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HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
STATE OF HAWAII

In re: )  
)  
The Application of )  
)  
ALOHA SOLAR ENERGY )  
FUND II, LLC, )  
)  
Applicant, )  
)  
To request a development )  
permit to develop a )  
5-megawatt renewable )  
energy solar photovoltaic )  
(PV) system with three )  
variances pursuant to )  
HAR §15-215-81 of the )  
Kalaeloa Community )  
Development District )  
Rules. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Thursday, January 18, 2018

Commencing at 10:03 a.m.

Taken at Department of Hawaiian Home Lands

Hale Pono'i Conference Room

91-5420 Kapolei Parkway

Kapolei, Hawaii 96707

Reported by: LAURA SAVO, CSR No. 347

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A P P E A R A N C E S

John Whalen, Chairperson  
Mary Pat Waterhouse, Vice Chairperson  
Garett Kamemoto, Interim Executive Director  
Deepak Neupane, Director of Planning and Development  
Lori Sunakoda, Deputy Attorney General

BOARD MEMBERS:

Mark Anderson  
Wei Fang  
Michael Golojuch  
Shirley Swinney  
Maeda Timson

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TESTIMONY OF WITNESSES:

Richard Fryer	17
Eric Guinther	33
Mark Kawika McKeague	42

PUBLIC TESTIMONY BY:

(None offered.)

1 Thursday, January 18, 2018, 10:03 a.m.

2 -o0o-

3 CHAIR WHALEN: Aloha kakahiaka. If  
4 people will take their seats, please. Good morning,  
5 everyone. If you could take your seats. I'd like to  
6 call to order the January 18th, 2018, public hearing  
7 of the Hawaii Community Development Authority. The  
8 time is now 10:03 a.m. Thank you for your interest  
9 in Kalaeloa and your attendance today. My name is  
10 John Whalen, chair of the Authority.

11 Let the record reflect that the following  
12 Kalaeloa members are present: John Whalen,  
13 Mary Pat Waterhouse, Shirley Swinney, Maeda Timson,  
14 Wei Fang, Mark Anderson and Mike Golojuch.

15 Would the representatives of the  
16 applicant make their appearances at this time?

17 MR. FRYER: Me?

18 CHAIR WHALEN: Yes. I guess it would be  
19 you.

20 MR. FRYER: My name is Rich Fryer, and I  
21 represent the applicant.

22 CHAIR WHALEN: Today's hearing on  
23 development permit No. KAL 17-017 is being held in  
24 accordance with Hawaii Revised Statutes, Section  
25 206E-5.6, and Hawaii Administrative Rules, Chapter

1 15-219, and Hawaii Administrative Rules, Chapter  
2 15-215.

3           The nature of today's public hearing is  
4 to allow the applicant to present the proposed  
5 project and to provide the general public with the  
6 opportunity to present oral and/or written testimony.  
7 The applicant is Aloha Solar Energy Fund II, LLC.  
8 Tax map key for the affected property is 9-1-013,  
9 parcel 70, and approximately 1.7 miles long, 12 --  
10 and approximate 1.78-mile-long, 12-kV interim  
11 electrical distribution line located on a  
12 30-foot-wide portion of right-of-way along the  
13 eastern edge portion of Coral Sea Road that borders  
14 tax map keys 9-1-013, parcels 39, 40, 43, 44, 72, 99  
15 and 100.

16           The request is for a development permit  
17 to develop a 5-megawatt renewable energy solar  
18 photovoltaic system with an approximately  
19 1.78-mile-long, 12-kilovolt interim electrical  
20 distribution line that will connect to the main  
21 Hawaiian Electric Company grid. The project will  
22 utilize 22 acres of the 44.28-acre site with the  
23 remainder of the parcel to remain as open space with  
24 a designated portion to become a permanent  
25 archaeological preserve.

1           There's some variances requested. The  
2 applicant is requesting the following three variances  
3 pursuant to Hawaii Administrative Rules 15-215-81 of  
4 the Kalaeloa Community Development District Rules:

5           First, under HAR 15-215-43, Architectural  
6 Standards, Part C: Increase the height of the fence  
7 from 3 feet to 6 feet along the perimeter.

8           Also HAR 15-215, Development Standards  
9 Summary, figure 1.3: Place the fence on the property  
10 line without the required setback.

11           HAR 15-215-44, Landscape: Eliminate the  
12 requirement for landscaping and an automatic  
13 irrigation system within the front yard area.

14           The application date was  
15 November 27th, 2017. A public hearing notice for the  
16 project was published in the Honolulu  
17 Star-Advertiser, The Garden Island, West Hawaii  
18 Today, Hawaii Tribune-Herald and Maui News on  
19 December 13th, 2017.

20           So let me briefly explain our procedures  
21 today for today's public hearing. The HCDA staff  
22 will first present its report summarizing the  
23 development permit application. Following that  
24 presentation, we will receive the presentation of the  
25 applicant and then testimony from the public. Only

1 members of the Authority and the interim executive  
2 director, Garrett Kamemoto, will be permitted to ask  
3 questions of the staff, applicant or individuals  
4 providing testimony.

5 Are there any questions on these  
6 procedures?

7 Okay. We'll begin our proceedings.  
8 First, I'll ask the Interim Director, Garrett  
9 Kamemoto, to present the staff's present.

10 INTERIM EXECUTIVE DIRECTOR: So Deepak  
11 Neupane will present the staff report on my behalf.

12 CHAIR WHALEN: Okay. Deepak Neupane.

13 MR. NEUPANE: Thank you, Garrett, and  
14 thank you, Chair and board members. The staff report  
15 is in your packet and folder and it summarizes the  
16 application. I'm not going to go into the -- read  
17 through the summary and all of the application  
18 itself. I think the applicant is going to do a much  
19 better job and go into lots more detail in the  
20 application itself.

21 I would just like to point out for the  
22 Authority members Section 9, compliance with  
23 chapter -- HAR Chapter 215, where we have provided a  
24 summary of the compliance with the rules. This is  
25 not a vertical development project. So it probably

1 doesn't -- a lot of the rules are not actually  
2 applicable to the project because of the nature of  
3 the project. And, also, in Section 10, the variance  
4 request, the Chair already mentioned that the project  
5 is seeking three variances from three separate  
6 provisions of the rules.

7 With that, you know, I conclude my staff  
8 report.

9 CHAIR WHALEN: Okay. Thank you, Deepak.

10 So we're ready to hear from the  
11 applicant. Well, first of all, does staff -- are  
12 there any questions for Deepak on his --

13 MEMBER TIMSON: I need a quick  
14 clarification --

15 THE REPORTER: Can you speak into the  
16 microphone?

17 MEMBER TIMSON: Okay. I need a quick  
18 clarification if you don't mind. I'm looking at our  
19 handout, which says -- it's the smaller handout, the  
20 smaller folder. At the second -- the  
21 third-to-the-last page where we talk about "Character  
22 of the transect," and the last sentence says "The  
23 purpose of the perimeter," and it appears that it  
24 ends there. Are we missing a page or is it -- yeah,  
25 but why did we put this page in here and it sort of



1 ends? If you look at that "Character of the  
2 transect." This is the staff summary.

3 MR. NEUPANE: It appears that --

4 MEMBER TIMSON: Are we missing something  
5 so that tomorrow when we look at this, do we have all  
6 of our pages? I just want to make sure we have all  
7 of the proper pages.

8 MR. NEUPANE: I believe it looks like a  
9 page is missing.

10 MEMBER TIMSON: If we can have that  
11 before tomorrow.

12 MR. NEUPANE: We will provide it.

13 MEMBER TIMSON: Okay. Thanks.

14 CHAIR WHALEN: Any other questions, board  
15 members?

16 Okay. So the introduction of the  
17 applicant. He made his appearance. And if you'd  
18 like to introduce the rest of the testifiers on  
19 behalf of the application.

20 MR. FRYER: Thank you, Mr. Chairman and  
21 members of the board. Actually, I'll pop down to the  
22 third chart quickly, which has got a list of our --  
23 the experts that we've invited here to join us to be  
24 able to answer any questions you might have.

25 First of all, I'm the guy -- I'm

1 Rich Fryer, the development manager for the project,  
2 and I've been working this for many years since the  
3 beginning.

4 Ryan McCauley is our local PM and  
5 renewable energy expert.

6 We have got Kawika McKeague. I'm sure he  
7 doesn't want to be here. He is here under duress  
8 (inaudible). He's not feeling well.

9 Mr. Michael Bungcayao, he is our civil  
10 expert.

11 We've got Morgan Davis, archaeologist,  
12 for any archaeological questions.

13 Eric Guinther --

14 Am I pronouncing your name right, Eric?

15 MR. GUINTHER: Guinther.

16 MR. FRYER: Guinther. Thank you.

17 -- for any flora or fauna questions that  
18 you might have.

19 We've got Ms. Lani Ma'a Lapilio as a  
20 descendant for any questions you might have about the  
21 coordination we've done with them.

22 And, finally, we have Ms. Cathleen Dagher  
23 to answer questions about the impact process --  
24 cultural impact process.

25 That's our team to answer any questions

1 that you might have today.

2 CHAIR WHALEN: Okay. Could you briefly  
3 describe the exhibits that you wish to have admitted  
4 to the record?

5 MR. FRYER: So the exhibits -- you're  
6 talking about the entire book?

7 CHAIR WHALEN: Yeah, I think they've been  
8 distributed to the board, I would imagine. You're  
9 introducing that.

10 MR. FRYER: Do you want me to kind of go  
11 through what they all are and the purpose we've  
12 submitted them, or do you just want me to rehash --  
13 sorry -- just read this for the record?

14 CHAIR WHALEN: Yes. Will you please read  
15 the entire binder?

16 (Audience laughing.)

17 CHAIR WHALEN: Okay. You could just sort  
18 of describe it as your list. You have them tabbed in  
19 the binder as Exhibits A through -- I have a question  
20 as to how far it goes. It goes to II, Exhibit II, I  
21 believe.

22 MR. FRYER: JJ, actually, yes.

23 CHAIR WHALEN: Or JK (sic).

24 MR. FRYER: So we have the actual permit  
25 itself, permit application with all the backup

1 documentation. We've got all the documentation like,  
2 for instance, of the prior notifications that we're  
3 supposed to do. We've got resumes of our experts  
4 here. We have got the EA exhibits. Your board  
5 meeting minutes are also an exhibit for the EA  
6 approval, the FONSI approval.

7 Okay. Cite the exhibit numbers. So  
8 Exhibit A is our permit application.

9 CHAIR WHALEN: Right. And also this CD,  
10 compact disc, with the environmental assessment.

11 MR. FRYER: Yes, sir. Yeah, because that  
12 one you have much more paperwork than this. We'd  
13 have to kill many more trees if we printed that out.  
14 I think that's like 900 pages. So this is only --  
15 what are we at? 300? 300.

16 So Exhibit A is the application itself.  
17 Exhibit B is our request for variance.  
18 Exhibit C is the notifications that we  
19 made.

20 D is the project completeness review.

21 E through M, obviously, is our resumes.

22 N is the environmental assessment. And,  
23 obviously, we didn't print it out. As you pointed  
24 out, we haven't printed it all out. We just printed  
25 out some portions of it, and the disc contains the

1 rest of it.

2 Minutes is Exhibit O for the FONSI -- for  
3 the FONSI approval.

4 Exhibit P is the FONSI. That's the FONSI  
5 itself. Exhibit P is the FONSI itself.

6 Q is an old report that was done in 2012  
7 that investigated the incident, the unauthorized  
8 entry incident.

9 R is the remediation agreement.

10 S is a series of meeting minutes related  
11 to the remediation measures.

12 T is the plan itself.

13 And U is SHPD's concurrence with the  
14 remediation plan.

15 V is meeting minutes of the -- okay.  
16 Presentation of the archaeological inventory survey  
17 that was done back in 2014 that captured just about  
18 every one of the sites that are out there.

19 W is essentially a letter from HCDA to  
20 SHPD acknowledging that the mitigation plan measures  
21 that had been agreed to in 2012 were complete.

22 X is SHPD's acceptance of that letter.

23 Y is the Archaeological Monitoring Plan  
24 that we'll have to use through the construction  
25 period.

1           Z is SHPD's acceptance of the  
2 Archaeological Monitoring Plan.

3           AA is the Burial Treatment Plan.

4           BB is SHPD's acceptance of the Burial  
5 Treatment Plan.

6           Item CC is the final -- interim  
7 preservation plan, the Interim Archaeological  
8 Preservation Plan, and then DD is SHPD's acceptance  
9 of the same.

10          EE is the agenda and minutes of a  
11 neighborhood board meeting that you requested that we  
12 make some presentations at, which we did in 2017.

13          FF is the National Pollution Discharge  
14 Elimination permit form that we've submitted for the  
15 project which has been approved by the state.

16          Development permit presentation, what I'm  
17 about to give you, is item GG.

18          HH is meeting notes from an advisory  
19 board meeting. I think this is the one that you  
20 outlined. Ryan did.

21          II is an additional resume, and then --  
22 and so JJ is what they call an environmental site  
23 assessment. It's kind of an environmental,  
24 condition-of-property report that we had done by an  
25 independent firm.

1                   And that should be the summary of  
2 exhibits here.

3                   CHAIR WHALEN: Okay. Thank you.

4                   Members, do you have about objections to  
5 the admission of any of these items to the record?

6                   Staff, do you have any objections to  
7 admission of these exhibits to the record?

8                   MR. NEUPANE: No objection.

9                   CHAIR WHALEN: Okay. Hearing no  
10 objection, the applicant, Aloha Solar Energy Fund II,  
11 LLC, Exhibits A through --

12                   MR. FRYER: JJ.

13                   CHAIR WHALEN: HH (sic).

14                   MR. NEUPANE: JJ.

15                   CHAIR WHALEN: HJ (sic) will be admitted  
16 to the record.

17                   (Exhibits A through JJ are offered and  
18 admitted to the record.)

19                   CHAIR WHALEN: Will you be establishing  
20 any of your witnesses as experts in a subject area to  
21 testify?

22                   MR. FRYER: Yes, sir. All those  
23 individuals that I read off in that chart.

24                   CHAIR WHALEN: Okay. Thank you. If so,  
25 I guess you can proceed with your presentation.

1 MR. FRYER: Thank you.

2 CHAIR WHALEN: Do you have any  
3 objections -- first of all, do any board members have  
4 objections to the qualification of expert witnesses  
5 offered by the applicant? The resumes are in the  
6 binder. I think probably many of them are familiar,  
7 board members.

8 Okay. So hearing no objection, the list  
9 of experts offered by the applicant is hereby  
10 accepted and qualified in their various subject  
11 areas.

12 With the receipt of the exhibits and list  
13 of experts being entered into the record, let us  
14 proceed with our hearing. Thank you.

15 So you can go ahead and call your first  
16 witness or it may be you.

17 MR. FRYER: It's me, sir. I'm going to  
18 read through this. I'll take it through the entirety  
19 unless board members have questions. Please stop me  
20 anywhere in the presentation. If you've got a  
21 specific question I can't answer, I'll turn to the  
22 experts to provide that answer.

23 CHAIR WHALEN: So if you'd raise your  
24 right hand and swear or affirm that the testimony you  
25 provide is the truth.



1 MR. FRYER: I do.

2 CHAIR WHALEN: Thank you. So you can  
3 proceed.

4

5

RICHARD FRYER,

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having been first duly sworn to tell the  
truth, the whole truth and nothing but the truth,  
testified as follows:

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MR. FRYER: Thank you, Mr. Chairman,  
members of the board, and thank you again for this  
opportunity to present our rationale and our  
background for the development permit for this parcel  
of property.

14

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18

You've seen some of these charts before.  
I'm not going to read everything on them. I'm going  
to hit some highlights on these charts, but please,  
again, stop me if there's something on here that  
you'd like to ask a question about.

19

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25

This is our team organization. It hasn't  
changed since the last time. I am with the top  
block, the development entity, which is ECC Energy  
Solutions, and we've been working this project since  
2012. And the other members of the team, some of  
whom are represented here in the audience, that  
provided key support. It's been a team effort to get

1 us this far.

2 I've already introduced you to these  
3 folks. I'm going to move on.

4 A little bit about us is that we do know  
5 Hawaii. We've been here for a long time. We have  
6 done renewable energy developments, significant  
7 projects here in Hawaii. Two major ones are the  
8 pictures that you see here, one on Joint Base Pearl  
9 Harbor-Hickam and the other one out in Waianae.

10 So this project is the last Tier III FIT  
11 project -- last HECO Tier III FIT project. Because  
12 it provides a lot of value for the state, it's under  
13 a FIT agreement that's been approved by the PUC and  
14 vetted. The project, as you saw earlier, 5-megawatt  
15 AC array with a number of inverters and a  
16 distribution line.

17 Just for orientation, this is the project  
18 location. I know many of you know it, but just for  
19 orientation. And then it's hard to see in this  
20 chart. We have another one where it shows you the  
21 distribution line goes underground.

22 This is the land use chart, and I think  
23 you all are well aware that this is a compatible land  
24 use. I guess this is actually the ownership chart,  
25 the parcel ownership. This is an HCD A parcel in the

1 brown, and then the land use. And this is a Zone  
2 T II, and the use of this land for a solar farm is  
3 compatible under the development district rules. And  
4 here's just a nice aerial so you've got a better idea  
5 where the property is.

6 We have progressed our design along. You  
7 know, we -- we needed to do that so that we could  
8 take into account all the archaeological sites and  
9 how we're going to work around them. So this is  
10 actually the current site plan for our utilization of  
11 the site. You'll notice a number of the kind of  
12 little round circles in the midst of the array. The  
13 array's obviously the blue portion, and that's our --  
14 the site's in the array. They're outside the inner  
15 archaeological preserve and the buffers that are  
16 around.

17 Just a kind of couple things. This is  
18 not a tracking system. It's what's called a  
19 fixed-tilt system. So the solar modules are placed  
20 10 degrees facing south. It's 5-megawatt AC, which  
21 is a requirement -- a match requirement under FIT.  
22 The foundations have not been finalized, but the  
23 assumption is there will be some form of pier. We're  
24 going to use modules here on inverters. The modules  
25 that I have noted on the chart were something

1 (inaudible). These will be the inverters that cannot  
2 change.

3 This, hopefully, is a little easier for  
4 you to see. The green portion is the portion where  
5 we will go underground. And I would note that the  
6 distribution line is actually going to be constructed  
7 by HECO except for the portion that goes underground,  
8 and we have to construct that. We have to construct  
9 the duct bank, and HECO will pull the lines that go  
10 through the duct bank.

11 I know you all are familiar with the  
12 lease. You approved it last month. You approved  
13 execution of the lease last month. I just have a  
14 couple major points on the lease. It can only be  
15 used for a power plant. We can't use it for anything  
16 else. And we will and have agreed to accommodate  
17 entities access to the archaeological sites.

18 This is just in case anybody has any  
19 questions about what the HECO Tier III FIT project or  
20 program is. It's a PUC bust (phonetic) program.  
21 It's got some interesting contract terms in it. We  
22 are going to actually execute it on the 31st of  
23 January, this month. So I have a meeting with HECO  
24 this afternoon to finalize the last two terms.

25 We have been -- and I think others of us

1 understood there's a number of values that the  
2 project provides the community. It provides revenue.  
3 It provides power. It meets the state -- it helps  
4 the state meet its renewable energy goals. It  
5 provides infrastructure. And, obviously, of great  
6 value is the lands are usable when we're done with it  
7 and turn it back over to HCDA for other purposes.

8 This is just a chart that talks about the  
9 process that we went through to get your approval of  
10 the EA and the Finding of No Significant Impact. I  
11 think you're all well aware of this.

12 And I think you're well aware that we  
13 have done all the FAA approvals that we need to do  
14 for this project, both on the glare study and the  
15 obstruction analysis, and we have the FAA approval  
16 documents.

17 We have done a great deal of  
18 archaeological and cultural investigation of the  
19 property. All of the features -- I think when we  
20 originally started --

21 Can I get you for a second?

22 I think there were only a few features  
23 that were known when we actually did this detail?

24 MR. MCKEAGUE: Two sites.

25 MR. FRYER: I'm turning to Kawika. I

1 think there were two sites -- so before we did this  
2 detailed investigation, there were only two known  
3 sites on the property, and the detail investigation  
4 identified 23 sites with 46 features.

5 I think the key takeaway in our chart is  
6 we have done all the SHPD -- got all the SHPD  
7 approvals, the monitoring plan and the burial  
8 treatment plan and the preservation plan.

9 I recognize this is a little bit of an  
10 eye chart, but these are the 14 conditions  
11 essentially that we will implement during  
12 construction that SHPD wants us to follow to help  
13 preserve the sites.

14 An extensive biological survey has taken  
15 place on the site, and no endangered flora or fauna  
16 has been found.

17 And then for your consideration, as you  
18 consider the development permit, we would like to  
19 point out it's consistent with the master plan, with  
20 the community development district rules, and that  
21 it's consistent as well with the neighbors, both the  
22 Coast Guard, the big airport and the other neighbors.

23 As Deepak -- Deepak mentioned earlier, a  
24 lot of the checked boxes that you normally apply to a  
25 development permit really don't apply to us because

1 we're not building facilities. We're not having  
2 building facilities. It's a solar array.

3 So I think you're well aware that,  
4 essentially, the height of the system, height of the  
5 fence, anyway, will be 6 feet. That's what we're  
6 requesting a variance for. And the -- we're  
7 requesting a variance for the second-to-the-bottom  
8 item of actually placing the fence on the property  
9 border.

10 The first one relates to that variance  
11 request as well for landscaping, and the project  
12 provides a significant amount of open space,  
13 preserves open space. And we have obtained all the  
14 SHPD approvals, as I mentioned, and SHPD concurs with  
15 our plans.

16 I'm just going to give you a couple  
17 photos, I mean, a couple drawings. This is  
18 essentially a side shot of what the array will look  
19 like. It's fixed tilt, what we call two modules in  
20 portrait. So you got two solar modules in portrait  
21 and run them in a line. The leading -- sorry -- the  
22 lower edge, we're looking to keep it about 4-foot-10  
23 off the ground just so that weeds don't get in the  
24 way.

25 This is a standard fence detail that

1 we're proposing. It's actually a State and County of  
2 Honolulu fence detail. So this is a county detail,  
3 and we will utilize this in our project with your  
4 approval.

5 And if anybody's kind of wondering what  
6 the roads will look like, it's very minimal impact.  
7 We're going just to bring in some material, lay it on  
8 top of the ground, and there's not a lot of road to  
9 the side of this project.

10 This is essentially the same diagram I  
11 showed you earlier. This is one, though, that shows  
12 you the existing major trees. So all these trees --  
13 Kawika, please correct me if I'm wrong -- are largely  
14 invasive; correct?

15 MR. MCKEAGUE: Kiawe are invasive.

16 MR. FRYER: Kiawe are invasive. So we're  
17 removing -- where you see the dark circles, those are  
18 the trees we'll remove. A lot of the area that we're  
19 using right now are what we call grasslands. And  
20 then where you see the green buffer line, that's  
21 where we're not going to enter. That's the  
22 archaeological preserve. We'll stay out of it.

23 And this is just the open space analysis.

24 And I think the key takeaway here is the  
25 buffer of the archaeological preserve. Yes. This is



1 basically showing our buffers. And so you'll see the  
2 buffers that we have around the sites within the  
3 array.

4 And we have already, I think, talked  
5 about these three variances that we're requesting.

6 Okay. I'm sorry. This chart, basically,  
7 talks to the first variance request. It's putting  
8 the fence on the property line. It kind of shows you  
9 where it will be.

10 MR. MCKEAGUE: Front yard.

11 MR. FRYER: Kawika reminded me this is  
12 the front yard variance. And this is the fence  
13 variance. And we're requesting this -- it's kind of  
14 two major points of view. Kind of both security and  
15 safety. It is a solar farm. It is an electrical  
16 system. So we definitely don't want to encourage  
17 folks or provide easy access to the site.

18 And this is a graphic depiction of the  
19 variance, 3 foot -- with the extra 3 feet that we're  
20 requesting. Same thing, 3 foot for personnel gate.  
21 And this shows the 3-foot variance on the swing gate.

22 We would point out to you that  
23 neighboring -- for your consideration, the  
24 neighboring properties do indeed have fences of this  
25 height or larger.

1                   And this last is just kind of my project  
2                   schedule. We have a lot of activity planned for the  
3                   next couple months, execution of FIT at end of the  
4                   month. We're hoping to sign the lease about the same  
5                   time frame. We're looking for your development  
6                   permit so that we can get the SMA permit, and with  
7                   the SMA permit and development permit, we can  
8                   actually start work.

9                   And, again, if you want to look at any of  
10                  these charts, they are in your binder, and thank you  
11                  very much. Mahalo for letting me make this  
12                  presentation.

13                 CHAIR WHALEN: Thank you, Mr. Fryer. I  
14                 know you turned to Kawika a couple times just for  
15                 confirmation of a couple things you said. So -- and  
16                 that's fine. I just -- if board members or staff  
17                 have any questions of other of your expert witnesses,  
18                 I'll have to ask you to swear or affirm that you'll  
19                 be telling the truth. I mean, that's just the  
20                 process we have to follow, but it's fine that --

21                 MR. FRYER: Yes, sir.

22                 MR. MCKEAGUE: I apologize.

23                 CHAIR WHALEN: So I'd like to ask if,  
24                 first of all, staff have any questions of the  
25                 applicant in the presentation?

1 MR. NEUPANE: No, I don't.

2 CHAIR WHALEN: Thank you.

3 Board members, are there any questions  
4 you have of the applicant or, in particular --

5 MEMBER TIMSON: Well, I'll ask my  
6 questions, and they can figure out who should answer  
7 them.

8 CHAIR WHALEN: Okay.

9 MEMBER TIMSON: Thanks very much. I do  
10 want to address some of the issues here, and I thank  
11 you for this -- for your extensive presentation and  
12 your experts, which we certainly don't -- you know,  
13 don't question any of your efforts.

14 I have a couple things that I want  
15 clarified. For one, whenever you're dealing with  
16 variances and this is -- I know we're going to go  
17 into detail tomorrow, but it's part of the project  
18 today, and it concerns me because that's why we have  
19 rules. We have rules not so that you can throw in  
20 some variance. So the concern I have is, number 1,  
21 I'm asking you if you did not put up a 6-foot fence,  
22 could you still operate?

23 Okay. Secondly, you are asking to get  
24 rid of this setback. The concern I have about this  
25 is that the whole future of Kalaeloa is a community

1 of openness and diversity and welcoming. When we  
2 start putting up fences and gates and such, it gives  
3 a different appeal. And with you not abiding by the  
4 setback rules, because you're coming right up to the  
5 road, if at any time down the road --

6           You're going to be here 20 years. You're  
7 going to be in our community 20 years. We have to  
8 see it and be it and part of it every day. So what's  
9 going to happen is -- my concern is if we're going to  
10 allow this, there'll be no setback. We're going to  
11 be driving down the road, and next thing you know, we  
12 have just fences, gates, you know. It's not very  
13 welcoming, to tell you the truth. And so now --  
14 okay. Now you don't have to do any irrigation  
15 because you're going to come right up to the road. I  
16 don't care. You can do an irrigation. I want -- I  
17 do not want us to look like this gated or exclusive  
18 community for just what you are within your property  
19 line. I would like you to consider that.

20           And if you're concerned that someone's  
21 going to come in, well, I'll tell you, if I'm a  
22 chronic or one of the crazies that do all these  
23 electrical things, whether the wall is 3 feet or 6  
24 feet or whether you have a setback or not, if I want  
25 to get in, I'm going to get in. I mean, I don't

1 think that that's going to deter anyone who is  
2 thinking about doing that. So that is another thing,  
3 you know, I want you to consider. Because I don't  
4 think it's going to prevent you from doing business  
5 if you leave the -- leave our setback. And so we  
6 have a nice, aesthetic-looking, you know, community  
7 and not just one of gates and fences. And I don't  
8 think your comparison to the airport is a good  
9 comparison because you're comparing apples and  
10 oranges. You're comparing an airport, you know,  
11 compared to a solar farm. So I don't think that's a  
12 good comparison.

13 So I don't believe that we would prevent  
14 you from doing business if you thought a little bit  
15 more about what your business will look like to the  
16 community. And you're going to be here 20 years.

17 CHAIR WHALEN: So, board members,  
18 Timson's question basically is could you operate or  
19 what would be the justification for the variances if  
20 you could operate without those variances,  
21 essentially? So if you'd like to respond.

22 MR. FRYER: A 6-foot (sic) fence would be  
23 very problematic for the insurance, and I think that  
24 all of us would be nervous. I mean, you're right,  
25 ma'am. If somebody wants to get in, they're going to

1 get in even if it's 20 foot. And same with the  
2 airport fences you pointed out.

3 Yeah, I mean, I can -- I can turn -- I  
4 would have to -- want to turn to our insurance agent  
5 to see what they would think of that, but I mean, I  
6 would be very nervous about anything much less than 6  
7 foot.

8 Now, whether it really needs to be on the  
9 property line, I understand your point there. There  
10 are portions, though, that -- to actually provide  
11 that setback, I want to --

12 If I could turn to one of the charts that  
13 shows you the --

14 There's a portion along Coral Sea Road,  
15 the front yard, where it's either in or it will enter  
16 the preserve if we don't have that setback, or if we  
17 do a setback. So there's a portion up -- I don't  
18 know if you can see it, but the orange and kind of  
19 purple area where we have some concerns.

20 Okay. Oh, thank you. In this area right  
21 in here. I mean, we -- to set back, we could be  
22 impinging on some of the areas we committed to  
23 preserve. Let's just leave it at that. I don't have  
24 a more detailed answer for you on that one. But  
25 there's a portion there where we would really be very

1 reluctant. You would -- or I think SHPD would want  
2 to have a real close look at the enforcement of the  
3 setback.

4 CHAIR WHALEN: We will have the hearing  
5 tomorrow on the variances. So I think maybe to  
6 continue that, you might want to think about how you  
7 might additionally respond, if necessary, because  
8 that's actually the item that we'll be hearing is the  
9 variances.

10 MEMBER TIMSON: Yes, I mean, I know that.  
11 But what I'm saying is the project is part of that.  
12 So when we're discussing the project, I want to have  
13 those answers, and I don't want to wait till  
14 tomorrow, you know, and know that. I just want you  
15 to keep the community in mind of what we're looking  
16 at and what we're dealing with on a daily basis.

17 MR. FRYER: Yes, ma'am.

18 CHAIR WHALEN: Thank you.

19 Are there any other questions, board  
20 members, to the applicant?

21 Yes, Mary Pat.

22 VICE CHAIR WATERHOUSE: I have a  
23 question, and I'm looking at the -- the initial EA  
24 from October 2017 because I could at least see it.  
25 And I'm looking at the section about the fauna, and

1 this is regarding the birds, and it is on page 3-6  
2 and 3-7. And they did -- G70 does say that of the 21  
3 avian species reported, the kolea is an indigenous  
4 migratory species. 20 species detected are alien to  
5 the Hawaiian Islands.

6 So there is also the manu o Ku was  
7 recorded as an incidental observation flight over the  
8 southwestern corner of the site while searching  
9 between point counts, and this also -- this bird, the  
10 manu o Ku, is an indigenous, breeding seabird  
11 species. So -- and it is listed as a species -- on  
12 page 3-7, it is listed as a species that is  
13 threatened under the State of Hawaii endangered  
14 species statute. So even though it's not listed as a  
15 federal endangered species, it is a State of Hawaii  
16 endangered species statute, and I'm just concerned  
17 about that. I'd like your response to that.

18 MR. FRYER: May I turn to my expert?

19 CHAIR WHALEN: Group 70 or G70, rather, a  
20 representative -- or your biological consultant.

21 MR. FRYER: Could I turn to my biological  
22 consultant?

23 CHAIR WHALEN: Okay. Thank you.

24 If you could just state your name and  
25 affirm or swear what you say is the truth.



1                   MR. GUNTHER: Aloha kakou. So my name  
2 is Eric Guinther. I'm an ecologist with AECOS, and  
3 we were responsible for the environmental -- the  
4 natural environment studies that were done for the  
5 project, and I do swear to tell the truth.

6                   CHAIR WHALEN: Thank you.

7

8                   ERIC GUNTHER,  
9                   having been first duly sworn to tell the  
10 truth, the whole truth and nothing but the truth,  
11 testified as follows:

12                   MR. GUNTHER: I guess I could start right  
13 out by attempting to answer the question. I did hear  
14 it.

15                   The particular species of bird that you're  
16 talking about is a small white seabird. It is  
17 protected under state regulations. It's not  
18 federally protected. It doesn't reside on the site.  
19 Just to back up a little bit on how the studies --  
20 the bird studies are done. An avian biologist, not  
21 myself -- I'm a botanist -- sets up stations on a  
22 site and then does timed counts. So he's standing in  
23 a spot. I believe they're five-minute counts for  
24 this type of survey. And he is very good at hearing  
25 and identifying birds from the sounds they make.

1 He's also, obviously, very knowledgeable about any  
2 sightings that he sees. So he's going to list all of  
3 the species in that five-minute count that he hears  
4 or he sees. I've watched him do it. He rotates  
5 around. So he's doing a very thorough study of that  
6 area, which extends well out from where he's  
7 standing, obviously.

8           Incidental -- the incidental observations  
9 are other birds that he sees while he's not at a  
10 count station. And I think it's explained in there  
11 that this particular tern was spotted while he was  
12 moving from one -- one point to another. So he  
13 listed those as well as things he's seen, and I think  
14 he describes it quite well that it was flying over  
15 the site. So that means there's no evidence --

16           And he's knowledgeable -- very  
17 knowledgeable about that species. There's no  
18 evidence that that bird is even using that site in  
19 any way. In fact, seabirds don't use that site for  
20 anything, but they will fly over going from point A  
21 to point B.

22           So that's the nature of the observation.  
23 It wouldn't be counted as a habitat that was either  
24 suitable for that species or something that you would  
25 even expect to live there or utilize in any way.

1                   Does that satisfy your question on that  
2 particular species?

3                   VICE CHAIR WATERHOUSE: Yes.

4                   MR. GUNTHER: So it wouldn't be listed in  
5 our report as an endangered species that's present  
6 because birds naturally move around. They're flying  
7 over and stuff. And so simply flying over a site  
8 isn't considered the presence of the species.

9                   VICE CHAIR WATERHOUSE: What department  
10 of the state -- I'm assuming in DLNR -- has responded  
11 to this section of the report?

12                   MR. GUNTHER: Excuse me?

13                   VICE CHAIR WATERHOUSE: Is there a  
14 response by DLNR to this section of the report, a  
15 division within DLNR that has responded to this  
16 section of the report?

17                   MR. GUNTHER: It would be DOFAW, and I  
18 do believe they did respond. I don't think they  
19 mentioned that particular species, again, because  
20 simply flying over the site isn't considered  
21 utilizing the site. It's utilizing the air space  
22 about it. So they probably would not have --

23                   That species is particularly prominent in  
24 Waikiki and parts of downtown Honolulu. It likes to  
25 nest in large trees. If you really wanted to see the

1 species, it's very easy to spot it going to Waikiki,  
2 around the state capital, that part of central  
3 Honolulu. That's actually where they live and  
4 utilize the trees for their nests which are just --  
5 they just put an egg on the branch. They don't even  
6 build a nest, particularly. But they are prominent  
7 in the Waikiki area. They're going out to sea to  
8 feed. So they're flying back in from their feeding,  
9 heading back to their roost or their nest. So it  
10 would fly over this site naturally if it was coming  
11 from that particular direction from the sea. It has  
12 no bearing on the site itself or the use of the site.  
13 It's not a material concern of either DOFAW or us,  
14 particularly.

15 VICE CHAIR WATERHOUSE: Can you or  
16 someone in your organization or someone direct me to  
17 the response from DLNR about --

18 MR. FRYER: So we do have a letter  
19 from -- it's from Department of Land and Natural  
20 Resources dated 15 August 2017, and I believe it's  
21 attached to -- it's one of the EA documents.

22 VICE CHAIR WATERHOUSE: Can you say the  
23 date again?

24 MR. FRYER: I'm sorry, ma'am?

25 VICE CHAIR WATERHOUSE: What's the date

1 of the document?

2 MR. FRYER: The date is 15 August 2017,  
3 and it's from DLNR.

4 VICE CHAIR WATERHOUSE: Okay.

5 MR. FRYER: Essentially, if I can  
6 paraphrase it, it's accepting the survey is  
7 completed.

8 VICE CHAIR WATERHOUSE: And that is  
9 located in --

10 MR. FRYER: It's in the EA package,  
11 ma'am. Let me see if I can figure out what appendix  
12 it is.

13 CHAIR WHALEN: Cite the document and the  
14 page so that -- I'm sorry to be so particular.

15 MR. FRYER: No, no, no, no.

16 VICE CHAIR WATERHOUSE: Is it the October  
17 2017 final EA? Is it in this one?

18 MR. FRYER: Yes, ma'am. It's in there.  
19 It's about three quarters of the way through. It's  
20 in the back and I'll try to -- there's,  
21 unfortunately, no page numbers, but it's one of the  
22 attachments supporting the document. So it's  
23 Appendix A, comment letters -- no. I take it back.

24 VICE CHAIR WATERHOUSE: Okay. From  
25 Mr. Emoto, that one?

1 MR. FRYER: Yes. It should be from James  
2 Cogswell.

3 (Brief pause.)

4 CHAIR WHALEN: I don't know if you can  
5 record this. They're identifying the page.

6 VICE CHAIR WATERHOUSE: Oh, here we go.  
7 Okay. So it's August 15, 2017, and it's from James  
8 Cogswell. Okay. So I will go ahead and read this  
9 later on. Thank you.

10 MR. FRYER: Thank you.

11 MEMBER SWINNEY: Chair?

12 CHAIR WHALEN: Yes. Yes, Shirley.

13 MEMBER SWINNEY: So in the staff report,  
14 it refers to a substation located on this property,  
15 and it describes it as, like, being a  
16 transformer-type station. I was wondering can you  
17 describe, first of all, what that substation or  
18 building would look like? Is it tile? And, also, if  
19 you're transmitting -- transforming and transmitting  
20 to HECO, what kind of lines would that require?  
21 Would you be putting in lines and is that overhead?

22 MR. FRYER: Yes. Part of the lines will  
23 be overhead and part of it will be underground, and  
24 HECO is actually going to put the lines in  
25 themselves. So they'll put poles down Coral Sea Road

1 where it's not inside the FAA clear zone, and inside  
2 that zone, we will put in duct bank.

3 So duct bank is a series of conduits  
4 placed underground covered with concrete, and then  
5 HECO will pull their wires essentially to the  
6 circuits through the duct bank.

7 The switch yard -- I'm calling it a  
8 switch yard because typically a substation has a big  
9 transformer, and this will not. So we'll take the  
10 power off of each of the inverter pads and bring it  
11 into our switch yard where we'll consolidate it kind  
12 of like a big electrical panel like you have in your  
13 home, but we're kind of going in reverse.

14 So each will be pad-mounted cabinets that  
15 will basically accept the power. There will be  
16 cabinets for the power. There will be cabinets for  
17 the communication lines coming in because HECO needs  
18 to have control of it. So they have what they call  
19 SCADA control over it, supervisory (sic) and data  
20 acquisition control coming on in. So there will be a  
21 Hawaiian Telcom cabinet, HECO's cabinet, and then  
22 these upright stainless steel cabinets that will  
23 contain the actual switch gear itself.

24 The only thing missing from the typical  
25 substation is your big, massive transformer.

1       Something that looks like that, that won't be there.

2                   MEMBER SWINNEY:   So your lines are  
3       underground?  Is that what I heard?

4                   MR. FRYER:   So the portion that we put  
5       in -- so the lines will be aboveground that HECO puts  
6       in.  The portion that we put in, because HECO does  
7       not do -- or has indicated they will not do the duct  
8       bank, the portion that's up by the airport -- by the  
9       airfield.  We have to come in and put that in in the  
10      DOT right-of-way.  And then we build it and,  
11      essentially, let them do their part once we're done.  
12      Does that make sense?

13                  MEMBER TIMSON:   Chair, I have another  
14      question, please.

15                  CHAIR WHALEN:   Yes.

16                  MEMBER TIMSON:   Okay.  I want to ask a  
17      question about the closer sites which you will be --  
18      you will be preserving.  And I was reading something  
19      you're going to -- what are you going to do?  What is  
20      your definition of preserving it?  Are you just going  
21      to leave the land there?  Are you going to do  
22      something with it?

23                  MR. FRYER:   We leave it alone.  We will  
24      not touch it.  We leave it alone.  We haven't decided  
25      if we're going to put, like, a little barrier around



1 it, like a rope fence around it or not. We're trying  
2 to figure out the right answer for that. In fact, as  
3 I recall, we have to consult with SHPD when we come  
4 up with that final plan, but, yeah, we're not  
5 touching it. We'll put up during construction --  
6 advance of construction, we'll put up -- what do they  
7 call it? It's kind of like the marker tape. Not  
8 crime scene tape, but it's the same kind of tape that  
9 you'll put up around it. We'll put up two zones --  
10 two rings around one site. So one is absolutely do  
11 not get inside this and the other one as well. But  
12 we will not touch the sites, ma'am. They are going  
13 to stay as they are.

14 MEMBER TIMSON: And you're going to set  
15 rules for the proper authorities, whoever wants to  
16 come and do research? You know, what's going to be  
17 the access to that -- to that area? We want to keep  
18 it away from the general public who knows nothing  
19 about it, but what is the openness to another group  
20 or organization that may want to come in and do work  
21 or studies or, you know? Is that going to be open to  
22 them?

23 MR. FRYER: Yes, ma'am, and the person  
24 who is going to answer that is Kawika.

25 CHAIR WHALEN: Kawika, this will be a

1 good time for you to introduce yourself and be sworn  
2 in.

3 MR. MCKEAGUE: Aloha mai kakou. Kawika  
4 McKeague, senior planner and director of cultural  
5 planning, and I do affirm to tell the truth.

6 CHAIR WHALEN: Okay. Thank you.

7

8 KAWIKA MCKEAGUE,  
9 having been first duly sworn to tell the  
10 truth, the whole truth and nothing but the truth,  
11 testified as follows:

12 MR. MCKEAGUE: Please pardon my frog  
13 voice. I'm dealing with day 3 of the flu, and so I'm  
14 trying my best here. But to answer your question --  
15 that's a great question.

16 So maybe to take a quick back-step. So  
17 once we identified the 23 sites and the 46 features  
18 in our field work, we also, as part of the  
19 requirements, had extensive conversations with  
20 different key community groups, including the  
21 Kalaeloa Heritage Park, at the time the Kalaeloa  
22 Heritage Legacy Foundation. We also met with the  
23 Office of Hawaiian Affairs as well as, more recently,  
24 the Kanehili Cultural Hui. And thank you very much.  
25 And last but not least is that through the process of

1 going through the Burial Treatment Plan, because two  
2 of the specific features were identified as Native  
3 Hawaiian burials, and there's a subscribed process by  
4 which family descendants come up and get recognized.  
5 And I believe -- I could be corrected here. I  
6 remember a count of 27 recognized cultural  
7 descendants.

8           So the setup for all that is we allowed  
9 talk story sessions about what we should and  
10 shouldn't do with what essentially would be -- the  
11 best way to describe it as a passive preservation  
12 site, meaning that ASEF is not really in the capacity  
13 to do active preservation activities like hosting a  
14 cultural group or whatnot. But in those  
15 conversations, which HCDA was also -- at least staff  
16 was present along with SHPD and some of these other  
17 entities, we did say, you know, if, within the  
18 20-year lease, an appropriate group were to come  
19 forward -- for example, not to call them out, but  
20 say, for example, like the Heritage Park was  
21 interested to do some activity, ASEF would be more  
22 than happy to try to figure out what that  
23 collaboration would be or could be in the future.

24           But right now where it stands, first  
25 thing we want to do is establish the preservation

1 zone first and get that actually set, literally, into  
2 stone and then worry about what happens with the  
3 activities afterwards.

4 MEMBER TIMSON: Okay. So it's not part  
5 of anything written? So it's just an agreement  
6 that -- talk story?

7 MR. MCKEAGUE: At this current time with  
8 SHPD, the requirement being asked of us would be  
9 interim preservation and to ensure that nothing  
10 happens during the construction phase of the project.  
11 Now, we'll still continue to have more conversations,  
12 and I failed to mention we also had a talk story with  
13 the Ahahui Siwila, the one in Kapolei as well.

14 So pretty much people, at this point in  
15 time, are of the opinion until such time there's  
16 appropriate persons or entity that comes forward --  
17 steps forward to want to come and kuleana -- no one's  
18 really done that yet -- that the best way to malama  
19 these mo'ohelu (phonetic) is to put them into passive  
20 preservation such that nothing happens to them in the  
21 interim, if that makes sense.

22 MEMBER TIMSON: Okay. It's not the best,  
23 but that's what we got.

24 MEMBER SWINNEY: Just to follow up on  
25 that. What is the Archaeological Monitoring Plan?

1                   MR. MCKEAGUE:  What is the monitoring  
2 plan?

3                   MEMBER SWINNEY:  Yes.

4                   MR. MCKEAGUE:  If I could yield to our  
5 archaeologist because I'm not a qualified  
6 archaeologist, but as a professional that works in  
7 the 6E world, monitoring this case is a form of  
8 mitigation that is to ensure that, while we're doing  
9 construction, everything that needs to be put into  
10 place relative to observation ensures -- assures us  
11 that we do not impact those sites there during  
12 construction.  So the specifics I would yield to  
13 Ms. Morgan Davis if you have follow-up questions.

14                  CHAIR WHALEN:  Would you like to hear  
15 from the archaeologist?

16                  MEMBER TIMSON:  I think we're concerned  
17 about a future plan.  I know construction -- I  
18 believe that you're qualified to know better, but,  
19 you know, we're interested in the future.  You know,  
20 what is your commitment to the future?

21                  MR. FRYER:  To answer your question,  
22 ma'am, it is actually in the lease.  The form of the  
23 lease -- it's not final, but the form of the lease  
24 includes language that we will cooperate.  We are  
25 required to cooperate with recognized descendants.  I

1 think the only word in there is we have to be  
2 properly vetted, insured, you know, sign leases, that  
3 type of thing. But there is language in the draft  
4 lease that basically preserves that right.

5 MR. MCKEAGUE: And I would -- I'm sorry.  
6 I would add one more comment specific to the two  
7 burials. This question was specifically asked:  
8 "Would you want" -- to the descendants. Excuse me.  
9 "Would you want access that's maintained, cleared to  
10 the two burials? Would you want specific  
11 landscaping? What kind of materials would you want  
12 to those specific burials?" And the answer, I  
13 believe almost uniformly, was, "Leave it as is."  
14 Because if you make a clearing, a lot of people can  
15 come in and check it out; right?

16 So, basically, the way it is now in the  
17 natural environment with the kiawe bush and all that  
18 there makes it very difficult to want to access these  
19 sites. So at least specific to the two burials,  
20 excuse me, there was no need, at least on the part of  
21 the descendants, to provide access, but it was  
22 requested to at least do annual inspections because  
23 we do have foliage that grows, and there was one  
24 kiawe tree, for example, that could be a future issue  
25 that may have to be addressed. So those kinds of

1 things were discussed with that particular group.

2 CHAIR WHALEN: Board Member Timson or  
3 Swinney, do you have any questions of the  
4 archaeologist, particularly?

5 MEMBER SWINNEY: No.

6 CHAIR WHALEN: Thank you. Any other  
7 questions of board members of the applicant or  
8 witnesses? Or, staff, do you have any questions?

9 Okay. Then all right. So at this point,  
10 Applicant, do you feel you've concluded your  
11 presentation? Anything else that you wish to add?

12 MR. FRYER: No, sir. Mahalo. Thank you.

13 CHAIR WHALEN: Okay. We are ready for --  
14 we can proceed with public testimony. Speakers will  
15 be called up to testify in order. I think we haven't  
16 gotten any sign-ups. I haven't gotten any sign-ups  
17 from staff. Is there anyone in the audience who  
18 wishes to provide public testimony on the part of the  
19 applicant or --

20 Okay. So if there's no public testimony,  
21 then on behalf of the HCDA Authority members and  
22 staff, I thank you for your attendance. The public  
23 hearing on the applicant's requested modifications  
24 now stands adjourned. The time is now 11:06 a.m.  
25 Thank you.

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(The proceedings were adjourned at  
11:06 a.m.)

C E R T I F I C A T E

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 28th day of January 2018 in Honolulu, Hawaii.

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LAURA SAVO, RPR, CSR NO. 347