

In re Application of

ASEF II LLC
Applicant
For a Development Permit and Request for
Variances for TMK (1) 9-1-013:070

APPLICATION NO. KAL 17-01

APPLICANT'S EXCEPTIONS TO HCDA STAFF'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

On November 27, 2017, ALOHA SOLAR ENERGY FUND II, LLC ("ASEF II" or "Applicant") submitted an application ("Application") for a Development Permit pursuant to Hawaii Revised Statutes ("HRS") § 206E, Hawaii Administrative Rules ("HAR") § 15-219 and HAR § 15-215, for a proposed photovoltaic system project known as the ASEF II project ("Project"). The Project site is located within the Kalaeloa Community Development District ("KCDD"), on the western side of Coral Sea Road and further identified as Tax Map Key (1) 9-1-013:070. The Project also includes an approximate 1.78-mile-long 12 kV interim electrical distribution line located on a 30 foot wide portion of right-of-way along the eastern edge of Coral Sea Road that border TMKs: 9-1-013:039, 040, 043, 044, 072, 099, and 100.

The Hawaii Community Development Authority ("HCDA" or the "Authority") has heard, considered, and examined testimony, evidence, and public comment, which were presented during hearings held on January 18 and 19, 2018. A decision-making hearing is scheduled for March 13, 2018.

On January 26, 2018, the Applicant submitted to the Authority its proposed Findings of Fact ("FOF"), Conclusions of Law ("COL"), and Decision and Order ("D&O").

On March 6, 2018, the Authority provided the Applicant its Staff's FOF, COL, and D&O

with stipulations that any exceptions to HCDA Staff's FOF, COL and D&O be filed by 2 p.m. on March 9, 2018.

The Applicant via this submittal has one (1) exception to formally file in response to the HCDA Staff's FOF, COL and D&O.

**Exception 1 on HCDA Staff's D&O, No. 2 (HAR § 15-215 Development Standards
Summary, Figure 1.3)**

The HCDA Staff's D&O, No. 2 effectively denies the Applicant's request to place the proposed perimeter fence on the property line in the front yard without the required setback, except where the property line encroaches or is directly adjacent to the proposed archaeological preserve area. For the frontage area that does not encroach or is not adjacent to the archaeological preserve, the HCDA Staff's D&O, No. 2 states that the fence shall be setback 15 feet from the property line.

The Applicant concurs with the denial of its request by HCDA Staff's D&O, No. 2 with the noted exception that the Kalaeloa Community Development District development standards allow for flexibility and accordingly, provide for an allowed range of five (5) to fifteen (15) feet for a front yard fence setback within the designated Transect Zone 2, Rural/Open Space, in which the Project resides.

The Applicant requests that HCDA Staff's D&O, No. 2 be amended based upon the allowance provided for in the development standards. Specifically, the Applicant requests that the current citation in HCDA Staff's D&O, No. 2 that the "fence shall be setback 15 feet from the property line" be amended to "the fence shall be setback within the allowable range of five (5) to fifteen (15) feet" in which the actual distance will be determined during the preparation of

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March 9, 2018

final fence design plans. HCDA will review and approve any final fence design plans prior to their submittal to the City and County of Honolulu for building or construction permits.

The Applicant does have concerns that as a part of HCDA's commitment as a landowner to ensure the protection of twenty-three (23) identified historic sites and one hundred forty-six (145) associated features, there are requirements to afford a ten (10) foot permanent buffer and 10 (foot) temporary buffer. Although not anticipated due to the extensive coverage of the archaeological investigations that occurred, the Project is subject to possibility of historic property finds under required archaeological monitoring. In the unlikely event that unknown historic properties could be discovered during monitoring of the project, the provision of five (5) to fifteen (15) feet for the front yard setback will afford some flexibility in the event an appropriate design response is necessary to protect any unknown historic features that could be discovered near the property line.

The Applicant also has concerns that the edge of pavement of Coral Sea Road along the frontage of the parcel does encroach the parcel. As final detailed fence plans are prepared, the provision of a five (5) to fifteen (15) foot front fence yard setback will ensure the Applicant can appropriately design its proposed perimeter fence in a manner that responds to any safety concerns related to the proximity and encroachment of Coral Sea Road.

The Applicant respectfully submits this formal exception.

Dated: March 9, 2018



Mr. Richard Fryer, ASEF II Program Manager