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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.3
AUGUST 10, 2021**

Ms. McLean: Next we have your final D&O of the day, and these are Proposed Findings of Fact, Conclusions of Law, and Decision and Order denying the Maui Meadows Neighborhood Association and Pono Power Coalition's Petition to Intervene in County Special Permit and Project District Phase 2 Development Approval applications for the Paeahu Solar LLC project at Wailea, TMK: 2-1-008:001 and 056. Kurt Wollenhaupt was the project planner.

C. CONSIDERATION AND ADOPTION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Pursuant to Chapter 91, Hawaii Revised Statutes, and Maui Planning Commission Rule 12-201-119, no public testimony will be taken.

- 3. Proposed Findings of Fact, Conclusions of Law and Decision and Order denying Maui Meadows Neighborhood Association and Pono Power Coalition's Petition to Intervene in County Special Permit and Project District Phase II Development Approval applications for Paeahu Solar LLC at Wailea, Maui, Hawaii, TMKs: (2) 2-1-008:001 and :056 (CUP 2020/0008) (PH2 2021/0001) (K. Wollenhaupt) (Action on the matter was taken by the Commission at the May 25, 2021 meeting.)**

The Commission make take action to adopt, adopt with modifications, or take some other action regarding the proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Ms. McLean: And I see that the applicant's counsel, Mr. Goodin, is also on the line. They did submit some corrections that we want to be certain that action is taken on the document with corrections. And I see also that the petitioners counsel is also on the call. Mimi, could we get your guidance? I would think that the applicant would go first, followed by the petitioner, but if I have that backwards, please let me know.

Ms. Desjardins: No, that's correct. And just for the record, my understanding is, is that, the...those folks who are petitioning to intervene did not submit anything in writing, is that correct?

Ms. McLean: That's correct.

Ms. Desjardins: Okay, thank you.

Ms. McLean: So, Chair, if you would like to allow the applicant's counsel, Mr. Goodin, to offer comments on the document, be you.

Mr. Tackett: Sure, and did...do they need to promise to tell the truth in this situation or are we beyond that?

Ms. McLean: We're beyond that.

1
2 Mr. Tackett: Okay, yeah, please, please proceed.
3
4 Ms. McLean: Mr. Goodin, we can't hear you. Let me see, you seem to be unmuted on our end.
5
6 Mr. Christopher Goodin: I'm sorry, can you hear me now?
7
8 Ms. McLean: Yes.
9
10 Mr. Goodin: Okay, no need the videos, we can turn this one off. All right, well Commissioners—
11
12 Ms. McLean: Oh, we just lost you again.
13
14 Mr. Tackett: Just lost you.
15
16 Ms. McLean: When Stacey Grey disconnected, we lost your audio.
17
18 Mr. Goodin: Can you hear me okay?
19
20 Ms. McLean: Yes.
21
22 Mr. Goodin: Okay, well, Commissioners thank you very much for hearing this matter. At the
23 request of counsel, we submitted proposed Findings of Fact, Conclusions of Law and Decision
24 and Order. Thereafter, we identified a few points to correct, and so, we submitted a corrected
25 proposed decision on July 30th. We believe that the proposed decision is appropriate and
26 respectfully request that the Commissioners adopt the proposed decision. Thank you.
27
28 Mr. Tackett: Director, are we waiting for the opposition?
29
30 Ms. McLean: Did Mr. Goodin complete his remarks?
31
32 Mr. Goodin: Yes, I did.
33
34 Ms. McLean: Okay, then Chair, now would be appropriate for the petitioner to present comments
35 if they have any. I believe their counsel is here.
36
37 Mr. Tackett: Thank you, thank you, Director. If the petitioner could please present comments at
38 this time.
39
40 Ms. Linda Nye: Yes, thank you, Chair. We did file our written objections yesterday and served
41 them on Thomas Kolbe, who was the Corp. Counsel assigned to the case at the time, and also
42 to opposing counsel. We received a receipt from Mr. Chip Chase acknowledging that he had
43 received it. Any, any rate, our objections are simple. It's simply that the findings, proposed
44 Findings of Fact and Conclusions of Law do not reflect what the Commission actually argued and

1 discussed on the record. They are simply a redo of the arguments presented by applicant, and
2 that's it.

3
4 Mr. Tackett: I'm not sure where, where we go from here, Director, sorry.

5
6 Ms. McLean: I would ask if Mimi has any... if, if your counsel has any comments or advice or
7 guidance for you.

8
9 Mr. Tackett: Okay, yeah.

10
11 Ms. Desjardins: Yeah, I would just go ahead and request the recommendation from the Director
12 if you have not already given that, I've kind of lost track, sorry Michele, but other than that then
13 you're ready to vote. But I see that Commissioner Thompson has his hand up.

14
15 Mr. Tackett: Okay, let's go, let's work through that first. Commissioner Thompson, go ahead.

16
17 Mr. Thompson: Thank you, Director. I want to ask the petitioner why exactly they were petitioning
18 against this? This was for the solar project, right? So, you guys, wanted—

19
20 Ms. Nye: Petitioners—

21
22 Mr. Thompson: What's that, go ahead.

23
24 Ms. Nye: Yeah, Commissioner, may I speak? I mean, Chair, may I speak to that?

25
26 Mr. Tackett: Yeah, please do.

27
28 Mr. Nye: Yes. We were not petitioning against it. We're petitioning for a hearing to be able to
29 present...have both sides present full testimony about whether or not this is a good idea for Maui,
30 for the county, both, both the applicant can present their information and we could present our
31 information. And the point of a contested hearing is to give the Commission all of the information
32 it needs. We couldn't possibly in three minutes allowed for the testimony during that hearing to
33 prevent...to be able to present the expert testimony and the other types of testimony that would
34 have fully fleshed this out. What we were requesting was a hearing in, in other words, kind of a
35 mini trial to be able to present all of the evidence for both the applicant and the petitioners. That's
36 what the intervention was asking and that's—

37
38 Mr. Thompson: Well, I'm sure it's fun for the lawyers. It's not for the people that live here. Literally,
39 we have climate change on the front page of the paper. People are dying, and I didn't hear in all
40 the...the people that were against it, I mean, they had issues, the neighbors did, and one of them,
41 the biggest complainer, was actually on the Climate Resilience Committee for which was pretty
42 rich isn't it. Anyway, I didn't hear any questions, like we need something answered. It was more
43 of a we're legally we're just going to try to get in the middle of this to bog it down. And I didn't
44 hear one thing that you said that we didn't have the answer. And it went for hours in front of us,

1 hours and hours. And you ask what that...can I ask what the question is that there's something
2 that we want to know.

3
4 Ms. Desjardins: Sorry, Chair. Sorry, this is Mimi. So, the hearings portion of the, of this is over
5 and the only thing on the docket or on your...to be heard today is whether to adopt the proposed
6 findings. So, I would just caution Commissioners to not broaden the record by bringing up things
7 that aren't directly related to what's on the agenda today which is just are you going to adopt the
8 proposed findings or not.

9
10 Mr. Thompson: Sorry, counsel. Thank you very much.

11
12 Ms. Desjardins: And I apologize, I don't mean to, you know, butt in, but that's, that's what's on
13 the record or that's what's in front of you today.

14
15 Mr. Tackett: That's all right. We appreciate your help. I'm going to, I'm going to move on to
16 P Dee, I see P Dee, she has her hand up and let's see what, what she has to say.

17
18 Ms. La Costa: Thank you, Chair. Ms. Nye, can I please ask and this is in accordance with this
19 D&O. When did you submit your response? You said you did it yesterday when did you do that,
20 please?

21
22 Ms. Nye: Oh, it wasn't testimony. It was our response. So, it was probably about 3:30, I think.

23
24 Ms. La Costa: Okay, the cut off time is noon on Monday before the Commission. We did not, we
25 haven't even seen that, so, because it wasn't done timely then, you know, we, we didn't hear what
26 you had to say, so that's kind of on you.

27
28 Mr. Nye: Okay, I believe actually that that's the cut off for testimony. This wasn't testimony.
29 These were objections by a party.

30
31 Ms. La Costa: Director, could you please clarify that for me? Because we don't have time to read
32 things at 8:30 in the morning when the meeting starts at 9:00.

33
34 Ms. McLean: Yes, Vice-Chair La Costa. It is true, as counsel said, documents that they submitted
35 would not be considered testimony, but just realistically, I did not see them. They were properly
36 served on...at the Department of the Corporation Counsel, but there simply wasn't time for them
37 to be provided to the Planning Department and then in turn, for them to be provided...so, it's, it's
38 to the, to the petitioners' detriment that they filed so late.

39
40 Ms. La Costa: Thank you for the clarification.

41
42 Mr. Tackett: Thank you. And I got, I got...Commissioner Freitas, but I also have Corp. Counsel
43 on there. Did you have something you wanted to say before I got to Commissioner Freitas, Mimi?

44

1 Ms. Desjardins: No, I just wanted to say that I did not receive a copy of whatever was filed either.
2 So, I have not had an opportunity to look at it. But I agree with the Director that it would be you
3 know, untimely in the sense that it can't be expected that you folks or that we would review it prior
4 to, you know, a meeting at nine a.m. But they were filed for the record.

5
6 Mr. Tackett: Thank you, Commissioner Freitas.

7
8 Mr. Freitas: Thank you, Chair. I need some clarification from either the Corporation me, Counsel
9 or the Director. What is in front of us are what we discussed in the other meeting, and it's for us
10 to look through and check if there's anything wrong, misprints, misinterpreted or such that is all.
11 We're...the people that came to intervene in the previous meeting, they can't come in here to try
12 to reverse what the decision was. That's a totally different process. Is that correct?

13
14 Ms. Desjardins: Chair, if I may, this is Corp. Counsel. Yes, that's correct. What, what they are
15 here for today is to make comments on the proposed Decision and Order that's before you for
16 possible adoption. So, what you have to review today is your decision based on the record in its
17 written form, which is required by the rules, whether you want to adopt that or not. So, that's
18 what's before you at this time.

19
20 Mr. Freitas: Okay, if I can ask one more question now, I believe that I was maybe one, the only
21 one or one of two that they didn't go with the vote and therefore, when we do take a vote on this,
22 I'm only voting that what's here is what was said, and not that I'm changing my vote, that now I
23 feel they shouldn't intervene because I was for them to intervene, just...that it looks like a yes.

24
25 Ms. Desjardins: That's understood. Yep, that's understood.

26
27 Mr. Freitas: Okay, okay, that's all. Thank you.

28
29 Ms. McLean: Is the document an accurate reflection of what led to the Commission's vote.

30
31 Mr. Tackett: Okay, Commissioners, do we have any, any other discussion? And if everyone
32 agrees that it is an accurate reflection, if we could get a motion or Director, do you have to have
33 a recommendation first?

34
35 Ms. McLean: Chair, the Department recommends adopting the proposed Decision and Order as
36 submitted to you with the corrections, the follow up corrections that were also provided to you.
37 And I did want to ask if Commissioner Thayer is on the meeting and has been listening to this
38 entire discussion because she is able to vote on this matter.

39
40 Ms. Thayer: Yes, I've been listening.

41
42 Mr. Tackett: Okay, Commissioner La Costa.

43
44 Ms. La Costa: Thank you, Chair. I would like to make a motion to accept the D&O as amended
45 and presented by the Planning Department.

1
2 Mr. Tackett: Okay, we have a motion and a second. P Dee, would you care to speak your motion?
3 Seconded by Dale Thompson.
4
5 Ms. La Costa: Thank you, Chair. Yes, after reading through this, I feel that it is...it depicts what
6 we spoke about both for and against and the evidence that was presented at the time. So, that
7 is why I'm moving should my motion be approved.
8
9 Mr. Tackett: Thank you, Commissioner La Costa. Commissioner Thompson, do you care to
10 speak your second?
11
12 Mr. Thompson: I'm afraid to, I'll leave my mouth closed. Thank you.
13
14 Mr. Tackett: Thank you, Commissioner Thompson. Commissioners, any other discussion?
15 Hearing none, Director.
16
17 Ms. McLean: Yes, Chair. Commissioner Edlao.
18
19 Mr. Edlao: Yes.
20
21 Ms. McLean: Commissioner Freitas.
22
23 Mr. Freitas: Aye.
24
25 Ms. McLean: Commissioner Hipolito.
26
27 Mr. Hipolito: Aye.
28
29 Ms. McLean: Commissioner Lindsey.
30
31 Ms. Lindsey: Aye.
32
33 Ms. McLean: Commissioner Pali.
34
35 Ms. Pali: I confirm that this record is accurate.
36
37 Ms. McLean: Commissioner Thayer.
38
39 Ms. Thayer: I also confirm.
40
41 Ms. McLean: Commissioner Thompson.
42
43 Mr. Thompson: Aye.
44
45 Ms. McLean: Vice-Chair La Costa.

1
2 Ms. La Costa: Aye.
3
4 Ms. McLean: Chair Tackett.
5
6 Mr. Tackett: Aye.
7
8 Ms. McLean: Chair, that's nine ayes confirming that the Decision and Order as corrected is an
9 accurate record of the proceeding. The motion passes.

10
11 **It was moved by Ms. La Costa, seconded by Mr. Thompson, then**

12
13 **VOTED: To Adopt the Findings of Fact, Conclusions of Law, and Decision and**
14 **Order with the Corrections Provided.**
15 **(Assenting – P D. La Costa, D. Thompson, J. Edlao, K. Freitas,**
16 **M. Hipolito, A. Lindsey, K. Pali, K. Thayer, C. Tackett)**

17
18
19 Respectfully Submitted by,

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21
22 CAROLYN TAKAYAMA-CORDEN
23 Secretary to Boards and Commissions II