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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

Friday, January 19, 2018

Taken at Department of Hawaiian Home Lands

Hale Pono'i Conference Room

91-5420 Kapolei Parkway

Kapolei, Hawaii 96707

Commencing at 10:00 a.m.

Reported by: LAURA SAVO, CSR No. 347

A P P E A R A N C E S

1

2 John Whalen, Chairperson

3 Mary Pat Waterhouse, Vice Chairperson

4 Garrett Kamemoto, Interim Executive Director

5 Deepak Neupane, Director of Planning and Development

6 Lori Sunakoda, Deputy Attorney General

7

8 BOARD MEMBERS:

9 Mark Anderson

10 Wei Fang

11 Derek Kimura

12 David Rodriguez

13 Shirley Swinney

14 Maeda Timson (Joined meeting at 10:23 a.m.)

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EXHIBITS ADMITTED TO THE RECORD:

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TESTIMONY OF WITNESSES:

Richard Fryer 23

Ryan McCauley 33

PUBLIC TESTIMONY BY:

Michael Kojima 48

1 Friday, January 19, 2018, 10:00 a.m.

2 -o0o-

3 CHAIR WHALEN: Okay. Good morning. I'd
4 like to call to order the January 19th, 2018, public
5 hearing of the Hawaii Community Development
6 Authority. The time is now 10:00 a.m. Thank you for
7 your interest in Kalaeloa and your attendance today.
8 My name's John Whalen, Chair of the Authority.

9 Let the record reflect that the following
10 Kalaeloa members are present: John Whalen, Mary Pat
11 Waterhouse, Shirley Swinney, Wei Fang, Mark Anderson,
12 David Rodriguez and Derek Kimura.

13 So is the representative or
14 representatives of the applicant --

15 MR. FRYER: Yes, sir, there is.

16 CHAIR WHALEN: Okay. Thank you.

17 Mr. Fryer, for the applicant, Aloha Solar Energy Fund
18 II, LLC.

19 Good morning. Today's hearing on
20 Development Permit KAL 17-017 is being held in
21 accordance with Hawaii Revised Statutes, Section
22 206E-5.6, Administrative Rules, Chapter 15-219, and
23 Hawaii Administrative Rules, Chapter 15-215.

24 The nature of today's public hearing is
25 to allow the applicant to present the request for

1 variances and to provide the general public with the
2 opportunity to present oral and/or written testimony.
3 The applicant is Aloha Solar Energy Fund II, LLC.
4 Tax map key is 9-1-013, parcel 070, and an
5 approximate 1.78-mile-long 12 kV interim electrical
6 distribution line located on a 30-foot-wide portion
7 of right-of-way along the eastern edge of Coral Sea
8 Road that borders TMK 9-1-13, parcels 39, 40, 43, 44,
9 72, 99 and 100.

10 So the variances requested are the
11 following three variances pursuant to Hawaii
12 Administrative Rules 15-215 of the Kalaeloa Community
13 Development District Rules.

14 First, HAR 15-215-43, Architectural
15 Standards, subpart C: Increase the height of the
16 fence from 3 feet to 6 feet.

17 HAR 15-215, Development Standards
18 Summary, figure 1.3: To place the fence on the
19 property line without the required setback.

20 And the third is HAR 15-215-44,
21 Landscape: To eliminate the requirement for
22 landscaping and an automatic irrigation system within
23 the front-yard area.

24 The application date was November 27th,
25 2017. A public hearing notice for the project was

1 published in the Honolulu Star-Advertiser, The Garden
2 Island, West Hawaii Today, Hawaii Tribune-Herald and
3 Maui News on December 13, 2017.

4 So these are the procedures of the
5 hearing. This is the hearing to consider the
6 variance -- the request for variances by the
7 applicant. Let me briefly explain our procedures for
8 today's public hearing.

9 The HCDA staff will first present its
10 report summarizing the project's request for
11 variances. Following that presentation, we will
12 receive the presentation of the applicant and the
13 testimony from the public. Only members of the
14 Authority and the interim executive director will be
15 permitted to ask questions of the staff, applicant or
16 individuals providing testimony.

17 Are there any questions about these
18 procedures?

19 Okay. So we'll begin the proceedings.
20 First, Garrett Kamemoto, the interim executive
21 director, will present the staff's report, but I
22 think in lieu or in his stead, Deepak Neupane will
23 present the staff report.

24 MR. NEUPANE: Thank you, Chair, and good
25 morning, members. Before starting the staff report,

1 the staff would like to introduce two exhibits into
2 the record, Exhibit B and Exhibit C. Let me briefly
3 describe and give a copy to the applicant.

4 Exhibit B is the aerial photograph of the
5 project site, and Exhibit C is, I guess, the
6 pedestrian view or the driving view of the -- of the
7 site, and I would like to -- Exhibit C is primarily
8 to give the board a sense of -- sense of height if
9 there is a fence of 6 feet or 8 feet or whatever,
10 what it would look in the elevation and all. And if
11 you look, some of the signage there, that's
12 approximately maybe around 6 feet, maybe a little bit
13 more. So with that, I'd like to give a copy to the
14 applicant.

15 MR. FRYER: Received.

16 (Staff's Exhibits B and C are
17 offered for the record.)

18 MR. NEUPANE: The staff report on the
19 variances is in your packet. I apologize for the
20 mix-up that we had, and I believe there was a new
21 copy provided to the board members yesterday, and
22 that was -- that was Exhibit A, which was the
23 variance application from that. With that, you know,
24 the variance requested -- variance, section HAR
25 15-215-81, variances in the Kalaeloa Rules --

1 Kalaeloa Community Development District Rules
2 provides for a mechanism of relief from the strict
3 application of the Kalaeloa Rules. The applicant is
4 requesting the following three variances: First one
5 is HAR 15-215-81 of the Kalaeloa Community
6 Development District Rules.

7 The first one is from HAR 15-215-43 where
8 the applicant is requesting the increase of height of
9 the fence from 3 feet to 6 feet.

10 Number 2, HAR 15-215, Development
11 Standards Summary, figure 1.3, where the requirement
12 is to place any fence on the property at the setback
13 line, the applicant is requesting the fence to be
14 placed on the property line.

15 And, third, HAR 15-215-14 -- dash 44,
16 Landscape, the applicant is requesting to eliminate
17 the requirement to landscape and automatic irrigation
18 within the front yard.

19 With that, I conclude my staff report.

20 CHAIR WHALEN: Thank you. Board members,
21 are there any questions of the staff?

22 MEMBER ANDERSON: I have one.

23 CHAIR WHALEN: Yes, Mark.

24 MEMBER ANDERSON: Hi, Deepak. You know,
25 after yesterday's hearing, I drove around the area

1 and looked at different fences and the setbacks just
2 to get a feeling, and there seems to be a wide
3 variety of fence heights and setbacks. Just curious.
4 Do you recall the origin of our rule for the setback
5 and the 3-foot fence? I mean, how did we come about
6 that? If you don't, that's okay.

7 MR. NEUPANE: No. I do.

8 MEMBER ANDERSON: I'm just curious about
9 the 3 foot because I saw some different heights on
10 different fences.

11 MR. NEUPANE: Totally. What you see out
12 there is existing, and some of the new ones probably
13 were on federal property that kind of doesn't go
14 through permitting with the HCDCA because of the
15 federal supremacy clause and all that. But the rule
16 itself, the 3-foot fence height, primarily was -- you
17 know, the height was arrived at based on some of the
18 downtown areas in Kalaeloa.

19 So the intent really was not to have a
20 fence -- if you look at the downtown area, it was a
21 higher density area and all. So we just limited the
22 height of the fence to about 2 feet, 3 feet and no
23 more. With that said, there's only one provision for
24 fencing in the rules. The rules doesn't look at, you
25 know, a different fence height based on transects,

1 you know. Since I was very much involved in, you
2 know, coming up with the drafting of the Kalaeloa
3 Rules and all, I remember several years ago the
4 discussions that we had. So, you know, we are
5 looking at amending some of the rules, and that some
6 of the things that we're probably considering to look
7 at are fence height and things like that based on
8 different transects and not just have one height for
9 all transects.

10 MEMBER ANDERSON: Thank you.

11 MEMBER SWINNEY: So may I follow up,
12 Chair?

13 CHAIR WHALEN: Yes.

14 MEMBER SWINNEY: So I heard you say -- I
15 heard you say, Deepak, regarding the discussion on
16 the fences, when these rules were being put in
17 place -- can you repeat what you said?

18 MR. NEUPANE: Primarily, the reason for a
19 3-foot fence was looking at -- looking at more
20 density in the downtown Kalaeloa where, typically,
21 you wouldn't want to have a high fence. And a lot of
22 the provisions in the Kalaeloa Rules was actually
23 derived from Kaka'ako because we already had the
24 Kaka'ako Rules, and that was used, you know, as some
25 of the basis for that. So that was the main reason

1 for the 3-foot height.

2 MEMBER SWINNEY: Along the thoroughfares?

3 MR. NEUPANE: Yeah. Along property
4 lines, basically.

5 CHAIR WHALEN: When you say city or urban
6 Kalaeloa, you're referring also to the city of
7 Kapolei? Because those are city zoning standards.
8 Usually 6-foot-height fences are permitted by zoning.

9 MR. NEUPANE: I believe so. The land use
10 ordinance does allow for 6-foot-high fences on
11 property lines.

12 MEMBER RODRIGUEZ: I believe the fences
13 are comparable to the fences surrounding the Kalaeloa
14 Airport. Is that the reason why? So they just make
15 it look consistent?

16 MR. NEUPANE: That probably would be a
17 question for the applicant.

18 CHAIR WHALEN: On these two exhibits that
19 were on here, these photo exhibits, my understanding
20 is that the properties haven't really been surveyed
21 at this point. So we don't know precisely where that
22 front yard will be or, you know, where the property
23 line would be along the frontage, but it doesn't
24 appear that the property line is really all that
25 close to the roadway, at least from the photo -- I

1 mean, the aerial photo exhibits that we saw. In
2 other words, the solar panels would be situated
3 fairly far from the roadway.

4 MR. NEUPANE: It's set back.

5 CHAIR WHALEN: Quite a bit. So just
6 looking at this roadway sign there, they're
7 approximately -- they vary in height, but I would say
8 it's probably fairly close to 6 feet in height. Does
9 that give us kind of an indication about what the
10 height of the fence would be?

11 MR. NEUPANE: That should give you an
12 indication, and that's one of the reasons why the
13 staff wanted to introduce this was to give you a
14 sense of there was a 6-foot fence that was even on
15 the property line, as you say, Chair, because there
16 is no right-of-way survey. So from the picture, we
17 can't really tell where the property line really is,
18 but it's probably maybe where that, you know, tower
19 station starts. That's probably where the property
20 line is.

21 So I think there is a road sign -- a
22 yellow sign in the foreground. That -- I believe,
23 typically, those signs are a little bit higher than 6
24 feet.

25 CHAIR WHALEN: So this is -- the road

1 part is probably some kind of a road shoulder, and it
2 may even be deeper than this? I mean, once the
3 property -- I'm just trying to get a sense of really
4 how visible either the panels or the fence would be
5 actually from the roadway, which is kind of the key,
6 I would say, in terms of defining a maximum height
7 fence.

8 MR. NEUPANE: There is an overgrowth
9 there. There is a lot of koa haole out there.

10 CHAIR WHALEN: Haole koa.

11 MR. NEUPANE: That's, you know,
12 basically -- yeah, it's a weed. It's just a local
13 plant. It's a tall plant, and it probably will be
14 completely camouflaged with that.

15 CHAIR WHALEN: Yeah. That was my point
16 is that the fence itself may not be visible even at 6
17 feet from the roadway.

18 MR. NEUPANE: With that kind of
19 overgrowth, yes.

20 MEMBER KIMURA: (Inaudible.) Were there
21 any objections from the FAA?

22 MR. NEUPANE: I believe not. If we look
23 at the staff report from yesterday, there is a letter
24 from the FAA with no objection.

25 CHAIR WHALEN: Just one other question

1 about this exhibit. The aerial photo -- the aerial
2 photo, this sort of orange mark is the approximate
3 location where the beginning of these solar panels
4 would be located; right? I mean between that point
5 and the runway?

6 MR. NEUPANE: Chair, let me ask the
7 applicant to put up the site plan. I believe that we
8 can have a site plan showing where the panels are in
9 the presentation.

10 So the curb line is the property line,
11 and I can't read the scale from here, but we are
12 closer. Can you read the scale? That's 20 feet?

13 MR. FRYER: This is 400 feet right there.
14 That's 400.

15 MR. NEUPANE: Let me just walk to the
16 screen. Just to give you a sense of scale on this,
17 that distance is 100 feet. So you take that and put
18 it here, so it looks like if that's the --

19 Is that the edge of the road, or is that
20 the property line?

21 MR. FRYER: Should be the property line.

22 MR. NEUPANE: Looking at this, it's
23 anywhere from 80 to 100 feet further back from the
24 property line.

25 So the solar panel -- the closest solar

1 panel to the road would be probably between 80 to 100
2 feet from the property line.

3 CHAIR WHALEN: Okay. It's set back --

4 MR. NEUPANE: Set back quite a bit.

5 MEMBER SWINNEY: So the property line is
6 not on the roadway?

7 MR. NEUPANE: It's further back.

8 MEMBER SWINNEY: It's further back to 80
9 feet?

10 MR. NEUPANE: Not the property line.

11 That's the requirement that you were saying, but the
12 actual solar panel looks like it's a lot further back
13 than 15 feet.

14 MR. FRYER: Right. I would just point
15 out, if I may speak, that this distance varies. The
16 road itself -- the property right-of-way is kind of
17 somewhat fixed down there. The road kind of swerves
18 back and forth. So sometimes the setback from the
19 road to the HCDA property line varies. Yeah, it's --

20 MR. NEUPANE: Yeah. We don't have a
21 metes and bounds survey. So it's difficult to say
22 exactly where the line is. What I was trying to
23 explain from the site plan was that on average, the
24 distance from the property line to where the solar
25 panel is. What you're showing is just a schematic,

1 but are you 15 feet from the property line, or are
2 you further back from the property line?

3 MR. FRYER: No. In general, this is
4 probably the closest we would be is 15 feet. As we
5 go back to here, there will be places -- like, I'll
6 show you this. Obviously here, the setback, as you
7 point out, is almost 200 feet in this area here.
8 Down here at this point, the setback is --

9 MR. NEUPANE: Look at the drawing, I
10 mean, if the scale shows that it's 100 feet, then the
11 smallest unit there in that scale is 100 feet. And
12 if I take that, then it looks like about 80 feet,
13 around closer to that.

14 CHAIR WHALEN: Okay. I'd just like to
15 note for the record that Mr. Fryer had been sworn in.
16 So it carries over from yesterday's --

17 MR. FRYER: Thank you.

18 CHAIR WHALEN: -- continuing hearing.

19 So if the fence were set back 15 feet,
20 there would be no height restriction; is that right?
21 Or no?

22 MR. NEUPANE: The height restriction is 3
23 feet even at the setback by the road.

24 CHAIR WHALEN: So interior to a property,
25 even if they were set back 100 feet, they would still

1 be --

2 MR. NEUPANE: The way the rule is
3 written, it would still be 3 feet.

4 MEMBER SWINNEY: Along thoroughfares?

5 MR. NEUPANE: Along thoroughfares.

6 MEMBER SWINNEY: Along roadways. So,
7 Deepak, then there is a 15-foot right-of-way for the
8 road right-of-way, and that's standard; right? From
9 the roadway, there's a 15-foot setback, and that's a
10 right-of-way; correct? DOT?

11 MR. NEUPANE: I am not sure, Member
12 Swinney, because I don't know -- I haven't looked at
13 the right-of-way map for CEO (sic). So it's
14 difficult to say the right-of-way is 15 feet from the
15 edge of the road.

16 MEMBER SWINNEY: So maybe the applicant
17 knows that or has it in his presentation. Thank you.
18 I'll wait for the applicant.

19 CHAIR WHALEN: I'd just like to note for
20 the record, Maeda Timson just joined the meeting at
21 10:23.

22 Okay. Any other questions? I think
23 these are -- so, essentially, we've established that
24 because there has been no survey, we don't know
25 precisely where the right-of-way boundary is or front

1 property line at this point.

2 MR. NEUPANE: Right now, we don't. The
3 Authority did approve a metes and bounds survey early
4 this month, and we are in the process of engaging a
5 consultant to, you know, do a right-of-way metes and
6 bounds survey. Without that, at this point I really
7 can't say what the property line is.

8 CHAIR WHALEN: Okay. But we do have an
9 exact height for the fence at least in the rules, I
10 guess, at this point other than what the variance
11 request is.

12 Okay. If there are no more questions
13 from the board or staff or, I guess, exhibits, we'll
14 let Mr. Fryer, representative of the applicant, Aloha
15 Solar Energy Fund II, LLC, please introduce your
16 expert witnesses or parties if they will be speaking
17 besides you.

18 MR. FRYER: Thank you. Our expert
19 witnesses are three of the same people we had here
20 yesterday. We have Ryan McCauley from Tritium3, Jeff
21 Overton from Group 70, and Morgan Davis.

22 CHAIR WHALEN: Thank you. Do you have
23 any additional exhibits?

24 MR. FRYER: Yes, sir. We would like to
25 introduce a new exhibit. It is essentially Exhibit

1 GG from yesterday. We have -- in the interest of
2 efficiency, we have removed charts and kind of pulled
3 it down to just the charts related to the variance.
4 And then based on some of the comments and questions
5 we got yesterday, updated some of those charts and
6 we'll hand it out. This will be Exhibit KK.

7 CHAIR WHALEN: So all of them are stapled
8 together?

9 MR. FRYER: Yes.

10 CHAIR WHALEN: Okay. Members, do you
11 have any objections to the exhibits being offered by
12 the applicant, Aloha Solar Energy Fund II, LLC?

13 Oh, yes, we have a clarification on the
14 exhibit numbers. Are they sort of like in some
15 sequence, I guess, or are they all just the same
16 exhibit, or is each page a different exhibit?

17 MR. FRYER: No, sir. This is meant to be
18 one PowerPoint presentation, a single exhibit.

19 CHAIR WHALEN: Okay. A single exhibit.
20 So that would just be Exhibit A?

21 MR. FRYER: I thought this would be KK on
22 top of the exhibits we provided yesterday. So last
23 exhibit we provided was JJ or should have been JJ.

24 MR. OVERTON: JJ was the last.

25 MR. NEUPANE: Exhibit KK sounds about

1 right because if you look at your list, the exhibit
2 that you have is JJ.

3 MR. FRYER: Correct. And then this would
4 be then the next exhibit, which would be KK, kilo
5 kilo.

6 DEPUTY AG SUNAKODA: Just to clarify with
7 the Chair's permission, just so that all the exhibits
8 are in order for this contested case hearing record,
9 I just want to make sure. So this document that is
10 for the "Public Hearings For Development Permit
11 Application and Request For Variances Regarding the
12 Aloha Solar Energy Fund II, LLC, Project" with the
13 permit numbers and the two hearing dates of January
14 18 and January 19th, 2017 (sic), appears to be a
15 PowerPoint slide presentation. So this document that
16 is approximately nine pages in length, this document
17 is being introduced today at the variance-portion
18 phase of the public hearings as the developer's
19 exhibit?

20 MR. FRYER: KK.

21 DEPUTY AG SUNAKODA: Thank you very much.

22 CHAIR WHALEN: Thank you. So, members,
23 any objections to these exhibits being offered?

24 Staff, any objections?

25 MR. NEUPANE: No, Chair.

1 CHAIR WHALEN: Okay. Hearing no
2 objections, applicant Aloha Solar Energy Fund II,
3 LLC's, Exhibit KK is admitted to the record.

4 (Applicant's Exhibit KK is admitted
5 to the record.)

6 MEMBER TIMSON: Chair, can I make a
7 comment, please?

8 CHAIR WHALEN: Yes.

9 MEMBER TIMSON: As far as the exhibits
10 go, in the future, I would -- I know for me, I would
11 appreciate getting it the day before because now
12 you're asking us do we have objections. I can't
13 object. I can't read it that quickly to see if it's
14 good or not good. So I'm not going to object, but in
15 the future, I would like them, whoever comes, to be
16 more prepared so that when we make our comments, it's
17 based upon something I looked at. I cannot read this
18 right now. Thank you.

19 CHAIR WHALEN: Mr. Fryer, you'll be
20 following this with a PowerPoint presentation?

21 MR. FRYER: Yes.

22 CHAIR WHALEN: So these are essentially
23 the slides from a PowerPoint presentation?

24 MR. FRYER: Yes, sir.

25 CHAIR WHALEN: So this is basically so

1 you can follow the presentation, I guess.

2 MEMBER TIMSON: Okay.

3 CHAIR WHALEN: Okay. So you'll be
4 establishing your party as experts in their subject
5 areas?

6 MR. FRYER: Yes.

7 CHAIR WHALEN: The ones that you have
8 introduced.

9 Board members, do you have any objections
10 to their being qualified as expert witnesses offered
11 by the applicant?

12 Staff, do you have any objections to
13 their being --

14 MR. NEUPANE: No objection.

15 CHAIR WHALEN: Hearing no objections, the
16 list of experts offered by the applicant is hereby
17 accepted and qualified in their various subject
18 areas.

19 So with receipt of all exhibits and the
20 list of experts being entered in the record, let's
21 proceed with the hearing.

22 Applicant, you can proceed. Mr. Fryer?

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RICHARD FRYER,

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

MR. FRYER: Thank you, Mr. Chairman and members of the board. So this is -- basically, we started with yesterday's presentation and we have, based on some of the comments that members made yesterday, gone back and at least got a little more homework done so that we can answer some of those concerns here today as best we could. So I'm going to go right into it.

These are the three variances that we're requesting. Deepak has gone over those already. I'd like to go into the first one, the fence variance. We are looking for a 6-foot fence height. It is -- it is a safety requirement more than anything else, but, certainly, it's also a security requirement with regards to our 23 historic sites. There is a requirement from the National Electric Code, and the State of Hawaii follows the 2014 version of the National Electric Code. There is some, I would say, wiggle room on the requirements for a 7-foot fence or a 6-foot fence, and 6-foot fences have been installed most commonly across Oahu and that's what we

1 requested.

2 I can let you read the narrative here
3 about a self-created hardship.

4 These are things we need to do for code
5 compliance, protection of historic resources that
6 we've agreed to in the archaeological preservation
7 plan and monitoring plan. Public safety comes into
8 play, security. And we believe this is a minimum
9 deviation from your standards, and we do not believe
10 it interferes with any further development or any of
11 your neighbors.

12 And this is, again, a graphic depiction
13 of what we're requesting. So the highlighted portion
14 being above and beyond the standard fence height.

15 The second variance we're requesting is
16 the fence setback, and we understand that your
17 standards require a setback from the property line --
18 from the fence. There are portions of this property
19 where I think you're well aware that we can't set
20 back the fence because of archaeological sites on the
21 edge of the property line. That said, I mean, we
22 acknowledge that there are portions where there are
23 not archaeological sites present.

24 We are concerned about unauthorized entry
25 on the HCDA property that we're going to be leasing

1 and that we'll be responsible for. We noted in our
2 past surveys out there, not on this property, but on
3 adjacent properties, encampments. And we understand
4 DOT regularly patrols, along with HPD, to keep
5 encampments off the right-of-way, but I don't believe
6 they have jurisdiction on this property.

7 So we believe a fence is greatly
8 supportive on the property -- excuse me -- is greatly
9 supportive of our ability to grant and preclude
10 unauthorized persons on the property and unauthorized
11 encampments.

12 We will not be occupying this property
13 full-time. It's -- you know, it's a solar array. It
14 will have a security system in it. There will be
15 occasional O&M personnel going in and out to maintain
16 the property, but, in general, the property will be
17 not occupied by humans.

18 Regarding some of the other things, it's
19 not a hardship that we've created. The lease --
20 although the lease is still in draft form, there's a
21 number of provisions in the lease that will require
22 us to be good stewards of the land for HCDA to keep
23 it clean, keep Dura (sic) vehicles off of it and
24 maintain it in orderly condition, and it will be very
25 difficult since we don't occupy -- physically occupy

1 it to do that and the fence is not on the property
2 line.

3 And then as you're going to see in a
4 subsequent chart -- I wanted to show you a little
5 while ago -- the solar array itself will be set back
6 from the fence line. So it will not be right on top
7 of the fence line itself. And this is that chart.

8 So one thing I would like to correct on
9 the record at least is that we have surveyed the
10 entire property in great detail. So we have located
11 where all the archaeological sites are, and we have
12 done it in such great detail that we know exactly
13 where all of our array is.

14 Now, what we have not done (inaudible) a
15 survey is only to the property line, not from the
16 property line out. So the DOT right-of-way, we can't
17 actually honestly tell you today that it's truly a
18 15-foot setback from the edge of the property line to
19 the edge of the road, but I think in general terms,
20 it's going to be that or greater. But the road does
21 -- we are aware that the road kind of varies within
22 the DOT right-of-way. But on the other side of the
23 property line, it's our intent to be no closer than
24 15 foot to the fence line.

25 And then the last variance would be for

1 landscaping. We need the landscaping or we request a
2 landscaping variance for a couple reasons. If you
3 grant us the setback, I think this will alleviate the
4 need for landscaping. Inside the array, we're going
5 to keep the grounds maintained so they don't
6 interfere with sunlight hitting the solar panels.

7 If the setback is not granted, we would
8 have some difficulties with regards to providing the
9 infrastructure. The solar array needs no water
10 requirement. We have no water requirement for the
11 solar system. So we will have no infrastructure for
12 water there. So any landscaping we do -- it's not
13 going to be impossible, but it will be very difficult
14 to landscape in that area.

15 And I think the last chart I'd like to
16 show you is, again, there's a portion of this area
17 that's impacted by the archaeological sites, and I
18 can say it probably comes down to this point. So,
19 roughly, 40 percent of the property line, it would be
20 difficult and potentially not compliant with our
21 agreements with SHPD, and, certainly, there is a
22 portion we could if you so desire.

23 That's the extent of my presentation for
24 today, ladies and gentlemen. I'm open for your
25 questions.

1 CHAIR WHALEN: Okay. Board members, do
2 you have any questions?

3 I presume that if there's some of the
4 questions that you want your witnesses to help
5 respond to, we can do that?

6 MR. FRYER: Yeah. If there are some
7 questions I can't answer, I certainly would like to
8 turn to my experts.

9 CHAIR WHALEN: All right. Board members,
10 questions?

11 MEMBER TIMSON: Yes.

12 CHAIR WHALEN: Yes, Maeda.

13 MEMBER TIMSON: Okay. Thank you. I'm
14 sorry if I don't -- if I'm asking for clarification
15 because it's not clear to me. So you're saying
16 you're going to do a 15-foot setback because that's
17 what DOT is now requiring for? Is that the front of
18 the project?

19 MR. FRYER: No. DOT owns the land from
20 the edge of the HCD property up to the road. That's
21 their land and they maintain it. As you saw on the
22 exhibits that Deepak submitted, I mean, they're
23 mowing that and they're keeping unauthorized
24 personnel from entering that area.

25 MEMBER TIMSON: Okay. So you still need

1 this variance?

2 MR. FRYER: Yes, ma'am.

3 MEMBER TIMSON: Okay. Well, I need some
4 questions answered and some clarification based upon
5 the presentation -- the paperwork we received
6 yesterday. On your request for variance on page 2, I
7 have a -- the question is you're saying that this
8 fence can either be painted or constructed out of a
9 decorative material. I have a concern for that
10 because that means you can pretty much do whatever.
11 You know, you can put up a white vinyl fence. You
12 can put up a wall. I mean, the decorative material
13 is to your liking. I have a problem with that. I
14 want it to be real clear that it would be a fence and
15 not some kind of barrier because anything other than
16 a fence to me would be -- would be a barrier to the
17 community, and we'll be driving down that road and
18 see all these barriers going up, you know. This is a
19 variance, and I don't want to set a precedent.

20 Okay. Secondly, on No. 2, you're saying
21 that you're concerned about trespassers, but I guess
22 the question is the property next door, which is that
23 Kalaeloa Heritage Park, I don't believe they have any
24 problems. They have never expressed any problems
25 about trespassers. They don't have a fence. So is

1 there -- is there a problem that we do not know of,
2 or you're just assuming that there could be a
3 potential problem?

4 MR. FRYER: So can I answer your first
5 question first?

6 MEMBER TIMSON: Surely.

7 MR. FRYER: So the first one on the
8 fence, so we will follow the city and county
9 standards, which is a chain-link fence, and the
10 authorities indicated that they want that to be vinyl
11 coated. So it will be vinyl-coated chain-link fence.
12 So it will not be something odd or -- it will follow
13 the city and county standard.

14 MEMBER TIMSON: Okay. Could you so state
15 that? Could you make an adjustment and state that
16 it's going to be a fence --

17 MR. FRYER: Yes, ma'am.

18 MEMBER TIMSON: -- chain-link fence?

19 MR. FRYER: If you would like that, we
20 will make that.

21 MEMBER TIMSON: Thank you.

22 MR. FRYER: And your second question with
23 regards to trespassers. No. I mean, I have not been
24 down to the property because the property is
25 relatively -- I'll use the term "uninviting" right

1 now. I have been down there many a time and taken
2 many a thorn in the shoe. So it's not exactly --
3 once we clear it and you've got nice open area, I'm
4 concerned that folks may decide to -- especially if
5 the fence is off the property line, and DOT is
6 keeping that roadway clear right now because you
7 don't see any of those things because DOT and
8 Honolulu Police Department are keeping that area
9 clear. But if you look here, their jurisdiction, I
10 believe, is within the DOT area, and I'm not so sure
11 that it would apply off the DOT land. If we have the
12 fence 15 feet back from the property line, that area,
13 that 15-foot setback will not be -- I don't think it
14 will be upheld by HPD and DOT. So --

15 MEMBER FANG: Can I --

16 CHAIR WHALEN: Yes.

17 MEMBER FANG: -- make a comment to Member
18 Timson's question about trespassing on neighboring
19 properties?

20 I believe for the last several months,
21 we've been dealing with the Kalaeloa Heritage
22 Foundation, which had several hundred thousand
23 dollars of damage done due to illegal dumping on
24 their site that we're still trying to clean up.

25 MEMBER TIMSON: Yes. But I don't want to

1 argue, but the illegal dumping was not by John Q
2 Public. The illegal dumping was by someone they, the
3 Kalaeloa Park, was working with. So it wasn't just
4 John Q Public. They were -- they had made an
5 agreement with these folks and they were working with
6 them. So it wasn't anyone that was unknown. So I
7 think there's a big difference here.

8 Am I correct, Shirley?

9 MEMBER SWINNEY: As far as I --

10 MEMBER TIMSON: Because I believe that's
11 what the committee worked on. So I don't think we're
12 comparing the same things. Is that correct?

13 MR. FRYER: Then, Mr. Chairman --

14 CHAIR WHALEN: Yes.

15 MR. FRYER: -- I'd like to ask
16 Mr. McCauley to answer -- provide some additional
17 information.

18 CHAIR WHALEN: Just as a reminder, you're
19 still sworn in.

20 MR. MCCAULEY: Yes. I didn't swear in
21 yesterday. So --

22 CHAIR WHALEN: Oh, do you swear or affirm
23 to tell the truth?

24 MR. MCCAULEY: I do swear.

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RYAN MCCAULEY,

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

CHAIR WHALEN: All right. Thank you. And your name for the record.

MR. MCCAULEY: It is Ryan McCauley.

So I just -- I wanted to address some of this for passersby on solar farms. So we also maintain about 70 megawatts of solar in addition to other work we do. And a couple of things that go on with the solar farms. One, the fencing in and of itself as a restriction is really there to ensure qualified personnel. Once you go into the boundary of this, you will hit a thousand volts. So this is with accessible wires. You will also encounter -- you will have wiring that's exposed.

So if I may, with the original -- the project that went up on DHHL, when that first went up, we actually had talked to the developer afterwards. They probably had three or four vandalism incidents, including theft of a ray. These are unmanned facilities with high-valued materials, which is atypical for the most part. So, therefore, it's a different kind of inviting, you know,

1 invitation to come in. That's why it's very
2 particular on who can access it and the risk related
3 to people wanting to come in and do either vandalism
4 or other uses of that property.

5 MEMBER TIMSON: I have another question,
6 if you don't mind.

7 CHAIR WHALEN: Yes.

8 MEMBER TIMSON: And I mentioned this
9 yesterday, and it's still something that doesn't sit
10 right with me, but I need to disclose I don't -- I'm
11 not -- I'm a Hawaiian, but I'm not a very good
12 cultural Hawaiian. But what my concern is, and I
13 mentioned it yesterday, is I want to make sure that
14 any of the legal or certified Hawaiian groups or
15 entities will not be prohibited from going on the
16 site if they need to be. And I know yesterday, your
17 Hawaiian culture person said, "Oh, well, we've been
18 talking story and we're going to let them come." But
19 it's not written. And I just don't want that to be
20 shut, you know, at them. They can go through SHPD
21 and get an okay to enter the property for whatever
22 the cultural thing that -- you know, that we need for
23 Hawaiians to want to do, and I don't want them to be
24 prohibited from doing that.

25 CHAIR WHALEN: May I ask at this point, I

1 think maybe that was a condition that came up in the
2 lease also, and I'm wondering if we have that
3 language in the lease concerning access to --

4 MR. NEUPANE: I believe the deputy AG is
5 looking into that.

6 CHAIR WHALEN: Okay. So we don't have
7 the answer today, but there is some provision as I
8 recall about --

9 DEPUTY AG SUNAKODA: We understand the
10 board members and the board at large -- the
11 collateral board's concern. So we will ensure and
12 confirm that lease is still -- the language in the
13 lease is still being refined, and we plan to keep the
14 board updated with respect to the current status of
15 the lease and the lease provisions.

16 It's clear, based on the direction and
17 comments by the board today, that the board has
18 concerns and is -- is directing the attorney
19 general's office to check the terms and conditions in
20 the lease and to ensure that the access that was the
21 subject of the concern as raised by Board Member
22 Timson, we will make sure and follow up on that to
23 ensure that that is addressed in the lease.

24 MEMBER TIMSON: Oh, thank you. Thank you
25 for that.

1 And I just have one last comment. I'm
2 sure you're glad I'll be done. I guess reading
3 throughout this thing is comments have been made
4 about, you know, the protection and we want to do a
5 6-foot fence, you know. Like I mentioned before, if
6 you have the chronics or whatever that's going to
7 jump that fence, another 3 foot is not going to
8 protect you. I mean -- and so you need to be careful
9 when you keep talking about the safety because then
10 you're making me a little nervous because, well,
11 should we even be there? Because it's something, you
12 know, that, you know, that requires --

13 When you talk about potential shock and
14 electrocution, you know, it's a little worrying to be
15 perfectly honest. And I do not believe that a 3-foot
16 fence higher is going to keep those unmentionables or
17 unwantables being there.

18 Okay. Thank you. I'm done.

19 CHAIR WHALEN: Mr. Fryer, I have just one
20 question. Do you have -- I'm sure there's insurance
21 involved in a project of this type and magnitude. Is
22 there an insurer's requirement in terms of your
23 perimeter fencing or anything?

24 MR. FRYER: I reached out to our
25 financing agent yesterday, and I asked about that

1 issue. They said the short of the answer is the
2 project would probably be unfinanceable. So it's not
3 even worth asking an insurance agent. So an
4 insurance agent will probably, at some premium, would
5 insure just about anything, but the risks involved
6 would make it very difficult, if not impossible, to
7 finance the project of having such a short fence that
8 somebody could just step over.

9 CHAIR WHALEN: Okay. But at some point,
10 you'll have to get a policy, I take it?

11 MR. FRYER: Yes, we do. For Aloha Solar
12 I, it's a routine matter to get insurance on solar
13 systems. Your policy premium depends upon the
14 security system that you install and a few other
15 things. In general, it's not (inaudible).

16 MEMBER SWINNEY: Just a follow-up
17 question to your presentation this morning.

18 MR. FRYER: Yes, ma'am.

19 MEMBER SWINNEY: So you say it is a
20 requirement of the National Electric Code to have
21 some kind of security fencing around?

22 MR. FRYER: Yes, ma'am, it is. It's just
23 the code could be a little clearer for solar systems.
24 As I said on one of the charts, you know, one could
25 interpret there needs to be a 7-foot fence. One

1 could interpret it could be something else. But no
2 matter how you interpret it, the minimum requirement
3 is a 6-foot fence. And 6 foot is what we have seen
4 on other arrays, and it's clearly got a DPP approval.
5 So we're comfortable that 6-foot will work. And,
6 frankly, it's what we have on our array in Waianae as
7 well.

8 MEMBER SWINNEY: And then as a follow-up
9 to something Mr. McCauley said. He mentioned there
10 is a possibility of being exposed to 1,000-volt line.
11 What was -- what does it take to get electrocuted?

12 MR. FRYER: Well, do you want to try that
13 one?

14 All right. I'll turn, if I may, and
15 introduce Mr. McCauley to answer that question.

16 MR. MCCAULEY: Thank you. And so all of
17 these are touch safe; right? So this would be
18 somebody that would be involved in vandalism. I
19 mean, it's not unlike those that have gone and
20 vandalized utility poles. You would have to actually
21 go and vandalize it. But it's not something you
22 would want to be playing around with loose wires and
23 pull through. So it is not something you would want
24 to have available to the public. Therefore, that's
25 why a 6-foot fence is required and to meet that

1 benchmark for qualified personnel. So people who are
2 familiar with working around that typical type of
3 equipment, it's not a safety risk. It's touch safe
4 for people who are working around that equipment.

5 MEMBER SWINNEY: So a 1,000 volt would
6 give you what? A shock?

7 MR. FRYER: Yes. This is DC. So they
8 would -- if someone was to go in and vandalize it,
9 they could hurt themselves as with any system that
10 you were tampering with.

11 MEMBER SWINNEY: Then one more question
12 for Mr. Fryer. I'm sorry to have you switch seats
13 all the time.

14 MR. FRYER: No problem.

15 MEMBER SWINNEY: So thank you for this
16 morning's presentation and especially the
17 clarification of the DOT's right-of-way setback, and
18 that's a required permanent setback. So with at
19 least a 15-foot setback, there are no fencing that
20 could come up to the roadway?

21 MR. FRYER: No. The fencing would not
22 come up to the edge of the road. Unless the road --
23 from the HCDA property, the road is within the
24 entirety of the DOT right-of-way. So it's -- so the
25 answer to your question is, in short, yes, DOT will

1 always have a green space between the fence and the
2 road itself. Does that --

3 MEMBER SWINNEY: Yes.

4 MR. FRYER: Thank you.

5 CHAIR WHALEN: Mark?

6 MEMBER ANDERSON: If you haven't already
7 done so, you said that the State of Hawaii follows
8 the 2014 electrical code. Could you submit something
9 that shows the State of Hawaii does follow that?

10 MR. FRYER: Yes, sir. We'll follow up
11 and take that excerpt --

12 MEMBER ANDERSON: Within the electric
13 code, the requirement for the fence, could you submit
14 the language from the 2014 electrical code that's
15 describing the 6- or 7-foot fence requirement? And
16 then on the chain-link fence itself, the proposed DOT
17 standard, could you reference or submit the standard
18 on that?

19 MR. FRYER: Yes. Okay.

20 MEMBER TIMSON: Chair, may I ask one more
21 question?

22 CHAIR WHALEN: Sure.

23 MEMBER TIMSON: Let's say you're going to
24 construct and once you have everything in place, is
25 there ever -- like, what kind of security system?

1 Are there going to be people there manning it? What
2 will happen in the future going forward of the
3 facility? How will it be manned or will it be
4 manned?

5 MR. FRYER: Do you want to take that one?
6 Okay. I will introduce Mr. McCauley to answer that
7 question because he's going to be responsible for it.

8 MEMBER TIMSON: Good.

9 MR. MCCAULEY: Thank you. So it's a
10 two-part question. So for security, ongoing,
11 around-the-clock monitoring. Typical for this,
12 although it's not in final spec, usually it is a
13 combination of cameras. So you can see what access
14 is and what is to be called a shake wire, which is
15 pretty typical. It includes a fiber line that goes
16 through the entire fence line. So if someone were to
17 climb it, cut it, try to access through it, it can
18 sense large movements of people trying to go through
19 the fence, and that's typically what they do. So
20 it's usually about halfway up or about that. And
21 it's pretty good at sensing when people try to enter
22 it.

23 For manning, we would -- typically, we're
24 out once a week to check on it depending on if
25 there's something else going on. But usually it's

1 probably a drive in, check how things are going once
2 a week, and then there will also be intermittent
3 times when there will be preventive maintenance going
4 on. There would be one to two people out at the site
5 for one to two weeks.

6 MEMBER TIMSON: Thank you.

7 CHAIR WHALEN: Mary Pat.

8 VICE CHAIR WATERHOUSE: Regarding the
9 fence again and your presentation, you have mentioned
10 a barbed wire fence. 6 foot is common across many.
11 Is that what you're proposing for this site?

12 MR. FRYER: No. The fence is 6 foot
13 without barbed wire. Exactly what I'm showing right
14 here. This will be the perimeter. So no barbed
15 wire. 6-foot, vinyl-coated chain-link fence.

16 There is, however, within the array, not
17 on the array property line, there is the switch yard
18 which is a roughly 80 by 80 area. Let me just show
19 you where I'm talking about so you can be absolutely
20 certain.

21 Okay. So it's really light here. Maybe
22 you can see it on your charts, but that little block
23 there, code requires that. Because that's high
24 voltage, it's required to have a chain-link fence
25 with barbed wire at the top.

1 So that will be 7 or 6 with barbed wire
2 on it.

3 MR. MCCAULEY: 6.

4 MR. FRYER: 6-foot fence with three
5 strands of barbed wire. So this is the only section.
6 It's roughly 80 by 80. This is where the switch yard
7 is. It's got the high-voltage cabinets, the telecom
8 cabinets and the SCADA cabinet. And from here, the
9 power goes directly to the HECO grid, 12,000 volts.
10 So that small section has to have barbed wire on
11 that.

12 CHAIR WHALEN: That's typical of Hawaiian
13 Electric?

14 MR. FRYER: Yes. It's a Hawaiian
15 Electric requirement as well.

16 MEMBER SWINNEY: So the area you just
17 described, is that the shed, the transformer shed
18 area?

19 MR. FRYER: Well, there's -- we're not
20 going to have -- there's no transformer in this area.
21 It will just be cabinets. So think of
22 refrigerator-size stainless steel cabinets, several
23 in a row, that will essentially have the equipment
24 that will take the power from the array, consolidate
25 it and then put it in the HECO system. It will have

1 control cabinets as well. So just, literally, they
2 are about the size of a refrigerator.

3 CHAIR WHALEN: Any other questions? Yes.

4 VICE CHAIR WATERHOUSE: And you had
5 talked about as far as the setback, and you're saying
6 that it's not possible along portions of the Coral
7 Sea Road to archaeological sites. So let's say that
8 we were able to do, in some areas, a 5-foot setback
9 which is, you know, within our rules. Is that
10 possible? Can we do a 5-foot setback?

11 MR. FRYER: A 5-foot setback along the
12 entire property line or just --

13 VICE CHAIR WATERHOUSE: Yes.

14 MR. FRYER: May I confer?

15 Jeff, do you have any idea?

16 MR. OVERTON: We're right up against it.

17 MR. FRYER: We're right up against it?

18 So I believe -- we don't believe -- I don't believe
19 the answer is yes, but I also can't give you a
20 definitive answer sitting here. If you'd like, I'll
21 research that and provide an answer to the board. So
22 you're looking at something smaller than 15 foot for
23 setback is kind of what your question is?

24 VICE CHAIR WATERHOUSE: Yeah, yeah, yeah,
25 because the rules are 5 and so -- like, 5 to 15. So

1 what if we go with, like, a 5-foot setback and have
2 the fence along -- along that instead of right on the
3 property line? Have it -- have a setback?

4 And, also, the other question I had is
5 that you had talked about having some vegetation just
6 within the fence line?

7 MR. FRYER: Yeah. Natural vegetation
8 will grow back. From the fence line to the array,
9 essentially, it's going to be grass. We'll mow the
10 grass to keep it down. So it will have that
11 front-yard appeal, but, obviously, the fence will be
12 in front of the array. So it won't have quite the
13 front-yard feeling you're looking for.

14 VICE CHAIR WATERHOUSE: And you're saying
15 that you don't need water to do that because there's
16 no -- you're saying that there's no water --

17 MR. FRYER: If you could look at one of
18 the exhibits that Deepak gave you, if you could look
19 at this one with the red truck in it, essentially
20 what's going to happen is once we've built this
21 thing, what you're looking at is this is unirrigated
22 grass that comes about. This is hardy, I guess,
23 native grass. Am I using the right term? Jump in
24 here and correct me if I'm speaking poorly. This
25 native vegetation is going to come back, and we're

1 going to have to mow it to keep it down. I think
2 it's going to give you a front-yard feel, which I
3 think is the intent of this. It's not going to get
4 overgrown. We can't have it really overgrown because
5 it will shade the array, and it will impact our
6 ability to produce power.

7 CHAIR WHALEN: So the intent really is to
8 restore it to sort of the natural state rather than
9 have a manicured --

10 MR. FRYER: We're not going to have
11 manicured grass, sir. It will be -- it will be --
12 natural vegetation returns and we'll be -- excuse me.
13 Not native. It probably won't be native. It will be
14 whatever species comes up first.

15 CHAIR WHALEN: Or kiawe.

16 MR. FRYER: Well, the only thing is
17 tree-like species is probably not going to survive.
18 I think the grasses will come back. And I'll admit
19 I'm not an expert in this. I don't think we have an
20 expert today that can answer that kind of stuff on
21 the biological stuff.

22 I will say this: I am aware that most of
23 the native species that were found on this
24 property -- I do recall this from the biological
25 report -- were actually on what I call the disturbed

1 portions of the property, on the edges of the
2 property right next to the DOT. So, yeah, I
3 understand it might not all be native, but some of
4 the native species and most of the seed harvesting
5 that we're going to be doing will be from the edge of
6 the property because that's where the native species
7 seem to be thriving.

8 VICE CHAIR WATERHOUSE: And then related
9 to that, let's see, on your presentation of today, on
10 page 7, you refer to "Minimal Deviation: ASEF will
11 set the system and maintain the grounds between --
12 free of noxious plants." What does that mean?

13 MR. FRYER: Well, we're going to maintain
14 the area. It's kind of hard to say. We're not going
15 to let it grow wild.

16 VICE CHAIR WATERHOUSE: So this is the
17 area between --

18 MR. FRYER: The fence and our array, our
19 system, our solar panels.

20 VICE CHAIR WATERHOUSE: As well as -- oh,
21 okay, the DOT right-of-way?

22 MR. FRYER: Yeah. DOT maintains the
23 right-of-way. If we have the fence line -- if you
24 grant us the ability to put the fence on the property
25 line, from the fence out, DOT is already doing that.

1 As you can see from, again, that chart with the red
2 truck on it, DOT is maintaining that land. We will
3 then maintain the interior of the fence line up to
4 the array, and because it's in our best interest,
5 we'll be keeping that vegetation low so it doesn't
6 affect -- doesn't shade the system.

7 VICE CHAIR WATERHOUSE: Thank you.

8 MR. FRYER: Yes, ma'am.

9 CHAIR WHALEN: Any other questions, board
10 members, before we ask for public testimony? We have
11 just one person signed up to testify, Mike Kojima
12 from the U.S. Coast Guard.

13 MR. KOJIMA: I'm not representing the
14 Coast Guard. It's just me as a concerned citizen.

15 INTERIM EXECUTIVE DIRECTOR: Can we ask
16 him to go over there? And if you can state your
17 name.

18 MR. KOJIMA: My name is Mike Kojima, and
19 I swear I will tell the truth.

20 CHAIR WHALEN: Thank you.

21 MR. KOJIMA: Prior to having heard about
22 the AC requirement, I was not concerned so much about
23 the equipment and hardware and things that could be
24 replaced. My concerns were more for the cultural
25 aspect. In asking for the deviation for the setback,

1 I believe it's the right thing to do so you don't put
2 a fence through somebody's grave or house or whatever
3 that cultural asset might be. The idea of a 3-foot
4 fence is not much of a deterrent from something
5 getting in there and moving rocks around or doing
6 things that they shouldn't be.

7 A very, very long time ago, when we
8 played baseball, we had a 4-foot fence in the
9 outfield. A ball went over the fence. I jumped back
10 over the fence, got the ball, jumped back over the
11 fence and kept playing. It was not like we'd go
12 around or anything like that.

13 Again, what seems to make sense to me is
14 that -- I agree with Ms. Timson's assessment that we
15 shouldn't be allowing variances just because we can,
16 but I think we need to also take a common-sense
17 approach. We don't want to put a fence through,
18 again -- excuse me -- through a cultural aspect or
19 asset, but where the space is available, maybe we
20 ought to. I don't know that -- I'm not going to
21 argue against their arguments. Just that also,
22 again, with Ms. Timson's idea that we shouldn't just
23 grant a variance because we can. So I would say
24 follow it where you can. Where you can't, go around.

25 CHAIR WHALEN: Members, are there any

1 questions?

2 Okay. Thank you, Mr. Kojima.

3 Okay. I'll ask if there's anybody else
4 that wants to testify, but I don't see anyone. So
5 the Authority would like to close the record for the
6 hearing unless the representatives of the applicant
7 requests that the record be kept open. There are a
8 few items that were requested for further evidence in
9 terms of the code requirements.

10 MR. FRYER: I think in the interest of
11 answering those questions, we'd like to keep it open
12 so that we can submit some of this information that
13 was requested.

14 CHAIR WHALEN: Yes.

15 MR. FRYER: So we would like to keep it
16 open if we could.

17 CHAIR WHALEN: We will do that. And we
18 have the decision-making hearing scheduled, but what
19 we can do is keep the record open. I'd ask that the
20 submittals be by February 16th, so that we'll have
21 some advanced time before our decision-making hearing
22 so board members can take a look at the additional
23 items that you're submitting.

24 If there's anything -- I think they're
25 probably in the record. Sort of itemize those

1 things, and staff has kept track of the things that
2 are requested. So if you can get that in to staff by
3 the 16th of February, and we'll keep the hearing open
4 until the decision-making hearing, close the evidence
5 hearing, and then go into the decision-making
6 hearing.

7 MEMBER TIMSON: I have a question,
8 please. So does that mean that -- I know the AG is
9 working on the agreement. Will that also be ready by
10 February 16th? So we'll be able to see that as well?

11 DEPUTY AG SUNAKODA: Yes. We are hoping
12 to have that done at the very latest by early next
13 week, and as I mentioned in the interim, as there has
14 been some time to pass, to be sure that the board
15 members see any redline edits subsequent to the
16 board's final approval in the agreement and --

17 THE REPORTER: I'm sorry.

18 DEPUTY AG SUNAKODA: In answer to Board
19 Member Timson, yes, we hope to have the agreement
20 finalized at the very latest by early next week.
21 There have been a number of issues relating to
22 confirming the contents of the language in the lease,
23 and so we just want to make absolutely sure that it's
24 both consistent and acceptable given what the board
25 had previously reviewed and approved and within the

1 scope and parameter of that approval subject to any
2 suggested newly proposed edits that the attorney
3 general's office would be recommending. And that's
4 why we would be keeping the board members apprised of
5 the status of the lease agreement and also of the
6 proposed redline edits that are subsequent to the
7 board's prior approval.

8 MEMBER TIMSON: Thank you.

9 VICE CHAIR WATERHOUSE: I'd just like to
10 clarify. Mr. Kojima made a good point, and I just
11 want to clarify that. If the setback, you know,
12 could -- even a 5-foot setback could affect any
13 archaeological site, you know, I do not want that to
14 be affected. Of course not. So only if that would
15 not be affected.

16 CHAIR WHALEN: That would be one of the
17 items is to take a look at the alignment of the fence
18 relative to the archaeological preserve?

19 MR. FRYER: Yes, sir.

20 CHAIR WHALEN: You know, unfortunately,
21 we don't have -- on our side, we don't have good
22 survey information yet, but from the surveys that
23 you've done, I think you've probably determined that,
24 you know, the boundaries of this archaeological
25 preserve. So that will be very helpful to us to take

1 a look at in terms of what decision we ultimately
2 reach.

3 So we have the -- the date of the
4 decision-making hearing has been set for March 13th.
5 So as I said earlier, the evidentiary hearing will be
6 kept open until that same date, but we'll be
7 expecting the additional information by February
8 16th.

9 So without any further public testimony
10 or questions from the board, the public hearing for
11 the applicant's request for variance is continued
12 until --

13 Okay. One of the items that I would ask
14 also the applicant to produce is to provide a draft
15 findings of fact, conclusions of law and decision and
16 order for the Authority. This is for the
17 decision-making hearing, and then that be provided by
18 January 26, 2018. That's just a draft from which we
19 work.

20 MR. FRYER: We understand.

21 CHAIR WHALEN: Thank you. So with that,
22 the public hearing is continued till March 13th. The
23 time is now 11:13 a.m.

24 (The proceedings were adjourned at
25 11:13 a.m.)

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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 29th day of January 2018 in Honolulu, Hawaii.

LAURA SAVO, RPR, CSR NO. 347