

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: 10 CFR 2.206 Petition
 RE Schofield Barracks

Docket Number: (n/a)

Location: (telephone conference)

Date: Wednesday, April 14, 2010

Work Order No.: NRC-196

Pages 1-65

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 10 CFR 2.206 PETITION

5 CONFERENCE CALL

6 RE

7 SCHOFIELD BARRACKS

8 + + + + +

9 WEDNESDAY

10 APRIL 14, 2010

11 + + + + +

12 The conference call was held, Ken Kalman
13 presiding.

14 PRESENT:

15 ISSAAC HARP, Petitioner

16 KEN L. KALMAN, presiding, NRC

17 BRETT KLUKAN, NRC Counsel

18 CORY HARDEN, Hawaii

19 DAVID EDGAR, Hawaii

20 DAVID T. McINTYRE, Public Affairs, NRC

21 JASON ARMSTRONG, Hawaii Tribune Herald Newspaper

22 KEITH I. McCONNELL

23 James Albertini, Hawaii

24 Dr. MIKE REIMERLYMER, Hawaii

25 Dr. Lorrin Pang, Hawaii

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1 Kai Markell, Office of Hawaiian Affairs, Hawaii

2 Representative Cindy Evans, Hawaii

3 Shelly Stephens, Hawaii

4 **NOTE: AS NO SPELLINGS OF TERMS/NAMES WERE PROVIDED,**
5 **BEST GUESSES WERE USED.**

6
7 T-E-L-E-C-O-N-F-E-R-E-N-C-E

8 3:00 p.m.

9 SCOTT: This is a meeting. This meeting
10 is being recorded and will be transcribed, as Ken
11 mentioned to serve as the record of the meeting.

12 After the meeting the Petition Review
13 Board will meet in closed session to determine whether
14 the request meets the criteria for a 2.206 petition
15 and as a consequence, whether we would accept it as a
16 2.206 petition.

17 Petition Manager would then inform Mr.
18 Harp of the Board's decision. He has an opportunity
19 to comment on the Board's recommendation either in the
20 form of a meeting or teleconference. This meeting
21 will also be transcribed and distributed.

22 Subsequent to that, if the Board decides
23 whether to modify its recommendation and final
24 recommendations will be provided in an acknowledgement
25 letter to Mr. Harp. And we hope to have that done by

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1 the end of April of this year.

2 If the request meets the criteria for a
3 2.206 petition, a *Federal Register* notice is issued.
4 Subsequent to that, the goal is to issue a draft
5 Director's decision regarding the petition for comment
6 with 120 days after issuing the acknowledgement letter
7 to Mr. Harp.

8 A second goal is to issue a final
9 Director's decision within 45 days of the end of the
10 comment period for the proposed Director's decision.

11 At the end of my opening remarks, I'll
12 just lay out the criteria for 2.206 petition.

13 First, there must be more than a general
14 assertion of a safety problem without supporting
15 facts.

16 The petition must contain a request for
17 enforcement-related action.

18 Facts that constitute the basis for taking
19 the particular action (inaudible).

20 And there is no NRC proceeding available
21 in which the petitioner, Mr. Harp, is or could be a
22 party and to which his concerns could be addressed.

23 MR. KALMAN: Scott, this is Ken Kalman.

24 It sounds like a few more people may have
25 joined us. If so, would they please identify

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1 themselves?

2 MR. ARMSTRONG: Hello. This is Jason
3 Armstrong, reporter with the *Hawaii Tribune Herald*
4 newspaper in Hilo.

5 MR. KALMAN: Okay.

6 MR. McINTYRE: And Dave McIntyre with NRC
7 Public Affairs.

8 MR. KALMAN: Anyone else?

9 MR. EDGAR: David Edgar from Segallo in
10 Hawaii.

11 MR. KALMAN: David, would you spell your
12 name, please?

13 MR. EDGAR: David, D-A-V-I-D Edgar, E-D-G-
14 A-R.

15 MR. KALMAN: Okay. Anyone else?

16 Okay. That's great.

17 Again, this is Ken Kalman.

18 Because this telecon is being recorded and
19 will be transcribed, I'm requesting that everybody
20 identify themselves by name before they speak. And if
21 I end up interrupting someone to say please state your
22 name, please don't be offended.

23 Okay. Thank you.

24 SCOTT: Okay. I think that's all in terms
25 of from the NRC perspective our opening remarks. So

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1 we'll turn it over to Mr. Harp and his associates.

2 MR. HARP: My name is Isaac Harp.

3 I sent in a request in early this morning
4 by email regarding 10 CFR 2.206 Management Directive
5 8.11 under section management of allegations
6 reflecting that the process should exclude all NRC
7 legal counselors who are involved in my prior petition
8 against the Army's application for a position only
9 license. I feel these NRC legal counselors may be
10 prejudiced due to comments made during the oral
11 argument proceedings as well as from communications
12 via email prior to and following the oral argument
13 proceedings.

14 Could I get a response from NRC on that
15 request?

16 MR. McCONNELL: Well --

17 MR. KALMAN: Keith?

18 MR. McCONNELL: Yes, this is Keith
19 McConnell.

20 We didn't consider your explicit request
21 because we just got it like five minutes ago. But
22 when we had our organizational board we did consider
23 organizational conflicts of interest and felt that
24 there were none.

25 We will put your most recent request on

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1 | the record and it will become part of the
2 | considerations that the Board goes through.

3 | I would note that the passage you cite out
4 | of Management Directive 8.11 refers to technical staff
5 | and not the staff from the General Counsel's Office.
6 | And Greg Puken, would you like to --

7 | MR. ~~KLUKAN~~PUKEN: This is Brett KlukanGreg
8 | Puken.

9 | The other point I would like to make is
10 | that the scope of your request relates to potential
11 | violations by the Army related to tell you to have a
12 | license. That is different from the scope of the
13 | adjudicatory proceeding for the Army to gain a license
14 | for the two sites in Hawaii. In fact, I was not
15 | involved in the scope of this, which is again the
16 | potential violations of the Army in the past to obtain
17 | and possess a license for nuclear materials.

18 | MR. HARP: Well, I guess we're stuck with
19 | the same legal counselor and some of this issue was
20 | raised during oral argument. But regardless, I guess
21 | we're stuck with what we have.

22 | I requested enforcement action for the
23 | Army's possession of depleted uranium in Hawaii after
24 | their license had expired on October 31, 1964. To the
25 | best of my knowledge, depleted uranium contamination

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1 has never been cleaned up. The NRC has never issued a
2 license to the U.S. Army for the **surface** disposal for
3 depleted uranium in Hawaii.

4 The depleted uranium has been ~~re~~possessed
5 ~~has~~ by the U.S. Army at least two sites in Hawaii
6 since October 31, 1964 without an NRC depleted uranium
7 possession license.

8 Specific locations that we know of at this
9 time are the Schofield Barracks site on the island of
10 O'ahu, Pohakuloa Training Area site on the island of
11 Hawaii. And possibly the Makua Military Reservation
12 on the island of Oahu.

13 In regards to the Makua Military
14 Reservation location, the Army has not definitively
15 determined if depleted uranium was or was not used at
16 this site. And I'm requesting NRC enforcement to
17 ensure that the U.S. Army **completes** the site
18 assessment so that a definitive determination can be
19 made for this site. I understand the Army conducted
20 fly overs of the Makua site but were unable to
21 determine if any depleted uranium evidence was
22 available due to the heavy growth of brush in the
23 area.

24 And I also requested an investigation of
25 other potentially forgotten radiological or

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1 | radioactive hazards. ~~±~~ If depleted uranium was
2 | forgotten about at these two high profile locations,
3 | Schofield and Pohakuloa, ~~—~~ I believe it's highly
4 | likely that the Army has forgotten about lesser high
5 | profile sites where they may have used source
6 | ~~materialash (phonetic)~~.

7 | And I would like to request that -- let me
8 | turn it over to Ms. Cory Harden for now. ~~But~~ Ms.
9 | Harden has some points she would like to get across.

10 | MS. HARDEN: Yes. This is Cory Harden.

11 | I understand Mike ~~Ly~~Reimer might have to
12 | leave early. So I wonder if Mike would like to make
13 | his comments at this time?

14 | MR. ~~LY~~REIMER: No. I hope to remain for
15 | the entire hearing.

16 | MS. HARDEN: Okay. I'll go ahead with my
17 | comments, which summarize comments sent by email
18 | earlier. It should take about 6 minutes, so I'll go
19 | ahead.

20 | I'm requesting that NRC direct all
21 | military forces, U.S. and foreign --

22 | MR. KALMAN: Someone may need to mute
23 | their phone because we're getting feedback.

24 | MS. HARDEN: Okay. This is Cory again.

25 | I'm requesting that NRC direct all

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1 military forces, U.S. and foreign that have trained in
2 Hawaii since 1940 to search their classified and
3 unclassified record for all forgotten radioactive
4 hazards, not just depleted uranium under close
5 supervision by NRC.

6 I feel that information given to the
7 public about military hazards in Hawaii is unreliable
8 for several reasons.

9 First, past inaccurate statements about
10 DU, the Army repeatedly denied having DU in Hawaii
11 until 2006 when citizen groups held a press conference
12 announcing they had obtained Army emails showing the
13 Army had found DU ~~starting~~ ~~spotting~~ rounds in Hawaii
14 four months earlier. A few hours after the citizens
15 press conference, the Army issued a press release
16 admitting the find. The Army said they didn't
17 announce the find earlier because they were confirming
18 it. They didn't say why they finished confirming just
19 a few hours after citizens blew the whistle.

20 And what you find was just the tip of the
21 iceberg. The Army ~~lost track of it~~ ~~turned out~~ about
22 29,000 rounds containing over 5,000 kilograms of DU at
23 17 or more locations in the United States and three
24 foreign countries, according to an Army report
25 ~~(inaudible)~~ to our County Council about a year ago.

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1 The second reason about Army ~~r~~reliability.
2 Questionable number estimates. The Army has
3 ~~explain~~claimed there are only about 700 spotting
4 rounds in the entire State of Hawaii. But there are
5 two lines of evidence for over 2,000 spotting founds
6 at Pohakuloa alone.

7 One line is the discovery of about 400
8 ~~pistons~~450 at Pohakuloa from the spotting round of
9 weapons system. Generally there were about five
10 spotting rounds used for every one piston. And other
11 lines is that for soldiers to follow training manual
12 requirements of that time, about 2,000 spotting rounds
13 would have been needed at Pohakuloa. Now the Army
14 didn't find 2,000 spotting round recently at Pohakuloa
15 Training Area, only four fragments. They speculate
16 that range clearance may have been done, but offer no
17 evidence to support this theory.

18 Also, normal range cleanup in the spotting
19 round era included dumping scrap metal in the impact
20 one at Pohakuloa subject to bombs and ~~wild~~live fire.
21 Since DU ~~is~~was not considered dangerous at that time,
22 it may have been classified as scrap and also dumped
23 in the impact area.

24 Also, the Army searched fewer than 1,000
25 of the ~~6~~51,000 acres of the Pohakuloa impact area,

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1 their thorough search. The Army did thorough searches
2 only where they thought it most likely that spotting
3 rounds were used.

4 I also saw that some spotting rounds were
5 fired off of trucks. So I don't know where the trucks
6 might have gone.

7 The Army argued for a lower number of
8 spotting amounts, more like 700, in a letter to a
9 Hawaii Congress person. And to back up their claim
10 they quoted from a report, which I only managed to
11 obtained after ten months of repeated requests. Their
12 quote for the lower number does not match my copy of
13 the report. My copy of the report indicates more
14 spotting rounds.

15 The third reason about unreliability,
16 questionable studies and monitoring. Because
17 undiscovered DU, bombs and live fire exploding on top
18 of it, could generate hazardous airborne compounds.
19 But when we talked with our experts, they say that the
20 Army air monitoring methods are inadequate to detect
21 these compounds. Our experts also identified other
22 shortcomings in Army studies in monitoring for Hawaii
23 DU.

24 The experts are Dr. Marshall Blanned, a
25 consultant for Las Alamos National Laboratory, Dr.

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1 Pang, who is on the line. He's a former Army doctor
2 and consultant to the World's Health Organization.
3 And Mike ~~Ly~~Reimer who is on the line. He has a PhD in
4 geology and background in radiation.

5 I note also that Pohakuloa is used by
6 military services other than the Army and by foreign
7 military services.

8 The Army reporting to County Council said
9 that the Navy and Marines found no evidence they had
10 used DU at Pohakuloa. But it didn't appear that they
11 had checked any classified records and there was no
12 report from the Air Force or foreign forces. And I've
13 seen no further information about what other services
14 did up there.

15 Fourth reason on unreliability, unreliable
16 license record. The Army cannot determine whether it
17 had or did not have a license for DU in Hawaii
18 according to the *Honolulu Advertiser* and *Honolulu*
19 *Weekly*.

20 Further muddying the waters, the State
21 Health Department claims there were six or more
22 licenses, but won't give us details.

23 Fifth reason for unreliability,
24 revelations of past hazards turning up on our
25 island. The Army secretly ~~tested~~~~kept~~ its nerve gas and

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1 defoliants in a forest reserve near Hilo in the 1960.

2 The Army denied and covered up the testing until
3 reporters ~~found~~ out and publicized it.

4 Stuff keeps turning up all over our
5 island. Students dug up a grenade in their school
6 garden. And there's old ordnance and explosive waste
7 possibly turning up in that area near Pohakuloa. Old
8 ordnance has been found under water off of popular
9 beaches, some in only 12 feet of water, some only 100
10 yards from shore.

11 A diver found unexploded ordnance in Hilo
12 Bay and when the Navy went to look there were 300
13 pieces.

14 And the last reason, lack of
15 communication. The Army has been repeatedly invited to
16 participate in a community forum on DU, but they just
17 keep putting us off for a year or so.

18 The Army said that Pohakuloa Community
19 Advisory group, where Dr. ~~Ly~~Reimer and I were members,
20 was a way for the community to get information on DU.
21 But that group hasn't met for eight months. When I
22 write and ask what's happening, I get no response.
23 And as I said earlier, although there's a lot of stuff
24 on the Army website now, it took ten months of
25 requests for me to get one basic report, one of the

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1 first reports done, which formed the basis for many of
2 the subsequent reports.

3 | Also, American ~~(inaudible)~~ Friends Service
4 Committee in Honolulu did a Freedom of Information Act
5 request to the Army for information on DU. Over a
6 year later no response.

7 | So in conclusion, since we can't rely on
8 the military to shine the ~~ir~~ light on the hazards its
9 left behind, we need help from NRC.

10 Thank you.

11 MR. KALMAN: Ms. Harden, this is Ken
12 Kalman. Before I can move on, just so I understand
13 you, is your allegation that the Army provided --
14 potentially deliberately provided materially
15 inaccurate information to the NRC as part of its
16 license application.

17 MS. HARDEN: I don't know how to answer
18 that. It's hard to tell if they didn't know or didn't
19 tell about having the DU in Hawaii. I'm concerned
20 about the statement to the Congress person that
21 misquoted ~~archived~~ ~~(inaudible)~~ the Archives Search
22 ~~R~~Report.

23 | So, is your question whether they did it
24 deliberately or accidently or just --

25 MR. KALMAN: Well, I'm just trying to get

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1 my head around because you talked a lot about
2 inaccuracies in information. And I was just trying to
3 see if that's what you were electing. If it's your
4 claim that the Army provided inaccurate information to
5 the NRC and then maybe beyond that you think it's
6 deliberate. Or do you think did they provide
7 inaccurate information or was it deliberate? And I
8 was trying to figure if that adequately describes your
9 claim here.

10 MS. HARDEN: Well, especially on the
11 numbers I think they were extremely optimistic about
12 having a lower number. I saw a lot of places where
13 there was room for interpretation and they would
14 interpret it as there being a lesser problem ~~where~~
15 ~~there's~~ rather than a greater problem.

16 I don't know everything that they sent to
17 the NRC. There's an overwhelming amount of
18 information on the website. But just based on the
19 history I would look carefully at the information that
20 they submit. You know, I can't point to something and
21 say this particular submission was inaccurate, except
22 perhaps on the numbers of spotting rounds. But, you
23 know, someone has interpreted it way over on one side
24 in several instances. And, you know, you got to I
25 think look closely at what they're doing.

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1 And it's like they don't know what they've
2 left behind, you know. Because we keep turning --
3 | having surprised finds ~~at least of~~ old hazards on our
4 island.

5 So did that answer your question?

6 MR. KALMAN: Thank you, Ms. Harden.

7 MS. HARDEN: Okay.

8 MR. McCONNELL: This is Keith McConnell.

9 Before we move on I'd like to ask a couple
10 of questions also.

11 First, to either Mr. Harp or Ms. Harden,
12 beyond your concerns -- and I think I heard Mr. Harp
13 mention -- beyond your concerns with the completeness
14 of the Army's record keeping, do you have any evidence
15 that the Davy Crockett Weapon System was used at
16 Makua?

17 | MR. HARP: This is Isaac Harp.

18 In the Army's application, their current
19 application for a possession only license they state
20 and I quote: "Installations currently subject to
21 further investigation include the Aberdeen Proving
22 Grounds, Fort Dix, New Jersey and the Makua Military
23 Reservation ." So they themselves suspect that they
24 may have used it at the Makua Military Reservation

25 MR. McCONNELL: Okay. This is Keith.

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1 Thank you.

2 And the other question I had was --

3 MS. HARDEN: This is Cory Harden.

4 MR. McCONNELL: Sorry.

5 MS. HARDEN: I have a little bit more on
6 that. I know that they did some searching at Makua,
7 that they did a helicopter fly over. I've seen maps
8 where they kind of tried to figure out where the Davy
9 Crockett ranges might have been. So, there looks like
10 there was enough indication there might have been DU
11 that they thought it worth to go and fly a helicopter
12 over. But it was difficult. It's a steep valley with
13 heavy, heavy tropical vegetation. And the searching
14 was extremely difficult. I don't know how they would
15 possibly find the stuff in there. You can't go
16 walking with unexploded ordnance all over the place.
17 It's basically it's too hazardous to try to even find
18 it.

19 MR. McCONNELL: Okay. This is Keith
20 McConnell again.

21 The second question I had was I think
22 that, Ms. Harden, you've referenced munitions of
23 various sorts seen all over the island. But I was just
24 wondering if you were aware of any other depleted
25 uranium or munitions that might have been found

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1 outside of the Pohakuloa, Schofield Barracks -- well,
2 out of those two locations?

3 MS. HARDEN: I'm not aware, but then again
4 I don't have need to find out. But I do -- someone --
5 this is very secondhand. I spoke with a hunter who
6 goes around Pohakuloa and he says finds unexploded
7 ordnance outside of the base when he goes around
8 there. So there are some reports of stuff getting off
9 the base. But I don't have anything specific. Of
10 course it doesn't, you know, will glow orange, so I
11 wouldn't know if I saw it.

12 BRAD: Ms. Harden, this is Brad
13 (inaudible) again.

14 You mentioned, I think 17 locations in the
15 United States and three other foreign countries.

16 MS. HARDEN: Yes.

17 BRAD: Could you either list it if you
18 have it on hand, or provide us the source of that
19 information? If it's just in documents that the NRC
20 already has, you can just say that.

21 MS. HARDEN: Yes. I think I said that in
22 it before, but I will --

23 BRAD: You think it's in your petition?

24 MS. HARDEN: Right. I will try to find
25 that document from the County Council presentation and

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1 get it to you.

2 BRAD: Okay. Thank you.

3 MR. ARMSTRONG: Excuse me. This is Jason
4 Armstrong from the *Tribune Herald* in Hilo.

5 I'll be signing off now. I'm not sure of
6 the protocol, so I just wanted to announced ~~my~~ my
7 departure.

8 MR. KALMAN: Okay. Jason. Thank you,
9 Jason.

10 MR. ARMSTRONG: Thank you. Bye-bye.

11 MR. McCONNELL: This is Keith McConnell
12 again.

13 I guess we can proceed with Mr. Harp and
14 his associates.

15 MR. HARP: I'd like to turn the link* over
16 to Mr. James Albertini* at this time.

17 MR. ALBERTINI*: Hello. This is Jim
18 Albertini*.

19 Just for background, I'm the head of the
20 Center for Nonviolent Education and Action for this
21 town Hawaii. Prior to that I was a teacher and the
22 Director of the Catholic Action of Hawaii Peace
23 Education Project. And part of that work was the
24 publication of book entitled "The Dark Side of
25 Paradise: Hawaii in a Nuclear World" about the

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1 military's nuclear presence in Hawaii.

2 | Now that book was published in 1980, ~~it~~I
3 was also certified as a state civil defense radiation
4 monitor. So I have some background in nuclear
5 materials.

6 And I want to state up front that one of
7 the major problems in dealing with all of this
8 including the DU issue is secrecy: The classification
9 | of material. ~~That~~The policy is that they neither
10 confirm nor deny the presence of nuclear weapons
11 anywhere and therefore, spotting rounds associated
12 with the training of nuclear weapons systems is also
13 classified.

14 I want to point out that we've had real
15 difficulty dealing with the military. We've been
16 stonewalled in communications. And this has been
17 going on for decades. And I want to cite some
18 specific communications and ask for the NRC to direct
19 the military to respond and to direct the military to
20 follow Army regulations, specifically Army regulation
21 700-48 section 2-4.

22 | Here ~~is~~are some specific points.

23 | Correspondence ~~(inaudible)~~October 30, 2009
24 | to Lieutenant Colonel ~~Warline~~only Richardson, the
25 commanding officer at Pohakuloa where the military was

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1 going to parade through Hilo on November 7th, Veterans
2 Day Parade, Stryker vehicles currently do live fire
3 training at Pohakuloa and recently returned from Iraq.

4 Now there was a real question that those
5 vehicles may be contaminated with DU risking spreading
6 that contamination of endangering the health and
7 safety of troops and citizens of this island bringing
8 these Strykers to our community.

9 I followed that communication up with a
10 November 8th letter to Colonel Richardson, also a copy
11 to Tad Davis, Undersecretary for the Environment of
12 the Army specifically asking to provide our
13 organization with a list of decontamination of those
14 vehicles before they were paraded through the
15 community, all documents, et cetera. To date I've
16 received no response. They were official FOIA
17 requests made in November of '09.

18 I also sent a direct email to Tad Davis
19 with a similar request, dated November 2009.

20 I did a formal request on November 2, 2009
21 to Public Affairs, Schofield Barracks including a list
22 of 15 U.S. Army DU cartridge penetrator weapons and
23 with the specific request of asking if any of those
24 penetrators on the list are or were present in Hawaii.

25 To date no response from any of those letters.

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1 I want to make clear that Major Doug
2 Rokke, Retired U.S. Army, Director of the U.S. Army
3 Depleted Uranium Project who wrote the regulation 700-
4 48 says the following, and I quote: "Any and all
5 combat vehicles and equipment returning from Iraq
6 should be prohibited from any civilian area. A
7 standard wash rack is useless for decontamination.
8 All contaminated equipment isolated to the Army post.
9 Army Regulation 700-48 Section 2-4 requires isolation
10 from all human contact."

11 He goes on further, and I'm quoting, "Even
12 after extensive depot level cleaning I found DU and
13 other radiological chemical and biological
14 contamination in vehicles years later. The gross
15 contamination of equipment, vehicles, terrain, air,
16 water, soil and food is reflected and verified in the
17 hundreds of thousands of U.S. casualties with various
18 medical problems that are unrelated to bullets and
19 bombs."

20 And Doug Rokke says "Hawaii's environment
21 should not be exposed to consequently placed in danger
22 through any exposure to any of the contaminants
23 brought back by the U.S. military." End quote, Doug
24 Ro~~i~~kke, Major, Retired.

25 I want to also emphasize that in my

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1 presentation before the NRC in January I quoted from
2 the *Army Times*, August 30, 2007 that says the
3 following, a short sentence. This is by Greg Komp,
4 Senior Health Physicist, Office of the Director of
5 Army Safety. He says "Today DU is not used in military
6 training. But in the '50s and '60s it was used
7 anytime you needed a heavy weight."

8 Now I want the NRC to follow-up with Mr.
9 Komp, the Senior Health Physicist for the Army and
10 find out where DU was used anytime they needed a heavy
11 weight, and if that **was** used in Hawaii. It's
12 reasonable to believe that **since** it was used as a
13 weight for spotting rounds for Davy Crockett, it was
14 used in other areas here in Hawaii, and in other
15 places around the country according to his testimony.

16 And I think this issue of DU coming out
17 involving at the time frame of the late '60s, or the
18 early to late '60s, should also be part of a package
19 of further investigation and enforcement by the NRC
20 over the military's contamination with **other** nuclear
21 material in Hawaii.

22 And in our book, "The **BookDark** Side of
23 Paradise" I have quoted in there page 18 quoting the
24 *Honolulu Star Bulletin* of April 4, 1979 where the U.S.
25 Navy acknowledges dumping over 2,000 barrels of

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1 radioactive waste from the refueling of nuclear
 2 reactors at Pearl Harbor. They dumped that waste in
 3 the ocean off of Oahu's southern shore.

4 In addition, January 15, 1969 *Honolulu*
 5 *Star Bulletin*, front page talks about U.S.S
 6 ENTERPRISE, the aircraft carrier accident in 1969 that
 7 killed 24, injured more than 85 from a rocket accident
 8 on board. I know that the ~~eat~~ ENTERPRISE limped into
 9 Pearl Harbor for emergency repairs reported ~~at~~
 10 ~~(inaudible) — civilian~~ costing tens of millions of
 11 dollars, and that was the year of a major oyster kill
 12 in Pearl Harbor.

13 Now those are just a few examples.

14 We also have reason to believe that in
 15 that same time frame that at least one of five Hawaii
 16 ~~International Air National~~ Guard accidents may have
 17 involved nuclear weapons in Hawaii area.

18 March 21, 1967, Operator George Joy.
 19 November 15, 1969, Operator James ~~Moncrief-Von Greedy~~.
 20 May 27, 1970 Melvin ~~Sousassa~~. January 11, 1972 James
 21 ~~Garagoueie~~ Haaguchi. And June 9, 1973 James ~~Moncrief~~
 22 ~~Von~~ ~~Cret~~. This needs to be further investigated --of
 23 nuclear weapon accidents and contamination in Hawaii.

24 MR. BRETT KLUKANPARTICIPANT: Mr.
 25 Albertinie?

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1 MR. ALBERTINIE: Yes.

2 MR. KLUKANPARTICIPANT: You know, you can
3 call it a license. But you know the use of weapons in
4 Hawaii I believe is outside the scope of this
5 particular petition and Review Board meeting. I think
6 the focus is on depleted uranium.

7 MR. KLUKANPUKEN: The reason we say that,
8 Mr. Albertinie -- this is Brett KlukanGreg Puken.

9 Is the NRC generally doesn't have
10 authority over weapons. That's outside our
11 jurisdiction. We do, however, have jurisdiction over
12 depleted uranium and other radionuclides. I'm not
13 just saying depleted uranium when used for training
14 purposes as nuclear material under the Atomic Energy
15 Act. Or source material under the Atomic Energy Act.

16 MR. ALBERTINIE: All right.

17 MR. KLUKANPUKEN: One thing I would add,
18 though, Mr. Albertinie, is whatever you documents that
19 you would like the Petition Review Board to review as
20 part of its decision, please forward to us and we can
21 provide you with a email if it's electronic. And if
22 it's paper, we can give you a mailing address. And
23 this goes for everyone, not just you, Mr. Albertinie.

24 MR. ALBERTINIE: I'll continue then and
25 focus on the DU issue.

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1 On February 21st of 2010 our organization
2 sent a letter to Colonel Richardson listing eight
3 questions. That letter was also given to State
4 Representative Faye Hanohano from the Puna District
5 here on the island of Hawaii who asked Colonel **Matthew**
6 **T. Margotta**, the Garrison Commander to respond in
7 writing to these questions. To date, and today here
8 we are nearly two months later, no answers to these
9 questions.

10 So somebody needs to light a fire under
11 the military to respond to the citizens' concerns over
12 this DU and the questions that were raised talk about
13 the things that I think are very pertinent that the
14 County Council has called for all halt to all live
15 fire at Pohakuloa until there is a cleanup of the
16 depleted uranium.

17 And now neither the NRC seems to be
18 following up. You're the enforcers that should be
19 following the will of the people here at the County
20 and taking some action on that.

21 Anyway, I guess I'll stop at that point.

22 MR. McCONNELL: Okay. This is Keith
23 McConnell again.

24 Thank you.

25 Mr. Harp.

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1 MR. HARP: This is Mr. Harp.

2 Regarding the County resolution that Mr.
3 Albertini~~e~~ just mentioned, during our oral argument
4 proceedings earlier this year, Mr. Klukan~~Puken~~ stated
5 that the NRC is exempt from this County resolution as
6 well as state action.

7 And I wanted to turn the line over to Ms.
8 Shelly Steph~~ensvens~~ at this point so she can provide
9 some information.

10 MR. KLUKAN~~PUKEN~~: This Brett Klukan~~Greg~~
11 ~~Puken~~. There seems to be talking over the line at the
12 same time that you're speaking, Mr. Harp. We can't
13 tell who that is, but we're having a little trouble
14 understanding you because of that.

15 The one thing I will say is that
16 discussions relating to the adjudicative proceedings
17 or relating to the Board's holding therein aren't
18 related this (inaudible). If the County Council's
19 resolution provide underlying evidence to support that
20 the Army violated NRC regulations, please move forward
21 with your conversation. But if it's simply a dispute
22 by NRC staff and the Safety and Licensing Board's
23 decisions regarding being relevant to those County
24 resolutions to the adjudicatory proceeding, we prefer
25 to move on.

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1 So I turn it back to you, Mr. Harp.

2 MR. HARP: Mr. KlukanPuken, can you tell
3 me if the NRC is exempt from county and state laws?

4 MR. KLUKANPUKEN: I'm not going -- that's
5 not the purpose of this proceeding here today, Mr.
6 Harp. The purpose of this proceeding is for you and
7 your fellow members of the public to provide evidence
8 in support of the allegation that the Army has
9 violated NRC regulations and the Atomic Energy Act.
10 So, it's not --

11 MR. HARP: Okay. I'd like to turn the
12 line over to Mr. Shelly Stephensvens.

13 MS. STEPHENSVENS: Okay. This is Shelly
14 Stephensvens.

15 I just wanted to comment that while there
16 was in a previous conversation about the military that
17 they did not have to respond to state or
18 county. ~~(inaudible)~~ I just did want to remind everyone
19 that there was a BLNR lease that was signed by the
20 military that justify cleanup and environmental
21 protection.

22 Excuse me. And also that I agree with Jim
23 Albertinie and others who have spoken about ~~CC~~ live
24 fire training. Until the General Comptroller or
25 someone has actually assessed the areas for depleted

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1 uranium contamination as airborne, DU and the wind
2 patterns here apparently take the depleted uranium in
3 certain areas in particular to ~~Waikoloa~~ ~~Kalea~~
4 Elementary School.

5 And I also wanted to bring the OSHA Right
6 to Know that the denial of depleted uranium or
7 nonadmittal of the depleted uranium has violated
8 workers' right to know for hazardous materials in the
9 workplace.

10 And I also wanted to bring up the point of
11 Department of Defense consultation protocol that there
12 was an Executive Order issued by the White House for
13 government-wide compliance of consultation with the
14 Native Hawaiians. And that there are several statutes
15 that Department of Defense should be following so far
16 as releasing of documents and open consultations.

17 We had a meeting which ~~Clyde Marcell~~ ~~Kai~~
18 ~~Markell~~ did attend some time ago in 2008 with David
19 Sandborn, Department of Defense Tribal Liaison. And
20 it does involve the Clean Air Act 32 CFR 775.6 and
21 also to allow public input and dialogue under section
22 102(2)(c) under NEPA.

23 And that also there's a problem concerning
24 the Native Hawaiians are being denied access to the
25 area. And the problem with that is ~~is~~ that there is

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1 the Religious Repatriation and Practices Freedom
2 Restoration Act of 1993, 42 USC Section 2000(b)(b)-1
3 because the presence of depleted uranium places a
4 burden on the Native Hawaiians' religious practices.
5 And so right now that's actually a violation of the
6 First Amendment.

7 And basically I wanted to get back to BLNR
8 lease that the military did sign an agreement. And it
9 does specify cleanup and protection of the
10 environment. And I would like to see compliance with
11 that. And I know that none of the Native Hawaiian
12 organizations that are on either the Department of
13 Interior ~~(inaudible) Office~~ Native Hawaiian
14 Organizations Consultation List or the Department of
15 Defense Native Hawaiian Organization Consultation List
16 and including Kupuna Councils and other concerned
17 citizens who are Hawaiian, none of them want the
18 depleted uranium stored here and they want it properly
19 assessed and reported.

20 MR. KLUKANPUKEN: This is Brett KlukanGreg
21 Puken.

22 I didn't get your last name, so I'll refer
23 to you as Shelly. And I apologize.

24 But could you tell us BHLR stand for?

25 MS. STEPHENSVENS: I'm sorry, what?

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1 MR. ~~KLUKANPUKEN~~: What does BHLR stand
2 for?

3 MS. ~~STEPHENS~~VENS: Oh. It's BLNR, the
4 Board of Land and Natural Resources. And, Is~~s~~aac, I
5 believe you have a copy of the lease. It's available,
6 the original copy of the lease is available through
7 the Land Agent at ~~DBLNR~~, Department of Land and
8 Natural Resources. And this lease, it goes into great
9 detail as to what the military can have and what they
10 are not supposed to have, which includes hazardous
11 materials that may enter ~~brown~~—ground water and
12 includes ~~protection from~~ing air contamination. And it
13 does specify that they are mandated to restore any
14 damage that they have done. So I would like to see --
15 and I know others would like to see compliance with
16 the actual lease that the Department of Defense did
17 sign.

18 MR. HARP: This is Is~~s~~aac Harp.

19 Just for clarification, State of Hawaii,
20 Board of Land and Natural Resources.

21 MR. ~~KLUKANPUKEN~~: Thank you.

22 MR. McCONNELL: Okay. Mr. Harp?

23 MR. HARP: I'd like to turn the line over
24 to Dr. Lor~~r~~ein Pang at this time.

25 DR. PANG: Thank you.

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1 Let me just state for the record I speak
2 as a private citizen and as a private citizen~~s~~ I've
3 been a consultant to the World Health Organization.

4 I taught specifically, epidemiology at --

5 MR. KlukanPUKEN: Dr. Pang?

6 DR. PANG: Yes.

7 MR. KlukanPUKEN: I'm sorry. We're
8 getting feedback again. Someone needs to mute their
9 phone.

10 DR. PANG: Okay. Shall I repeat or just
11 continue.

12 MR. McCONNELL: Why don't you repeat,
13 please.

14 This is Keith McConnell.

15 DR. PANG: I speak as a private citizen,
16 but even as a private citizen I tell you I have been a
17 consultant to the World Health Organization in Geneva
18 since 1985. I teach, specifically, epidemiology as
19 well as drugs and vaccine testing.

20 I also am a retired Army medical officer,
21 24 years active duty. And I think since 2007 I am
22 named in America's Best Doctors List, an honor which
23 goes to about 3 percent of the physicians in the U.S.

24 My comments are going to -- you can look
25 at them on two levels. One is a direct comment about

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1 the health and safety of depleted uranium. But on
2 another level I'm going to tell you what the Army and
3 their collaborator told us because it sheds light on
4 their credibility, the very poor scientific
5 credibility which the Army has brought to the table on
6 this issue.

7 Now, if you think well why is he talking
8 about credibility? That's a minor point in ~~h~~well,
9 ~~T~~the credibility on this issue is so fundamental it
10 crosses the board to ~~me~~ almost everything the Army
11 said. It's like if I were to describe of antenna
12 length of ants. We're not talking about the antenna
13 length of ants, we're talking about the exist~~ence~~
14 ~~ing~~ of ants. It's at a very fundamental level.

15 I will give you specific examples, three.

16 About three years ago I met with the Chief
17 of the Environmental Section of the Department of
18 Health. He's a Harvard trained lawyer. He is not a
19 scientist. But the Army told him don't worry about
20 depleted uranium, inhaled risk that Dr. Pang
21 mentioned. Uranium is heavier than air and it sinks
22 down and nobody breathes it.

23 Well, I don't know, like Cory Harden, if
24 this was said intentionally or out of ignorance. I
25 corrected this statement whenever I can. But the

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1 Army, whenever I'm not there, seems to repeat it
2 because it appears in media coverage of certain
3 meetings. So I ask the NRC go get a statement from the
4 Army whether they still believe that. And if they
5 still do, then the Army is losing their credibility or
6 what you call "standing."

7 The next point, I was at a legislative
8 meeting, state legislative meeting about depleted
9 uranium issues on the Big Island. And at that time
10 some civilians had done monitoring near the Pohakuloa
11 Training site and they had many samples and there were
12 some very high samples. There were three or four
13 samples which were above background, what we thought
14 was background, by 30 or 40 counts per minute.

15 We were not allowed to ask questions. But
16 after the meeting Army's collaborators took me aside
17 and said "Dr. Pang, do you~~we~~ possibly realized how
18 big a chunk of DU you need to raise the count by 30 or
19 40 counts per minute for air sampling?" And they held
20 up their hands. These were Army consultants.
21 ~~Gesturing (inaudible)~~ as if holding a basketball. And
22 they said "Do your homework, Dr. Pang, before you make
23 such statements."

24 Within two days I sent them two references
25 calculations based~~ng~~ on area and weight disputing

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1 their insinuations. To date I have not heard from
2 them.

3 I ask you, NRC, to test the Army's
4 credibility and their consultants. Ask them how big a
5 chunk of DU you need to raise a Geiger-Müller count
6 by 30 or 40. Look at my references. There have been
7 no answers, it's been years.

8 The final issue I want to bring up is the
9 most damaging of all. At ~~ain~~ public meeting on the
10 Big Island about three years ago Walter Reed Colonel,
11 I think Mark was his first name, Melanson. He's a
12 ~~healthtop~~ physicist. He claimed that DU exposure was
13 safe. "We knew it was." ~~—h~~He knew it was safe or
14 thought it was safe, that they had determined a safe
15 ~~threshold—special~~ level based on the friendly fire
16 incident done by the Army in conjunction with Johns
17 Hopkins Medical School.

18 Essentially they took a bunch of soldiers
19 who were exposed to friendly fire, breathed levels of
20 DU, ~~—~~and he claimed that they had monitored these
21 soldiers for a long period of time and they were in
22 perfect health.

23 I asked them, I knew a little bit about
24 them and I knew these studies were controversial. I
25 claimed that the control group for which they were

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1 compared was tainted. They've should have gotten
2 ~~(inaudible)~~ soldiers who never entered the war
3 theatre.

4 The next issue was that the numbers were
5 small, so we weren't real sure of that. But I did tell
6 Colonel Melanson that that was a very good approach if
7 he could describe ~~is~~ a group that remained
8 healthy, that could determine a threshold level.

9 Since that meeting, it's widely published,
10 it's all over the internet, it's accepted by the
11 Veterans Administration and it was ~~this~~ study --
12 reviewed ~~studies were done~~ by Dr. White of Boston
13 University ~~showing. But that~~ this study was seriously
14 flawed. I am not going to read intention or
15 ignorance, but within the exposure group there were
16 tumors both malignant and benign. Okay.

17 So that kind of stuff appears in the
18 summary report. It's all over the internet. And this
19 was the big study which did go on to show that Gulf
20 War Syndrome was true. An excess of maybe 300,000
21 cases. ~~†~~They specifically looked at the DU issue and
22 found that the friendly fire researchers had ignored,
23 for whatever reason, significant health effects
24 including tumors.

25 That kind of statement -- this sounds like

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1 esoteric health jargon, it is not. This kind of stuff
2 reflects on the credibility that the Army has brought
3 to the table. It goes beyond health. It goes to what
4 Cory Harden was saying.

5 They claimed it wasn't used, or we don't
6 know if it's used. I don't even know how to interpret
7 these statements. That's why we always ask for
8 surveys.

9 Thank you.

10 MR. McCONNELL: This is Keith McConnell.

11 Mr. Harp?

12 MR. HARP: I'd like to turn the line over
13 to Dr. Michael LyReimer if he would like to provide
14 any comment.

15 MR. LYREIMER: Thank you. This is Michael
16 LyReimer.

17 I have no comment at this time. IF there
18 are later any technical questions I feel I could
19 address, I will do so at that time.

20 Thank you.

21 DR. PANG: Sorry, Issaac, this is Dr. Pang
22 again. Could I make one comment I forgot?

23 MR. HARP: Please do.

24 DR. PANG: I just want to make it real
25 clear or I want a te statement from the NRC and the

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1 Army. This meeting we had is about the radiation
2 health risk of DU and its associated compounds. It
3 does not cover chemical toxicity or nano
4 toxicity. ~~(inaudible?)~~

5 MR. McCONNELL: Yes. This is Keith
6 McConnell.

7 Let me just clarify again that the purpose
8 of this meeting is to decide whether to take
9 enforcement action against the Army with respect to
10 Mr. Harp's petition. The issues of health risks are
11 being done in a different arena in terms of the
12 license that the Army had submitted to the NRC.

13 MR. KLUKANPUKEN: This is Brett KlukanGreg
14 Puken.

15 That isn't to say that the public can't
16 provide evidence of DU being in certain locations that
17 the Army claims is not, as certain members of the
18 public have already done.

19 So, again, what we're looking for today is
20 evidence that you have that the Army has violated NRC
21 -- or that the NRC regulations that the NRC should
22 take enforcement.

23 MS. STEPHENSVENS: Isaac, can I --

24 MR. HARP: Yes.

25 MS. STEPHENSVENS; This is Shelly

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1 | ~~Stephensvens~~.

2 | Is it possible for me to make a quick
3 | comment?

4 | MR. HARP: Yes, please do.

5 | | MS. STEPHENSVENS: Okay. I'd like to
6 | comment from page 11 of --

7 | MR. McCONNELL: I'm sorry. This is Keith
8 | McConnell. Would you please identify yourself.

9 | | MS. STEPHENSVENS: Okay. My name is
10 | Shelly ~~Stephensvens~~.

11 | MR. McCONNELL: Thank you.

12 | | MS. STEPHENSVENS: Okay. And I'd like to
13 | comment on page 11 of Department of Defense
14 | Consultation Protocol having to do with categorical
15 | exclusions. And that actually that the exclusions for
16 | Department of Defense do not include anything that
17 | would adversely effect the public health or safety and
18 | that involves effects on human environment that are
19 | highly uncertain or involve unique or unknown risk, or
20 | scientific controversial. And in particular which has
21 | | to do with Jim Albertinie and Cory Harden and everyone
22 | is mentioning about liberation of DU into the dust by
23 | live fire training that would result in an
24 | uncontrolled or unpermitted released of hazardous
25 | substances or require a confirmatory determination

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1 under the standards of Clean Air Act general
2 confirmatory rule 32 CFR 77.6.

3 So I just wanted to comment that it does
4 not appear that the use of DU or the activities
5 resulting do not fall under a categorical ~~exclusion~~
6 ~~option~~ for the military.

7 Thank you.

8 MR. McCONNELL: Thank you, Ms.
9 ~~Stephensven~~.

10 Keith McConnell.

11 Mr. Harp?

12 MR. HARP: I would like to add in addition
13 to my earlier statements that the NRC investigate if
14 military vehicles of aircraft, such as the A-10
15 Warthog, the Stryker vehicles, tanks and other
16 military vehicles that may have DU armor plating if
17 they were brought into Hawaii, as well as aircraft
18 that may contain DU counter weights. I'm not sure
19 under your regulations if these require a depleted
20 uranium possession license, but I would like the
21 investigation to include those types of vehicles.

22 DR. PANG: This is Dr. Pang.

23 I would like to make a comment. This kind
24 of thing such as stated by Mr. Harp, we have seen in
25 the media, at least on Maui here, the Army will make

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1 general statements that they have not put the
2 civilians at risk. To me that's an ambiguous
3 statement. I don't know if you ~~deny~~~~amaged~~~~in~~ bringing
4 contaminated material ~~or if~~ ~~,~~ ~~but~~ you brought it in
5 and you determined by yourselves ~~f~~~~that~~ if there is
6 ~~y're~~~~at~~ risk.

7 Like I said, the credibility issue on my
8 health examples are so fundamental I question anything
9 they say.

10 Let me just ask the NRC, who we're dealing
11 with, do you have PhDs or MD degrees? Do you realize
12 how fundamental this report is, the science ~~is~~
13 ~~missing~~~~(inaudible)~~.

14 MR. ~~KLUKAN~~~~PUKEN~~: Mr. Pang, this is Brett
15 ~~Klukan~~~~Greg~~~~Puken~~.

16 Generally the public doesn't get to ask --
17 I mean, the public can always ask questions about the
18 due process. But generally the NRC doesn't field
19 questions. I don't know how to respond to that
20 question.

21 DR. PANG: If I told you depleted uranium
22 sinks, it's heavier than air, all risks are
23 negligible, what is your reaction to that?

24 MR. McCONNELL: Yes, Mr. Harp.

25 I'm sorry. Dr. Pang this is Keith

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1 McConnell.

2 I think as we did when we were out in
3 Hawaii for the public meetings, we did go through our
4 credentials at that time and noted at that time that
5 many of us, if not all of us, have advanced degrees
6 either in geology or health physicists or other
7 related disciplines.

8 So I think that that type of question is
9 probably beyond the scope of this meeting.

10 MS. STEPHENSVENS: This is Shelly
11 Stephensvens, and I'd like to make a comment at this
12 point in time, if I could.

13 MR. McCONNELL: Go ahead, Shelly. This is
14 Keith McConnell.

15 MS. STEPHENSVENS: Thank you.

16 I just wanted to comment when I was
17 working on the DU Permit Moritorium ~~Morris—Volume~~
18 ~~Bill~~ that was being processed by Mazie Hirono's
19 office to deny the license or permit to store the
20 depleted uranium on-place in Hawaii and to support the
21 native Hawaiians in a radio-active free environment;
22 ~~that-(inaudible),~~ I did access information from
23 different websites including the Depleted Uranium
24 Emergency Response Planning and Guidelines. And it
25 did say that any site contaminated with depleted

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1 uranium puts what is termed "the general public" at
2 risk in a 50 mile radius. And if you look at the map
3 here on the Big Island, if you go out a 50 mile radius
4 from any direction, that puts a considerable amount of
5 people at risk, of course depending on the wind
6 pattern and if it's liberated into the air. But
7 according to the website there is a 50 mile radius of
8 concern for depleted uranium contamination of sites.

9 Thank you.

10 MR. McCONNELL: Ms. Stephensvens, this is
11 Keith McConnell.

12 Could you repeat the reference you're
13 referring to?

14 MS. STEPHENSVENS: Okay. I basically
15 looked onto the Depleted Uranian Emergency Response
16 Planning Guidelines, which actually Dr. Pang was
17 referenced. There is a 50 mile radius contamination
18 concern for the general public.

19 MR. KLUKANPUKEN: Ms. Stevens, this is
20 Brett KlukanGreg-Puken.

21 I think we're asking what agency or
22 institution or persons produced this document? Is it
23 an NRC document? Is it an --

24 MS. STEPHENSVENS: Well, actually it did
25 mention -- yes, it did mention Nuclear Regulatory

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1 Commission findings of what was critical levels and
2 what was they termed basically that if you're exposed
3 to it, there were different levels that they
4 mentioned, different amounts that was specified
5 through Nuclear Regulatory guidelines. I don't have
6 with me right now the actual references to the
7 depleted uranium emergency response planning
8 guidelines, but you could access that through the
9 website.

10 MR. ~~KLUKANPUKEN~~: Okay.

11 MR. McCONNELL: Ms. ~~Stephensvens~~, this is
12 Keith McConnell.

13 Perhaps you could for the record provide
14 us that either in email or a letter, whatever.

15 MS. ~~STEPHENSSENS~~: Sure. And if you would
16 like a map of -- you know, and you probably have it,
17 but a map of the Big Island for the contamination
18 zones and what we're also asking for is to correlate
19 that 50 radius with well known trade winds and other
20 known wind patterns as to where liberated depleted
21 uranium would go in absence of the trade winds and
22 during trade winds regular patterns.

23 MR. McCONNELL: Yes. If you could provide
24 that information for the record, that would be
25 helpful.

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1 MS. STEPHENS: Okay. Thank you.

2 MS. HARDEN: This is Cory Harden.

3 I'd like to request that Mike LyReimer
4 perhaps say a couple of things. He has sent
5 information about the Army method of air monitoring
6 and precisely why he felt that it did not work,
7 something about the filter size. And sorry to put you
8 on the spot, Mike, but I wonder if you could say
9 something about that?

10 MR. LYMERDR. REIMER: Yes, I will. I
11 think I can on the one part of it make it pretty
12 brief.

13 The NRC itself in a letter to the Army
14 just recently noted that the proposed continued
15 monitoring plan that was submitted by Oakridge would
16 be insufficient in particularly the number of
17 monitoring stations that they had proposed. I think it
18 was four and the suggestion was to have at least 16
19 plus a few roving stations.

20 The other issue about the filter size.
21 This becomes pretty much a technical issue. It may not
22 be part of this proceeding. But the filter size
23 they're using to capture airborne particulate matter
24 is rather large. And the size that they were using,
25 looking at a 5 micron size, would fall out within a

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1 very short distance, perhaps a mile. It's the smaller
2 sizes that would be important in showing that the
3 aerosol could be carried by the wind.

4 That's my comment on the matter.

5 MR. HARP: Doctor, this is Isaac Harp.

6 What would your recommendation be for
7 nominal filter pore size?

8 ~~MR. LYMER~~ DR. REIMER: I would use a
9 standard size filter of .45 micrometers.

10 MR. McCONNELL: I'm sorry, may I
11 interrupt.

12 This is Keith McConnell.

13 I'd have to question, you know, how is
14 this relevant to the meeting today, which is to decide
15 whether to take enforcement action or not?

16 MR. HARP: I'd like to read from the
17 process and definition of licensee is to include
18 applicants for license, which the Army currently is,
19 and --

20 MR. McCONNELL: I'm sorry. This is Keith
21 McConnell again.

22 I'm talking about the pore size for
23 filters.

24 MR. ~~KLUKAN~~ PUKEN: This is Brett Klukan
25 ~~Greg~~
~~Puken~~.

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1 Again, in relation to the pore filters,
2 what regulation of the NRC are you alleging that the
3 Army violated?

4 MS. HARDEN: This is Cory Harden.

5 Basically the kind of air monitoring the
6 Army is doing if there's a hazard, they'll never find
7 it.

8 Can I get comments from Mike ~~Ly~~Reimer and
9 Dr. Pang if I got that correct?

10 MR. McCONNELL: This is Keith McConnell
11 again.

12 So the issue, as I understand it and
13 please correct me if I'm wrong, is that in terms of
14 air monitoring they're in violation of the forms to
15 adequate air monitoring for the facility? Is that
16 what you're proposing.

17 ~~MR. LYMER~~DR. REIMER: This is Mike
18 ~~Ly~~Reimer.

19 I would say that that would be a correct
20 statement in view of the letter from NRC to the
21 military that their proposed plans included some
22 inadequacies that should be corrected.

23 MS. STEPHENSVENS: This is Shelly
24 Stephensvens. I would like to make a comment at this
25 point on the air monitor situation.

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1 MR. HARP: Please do.

2 MS. STEPHENS: Okay. This is from
3 page 4 of the Consultation Protocol 9/17 2008. It says
4 basically that accommodating to the extent possible
5 and consistent with the safety of Native Hawaiian
6 organizations, representatives, military training,
7 security and readiness requirements. And also that
8 they must provide a point of contact to ensure that
9 DoD has increased participation ~~(inaudible)~~ and that
10 native Hawaiians are consulted by the appropriate
11 officials who are required to respond in a timely
12 manner. I believe Ka Wai Ola newspaper of OHA is
13 mentioned in DoD Consultation paperwork. And so that
14 recognizing the importance and improving
15 communications, this is very significant that if you
16 have an ongoing problem, that there needs to be some
17 sort of monitoring to make sure that there is proper
18 enforcement of levels that may be hazardous to not
19 only the public and Native Hawaiians, but also the
20 military staff. And that if right now presently they
21 do not have adequate monitoring systems according to
22 this Department of Defense Consultation Protocol that
23 they are putting the safety of everyone at risk by not
24 having these proper monitoring, air monitoring
25 systems.

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1 Thank you.

2 MR. McCONNELL: This is Keith McConnell.

3 Mr. Harp, is there anything else.

4 MR. HARP: Mr. McConnell, this is Isaac
5 Harp.

6 I just wanted to ask NRC when you conduct
7 your procedures to establish standing, what is the
8 criteria that the NRC uses especially when they say
9 that the Army has standing and the community
10 representatives don't?

11 MR. McCONNELL: This is Keith McConnell.

12 Again, I think the issue of standing, it
13 was an issue that was addressed by the Atomic Safety
14 and Licensing Board and is outside the scope of this
15 particular meeting.

16 MR. HARP: And in this meeting what is the
17 NRC's procedure for establishing if my requests for
18 enforcement has standing or not?

19 MR. McCONNELL: What we're doing in terms
20 of the process is we're going through right now and
21 collecting the additional information we need as a
22 Board to decide whether a 2.206 petition process is
23 warranted in this particular action.

24 There is no relevance of standing in this
25 particular meeting or this particular process.

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1 MR. ~~KLUKANPUKEN~~: This is Brett KlukanGreg
2 Puker.

3 I think what you're asking, Mr. Harp,
4 there are criteria in (inaudible) or whether the staff
5 should just accept a request for enforcement or not.
6 And I don't have that in front of me. But you'll see
7 those criteria in there. Mr. McConnell actually take
8 them out beforehand at the outset of this meeting for
9 (inaudible) to be taken or not.

10 MR. McCONNELL: This is Keith McConnell.

11 Those are the only criteria that we will
12 use.

13 MR. ALBERTINIE: One final comment here I
14 raised earlier about following up with Greg Komp, the
15 Senior Health Physicist Office, Director of the Army
16 Safety who said in the '50s and '60s DU was used
17 anytime you needed a heavy weight. My question is did
18 they have a license to do that anywhere they needed a
19 heavy weigh? And if not, then it was done illegally
20 and it should be investigated because it was done
21 illegally.

22 And because of the secrecy surrounding the
23 use of DU with nuclear weapon systems, the public has
24 a difficult time documenting that. So it's up to the
25 NRC to break through the secrecy and document where

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1 else DU was used according to Greg Komp. It was used
2 anytime where heavy weight was needed. And I suspect
3 there's a lot more DU at PTA than just Davy Crockett,
4 but nobody wants to look at it and nobody wants to
5 enforce it. And I think that's your job, the NRC.

6 COLONEL HERRING: This is Colonel Herring
7 from the Army.

8 I'd just like to say, if I may, on that
9 statement, I believe it's a little out of context. Mr.
10 Komp was quoted as saying something to that effect,
11 but he also used the example of DU was used to tail
12 weight in aircraft airliners. So he wasn't speaking
13 specifically of the military, and certainly not
14 Hawaii. He was talking about the properties of DU and
15 its general application in industrial use.

16 MR. ALBERTINIE: Jim Albertinie again.

17 I know DU was used as recently as a few
18 years ago in missile firing from Vandenberg Air Force
19 out into the Marshall Islands as ballast contaminating
20 of the Kwajalein lagoon with DU used as ballast. So
21 apparently its still being used as recently as a few
22 years, maybe even today.

23 MR. McCONNELL: Okay. This is Keith
24 McConnell.

25 I think, you know, this discussion is

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1 probably outside the scope of the present meeting.

2 MS. STEPHENSVENS: Keith, this is Shelly
3 Stephensvens. And I just wanted to make a comment if
4 I could.

5 MR. McCONNELL: Yes, go ahead, Ms.
6 Stephensvens.

7 MS. STEPHENSVENS: Okay. All right. I'm
8 quoting from page 4 of the Consultation Protocol
9 with--

10 MR. McCONNELL: Ms. Stephensvens, may I
11 interrupt?

12 MS. STEPHENSVENS: I'm sorry, what?

13 MR. McCONNELL: May I interrupt, please?

14 MS. STEPHENSVENS: Yes.

15 MR. McCONNELL: I think you're referring
16 to a protocol that is the Army's protocol?

17 MS. STEPHENSVENS: Well, actually I
18 believe it does -- it's a government-wide statute by
19 the Executive Order issued --

20 MR. McCONNELL: Are you referring to
21 Executive Order -- let me see if I have the number
22 here. 10375, Government-to-Government Consultations
23 with Tribes?

24 MS. STEPHENSVENS: Yes.

25 MR. McCONNELL: Okay. Thank you.

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1 MS. STEPHENSVENS: And what I'd like to
2 comment on in particular is that it does say, and this
3 is referring to ~~(inaudible)~~OHA or Office of Hawaiian
4 Affairs that as a State of Hawaii organization of
5 which ~~is to protect the to prompt~~ interests of Native
6 Hawaiians that OHA will be able to provide Department
7 of Defense up to date information for proposed
8 Department of Defense actions that may have
9 potentially significantly effect on cultural and
10 natural resources of importance to Hawaiians. And
11 that the Native Hawaiians as beneficiaries are asking
12 OHA, in particular what they're going to do in
13 response to this to represent Hawaiians in issues
14 concerning depleted uranium for health concerns and
15 future generations that may be impacted and due to
16 lack of enforcement on the depleted uranium issue.
17 And if I could, I would like to ask ~~Clyde Marcel~~Kai
18 Markell if he could make a comment on Office of
19 Hawaiian Affairs standing or position on the depleted
20 uranium enforcement and presence of depleted uranium.

21 Are you there KaiClyde?

22 MR. McCONNELL: This is Keith McConnell.
23 It doesn't sound like they are.

24 MS. STEPHENSVENS: Okay. All right. I
25 just wanted to make a comment that we did recently

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1 attend a meeting with Office of Hawaiian Affairs in
2 Hilo. And the issue was brought up to Bob Lindsey,
3 who is a Trustee for the Big Island. And he does
4 support consultation and that they are -- their
5 advisors are looking into scientific impacts of
6 depleted uranium on the Hawaiians. So I just wanted
7 to put that in. There seems to be some sort of
8 interest in enforcement to protect the Native
9 Hawaiians and the general public. And that without the
10 Nuclear Regulatory's help on this, we're not going to
11 get any help and we are being put at risk.

12 Thank you.

13 MR. McCONNELL: Okay. Thank you, Ms.
14 Stephensvens.

15 Mr. Harp, anything else?

16 MR. HARP: Mr. McConnell, I wanted to ask
17 if this is not the proper proceeding under 2.206, will
18 the NRC recommend alternative projects that we may
19 follow?

20 MR. McCONNELL: This is Keith McConnell.

21 I'm not sure I understand. With respect
22 to what?

23 MR. HARP: With respect to the request for
24 enforcement.>

25 MR. McCONNELL: I think once the Board

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1 meets in closed session and makes a decision, you do
2 have the opportunity at that time to comment on that
3 decision. But certainly if there are other
4 opportunities, we would identify --

5 MR. ~~KLUKANPUKEN~~: This is Brett KlukanGreg
6 ~~Puken~~.

7 One of the criteria is whether this
8 matter, the matter raised by -- want to call the
9 (inaudible) can be handled through an alternative
10 proceeding. And if that were the case we find that if
11 we can determine here this request could be handled
12 through another proceeding, we would notify you of
13 that.

14 MR. HARP: This is Isaac Harp. Thank you
15 very much.

16 MS. HARDEN: This is Cory Harden. I have
17 one more question.

18 How often does the NRC deal with the
19 military on -- basically, how often does the NRC deal
20 with the military or do you folks mostly deal with
21 commercial entities?

22 MR. McCONNELL: This is NRC.

23 We deal primarily with commercial
24 entities, but there are other facilities where the
25 Army is involved with which the NRC does interact with

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1 the Army.

2 MR. KLUKANPUKEN: This is Brett KlukanGreg
3 Puken.

4 Just to answer your question very
5 generally, the Navy for example has a license as well.

6 And the other military branches do have a C license.

7 PARTICIPANT: As does the Air Force.

8 MR. KLUKANPUKEN: Yes.

9 MR. HARP: This is Isaac Harp again.

10 I have just a couple of final -- one
11 request and a final brief statement.

12 Regarding keeping the petitioner informed,
13 I've seen the process--that willas be shared with me,--
14 Bbut I guess I'll be informed by telephone calls
15 according to what the process is. --And I'd like to
16 request that I be kept informed on the status of the
17 process via email or postal mail letter in addition to
18 any phone calls that might be made.

19 MR. McCONNELL: This is Keith McConnell.

20 Will email be sufficient?

21 MR. HARP: Yes. And I guess --

22 MR. ALBERTINIE: Jim Albertinie, if I
23 could finish it.

24 MR. HARP: Go ahead, Jim.

25 MR. ALBERTINIE: A question for the NRC.

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1 Does the NRC have enforcement authority to direct the
2 Army to respond to official Freedom of Information Act
3 requests for information that we've asked about DU?

4 MR. McCONNELL: This is Keith McConnell.
5 It's Mr. Albertinie, I believe.

6 I think that's beyond the scope of this
7 particular meeting.

8 MR. ALBERTINIE: Well, you see, I don't
9 understand that. I mean these are specificallly
10 questions under FOIA about DU at Pohakuloa and who do
11 we get to enforce that if it's not the NRC?

12 MR. KLUKANPUKEN: This is Brett KlukanGreg
13 Puken.

14 I can't speak to your remedies for service
15 from FOIA. I mean, it's up to you to pursue that in
16 court cases. But other agencies have failed to pursue
17 to FOIA and what your remedies are in those cases.

18 I can only say that we don't have the
19 jurisdiction to force another agency to comply with
20 the Freedom of Information Act.

21 I mean the NRC does when it reviews
22 license applications, an enforcement could be -- does
23 have the authority to ask those persons, the applicant
24 or (inaudible). But we don't have the authority to
25 force an another agency to comply with FOIAs.

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1 MR. McCONNELL: This is Keith McConnell.
2 People are speaking over each other and we would like
3 to wrap this up if we could in the next 15 minutes.

4 Mr. Harp?

5 MR. HARP: I believe Mr. Albertinie was
6 continuing talking and I believe Ms. Shelly
7 Stephensvens had stepped in. But, Jim, do you have
8 any additional stuff.

9 MR. ALBERTINIE: I'm Albertinie.

10 Well, the NRC can't get involved in the
11 FOIA thing. Can you ask the question for us of the
12 Army in licensing that we asked in our FOIA request?
13 Can we send you the copies of the letters and you ask
14 for us and ask the Army to respond?

15 MR. KLUKANPUKEN: The way I responded, Mr.
16 Albertinie, is if the NRC -- if it decides to accept
17 into 2.206 process, the NRC will take all actions
18 within its jurisdiction in pursuant of this
19 enforcement action, or whatever recommendation the
20 Director decides regarding this, again assuming that
21 2.206 required that is accepted into the process.

22 MR. ALBERTINIE: This is Albertinie again.

23 This is a a Catch 22 (inaudible). We
24 haven't been able to get answers from the Army to our
25 questions, therefore we don't have the information

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1 needed to provide to you for enforcement. So it's a
2 circular thing of a sure way to ensure no NRC action.

3 MR. McCONNELL: This is Keith McConnell.

4 Mr. Albertinie, I don't know that we can
5 provide you any additional information on these issues
6 that you are raising.

7 MR. ~~KLUKANPUKEN~~: ~~Brett Klukan~~~~Greg Puken~~.

8 The NRC ADAMS is updated with all publicly
9 available information that's within the NRC's
10 possession. That is our depository for official
11 agency records.

12 So if we need additional information
13 regarding the NRC's review of the license application,
14 I'm not saying that would necessarily be relevant to
15 enforcement cases, would be put in that.

16 DR. PANG: This is Dr. Pang.

17 You know, already we had issues standing
18 of credibility. I believe you gave it to the Army
19 incorrectly and denied it to the community. None the
20 less, that falls outside the scope.

21 Let's talk about your last statement from
22 the NRC. Apparently, you really can't force FOIA
23 issue. If it's very important, you might. That's
24 what hurts the most.

25 MR. ~~KLUKANPUKEN~~: Mr. Pang, I hate to

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1 correct me. Again, we are limited by a statutory
2 authority. We simply can't enforce FOIA against
3 someone else. As I did point out, the NRC has within
4 its jurisdiction the right to seek information
5 necessary to meet its obligations under the statute 10
6 regulations.

7 DR. PANG: That's exactly the point I'm
8 making. The public believes you will do that second
9 part when in fact, you may not. Any regulatory agency
10 which acts in an arbitrary capricious manner violated
11 1946 code. That's why there's a problem. I feel that
12 it is under question now.

13 MR. McCONNELL: This is Keith McConnell.

14 Again, Dr. Pang, I think we've taken that
15 line of discussion as far as we can take. Otherwise,
16 turn it back over to Mr. Harp.

17 MR. HARP: I believe Shelly Stephensvens
18 had some additional comments.

19 MS. STEPHENSSENS: Yes, I do.

20 This is Shelly Stephensvens.

21 And first of all, as a suggestion that the
22 General Comptroller for the military should provide a
23 report and survey of all actual areas or situations of
24 depleted uranium contamination in the past as well as
25 presently known to demand of them that they provide

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1 all materials to the Nuclear Regulatory Commission for
2 the ability to enforce the situation.

3 And that also to go over the BLNR lease
4 for violations, because that does I believe fall under
5 the premise for enforcement issues.

6 And the third thing I have is just that is
7 it possible for the Nuclear Regulatory Commission to
8 commence a cease and desist for live fire training in
9 the area of depleted uranium -- known depleted uranium
10 contamination until determination is made in this
11 case?

12 MR. McCONNELL: I believe your comments
13 are noted, and that will be part of our deliberation
14 process as we move through the 2.206 petition process.

15 MS. STEPHENSVENS: And will you be putting
16 the Pohakuloa and other facilities on notice that
17 they should cease live fire training from today
18 forward until that is determined?

19 MR. KLUKANPUKEN: This is Brett KlukanGreg
20 Puken, Ms. Stephensvens.

21 The NRC is taking your comments into
22 consideration. And it will pursue what actions is
23 necessary to (inaudible).

24 MS. STEPHENSVENS: Thank you very much.

25 DR. PANG: This is Dr. Pang. I want to

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1 make a statement whether or not the NRC agrees.

2 I am trying to uphold what I interpret
3 those guidelines, federal, state and county. I expect
4 no retaliation on me professionally or personally for
5 what I've said today. But I am not ashamed if the
6 media wants to take it public, but I expect no
7 retaliation.

8 Thank you.

9 MR. McCONNELL: This is Keith McConnell.

10 Mr. Harp?

11 MR. HARP: If there are no more comments
12 from any of my associates, I'd like just to make a
13 final closing statement.

14 MR. ALBERTINIE: I would like to make a
15 short statement, too. Jim Albertinie

16 MR. HARP: Please go ahead, Jim.

17 MR. ALBERTINIE: Well, I just want to
18 comment on the general tone of today, that the
19 response and Mr. KlukanPuker and other folks that have
20 spoken from the NRC, it doesn't seem in anyway
21 balanced and really concerned about the community's
22 concern. It seems that procedural technicalities
23 stonewall the community, business as usual with the
24 U.S. Army. The same type of nonregulatory activity
25 that brought us in the financial crises from Wall

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1 Street as is this nuclear crises today with
2 contamination from nuclear materials.

3 MR. McCONNELL: This is Keith McConnell of
4 the NRC.

5 I'd just point out that public health and
6 safety protection of the environment is our primary
7 mission.

8 MR. ALBERTINI: I don't believe it.

9 MR. McCONNELL: Your comment is noted.
10 Thank you.

11 Mr. Harp?

12 MR. HARP: This is my final statement.
13 I'd like to thank everyone from the NRC and
14 particularly the Petition Review Board for your time.

15 And it is my sincere hope that the NRC
16 ~~does not substitute, there's not substantive~~ procedure
17 for science and reason which may place the health and
18 safety of Hawaii residents as well as our visitors at
19 risk.

20 And I thank you again for your time and
21 for keeping me informed as the process moves along.

22 MR. McCONNELL: Okay. This is Keith
23 McConnell.

24 I do want to thank everyone who has
25 participated on the phone. It is of great value to us

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1 as we proceed through 2.206 process.

2 And as we noted, we will keep you, Mr.
3 Harp, informed in the way that you desire, which is I
4 think through email. And that will be coming from Ken
5 Kalman.

6 And I would ask that if anybody had
7 supporting information that they wanted to provide for
8 the record, that they do that quickly. It's our goal,
9 again, to move forward in the next two weeks and make
10 a decision on whether we want to accept this as 2.206
11 petition and of reviewing the record of this meeting
12 and any supplementary materials will be part of that
13 decision making process.

14 MS. EVANS: Mr. McConnell?

15 MR. McCONNELL: Yes, Ms. Harden.

16 MS. EVANS: This is Cindy Evans.

17 MR. McCONNELL: Oh, I'm sorry.

18 MS. EVANS: ~~(inaudible)~~ Pohakuloa Training
19 Area is in my District. And depleted uranium has been
20 a big issue for our community for many years.

21 And I first of all want to thank everyone
22 who participated in the teleconference, but more
23 importantly for just for the organization and getting
24 the word out, And I want to thank Isaac Harp, Dr.
25 Pang, Cory Harden and Jim Albertinie.

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1 It's just nice to have community people
2 that really stay focused on an issue and kind of keep
3 that dialogue going. Because as we all know, there
4 are so many things. You know, we get side tracked
5 with so many issues. You know, as a State
6 Representative I've got plenty on my plate, so I
7 appreciate community leadership that's been shown.
8 ~~because~~ †The other side of it is, you know, they're
9 also people that can assist you in terms of what your
10 needs are for information or, you know, whatever it is
11 in terms of dialoging with the community. These are
12 people that can get the word out. So they actually
13 become very important to the process and to the
14 procedures that you follow.

15 So, I suggest ~~you~~ use them in terms of
16 getting other people engaged. And we're really
17 grateful for all your consideration. And just thanks
18 again for really working on the issue and staying
19 focused on the issue.

20 MR. McCONNELL: This is Keith McConnell.

21 Thank you, Ms. Evans. I apologize for
22 misidentifying you.

23 Is there anything else from the Petition
24 Review Board?

25 Seeing nothing, anything else from you,

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1 Mr. Harp.

2 MR. HARP: Yes, this is Isaac Harp.

3 Just wanted to let my associates or anyone
4 else listening in know that if you have any
5 information or evidence that you would like to get
6 to the Petition Review Board, please feel free to
7 email or mail me that information. If you need to get
8 in touch with me, you can give me a call on my cell
9 phone. The number is area code 808-345 --

10 MR. ~~KLUKANPUKEN~~: Mr. Harp, before you
11 continue this is going to be put in the public record.

12 So do you want your number put in the public record?

13 It is personally identifying information.

14 MR. HARP: Thank you.

15 MR. ~~KLUKANPUKEN~~: So maybe we should not
16 do the last four digits of your phone number. And then
17 you can provide that through email through the people
18 on the mailing list, which I think has already been
19 kind of put together.

20 MR. HARP: Well, I'm fine with my contact
21 information going on the public record. Let me state
22 my cell phone number again. Area code 808-345-6085.
23 Thank you.

24 MR. McCONNELL: Okay. I assume that's it,
25 Mr. Harp?

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1 MR. HARP: That's it from my end. Thank
2 you very much.

3 MR. McCONNELL: Thank you all for
4 participating.

5 MS. STEPHENSVENS: Thank you very much.
6 This is Shelly Stephensvens.

7 (Whereupon, the teleconference call was
8 concluded.)

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