps.

12 CHAIRMAN ROBINSON: Actually, if you could -- if you have
13 just one that we could pass along, so we could kind of take a look at
14 it before --

15 MR. BROWN: Yes.

16 CHAIRMAN ROBINSON: -- we deliberate? I appreciate that.
17 Commissioner Carnicelli.

18 COMMISSIONER CARNICELLI: Thank you for your testimony. The
19 other question I had about this, other than just the trail itself, is
20 parking.

21 MR. BROWN: Ahh, good point.

22 COMMISSIONER CARNICELLI: So --

23 MR. BROWN: Really, really good point. The trail, as
24 defined over 100 years ago, ends at the park and ride with 67 parking
25 spaces. It ends right there within 100 feet. I mean, it goes on. It

1 goes on to the -- to the -- well, the old -- now, the garbage hill.

2 COMMISSIONER CARNICELLI: On the mauka side of the
3 Honoapiilani?

4 MR. BROWN: This is -- here's the intersection right here.
5 There's the parking lot. Sixty-seven spaces. All we have to do is
6 change the lights, so it would be a little bit safer to go across, but
7 people run across anyhow.

8 COMMISSIONER CARNICELLI: Thank you. Chair, thank you.

9 CHAIRMAN ROBINSON: Any other questions? Thank you. Would
10 anyone else like to testify on this item? Aloha. Please introduce
11 yourself. You have three minutes.

12 MR. PEREZ: Good morning. I'm Albert Perez with Maui
13 Tomorrow Foundation. You guys really need to get a taller microphone.
14 You know, we've been involved in this -- in projects that have been
15 proposed for this area. Obviously, we don't like the fact that it's
16 currently community planned for Project District. It's always -- you
17 know, there's always that possibility that someone else might try to
18 put -- this is not a good place for people to live, unfortunately.

19 As we know in September 2016, there was a big storm, and I
20 believe it was in July of 2016, there was a huge fire. I think it was
21 sparked by the power lines. And it spread right up the ridge, very,
22 very quickly. So, we're very concerned. The wind comes through there
23 every afternoon. It's like a wind tunnel. There's a reason that
24 there are windmills up on the ridge there. So, we don't think it's a
25 good place to live.

1 It would be better for open space. And, unlike -- I think
2 someone in the paper accused me of wanting to drive to Lahaina and
3 have a nice view as I drive over for an expensive dinner. That is not
4 me. I don't value expensive dinners, and I don't know if my car would
5 make it. So -- but as far as the project district, we kind of like
6 the idea that the proposal is for it to go into agriculture. We think
7 it would be better for open space because even the farms there would
8 have to have huge firebreaks. I mean when the wind comes through to
9 create defensible open space, that you wouldn't have to worry about
10 your structure burning down. I mean, it was only a few weeks ago that
11 we had the Lahaina fire. We can't -- we can't just ignore that this
12 time.

13 I'm not sure how much time I have left, Chair. So, we kind
14 of have mixed feelings on this. We would rather see it be acquired
15 for open space. One question I had on the staff report, it wasn't
16 clear to me what the open zone is. I don't think it's the same as the
17 Open Space 1 or the Open Space 2. And I couldn't find it in the Code,
18 so I'm not sure what that is, but maybe I didn't look hard enough.
19 Anyway, I would like some clarification on what the Open Zone is.

20 We have some concerns. There's not a place for a lot of
21 cars, a lot of traffic, so we are happy that the proposal is for only
22 21 lots. We don't want to see it subdivided. In the past when we
23 worked with this Applicant, there was a promise that it wouldn't be
24 subdivided, and then we found out that that wasn't necessarily the
25 case. So, we would like to see a condition. I don't know for the no

1 further subdivision, even though that's already on the sliding scale
2 in the ag ordinance. Thank you very much.

3 CHAIRMAN ROBINSON: Thank you. Commissioners, do you have
4 any questions for Mr. Perez. Aloha, Albert. Thank you. Would anyone
5 else like to testify on this item? Seeing none, public testimony is
6 closed. Would the Applicant like to comment and address some
7 questions from the Commission? Thank you.

8 I think you heard testimony of concerns, and why don't we --
9 why don't we start with the easy one for you? Trail and parking. And
10 I remember you mentioned that during your presentation and what did
11 you have in mind for that?

12 MR. BAGOYO: Yes, Mr. Chairman. I actually have a map of
13 the access trail that's being proposed -- suggested by DLNR. I can
14 pass this around.

15 CHAIRMAN ROBINSON: Is it in our packet or?

16 MR. BAGOYO: It's not.

17 CHAIRMAN ROBINSON: Okay.

18 MR. BAGOYO: Yeah, the Applicant is always willing to
19 provide access to the Pali Trail. Right now, there is an undefined
20 trail that's being -- could be used. There's actually parking spaces
21 within the state property on the trail head. So, Mr. Doug Spencer has
22 been in contact with DLNR and whatever they prefer where the trail --
23 access trail will be, I think they're open to providing those trails.

24 CHAIRMAN ROBINSON: Thank you. Commissioner Carnicelli.

25 COMMISSIONER CARNICELLI: The gentleman from -- I'm sorry, I

1 forgot your name from --

2 UNIDENTIFIED MALE: PATH.

3 UNIDENTIFIED FEMALE: PATH.

4 COMMISSIONER CARNICELLI: PATH. Yes, from PATH, he talked
5 about potentially having a deeded access. Is that something that the
6 Applicant would be willing to provide?

7 MR. BAGOYO: Yeah. Yes.

8 COMMISSIONER CARNICELLI: Okay. Thank you.

9 CHAIRMAN ROBINSON: Commissioner Pali.

10 COMMISSIONER PALI: Can you address some of the questions
11 regarding fire -- potential wind tunnel and fires? If this
12 subdivision were to move forward with the 21 homes, can you just
13 address how you envision that would help or hinder the concern about
14 fires?

15 MR. BAGOYO: I think it's -- that's an excellent question.
16 In fact, when I met with the Kihei Community Association, that's one
17 of the concerns that they have as well, and it's also a concern of the
18 Applicant. One of the things that perhaps we could consider is to
19 provide a firebreak within the subdivision as well, in addition to the
20 state land that is mauka of this property. They're already providing
21 some kind of a firebreaks within the boundary of this property and the
22 state property. And we could also further provide firebreak as well.

23 CHAIRMAN ROBINSON: Commissioner La Costa.

24 COMMISSIONER LA COSTA: Thank you, Chair. There was a
25 question about there was no water flow for fires. What precautions or

1 | what are you going to do within the subdivision because there is not
2 | county water, so you don't have hydrants to prevent anything that
3 | happened two years ago?

4 | MR. BAGOYO: Excellent question. The Maui County Code
5 | mandates that the property will have to provide fire protection. For
6 | agricultural subdivisions, the fire requirements would be 500 gallons
7 | per minute for two hour durations. We do have an existing 750,000
8 | gallon storage tank at the site for both domestic and fire protection.
9 | So, there's an adequate that meets -- more than meets the Maui County
10 | Code.

11 | COMMISSIONER LA COSTA: Chair.

12 | CHAIRMAN ROBINSON: Yeah, please.

13 | COMMISSIONER LA COSTA: Thank you. When you said that there
14 | is a 750,000 gallon tank, what happens when that becomes depleted as
15 | the summer goes on. I happen to live in an ag subdivision in
16 | Launiupoko, actually, and went through the fire mess. So, we have
17 | hydrants, but there's nothing here, and I have a real concern about
18 | that.

19 | MR. BAGOYO: Thank you so much. We do have three wells on
20 | the site that yield approximately -- I have a water resource
21 | consultant here, so if he may -- could you answer the question, Tom?
22 | This is Tom Nance.

23 | MR. NANCE: The installed well capacity --

24 | CHAIRMAN ROBINSON: Please introduce yourself, sir.

25 | MR. NANCE: Okay. Sorry about that. This is Tom Nance.

1 I'm a consultant in water resources. The design of the system and for
2 fire protection is that there's three wells, any two of which can
3 operate and provide that protection. And two of the wells operating
4 concurrently can provide 750,000 gallons a minute.

5 The storage reservoir, which I think is actually 800,000
6 rather than 750, would be continually filled by the wells. So,
7 there's more than sufficient capacity, and reservoir storage, and well
8 pumping capacity to provide for fire protection.

9 CHAIRMAN ROBINSON: Commissioner La Costa.

10 COMMISSIONER LA COSTA: Mr. Nance, the discussion of Mr.
11 Atherton's 1400-unit property in Waikapu has come up and the
12 questionable resources of water that will be in both projects. So, if
13 there were to be 1400 homes in Waikapu and the 21 subdivision lots,
14 providing this is approved, and there is an issue with fire then,
15 again, I am incredibly concerned about what's going to happen if you
16 don't have those water resources.

17 MR. NANCE: The water resources are based on moving annual
18 averages. Storage in the aquifer is equivalent to probably 20 years
19 of pumping at three million gallons a day. So, you need to
20 differentiate yourself from what is -- what the aquifer can provide on
21 a sustainable basis long-term, versus what can be drafted on a short-
22 term basis to fight a fire. There's more to that, if I can comment
23 while I'm here.

24 The letter from the Board of Water Supply wasn't actually
25 straight up telling you the full story. This aquifer, the sustainable

1 yield was set at three million gallons a day based on some very
2 cursory figuring done in the late 80s, early 90s. There's actually no
3 (indiscernible) actual pumping on a sustainable basis from this
4 aquifer. A number of wells have been installed, three in this
5 project, six in the Atherton project, and one by the State in the
6 early 70s, but other than the relatively short-term pump test, none
7 have been pumping on a long-term basis.

8 The Board of Water Supply letter suggests that the yield set
9 forth in the Maalaea Agricultural Subdivision and the Tropical
10 Plantation will exceed the 3 mgd. That's absolutely not correct. The
11 Board wasn't completely forthcoming about what was planned for using
12 the wells that are at the Tropical Plantation because a very
13 substantial amount of that well capacity may actually be exported
14 outside of the aquifer for uses elsewhere. And if that happens, if it
15 is in fact possible that pumping could exceed the present sustainable
16 yield of 3 mgd. Right now, the pumpage is absolutely zero. Getting
17 to 3 mgd will take some years.

18 The USGS has done a far more sophisticated and accurate
19 assessment of the aquifer sustainable yield based on computer modeling
20 and that modeling suggests the sustainable yield is potentially
21 substantially higher, possibly as much as double the present 3 mgd,
22 but certainly higher than 3 mgd, and it will take years of actual
23 pumping of the aquifer approaching 3 mgd to see if it's in fact
24 (indiscernible) as we've done in many aquifers throughout the state
25 and continue to do so, but that sustainable yield number gets revised

1 based on more accurate studies and decades of company experience.

2 COMMISSIONER LA COSTA: Thank you.

3 CHAIRMAN ROBINSON: And before passing to questions,
4 Commissioner Tackett, in the packet it referred to a study from Mr.
5 Nance, and it wasn't in the packet. So, the packet referred to a
6 study, and then as I went through to try to find the study, the study
7 wasn't in there, but when your letter -- I just wanted to let you know
8 that, so hopefully you can maybe -- if you have that somewhere as we
9 come back on, I will be asking for that, but I'm going to keep with
10 the question for Mr. Nance from Commissioner Tackett.

11 COMMISSIONER TACKETT: Thank you. So, my question is these
12 wells, are they located on that property?

13 MR. NANCE: Yes.

14 COMMISSIONER TACKETT: And what are their susceptibilities
15 to being on fire themselves? Could a fire impact their ability to
16 pump the water that they need to fight the fire?

17 MR. NANCE: It's not really my field of expertise, but I
18 think the answer is possibly yes. They are located -- if you drive
19 by, you'll see that stainless steel tank on the mauka side of the road
20 there. The wells are adjacent to that tank there.

21 COMMISSIONER TACKETT: Thank you.

22 CHAIRMAN ROBINSON: Commissioner Carnicelli.

23 COMMISSIONER CARNICELLI: Thanks, Tom. So, this may be an
24 obvious question or an obvious answer, but is there a non-potable
25 water source for the ag part of this particular subdivision?

1 MR. NANCE: If we can change non-potable to very slightly
2 brackish, yes. All three wells produce water of marginal salinity for
3 drinking water use, but certainly acceptable for irrigation use. So,
4 these will actually have a dual system where the well water will be
5 pumped into the 800,000 gallon tank, and then that water will go
6 directly out of that tank for the agriculture use, and I think for the
7 fire protection. Is that right, Stacy? Yeah.

8 Separate from that, will be a small potable treatment plant,
9 the osmosis desal plant that will produce water for drinking water use
10 for the 21 houses. So, there will be a slightly brackish system for
11 the irrigation use, but it's coming out of the wells.

12 COMMISSIONER CARNICELLI: Thank you.

13 CHAIRMAN ROBINSON: Questions. Mr. Nance, while I have you
14 up there, I got the report, but, of course, I don't have time to read
15 it this second, but I want to address the amount of water inside this
16 reservoir. I want to address the concern that we have, because we
17 have a project that is right next to you folks that is supplying a lot
18 of homes, which is what this county needs and water is the concern.
19 And I want to make sure -- because I wasn't comfortable with the
20 volume of output that the Atherton project said that they had on the
21 water stuff, and I noticed that as of this date they did certain
22 pumping tests and certain reclamation tests, but there's no follow
23 through with that second test.

24 So, I know that you're not a consultant for the Atherton
25 Group, but since you're here, and you are doing -- we are talking

1 about that aquifer, is because we want to make sure that the capacity
2 of whatever this project can do, and what the capacity that Atherton
3 does, because I think the Atherton Project understates their demand.
4 How do you feel about that -- about my opinion?

5 MR. NANCE: I don't know what they're saying their demand
6 is, but the reality is the -- you know, six wells have been drilled in
7 the Atherton property. My personal opinion is two are useable and the
8 others are not. And the plan is to add two more in the mauka
9 locations on that property for a total of four wells. The intention
10 is to supply not only the plantation project, but the Department of
11 Water Supply would take some water from that and, potentially -- and I
12 heard the developer as a partner in a tri-party agreement, Department
13 of Water Supply, Atherton, and this third-party. And the Department
14 of Water Supply and the third-party would be using the water
15 elsewhere.

16 I do think that the aquifer at 3 mgd is currently
17 undervalued or understated as to what it's likely sustainable yield
18 is. I think it's at least four -- probably between four and five. It
19 will take, as I said, a couple decades of actual pumping to get there,
20 but in order to do that, there will need to be additional wells on the
21 Atherton property to get to that point. And I am involved with this
22 third-party of --

23 CHAIRMAN ROBINSON: Right.

24 MR. NANCE: -- of the third-party agreement.

25 CHAIRMAN ROBINSON: And so, Mr. Nance, what I'm hearing you

1 saying is even though Atherton might be undersized well rise, the
2 water -- reserve wise, the water is there, they just have to -- you
3 think that they might have to add more wells and that the --

4 MR. NANCE: Yeah, more wells and more properly locate them,
5 so that we can in fact optimize the yield of the aquifer.

6 CHAIRMAN ROBINSON: When does the -- and, you know, I read
7 through this project. There's, you know, 21 lots, I see. You know,
8 42 places, I see 48. What is the maximum output that this project
9 could take, because it's agriculture, so agriculture depends on what
10 you farm, right? I mean, so are we assessing the draw based on what
11 the wells can produce at 100 percent, all the time, 24 hours a day, or
12 are we saying on an eight hour day, we're going to pump so much water?

13 MR. NANCE: No, it's -- the three wells -- one well has a
14 pump with 275 gallons a minute, and the other two have pumps of 475
15 gallons a minute. And pumping the wells 24/7, it's much more than
16 what the project needs, but the 475 gpm pumps are grossly oversized.
17 And so, my recommendation to the owner is that they get downsized to
18 about 260 gallons a minute, but it would run -- a year on average
19 production in round numbers is required about .5 mgd, and in the
20 summer time that's probably up to .7 or .8. Two of the wells with 260
21 gpm pumps can provide that with the third providing standby. So, I
22 think there is capacity, and, in fact, two of the three pumps need to
23 be downsized.

24 CHAIRMAN ROBINSON: But like the calculations that we're
25 using -- the calculations that are used off of the current pump sites

1 that we have and with those compilations running 24 hours, that's what
2 our max output is?

3 MR. NANCE: No. No, the max output would be just two wells
4 running at 24/7 at 260 gallons a minute each.

5 CHAIRMAN ROBINSON: But you're calculations that we used for
6 the -- you know, the high end --

7 MR. NANCE: That is the high end.

8 CHAIRMAN ROBINSON: Okay. So, that's two wells at 275.

9 MR. NANCE: At 260.

10 CHAIRMAN ROBINSON: Well, there's three wells on the
11 property.

12 MR. NANCE: The third would be standby, yeah.

13 CHAIRMAN ROBINSON: And is --

14 MR. NANCE: And if one slows down --

15 CHAIRMAN ROBINSON: Right.

16 MR. NANCE: -- they need to be replaced, you need to have a
17 standby.

18 CHAIRMAN ROBINSON: Now, is -- could they possibly put a
19 bigger pump to draw or keep the 475 or 600, or that's something that
20 they would have to go back to the state to ask to -- I'm sorry. I
21 guess, you know, we're looking at the capacity here. So, is the
22 concern I here is capacity -- my concern is capacity. You know, just
23 because you have a well it doesn't mean -- and you have 250 per
24 minute, we can increase those pumps to make it 500 per minute if we
25 had a larger pump. So, how do you control that?

1 MR. NANCE: So, then the pump water -- the two wells with
2 the larger pumps, that salinity in the test that I did as opposed to
3 the original test by the drilling contractor never reached the stable
4 (indiscernible) level, unless you can pump the water out, but with a
5 salinity consequence. This is a relatively thin (indiscernible)
6 underlined by saving groundwater and over pumping (indiscernible) an
7 accurate salinity result. That's why I want to downsize the pumps,
8 not upsize them. And downsizing it still provide the maximum.

9 CHAIRMAN ROBINSON: Which brings me back to if we're pulling
10 from the same resource, pumping on the Atherton side -- and if we have
11 salinity on one side, we're going to have salinity on both sides. So,
12 if we're pumping at the same (indiscernible) are we affecting the
13 Atherton quality of water as well. And then if they have to go
14 (indiscernible) more water, because they're going to throw away part
15 of it.

16 MR. NANCE: You need to back up a little here.

17 CHAIRMAN ROBINSON: Okay.

18 MR. NANCE: Generally speaking, the Atherton aquifer is
19 where the water is. And chloride levels of 20 to 40 mgs per liter in
20 the two wells that I think are useable, it's certainly possible. And
21 at that location the (indiscernible) is much thicker and much fresher.
22 If one acquirer is ultimately going to affect the other, it's the
23 reverse. (Indiscernible) decades now (indiscernible) the affect in
24 the Maalaea Ag Subdivision wells might happen as a result of the
25 upgradient Atherton wells, not the reverse.

1 CHAIRMAN ROBINSON: Thank you. Commissioners, any other
2 questions? Commissioner Castro.

3 COMMISSIONER CASTRO: Thank you. You mentioned earlier with
4 the possibility of putting in a desalination plant. If that was to be
5 implemented what would you do with the waste?

6 MR. NANCE: That's a good question. We're doing a very
7 small amount, just for the domestic use. And so, the concentrate that
8 disposable amount from the (indiscernible) plant is actually still of
9 a salinity that can be reused to irrigate these runoff retention
10 areas. So, that's the plan of what to do with the concentrate from
11 the (indiscernible) plant.

12 COMMISSIONER CASTRO: Thank you.

13 CHAIRMAN ROBINSON: Yeah. Commissioner Pali.

14 COMMISSIONER PALI: For the project manager. The issue of
15 (indiscernible). We heard a few testimonies regarding once the
16 subdivision is, let's say, complete, will there be CC&Rs, or
17 something, or some kind of an association within the 21 units and
18 would you have restriction about possible -- the use of -- for future
19 use. Like if they did the ohana unit, would you allow them to apply
20 for vacation rental permits, would you allow subdividing within their
21 lots? What do you feel about -- I think it was several requests that
22 say they would like us to make sure that there was no future
23 subdividing. And I know that the project itself mandates the maximum
24 21, which seems like it's already taken care of itself, but what's
25 your comments on that?

1 MR. BAGOYO: Regarding the re-subdivisions, under the
2 current Maui County Code, they cannot subdivide it. Yeah. With
3 regards to the use for short-term rentals, I don't think -- it's
4 probably going to be included in the CC&Rs that there will be no
5 vacation rentals. Yeah. I mean that's something that the Applicant
6 will not -- that we'll probably agree as a condition.

7 CHAIRMAN ROBINSON: Okay. And as we know, projects sell.
8 Commissioner Carnicelli.

9 COMMISSIONER CARNICELLI: So, Vince, a couple of questions
10 for you, and then I have one for the Department. If you could address
11 your 2.96 affordable housing component, how you're going to address
12 that. Mr. Mayer brought up the fact that the retention basin stops
13 instead of continuing all the way on. If you could address that. And
14 you've already addressed the other things that I have here. So, just
15 those two things, and then I have one question for the Department.

16 MR. BAGOYO: With respect to the first questions on the
17 2.96, the Applicant will comply to the 2.96. I think we are required
18 to provide at least four. There is a number of options that they
19 could use. One is credits that they may have, and the other is to pay
20 to the general fund for the County of Maui. So, they will comply.

21 With respect to the drainage, I was just talking to Mark
22 Spencer, who is part owner of the property. That they will -- yeah,
23 they will comply with that as well.

24 COMMISSIONER CARNICELLI: Okay. Thank you. And then my
25 other thing, Chair, is regarding the transportation corridor, I'm a

1 little bit unclear as to -- is this something that's County proposed?
2 I mean, are we going to put -- you know, if we try to make this a
3 condition, are we going to have, okay, a mile-and-a-half stretch that
4 has a corridor, you know, agreement, and then no place else on the
5 whole entire Honoapiilani does it have that. So, if you could just
6 address kind of what that is and how it pertains, please.

7 CHAIRMAN ROBINSON: Director.

8 DIRECTOR MCLEAN: Thank you.

9 CHAIRMAN ROBINSON: You said Chair, so she was looking at
10 me.

11 DIRECTOR MCLEAN: To address the second part of your
12 question, when there are -- when it's desired to have an improvement
13 like this, you take advantage of the opportunity when it comes along,
14 even if it's going to be only one segment now with the hope -- the
15 expectation that the other segments come along when those properties
16 are developed or when the County takes the initiative to acquire it or
17 whatever.

18 In this particular case, I simply don't know how wide the
19 highway right-of-way is and what kind of area might be available in
20 the State right-of-way rather than being on this property. I think it
21 would be important to have this corridor, but whether or not there's
22 already land in the State right-of-way that could allow for it or
23 whether it needs to come from this property, I simply don't know at
24 this time.

25 And we could probably figure out how to word a condition

1 that requires it of the Applicant if it's not available on State land.
2 So, I don't have a solid answer on that, but it would be important to
3 take advantage of the opportunity. And even if it's only a certain
4 segment right now, if we close the door on that, then putting in other
5 segments, you know, you missed this middle part, so --

6 COMMISSIONER CARNICELLI: Okay.

7 DIRECTOR MCLEAN: -- it should be done.

8 CHAIRMAN ROBINSON: Commissioner La Costa.

9 COMMISSIONER LA COSTA: Thank you, Chair. Mr. Bagoyo, thank
10 you for coming. I would like to go back to the PATH, the Pali Trail.
11 You talked about realigning it from where it is now to -- I think the
12 map that you have in red that we have the trail, correct?

13 MR. BAGOYO: Correct.

14 COMMISSIONER LA COSTA: Okay. So, if that is -- is that
15 going to be an easement, is that going to be a different TMK? And, if
16 so, who's going to maintain it and the access to the public? That's
17 what I would like to know, please.

18 MR. BAGOYO: Thank you. One of the options that is marked
19 in red is actually the proposed road within the subdivision. They can
20 use that as part of the trail -- access to the trail head. The other
21 is marked in -- I believe, in blue --

22 COMMISSIONER LA COSTA: Uh-huh.

23 MR. BAGOYO: -- which is --

24 COMMISSIONER LA COSTA: The current trail.

25 MR. BAGOYO: -- along the drainage area. That could also be

1 an option for DLNR to see if they prefer that site. And the Applicant
2 will be more than happy to provide an easement, permanently, to access
3 to the trail head. So, whichever the DLNR prefers we're more than
4 happy -- the Applicant's more than happy to accommodate.

5 COMMISSIONER LA COSTA: Thank you.

6 MR. BAGOYO: Yeah, in fact, I believe DLNR submitted a map
7 on the different options. One is in yellow, which is basically where
8 the drainage is, which is marked in blue and the other one is in red.
9 That's pretty close to the red mark that we have there on the
10 subdivision map.

11 COMMISSIONER LA COSTA: Did you provide that for us?

12 MR. BAGOYO: That's, I think -- I know this was given to me
13 by the Planning Department.

14 CHAIRMAN ROBINSON: That's in this book here or it's in the
15 packet in the back?

16 MR. FASI: Yeah, the exhibit that I passed out this
17 morning --

18 CHAIRMAN ROBINSON: On the table.

19 MR. FASI: -- is from Tori Nohara, and she's from the DLNR.
20 And she is here in the gallery.

21 COMMISSIONER LA COSTA: Thank you.

22 MR. BAGOYO: And I believe the Applicant is also proposing
23 to provide some parking wherever the preferred access trail will be.
24 And, actually, I think it's fully marked within the subdivision map
25 that I submitted earlier.

1 CHAIRMAN ROBINSON: Do you have a number of how many stalls
2 you're proposing?

3 MR. BAGOYO: There's no --

4 CHAIRMAN ROBINSON: Twenty, 30? How many is it?

5 MR. BAGOYO: We don't have any numbers. Right now, there's
6 no parking.

7 CHAIRMAN ROBINSON: Right.

8 MR. BAGOYO: So, whatever the DLNR would suggest to the
9 Applicant, I think that's probably would be the amount of parking that
10 we will provide.

11 CHAIRMAN ROBINSON: Okay.

12 MR. BAGOYO: Right now, according to the gentleman that
13 testified --

14 CHAIRMAN ROBINSON: Mr. Brown from PATH, yeah.

15 MR. BAGOYO: -- yeah. There's actually across the --

16 CHAIRMAN ROBINSON: Across the highway --

17 MR. BAGOYO: -- across the highway, yeah.

18 CHAIRMAN ROBINSON: -- which we don't want, yeah.

19 MR. BAGOYO: Yeah. So, we'll try to provide some parking
20 within the project site.

21 CHAIRMAN ROBINSON: Yeah, thank you. I would hate to have
22 to wait at that light for people to cross the street.

23 MR. BAGOYO: Yeah, exactly.

24 CHAIRMAN ROBINSON: Okay. Commissioner Gomes.

25 COMMISSIONER GOMES: Okay. Thank you. I think this

1 question might be directed for the Department. Can you explain, and
2 pardon me, you may have -- the difference between Agricultural and an
3 Open Zone? Because I think that's what you guys are going for, is to
4 change in zoning from Open Zone to Agricultural, and then a change in
5 zoning of Road/Street Reserve Zone to Agricultural. And can you
6 explain a little about that? I mean, I don't know the difference
7 between Open Zone and then Agri -- you know, going to Agricultural,
8 and then over to Reserve Zone. Yeah.

9 CHAIRMAN ROBINSON: Director.

10 DIRECTOR MCLEAN: Thank you. You're probably most familiar
11 with the Zoning Districts that are listed in the Maui County Code,
12 residential, business, commercial, et cetera.

13 COMMISSIONER GOMES: Yes.

14 DIRECTOR MCLEAN: We do have, countywide, old zoning maps
15 that have labels on them that actually don't have a chapter in the
16 County Code that defines what those mean. Urban Zone is one of those,
17 Road/Street Reserve Zone is one of those. And so, if someone were to
18 ask us what can I do under this zoning, we have to try to come up with
19 what we think those things mean. We do have an Open Space Zoning
20 District, but not Open Zone like this says. So, it's not clear.

21 COMMISSIONER GOMES: Yes.

22 DIRECTOR MCLEAN: We do our best to compare it to actual
23 zonings that we do have and do our best to understand what uses might
24 be allowed in those districts, but those were zonings on an approved
25 zoning map, so they are existing zonings. That's what the zoning map

1 | says, but there aren't clear uses and standards that correlate to
2 | them.

3 | And, like I said, we haven't -- we have Open Space Zoning
4 | Districts, but not Open Zone Zoning Districts, and we don't have a
5 | Roadway Reserve Zoning District. So, this is from an old zoning map
6 | that they're trying to clear up and make consistent with the rest of
7 | the property.

8 | COMMISSIONER GOMES: Chair.

9 | CHAIRMAN ROBINSON: Yes.

10 | COMMISSIONER GOMES: I want to add --

11 | CHAIRMAN ROBINSON: Okay. Go ahead.

12 | COMMISSIONER GOMES: -- this question is for Corp Counsel.
13 | This isn't in the Maui County Code in regards to what Director McLean
14 | is stating. I mean, it's there, basically, because it's old. So, it
15 | seems to be grandfathered, in some way, or at least it's stated there,
16 | but as far as finding it in MCC, like if I went into archives, I would
17 | be able to find this?

18 | MR. GALAZIN: Thank you, Chair. And I understand the
19 | Planning Department's response. No, you'll not find this even in an
20 | archive portion of the County Code.

21 | COMMISSIONER GOMES: Okay. I'm trying to make sense of it.
22 | I'm sorry, Director McLean.

23 | DIRECTOR MCLEAN: If I can add. You may be familiar with
24 | the project that just passed out of one of the Council's Committees to
25 | adopt a digital zoning map to replace all of these old paper maps that

1 we have with a digital map. And in a number of cases, we are taking
2 these old designations and recommending that they be replaced.

3 So, in this case it's a specific application that's coming
4 to you, but elsewhere in the County we're trying to replace them with
5 the most comparable Zoning District that is actually in the Code. So,
6 if we see Open Zone somewhere else, it would probably be recommended
7 to be changed to Open Space, because we have a Zoning District that
8 says Open Space.

9 COMMISSIONER GOMES: Oh, I see.

10 DIRECTOR MCLEAN: So, there are areas throughout the County
11 that have labels on the zoning map and those are adopted lawful zoning
12 maps. So, that is the zoning, but there was never a chapter in the
13 Code adopted to go along with that. So, it's not grandfathered, it's
14 still -- it's still --

15 CHAIRMAN ROBINSON: Active.

16 DIRECTOR MCLEAN: -- on the map. It's still applicable, but
17 we don't have a Zoning District to go along with it, so we're trying
18 to replace those with current --

19 COMMISSIONER GOMES: So, is this just semantics as far as
20 verbage that we're trying to change, or --

21 DIRECTOR MCLEAN: Well --

22 COMMISSIONER GOMES: -- is it with the Community Plan that
23 is being changed?

24 DIRECTOR MCLEAN: Even if this were, let's say, Open Space,
25 I think the Applicant would still be requesting the change to

1 Agriculture, so that the property could have one consistent
2 designation throughout it.

3 COMMISSIONER PALI: Can I interject? What I -- how I
4 process it --

5 CHAIRMAN ROBINSON: Commissioner Pali.

6 COMMISSIONER PALI: Oh, sorry, Chair. How I process it, and
7 we just can confirm with Corp Counsel, is the old labels have no
8 definition. They're labeled, but we don't know what that means. And
9 so, from my understanding, Open Space was called Open Space, but
10 there's not Charter Code that says what Open Space is. So, right now,
11 it's undefined.

12 And I think what's happening now is the developer wants to
13 now put a definition onto the use, which is what we have now. We have
14 labels that are now defined in our new current times. So, by going
15 from Open Space to Ag, they're saying we want to adopt the uses of Ag,
16 because there is a definition. So, we're going from undefined to
17 defined. That's how I -- is that accurate to say? Okay. Does that
18 help?

19 COMMISSIONER GOMES: It helps, but when you do something
20 like that -- and if you don't mind me stating -- then you're setting a
21 precedent for the future, for everything else. And when you do stuff
22 like that, specifically with the Charter, which, you know, this is
23 what governs -- the Charter governs our government, we're setting a
24 precedent for the future. So, you know, just bearing that in mind for
25 the community, so that they understand that as well.

1 If we're going to go that route and state, well, it's there
2 -- you know, it's undefined, then you could use that as an excuse on
3 many applicable other things, you know. And I would hate to see, in
4 the future, that that happens, and we use that as an excuse, well,
5 this would be an example, as a precedence, you know. So, I completely
6 understand that part, which -- thank you, but, you know, I definitely
7 -- you know, it doesn't sit very well, I'll tell you that, because
8 it's undefined even though it's there.

9 You know, it doesn't help us as Commissioners, it doesn't
10 help future individuals who come here, and they want to build, or they
11 want to develop, and then they can use this and say, well, you know,
12 this is -- that was undefined, and you let this one go, or you voted
13 on this. You know, and then we have mayhem between us or between the
14 situation. So, it does need to be defined. And if it's going to be
15 in the Charter, then Corp Counsel or whomever needs to get on it and
16 the Maui County Code, MCC, get it defined.

17 CHAIRMAN ROBINSON: Okay. Thank you. You want to respond
18 to that?

19 MR. BAGOYO: Yeah. What we're trying to do is to make it
20 consistent with all of the Community Plan that's been proposed and the
21 Maui Island Plan, which designate this area as outside, which is
22 Agriculture.

23 CHAIRMAN ROBINSON: Yeah, I think it's more -- we're talking
24 about an internal thing that we need --

25 MR. BAGOYO: Oh, oh.

1 CHAIRMAN ROBINSON: -- to clean up what we have on the books
2 instead of what the Applicant is trying to accomplish. We understand
3 that you're trying to get a designation, which you should. It should
4 be designated instead of just undefined. I would like it if you could
5 touch on your SMA requirement and what part of your parcel is SMA, and
6 if you have a map showing that.

7 MR. BAGOYO: There's a portion, which is -- I think it's on
8 the red -- it approximately about 23 acres. If the owner decide to do
9 something on that property, they would have to come back to the
10 Commission for the SMA.

11 CHAIRMAN ROBINSON: Well, can you show us where that
12 location is, please? Because if it's coming back to us it's one thing
13 that, you know, helps us decide on voting today.

14 UNIDENTIFIED MALE: If I may speak, Mr. Chairman?

15 CHAIRMAN ROBINSON: Please.

16 UNIDENTIFIED MALE: It's about this location over here.

17 CHAIRMAN ROBINSON: I know, sorry, Carolyn.

18 MR. BAGOYO: It's about this area, Mr. Chairman, right here.
19 It's the most southerly part of the property.

20 CHAIRMAN ROBINSON: Is part of the trail on top of that?

21 MR. BAGOYO: No, it's not.

22 CHAIRMAN ROBINSON: Nothing? So, that is just completely
23 the Applicant's property? And is that considered a lot or is that
24 considered undefined space for you?

25 MR. BAGOYO: It's going to be -- no, it's going to be part

1 of the subdivision. It's approximately 44 acres to that particular
2 lot, but a portion of that is within the SMA.

3 CHAIRMAN ROBINSON: What are the shaded -- what is the
4 shaded indicating?

5 MR. BAGYOYO: This shade --

6 CHAIRMAN ROBINSON: Yeah.

7 MR. BAGYOYO: -- which is about -- that's the Open Space --
8 Open Zone that is undefined.

9 CHAIRMAN ROBINSON: So, the SMA is in an undefined area
10 right now?

11 MR. BAGYOYO: Correct.

12 CHAIRMAN ROBINSON: Okay. Thank you.

13 MR. BAGYOYO: And this is the -- the future State road and
14 this little portion right here is -- this .06 acres is an R-3 Zone.

15 CHAIRMAN ROBINSON: Okay. Thank you. And, Commissioner La
16 Costa.

17 COMMISSIONER LA COSTA: I'm sorry. Thank you, Chair. I beg
18 your pardon if you have answered this. Was there any designated open
19 space or greenbelt area within the subdivision other than the road?

20 MR. BAGYOYO: Currently?

21 COMMISSIONER LA COSTA: Yes. Yeah, for what your plans are.
22 Where is the green space?

23 MR. BAGYOYO: It's all going to be agriculturally zoned and
24 that's what we're proposing. To change from -- the Community Plan
25 change it to Agriculture. And most of the property, already, is

1 within the agricultural county zoning.

2 COMMISSIONER LA COSTA: So, you don't have any designated
3 park, or green zone, or anything within the subdivision?

4 MR. BAGOYO: No.

5 COMMISSIONER LA COSTA: Okay.

6 CHAIRMAN ROBINSON: Yeah, the retention basin is a green
7 zone --

8 MR. BAGOYO: Yeah.

9 CHAIRMAN ROBINSON: -- if I'm not mistaken too.

10 MR. BAGOYO: Yeah, the retention and the drainage.

11 CHAIRMAN ROBINSON: Yeah.

12 MR. BAGOYO: Yeah.

13 CHAIRMAN ROBINSON: Okay. And going back to Commissioner
14 Gomes' comment, is the reason why this is an EA is because it's going
15 to agriculture, right. So, if it's going to something, then therefore
16 the needed the EA, but if it was designated something else, it might
17 have triggered that EA. So, there wasn't -- there would have been
18 something to -- you know, that's the part that has to be determined.
19 Commissioners, do you have any other questions at this time?

20 COMMISSIONER LA COSTA: Actually, I do have one.

21 CHAIRMAN ROBINSON: Commissioner La Costa.

22 COMMISSIONER LA COSTA: May I please direct this to Mr.
23 Nance? Thank you, Chair.

24 MR. NANCE: Thank you.

25 COMMISSIONER LA COSTA: Thank you. I didn't see your

1 report, so are you a certified hydrologist?

2 MR. NANCE: No, I'm a certified professional engineer, but
3 not as a hydrologist.

4 COMMISSIONER LA COSTA: Okay. The septic system, the
5 groundwater is 210 feet above, according to what the documents say.
6 Let's see here.

7 MR. NANCE: The groundwater beneath the project is sitting
8 about three or four feet above sea level.

9 COMMISSIONER LA COSTA: Okay.

10 CHAIRMAN ROBINSON: And do you know what that is? Do you
11 know that is, topography wise from the --

12 MR. NANCE: Between the ground level --

13 CHAIRMAN ROBINSON: Yeah.

14 MR. NANCE: -- and down, I don't, to be honest.

15 CHAIRMAN ROBINSON: Okay.

16 MR. NANCE: The wells that are up at the mauka end are about
17 250 or 60 feet to sea level.

18 COMMISSIONER LA COSTA: My question would be then, will
19 septic leaching have any effect on the groundwater or any of the lands
20 around there, specifically? I'm thinking about the Ocean Center.

21 MR. NANCE: This is going to be a little convoluted
22 explanation, but I'm going to try. There is a travel between the
23 leach field area of the septic system to the groundwater below, across
24 the project site that travels through what we call the (indiscernible)
25 zone, unsaturated lavas, is probably between 100 and 250 feet. Once

1 | it reaches the basal groundwater, then it will move laterally toward
2 | the shoreline and toward the improvements down along the Maalaea Bay
3 | shoreline.

4 | There is natural processes that go on as this leach field
5 | discharge moves through the unsaturated lavas. It acts like a
6 | trickling filter. And the most significant example I can give,
7 | something that I was sampling yesterday in Kona, the County's
8 | Kealakehe Wastewater Treatment Plant discharges 1.7 million gallons a
9 | day into a pit that is 3700 feet inland of the upper end of Honokohau
10 | Harbor.

11 | I grabbed samples from the discharge into the pit, I grabbed
12 | samples from what's discharging at the mauka end of the harbor, I got
13 | samples for what I'll call the ambient basal groundwater, and I can
14 | calculate iteratively what removal of the nutrients occurs for, in
15 | that case, about a 50-foot travel between the unsaturated zone to
16 | basal groundwater, and 3700 feet to the Honokohau Harbor. And that
17 | natural removal process, the nitrification for nitrogen and absorption
18 | for phosphorous removes about 90 percent of all the nitrogen and
19 | somewhere between 95 and 98 percent of all the phosphorous.

20 | So, you can't say there won't be an effect, but that effect
21 | definitely gets moderated by the natural filtration process that goes
22 | on through the unsaturated lavas before it reaches groundwater.

23 | COMMISSIONER LA COSTA: Thank you.

24 | CHAIRMAN ROBINSON: Tom, on that question is, you know, we
25 | have the problem with Kahului and Honolulu where the cesspools are in

1 the mountain, but it comes down and starts going out into the ocean.
2 I mean, is that a problem over 20 years to where that water could then
3 seep out and be inside Maalaea Bay because of the slope and the
4 topography?

5 MR. NANCE: It would -- anything discharged in that fashion
6 that gets below the plant food zone will ultimately reach groundwater,
7 ultimately discharge at the shoreline. There's -- you know, that's
8 the natural process that's ongoing and the question is how much will
9 it actually impact the quality of that groundwater at the shoreline.
10 And we were just incredibly fortunate. Another example, if I can --

11 CHAIRMAN ROBINSON: Please.

12 MR. NANCE: -- another Island. The County has the Kahaluu
13 shaft. It's about elevation 600 feet inland of Keauhou Bay and above
14 it are the community that live up mauka and everybody's cesspool does
15 not even have septic systems. The Kahaluu shaft is a horizontal
16 skimming tunnel, not a drilled well, but it's an inclined shaft that
17 goes down to a horizontal skimming tunnel that's about 280 feet long.
18 And it's not adversely impacted by the discharges of the cesspools
19 directly upstream. It sort of an incredible removal process. So that
20 it does get into the groundwater, but there is a natural filtering
21 process that goes along en route to the groundwater.

22 In areas where you don't have much travel on the west side
23 where the County has a park with a restroom that's next to the
24 shoreline. You can pick it up at the shoreline without a whole lot of
25 removal going on, but if you're inland and a couple hundred feet above

1 the ground water table, there's an incredible natural protection that
2 happens. So, I can't say that nothing gets to it, because it does,
3 but there is a natural removal that removes most.

4 CHAIRMAN ROBINSON: Thank you. Anything else for Mr. Nance?
5 Thank you, sir. It's -- we talked about the questions -- counsel,
6 they had two questions, and I want to go back to the one question we
7 had about affordable housing and triggering the amount of homes. And
8 I would like to it over to the Director to what exactly is the amount
9 of homes that can build in this project as currently stated and what
10 the requirement would be on that. Director.

11 DIRECTOR MCLEAN: Thank you, Chair. Under the County
12 Agricultural District and the sliding scale, the property would be
13 limited to 21 lots of varying sizes. Each of those lots could be
14 developed with two farm dwellings, one of which could not exceed 1,000
15 square feet. During the subdivision process, the County's workforce
16 housing ordinance would be applied to the project and that requires 25
17 percent of the units that the Applicant provide, the equivalent of 25
18 percent of the number of units being developed to be subject to an
19 affordable housing agreement with the Department of Housing and Human
20 Concerns. And you round up.

21 So, 25 percent of 21 is 5.25. So, rounding up that would be
22 six affordable housing units that they would have to provide, that
23 they could provide on-site or they could off-site and that would be
24 spelled out in the affordable housing agreement that they would enter
25 into with the County during the subdivision process.

1 CHAIRMAN ROBINSON: So, Director, so these ohana units or
2 second homes you develop there for -- the ohana is going to be a
3 residence. Is that not considered as part of the totals?

4 DIRECTOR MCLEAN: The way it's written is it applies per lot
5 or per unit, but it excludes second farm dwellings. So, it would just
6 be for the 21.

7 CHAIRMAN ROBINSON: Thank you. Commissioners, do you have
8 any other questions for the Applicant? Seeing none, Mr. Fasi, could
9 you please have the recommendation?

10 MR. FASI: Thank you, Director. So, this body will be
11 making a recommendation on the Community Plan Amendment and the change
12 in zoning to the County Council, who will then take action and come to
13 some definitive Agreement.

14 On the Community Plan Amendment for 257 acres, the
15 Department is recommending approval to the Maui County Council from
16 Project District 12 to Ag in the change of zoning. The Planning
17 Department is recommending approval of the change in zoning for
18 approximately 14.7 acres from Open Zone to Ag, change in zoning for
19 approximately .06 acre from R-3 to Ag, and a change of zoning for
20 approximately 0.8 acres from Road/Street Reserve Zone to Ag. On both
21 land use and (indiscernible), the Department is not recommending any
22 conditions on either of them.

23 CHAIRMAN ROBINSON: Thank you. I guess, Commissioners,
24 we're not the final say here. We're only giving recommendations to
25 the County Council. Excuse me. It's -- because the rule didn't state

1 any conditions on either one of those, I want to -- I want to try take
2 these up individually, because I think there's different concerns on
3 different ones from hearing from the testimony.

4 So, we're going to start off with the CPA. Are there any
5 discussion or any motions to get this ball rolling. Commissioner
6 Carnicelli.

7 COMMISSIONER CARNICELLI: I move to approve as recommended
8 by staff.

9 CHAIRMAN ROBINSON: Commissioner Carnicelli recommends the
10 approval by motion. Do we have a second?

11 COMMISSIONER CASTRO: Second.

12 CHAIRMAN ROBINSON: Seconded by Commissioner Castro.
13 Discussion. Who would like to speak to the motion Carnicelli or open
14 up for discussion?

15 COMMISSIONER CARNICELLI: I'll just speak briefly, Chair, to
16 saying that I think in the deliberations we covered all the concerns.
17 My only question would be either for the Department or Corporation
18 Counsel. You know, the Applicant has made certain representations,
19 which will stay as part of the -- you know, what then gets transmitted
20 up to Council. However, if we are going to place conditions, is it
21 best to do it in the Community Plan Amendment, change in zoning? You
22 know, where should we -- if we want to place additional conditions,
23 where should we place them?

24 CHAIRMAN ROBINSON: Good question. Director.

25 DIRECTOR MCLEAN: Thank you. It would be preferable to

1 place this on the zoning, and I say that only because the County Code,
2 Title 19, is quite specific when it talks about conditions of zoning.
3 It's not quite so clear about placing conditions on Community Plan
4 Amendments. Even though that has been done, that's typical when
5 that's the only entitlement that they need, so that's the only
6 opportunity to impose conditions.

7 In this case, because we have the zoning as well, we would
8 want to make clear that it applies to the entire site. So, if a
9 change in zoning applies to the entire site, then you could condition
10 the zoning. But if a significant portion of the site is already
11 agriculture, then the Community Plan would really be the only
12 opportunity to condition it.

13 It's a roundabout answer. Just, in general, the preference
14 is for zoning, but because the majority of the entitlement is right in
15 front of you, it's Community Plan, for it to apply to the whole
16 project it would have to be on the Community Plan Amendment.

17 CHAIRMAN ROBINSON: So, you're saying some Community Plan
18 Amendment?

19 DIRECTOR MCLEAN: Unfortunately, yes. That's the --

20 CHAIRMAN ROBINSON: Okay.

21 DIRECTOR MCLEAN: -- that's the best way to do it.

22 CHAIRMAN ROBINSON: Okay. And I think the testimony we
23 heard today was about the Community Plan and getting out of Project
24 12, you know. I think, you know, moving into Community Plan Amendment
25 to try to get that out and adjust it to the other one, I think that's

1 -- I think that's where most of us are thinking. Any discussion on
2 that, folks? Commissioner Carnicelli.

3 COMMISSIONER CARNICELLI: If I could then go to the
4 Director. In our deliberations and questions, we talked about
5 drafting -- I'm sorry, I actually said, would you please draft
6 something and there you go. If you could please then read that into
7 the record what you have?

8 CHAIRMAN ROBINSON: And we're doing an amendment and --

9 COMMISSIONER CARNICELLI: Well, I want to hear what she has
10 to say, and then --

11 CHAIRMAN ROBINSON: Okay. Yeah. Okay. Perhaps, the --
12 yeah, so the question is during the course is the Director has been
13 writing down our comments and, you know, for the recommendations. And
14 so, she's going to read them off, and then we can discuss it if we
15 want in the CPA or we can move over to the zoning. Okay. Director.

16 DIRECTOR MCLEAN: I noted four areas where you might be
17 interested in imposing conditions. One would be prohibition on short-
18 term rental homes and other vacation rentals, one would have to do
19 with the firebreaks, one would have to do with vehicular access for
20 the trail, and then the last having to do with the roadway -- the
21 multi-modal corridor. So, I can -- you know, if you want to go
22 through those one at a time, I can read what I've --

23 COMMISSIONER CARNICELLI: If I could also, though --

24 CHAIRMAN ROBINSON: Commissioner Carnicelli.

25 COMMISSIONER CARNICELLI: Thank you, Chair. Also, the

1 retention basin. For the retention basin to continue all the way
2 along the entire stretch of the project. I mean, I know that they
3 made representation and, you know, Mr. Spencer had agreed to that, so
4 -- but I didn't know if we wanted to actually make that a condition or
5 not.

6 DIRECTOR MCLEAN: That, actually, we can confirm with Public
7 Works, but drainage requirements are typically handled during the
8 subdivision process. And so, Public Works might have a different
9 design in mind. It may include the continuation all along, it could
10 be in a different area. I don't know that that should be a condition.
11 That should be something that comes from Public Works through the
12 subdivision process.

13 MS. DAGDAG-ANDAYA: Chair --

14 DIRECTOR MCLEAN: If you wanted to --

15 CHAIRMAN ROBINSON: Yes.

16 MS. DAGDAG-ANDAYA: Yeah, it might be problematic in the
17 future if you do place a condition like that to require that the
18 developer place their retention basin along the edge of the property.
19 I think putting a firebreak is -- a condition regarding firebreaks
20 would be more appropriate, because the issue that came about when the
21 retention basin was mentioned was that -- you know, what I hear are --
22 from my limited hearing right now because I have a cold, was that, you
23 know, create the retention basin to protect the properties downstream
24 from any fires. Is that -- I mean, I guess that's what I heard?

25 CHAIRMAN ROBINSON: No, runoff.

1 MS. DAGDAG-ANDAYA: Oh, from any runoff. You know,
2 typically -- you know, it depends on the design of the basin. So,
3 sometimes depending on the topography, it might not be an appropriate
4 place to place the retention basin along the edge. So that's
5 something that the Department and the Applicant will need to work
6 together on. So, again, as I mentioned before if you place a
7 restrictive condition like that, it might be problematic in the
8 future.

9 CHAIRMAN ROBINSON: This could be the buffer zone. It
10 doesn't have to be the retention basin. I mean, and then they -- in
11 that buffer zone, they could put a retention basin. Is that something
12 -- are you trying to get a distance on that highway?

13 COMMISSIONER CARNICELLI: Thank you, Chair. No as I'm
14 looking at the map, we have a retention basin along Lots 1, 2, 3 -- is
15 that 18, 19, something like that, 20, and then 21. There's no
16 retention basin on Lot 21, right. There is all -- so, and I just --
17 you know, because part of what, again, we're tasked with is runoff.
18 And so -- you know, and water flows.

19 So, I'm just looking at it as just like why did we not put a
20 retention basin -- and, like I said, I don't want to get into design
21 or whatever it might be, but that particular lot doesn't have one.

22 CHAIRMAN ROBINSON: Director.

23 DIRECTOR MCLEAN: That's something I would defer to the
24 Applicant to answer because maybe their design, you know, brings the
25 -- any kind of runoff from that parcel onto another section of the

1 property. So, I would defer it to --

2 CHAIRMAN ROBINSON: Okay.

3 DIRECTOR MCLEAN: -- the Applicant.

4 CHAIRMAN ROBINSON: Aloha, Stacy.

5 MR. OTOMO: Good morning, Chair, Members of the Commission.
6 My name is Stacy Otomo. To answer your question, Commissioner, the
7 retention basins were designated in separate parcels along the length
8 of the subdivision that is basically makai of the roadway in the
9 subdivision. That's where the additional runoff from the subdivision
10 would be generated. So, the idea was to bring it down into the
11 retention basin.

12 However, going back to what Rowena said is that we are not
13 precluding that the design to include retention basin on the southerly
14 side; however, we don't want to designate it in a specific retention
15 basin sight, because we might want to put it further mauka where
16 there's no improvements in the subdivision related to that particular
17 area. So, we are planning to get retention basins on that side as
18 well. The side that has the actual lots in them, is where the
19 retention basins will be placed.

20 COMMISSIONER CARNICELLI: You know, I mean if that's an Ag
21 lot, but it just --

22 CHAIRMAN ROBINSON: Commissioner Pali.

23 COMMISSIONER PALI: So, are you saying that you do intend to
24 put a basin in Lot 21, you just don't know where yet?

25 MR. OTOMO: That's correct. The idea is to not allow more

1 runoff to get down across the State highway after the subdivision is
2 built.

3 COMMISSIONER PALI: All right.

4 CHAIRMAN ROBINSON: Yeah, thank you. It's conditions I
5 think we should put in the CPA. I think Corp Counsel agrees as well
6 if you guys come up with that. And I guess we have to ask how do we
7 feel about 21 lots, how do we feel about this project before we jump
8 into conditions. You know, I think if you guys have a discussion or a
9 preference on that. You know, do we want to have, you know, gentleman
10 estates on the highway, you know, going through there? Landowners
11 will build what they want to build, but if there are 21 of them, I'm
12 not so sure. Discussion, Commissioners. Anybody? Commissioner
13 Tackett.

14 COMMISSIONER TACKETT: It seems like a long time ago, things
15 were changed to get a lot of affordable housing in there. Affordable
16 housing that was, maybe not necessarily put in the right place just
17 because of how dry it is and the amount of things that can catch fire
18 upwind from it. So, I haven't seen a lot of community support for
19 this project so far.

20 I do see that it -- probably it's going to generate revenue
21 for some people, and it's probably -- as I understand it's probably
22 going to be similar to Launiupoko where it will be more like gentleman
23 estates, so. And then the fact that more wealthy people come and own
24 that kind of estate is probably not necessarily what we need, but I
25 understand that that happens to be the way things sometimes fall over

1 here.

2 That being said, it's still a dangerous place for
3 development. And what bothers me probably the most is the fact that
4 there was a fire, and they're going to put out the fire with a well
5 that's in the area where the fire is taking place, and the fire could,
6 theoretically, take out the source of the water that's meant to
7 contain the fire. It just seems like a precarious place for it to be
8 put. So, I'm not necessarily in favor at it -- in favor of it at this
9 point. That's just what I've gotten from the information that we've
10 received today.

11 CHAIRMAN ROBINSON: Commissioners? My personal opinion, I
12 think 21 lots is too much. I think I could be more comfortable with
13 11. I think it is going to put a strain on our Fire Department and
14 their resources to try to keep that area protected and dry, just like
15 Launiupoko with how fallow it is and the water it's going to need. I
16 used to live in Maalaea, I know exactly how windy and dry it gets. It
17 is land that if it's not used is going to be a dust ball, and I think
18 -- you know, I think something should be done with it, but 21
19 Launiupoko -- nothing against Launiupoko, but I just -- I don't know
20 if that's the best resource area, but, you know, people should be able
21 to do something with their land I feel. Commissioner Carnicelli.

22 COMMISSIONER CARNICELLI: So, speaking to the motion on the
23 floor --

24 CHAIRMAN ROBINSON: Yes.

25 COMMISSIONER CARNICELLI: -- which is the approval of a

1 Community Plan Amendment with potentially four additional conditions
2 -- well, I'll just start with Dick Mayer and Albert Perez came and
3 spoke in favor of this as long as we put some additional conditions on
4 that. I think that goes a long way in my book.

5 Yes, we need affordable housing and yet there's also a chain
6 that happens when people move up. Is this going to be Launiupoko? We
7 don't know. We're making conjecture. So, to say, hey, listen, you
8 know what, I'm against rich people coming and buying houses and so,
9 then therefore I only want X rather than X, I personally like the
10 project.

11 What it was originally, two times ago, and then last time,
12 and then now, I think this is a good project. I really do. And we
13 can talk all day long about potential for fires. That can be
14 anywhere. Is it windy? Yeah, it's super windy there. If somebody
15 chooses to live there though, knowing that it's windy, then who am I
16 to say you can't live there.

17 So, I'm in support of the project. I do like the fact that
18 we're going to put in some conditions, you know, around vacation
19 rentals, around fire, protecting the trail head, traffic, runoff. So,
20 you know, is it perfect? I would love to see another Atherton project
21 here, you know, like Waikapu Town. You know, I mean that's what we
22 need. We need houses. So, to me, to act another, you know, 20 or so,
23 I'm in support of the project and the motion, Chair.

24 CHAIRMAN ROBINSON: Thank you. But I did hear testimony
25 from Mr. Mayer on his preference. If this goes, it's the difference.

1 So, I think I heard open space, and then if this project does go
2 through, then it should be done this way. Commissioner La Costa.

3 COMMISSIONER LA COSTA: Thank you, Chair. So, if we're
4 talking about conditions, hypothetically --

5 CHAIRMAN ROBINSON: Yes.

6 COMMISSIONER LA COSTA: -- I would like to have that the
7 trail is in either an easement or separate TMK in perpetuity, so that
8 it is always protected. And that there is some designated open space,
9 to be left as open space.

10 CHAIRMAN ROBINSON: Okay. Add that. Any other additions
11 the Commission would like to see? Commissioner Pali.

12 COMMISSIONER PALI: I just have a comment. I guess it's for
13 somebody other than ourselves, Corp Counsel or Planning Director.
14 Just learning my role as a Commissioner, I just don't know my
15 boundaries, and I just want to make sure I'm working within my
16 boundaries. From my understanding, this project has gone through a
17 lot of different changes. They're trying to hear the voice of the
18 community. They started with affordable housing, they changed it now
19 because the testimony was that the people didn't want affordable
20 housing in this area.

21 And so, am I supposed to be making sure that this project
22 has met the certain required laws or am I supposed to -- am I allowed
23 to impose what I would like to see on a personal level on this area?
24 I'm more confused as to the boundaries that I can work within.

25 CHAIRMAN ROBINSON: Corporation Counsel.

1 MR. GALAZIN: Thank you, Chair. And that's really a good
2 question. When you step back, what you're being asked to look at
3 right now is both a request for change in zoning for -- as you can
4 look at that map -- just a very small portion, because it already is
5 Zoned Ag in the Community Plan Amendment to Ag for the entire thing.

6 If the -- whether or not the County Council approves that,
7 then the hope is going to be that they come in for a subdivision
8 application. That may or may not be approved as proposed. There may
9 still be changes. So, what you are supposed to do, at this point, is
10 look at do they meet the requirements for a change in zoning as it
11 applies to this small portion, as I pointed out, and do they meet the
12 requirements for a Community Plan Amendment.

13 Now, you have the Staff report analysis. You do have some
14 comments from the consultants, some, you know, opinion testimony from
15 the members of the public. There is the requirement that public
16 access for that trail be maintained. That was stated clearly by the
17 DLNR. I think that's a requirement that's already in there, but you
18 could, you know, articulate more to the Community Plan Amendment.

19 But so far it is what the project ultimately looks like,
20 it's going to be in the back of your mind, but that's not really the
21 goal here. The goal here is to say if we're going to allow the
22 Community Plan Amendment to go forward, what is the impact going to
23 be, and then what sort of condition should we put on to mitigate those
24 impacts.

25 COMMISSIONER PALI: And a follow-up question, please, Chair.

1 But the allowance, does it fall specifically on us? The allowance
2 that we say yes or no, depends on whether they follow the current
3 requirements legally, at this point? Just a clarification.

4 MR. GALAZIN: Mr. Chair. Thank you. Yeah, that is correct.

5 CHAIRMAN ROBINSON: Commissioner Pali, I think what it is,
6 is we can arbitrarily make up stuff that has to be certain guidelines.
7 We're only doing a recommendation, we're not the final say. This is
8 just recommending that we want the Council -- usually we want Council
9 to look at certain points that we may feel is pertinent to the
10 project. Community Plan Amendments, they're here to ask for a change
11 of it. So, if they weren't asking for a change, then we would have
12 not input anyway.

13 So, when there's a change, that's where we want to make sure
14 that, you know, it follows the different criterium of what we're
15 looking at. You know, sort of Agriculture. You know, like
16 Launiupoko. It's not that we're close to the hub, it's that it's
17 agriculture zoned. It could be zoned something different. It could
18 be R-3, R-5. You know, that's the type of thing. It's not that we
19 don't want a development, it's just what we do categorize these people
20 and what type of property taxes would they pay, not -- you know, we
21 can have an opinion if they develop or not, but it's not our say if
22 there's development.

23 COMMISSIONER PALI: Yeah.

24 CHAIRMAN ROBINSON: Yeah.

25 COMMISSIONER PALI: Okay.

1 CHAIRMAN ROBINSON: There's a lot of opinions on this
2 Commission. That's why we're here. That's why we're here.

3 COMMISSIONER PALI: We can work within --

4 CHAIRMAN ROBINSON: Yeah.

5 COMMISSIONER PALI: -- (indiscernible).

6 CHAIRMAN ROBINSON: Yeah.

7 COMMISSIONER PALI: And one last question. Just for Corp
8 Counsel, Chair, if I may?

9 CHAIRMAN ROBINSON: Of course.

10 COMMISSIONER PALI: Regarding Tina Gomes' comment. If
11 there's something that we don't know about, is there a group working
12 in the background in trying to define the undefined sections right
13 now, or are we just leaving it up to developers to come with undefined
14 properties, and then they're just trying to adopt a current defined
15 definition and label?

16 CHAIRMAN ROBINSON: Director.

17 DIRECTOR MCLEAN: Thank you. As I mentioned, we just had a
18 project come out of one of the Council Committees, and it will be
19 moving on to Full Council for final adoption to replace our existing
20 paper zoning maps with a digital map. And for those Zoning Districts
21 that have designations like Open Zone, we're recommending that those
22 be replaced with Open Space or districts that are actually in the
23 County Code.

24 COMMISSIONER PALI: Okay. So, that's in the works.

25 DIRECTOR MCLEAN: That should be completed within the next

1 month or so, also.

2 CHAIRMAN ROBINSON: There's always something in the works,
3 it's just -- if no further comments, are we ready for the vote? No,
4 but I mean -- I mean, she's going to read the conditions on part of
5 it. I mean, did you (indiscernible)?

6 COMMISSIONER CARNICELLI: There's a motion.

7 CHAIRMAN ROBINSON: Are we going to add -- well, we're
8 always going to add conditions.

9 COMMISSIONER CARNICELLI: If I could, Chair?

10 CHAIRMAN ROBINSON: Yes, please.

11 COMMISSIONER CARNICELLI: Because right now we have a motion
12 on the floor to approve as recommended by Staff. We have not added
13 the conditions in. So, what I would like to do is hear what the
14 recommendations are, and then amend my motion to include those, is
15 what I would like to have done.

16 CHAIRMAN ROBINSON: Okay.

17 COMMISSIONER CARNICELLI: Thank you.

18 DIRECTOR MCLEAN: The first is no short-term rental homes,
19 bed and breakfast homes, or other transient accommodations shall be
20 permitted or conducted.

21 CHAIRMAN ROBINSON: Okay.

22 DIRECTOR MCLEAN: Next, the Applicant shall construct and
23 maintain firebreaks on all perimeter property boundaries, as approved
24 by the Fire Department.

25 CHAIRMAN ROBINSON: Okay.

1 DIRECTOR MCLEAN: Next, the Applicant shall provide
2 vehicular access from Honoapiilani Highway to the Lahaina Pali Trail
3 as shown on the survey map provided by the Applicant at the September
4 11th, 2018, meeting, or as otherwise approved by DLNR and Na Alahele.
5 Such access shall be provided via a separate lot or a recorded
6 perpetual easement.

7 Next, the Applicant shall coordinate with the State
8 Department of Transportation and the Planning Department to ensure
9 that a multi-modal transportation corridor is provided along
10 Honoapiilani Highway -- along the project's Honoapiilani Highway
11 frontage as approved by the Planning Department. The Applicant shall
12 dedicate any additional land that may be required for such corridors
13 at no cost to the State or the County.

14 And then, lastly, Commissioner La Costa made a comment about
15 open space. I need more specificity on that. It could say at least X
16 number of acres shall be left in undeveloped open space, and you might
17 want to specify where you want that to be. I don't know how many
18 acres and where you see that being located.

19 COMMISSIONER LA COSTA: It was my thought, Director, that
20 the section that is currently marked on the map that was hashed
21 across, that that might be the space, but I think that that's
22 something the Developer may need to determine. I would think that
23 perhaps a percentage of the total acreage. Like ten percent of the
24 total acreage be put in open space.

25 CHAIRMAN ROBINSON: So, you know, how you have the

1 suggestion that they should look at --

2 DIRECTOR MCLEAN: Correct.

3 CHAIRMAN ROBINSON: -- designating some -- and that part, if
4 I didn't hear, Commissioner La Costa asked for the separate TMK. Did
5 we address that in the conditions --

6 DIRECTOR MCLEAN: Yeah.

7 CHAIRMAN ROBINSON: -- for the trail?

8 DIRECTOR MCLEAN: Yeah.

9 CHAIRMAN ROBINSON: Okay. All right. Are we --

10 COMMISSIONER CARNICELLI: So, Chair, then I would like to
11 amend my motion to include the four conditions that the Director just
12 read into the record.

13 DIRECTOR MCLEAN: No, we have five.

14 CHAIRMAN ROBINSON: Five?

15 DIRECTOR MCLEAN: We have six.

16 CHAIRMAN ROBINSON: Six.

17 COMMISSIONER CARNICELLI: There were five?

18 DIRECTOR MCLEAN: Five.

19 CHAIRMAN ROBINSON: Five, sorry.

20 DIRECTOR MCLEAN: I'm just not sure how to word the open
21 space condition.

22 COMMISSIONER CARNICELLI: I don't want to include the open
23 space condition --

24 DIRECTOR MCLEAN: Oh, then --

25 COMMISSIONER CARNICELLI: -- in mine. Yes.

1 DIRECTOR MCLEAN: I read four.

2 COMMISSIONER CARNICELLI: Okay. You read four. That's what
3 I want to include in -- that's what I want to amend my motion to say,
4 is the four that you read into the record, or did you read five?

5 COMMISSIONER CARNICELLI: I thought it was four. Vacation
6 rentals, fire, trail head, traffic corridor.

7 CHAIRMAN ROBINSON: TMK.

8 COMMISSIONER CARNICELLI: No, the TMK is part of the trail
9 corridor.

10 DIRECTOR MCLEAN: Short-term rental homes.

11 COMMISSIONER CARNICELLI: Right.

12 DIRECTOR MCLEAN: Firebreaks.

13 COMMISSIONER CARNICELLI: Right.

14 DIRECTOR MCLEAN: Vehicular access to the trail and that
15 includes the language about a separate TMK and an easement.

16 COMMISSIONER CARNICELLI: Right.

17 DIRECTOR MCLEAN: And then the multi-modal corridor
18 including land dedication, if needed.

19 COMMISSIONER CARNICELLI: Correct. Yes.

20 DIRECTOR MCLEAN: So, that's four.

21 COMMISSIONER CARNICELLI: So, I would like to amend my main
22 motion to include the four conditions that the Director just read into
23 the record.

24 CHAIRMAN ROBINSON: Mr. Fasi.

25 MR. FASI: Are we missing the trail easement in perpetuity?

1 CHAIRMAN ROBINSON: It's tied in, in there.

2 MR. FASI: All right. Thank you.

3 CHAIRMAN ROBINSON: Do we have a second?

4 COMMISSIONER CASTRO: Second.

5 CHAIRMAN ROBINSON: We have a second. Commissioner La
6 Costa, would you like to -- are you okay with the open space not
7 included, or would you also like to have an amendment yourself?

8 COMMISSIONER LA COSTA: I think that the open space is
9 important in this project, so I would like to see the open space in
10 the motion, so --

11 CHAIRMAN ROBINSON: You can have a -- we can have a
12 recommendation.

13 COMMISSIONER LA COSTA: Okay.

14 CHAIRMAN ROBINSON: We can vote on that right now since it's
15 not in the original motion.

16 COMMISSIONER LA COSTA: Okay.

17 CHAIRMAN ROBINSON: Is our -- we would like to vote on an
18 additional condition to have some type of open space. For the
19 Department, I guess, and the Applicant to work out some open space.
20 Anybody have any questions on the other condition? Seeing none, all
21 those in favor of adding a condition, please raise your right hand.
22 You want to add a condition of open space, it was on the initial --
23 Mr. Carnicelli's motion.

24 COMMISSIONER LA COSTA: Added to -- yeah.

25 CHAIRMAN ROBINSON: Add -- you know, to look at adding some

1 open space, right?

2 COMMISSIONER LA COSTA: Correct.

3 CHAIRMAN ROBINSON: All those in favor, please raise your
4 right hand. All those opposed. That's two for, that's two oppose,
5 that's two abstaining, which is actually a positive vote, and I will
6 add that open space onto that amendment. So, we'll have that as a
7 recommendation. It's not a -- it's a recommendation. Council can
8 take it or leave it. Take it from this to be discussed. If they're
9 open to it, that might help the Applicant get something and help them
10 get something through the Council with giving a little bit more.
11 Let's hold on the final.

12 DIRECTOR MCLEAN: Just for our clarification, what does the
13 condition say or what --

14 CHAIRMAN ROBINSON: Well, ask them to look at designating
15 some open space as part of this project.

16 DIRECTOR MCLEAN: Okay. So, it's not a specific area or a
17 certain amount of acreage.

18 CHAIRMAN ROBINSON: No.

19 DIRECTOR MCLEAN: It's just the Applicant shall consider.

20 CHAIRMAN ROBINSON: Yeah, it's pretty open. Yeah, we got to
21 vote.

22 DIRECTOR MCLEAN: Okay.

23 CHAIRMAN ROBINSON: And, Director, can we -- yes,
24 Commissioner Gomes.

25 COMMISSIONER GOMES: I'm not sure -- I mean, I don't know if

1 | this is actually a condition that could actually be added. You
2 | mentioned in regards to the 12 Ag lots. So, this is only Ag lots; am
3 | I correct, Mr. Fasi?

4 | MR. FASI: Yes, that is correct.

5 | COMMISSIONER GOMES: And is there a possibility of then
6 | amending that to -- because six is affordable; I believe. Is -- that
7 | is what I heard.

8 | CHAIRMAN ROBINSON: Six because it's five --

9 | COMMISSIONER GOMES: Six -- so, it's five.

10 | CHAIRMAN ROBINSON: It goes up to six.

11 | COMMISSIONER GOMES: So, six out of the 12 --

12 | CHAIRMAN ROBINSON: Twenty-one. Twenty-one lots.

13 | COMMISSIONER GOMES: Oh, 21. My apologies. I see 12, and
14 | then 21. Okay. I'm not sure if this could be a condition or even an
15 | amendment at this time to be considered, but to change the
16 | consideration of it not all being Ag lots, or is that just a moot
17 | consideration? Okay. I see the Director shaking her head. Because
18 | it is Ag.

19 | DIRECTOR MCLEAN: It is changed to Ag.

20 | COMMISSIONER GOMES: It's changed to Ag.

21 | CHAIRMAN ROBINSON: Yeah, it's -- the majority of the
22 | project is Ag and there's a few that they want to make it towards all
23 | Ag, but those aren't part of the --

24 | COMMISSIONER GOMES: Right, it's --

25 | CHAIRMAN ROBINSON: -- lots.

1 COMMISSIONER GOMES: -- undefined.

2 CHAIRMAN ROBINSON: Yeah, but the other lots are already Ag,
3 as it is.

4 COMMISSIONER GOMES: Which, might I add -- I just want to
5 just make clear my experience with this verbage that needs to be
6 clarified with County Council. You know, just got to make some stuff
7 clear.

8 CHAIRMAN ROBINSON: Duly noted.

9 COMMISSIONER GOMES: Trust me.

10 CHAIRMAN ROBINSON: Okay.

11 COMMISSIONER GOMES: I've been through it.

12 CHAIRMAN ROBINSON: Director, shall we go with the motion
13 and the vote? And shall we say six conditions or five conditions?

14 DIRECTOR MCLEAN: Five conditions.

15 CHAIRMAN ROBINSON: Five conditions. Well, why don't you
16 read it all again? Those four, and we added one.

17 COMMISSIONER CARNICELLI: What is the -- could you please
18 read the fifth, what it is?

19 DIRECTOR MCLEAN: What I have right now is the Applicant
20 shall consider leaving land in undeveloped open space.

21 CHAIRMAN ROBINSON: Which was already approved by this
22 Commission. That's going to be a condition, so that one already
23 passed. That's one condition that's in.

24 COMMISSIONER CARNICELLI: It passed as an amendment to the
25 motion.

1 CHAIRMAN ROBINSON: Right.

2 COMMISSIONER CARNICELLI: It has not been voted --

3 CHAIRMAN ROBINSON: Right.

4 COMMISSIONER CARNICELLI: -- it is not approved. So, what I
5 want --

6 CHAIRMAN ROBINSON: So, write it down again and go back and
7 vote again.

8 COMMISSIONER CARNICELLI: So, here's what I would like to
9 ask, Chair. Is before we vote on this -- because we're placing
10 conditions on an Applicant that may be a deal killer.

11 CHAIRMAN ROBINSON: No, but it's a recommendation to the
12 Council. We have -- we are not placing anything. We're recommending
13 to a Council. There's no -- we don't place anything. So,
14 recommendation to consider open space. Consider, okay. I mean we got
15 to vote. Let's go. Director, please.

16 DIRECTOR MCLEAN: The motion before you is to include the
17 Community Plan Amendment subject to five conditions. Would you like
18 me to read those?

19 CHAIRMAN ROBINSON: No, I think they're fine. I think we've
20 got it. All those in favor please raise your right hand. One, two,
21 three, four, five. All those opposed. The motion passes. The
22 recommendation passes. Thank you. Now, let's get to the CIZ. Do we
23 have a motion on the CIZ? Mr. Carnicelli.

24 COMMISSIONER CARNICELLI: I move to approve, as recommended
25 by Staff.

1 CHAIRMAN ROBINSON: Do we have a second?

2 COMMISSIONER LA COSTA: Second.

3 CHAIRMAN ROBINSON: Second by Commissioner La Costa. Do we
4 have any discussion on the zoning? Seeing none, because we got our
5 conditions on the CPA, Director.

6 DIRECTOR MCLEAN: The recommendation -- the motion is to
7 approve the Change in Zoning.

8 CHAIRMAN ROBINSON: All those in favor, please raise your
9 right hand. That's four. All those opposed. Two. I'll vote for
10 approved. Motion pass. Let's take a five-minute break. Thank you.

11 (Recess)

12 CHAIRMAN ROBINSON: Next item on the agenda, Director.

13 DIRECTOR MCLEAN: Thank you, Chair. This is a communication
14 item from Paradis Ridge Estates LTD Partnership, requesting amendments
15 to the SMA Use Permit for the Paradise Ridge Estates Project, a 32-
16 unit condominium complex with swimming pool, accessory structures, and
17 related improvements to raise some elevations to allow maximum peak
18 height of five feet higher than the original approval for Buildings 1
19 through 7, and to extend the time to complete construction to March
20 31st, 2022.

21 This is located on 2.69 acres of land in the A-1 Apartment
22 District at 2757 South Kihei Road, TMK: 3-9-4, Parcel 132 in Kihei.
23 Ann Cua is the Project Planner.

24 MS. CUA: It's still morning. Good morning, Mr. Chair,
25 Members of the Commission.

1 CHAIRMAN ROBINSON: Aloha, Ann.

2 UNIDENTIFIED FEMALE COMMISSIONER: Aloha.

3 MS. CUA: So, what I would like to do is give a brief
4 introduction and some history on the project, call the Applicant up to
5 take you through a PowerPoint, and then we can come back and talk
6 about our analysis or any questions.

7 So, back on May 24th, 2005, the Maui Planning Commission
8 granted a Special Management Area Use Permit for the Paradise Ridge
9 Project. And the approval letter is dated -- I mean, is attached as
10 Exhibit number 1. At that time there were two interventions submitted
11 on the SMA Permit. One from Isaac Hall, attorney on behalf of Kenneth
12 and Kathy Barr, and the other from Richard Rost, attorney for Hale
13 Kamaole Owners Association. A settlement was reached with both
14 parties and the petitions to intervene were withdrawn.

15 Onsite construction of portions of an eight-inch water main
16 pipe was initiated in March of 2006, which deemed initiation of
17 project construction. The confirmation letter from the Department
18 confirming the initiation of project construction is attached as
19 Exhibit 2. And, at that time, the project was required to complete
20 construction by March 31st, 2011.

21 The project received several SMA Permit time extensions
22 approvals to complete construction with the current date to complete
23 construction as March 31st, 2019.

24 On March 3rd, 2017, the Planning Department granted a site
25 plan modification for the project, which included some minor

1 adjustments to the site plan involving parking, security, and
2 pedestrian gates, the change of the pool area from square to round,
3 and relocation of trash enclosure to provide a larger turnaround for
4 trucks.

5 So, Michelle kind of mentioned the project. It's a 32-unit
6 project, Buildings 1 through 8. In addition to the increased pad
7 elevation, they're also requesting a flatter slope roof for all
8 buildings to lessen the impact on the views from neighbors. So,
9 they're proposing a new roof pitch of 3:12 instead of 4:12, and then
10 the three year time extension to complete construction to get the
11 project constructed by March 31st, 2022.

12 The Applicant has indicated that the request to raise the
13 max peak height elevations for Buildings 1 through 7 is to reduce the
14 impacts of neighbors as follows: First a reduction in excavation. At
15 the higher pad elevation, which is how the project was approved back
16 in 2005, there -- excuse me. Excuse me. At the higher pad elevation,
17 which is right now, there will be less material to hammer and
18 potentially blast to reach the current approved pad elevations,
19 significantly reducing noise complaints and safety concerns to develop
20 properties around Paradise Ridge.

21 The original site plan that was approved by the Commission
22 in 2005, required the removal and export of approximately 19,000 cubic
23 yards of material. And that's approximately 1,267 truckloads, as well
24 as the import of 7,000 cubic yards of material, approximately 466
25 truckloads. It will also have -- this proposal will also take care of

1 a reduction in traffic and noise. With less material to haul out, the
2 change will significantly reduce noise and traffic to the surrounding
3 neighbors, as well as reducing the time, duration, and site work.

4 The amendment request allows for the export of 7,000 cubic
5 yards of material from the site, as opposed to 19,000 cubic yards,
6 which is a reduction of 12,000 cubic yards or 800 truckloads. Seven
7 thousand cubic yards of material must still be imported to support the
8 revised building pad elevations.

9 It's very important to note that the layout, the floor plan,
10 the density, and the footprint of the buildings will not change and
11 will remain as approved by the Planning Commission.

12 The main reason why we are here today is because of the
13 raising in height of the elevations -- of the building pad elevations.
14 Back in 2005, the interventions were based -- partially based on
15 height and views from public rights-of-way. And I remind the
16 Commission that the SMA law protects public views, not private views.

17 As Michelle mentioned, the project consists of 32 condos
18 with eight four-plex two story buildings. The units are for long-term
19 residential use and will not be used as vacation rentals.

20 The report -- the zoning for the project -- when the project
21 got their SMA approval back in 2005, the A-1 Apartment District Zoning
22 height limit was 30 feet. In 2013, the A-1 Apartment District was
23 changed to allow for 35-foot height limit. It is important to note,
24 though, even though the allowable height is 35 feet, as mentioned in
25 the report, none of the buildings will be higher than the 30-foot

1 height requirement. In fact, two of them will be 27 feet high.

2 I think I will stop for now, in the interest of time, and I
3 will let the Applicant do their testimony. Oh, one important thing.
4 When we prepared the staff report, the only letters that we had
5 received were letters from the intervenors because in order to not
6 have a public hearing, we need a waiver of the intervenor's rights to
7 not have a public hearing. We received letters both from Kathy and
8 Kenneth Barr -- Kenny Barr, as well as the AOA of Hale Kamaole.

9 But since then, we received a number of emails and letters.
10 So, those have all either been emailed to you or passed out to you
11 today, because we just got them either last night or this morning.
12 So, what we have as of now, is we have four letters of support, but I
13 need to note that two of them are from the same person. We have seven
14 letters of opposition. And I need to note that two of them are from
15 the same person. And we have six letters of concern, and three of
16 them are from the same person.

17 So, with that I would turn it over to the Applicant to take
18 you through their PowerPoint, and then I'll come back up for questions
19 and to go on with the analysis and recommendation.

20 MR. COOK: Good morning, Commissioners. My name is Thomas
21 Cook. I'm the project manager for Paradise Ridge. Thank you for the
22 opportunity to come and make a presentation today. I think that this
23 -- our slide show or PowerPoint will bring a lot clarity to what we're
24 proposing.

25 So, I'm going to show the -- okay. So, a bit about Paradise

1 Ridge. Why we're -- number one, why we're requesting an SMA
2 Amendment, and then also we're going to show pictures of what the
3 amendments we are requesting will physically look like. And, finally,
4 the project's assistant Dr. Jenn Salisbury is going to explain about
5 the communications and goodwill that we've done an outreach with
6 Paradise Ridge neighbors.

7 Paradise Ridge is located in Kihei, across from Kamaole III
8 Beach and shares a driveway with Hale Kamaole when completed. During
9 completion, the access to the site is off of Keonekai Road near the
10 park. Paradise Ridge is within walking distance of two parks.

11 If you look at this -- go back one slide. If you look at
12 this, you can see this is an infill project. It's a really classic
13 infill project. It's shoe horned in, in the midst of a lot of highly
14 densely developed areas. And I'll touch up -- that's partially why
15 some of the delay of construction has occurred is because of the
16 location of this project.

17 Okay. This is a closer view of the construction access to
18 the Paradise Ridge property. We have requested and received a right
19 of entry agreement with the County of Maui to use the unimproved
20 portion of the north-south collector road. You'll see from this,
21 Keonekai Villages is the area that will be impacted by our import and
22 export of construction materials. We are in communication with the
23 various members of that area. We're going to be improving the road
24 with gravel and dust control. And as we've said, we've significantly
25 reduced the amount of import and export.

1 Kihei Shores is also our adjacent neighbor. Hale Kamaole is
2 our neighbor that's between South Kihei Road and the property. Hale
3 Kamaole is going to be the access for the residents for Paradise
4 Ridge. Maui Kamaole to the south is a very large, established
5 development and that's where our south retaining wall is, and we'll
6 talk about that.

7 Am I speaking in this mic okay? Can everybody hear me?
8 Okay. Okay. This is a virtual rendering of the eight four plexes
9 that consist of Paradise Ridge. The eight buildings are numbered 1
10 through 8, starting with the mauka building, Building 1, to the makai,
11 Building 8. As the property slopes towards the ocean, the building
12 elevations roughly follow the topography of the land. There are two
13 retaining walls that are to be constructed. One on the south side,
14 Maui Kamaole, and one on the north, the Kihei Shores sides of the
15 property.

16 Because Paradise Ridge is an infill project with difficult
17 retaining walls, we could not design a safe retaining wall with the
18 current approved SMA building pad's elevations. We discovered that if
19 the building pad elevations for Building 1 through 7 were raised five
20 feet, the retaining walls could be safely designed and constructed.
21 This illustration is of the north wall bordering the Kihei Shores,
22 which is -- that building permit is under review.

23 If I may comment for a second on this. Although the south
24 wall has based lower, the north wall is higher, and the access
25 driveway instead of being asphalt is concrete. So, this is not simply

1 just trying to change the pad elevation to make the project more cost
2 effective or cheaper. What it's done is it's reallocated costs from
3 the south wall to raising the north wall and a concrete access road.

4 So, this is -- if we could have constructed safely according
5 to the existing SMA, we would have. It would have required tie backs
6 into Maui Kamaole's land. And we requested and that was denied. So,
7 that's partially -- that's why we say we cannot safely construct it.
8 Normally, you would use like sheet pilings and a pile driver along the
9 boundary, not very user, neighbor friendly. We're trying to be -- you
10 know, an eco-friendly, conscious development.

11 Also, because of the substrate combination, it's not all the
12 salt, but it's rocks, and boulders, and a variety of things. So,
13 sheet short piling was not an option. Not only would it have been
14 noisy and extremely invasive, it wasn't an engineering option.

15 Okay. I've included a concept of what we anticipate the
16 final walls will look like on the south. This slide includes quite a
17 bit of greenery hiding the actual wall. This is a conception of the
18 south wall, which will border Maui Kamaole. This, by the way, is a
19 little bit of my pet project for people being able to grow herbs and
20 stuff on the wall, so. But what this is, is it's a concrete wall that
21 basically has some irrigation on it, and it enables you to plant
22 plants on the face. And so, you're not -- this is in the backyard of
23 the units that are facing the south.

24 When you look at the current SMA approval heights on all
25 eight buildings at Paradise Ridge, we must draw attention to the

1 approved building height, which is the distance between the building
2 pad and the building peak, has not changed from the original SMA
3 approval. Buildings 1 and 2 are 27 feet or less. The remaining
4 buildings are 30 feet or less.

5 I've included in this slide the maximum peak elevation of
6 each -- peak elevation of each building as currently approved by our
7 existing SMA. However, if Buildings 1 and 7 are raised five feet,
8 Building 8 remains the same elevation. The following changes are
9 noted. So, this is just -- this graph you can refer to, we're
10 maintaining our minimum heights -- our maximum heights, and this is
11 showing you -- doing the math for you, so you could see what the
12 impact is.

13 The Paradise Ridge Property is a narrow strip. The roof
14 heights proposed, versus approved is better shown in two halves. This
15 is the mauka side of Paradise Ridge showing Buildings 1 to 4. Please
16 note that Buildings 1 and 2, 27 feet high, are shorter than Buildings
17 3 and 4, 30 feet high. The black dark shaded area is the retaining
18 wall on the south side. This next slide shows the proposed heights
19 and improved heights of Buildings 5 through 8. Building 8, which is
20 at the top left does not change.

21 I realize that these profiles I just showed you are hard to
22 see, so we created a visual picture from two public roadways to show
23 you what the approved heights would look like and what the proposed
24 heights would look like. One set of photos is from South Kihei Road
25 looking mauka, the other is from Kauhale Street looking makai. From

1 South Kihei Road, the public would see Building 8, left, and Building
2 7 to the right front.

3 At the current -- this is the current SMA building pad
4 elevations. And this is a superimposed reference for your -- to
5 scale, for your visualization. This is the view from South Kihei Road
6 showing the requested building pad elevation for Building 7 and
7 Building 8's elevation does not change. And then this -- with this as
8 an approved building pad elevation in orange and the requesting
9 building pad elevation in purple, the change in the public view of
10 Building 7 height increase is minimal change when seen from South
11 Kihei Road.

12 The public can also see Paradise Ridge from Kauhale Street,
13 the street mauka of Paradise Ridge off of Keonekai. This is the view
14 of Paradise Ridge at the approved building pad heights. I've added a
15 red arrow to show you the elevation of the buildings. It's really
16 difficult to see this from here at all.

17 As a side note, the green home on the left is the home of
18 one of the original intervenors at Paradise Ridge. He and his wife
19 provided a letter of support for the SMA amendment that we have
20 requested. They are very supportive of the project.

21 This is the public view of our requested modified heights.
22 Again, I have put in a red arrow to make elevation easier to spot.
23 And then this slide comparing the two heights proposed and approved.
24 I should have brought up a bottle of water.

25 CHAIRMAN ROBINSON: You want to share? Mine's empty, sorry.

1 MR. COOK: It's all right. Okay. Paradise Ridge has always
2 sought to be a good neighbor, even during the planning stages. The
3 consideration of safe construction of the retaining walls was not the
4 only concern in requesting the site be lifted. We need to reduce the
5 disturbances to our neighbors during construction.

6 Building the approved SMA building pad elevations would have
7 involved construction and site work to get to the approved heights.
8 Namely, the upper Buildings 1 and 2, may potentially have involved
9 blasting and likely hammering the rock to get to the heights approved.
10 The truckloads out due to the cut of the property would be
11 approximately 1,267 truckloads, while on 466 truckloads back in. This
12 would be all down the construction access road, behind the homes on
13 Kauhale Street and past Kihei Shores and Keonekai Villages.

14 With our new elevation, the way it's going to work out is
15 all of the -- there will be no empty trucks. Excavated material will
16 be taken up to the material processing plant mauka of the Piilani
17 Highway. The processed material will be brought back in and placed.
18 PV Sullivan is -- Pete Sullivan is here, is our local civil
19 engineering and site contractor.

20 So, it's -- we're really proud of the fact that we're going
21 to have full trucks coming -- going out and full trucks coming in, and
22 then we're going to be recycling and reusing all of the excavated
23 material as fill. At this time, I would like to introduce Dr.
24 Jennifer Salisbury, and she's the project administrator sitting next
25 to me, and she's going to -- oh, I forgot one.

1 Okay. Okay. We realize that the building pad elevations
2 moved higher may also disturb the neighbors. In an effort to reduce
3 the profile of Paradise Ridge Buildings, we are also requesting to
4 flatten the roof slopes. The upper building is approximately 4:1
5 slope, while the lower illustrates the same building, but with at 3:1
6 slope. You can see the bottom roof line is a much shorter profile.

7 One of the most common questions we have gotten from
8 prospective buyers is about photovoltaic. We do have solar panels on
9 our buildings, the answer is yes, to comply with the solar hot water.
10 However, our hip roofs PV is not practical on the roofs. If the HOA
11 wants to add solar carports in the future, the parking areas would
12 ideal for this. You want me to talk about the infrastructure that
13 we've -- yeah.

14 We are installing, so that the HOA could implement for all
15 of the residents the conduits, so that people could have charging
16 stations at their parking stalls and the conduit is going back to
17 their house to their meter -- back to their unit. So, we are putting
18 -- we're not pulling the wire, but we're putting in the infrastructure
19 for that recognizing that that is something that is -- you know, it's
20 the future, and it's really a good thing, so. Okay. And I'm going to
21 introduce Dr. Salisbury. Thank you.

22 CHAIRMAN ROBINSON: Thank you.

23 MS. SALISBURY: Good morning, Mr. Chairman.

24 CHAIRMAN ROBINSON: Aloha.

25 MS. SALISBURY: Commissioners. Thank you for this

1 opportunity. Thank you to Ann. My name is Jennifer Salisbury.
2 Myself and my family are longtime Maui residents, Chamber members,
3 members of boards, rotary clubs, and contributing members of the Maui
4 Community. I'm the project assistant to Paradise Ridge, and I happen
5 to be married to Michael Salisbury who originally purchased the
6 Paradise Ridge property in 1995. And, yes, you heard me correct, that
7 is 23 years ago. There has been a few changes since then.

8 I got involved, actively, two-and-a-half years ago. With my
9 background I wanted to jump in as the administration person and really
10 make sure that we could champion Paradise Ridge Homes. And I'm the
11 one that reviews everything again and again. And I ensure that the
12 details are all completed. I'm the one that calls and asks on how we
13 can do things properly. Poor, Ann, I ask all the time, how do we do
14 this properly. I don't understand this. I'm the one always asking
15 the question.

16 It's my husband and I, and another family friend -- family
17 that is a longtime group of people together. It's just us. We're not
18 A&B, we're not billion dollar developers, it's us. Glenn Richardson
19 is also the other party. He's got a family reunion in Ireland,
20 otherwise he would be here with us today. That's the only reason he's
21 not here.

22 And I wanted to let you know that while the Paradise Ridge
23 team and I prepared the final site plan and the SMA extension in
24 February-March of 2017, as Ann mentioned, somewhere in the mass
25 amounts of communications to Maui County and our discussions about the

1 safe retaining walls, specifically the south wall, and the flatter
2 roof slopes, it escaped our official notices.

3 And when we received the complaint from Maui Kamaole in May
4 of this year, we scoured every single thing. I have minutes on every
5 meeting, I document every phone call, all the emails. We went back
6 and forth, and back and forth, and we have lots of conversations
7 between us all about these safe retaining walls. And somewhere, I
8 missed it, that Paradise Ridge never officially requested the request
9 that you're seeing today. It was my fault.

10 So, this complaint brought it to light that we missed it,
11 that I missed it. Okay. So, now we're fixing it. Now, we're going
12 back. This is why we're doing this. So, we were operating 2017 and
13 2018, not aware that we had missed this. And I would like to explain
14 the communications we've had with our neighbors during this entire
15 process, including the SMA amendment request.

16 And please know that for each of the neighboring complexes
17 around Paradise Ridge, because this is quite an interesting infill
18 project, any time we are around, a lot of people see us, they want to
19 ask questions. Frequently, we'll get people yelling over their fences
20 wanting to know more. We'll give them a business card, explain what's
21 going on, or introduce ourselves. And we happen to know quite a few
22 people around Paradise Ridge now because of that and in addition to
23 our normal Maui living.

24 But we've done two things to support communication -- the
25 official Paradise Ridge communication with our neighbors. We've given

1 all of them Paradise Ridge contact information, including emails and
2 phone numbers for the project to all the complexes. And we've done
3 that in the event of an emergency situation. We've actually had
4 counsel -- Hale Kamaole started, I think, three or four years ago and
5 said, in the event something goes on, what's our official chain of
6 command for communication, and we've provided that. And then we said
7 that's a good idea, and we gave it to everyone.

8 We also requested, from each complex, how they would like us
9 to communicate with their Board or their manager. Again, we happen to
10 personally know quite a few people in this immediate area, but how did
11 they actually want us to communicate. And so, as this project has
12 been going on for years, we -- there's always been this debate, do we
13 communicate with people individually, or do we communicate with the
14 Board through the channels that they have requested.

15 As you'll see shortly, communicating with individual
16 residents and owners is very different than communicating with an HOA
17 or the AOA around Paradise Ridge. Each of the boards has directed us
18 to either communicate through their property manager, their board
19 chairman, or both. So, we have communication windows for everyone,
20 but we were specifically directed not to have individual contact with
21 the owners about Paradise Ridge by all of the complexes.

22 So, we have not. I could have called friends in these areas
23 and said, would you write us a letter of support, you've known us
24 forever, we've been on the chamber together, we've been in rotary
25 clubs together, but we did not do that, and this was a big bone of

1 contention in our house, because we could have gotten more letters of
2 support, but we specifically did not do that. So, why we only have
3 four letters of support? We have more folks that are going to support
4 us here, but that's one of the reasons why. Now, does that mean we
5 haven't had any communication? No, we had lots of communication.

6 So, let me explain some of this ongoing communication.
7 First, with the two intervening parties to Paradise Ridge's original
8 SMA Application and approval in 2005, Hale Kamaole and Kathy and Kenny
9 Barr. We've actually had quite a bit of communication with both of
10 these parties, especially Hale Kamaole. We communicate with them most
11 often, at least once per month, many times more, specifically,
12 regarding the access. We have an access and utilities easement with
13 them. And so, we will be doing our off-site services down their
14 driveway, and so they're always wanting to know timing and start, and
15 when are we going to do that.

16 But we communicate with Hale Kamaole through both their
17 property manager and their board chairman and most of the time we talk
18 to their property manager either on the phone, but likely in person.
19 We just talked to them this week.

20 The Hale Kamaole -- they -- we've explained the SMA
21 Amendment, we've explained what's going on. They just want to know
22 when we're starting. They really want to get the fire hazard, and the
23 branches, and the trees, and all the different things that are
24 impacting the very mauka side of their property, they want to get this
25 going. So, they're asking when we're going to move forward.

1 And so, the SMA Amendment changes minimally impact Hale
2 Kamaole as far as the view changes. They just want us to get started.
3 Kathy and Kenny Barr, they're on the mauka side. They own the
4 property on Kauhale Street, directly behind -- directly mauka of
5 Paradise Ridge property. They have been working with Paradise Ridge
6 and with my husband, Michael Salisbury, for 23 years, and I can assure
7 you that they were not always supportive.

8 We've educated them, we've worked with them, we've talked
9 with them about the safe retaining walls and that, basically, we
10 needed to have their support and how could we work with them and --
11 the Barrs are almost 80 years old now, and they're looking, going, is
12 this actually going to happen, and we said, yes, it is. This is what
13 we need to work with. We're asking for this amendment, and they said,
14 okay, and they provided the two letters that you've seen.

15 So, they both have waived their right to a public hearing
16 and there were no other intervenors, no one from Mau Kamaole, or Kihei
17 Shores, or Keonekai Villages, nor any individual owners intervened
18 other than those two people.

19 But let me talk for a moment -- the reason I left this slide
20 up is so that I can show you the other communication around the
21 parties of Paradise Ridge has been significant, including emails,
22 phone calls, in person meetings with not only me, Michael, our
23 architect, our project manager. We've also used our excavator that's
24 on-site with operating time, fuel. We've gone -- done as much as we
25 possibly can to explain Paradise Ridge's development and answer their

1 questions.

2 So, let's start with Kihei Shores. Kihei Shores is the
3 neighbor to the north of Paradise Ridge. In our communications with
4 Kihei Shores, we have been directed to go through their property
5 manager even though we have met and know several individual owners.
6 We met and had contact information for several of their board members.
7 Our communications with Kihei Shores has included, over the years,
8 countless emails, phone calls. Their previous long-term property
9 manager has since retired, which sort of tells you about the longevity
10 of this project.

11 Communication regarding a potential easement agreement for
12 outside services. When we went to review the permit for the off-site
13 services with Maui Electric and there were other people going, well,
14 why don't you just go through Kihei Source. So, we went to Kihei
15 Source, and we said would you consider this. We'll pay for the
16 engineer, we'll pay for the attorney to create the easement. Let's
17 move forward. Let's do something. What would you like? And they
18 said come talk to our board members, they've got some specific
19 questions. Michael and I said, okay, that's fine. Let's do that.

20 And so, Michael and I, on November 1st, 2017, that's when I
21 started taking note of all the meetings. I know there's been more
22 than that, but that's when I started actively taking notes with my
23 administrative brain. We met with two board members on one of the
24 balconies that has a clear view of Paradise Ridge on the Kihei Shores
25 property, and we answered questions for over two hours.

1 And I know that there were a lot of questions about this
2 north wall. This is a big wall they're going to be looking at. And
3 it wasn't so much the timing and the interruptions to them via the
4 construction, they were more concerned about what it would look like
5 and the greenspace, understandably. So, we've heard them. And you
6 can see that some of the concepts and some of the greenspace that we
7 want to do for Paradise Ridge includes their responses.

8 And the communication goes on. We've been in contact --
9 leading up to today's meeting, we've been in contact with Kihei
10 Shores, and they always say the same thing, we want to get back --
11 we've got to get back to the board.

12 And I would like to insert here that we requested a couple
13 times saying what -- you know, when can we talk to the board about
14 off-site services. The board never returned anything. The board
15 never communicated back. We went, okay, well the board couldn't make
16 a decision, didn't make a decision, and it was over a year-and-a-half
17 that we were waiting, and we were sort of on call. So, we said, you
18 know what, we've got to abandon the Kihei Shores off-site idea, the
19 off-site plan, the off-site services, and the access easement. That's
20 all approve to go down Hale Kamaole. Let's just go as approved, and
21 so we've done that.

22 So, I guess what I'm saying is requesting a letter of
23 support from Kihei Shores, because of their long lead time and
24 education, we have not even had the opportunity to speak to their
25 board. Not that they can't get ahold of us, because we are readily

1 available, and we've made that clear.

2 Okay. Let's talk about Maui Kamaole. Maui Kamaole is the
3 property south of Paradise Ridge. Building near and around their
4 existing retaining wall has been the most --

5 CHAIRMAN ROBINSON: Excuse me.

6 MS. SALISBURY: Yes, sir.

7 CHAIRMAN ROBINSON: Hi, just because of what's going on
8 today and this afternoon, if we have questions regarding why you
9 didn't get somebody's support, I think you can come in then, but you
10 don't have to defend yourself.

11 MS. SALISBURY: Okay.

12 CHAIRMAN ROBINSON: I just wanted to let you know that.
13 It's about the property. We'll ask pertinent questions to you. You
14 will have time to come back, and we will come back to you if something
15 -- if there's a question, if it's going to way in our voting. Just to
16 let you know. So, there's plenty of opportunity. I think stick to
17 the project, and I think if you listen to the Commission, I think your
18 time would be better served.

19 MS. SALISBURY: Yes, sir.

20 CHAIRMAN ROBINSON: Thank you.

21 MS. SALISBURY: Maui Kamaole. Maui Kamaole is to the south
22 property and working underneath their existing retaining wall has been
23 the biggest safety concern and design issue in Paradise Ridge. That's
24 the reason why we need these raised heights. We want to lessen the
25 impact. That the whole point of these raised heights, these raised

1 building elevations is so that the south wall works. The south wall
2 would go up five feet, the north wall would go up five feet. And I
3 want to make it clear, as approved we still have to -- as approved, we
4 would have to work 15 feet underneath their existing retaining wall.
5 As requested, we're only going to work underneath ten, which the
6 engineers all go, okay, we can work with ten. We can work with then.
7 And that's where we're at now.

8 So, let me explain a little bit about the communications.
9 We -- Tom mentioned that we did request, we did go to Maui Kamaole,
10 we've had extensive interactions with Maui Kamaole the most. They're
11 behind us. Their views are going to be impacted, hence the
12 complaints. We took it upon ourselves that we would assist and meet
13 with not only their property manager, their resident realtor in person
14 along with our architect Peter Niess. And so, we had a meeting. This
15 was November of 2017. They wanted to express concerns for the view,
16 specifically, of one of their units.

17 And so, we visited. We all went to that balcony and went,
18 okay, well, we're not really sure. It doesn't look like it would
19 impact, but I don't really know. Why don't we move our excavator
20 over? So, the next week, during Thanksgiving weekend, we went, you
21 know what, this is really important, let's do this. Michael and I
22 went out with our excavator, and we put our boom where the rooflines
23 of -- again, I want to make sure -- as we did this, we did this for
24 the rooflines that we're requesting today. Again, we didn't realize
25 that we had missed this.

1 So, the rooflines that we were showing was what we are
2 asking for today. We did move the excavator around. Roger Pleski sat
3 on the balcony and took pictures. We moved big rocks and spray
4 painted them and said, if you want to come out, and put a pole up, and
5 recreate what we're doing, then you have the opportunity to do this.

6 We've had lots of involvement with Maui Kamaole. In
7 December, just a couple weeks after we did the excavator bit, I went
8 to Maui Kamaole, reviewed their as-builts to get the profile of this
9 retaining wall, the details of the retaining wall -- you okay. You
10 got it. Okay.

11 I didn't talk about how we interacted with the complaining
12 party. Shall I do that? Okay. Let them out. Okay. Shall I turn it
13 back over to Ann?

14 CHAIRMAN ROBINSON: And, you know what, it's -- you will
15 have your time. And we get it. That's what I'm saying. So, we get
16 this.

17 MS. SALISBURY: Okay.

18 CHAIRMAN ROBINSON: You're good. We have the data. We've
19 been reading, and, yeah, we got time.

20 MS. CUA: Just a couple of additions. I know you got a lot
21 of these communications very late, because we got it to you as soon as
22 we could, but just to summarize real quickly what I saw as the issues
23 in some of the letters was the lack of communication, the project's
24 effect on private owner's views, the impacts on owner's income
25 property values. The one thing I do want to mention is that we talked

1 about the A-1 Apartment Zoning, which requires long-term use. The
2 Applicant has indicated they're not going to -- you know, they don't
3 intend to do any short-term rentals.

4 I do want to point out, however, that both Hale Kamaole and
5 Maui Kamaole, although they are also zoned for long-term use, they
6 fall under the Minatoya ruling, which they have can have short-term
7 rentals. And that's why if any of you read some of the letters, and
8 you might have been confused because one of the concerns is the amount
9 that they're able -- that they live away for -- or they're only here
10 for like a couple of months, but it would affect the property -- their
11 value of what they can get for their short-term rental. I just wanted
12 you to know that they are allowed to do short-term rentals at both of
13 those complexes. We checked the list prior to this meeting.

14 CHAIRMAN ROBINSON: So, it's A-1, but it's also TVR?

15 MS. CUA: So, you want to help me with -- I'll let Michelle
16 help me with that.

17 CHAIRMAN ROBINSON: Undefined.

18 MS. CUA: And it's not for this property now. It's for the
19 neighboring properties.

20 CHAIRMAN ROBINSON: Yeah.

21 DIRECTOR MCLEAN: Oh, it's defined. It's not undefined. At
22 the time those projects were built, the A-1 Apartment District allowed
23 short-term rental. And so, they were built, and they started
24 operating under that lawfully allowed use. Then when the Code
25 changed, then that use was effectively grandfathered. And, recently,

1 the Code was changed again, so that their status wouldn't be
2 grandfathered, it would actually be established in the Code that
3 that's a lawful use and that they can continue.

4 CHAIRMAN ROBINSON: And as long as they are licensed.

5 DIRECTOR MCLEAN: No, they don't need --

6 CHAIRMAN ROBINSON: Don't they need a license to rent out a
7 vacation rental? They should need --

8 DIRECTOR MCLEAN: None of those -- none of those were
9 covered (indiscernible). It was allowed -- the use was allowed
10 outright by the zoning at that time. And so, it's allowed to
11 continue.

12 CHAIRMAN ROBINSON: Okay.

13 MS. CUA: Okay. So, that's -- do you want my analysis now
14 or you want questions? Analysis is just really brief.

15 CHAIRMAN ROBINSON: Yeah.

16 MS. CUA: You know, we --

17 CHAIRMAN ROBINSON: Please.

18 MS. CUA: -- the overall impacts of this project was
19 analyzed in 2005, when it was approved by the Commission. The project
20 remains substantially the same as was approved by the Commission.
21 And, therefore, that analysis is still valid, except that we wanted to
22 make a couple of additions, which is now since then the height has now
23 been increased. The allowable height is increased for the A-1
24 Apartment District to 35 feet; however, this project will still
25 maintain the building heights of 27 to 30 feet.

1 In terms of project density, this project will have a
2 density of 14.5 units per acre. We talked about this being an infill
3 project. Some of the surrounding projects, Maui Kamaole, they have a
4 density of 13.5 units per acre, Keonekai Villages is 22.2 units per
5 acre, Hale Kamaole 23.9 units per acre, Kihei Shores 29 units per
6 acre, Kamaole Sands 29, Haleakala Shores 30 units per acre, and Maui
7 Park Shore 35 units per acre.

8 The reduction in excavation traffic and noise associated
9 with the proposed amendment will allow the project to better comply
10 with SMA condition number 5, which reads that appropriate measures
11 shall be taken during construction to mitigate the short-term impacts
12 of the project relative to soil erosion from wind and water, ambient
13 noise levels, and traffic disruptions. And I think I'll leave it at
14 that for now.

15 CHAIRMAN ROBINSON: Thank you, Ann. At this time, we're
16 going to open the floor for public testimony. On the list we have Mr.
17 Brian Noble. Aloha. Please -- thank you for your patience. Please
18 introduce yourself, and you have three minutes.

19 MR. NOBLE: My name is Brian Noble. I'm the manager at Maui
20 Kamaole. I had a much shorter statement, but I did want to just
21 clarify a few things that in the discussions in the meetings we had
22 with Mike and Jennifer from Paradise Ridge, at no point in time was an
23 increase mentioned. And what we were seeking from them is, hey, help
24 us figure out the heights as they are now and as they were approved.

25 And I can say on behalf of the Board of Directors what

1 they're looking for and what we are hoping is the project is built to
2 as it was approved in 2005. You've had, you know, 13 years to figure
3 this out, and we think that's enough time to have figured that out and
4 not have a last minute change.

5 CHAIRMAN ROBINSON: Commissioners, any questions?

6 Commissioner Pali.

7 COMMISSIONER PALI: So, with every decision you have a
8 tradeoff. And so, my question is, are you saying you want the
9 original heights? You realize you are also saying that then you
10 accept the 800 additional truckloads daily, because that would be the
11 tradeoff, it seems, based off of the schedules that we've seen?

12 MR. NOBLE: Yeah, so it's been the opinion of our Board that
13 that is a temporary issue.

14 COMMISSIONER PALI: Oh, total. Total.

15 MR. NOBLE: Is that that's a temporary issue, versus a long-
16 term. Hey, this is how the project was approved and that's how the
17 Board would like to see it built. And since then, there has been a
18 number of people that have purchased units based on the original
19 approval in 2005. That's a long time. Thank you for your time.

20 CHAIRMAN ROBINSON: Yeah, you have a question, Commissioner?
21 Commissioner La Costa.

22 COMMISSIONER LA COSTA: Thank you, Chair. How many units
23 would be impacted with their view corridors diminished or obliterated
24 if the five-foot --

25 MR. NOBLE: That's what we were trying to figure out. It

1 looks to be approximately 40 units, two clusters along the road. And
2 that's approximately -- that's what we were hoping to work with them
3 to figure out, hence the whole bucket idea on some of these things.

4 CHAIRMAN ROBINSON: You have 30 second floor units?

5 MR. NOBLE: There are lower units as well. This is along a
6 road. If you look at -- the way, we look. So, our property has units
7 looking this way towards the ocean.

8 CHAIRMAN ROBINSON: But the lower units were impacted
9 regardless, right? I mean, we're talking apples and apples here, so.

10 MR. NOBLE: So, that's what we were also trying to figure
11 out, was some of this determining the elevations, which goes back to
12 why -- hey, this is why we just wanted to see it and the Board wants
13 to see it built as it was approved in 2005.

14 CHAIRMAN ROBINSON: Thank you so much, Brian. Anyone else?
15 Thank you for your testimony.

16 MR. NOBLE: Thank you.

17 CHAIRMAN ROBINSON: Next we have Mr. Charles Wilburn.
18 Please introduce yourself. You have three minutes.

19 MR. WILBURN: Good afternoon, Commission. I'm Charles
20 Wilburn. I am a property owner at 2777 South Kihei Road, Unit J-19,
21 and I am one of the affected owners in that view area.

22 At this point, I would really like to request a postponement
23 of this amendment on the -- due to the fact that the majority of the
24 owners of those 40 units have never been contacted. As you can see
25 from getting such late letters from the complainants or the people

1 objecting to this, we had no notice. Despite what the Applicant has
2 said, we were never notified. We scrambled, basically, at the last
3 minute to be able to address you. We would like time and ask for a
4 postponement of this amendment to give us an opportunity to seek
5 counsel here locally and understand where we're at as far as our
6 rights and what we can do at this point.

7 In the event you decide not to grant the postponement, I
8 wish to object to this amendment due to the fact that one of the
9 reasons -- and like myself and so many other owners who purchased
10 after the permit in 2005 -- from the Planning Commission and the
11 Planning Department, you know, I based my decision to purchase that
12 property after my due diligence and saw how it was permitted. I saw
13 that it was vetted. There was public hearings held, it was discussed,
14 permits were issued. So, I, at that point, came to the conclusion
15 that I'm buy -- I know what I'm buying.

16 Now, with the amendment it is actually changing that. And
17 it was a promise from the County and the Planning Commission when they
18 issued those permits to us prospective buyers. So, now, I'm showing
19 that this is really changing the whole situation.

20 I want to refer now to the August 6th letter that Paradise
21 Ridge sent to the Planning Commission. In their correspondence -- and
22 as they admitted today -- they omitted, or forgot, or made a mistake
23 and didn't realize that they were going to put these buildings up five
24 feet higher. Really? That's something you just don't remember until
25 a complainant called them on it. I find that very disingenuous.

1 Also, at this point, I need to tell you that I'm also a Board Member
2 on Maui Kamaole, and it's very important to me. I want to switch hats
3 now and talk about this proposed retaining wall that they want to put
4 between our property and theirs.

5 From what I understand, and I -- that there needs to be a
6 ten-foot setback.

7 UNIDENTIFIED FEMALE: Three minutes.

8 MR. WILBURN: There needs to be a ten-foot set setback and
9 at some point, is there a difference between our wall and their wall?
10 Is there an additional setback? And then with the thickness of their
11 wall, is that -- so, we're really concerned and really would like the
12 Planning Commission and the Planning Department to very much
13 scrutinize this wall. They did approach us and asked us to tie the
14 wall, which we denied, because we were concerned about the failure of
15 our wall. And, also, in their drawings that we see, their pool is --
16 it looks like it's within five feet of the retaining wall. Will they
17 be excavating down further, which could possibly undermine the Maui
18 Kamaole retaining wall.

19 Again, I want to ask you if -- to postpone this while we can
20 get our group together, so they fully understand what the consequences
21 of this is. Thank you so much.

22 CHAIRMAN ROBINSON: Thank you. Thank you. Commissioners,
23 any questions? Seeing none, thank you for your testimony, sir.

24 COMMISSIONER GOMES: Chair.

25 CHAIRMAN ROBINSON: Yes.

1 COMMISSIONER GOMES: Question.

2 CHAIRMAN ROBINSON: I'm sorry, sir, can you -- go ahead and
3 ask your question, please, Commissioner Gomes.

4 COMMISSIONER GOMES: You are from what Board?

5 MR. WILBURN: I am on the AOA of Maui Kamaole. I'm one of
6 the board members.

7 COMMISSIONER GOMES: Along with --

8 CHAIRMAN ROBINSON: Brian.

9 MR. WILBURN. Brian is our resident manager. I am probably
10 the only board member present right now from Maui Kamaole.

11 COMMISSIONER GOMES: Okay.

12 MR. WILBURN: And I've been privy to all these
13 conversations. And I might also add the Board never instructed them
14 to not speak to owners.

15 COMMISSIONER GOMES: Okay. Okay. Can I --

16 CHAIRMAN ROBINSON: Yeah.

17 COMMISSIONER GOMES: To my understanding though, Brian was
18 speaking -- and clarify me if I'm correct, on behalf of the Board of
19 Directors.

20 MR. WILBURN: Yes, that is correct.

21 COMMISSIONER GOMES: And you are board member?

22 MR. WILBURN: I am a board member also.

23 COMMISSIONER GOMES: You are opposing, and it didn't seem --

24 CHAIRMAN ROBINSON: Yeah, he was talking as to J-19 unit.

25 MR. WILBURN: Owner first, board member --

1 COMMISSIONER GOMES: Correct.

2 CHAIRMAN ROBINSON: Yeah.

3 MR. WILBURN: -- opposing the amendment and as far as -- and
4 raising a concern as a board member of the retaining wall. Those are
5 my issues.

6 COMMISSIONER GOMES: Okay.

7 COMMISSIONER CARNICELLI: Chair.

8 CHAIRMAN ROBINSON: Commissioner Carnicelli.

9 COMMISSIONER CARNICELLI: Yeah, I got a question for you.

10 CHAIRMAN ROBINSON: Charles.

11 COMMISSIONER CARNICELLI: Charles. So, you just said that
12 you were privy to all the conversations with the Saliburys, as a board
13 member?

14 MR. WILBURN: I did get feedback from the Board in --

15 COMMISSIONER CARNICELLI: Thank you.

16 MR. WILBURN: -- the discussion. Thank you so much.

17 CHAIRMAN ROBINSON: And, Mr. Wilburn, I apologize. Another
18 question.

19 MR. WILBURN: I'll stay until you --

20 CHAIRMAN ROBINSON: Yeah. Yes. Commissioner Castro.

21 COMMISSIONER CASTRO: Thank you, Chair. So, are you in
22 support of the original permit?

23 MR. WILBURN: I totally -- I am asking that they built it as
24 permitted. I totally support them to build their property as
25 permitted in, and I wish that's the way it would be done. I think the

1 ruse of the noise and the -- just for the sake of higher elevations is
2 nothing more than a cost cutting ploy, and it will make their units
3 more marketable at the Maui Kamaole expense.

4 COMMISSIONER CASTRO: Thank you.

5 MR. WILBURN: Thank you.

6 CHAIRMAN ROBINSON: Commissioners, at this time, we have a
7 half-an-hour, at least, of testimony just from the names. Is
8 everybody okay with working through lunch? Okay. Thank you.
9 Commissioner Pali, you have a question first.

10 COMMISSIONER PALI: You made a comment about when you
11 purchased your unit.

12 MR. WILBURN: That's correct.

13 COMMISSIONER PALI: My question to you is, when you signed
14 the contract were there promises made by the realtors that helped
15 represent you that the landscaping or the areas around would never be
16 impacted for future and that what you bought would permanently be like
17 that for the rest of your life? I mean, I'm just trying to
18 distinguish --

19 MR. WILBURN: Yes.

20 COMMISSIONER PALI: -- if you sat there and just made --
21 very confident --

22 MR. WILBURN: No, we knew there was a possibility that -- it
23 was planned and permitted.

24 COMMISSIONER PALI: Okay.

25 MR. WILBURN: We knew that there would be difficulty in them

1 performing based on the excavation. And we knew that this was always
2 a possibility. And it would have been acceptable based on the current
3 permitted plan. The five-foot elevation change or that amendment
4 really changes the situation.

5 COMMISSIONER PALI: Okay. And, Chair, may I follow-up
6 with --

7 CHAIRMAN ROBINSON: And with testifiers we just ask
8 questions, we don't -- the Applicant's we can interrogate more.

9 COMMISSIONER PALI: Yeah. Well, I just -- he made a
10 comment.

11 CHAIRMAN ROBINSON: Yeah.

12 COMMISSIONER PALI: And I just wanted to double check. Can
13 I get a question -- follow-up to the project. Was this permitted
14 already?

15 UNIDENTIFIED MALE: No.

16 COMMISSIONER PALI: He's commenting.

17 CHAIRMAN ROBINSON: After. Yeah, we got. Okay. Thank you
18 so much.

19 MR. WILBURN: Thanks so much.

20 CHAIRMAN ROBINSON: Moving on to -- moving on. Robert
21 Simon. You have three minutes. Please introduce yourself.

22 MR. SIMON: I'm going to ask you to indulge me. I'm going
23 to read a prepared statement, but in advance of doing so, I was
24 promised that my view would never be blocked by a realtor.

25 COMMISSIONER PALI: Okay.

1 MR. SIMON: And I have it in writing. I'm also the person
2 in -- I'm also the person who in Paradise Ridge's paperwork is called
3 the complainant. That is me.

4 Thank you for allowing me to address you today. I am Robert
5 Simon. I'm an owner at Maui Kamaole. I also am a forensic
6 psychologist. I practice here on Maui. I'm here today to ask that
7 you deny the developer's amendment to their SMA. I'm going to be
8 brief, but I'm going to be direct and very plain spoken.

9 The basis for their request is without fundamental merit.
10 The period of time that construction will take place and therefore
11 excavation and trucking in and out of construction materials and earth
12 will be relatively brief compared to the project over the long haul.
13 These developers have had 13 years to build their plan project, and it
14 is at this eleventh hour that they have attempted to sneak changes in
15 their plan into reality.

16 Had it not been for the diligence of my fellow owners at MK,
17 the fact that these developers were going to increase pad heights and
18 roof heights without the knowledge and permission of this Commission
19 would have gone unnoticed. What they call an oversight and
20 inconsequential error is instead a blatant attempt on their part to
21 bypass the planning process and to save them money while increasing
22 the perceived value of their units with improved ocean views.

23 Please allow me to remind you that on March 30, 2017, this
24 Commission granted Developers a request to amend their SMA with regard
25 to the location of their pool, some issues with parking, and

1 enclosures of trash dumpsters. How is it credible for these
2 developers to assert that they overlook an amendment as significant as
3 an alteration in building height and rooflines, mind you, at the same
4 time the renderings on their website for the buildings reflect the
5 building plan that they're now requesting, but was not approved.
6 That's what's on their website then, that's what's on their website
7 now.

8 Indeed, if you look at the materials -- marketing materials
9 promulgated by Paradise Ridge, you'll realize that they are in fact
10 currently selling and have taken deposits on the unapproved plan.
11 Article 2 of the 2018 Code of Ethics and Standards for Realtors
12 explicitly states: "Realtors shall avoid exaggeration,
13 misrepresentation, or concealment of pertinent facts relating to the
14 property transaction." Article 12 of the same Code states: "Realtors
15 shall be honest and truthful in their real estate communications and
16 shall present a true picture in their advertising, marketing, and
17 other representations."

18 In the FAQ section of their website, with regard to whether
19 the site plan remains the same as originally approved, they state:
20 "Civil work, roof lines, and some doorways in the units have changed."
21 This kind of unethical ask for forgiveness, but not permission
22 behavior is not befitting our community or our Island. It is not the
23 pono way of doing things.

24 I am certain this Commission does not condone such --

25 UNIDENTIFIED FEMALE: Three minutes.

1 MR. SIMON: -- nor should it. This kind of behavior can't
2 be rewarded, amending their SMA rewards it.

3 There's also the matter of the retaining wall. There was
4 nothing stated about the retaining wall until they submitted -- until
5 we told them they couldn't tie into our wall. Only after we told them
6 they couldn't tie into our wall did the issue of we can't build a safe
7 retaining wall come up. The truth is, in the original plans that were
8 approved in 2005, there was no retaining wall. Their plan was to tie
9 into our wall and that's not allowed by Code to begin with.

10 This again calls into question their ethics, and their
11 candor, and their willingness to cut corners.

12 CHAIRMAN ROBINSON: Mr. Simon, please conclude.

13 MR. SIMON: I am about to.

14 CHAIRMAN ROBINSON: Thank you.

15 MR. SIMON: This plan having languished for 13 years now, I
16 believe it's time for an entirely new review. However, if the
17 Commission does not elect this option, I ask this Commission to deny
18 their amendment and give them a specific time frame to finish their
19 plan project, rather than allowing these developers to drag out the
20 project interminably, leaving the surrounding neighborhood in a
21 chronic state of uncertainty and limbo. Thank you very much for your
22 consideration.

23 CHAIRMAN ROBINSON: Thank you, Mr. Simon. Any questions?
24 Seeing none, thank you for your testimony, sir. Next, we have David
25 Ross. Hello, Mr. Ross. Please introduce yourself. You have three

1 minutes.

2 MR. ROSS: I'm David Ross, owner of Maui Kamaole J-218.
3 We've been there since 2003. And thank you for your time, especially
4 your lunchtime today. Can you hear me okay?

5 CHAIRMAN ROBINSON: We can, but louder.

6 MR. DOSS: A little closer?

7 CHAIRMAN ROBINSON: Yeah.

8 MR. DOSS: Okay. Very good. So, I'll be fairly brief.
9 Three points really that I would like to make, and they've been
10 touched on already. One is the retaining wall. I have recently
11 become aware of the situation. No one has ever communicated to me,
12 until very recently, about it. In terms of the retaining wall, it's
13 unclear to me -- and I am a complete layman, you know, disclosure now.
14 It's unclear to me where the retaining wall is going to be located and
15 how it's going to be engineered. I've seen the engineering report,
16 and I think it's really important that the owners of the surrounding
17 areas understand and see a complete and validated engineering report
18 of both retaining walls to make sure that it's going to be safe.

19 So, safety is of primary concern for me. Also, as has been
20 noted, it's not clear how the retaining wall current and the new ones
21 will be serviced, inspected, and repaired. Will there be a setback
22 that will allow an entry way between the two. This is a very narrow
23 strip of land to work with, so that's unclear. And, again, it's been
24 mentioned that there's a pool and digging that will occur very close
25 to the retaining wall. I just want more information. I want more

1 clarity and valid engineering reports before we go forward with this
2 particular amendment.

3 The other issue is -- has to do with the questions on the
4 baseline for the 30-foot height. And, again, I'm a completely lay
5 person here, but it seems to me that you would want to go from sea
6 level to determine what the allowed height would be. Thirty feet from
7 what point? And in 2000 -- I mean I've been the owner since 2003.
8 They pushed dirt around quite a bit in the last 13 years. And, you
9 know, is it going to be from the latest mound where dirt's been pushed
10 and 30 feet from that? It's just very unclear.

11 And then the third piece is really the overall planning and
12 engineering of the project. As I mentioned, I haven't seen detailed
13 engineering plans. I don't know who has validated those plans. The
14 plans I have seen, seem to be inconsistent and very last minute.
15 We've all heard about, you know, hurry up and wait. This project
16 seems to be more about wait and now hurry up and get it done.

17 And I'm in favor of doing the project, but I want to make
18 sure it's done right and that it's done safely. There are just too
19 many unanswered questions, too much information missing, and I think
20 it's premature to move forward on something other than the original
21 approved design. I do trust this Commission. I think this Commission
22 will ensure the Code is followed, that safety is a priority, and that
23 valid engineering practices are followed. Thank you very much.

24 CHAIRMAN ROBINSON: Thank you, Mr. Doss. Any questions for
25 Mr. Doss? We have a question. Commissioner La Costa.

1 COMMISSIONER LA COSTA: Thank you, Chair. Mr. Ross, thank
2 you for your testimony. At what point were you apprised that the
3 height was going to be changed?

4 MR. ROSS: It was within the last 60 days.

5 COMMISSIONER LA COSTA: Thank you.

6 CHAIRMAN ROBINSON: Anything else?

7 COMMISSIONER LA COSTA: I would like to add. How was the
8 communication given to you?

9 MR. ROSS: Email.

10 COMMISSIONER LA COSTA: Directly from your Board or from
11 the --

12 MR. ROSS: It was from another owner. Yeah.

13 COMMISSIONER LA COSTA: So, they were sharing information.

14 MR. ROSS: Right.

15 CHAIRMAN ROBINSON: Thank you, Mr. Ross.

16 MR. ROSS: Thank you so much.

17 CHAIRMAN ROBINSON: Thank you for your testimony. Next, we
18 have Dave Brown. I think Mr. Brown was on the other one that he
19 missed on. Yeah. Found some time. Leighton Hiranaga. Aloha, please
20 introduce yourself. You have three minutes.

21 MR. HIRANAGA: Okay. My name is Leighton Hiranaga. I was
22 born and raised on Maui and the owner of a condominium at Maui
23 Kamaole. If I slur, I'm in the process of an implant, so I'm learning
24 how to speak with my tongue trying to shoot through the gap. And so,
25 I'm not drunk. I'm not drunk, okay. So, bear with the slurring. I

1 can always talk to you to make it look nice, but I didn't realize how
2 much it impacts your speech.

3 So, I come in front of you not to block the construction of
4 Paradise Ridge. I've owned a condo since 1999, and I've enjoyed the
5 view of Maalaea Bay. And it will be significantly altered by Paradise
6 Ridge. But, you know, however, I knew that one day that this would
7 happen. And so, I'm really okay with Paradise Ridge being built.

8 But when I heard of this two-and-a-half elevation -- and
9 it's a net two-and-a-half even though they're talking about five,
10 which came about -- to me about four weeks ago in some emails that
11 were bouncing around, I thought -- and I had spoken to Ann, and she
12 said private views are not affected. Okay. But at the same time, I
13 thought, you know, two-and-a-half -- and I have a ground level unit,
14 so two-and-a-half feet in front of you is a heck of a lot different
15 than two-and-a-half feet, 300 yards away from you.

16 So, okay, it is what it is. So, I'm okay. I -- so this is
17 not about the view from my condo that I will miss, nor is it about
18 technicalities of Codes and all that, that some people are talking
19 about, which I have no idea what they're talking about, so bear with
20 me.

21 So, from 1953, my dad and my siblings owned a business in
22 Maui. It's called Valley Isle Carpet and Drapery. I don't know if
23 some of you are old enough to know the company. So, I would like to
24 share a valuable life lesson as it relates to this situation we're
25 talking about today. And it has to do with righteousness. And so,

1 for those of you guys around here long time, pono, right.

2 So, I was in high school, working part-time in our family
3 business, and an uncle who was the general manager sent me to take the
4 measurements of a customer's windows for drapes. So, after the drapes
5 were cut and sewn, another worker and I went to install them. And
6 then to our astonishment, but a dream for me and my peer, because I
7 did the measurement, they were about a foot or so too short, and they
8 were made to my measurements though. And so, you know, as a high
9 school kid I freak out.

10 UNIDENTIFIED FEMALE: Three minutes.

11 MR. HIRANAGA: Because they were supposed to be full length
12 drapes about an inch or so off the floor, not kind of like in between
13 the floor and the bottom of the window. So, we hung the drapes anyway
14 and went back to the shop. And, you know, those days no one locked
15 the doors, so the customer told my uncle, yeah, just go ahead and
16 install the drapes. So that's what happened. She called my uncle and
17 said she was very disappointed, but not angry. And I remember it so
18 vividly because, as I said, this was a really learning lesson for me.
19 A real lesson.

20 And, you know, in those days as you long time guys know,
21 there was this level of trust that things would be made right. Don't
22 sweat it, we're okay. But because I was panicking, I suggested to my
23 uncle we cut the drapes, okay, and make them like just a little bit
24 below the window and maybe offer the customer a discount.

25 CHAIRMAN ROBINSON: Leighton, please. Please.

1 MR. HIRANAGA: Okay. So, with this work I learned to be
2 pono. So, my uncle told me we made a mistake. Regardless of the cost
3 we would not try to convince the customer of another option. To this
4 day I can hear him saying, once we make a commitment we stand by it
5 regardless of how much mistake it will cost the shop.

6 So, all I'm asking is Paradise Ridge do what you committed,
7 please, and stay with your commitment. It's Hawaii. It's the pono
8 way. So, thank you. Mahalo --

9 CHAIRMAN ROBINSON: Thank you.

10 MR. HIRANAGA: -- for trying to instill our culture.

11 CHAIRMAN ROBINSON: Thank you for your testimony. Next, we
12 have Pamela Tumpap. Aloha.

13 MS. TUMPAP: Aloha.

14 CHAIRMAN ROBINSON: I took my glasses off for a second. I
15 apologize, Pamela. I should already just know it.

16 MS. TUMPAP: Aloha and thank you for the opportunity to be
17 here with you today. I'm here as the President of the Maui Chamber of
18 Commerce. And I know you received a handout of my testimony, so I
19 just wanted to share a couple of thoughts.

20 We all know, and it was already addressed earlier on how
21 woefully behind we are in affordable housing, and we talked about how
22 long this project has been in place, but what we didn't talk about is
23 it started in 2005, and then as we saw at the Chamber, and we also in
24 our community devastation as the recession came into play. And a lot
25 of the housing that we thought we were going to get, didn't

1 materialize. And then as practices moved along in different
2 processes, and you folks have been talking about that today, often we
3 have projects that we think are going to go a certain way, and then
4 they move from one place to another, and sometimes conditions get
5 added or things change, and what we saw, laws changed.

6 And what we saw after the recession is that many of the laws
7 and some of the conditions put on affordable projects, or housing
8 units, or different things were planned didn't get built. They no
9 longer penciled out.

10 So, now we have a project here with Paradise Ridge Estates,
11 in our community, that's going to do 32 new units. It's an infill
12 project. We all know that when you buy something, and you have an
13 open space in front of you, but you know somebody else owns the lands,
14 something is going to change. Now, people make commitments along the
15 way, permits change, unit owners may sell their unit, the property
16 developer at some point could sell their development, and you could
17 have something completely different. When it comes to development and
18 property ownership, things change.

19 And you've already talked about how this SMA permit doesn't
20 protect private views, but I want to say, because some people have
21 been attacking ethics, and at the Chamber we stand for ethics, and
22 I've got to tell you that the two local developers that are here
23 before you, and I really mean this sincerely, they are people who have
24 been giving back to our community for years. I started at the Chamber
25 in 2006.

1 I've known Jenn and Michael since probably 2008, and over
2 that time they've been very involved in the Chamber and many other
3 organizations, including rotary and the construction industry of Maui
4 trying to help bring back the construction industry voice. They're
5 good people. Do people sometimes make mistakes? Yes. Are there
6 things we need to relook at? Yes, but I want to say ethically,
7 they're good people. So, I have discontent with some of the things
8 that I've heard earlier.

9 I think they're trying to do many good things, reducing
10 noise, trying to keep the roof heights lower. They're saying they're
11 going to make sure that the units are not being used -- you know,
12 they're not used for vacation rentals. We're talking about residents
13 and long-term tenants, and that's really important to us all.

14 So, the Maui Chamber of Commerce stands in strong support of
15 this project, and we hope you grant this amendment. Thank you for
16 your time.

17 CHAIRMAN ROBINSON: Thank you. Any questions? Seeing none,
18 thank you, Pamela. Next could I have Mr. Peter Niess.

19 MR. NIESS: Good afternoon, Chairman. My name is Peter
20 Niess. Born and raised here on Maui. I have a degree in urban
21 planning and a Master of Architecture. I inherited this project. I
22 am the architect for this project, and I have a lot to say, but I am
23 intentionally testifying to limit myself to three minutes.

24 The real issue at hand here is private views being affected
25 and the affect it's going to have people's short-term rental income.

1 For me recently, being from here, I'm still renting, and I'm trying to
2 buy a home. Short-term rentals are a four letter word, somehow.

3 But in reality, this project has been in the works for a
4 long time, and we want to bring the grade up five feet. Just to be
5 clear, we're keeping the building heights limited to 30 feet. A-1
6 Zoning, we could make these buildings 35 feet and there's nothing
7 anybody can do to stop it. This five feet is going to -- it will
8 bring the grade up, but our roofs could go up another five feet,
9 regardless if we keep the original grade or the new grade.

10 So, it's frustrating to see all of this humbug, when it's
11 sort of a moot point. That regardless of what happens today, we can
12 raise the roofs five feet through the DSA permit approval process for
13 the actual buildings themselves. I just want to point that out.

14 It's a better project with it raised up. The retaining
15 walls have always been in the project. It hasn't been explained
16 clearly, but Maui Kamaole sits here, they have a retaining wall. We
17 have to go under their wall, eight to ten feet, and then build our
18 site, and then drop down, and there's another existing condo here.
19 So, we're building a wall here, retaining, cutting, and then going up
20 under their wall.

21 We asked if we could go under their wall and pin back. It
22 would have made things simpler and safer. They said, no. If they
23 wanted full access to engineering reports, I promise you we went
24 through everything. I went and met with a few of these people. We
25 wanted to work with them as much as possible. They said, no. We have

1 all the engineering reports. We have a great team. It's a good
2 project. I'm, obviously, a little frustrated. Sorry.

3 We want to get it built. We're ready to go. Grading
4 permits are ready, the walls have been designed, they're safe, they're
5 going to be great. The building permits will be ready as soon as this
6 issue is cleared up, and it's an infill project. That's Maui needs.
7 We don't need sprawled out development.

8 Something's going to go here. We're the last ones in. That
9 means we have condo owners all around us. It makes it harder,
10 obviously, but it's infill. The infrastructure is there. Everything
11 is there. Impacts are minimal. The density increase is lesser than
12 what -- everything around it. It should be approved. That's my
13 bottom line.

14 CHAIRMAN ROBINSON: Any questions? Commissioner Pali.

15 COMMISSIONER PALI: Can you clarify when you said pin back
16 to the original wall that's there now? Is that legal or -- is that
17 legal or illegal?

18 MR. NIESS: We can build right up to the property line, just
19 to clarify with the retaining wall, right up to it. So, their
20 retaining wall is like six inches to a foot within their property and
21 because we have to go underneath it, that means we're digging down
22 next to their wall. And so, it would be easier if we could pin back
23 underneath, crossing the property line, into theirs, but they didn't
24 want to allow that.

25 COMMISSIONER PALI: But is that process legal or illegal in

1 our current Code from your understanding?

2 MR. NIESS: With easement approval, it's legal.

3 COMMISSIONER PALI: Okay. All right. Just curious. And
4 then aside from all the factual of what can or can't be built, what's
5 your comment on just the fact that they feel they just didn't have
6 enough time to process all this information?

7 MR. NIESS: With the raising of the pad heights? I
8 personally went over there six, eight -- how long ago did I go over
9 there? I've gone to both the condo units, just walked over there to
10 introduce myself and say, hey, look, this is what's happening. Went
11 up on their balcony and took photos for the photo renditions, standing
12 on their balcony, putting the boom, took survey points, went and set
13 the boom of the truck to show where the roof is going to block, it
14 blocks the smallest sliver of any of their view. That was from a
15 second story unit, but it's not like we're going right up in their
16 face. There's units, there's landscaping, there's parking, then
17 there's our property, which drops down six, eight, ten feet, and then
18 we're building up. The peak of the roof blocks minimal amounts of any
19 of their view. It's not like we're building right in their face, at
20 all.

21 CHAIRMAN ROBINSON: Commissioner La Costa. Peter.

22 MR. NIESS: I need lunch too. I'm getting hangry, sorry.

23 CHAIRMAN ROBINSON: Commissioner La Costa.

24 COMMISSIONER LA COSTA: Thank you, Chair. Tell me about the
25 ten-foot retaining wall on the north side that has been a bone of

1 contention as well.

2 MR. NIESS: Yeah, it's hard. This is a very tricky site,
3 because it's long, and narrow, and has existing conditions all the way
4 around it. That wall is less of an issue, because it's more of
5 typical retaining wall where we have -- it's all within our property
6 or we can dig back, and build it up, and then backfill against it.
7 Whereas the other one, it's existing or digging down under it. So,
8 the north side is much less of an issue. And they've gone above and
9 beyond to beautify it as much as possible.

10 COMMISSIONER LA COSTA: What kind of -- Chair?

11 CHAIRMAN ROBINSON: Please.

12 COMMISSIONER LA COSTA: Thank you. What kind of impact will
13 that create on the neighboring property's views?

14 MR. NIESS: Zero. I mean, they're going to -- they're down
15 below in that photo, those white roofs looking back, not even mauka.
16 It's across their parking lot, and they're going to -- there will be a
17 wall, but it's not ocean views or mountain views.

18 COMMISSIONER LA COSTA: Okay.

19 MR. NIESS: Yeah.

20 COMMISSIONER LA COSTA: Thank you.

21 CHAIRMAN ROBINSON: Peter, I got a question. You said that
22 you had a grading permit?

23 MR. NIESS: It's ready to issue.

24 CHAIRMAN ROBINSON: It's contingent on getting approval?

25 MR. NIESS: Yeah.

1 CHAIRMAN ROBINSON: Okay.

2 MR. NIESS: That's definite.

3 CHAIRMAN ROBINSON: So, you have a permit waiting for --
4 okay.

5 MR. NIESS: I mean --

6 CHAIRMAN ROBINSON: I don't know how you got a permit yet.

7 MR. NIESS: -- engineering wise everything is ready.

8 CHAIRMAN ROBINSON: Gotcha.

9 MR. NIESS: Yeah.

10 CHAIRMAN ROBINSON: Okay. Thank you. Thank you for your
11 testimony. Next -- oh, I apologize. Commissioner Castro.

12 COMMISSIONER CASTRO: The retaining wall, the purpose of
13 going underneath, what is that? Is that part of footing?

14 MR. NIESS: It's just the way that the site it. Maui
15 Kamaole is up here, our site is down six to eight feet, even up to ten
16 feet, in the proposed new one. Without that it's down 12 or 15 feet.
17 So, there's a wall here -- wall here, and you have to go down -- 15
18 feet is hard to keep -- not affect their wall, go straight down just
19 off of it, and build a wall under that to retain the dirt under their
20 wall without being able -- without any -- being able to tie into their
21 wall. We have to do it completely separately now. And so, to make
22 that only ten feet makes it possible.

23 And we went through so many different structural engineers,
24 more than any other project to get this figured out. It was not --
25 it's not an easy problem and the fact that we finally have a solution

1 is a relief, but, of course, it needs to -- I want to do things
2 correctly too, and pono, and make sure everyone is as happy as they
3 can be.

4 CHAIRMAN ROBINSON: Commissioner La Costa.

5 COMMISSIONER LA COSTA: Thank you, Chair. So, you said we
6 finally have a solution. Did you not have a solution when the
7 original permit was -- or the original was submitted?

8 MR. NIESS: No, there is a solution. It was done by Scott
9 Listovich. And in the SMA process it's more of a schematic solution
10 than a fully engineered complete wall design, which is the case with
11 nearly every project that's going through the SMA process before it
12 gets in. That's before engineers, and architects, and everyone is
13 hired on in their full capacity.

14 CHAIRMAN ROBINSON: Commissioner La Costa.

15 COMMISSIONER LA COSTA: Thank you. But wasn't that the
16 premise under which everything was submitted and moved forward until
17 60 days ago or so, the original plan versus what you're proposing now?

18 MR. NIESS: Yeah, it is doable --

19 COMMISSIONER LA COSTA: Okay. Thank you.

20 MR. NIESS: -- in an aggressive manner though.

21 COMMISSIONER LA COSTA: Thank you.

22 CHAIRMAN ROBINSON: Commissioner Carnicelli.

23 COMMISSIONER CARNICELLI: Just a quick question for you.
24 Had they allowed you to tie in, would you need this change in grade,
25 if they would have let you to tie in? Could you have gone with the

1 original -- if they would let you tie in, would you -- could you have
2 gone with the original plan?

3 MR. NIESS: Tom.

4 MR. COOK: It would be very difficult. The soil engineer
5 (indiscernible) --

6 CHAIRMAN ROBINSON: Okay. Hold on. You need to answer
7 that, Peter.

8 MR. NIESS: No.

9 CHAIRMAN ROBINSON: Okay. Thank you. Any other questions?
10 Seeing none, thank you for your testimony. Next Trisha -- is it Edge
11 or Egge?

12 MS. EGGE: Egge.

13 CHAIRMAN ROBINSON: Egge. Please introduce yourself.
14 You've got three minutes.

15 MS. EGGE: Hi, I'm Trisha Egge. I wrote a letter, and I'm
16 just going to read it briefly. I'm writing to voice my support for
17 this construction project. I'm a volunteer with the Construction
18 Industry of Maui. I'm serving as a Vice-Chair this year. The
19 Construction Industry of Maui's mission is to unify the building
20 community through active advocacy, communication, and education to
21 sustain our industry growth and best practices.

22 I believe this project embodies that mission statement.
23 This project has been working for 23 years to get all the necessary
24 approvals and the changes they need to continue are minimal regarding
25 what was approved to what they want to do. These homes are needed on

1 Maui. This project is needed. This project will be completely
2 owner/occupied or long-term rentals. Being that there's no short-term
3 rentals, you know, this project is for the residents of Maui.

4 To my knowledge, the people challenging this project are
5 concerned about short-term rental income, and I believe preference
6 should be given to Paradise Ridge, which will provide homes for our
7 community. And that's all.

8 CHAIRMAN ROBINSON: Thank you. Is there any questions from
9 the Commission? Seeing none, thank you, Trisha.

10 MS. EGGE: Thank you.

11 CHAIRMAN ROBINSON: Mr. Salisbury, are you the Applicant?
12 Mr. Salisbury, are you the Applicant? Can we hold the testimony for
13 -- in case we have Applicant questions, or do you just want to testify
14 and answer later? I mean, you can do it for both that's why, because
15 you're able to walk up after. It's up to you. Please introduce
16 yourself. You have three minutes.

17 MR. SALISBURY: Hi, Mike Salisbury. I'm involved with the
18 project Paradise Ridge, and I'm going to be real brief because a lot
19 of stuff has been said. I think there was a little bit of
20 communication when we presented this view. This is the increased --
21 this is not -- this is the most impactive spot of any of our buildings
22 at the height that we requested with this amendment.

23 We had thought we had -- like Jenn said, she missed it. She
24 thought we had this already. That's why we have presented this as it
25 is now. So, I just want to point this out and if you've got any

1 questions, I'm happy to answer them.

2 CHAIRMAN ROBINSON: Okay. Commissioners.

3 UNIDENTIFIED COMMISSIONER: I have a question.

4 CHAIRMAN ROBINSON: If you have a question for Mr.
5 Salisbury, you can ask them at the other --

6 UNIDENTIFIED FEMALE: Yeah.

7 CHAIRMAN ROBINSON: -- when we talk to the Applicant too.

8 That's what I'm saying, so. Thank you. Mr. Cockett. Aloha. Please
9 introduce yourself. You have three minutes.

10 MS. COCKETT: My name is Michelle Cockett, and I'm the
11 permit facilitator for this project. I have been a part of this
12 project for the past two years, and it has been through quite a lot of
13 changes. We have had internal meetings on how to design this project
14 because of the original design back in 2005, it took three years to
15 get majority of approvals for the SMA design that was represented at
16 that time.

17 We've come to terms in regards to this, because it comes
18 down to field (indiscernible) conditions. What's actually attainable
19 or what is designed, doesn't necessarily mean it's buildable. And the
20 biggest issue on this was the retaining walls. They were clearly
21 designed to be 16 feet high and not only as constructability part of
22 that --

23 CHAIRMAN ROBINSON: Michelle, can you please lift the mic.

24 MS. COCKETT: Oh, sorry.

25 CHAIRMAN ROBINSON: Sorry. No.

1 MS. COCKETT: As a constructability part of this, it takes a
2 lot of, well, design capability and also the actual ability to
3 construct it and that's why we had to retract and start over.

4 Now, some of these plans that we originally started with,
5 the Department of Water Supply actually signed off on those plans, the
6 original ones, that were permitted by the SMA in 2013. We had to
7 regroup once we realized the difficulty of the constructability of
8 those retaining walls. And this seemed the best method to actually be
9 able to incorporate the design, which is -- really doesn't have a lot
10 of density and is for the residents of Maui, it needed to be able to
11 be constructed accordingly.

12 So, we went through many structural engineers and as well as
13 mechanical and civil. We had to regroup. This went from 2005 all the
14 way up to now, and we're on course to finish. We have obtained off-
15 site approvals to install the utility installations, the Maui Kamaole
16 easement, we have gotten ours SMAs, and the right of entry agreement
17 for the back end to be able to access the property from the back, on
18 the mauka side. There's a lot of moving parts to this and there's a
19 lot of pieces.

20 The whole purpose of this is to make this project be
21 constructed accordingly. If we can't build it, then we can't -- it's
22 not possible. So, the whole point to this is to regroup and that's
23 why it's taken so long to get this up because of the piece of property
24 that it is. It has a lot of caveats associated with it. And as field
25 safe conditions are, we have to be able to work with them accordingly.

1 This was the best and most -- least invasive type of design --

2 UNIDENTIFIED FEMALE: Three minutes.

3 MS. COCKETT: -- in order to make this occur for everyone.

4 So, if you have any questions, let me know. I can give you the status
5 of the permits.

6 CHAIRMAN ROBINSON: Thank you. Commissioner La Costa.

7 COMMISSIONER LA COSTA: Thank you, Ms. Cockett. You said
8 this is the only way we could build it, but, again, I will ask the
9 question. You came and got the approvals and now you want to change
10 it. So, does that mean that if the changes are not approved that you
11 cannot build the project?

12 MS. COCKETT: I have to leave that back to the architect to
13 respond to. I think in this regard we have tried everything to make
14 these retaining walls be non-invasive. There's different types of
15 retaining walls. The one that was originally approved was a CMU wall,
16 which would clearly not be effective. This -- and it would create
17 liabilities on the back end. So, we had to be able to determine -- by
18 changing the type and the material walls that we're doing now, the
19 north wall is different than the south wall, because of its height
20 requirements.

21 The north wall is the wall that Tom showed that has the
22 vegetation on it, and it is -- it took a long time to actually locate
23 a type of material and method to be able to hold up that wall and the
24 earth. So, in essence, yes, I believe at this point we need to have
25 this type -- these changes made in order to make it constructible.

1 COMMISSIONER LA COSTA: Thank you.

2 MS. COCKETT: You can ask Tom. He's the project manager.

3 COMMISSIONER LA COSTA: Thank you.

4 CHAIRMAN ROBINSON: Thank you. Would anybody else like to
5 testify? Please. Aloha. Please introduce yourself. You have three
6 minutes.

7 MR. SULLIVAN: Hi, I'm Pete Sullivan, PV Sullivan
8 Construction. I just wanted to speak to what was said about maybe
9 Mike and Jenn being ingenuous. We bid this project -- my guys did,
10 and during the process I heard the architect mention, he said, hey,
11 you know, during the SMA you get so far, and you don't have a complete
12 design, but you have a conceptual plan, and then after that, then you
13 draw these things. That's normal for us and a lot of times we put
14 projects together, and we make exceptions to come up with prices for
15 all this type of stuff.

16 What I found with this project was -- and this goes contrary
17 to what's been said here. They came to us -- in fact, I think it was
18 Tom who came to us and said, hey, you know what, Jenn missed -- well,
19 he didn't say Jenn's name, but they missed a five foot height thing
20 and this -- in their SMA or whatever you call that. It went to Ann, I
21 think. And so, now we've got to go and reprice this.

22 I'll tell you that the project had X amount of dollars to
23 build it, and by the time we got done repricing it, there was about
24 19,000 yards of cut on the job and there was 712,000 of fill, and now
25 the job balances 7,000 cuts, 7,000 fill, but the materials because

1 | it's rocky, bouldery, and there's some fill that was uncontrolled that
2 | has to be removed, a lot of that stuff has to come out. It was Mike's
3 | idea -- Mike Salisbury's idea -- he said, Pete, can you guys crush
4 | that and process that on-site? I said, maybe, but the neighbors
5 | aren't going to be happy from the beginning, you know, so all this
6 | stuff had to come out.

7 | So, from our point of view, what I know about this, is it
8 | was missed. This whole height thing got missed. It wasn't something
9 | that they're coming back later and saying, hey, we want to raise this
10 | or something. That's exactly what happened here. It never -- they
11 | missed it. They tried to do everything, and they missed it. And we
12 | had to reprice that.

13 | And during that time, the architect was working with other
14 | engineers to try to figure if he could soil nails to go under the
15 | property to the south. And my understanding, because I was involved
16 | in these conversations was that they said, no. We don't -- Maui
17 | Kamaole said, no, we don't want you guys coming over there. So, it
18 | would take an easement to get under there. We've done that before,
19 | soil nails, we've shock-crete slopes, we've done all kinds of stuff to
20 | create a safe constructible project in different areas, but we were
21 | told that, no, you're not going to be able to do this.

22 | So, even as far as the bidding got down, we are still
23 | pricing from different engineers how this was going to be done. We
24 | didn't know. We just didn't know. But I will tell you that if we
25 | were going to have to cut that at 15 feet, vertically, right there,

1 not without soil nailing that or not without shock-creting that would
2 that not work.

3 UNIDENTIFIED FEMALE: Three minutes.

4 MR. SULLIVAN: So, I just wanted to clarify that.

5 CHAIRMAN ROBINSON: Any questions?

6 COMMISSIONER GOMES: I have one.

7 CHAIRMAN ROBINSON: Yeah, Commissioner Gomes.

8 COMMISSIONER GOMES: Thank you, Mr. Sullivan. And I just
9 want to clarify, I mean as you're talking about pricing, that as this
10 project progresses and the length of time, obviously, pricing is going
11 to increase. I mean when we're talking about materials, and their
12 use, and so forth. So --

13 MR. SULLIVAN: If it gets drug out farther, yeah, there's
14 all kinds of things that could impact that.

15 CHAIRMAN ROBINSON: Okay. Thank you. Anybody else would
16 like to testify? Please.

17 MR. TERSHMAN: I know you guys are hungry.

18 CHAIRMAN ROBINSON: That's okay. Everybody got to voice.

19 MR. TERSHMAN: My name is David Tershman (phonetic), and I
20 live in Maui Kamaole. And I'll go ahead and admit upfront that, you
21 know, I'm one of those off island people who bought in 2003, but I've
22 been paying taxes here for 15 years, and I've paid a lot of taxes.
23 And the renters who come to this Island contribute a lot on sale tax
24 and other taxes. So, I think my voice is as important as a resident's
25 voice.

1 And I'm not opposed to this project. I want good housing
2 for people on Maui. I just retired. I hope to move here. But what I
3 don't like is in this project and what I would ask for, specifically,
4 they've extended the construction by three years. And I don't
5 understand if all of these loads, if there's fewer loads, this is
6 easier, then why is the construction extending three years. It was
7 supposed to be finished in 2019, I think and now they're saying 2022.
8 So, three years.

9 So, what I would ask if you do approve this amendment or
10 whatever you guys call it, that you would stipulate that they shorten
11 the construction. It's going to be a lot of disruption for
12 surrounding homeowners. And if this really is easier, if it's fewer
13 loads, fewer things going on, then I guess I don't understand why
14 their proposed construction now is three years longer. So, that's all
15 I have to say.

16 CHAIRMAN ROBINSON: Thank you. Any questions? Mr.
17 Tershman.

18 UNIDENTIFIED COMMISSIONER: No, I think this question might
19 -- I'm not exactly sure if it would be for him or for Ann.

20 CHAIRMAN ROBINSON: Up to you.

21 UNIDENTIFIED COMMISSIONER: In regards to construction, just
22 for clarification purposes, you want the construction shortened or
23 you're wondering why they are starting --

24 MR. TERSHMAN: Well, I want it shortened. If it really --
25 if this is an easier buildout for them, it's fewer truckloads going in

1 and out, yeah, I want it shortened. I don't -- I guess I don't
2 understand why it would be, but if it truly is going out three more
3 years, I would ask that it be shortened. Do it in a shorter time
4 period and have less disruption for myself and the surrounding
5 property owners.

6 UNIDENTIFIED COMMISSIONER: So, my apologies. Again, just
7 for clarification, it's not about the start date of construction that
8 is the concern, it is the amount of time to construct the project is
9 the concern.

10 MR. TERSHMAN: Yeah, right. The extended end date.

11 UNIDENTIFIED COMMISSIONER: And then, another question
12 Chair. I'm sorry this will be to Ann.

13 CHAIRMAN ROBINSON: Yes. Ann.

14 MS. CUA: So, the request for an extension of three
15 additional years does not mean that the construction is taking three
16 years. Back in the report of 2005, and I don't believe there's been
17 any change, the Department's understanding is that construction of
18 this project will take a year-and-a-half. But, as you know, they
19 still have to find -- secure getting all the building permits and, you
20 know, I don't know what they do with financing, but it's just they
21 want to make sure they can complete the project well in advance of it
22 expiring.

23 So, the three years doesn't mean that -- that construction
24 is planned for three years. And then one -- just one last point. I
25 think there was some testimony -- I wanted to read -- I believe there

1 was some testimony --

2 CHAIRMAN ROBINSON: You can come back. I just want to see
3 if I can wrap --

4 MS. CUA: Oh, okay.

5 CHAIRMAN ROBINSON: -- the testimony.

6 MS. CUA: All right.

7 CHAIRMAN ROBINSON: Would anybody else like to testify at
8 this time? Seeing none, public testimony is now closed. We'll take a
9 quick ten minute break, Commissioners, to use the time to call who you
10 need to call, take a quick snack, and --

11 (Recess)

12 CHAIRMAN ROBINSON: Aloha. Thank you for the intermission.
13 The Planning Commission is back in session. At this time after public
14 testimony, as the Chair I would like to offer the Applicant time to
15 respond to all testimony at this moment. After that, I will then
16 bring Ann back up here and the Applicant, and we'll be able to ask
17 some questions.

18 And, again, guys, this is just -- there's always hearsay.
19 There's no sense all of us getting personal or anything. It's just --
20 just facts, and we can move on. Thank you so much. Please introduce
21 yourself.

22 MR. SALISBURY: Thank you, Chair. Mike Salisbury. Thank
23 you for letting me speak. I just wanted to say two things that came
24 to my mind when all of this stuff was going on. From our original SMA
25 when it was approved there's been a lot of changes over this long

1 time.

2 One of the things is the ADD, the Fair Housing Act.

3 UNIDENTIFIED FEMALE: ADA.

4 MR. SALISBURY: ADA. And the slope that -- the reason why
5 we got retaining walls on one side, and we're kind of coming out of
6 the other is because the land -- we have to stick to two percent
7 slope, which --

8 CHAIRMAN ROBINSON: Mr. Salisbury, if you have anything
9 regarding the testimony, because if you guys are good with the
10 testimony, then I want to move on to questions from Commissioners. I
11 just want to give you this opportunity in case there's something else.
12 And we will talk about all of that that you want to talk about.

13 MR. SALISBURY: Okay. One response that I would like to say
14 is that we did -- we didn't -- when we presented to the Maui Kamaole
15 the heights, we had assumed that we had got the amendments on our last
16 changes to the SMA. So, I think that they think it's going to be five
17 feet higher than what we presented to them. That's one. I wanted to
18 make sure you guys -- they understood that. I think that was -- they
19 were thinking that we're looking for an additional to what we
20 presented to them. That's what I wanted to say.

21 CHAIRMAN ROBINSON: Go ahead.

22 MRS. SALISBURY: Mr. Chair, thank you. I'm Jennifer
23 Salisbury, project assistant for Paradise Ridge. I want to make it
24 very clear. I know it was asked during the testimony if the SMA
25 amendment today is not granted, what would that mean for the project.

1 Let me ask all of you, if we are not granted this, and we cannot
2 safely build the south wall, what engineer is going to put their stamp
3 on that?

4 If we cannot get the SMA amendment today, abandoning this
5 property, abandoning this project is a very real possibility and a lot
6 of the permits are near ready. They're near approved and most of it
7 hinges on today, and we are shovel ready. I don't know what else I
8 can say. It's this or nothing. That's all I have to say, sir.

9 CHAIRMAN ROBINSON: Okay. Thank you.

10 MR. SALISBURY: Yeah, we're ready to build. So, like, if
11 this gets approved we're moving forward. If not, we're back to the
12 drawing board.

13 CHAIRMAN ROBINSON: Thank you so much. Ann.

14 MS. CUA: Thank you, Chair.

15 CHAIRMAN ROBINSON: And so, Ann, I know you had a couple
16 points you wanted to make before I went to break, so thank you for
17 waiting and please go.

18 MS. CUA: Okay. Let me find it. So, when I was hearing
19 testimony there was something that was said that made me ask one of my
20 staff to take a picture of the original staff report done in 2005, the
21 project description that was presented then, so I want to read one
22 paragraph, because I think what you heard was that there were no
23 retaining walls proposed as part of the original project.

24 So, what I am reading from is the Planning Department Staff
25 Report of 2005, the project description section. "Retaining walls are

1 also proposed in addition to the walls already existing on the north
2 and south boundaries of the site," and it refers to an Exhibit 21.
3 "The retaining wall on the north side of the site has been designed to
4 stagger the existing wall by approximately two feet at its base to
5 accommodate a planting area," and then it refers to Exhibit 21A. "The
6 Applicant originally proposed the stack block keystone system rather
7 than the typical hollow tile. They are now requesting approval of a
8 split block tile wall, which has a similar appearance to the keystone
9 wall. The wall on the south side will also be a split block design."

10 So, that's just to make sure the record is accurate that in
11 2005, when the Commission approved the project they did include
12 retaining walls on either side. It's not the same retaining walls as
13 today, but it did include retaining walls. Other than that, Chair,
14 we've gone over our analysis. So, when you are ready, I can give you
15 our conclusions and recommendation.

16 CHAIRMAN ROBINSON: Okay. Thank you. Do we have any
17 questions for, Ann, or should I start? Ann, we've had a lot of good
18 testimony. I think the Commission can see both sides, you know. I
19 think it's -- you know, it's -- we all live with this daily.

20 I think the question is, and I asked you this earlier, is
21 when the SMA was approved, was there excavation and did the excavation
22 add up to -- we know the buildings never changed, but the difference
23 we're talking about is between a pad with minimal excavation and
24 infill, compared to excavation and truckloads and truckloads.

25 And we're here talking about an SMA. We're not here talking

1 about views, we're not here talking about noise, kind of, but it's
2 really about what is best for our special management area and that's
3 why the Planning Commission looks at SMA. So, if you could walk us
4 through then and now, please.

5 MS. CUA: Okay. So, I think a good table to use in your
6 report -- not necessarily a table, but -- well, yeah. So, on page 3,
7 there's a table that shows the maximum peak elevations. So, you see
8 Buildings numbers 1 through 8, and it says in 2005 -- so, the second
9 column is the 2005 approved max peak elevations.

10 So, at the time, the conceptual plans that were presented to
11 the Planning Department and the Planning Commission, and as was
12 settled -- now, remember there was an intervention and there was a
13 settlement. So, these elevation pads or these peak elevations were
14 what was agreed to and that's how the SMA permit was approved.

15 The Applicant came in -- well, and then as most of you know
16 as Commissioners, when you approve a project or when you review a
17 project in the SMA, the kind of plans that we have at that time is
18 conceptual plans. We don't have construction drawings, we don't have
19 design build drawings at that point in time.

20 So -- I mean, I've been with the Department 35 years. So
21 many projects come back, sometimes very minor. Like one of the things
22 we approved, just administratively, was when they went to the Fire
23 Department, the Fire Department said they need a greater truck
24 turnaround. So, they have to shift their parking, so they can have
25 the greater truck turnaround. That's very typical of any project when

1 | you go from conceptual plans to construction drawings.

2 | So, when the Applicant actually came in to meet with the
3 | Department -- and they talked to me about the elevation change. They
4 | talked to me about that, they talked me about all the other stuff that
5 | we approved, but when their letter actually came in to us, it
6 | mentioned everything except the elevation pad change. And so, in
7 | their mind, they're thinking that's what I approved. In my mind, yes,
8 | they talked to me about it, but people talk to me about a lot of
9 | stuff, but when it comes down to what are we responding to, it's
10 | what's in writing and that's what we responded to.

11 | And so, when we did talk and understood that, you know,
12 | that's something they had totally meant to include, they didn't
13 | include, we didn't approve it, and when they said that's what they
14 | wanted to do, I said, well for something like that, that has to go
15 | back to the Planning Commission because height was the whole issue.
16 | Elevations was the whole issue. That's why we're here today.

17 | CHAIRMAN ROBINSON: So, there was an intervention that I
18 | don't know if -- we're not privy to what was the intervention about,
19 | but were you involved at the time of the intervention?

20 | MS. CUA: Oh, yeah.

21 | CHAIRMAN ROBINSON: And so, if there's an intervention and
22 | there's an agreement on height, and then how does that affect the
23 | amendment changing the intervention or was that --

24 | MS. CUA: Okay. So --

25 | CHAIRMAN ROBINSON: -- or was that -- the height was the

1 building height, it wasn't the overall net height?

2 MS. CUA: It was the pad height. Okay. So, let me just say
3 one thing. I want to make sure we're clear on that. The
4 interventions were filed, and the Commission had -- I would like to
5 read exactly -- the Commission had entertained or had taken up --
6 okay. The interventions were filed. The Commission never acted on
7 the intervention. It was settled before the Commission could either
8 approve or deny the intervention. But still, because they were filed,
9 we still have to be able to get letters from them to be able to waive
10 the public hearing and see what their feeling is on the project.

11 Now, at that time, the project was as it was stated here,
12 and it -- and the report didn't go into the amount of truckloads, but
13 that is one thing I asked them to do. I said, you know, we need to
14 really see because the SMA -- part of the -- I mean, the SMA law is to
15 protect, you know, environmental and ecological issues.

16 And so, what kind of -- you know, we need to look at what
17 kind of environmental impacts are either going to be created as a
18 result of this proposed amendment or mitigated, as I mentioned one of
19 your conditions states. And so, you know, when they started talking
20 to me about the truckloads, I said, okay, you need to put that down
21 writing because that's -- that's really important because there are a
22 lot, a lot, a lot of neighbors that surround this project site.

23 And from the Department's standpoint, we looked at, okay,
24 the impact of having 12,000 cubic feet less material leaving the site
25 and all those additional truckloads will definitely have less of an

1 impact on the overall area. I understand the height issues. You
2 know, just being a good neighbor.

3 From the SMA, though, standpoint and the reason why I asked
4 them to prepare those -- the view study, which shows the views of the
5 project from the public roadway. So, that's why they took South Kihei
6 Road, and they wrote about Kenny Barr's house. And that's why we're
7 discussing -- you know, that's why that was included as part of your
8 report, both views.

9 CHAIRMAN ROBINSON: Corporation Counsel has a question, Ann.

10 MS. CUA: Okay.

11 MR. GALAZIN: Thank you, Ann. So, back when the original
12 SMA permit was being considered, you said that there were two
13 petitions for intervention filed.

14 MS. CUA: Right.

15 MR. GALAZIN: And that ended up in a settlement agreement.

16 MS. CUA: Correct.

17 MR. GALAZIN: Were there any other petitions filed and acted
18 on by the Commission?

19 MS. CUA: No.

20 MR. GALAZIN: Those were the only two?

21 MS. CUA: Those were the only two.

22 MR. GALAZIN: Could Maui Kamaole, the AOA, have filed an
23 intervention at that time?

24 MS. CUA: Absolutely.

25 MR. GALAZIN: And did they?

1 MS. CUA: No.

2 MR. GALAZIN: Okay. Thank you.

3 CHAIRMAN ROBINSON: Commissioner Gomes.

4 COMMISSIONER GOMES: Thank you, Chair. Ann, you've been
5 through this project with them the entire time.

6 MS. CUA: Correct.

7 COMMISSIONER GOMES: Okay. From the get-go.

8 MS. CUA: Correct.

9 COMMISSIONER GOMES: Okay.

10 CHAIRMAN ROBINSON: Are you good? Do you have anything to
11 add? You want to --

12 MS. CUA: No, I'm fine, unless you want me to go to the
13 recommendation.

14 CHAIRMAN ROBINSON: Do you guys have any question for Ann?
15 It not, we're going to go to recommendation. Please, Ann.

16 MS. CUA: The Planning Department, based on the findings of
17 fact presented in the Department's report, finds that the proposed
18 amendment will not have a significant adverse environmental or
19 ecological effect provided mitigation measures are incorporated into
20 the project.

21 The Department is recommending approval of the SMA permit
22 amendment subject to all of the original conditions and only amending
23 Conditions number 2 and 4. Condition number 2, deals with the time to
24 complete construction. So that condition would now read that
25 "construction of the project shall be completed by March 31st, 2022."

1 I won't need to read the rest of that condition. And then Condition
2 number 4, calls attention to the date of the plans that are in your
3 report and that have been discussed at this meeting today. So, "that
4 final construction shall be in accordance with revised plans dated
5 August 6th, 2018." Those are the only two changes to the conditions
6 that were approved by the Planning Commission in 2005.

7 CHAIRMAN ROBINSON: I'm just trying to get color
8 coordinated.

9 MS. CUA: Yeah, I know that happened to me too. I was,
10 like, wait a minute, only the recommendation is supposed to be in
11 green, not.

12 CHAIRMAN ROBINSON: Yeah.

13 MS. CUA: So, in consideration of the foregoing, the
14 Department recommends that the Commission adopt the Department's
15 report and recommendation prepared for the September 11th, 2018,
16 meeting as its findings of fact, conclusions of law, and decision and
17 order, and authorize the Director of Planning to transmit said written
18 decision and order on behalf of the Commission.

19 CHAIRMAN ROBINSON: Thank you. Commissioner La Costa.

20 COMMISSIONER LA COSTA: Thank you, Chair. Thank you, Ms.
21 Cua. You mentioned in your conversation -- sorry, the word went above
22 my head -- about mitigation. What -- are the mitigations that you are
23 discussing enumerated in here, because I didn't --

24 MS. CUA: So, when we talk about mitigative impacts, we talk
25 about, like, you know, fencing -- construction fencing, watering if

1 needed, you know, maybe notification of neighbors for blasting.
2 That's just constructive related impacts.

3 Mitigation measures of this project compared to the other
4 project is what I discussed and that's, you know, noise, traffic.
5 Those are mitigative measures to make the project have less of an
6 environmental impact on the entire neighborhood.

7 COMMISSIONER LA COSTA: Okay. Thank you.

8 MS. CUA: Chair, one thing I forgot to mention. I guess one
9 of the testifiers asked me and discussed with you about calling
10 attention to one of the emails that was sent around that there was a
11 picture in the back of it. And I believe -- I understand you got to
12 see the colored version of it, and so I think we should be good. And
13 that was from Dr. Simon.

14 CHAIRMAN ROBINSON: Simon.

15 MS. CUA: Thank you.

16 CHAIRMAN ROBINSON: Thank you.

17 MS. CUA: I think that's it.

18 CHAIRMAN ROBINSON: Commissioners, questions or motions.
19 Anyone. Commissioner Carnicelli.

20 COMMISSIONER CARNICELLI: I will -- I'll make a motion,
21 Chair to approve the SMA permit as amended in the staff report.

22 COMMISSIONER GOMES: Seconded.

23 CHAIRMAN ROBINSON: I have a motion to approve as
24 recommended and second -- by Commissioner Carnicelli, second by
25 Commissioner Gomes. Would you like to speak to the motion?

1 COMMISSIONER CARNICELLI: Yeah. Thank you, Chair. You
2 know, this is one of those months where, you know, we're dealing with
3 people's homes, people's lives. It gets emotional. People are, you
4 know, very passionate. I wish this were just as easy as re-cutting
5 drapes. I wish it was that easy, but, you know, we're tasked with
6 things that have a lot more nuance than that.

7 I understand the concerns of the neighbors. I do hear what
8 they are saying. However, when I look at how we're supposed to go
9 ahead and make these decisions, and what does it fall under and not, I
10 do feel as though the Applicant has taken the steps to do what they
11 can. They did make mistakes. However, this also falls under what we
12 talk about nearly every single time we meet and that is also housing.

13 And so, the fact that we can -- we're kind of pigeon holed
14 into this as our option is why I'm going to go ahead and support the
15 motion. So, thank you, Chair.

16 CHAIRMAN ROBINSON: Thank you. Commissioner Gomes.

17 COMMISSIONER GOMES: I would just like to say that I do
18 second this motion with comments in regards to -- I apologize -- I
19 can't recall her name. I apologize. Jennifer. I'm sorry, Jennifer.

20 It is very true this is a very small parcel. It's two --
21 it's a little over two acres. You know, it's either, you know, this
22 particular project that's going to come before us that has been in the
23 works for this long. As it's been stated, mistakes were made. They
24 are making the corrections. And if it's not going to be this perfect
25 a project, which is Paradise Ridge Estates, it's going to be another

1 project.

2 I mean, there's something else that's going to be built
3 there, and then we're probably going to go through -- and we may not
4 be here, but we're going to go through the entire process all over
5 again. And, unfortunately, you know, the residents of, you know, Maui
6 Kamaole is going to go through it again.

7 I stand by this, and I do just want to make a comment, if
8 you don't mind, in regards to the retaining walls. I mean, the
9 retaining walls is something that actually, you know, is a good thing
10 for both ends. I mean, I can only say that for safety wise. You
11 know, and if they could pin it together that it's actually a positive
12 more than it's a negative, and that's just speaking from experience,
13 you know, but I can see that there's some opposition to this, because
14 -- for whatever reason, but, you know, it's something that I know that
15 that was also a big concern in regards to what is being stated, you
16 know, here by the testifiers.

17 And I just wanted to make that clear that, you know, it's
18 kind of similar to consider trying to come up again, you know, to
19 solidify and constructually make it solid and sound for you because
20 where you are, really is, you know, in a flood zone type of area as
21 well. You know, so I'm just saying that, you know, I'm in approval of
22 this, but I do want to make my comments in regards to that. And I do
23 understand the testifiers, they're needs as well. But, you know, if
24 it's not Paradise Ridge Estates right there, it will be a whole other
25 project that's going to come forward before us in regards to this.

1 CHAIRMAN ROBINSON: Okay. Thank you. Discussion.
2 Commissioner La Costa.

3 COMMISSIONER LA COSTA: Thank you. I had a question for the
4 Developer, please, the Salisburys.

5 CHAIRMAN ROBINSON: Sure.

6 COMMISSIONER LA COSTA: Thank you. Thank you so much.
7 Commission 18 talks about affordable housing. Can you please tell me
8 what the allocation is in this project and if it will always be
9 affordable or if it will turn the market at some point? Thank you.

10 MR. SALISBURY: So, this project's been on the books for 23
11 years. So, when we started it was an affordable housing, but then
12 when the affordable housing movement came out, they passed -- the
13 first go at affordable housing was to assess an affordable housing fee
14 on every unit. So, that was registered on our title, so that when we
15 take out the permits on this project we will pay a fee towards
16 affordable housing.

17 MS. SALISBURY: Did we answer your question? I'm not sure.

18 COMMISSIONER LA COSTA: No, you did not.

19 MS. SALISBURY: Could you ask it again, please?

20 COMMISSIONER LA COSTA: Yeah, I want to know if there's a
21 portion of the project that is going to be allocated as affordable
22 housing, and if it will stay in affordable housing, but it sounds like
23 you want to buy the credits rather than provide affordable housing in
24 the project.

25 MS. SALISBURY: That's correct.

1 COMMISSIONER LA COSTA: Thank you.

2 CHAIRMAN ROBINSON: And I want to -- not credits, but
3 they're paying the fee. So, there's fee and -- a credit is actually a
4 house that's built. A fee is just income.

5 COMMISSIONER LA COSTA: But there won't be any on the
6 project? No affordables on the project?

7 MS. SALISBURY: No, ma'am.

8 COMMISSIONER LA COSTA: Okay.

9 CHAIRMAN ROBINSON: No, it will be market.

10 MS. SALISBURY: Right.

11 CHAIRMAN ROBINSON: Any other discussion. I have a comment.
12 It's human to make errors. I work with a lot of them. But, you know,
13 it's -- yeah. Losing views is unfortunate for anybody. If the Code
14 is there, or they're not there, if you go higher or lower, but the one
15 thing that Makena is they agreed to make sure that their tree line and
16 their sights wasn't higher than their building. Because a lot of
17 people -- you know, a lot of people let their trees go 50 feet and
18 everybody is worried about the views of the building, but the trees
19 block everything out.

20 And I'm hoping as a good neighbor, you guys look to that
21 maybe as a consolation and consideration to your neighbor's that you
22 might look at coconut trees instead of something that is of full
23 growth. I'm not asking for a condition, because I think, you know,
24 SMA to put onto you guys right, you guys already have 25 conditions.
25 You guys are paying every fee that's asked. You guys haven't asked to

1 get out of any of that even though it may not be -- you know,
2 especially with the public schools and the traffic. You know, we look
3 at all of that, a lot of people trying to get out of things.

4 So, that's just my comment. I hope you guys, you know, do
5 that. I hope you guys work with your neighbors. And the color of the
6 roof, you know -- the picture that I saw, the white makes the blue
7 look nicer. If it was a black roof or a different color roof it might
8 not be as attractive. They don't see those roofs anymore, so it's not
9 -- it's going to be just blue. Little things like that help it. My
10 neighbor took away my view, but he worked with the roof, and it worked
11 out, you know. It's just the -- still try to be good neighbors even
12 though we have a disagreement about what we should do.

13 MS. SALISBURY: Yes, sir, that's our full intention.

14 CHAIRMAN ROBINSON: Yeah. Thank you. Any other? Seeing
15 none, Director?

16 DIRECTOR MCLEAN: Chair, the motion on the floor is to
17 approve the requested amendments as noted in the staff recommendation.

18 CHAIRMAN ROBINSON: All those in favor, please raise your
19 right hand. All those opposed. We have four approvals, one opposed,
20 and we have an abstention, which is an approval. The recommendation
21 does pass. Congratulations. Thank you.

22 Next on top of the agenda, we put back our maps, tracking
23 system, education seminar, whatever you want to call it to a further
24 date. We have -- and go ahead, Director.

25 DIRECTOR MCLEAN: The next item on the agenda is for

1 notification purposes only. And this is notification to the
2 Commission that approval letter dated August 16, 2018, of Peter Savio,
3 approving the transfer of an SMA Use Permit from MP Venture, LLC to
4 MPV Holding Company LLC for the Maui Palms Redevelopment Project, also
5 known as the Maui Pagoda, at TMK: 3-7:003, parcels 007 and 009, in
6 Kahului. And, again, this is just for notification purposes.

7 The Chair did ask me earlier about whether notifications
8 need to come to the Commission or whether they can be granted
9 administratively as was done in this case. I will review the rules
10 carefully and let you folks know how the Department will proceed on
11 these in the future.

12 CHAIRMAN ROBINSON: Yeah, and I was just asking about who
13 the new owners would be. You know, if something is approved by our
14 body at least we know who the new owner is or who left, because we
15 might have -- that might have been our contingency on one person being
16 on a project that we might have given a favorable opinion for.

17 And then, also, Director, is I know we have some emails
18 going back and forth about the SMA Minor and on some testimony that
19 was sent in. Can you touch on that and see if it's relevant to --

20 DIRECTOR MCLEAN: Sure. The next items on the agenda are
21 the SMA Minor Report and the SMA Exemption Report. SMA Minors can be
22 -- or the rules call for them to be issued by the Department
23 administratively. And so, those do not come to the Commission.

24 There was some testimony submitted about a property in
25 Makena that received an SMA Minor Permit and that testimony stated

1 that the Commission was delinquent in its authority or failed to
2 perform its duties in this permit, but the Commission did not have a
3 role in that permit. That was handled by the Department.

4 CHAIRMAN ROBINSON: And I think in that one the contention
5 of the complaint was that it was being piecemealed. They were doing
6 one thing, and another, and another, which we see. And as -- I would
7 like to see if we could -- if they had more than one SMA Minor or if
8 that's the first one, if there's going to be a second one. You know,
9 if you could bring that to us and notify us, so we can at least know
10 this is what we're talking about. It still makes the way we review,
11 but at least we can be aware of that piecemeal project.

12 Commissioners, do we agree on that? Thank you.

13 DIRECTOR MCLEAN: My recollection for this one is that the
14 dwelling was given and SMA exemption, which is appropriate, and then
15 sometime later we granted an SMA Minor Permit for the installation of
16 a gate at the end of the driveway, which actually is a couple parcels
17 away from it. They had easements across a couple of parcels.

18 So, it was a gate at one location, and then the exemption
19 for a different one. So, they could be construed to be the same
20 project and, therefore, that concern of segmentation could,
21 theoretically, be raised, but because that gate serves an easement
22 that serves other properties, we felt it was distinct enough that we
23 didn't want to tie it into the exemption that was granted for the
24 house.

25 CHAIRMAN ROBINSON: And as long as that's been tied to the

1 project. If there's going to be another phase of it, I think if you
2 could --

3 DIRECTOR MCLEAN: Correct.

4 CHAIRMAN ROBINSON: -- let us know that at the time.

5 DIRECTOR MCLEAN: Yes.

6 CHAIRMAN ROBINSON: I appreciate that.

7 DIRECTOR MCLEAN: Yes. Are there any questions on the Minor
8 Report or Exemption Report?

9 CHAIRMAN ROBINSON: All in favor of approving raise your
10 right hand. Thank you.

11 DIRECTOR MCLEAN: And, lastly, you have a memo for the
12 agenda items for the next meeting. Two items under unfinished
13 business. One is the findings of fact from Hearing's Officer Nakano
14 for the County Special Use Permit for seashore properties for the Paia
15 Inn. And then the other was -- the other was deferred from just the
16 last meeting, the Downtown Kihei Project six year time extension. And
17 on the back communication items, we may -- this isn't certain, but we
18 may have a request for a hearing's officer to be appointed in a
19 different matter and that is the Commission's new review of the Camp
20 Maui Zipline in Haiku. And we will also have -- we will also have the
21 Maps Workshop, but we're not certain if that communication item will
22 be scheduled at the next meeting. It's possible, but that's not
23 certain yet.

24 CHAIRMAN ROBINSON: And, Commissioners, I'm going to request
25 that we move up the Crouse Companies to our first item before we do

1 | the Paia. If there's any objection to that. Okay. Thank you.

2 | Carolyn, noted. That's it. All right. Guys, thanks for working

3 | through lunch. Be safe out there.

4 | (Meeting adjourned at 1:57 p.m.)

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CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that the foregoing is a complete, true, and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: October 12, 2018



Jessica B. Cahill, CER/CET-708