

1 MAUI PLANNING COMMISSION MEETING

2 SEPTEMBER 27, 2022

3 9:01 A.M.

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5 **Certified Transcript**  
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10 Report of proceedings at the Maui Planning  
11 Commission Meeting, held at Wailuku, Maui, Hawaii on  
12 the 27th day of September, 2022, commencing at the  
13 hour of 9:01 a.m.

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2

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KELLIE PALI, Vice Chair

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KIM THAYER

7 ASHLEY LINDSEY

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ANN CUA, Project Planner (Appeared remotely)

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1 HONOLULU, HAWAI'I

2 SEPTEMBER 27, 2022

3 9:01 A.M.

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5  
6 (Whereupon, due to poor audio  
7 connectivity, the proceeding was  
8 reported and transcribed to the  
9 best of my ability as follows.)

10 -o0o-

11  
12 CHAIR LA COSTA: Aloha kakahiaka, all.

13 Welcome to Maui County Commission meeting on  
14 September 27. We have with us today commissioners in  
15 person. Thank you so much for attending. Good to  
16 see you.

17 Director, nice to see you. And Carolyn,  
18 for your help, thank you so much.

19 Director, will you please open?

20 DIRECTOR MCLEAN: We have Commissioner  
21 Freitas. Good morning.

22 COMMISSIONER FREITAS: Good morning.

23 DIRECTOR MCLEAN: Commissioner Thompson.

24 COMMISSIONER THOMPSON: Aloha and good  
25 morning.

1 DIRECTOR MCLEAN: Commissioner Hipolito.

2 COMMISSIONER HIPOLITO: Aloha, good  
3 morning.

4 DIRECTOR MCLEAN: Commissioner Thayer.

5 COMMISSIONER THAYER: Aloha kakahiaka  
6 kakou.

7 DIRECTOR MCLEAN: Vice Chair Pali.

8 VICE CHAIR PALI: Good morning.

9 DIRECTOR MCLEAN: And Chair Lacosta.

10 CHAIR LA COSTA: Aloha.

11 DIRECTOR MCLEAN: I know that Commissioner  
12 Deakos is excused. And is Commissioner Lindsey  
13 excused as well?

14 MS. TAKAYAMA-CORDEN: She's going to be  
15 late.

16 DIRECTOR MCLEAN: Commissioner Lindsey's  
17 going to be late.

18 CHAIR LA COSTA: Thank you. So this  
19 morning during our agenda, we have several items.  
20 First one, the director will introduce and then we'll  
21 have a hearing on the item. We also have a contested  
22 case in which (indiscernible).

23 So initially, please understand that if you  
24 testify, you have three minutes. You don't have  
25 three minutes and ten seconds, you have three

1 minutes. Please do so (indiscernible) questions, you  
2 will be allowed to answer those (indiscernible). So  
3 thank you so much for your kokua on that.

4 If you are on our chat function, please do  
5 not use it for testimony or to directly contact  
6 anyone or the director.

7 So having said that, I will turn it over to  
8 the director. Thank you.

9 DIRECTOR MCLEAN: Thank you, Chair. When  
10 we do hear from staff on the first item, the public  
11 hearing item -- and I will introduce that in just a  
12 second -- I did also want to ask if the commission  
13 would consider making an item in the director's  
14 report either first or second on the agenda.

15 And this is the item that asks if the  
16 commission was to designate the South Maui Advisory  
17 Committee to provide a recommendation on an SMA Use  
18 Permit and then -- because that should also  
19 (indiscernible) so we need to find out from staff on  
20 either item (audio difficulty) first time public  
21 hearing item. So commissioners, if you would  
22 consider (indiscernible).

23 COMMISSIONER FREITAS: There's no  
24 testimony?

25 DIRECTOR MCLEAN: Testimony could be taken.



1 COMMISSIONER FREITAS: Would that mess up  
2 (indiscernible)?

3 DIRECTOR MCLEAN: It could, though -- yes,  
4 it absolutely could. There's no guaranteeing on  
5 items it would work.

6 COMMISSIONER FREITAS: Okay. All right.

7 DIRECTOR MCLEAN: But that's a -- that's a  
8 very --

9 COMMISSIONER FREITAS: One more question.  
10 You don't have corporate counsel?

11 DIRECTOR MCLEAN: Mr. Hopper is joining  
12 remotely right now, and he will come down to the  
13 meeting.

14 CHAIR LA COSTA: Any questions? Did anyone  
15 have an objection to rearranging the agenda? (Audio  
16 difficulty) consensus.

17 DIRECTOR MCLEAN: So you do have a  
18 communication in your packet from the past couple  
19 days. This is their request to amend their SMA Use  
20 Permit for the proposed Downtown Kihei Project to  
21 include a northern component consisting of the  
22 previously approved 150-unit select service hotel --

23 MS. TAKAYAMA-CORDEN: Mike Hopper. Get  
24 your attention.

25 DIRECTOR MCLEAN: I'm sorry?

1 MS. TAKAYAMA-CORDEN: Mike is trying to get  
2 your attention.

3 DIRECTOR MCLEAN: Mr. Hopper.

4 MR. HOPPER: Just the audio is very bad.  
5 There's been a couple people in the chat and myself,  
6 just remotely -- it's -- there's parts that we just  
7 cannot hear. So for sunshine law purposes anyway --

8 DIRECTOR MCLEAN: (Indiscernible).

9 MR. HOPPER: Still don't have me?

10 DIRECTOR MCLEAN: Does it -- no, we can  
11 hear you now. Does it seem any better now?

12 MR. HOPPER: I don't know. If you did  
13 something to change it, maybe give it a shot. But,  
14 yeah, I think with -- it's been very difficult to  
15 hear.

16 So maybe go on now and see if it's any  
17 better if there was something done to change it. It  
18 was very hard to hear, though.

19 MS. TAKAYAMA-CORDEN: Is it better?

20 DIRECTOR MCLEAN: Okay. Let me finish  
21 reading the item into the record, and you can let us  
22 know if this is any better.

23 The Downtown Kihei Project including a  
24 northern component consisting of the previously  
25 approved 150-unit select service hotel and up to

1 approximately 63,400 square feet of commercial retail  
2 space and a southern component of 223 affordable  
3 housing units in one four-story mixed use building,  
4 two four-story residential buildings and four  
5 two-story residential buildings, a community center  
6 with common resident facilities, 28,075 square feet  
7 of commercial and retail space. Also proposed are  
8 873 parking stalls for tenants and guests,  
9 landscaping, and related infrastructure improvements.

10 The project will be located on  
11 approximately 27.436 acres of land at TMKs 3-9-002,  
12 Parcels 30, 76, 80, and 158 on Piikea Avenue, Kihei.

13 Again, this is an SMA permit amendment.  
14 It's not a public hearing item, but there will be  
15 public testimony taken when the commission hears it.

16 What's in front of you today is whether you  
17 wish for this to go to the South Maui Advisory  
18 Committee first. If it goes there, they would take  
19 testimony (audio difficulty) and come back to you.  
20 So the question is whether or not (audio difficulty).

21 MR. HOPPER: Chair.

22 MS. CUA: Mike, was that any better?

23 MR. HOPPER: There are -- it's slightly  
24 better, but it's still very quiet. I've got my audio  
25 boosted and parts are just cutting out on and off;

1 there's parts you cannot hear.

2 MS. TAKAYAMA-CORDEN: Okay. I'll bring  
3 this computer down and bring it back up. I'll turn  
4 it off.

5 CHAIR LA COSTA: Ladies and gentlemen, if  
6 you please bear with us, we are having some technical  
7 difficulty.

8 (Whereupon, a brief recess was held.)

9 MS. CUA: Okay. Try again.

10 CHAIR LA COSTA: Ladies and gentlemen, they  
11 are getting us back on. I will now (audio  
12 difficulty).

13 Mr. Hopper, can you hear us?

14 MR. HOPPER: You can try. It still sounds  
15 a bit fuzzy, but I think you can try. But Mr. Hurley  
16 said that you're still cutting out. I mean, we can  
17 see, but -- yeah, I don't know what the problem is.

18 This did not sound like this at the last  
19 planning commission meeting. So I'm not sure if  
20 there's been a change in the audio or what's --  
21 what's happening right now.

22 MS. TAKAYAMA-CORDEN: We've been having  
23 problems.

24 CHAIR LA COSTA: With that being said,  
25 commissioners, do we have questions for the director

1 regarding this item?

2 Commissioner Thompson?

3 COMMISSIONER THOMPSON: My input there is  
4 as it always is. Planning commission should not hear  
5 (indiscernible) a lot of people, no one was for  
6 permits to take longer and cost more money.

7 Everybody already --

8 MR. HOPPER: Chair. Chair.

9 CHAIR LA COSTA: Yes, Mr. Hopper?

10 MR. HOPPER: If we're going to get into  
11 this item of whether to send this matter to the South  
12 Maui Advisory Committee, the first thing to do would  
13 be to take public testimony on that item before you  
14 get into discussion, if that's what we're going to  
15 do. So I think we would ask for testimony from the  
16 public and, you know, and go from there.

17 CHAIR LA COSTA: Yeah. I asked if the  
18 commissioners had any questions, and I didn't realize  
19 that Mr. Thompson (indiscernible).

20 MR. HOPPER: Yeah. It seems like we're  
21 starting a deliberation there, so, you know, I don't  
22 want to -- I wanted to avoid that before testimony.  
23 I think I'd advise to just take testimony at this  
24 point with that.

25 CHAIR LA COSTA: Thank you, Mr. Hopper.

1 Carolyn, have we anyone signed up?

2 MS. TAKAYAMA-CORDEN: No. No. There is no  
3 one signed up on this matter.

4 MR. HOPPER: Just, Chair, it may be good,  
5 because of the audio problems, to re-announce what  
6 the matter in general is, that you changed the agenda  
7 item. I know that the director read that item but  
8 just to be clear in case the public had trouble  
9 hearing that, to just re-announce it.

10 You don't have to do the whole item, but  
11 just remind them that this is item -- go with the  
12 item number and what the potential decision that  
13 you'd be making is.

14 CHAIR LA COSTA: Thank you, Mr. Hopper.

15 So, ladies and gentlemen online, the item  
16 on the agenda, Number D-1, has been moved forward.  
17 Doing that, public testimony will be open for any of  
18 you who wish to testify.

19 This item is to determine whether or not  
20 the South Maui Advisory Committee will provide a  
21 recommendation on this change of SMA. Please step  
22 forward and make (audio difficulty).

23 MR. HOPPER: Chair, again, you're cutting  
24 out. I did not hear the last part of your sentence.  
25 So I don't know if we can continue the meeting if we

1 can't fix these audio problems because this was  
2 agendized as a remote meeting. So maybe we can work  
3 on that.

4 CHAIR LA COSTA: Okay. If I am closer to  
5 the microphone, does that help any or does it still  
6 cut in and out?

7 MR. HOPPER: I can hear you better, but I  
8 don't know if the cutting out issues would have  
9 anything to do with that. So I would definitely  
10 speak very slowly, very clearly, close to the mic I  
11 think is good, but I don't know why there are  
12 portions that are being cut off at this point.

13 CHAIR LA COSTA: Okay. So I will restate  
14 that Item Number D-1 has been repositioned (audio  
15 difficulty) agenda (audio difficulty) Item D-1 before  
16 us.

17 MR. HOPPER: Chair.

18 CHAIR LA COSTA: Yes, sir?

19 MR. HOPPER: Chair, it's -- you're being  
20 cut out again. The audio is unintelligible. Could  
21 you please take a recess? And I could come down and  
22 we can discuss.

23 CHAIR LA COSTA: Thank you, Mr. Hopper.

24 Yes. Planning commission is now in recess.

25 ///

1 (Whereupon, a recess was held  
2 from 9:15 a.m. to 9:27 a.m.)

3 CHAIR LA COSTA: Aloha again, everyone. I  
4 will call us back to order. Maui (audio difficulty).  
5 If you are having difficulties hearing me, if the  
6 audio is in and out, please let us know immediately.  
7 (Audio difficulty).

8 MR. HOPPER: Chair, it's still happening.  
9 The audio is cutting out still.

10 CHAIR LA COSTA: This -- what is the degree  
11 to which it's cutting out? Can you ascertain words  
12 or is it entire sentences?

13 MR. HOPPER: We can't hear, so I'd recess  
14 again. I can come down. We can perhaps discuss  
15 about where we would -- potentials for continuing the  
16 meeting with 100 percent remote commissioners or some  
17 other alternative while keeping the meeting open,  
18 but, at this point, I -- we -- the public cannot hear  
19 the meeting.

20 CHAIR LA COSTA: Then I will recess the  
21 planning commission meeting one more time, and let's  
22 put a time on it.

23 Please reconvene at ten o'clock. That will  
24 give us 30 minutes (audio difficulty) figure out what  
25 to do, and if we do need to do it remotely, it will



1 give the commissioners time to go to another venue.  
2 Recessed.

3 (Whereupon, a recess was held  
4 from 9:29 a.m. to 10:11 a.m.)

5 CHAIR LA COSTA: Good morning, ladies and  
6 gentlemen. We will now reconvene the Maui Planning  
7 Commission of September 27th. I thank you so much  
8 for your kokua and patience.

9 Previously you could not hear what we were  
10 saying because of the intermittent cutting out. So  
11 we are moving agenda Item D-1 from its position after  
12 C and moving it to the next item.

13 DIRECTOR MCLEAN: B is the item that Jacky  
14 will be presenting from her office.

15 CHAIR LA COSTA: So with that said, we will  
16 begin if Jacky's ready.

17 DIRECTOR MCLEAN: It's up to you if you  
18 want to go with the public hearing item or if you  
19 want to do D-1. We were kind of halfway into D-1.  
20 Actually, we had called for testimony on Item D-1.

21 So again, for the public, Item D-1 under  
22 the director's report is whether to refer the request  
23 to amend the Special Management Area Use Permit for  
24 the Downtown Kihei project to the South Maui Advisory  
25 Committee. There's no one in the room that wishes to

1 testify, and the Chair had put out a call to anybody  
2 who has joined the meeting. If you wish to testify  
3 on this item, go ahead and unmute your audio and, if  
4 you wish, unmute your video and provide your  
5 testimony.

6 Is there anyone who wishes to testify on  
7 this item? Going once, going twice. There doesn't  
8 appear that there's any public testimony.

9 CHAIR LA COSTA: Public testimony is now  
10 closed.

11 DIRECTOR MCLEAN: So commissioners, the  
12 question is to you of whether or not to refer this  
13 matter to the South Maui Advisory Committee before it  
14 comes to you.

15 CHAIR LA COSTA: So commissioners, comments  
16 about Item D-1, please.

17 Commissioner Thompson, would you like to  
18 continue (indiscernible)?

19 COMMISSIONER THOMPSON: I would recommend  
20 that -- against sending it to the South Maui planning  
21 commission for us -- advisory commission. I would  
22 advise against it. Thank you.

23 CHAIR LA COSTA: Commissioners, any other  
24 comments?

25 Commissioner Freitas?

1 COMMISSIONER FREITAS: Regarding this, I --  
2 I have to ask the question. Would the members of the  
3 advisory committee have better insight and get  
4 more -- not more, but have better insight on  
5 gathering the information and providing us with a  
6 recommendation? Or would it just be the same if we  
7 were to do it? That would be the reason why we would  
8 send it or not, especially because we -- we -- I'm  
9 not sure if we have enough members.

10 Their members are 7 or 9?

11 DIRECTOR MCLEAN: They have 7 members.

12 COMMISSIONER FREITAS: Oh, 7. So not -- we  
13 have more. Okay, I agree with the Commissioner  
14 Thompson.

15 CHAIR LA COSTA: Commissioner Thayer?

16 COMMISSIONER THAYER: I guess my thoughts  
17 would be that since this would be talking about  
18 housing now, which affects the whole island and not  
19 just South Maui, I would be interested in having the  
20 meeting here as a central location that is more  
21 accessible to more of the community to provide their  
22 input.

23 CHAIR LA COSTA: Thank you, Commissioner  
24 Thayer.

25 Commissioner Hipolito, comments?

1 COMMISSIONER HIPOLITO: From my  
2 perspective, I agree with Commissioner Thompson and  
3 Commissioner Freitas that we hear the case.

4 CHAIR LA COSTA: Commissioner Pali?

5 VICE CHAIR PALI: No comment, Chair.

6 COMMISSIONER FREITAS: One more time.

7 VICE CHAIR PALI: I have no comment, Chair.

8 CHAIR LA COSTA: Thank you, Vice Chair.

9 So may I have a motion, please, on this  
10 agenda item?

11 Commissioner Thompson?

12 COMMISSIONER THOMPSON: I'd like to make a  
13 motion to have us hear the -- this case.

14 CHAIR LA COSTA: Do we have a second?  
15 Commissioner Freitas, have you additional comments as  
16 we move on?

17 COMMISSIONER FREITAS: No, thank you.

18 CHAIR LA COSTA: Commissioner Freitas?

19 Okay.

20 Hearing none, I will take a roll call vote  
21 or rather -- yeah, I already --

22 DIRECTOR MCLEAN: Commissioner Freitas?

23 COMMISSIONER FREITAS: Aye.

24 DIRECTOR MCLEAN: Commissioner Thompson?

25 COMMISSIONER THOMPSON: Aye.

1 DIRECTOR MCLEAN: Commissioner Hipolito?  
2 COMMISSIONER HIPOLITO: Aye.  
3 DIRECTOR MCLEAN: Commissioner Thayer?  
4 COMMISSIONER THAYER: Aye.  
5 DIRECTOR MCLEAN: Vice Chair Pali?  
6 VICE CHAIR PALI: Aye.  
7 DIRECTOR MCLEAN: And Chair La Costa?  
8 CHAIR LA COSTA: Aye.  
9 DIRECTOR MCLEAN: Chair, that's unanimous.

10 What do we have? One, two, three, four -- six ayes.  
11 Two excused, Commissioners Lindsey and -- so the  
12 motion passes. The item will not be referred.

13 CHAIR LA COSTA: Thank you, Director. Now  
14 we will move into Item B.

15 Director?

16 DIRECTOR MCLEAN: Yes, Chair. This is a  
17 public hearing item referring to you a proposed bill  
18 to amend Maui County Code Chapter 19.12, the  
19 Apartment Districts, to allow property owners of  
20 buildings located in the Apartment Districts to  
21 permanently convert property from transient vacation  
22 rental use to long-term residential use.

23 Jacky Takakura will do a presentation after  
24 which we will take public testimony. Jacky, go  
25 ahead.

1 MS. TAKAKURA: Can everyone hear me okay?  
2 Can I get a thumbs-up if you can hear me?

3 CHAIR LA COSTA: Can't hear you.

4 MS. TAKAKURA: Oh, shucks.

5 DIRECTOR MCLEAN: Can we -- put your  
6 speakers on.

7 MS. TAKAKURA: Thank you. I don't have a  
8 PowerPoint presentation today. This one is very  
9 short.

10 So this morning's public hearing is related  
11 to the apartment zoning district, and that's Chapter  
12 19.12 of the Maui County Code. And it's basically to  
13 allow owners to convert from transient vacation  
14 rental, or TVR, use to long-term residential use.

15 Just some background information, the  
16 purpose and intent of the Apartment District is to  
17 provide higher density housing options and occupancy  
18 on a long-term residential. However, on Maui and  
19 Molokai, there are Apartment District properties with  
20 vacation rental use because they meet certain  
21 criteria, and that's basically that they were  
22 conducting the TVR use before it became prohibited.

23 The county council proposed this bill to  
24 add a new section to Chapter 19.12 to establish  
25 criteria for property owners to voluntarily

1   discontinue TVR use if 100 percent of the owners  
2   agree to execute a declaration which would be filed  
3   with the state Bureau of Conveyances. The  
4   declaration would state that the owners will use the  
5   property for long-term residential use only and that  
6   they forfeit any right to transient vacation rental  
7   use.

8                   My understanding is that the benefit to the  
9   property owners would be the lower rate for their  
10   real property taxes.

11                   The county council did discuss bringing the  
12   percentage down to 67 percent of owners to agree, but  
13   they decided to leave that up to the planning  
14   commissions.

15                   We do have one proposed revision for this  
16   bill, and that's regarding the recording of the  
17   declaration. In the proposal from the county  
18   council, they have in 19.12.02.5D, as in dog, they  
19   have this part about:

20                                   Recordation would  
21                                   constitute a forfeiture  
22                                   on the part of the  
23                                   owners of any right to  
24                                   transient vacation rental  
25                                   use of the property unless

1                   such use is then allowed  
2                   in accordance with a  
3                   valid permit.

4                   We think that prohibiting TVRs but then  
5 allowing them the use with a permit is contradictory,  
6 so we propose to remove that language "allowing the  
7 use with a permit."

8                   And I have that in the memorandum. If you  
9 take a look at Page 2 under Recommendation and  
10 Options, you can see that part that -- proposed to  
11 bracket and remove from the county council's  
12 resolution. So that's it in a nutshell.

13                   In the handout, you have the memorandum.  
14 You also have the resolution and the proposed  
15 ordinance from the county council. You have the  
16 ordinance with the watermark "draft" across -- going  
17 across the page. It's just two pages, and on that  
18 one, we don't have that part about allowing the use  
19 with the permit.

20                   And then there's also some really good  
21 comments from the director of finance, and I can try  
22 to answer some questions best I can if you have any  
23 about them. But that's it in a nutshell; it's pretty  
24 simple.

25                   Do you have any questions? I can answer



1 some clarifying questions after public testimony or  
2 however you would like to do that. Thank you.

3 CHAIR LA COSTA: Thank you, Ms. Takakura,  
4 for your presentation.

5 DIRECTOR MCLEAN: If commissioners have any  
6 clarifying questions, right now would be a good time  
7 just for clarifying questions. If not, we can  
8 proceed with public testimony.

9 CHAIR LA COSTA: Commissioner Freitas?

10 COMMISSIONER FREITAS: Ms. Takakura, so  
11 if -- let's just say 100 percent of the owners agree,  
12 then on the property, each individual owner then can  
13 decide which way they want to go, or once 100 percent  
14 agree, all of them have to switch?

15 MS. TAKAKURA: So Commissioner Freitas, it  
16 would be the entire property would have to agree to  
17 not conduct a TVR.

18 COMMISSIONER FREITAS: Thank you.

19 CHAIR LA COSTA: Commissioners, other  
20 questions? None? We'll move to -- sorry.  
21 Commissioners, other questions?

22 Commissioner Thompson, question?

23 COMMISSIONER THOMPSON: Mr. Hopper.

24 DIRECTOR MCLEAN: You still need to speak  
25 into (indicating microphone).

1 COMMISSIONER THOMPSON: Mr. Hopper, I own  
2 one of those units. Do you have a comment or  
3 (indiscernible) about this?

4 MR. HOPPER: I'd advise if you're an actual  
5 owner, that you should not be voting on this item. I  
6 didn't know that before the meeting, but it's  
7 important -- it's good that you're disclosing that  
8 and that's known to the public, but, yeah, I think in  
9 that case, you should probably not vote or comment on  
10 the recommendation if you actually own one of the  
11 units and -- in a complex that this would -- this  
12 could be -- this is being contemplated.

13 CHAIR LA COSTA: So with that, Commissioner  
14 Thompson, are you going to be recusing yourself?

15 So let the record note that Commissioner  
16 Thompson has recused himself from this item. Okay.

17 We have one person signed up to testify  
18 currently. Oh, there are two, excuse me.

19 So Diana Brennan (sic), if you are on the  
20 call, please unmute yourself, introduce yourself,  
21 promise to tell the truth, and you have three  
22 minutes. Thank you.

23 ///

24 ///

25 ///

1 DIANA BRESNAN,  
2 called to testify,  
3 was sworn to tell the truth  
4 and testified as follows:  
5

6 MS. BRESNAN: Aloha. I am Diana Bresnan.  
7 I am -- can you hear me okay? I hear some  
8 reverberation.

9 DIRECTOR MCLEAN: We can hear you now.

10 MS. BRESNAN: Okay, great. I'm the board  
11 president of Mahinahina Beach and also an owner of a  
12 unit there, so I appreciate the work that the  
13 Planning and Sustainable Land Use Committee's done in  
14 working to remedy some of the unintended consequences  
15 of properties being classified as short-term rentals  
16 when they do not allow short-term rentals. So thank  
17 you.

18 Mahinahina Beach was recently reclassified  
19 as a short-term rental property based on one unit's  
20 improper rental years ago which violated our  
21 governing documents. That was addressed and remedied  
22 at the time.

23 And we've since amended our declaration to  
24 prohibit short-term rentals of less than 180 days,  
25 and we've increased fines for violating this

1 provision to align with the county's fine level at  
2 \$20,000 per violation, plus \$10,000 per day  
3 thereafter. So we've taken this very, very seriously  
4 to prevent short-term rentals.

5 Both of these changes were implemented  
6 after more than 67 percent of owners approved them,  
7 consistent with Hawaii Law 514B governing condominium  
8 associations. So we're contributing to the  
9 availability of long-term housing by not allowing  
10 short-term rentals.

11 We primarily have owner-occupied and  
12 long-term rental units in our 32-unit complex, and we  
13 have zero short-term rentals. Classifying our  
14 property as a short-term rental is inconsistent with  
15 actual use and inconsistent with governing documents.

16 So continuing with this classification  
17 while not actually renting short term on our property  
18 may actually encourage our property to convert to  
19 short-term rentals, which is contrary to what we're  
20 all trying to accomplish for long-term housing.

21 We recommend two changes in the proposed  
22 language, which we submitted to the land use  
23 committee. One of those is to require only 67  
24 percent of owners to approve versus 100 percent.  
25 This is consistent with 514B, which governs

1 associations, and you can imagine it would be nearly  
2 impossible to get 100 percent of people to approve  
3 everything -- to approve anything.

4 So we would recommend that you seriously  
5 consider that. I think without changing that to  
6 align with 514B, it's going to render this language  
7 generally useless.

8 The other language that we would recommend  
9 is to modify the phrase:

10 The declaration must  
11 state owners will use the  
12 property for long-term  
13 residential use only,

14 and change that to "The owners will not use  
15 the property for short-term rentals."

16 Some persons purchased at Mahinahina Beach  
17 with a plan to relocate there for retirement in  
18 future years, and this would support classifying that  
19 as owner-occupied instead of a short-term rental.

20 We believe that these changes would meet  
21 the desired goal of encouraging long-term housing,  
22 and 514B has supported 67 percent voting decisions  
23 for condominium associations since its inception in  
24 2006. So I appreciate your consideration, and I  
25 thank you for the work that you're doing.

1 CHAIR LA COSTA: Thank you, Ms. Bresnan.  
2 Commissioners, have you any questions for the  
3 testifier? Seeing none, I thank you so much for your  
4 testimony.

5 MS. BRESNAN: Mahalo.

6 CHAIR LA COSTA: Next up is Mr. Tom Croly.  
7 He will be followed by Madeline Monaco.

8 Mr. Croly, if you're on, three minutes,  
9 please. Go ahead.

10

11

TOM CROLY,

12

called to testify,

13

was sworn to tell the truth

14

and testified as follows:

15

16

MR. CROLY: Aloha, commissioners.

17

Tom Croly speaking on my own behalf and with no

18

interest, no financial interest in this. But I would

19

like to bring you a little more background about

20

what -- why this came about. And this is really a

21

real property tax bill that has implications that --

22

on land use, but it really is based on real property

23

tax classification.

24

And that is because three years ago, the

25

Maui County Council decided to take away the self

1 declaration of condominium units for their use and to  
2 classify condominium units based on their highest and  
3 best use.

4 So essentially, what they were saying was  
5 if you own a condominium unit in a building or in a  
6 complex that is allowed to make short-term rental  
7 use, we will classify you as short-term rental  
8 whether you're making that use or not, with two  
9 exceptions.

10 With the exception of if you are living in  
11 it and you have a homeowner exemption, then you get  
12 the owner-occupied rate. Or if you have a long-term  
13 rental and you have applied to the county for the  
14 long-term rental exemption, you would get the  
15 long-term rental rate.

16 But what it -- the net effect of this was  
17 it turned 1800 units where the owners had said, We  
18 are not making short-term rental units, we are only  
19 using these units as our second homes, so we should  
20 not be in the short-term rental classification, it  
21 reclassified those folks into short-term rental.

22 And as a result, some of those folks, when  
23 they got their tax bills and found out that their  
24 real property tax bills had doubled as a result of  
25 this, they said, Hey, this isn't fair.

1           So the council brought this forward as a  
2 way to remedy that situation, only for people who are  
3 using their properties as second homes would -- that  
4 it would affect them, and they -- this could work if  
5 it was on a unit-by-unit basis, if each unit owner  
6 was able to say, Okay, I'm opting out of short-term  
7 rental.

8           But I understand the problem that that  
9 would create for the planning department, who then on  
10 an enforcement basis would have to figure out what  
11 units in a building are allowed to make short-term  
12 rental uses and what building -- what units in that  
13 building are not allowed for -- to make those  
14 short-term rental uses.

15           The change from 67 percent to 100 percent  
16 adoption of this probably came from lawyers saying,  
17 Hey, you can't take away someone's use without them  
18 expressly saying that they're allowing you to take  
19 away that use. But as was pointed out in the last  
20 testimony, if the homeowners association, the  
21 apartment owners association approves it, then they  
22 are empowered to do that.

23           It's not the county taking away the use;  
24 it's the homeowners association registering the  
25 property that way. Leaving this at 100 percent and



1 saying you have to get 100 percent of the owners to  
2 agree --

3 MS. TAKAYAMA-CORDEN: Three minutes.

4 MR. CROLY: -- essentially tables this.  
5 Nothing -- it's not going to have any effect.

6 I'll leave it at that, Chair, and be open  
7 to any questions that you might have. Thank you.

8 CHAIR LA COSTA: Thank you, Mr. Croly.

9 Commissioners, have you any questions?

10 Commissioner Pali?

11 Sorry. We have to readjust everything  
12 here.

13 VICE CHAIR PALI: Mr. Croly, I just have  
14 two questions for you. Thank you for your testimony.  
15 So you gave us a lot of really good things to think  
16 about factually, but I don't know that I -- did I  
17 miss your opinion? Are you in favor or are you not  
18 in favor or were you just trying to be neutral and  
19 have us consider things? Let me know.

20 MR. CROLY: Yeah. In its current form, I  
21 don't see this bill having any effect when you say  
22 that 100 percent of all the owners have to agree. I  
23 don't think any properties are going to fall into  
24 this.

25 So this could have an effect if you wanted

1 it to, if you broke it down to each individual owner  
2 or reduced it to 67 percent, then you would have --  
3 have a policy that might actually make sense.

4 But what's on the table for you -- and I  
5 don't really have an opinion about -- but real  
6 property tax certainly does -- is you would be  
7 losing -- or the County of Maui would be losing the  
8 revenues that they get from taxing someone at  
9 short-term rental. And therefore taxing them at a  
10 lower rate when their property is used for a second  
11 home and not as a long-term rental that they have  
12 applied for a long-term rental exception or -- or as  
13 a primary residence where they have applied for a  
14 homeowner exemption. So for this thing -- for this  
15 policy to work, it needs to be modified.

16 VICE CHAIR PALI: Got it. Thank you.  
17 Thank you. One last question. Are you saying that  
18 you might -- I mean, it almost sounds like you're in  
19 favor of bringing back the self declaration, which is  
20 kind of what that did. It went by -- unit by unit.  
21 Is that your testimony? Am I understanding that  
22 correct or not?

23 MR. CROLY: Yeah, that's not -- that's not  
24 what's before you, but I agree that the self  
25 declaration was more fair.

1 VICE CHAIR PALI: Okay. Thank you, sir.  
2 Thank you very much.

3 MR. CROLY: Aloha, everybody.

4 CHAIR LA COSTA: Commissioners, any other  
5 questions for Mr. Croly? Seeing none, as always,  
6 mahalo mui for your testimony.

7 Next up is Madeline Monaco. Ms. Monaco,  
8 please unmute yourself, introduce yourself, and  
9 promise to tell the truth. Thank you.

10

11 MADELINE MONACO,  
12 called to testify,  
13 was sworn to tell the truth  
14 and testified as follows:

15

16 MS. MONACO: Hi. This is Madeline Monaco.  
17 I have unmuted myself. I'm having a hard time on  
18 showing my video, so -- can you hear me?

19 CHAIR LA COSTA: We can hear you. Yes, we  
20 can hear you.

21 MS. MONACO: Oh, okay. Perhaps I will just  
22 continue. And I do promise to tell the truth. I'll  
23 continue without video.

24 I would like to thank you all for your hard  
25 work to improve the housing market for Maui residents

1 and for the opportunity to testify today.

2 I live at Mahinahina Beach, as does Diana  
3 Bresnan who testified previously. And I have been  
4 living on and off Maui for the past 25 years. I love  
5 Maui.

6 And I'm testifying in support of this  
7 legislation that will allow properties that do not  
8 allow short-term rentals to be reclassified  
9 accordingly. At Mahinahina Beach, we have a no less  
10 than six-month rental policy which is enforced by a  
11 \$20,000 fine if anyone violates our policy.

12 We have -- as Diana said, we have had one  
13 person that violated that policy, or our previous  
14 policy, and they were fined accordingly. And, in  
15 fact, they no longer live at Mahinahina Beach, and we  
16 do not have anyone who's renting short-term at the  
17 time. We do have -- at this time, I should say. And  
18 it hasn't been for several years.

19 We do have several units that are rented  
20 long term so, again, we do feel that we are  
21 contributing to the solution for long-term rentals on  
22 Maui. And I think that's the intent of the -- the  
23 planning commission and the Maui council.

24 I'd also like to add that the planning and  
25 sustainable use committee supported the requirement

1 of 67 percent of owners versus 100 percent of owners  
2 approving a permanent ban on short-term rental. We  
3 support that because it's consistent with Hawaii  
4 Law 514B governing condominium associations, and it  
5 is practically impossible to get any group of people  
6 to agree 100 percent on anything.

7 And indeed, it has been testified  
8 previously at the planning and sustainable land use  
9 meetings that it is extremely difficult to get all  
10 apartment owners in a complex to vote on anything.

11 I've been a president of another homeowners  
12 association for five years, and it's really hard to  
13 even get anybody to come to a meeting. And even if  
14 you send out ballots by mail, you will not get 100  
15 percent of the people returning those ballots or to  
16 vote on anything.

17 I'd also like to suggest a change to the  
18 phrase:

19 The declaration must  
20 state the owners will  
21 use the property for  
22 long-term residential  
23 use only,

24 to something such as, "Owners will not use  
25 the property for short-term rentals." I think that's

1 consistent with what this legislation is trying to  
2 achieve.

3 And finally, I support the legislation also  
4 because it will provide equality amongst apartment  
5 communities that are already classified as apartment  
6 because they do not allow short-term rental,  
7 regardless of whether the owners are full-time Hawaii  
8 residents or part-time Hawaii residents. I know at  
9 least one such property, and we at Mahinahina Beach  
10 would like to have the same opportunity to be  
11 reclassified based on the real usage of our units.

12 MS. TAKAYAMA-CORDEN: Three minutes.

13 MS. MONACO: That's basically what I wanted  
14 to say. Thank you very much.

15 CHAIR LA COSTA: Thank you, Ms. Monaco, for  
16 your testimony. Commissioners, have we any questions  
17 for the testifier? No? Seeing none, thank you very  
18 much.

19 Before we continue, I'd like to welcome  
20 Commissioner Lindsey who joined us at 10:30. So  
21 welcome.

22 COMMISSIONER LINDSEY: Hi. Thank you for  
23 welcoming me.

24 CHAIR LA COSTA: Okay. Our next testifier  
25 is Bart Gill. Mr. Gill, will you please unmute

1 yourself, introduce yourself, and promise to tell the  
2 truth. Mahalo.

3

4

BART GILL,

5

called to testify,

6

was sworn to tell the truth

7

and testified as follows:

8

9

MR. GILL: Thank you very much. My name

10

is -- and aloha. My name is Bart Gill. I am a

11

part-time resident of Mahinahina Beach and a member

12

of the -- vice president of the association board.

13

I would like to go on record as supporting

14

the modifications to the measure as identified by

15

Ms. Bresnan and Madeline Monaco. I think they laid

16

out the cases very well for justification for those

17

changes.

18

We have a tight-knit community at

19

Mahinahina Beach. It's only 32 units, and we feel

20

like ohana. And the vast majority, although not

21

100 percent, do not favor any type of short-term

22

rentals at all. And that's why we changed our

23

declaration and voted -- and voted as a membership

24

with over 67 percent of the membership to not allow

25

short-term rentals on the property.

1           The only additional comment I wanted to  
2 make is that it came as a shock to many of us, when  
3 we got our tax bill two years ago, that it doubled.  
4 That was a tremendous shock.

5           And the reason it was is, you know,  
6 short-term rentals -- by the nature of short-term  
7 rentals allow owners to increase their revenue on a  
8 property and maybe support a larger tax bill. And if  
9 you're not using your property for short-term  
10 rentals, you don't have that opportunity to increase  
11 your revenues on the property to support the doubling  
12 of your -- of your tax bill.

13           So I think it's a bit of injustice to those  
14 of us who are part-time residents on Maui like myself  
15 and intend to be long-term residents at some time in  
16 the near future, which many of us at Mahinahina Beach  
17 are in that category.

18           So I support the measure. I support it  
19 with the changes that have been identified by  
20 Ms. Bresnan and Ms. Monaco.

21           And I thank Thomas Croly for his summary  
22 because I think he put it in really good perspective  
23 about -- about what I would call an injustice to  
24 those of us who are part-time residents and need to  
25 suffer a short-term rental tax classification.



1 Mahalo, and thank you very much for your --  
2 for the work that the commission does. We appreciate  
3 it. Mahalo.

4 CHAIR LA COSTA: Thank you, Mr. Gill.

5 Commissioners, have you any questions?  
6 Commissioner Pali?

7 VICE CHAIR PALI: Yes. I just have two  
8 questions. The first question, I think I wanted to  
9 address for clarification purposes that you mentioned  
10 you -- you know what? It's not even about the topic.  
11 Never mind. I'll just take your testimony as is and  
12 will not veer off the path. No questions. Forget  
13 it.

14 CHAIR LA COSTA: You can tell that this  
15 technological issue we're having is kind of throwing  
16 everybody off their game. So thank you again for all  
17 of your patience with this. Okay.

18 Commissioners? Okay. I see no further  
19 questions for Mr. Gill. Mr. Gill, mahalo for your  
20 time and your testimony, appreciate it very much.

21 Is there anyone else who wants to testify  
22 on this matter? If so, would you please step forward  
23 and notify us in the chat room that you'd like to  
24 testify. Going once, going twice. Seeing no further  
25 testimony, public testimony is now closed. Okay.

1 With that, commissioners, discussion?

2 Commissioner Freitas.

3 COMMISSIONER FREITAS: Yes. Thanks, Chair.  
4 I would like to take -- make an amendment and go with  
5 the suggestion to change it to 66.7 percent instead  
6 of 100 percent. And I'll -- yeah, a motion. Is that  
7 a motion needed? Okay.

8 And also, I like the idea of saying no  
9 vacation rentals versus it must be used as a  
10 long-term residential use only. I agree with the two  
11 testifiers that had mentioned that. That's all.  
12 That's enough.

13 CHAIR LA COSTA: Second?

14 Commissioner Pali? Discussion?

15 Commissioner Freitas?

16 COMMISSIONER FREITAS: Yes. I believe the  
17 woman that said -- the testifier that said you can't  
18 get 100 percent of people to, even if it's mail-in or  
19 whatever, to come to any agreement. This would just  
20 not happen. It falls within the rule that she  
21 stated, 514B. I haven't checked that, but I'm sure  
22 Mr. Hopper did, and I agree with that.

23 CHAIR LA COSTA: Thank you.

24 Commissioner Pali as the second?

25 VICE CHAIR PALI: Okay. I got a couple

1 issues on this one, but I appreciate  
2 Commissioner Freitas bringing that motion up.

3 I'm not clear about the 100 percent or 67  
4 percent. I don't know the law in that area, and  
5 so -- but it does sort of make sense that if the  
6 majority votes anything within that complex that it  
7 becomes an association decision.

8 And then -- because I'm all about property  
9 rights. So I was kind of leaning on, oh, every owner  
10 should have a right to say this or this because they  
11 bought the property or the unit knowing that they had  
12 these rights and then those rights would be taken  
13 away.

14 I was super concerned about -- but like  
15 every normal association, when they have their annual  
16 meetings, and things are changing, lots of things are  
17 changing with the association and the management of  
18 that. So I can see how maybe that might fall into  
19 the 67 percent? I'm not sure.

20 But assuming it's legal, it sounds like  
21 that could be the case, but I just want to go on  
22 record by saying that just because we do these  
23 things, it does not mean it will create more rentals  
24 for our kamaaina.

25 I don't know about you guys, but Mahinahina

1 Beach? Those sold over millions of dollars. If they  
2 were to lease it long term to a kamaaina, what are  
3 they going to charge? Five grand a month? Does that  
4 sound like that's residential housing? Like, no.

5 So I just want to be real clear that just  
6 because that's the goal doesn't mean that this would  
7 get us to that goal. There are many properties that  
8 are not going to fall into -- these are luxury  
9 properties (indiscernible) but in most cases not.

10 So I just want to make sure that if that's  
11 what we're going for, this might open the doors. But  
12 let's not kid ourselves. That is not what's going to  
13 happen.

14 I think that Tom Croly had a really good  
15 point about property taxes. We got a lot of extra  
16 money this year from second home users by imposing  
17 short-term rental vacation classification when  
18 they're not doing that.

19 So this idea of, Oh, let's create more  
20 residential housing, more affordable housing with  
21 existing units, well, it might not do that. And then  
22 we're going to lose a heck of a lot of money on the  
23 property tax sector. So just -- we just need to be  
24 aware that if we say yes to this, we're saying no to  
25 that.

1 But it seems a little out of my control  
2 right now. So what's in front of us, I feel  
3 comfortable. If you're going to just make a way and  
4 allow them to do it, then let's just do that and see  
5 where it goes. But I seconded the motion. That's  
6 where I fall. So thank you.

7 CHAIR LA COSTA: Thank you,  
8 Commissioner Pali.

9 MR. HOPPER: Chair?

10 CHAIR LA COSTA: Mr. Hopper, go ahead.

11 MR. HOPPER: Can you hear me okay? I know  
12 you can, but I want to make sure I'm good on the  
13 audio.

14 The -- a couple of things. One is the  
15 67 percent. I think you can make that as a  
16 recommendation. Our office would still have to  
17 review and approve that.

18 And the other issue, though, is that  
19 Commissioner Freitas had mentioned -- Commissioner  
20 Freitas had mentioned changing long-term residential  
21 use, and I'm not sure what it's changing to. Again,  
22 if you could reiterate that.

23 And then also, the reason "long-term  
24 residential use" was picked, I think, was because  
25 that's a definition in the county code. So it says:

1 The declaration must  
2 state the owners will  
3 use the property for  
4 long-term residential  
5 use only.

6 What was the other language you were  
7 thinking of? And -- yeah, I mean, that may not be  
8 broad enough to cover all of the potential issues.  
9 So I think I would advise long-term residential use  
10 at this point (indiscernible) counsel.

11 DIRECTOR MCLEAN: (Audio difficulty) they  
12 think that it's more appropriate to narrow it down,  
13 then those are the comments that we will send back.  
14 So --

15 MR. HOPPER: I am not disagreeing. And  
16 certainly the commission can comment however they  
17 want, but if we're going to look to approve this as  
18 to form and legality, I wanted to explain, I think,  
19 why that language was originally stated there.

20 So again, you can provide any  
21 recommendation you like; that's certainly true. But  
22 that's why that language was there, and so you can  
23 consider that and vote how you would please.

24 CHAIR LA COSTA: Commissioner Pali?

25 VICE CHAIR PALI: If I may, Commissioner

1 Freitas. I think one of the testifiers said that  
2 right now they're saying that they can do this use,  
3 but they mentioned, like, I don't actually even do  
4 long term, it's my second home.

5 So saying that you could do this use might  
6 give the impression that he has to do that use, and  
7 he's not doing that use. He has no intention.

8 So I think the staff's recommendation in  
9 the report says that we should remove the ability to  
10 do short-term rentals for permits -- you agreed with  
11 that one; right? So we don't want conflicting  
12 information.

13 And then the testifier said instead of  
14 saying you're forced to do long-term use, just say  
15 that you're just not allowed to use it as vacation  
16 rentals. So whether they're using it for long-term  
17 use or if they're personal use, they can do it in  
18 that space but just identifying again that the use  
19 cannot be short-term rental.

20 CHAIR LA COSTA: Correct. And what -- the  
21 verbiage that I got from Commissioner Freitas is that  
22 the owners will not use the property for short-term  
23 rentals.

24 COMMISSIONER FREITAS: Yes.

25 CHAIR LA COSTA: Okay. So we confirmed

1 that that is the language that the commission wants  
2 to send forward to the council?

3 DIRECTOR MCLEAN: Well, the motion on the  
4 floor is to recommend approval of the bill with  
5 changing 100 percent to 67 percent, changing B from  
6 "The owners will use the property for long-term  
7 residential use" to "will not use the property for  
8 short-term rental or transient vacation rental use."

9 And then the department also had one  
10 recommended change to letter D, which is to delete  
11 that last phrase, "unless such use is then allowed."  
12 So if that was part of your motion -- I don't know if  
13 that third part was part of your motion, but those  
14 would be the three revisions in the motion.

15 CHAIR LA COSTA: Commissioner Freitas?

16 COMMISSIONER FREITAS: I would like to say  
17 that I appreciate Commissioner Pali's comments about  
18 a certain resort that has like a high price.

19 But I think when I had mentioned the 67  
20 percent based on the two testifiers, I feel that the  
21 list of properties -- I think the majority is not  
22 those \$5 million units, so we're making a decision  
23 based on a lot of other ones that could easily fall  
24 within the affordability of a lot of our residents.

25 And if those that are in the 5 million



1 don't want it, they can vote it down, and that might  
2 be what's going to happen there.

3 So just wanted to share that in response to  
4 your great -- yeah, okay.

5 CHAIR LA COSTA: Thank you, Commissioner  
6 Freitas. Commissioners, additional comments? Okay.

7 Seeing none, then we will move to the vote.  
8 So do roll call vote, Director, please.

9 DIRECTOR MCLEAN: Commissioner Freitas --  
10 and again the motion is to recommend approval of the  
11 bill with the three changes. Commissioner Freitas?

12 COMMISSIONER FREITAS: Aye.

13 DIRECTOR MCLEAN: Commissioner Thompson?

14 COMMISSIONER THOMPSON: Recused.

15 DIRECTOR MCLEAN: Thank you.

16 Commissioner Hipolito?

17 COMMISSIONER HIPOLITO: Aye.

18 DIRECTOR MCLEAN: Commissioner Lindsey

19 COMMISSIONER LINDSEY: Am I allowed to  
20 vote?

21 DIRECTOR MCLEAN: Yes.

22 COMMISSIONER LINDSEY: Even though I wasn't  
23 here for the whole testimony?

24 DIRECTOR MCLEAN: I believe so.

25 MR. HOPPER: That's correct. Members can

1 vote even if they weren't here for the whole item  
2 because this is -- this item is not a contested case.

3 COMMISSIONER LINDSEY: So I can vote? Aye.

4 DIRECTOR MCLEAN: Commissioner Thayer?

5 COMMISSIONER THAYER: Aye.

6 DIRECTOR MCLEAN: Vice Chair Pali?

7 VICE CHAIR PALI: Aye.

8 DIRECTOR MCLEAN: And Chair La Costa?

9 CHAIR LA COSTA: Aye.

10 DIRECTOR MCLEAN: Chair, that's six eyes,  
11 one recused, and two -- Mr. Thompson -- and two  
12 excused -- or one excused, Commissioner Deakos. So  
13 the motion passes.

14 CHAIR LA COSTA: Commissioners, thank you  
15 very much.

16 MS. TAKAKURA: Thank you.

17 DIRECTOR MCLEAN: Thank you, Jacky.

18 COMMISSIONER FREITAS: Thank you, Jacky.

19 CHAIR LA COSTA: Mahalo, Jacky.

20 At this juncture, we're going to take a  
21 short recess so that Mr. Chipchase can set up his  
22 computer because of our issues with technology, so we  
23 will take a ten-minute recess.

24 (Whereupon, a recess was held  
25 from 10:53 a.m. to 11:03 a.m.)

1 CHAIR LA COSTA: Good morning, again,  
2 ladies and gentlemen. It appears Mr. Chipchase is  
3 set up and ready to go. We will reconvene the Maui  
4 Planning Commission meeting of September 27th.

5 Director?

6 DIRECTOR MCLEAN: Thank you, Chair. Let's  
7 first make sure that the audio is working well for  
8 the parties. I see Mr. Hurley is also on.

9 Mr. Hurley, can you hear us? And we want  
10 to make sure we can hear you.

11 MR. HURLEY: Thank you, Director. This is  
12 Ryan Hurley double-checking my audio.

13 DIRECTOR MCLEAN: Okay, great. We can hear  
14 you, too. And Mr. Chipchase, you're in the room with  
15 us, so we can obviously hear you. Let's make sure  
16 that Mr. Hurley can hear you.

17 MR. CHIPCHASE: Sounds good. Am I loud and  
18 clear?

19 MR. HURLEY: Yep. I can hear you good,  
20 Cal.

21 CHAIR LA COSTA: Mr. Hurley, did you hear  
22 Mr. Chipchase?

23 MR. HURLEY: I did. Can you folks not hear  
24 me now? I think -- hello? Can you folks hear me?

25 CHAIR LA COSTA: We can hear you.

1 MR. HURLEY: I could hear Cal when he was  
2 talking.

3 CHAIR LA COSTA: Okay. Thank you so much.  
4 Great, okay.

5 DIRECTOR MCLEAN: Okay. For the record  
6 this is the continuation of the contested case  
7 hearing relating to Honua'ula Partners, LLC's request  
8 for Project District Phase II Development approval  
9 for Honua'ula, a master planned community comprised  
10 of single-family and multifamily homes, village mixed  
11 uses, preservation and conservation areas and  
12 recreational/open space areas, and related  
13 infrastructure improvements on approximately 670  
14 acres in Kihei-Makena Project District 9, located in  
15 Wailea, Kihei, Maui, at TMKs 2-1-008 parcels 56 and  
16 71.

17 As the Chair stated previously, no public  
18 testimony will be taken on this matter. Both parties  
19 have submitted a number of filings since the last  
20 meeting, and I would ask if Mr. Hopper could walk us  
21 through the procedural steps for today. Thank you.

22 MR. HOPPER: Thanks, Chair. I think what  
23 we have are briefs on the housing issue that the  
24 commissioner requested as well as each parties'  
25 proposed decision and order.

1           If you like, you could hear from the  
2 parties first if they have -- it's been briefed; so I  
3 don't know if you want to hear orally from the  
4 parties as a follow-up on the housing issue. You  
5 could hear briefly maybe from each party on -- on  
6 their briefs, if you had any questions for them on  
7 those briefs.

8           After that, you could proceed to hearing  
9 the -- hearing the parties' oral discussion of their  
10 proposed decisions and orders. You could do the  
11 format that you've been doing, which is applicant  
12 begins, intervenor goes next, and then applicant  
13 closes with rebuttal if needed.

14           So that's maybe how you could proceed,  
15 starting with the housing issue, giving time for each  
16 party, then going for the decision and order  
17 discussion from either party with commissioner  
18 questions. After that, you may want to go into an  
19 executive session to further discuss the issues that  
20 have been raised by the parties in their arguments as  
21 well as their filings. And then you can proceed with  
22 a motion and potentially a vote on the matter today.  
23 So that's my suggestion.

24           You can have the parties introduce  
25 themselves if you like and then begin with oral

1 argument. You can certainly set time limits on both.  
2 I would imagine the time limit on the -- if you do  
3 allow oral discussion or oral argument -- on the  
4 housing issue could be very brief because you've  
5 already got separate briefs from the parties on  
6 those. You could perhaps give a bit more time on the  
7 findings and conclusions and decision and order for  
8 the parties.

9 So if -- with that, I think you can proceed  
10 to have the parties introduce themselves and then  
11 proceed, if you like, with oral argument on the --  
12 it's not really an oral argument, it's, I guess, an  
13 oral discussion of the parties -- the issues that the  
14 parties briefed on housing.

15 CHAIR LA COSTA: Thank you so much,  
16 Mr. Hopper. With that, we will follow what  
17 Mr. Hopper has suggested, and we will have the  
18 parties introduce themselves.

19 The applicant?

20 MR. CHIPCHASE: Good morning, Chair,  
21 commissioners. Cal Chipchase for the applicant.

22 CHAIR LA COSTA: Thank you. Intervenors?

23 MR. HURLEY: Good morning, Chair,  
24 commissioners. Ryan Hurley here on behalf of  
25 Intervenors Ho'oponopono O Makena and the Maui

1 Tomorrow Foundation.

2 CHAIR LA COSTA: Thank you so much,  
3 Mr. Hurley. So --

4 MR. HOPPER: Chair.

5 CHAIR LA COSTA: Yes, sir?

6 MR. HOPPER: Just want to let the parties  
7 know -- they may already know that there's audio  
8 issues in the room occasionally. They've been --  
9 they've been pretty much resolved, but when we go  
10 back and forth, the parties, it's helpful to have a  
11 minute to change up.

12 So I would just ask the parties to, you  
13 know, not speak over each other or interrupt each  
14 other, to ask permission from the chair to talk and  
15 get recognized. I think with that the audio will be  
16 fine, but we just have to keep that in mind. So we  
17 would ask the indulgence of the parties and certainly  
18 the commissioners as well, if you have questions or  
19 anything like that to cut in just to keep that in  
20 mind.

21 CHAIR LA COSTA: Thank you, Mr. Hopper.  
22 Okay.

23 With that, Mr. Chipchase, would you please  
24 begin? And we will allow five minutes for the  
25 discussion of your briefs. Thank you.

1 MR. CHIPCHASE: Absolutely, Chair. The --  
2 you know, as I read the briefs yesterday, preparing  
3 to talk to you guys today, it struck me that the  
4 intervenor's position, particularly as you see in the  
5 responsive brief on affordable housing, is  
6 increasingly shrill. And it always strikes me that  
7 when you have to yell, you don't really have anything  
8 to say. And that's the case here.

9 All he had to say is that you have to make  
10 this decision. But they don't say why. All they  
11 have to say is that one sentence, one of the two  
12 ordinances references 450 units on-site.

13 They don't explain that on context of the  
14 two ordinances. They don't apply any of the rules of  
15 statutory construction. And they ignore the nature  
16 of the questions before you.

17 So let's start with that point. If we come  
18 back to those first principles, what it means to  
19 conform to project district ordinance, what is  
20 required for a Phase II approval, is a legal  
21 question. That is an interpretation of the  
22 ordinance. It is not a factual question but a legal  
23 one.

24 Let's put that in context. The factual  
25 questions, the applicant has the burden of proof.



1 That's 91-15, HRS 91-15. That burden is a  
2 preponderance of the evidence, 51 percent.

3 What does that mean here? It is my burden  
4 to produce a preliminary site plan to you for review,  
5 approval, or modification. It is my burden to  
6 produce the proposals that are called for on a  
7 project district processing regulation. Those are  
8 factual questions.

9 What is required -- what it means to  
10 conform is a legal question. You decide without  
11 burden on either party. You are interpreting the  
12 law.

13 How is that law interpreted here?  
14 Intervenors are certain that the law requires you to  
15 determine the number of affordable housing units that  
16 will be provided, the ratio.

17 But nothing in the project district  
18 processing regulation puts that burden on you.  
19 There's not a single reference to affordable housing  
20 or to the ratio of market to affordable in the  
21 project district processing regulation.

22 That's in contrast to density where the  
23 project district processing regulation specifically  
24 says that the proposals have to include things like  
25 net developable area, floor area ratio, and density

1 factors, which just means the number of units per  
2 developable area. Those things have to be done.

3 That's why we come before you proposing  
4 1150 units, but how many of those units must be  
5 affordable units is not a decision that the Phase II  
6 processing district regulations put on you.

7 Instead, Chapter 2.96, which is invoked in  
8 this project in two places, in chapter -- in  
9 Ordinance 3553 and 3554, puts that burden on the  
10 Department of Housing and Human Concerns. And it  
11 does so at subdivision or building permit to ensure  
12 that the most current version of the regulation  
13 applies to any project. It is a late-vesting rule.

14 That's the agency's burden; that is not  
15 yours. If you disagreed with that, if you said, No,  
16 it is our burden, you have to state the number of  
17 affordable units, then the second legal question --  
18 not factual, but legal question -- is how many units  
19 are required? Intervenors come back to that one  
20 sentence, one sentence, ignoring everything else.

21 As we've explained in the papers and we've  
22 explained when we met before, the history of that  
23 reference to 450 units on-site is indisputably  
24 locational. 250 off-site, 450 on-site under the  
25 original 2.96, that's why it's in there.

1           What happened after that? Chapter 2.96,  
2 the 50 percent ratio, did not work. Affordable units  
3 were not built, projects didn't go forward. And so  
4 the council amended that, and we've detailed how many  
5 members overlapped between our project, the original  
6 2.96, the amended 2.96, and, finally, when our  
7 project came back before the council in 2018.

8           DIRECTOR MCLEAN: Five minutes.

9           MR. CHIPCHASE: It didn't work. And along  
10 that way, every step of the way, every statement from  
11 a councilmember or testifier in those proceedings  
12 reveals that everybody understood 2.96 would govern  
13 the affordable housing requirement for this project,  
14 that it would apply as 2.96 directs that it apply,  
15 and that the number of units would be, after that  
16 change, reduced from the original requirement to  
17 those required by Chapter 2.96.

18           Context matters. If you put it all in  
19 context, that is what's required.

20           CHAIR LA COSTA: Thank you, Mr. Chipchase.

21           Mr. Hurley, you now have five and a half  
22 minutes to cross.

23           MR. HURLEY: Thank you, Chair. Members of  
24 the commission --

25           CHAIR LA COSTA: Sorry.

1 MR. HURLEY: Sorry. Go ahead.

2 MR. HOPPER: I'm just noting it's obviously  
3 not to cross. It's to present your position on the  
4 briefing, but I think we understand. Thanks.

5 CHAIR LA COSTA: Mr. Hurley, please present  
6 your position on your briefs, and you have five and a  
7 half minutes. Thank you.

8 MR. HURLEY: Thank you. Good morning,  
9 Chair. Ryan Hurley on behalf of Intervenors  
10 Ho'oponopono O Makena and Maui Tomorrow Foundation.

11 You know, just to start off, we're going to  
12 reiterate our deep appreciation and thanks to the  
13 department, the commission, the commissioners, all  
14 the parties, and the participants. We appreciate  
15 everyone's work to help get this record right and get  
16 all this great information on the record.

17 You folks have our briefs so I'll be brief  
18 and just summarize. It's funny. I just listened --  
19 I don't know what we just heard. It seems like we're  
20 trying to confuse things. It was a very simple  
21 question. How did Ordinance 3553, 3554, and 2.96  
22 work together?

23 You know, despite the number of absurd and  
24 faulty assertions made by the applicant, both today  
25 and in its memorandum and reply, the facts remain

1 really simple, folks. The application as proposed  
2 fails to comply with the basic requirement of Phase  
3 II approval.

4 I spent a lot of time in my memorandum  
5 talking about how that Phase II approval requirement,  
6 19.45.050, actually requires compliance with the  
7 project district ordinance, or 3553, in this project  
8 district. And we've all heard it a hundred times at  
9 this point.

10 Ordinance 3553 very specifically requires  
11 450 affordable units shall be developed within the  
12 project district. I'll just pause and say that one  
13 more time. 450 affordable units shall be developed  
14 within the project district.

15 It also requires integration with an  
16 18-hole golf course. These are very specific things.  
17 These use terms like "shall." These aren't optional;  
18 they're required.

19 Now, the applicant's filings, they attempt  
20 to overlay this complex legal question and theory  
21 about compliance. And you just heard some of it  
22 today, and I don't think it probably cleared anything  
23 up for a lot of folks.

24 In support of these faulty assertions, the  
25 applicant creates this conflict amongst these

1 ordinances mentioned, and the reality is there is no  
2 conflict between Ordinance 3553, 3554, and 2.96.

3 3553 requires 450 units within the project  
4 district. 2.96 sets the bottom floor for that, and  
5 then it allows more. So very clearly, complying with  
6 3553 and adding 450 would clearly comply with 2.96.  
7 There is absolutely no conflict.

8 The developer, the applicant in this case,  
9 wants to read that conflict in there because building  
10 less affordable homes, that makes them more money.  
11 The fact is the project district requires 450  
12 affordable units.

13 Now, this is also something -- and I  
14 highlighted this in the briefs -- this is something  
15 that the applicant has stated throughout the  
16 application process as well as in other avenues. I  
17 think it was a lot of clarity for all of us folks to  
18 see Mr. Jenck's testimony or his signed declaration  
19 to the state Land Use Commission that was filed in  
20 2019.

21 I'm just going to read it very briefly.

22 The Wailea 670 Project  
23 must comply with  
24 Maui County workforce  
25 housing ordinance.

1 Ordinance 3553 requires  
2 that 450 residential  
3 units be located within  
4 the Wailea 670 project  
5 site.

6 Now here, the applicant is clearly  
7 recognizing the requirement of 450 units. Now  
8 they're telling something completely different to  
9 this commission, and I think that's very concerning,  
10 but it also shows that they really don't have an  
11 argument here.

12 Finally, we think that this representation  
13 by the applicant's representative clearly shows that  
14 these different representations are just a ruse to  
15 misguide the commission and get them to vote for  
16 something that's clearly a violation of the law.

17 You know, we would also note that, you  
18 know, it's -- the commission has a duty to enforce  
19 the law, and when I read the applicant's memo and  
20 reply, there's a lot of assumptions they're taking  
21 about what intervenors are trying to do here.

22 Now, regardless of what intervenors are  
23 claiming or know -- what the applicants are claiming  
24 to know about what our intention is here, the fact is  
25 the law is not to be ignored. The law was put there

1 for a reason. Those councilmembers drafted that  
2 language for a reason. And one of those reasons was  
3 they specifically did not want developers opting out,  
4 doing land exchanges, or paying fees to not develop  
5 the affordable housing.

6 They recognized then how important  
7 affordable housing was. They recognized then the  
8 crisis Maui was in. And that crisis has only gotten  
9 worse today.

10 It's absolutely true that we need every  
11 unit of affordable housing, and we need all of the  
12 required 450 units. Now we think that this  
13 application fails on its face and that there's a  
14 required golf course, and that, you know, Condition  
15 6, the drainage plan, needs to be in compliance.

16 It's clearly not in compliance. There's a  
17 whole bunch of conditions relating to a golf course.  
18 I believe Condition 12 and 18 all include the golf  
19 course. Those are just ignored. The applicant is  
20 clearly picking and choosing what pieces of the law  
21 they want.

22 This is a great opportunity for the Maui  
23 Planning Commission to stand up and say no.  
24 Developers and applicants, they need to follow the  
25 law. They need to do what the city council has put



1 forward, but they put all this effort, all these  
2 hearings, all this work that we've done and they have  
3 done -- that needs to be followed.

4 That's what needs to be happen here today.  
5 And we believe it's in the commission's power to  
6 either deny this application on its face, as it  
7 should be done, or to mandate and change that site  
8 plan to include that 450 required affordable homes.

9 Now, that won't solve all the other  
10 problems of the application, but that would do a lot  
11 of good and that will help get, I think, where the  
12 Maui County Council's going with this.

13 Thank you. I will leave it at that, and  
14 always am available to answer questions. Thank you  
15 very much.

16 CHAIR LA COSTA: Thank you, Mr. Hurley.

17 Commissioners, have we questions for either  
18 party? Commissioner Pali, go ahead, please.

19 VICE CHAIR PALI: Like that backing in?  
20 Chair, sorry for my back. May I call for an  
21 executive session so that we can consult with our  
22 attorney with questions, issues pertaining to  
23 commission's powers, duties, and privileges,  
24 immunities, liabilities pursuant to Section 92-5A for  
25 Hawaii Revised Statutes.

1 CHAIR LA COSTA: I'm sorry, Commissioner  
2 Pali. We could not hear you.

3 VICE CHAIR PALI: Oh, my goodness.

4 MR. HOPPER: And, Chair, just one thing.  
5 We're not deciding anything right now. I think if  
6 you've got questions on these briefs that you've been  
7 given, I think now would be the time for those.

8 I think you can separately also hear both  
9 parties' discussion about their proposed decisions  
10 and orders. And then after that discussion's done,  
11 then I think perhaps you could go to executive  
12 session once that's finished because right now we're  
13 not deciding anything, and I would anticipate an  
14 executive session needed to both discuss the proposed  
15 D&O --

16 VICE CHAIR PALI: Okay. I can table it  
17 until the next brief.

18 MR. HOPPER: Thank you.

19 VICE CHAIR PALI: That's fine.

20 COMMISSIONER FREITAS: Can I check if this  
21 is working? Testing. You couldn't hear her? Can  
22 you hear me?

23 CHAIR LA COSTA: Her back was to us.

24 COMMISSIONER FREITAS: Oh. So you're not  
25 getting it off of here? Okay.

1 CHAIR LA COSTA: Commissioner Freitas?

2 COMMISSIONER FREITAS: Yeah. Thank you,  
3 Chair. I have a question for Mr. Chipchase.

4 Were there affordable homes built off-site?

5 MR. CHIPCHASE: No, Commissioner.

6 COMMISSIONER FREITAS: Oh, okay. I thought  
7 some were built already.

8 MR. CHIPCHASE: No, Commissioner.

9 COMMISSIONER FREITAS: Okay. Thank you.

10 CHAIR LA COSTA: Commissioners? No further  
11 questions? All right.

12 Then we will move into the discussion of  
13 the D&O.

14 DIRECTOR MCLEAN: The presentation? The  
15 parties' presentations.

16 MR. HOPPER: So I think next you can ask  
17 the parties to basically do what they did, but with  
18 respect to their proposed decisions and orders.

19 Because of the length of those documents and what  
20 they cover, they're basically sort of a summary of  
21 the entire hearing, you may want to give the parties  
22 a bit more time than on their briefs, but, again,  
23 that's subject to the commission's discretion.

24 And, again, if applicant wants to have time  
25 for rebuttal, they can say they want to use some of

1 their time for that rebuttal later on. That's up  
2 to -- again, up to the commissioner, but I'd suggest  
3 maybe adding additional time because it's a topic  
4 that might merit a lengthier discussion.

5 CHAIR LA COSTA: Thank you, Mr. Hopper.

6 Mr. Chipchase, how much time do you think  
7 you will need, please?

8 MR. CHIPCHASE: For my affirmative  
9 presentation, actually, I intend to be very brief on  
10 the findings. I would like time for rebuttal.

11 CHAIR LA COSTA: Okay. Thank you.

12 Mr. Hurley, how much time do you need,  
13 please?

14 MR. HURLEY: Chair, I intend as well to be  
15 very brief.

16 Chair, could I just get -- sorry.  
17 Apologies. There was a late filing yesterday about  
18 3:30 concerning transcripts relating to this matter.  
19 I just want make sure that the commission's all had a  
20 time to review those transcripts or they're part of  
21 the record? I didn't see them listed yet.

22 CHAIR LA COSTA: Mr. Hurley, it was -- they  
23 were submitted after the noon cutoff time, and you  
24 have to understand that we also have additional  
25 things to do in our lives. So the 12 o'clock noon is

1 the cutoff for a reason, so that we have time to  
2 review everything.

3 So I can appreciate what you're asking, but  
4 I did not review it. I don't know if the other  
5 commissioners did.

6 MR. HURLEY: That's fine, Chair.

7 MR. CHIPCHASE: I can explain that. It was  
8 actually my filing, Chair.

9 CHAIR LA COSTA: I beg your pardon. Sorry.

10 MR. CHIPCHASE: And so, if I may, all it  
11 was was that as the proceedings went on, two  
12 versions, essentially, of the transcripts were  
13 prepared by the same court reporter and both  
14 certified by the court reporter. One version had  
15 only our proceeding, one version had the entire  
16 proceeding before the commission each day.

17 We assumed both versions were in the  
18 commission's record. That's not clear to me now,  
19 so -- and so to ensure there's no question that both  
20 versions are in the record, we filed the other  
21 version of the transcript with the commission  
22 yesterday.

23 But, substantively, it's identical to the  
24 versions of the transcript that had the entire  
25 proceedings for the matters that came before it.

1 That's the only thing that was filed. If you've  
2 reviewed the transcripts that are in the record, then  
3 you've reviewed what was submitted.

4 MR. HURLEY: Chair, if I may?

5 CHAIR LA COSTA: Thank you, Mr. Chipchase.  
6 Mr. Hurley?

7 MR. HURLEY: Yes. Thank you for the  
8 clarification. Those -- as Mr. Chipchase said, those  
9 were not our records.

10 The fact is that the commission actually  
11 e-mailed -- had e-mailed out the official  
12 transcripts, and the Maui Planning Commission rules  
13 have a very specific rule relating to the  
14 verification of the transcripts.

15 I have not had a chance to verify  
16 Mr. Chipchase's transcripts, and it doesn't appear to  
17 me initially that they line up per paragraph or page  
18 numbers, so that means that all of Mr. Chipchase's  
19 findings and facts and decision and orders -- or not  
20 all of them, because there are a few that do  
21 relate -- but -- and I believe his filing --  
22 Mr. Hopper could bring it up and share with you  
23 folks -- references the filings that were different.  
24 But those were never part of the record, so that  
25 would have made it virtually impossible for the

1 commissioners to verify the findings and facts,  
2 conclusions of law, and the references that  
3 Mr. Chipchase uses, and also made it virtually  
4 impossible for intervenors to do so, too. So we  
5 haven't really been able to verify all of the  
6 statements and the findings and facts and conclusions  
7 of law.

8 CHAIR LA COSTA: Mr. Hopper?

9 MR. HOPPER: I mean, I suppose the parties  
10 can address that issue in their argument. Did the  
11 transcripts -- the references might be -- that could  
12 create an issue with the references potentially.

13 Obviously you were present or had a chance to -- if  
14 you're going to vote -- had a chance to read all of  
15 the transcripts, so you would have seen -- you've  
16 heard all the testimony and everything like that.

17 The only issue it could potentially create  
18 is when you review a decision and order that has  
19 references to a transcript, it might be difficult to  
20 verify that that's the page and that's what was said  
21 and the accuracy of that.

22 Now, references to transcripts can be  
23 helpful for that, but I think at this stage we could  
24 have the parties, if they need to, address that in  
25 their discussion. And then we can -- we can still

1 hear from the parties about the merits of their  
2 findings and conclusions and go forward from there.

3 That's what I think I'd advise. And if the  
4 parties need to bring that up as part of their  
5 discussion, they're welcome to do so.

6 CHAIR LA COSTA: Thank you, Mr. Hopper. I  
7 appreciate that. Okay. With that being said, then  
8 is ten minutes sufficient for both parties to present  
9 their D&O and then do cross?

10 MR. CHIPCHASE: Ample for me, Chair, and  
11 I'll save the bulk of that for rebuttal.

12 CHAIR LA COSTA: Thank you.

13 MR. CHIPCHASE: And I'll save the bulk of  
14 it for rebuttal because we've been through this, as  
15 Mr. Hopper said. We heard the evidence, most of us  
16 all together at the same time or at least with the  
17 opportunity if any meeting or portion was missed to  
18 review the --

19 MR. HURLEY: Chair, I'm going to object --  
20 I'm going to object at this time. This should be --  
21 excuse me.

22 MR. CHIPCHASE: Oh.

23 CHAIR LA COSTA: Mr. Hurley, is ten minutes  
24 sufficient for you get your D&O and then do it?

25 MR. HURLEY: Chair, it appears that there's



1 a problem with the audio. I'm trying to object to  
2 Mr. Chipchase's statement.

3 I believe that these need to be on the --  
4 on the -- part of his time allotted, if he's going to  
5 be talking right now. He seems like he was going --  
6 explaining something that should have been part of  
7 his time, so I just want to make sure the time has  
8 started.

9 CHAIR LA COSTA: We'll start the time when  
10 I start the time.

11 MR. HURLEY: And also, I'd like to note it  
12 appears there's a delay, so I'm not sure that my  
13 objections are getting put on the record.

14 MR. CHIPCHASE: I don't care, Chair.  
15 That's fine.

16 CHAIR LA COSTA: I am going to start the  
17 ten minutes right now. You both have ten minutes.  
18 If you have a problem with that, you better speak up  
19 right now. If not --

20 MR. HURLEY: Sorry, I just want to verify  
21 that people can hear my objections, Chair.

22 MR. CHIPCHASE: Very good, Chair. And so  
23 we have heard everything. We've all heard it  
24 together.

25 And what I would say is that, as we've gone

1 along this journey, including doing the closing  
2 arguments that covered in detail all of the things  
3 that were required, the commission has had an  
4 opportunity to ask questions of me, of witnesses, and  
5 as we've gone along.

6 And I would submit that the record we have  
7 developed satisfies our preponderance of the evidence  
8 at 51 percent burden. We have produced what's  
9 required to meet those things that are required on  
10 Phase II approval.

11 Remember, this is not the end of the  
12 journey for the project. We will go on to Phase III  
13 and a bunch of other approvals and requirements for  
14 this project, but here today on this site plan, on  
15 this record, we have met our burden.

16 And I respectfully appreciate your time and  
17 ask the commission to approve this project. Thank  
18 you.

19 CHAIR LA COSTA: Thank you, Mr. Chipchase.

20 Mr. Hurley, will you do your presentation,  
21 please? You have ten minutes.

22 MR. HURLEY: Yes, Chair. I would just note  
23 at the beginning, I think there's an audio lag or  
24 that all your speakers are off, so if you're not  
25 listening for me, you can't hear me when I make an

1 objection. So I think that might be an issue that  
2 might be addressed later.

3 I'll go ahead and continue, but I've made a  
4 number of objections that no one would respond to.  
5 So note that.

6 CHAIR LA COSTA: If you have an objection,  
7 you'll need to raise your hand so that we can see  
8 because there is an audio issue that was mentioned in  
9 the beginning of this procedure. So please wave at  
10 me or something so that I know there's an issue so  
11 that I can take care of that for you. Thank you very  
12 much.

13 Okay. Go ahead, please. You have ten  
14 minutes.

15 MR. HURLEY: Yeah, Chair. We will be very  
16 brief as well. Ryan Hurley here once again on behalf  
17 of Intervenors Ho'oponopono O Makena and Maui  
18 Tomorrow Foundation.

19 We've already expressed our gratitude and  
20 thanks, and we continue to do so. We realize this is  
21 really challenging. It's been especially interesting  
22 to watch this morning's proceedings, and I'm glad  
23 it's not me with the audio troubles for once.

24 You know, I mentioned this already. You've  
25 had our briefs, you've heard most of our discussions.

1 We kept our findings of facts and conclusions of law  
2 fairly brief, mainly because we don't think much is  
3 necessary. As we've -- can you folks hear me?

4 CHAIR LA COSTA: Mr. Hurley, I'm sorry.  
5 Would you please continue after "we don't think much  
6 is necessary." I beg your pardon, but we don't have  
7 control over this. I know it's frustrating.

8 MR. HURLEY: No problem, Chair.

9 CHAIR LA COSTA: So please continue. And  
10 thank you for your patience.

11 MR. HURLEY: Yeah, absolutely, Chair. No  
12 problem.

13 Once again, I was saying we really don't  
14 think there's much necessary in terms of -- of the  
15 findings of facts, conclusions of law. We think the  
16 applicant was correct; the burden of proof is on  
17 them. It's very clear the burden of proof is on  
18 them.

19 And the law is very clear as well.  
20 19.45.050 requires -- you know, this is one of the  
21 first things that the applicant brought up to us when  
22 we filed our motion to intervene was 19.45.050. And  
23 we've looked at it thoroughly, and it's very clear  
24 that this application does not comply with the  
25 processing procedure required there.

1           You know -- and it's funny when I read the  
2 applicant's briefs, one of the things they ignore is  
3 just that this requirement of Ordinance 3553 -- in  
4 fact, they list out all 24 of the requirements in  
5 19.45.050, but they leave out -- they leave out the  
6 25th one, and we think it's the most important one,  
7 and that's compliance with Ordinance 3553.

8           Now why is Ordinance 3553 so important?  
9 Well, this is the foundational ordinance. This is  
10 the ordinance that lays the groundwork, the project  
11 district zoning. This lays the groundwork for  
12 everything we're doing today.

13           And the council, in their great wisdom,  
14 knew -- and the -- the testimony shows it, that 450  
15 affordable homes was desperately needed and should be  
16 built on-site. And they were very concerned about a  
17 developer paying a fee or doing a land exchange and  
18 putting these homes somewhere else, so they required  
19 it. They also required an 18-hole golf course.

20           That's also required some other things. In  
21 Ordinance 3554, the conditions of zoning, they  
22 required a drainage master plan and required that  
23 drainage master plan comply with this preliminary  
24 engineering report.

25           We've seen very specifically that that

1 drainage master plan has changed almost by the day.  
2 I'm kind of surprised there's not a new drainage  
3 master plan today, to be honest. And it's clear that  
4 drainage master plan does not meet up with the  
5 preliminary drainage report that's in the project EIS  
6 or the 2017 update. So clearly, Condition 6 is not  
7 met.

8           Now, we've got Conditions 12 and 18. Those  
9 both heavily relate to a golf course. We have so  
10 much testimony that there's no golf course. So  
11 clearly Conditions 12 and 18 can't be met.

12           Of course, Condition 20 relating to marine  
13 water -- marine -- ecological and water monitoring,  
14 we have testimony on the record showing that the  
15 annual compliance has not been done. Now, the  
16 applicant thinks that they can do this once  
17 construction starts, but that's not what the  
18 condition says.

19           And, of course, there's Condition 26  
20 relating to the preservation and mitigation plan. We  
21 heard the very important testimony from  
22 Daniel Kanahale stating that it's pretty clear  
23 there's unrecognized sites that need to be  
24 recognized.

25           Finally, the approved conservation

1 plan-related easement. We've seen how much that's  
2 changed. And, in fact, you know, if you read the  
3 applicant's brief relating to -- to some of these  
4 things -- or the applicant's findings and conclusion,  
5 what they say about the HCP is that because it's --  
6 was approved, and even though they've pulled it,  
7 they're no longer doing the HCP, that it still  
8 complies. I mean, that's -- that's just crazy, and  
9 we can't let developers say that they can put  
10 something forward and then pull it and say they met a  
11 requirement.

12 Now -- you know, we're going to say it  
13 again. Now the applicant has stated a number of  
14 times that they think that they know what we're doing  
15 or why we're here, delay, delay, delay, et cetera,  
16 but really, we are here about affordable housing and  
17 compliance with the law.

18 And it's absolutely clear that this site  
19 plan does not meet the requirements of Ordinance  
20 3553, specifically -- we're specifically focusing in  
21 on that -- that 450 affordable units requirement.  
22 And why? Because that's really important to Maui  
23 today. We need that.

24 And then, of course, there is the  
25 requirement for this golf course. It says right

1 there in Purpose and Intent in 3553, "all integrated  
2 with a golf course."

3 Now, it doesn't matter what our true  
4 feelings on a golf course is. What matters is  
5 following the law. We cannot allow developers to  
6 pick and choose which pieces of the law they're going  
7 to follow. Everyone can see how that can become a  
8 slippery slope that will lead to disastrous impacts  
9 on the community.

10 Now just to conclude, we know the  
11 commission has the duty here, and this duty is to  
12 enforce the requirements of the law. Ordinance 3553  
13 and 3554 require a number of things, including that  
14 450 affordable units. These aren't met. These  
15 aren't there. It needs to be rejected.

16 And in terms of the findings of facts and  
17 conclusions of law, we think that it should be very  
18 simple. It should say that the applicant -- the  
19 initial application that was presented forward  
20 doesn't meet these, and that you send it back.

21 If the commission chooses to do so, they  
22 can always -- they can always use their power to make  
23 modifications of the site plan. And we think if they  
24 approve anything, that they should mandate that that  
25 450 affordable units as well as an 18-hole golf



1 course be included in the project.

2 We're here to answer any questions. You  
3 know -- yeah, it's been a long road, and we think  
4 that we've really added to the record, and we hope  
5 you folks can -- we can help you folks make a good  
6 decision here. So we'll leave it at that.

7 Thank you, folks, very much. And we  
8 encourage you just to -- to apply the letter of the  
9 law. I think that this is really the opportunity for  
10 the Maui Planning Commission to say we're not letting  
11 developers slide anymore. We're not letting them say  
12 one thing and then do the exact opposite.

13 And also I would just -- would note if, by  
14 any chance, the commission did decide to use the  
15 applicant's findings of facts, conclusions of law,  
16 that we would request an additional time to review  
17 them and make any comments or objections on that,  
18 given that we were -- still haven't even really  
19 reviewed the appropriate transcripts.

20 So thank you very much. We'll leave it at  
21 that, and here to answer any questions.

22 CHAIR LA COSTA: Thank you, Mr. Hurley.

23 So at this juncture, Mr. Chipchase, you  
24 have 8 minutes and 17 seconds of your 10 minutes  
25 left, so please go ahead.

1 MR. CHIPCHASE: Thank you, Chair, for being  
2 precise. Our findings, in contrast, are pretty long,  
3 pretty long and very detailed. It goes through every  
4 witness. It goes through every relevant topic. They  
5 explain not in generalities, not in hyperbole, but in  
6 specificity what those witnesses said, what those  
7 documents said, how they relate to Phase II approval.

8 This has been a highly scrutinized project.  
9 It's been through council twice, it's been through  
10 the Land Use Commission. Now it's been through seven  
11 months of hearings for the Maui Planning Commission.  
12 This is not a project in which the developer has just  
13 done whatever it wants and chooses to follow any law  
14 that it chooses to follow. This has been a highly  
15 scrutinized project at a number of levels.

16 That scrutiny has continued through today  
17 and is reflected in findings and conclusions.  
18 Through that scrutiny, the project has evolved. It's  
19 evolved in ways that has made the project better.  
20 It's evolved in favor of less density, more open  
21 space. It's evolved in favor of preservation, both  
22 historic and cultural resources. It's evolved in  
23 favor of an enormous preservation area that isn't  
24 simply left to nature but is fenced and actively  
25 managed to ensure that deer and other invasive

1 species don't damage the important resources on that  
2 portion of the project. All of those things are  
3 detailed in our findings and conclusions because all  
4 of those relate to the project for which you're  
5 asking -- we are asking your approval.

6 In Mr. Hurley's presentation today, cutting  
7 through all of many hours of testimony that we've  
8 heard, all of the different objections that they've  
9 raised along the way, he focused on a handful of  
10 things.

11 One of those, again, the affordable housing  
12 requirement, we detail that in findings and  
13 conclusions as well and explain that Ordinance 3553  
14 unambiguously says that housing shall be determined  
15 pursuant to Maui County policy. That is reflected in  
16 Ordinance 3554 which expressly invokes Chapter 2.96.

17 We explain, under the rules of statutory  
18 construction, how those two ordinances and the  
19 reference to 450 both came to be and what they mean,  
20 not in generalities, not abstractly, not plucking a  
21 sentence and throwing it out there, but specifically  
22 with the framework that this commission needs to make  
23 a decision.

24 With respect to the golf course, you heard  
25 Mr. Munekiyo explain, without any contrary testimony,

1 that the golf course is an allowed use, not a  
2 required use. What happens when conditions related  
3 to an allowed use but not required use -- what  
4 happens when an allowed use but not a required use  
5 isn't developed (audio difficulty) related to that  
6 allowed use don't apply. It's not a technicality.  
7 It's simply how the ordinances are structured and how  
8 the law works.

9 We're allowed to make uses. We're not  
10 required to make every use that's allowed. But if we  
11 do make a use, like the golf course, then there's  
12 certain conditions, like water quality monitoring,  
13 that apply to that golf course because that use --  
14 that allowed but not required use -- has unique  
15 impacts that might require other means of monitoring  
16 to ensure we're not damaging the environment. But  
17 everyone agrees that not doing it all and shifting  
18 away from golf course in favor of preservation is a  
19 positive evolution of this project, and that's what  
20 happened.

21 Mr. Hurley mentioned the drainage plan.  
22 And I chuckled because it was a pretty good comment.  
23 The drainage plan has been updated. It was updated  
24 in 2017, it was updated when we began these  
25 proceedings, and it's been updated again in these

1 proceedings. (Audio difficulty) that update  
2 reflected community comments and questions from this  
3 commission that we show a plan that includes proposed  
4 drainage basins that don't overlap the (audio  
5 difficulty) sites. And so we did that.

6 We heard from Mr. Otomo, who is actually an  
7 engineer and actually processes Phase II and  
8 Phase III drainage proposals, that those plans will  
9 be refined further through the Phase III process and  
10 construction drawings.

11 The important point is our commitment as to  
12 drainage as reflected in the preliminary engineering  
13 report and those maps that we are overengineered. We  
14 are retaining more stormwater on-site than the county  
15 requires us to retain. We are overengineered even  
16 for the 24-hour 100-year storm so that we do what's  
17 right, not only for this project, but we make  
18 drainage in the area better.

19 Mr. Hurley mentioned annual monitoring, and  
20 you've heard through Andrea Millan how many studies  
21 have already been done even though not a shovel of  
22 dirt has been turned on this project. We explained  
23 that annual monitoring relates to actual construction  
24 activities on-site, but there's nothing to monitor.

25 You can't assess the impact of a site

1 unless you're actually doing something on the site.  
2 But not only will we do that, we have many more  
3 baseline studies done because of the history of this  
4 project and its starts and stops than anyone would  
5 ever require and that are required by our ordinance.

6 Mr. Hurley mentioned Condition 26 related  
7 to archaeological resources. He ignores what that  
8 condition actually requires, that OHA and SHPD (audio  
9 difficulty) preservation plan, Historic Resource  
10 Preservation Plan. That is an unusual condition.  
11 I've only seen it in one other project that OHA has  
12 to accept a Historic Resource Preservation Plan.

13 It took nearly six years to persuade OHA  
14 that we met our obligations with beneficiaries and  
15 under the law and accept our Historic Resources  
16 Preservation Plan. But it did, and through that  
17 process, substantially more areas and substantially  
18 more sites were preserved in perpetuity, and again,  
19 for the most part, not left to nature but protected  
20 with an enlarged preservation area protected by a  
21 deer fence.

22 Finally, the last objection that Mr. Hurley  
23 raised to our site plan was Condition 27. This  
24 commission in 2018 adopted the plan required by  
25 Condition 27, the Habit Conservation Plan, in draft

1 form.

2 You heard Mr. Eijzenga explain the  
3 relationship between the Habitat Conservation Plan,  
4 which is a requirement of federal law when you take  
5 species, and the Natural Resources Preservation Plan  
6 that we have in place now because we've managed to  
7 avoid species.

8 We've managed to orient the project in such  
9 a way that no take is anticipated, working with  
10 DOFAW, working with the Fish and Wildlife Service.  
11 So the Habitat Conservation Plan is not only no  
12 longer required, it's unavailable.

13 And through all those ways, we have met our  
14 burden, Chair and commissioners, and we ask for your  
15 approval. Thank you.

16 CHAIR LA COSTA: Thank you, Mr. Chipchase.  
17 I appreciate that.

18 Mr. Hurley, you have 3 minutes and 43  
19 seconds. You now get 4 minutes. So please go ahead  
20 with your rebuttal.

21 MR. HURLEY: Chair, thank you very much.  
22 You know, just some things off the top of my head --

23 CHAIR LA COSTA: Mr. Hurley, just a minute,  
24 please. Mr. Hopper had something -- I beg your  
25 pardon.

1 MR. HOPPER: If you want to allow, I  
2 guess -- normally the rebuttal would be reserved by  
3 the party doing the initial discussion. So they do  
4 that, and then there's the intervenors, and then the  
5 applicant closes. That's generally how the process  
6 is in your rules for that. So just to be clear on  
7 that.

8 I understand Mr. Hurley didn't use all of  
9 his time allotted, but I don't think he intended to  
10 ask for, like, a re-rebuttal-type situation. So  
11 generally you wouldn't allow for something like that.  
12 Certainly, if you've got questions for either of the  
13 counsel, you can ask that. But normally we would  
14 just have the rebuttal one time.

15 CHAIR LA COSTA: So with that, Mr. Hurley,  
16 I will retract my offer for the balance of your ten  
17 minutes.

18 So, commissioners, have we questions for  
19 either Mr. Hurley or Mr. Chipchase at this time?  
20 Commissioner Freitas.

21 COMMISSIONER FREITAS: Chair, I have a  
22 question about details in that document we received  
23 yesterday, but it sounds like we're not going to  
24 discuss that because we didn't have time to look at  
25 it.



1 MR. HOPPER: I mean --

2 CHAIR LA COSTA: Mr. Hopper?

3 MR. HOPPER: Yeah. I -- if we want to  
4 spend time to try to look at it, I suppose that we  
5 could. But, I mean, again, it deals with -- I mean  
6 the parties can discuss it, but it's basically where  
7 two transcripts may have different references in  
8 them. So if you were here for all of the hearings,  
9 you would have heard everything that was in those  
10 transcripts.

11 The issue would be when the parties prepare  
12 their findings and facts, conclusions of law, and  
13 decision and order, when they make an assertion or  
14 when they state something, they sometimes will  
15 reference to the record where that appeared. And so  
16 there was one set that the -- that the applicant used  
17 that didn't necessarily conform to the set that the  
18 intervenors had access to, so the page numbers of the  
19 transcript may have been off, though the actual  
20 citation of that person's testimony, what the  
21 testimony was, should be consistent in those cases.  
22 I think that's the background of it.

23 If you have questions for either of the  
24 parties and you want to get into more detail on that,  
25 you certainly can, but I think -- I think that's

1 what -- the issue that had happened. So again, I  
2 mean, the transcript just reflects what happened in  
3 all of our meetings. So if you were there for all of  
4 the meetings and you heard them, the issue would be  
5 there may be different citations to the same record  
6 for testimony that happened at a certain time that  
7 would be on different pages of the different  
8 transcripts.

9 COMMISSIONER FREITAS: Can I give you an  
10 example of my question and see if that would fly or  
11 not really?

12 MR. HOPPER: I suppose.

13 COMMISSIONER FREITAS: Okay. For the  
14 applicant, you folks have said it's 288 affordable  
15 units. But in the document I read yesterday, in one  
16 of the first sections basing it on 2.96 and other  
17 law, it should be 230. So I don't know where the  
18 difference came from.

19 MR. CHIPCHASE: Happy to (indiscernible).

20 COMMISSIONER FREITAS: Is that okay, that  
21 question?

22 MR. HOPPER: All that was filed actually  
23 yesterday was regarding the transcripts. You may  
24 have -- since some of the documents were filed --  
25 some of the documents were filed on Friday, you may

1 not have had the chance to read some of them until  
2 yesterday. But the only actual filing yesterday, I  
3 guess, related to the transcript.

4 Certainly this is a valid question, but to  
5 let you know, I don't think this would necessarily  
6 relate to what was filed yesterday. But this is  
7 certainly a valid question for -- on the issues that  
8 the parties have discussed.

9 So, yeah. I think you can proceed with the  
10 question for sure.

11 CHAIR LA COSTA: Mr. Chipchase, please  
12 answer. Thank you.

13 MR. CHIPCHASE: Yes, Chair.

14 So, Commissioner, with 1150 units, total  
15 units proposed, applying 2.96, which says 25 percent  
16 of the market unit -- divide 1150 by 1.25, you get  
17 920. You subtract 920 from 1150, 230 affordable  
18 units required. That is literally the requirement of  
19 the 2.96.

20 But we have committed to building 288  
21 affordable units. The reason for that is that when  
22 Charlie Jencks, who was the project manager for a  
23 long time, went back before the county council and  
24 this commission in 2018 to amend Condition 5, our  
25 affordable housing condition in Ordinance 3554, he

1 told the council that we would develop 288 units.

2 And I think he got there by just doing 25  
3 percent of the total rather than 25 percent of the  
4 market. Basically he overstated the affordable  
5 housing requirement, but he said it on the record,  
6 you know, as part of the amendment of Condition 5,  
7 our actual affordable housing condition.

8 And in response, Councilmember King said  
9 right, and acknowledged that and agreed with him. So  
10 we have elected to stand by that commitment; right?  
11 It was represented in that way as part of the  
12 amendment of the affordable housing condition, and so  
13 we stood by it.

14 So we will develop at least 288 affordable  
15 units even though that exceeds the requirement of  
16 2.96.

17 COMMISSIONER FREITAS: One more time, it  
18 went from 1150 to 920?

19 MR. CHIPCHASE: No. So it went from 1400  
20 total units to 1150. Of that 1150, under the law, we  
21 could develop 920 market units, but we won't.

22 Let me challenge my math real quick. We'll  
23 develop, I think it would be 862 market units, and  
24 the balance will be affordable units because of  
25 Charlie's representation to the council.

1 COMMISSIONER FREITAS: Okay. I got it.  
2 Thank you.

3 CHAIR LA COSTA: Thank you, Mr. Chipchase.  
4 Commissioners, other questions for either Mr. Hurley  
5 or Mr. Chipchase? Okay. Commissioner Pali?

6 VICE CHAIR PALI: Yes, Chair. Can we go to  
7 executive session so that we may consult with our  
8 attorney regarding our privileges and liabilities  
9 pursuant to Section 92-5A for Hawaii Revised  
10 Statutes.

11 CHAIR LA COSTA: Thank you. May I have a  
12 second? Commissioner Thayer is second.

13 At this juncture, we will go into  
14 executive --

15 DIRECTOR MCLEAN: Oh, have to vote.

16 CHAIR LA COSTA: Oh, I beg your pardon.

17 DIRECTOR MCLEAN: Roll call vote. Raise  
18 your hand.

19 CHAIR LA COSTA: All in favor, please raise  
20 your hand. It's unanimous. We will go into  
21 executive session.

22 DIRECTOR MCLEAN: Chair, may I ask for the  
23 record if Planner Ann Cua and I should be in or out  
24 of executive session?

25 CHAIR LA COSTA: Mr. Hopper?

1 DIRECTOR MCLEAN: So Ann and I will both be  
2 out of executive session. I'll leave the room.  
3 Carolyn will figure out how to do executive session  
4 here, but Ann will not be in the meeting. Okay.  
5 Thank you.

6 CHAIR LA COSTA: Thank you, Director.

7 (Whereupon, a recess was held  
8 from 11:55 a.m. to 1:21 p.m.)

9 CHAIR LA COSTA: We will now reconvene the  
10 September 27th, 2022, Maui Planning Commission  
11 meeting.

12 So before we begin, I have a question for  
13 you, please, Mr. Chipchase. In our discussions of  
14 both of the D&Os, we have some questions that came up  
15 so I will ask those. The question that came up was  
16 which of the site plans are you going to be using and  
17 where was it referenced in your D&O to show the  
18 drainage?

19 MR. CHIPCHASE: Okay. Let me make sure  
20 that I get you the right exhibit number and the right  
21 finding numbers so there's no confusion.

22 CHAIR LA COSTA: Thank you.

23 MR. CHIPCHASE: Chair, commissioners, it's  
24 Exhibit 53, and that is referenced at Finding of  
25 Fact 198.

1 CHAIR LA COSTA: Mr. Hurley, did you hear  
2 that?

3 MR. HURLEY: I did, Chair.

4 CHAIR LA COSTA: I just want to be sure  
5 that we're all on the same page.

6 MR. HURLEY: Chair, I believe that  
7 Finding 12 says that it's 3, or Exhibit Number 3.

8 MR. CHIPCHASE: Exhibit 3 to the staff  
9 report, which is Exhibit 4, is the site plan that was  
10 submitted. But you asked for the most updated  
11 version, which was Exhibit 53, which depicts the  
12 drainage as well as the site plan as well as the  
13 adjustments we made to include mo'o ridge in response  
14 to Mr. Kanahale's testimony.

15 MR. HURLEY: Chair, I'm reading Number 12  
16 here and it clearly says the site plan for the  
17 project is attached as Exhibit 3.

18 DIRECTOR MCLEAN: Chair, if I may ask in  
19 the applicant's proposed decision and order,  
20 Condition Number 7 refers to a conceptual site plan,  
21 phasing plan, and roadway site layout plan dated  
22 January 13th, 2022, and calls for substantial  
23 compliance with that.

24 Did that reference be replaced with the  
25 Exhibit 53 that you just mentioned or should that be

1 added to it if the commission does move in the  
2 direction of imposing that condition?

3 MR. HURLEY: Chair, can you folks hear me?

4 MR. CHIPCHASE: Director, let me pull that  
5 up to make sure I see what you see.

6 MR. HURLEY: Can you folks hear me? Can  
7 you folks hear me?

8 DIRECTOR MCLEAN: Oh, Mr. Hurley is waving.

9 CHAIR LA COSTA: Mr. Hurley, go ahead,  
10 please. Thank you. I appreciate that.

11 MR. HURLEY: Chair, this is making it  
12 really hard for me to make note of objections. I'm  
13 reading Finding of Fact 12 and it clearly says the  
14 site plan for the project is attached to Exhibit 3 to  
15 the staff report. I think that's -- I mean, it's  
16 pretty clear --

17 MR. CHIPCHASE: That --

18 MR. HURLEY: -- and this is one of the  
19 reasons why I think we should have had the full  
20 transcripts and allowed us the ability to review  
21 them.

22 CHAIR LA COSTA: I can appreciate that,  
23 Mr. Hurley. It would have been really easier, I  
24 think, if you had been here, but I understand why  
25 you're not here.



1 MR. HURLEY: I'm sorry, Chair. What  
2 does -- I'm talking about the -- I'm talking about  
3 the transcripts that were submitted yesterday.

4 CHAIR LA COSTA: Mr. Chipchase has said he  
5 is going to stand by, in the D&O, what he has  
6 presented. So being that they're his exhibits --

7 MR. HURLEY: Chair, were those ever moved  
8 into the record as exhibits? I don't think he ever  
9 made a motion (indiscernible) exhibits.

10 MR. HOPPER: If there's something  
11 misstated -- again, commission has a meeting decision  
12 and wants some clarification on the D&O (audio  
13 difficulty) --

14 MR. HURLEY: Sorry, folks. I can't hear  
15 anything.

16 MR. HOPPER: Can you hear me?

17 MR. HURLEY: Try again. It's, like,  
18 super -- try again -- echoey.

19 MR. HOPPER: I could use my regular  
20 computer audio and try that. I guess (audio  
21 difficulty).

22 MR. HURLEY: It's really bad. It's super  
23 bad and echoey.

24 MR. HOPPER: Is this any better?

25 MR. HURLEY: Sorry -- yeah, I guess so.

1 MR. HOPPER: Is this any better right now?

2 MR. HURLEY: That is better. That is  
3 better for me.

4 MR. HOPPER: It is a little bit closer.

5 CHAIR LA COSTA: Mr. Hurley, can you hear  
6 now?

7 MR. HURLEY: Yes, I can hear you. It was  
8 Mr. Hopper I was having trouble with.

9 CHAIR LA COSTA: Okay. Thank you, sir.  
10 Mr. Hopper?

11 MR. HOPPER: Yeah. I think at this stage  
12 you're asking for clarification. The applicant's  
13 proposed (audio difficulty) --

14 MR. HURLEY: I can't hear, folks. I can't  
15 hear anything from Mr. Hopper at this point.

16 MR. HOPPER: Is this any better for you?

17 MR. HURLEY: That's better.

18 MR. HOPPER: Maybe I'll try it like this  
19 and just take it off when we're done.

20 I think right now you're just asking for  
21 clarification from the applicant. I don't think you  
22 necessarily need to get an objection from either  
23 party on -- on discussions at this point on these  
24 types of clarification questions.

25 If you have questions for intervenor, I

1 think you can ask them at this point. If there ends  
2 up misstatements or misreferences to findings after a  
3 decision's made, either party can bring that up in  
4 either motion for reconsideration or in an appeal.

5 So that's the most efficient way for now.  
6 You're about to start your deliberation and  
7 decision-making, so I think if you've got further  
8 questions for either party on their D&Os, you can  
9 continue with them.

10 CHAIR LA COSTA: Thank you, Mr. Hopper.  
11 Mr. Chipchase?

12 MR. CHIPCHASE: Yes, so I'm ready to  
13 respond to the director's question.

14 CHAIR LA COSTA: Thank you.

15 MR. HURLEY: Sorry. Could you repeat --

16 MR. CHIPCHASE: I do agree, Director,  
17 that -- I believe it's Condition 7 that the reference  
18 should be Exhibit 53 --

19 MR. HURLEY: Chair, I'm going to make an  
20 objection. Excuse me, folks. Objection. Objection.

21 COMMISSIONER THAYER: Hold on a second.  
22 Mr. Hurley is --

23 CHAIR LA COSTA: Mr. Hurley, can you please  
24 wait until he finishes?

25 MR. HURLEY: Chair, I need the ability --

1 Chair, I need the ability to make objections, and  
2 this is not working out for me.

3 Is Mr. Chipchase responding to a question  
4 by the director?

5 DIRECTOR MCLEAN: Yes, a clarifying  
6 question about --

7 MR. HURLEY: Is that appropriate at this  
8 point? Isn't the director a party at this point?  
9 Are parties allowed to ask questions at this point?  
10 I'm going to object to that question.

11 MR. HOPPER: Yeah. I think, at this point,  
12 I know the director brought that up. I think at this  
13 point it's best to maybe address these questions to  
14 the chairperson and the commission members.

15 I understand there's reference to this  
16 condition. I think, going forward, if the commission  
17 wants to include this as their condition -- as a  
18 condition in order to have the plans updated if  
19 that's an issue, the commission feels it's important,  
20 let's keep the discussion, I think, between the  
21 applicant and the chairperson/commission members at  
22 this point since we're in discussion.

23 In that case, it was to a planning director  
24 who's a party to the case making -- having a  
25 discussion at this point, and I suppose that's okay

1 to make that at this stage.

2 But at this point forward, let's try to  
3 (audio difficulty) commission members and the parties  
4 (audio difficulty) to respond to the commission  
5 members and their questions. I don't think there's  
6 any further need for objections and clarifications in  
7 that process unless a party has asked for that.

8 That's the most efficient way forward.

9 CHAIR LA COSTA: Mr. Hurley, are you still  
10 having issues hearing? We can't hear you.

11 MR. HURLEY: It's pretty bad, but, I mean,  
12 we're getting through it. It's only with Mr. Hopper  
13 at this point.

14 CHAIR LA COSTA: Would you repeat what you  
15 just said, please?

16 MR. HURLEY: I said it's pretty bad, but  
17 it's only with Mr. Hopper at this point.

18 MR. HOPPER: Can you hear me any better  
19 with my computer audio? Is this better or not  
20 really?

21 MR. HURLEY: That's a little bit clearer  
22 for me.

23 CHAIR LA COSTA: I'm sorry. What did you  
24 say, please?

25 MR. HURLEY: I'm sorry. That's clearer for

1 me than the other one.

2 CHAIR LA COSTA: Now we can't hear you,  
3 sir. And I apologize, but we can do nothing about  
4 it.

5 MR. HURLEY: I think it's all the audio.  
6 You guys keep turning the sound off and on, which  
7 makes it hard for me to object. And I think it also  
8 is -- I don't know what to say.

9 CHAIR LA COSTA: You have to turn this -- I  
10 beg your pardon. We have to turn the sound off,  
11 otherwise we get feedback. So everyone has to be  
12 muted until they speak.

13 So having said that, Mr. Chipchase, you  
14 were going to respond to the director's question,  
15 please.

16 MR. HURLEY: I thought we just said we're  
17 not going to respond to this question.

18 MR. HOPPER: Yeah. Yeah, okay. Let's face  
19 this. The commission -- would the commission like  
20 Mr. Chipchase to discuss how to best incorporate the  
21 most recent drainage plan into the D&O and whether it  
22 could be done as part of the condition. That's  
23 something, commission, you would like Mr. Chipchase  
24 to answer at this point.

25 CHAIR LA COSTA: Can I have a consensus?

1 MR. HOPPER: Or, Chair, you can -- if you  
2 want to have him answer, I think you can have him  
3 answer that.

4 CHAIR LA COSTA: The consensus of the --  
5 yes, that is correct, Mr. Hopper.

6 MR. CHIPCHASE: Very good, Chair. Yes, I  
7 do believe that the most appropriate reference --

8 MR. HURLEY: I can't hear, folks. I can't  
9 hear, folks. I can't hear. I can't hear Cal.

10 DIRECTOR MCLEAN: We heard that.  
11 Mr. Chipchase, can you make sure that your audio is  
12 turned on?

13 MR. CHIPCHASE: Starting over. Yes, Chair,  
14 I do agree that the most appropriate reference in  
15 Condition 7 would be to Exhibit 53 as it has all of  
16 those required elements but also shows the conceptual  
17 drainage basins in relation to the preserved features  
18 and includes the expansion of a greenway area to  
19 include mo'o ridge.

20 (No audio.)

21 MR. HURLEY: Is there questions? I can't  
22 hear anything.

23 CHAIR LA COSTA: Does that answer your  
24 question, Director?

25 DIRECTOR MCLEAN: It was the commission's

1 question.

2 CHAIR LA COSTA: Well, it was directed --  
3 he made it -- he directed it to -- okay.

4 Have we other clarifying questions of the  
5 applicant? No.

6 Have we any clarifying questions of the  
7 intervenors? Okay. I see no questions, no further  
8 questions for either party.

9 At this juncture, can I entertain a motion?  
10 Commissioner Thompson?

11 COMMISSIONER THOMPSON: Okay. I'd like to  
12 make a motion that we approve Phase II application  
13 and with a couple changes. You have changes? You  
14 want one about -- you want Mr. Hopper to state those  
15 changes that we talked about?

16 MR. HOPPER: Well, at this stage, I think  
17 you can maybe summarize them. Again, am I coming  
18 through okay on audio? Okay.

19 It appears that you're attempting to make a  
20 motion to approve or basically adopt the applicant's  
21 decision and order, and then I think you can maybe  
22 get a second, and then you can discuss potential  
23 amendments to that after you've gotten a second, if  
24 it's -- if so.

25 CHAIR LA COSTA: Thank you, Mr. Hopper.



1 Okay. Commissioner Thompson has made a motion to  
2 accept, or approve rather, the Phase II as presented  
3 by the applicant. Can I have a second? I will  
4 second for the sake of conversation.

5 Commissioner Thompson?

6 COMMISSIONER THOMPSON: For this one, there  
7 was only a couple things I saw that we needed to  
8 change. One was for character reference --

9 MR. HURLEY: I can't hear.

10 DIRECTOR MCLEAN: You need to speak more  
11 directly so that everyone can hear.

12 MR. HOPPER: I can bring it up. If you  
13 don't have any more discussion on your motion, I --  
14 if you want to go with the most recent site plan and  
15 adopt that as a condition, I think that's a relevant  
16 amendment to the decision and order.

17 In my review of the document, there were  
18 multiple cases where there was a reference to  
19 witnesses not being credible. I don't think those  
20 are necessarily required findings, so I referenced  
21 the paragraphs where those were. If you -- if you do  
22 not find that finding necessary, I think you can  
23 delete or amend those appropriate paragraphs to  
24 delete the statement that a certain witness is not  
25 credible.

1           There's a reference to -- I think it's  
2 Finding 87 dealing with Mr. Kanahale being a county  
3 employee. I don't think that's a -- necessarily a  
4 conclusion. There was a dispute on that issue. I  
5 think you could make that same finding without that  
6 reference. And also, I think Finding of Fact 64  
7 references a witness --

8           MR. HURLEY: I'm going to object at this  
9 point, folks. I'm going to object.

10           MR. HOPPER: Mr. Hurley's waving his hands.  
11 I believe he wants to make an objection here.

12           I'm advising my client on the -- after a  
13 motion's been made at this point, so I don't know  
14 if -- you can ask Mr. Hurley what his objection is, I  
15 suppose, unless it's an audio issue at this point.

16           CHAIR LA COSTA: Mr. Hurley? What is your  
17 objection, please? Is it an audio issue or what?

18           MR. HURLEY: I think that Mr. Hopper is  
19 getting a little too far into his role. I think that  
20 those amendments --

21           CHAIR LA COSTA: That's not what I asked.

22           MR. HURLEY: It's not audio. I'm making  
23 the objection on the record. I think that those  
24 statements are inappropriate for Mr. Hopper to direct  
25 the commission how to amend the application, amend

1 the site plan.

2 CHAIR LA COSTA: Thank you, Mr. Hurley. I  
3 will add this for the record that during our  
4 executive --

5 MR. HOPPER: Wait. We don't have to -- we  
6 will not go over the meeting and discuss in executive  
7 session. That's legal advice.

8 CHAIR LA COSTA: Okay. We -- I asked  
9 Mr. Hopper if he would please bring the items to the  
10 table for public record --

11 MR. HOPPER: There's no further --

12 CHAIR LA COSTA: -- so that's why he is in  
13 the conversation. This is what I asked you just now.

14 MR. HOPPER: Okay. At this point, I'm  
15 advising the commission on any proposed edits to a  
16 D&O. I would do that with any other D&O. I'm not  
17 sure what my role would be otherwise or why I'd be  
18 here.

19 So I think it's appropriate for me if  
20 you're looking to adopt a D&O to go over the edits  
21 that I see that may be important to have in the D&O  
22 that if you do decide to adopt I think would be most  
23 appropriate, but that's up to the commission  
24 ultimately if it wants to make those changes.

25 I see potential changes to references to

1 credibility -- I can give those numbered findings --  
2 the county employee reference as well as the witness  
3 list repetition reference. That's all I am going  
4 into.

5 As far as some potential changes to the  
6 D&O, you can obviously have further discussion, but I  
7 wanted to get that on the record, if you do choose to  
8 adopt these, as I would with any applicant to make  
9 the D&O something that I think the commission could  
10 adopt, if it so chooses.

11 CHAIR LA COSTA: Thank you, Mr. Hopper.  
12 And for clarification, I asked Mr. Hopper if he would  
13 add those when Commissioner Thompson made his motion.  
14 So I just want to make sure that that is on the  
15 record and clear. Thank you.

16 Any other discussion. Commissioner Pali?

17 VICE CHAIR PALI: I think discussion is  
18 important because it provides a record and paper  
19 trail of just our thoughts as we serve in this  
20 volunteer position as commissioners. I think it's  
21 good reference points for the community at large,  
22 who, you know, require us to be the gatekeepers and  
23 to guard their special interests, which is our land.

24 And I've been struggling because there's  
25 just a lot of different elements around this

1 particular application, and I think I just try my  
2 best in each application to weigh the cost and also  
3 to weigh the benefits. And I thought it would have  
4 been fun to sort of look at the definition of cost  
5 and, just for the record, a quick definition which  
6 you can find is an advantage -- I'm sorry that's  
7 benefit. Cost is require a payment, that's cost.  
8 When we weigh the cost, it's requiring the payment of  
9 something before it can be acquired. That's  
10 definition of cost. So if there's cost to us, it  
11 means that it required something from us, our  
12 community.

13 And when we weigh the benefits, the  
14 benefits are advantage. What are the advantages that  
15 we would get after we weigh those costs, after we  
16 give. And so I really -- for me, it just boils down  
17 to the law. That's been thrown out a lot in this  
18 case, the law, the law, the law. And it's very clear  
19 that many interpret the law differently.

20 I think it's important for me to state on  
21 record that I'm interpreting the law as it was  
22 intended, from my perspective, that has the law been  
23 followed and has it not been followed? And that's  
24 going to be the basis of my decision.

25 And also what are the benefits? You know,

1 the benefits is an affordable housing piece. I can't  
2 express how much times I hear people in groups talk  
3 about we need affordable housing, we need affordable  
4 housing. And then we see those same groups come up  
5 in front of us and they're saying, no, not here. Not  
6 there. Too big. That's too far away. It was too  
7 close. Density.

8 And I'm really just shocked because the  
9 same people at large in social media are screaming  
10 "we need affordable housing," but they're coming here  
11 and they're giving us reasons why they can't put  
12 their mark on affordable housing.

13 So when I look at the cost, we're giving  
14 away resources -- that's our land. We don't own the  
15 land, but that cost gains us protection for native  
16 plants, protection -- cultural sites. I think --  
17 ultimately I think for me, as I weigh cost and  
18 benefit, I'm just landing that the costs are -- the  
19 benefits would outweigh the cost. And that's where I  
20 land in my decision, so that's my discussion.

21 CHAIR LA COSTA: Commissioners, additional  
22 input, questions, comments? Commissioner Thayer?

23 COMMISSIONER THAYER: Okay. I will thank  
24 Commissioner Pali for getting us going because I  
25 think this warrants good discussion of us based on

1 these months and months of hearings we've been  
2 having, the amount of time this project has been on  
3 the books.

4 Like, this is -- I was in, like, middle  
5 school, I think, when this was first proposed. And,  
6 like, I think we need to have good discussion on this  
7 to do this project justice. So in the interest of  
8 that, I will give my two cents.

9 One thing, I would like to propose a  
10 condition that the landscaping will consist mainly of  
11 native drought-tolerant plants and follow the  
12 landscape master plan that was in the final EIS, as I  
13 think that was the most recent or only landscape plan  
14 that we've seen.

15 And then to think about the Project  
16 District approval -- Phase II approval, like this  
17 Phase I and the change in zoning was decided years  
18 ago by our predecessors and the council, and they are  
19 the ones that weighed the impacts of this project.

20 And our task today is to say whether these  
21 plans before us conform to that original project and  
22 conditions and design standards that were approved  
23 before. Like, we are not here necessarily to hash  
24 through all the impacts and mitigation measures  
25 because that was already done as part of Phase I.

1           So we are here to say does this plan -- do  
2 these plans that we have before us follow that first  
3 approval? And I think like Commissioner Pali said,  
4 there's a lot of ways you can interpret all of these  
5 provisions that went into the Project District  
6 Ordinance 3553, and like we've gone for weeks over is  
7 this following, is this not following? And we are a  
8 group of laypeople that are tasked with making this  
9 determination. And so we are -- I think just got to  
10 do the best we can.

11           And, like, I think with all developments,  
12 the developers shoot for the moon. Like how can we  
13 maximize the take from this piece of land? Like how  
14 can we maximize what we can get out of this piece of  
15 land?

16           And that's what the project was at the very  
17 beginning. And I think over years and years and  
18 years of, like, community input and studies and plans  
19 and deliberations, we have come to this today which  
20 has fewer units overall. It has more preservation  
21 area. I think has a lot of, like, good planning  
22 principles for mixed use, and, you know, making it  
23 walkable and incorporating, like, community  
24 facilities, like everything you, quote, unquote,  
25 "want to see in a development." And I think this has



1 that.

2 And, like, two questions that come to me  
3 are, one, is this the best thing for this land and  
4 our culture? And number two, like, how well is this  
5 being done, and how will it benefit our island? And  
6 I can see, like, pluses and minuses in all respects.

7 Like, do we really need several hundred  
8 more, like, market rate homes? And, yes, I think  
9 everybody would say we do need whatever affordable  
10 housing we can get. That's one thing.

11 Another thing that comes to my mind is,  
12 like, that this very endangered habitat will be  
13 protected by this development and, like, that is,  
14 well, almost 200 acres of dryland forest that would  
15 be lost presumably otherwise if this doesn't happen.

16 And, you know, as an aside, I would hope  
17 that the landowner would protect it anyway because it  
18 is super valuable, and if you have this, like,  
19 treasure of a piece of land, that I hope you would  
20 protect it whether or not you get to build everything  
21 else. But we live on an island, and we have to  
22 compromise, and I think this is a compromise in that  
23 there is a lot more native area preserved than was  
24 going to be preserved before.

25 And that we are getting some affordable

1 housing out of it and that -- I don't know. The  
2 other housing is what it is, but I don't know where  
3 I'm going with this, but I figure we should just have  
4 discussion to hash this all out because I think we  
5 owe it to this piece of land to get all of our  
6 thoughts out there.

7 CHAIR LA COSTA: Thank you, Commissioner  
8 Thayer. Commissioner Hipolito, anything to add?

9 COMMISSIONER HIPOLITO: As put by  
10 Commissioner Thayer and Pali, there's awesome --  
11 there's benefits. Well said, well put. You know,  
12 when we look at, especially, at us as volunteers and  
13 decision-makers on this and the amount of time spent,  
14 all the information each of us have to weigh it from  
15 how we feel and how we were brought up and the  
16 experiences we have throughout our life and sharing  
17 our own experience and how we can make this best  
18 balanced decision. Again, it's the best balanced  
19 decision.

20 And what was presented before us over the  
21 last several months now, as Commissioner Thayer says,  
22 there's positives and negatives, but we need to  
23 really look at that 170 acres of preservation. We  
24 need to look at the affordable or workforce homes  
25 that we're going to get out of this project.

1           This is Phase II. There's much more that  
2 needs to progress as it goes along.

3           So the discussion that we're having today,  
4 and I think we're going to even have after this, for  
5 all of us and the community, but again, what we're  
6 challenged with is to see, again, the law and has  
7 that been met? Has the applicant's submittals and  
8 evidence that was presented has met the criteria and  
9 make up the balanced decision with that? That's all  
10 I have to say.

11           CHAIR LA COSTA: Thank you, Commissioner.  
12 Commissioner Freitas?

13           COMMISSIONER FREITAS: I wasn't going to  
14 talk because I asked so much questions throughout  
15 these hearings, I think they're tired of my voice.  
16 But I look at this -- I have to kind of disagree a  
17 little bit with my fellow Commissioner Thayer in that  
18 some of this groundwork for this project was set out  
19 years and years ago, but it took them a while to get  
20 to this point. And things have changed, and  
21 therefore we really got to look at it based on what  
22 the changes are.

23           Changes for me that I kept questioning in  
24 this hearing that stands out is water. That is a  
25 real issue here and I bring it up all the time.

1           The second one is affordable housing. So  
2 if there wasn't -- if there was something written  
3 somewhere that said there is a possibility we can get  
4 more, I brought that up as often as I could to make  
5 sure that we checked all the boxes, crossed the T's  
6 and dotted those I's and made sure that whatever the  
7 law is, like Commissioner Hipolito has said, it was  
8 presented by the applicants, I think that would help  
9 us with our decision.

10           One really, really good thing is that I  
11 noticed that the applicant listened to the community.  
12 There's developers that they say they do and they  
13 don't really listen, but they did and they made those  
14 changes that really fit that area. And I appreciate  
15 that.

16           So what was presented, I really feel good  
17 about what I'm going to decide today. So I just  
18 wanted to share that.

19           CHAIR LA COSTA: Thank you, Commissioner  
20 Freitas.

21           Commissioner Thompson, anything further?

22           COMMISSIONER THOMPSON: Because I can.  
23 Well, I agree with Commissioner Freitas. He's very  
24 right about all those things, and I think these guys  
25 are good stewards. They made those changes. They

1 had everybody walking inch by inch over that property  
2 and adjusted all those things.

3 And as far as 3553 is -- ordinance is  
4 allowable but not required, a golf course is  
5 allowable but not required, and I would bet if  
6 they're putting in -- and I'm a golfer -- but if  
7 they're putting a course there, there would be  
8 protests. Nobody would want a million gallons a day  
9 going into a golf course for a handful of rich guys.

10 Anyway, like I said, I think they're good  
11 stewards of the land. It's a good project.

12 We need our four lanes going to Kihei.  
13 That's a major point right there. That's hardly been  
14 mentioned.

15 And it's still years before a shovel gets  
16 in the ground. It's going to go through a lot more  
17 discretion. That's it.

18 CHAIR LA COSTA: Thank you, Commissioner  
19 Thompson. Anyone else?

20 I will put in my two cents.

21 You have something else, Commissioner  
22 Thayer? Go ahead.

23 COMMISSIONER THAYER: I do want to agree  
24 with Kawika that the water is a huge giant issue, and  
25 that, you know -- like this being in what is

1 basically like one of the fastest-growing communities  
2 in, like, the driest area of our islands, that is  
3 something that we should consider very strictly.  
4 And, you know, they are using water from that moku  
5 and not sucking it out from this side like most of  
6 South Maui does.

7 So maybe that's a compromise that is  
8 happening here, but thank you. I -- yes, thank you.  
9 I just want to say that.

10 CHAIR LA COSTA: Thank you, Commissioner  
11 Thayer.

12 So my comments are twofold. First of all,  
13 I would like to thank all of you for your patience  
14 with me. I will say it one more time. I am not an  
15 attorney as you have well found out. And I want to  
16 thank Mr. Hopper for all of his input and trying to  
17 keep me on the straight and narrow when he doesn't  
18 have tape to put over my mouth, which he probably a  
19 couple of times wished he had.

20 Commissioners, thank you for all of the  
21 hours and hours and hours and hours that you have put  
22 in reviewing transcripts and reading exhibits and  
23 D&O.

24 Carolyn, thank you for your patience.  
25 She's still hanging with us. Directors and everyone,

1 all of the planners and everyone involved in this,  
2 this has been a very arduous and informative case.  
3 And I have applauded all of you who have  
4 participated.

5 Thank you, Mr. Hurley, for your patience.  
6 And I know a couple of times you probably wanted to  
7 reach out and slap me, so thank you for your  
8 patience.

9 Mr. Chipchase, the same. Thank you very  
10 much for your patience. It was a learning experience  
11 and one probably none of us want to do again. So  
12 we'll probably let the professionals stick to it from  
13 now on.

14 But my comments about the case are that  
15 Phase II is preliminary with a capital preliminary,  
16 and that's what I keep looking at, and that's what I  
17 kept going back to, looking at all of the things that  
18 were set out.

19 The concurrence with the other  
20 commissioners that indeed the applicant listened to  
21 the community, took heed and changed several things  
22 based upon input from the community and from the  
23 commission, we have also made several comments.

24 There have been arguments on both sides.  
25 You know, what do you do, what do you not do? 3553

1 and 3554 have to do with Phase I, and I was on the  
2 commission during Phase I, and I do remember that  
3 many years ago. And this project has been on the  
4 books since I moved here in 1990.

5 So in concurrence with Commissioner Thayer,  
6 it has been a long time coming. We need housing.  
7 "Not in my backyard," that has got to stop at some  
8 point if we want to fulfill the housing needs of our  
9 community, and I think this is a good balance.

10 The lack of golf course, I am -- it's an  
11 allowed use, not a required use. And therefore, we  
12 will save water and pesticides and anything else that  
13 goes along with the golf course. And there's just so  
14 many components, and it was a hard weigh because we  
15 do listen to what the community says, and we do read  
16 everything, and we do make decisions, hard decisions,  
17 and we do not get paid for this. So this is coming  
18 from our hearts and our concern for our community and  
19 everyone involved in that.

20 So I applaud all of you again. Thank you  
21 so much for your kokua and patience. And with that,  
22 I will --

23 MR. HOPPER: Chair.

24 CHAIR LA COSTA: -- turn it over to  
25 Mr. Hopper.



1 MR. HOPPER: Just a couple of things. One,  
2 I guess I should have done it before we had a motion,  
3 but just want to confirm. I think that it's the  
4 case, but everyone who's going to vote today was  
5 required to have reviewed all of the proceedings to  
6 date. You either were here or had a chance to review  
7 the recordings and all of the documents filed. So  
8 just a confirmation, I think, from all the members  
9 that you've done so, you read the entire record and  
10 are prepared to vote on the matter.

11 CHAIR LA COSTA: Please raise your hands if  
12 you are so -- go ahead.

13 MR. HOPPER: All of the commissioners  
14 raised their hands so they're all -- they have all  
15 reviewed the entire record and the matter. I think  
16 that's important.

17 Also, if there's -- again, if there's going  
18 to be any amendments, you would make them before  
19 voting on the main motion. So whether they're  
20 amendments to deal with the suggested revisions or  
21 the discussion of a reference to updated plans, more  
22 specific updated plans, I think that's something you  
23 would do before you would vote on the main motion.

24 CHAIR LA COSTA: Thank you, Mr. Hopper.

25 With that being said, I would need a motion

1 to afford the amendments that Mr. Hopper read into  
2 the record. Those are to eliminate the -- go ahead,  
3 Mr. Hopper.

4 MR. HOPPER: Chair, if you'd like, I  
5 could -- my suggested revisions were, I believe,  
6 Finding of Fact 64 states witness lists a couple --  
7 one extra time. Finding of Fact 87 references  
8 Mr. Kanahele as not being a county employee. I don't  
9 think that that -- I -- that was disputed. You  
10 could, I think, delete that reference because I don't  
11 believe it's necessary.

12 And then the following findings, should the  
13 commission wish, are findings that certain witnesses  
14 were, quote, "not credible." Did the commission wish  
15 to make those findings? They certainly can, but I  
16 don't believe they're necessary for a determination.

17 So Findings of Fact 173, 190, 218, 352,  
18 this is to commission -- this is the 444 and 476 --  
19 these are references to the applicant's errata  
20 that's -- they're essentially revised findings,  
21 conclusions, and decision and order. I think those  
22 can be either deleted or amended to delete reference  
23 to a witness not being credible.

24 So if the commission would so choose, I  
25 think they can take that action with those changes in

1 addition to any other amendments that you would want  
2 to make.

3 COMMISSIONER THOMPSON: Does that have to  
4 be a friendly amendment that's on the floor now?

5 MR. HOPPER: Yes. Someone would need to  
6 make the motion to amend to incorporate those  
7 changes. You could do that along with or separate  
8 from any other amendments dealing with updating site  
9 plans or things like that if you feel necessary.

10 CHAIR LA COSTA: Do we have a motion,  
11 please?

12 COMMISSIONER THOMPSON: Motion to adopt.  
13 (Indiscernible) with regard --

14 DIRECTOR MCLEAN: Make sure you are  
15 speaking clearly, Commissioner Thompson, just in  
16 case.

17 CHAIR LA COSTA: Commissioner Thompson?

18 COMMISSIONER THOMPSON: Yes. I would like  
19 to make a motion to incorporate the changes  
20 Mr. Hopper has made, or that we have made through  
21 Mr. Hopper.

22 CHAIR LA COSTA: Do we have a second?

23 COMMISSIONER FREITAS: Question.

24 CHAIR LA COSTA: Does that mean we cannot  
25 add after we do this?

1 CHAIR LA COSTA: It does not.  
2 Second? Thank you, Commissioner Hipolito.  
3 Discussion. Commissioner Thompson?

4 COMMISSIONER THOMPSON: Yeah. At least we  
5 discussed before that we wanted to add into,  
6 initially anyway, into the D&O, and I think it's  
7 self-explanatory.

8 CHAIR LA COSTA: Commissioner Hipolito?

9 COMMISSIONER HIPOLITO: No discussion.

10 CHAIR LA COSTA: No discussion, okay.  
11 Commissioner Pali?

12 VICE CHAIR PALI: Question about the  
13 "project shall be initiated by" with a date. I think  
14 the original --

15 CHAIR LA COSTA: Yeah. There's a motion on  
16 the floor, so you can't ask a question not related --

17 VICE CHAIR PALI: Okay.

18 MR. HOPPER: We can ask --

19 VICE CHAIR PALI: So it needs to be an  
20 amendment?

21 MR. HOPPER: Well, we can have additional  
22 amendments after this to vote on, too, if you want.

23 VICE CHAIR PALI: Got it.

24 CHAIR LA COSTA: So we have amendment that  
25 covered three things, whether or not Mr. Kanahele was

1 an employee, the witness list, and the credibility of  
2 the six witnesses as shown.

3 So we have a motion and a second. Call for  
4 the vote.

5 DIRECTOR MCLEAN: Do I do roll call vote?

6 CHAIR LA COSTA: We'll do a verbal vote,  
7 please. All those in favor, please say aye.

8 COMMISSION MEMBERS: Aye.

9 MR. HOPPER: Commissioner Lindsey, do you  
10 have a question? I'm not sure if it's clear what  
11 you're voting.

12 COMMISSIONER LINDSEY: (Indiscernible).

13 MR. HOPPER: If you so choose, yes.

14 CHAIR LA COSTA: Any opposition? Any  
15 abstentions? Motion passes by voice vote  
16 unanimously. Thank you.

17 Commissioner Freitas, did you have anything  
18 you want to discuss?

19 COMMISSIONER FREITAS: I do have a question  
20 about the Condition 11, and I believe I had it on my  
21 phone. And it was about the water again.

22 Now, Commissioner Thayer had reminded me  
23 that they did say that it was -- water source was  
24 from the property, but in this Number 11, it only  
25 says that it is from the Kamaole Aquifer and that it

1 is not in the Kula Community Plan. So does that mean  
2 that that water is coming from that property or that  
3 project site?

4 CHAIR LA COSTA: So you're talking about  
5 the information on Page 2 of the D&O; correct?

6 COMMISSIONER FREITAS: Yeah.

7 CHAIR LA COSTA: That Number 11?

8 COMMISSIONER FREITAS: Number 11, yeah.

9 CHAIR LA COSTA: Thank you. Would you read  
10 that into the record, please?

11 COMMISSIONER FREITAS: Number 2  
12 Condition 11 states that the water from the project  
13 will be drawn from Kamaole Aquifer and not from the  
14 Kula Community Plan area. And where does it actually  
15 come from? Does it come from the project site?

16 MR. HOPPER: Chair, is that a question for  
17 the applicant?

18 CHAIR LA COSTA: Is that a question for the  
19 applicant.

20 COMMISSIONER FREITAS: I guess what I'm  
21 trying to say is can we be more clear on that water,  
22 that it will be from the site? Because when the man  
23 came and talked about that water, he did say that  
24 there's two more wells somewhere else, and now that  
25 was taken out of Number 11.

1           It doesn't talk about the other two wells.  
2 And that was if you needed more, but this now says  
3 that you folks have adequate -- that water that you  
4 folks are going to be using is adequate for the  
5 project.

6           MR. HOPPER: But if you want a question for  
7 the applicant, I suppose you could ask that.

8           COMMISSIONER FREITAS: So what I would like  
9 to do is have an amendment -- add to that condition  
10 something a little bit more specific.

11           MR. CHIPCHASE: Commissioner -- and I'll  
12 invite, actually, Mr. Frampton up here. He's worked  
13 more on the water than me.

14           But I don't read that Condition 11 is  
15 saying that the water is coming from the project  
16 site. I read it as only specifying aquifer and the  
17 Kula Community Plan because, of course, the rule  
18 against drawing water from this area, from the Kula  
19 Community Plan area.

20           But there will be wells that may be  
21 necessary to supply this project drilled off the  
22 project site, just mauka of it, but still within that  
23 aquifer system and outside of the Kula Community Plan  
24 area.

25           MR. HURLEY: Objection, Chair. Folks,

1 objection. Objection.

2 CHAIR LA COSTA: Mr. Hurley, go ahead,  
3 please.

4 MR. HURLEY: Chair, I'm going to have to  
5 object. I think it's inappropriate to be asking the  
6 applicant to be -- I think it's inappropriate to be  
7 asking the applicant at this time to be adding to the  
8 record.

9 CHAIR LA COSTA: It wasn't --

10 MR. HURLEY: I think we need -- I think if  
11 you're making a final decision order, I think you  
12 folks need to base it on what's in the record at this  
13 point.

14 CHAIR LA COSTA: It wasn't an addition to  
15 the record, sir. It was a clarification of Number 11  
16 and wanted to know about that --

17 MR. HURLEY: But his testimony is adding to  
18 the record, Chair. His testimony is adding to the  
19 record, and I think it's inappropriate at this time  
20 of decision-making.

21 CHAIR LA COSTA: So it wasn't anything  
22 added to the record. It was specifically for  
23 clarification on Number 11.

24 Commissioner Freitas, go ahead, please.

25 COMMISSIONER FREITAS: Chair, my question



1 has been answered, so I'd like to not make any  
2 changes.

3 CHAIR LA COSTA: Mr. Hurley, did you hear  
4 Commissioner Freitas said that his question had been  
5 answered by the applicant and he was not going to  
6 make any further changes regarding Number 11?

7 MR. HURLEY: I did, and I think that's  
8 exactly why I made the objection --

9 CHAIR LA COSTA: Can't hear you, sir.  
10 Sorry.

11 MR. HURLEY: -- I think it's inappropriate  
12 at this time.

13 CHAIR LA COSTA: Would you repeat that,  
14 please?

15 MR. HURLEY: I said, I did hear that, and I  
16 think that's exactly why it's inappropriate for the  
17 applicant to be adding to the record at this time. I  
18 think we need to make the decision based on what's in  
19 the record and go with that at this time.

20 CHAIR LA COSTA: Thank you, sir.

21 MR. HOPPER: If I could make a comment. I  
22 think it's entirely appropriate -- if you've got  
23 questions to either party based on the existing  
24 record, then I think you can ask either party about  
25 their D&Os or anything about that.

1           It's true that I don't think it's  
2 appropriate to take additional testimony or add  
3 additional testimony, but if you've got clarification  
4 questions to -- with either party on the existing  
5 record and how their D&O reflects that record, I  
6 think you can ask for that.

7           We're not asking for either party to  
8 provide any testimony. So I think you can ask the  
9 parties for that clarification on their D&O; I think  
10 that's fine.

11           CHAIR LA COSTA: Thank you, Mr. Hopper.

12           Commissioners, any other questions?  
13 Commissioner Pali?

14           VICE CHAIR PALI: I just wanted to  
15 double-check. Back in February when we had this on  
16 our agenda before we went through intervention, the  
17 recommendation from department had a list of 24  
18 conditions.

19           And I want to just -- on the list of 24  
20 conditions for the recommendation, it had a date that  
21 the project would commence, and that date shows a  
22 February 2027. And I just don't know if that was  
23 addressed in the D&O or if that needs to be updated.

24           MR. CHIPCHASE: Appreciate it. There we  
25 go. I appreciate the question. So we just took that

1 straight from the staff report. We'd happily change  
2 that to today's date so it's five years from the date  
3 of approval, if the commission made that amendment.  
4 If not, then we'll live with the date that staff had  
5 proposed.

6 VICE CHAIR PALI: Yeah, I'm so sorry. I  
7 meant that question to be for Mike. But thank you.  
8 It was more for a discussion piece for us.

9 Since we took seven months for this  
10 proceeding, it seems like we should be updating that  
11 date to five years from the decision date. Thank  
12 you.

13 MR. HOPPER: If you make that amendment --  
14 if that amendment's made, which you can, that would  
15 change the D&O as well. So that's up to you. I mean  
16 it's up to you if you want to add that as an  
17 amendment.

18 VICE CHAIR PALI: Okay. If I may, Chair, I  
19 think it would be wise to do a friendly amendment  
20 since we're not in February anymore. We're in --  
21 just a few days away from October that we would just  
22 do a friendly amendment to the date of, I guess, the  
23 start of the construction.

24 CHAIR LA COSTA: Today's date? Okay. A  
25 motion? And we have a second by Commissioner

1 Thompson that the date on the D&O, Page 74 Number C1  
2 be changed to five days -- five years from September  
3 27th, 2022; so now it's 2027.

4 Further discussion on the motion?  
5 Commissioner Pali? Commissioner Thompson? Okay.

6 On that friendly amendment, all those in  
7 favor, please raise your hand. Okay.

8 All those opposed?

9 All those abstained?

10 Please note for the record, Commissioner  
11 Freitas has abstained.

12 Commissioners Lindsey, Pali, Thayer,  
13 Hipolito, Thompson, and La Costa have all raised  
14 their hand in favor of the motion.

15 Commissioner Thayer?

16 COMMISSIONER THAYER: Thank you, Chair.  
17 I -- there's a couple of typos in the conditions on  
18 the applicant's proposed decision and order. We  
19 should address those, but also, I want to propose  
20 another condition that the landscaping will or shall  
21 consist mainly of native drought-tolerant plants and  
22 follow the landscape master plan in the final EIS.

23 CHAIR LA COSTA: Thank you for that,  
24 Commissioner Thayer. Commissioner Pali seconded. As  
25 an amendment, we will do -- all those in favor,

1 please raise your hand.

2 Opposed?

3 Abstentions?

4 We have unanimous vote for the affirmative.

5 Thank you, ladies and gentlemen.

6 DIRECTOR MCLEAN: Commissioner Thayer, I  
7 think it would be good to note the typos that you  
8 called out, just so everybody is clear.

9 COMMISSIONER THAYER: Oh, thank you,  
10 Director.

11 The -- just the ones that I had marked were  
12 in Condition 24. The State DOT abbreviation is  
13 "HOOT," HDOT.

14 And then the last sentence which was  
15 carried over from the staff report version is --  
16 says -- the very end of the sentence says,  
17 "Roundabouts shall be construction at one or both  
18 intersections." I think that should be  
19 "constructed."

20 MR. HOPPER: I think you can incorporate  
21 those in. It's not substantive changes. It's just  
22 correcting those typos. I think you can note that  
23 for the record.

24 CHAIR LA COSTA: Okay. So those will be  
25 noted as entered into the record, so that they can be

1 fixed. And they are not substantive changes.

2 MR. HOPPER: You could in your vote -- if  
3 you do vote to approve this, to authorize such  
4 nonsubstantive changes to be made. That happens from  
5 time to time, those typos.

6 CHAIR LA COSTA: By concurrence is everyone  
7 okay with that? Please raise your hand, nod your  
8 head, say yes, jump up and down.

9 Okay. We have thumbs up, hands up.  
10 Everyone is in concurrence with that comment by  
11 Mr. Hopper about the nonsubstantive changes. Thank  
12 you.

13 Okay. Any other amendments before we move  
14 to the main motion? Yes?

15 DIRECTOR MCLEAN: Chair, I don't know if  
16 it's appropriate for me to ask for a couple of  
17 clarifications.

18 MR. HURLEY: Objection. Objection.

19 CHAIR LA COSTA: Mr. Hurley, yes?

20 MR. HURLEY: Objection. No, I think  
21 it's --

22 CHAIR LA COSTA: We see you. I'm sorry.  
23 You need a red flag or a bull or something. Go  
24 ahead.

25 MR. HURLEY: It's inappropriate for --

1 for -- for the director to make any amendments at  
2 this point. She's a party here. Am I allowed to  
3 make amendments?

4 CHAIR LA COSTA: You don't sit on the  
5 commission, sir.

6 MR. HOPPER: The director --

7 MR. HURLEY: It's inappropriate for the  
8 director to make -- does the director sit on the  
9 commission?

10 MR. HOPPER: It's fine. The director's  
11 technically a party in this case. I mean -- so if  
12 there's things that the -- that the commission has to  
13 add, I think that's fine.

14 But I think, at this time, I don't think  
15 that we should take additional discussion from -- I  
16 mean, technically the director is a party at this  
17 point. I think at this point --

18 DIRECTOR MCLEAN: I should not?

19 MR. HOPPER: Yeah.

20 CHAIR LA COSTA: Oh, you should not? Okay.  
21 So the director will not make any further comments.  
22 Okay.

23 We have a motion on the floor. And a  
24 second?

25 Director, roll call vote, please.

1 MR. HOPPER: Just to clarify, was there  
2 anything with respect to revised site plans that you  
3 wanted to include --

4 MR. HURLEY: Objection. Objection.

5 MR. HOPPER: -- or is that --

6 MR. HURLEY: Objection. Objection.

7 Objection. Objection.

8 CHAIR LA COSTA: Yes, Mr. Hurley?

9 MR. HURLEY: Not appropriate of Mr. Hopper.  
10 Not appropriate of Mr. Hopper. He is the counsel.  
11 The commission has not asked for a site plan. That's  
12 not appropriate for Mr. Hopper to ask one be  
13 inserted.

14 CHAIR LA COSTA: We actually did ask for a  
15 revised site plan early on, and Mr. Chipchase sent us  
16 to view exhibit and the page to which you objected,  
17 so that was asked to be included. An updated site  
18 plan was asked to be included in the motion.

19 MR. HOPPER: There was a discussion on this  
20 matter. I wanted to make sure you didn't forget to  
21 vote on something that you wanted to vote on. If you  
22 don't want to, and you believe that the citations in  
23 the D&O are fine, then that's fine.

24 But, again, I'm the commission's legal  
25 advisor and attempting to assist the commission in



1 making a decision that's consistent with the law and  
2 with the previous discussion.

3 MR. HURLEY: Mr. Hopper is the one that  
4 brought up the site plan. Mr. Hopper is the one that  
5 brought up the site plan. I disagree.

6 MR. HOPPER: There's nothing in any law  
7 or -- or any other document that would suggest that I  
8 cannot make recommendation to my own client as far as  
9 the wording of the decision and order and as far  
10 as --

11 MR. HURLEY: But you're asking to replace  
12 the applicant's site plan.

13 MR. HOPPER: -- things they've already  
14 discussed today, to remind them.

15 MR. HURLEY: The applicant clearly said on  
16 Line 12 that the site plan was Exhibit 3 to the staff  
17 report.

18 CHAIR LA COSTA: Can't hear you,  
19 Mr. Hurley.

20 MR. HURLEY: You can or you can't?

21 CHAIR LA COSTA: I could not hear if you  
22 mentioned something.

23 MR. HURLEY: Can you folks hear me now?

24 My point is the applicant's findings of  
25 facts and conclusions of law say the site plan is

1 Exhibit 3 to the staff report -- Exhibit 4 to the  
2 staff report.

3 Mr. Hopper is the one that asked that that  
4 change be made. That's inappropriate, and I need to  
5 note that objection.

6 MR. HOPPER: If -- okay. We're in  
7 deliberation right now. What I'm saying is that if  
8 you want to change a condition to reference site  
9 plans or anything like that, which is, I believe,  
10 what you discussed, you need to do that.

11 I could -- I can recommend changes to what  
12 is going to become the commission's decision and  
13 order because that's going to be, if it's adopted,  
14 the document the commission adopts. I could write my  
15 own set of decision and order and ask the commission  
16 to adopt that, should I choose.

17 MR. HURLEY: And I would have the right to  
18 reply.

19 CHAIR LA COSTA: Commissioner Pali?

20 VICE CHAIR PALI: Before we take a vote,  
21 since we're still on discussion, I did -- I did think  
22 that in the -- I just want to clarify that the  
23 original motion addressed the site plan as Exhibit  
24 53, but I just wanted to clarify that that was what  
25 you did, Mr. Thompson, to fix it.

1 COMMISSIONER THOMPSON: Yes.

2 VICE CHAIR PALI: Okay. Thank you.

3 CHAIR LA COSTA: Thank you for that  
4 clarification.

5 So I have a question for clarification. On  
6 Page 75, under Number 6 -- this is for the applicant.  
7 On Page 75, under Number 6, it talks about the  
8 applicant shall submit applications for Project  
9 District Phase II approvals.

10 Did you mean Phase III on that one?

11 MR. CHIPCHASE: Yes, Chair.

12 CHAIR LA COSTA: So let the record note  
13 that there was another typo, and that is on Number 6,  
14 Page 75.

15 And we will follow Mr. Hopper's comments  
16 about not being a substantive change but merely a  
17 typo. Thank you. Okay.

18 Any other discussion before we vote? Okay.  
19 Seeing none, Director, please do a roll call vote.

20 DIRECTOR MCLEAN: Okay. Chair, let me  
21 first read this into the record, make sure I have it  
22 accurately.

23 CHAIR LA COSTA: Thank you.

24 DIRECTOR MCLEAN: The motion is to adopt  
25 the applicant's proposed finding -- or the

1 applicant's findings of fact, conclusions of law, and  
2 decision and order; their errata corrected version  
3 with typographical errors corrected; with repeat  
4 references to the witness list, corrected with  
5 references to witness credibility being deleted; with  
6 the additional condition for the landscaping plan or  
7 for landscaping to use native and drought-tolerant  
8 plants following the landscaping plan from the EIS;  
9 changing the date of initiation to five years from  
10 today, September 27, 2027; correcting typos in  
11 Condition 24 -- right -- that was in correcting the  
12 witness -- the references to witnesses and witness  
13 credibility -- and the original motion did change the  
14 reference in Condition 7 to the Exhibit 53 site plan.

15 I think those were all the changes, so  
16 those were the original motion and the amendments.  
17 If there are no corrections or edits to that, Chair,  
18 you want to do a roll call vote?

19 CHAIR LA COSTA: Are there any corrections  
20 or additions to those? Everyone has a clear  
21 understanding of on what we're voting?

22 Director, please go ahead.

23 DIRECTOR MCLEAN: Commissioner Freitas?

24 COMMISSIONER FREITAS: Aye.

25 DIRECTOR MCLEAN: Commissioner Thompson?

1 COMMISSIONER THOMPSON: Aye.  
2 DIRECTOR MCLEAN: Commissioner Hipolito?  
3 COMMISSIONER HIPOLITO: Aye.  
4 DIRECTOR MCLEAN: Commissioner Lindsey?  
5 COMMISSIONER LINDSEY: Aye.  
6 DIRECTOR MCLEAN: Commissioner Thayer?  
7 COMMISSIONER THAYER: Aye.  
8 DIRECTOR MCLEAN: Vice Chair Pali?  
9 VICE CHAIR PALI: Aye.  
10 DIRECTOR MCLEAN: And Chair La Costa?  
11 CHAIR LA COSTA: Aye.  
12 DIRECTOR MCLEAN: Chair, that's seven ayes.  
13 One excused, Commissioner Deakos. The motion passes.  
14 CHAIR LA COSTA: Thank you so much. Thank  
15 you all very much for your participation and long  
16 hours of work.  
17 MR. HOPPER: Mr. Hurley has his hand up.  
18 MR. HURLEY: Chair, I just have a question.  
19 So the transcripts that were submitted yesterday have  
20 not -- will not be admitted to the record or will  
21 they be admitted to the record? You said nothing  
22 after the 12 o'clock or whatever they would be  
23 admitted this morning.  
24 CHAIR LA COSTA: Mr. Hopper will answer  
25 that for us. Thank you.

1 MR. HOPPER: At this point, there's been a  
2 vote. I do think if you want to have those admitted  
3 into the record, we can. I think they're a  
4 transcript of the proceeding already. So, I mean,  
5 they're different page numbers and things.

6 The D&O would eventually be adopted. I  
7 think if there's future objections or problems with  
8 that, that can be brought up in a motion for  
9 reconsideration as errors can be pointed out at that  
10 point. So I think the commission -- or the chair  
11 could admit those into evidence if that's an  
12 important thing for the record.

13 MR. HURLEY: I -- I would object at this  
14 point. I think it's inappropriate to admit any  
15 evidence at this point.

16 Chair, I object to --

17 CHAIR LA COSTA: Yes, Mr. Hurley?

18 MR. HURLEY: -- admitting any -- I object  
19 to any admitting of evidence after the final vote has  
20 been taken. I think the contested case hearing is  
21 concluded. It's inappropriate to admit new evidence  
22 at this point.

23 CHAIR LA COSTA: I absolutely concur, sir.  
24 Thank you very much.

25 MR. CHIPCHASE: May I ask one --

1 MR. HURLEY: So the transcripts will remain  
2 off the record then.

3 CHAIR LA COSTA: Mr. Chipchase, go ahead,  
4 please.

5 MR. CHIPCHASE: (No audio.)

6 MR. HURLEY: I can't hear.

7 CHAIR LA COSTA: Would you please repeat  
8 that? We couldn't get that. Thank you.

9 MR. CHIPCHASE: Yes. As part of the  
10 nonsubstantive amendments or nonsubstantive changes  
11 to the D&O, such as typos, would you like me to  
12 change the transcript references to be to the form of  
13 the transcript that Mr. Hurley used?

14 MR. HURLEY: I would object at this time  
15 that --

16 MR. HOPPER: As an alternative, we could  
17 take a motion to rescind something previously adopted  
18 and add that to the record --

19 MR. HURLEY: I think that would need to be  
20 agendized.

21 MR. HOPPER: -- and then retake the vote.

22 MR. HURLEY: That would need to be  
23 agendized.

24 CHAIR LA COSTA: Mr. Hurley, I saw you  
25 waving your arms.

1 MR. HURLEY: Yes. I think that it's  
2 inappropriate to -- that's a nonsubstantive change.  
3 The transcripts need to be reviewed by me pursuant to  
4 Maui Planning Commission rule. Once a new transcript  
5 has been admitted, I have ten days to make any  
6 corrections to it, these new transcripts.

7 Also I think retaking a new vote at this  
8 time should be agendized and would need to be -- go  
9 through the agenda process if you're going to take a  
10 new vote.

11 MR. HOPPER: No. We don't need a new  
12 vote -- agendize a separate vote. Not every single  
13 action in a contested case -- contested cases don't  
14 actually have to be (indiscernible) --

15 MR. HURLEY: Contested case is ended.

16 MR. HOPPER: -- agenda. But in any case,  
17 we can take a motion to rescind something previously  
18 adopted. I think that's something that you could do,  
19 if you'd like, to add that into the record if you  
20 think that's important. You could also order the  
21 decision and order renumbered.

22 I mean, at this point -- I mean, at this  
23 point, I don't see these as substantive requests  
24 because there's -- they're different transcript  
25 numbers. It's the same transcript; it's the same



1 hearing.

2 MR. HURLEY: We don't know that.

3 MR. HOPPER: But if we want to go ahead  
4 and --

5 MR. HURLEY: Objection. We don't know  
6 that.

7 MR. HOPPER: At this point, if you want to  
8 take a motion to rescind something that you've  
9 previously adopted, I think you could do that. And  
10 then you can add that into the record if you really  
11 want to add that into the record, if that's something  
12 that you want to do.

13 So one member could make a motion to  
14 rescind something you previously adopted and take a  
15 vote to add that into the record.

16 CHAIR LA COSTA: Commissioner Pali?

17 VICE CHAIR PALI: I think it would be  
18 helpful to just have -- the information's the same.  
19 It's just reference point. I like good mapping and  
20 reference points.

21 So I think, if it's okay, I would like to  
22 make a motion to rescind it so that we can add just  
23 the correct reference numbers on the new motion. So  
24 I would like to make a motion to rescind the just  
25 recent motion.

1 MR. HOPPER: Mr. Hurley's raised his hand.  
2 Let me check with either party. Mr. Hurley  
3 has objected on the basis of an agenda. I don't know  
4 if Mr. Chipchase has further thoughts. We can allow  
5 the parties to chime in here, if you like.

6 CHAIR LA COSTA: I have a motion on the  
7 floor, so does she rescind her motion? Do we suspend  
8 it? What do we do? Because this is out of order.

9 MR. HOPPER: It is. I understand. At this  
10 point, I think you can have that question while it's  
11 pending and go from there.

12 CHAIR LA COSTA: Okay. We will put the  
13 motion --

14 MR. HOPPER: Because we've been taking  
15 objections as they've been coming. We're going to  
16 need to stop this at a certain point, but if there's  
17 an objection to this course, Mr. Hurley can discuss  
18 and Mr. Chipchase can also discuss.

19 CHAIR LA COSTA: Okay. So what I'm going  
20 to do is I'm going to suspend the motion for right  
21 now.

22 Mr. Hurley, whatever it is you want to say,  
23 you can.

24 And Mr. Chipchase, if you have any rebuttal  
25 or any other comments, you can do that.

1           And then we're going to take a second, and  
2 then we're going to vote on the motion. And then I  
3 think we're pretty much pau.

4           So Mr. Hurley, go ahead.

5           MR. HURLEY: Sure, Chair. I mean, this is  
6 just procedurally inappropriate. I mean, you folks  
7 have already had a final vote; the contested case is  
8 over at this point regarding the hearing. I think  
9 doing anything beyond that is inappropriate unless  
10 you re-agendize the item.

11           If you guys are going to take another vote,  
12 I'm going to request -- my -- my clients are likely  
13 going to request a contested case hearing on that  
14 vote because it's technically a new item; right? I  
15 mean, hasn't this -- hasn't there already been a  
16 final decision on this?

17           MR. HOPPER: It's the same deal if you had  
18 a motion for reconsideration. I mean, it's still the  
19 same contested case. There's been an action taken.  
20 Robert's Rules does allow for a motion to rescind  
21 something previously adopted. There's no decision  
22 and order that's been, in fact, finalized.

23           There has been a vote taken, but there  
24 still actually has to be a signed D&O signed by the  
25 parties and -- so I don't know if Mr. Chipchase had

1 anything to add, too, and then we can proceed with  
2 our (indiscernible).

3 MR. CHIPCHASE: I have nothing to add.

4 CHAIR LA COSTA: Thank you, Mr. Chipchase.

5 MR. HOPPER: So there was a motion to  
6 rescind what was previously adopted.

7 CHAIR LA COSTA: Thank you. So there is a  
8 motion on the floor to rescind what was previously  
9 adopted and have the renumbering of the --

10 MR. HOPPER: Well, first the rescission  
11 would take away the -- your previous action so you  
12 would have --

13 CHAIR LA COSTA: Oh, the whole actions.

14 MR. HOPPER: Yeah.

15 CHAIR LA COSTA: Okay.

16 MR. HOPPER: Can we have a recess for a  
17 minute?

18 CHAIR LA COSTA: At this juncture, I'm  
19 going to call a recess for just a couple of minutes.

20 (Whereupon, a recess was held  
21 from 2:32 p.m. to 2:36 p.m.)

22 CHAIR LA COSTA: Thank you, ladies and  
23 gentlemen. We will now reconvene Maui Planning  
24 Commission, September 27, 2022.

25 Commissioner Pali?

1 VICE CHAIR PALI: Chair, I'd like to  
2 withdraw my motion, please.

3 CHAIR LA COSTA: Thank you. Any  
4 discussion?

5 VICE CHAIR PALI: Nope.

6 CHAIR LA COSTA: Okay. Thank you.

7 Commissioner Pali has withdrawn her motion  
8 to --

9 VICE CHAIR PALI: -- reconsider or -- and  
10 rescind the previous vote.

11 CHAIR LA COSTA: Thank you.

12 MR. HOPPER: So, Chair, I think I  
13 understand the objections in the record, but I do  
14 believe that the decision and order is going to have  
15 to have edits made to it and circulated for  
16 signature.

17 I do believe that the numbers being  
18 consistent with the transcript on record is something  
19 that can be done as something that the applicant  
20 would -- can do as part of that revision.

21 There's objections on the record to that,  
22 and they have been made, and that's fine, but I think  
23 that that's something that can be done to be  
24 consistent with what's part of the record.

25 CHAIR LA COSTA: Thank you very much,

1 Mr. Hopper.

2 Having stated that, the motion has passed  
3 unanimately. We're finished with that section.

4 Going on to the next portion of our agenda.  
5 Director?

6 DIRECTOR MCLEAN: Yes, Chair. Under  
7 Director's Report, the commission already handled  
8 Item D-1, though Items D-2 and D-3 are the SMA Minor  
9 and Exceptions reports.

10 Are there any questions on any of those  
11 items?

12 CHAIR LA COSTA: I don't see any.

13 DIRECTOR MCLEAN: Seeing none. Then next  
14 is the proposed meeting schedule for calendar year  
15 2023. That's that pink sheet that was included in  
16 your packet. I think generally those are all  
17 Tuesdays. Yeah, Carolyn?

18 We didn't have to make any adjustments for  
19 holidays or whatnot. So continuing with your regular  
20 schedule of the second and fourth Tuesdays of the  
21 month.

22 CHAIR LA COSTA: Perfect. Commissioner  
23 Thayer?

24 COMMISSIONER THAYER: Are we continuing  
25 hybrid meetings?

1 DIRECTOR MCLEAN: We don't currently have a  
2 plan to discontinue hybrid meetings, but if the  
3 commission -- the commission can return to completely  
4 in-person meetings if you choose to.

5 Even today, I don't know if your thoughts  
6 on that will change. But that's really up to the  
7 commission and your availability to come in person if  
8 that's what you want.

9 COMMISSIONER FREITAS: Question.

10 CHAIR LA COSTA: Commissioner Freitas?

11 COMMISSIONER FREITAS: Can you remind how  
12 we handled (indiscernible), the letter that he wrote  
13 and we were going to write a (audio difficulty).

14 DIRECTOR MCLEAN: Yes, we did write the  
15 letter back. Yeah.

16 Next, if there aren't any questions on the  
17 meeting dates, we have future agendas for the October  
18 11th meeting. Right now, there's one public hearing  
19 item. The Chair asked about agendizing again  
20 outstanding enforcement actions and fines.

21 CHAIR LA COSTA: Correct.

22 DIRECTOR MCLEAN: That comes from -- we --  
23 counsel had asked for information on outstanding  
24 fines of \$100,000 or more, and we provided you folks  
25 with a copy of that. We are working with corporation

1 counsel to narrow down and to clarify that list about  
2 the status of those outstanding enforcement actions.  
3 So as soon as we have that wrapped up, we can put it  
4 back on the agenda.

5           If there is different information, though,  
6 that you wanted, certainly we can put forward  
7 whatever -- whatever you're asking. The counsel is  
8 asking for other information, so we can copy you on  
9 that as well just so you both are working from the  
10 same -- you would have the same information in front  
11 of you.

12           CHAIR LA COSTA: And for clarification, I  
13 will not be here next -- on the October 11th, and my  
14 very capable vice chair will be the chair for that  
15 meeting. So thank you very much, Commissioner Pali.

16           Did you have a question, ma'am?

17           VICE CHAIR PALI: One of the easy ones,  
18 huh? Watch, I just, like, bachi'd us, didn't I?  
19 Sorry about that.

20           Do we as commission affect or have  
21 authority to affect putting in place when someone is  
22 in violation? Measured standard practices for those  
23 who have been -- are in violation and then not moving  
24 towards reconciliation or corrective action. Is that  
25 under our purview or not?



1 MR. HOPPER: I think that discussion you  
2 could put under another agenda if you want to have  
3 some discussion of that or something like that. Or  
4 if you get the list, you could have a discussion  
5 under that item maybe, too. But since there's not  
6 really an agenda item on something like that today, I  
7 think it's okay.

8 VICE CHAIR PALI: I guess if it's not in  
9 our authority then there would be no point in putting  
10 it on the agenda if it's not in our purview?

11 MR. HOPPER: Yeah. I mean, you have  
12 purview over SMA enforcement and your rules so you  
13 could maybe agendize an item on that.

14 VICE CHAIR PALI: I would like to do that.  
15 Can we do that? But specifically, like, a discussion  
16 about enforcement. It seems like it would be helpful  
17 to your department to give you teeth.

18 And I know, like, when I'm on a board of  
19 associations, it's good for the owners to know that  
20 if you're in violation -- the first notice, the  
21 second notice, there's a progressive sort of issue  
22 and a standard, so we're not picking, we're not  
23 cherry picking, we're not changing it per applicant.

24 It's the same, and it's known, and that's  
25 helpful on the enforcement side, and I'd like to be a

1 part of creating that for you. So I would love to  
2 have that on an agenda.

3 DIRECTOR MCLEAN: At a future agenda, we  
4 will be doing another workshop on the proposed SMA  
5 shoreline rules and there is a lot of enforcement in  
6 the SMA rules. So that'll be an opportunity specific  
7 to SMA in the future.

8 VICE CHAIR PALI: Well, I'm also  
9 considering things outside of the SMA. Like, to me,  
10 those are the guys, sometimes they get under the  
11 radar.

12 CHAIR LA COSTA: Are those items public  
13 knowledge so that if there is a discussion, if  
14 specific names come up or is it just situations where  
15 TMKs are --

16 MR. HOPPER: Yeah. You don't want to be  
17 discussing specific violations publicly because there  
18 can be active cases. But if you want to discuss your  
19 rules in general or zoning enforcement under Title 19  
20 as a general matter, you have a lot less authority  
21 under that than you will SMA, I guess you can have  
22 the discussion.

23 CHAIR LA COSTA: Thank you.

24 DIRECTOR MCLEAN: And I will also not be  
25 here on October 11th. We're not traveling together.

1 We're going in opposite directions.

2 COMMISSIONER FREITAS: (indiscernible) so  
3 we are not traveling together.

4 DIRECTOR MCLEAN: You're going up north,  
5 we're going east and west.

6 VICE CHAIR PALI: One, two, three, four.  
7 So we need five or we won't have quorum. Is there  
8 any way to get six that morning? There's no quorum.

9 CHAIR LA COSTA: Where are you going?

10 COMMISSIONER FREITAS: Busy.

11 CHAIR LA COSTA: We are all there.

12 COMMISSIONER THOMPSON: Wasn't a very long  
13 drive.

14 VICE CHAIR PALI: You should be back by  
15 then.

16 MR. HOPPER: We're all on the bus together.

17 CHAIR LA COSTA: Exactly.

18 DIRECTOR MCLEAN: If there are no other  
19 questions on future agendas, meetings scheduled,  
20 court, then we're pau.

21 CHAIR LA COSTA: This meeting is adjourned  
22 at 2:45 p.m. Thank you, ladies and gentlemen.

23 (Whereupon, the proceeding  
24 was concluded at 2:45 p.m.)

25

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2 CITY AND COUNTY OF HONOLULU )

3

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11 That the foregoing is a full, true and  
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12

13 I further certify that I am not of counsel  
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15 in any way interested in the outcome hereof, and that  
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16

17 Dated this 4th day of October 2022 in  
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18

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