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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

Tuesday, March 13, 2018

Taken at Department of Hawaiian Home Lands

Hale Pono'i Conference Room

91-5420 Kapolei Parkway

Kapolei, Hawaii 96707

Commencing at 10:01 a.m.

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
Garett Kamemoto, Interim Executive Director
Deepak Neupane, Director of Planning and Development
Lori Sunakoda, Deputy Attorney General
Max Levins, Deputy Attorney General

BOARD MEMBERS:

Mark Anderson
Wei Fang
Michael Golojuch, Sr.
Derek Kimura
Shirley Swinney
Maeda Timson

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I N D E X

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PUBLIC TESTIMONY BY:

(None offered.)

1 Tuesday, March 13, 2018, 10:01 a.m.

2 -o0o-

3 CHAIR WHALEN: Call to order this
4 March 13th, 2018, decision-making hearing before the
5 Hawaii Community Development Authority in the matter
6 of KAL 17-017 for a development permit and request
7 for variances to construct a solar farm on tax map
8 key (1)9-1-013:070. The project also includes an
9 approximate 1.78-mile-long 12-kV interim electrical
10 distribution line located on a 30-foot-wide portion
11 of right-of-way along the eastern edge of Coral Sea
12 Road that borders tax map keys 9-1-13, parcels 39,
13 40, 43, 44, 72, 99 and 100.

14 The time is now 10:02 a.m. Thank you for
15 your attendance and interest in this subject today.
16 My name is John Whalen, chair of the Authority.

17 Let the record reflect that the
18 Kalaeloa -- following Kalaeloa members are present:
19 Mark Anderson, Wei Fang, Shirley Swinney, Michael
20 Golojuch, Maeda Timson, Derek Kimura and Chair John
21 Whalen.

22 Today's hearing is being held in
23 accordance with Hawaii Revised Statutes, Chapters 91
24 and 206E, Hawaii Administrative Rules, Chapter
25 15-219.

1 The record contains the application,
2 property description and so forth.

3 For the record, I will summarize the
4 procedural status of the application. It's a long
5 list of chronology.

6 On October 4th, 2017, the Authority
7 approved a Finding of No Significant Impact for the
8 Final Environmental Assessment for the ACEF (sic) II
9 project.

10 On November 27th, 2017, the development
11 permit application was determined to be complete.

12 On December 13th, 2017, a public hearing
13 notice was published in the Honolulu Star-Advertiser,
14 The Garden Island, West Hawaii Today, Hawaii
15 Tribune-Herald and Maui News.

16 On January 12th, 2018, a copy of the
17 development permit application and request for
18 variances was provided to the Authority members.

19 On January 18th, 2018, HCDA staff
20 presented a summary of the development permit
21 application at the public hearing.

22 On January 18th, 2018, the Applicant
23 presented its development permit application.

24 On January 19th, 2018, HCDA staff
25 presented a summary of the request for variances at

1 the public hearing.

2 On January 19th, 2018, the Applicant
3 presented its request for variances at the public
4 hearing.

5 On January 26th, 2018, the Applicant
6 filed its Findings of Fact -- Facts, Conclusions of
7 Law and Decision and Order with the Authority.

8 On December -- rather -- I'm sorry. On
9 February 15th, 2018, the Applicant submitted
10 additional Exhibits LL, MM and NN.

11 On March 6th, 2018, HCDA staff served its
12 Findings of Facts, Conclusions of Law and Decision
13 and Order to the Applicant.

14 On March 7, 2018, HCDA staff provided its
15 Findings of Facts, Conclusions of Law and Decision
16 and Order and the Applicant's Findings of Facts,
17 Conclusions of Law and Decision and Order to the
18 Authority.

19 On March 9th, the -- 2018, the Applicant
20 filed exceptions to the HCDA staff Findings of Facts,
21 Conclusions of Law and Decision and Order.

22 And on March 9th, 2018, the Applicant's
23 exceptions to the HCDA Findings of Facts, Conclusions
24 of Law and Decision and Order was provided to the
25 Authority.

1 So let me briefly explain our procedures
2 for today's hearing. HCDA staff will present its
3 Proposed Findings of Facts, Conclusions of Law and
4 Decision and Order. Following that, as required by
5 Hawaii Revised Statutes, Section 206E-5.6, we will
6 take public testimony. After the public testimony, I
7 will take a motion to deliberate on the form of HCDA
8 Proposed Findings of Facts, Conclusions of Law and
9 Decision and Order. After the deliberation, a motion
10 related to making a decision on HCDA staff Proposed
11 Findings of Facts, Conclusions of Law and Decision
12 and Order will be made.

13 If HCDA staff Proposed Findings of Facts,
14 Conclusions of Law and Decision and Order is not
15 adopted, decision-making will continue. The
16 Authority is aware that a decision must be made on or
17 before April 12th, 2018, for the development permit
18 and May 22nd, 2018, for the variances, or the
19 application will be deemed approved as a matter of
20 law.

21 If HCDA staff Proposed Findings of Facts,
22 Conclusions of Law and Decision and Order is adopted,
23 that will conclude these proceedings.

24 The Applicant may appeal the Authority's
25 final decision pursuant to Hawaii Revised Statutes,

1 Chapter 206E-5.6(h).

2 Members, are there any questions on these
3 procedures?

4 So we'll begin our proceedings. Before
5 the staff report, I'd like to note that the Authority
6 members have received additional Exhibits LL, MM and
7 NN submitted by the Applicant, and those exhibits are
8 attached to the record. The record is now closed.

9 So the Director of Planning and
10 Development, Deepak Neupane, will now present the
11 HCDA staff Findings of Facts, Conclusions of Law and
12 Decision and Order. Deepak?

13 MR. NEUPANE: Thank you, Chair. Good
14 morning, members of the Authority. The staff
15 Proposed Findings of Facts, Conclusions of Law and
16 Decision and Order was provided to you. I am not
17 going to read through the whole thing, but I'll just
18 highlight on the findings. But I will read through
19 the conditions of the Decision and Order just for the
20 record.

21 So if you -- let me direct you to the
22 staff Proposed Findings of Facts. The first page is
23 preliminary. It describes the project and all.

24 On the Findings of Facts, paragraph 1
25 through 17 is just the procedural matter of

1 application and when the notice was published and all
2 of that.

3 Paragraph 18 through 28 basically deals
4 with the past two public hearings and then the record
5 that was submitted by the Applicants.

6 Paragraph 29 through 41 describes the
7 project.

8 Paragraph 42 through 52 describes the
9 variance request and then provides findings of facts
10 on the variance.

11 Paragraph 53 through 56 addresses
12 Kalaeloa Rule requirements and how the development
13 permit application meets the Kalaeloa Rule
14 requirements except for the variance that was
15 requested.

16 Paragraph 57 through 67 addresses
17 compliance with HRS 206E-5.6 requirements.

18 Paragraph 68 through 83 addresses
19 historic property review.

20 Paragraph 84 through 89 addresses air
21 navigation, the proximity to the airport and the
22 consultation with the FAA.

23 Paragraph 90 through 92 addresses
24 infrastructure and runoff-control issues.

25 So that concludes the findings of facts.

1 If members have any questions on the findings of
2 facts before I go into the conclusions of law?

3 CHAIR WHALEN: I hear no questions.

4 MR. NEUPANE: Then on the conclusions of
5 law again, paragraph 1 through 2 addresses Kalaeloa
6 Rule requirements. Paragraph 3 to 5 addresses
7 historic property review, and paragraphs 6 through 9
8 addresses Kalaeloa Rule requirements again.

9 If there are no questions on the
10 conclusions of law, I'll go into the staff
11 recommendation on the decision and order.

12 CHAIR WHALEN: Go ahead.

13 MR. NEUPANE: Decision and Order: Staff
14 is proposing the following recommendations on the
15 variance request: It is hereby ordered that the
16 decision on the request of variance is as follows:

17 1. HAR -- regarding HAR 15-215-43(c),
18 the request to increase the allowable height of the
19 perimeter fence from 3 feet to 6 feet tall along the
20 front yard that faces Coral Sea Road as a
21 thoroughfare is approved;

22 2. Regarding HAR 15-215, Development
23 Standards Summary, Figure 1.3, the request to place
24 the perimeter fence on the property line in front
25 of -- in the front yard without the required setback

1 is denied except where the property line encroaches
2 or is directly adjacent to the archaeological
3 preserve area. For the frontage area that does not
4 encroach or is not adjacent to the archaeological
5 preserve, the fence shall be set back 15 feet from
6 the property line. The Applicant shall submit
7 construction drawings to HCDA citing the location of
8 the fence prior to approval of the City and County of
9 Honolulu building permit;

10 3. Regarding HAR 15-215-44(1),
11 Landscape, the request to eliminate the landscape
12 within the required yard is denied except where the
13 fence is located on the property line where it
14 encroaches or is directly adjacent to the
15 archaeological preserve area. The Applicant shall
16 maintain the landscaping within the setback area.
17 The Applicant shall submit a landscape plan,
18 including the location and type of plant material, to
19 HCDA prior to approval of the City and County of
20 Honolulu building permit;

21 Regarding HAR 15-215-44(4), Landscape,
22 the request to waive the requirement to install an
23 automatic irrigation system with rain or moisture
24 sensor is approved. The Applicant shall utilize
25 water trucks for landscaping purposes until such time

1 the landscaping within the setback area is
2 established.

3 Those are the recommendations on the
4 variance request.

5 On the development permit application,
6 the staff recommends that the decision on the
7 development permit is approved subject to the
8 following conditions:

9 1. The Applicant shall plan, design,
10 implement and maintain the project site in accordance
11 with all applicable federal, state, and city and
12 county of Honolulu requirements and guidelines,
13 including but not limited to Best Management
14 Practices Manual for Construction Sites, dated
15 November 2011 --

16 That's the city and county's manual.

17 -- rules relating to soil erosion
18 standards and guidelines, dated April 1999; rules
19 relating to storm drainage standards effective June
20 1st, 2013; Hawaii Administrative Rules, Title 11,
21 Chapter 54, water quality standards; and Hawaii
22 Administrative Rules, Title 11, Chapter 55, water
23 pollution control. For construction runoff,
24 specifically Appendix C, NPDES, general permit
25 authorizing discharges of storm water associated with

1 construction activities. That expires on December 5,
2 2018;

3 2. Except as otherwise provided herein,
4 the Applicant shall comply with all applicable
5 requirements of the KCDD rules under Chapter -- under
6 HAR Chapter 15-215;

7 3. The Applicant shall comply with the
8 SHPD-approved mitigation plans and all applicable
9 laws regarding historic properties, aviation
10 artifacts and burial sites, including but not limited
11 to Hawaii Revised Statutes, Section 6E. A
12 preservation easement in perpetuity for the 26
13 historic sites and the permanent 10-foot buffer shall
14 be recorded with the Bureau of Conveyances.

15 INTERIM EXECUTIVE DIRECTOR: 23 historic
16 sites.

17 MR. NEUPANE: I'm sorry. 23 historic
18 sites.

19 3. The Applicant shall comply with the
20 Article XII --

21 Right?

22 INTERIM EXECUTIVE DIRECTOR: 12.

23 MR. NEUPANE: -- Article XII, Section 7,
24 of the Hawaii State Constitution that requires the
25 state to protect the reasonable exercise of

1 customarily and traditionally exercised native
2 Hawaiian rights to the extent feasible;

3 4. The Applicant shall comply with all
4 material representations and commitments regarding
5 the project made to HCDA in the application permit
6 process;

7 6. The Applicant shall record a
8 memorandum of this decision and order with the Bureau
9 of Conveyances or the assistant registrar of the Land
10 Court as a covenant running with the land. Proof of
11 such filing in the form of copies of the covenants
12 certified by the appropriate agency shall be
13 submitted to HCDA within 180 calendar days from the
14 approval of the development permit.

15 And that concludes my report if members
16 have any questions.

17 CHAIR WHALEN: Questions -- if there are
18 no questions, we'll proceed to public testimony, and
19 that would include the Applicants.

20 MR. NEUPANE: If the Applicant wants to
21 provide testimony, correct.

22 CHAIR WHALEN: Does the Applicant wish to
23 provide -- well, you've already submitted written --

24 MR. FRYER: No, the Applicant does not
25 wish to provide any further testimony.

1 CHAIR WHALEN: Okay. Fine. Thank you.
2 And no one else has signed up to speak.
3 Is there anyone in the audience that wishes to speak?

4 Okay. Hearing none, we'll continue with
5 deliberations and decision-making. First, members,
6 please indicate "yes" or "no" to signify that you've
7 received and reviewed the record of this application
8 and are prepared to deliberate on the application.

9 MEMBER TIMSON: Yes.

10 CHAIR WHALEN: Okay. Let me just read so
11 I don't miss anyone. Okay. Maeda said "yes." Chair
12 says "yes."

13 Okay. Mark Anderson.

14 MEMBER ANDERSON: Yes.

15 CHAIR WHALEN: Okay. And Wei Fang?

16 MEMBER FANG: Yes.

17 CHAIR WHALEN: Shirley Swinney?

18 MEMBER SWINNEY: Yes.

19 CHAIR WHALEN: Mike Golojuch?

20 MEMBER GOLOJUCH: Yes.

21 CHAIR WHALEN: And Derek Kimura?

22 MEMBER KIMURA: Yes.

23 CHAIR WHALEN: After reviewing the
24 records, which includes HCDA staff Proposed Findings
25 of Fact, Conclusions of Law and Decision and Order,

1 the Applicant's evidence and arguments, including
2 Applicant's Proposed Findings of Facts, Conclusions
3 of Law and Decision and Order, Applicant's exception
4 to HCDA staff Findings of Facts, Conclusions of Law
5 and Decision and Order, and also having considered
6 public testimony, is there a motion -- yeah -- is
7 there a motion to adopt HCDA Proposed Findings of
8 Facts, Conclusions of Law and Decision and Order for
9 Development Permit Application KAL 17-017 for
10 Applicant Aloha Solar Energy Fund II, LLC, subject to
11 nonsubstantive edits for clarity?

12 MEMBER SWINNEY: Yes.

13 CHAIR WHALEN: Okay. Is there a second
14 to that motion?

15 MEMBER SWINNEY: Second.

16 CHAIR WHALEN: Yes. Shirley moved to
17 approve. Is there a second?

18 MEMBER FANG: So moved.

19 CHAIR WHALEN: So moved. Okay.

20 MEMBER FANG: Or second. Sorry.

21 CHAIR WHALEN: Second. Okay. Wei Fang
22 seconded the motion. Is there any further
23 discussion?

24 MEMBER TIMSON: Yes. I would like to
25 clarify, you know, the last-minute amendment or

1 whatever that they -- that Aloha Solar submitted. So
2 I don't quite understand. What is the staff's
3 position on that? That they have the flexibility of
4 changing the boundary from 5 to 15 feet if they
5 choose? What was the staff's recommendation?

6 MR. NEUPANE: The staff recommendation is
7 still to require a 15-foot setback.

8 MEMBER TIMSON: Is what? I'm sorry.

9 MR. NEUPANE: To still require the
10 15-foot setback. The rule does provide for between 5
11 to 15. And if I may direct the board members to the
12 material that was passed out this morning, and if you
13 look in, you know, I think -- no. I'm sorry. The
14 material that was provided before, if you look in the
15 Exhibit NN with the drawings, the first drawing, it
16 shows that for, you know, Coral Sea Road, there's
17 quite a bit of length of Coral Sea Road. The
18 pavement and the property line are the same. So it
19 looks like the Coral Sea Road encroaches into the
20 property line. And, therefore, the recommendation is
21 that the fence would be 15 foot back in case in
22 future if any improvements need to be made on Coral
23 Sea Road, or for that matter, you know, because we
24 don't have a surveyed right-of-way, we really don't
25 know, even with this, where the right-of-way is. So

1 the staff is recommending that except where
2 archaeological sites are, that fence should be the
3 maximum of 15 feet back from the property line.

4 MEMBER TIMSON: Okay. Good. I'm happy
5 to hear that, and I really want to address Aloha
6 Solar on this. Can I do that?

7 CHAIR WHALEN: Yeah.

8 MEMBER TIMSON: Okay. You know, I don't
9 want it to appear because I know I was the one that
10 was a stickler from the beginning about that. And
11 what I'm just saying to you is that we want you to be
12 a good example that when all the other industrial
13 folks come into Kalaeloa, that they will see that
14 here we have a responsible company that has allowed
15 us that greenway so that when we're traversing down
16 that road, we have this greenway. And that's really
17 what we would like to do. And, perhaps, take a look
18 at Campbell Industrial Park. That is the worst,
19 biggest industrial park in this whole state, but look
20 how beautiful that is. So I'm asking that if you can
21 please be that example to others that will come after
22 you because we certainly will require the same of
23 them. So when they come --

24 So can you make it a little bit nicer
25 than just, you know --

1 Please, because, remember, you're going
2 to be our neighbor in that -- in that -- in your site
3 for over 20 years. We're going to still be here.
4 Most of this board won't. But, you know, we're going
5 to still be here. This is where we live, you know,
6 and our kids. So we just want to have some nice
7 greenway. So, please, if you'd consider that. Thank
8 you. Thank you.

9 CHAIR WHALEN: Any other comments? You
10 don't need to respond.

11 MR. FRYER: I wasn't going to respond to
12 that.

13 CHAIR WHALEN: You don't need to.

14 Is there anyone else who has any comments
15 in deliberation before we move to decision?

16 Okay. I think it sounds like we're ready
17 for a vote. All right. So, Deepak, would you call
18 the roll, please?

19 MR. NEUPANE: Members, the motion has
20 been made and seconded. On the motion, Member
21 Swinney?

22 MEMBER SWINNEY: Yes.

23 MR. NEUPANE: Member Fang?

24 MEMBER FANG: Yes.

25 MR. NEUPANE: Member Anderson?

1 MEMBER ANDERSON: Yes.

2 MR. NEUPANE: Member Golojuch?

3 MEMBER GOLOJUCH: Yes.

4 MR. NEUPANE: Member Timson?

5 MEMBER TIMSON: Yes.

6 MR. NEUPANE: Chair Whalen?

7 CHAIR WHALEN: Yes.

8 MR. NEUPANE: The motion passes with six
9 yes and three excused.

10 CHAIR WHALEN: Okay. So that brings us
11 to the end of the hearing. On behalf of HCDA
12 Authority members and staff, thank you for your
13 attendance. The hearing now stands adjourned at
14 10:24 a.m.

15 (The hearing adjourned at 10:24 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 26th day of March 2018 in Honolulu, Hawaii.

/S/ Laura Savo
LAURA SAVO, RPR, CSR NO. 347