

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEMS C.1.a and b
MAY 25, 2021**

Mr. Tackett: Thank you, P Dee. Director, what's out next order of business?

Ms. McLean: Yes, Chair. Next will be the petitioners presenting their petition to intervene then they will be followed by the applicant who will present their opposition to the petition.

C. PUBLIC HEARINGS

1. **PAEAHU SOLAR, LLC, requesting a County Special Use Permit for construction and operation of the Paeahu Solar Project, a 15-megawatt (MW) ground mounted solar photovoltaic system coupled with a 60 MW-hour (MWh) battery energy storage system, as well as ancillary support infrastructure, located in the County Agricultural District approximately 0.6 miles east of Pi'ilani Highway, mauka of the Maui Meadows subdivision, near Wailea, Hawaii, on a portion (approximately 150 acres) of the 2,564 acre parcel of land identified by Tax Map Key (2) 2-1-008:001 (POR).**

Paeahu Solar, LLC is also requesting a Project District Phase 2 Development Approval for improvements to an existing ranch road located on the 56-acre parcel of land identified by TMK (2) 2-1-008:056 (POR) located in the County Kihei-Makena Project District 9 (Maui Wailea 670), in the Wailea area of Maui, Hawaii. The existing ranch road extends from near Pi'ilani Highway mauka to the proposed solar project site and will be used for temporary access. (CUP 2020/0008) (PH2 2021/0001) (K. Wollenhaupt)

- a) **LINDA J. NYE and CHRISTINA LIZZI, attorneys for intervenors, PONO POWER COALITION and MAUI MEADOWS NEIGHBORHOOD ASSOCIATION, submitting a PETITION TO INTERVENE dated May 10, 2021 on the above listed application from PAEAHU SOLAR, LLC.**
 - 1) **Action on the Petition to Intervene**
 - 2) **If the Commission grants the Petition to Intervene, then the Commission may select a Mediator and a Hearing Officer. If the Commission denies the Petition to Intervene, then it may take action on the permit request.**
- b) **CALVERT G. CHIPCHASE and CHRISTOPHER T. GOODIN, attorneys for Applicant, PAEAHU SOLAR LLC submitting an OPPOSITION TO MAUI MEADOWS NEIGHBORHOOD ASSOCIATION AND PONO POWER COALITION'S PETITION TO INTERVENE**
- c) **Additional filings submitted after posting**

Mr. Tackett: Thank you. So, who introduces the petitioner, you? Is that, is that the process or—

Ms. McLean: They can introduce themselves. It's the attorneys listed on the agenda. Linda Nye and Christina Lizzi are both on the meeting, so they can unmute themselves and give their arguments for the petition. Oh, Mr. Hopper.

Mr. Tackett: Yeah, I see him. Go ahead, Mr. Hopper.

Mr. Hopper: Just for the outset, we would want to clarify, I think you'd want one, I know there's co-counsel for the petitioners, I would...you would want one of them to confirm that they're gonna be the one to make the presentation and answer the questions to the extent possible. The other, the other thing is I don't know if how much time you want to give, I don't know how much time that the intervenors and the applicant have proposed for how much time or if the intervenors want to have time for rebuttal. So, you may want to set that at the outset or see about what it could. I do think you have the option to set time limits, but I would, I would recommend you give sufficient time to you know, make their arguments and we did discuss you know, using visual aids before the meeting, so it looks like that's something that they're going to request to do, so Chair if you're okay with that, I think it's fine to do that as long as all parties see it. And the only other thing is because we're electronic hopefully the parties, with the parties understanding you will, you know, wait to be recognized by the Chair and there won't be lots of, you know, argument back and forth if you get into questions or anything like, so with that, I think you can go onto the petitioners and go forward, but those are just a couple of points that I wanted to make to make hopefully make things a little easier.

Mr. Tackett: Okay, and Mr. Hopper, I believe whatever, whatever time restraints is applied to the applicant or the petitioner it should be the same for the other party in your opinion?

Mr. Hopper: I think so. I would, I would have the parties introduce themselves and then ask them both how much time they think they would need, that would be fair for them. You know, I'm not saying you should try to cut them shorter than the time that they would want, but I mean if they're gonna go an unreasonable amount of time I do think you have the ability to limit that if you'd like. So, maybe you could start with having them introduce themselves and then talk about how much time they think they would need for their oral argument on the intervention.

Mr. Tackett: Okay, sounds good. Since we have petitioner...the petition first, who would, who would be the primary representative on this petition?

Ms. Christina Lizzi: Thank you, Chair. My name is Christina Lizzi, I'll be the primary person speaking on behalf of the petitioner today.

Mr. Tackett: Thank you, Christina, and about how much time do you feel you will need?

Ms. Lizzi: I would need about 15 minutes for my initial presentation and would request five minutes at least for rebuttal if necessary.

Mr. Tackett: Okay, and then if, if I could please have the applicant would those same time, time periods be acceptable for you?

Mr. Cal Chipchase: Yes, Chair. This is Cal Chipchase, I represent the applicant Paeahu Solar LLC, my partner, Christopher Goodin is present with me though he won't be presenting argument. On the...our call with us today are also Julia Mancinelli with Paeahu, and then, Leslie McClain with Tetra Tech, the primary planning consultant for the project. They won't be presenting either, but they are available in the event that the commission has questions either during my presentation or afterwards. The only thing I would ask Chair is, I have no objection to offering the petitioners five minutes for rebuttal following my opportunity to speak with you. I would ask that in the event I feel there are any points that are so critical I need a minute or two to address them after the rebuttal that the commission indulge me in it.

Mr. Tackett: Okay, so the 15 and five is okay with you as well?

Mr. Chipchase: Yes, Chair.

Mr. Tackett: Okay, then let's move forward with those numbers in mind. I believe it's the petitioner's time so please you have the floor.

Ms. Christina Lizzi: Thank you, Chair and thank you, Members of the Commission, Director and everyone gathered here today. We really appreciate the time to present petitioner's Petition for Intervene. I want to make sure everyone can see the slide behind me, if you go to speaker view it will make it larger. So, I'm here today along with Linda Nye on behalf of Pono Power Coalition and Maui Meadows Neighborhood Association to represent their Petition for Intervene in Paeahu Solar's application for a Special Use Permit. I will try to move quickly today, but we do have a lot to cover. We'll do it within the 15 minutes. I'll be reviewing the most pertinent points within our application or our petition and providing some responses to some of the points raised by the applicant in their Memorandum in Opposition to our Petition for Intervene. Linda and I ...(inaudible)...answer questions at the end of this presentation.

To begin with, I'd like to introduce you to our petitioners. First, the Maui Meadows Neighborhood Association, you've heard from their president earlier today. They were founding in 1999 as a group to look after the well-being and promote that well-being and the aloha spirit of all residents in Maui Meadows neighborhood. They are governed by a board of directors, have approximately 91 members at this time and overall seek to ensure the integrity and livability of the Maui Meadows neighborhood community. A majority of the board did vote to intervene or to file a Petition to Intervene in this application. Next we have Pono Power Coalition which is an unincorporated citizen's organization. It's a group of concerned citizens who came together specifically to address community engagement with power projects such as these and to make sure that community concerns are adequately voiced and heard throughout it, and most of their members do reside in the Maui Meadows neighborhood community. They stand for protecting, respecting,

preserving cultural and environmental diversity and integrity in Maui and to ensure that energy products...projects do not harm endangered or threatened species including those species habitats. And I would just note the Pono Power Coalition has been granted intervention status previous in the Public Utilities Commission matter regarding the applicant's purchase power agreement with MECO.

So, why does these folks care so much? You've heard a lot this morning about the fact that this is very close to where they live. You can on the map this is where Maui Meadows is, and where the proposed project is, so it really is just 250 feet back from some of their property lines. Todd Logrande was earlier a testifier today, these are images that he had simulated and created to show what the solar panels may look like behind his home. But this is really not just a not in my backyard kind of thing. The petitioners are organizational representatives have a wide array of concerns that go beyond the flooding and things that will directly impact those that live closest to the project that extend to endangered species and cultural and historical resources.

So, why intervention? Yes, we heard a lot of testimony earlier today, the people for and against this particular permit, but intervention is not really about is it granted or is it denied. The purpose of intervention and the purpose of the intervenor, petitioners coming forward to day is to offer you, the commissioners, more information. We heard a lot of concerns and issues raised from both sides about mitigation measures that are necessary, about flood risks, about how far back is really safe, and what things could be put in place. Intervention is an opportunity for a party that's not really been fully heard and whose concrete interest and property rights will be affected to come forward and present that kind of evidence. And so, if intervention is granted it would basically give the opportunity for petitioners to come forward in a contested case to present lay testimony as well as expert testimony to really flesh out these issues and to help you, the commissioners come to a much better fully informed and educated decision. And just to be clear, the commission would retain the final authority over whether or not the petition...or the whether or not the permit is granted or denied.

So, what are the nature and extent of the petitioner's interest? The members include but are not limited though to those who actually live directly on properties that are abutting the project. We have three that provided declarations, by declarations with the petition, but you also heard from other folks that are involved who also live on properties directly adjacent to the solar project. The members have concrete interest that are affected by the proposed that are including property, financial, quality of life, environment, aesthetic, recreational, cultural and historical and archaeological interest.

You heard a lot of these concerns earlier today, but because they are part of the partition I just want to run through some of them quickly. Association coalition members will be directly and immediately effected by the issuance of a special use permit because they are adjacent home...landowners, they'll be most harmed, there's dust and noise during the construction and operation of the project. They'll be affected by the blasting, the grubbing and grading. The runoff that can come from the increase in pervious surfaces potentially lead to increased flooding in our neighborhood and community. There's concerns about water quality issues from that runoff getting down to the nearshore areas and what effect that could have not only on the marine life

but also on their recreational interest in that nearshore waters. There's also impact to view plains from their homes, glare from the panels, increased fire risks, degradation of the character of the neighborhood, again this project will last for 25 years or more and so this is really an ongoing impact and that's why they want to make sure their concerns are fully vetted in advance. They're also concerned about archaeological resources particularly along the access road improvement through Wailea 670. They're also concerned about nighttime lighting, including any vehicles that might be on the roads after dark that shine lights into their homes. The lighting of the project can also affect stargazing at night. They're concerned about increased traffic and dangerousness at intersections. The potential construction vehicles going through Maui Meadows as well as the creation of heat sync raising temperatures in the surrounding community and electromagnetic frequency emission with potential health impacts, and they're also concerned about property value impacts.

Members are all, also very concerned about the wildlife that are in the nearby area, both the flora and the fauna, and this project moving forward could diminish their ability to see wildlife and have impacts on endangered species such as the Hoary bat and Blackburn's sphinx moth, both of those species were addressed in the applicant's application, however the recommendations are basically to systematically reduce the habitat for those species to avoid interactions with the power plant and in that sense they'll actually be losing habitat in order for this power plant to go forward and so there's things that really looked at and considered before that step is taken.

There may also be unknown chemicals used for vegetation management and cleaning the solar panels. There's no concrete commitments right now to what will be used. There's also issues with clearing vegetation and the toxins that can be released when that's done, and the road proposed now to run alongside the fence adjacent to Maui Meadows raises new concerns including increased noise and dust to adjacent landowners.

Those are just some of the concerns. If the petition is granted, petitioners would be able to come forward and provide much more detailed information on each of those and provide expert testimony in addition to their own lay testimony.

And based on this, petitioners have a statutory as well as their constitutional right to intervention. Pursuant to the Maui Planning Commission Rules all persons who can demonstrate that they will be so directly and immediately affected by the matter before the commission that their interest in the proceeding is clearly distinguished from the general public shall be admitted as parties upon timely application for intervention. All of the interests that have been mentioned so far fall into that as the direct...as organizations representing members who have direct property interest and will be so directly affected. The petitioners do have standing and their interests are different and distinguishable from the general public.

They also have a constitutional right to intervention and this is based upon their due process right under Article 1, Section 5, as well as they are public trust beneficiaries and they also have a right to a clean and healthful environment. So, all of these really mandate that they have the opportunity to present more information before the commission makes its decision.

Alternatively, the commission can also grant leave for any party to intervene even if they don't have adjacent landowners or even if they can't show that the folks intervening are immediately and directly impacted, and in this case, there are some criteria for the commission to consider. We do believe that petitioners also meet all of those. The petition is in the interest...the position or interest of petitioners is not substantially the same as any party that's already admitted to the proceeding. The only other party right now really is Paeahu Solar and so they are representing the interest of the applicant and not necessarily those of the community. They won't render the proceedings ineffective or unmanageable, they're represented by counsel and we can present them effectively and efficiently. It will also aid in a full record and really get to the heart of the issues that the special use permit is supposed to address. And finally, it would serve the larger public interest because they do have these concerns that go well beyond what directly affects them in their own backyard.

Before I end, I want to make sure I address a few of the points that were raised in the applicant's Memorandum in Opposition. One of those was organization standing and in ...(inaudible)...in particular the applicant referenced the Hunt test. We dispute whether or not the Hunt test applies in this situation because it really goes to whether or not organizations have a right to sue. However, in the interest of making sure that we're, we are meeting everything, the hunt test to explain it briefs says an association may sue on behalf of its members even though it, itself has not been injured when its members would otherwise have standing to do on their own right, the interest it seeks to protect area germane to organization's purpose and neither the claim asserted or the relief requested requires the participation of individual members in the lawsuit. What applicant had issue with was specifically that third thing and the Hawaii Supreme Court however has already clarified that that last prong simply requires that an organization's participation does not require participation by each injured party in an action. In deed it's quite normal for organizations to have standing and to have a few of their members participate in a contested case proceeding. So, applying that test to Pono Power Coalition and Maui Meadows Neighborhood Association...establish that we do have organizational standing, members would otherwise have a right to intervene on their own because they're adjacent homeowners and have rights to clean and healthful environments that are being directly impacted. There's a nexus between the organization's mission, Pono Power Coalition was directly formed to deal with exactly these kinds of issues and to engage in...with energy projects. Maui Meadows Neighborhood Association is there to promote the wellbeing of the Maui Meadows neighborhood community and this directly affects their wellbeing.

Finally, intervention does not require substantial participation of all the individuals of these organizations and it would be really unwieldy for all of them to come forward as individuals. It's much easier for them to come together as a group and then just have a couple that will come forward in a contested case to provide testimony and also to be able to pull together resources to ...(inaudible)...expert to the commission. So, we do have organization standing and this is the most efficient and effective approach. Applicants might note that they did offer that they would not oppose our intervention if we had substituted in the declarants as those who we're intervening on behalf of. That's not required by law and would have prejudiced declarants, both declarants and the organizations in numerous ways and it would have burdened the commission with going through multiple declarants to determine whether or not each of those people had a right to

intervene. We selected just a few folks to provide declarations, we had many more to choose from. Again, we believe that representational...organizations representing these organized individuals really make this proceeding much more efficient and effective and that they absolutely have a right to do so. I'd also like to note that courts have also held that not every member of the organization must be injured in order for the organization to have standing. Also, as the Maui Meadows Neighborhood Association's decision to intervention, that decision was made by a majority vote of the current board of directors and therefore indicates the will of the organization. I don't expect you to read all the information on this next slide, but it's really just here to show you that there...this is just a sample of cases that the Hawaii Supreme Court has decided where it's found that organizations have standing to represent the interest of their members, and it's just to show you that really this kind organizational representation of petitioner is the norm.

Just to close, again, believe in all the ways that the petitioners have shown that their members will be so directly and immediately affected by this project that they do have a statutory, mandatory right of intervention in order to really flesh out the record and to provide the commission with more information and they also have constitutional due process rights to such intervention based on all of those concerns. However, again, they could also be granted your discretionary intervention. And just again, reiterate that intervention here will just provide more information to the commission and that we are grateful for the opportunity to submit the petition and ask that the petition be granted. Thank you.

Mr. Tackett: Thank you. Does the, does the applicant have anything to say on that?

Mr. Cal Chipchase: Yes, Chair if I may. We are here discussing the petition to intervene. The petition to intervene of course has context and that context is the renewable energy project, the Paeahu solar project. A number of the comments about that project and the studies that were presented or provided in the discussion these applicant's counsel, petitioner's counsel were not accurate. You know, for example, the habitat of the Yellow-Face bee was studied by the state's recognized expert Karl Magnacca and he concluded there is no Yellow-Face bee habitat. Things like that are just inaccurate statements but I'm not going to belabor them because what we're really talking about is standing and standing in this project we have a renewable energy project that will help the state meet its goals of reaching a hundred percent renewable energy by 2045. This project alone will reduce carbon output by 520,000 metric tons and provide electricity for 7,000 Maui homes. One of the statements we've heard throughout the day is about the size of the project. The size of the project is 50 acres of panels. There is a 150 acres total including the buffer area and the project study area was 250 acres so encompassing much more than the solar panel itself that portion of the project and the buffer area, but the solar panels themselves are 50 acres.

The applicant, Paeahu engaged in extraordinary community outreach and you heard some of that from the public testifiers today. We've been working with the community since 2018. There have been more than 100 in-person meetings with individuals, organizations, surrounding communities including the Maui Meadows residents. There were five days of community information sessions and public open houses. The Aha Moku was consulted as well.

All of these outreach efforts and then the technical work resulted in 14 different studies, all of which have been submitted to the commission as part of the application and to come back to the Yellow-Faced bee point, Mr. Croly, one of the public testifiers earlier who is a resident of Maui Meadows urged the commission to read those technical studies because they refute the concerns or the assertions that have been raised in opposition to the project, but 14 studies all prepared in conjunction with the relevant county, state and federal agencies and submitted to the county for its review in the preparation of its report.

When the project is being constructed and when the project is in operation, Paeahu is committed to following best management practices and you see those incorporated into the application and into the staff report and its recommendations. Those include a drainage plan to address any issues with respect to runoff. We recognize that no matter how much outreach you do or no matter how many studies you provide, someone will not like the project and it always happens or often happens. In this case, the project is about 300 feet, the first solar panel, about 300 feet or a football field away from the first property in Maui Meadows, and as you saw from counsel's presentation the folks that have submitted declarations represent that row of people on one part of Maui Meadows and, and that gets us into the standing issue itself because we see from just that how individualized the opposition to the Paeahu solar project really is. It's not a collection or a group or a large swath of the community, it's particular folks. And so, when we received the petition to intervene we noticed that it was not brought by individuals, the folks who have submitted the declarations of folks you heard from today instead it was brought by two organizations, one group called Pono Power Coalition and then the Maui Meadows Neighborhood Association, and so as counsel acknowledged we immediately reached out and say, we don't have a problem with the individuals who have concerns about the project to intervene, but we don't think that the organizations are the appropriate vehicles to do that. We would stipulate to allow all of the declarants in as parties. There'd be no need for the commission to consider an application or individual's interest we would simply have stipulated to allow them to participate because we welcome the dialog and welcome the discussion. We believe it should be done by the folks who actually have expressed an opposition to the project and through these coalitions. Counsel declined and so we end up in the hearing that you're having now, and as counsel put up on the screen there are two rules in the Commission's rules that deal with intervention. The path is mandatory intervention, and the second path is discretionary. Through either path because they presented organizations as the applicants you have to deal with organizational standing. It's part of the inquiry whichever route you go.

The starting point for discussion of organizational standing is to look at the organizations. Here we have Pono Power is...which identifies itself as individuals who have signed an online petition or have donated money or have donated time, you do any of those things you're a member and they admit that they include many individuals who are not residents of Maui Meadows. The second group is the Maui Meadows Neighborhood Association, and you heard a little bit about that from public testifiers today. It was noted that it's not a mandatory organization and that it only has about 91 members when there are about 3,000 residents of Maui Meadows, more than 600 homes. So, it's an organization of a collective very few people not representing all of the Maui Meadows neighborhood. For two reasons the association does not have standing. Counsel mentioned one of those that we raised in our papers. The other we raised is that it, that the

opposition to this project is not germane to the purpose of the Maui Meadows Association. The second point that counsel did raise is that there's a fracture among the membership of Maui Meadows and when you have an organization that has a fractured membership on a position, it's not appropriate for the organization to represent or to assert that it is representing the interest of its members, it's appropriate for the individual members to stand in their own names. For a third reason, both Maui Meadows and Pono Power are not the appropriate parties to intervene in this case and that's simply that the harms are so individualized. It's not simply a question of who will have to testify, it's the fact that the harms you heard from the folks today, the declarants in large part were the folks who testified today. They talked about the views from their homes, the property value impact, the runoff to their homes those are individualized injuries not collective injuries and because they're individualized it's appropriate for them to present them in their own names.

So, we look at the same test that counsel put up on the screen and this test applies wherever you are court or commission proceeding, this is a quasi-judicial proceeding under Chapter 91 of the Hawaii Revised Statutes and any appeal from here goes to court. So, we follow the same rules for standing that you would follow anywhere and when you have an organization it's your burden to show that organization has met those standards, and the two that we focused on as I said if you look down on the power point, numbers two and three, two is that it's not germane to the organization's purpose, and three, is that neither the claim asserted nor the relief requires the participation of individual members in the lawsuit.

So, if we begin with the neighborhood association, we look at the Articles of Incorporation and we put those up on the screen, the purpose, the only reason this organization exists is to promote the well-being and aloha spirit of all residents of the Maui Meadows neighborhood that's its only purpose. Well, we know that there are 3,000 residents of Maui Meadows and we know that far fewer than that numbers oppose the project. We have the association representing only 91 individuals or having 91 members and we know even with that organization there's a fracturing of the membership.

Well, you can see from the testimony you've heard today and the testimony that was submitted in writing is this fracturing, this divergence of interest between the board or at least the majority of the board that counsel mentioned that opposed the project and the rest of the Maui Meadows neighborhood. For example, William Gresham submitted written testimony stating that he supports the project and he confirmed what I just told you that the association has not reached out to homeowners in Maui Meadows and that its small board does not speak for the entire neighborhood. You have a board whose only purpose is to represent the interest of all members of Maui Meadows. It is not through opposing this project representing the interest of all residents of Maui Meadows. Michael McCormick who is a former board member also supports the project and he said the same things in his written testimony to the commission. He says that the project has its approval because it will improve health and that it will provide cleaner, greener electricity for the community. This divergence from the purpose of the association and the actual effect of the opposition. The testimony of Madge Schaefer further shows this divergence among the residents of Maui Meadows. Ms. Schaefer supports the project and what her testimony and all the testimony you've heard and it's been presented in writing is that the association is not here

representing the interests of all residents of Maui Meadows. It's representing some, some is not enough when your purpose is to represent the interest of all residents.

That representation though is not even uniform among the members of the association and that brings me to our second point is that organizational standing isn't allowed when there are conflicts of interest or great divergence between the members. Courts have recognized that there's a difference between a board and the members of the association. A board may have a particular view or want to take a particular path that may not be shared by all of the members of that association. In that case, it's improper for the board to cloak itself in the mantle of the association and claim that it is representing individuals when it is not in fact advancing their interests. And so, one of the testimonies that you've received is from Karen Carlson, she's a Maui Meadows resident and a member of the association and she supports the project. She's not alone, a couple of years ago there was actually a poll conducted by the Maui Meadows Association and that poll found that a material percentage of the membership supported the project. We put those minutes from the association's meeting up on the screen. Notably the poll asked whether there was support for a 200-acre solar array. Our project as I said is only 50 acres, so even when the project was described as a 200-acre solar array there was material support for the project among the association's own members.

At that same meeting, a motion was made to take a position on the project and that motion failed to receive a second and so no position was taken. You heard today from counsel for petitioners that a second motion at some point was made and that a majority of the board voted in favor of opposing the project. So, not even the full board supports the positions that are being advanced by the association. In that kind of situation where you have this divergence among the membership and among the board itself it seems it's inappropriate for the association, for the organization proceed as the intervenor.

The third point, and my last point relates to both Pono Power and the association. The assertions in the petition as counsel shared with you include some generalized claims and some that are unique to particular homeowners. The problem with the generalized claims is that under the law, unless you allege a violation of the law, a generalized concern is not enough to confer what we would call environmental standing. You have to claim that there's some violation or eminent violation of the law. In all of counsel's presentation, in their writing that claim is not made. The particularized claims are the only ones then left standing and as I said, those require material participation by the members of both Pono Power and the association, those folks who claim it's going to affect my views, it's going to affect my relationship with wildlife. It's going to affect my stargazing. You've heard that from Mr. Logrande that it's gonna affect his runoff and his visual, his view outside of his upper story. Those things are not association issues. Those things are individual issues. There were divergence even among the individuals. One individual thought that a mile was the minimum distance the project should be, another individual thought a thousand feet, those are not associational whether Pono Power or the Maui Meadows Neighborhood Association, those are individual issues.

The same is true of what we've heard a lot about today and that's property values. We've heard from a number of the opponents that this will affect my property values. It's hard to imagine a

more quintessentially personal issue then it will affect value of my home. To do that, to assess that, you have to look at the existing value of the home, have that valued, and then value the effect of the solar if any that's a unique measurement that is not going to be applicable to all people and the effect of it is not going to be applicable to all people. Instead it's equivalent to a damage, a loss, and you heard about a lawsuit if things don't go well. Those are damages, those are personal, they're not associational injuries, they're individual injuries and the individuals are the proper ones to present them.

Ms. Takayama-Corden: Fifteen minutes.

Mr. Chipchase: Understood. For these reasons, the two organizations petitioning to intervene are not the proper parties, as counsel said, and I said, we had offered to allow individuals to stipulate, that offer stands. We're well outside the period in which intervention would be timely, we're not trying to shutdown discussion, what we're trying to do is focus that discussion on the folks who actually have issues to raise, and to have them raise them directly instead of through the associations that don't represent all of the members in this petition and that would need their individualized participation in any event. Thank you.

Mr. Tackett: Thank you. Director, is this the time for rebuttals?

Ms. McLean: Yes, Chair, and I would ask Mr. Hopper to chime in. It is the Chair's call whether to allow the petitioner to rebut. If you do that, then I would imagine the applicant might also want to have something to say that is your decision. Mr. Hopper might have something to add to that, but otherwise it's your call Chair.

Mr. Tackett: Okay, let's listen to Mr. Hopper and then we'll go from there. Thank you, Director.

Mr. Hopper: I think you had said five minutes for rebuttal for the petitioner. It's a little unusual to have a rebuttal to the rebuttal. I think Mr. Chipchase had asked if there's any, you know, very...I don't know exactly what he wants I guess to clarify any points, but I don't want to have to get into the endless rebuttal situation, so we could just have the petitioner give their rebuttal, and I suppose if you wanted to recognize Mr. Chipchase with the understanding that at the conclusion, the Commissioners can ask questions of the parties and the parties will have to answer those questions. So, I think that that's the fairest way to go about it.

Mr. Tackett: Okay. Yeah, I believe I did, I did allow both of them to have that opportunity.

Ms. McLean: Okay, Chair then it would be the petitioner's time to speak right now.

Mr. Tackett: All right, please proceed.

Ms. Lizzi: Thank you, Chair. Just to briefly address these points, so the organizations do have standing. Maui Meadows Neighborhood Association has never purported to represent every single person that lives in Maui Meadows neighborhood. They do promote the well-being of all those there, but they do not represent the interest of every single person in that community

because they represent the interest of their members. The board of directors as a representative government naturally does. They are the ones that make a decision based on upon the organization and they found that the petition to intervene is what they find is in the best interest at this time of their members, and again, that's the petition to intervene to be able to offer more information. I wanted to make sure that the commissioners are not confused here by some of the points raised because what we're speaking is intervention to provide more information. We are not seeking to sue anyone here, we are not seeking damages, we do not need every individual homeowner to come forward and explain their particularized individual injury and that's the Hunt test that counsel is unfortunately leaving off that that same case that cited to you clarifies that that goes to each injured party, and if injured party must participate then we would not have organizational standing, but that's not the case here.

Again, regarding the...just to briefly mention we recognize that a lot of outreach has been done, we recognize that many studies have been conducted but those were by their experts, and there are people who have been left out of the discussion. There are experts that have not opined on these issues and petitioners are simply seeking an opportunity to bring more information to the commission so that all of these issues can be fleshed out. The ultimate decision whether to grant or deny the permit remains with the commissioners.

We also did not incorrectly say anything about the Yellow-Faced bee. There are, there is habitat there. There was an expert that opined for them that said that it's a poor habitat, however there are plants in that area that the Yellow-Faced bee relies on to survive, and so they did not continue to search for it because they felt that it was not necessary at the time. However, that does not mean that there is no habitat there for those bees.

Again, regarding the diversions within Maui Meadow Neighborhood Association, they are governed by a board of directors. The poll that was referenced it's from 2019, that is well before what's before the commission today. There were also, there was also leadership at that time and that should not...it directly showed that the vast majority of their organization actually opposed this project whereas what we're really looking at today is whether or not they want the opportunity to present you with more information and make sure that all of their concerns are heard.

Pono Power Coalition also, if they've been previously granted standing between the Public...before the Public Utilities Commission and believe that goes to the fact that they do have standing as an organization to represent those people who have concrete interest that are affected by this project.

Again, we're not seeking money damages here. This is not a lawsuit. We don't have to bring everyone who's impacted to the table here. And anything else that I want to touch on before our time runs out here...just go back to the fact that petitioner's organizations, their members have concrete interest. Organizational standing really is the norm, it's the most efficient and effective way to participate in the decision making process. Pono Power Coalition, many of its members reside in Maui Meadows. Maui Meadows Neighborhood Association obviously has numerous members that reside directly in Maui Meadows and they will be affected by this. We ask that you recognize that petitioners have a constitutional due process right as well as a right to a healthful,

clean environment and they're asking for the opportunity to provide more information to make sure that all of their interests that will be impacted by this project really are taken into consideration and that they have the opportunity to bring forth more information to answer all those questions that were raised earlier today and we thank you for time and your service to the community and ask that you grant this intervention.

Mr. Tackett: Thank you. I'm gonna ask the, I'm gonna ask the applicant right now if they have any rebuttal for, for the rebuttal and then we'll proceed.

Mr. Chipchase: Very good, Chair. Less than a minute. The first thing I wanted to point out is that board, particularly partial board's report is not enough to confer standings. I mentioned the courts uniformly recognize the distinction between boards and the members. If you're going to claim to represent the members, the members have to support what you're doing. If there's a divergence among the membership they don't and you don't have associational standing. You might be able to proceed in your name perfectly fine, but you can't claim to represent all of these people many of whom disagree with the position that you're taking and that's particularly true here when the only purpose of the organization is to represent all the members, all residents I should say, all 3,000 residents of Maui Meadows. The association is not doing that by its own admissions, by its own numbers it's not doing that and so it doesn't have associational standing.

Pono Power was organized to oppose this project. There's no question about where its interest lie. The question is, do the claims that it makes require participation by individual members and that's absolutely the case. If you're gonna claim that it's gonna impact my home because of runoff, views, property values, that member making that claim is going to have to participate and so there's no efficiency, there's no saving of time. We have the same evidence either way. The thing you have is associations, organizations claiming who represent these broad interest when they do not in fact when they represent narrow interests. Those narrow interests are welcome to participate even now, but the association should not. Thank you.

Mr. Tackett: Thank you. Director, I believe we move onto questions from the commission. Would I break, break them apart to questions to the applicant, then questions to the petitioner or how, how should we segregate that.

Ms. McLean: It's a great question Chair, and I would ask Mr. Hopper to respond.

Mr. Tackett: Mr. Hopper.

Mr. Hopper: I think at this time if you're okay with it Chair, you can just have questions for either party depending on which the members have. Some may be for both, some may be for a particular party, so I think whichever the commission would prefer.

Mr. Tackett: Outstanding. Thank you, Mr. Hopper. All right, commissioner so the floor is now open for questions to either party. Go ahead, Kawika. Please, please give me just one second. Mr. Hopper do I have to swear in my, my commissioners? I do not, correct?

Mr. Hopper: You do not, they're not giving evidence, they're, they're...you're essentially the decision maker so you would not have to.

Mr. Tackett: Outstanding. Thank, Kawika. Go ahead my brother.

Mr. Freitas: Okay, thank you Chair. As I listen to the testimonies today, a lot of them that were members of the Maui Meadow area it sounds to me like their testimony addressing the same things that were brought up in previous town hall meetings and a lot of them have been addressed. There was one that kinda concerns me and one gentleman that gave a good picture how a 5,000 square foot roof with water running off of it and now you're gonna have six million square foot of runoff. I'm really concerned about the drainage. I know that in the study that you provided it just says a study was done on drainage. Now if water is coming off of that, and then going down into the ground or is it being channeled into some kind of piping that leads toward a proper drainage or are we just letting it run right into the ground and make its own path to wherever and it's gonna go right to these people's homes that's the first question.

And then the second one was, the other gentleman who said very similar to the Lahaina project how all the water mauka side had brought down all the dirt right underneath and below the project and they continually go and clean it out which to me sounds like erosion because of poor design and poor development. So, two questions about the water drainage and then also how water coming down carrying mud under something that is gonna be...I'm not sure if it's gonna be on dirt or you folks are gonna put it on cement or how that's gonna be, so it's a more of question I think for the applicant.

Mr. Chipchase: Yes, understood Commissioner. And, what I would, what I would invite is in the response to your very technical and very thoughtful question, I would ask Leslie McClain if she's available to respond to it. I think you'll get more accurate or more complete information from her as in charge of the planning efforts than for me, as just a guys reading them and so, Leslie if you wouldn't mind fielding that?

Ms. McClain: Hi, yeah...

Mr. Hopper: Mr. Chair? I'm asking just for the Chairperson to be recognized real quick.

Mr. Tackett: For?

Mr. Hopper: Oh, just on the question, I just had a concern about the directions of the questions if I could address it?

Mr. Tackett: Sure, go ahead Mr. Hopper.

Mr. Hopper: The sole issue right now, you can definitely get to the issues of the project impacts and things and I suppose if the question on the project impact is germane to whether you want to allow an intervention you can proceed with those, those questions, but the issue right now is whether to allow an intervention so you decide who the parties are and then if you have...grant

the intervention, you can certainly go into the mitigating impacts of the project. If you deny the intervention, you can do that also. Right now, it appears that the main issue raised by the opposition is the issue of organizational standing and I think that's primarily what you're being asked to discuss with this petition to intervene. Having witnesses come in to talk about aspects of the impacts of the project may be more appropriate for after deciding intervention unless like I said that is a significant thing for the commission to hear before they decide on intervention and to go toward the intervention issue, but I just want to not get into, you know, the entire discussion of the...of whether to, you know the impacts of the project if that's not going to be germane to the intervention issue, so I just wanted to try to focus that as much as possible on the legal arguments made by the parties for the intervention because after that's decided you can go forward whether you approve it or do not to deal with the project impacts. That's all that I had.

Mr. Tackett: Thank you, Mr. ... Thank you, you Mr. Hopper. Hey, Kawika what, what...did you, did you get what he was saying?

Mr. Freitas: Yes, I do and I thought I made myself kinda clear and the reason I stated what I did is I've made up my mind about which way I'm gonna vote. However, I am not too clear about that one issue which is a concern of the people that are on that board is the people that are petition. So, it's not to ...(inaudible)...all of the details, it was something from someone's question that we would have been told wait till later to ask. So, if I'm...if this isn't the time to ask that then I know what I'm gonna vote then, that's fine.

Mr. Tackett: Okay, understood Kawika. Just, just a reiteration of what I think I heard from Corp Counsel is you guys need to decide whether or not you feel like the arguments that were made today for and against the intervention are legitimate whether or not you're going to allow the intervention whether or not you're not going to allow the intervention. If you do allow the intervention then it will go that way, if you do not allow the intervention then almost all of the things that you have questions about can be entertained at that point because you still have the ability to say yes or no at that point as that's within your purview, so that's just how I understand it. What Kawika said is in his opinion and you guys are all here because you have valuable opinions and his opinion was that that was part of something that he was using to, to base his decision off of. So, after, after, after my short rant, I think I'm gonna get back to you guys as far as if you guys have questions that that are directly related to the legitimacy of the intervention. I believe I got P Dee. Thank you, P Dee please proceed.

Ms. La Costa: Thank you, Chair. My questions are for Ms. Izzi, excuse me, the petitioner.

Ms. Lizzi: Lizzi. Thank you. Thank you, Commissioner. Lizzi, thank you.

Ms. La Costa: Sorry, I can't read my own writing. I beg your pardon.

Ms. Lizzi: That's okay, thank you.

Ms. La Costa: So you mentioned that if the intervention were to go forward, then you could have a lot more information to be provided to us to make a decision. So, when...according to my

calculations the association of 91 out of 614 homes is 14.8 percent, of that 14.8 percent there are people who belong to the association and people who do not who are for and against this. So my question is, if the intervention is being requested solely so you can provide more information why are the experts and/or the people who are against this project and want to be part of the information, why are they not available today. Thank you.

Ms. Lizzi: Thank you for your question, Commissioner. The reason that we did not bring today all the experts and absolutely everyone who is opposed to this project here today is because there is this really clear process for intervention that's laid out in the Maui Planning Commission rules, and so the most appropriate way for us to go forward was to present our petition to intervene which would then give us a hearings officer, someone that could make findings of fact and conclusions of law so really, so that we could get that those experts. It's gonna require a substantial time and investment of resources on our end to do this, and so we want to make sure that we can have those but that it can be fully heard in more than three minutes. If we had presented those experts here today, it might have prejudiced our ability to testify in any intervention and that's why we did not ask any experts to come forward today.

Ms. La Costa: Then why did we not receive written testimony from more people if you wanted more people to be heard. There isn't a three-minute limit on that and we did not receive very many people from the association so I, I just go back to that. Thanks.

Mr. Hopper: Chair?

Mr. Tackett: Yes, Mr. Hopper.

Mr. Hopper: I think it may be beneficial to have potentially a brief executive session on, on this item in general to give the parties...the commissioners some guidance on the issues here. I think that would be something that would be significant if possible.

Mr. Tackett: All right, we got a motion for executive session?

Ms. La Costa: So move.

Mr. Tackett: A second? All right, I got a motion from P Dee and a second from Jerry. I believe we'll go to executive session now and see if we can get this situated.

Ms. McLean: Chair, you need to formally recess this meeting to go into executive session and then reconvene.

Mr. Tackett: Yeah, and you need to send codes, correct?

Ms. McLean: Right, Carolyn will email the commissioners with the new invitation. You will need to drop out of this meeting and then come back to this, so make sure that you save the link that you used to join this morning.

Mr. Tackett: Okay, so if we could formally close this meeting or recess...recess this meeting, if we could formally recess this meeting for now and then we'll convene into our executive session via the link that Carolyn sends to you guys and then we can proceed from there.

Ms. Takayama-Corden: I'm working on it right now.

Mr. Tackett: Thank you so much.

(Motion was made at approximately 00:56:10 of Chapter 4 of the audio recording.)

It was moved by Ms. La Costa and seconded by Mr. Edlao to go into executive session.

The regular meeting was recessed at approximately 1:30 p.m., and the Commission went into Executive Session at approximately 1:36 p.m. Upon adjourning the Executive Session at 2:00 p.m., the regular meeting was then reconvened at approximately 2:02 p.m.

Mr. Tackett: ...our meeting to order. Thank you very much, and I believe we were still in commissioner questions to the applicants and commissioners, so do we have any other questions for the applicants...I mean, for the applicants or petitioners. I see P Dee's hand up, go ahead P Dee.

Ms. La Costa: Thank you, Chair. This is for the applicant please. Could you please clarify for me that the individuals who might have an issue with this, you're inviting to be intervenors but you do not feel that the petitioner has any standing because of the organizational aspect? Thank you.

Mr. Chipchase: Appreciate the question, Commissioner, and that's essentially correct. The two organizations that have petitioned to intervene that are the petitioners we don't believe meet the test for organizational standing, but it's not an intention to or no intention on our part to close down or prevent dialogue and so we're making the offer that we would stipulate to allow the individuals to intervene in their own names.

Ms. La Costa: Thank you.

Mr. Chipchase: You're welcome, Commissioner.

Ms. La Costa: That's all Chair.

Mr. Tackett: Thank you. Commissioners, any other questions? I guess at this point since you have no more questions, I guess we'll entertain a motion as to whether or not to grant the petition to intervene. If you make a motion you're gonna want to have your criteria and then base that motion off the criteria and we will need a majority vote, so do we have a motion on the floor? Go ahead, P Dee.

Ms. La Costa: Thank you, Chair. I'd like to make a motion to deny the intervenor's standing because they lack organizational standing in this petition.

Mr. Tackett: Thank you, P Dee, and we got a second from Jerry. All those in favor please raise your hand. P Dee is that a hand up or hand down? Hand up?

Ms. La Costa: We didn't talk to the motion.

Mr. Tackett: Oh sorry, you guys are, you guys are totally correct. Sorry, you guys I jumped the, I jumped the gun. So, go ahead P Dee, go ahead and speak to your motion.

Ms. La Costa: Thank you, Chair. I made this motion because after hearing the testimony, reading all the written testimony and getting a better understanding of what positions are for the applicant and for the petitioner I do not feel that the petitioners can meet the burden of proof to be an organizational intervenor. Thank you.

Mr. Tackett: Thank you, P Dee. Jerry, would you also like to speak to the motion?

Mr. Edlao: Yeah, I agree with that. The people that are gonna be impacted are gonna be impacted undoubtedly and I agree with that, but what's before us is are these, are these two petitioners as organizations have standing and I do not think that they do as an organization and that's why I voted you know to deny.

Mr. Tackett: Thank you, Jerry. Commissioners, anybody else want to weigh in on this, on this subject? Go ahead Kellie.

Ms. Pali: Yeah, I think, I think this is just a really, this is a tough one. I'm really big on the process of allowing people to state their case and really be able to intimately work with applicants which is what the intervention allows. It allows in my opinion the opportunity of specific people or people groups to have sort of special audience with the application and so, I do like that opportunity process, although sometimes in any system people sometimes use it for the wrong things or take advantage of it, so I'm kind of mixed on it, but I do feel like there's a sincerity there with the directly affected parties at least that we got to hear today in public testimony the people that got to specifically you know, show themselves with their backyards adjacent or abutting the property, and so I definitely think that there is some you know, merit to the intervention request, but I am struggling with where that line is and so I'm trying to commit to a decision but it's just, it's a tough one, and I see how the group and it's fractured and 91 versus 600 lots, and we've just heard a lot of really great information on it and so I'm just sharing the things that I'm toggling through.

Mr. Tackett: Thank you, Kellie. Commissioners, anybody else want to speak to this motion before I call for a vote? I believe Jerry has more to add. Go ahead, Jerry.

Mr. Edlao: Yeah, you know, Kellie I understand you know what you're going through and probably the other guys too because this is a tough one, but what's before us is whether these organizations have standing. I think even the applicant says he had no problem if the individuals were to intervene. It's just the issue that these two petitioners, the two organizations have standing and because of the fractured membership and the participation you know, 91 members you know, it's not even a fraction of what the total people are there. Yeah, they may say, well it's

the majority, well it's not a majority of the people, and based on that, that's why I, I don't think the two petitioners have standing. I have no...you know, if it was just the individuals coming before us, yeah, maybe not these two petitioners as organizations to participate as intervenors in this case. Thank you.

Mr. Tackett: Commissioners, anyone else want to speak to this motion? All right, seeing none, if we could, we could just have a raise of hands. All those in favor?

Mr. Edlao: Maybe we should have a roll call so we don't miss anybody.

Mr. Yoshida: This is Clayton Yoshida, Administrator of the Current Division of the Planning Department, I'm here with Ann Cua, one of our supervisors, so roll call on the motion to deny the petition to intervene. Commissioner Edlao.

Mr. Tackett: Jerry you called for the roll call and he just called your name so that means you gotta answer.

Mr. Edlao: Yes. Oh, I'm sorry, yes. I'm sorry.

Mr. Tackett: That's all right.

Mr. Yoshida: Commissioner Freitas.

Mr. Freitas: No.

Mr. Yoshida: Commissioner Hipolito.

Mr. Hipolito: Approve denial. Yes.

Mr. Yoshida: Commissioner Lindsey.

Ms. Lindsey: Yes.

Mr. Yoshida: Commissioner Pali.

Ms. Pali: I'm gonna abstain.

Mr. Yoshida: Commissioner Thayer.

Ms. Thayer: Per my declaration earlier, I'm going to recuse myself from this vote.

Mr. Yoshida: Commissioner Thompson.

Mr. Thompson: Aye.

Mr. Yoshida: Vice-Chair La Costa.

Ms. La Costa: Yes.

Mr. Yoshida: Chair Tackett.

Mr. Tackett: Yes.

Mr. Yoshida: Seven ayes, one no, one abstention.

Ms. Pali: If I may Director, it was six ayes, one abstention, one refrain, and one no.

Mr. Yoshida: The motion carries.

Mr. Tackett: Director, did you say motion carries. Director, did you say that the motion carries?

Mr. Yoshida: Yes.

Mr. Tackett: Thank you.

It was moved by Ms. La Costa, seconded by Mr. Edlao, then

**VOTED: To Deny the Petition to Intervene.
(Assenting – P D. La Costa, J. Edlao, M. Hipolito, A. Lindsey,
K. Pali - Abstain, D. Thompson, C. Tackett)
(Dissenting – K. Freitas)
(Recused - K. Thayer)**

Mr. Hopper: Chair?

Mr. Yoshida: Okay, having dealt with the petition to intervene in denying them, I guess we're back to the...dealing with the applications themselves. The applicant's presentation.

Mr. Hopper: Chair?

Mr. Tackett: Yes, Mr. Hopper.

Mr. Hopper: Just because that's a decision adverse to a party, would you request that the applicant prepare a decision and order on the petition to intervene for the commission's approval.

Mr. Tackett: Yeah, would the, would the applicant please prepare what Corp. Counsel has just lined out.

Mr. Chipchase: Yes, Chair.

Mr. Hopper: Thank you.

Mr. Yoshida: So, having just parted on that, Mr. Chair, I don't know if you want to move forward to the applicant's presentation on the request.

Mr. Tackett: Yes, please. Thank you, Director.

Mr. Chipchase: Chair, if I might indulge me with a five-minute recess so that I can ensure our experts are available and on the line should the commission have questions at any point during the presentation.

Ms. Lizzi: And Chair if I might, my apologies for interrupting but I'm not being seen, I do just want to put an objection on the record that counsel for the petitioners was kicked out of the room whenever you said you were going into executive session the whole thing shut down for us and the last thing we heard was that a new link would be sent out to us, so if anything was there and there were questions that we should have heard, we were...the last information we had from this was that a new link would be sent, and so we were not able to be here for any questions. I don't know if that was a technical error, but I just want to make sure that's on the record that that did happen.

Mr. Tackett: Mr. Hopper, I think you should probably address that.

Mr. Hopper: Oh, what did...what was missed?

Mr. Tackett: Nothing was missed in my opinion.

Mr. Hopper: But I mean, what portion of the hearing did the, were the intervenors did they miss?

Ms. Lizzi: If I may, I'm not sure what we missed. As soon as commission went into executive session the application for both Linda and myself shut down, and it's...the last thing we heard from Director McLean was that a new link would be sent out and so we were awaiting a new link and so I'm not sure, we just both jumped on and came into the middle of the vote. I'm not sure if there was any discussion or any questions was...(inaudible)...make sure that is on the record.

Mr. Hopper: There was a question asked to the applicant, I do not believe there were any questions asked to the intervenors, but there was, there was a motion, a vote, deliberation and decision making. I'm not sure how we would rectify this going forward. I mean, there was no, there was no, request to the, the petitioners for questions. To the extent that there was something done that or something stated that was objectionable I suppose that you would still be able to object to that in...after the order is made and, and you know, an appeal filed. I don't know if the parties have any other suggestions how to remedy. Again, this is a technological problem. Again, there were no questions to the intervenors it was just that you were not able to view the question to the applicant and the deliberation and decision making which again I believe you'd still have the ability to...if there was an error in your view challenge on a Circuit Court appeal, but I don't

know if the parties have any suggestions on how to deal with this. We want to be as fair as possible, but I'm not sure how we proceed given you know, a technical error like that.

Ms. Cua: Mr. Chair, I'm Ann Cua, also representing the Department. I believe the question from the intervenor's attorney was on the executive session, and the executive session nobody was a part of that I believe except the commission. Is that correct, Mike Hopper.

Mr. Hopper: Right. I think they're saying though that they had confusion on how to get back to the original meeting and by the time they got back to it, the deliberation and decision making had already happened unless I'm mistaken. Yeah, no the executive session link was only for myself and commission and commission staff to discuss for the purpose legal advice and was not intended for any other parties to be involved in it. The resumption of the meeting though, I don't know what the confusion was but it sounds like you did miss a portion of the meeting that involved the...I think it sounds like essentially you're saying from the end of the executive session till now you did not get a chance to be in that meeting is that correct?

Ms. Lizzi: That's correct. Whenever it was announced they would go to executive session, there was a brief pause, there was a statement that link would be sent out and then the application closed for us, and so we were under the impression that we were waiting for a link in order to be able to come to the original hearing, and then we decided to recently just try the original link and saw that everyone is here already.

Mr. Tackett: In my opinion, in my opinion Mr. Hopper, both you and Ann are both correct.

Mr. Hopper: I mean, does the applicant have any thoughts on proceeding here as well. I understand there's an objection for the record, and I understand that, and we want to preserve the parties' due process rights here to the extent possible. There were no questions asked of the intervenors and to the extent that they could file objections, you know, they can make them to a Circuit Court, but do we have any thoughts on...or the intervenor on how we could rectify a situation in this case.

Mr. Chipchase: I'll offer just a couple of thoughts, Mike. Christina, the question that was asked of me was whether it is correct that the applicant would stipulate to allow the individuals to participate in their own name, and I answered that that was correct and that it remained correct to this moment, and actually that remains correct too, we would stipulate to that. That was the only question asked of me and I think Mike is right, there was no question asked of petitioners and then there was a motion, a second, and then commission discussion on that which of course, we couldn't participate in anyway. I will say that if there is any portion of that period of the hearing from when executive resumed until you were able to rejoin that you believe raised an error, that you missed an opportunity to object to, I will not assert that you've waived that or lost that in any way.

Ms. Lizzi: Thank you, and we acknowledge everything that's gone on and that that may or may not been the only thing that happened without waiving any rights of potential objection and any appeal. We're fine with things moving forward. Thank you.

Mr. Hopper: Did you hear the motion and the vote though?

Ms. Lizzi: Yes, we did hear the motion and the vote.

Mr. Hopper: Okay, all right.

Ms. Lizzi: Thank you.

Mr. Hopper: All right, and I apologize for any confusion. I think that's the best we can do going forward and obviously the intervenors have, can reserve their rights to object to the denial of the intervention and make their arguments to Circuit Court on that basis. So, I think that's the best we can do at this point.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II