

Crook County
7/8/2022
Planning Dept

TRANSCRIPT OF CROOK COUNTY PLANNING COMMISSION MEETING

(Re: Appeal of Application for the 15th Phase of

Subdivision Development with

Brasada Ranch Destination Resort)

(May 11, 2022)

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CROOK COUNTY PLANNING COMMISSION MEETING

(May 11, 2022)

(Pledge of Allegiance)

MS. HERMRECK: You will have to forgive us tonight, our Chair and our Advice Chair are both absent. So we are going to have to have an election for a temporary interim chair for tonight.

Are there any recommendations from the floor?

Laquita?

MS. STEC: I would like to nominate Susan.

MS. HERMRECK: *(inaudible)*

MR. WILLIAMSON: Second.

MS. HERMRECK: Thank you. Are there any other nominations? Okay. I will go ahead and call for the vote. All those in favor.

MS. STEC: Aye.

MR. WILLIAMSON: Aye.

MR. LUNDQUIST: Aye.

MS. HERMRECK: All those opposed?

(No audible response)

MS. HERMRECK: I guess I'm the Chair. I kind of got that feeling when you put my name --

MS. STEC: When you put me in the chair.

MS. HERMRECK: All right. Okay. Now, you're

1 going to have to forgive me, Mike always reads this and
2 I always blank out, so I'm going to have to focus
3 tonight.

4 Before we start tonight's meeting, I would like
5 to talk about our process. The meeting is being
6 conducted with some Planning Commission members
7 participating in person and others through a call-in
8 service, which for tonight there won't be any on call-
9 in service.

10 When we open the hearing we will mute the phone
11 lines so everyone will be able to hear clearly. We
12 will conduct the roll call to determine who is on the
13 line. Throughout the hearing we will call on
14 individual Planning Commissioners to make sure that
15 everyone has a chance to be heard. We will conduct a
16 similar process for comments from the public. Please
17 wait until you are called on to offer comments and/or
18 testimony.

19 We would like to thank everyone for your
20 understanding and patience. Draft Minutes and audio
21 recordings will be available on the Planning Commission
22 website.

23 We've already called the meeting to order.

24 Today's date is May 11th, 2022, and the time is
25 4:04.

1 People joining me today are your Crook County
2 Planning Commissioners. We are volunteers that have
3 been appointed by the county court and make up a
4 diverse cross-section of the community.

5 The Planning commission -- well, actually right
6 now I'm going to go ahead and introduce. We have Les
7 Williamson, Laquita Stec, myself Susan Hermreck, and
8 Bob Lundquist. And I think we have adjacent name tags
9 there.

10 Okay. The Planning Commission will consider the
11 following agenda items:

12 1. Review of and a decision on the Planning
13 Commission meeting minutes from March 9th, 2022 and
14 March 16th, 2022.

15 2. Record number 217-22-000451-planning. An
16 appeal of application 217-21-001013-planning. The 15th
17 phase of subdivision development within the Brasada
18 Ranch Destination Resort.

19 Now, I'll do a roll call for the Planning
20 Commissioners, staff, and anyone else here with us
21 tonight (*inaudible*) call.

22 Planning Commissioner George Ponte.

23 (*No audible response*)

24 MS. HERMRECK: Absent or excused?

25 UNIDENTIFIED MALE: Excused.

1 MS. HERMRECK: Okay. Susan Hermreck. Aye.
2 Gary Bedortha is excused.
3 Laquita Stec.
4 MS. STEC: Present.
5 MS. HERMRECK: Bob Lundquist.
6 MR. LUNDQUIST: Present.
7 MS. HERMRECK: Les Williamson.
8 MR. WILLIAMSON: Present.
9 MS. HERMRECK: Lawrence Weberg, I'm assuming is
10 excused. And Mike Warren is also excused.
11 MS. HERMRECK: For Staff, Katie McDonald.
12 Can she hear us?
13 MS. MCDONALD: I'm here.
14 MS. HERMRECK: Thank you, Katie.
15 Hannah Elliott.
16 MS. ELLIOTT: Here.
17 MS. HERMRECK: Will VanVactor.
18 MR. VANVACTOR: Here.
19 MS. HERMRECK: Grant Bybee.
20 MR. BYBEE: Here.
21 MS. HERMRECK: And Jennifer -- and I know --
22 I'm going to call her Jennifer O.
23 JENNIFER O: *(inaudible)*
24 MS. HERMRECK: All right. Okay.
25 For the Commissioners that are absent, will

1 Staff please indicate for the record the absences that
2 are excused and unexcused. I feel we've already done
3 that.

4 We'll now do a roll call of any agency
5 representatives and members of the public on the phone
6 line. Please speak slowly and clearly and state your
7 name and address. We will check in later to see if
8 anyone else has joined the call.

9 Are there any -- is there anyone from an agency
10 here present?

11 *(No audible response)*

12 MS. HERMRECK: Okay. And you -- and anyone on
13 the -- online? I can't see the board so --

14 MS. ELLIOTT: We have callers. If anyone's on
15 the line as a representative agency, please let us
16 know.

17 *(No audible response)*

18 MS. HERMRECK: I take it none. So --

19 UNIDENTIFIED FEMALE: Only as owners. Are you
20 asking for owners representation?

21 MS. HERMRECK: We're asking for Staff -- for
22 agency representatives, and then we will ask for
23 members of the public. Is there anyone that's
24 representing an agency?

25 *(No audible response)*

1 MS. HERMRECK: No.

2 Do you want to ask for members of the public?

3 Members of the public, if you could speak up and
4 give your name and address for Hannah.

5 MS. SATKO: I'll go. Jody Satko, owner at
6 Brasada Ranch. My address is 15660 Southwest Rangeland
7 Drive, representing owners, my personal concerns.

8 MS. ELLIOTT: Could you spell your last name
9 for me?

10 MS. SATKO: S as in Sam, a-t-k-o.

11 MS. ELLIOTT: Perfect. Thank you.

12 MS. HERMRECK: And a question for me, are you a
13 member of the Coalition? The Brasada --

14 MS. SATKO: I am a member of the Coalition.

15 MS. HERMRECK: Okay. Thank you very much.

16 Okay. Did you get all your info?

17 Is there any other owner on the phone that would
18 like to --

19 MS. ELLIOTT: We just have Katie. Katie, can
20 you just speak for me so I can tell which user you are?

21 MS. MCDONALD: This one is me.

22 MS. ELLIOTT: Yay. Thank you.

23 MS. HERMRECK: And we're good?

24 MS. ELLIOTT: Yep.

25 MS. HERMRECK: Okay. Is -- is there anyone in

1 the meeting room tonight or on the phone that wishes to
2 address an item that is not on the agenda?

3 *(No audible response)*

4 MS. HERMRECK: Seeing none, we'll move on.

5 We'll now mute the phone lines of those folks
6 who are not Staff or Commissioners, and we will move on
7 to the first item on the agenda.

8 Planning Commissioners have the Minutes from the
9 March 9th meeting before them. Are there any comments
10 on the Minutes?

11 *(No audible response)*

12 MS. HERMRECK: Comments?

13 *(Discussion regarding Minutes)*

14 MS. HERMRECK: Are there any other comments on
15 the March 9th meetings -- or Minutes? Minutes?

16 *(No audible response)*

17 MS. HERMRECK: Seeing no comments, is there a
18 motion for approval or denial?

19 MS. STEC: I move to approve the Minutes as
20 corrected.

21 MR. WILLIAMSON: Second.

22 MS. HERMRECK: Okay, Laquita has made the
23 motion and Les has seconded. I will go for the vote.

24 All those in favor?

25 MS. STEC: Aye.

1 MR. WILLIAMSON: Aye.

2 MR. LUNDQUIST: Abstain.

3 MS. HERMRECK: And I'm an aye.

4 Now we'll move on to the Minutes from March 16th.

5 Are there any comments on those minutes?

6 I have a comment that I thought you did a very
7 good job, Katie, on a very lengthy and detailed
8 meeting.

9 MS. MCDONALD: Thank you.

10 MS. HERMRECK: Does anyone want to make a
11 motion?

12 MS. STEC: I move to approve the Minutes of May
13 16th as presented.

14 MR. WILLIAMSON: Second.

15 MS. HERMRECK: Okay. We've had a motion and
16 second. All those in favor?

17 MR. WILLIAMSON: Aye.

18 MS. STEC: Aye.

19 MS. MCDONALD: Aye.

20 MR. LUNDQUIST: I'll abstain.

21 MS. HERMRECK: And one abstention.

22 Okay. Now we get to turn the page.

23 Tonight's hearing item is the file number 217-
24 22-000451-planning, an appeal of Application 217-21-
25 001013-planning. The 15th phase of Subdivision

1 Development Within the Brasada Ranch Destination
2 Resort.

3 The application has been remanded to county --
4 Crook County Planning Commission for consideration of
5 additional evidence towards only the appellant's
6 grounds for appeal in regard to trails within the
7 proposed subdivision phase, and the verification of
8 overnight lodging unit numbers.

9 Public hearing on this item is now open.
10 Properties are identified as Township 16 South, Range
11 14 East, WM Section 26, Tax Lots 2805 and 2806. The
12 property is zoned exclusive farm use EFU 3 for Powell
13 Butte area and is within the destination resort
14 overlay.

15 The appeal involves the following criteria from
16 Crook County Code: Title 17 Subdivisions, Chapter
17 17.20 final plat, Chapter 17.40 Improvements, Title 18
18 Zoning, Chapter 18.116 Destination Resort Overlay.

19 Before we discuss the recommendation from Staff,
20 we will address ex parte contact, conflicts of
21 interest, and bias.

22 Do any of the Commission members have a conflict
23 of interest? Les?

24 MR. WILLIAMSON: No.

25 MS. HERMRECK: Laquita?

1 MS. STEC: No.

2 MR. LUNDQUIST: No.

3 MS. HERMRECK: Bob. And Susan, no.

4 Has any member of the Commission had any ex
5 parte contact with the Appellant or any member of the
6 public?

7 Les?

8 MR. WILLIAMSON: No.

9 MS. HERMRECK: Laquita?

10 MS. STEC: No.

11 MS. HERMRECK: Bob?

12 MR. LUNDQUIST: No.

13 MS. HERMRECK: And Susan, no.

14 Are there members of the public on the phone who
15 wish to challenge any member of the Commission on any
16 of the items on the agenda? Staff, please unmute the
17 phone. If so, please speak up and state your bias.

18 *(No audible response)*

19 MS. HERMRECK: Hearing none, we will move on.

20 Staff, please mute the phone line.

21 If last minute testimony was received, request
22 time to review the documents prior to Staff's
23 presentation. That's kind of an incomplete sentence.
24 I'm sorry.

25 MR. BYBEE: Well, that -- sorry, that was meant

1 to be internal.

2 MS. HERMRECK: Okay.

3 MR. BYBEE: We did receive testimony a few
4 hours ago from the Appellant, so if you folks want to
5 review that ahead of time, you're welcome to. It's the
6 document from Peterkin, Exhibit 3?

7 MS. ELLIOTT: Four.

8 MR. BYBEE: Four.

9 MS. HERMRECK: Okay. That's the one (*inaudible*
10 *- audio cuts out*).

11 MR. WILLIAMSON: Yeah.

12 MS. HERMRECK: All right, I will take direction
13 from the rest of Staff. Would you like to take a five
14 minute break and look this over or would you like Staff
15 to go ahead and present? Anyone have a comment?

16 MR. WILLIAMSON: I'd like to look it over.

17 MS. HERMRECK: Okay. Seeing -- is that fine
18 with the rest of us?

19 (*No audible response*)

20 MS. HERMRECK: Then we will take a -- is five
21 minutes adequate you feel?

22 MR. BYBEE: Maybe give it ten.

23 MS. HERMRECK: Ten?

24 MR. BYBEE: Yeah.

25 MS. HERMRECK: We'll go ahead and take a ten

1 minute break and we will reconvene at 4:24. Okay,
2 sorry.

3 MS. ELLIOTT: Those are posted online if anyone
4 wants to read them online.

5 *(Break)*

6 MS. HERMRECK: Okay. It's been ten minutes and
7 I'm going to reconvene the meeting at 4:24.

8 We will hear from Staff first, and then I will
9 ask each Commissioner for any questions of Staff.

10 Staff, will you please provide your overview.

11 MR. WILLIAMSON: Susan, before we go any
12 further, I would like to acknowledge that Laura Cooper
13 is related to me, but there is no bias. There's been
14 no communication. But I wanted to get that on the
15 record.

16 MS. HERMRECK: Thank you, Les.

17 Is there any discussion from the audience on
18 that matter or that statement?

19 *(No audible response)*

20 MS. HERMRECK: I believe actually, most of the
21 members of the Commission, I think we had Ms. Cooper
22 come for a -- for an educational thing that I found
23 very good, so we all learned quite a bit from Ms.
24 Cooper.

25 Okay. Hearing no -- no conflicts, I'm going to

1 go ahead and have you go ahead, Brent.

2 MR. BYBEE: Okay. Thank you, Commissioners.

3 So the hearing tonight is for the Brasada Phase
4 15 appeal. Let's go to the next page.

5 The owner is FNF NV Brasada, LLC. Contact is
6 Brent McLane. Brent is present with us tonight.

7 Their agent is Adam Conway with Dowl
8 Engineering. He was present during the initial
9 hearings, I don't believe he's present tonight.

10 And the Appellant is BR Community Coalition.
11 Their representatives are Megan Burgess and Peterkin,
12 Burgess, who are present tonight.

13 So here is a brief overview of the project. You
14 folks have seen this, it's the 15th Phase of Subdivision
15 Development within Brasada Ranch, with 50 new
16 residential lots proposed.

17 Some procedural background. On March 9th, 2022,
18 the Planning Commission hearing was held for review of
19 Phase 15.

20 On March 17th, amended findings and conditions
21 were sent in a Planning Commission decision.

22 On March 29th, an appeal was received by the
23 Appellant.

24 On April 28th, 2022, the county court hearing was
25 held, where the court remanded the decision back to the

1 Planning Commission.

2 Let's go next slide. There's -- *(inaudible)*
3 folks want to see that.

4 And then go next slide.

5 The applicable appeal criteria as listed up
6 there, it's also within your packets, only the criteria
7 under appeal is being reviewed by the Commission.
8 Crook County's Code states that, you know, if it's
9 remanded, only that criteria is subject to review by
10 the Planning Commission.

11 So it's Title 17 Subdivisions, Chapter 1720
12 Final Plat, Chapter 1740, Improvements, and then also
13 Title 18 Zoning, Chapter 18.116 Destination Resort
14 Overlay.

15 Let's go to the next.

16 MS. HERMRECK: I'm sorry, *(inaudible)*.

17 MR. BYBEE: I'll wait so that folks online can
18 track along with us.

19 MS. HERMRECK: There we go.

20 MR. BYBEE: So some important facts that need
21 to be considered prior to the rest of the presentation.
22 The Final Development Plan approval that was approved
23 in 2003 governs the development of all subdivision
24 phases within the resort. Statements in past
25 applications from individual subdivision phases do not

1 govern subsequent phases.

2 The Planning Commission decision tonight will
3 only address Phase 15, no other past or future phases.

4 No decisions or conditions from past or future
5 phases are subject to review for Phase 15, only the
6 applicable criteria for this decision and conditions
7 from the 2003 Final Development Plan apply.

8 Let's go next.

9 So originally identified as the Appellant's
10 grounds for appeal, with regard to trails, the
11 Appellant states that, "The applicant has not met the
12 condition of approval from the Final Development Plan
13 approved in 2003." The Appellant states that,
14 "Easements are required to be depicted on the final
15 plat and that additional information is to be submitted
16 with the final plat to include specific information
17 concerning the width and location of sidewalks."

18 The Appellant objects to a finding regarding the
19 interior trail -- resort trail system.

20 And with regard to overnight lodging units, the
21 Appellant objects to findings in a description of
22 applicable legal precedent regarding overnight lodging
23 units.

24 Next. So for appeal grounds one, the Appellant
25 believes that trails should be shown and dedicated on

1 the final plat and should be constructed when the
2 subdivision phase is constructed. They cited condition
3 15 from decision CCU-DES-00103, and language from a
4 previous application for a subdivision phase.

5 The owner responded initially to this stating
6 that trails are not required for each phase and trails
7 within common areas do not require approval.

8 Staff's response: "The original condition from
9 the 2003 decision states, 'The Applicant shall provide
10 a detailed depiction of the final location surfacing in
11 size of all trails within a phase prior to preliminary
12 plat approval for each phase of resort development. No
13 condition exists within the development plan approved
14 in 2003 that states trails must be constructed at the
15 time of subdivision constructed or before the sale of
16 any lots.'"

17 Let's go next.

18 For appeal grounds two, the Appellant states
19 that, "Trails qualify as easements and should be
20 depicted on the final plat, including specific
21 information concerning the width and location of
22 sidewalks."

23 The owner's response, they state, "No trails are
24 required in place of sidewalks since there are no
25 special pedestrian ways, no primary or secondary

1 arterials, or special type industrial districts. And
2 there are dwellings per gross acre and no special
3 pedestrian activity."

4 Staff's response is that, "The easement
5 criterion relied upon by the Appellant is from
6 criterion for final plats, not tentative plans. It
7 does not apply to tentative plan approvals. Easements
8 must be identified on the tentative plan, but is not
9 the responsibility of the county to identify if trails
10 qualify as an easement. Staff agrees with the owner's
11 statements regarding no requirement for sidewalks or
12 alternative pedestrian routes in the proposed phase."

13 For number three, the Appellant cited a 2005
14 improvement agreement, which they link to trail
15 improvement requirements.

16 The owner did not respond to this, but Staff's
17 response is that, "The 2005 improvement agreement cited
18 by the Appellant has expired and is not valid. The
19 bond has been paid back to the Applicant. It does not
20 apply to the proposed tentative plan."

21 Go next.

22 For number four, this is in relation to
23 overnight lodging units, the Appellants state, "Contest
24 statements made by the Applicant and believes the
25 Applicant should be required to submit more sufficient

1 evidence demonstrating compliance with the required
2 ratio for overnight lodging units."

3 The owner's response, he states that, "Initially
4 the owner responded clarifying that there were 200
5 and," sorry, I'm waiting for it to pass. "The owner
6 responded, clarifying that there are 243 overnight
7 lodging units within 91 individually owned cabins and
8 one Applicant owned ranch house where all -- where all
9 deed restricted and must be available 45 weeks per
10 year, not all are owned by the owner."

11 An additional response was provided on May 9th
12 and 10th, this response is addressed further on, which
13 clarifies the number of overnight lodging units.

14 Staff's response, "All phases of the destination
15 resort have demonstrated compliance with the required
16 ratio. The Final Development Plan states that the
17 resort shall maintain a two to one ratio between
18 permanent dwellings and overnight lodging units as that
19 term is defined in Goal 8, ORS 197 and CCZO. The
20 resort shall document compliance with this ratio prior
21 to preliminary plat approval for each phase of resort
22 development."

23 So when those original conditions refer to
24 current preliminary plat, it means tentative plan.
25 It's a different term that the planners or the

1 Commission at the time utilized, but it means tentative
2 plan, which is similar to what this phase is going
3 through currently.

4 The two to one ratio was later on modified by
5 the Applicant to allow a two to -- 2.5 to 1 ratio
6 instead of a 2 to 1 ratio. So that is not reflected in
7 that original condition, but I just wanted to update
8 you on that.

9 Any other evidence submitted towards compliance
10 with that ratio would demonstrate further compliance.
11 Within the last decision you folks determined that
12 you'd like to see a map of all the overnight lodging
13 units and their location, and we'll cover that further
14 on.

15 So one thing I -- I want to cover some topics as
16 we dive into some recent responses from the Applicant
17 and the Appellant. Within the original decision, CCU-
18 DES-00103, I've already recited condition 15. "The
19 above condition does not require trails within each
20 phase, only that any proposed at the time of the
21 application be identified on the tentative plan
22 preliminary plat for each phase. It is not the
23 responsibility of the County to determine what
24 qualifies as an easement. Our role is to only require
25 any existing or proposed easements be identified.

1 "The Final Development Plan did not identify
2 trails as a required developed recreational facility,
3 which would require construction prior to the sale of
4 lots. The expired bond cited by the Appellant did not
5 include trail infrastructure."

6 For trails, additional evidence was submitted by
7 the Applicant on May 9th and 10th, which was this Monday
8 and Tuesday. The evidence that they submitted was an
9 updated trail map depicting the location of existing
10 trails to be improved. The narrative also discusses a
11 detailed depiction of their use, surfacing, and size.
12 They also addressed trails within areas exceeding 25
13 percent slopes, and they demonstrated compliance with
14 the criterion addressing whether sidewalks or
15 alternative pedestrian routes would need to be within
16 the proposed phase. Again, none are required.

17 So the next map that you see there is the
18 original map from the original Planning Commission
19 decision that showed either proposed trails, existing
20 trails to be abandoned, existing trails to remain,
21 proposed trails for the future in the boundary of Phase
22 15.

23 And the next slide was submitted on May 9th and
24 10th depicting, you know, updating the trail map for the
25 Planning Commission to make a decision on tonight. It

1 depicts a trail through Phase 14 and surrounding other
2 phases, and also going south of proposed Phase 15. So
3 this will be the trail map utilized by the Commission
4 in making their decision.

5 Go next slide.

6 Jumping into overnight lodgings. I want to
7 cover the definition before we hop too much further
8 into it. Overnight lodgings mean permanent separately
9 rentable accommodations which are not available for
10 residential use. Overnight lodgings include hotel
11 rooms, lodges, cabins, and timeshare units.
12 Individually owned units may be considered overnight
13 lodgings if they are available for overnight rental use
14 by the general public for at least 45 weeks per
15 calendar year through a central reservation and check-
16 in service. Tent sites, recreational vehicle parks,
17 manufactured dwellings, dormitory rooms and similar
18 accommodations do not qualify as overnight lodgings for
19 the purpose of this definition.

20 Let's go next.

21 As part of their evidence submitted on May 9th
22 and 10th, the Applicant submitted proof towards the
23 number of lots that have been platted, the number of
24 lots that have been consolidated, and the number of
25 overnight lodging units currently in use.

1 They've stated that 626 lots have been platted,
2 but after consolidations 595 exist on the property, so
3 that's 31 consolidations total, and that's usually done
4 through a replat with our department. It's similar to
5 a -- to the partition process, and it's just a
6 different term for consolidating lots.

7 So 244 total overnight lodging units are on the
8 property or within the resort. The original decision
9 from the Planning Commission stated 243, but the
10 Applicant clarified stating that was inaccurate due to
11 a two bedroom cabin having been recently converted into
12 a three bedroom.

13 The current ratio is 2.44 to 1. They also
14 submitted deed restriction language that's required
15 within the properties that are dedicated as an
16 overnight lodging unit. And I'll show you the language
17 later on in my presentation. 279 pages of reservations
18 from 2019 to 2021 were also submitted as further
19 evidence, and the Applicant stated that more can be
20 provided if requested.

21 Let's go to the next.

22 So this is the deed restriction language that
23 was provided by the Applicant for the overnight lodging
24 unit properties. They state that, "For purposes of
25 complying with criteria established by the applicable

1 governmental authority for destination resorts in the
2 state of Oregon, each unit, referring to each cabin, in
3 the additional property for Sage Canyon is designated
4 as overnight lodging unit. Each overnight lodging unit
5 shall be made available for overnight rental use by the
6 general public through a central reservation and check-
7 in service operated by the declarant or its affiliate
8 or by a real estate property manager selected by the
9 owner for a minimum of 45 weeks per calendar year or
10 such lesser number of weeks as may be approved by the
11 applicable governmental authority. This Section 7.1
12 cannot be amended or removed without the written
13 consent of Crook County, Oregon, a political
14 subdivision of the State of Oregon."

15 Let's go next.

16 MS. HERMRECK: Can I ask a question for
17 clarification?

18 MR. BYBEE: Yeah.

19 MS. HERMRECK: The overnight lodging units net
20 that we're just now turning the page -- no, the one
21 back.

22 MR. BYBEE: Or the one after this --

23 MS. HERMRECK: Whichever.

24 MR. BYBEE: Okay.

25 MS. HERMRECK: Overnight lodging units.

1 MR. BYBEE: Did you get on next.

2 MS. HERMRECK: I got a little confused when you
3 talked about a one bedroom being turned into a three
4 bedroom.

5 MR. BYBEE: Okay.

6 MS. HERMRECK: Now, are overnight lodging units
7 counted based on a specific unit or how many bedrooms
8 are in the specific unit that's rented?

9 MR. BYBEE: So we've clarified this with
10 Building Codes as well, because we've approved them
11 over the years. There are units that have two bedrooms
12 per side.

13 MS. HERMRECK: Mm-hmm.

14 MR. BYBEE: If you want to rent two units at
15 once, it would be a four unit total, but they are
16 advertised as single two bedroom units. And that would
17 also be a good question for the Applicant when they
18 provide testimony and they could provide more
19 clarification on that. There's also three bedroom
20 units and five bedroom units that are provided as well.
21 So in that case what happened, they had a two bedroom
22 unit and they decided to add on an additional unit onto
23 the -- the building to make it a three bedroom.

24 MS. HERMRECK: So that would make one more bed
25 available, but not one more structure.

1 MR. BYBEE: I'm going to let you ask the
2 Applicant that.

3 MS. HERMRECK: Okay.

4 MR. BYBEE: I don't want to -- I don't want to
5 misrepresent that.

6 MS. HERMRECK: Okay. I'll make a note to ask.

7 MR. BYBEE: Yeah.

8 MS. HERMRECK: Thank you.

9 MR. BYBEE: Yeah.

10 Okay, so the map before this one, this depicts
11 the -- the number of consolidations that have occurred.
12 We continue to get lot consolidation requests, and I
13 believe we have one coming in again fairly soon, if we
14 haven't already gotten it. So 31 have occurred total.
15 One of those consolidations involved three lots instead
16 of two, but most of them involves two lots just
17 combining into one.

18 The next map that was provided shows an
19 illustration of where the overnight lodging units are
20 located on the property, as well as how many units, and
21 also total overnight lodging units per building.

22 Next.

23 Okay, so I'm going to cover what you folks read
24 earlier during our ten minute break. That was evidence
25 submitted by the Appellant on May 11th, 2022.

1 So with regard to trails, the Appellant believes
2 the trails are commercial paths benefitting the
3 commercial center and guest rentals only. When built
4 after phases have been approved, they are in conflict
5 for -- they are a conflict for lot owners. They also
6 believe that the final location of trails cannot be
7 determined after tentative plan approval for each
8 phase.

9 The Appellant cited a finding made by the
10 Commission in the previous decision addressing Crook
11 County Code 17.16.020(2). That section of the Code
12 states, "The subdivision will be compatible with the
13 area surrounding the project site and will not create
14 an excessive demand on public facilities and services
15 required to serve the development."

16 The Appellant also believes that any trails
17 built without being approved on a tentative plan or out
18 of compliance with condition 15 from the 2003 decision.

19 Let's go -- oh, there we go.

20 And for overnight lodging unit ratio, the
21 Appellant again links to case law, which is *Central*
22 *Oregon Land Watch v. Deschutes County*. They do not
23 believe the Applicant has demonstrated that the units
24 are permanent and separately rentable. They believe
25 when multiple units in a building are rented they are

1 not considered separately rentable. They've
2 interpreted the language within the definition to read
3 "permanently separately rentable," which if we go --
4 can we go back to the definition? Right there. So
5 overnight lodgings mean permanent separately rentable
6 accommodations. I think it's been interpreted to say
7 permanently separate rentable, which in this case
8 "permanent" is meant to mean it's a permanent
9 structure, not that they're permanently separate
10 rentable accommodations.

11 Let's go back to slide -- let's go to the next
12 slide.

13 So Staff's response, "The owner has updated the
14 trail map to illustrate that no trails will be located
15 within Phase 15, only existing trails surrounding the
16 phase will be utilized. Condition 15 only requires
17 trail locations within a proposed phase to be depicted
18 prior to tentative plan approval, not trails within
19 other areas of the resort.

20 "The Planning Commission findings cited by the
21 Appellant has been inaccurately applied. The finding's
22 meant to address the area surrounding the destination
23 resort and not the individual subdivision phase. If
24 the Appellant believes the conditions of approval from
25 the Final Development Plan are not being met in other

1 phases, it should be pursued through a different avenue
2 rather than through the appeal process for this
3 individual subdivision phase.

4 "Overnight lodging unit ratio, the owner
5 submitted additional evidence beyond what the condition
6 from the original Planning Commission decision
7 required. The evidence provides factual proof that the
8 criterion is met.

9 "Our recommendation to the Planning Commission
10 is that based on the evidence submitted by the
11 Applicant, Staff recommends adoption of the amended
12 findings with edits to be incorporated into the
13 original Staff report for 217-21-1013-PLNG.

14 "Edits to be incorporated into the findings
15 would include the updated trail map and the factual
16 evidence supporting compliance with the overnight
17 lodging unit ratio."

18 That's all I got.

19 MS. HERMRECK: Okay. I'll start with you, Les.
20 Do you have any questions of Staff?

21 MR. WILLIAMSON: No.

22 MS. HERMRECK: Laquita?

23 MS. STEC: None at this time, no.

24 MR. LUNDQUIST: None.

25 MS. HERMRECK: Bob, questions?

1 I had a question, but I forgot. I guess it
2 wasn't that important.

3 Okay. And so I guess we will go ahead, and
4 before opening for testimony either in person or on the
5 phone line, I want to remind everyone that all
6 testimony must be directed to the relevant appeal
7 grounds criteria and standards remanded by Crook County
8 Court. No person may be disorderly, abusive, or
9 disruptive of the orderly conduct of the hearing. No
10 person may testify without first receiving recognition
11 from the hearing authority and stating your full name
12 and address. No person may present irrelevant,
13 immaterial or unduly repetitious testimony or evidence.
14 Audience demonstration such as applause, cheering, and
15 display of signs or other conduct disruptive of the
16 hearing are not permitted. Any such conduct may be
17 cause for immediate suspension of the hearing or
18 removal of the offender.

19 Failure to raise an issue accompanied by
20 statements or evidence with sufficient detail to give
21 the hearing authority and the parties an opportunity to
22 respond to the issue precludes appeal to the Land Use
23 Board of Appeals on that issue.

24 Failure to raise constitutional or other issues
25 relating to proposed conditions of approval with

1 adequate detail that is specific to the request and to
2 allow the hearing authority to respond to the issue
3 precludes the Applicant from taking action or damages
4 in circuit court.

5 Also, prior to the conclusion of the initial
6 evidentiary hearing, any participant may request an
7 opportunity to present additional evidence, arguments,
8 or testimony regarding the Application. The hearing
9 authority must grant the request by either continuing
10 the public hearing or leaving the record open for
11 additional written evidence, arguments, or testimony in
12 accordance with CCC 18.172.110(16).

13 The Commission may set the time limits on oral
14 testimony. Does the Commission wish to impose a time
15 limitation? So I'm going to poll the Commissioners.

16 Les, would you like to have a time limitation?

17 MR. WILLIAMSON: No.

18 MS. HERMRECK: Laquita?

19 MS. STEC: I would prefer that each person who
20 is allowed to speak limit their testimony to no more
21 than five minutes and not cover a topic someone else
22 has addressed.

23 MS. HERMRECK: Bob?

24 MR. LUNDQUIST: No.

25 MS. HERMRECK: And I'm very with Laquita that

1 five minutes I think is adequate and we do not need
2 repeat testimony.

3 So, if you do like, let's say -- I'm just going
4 to use Bob as an example -- if you like what Bob said,
5 you don't need to tell us what he said, we remember it,
6 just say, "I agree with Bob's testimony," and that is
7 perfectly acceptable and moves the meeting along.

8 Participants in this hearing are limited to
9 Crook County staff, the Appellant, the Applicant and
10 the Appellants from the appeal. The hearing bodies may
11 elect, in its discretion, to expand those who may
12 participate in the remand hearing upon its own motion.
13 The Applicant will first be heard, followed by the
14 Appellant, with an opportunity for the Applicant to
15 rebuttal.

16 MR. BYBEE: Hey, Susan, it may be good to
17 clarify who the Appellants are.

18 MS. HERMRECK: I was going to do that.

19 MR. BYBEE: Oh.

20 MS. HERMRECK: So, that's okay. But that's
21 okay, keep me on my toes.

22 One of the things about if you want to speak,
23 you have hired legal representation, and I'm sure that
24 they are going to be speaking for you, but if you are a
25 member of the Coalition, you are -- I don't know how to

1 say it quite properly -- but you're on the record and
2 you may speak to the topic. If you are not a member of
3 the Coalition, unfortunately, you are not allowed to
4 speak to the record unless we make a motion to hear
5 your testimony.

6 So, I'm going to assume, if you get up to speak,
7 that you are a member of the Coalition. I don't feel I
8 need to ask that. And we'll be on the buddy system on
9 that. Hopefully -- you all look very truthful out
10 there, so I'm not too worried.

11 Okay. After -- and then I can't remember where
12 I quit, but I'm going to read the last sentence. The
13 Applicant will first be heard, followed by the
14 Appellant, with an opportunity for the Applicant to do
15 rebuttal. After each person testifies, I will call on
16 the individual Planning Commissioners to determine if
17 they have questions.

18 So, does the Applicant wish to testify? Please
19 be sure to state your name and address for the record.

20 LAURA COOPER: Good evening, Madam Chair and
21 Commissioners, my name is Laura Craska Cooper, and I am
22 counsel for the Applicant, FNF NV Brasada, LLC.

23 And I'd like to ask one clarification. So do we
24 have five minutes then?

25 *(inaudible - talking over each other)*

1 MS. HERMRECK: (*inaudible - garbled*)

2 LAURA COOPER: I'm not going to -- I'm not
3 going to go on and on and, I promise, I just wanted --

4 MS. HERMRECK: (*inaudible*) after probably five
5 minutes.

6 LAURA COOPER: I just want to make sure that we
7 still have time for rebuttal.

8 MS. HERMRECK: Yes.

9 LAURA COOPER: And sometimes when you get a
10 time limit you've got to reserve it, so I just wanted
11 to make sure.

12 MS. HERMRECK: Okay.

13 LAURA COOPER: Okay. Thank you.

14 In general, I would just refer to the submission
15 that we sent in. We sent two of them on Monday and
16 Tuesday. I don't want to reiterate a whole bunch
17 because I know that you guys are diligent and read your
18 materials and you don't want to hear me recite it
19 again.

20 I would like to make a couple clarifications.
21 First, in general, we strongly disagree with the
22 opponents that trails need to be shown on the final
23 plat. Point of fact, condition number 15 from the
24 original development plan does not require that the
25 trails be shown on any plat, not the tentative plat,

1 not the final plat.

2 And in addition, we actually don't have any
3 trails on Phase 15 except -- and I did want to just
4 make one clarification, because in the current Staff
5 report, which we generally fully agree with, but that
6 he mentions that there were no trails in Phase 15. And
7 there pretty much aren't, but there's one little place
8 where one trail crosses a road, and I just wanted to
9 make that clear. But we also are showing the trails
10 that are surrounding Phase 15, because we know that
11 those trails will be used by people in Phase 15.

12 So we thought just in an abundance of disclosure
13 we'll just show you what those trails are -- are going
14 to look like.

15 Also, as Staff pointed out, we strongly believe
16 that trails do not require any easements on the plat
17 and they are, furthermore, not dedications. All of the
18 trails that my client is constructing are either on
19 common areas or land that's going to become common
20 areas. And all owners and their guests at Brasada have
21 the right to use any common area.

22 So point of fact that opponents are very angry
23 with some trails that are -- that have or will be
24 constructed, because they don't want trails near their
25 home because they are -- at least has been as

1 represented to me, their concerns that you might have
2 the public going past, you know, individual homes. But
3 the common areas are open to everybody and their
4 guests, they're not open to the public. So the public
5 will not be using these. Yes, they will be used by
6 guests who come to the resort, whether they're a guest
7 in one of the individually owned units that's rented
8 out as overnight lodging or whether they are a resort
9 guest, but the common areas can be used by all of these
10 folks regardless of whether there are trails on them or
11 not. So it kinda doesn't make sense. But anyway.

12 The other item that was outlined in Staff report
13 that I just wanted to touch on is sidewalks. And we
14 very much agree with the Staff report and it's the same
15 issue that was discussed up in the appeal with the
16 Crook County court, that there is no need for sidewalks
17 within Phase 15, in fact, sidewalks are not required
18 anywhere in Brasada. And first, because the Crook
19 County provision regarding sidewalks, as outlined in
20 our submittal, requires them when you have a public
21 street. And we don't have any public streets. But
22 furthermore, it also specifies they are not required
23 when you have a single lot per gross acre, and we have
24 that situation.

25 And I think the idea of that code provision is

1 probably that in a very low density community it
2 doesn't really make sense to build sidewalks along
3 these large, you know, areas, so...

4 I think I have one more -- or two more
5 clarifications. Oh, I would like to call Brent up to
6 address the overnight lodging, but I did want to make a
7 clarification. So, the overnight lodging units, what
8 we have is, among other things, we have these units
9 that that are deed restricted, and some of them have
10 two or three bedrooms, and each of those bedrooms has a
11 separate outdoor entrance and can be separately rented.
12 And, in fact, unlike the *Caldera* case, which is quoted
13 by the opponents, those units, those separate units are
14 actually separately rented. In fact, I can tell you I
15 myself have stayed in them. I was a part of a retreat
16 for a statewide organization and they rented individual
17 rooms for us. We didn't even -- I stayed in one of
18 those units in one room, and there were people in other
19 rooms who had nothing to do with my organization.

20 So, in *Caldera*, what the Court of Appeals and
21 LUBA found in that case was that the lock-off units
22 there were sort of a wink and a nod. They weren't
23 really advertised separately and there was no evidence
24 that any individual unit as part of a -- of a home had
25 ever been separately rented. In other words, they just

1 rented the whole three or four bedroom cabin together.
2 At Brasada that doesn't happen, the individual rooms
3 are separately rented, and that's some of the data that
4 Brent has submitted to help clarify on this point.

5 And when I'm done, I would like to have Brent
6 talk just a little bit about the overnight lodging,
7 because if you have any questions he knows that stuff
8 really really well.

9 I already mentioned trails are not commercial
10 paths.

11 Oh, I do want to -- one other thing, we are
12 definitely -- Brasada is definitely building trails
13 that are not shown on the plats, but there's not a
14 requirement that all trails be on the plat. There was
15 an original proposed loop trail for Brasada that
16 Brasada knew was going to be relocated as each phase
17 developed, because you say okay, we're generally going
18 to have our trails look like this, right? But we
19 haven't developed any of those phases. And once we get
20 in and do engineering and site planning, then we
21 decide, oh, look, that trail actually goes through two
22 lots. We don't want that, so we're going to move it.

23 So at that time the Planning Commission and then
24 the county court said, "Okay, Applicant, you're fine
25 not to show us where the exact location of these trails

1 are, but when you get to platting this, at the time
2 you're platting, tell us what -- which of those trails
3 are going in this phase and show us where they are.
4 And that's what condition number 15 is about.

5 As outlined in my materials, the common areas
6 are open and available for any recreational uses of all
7 owners, and that includes trails. And there's nothing
8 in the County Code that requires any land use or other
9 approval in order to build a trail. If I want to build
10 a trail in my back yard I can. Well, assuming I lived
11 in the county. I actually live in the city. Assuming
12 I lived in the county, I could build a trail. And so I
13 -- anyway, that's the reason why we are building some
14 trails that are not shown on any plat.

15 And as I mentioned, and as Brent mentioned in
16 the Staff report, there are no trails within Phase 15
17 except a tiny little part of one trail that crosses a
18 road.

19 So, Brent, can you talk about overnight lodging
20 a little bit? Anything I missed or any clarifications.

21 BRENT MCLANE: Yeah. Any questions at all.

22 To clarify, so Laura mentioned we do not -- well
23 we rent all the cabins --

24 MS. HERMRECK: *(inaudible)*

25 BRENT MCLANE: Sorry, Brent McLane. Brent

1 McLane with FNF.

2 MS. HERMRECK: Brent.

3 BRENT MCLANE: Brent, B-r-e-n-t, with the
4 Applicant.

5 So, Laura did just mention that we sell the
6 cabins only as individual units. It's not true. We
7 do. If there is demand for a three bedroom cabin,
8 we'll accept it. But that same evening, in the same
9 booking engine, at the same reservation center, if
10 demand is there for one unit within that cabin we'll
11 sell it. And that's what we showed you. Right? Those
12 are all the reservations you were taking a look at that
13 show you this is a four bedroom, a three bedroom, a two
14 bedroom, a one bedroom.

15 If you would like me to address the question
16 that you had in regards to -- can you just remind me
17 what it was?

18 MS. HERMRECK: It was is overnight residential
19 units number of bedrooms or actual number of
20 structures.

21 BRENT MCLANE: So with each phase, with each
22 plat, and we always looked at them as the individual
23 units. So again, a three bedroom has a living room and
24 kitchen in the middle, three bedrooms around. They all
25 have individual entrances. Right? So I as a guest --

1 and individual bathrooms. And then they can just be
2 locked off, so you don't have to access the living room
3 if you'd like (*inaudible*) in all.

4 But so every -- each of those guests can access
5 a different part of the cabin. So Jeld-Wen was very
6 smart in how it built these, and there is even language
7 in the -- some -- some sort of a development plan
8 amendment that speaks to the fact that Jeld-Wen would
9 be building these two and three bedroom units and what
10 their configuration was.

11 As a hotelier, right, we are hotel guys as well,
12 we own straight up hotels without real estate, it's a
13 common practice, right? It's where you have a
14 connecting door between two rooms. Right? So you've
15 got rooms for sale, but if there's demand where a
16 family or any other reason they want to have a
17 connecting room, you can sell them two rooms next to
18 each other, open the doors between them. It's a very
19 similar concept.

20 So again, we offer one bedroom units, two
21 bedroom cabins, three bedroom cabins, four bedroom
22 cabins. And each of the individual units is considered
23 a unit. There are 91 total cabins at Brasada, 236
24 units within those 91 cabins.

25 MS. HERMRECK: Okay. That was -- that was my

1 question.

2 BRENT MCLANE: Okay.

3 MS. HERMRECK: Thank you.

4 BRENT MCLANE: In regards to the OLUs I don't
5 think I have any further clarification other than what
6 was given. I think the only thing is to say this, with
7 each plat as Staff has recognized, we have provided the
8 proof that we are in compliance with the ratio. We've
9 provided a tremendous amount more. The statement that
10 was provided said, "Hey, if you want to see all the way
11 back to 2014, we can provide that." It's about another
12 1,200 pages and that would take you all the way back to
13 14 through 18.

14 But there isn't -- there isn't a standard.
15 There's not a template for this, right? And I think in
16 the Code, as it was just reviewed, it's for the resort
17 to prove its compliance. There's no form we fill out,
18 there's nothing else we can do.

19 I hope that all that information and the
20 testimony tonight tells you these are permanent.
21 They're buildings, we can't move them. They're
22 separate, they have separate entrances, and they can be
23 individually sold. And that's what we do.

24 Do you have any other questions? I'm happy to
25 answer them.

1 MS. HERMRECK: Okay. I'm going to start, Les,
2 do you have a question?

3 MR. WILLIAMSON: No.

4 MS. HERMRECK: Laquita?

5 MS. STEC: No.

6 MS. HERMRECK: Okay.

7 BRENT MCLANE: Thank you.

8 MS. HERMRECK: Do you have -- does anyone have
9 a question of Ms. Cooper?

10 MS. STEC: I thought I did there for a minute,
11 but... Oh, I sort of do.

12 Ms. Cooper, back in your, what I assume was
13 Exhibit 2, which talks about trails, something about
14 either the 100 year flood plain or a slope exceeding 25
15 percent --

16 LAURA COOPER: I really -- thank you very much
17 for asking about that, because I did miss that. I
18 meant to state that.

19 When I said that there is nothing in the County
20 Code that requires any approval, land use or building
21 or otherwise for a trail, there is actually one code
22 provision that says that if you're building within the
23 hundred year flood plain or if you're building within
24 -- or if you're doing any alterations to the land I
25 think is the language, then to a slope that's more than

1 25 -- or that's 25 percent or more -- or is it more
2 than 25 percent?

3 UNIDENTIFIED MALE: More than 25.

4 LAURA COOPER: Exceeding 25. Thank you.

5 And in either of those cases then you have to
6 come to the Planning Commission and get approval.

7 And with respect to the hundred year flood
8 plain, none of our proposed trails are in the hundred
9 year flood plain. There are a couple of trails I
10 think, or a couple spots on some existing trails that
11 exceed 25 percent, and we are improving those trails,
12 so it's unclear -- I mean, I -- it's unclear whether we
13 need approval. However, I do not believe that that
14 approval needs to be part of the Phase 15 process,
15 because these trails are outside of Phase 15.

16 UNIDENTIFIED MALE: Correct. Correct.

17 LAURA COOPER: That would be something we would
18 have to submit for. It would be great if he would
19 clarify to us whether we need -- when we have an
20 existing trail that we are doing some work on the
21 surface, does that constitute something that we need to
22 bring for approval, 'cause it's a 25 percent slope?
23 It's clear that if we build a new trail on a 25 --
24 greater than 25 percent slope, we need to come to you
25 and get your approval, but if we're improving an

1 existing trail, it would be great to have that
2 clarification, but -- and I don't think that's exactly
3 what's in front of you tonight with Phase 15.

4 BRENT MCLANE: Can I just add one thing to that
5 point?

6 When we say they're existing, these are Ray
7 Shumway's -- primarily a lot of these trails are Ray's
8 old Jeep trails. Right? So when we got here in 2010,
9 even before Jeld-Wen arrived, these are pretty large
10 trails, that's what we tried to represent in the
11 exhibit there. Right? You can even see tire tracks.
12 We are not out there driving these roads. Sometimes,
13 but not very often. I mean, these are -- these are
14 established roads in certain areas.

15 So as we continue to improve those, to Laura's
16 point, it would be great to know do we need further
17 approval on those existing trails or not.

18 Thank you.

19 MS. STEC: Thank you.

20 MS. HERMRECK: Thank you.

21 Are there any other questions?

22 *(No audible response)*

23 MS. HERMRECK: Thank you, very much.

24 LAURA COOPER: Thank you.

25 MS. HERMRECK: All right. Does the Appellant

1 wish to testify? And please sure to -- please be sure
2 to state your name and address for the record.

3 MS. BURGESS: Good evening, Madam Chair and
4 Commissioners. I am Megan Burgess. I don't know if
5 you want my address of my law firm. I'm an attorney in
6 Bend. You probably don't need my address. But I am
7 happy to provide it if you would like it.

8 MS. HERMRECK: Do we need that Hannah or Katie?

9 MR. BYBEE: We have it.

10 MS. ELLIOTT: We have it.

11 MS. HERMRECK: Okay. I guess you're good then.

12 MS. BURGESS: Thank you.

13 Well, I appreciate your time and attention. We
14 did bring the appeal and went to the county court, and
15 we very much appreciated their time and attention.

16 Obviously it's pretty apparent my client, the
17 Coalition's primary concern is trails. And we agreed
18 -- we mentioned this on the appeal and I think it's
19 important to note, especially when you're looking at
20 the criteria, you know, why does this matter? And I --
21 I don't want the impression to be that the Coalition is
22 pushing their view that specific people don't want a
23 trail next to them or they do want a trail. I think
24 that highlights the issue though, that you're never
25 going to please every single person. There's going to

1 be people that want to be near a trail for a variety of
2 reasons, whether it's access to walking or whatever, if
3 that fits in their lifestyle, or there will be people
4 that want to be away from trails. And so it's not --
5 we're not asking you to bend to the individual whims of
6 particular persons.

7 However, the condition is there for a reason,
8 and I think the challenge is to say what was the
9 purpose of Condition 15 when it was -- when it was
10 adopted. And there is -- I think when this first
11 happened, it wasn't clear to me whether everyone agreed
12 that the final 2003 development plan applied to all
13 phases. But it is clear now that the Staff, the
14 Applicant, and the Appellant all agree on that point,
15 that the 33 conditions of approval that are in that
16 2003 decision apply to every phase, including Phase 15.

17 And Ms. Cooper spoke to it, and I agree with
18 her, I think, that in 2003 the trail concept was not
19 final and everyone knew that. So what did they do to
20 try to address it? And I think Condition 15 is one of
21 the things they did. And what it says is that -- you
22 can read what it says, Mr. Bybee read it for you, it's
23 there, but I think what it means plainly is that as
24 each phase happens, that's when we expect you to depict
25 the final location size and surfacing of each trail.

1 And what does that do? If it's not final, if it's not
2 actually going to be final, what -- what does that do
3 for the county, the Commission, what does that do for
4 the public, what does that do for owners? Nothing.

5 And so the Applicant shall -- it's mandatory --
6 depict the final location of all trails. We're not
7 arguing that they -- I think it's been interpreted or
8 argued that we're saying they have -- that trails are
9 required. It's just that if you are going to have
10 trails, they're required to be depicted in their final
11 location at the time of a tentative plat approval or a
12 preliminary plan approval as the -- as the verbiage I
13 think was at the time.

14 And so we're asking for that to have some teeth,
15 some purpose, to live up to its purpose of what it
16 meant in 2003, and what does that look like? I mean,
17 we can -- we know from having raised the appeal that
18 we've learned more information already. They --
19 they've updated their map as recently as yesterday.
20 And I believe that Mr. Bybee had it up earlier, and --
21 do you mind, Mr. -- or I'm sorry, Ms. Elliott, to pull
22 that up? Thank you so much.

23 MS. ELLIOTT: *(inaudible)*

24 MS. BURGESS: And so this is the first time --
25 I thought on my version it was marked Exhibit B down in

1 the corner, but I think it's Exhibit 2 to their
2 submission -- anyway, we're all looking at it. This is
3 the first time that the grading with the gray area was
4 depicted. And the Applicant I think admits now that
5 there are areas of the trail that exist that would
6 require Commission approval. And if these had been --
7 if in prior phases these final locations and things had
8 been depicted, I think this would have come to light
9 before. And if you include and make clear that
10 Condition 15 is going to require the Applicant to show
11 those final locations and surfacing, a lot of -- almost
12 all of the conflict would be eliminated, because people
13 would know. There would be notice, predictability,
14 finality and consistency.

15 And I don't think you need to -- I think that
16 now that the Applicant is aware and we're all aware
17 that there are trails in the areas that exceed this 25
18 percent slope, I believe the Code provisions that deal
19 with this, when I was looking at them earlier today,
20 because we haven't had this information for a long
21 amount of time, that changes to the trail or
22 improvements would require them to come and get
23 Commission approval. And so that just illustrates that
24 this keeps changing.

25 And I attached, really just more for

1 illustrative purposes, some maps. First it was the map
2 from Phase 2 that did actually show trails on the final
3 plat.

4 So, when they got to doing this work, you know,
5 a 35 foot trail easement was depicted in Phase 2 and
6 just has not been done in later phases. And so I do
7 think if an easement and a -- when they're showing a --
8 are required to show a final location surfacing and
9 sizing to get approval, what -- what does that mean if
10 there's nothing after that, and they can change it and
11 -- and just because that's happened in prior phases
12 doesn't mean that it shouldn't be adhered to now.

13 So that's the primary comment I had about
14 trails.

15 I have a couple of other items. Because I think
16 there's been some confusion about the sidewalk issue,
17 and this has evolved as -- as the appeal happened. On
18 -- I think it's on page 29 of your March decision, and
19 this obviously originally came from the Staff report
20 and was adopted by the Commission. In addressing
21 sidewalks and page -- the bottom of page 28 and the top
22 of page 29 of, just to be clear for the record, the --
23 the March 17th decision -- set out the code requirements
24 regarding sidewalks, and then the finding was that as
25 part of the original development plan, the destination

1 resort was approved for a trail system throughout the
2 entire development. The initial conceptual plans have
3 been formalized throughout each phase of the
4 subdivision -- or I'm sorry -- through each subsequent
5 subdivision phase, and a proposed trail map was
6 submitted with the Phase 15 application. The trail map
7 depicts proposed trails for Phase 15, proposed trails
8 for future phases, existing trails that will be
9 removed, and existing trails that will remain. These
10 alternative pedestrian routes are proposed instead of
11 sidewalks throughout the proposed phase, which is in
12 accordance with the above criterion.

13 So, I just read that on its face, and I think my
14 client did, that the Staff and the Commission was
15 interpreting these alternative pedestrian routes as
16 meeting the sidewalk requirement. And I understand the
17 argument now as well, we don't actually have to have
18 any sidewalks and this isn't required at all. But the
19 representation was that -- that these routes were
20 satisfying the, what I understood to be the Staff and
21 the Commission's requirements relating to sidewalks.

22 And elsewhere in the Code specific to
23 destination resorts in Chapter 18, 184.010, I believe
24 it is, talks about pedestrian access and circulation,
25 particularly sub 2 says that it applies to destination

1 resorts to ensure that they're safe, reasonably
2 convenient, and direct pedestrian access.

3 So, I don't know how else you would evaluate
4 that, the connectivity and what's it all going to do.
5 And this decision says this initial conceptual plans
6 have been formalized in each phase. That's what
7 Condition 15, that's the purpose of it, so that when
8 they get to that point now for Phase 15, they come and
9 make that representation and it's final, it's not going
10 to be changed, altered later on. Otherwise, I don't
11 think that -- that it has any teeth.

12 I know you're not here evaluating the final
13 plat. The Staff response was that it's not up to them
14 to say I think whether an easement -- a trail is an
15 easement, but there's no question in my mind that it
16 is. It's a legal right of access. It was shown on the
17 Phase 2 plat. The final locations have to be shown to
18 you.

19 And I think there was a little misunderstanding,
20 or perhaps I didn't say it very well, about the 2005
21 improvement agreement. The reason I attached that
22 initially is because the 2003 development decision was
23 behind it and all of that was recorded in the county
24 records, so it was a helpful resource. What we are
25 saying is that -- that the -- the trails they have

1 represented and depicted either have to be constructed
2 before lot sales or bonded, and citing the code
3 provision about that, and that's in my -- in my
4 submission. I think it's in 18.116.040, that nature
5 trails are defined as developed recreational facilities
6 and they shall be constructed prior to sales in that
7 phase or guaranteed by providing an agreement and a
8 security, a bond.

9 So it's not that I'm arguing that the 2005
10 improvement agreement and that bond still exist through
11 today, what we're saying is that the trails they
12 represented as final as of the latest iteration today,
13 that was submitted yesterday, would either be
14 constructed prior to lot sales or bonded over so that
15 they are in that location. And again, that ensures
16 that that is the final location and that for notice
17 purposes, buyers and potential buyers can make those
18 decisions.

19 And then I know I'm way over five minutes. So
20 on the -- I appreciate your -- your grace. With regard
21 to the overnight lodging units, I do think that the
22 deed restriction language supports our interpretation
23 that Mr. Bybee provided that the deed restriction on
24 these units says that each unit, referring to each
25 cabin, is designated as an, in the singular, overnight

1 lodging unit. And so I do think that Crook County Code
2 is different than Deschutes County, and I do think that
3 it reasonably is interpreted as the permanent separate
4 rentable units and that the counting the cabins doesn't
5 qualify.

6 And our citation to that case is not really that
7 we're arguing the facts are the same as what was going
8 on there, what I thought was really helpful from that
9 case from the Oregon Court of Appeals is that it says
10 it's a factual determination that must be made based on
11 the criteria in the statute, and the type of unit that
12 it is. And based on the Crook County Code definition,
13 our position is that -- that those units need to be
14 counted like the deed restriction. Each cabin is an
15 overnight unit and that they wouldn't meet that
16 criteria.

17 There are members of the Coalition here. And I
18 don't -- and if they want to say something separately,
19 I would defer and make sure that they are able to be
20 heard. But unless you have any questions those are the
21 things I wanted to add.

22 MS. HERMRECK: Okay. Les, do you have any
23 questions?

24 MR. WILLIAMSON: No.

25 MS. HERMRECK: Laquita?

1 MS. STEC: No. I may think of something later.

2 MS. HERMRECK: Okay.

3 MS. BURGESS: I'm not going anywhere.

4 MS. HERMRECK: We can call her back up.

5 Okay. I don't have any. But yes, we encourage
6 if there are members of the Coalition who want to speak
7 we encourage you to. You'd have to come up, state your
8 name and address. I would -- I have leniency on the
9 Applicant and the Appellant, but I would ask that you
10 remain under the five minutes. And if you agree with
11 something that they've said, just say, "I agree." We
12 don't need to be taught the whole lesson again.

13 MR. BYBEE: For the record, too, Staff requests
14 that any folks state that they are part of the
15 Coalition.

16 MS. HERMRECK: Okay. So we do need to state
17 that. All right.

18 MS. BURGESS: Thank you.

19 MS. HERMRECK: Thank you very much.

20 Okay, is there anyone in the public that would
21 like to speak? It's always hard to be the first one.

22 DAN COOPER: It's all good.

23 MS. HERMRECK: Okay.

24 DAN COOPER: Dan Cooper, resident at 15637
25 Southwest Rangeland in Brasada. And I am a member of

1 the Coalition.

2 So, I'm going to speak a little bit as a
3 homeowner, property owner, and some as a real estate
4 company owner as well as a builder/developer, which is
5 my profession.

6 So, we purchased our first property, one of four
7 properties from different parties, including two from
8 FNF Brasada, back in 2015. As I customarily do, being
9 in the industry, I study all of the paperwork and the
10 title documents and understand, especially as I'm going
11 to design my own home, understand all of the factors of
12 each property before I purchase.

13 So, this has been kind of a winding road. And,
14 you know, one thing that I want to make sure that I
15 detail is that I'm also speaking for a lot of people
16 behind me that may not stand up, but they had similar
17 circumstances.

18 So, when you go to buy, you can only rely on
19 what you see visually and what you see on the title
20 documents. For me, and desiring privacy, spending a
21 lot of money on a home, putting all of our private
22 spaces towards open space, you often see that open
23 space is advertised as very private and it's a very
24 desirable aspect of purchasing real estate. With that
25 comes great responsibility as a seller, whether it's a

1 private party or a real estate agent, because
2 disclosure is -- it's very important for people that
3 buy property, there's a lot of disclosure laws.

4 So, as we get through and trails versus no
5 trails, and I'm going to give a quick history on
6 everything, I think it really comes back to disclosure.
7 It's very unfortunate that we have to go to these great
8 lengths right now in spending our money and time to do
9 this, because we're really advocating for everyone from
10 Phase 15 on to make sure that what is happening to us
11 and what we're going through right now doesn't happen
12 to people that end up purchasing from Phase 15 on if
13 there is no certainty on the plat.

14 So, for us, we purchased our property and about
15 a year afterwards they spread some bark next to our
16 property in the common area and they told us that it
17 was for dust mitigation, which made sense. And then
18 soon after they turned it into a walking path. And
19 they did it because people were using it and they just
20 said, "Well, we're going to let it happen."

21 So that -- for two years we worked with the HOA
22 board, which is controlled by the declarant, FNF
23 Brasada, to try to come up with a way to soften the
24 blow, because we didn't know what was going on. We had
25 a special meeting with them. The special meeting came

1 with the epiphany that there is a master trail system.
2 We had no idea what they were meaning. We asked them
3 for the map, they sent it to us. It was a development
4 plan that -- that I hadn't found in a lot of my prior
5 visits to the County Commission office -- the Planning
6 Commission -- planning office. And I did find it with
7 Ann. I sat with Ann for half a day, we finally found
8 something, but it wasn't stamped, and we thought that
9 was it.

10 But when we got this map from them, we realized
11 soon that this was a master trail system that hadn't
12 been built on, at that time, for 12 years. Now we're
13 at 15 years. For a 15 year period there was no trails
14 built. So if you can imagine the development that's
15 going to eventually be 750 homes, has pedestrians all
16 over the roads, strollers, walking dogs, you know, my
17 friend Brian over here in a wheelchair. And there
18 weren't anything that was installed and we had no idea
19 that that was coming.

20 So we found this map through this discovery
21 process and we started letting some of our fellow
22 neighbors know that, "Hey, by the way, did you know
23 that there might be a pedestrian walkway system?" I
24 know we call them trails, but this is a way that they
25 actually get traffic off the roads, whether it's a

1 sidewalk or whether it's a trail, the whole intent is
2 to get people throughout the community safely, and it
3 connects to the public core. And I know there's some
4 dispute on public versus private, hey, if it connects
5 to the community center and people have no blocked
6 access, it's going to be for everybody. It doesn't
7 matter what the definition is, that's what's going to
8 happen.

9 So this is why all of us are here tonight, is we
10 are concerned that there is really -- there's no reason
11 to not show it on the plat, and we are arguing that it
12 should be on the plat. But if we're just being
13 reasonable, we should say, you know, that would have
14 protected our purchase. And so now a lot of us have
15 homes where we might have the general public in a gated
16 community coming behind our home. That is why, you
17 know, there's a lot of confusion, I know there's some
18 exhibits there of marking maps. I mean, we've got --
19 there's eight different marking maps that show eight
20 different depictions of trails. What are we supposed
21 to know as buyers, even someone in my industry? If
22 it's confusing to me, it's going to be confusing to
23 someone that isn't in the real estate business.

24 So I just urge you guys to also look at just
25 kind of what is reasonable for purchasers as far as

1 disclosure and what should the expectation be here. It
2 doesn't hurt to -- you know, we're not arguing to say
3 you know what, Brasada can't develop anymore, they're
4 not allowed to do anymore expansion. What we're saying
5 is hey, if they're going to do it, let's put it on the
6 plat as intended, which will protect all future
7 property owners, including someone that -- let's say
8 we're going to buy in a new phase, we would actually
9 know where the planned trail system is. These pretty
10 maps that they're showing, those aren't -- those aren't
11 record, those aren't title documents, we'll never see
12 those unless the realtor finds it and gives it to us.

13 So, I would just urge you guys to think about
14 all of that and the safety aspect.

15 One thing I want to mention on overnight
16 rentals, that wasn't something that we were pushing,
17 but we do want to make sure that it's considered that
18 how -- we -- for years we visited Brasada and we'd rent
19 the whole cabin. So a three bedroom was advertised, we
20 would -- we would rent three bedrooms. Well guess what
21 that doesn't allow for? Separately rentable. Because
22 we rented the whole thing.

23 So, and as a builder, I also see that I don't
24 see any signs of -- of a fire wall or a fire door. So
25 if they're separately renting these, they should

1 conform to Oregon Structural Specialty Code 420 and 706
2 through 708. I don't think they do. So if they're
3 going to count those as separate units, they probably
4 should prove that they're safe.

5 And that's all I have.

6 MS. HERMRECK: Okay. Thank you.

7 Before you leave are there any questions of
8 this --

9 MR. WILLIAMSON: No.

10 MS. HERMRECK: Laquita?

11 MS. STEC: No.

12 MS. HERMRECK: Okay.

13 DAN COOPER: Thank you.

14 MS. HERMRECK: Is there anyone else who would
15 like to come up and speak?

16 *(No audible response)*

17 MS. HERMRECK: Is there anyone that wants to
18 raise their hand in agreement with the last speaker to
19 show us how many agree with his points?

20 Okay. Very good. Thank you.

21 ASHLEY OLIVER: I'd actually -- I'd actually
22 just want to add something really quick.

23 MS. HERMRECK: All right. If we could have
24 your name and address, please.

25 ASHLEY OLIVER: Ashley Oliver. And my address

1 is 15626 Southwest Brasada Ranch Road. So, Phase 10
2 owner.

3 I do plan to buy in Phase 15, so this is really
4 important to me as well. The reason why is Phase 10,
5 where we currently own, there was a path put right by
6 our house, you know, a couple years after we owned the
7 property, so we are going to be selling our lot and
8 buying somewhere else so that we design our house
9 knowing where we're going to have private space and
10 where we're not.

11 So to speak on the privacy of the path, anybody
12 can drive into Brasada Ranch and access these trails,
13 it's not gated off, so that's where it's very hard to
14 say that they're not for the public, because anybody
15 can come and use them. So, I just wanted to add that.

16 MS. HERMRECK: Are there any questions?

17 *(No audible response)*

18 MS. HERMRECK: No questions. Thank you.

19 Anyone else?

20 Yes, sir.

21 JONATHAN DUGHI: My name is Jonathan Dughi, D-u-
22 g-h-i. I live at 15326 Southwest Oak Vista.

23 I had a couple things. So --

24 MR. BYBEE: Can you say if you're a member of
25 the Coalition?

1 JONATHAN DUGHI: Yes, I am a member.

2 MR. BYBEE: Okay.

3 MS. HERMRECK: Oh, and yes, we needed that from
4 -- are you a member of the Coalition, for the record?
5 Sorry. I should have caught that. Sorry.

6 JONATHAN DUGHI: So, I wanted to kind of agree
7 with what Dan was saying and also say two things. One,
8 when we purchased our lot, we purposely purchased a lot
9 that has a lot of common space around it, because we
10 wanted that privacy. And we don't have a trail by us,
11 we haven't seen any maps that show any trails
12 potentially going by us. Hopefully it doesn't happen.

13 So, we definitely want any potential trails to
14 be shown for Phase 15 so people can make those informed
15 decisions when they're purchasing, like Ashley said.

16 So this -- and then the second thing I want to
17 say is, we visited Brasada for five, six years before
18 we moved here, built a home, you know, purchased. We
19 stayed in a cabin every time and never once was it
20 possible for us to rent part of the cabin. Go on their
21 website, you rent a cabin, rent a two bedroom cabin,
22 three bedroom cabin. Never did I -- were we ever given
23 the ability to rent a single room in a cabin.

24 And having stayed in those cabins, the way
25 they're built, one has a kitchen with a bedroom,

1 *(inaudible)* two bedrooms, and then yes, there was a,
2 you know, a simple door that would lock to another
3 room, you know, a bedroom that had a bathroom and like
4 a coffeemaker and a little fridge.

5 So, like you know, we would have been happy to
6 rent the side with the kitchen, because it probably
7 would have been cheaper, but that was never an option.

8 So, that's all I have to say.

9 MS. HERMRECK: Thank you.

10 JONATHAN DUGHI: Thank you.

11 MS. HERMRECK: Are there any questions?

12 MS. ELLIOTT: Can you just state your name one
13 more time?

14 JONATHAN DUGHI: Jonathan Dughi, D-u-g-h-i.

15 MS. ELLIOTT: Thank you.

16 MS. HERMRECK: Anyone else?

17 *(No audible response)*

18 MS. HERMRECK: Going once, going twice. All
19 right.

20 I lost my script, but I believe it's time for,
21 the Applicant has the opportunity to respond to any --

22 JODY SATKO: Hello. May I speak? May I speak?

23 MS. HERMRECK: I'm sorry. I'm sorry. We
24 forgot about you. Okay.

25 JODY SATKO: Well, I'm sorry to interrupt the

1 meeting, but I did want to make a few statements. So
2 if now is a good time may I do that?

3 MS. HERMRECK: Yes. State -- do you need her
4 name and address?

5 MS. ELLIOTT: Yes, please.

6 MS. HERMRECK: We need your name and address
7 and also if you are a member of the Coalition.

8 JODY SATKO: Yes. My name is Jody Satko. I am
9 a member of the Coalition. My address is 15660
10 Southwest Rangeland Drive, Brasada Ranch.

11 And first I'd like to say that I would like to
12 agree on the record with the previous Coalition members
13 on their concerns and their issues.

14 And then I would also like to add and accentuate
15 the comment that Dan made as a builder/developer, and
16 I'm a realtor by trade, I've been a realtor for over 35
17 years across the United States, and his comments
18 regarding disclosure are paramount in our industry, and
19 a huge liability as well for anyone that deals with the
20 exchange of property.

21 And I have to say that my family and I purchased
22 a home in Brasada just this past year, in May of 2021.
23 And it was ironic that we actually purchased our home
24 from a builder/developer that sells and builds in
25 Brasada, and they are also realtors in Brasada

1 currently still to this day.

2 And I, as Dan Cooper, do due diligence not only
3 for myself to an extreme, but to all my clients that
4 are purchasing property. And we did all of our due
5 diligence. I read the HOA. I did everything to check
6 everything out before we made our purchasing decision.
7 And we were told by our sellers, who are developers as
8 well as realtors, that the area that we were purchasing
9 our property on was open space and that nothing would
10 ever be put behind it. It was for our -- the
11 community's HOA use, but there would be nothing built
12 behind us. It would be private. Our views would be
13 protected. And so I felt pretty confident with my
14 research as well as that support information from a
15 community developer/builder/realtor themselves that I
16 had accurate information to make our buying decision.
17 We have since been informed that there are very high
18 potential that this trail system will be impacting that
19 decision.

20 And so I want to go on the record that the
21 disclosure issue for Phase 15 is so important that
22 future buyers do not have to go through the pain and
23 suffering that all of the past buyers that have been
24 told these situations and have made substantial buying
25 decisions and now are dealing with, you know, the

1 unfortunate situation that we're in today. So, I just
2 want to go on record for that and just want to stress
3 the importance of disclosure and making sure that those
4 paths are predetermined, they are mapped out, and they
5 are demonstrated clearly on titles before purchases are
6 made.

7 Thank you.

8 MS. HERMRECK: Thank you.

9 Are there any questions?

10 MR. WILLIAMSON: No.

11 MS. HERMRECK: Seeing no questions. Thank you
12 very much. And thank you for speaking up. I forget
13 about the -- I'm not even looking at the TV, so I did
14 forget you and I apologize.

15 All right.

16 JODY SATKO: No worries. Thank you.

17 MS. HERMRECK: Okay.

18 The Applicant has an opportunity to respond to
19 any of this testimony. Does the Applicant have
20 comments in response to the testimony heard or
21 presented?

22 LAURA COOPER: Yes.

23 MS. HERMRECK: Will you please speak up. And I
24 don't believe we need name and address again, but this
25 is Ms. Cooper speaking for those that are on the TV.

1 LAURA COOPER: Thank you.

2 So, I've got just a couple of clarifications.

3 First, I want to note Ms. Burgess observed that
4 the information we provided on the trails was different
5 from what was provided with the original application,
6 and we acknowledge that that is the case, because we
7 had, as we mentioned in our submittal, we had some
8 trails that were pre-existing that showed up on the map
9 that we intended to remove. But I would also note that
10 the trails that were showing are not trails as part of
11 Phase 15, they are around Phase 15. Therefore, we
12 actually don't have an obligation to show them right
13 now, because they're not going to be within Phase 15,
14 but we wanted to show them and we provided the
15 additional information of the size and the location and
16 all that because we know that the trails are -- have
17 become such a big concern to folks, and so we wanted to
18 provide as much information as possible. So that's the
19 reason why we are providing additional information on
20 those.

21 Ms. Burgess also mentioned that there is an
22 easement. You know, we have said we don't need an
23 easement in order to put trails on, we don't need to
24 show an easement on the plat, and that's -- that is the
25 case. There is no need for us to do an easement on the

1 plat for a trail, because the trails are in common
2 areas and every owner and guest of owner in Brasada has
3 a right to use the common areas.

4 Phase 2 does show an easement on the plat for a
5 trail, but that's because Phase 2 is a somewhat unique
6 circumstance. If you were to look at the CCNRs for
7 Brasada Ranch, you would see that there are a few parts
8 of the property that are reserved to a particular
9 neighborhood. So there might be, you know, 20 homes in
10 an area and there's some common area in between those
11 homes that we refer to as neighborhood common area.
12 It's specifically identified as neighborhood common
13 area. And the concept and the documents provide that
14 only those homes have the right to use that common
15 area, because it's a neighborhood common area instead
16 of a general common area.

17 And so in Phase 2, we have a trail that runs
18 through one of these neighborhood common areas and
19 that's the reason why we put an easement on the plat,
20 because we had an area that is not general common area
21 and generally available to all owners and their guests,
22 and we wanted to make sure that this trail could be
23 used by everybody. It's part of our circulation system
24 for the resort. So that's the reason why Phase 2 needs
25 an easement and why none of the other phases have

1 needed an easement.

2 Ms. Burgess also talked about sidewalks and
3 bonding and the overnight lodging units. And I would
4 just -- I would just submit the documents that we've
5 already provided to you and we agree with the Staff
6 report on those matters.

7 The opponent -- some of the individual
8 opponents, well, you would think trails are adult
9 bookstores or something from the way people are really
10 upset about them. I understand the concern about
11 disclosure. I'm a real estate lawyer, I live with
12 disclosure. But I also think that if you are a
13 knowledgeable experienced person who is buying in a
14 place like Brasada, you'd read the CCNRs. And if you
15 read the CCNRs, you would know that the common areas
16 are available for all owners and their guests and that
17 the declarant did not place any limitations on the
18 ability for the declarant to improve that property.

19 Now, I'm not going to belabor this point too
20 much, because in fact I don't believe their comments
21 really are applicable to any specific criteria. They
22 cannot address a specific criteria that their comments
23 are addressed to. But I will note that if you are a
24 sophisticated developer and you read -- you would think
25 you would -- you would read the CCNRs. And reading the

1 CCNRs you would know that there could be trails
2 constructed in the future.

3 And despite folks' concerns, these are not
4 public. The land at Brasada is not public. Yeah, it's
5 not gated, but it's out -- it's outside -- it's not
6 like it's right adjacent to a city limits. So the
7 majority of people who come there are either guests or
8 they are owners. And so this is not available to the
9 general public. There is no public access easement.
10 We have no intention to install a public access
11 easement.

12 And I believe that Brent may have a couple
13 comments, unless you have any questions for me.

14 MS. HERMRECK: Are there any questions of Ms.
15 Cooper?

16 MR. WILLIAMSON: No.

17 MS. HERMRECK: I think one of the things that I
18 see between the -- the people that are speaking and
19 your, is there's -- there's a problem in there's open
20 space -- because this one gentleman, or -- I can't
21 remember which one -- that they bought a home and there
22 was all this open space, and then there's common areas.
23 And I think that there has been an inherent problem
24 somewhere there in making it known that open space is
25 -- it's just not -- that there's a difference. I mean,

1 and I see the difference. And I think that you're
2 seeing this in their confusion in that, like you're
3 talking, you have a neighborhood common area, that
4 makes sense to me, it's a neighborhood, and then you
5 have open space which, you know -- and there's -- I
6 think there's a problem. And I mean, I'm not going to
7 say that I know how to remedy it, because I think it
8 should have been addressed in 2003, whenever this
9 agreement was, and I wish Mr. Bedortha were here,
10 because he was present in that discussion. But that is
11 what I'm kind of basically seeing is that there's a --
12 there's a different -- there's a different perception
13 of open space versus common area.

14 LAURA COOPER: I think that's true, but I think
15 functionally for the most part they're -- they're
16 synonymous at Brasada Ranch.

17 When we describe open space, you're not allowed
18 to build -- you're not allowed to construct buildings,
19 permanent improvements, but a trail is just hey, you're
20 allowed to walk along here. Right?

21 MS. HERMRECK: It's a common path. It's a cow
22 -- a cow goes to water, it goes *(inaudible)* path.

23 LAURA COOPER: Exactly.

24 MS. HERMRECK: -- that's the way the trails
25 *(inaudible - talking over each other)*.

1 LAURA COOPER: Exactly.

2 And they're identified as common areas on the
3 plats. And the CCNRs are very clear that common areas
4 are available and open to anybody. You can't build an
5 improvement on it, you know, I can't -- I can't
6 construct a house, I can't construct a -- you know,
7 probably I can't construct a corral, I probably can't
8 construct, I don't know, any -- any type of building.

9 MS. HERMRECK: Permanent structure.

10 LAURA COOPER: Yeah, exactly. Exactly.

11 I mean, and in fact, a lot of these trails are
12 actually natural surfaces. They're not -- you know, I
13 mean some of them are -- are more permanent. But
14 again, they're -- they're level to the ground. We're
15 not building buildings, so...

16 MS. STEC: I wanted to address that.

17 MS. HERMRECK: Oh, excuse me, Laquita.

18 MS. STEC: Just in looking at this map, I don't
19 know if you can see, from the slide --

20 LAURA COOPER: Not really. I have very
21 *(inaudible)*.

22 BRENT MCLANE: I can see it. I can answer to
23 it.

24 LAURA COOPER: Okay.

25 MS. STEC: So, this -- it's kind of hard,

1 because like paint is going to be (*inaudible*). Down
2 here and here is Phase 15.

3 BRENT MCLANE: Correct.

4 MS. STEC: Yes.

5 BRENT MCLANE: Correct.

6 MS. STEC: And this up here is really not
7 developed yet.

8 BRENT MCLANE: No.

9 MS. STEC: Okay. So the boundary of this, of
10 15, the blue that goes around here, is going to have a
11 trail around the boundary of this -- this boundary? Or
12 this is the trail that already exists, that will
13 remain?

14 BRENT MCLANE: From the trail that you're
15 pointing to at our south border --

16 MS. STEC: The turquoise blue.

17 BRENT MCLANE: Exactly. That trail already
18 exists.

19 MS. STEC: Okay.

20 BRENT MCLANE: Our plan would be to continue to
21 improve it. What we've been doing is making the land
22 more short.

23 MS. STEC: Okay.

24 BRENT MCLANE: So, let me try to explain that.
25 If you're out there today, it's good for equestrian,

1 which is using it today, but not -- might not be great
2 for mountain biking.

3 MS. STEC: Okay. So that's just part one.

4 BRENT MCLANE: Okay.

5 MS. STEC: *(inaudible)*. Okay. So in the
6 existing trail to be abandoned, the yellow line that
7 goes from up here where there is nothing --

8 BRENT MCLANE: Correct.

9 MS. STEC: -- through the -- through Phase 15.

10 BRENT MCLANE: Correct.

11 MS. STEC: Okay. Was that on the map when
12 people purchased their properties then?

13 BRENT MCLANE: Nobody's purchased property
14 *(inaudible - talking over each other)*.

15 MS. STEC: That was going to be my next
16 question.

17 BRENT MCLANE: Right.

18 MS. STEC: Because it's a preliminary thing,
19 have there been -- there have not been lots sold.

20 BRENT MCLANE: No lots *(inaudible - talking*
21 *over each other)*, exactly.

22 MS. STEC: But is there an existing map so that
23 they can see that there is?

24 BRENT MCLANE: We have a trail map at Brasada
25 Ranch that is included. It's given out at the club,

1 given out to the resort guests. Those trails are all
2 on it.

3 MS. STEC: Okay.

4 BRENT MCLANE: This is what we shared with the
5 County and Ann and others back in June when it was --

6 MS. STEC: Yeah, I thought this looked
7 familiar, but --

8 MS. HERMRECK: You (*inaudible*) get all this --

9 BRENT MCLANE: Yep.

10 MS. HERMRECK: -- (*inaudible*) is on what you
11 give --

12 BRENT MCLANE: It's on trail map today. It
13 actually has a name, might be Buckaroo, might be
14 Wrangler, I don't know exactly, but it's on the map.

15 LAURA COOPER: Yeah, 'cause anyone can use it
16 until it's removed, right?

17 BRENT MCLANE: Correct. We haven't finished
18 everything out there yet.

19 MS. STEC: So the nearest proposed trail, I'm
20 assuming is the red one that goes over here? You have
21 a proposed trail on the boundary that --

22 MS. HERMRECK: Yeah, the pink one's in there,
23 the pink and red are --

24 BRENT MCLANE: Well, the red trail runs let's
25 call it north/south.

1 MS. STEC: Yes.

2 BRENT MCLANE: Right? And it runs right before
3 -- between 14 and 15.

4 MS. STEC: Okay.

5 BRENT MCLANE: Let me look at it this way since
6 you are. So 14 is on your left --

7 MS. STEC: Yes.

8 BRENT MCLANE: -- 15 is on your right. The red
9 trail is a canyon trail that runs north/south between
10 14 and 15. It will intersect the road in 15 and pop
11 out on the other side of the road at 15.

12 MS. STEC: Okay.

13 BRENT MCLANE: It doesn't -- it's not a trail
14 that we're improving in 15.

15 MS. STEC: Okay. So it will connect with the
16 existing trail, the turquoise down here --

17 BRENT MCLANE: Correct.

18 MS. STEC: -- which is at the edge of the open
19 space of this peninsula of Phase 15. Okay.

20 Now, is that on the maps too?

21 BRENT MCLANE: What? The --

22 MS. STEC: This one.

23 MS. HERMRECK: The red and the pink one. The
24 pink one I think.

25 MS. STEC: The red and the pink.

1 MS. HERMRECK: Yeah.

2 MS. STEC: Well, the red --

3 BRENT MCLANE: It would be -- so that map we --
4 we acknowledge there was a lot on that map. So we
5 tried to simplify it given the conversation that's
6 taking place here, so we can all see exactly what we
7 proposed long term.

8 MS. STEC: Okay. Long term and (*inaudible* -
9 *talking over each other*)?

10 BRENT MCLANE: Not entirely. I mean, again,
11 you know, who knows, right? Interest rates just went
12 to five percent, everyone's talking about the greatest
13 inflation in 40 years. I don't know. I hope people
14 still want to come to Prineville and still want to buy
15 at Brasada Ranch and be in Crook County, but I don't
16 know. So some of this is dictated by how real estate
17 sales continue and how we develop.

18 So, this is a little bit more accurate -- well,
19 is more accurate and might be a little bit more clear
20 in that that trail one heads up north, comes down
21 between 14 and 15. That's it. All these other trails,
22 two, four and -- where did three go? It's on the
23 bottom so it runs up the side. Those are all existing
24 trails, they just haven't been approved. So they're
25 variable terrain.

1 MS. HERMRECK: Those are the Jeep trails.

2 BRENT MCLANE: Those are the Jeep trails, the
3 equestrian trails. You can walk on them --

4 MS. HERMRECK: You ride a horse on them.

5 BRENT MCLANE: Yeah. And we have trail signs
6 out there today that say listen, these are multi-use
7 trails, you know, proceed with caution.

8 So, I think to answer your point is, what I
9 think the question was, when would we approve them.

10 Along with Phase 15, we would go ahead and get
11 two done. Right? So we would already improve one,
12 let's go improve the balance of two, which would take
13 us along the south border of our property and along the
14 south border of Phase 15. Let's do that immediately
15 while we're doing Phase 15 and finishing up.

16 The others I wouldn't go to until we start
17 understanding better what exactly would we do with that
18 land. Maybe there's a different plan for it in the
19 future. I don't know. But I'm not proposing to
20 improve that today.

21 MS. STEC: Okay. So my next question then is --

22 BRENT MCLANE: Or those additional lots today.
23 Sorry.

24 MS. STEC: -- is does the citizen, or the
25 resident group that are here tonight on the appeal --

1 BRENT MCLANE: Yes.

2 MS. STEC: -- talking about trails, none of them
3 actually live in Phase 15, because no lots have been
4 sold.

5 BRENT MCLANE: Correct.

6 MS. STEC: They live in other phases of the
7 subdivision --

8 BRENT MCLANE: Correct.

9 MS. STEC: -- that have -- they have bought
10 thinking it was open space and then a trail appeared.
11 Is that my correct understanding?

12 BRENT MCLANE: Somewhat, yes.

13 LAURA COOPER: Yes.

14 MS. STEC: Okay. So their wish is to have the
15 language changed in any future approvals of plats at
16 Brasada that it include there will be a trail here, is
17 that...

18 BRENT MCLANE: I don't want to speak for the
19 Appellant, so...

20 MS. STEC: Okay. But that's the impression --

21 BRENT MCLANE: That is my opinion.

22 MS. STEC: I don't know if I get to ask
23 anybody.

24 MR. BYBEE: We can open it back up to them for
25 questions after --

1 MS. STEC: Don't you think it's worth --

2 MS. HERMRECK: It's up to you. I mean, you
3 have this -- you have that red trail, number two,
4 already on here with your -- so there's going to be
5 houses that are going to be close to this trail. One
6 it almost looks is going to go to the back door.

7 BRENT MCLANE: We have one in and two in, and
8 all that two does is get approved. You're correct.

9 MS. HERMRECK: Okay. So that right there, if I
10 were a homeowner and I was going right there where that
11 one touched, I would be able to see that.

12 BRENT MCLANE: Yeah, it's actually -- it would
13 be a part of your sale story, right, it's hard to miss.

14 MS. HERMRECK: And it's -- okay.

15 BRENT MCLANE: That trail is there. That's our
16 southern border. What is that area out there? What is
17 that trail connecting to? It's all -- this is visible.

18 MS. HERMRECK: Okay.

19 LAURA COOPER: Can I make a point? Something
20 you said reminded me of something I was thinking while
21 we were listening to some testimony from some members
22 of the Coalition. You know, their argument is that we
23 should have to show all trails on a plat. Well, point
24 of fact, there's only a tiny little trail being shown
25 on Phase 15. But the arguments about this is about

1 disclosure, it's about so I know what's going to be
2 near my lot, there's kind of a big hole in that -- that
3 logic, because when you buy a phase in Brasada, if
4 there is undeveloped land around you, you're never
5 going to know what's in that phase in the future.

6 So let's say you have a lot that's on the
7 exterior part of your phase and it abuts up -- it abuts
8 land that is not open space, that's future land that
9 the developer intends to develop, right? You don't
10 know what's going to be in there. There could be a
11 trail that runs right behind your home. Right?

12 So the idea that we're going to solve their
13 concerns about always knowing exactly everything that's
14 going to be anywhere near their home is extremely
15 flawed. It's -- we cannot say that. Because point of
16 fact, one of the key purposes of developing in phases
17 is to be able to respond to market conditions and to be
18 able to respond to real conditions on the ground.

19 You know, when we go to develop a phase, we
20 actually have to go out and look at the land and see
21 what it's suitable for, right? And we also have to see
22 what market conditions will bear, and those things
23 change over time. So that's the reason why there was
24 no requirement initially to say yes, these are where
25 the trails will be and let's set them in stone. Right?

1 So that's why the original approval gave us
2 flexibility.

3 And so I understand why if you're buying a lot
4 you want to know all these things, but some things you
5 can't necessarily know. And we cannot go back and
6 rewrite the 2003 conditions of approval, which I
7 believe is what they'd really like to do, because I
8 think that's how they could achieve what they want to
9 achieve. But you just can't do it under Oregon Land
10 Use system. So...

11 MS. HERMRECK: Thank you.

12 Are there any other questions? Les, do you
13 have a question?

14 MR. WILLIAMSON: No, a comment.

15 MS. HERMRECK: Okay.

16 MR. WILLIAMSON: I have a comment. You know, I
17 think the Coalition has some legitimate concerns, no
18 doubt. However, we as Commissioners tonight, we're
19 here to deal with Phase 15. And -- and so I think it
20 will be important, and maybe I would encourage you if
21 there were other concerns, that's something that you
22 might want to take through a different avenue. But
23 we're here tonight focusing on Phase 15 in response to
24 -- in response to Staff's recommendations and findings.
25 So, just a comment.

1 MS. HERMRECK: Okay.

2 Bob, do you have anything?

3 MR. LUNDQUIST: No.

4 MS. HERMRECK: Okay. If I open it back up --

5 LAURA COOPER: Madam Chair, Brent still has one
6 or two things he would like to say if that's all right.

7 MS. HERMRECK: Go ahead. I'm going to make you
8 go for five minutes. You have five more minutes.

9 BRENT MCLANE: I'm going to go for less.

10 MS. HERMRECK: Okay, good.

11 BRENT MCLANE: How's that?

12 MS. HERMRECK: I like that.

13 BRENT MCLANE: So, listen, I appreciate every
14 owner of Brasada Ranch, I appreciate everyone in this
15 room. I have tried to listen to everybody. We have
16 sent out surveys, we have had polls, we have had more
17 surveys. We have town halls every year, we had two in
18 one year, where these trails are all been discussed.

19 Back in June when we were doing Phase 5, you
20 guys might remember there was another coalition here in
21 a way, right? Not formed, but by way of body. They
22 want trails, right? This is a -- this is a well
23 attended room. There's 1200 more members out there at
24 Brasada Ranch that aren't here tonight. So we've got
25 to think about that whole, and all I've been trying to

1 do is to get trails in areas where they make the most
2 sense, right? The development has changed
3 considerably. What's happened during the pandemic has
4 changed everything. Everybody -- all of a sudden
5 there's a lot of development activity happening. We've
6 got to make smart decisions. We've attempted to do it
7 with everybody's input.

8 The idea that trails on final plats is the only
9 thing that provides teeth just isn't true. I mean, a
10 real estate expert buying land should understand what
11 surrounds their plat. It's there, it's public, it's
12 available. That's why I provided you that Phase 3
13 plat. It's public information that Lot A, B and C are
14 common areas. You then have to ask yourself the
15 question, as a real estate expert, what's a common area
16 in the declarations. The declaration then goes on to
17 say the common area is for the enjoyment and the use of
18 all members of Brasada. If that doesn't sound right to
19 you, you should stop. You shouldn't buy that property.
20 Real estate experts should know that better than
21 anybody.

22 The -- I think that's all about trails. I mean,
23 the other idea that, you know, these trails are open to
24 the public, we don't allow trespassing. We do
25 everything we can to keep people from trespassing in

1 our property. To say, therefore, if somebody slips by
2 it's a public trail, that's a bit of a stretch. And we
3 do a ton to police this community. In the future we're
4 even moving our gatehouse. But would that keep
5 everybody and anybody that wanted to trespass off of
6 our property? Probably not. But to then make that
7 understood for what is public just doesn't compute for
8 me.

9 On the OLU side there were a couple of different
10 comments. The declaration comment about a cabin, that
11 was our language that we added for understanding.
12 That's not in the declaration.

13 What is, is just simply unit, and it doesn't
14 speak to them as, you know, the unit is a cabin in the
15 declaration, but the way we've been approaching the
16 Planning Commission, the way Jeld-Wen was approaching
17 the Planning Commission, the way certain documents very
18 specifically state that these two bedrooms are two
19 units, three are three and why they're being built the
20 way they are, there is communication back and forth,
21 that was the intent and it has been for 17 years.

22 For anybody to say that these things haven't
23 been made available, again, I am happy to go back to
24 '14 where the data is accurate, right, and that we can
25 provide it to you and you can see that one bedroom

1 cabins are used -- upwards of 21 percent of all of our
2 reservations are in one bedroom cabins. Why an
3 individual owner wouldn't have seen it when they came
4 to make a reservation, I can't say. But if you go on
5 my website tonight, if you call my reservations team
6 right now, they well tell you a one bedroom cabin is
7 available.

8 The last point -- well two things I would say is
9 Dan's right, you know, the cabins that exist today
10 don't have the fire walls, they don't have the
11 sprinkler systems, they don't have the other things
12 that are required in R-1, which is why in recent
13 conversations with the Planning Commission and the
14 Planning Department, if we want to build more cabins,
15 they have to have all those things. That's what you've
16 told us, that's what we've learned, that's how it's
17 been interpreted now. It just wasn't interpreted that
18 way when they were built.

19 The case about Sunriver, that case didn't go
20 back and attack all the cabins they had, it just
21 simply said they couldn't be building that same thing
22 in the future. Right? So the attack shouldn't be on
23 what we have, it should be on what we -- what do we do
24 next.

25 We pivoted, not liking the idea of having to

1 build those cabins that way with fire walls and
2 sprinkler systems, so we didn't like the design of it.
3 And it was taking up so much space, so we changed it
4 with a different plan, which is now individual suites
5 around the pool, and those are now under construction.

6 I think the last thing I would just say is this.
7 It feels like the Staff and the Applicant, myself,
8 we're aligned. We want to get 15 through. There are a
9 number of things, though, inside of our exhibits that
10 do ask for further clarification, such as geotechnical
11 reports. If we can get to that tonight that's
12 fantastic, but if we could simply get Phase 15 approved
13 and get it moving that would be even better.

14 I appreciate your time.

15 MS. HERMRECK: Okay. Thank you.

16 Any questions?

17 MR. WILLIAMSON: No.

18 MS. HERMRECK: Okay.

19 Brent, obviously you're next on the thing, but
20 if I did open it up for five minutes for the
21 Applicant's representative -- or no not -- not
22 Applicant -- Appellant -- Appellant representative,
23 then would I have to go back to Applicant? Yes.

24 MS. STEC: Yes. Because usually --

25 MR. WILLIAMSON: I would say so.

1 MR. BYBEE: Right. Yeah. Yeah, they would --
2 yeah, they would get rebuttal. So yeah, you can open
3 it up to the Appellant again if you'd like, and then we
4 can provide another opportunity for rebuttal.

5 MS. HERMRECK: Okay. I think, because this is
6 a crowded room, because you do represent, I'm assuming,
7 everyone in here, that you're all members of the
8 Coalition, I will allow you to come back up for your
9 rebuttal for five minutes, and then I'll allow him five
10 minutes, which --

11 MS. BURGESS: Thank you, Madam Chair.

12 MS. HERMRECK: -- we're going to keep it in the
13 time --

14 MS. BURGESS: I don't think I'll need five
15 minutes, but I do think there were some issues that
16 were a little outside of that and I appreciate the
17 opportunity just to address a couple of points to make
18 it clear.

19 I realize this is about just Phase 15. My
20 clients do have standing. I mean, of course this is an
21 application before you for a tentative plan approval.
22 So no, nothing's been built, nothing's been sold, our
23 clients -- my clients have standing to make these
24 comments.

25 And they talked about the phase development, and

1 -- and the map does show a trail that crosses over
2 Phase 15, so this is at issue in Phase 15. And I
3 wanted to point to the specific code provision that I
4 didn't get to address earlier, I did generally, but I
5 didn't specifically cite to it. With respect to
6 destination resort standards, 18.116.040(4) that we
7 were talking -- our position is that the trails
8 (*inaudible*) to be constructed or bonded over at the
9 time of the phase, what that sub -- part of that sub-
10 paragraph says is in phased development, developed
11 recreational facilities and other key facilities
12 intended to serve a particular phase shall be
13 constructed prior to lot sales in that phase or
14 guaranteed by providing an agreement and security.

15 So I mentioned that before, but I -- I want to
16 be specific, because in phase development -- so again,
17 I think the Code contemplates that in 2003 maybe they
18 didn't know everything. Condition number 15
19 contemplates that and says for each phase you're going
20 to show us the final locations. And the Code
21 requirement then is that in these phased developments,
22 developed recreational facility, the definition of
23 "developed recreational facilities" includes nature
24 trails. And Ms. Cooper told you that -- I believe she
25 argued that a trail is not a permanent improvement, and

1 we disagree with that. The definition of "developed
2 recreational facilities" means improvements
3 constructed, and goes on including nature trails.

4 So they are improvements that are serving Phase
5 15, they've represented that on a map, part of this
6 trail will cross Phase 15 and serve it. And so these
7 are permanent improvements that I argue are an easement
8 that needs to be shown. But whether we call it an
9 easement or not, Condition 15, back in 2003, they said
10 okay, you don't know everything now, but in -- as the
11 phases go forward, you will depict the final location
12 surfacing and sizing.

13 And so, you know, you've heard the disclosures
14 and the real estate and this and that, but what is the
15 purpose of that condition if there is nothing behind
16 it? And you tie it directly to the Code that it
17 contemplates that in phase development these developed
18 recreational facilities that includes nature trails
19 will either be constructed or a bond will be provided,
20 and that's the -- that's the reason. It's either going
21 to be there constructed, or you're going to provide an
22 improvement agreement in a bond so that that finality
23 is -- is cemented.

24 And so I don't want to go outside or repeat the
25 other things, but I wanted to add that.

1 I appreciate your time.

2 MS. HERMRECK: Before you leave, are there any
3 questions from the Commissioners?

4 MR. WILLIAMSON: No.

5 MS. HERMRECK: Okay.

6 Laquita?

7 MS. STEC: No.

8 MS. HERMRECK: Thank you very much.

9 MS. BURGESS: Thank you.

10 MS. HERMRECK: All right. Five minute
11 rebuttal.

12 MR. BYBEE: Anyone else? Any of the other --

13 MS. HERMRECK: Do I -- do I -- okay.

14 MR. BYBEE: Yeah, I would.

15 MS. HERMRECK: Is there anyone else that wanted
16 to make a rebuttal since I opened it up?

17 *(No audible response)*

18 MS. HERMRECK: Okay.

19 UNIDENTIFIED FEMALE: I -- I -- I would.

20 MS. HERMRECK: Okay. She didn't speak before,
21 is that still allowed?

22 MR. BYBEE: Yes. Yeah, since they're part of
23 the Appellant group.

24 MS. HERMRECK: Okay. Name, address, and again,
25 if you are -- state that you're a member of the

1 Coalition.

2 COURTNEY SATKO: Yes. So, I'm Courtney Satko,
3 address is 15660 Southwest Ranchland Drive. And I am a
4 part of the Coalition.

5 So, one of the comments that was made in regards
6 to is there a differentiation between common space and
7 the neighborhood space. If you want to pull up on
8 Exhibit 4, the colored map showing the Brasada Ranch
9 home sites and ranch cabins. Just to give you an
10 example, my home site is, if you're looking at the very
11 top, there are three orange boxes along with a couple
12 of *(inaudible)*.

13 MS. HERMRECK: What page are you on again?

14 COURTNEY SATKO: They're not numbered, it's
15 after --

16 MS. ELLIOTT: Which exhibit did you say?

17 COURTNEY SATKO: Exhibit 4.

18 MS. HERMRECK: Oh, a pdf. I'm so sorry.

19 *(inaudible - talking over each other)*

20 COURTNEY SATKO: So, the pond -- the two ponds
21 below that are connected, that is the area that Dan was
22 referring to that there was some, you know, barkdust
23 just randomly put down there to eliminate *(inaudible)*.

24 I'm across the way looking out at the other
25 pond, which actually does -- there's -- there's no pond

1 there. And if you were to fly out of the Redmond
2 airport and look out and see all of the natural scape,
3 do you have any incentive to just go stroll into that
4 naturally? Would you naturally just go in there?
5 That's as natural as that space is.

6 So if you're trying to say that the people that
7 are staying in the cabins that are not the general
8 public who stay for one night, very transient type of
9 mentality, these cabins would allow people to enter,
10 that are people like that, to enter in a very private
11 space. It is not just some grass that is just ready
12 for you to just stroll and two people walk their dogs
13 out there. No one goes out there. That is an
14 example.

15 And when we had several meetings with -- that
16 Brent said, you know, with the Coalition saying that,
17 you know, "I've been trying to get information and get
18 feedback," there are -- it's going to turn into a
19 Sunriver. That craziness, that mentality of
20 bachelorette parties, things going into this very
21 private place within Brasada.

22 And when we mentioned our concern about safety
23 he said quote/unquote, "I have a right to put a path
24 there." That is what he said to us when we -- with the
25 same mentality.

1 So I just want you all to know that this is the
2 mentality of knowing the differentiation between public
3 space and neighborhood space. If you were to come and
4 sit in my back yard, there's no way you would think
5 that that is common space.

6 So, that is one thing I would like to say, just
7 because that is silly to think that. If you walk
8 around you would notice that.

9 MS. HERMRECK: Are there any questions?

10 MR. WILLIAMSON: No.

11 MS. HERMRECK: Okay. Any more comments?

12 *(No audible response)*

13 MS. HERMRECK: Okay. Now, on my script --
14 well, oh, no -- yes, yes, the rebuttal. Sorry. I
15 almost didn't do you, I wasn't following my script very
16 well.

17 LAURA COOPER: Thank you.

18 I did want to respond to one thing Ms. Burgess
19 said, which was talking about the Destination Resort
20 Code 18.116.0404, and that's the provision that
21 requires that the required recreational improvements be
22 bonded. And she's absolutely right. However, what she
23 misses is something that Brent did cover in his Staff
24 report, which is that that is talking about the
25 requirements for a destination resort. And when you

1 build a new destination resort, you are required to
2 spend, I don't know, 25 million dollars --

3 BRENT MCLANE: It was seven million back in the
4 day when this destination resort was put together,
5 today it's 15, 20, whatever the numbers (*inaudible*).

6 LAURA COOPER: Yeah. You're required to spend
7 a minimum of that amount of money on recreational
8 facilities. You know, it can be a swimming pool,
9 tennis courts, equestrian facilities, whatever, nature
10 trails, all of those can be included. And in this
11 community none of the trails were ever included in
12 meeting that requirement. We had all -- a whole
13 assortment of other recreational facilities that were
14 required, and those are the ones that are required to
15 be bonded, and that's what the County required when the
16 original development plan was approved and before Phase
17 1 was platted, they required that all of those things
18 be bonded or constructed.

19 And so these trails are what I would call bonus
20 recreational facilities. They were not ones that we
21 offered up as meeting the minimum investment required.
22 So they were not part of the required improvements for
23 the resort. They are simply additional amenities that
24 Brasada Ranch is providing to owners in the resort.

25 BRENT MCLANE: I do.

1 LAURA COOPER: I'll yield the rest of the time
2 to Brent, please.

3 BRENT MCLANE: I would only add, right, I mean,
4 the recreational facilities that are being quoted,
5 again, are exactly as Laura stated. They could have
6 included trail. I mean it states it, right, but it's
7 also meeting room, swimming pools, we built a golf
8 course, we built a clubhouse, we built the athletic
9 center, multiple pools, and we continue to do so today.
10 But that was the requirement. Jeld-Wen did a fantastic
11 job. Got it completed. The bond was then settled.

12 So, those provisions don't apply to what we're
13 speaking about here today.

14 Moreover, the trails that are already existing
15 that circulate around Phase 15, they don't serve this
16 phase only. That was the other comment made. This
17 isn't an amenity for this phase only. They remain and
18 have been and will continue to be an amenity for the
19 resort guests, the owners, and the owners' guests.

20 The -- I'm not really sure what to say about the
21 colored map. I don't know. I haven't seen that
22 colored map. I haven't seen any exhibits. I can
23 simply say this, to say just to sit on a piece of land
24 and wonder what's behind it, it is important as a
25 homeowner to know what you own, that's in the plat.

1 That's in the declaration. These are public, these are
2 recorded, they're available.

3 Last two things I would say is this, I hope that
4 if I said something like that, "It's my right," I don't
5 believe that that's ever been my language. I have
6 looked to have a conversation with homeowners. I've
7 never met individually with the Coalition. I've never
8 known who is a part of the Coalition until tonight,
9 knowing a few. But I have reached out to homeowners to
10 ask them their opinion. We have not made decision, you
11 know? Many of these conversations came from us
12 proposing a trail on common land, but we went to the
13 homeowners first to ask their opinion. We're not
14 finished with that conversation today.

15 Lastly, I would say this, is that, you know, to
16 venture out at Brasada -- I lived at Brasada from 2010,
17 '11, and into '12, and my wife and I ran those trails.
18 The trail that Dan speaks of that runs by his house, we
19 used that trail all the time before Dan even bought.
20 So to say they weren't used isn't appropriate. They
21 were and are. So to attack them today is not an
22 appropriate move.

23 Phase 15 though again, there are no trails
24 except for that one space, let's address it, let's get
25 it approved, let's move forward. I commit to continue

1 to have a conversation with our homeowners and figuring
2 out the best way to improve the community. That's what
3 we're trying to do.

4 I appreciate your time.

5 Any questions?

6 MS. HERMRECK: Thank you.

7 Does anyone have any questions?

8 MR. WILLIAMSON: No.

9 MS. HERMRECK: Okay. Thank you.

10 BRENT MCLANE: Thanks.

11 MS. HERMRECK: Okay. Moving on to my official
12 script. I've marked where I'm supposed to be. Does
13 Staff have any other comments in response to testimony
14 or evidence offered?

15 MR. BYBEE: So, I'll -- I mean, I'll
16 acknowledge what Les said again. The criteria that
17 we're looking at is specifically for Phase 15. It
18 seems that a large amount of the testimony has been
19 directed towards issues within other phases, trails
20 throughout the resort.

21 To answer the Applicant's question as far as
22 process for trails that are constructed after approval
23 of the preliminary plat, what we would most likely
24 direct that process towards is what you folks have
25 recently approved within our Code, which would be a

1 declaratory ruling. It would essentially be the
2 Planning Commission making a decision on what process
3 that type of review needs to go through and what would
4 be applicable towards that.

5 I don't want to get too deep into it, but I do
6 want to mention the only reason that we have
7 destination resort overlays in the county is because of
8 goal eight, which there are 15 land use goals statewide
9 for the state of Oregon, goal eight is recreation. That
10 is the reason that we have destination resort overlays.
11 It's not intended to permit large amounts of
12 residential development that are only used by a single
13 individual, it's for the benefit of the county and for
14 the benefit of the State.

15 I do want to go to the definitions at the
16 beginning of 18.116.

17 MS. ELLIOTT: Is that in your slide show at
18 all?

19 MR. BYBEE: No. Let's go to the Code.

20 MS. ELLIOTT: Say that for me one more time.

21 MR. BYBEE: 18.116 in the section number 3-0.

22 MS. ELLIOTT: Okay.

23 MS. HERMRECK: (*inaudible*) from this angle you
24 can't see it.

25 MR. BYBEE: Okay.

1 MS. ELLIOTT: I'll make it a little bigger.

2 Can you guys see that?

3 *(inaudible)*

4 MR. BYBEE: Can you folks still see that?

5 MS. ELLIOTT: I'll make it as big as I can.

6 *(Pause while working on slide)*

7 MR. BYBEE: Is that better? Okay. So for open
8 space --

9 MS. ELLIOTT: *(inaudible)*, sorry.

10 MR. BYBEE: "Open space" means any land that is
11 retained in a substantially natural condition or is
12 improved for outdoor recreational uses such as golf
13 courses, playing fields, hiking or nature trails, or
14 equestrian or bicycle paths, or is specifically
15 required to be protected by a conservation easement.
16 Open spaces may include ponds, lands protected as
17 important natural features, lands preserved for farm or
18 forest use, required landscaped areas, and lands used
19 as buffers. Open space does not include residential
20 lots or yards, streets or parking areas.

21 Whenever a destination resort is approved, and
22 as you folks are aware with every single phase that's
23 come through, each phase is required to have 50 percent
24 open space. Or the entire resort -- sorry, I'm going
25 to rephrase that. The entire resort is required to

1 have 50 percent open space. And a demonstration
2 towards compliance with that ratio is required through
3 each phase.

4 The only -- one of the other points I was going
5 to bring up, the Appellant did cite, as Laura
6 mentioned, the required recreational facilities. I --
7 I think that was described well. We -- with -- Staff
8 went through and reviewed the original application, and
9 we reviewed the original development plan that was
10 approved by the County, nowhere within those documents
11 did it mention trails as a required developed
12 recreational facility. Only the portions that were
13 bonded, which Staff even went and looked at the bond as
14 well, and nowhere in there was -- were trails mentioned
15 as part of that bond.

16 I do want to express the point that it is not --
17 it is not your decision on whether trails qualify as
18 easements. Staff -- Staff's role, whenever we go
19 through a partition, or the Planning Commission's role,
20 whenever they go through a subdivision or a subdivision
21 phase, our only requirement is that we state if there
22 are proposed or existing easements within the platted
23 area that they be identified on the plat. It is the
24 Applicant's responsibility to coordinate with their
25 surveyor to figure out if there are any existing

1 easements, and also if there are proposed easements,
2 that they put together that documentation and identify
3 them on the face of the plat. It is not our role to
4 determine if something qualifies as an easement, it's
5 typically a civil matter that we don't get involved in.

6 So, the -- the original decision that was cited
7 to, talking about sidewalks, initially when Staff made
8 that finding that alternative pedestrian routes would
9 be provided in place of sidewalks, we based that
10 decision based on the evidence that was provided to us
11 at the time. Since then we've updated that finding,
12 and within the updated Staff report that we've provided
13 you folks that is addressed. And we have said okay,
14 now that we've received evidence that sidewalks are not
15 required, the request complies.

16 And that's all I can think of right now.

17 MS. HERMRECK: Okay. Thank you.

18 Is there any -- anyone have a question of Brent?

19 MR. WILLIAMSON: No.

20 MS. HERMRECK: Okay. All right.

21 So, then the next thing on my script is, has
22 there been a request to continue the hearing or to keep
23 the record open?

24 And again, do you want to explain to them what
25 leaving the record open is, just briefly?

1 MR. BYBEE: So if -- if a continuance is
2 requested, the hearing would be continued to a date and
3 time certain. And we can -- you can request that the
4 record be kept open, it's at the discretion of the
5 Planning Commission to determine if they want to keep
6 it open or not, but there would be a seven day period
7 for any new testimony. And I'm trying to make sure
8 that I get this right.

9 MS. HERMRECK: That's why I make you do that.
10 So I (*inaudible*).

11 MR. BYBEE: Will's really good at this since he
12 went to the (*inaudible*).

13 MS. HERMRECK: Yes. But I want them to be
14 aware -- keeping a record open is very confusing,
15 that's why I want you to be aware of this process.

16 MR. BYBEE: Do you maybe -- Will, do you want
17 to describe the rest of that since you're on the call?

18 MS. HERMRECK: Will's asleep.

19 WILL VANVACTOR: Will VanVactor, Community
20 Development Director. The -- the normal process is
21 that the record gets left open for seven days for any
22 party to submit additional comments or argument, and an
23 additional seven days for rebuttal, followed by seven
24 days for the Applicant to submit its final argument.

25 Are there any questions about that?

1 MS. HERMRECK: No.

2 MR. WILLIAMSON: No.

3 MS. HERMRECK: Okay. But we make the decision
4 on keeping the record open.

5 WILL VANVACTOR: Yes.

6 MS. HERMRECK: Okay. Is there any desire to
7 keep the record open?

8 MR. WILLIAMSON: No.

9 MS. HERMRECK: Laquita?

10 MS. STEC: No.

11 MS. HERMRECK: Okay. Seeing none, is the
12 Applicant willing to waive their seven day period for
13 final argument?

14 LAURA COOPER: *(No audible response)*

15 MS. HERMRECK: Could you state it for -- since
16 it's an audio recording?

17 LAURA COOPER: Yes. The Applicant is not
18 requesting that the record remain open or that there be
19 additional time for rebuttal.

20 MS. HERMRECK: Okay.

21 The Commission must then determine if the
22 hearing should be closed or continued to a time and
23 date certain either for additional testimony,
24 additional information from Staff, or for deliberation
25 only. If the record is kept open seven days for

1 additional written testimony, seven days for a response
2 to new evidence, and seven days for the Applicant's
3 final argument. New evidence is received at the
4 hearing, poll the Commissioners on whether they need
5 more time to review the information.

6 Since we did get Exhibit 4 late, we did review
7 it for ten minutes. Les, do you feel you had enough
8 time?

9 MR. WILLIAMSON: Yes.

10 MS. HERMRECK: Laquita?

11 MS. STEC: Yes.

12 MS. HERMRECK: Bob?

13 MR. LUNDQUIST: Yes.

14 MS. HERMRECK: And I do also.

15 Okay. So, I am going to ask for a motion to
16 close the hearing, continue the hearing to a time and
17 date certain with additional testimony or deliberation,
18 or close the hearing but keep the record open.

19 If the hearing is closed, please ask Staff to
20 close the phone lines. The Planning Commission may
21 make a motion to start deliberations. The Chair shall
22 ask for a motion and second and then allow for
23 deliberation.

24 MS. STEC: Madam Chair, I move we close the
25 public hearing and begin deliberations.

1 MS. HERMRECK: Okay.

2 MR. WILLIAMSON: Second.

3 MS. HERMRECK: And there's a second. There's a
4 motion to close the public portion of the hearing.

5 I'm going to go for vote. Is there any comment?

6 MR. WILLIAMSON: No.

7 MS. HERMRECK: Okay. I should put all three of
8 you on my left. Okay. All right. All those in
9 favor.

10 MR. WILLIAMSON: Aye.

11 MR. LUNDQUIST: Aye.

12 MS. STEC: Aye.

13 MS. HERMRECK: Aye.

14 MS. HERMRECK: And no one is opposed.

15 Okay. So at this time I am entertaining a
16 motion. As you can see, Staff has given us three
17 things: "I move to adopt the amended findings as
18 proposed, which will then be incorporated into the
19 original Staff report. I move to approve the amended
20 findings with edits. I move to deny the amended
21 findings with amended conditions and findings."

22 So does anyone have a motion that they are just
23 dying to tell me?

24 MS. STEC: Madam Chair, I do.

25 MS. HERMRECK: Okay. Laquita.

1 MS. STEC: I would like to move to approve the
2 amended findings with edits (*inaudible - audio cuts*
3 *out*) information from the current Staff report, which
4 will be incorporated into the original Staff report for
5 217-21-001013-PLNG. That was a motion to approve.

6 MS. HERMRECK: Okay. Do I have a second?

7 MR. WILLIAMSON: Second.

8 MS. HERMRECK: Okay. Les, that's been -- it's
9 been -- motion has been made and it's been seconded, is
10 there any discussion on the motion?

11 MS. HERMRECK: Bob?

12 MR. LUNDQUIST: No.

13 MS. HERMRECK: Les.

14 MR. WILLIAMSON: No.

15 MR. BYBEE: Sorry, clarification, which -- which
16 motion?

17 MR. LUNDQUIST: B.

18 MS. HERMRECK: B. To -- with the edits from
19 the Staff report --

20 MR. BYBEE: Okay.

21 MS. HERMRECK: -- which included things like the
22 20 percent --

23 MR. BYBEE: Mm-hmm.

24 MS. HERMRECK: -- grade, etcetera, etcetera.

25 Okay. Are there any -- is there any other

Motion to Amend

1 discussion, is there any questions of Staff?

2 Everything's good?

3 *(No audible response)*

4 MS. HERMRECK: Okay. Then I will call for the
5 vote.

6 Les?

7 MR. WILLIAMSON: Aye.

8 MS. STEC: Aye.

9 MS. HERMRECK: Bob.

10 MR. LUNDQUIST: I'll Abstain.

11 MS. HERMRECK: Abstention.

12 And I will vote aye.

13 Okay. So it says, if a decision is reached
14 please direct Staff to prepare the recommendation and
15 indicate if the decision will be signed by the Chair
16 *(inaudible - audio cuts out)* or outside of the
17 *(inaudible)*.

18 MR. BYBEE: So, Staff would recommend, since we
19 have to incorporate edits, that the Staff report be
20 compiled and then signed at the next Planning
21 Commission hearing.

22 MS. HERMRECK: Okay. So it will be part of the
23 agreement, go over the edits and things? Okay.

24 MS. STEC: Could I amend that to be more -- my
25 motion to be more specific so that we include the

1 updated trail map and the overnight unit count?

2 MS. HERMRECK: Well, isn't that in your edits?

3 Isn't that in your --

4 MR. WILLIAMSON: It's included in the edits.

5 MS. HERMRECK: Is that part of your edits. Do
6 you have the trail map?

7 MS. STEC: Does that include the edits? Or
8 those were the primary things that I should have been
9 talking about instead of grade.

10 MR. BYBEE: Do you want to pull up the last
11 slide (*inaudible*) slide show.

12 MS. HERMRECK: I thought that that's where that
13 map came from, but maybe I was wrong because I did
14 (*inaudible*).

15 MR. BYBEE: So, do you mean that, Laquita?

16 MS. STEC: Yes. Include the trail map and the
17 evidence on the overnight lodging unit ratio --

18 MR. BYBEE: Mm-hmm.

19 MS. STEC: -- in addition to the findings in
20 this -- in this --

21 MS. HERMRECK: That trail map was in there.

22 MR. BYBEE: So, Will, do we -- do you think we
23 need a new motion for that?

24 (*No audible response*)

25 MS. HERMRECK: Wake up, Will.

1 WILL VANVACTOR: Okay. I -- I think for the
2 sake of clarity it's probably a good idea.

3 MS. HERMRECK: Okay. I would entertain an
4 amended to your motion, an amendment to your --

5 MS. STEC: Do I need to repeat my amendment?

6 MS. HERMRECK: *(inaudible)*

7 MS. STEC: Here we go. Okay. I move to
8 approve the amended findings with edits which will then
9 be incorporated into the original Staff report. The
10 edits to include the updated trail map and the factual
11 evidence supporting compliance with the overnight
12 lodging unit ratio for 217-21-001013-PLNG.

13 MS. HERMRECK: Les, do you agree with that
14 amendment?

15 MR. WILLIAMSON: Yes, I do.

16 MS. HERMRECK: Okay. Is there any discussion
17 about this amended motion?

18 MR. WILLIAMSON: No.

19 MS. HERMRECK: All right. I will call for a
20 vote for the amendment.

21 Les?

22 MR. WILLIAMSON: Aye.

23 MS. HERMRECK: Laquita?

24 MS. STEC: Aye.

25 MS. HERMRECK: Bob?

For 217-22-000451-PLNG

Vote

1 MR. LUNDQUIST: Abstain.

2 MS. HERMRECK: And I'll be aye.

3 Okay. So now I am calling for a motion to close
4 the public hearing for 217-22-000451-PLNG.

5 MR. WILLIAMSON: *(inaudible)*

6 MS. HERMRECK: Les has made the motion.

7 MS. STEC: *(inaudible)*

8 MS. HERMRECK: Okay, well Laquita was gonna
9 second --

10 MR. LUNDQUIST: *(inaudible)*

11 MS. HERMRECK: Okay, I was gonna give Bob a
12 chance to get *(inaudible)*.

13 MR. LUNDQUIST: That's all right.

14 MS. HERMRECK: All right. There has been a
15 motion and a second, is there any discussion? If not
16 let's take a vote.

17 Les?

18 MR. WILLIAMSON: Aye.

19 MS. HERMRECK: Laquita.

20 MS. STEC: Aye.

21 MS. HERMRECK: Bob?

22 MR. LUNDQUIST: Aye.

23 MS. HERMRECK: And I'm an aye.

24 Thank you very much for coming and spending the
25 time here, *(inaudible)*

(End of meeting)

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STATE OF OREGON)
) ss.
COUNTY OF Linn)

I, Jean Mueller, a Court Transcriber for the
State of Oregon, do hereby certify that I transcribed
the audio of the above meeting; that I thereafter had
reduced by typewriting the foregoing transcript; and
that the foregoing transcript constitutes a full, true,
and accurate record of the meeting.

Dated: June 24, 2022.



Jean Mueller
Court Transcriber
541-259-1139