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LAND USE COMMISSION  
STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for an Action Meeting and Deliberation and Discussion at Conference Room 204, 2nd Floor, Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawai'i, commencing at 9:00 a.m. on July 5, 2012, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE CHOCK (Chairman)

LANCE INOUE

CHAD McDONALD

JAYE NAPUA MAKUA

ERNEST MATSUMURA

CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON, BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A99-728 HOUSING and COMMUNITY DEVELOPMENT

CORPORATION of HAWAI'I

For the Petitioner:

DHHL, OHA

CRAIG IHA, ESQ. Deputy  
Corporation CounselJOBIE MASAGATANI,  
Chair, DHHL

For the County:

DON KITAOKA, ESQ.

Deputy Corporation Counsel  
TIM HATA, Planning Dept.

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General  
RODNEY FUNAKOSHI  
Office of Planning

For Haseko ('Ewa) Inc.

YVONNE IZU, ESQ.

For HHFDC

DIANE TAIRA, ESQ.

## A P P E A R A N C E S (cont'd)

Docket No. SP09-403 DEPT. of ENVIRONMENTAL SERVICES,  
CITY & COUNTY OF HONOLULU, (WAIMANALO GULCH LANDFILL)  
O'ahu

For the Petitioner DES: DANA VIOLA, ESQ.  
Deputy Corporation Counsel

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI  
Office of Planning

For the Intervenor RICHARD WURDEMAN, ESQ.  
Colleen Hanabusa:

Ko Olina Community Assoc. CALVERT CHIPCHASE, ESQ.  
Maile Shimabukuro CHRISTOPHER GOODIN, ESQ.

## I N D E X

Docket A99-728

PUBLIC WITNESSES

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Georgette Stevens

Maeda Timson

Glenn Oamilda

Benjamin Sadoski

Rich Hargrave

Michael Golojuch

Homelani Schaedel

Shirley Swinney

Dr. Matthew Lopresti

DOCKET NO. SP09-403

Ian Sandison, Esq.

1           CHAIRMAN CHOCK: Good morning. I'd like to  
2 start our meeting this morning by welcoming our newest  
3 Commissioner to the Land Use Commission, Mr. Lance  
4 Inouye. Lance, welcome. I'd like to start this  
5 morning by entertaining a motioning to go into  
6 executive session to consult with our attorney.

7           COMMISSIONER McDONALD: I'll second.

8           CHAIRMAN CHOCK: All in favor? (aye) So  
9 we're going to recess for about 10 to 15 minutes.  
10 We'll be right back.

11           (Recess 9:05-9:15)

12           CHAIRMAN CHOCK: (gavel) Okay. I want to  
13 apologize to the public -- sorry about that. Still  
14 waiting on one Commissioner. (pause) Okay. As I was  
15 saying I want to apologize to the public and the  
16 parties. We have one of our Commissioners this  
17 morning called in sick. And as a result we have a  
18 quorum issue in terms of taking any action on the  
19 first item on our agenda A99-728.

20           So what we're going to do with the first  
21 item on our agenda is we're going to take public  
22 testimony. And we're going to need to adjourn and  
23 reschedule until we can have all of our -- until we  
24 can have a full Commission present, which likely won't  
25 be until September, which is our next scheduled

1 meeting date on O'ahu. I apologize for the  
2 inconvenience but this just came up this morning.

3 Then on the second issue, SP09-403, we will  
4 take public testimony and also go into deliberation on  
5 that issue since we do have the requisite number  
6 Commissioners present for SUP permit applications. So  
7 again I apologize. Parties, do you have any  
8 questions? State?

9 MR. IHA: No, Mr. Chair.

10 CHAIRMAN CHOCK: County?

11 MR. KITAOKA: Just for the record, Don  
12 Kitaoka deputy corporation counsel here for the  
13 Department of Planning and Permitting. And with me is  
14 Tim Hata. And we don't have any statement or  
15 objection.

16 CHAIRMAN CHOCK: OP?

17 MR. YEE: No objection.

18 MS. IZU: Yvonne Izu for Haseko. No  
19 objections.

20 CHAIRMAN CHOCK: Okay. Commissioners, any  
21 questions? So we're going to go ahead and take public  
22 testimony. This is an action meeting on action  
23 A99-728 Housing and Community Development Corporation  
24 of Hawai'i to consider Petitioner, state of Hawai'i  
25 Department of Hawaiian Home Lands' Motion for Order

1 Amending the Findings of Fact, Conclusions of Law and  
2 Decision and Order dated September 8, 1999. Actually  
3 before we do that we need to adopt the minutes from  
4 our last meeting. Is there a motion to approve the  
5 minutes?

6 COMMISSIONER McDONALD: So moved, Chair.

7 CHAIRMAN CHOCK: Second?

8 COMMISSIONER MATSUMURA: Second.

9 CHAIRMAN CHOCK: It's been moved and  
10 seconded. All in favor? Any opposed? Minutes are  
11 approved. Okay. Executive Officer, our meeting  
12 schedule.

13 MR. ORODENKER: Thank you, Mr. Chairman.  
14 Our tentative meeting schedule is August 23rd and 24th  
15 on Maui for the West Maui Land and Kauonoulu Ranch  
16 case. Oh, excuse me. I'm sorry, Mr. Chairman. I  
17 neglected July 19th and 20th on Maui for the West Maui  
18 Land opening hearing and Deluz Trucking.

19 August 2, 3, also on Maui for Makena  
20 Entities, Kauonoulu Ranch and August 23rd, 24th once  
21 again for West Maui Land and Kauonoulu Ranch.

22 CHAIRMAN CHOCK: Okay. Will the parties  
23 please identify themselves for the record. Office of  
24 Hawaiian Affairs.

25 MR. IHA: Good morning, Mr. Chair, Craig

1 Iha, deputy attorney general on behalf of the  
2 Department of Hawaiian Home Lands, state of Hawai'i.

3 MS. MASAGATANI: Jobie Masagatani, Chairman  
4 Department of Hawaiian Home Lands.

5 MS. TIARA: Diane Taira representing the  
6 Hawai'i Housing Finance and Development Corporation.

7 MR. KITAOKA: Don Kitaoka, deputy  
8 corporation counsel on behalf of the Department of  
9 Planning and Permitting, city and county of Honolulu.  
10 And with me is Tim Hata from that department.

11 MR. YEE: Good morning. Deputy attorney  
12 general Bryan Yee on behalf of the Office of Planning.  
13 With me is Rodney Funakoshi from the Office of  
14 Planning.

15 MS. IZU: Good morning. Yvonne Izu on  
16 behalf of Haseko ('Ewa), Inc.

17 CHAIRMAN CHOCK: Okay. Thank you. Let me  
18 briefly update the record. On May 3, 2012 the  
19 Commission met and admitted the exhibits of the  
20 parties to the record and deferred further proceedings  
21 to allow the parties to resolve outstanding issues  
22 remaining in the docket.

23 On May 10, 2012, the Commission received  
24 OP's supplemental response to Petitioner's Motion for  
25 Order Amending the Findings of Fact, Conclusions of



1 Law and Decision and Order dated September 8, 1999,  
2 Exhibit 9.

3 On June 29, 2012 the Commission received  
4 DHHL's supplemental exhibits in support of Motion for  
5 Order, Amending Findings of Fact, Conclusions of Law  
6 and Decision and Order dated September 8th, 1999,  
7 Exhibits 5 and 6.

8 On July 12, 2012 the Commission received  
9 DHHL's proposed Findings of Fact, Conclusions of Law  
10 and Decision and Order and written correspondence via  
11 email from Cindy McMillan, Shirley Swinney.

12 On July 3 the Commission received written  
13 correspondence from Homelani Schaedel, President  
14 Malu'ohai Residents' Association; OP's Response to  
15 DHHL's Proposed Findings of Fact, Conclusions of Law  
16 and Decision and Order and DPP's Statement of Position  
17 on DHHL's Proposed Findings of Fact, Conclusions of  
18 Law and Decision and Order.

19 Let me briefly run over the procedure for  
20 the motion. First, I'll call for those individuals  
21 desiring to provide public testimony to identify  
22 themselves. All such individuals will be called in  
23 turn to our witness box where they will be sworn in  
24 prior to their testimony.

25 After completion of the public testimony

1 portion of the proceedings I will give the  
2 opportunities for the parties to admit to the record  
3 for any further exhibits, although we're not going to  
4 be doing that today because we don't have a quorum.  
5 So we'll basically conclude at the end of public  
6 testimony. So, therefore, are there any individuals  
7 in the audience desiring to provide public testimony  
8 at this time? Executive officer?

9 MR. ORODENKER: Yes, Mr. Chair. We have  
10 Georgette Stevens followed by Maeda Timson.

11 GEORGETTE STEVENS

12 Being first duly sworn to tell the truth, was examined  
13 and testified as follows:

14 THE WITNESS: I do.

15 CHAIRMAN CHOCK: Name and address.

16 THE WITNESS: Georgette Stevens. P. O. Box  
17 75-414 Kapolei, 96707. Aloha Members of the Land Use  
18 Commission. I have lived, worked and played and would  
19 like to continue to play at this new shopping center  
20 that's being proposed for the DeBartolo Ka Makana  
21 Ali'i Regional Center. I am here to support DHHL's  
22 request.

23 Ka Makana Ali'i is important to the  
24 continued development of Kapolei. A regional shopping  
25 center is necessary for the movement forward in the

1 development of this new city. Most importantly the  
2 center will bring much needed employment opportunities  
3 for the people living in the surrounding communities.

4 It is my understanding that there are few  
5 regional malls being built across the country. And to  
6 have one being built here is an opportunity we cannot  
7 afford to miss. I encourage you to approve this  
8 Project. Mahalo for this opportunity for me to share.

9 CHAIRMAN CHOCK: Thank you. Parties, any  
10 questions? Commissioners? Thank you.

11 MR. ORODENKER: Maeda Timson followed by  
12 Glenn Oamilda.

13 MAEDA TIMSON  
14 being first duly sworn to tell the truth, was examined  
15 and testified as follows:

16 THE WITNESS: Yes, I do.

17 CHAIRMAN CHOCK: Name and address.

18 THE WITNESS: Maeda Timson, 92-684 Nohona  
19 Street Kapolei. Good morning and aloha, everyone.  
20 I'm a 41-year resident of West O'ahu, specifically  
21 Makakilo. I have been involved since moving there on  
22 the building of the new city of Kapolei as a community  
23 rep. And, you know, way back then we were really  
24 excited about what was going to happen in this little  
25 cane field area. And we knew about the secondary

1 urban area called Kapolei. When I moved there Kapolei  
2 was not even named Kapolei. So we've come a really  
3 long way.

4 So we're excited of having the opportunity  
5 when we built -- we're part of building the City of  
6 Kapolei there was community reps, government,  
7 businesses and all the community reps that was  
8 involved, myself included, we went back to the  
9 communities.

10 So we always knew, always had a pulse of  
11 what the community wanted. So now we have waited so  
12 long. It's been, like, 30 years and we're just  
13 finally moving ahead with many good things in our  
14 community.

15 So the Ka Makana Ali'i Center, it's going  
16 to be most welcomed among the residents of the area.  
17 It's just in line with everything that's been planned  
18 to create this new city. And there's other  
19 initiatives in East Kapolei that's going to complement  
20 the shopping center.

21 It's like including the UH West O'ahu, the  
22 city's rail project including a transit station near  
23 the Salvation Army Kroc Center, D.R. Horton's  
24 Ho'opili. It's just the community that's planned with  
25 the Department of Hawaiian Homes.

1           And I can tell you that when we go around  
2 talking with community they have now put the sign on  
3 the property that talks about the DeBartolo.  
4 Everyone's, like, wow, how cool. There's such a  
5 positive buzz in the community for that because we  
6 don't want to travel far. We wanna live and sustain  
7 ourselves right there in that community.

8           And when we see projects happen the first  
9 thing we do is we ask, "Who's doing this project?"  
10 Because we want to make sure there's quality, they can  
11 afford it and we don't run into problems. And if you  
12 look at the DeBartolo development, who is partnering  
13 with DHHL, they have been in business since, like,  
14 1944 something. They know what they're doing. And  
15 they're known to build shopping centers and good ones.

16           And the center was also gonna provide new  
17 shopping, dining, lodging, and all those commercial  
18 opportunities, you know, for the public. And what  
19 it's doing for us as residents it's making it simple.  
20 It's making it close. And most of all it's helping to  
21 give DHHL income to help sustain the Hawaiian  
22 community on all Hawaiian projects.

23           So, like I said, since it's been announced  
24 by the sign that's in the ground, some of us have  
25 already known and have testified before. We're not

1 here the first time. It's such a positive buzz.

2 And now we have that Kualakahi Highway  
3 which is kind of underused right now because there's  
4 only a couple things along that strip. And that's  
5 what the highway was built for. It was built to bring  
6 in new development, to bring in the amenities that you  
7 need and to make the transportation easy to get in and  
8 out. It's that DeBartolo development with DHHL is  
9 probably about three minutes to the freeway coming and  
10 going. So that is really exciting.

11 It may not benefit our area as much, but it  
12 should certainly benefit all the people that we want  
13 them to come in our community and spend money. So  
14 we're certainly happy about that. And it's just  
15 furthering the development of the new city of Kapolei  
16 which is what we're doing. We follow the rules. We  
17 do all that's possible.

18 So I really thank you for allowing me to  
19 express the views of not just myself but of hundreds  
20 and, you know, thousands of people in the community  
21 who want this kind of positive development in the  
22 area. Thanks very much.

23 CHAIRMAN CHOCK: Thank you for your  
24 testimony. Parties, any questions? Commissioners?

25 MR. ORODENKER: Glenn Oamilda followed by

1 Benjamin Sadoski.

2 GLENN OAMILDA

3 being first duly sworn to tell the truth, was examined  
4 and testified as follows:

5 THE WITNESS: Aloha, kakahiaaka. My name is  
6 Glenn Oamilda, 91-1179 Puamaeole Place 'Ewa Beach.  
7 96706. I'm president of 'Ewa Beach Community  
8 Association, born raised in Waipahu on the sugar  
9 plantation, been in the area for the last -- my life,  
10 my lifetime.

11 Members of the Commission and Mr. Chairman,  
12 I think Makana Ali'i is detriment to the area because  
13 it hasn't gone through the process. We're trying to  
14 have a hold on the planning process in the region. We  
15 haven't had a chance to come up.

16 All these I understand that the developer  
17 has come up with, the city has gone along with it. So  
18 I doubt even now as we sit here or as we go further  
19 with the planning in the area, I think the city will  
20 never deny, will never deny.

21 As long as I been in the region, the 'Ewa  
22 region, trying to have a good planning process going  
23 on in the region, we never had. Probably you guys  
24 won't even deny this Project from moving forward.

25 I seen that area. The plans -- the plans

1 are not really spelled out. If you look at it, Ma  
2 Kana Ali'i is about two miles from the secondary urban  
3 core. Okay? It's not even in Kapolei. It's outside  
4 of Kapolei. So if you want to plan, have a good  
5 well-rounded plan for the region you gotta plan  
6 correctly. And this plan, Ma Kana Ali'i, takes you  
7 away from the urban center from downtown Kapolei. It  
8 doesn't make sense at all.

9 Furthermore, I don't think the planners of  
10 that sports complex in 1999, you know, wanted to see  
11 something like a shopping center there. I think they  
12 wanted something that would infuse into the community  
13 some interest that the youth and the adults would be,  
14 you know, I mean pleased to have, like, a sports  
15 complex.

16 And this is not a sports complex. It's  
17 more of, like, a development that would be a pleasing  
18 to the bedroom communities already that exist.  
19 Furthermore, it *will* impact our archaeological sites  
20 in the region. Kalaeloa is a big, is a big burial and  
21 archaeological site. We know that because we been in  
22 there.

23 The impacts on the OR&L bus -- train line  
24 which is an historical site, that would impact the  
25 historical site of the old railroad station.



1           No. 2. It will impact little Verona  
2 Village. That it's on the historical site. It's just  
3 a stone's throw from where they want to locate the  
4 shopping center.

5           So I think the planning in the region, I  
6 think planning in 'Ewa alone would be detriment to the  
7 people that live in the region in that area. So  
8 unless we comes to grip on whatever planning that  
9 should be done, I think we're not focusing on that, on  
10 that vision of planning.

11           I sat on the 1993 -- I sat on the 'Ewa  
12 Development Plans. I was one of the people that  
13 worked with the city. We came up with the EDP. And  
14 it's 10 years late, Mr. Chair. So if you want to have  
15 a grip on the planning in that region I tell you you  
16 cannot look forward without tryin' to review that  
17 plans and put it on site so that the people can see,  
18 yeah, we approve of this.

19           By going forward and say: Well, we're  
20 gonna amend the sports complex and put a shopping  
21 center in there," that's not right at all. And I  
22 don't think we should go forward with this.

23           The other thing I think is we don't have a  
24 clear prospective of what's included in that area. We  
25 don't have -- we don't have ground mitigation. We

1 don't have drainage mitigation. We don't know what's  
2 in there. So unless we come to grips with what should  
3 be, you know, an overall conceptual plan between  
4 Kalaeloa and the 'Ewa region itself, if you're looking  
5 at two different separate plans that we have in the  
6 region.

7           We have Kalaeloa Master Plan which is a  
8 separate. It was created by the Legislature. We got  
9 that one. And then we got the EDP just, you know,  
10 outside, outside the gates to control the 'Ewa region.

11           And the 'Ewa region, it's a public  
12 document. We created that public document. Kalaeloa  
13 Master Plan is counter to what we tryin' do in the  
14 region. So I think, Mr. Chair, and members of the  
15 Commission, we got to, we got to plan as a vision for  
16 the whole region.

17           Right now it's all in disarray. We can't  
18 make heads or tails. We lost Ho'opili. We lost Koa  
19 Ridge. And probably we're gonna lose this one too if  
20 we don't -- if you guys get on the ball and say: You  
21 know what? The general overall planning is the  
22 important document.

23           I don't think the state with the lack of  
24 resources they have can come up with a finer tuned  
25 plan for the 'Ewa region. We understand. We

1 understand growth and everything else is gonna be in  
2 the region. But we gotta plan. We gotta plan  
3 adequately, not this flimflam things about well, like  
4 they do in Kalaeloa.

5           If you want to come in that region, yeah,  
6 go ahead. HCDA says, "Go ahead. Where you wanna  
7 build? You wanna build here? Go ahead. You got the  
8 right because we're not subject to public overview,  
9 we're not subject to the public process." So what's  
10 going on? What's going on, Mr. Chair, in the region?  
11 They want to build everything.

12           The city has seceded its responsibility to  
13 the developer, to the landowner. And who loses? The  
14 community loses. We lose because all the impacts  
15 that's created by development the community loses. We  
16 lose.

17           So I don't know who you guys define  
18 yourselves as. As a public servant or a government  
19 entity? If you are, then fine. They can proceed with  
20 their development.

21           I thank you, Mr. Chair.

22           CHAIRMAN CHOCK: Thank you for your  
23 testimony. Parties, questions? County.

24           MR. KITAOKA: I have a question for  
25 Mr. Oamilda. Do you realize that this is a DHHL

1 project, and DHHL --

2 THE WITNESS: We're gonna --

3 MR. KITAOKA: Wait. Hold on.

4 THE WITNESS: Yeah.

5 MR. KITAOKA: -- and DHHL would argue that  
6 they're not subject to city land use approval process?  
7 So you realize that, don't you?

8 THE WITNESS: Yes, I do. I mean that's a  
9 poor process though. I think we gonna go after them  
10 in a community sense.

11 MR. KITAOKA: Okay. As long as that's  
12 clear. That's all I wanted --

13 THE WITNESS: Yeah. The Hawaiians are  
14 gearing up for that. And we understand that if they  
15 wanna be adversary to the community, Hawaiian  
16 community, that's fine and dandy. We can go after  
17 them like we wanna go after everybody else. So they  
18 got a fight on their hands.

19 And I think it's improper for them to not  
20 realize, number the archaeological, the archaeological  
21 site and all the impacts it would create. And I don't  
22 think that's a mission of them to go and create  
23 developments at the expense -- at the expense of the  
24 community, the Hawaiian community. So I really take  
25 offense to that, Mr. Chair. Thank you.

1 MR. KITAOKA: No further questions.

2 CHAIRMAN CHOCK: State?

3 MR. YEE: Nothing.

4 CHAIRMAN CHOCK: Intervenor?

5 Commissioners, any questions?

6 MR. ORODENKER: Benjamin Sadoski followed  
7 by Rich Hargrave.

8 BENJAMIN SADOSKI

9 being first duly sworn to tell the truth, was examined  
10 and testified as follows:

11 THE WITNESS: Yes.

12 CHAIRMAN CHOCK: Name and address.

13 THE WITNESS: My name is Benjamin Sadoski.  
14 My address is 728 Coolidge Street, Apartment 13,  
15 Honolulu 96826. Thank you, Commissioners. So I  
16 represent Unite Here Local 5. And Local 5 is a part  
17 of a growing coalition between environmental groups,  
18 Native Hawaiian groups, equal rights organizations,  
19 interfaith groups and other community groups that are  
20 concerned about the future of this state. And land  
21 use is absolutely a key part of that.

22 Whether it comes out to an added traffic  
23 impact, impact on water systems, wastewater treatment,  
24 every development has some impact. And the Land Use  
25 Commission has recognized that in this case.

1            Obviously this parcel is part of a larger  
2 1300-acre parcel of land upon which the LUC, already  
3 put 27 conditions in 1999. Now, the developer or the  
4 DHHL in conjunction with the developer, wants to  
5 change or delete 11 of those 27 conditions as I  
6 understand it.

7            So I want to echo the concerns of  
8 Mr. Oamilda and other community members who have  
9 spoken at the last time that we, the LUC, met about  
10 this issue, as well as issues that I've seen  
11 previously raised by city and state agencies, you  
12 know, including the DPP, the state Office of Planning,  
13 the DOT, the Department of Education, Coastal Water  
14 Resource Management, Civil Defense and DLNR.

15           I understand that some of these concerns  
16 are related to developer not having submitted a  
17 sustainability analysis, developer wanting to remove  
18 the public school outlay that binds on the larger  
19 area; that there isn't a market analysis for the  
20 Project though it may not technically be required.

21           I believe it was the suggestion that  
22 perhaps it ought to be; the fact that this Project is  
23 under the flight path of aircraft heading into  
24 Kalaeloa Airport, the lack of an urban design plan and  
25 so forth.

1           So I think you know I think we need to plan  
2 these things very carefully. I think the LUC has  
3 already taken some of these things into consideration  
4 back in 1999 with the original Petition on the  
5 1300 acres.

6           But I think that before we move forward we  
7 should make sure that we're very rigorous and we  
8 thoroughly analyze the potential impacts that this  
9 development is going to have, especially in light of  
10 the other developments that we are now going to see in  
11 that area and the other developments that we may  
12 potentially see. So that's all. Thank you very much.

13           CHAIRMAN CHOCK: Parties, any questions?  
14 Commissioners? Thank you for your testimony.

15           THE WITNESS: Thank you.

16           MR. ORODENKER: Rich Hargrave followed by  
17 Michael Golojuch, Jr.

18                           RICH HARGRAVE,  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21           THE WITNESS: I do.

22           CHAIRMAN CHOCK: Name and address.

23           THE WITNESS: My name is Rich Hargrave. I  
24 live in 'Ewa Beach 91-1001 Makahiki Street, zip code  
25 96706.

1                   CHAIRMAN CHOCK: Please proceed.

2                   THE WITNESS: Okay, thank you. Chair,  
3 Commissioners. I'm a long-time resident of the  
4 Leeward Coast. And I support this Project simply  
5 because of a number of things. Over the past few  
6 decades I have seen many warranted changes to the West  
7 O'ahu.

8                   These changes have had an impact on our  
9 growing communities, of course, as we all know. The  
10 O'ahu's younger generation is seeking jobs, housing,  
11 safe communities and they really wanna just have a  
12 place to raise their families.

13                  Opportunities like Ka Ma Kana Ali'i  
14 Development will be viewed as a gift from their  
15 parents who envision their future to improve  
16 sustainable lifestyles.

17                  The development of the DeBartolo Ka Ma Kana  
18 Ali'i Project will generate the boost needed to  
19 provide for our future generations with jobs, schools,  
20 housing and an environment that they can call their  
21 own.

22                  The construction and opening of the  
23 University of Hawai'i's West O'ahu campus, the recent  
24 opening of the Salvation Army's Kroc Center, the  
25 current and continuing construction of the rail



1 system, coupled with the need for affordable housing,  
2 the construction and opening of Ka Ma Kana Ali'i  
3 Project will allow families to -- I'm sorry, will  
4 allow families, our families the availability to shop,  
5 play, work and socialize within their communities for  
6 years to come. I respectfully request your support of  
7 this Project. Thank you.

8 CHAIRMAN CHOCK: Parties, any questions?  
9 Commissioners? Thank you for your testimony.

10 MR. ORODENKER: Michael Golojuch, Jr.  
11 Followed by Homelani Schaedel.

12 MICHAEL GOLOJUCH, JR.  
13 being first duly sworn to tell the truth, was examined  
14 and testified as follows:

15 THE WITNESS: I do.

16 CHAIRMAN CHOCK: Name and address for the  
17 record.

18 THE WITNESS: Michael Golojuch, Jr. 92-954  
19 Makakilo Drive, No. 71, Makakilo, 96707. Under full  
20 disclosure I'm a member of the Abercrombie  
21 Administration but I'm here today in my own personal  
22 capacity as a community advocate. I'm a 30-year plus  
23 resident of the Leeward Coast. I am in full support of  
24 the Project. I have been ever since I heard about it.  
25 We heard rumors about it for years to come.

1           I was there the night that DeBartolo made  
2 their presentation to the Neighborhood Board. They  
3 have answered the concerns of the community.

4           One of the concerns was why isn't it  
5 happening. Why didn't it happen already? Why don't  
6 we already have this? It's going to be an added  
7 benefit to our community. The synergy between the  
8 Project as well as UH West O'ahu with their having  
9 their, one of the best hospitality programs. They'll  
10 have a lodge facility right down the street from them  
11 where their students can get hands on experience is  
12 second to none.

13           Where else in this state can you drop your  
14 children off to play and interact and exercise while  
15 you're out doing your errands, shopping? Nowhere else  
16 because you have the Kroc Center right there.

17           Imagine that the high school students right  
18 down the road from Kapolei High, knowing that they'll  
19 have jobs in their own backyard that they're not going  
20 to have to travel all the way into town. Even with  
21 the rail system they'll be able to walk to and from  
22 their homes to school and to jobs.

23           It just fathoms me, (sic) bothers me,  
24 actually that people would even find something wrong  
25 with this Project when it adds to my community. It

1 gives us -- it is aptly named because it is a gift  
2 that will keep on giving for generations to come not  
3 only to make sure that the Department of Hawaiian Home  
4 Lands continues with the mission of putting Hawaiians  
5 on homes in their own land. What a great idea is  
6 that? Come on.

7           The economic impact: Ranging from the  
8 construction jobs that will happen during buildout,  
9 and the buildout won't happen right way unfortunately  
10 for all those that need jobs right now. But the vast  
11 array of employment opportunities that will appear  
12 from the retail to the hotels to the office jobs that  
13 this Project gives.

14           So I stand behind this Project 100 percent.  
15 Everybody I've talked to in my community stands behind  
16 it. I have never heard, until today, one person  
17 actually speaking out against this Project. But,  
18 again, that one person is always against everything as  
19 I'm sure you all know.

20           So I ask you to fully support this Project.  
21 It's sorely needed for the new city of Kapolei. Thank  
22 you for your time.

23           CHAIRMAN CHOCK: Thank you for your  
24 testimony. Parties, questions? Commissioners?

25           MR. ORODENKER: Homelani Schaedel followed

1 by Shirley Swinney.

2 HOMELANI SCHAEDEL

3 being first duly sworn to tell the truth, was examined  
4 and testified as follows:

5 THE WITNESS: Yes, I do.

6 CHAIRMAN CHOCK: Thank you. Name and  
7 address for the record.

8 THE WITNESS: My name is Homelani Schaedel.  
9 My address is 91-1016 Koanimakani Street, Kapolei  
10 96707. Aloha. My name a Homelani Schaedel, but I'm  
11 also president of Maluhai Residents Association.  
12 We're the first Hawaiian homestead in Kapolei with 226  
13 homes. And I've lived there for 11 years.

14 In 2008 the director of the Department of  
15 Hawaiian Home Lands, at the time Micah Kane, and  
16 members of the DeBartolo development team, met with  
17 homestead leaders of Kapolei to explain the purpose  
18 and the vision for Ka Ma Kana Ali'i.

19 While initially concerned with using Trust  
20 lands to build a shopping mall of this magnitude, as a  
21 beneficiary I also understood the \$30 million annual  
22 income to DHHL under Act 14 would end in 2015.

23 Time was of the essence. DHHL needed to  
24 explore income sources to replace the sizeable loss of  
25 income. In concert with other projects Ka Ma Kana

1 Ali'i reflects the Hawaiian Home Lands Commission's  
2 commitment to its fiduciary duties and beneficiaries  
3 of the Trust, aware that the mission of the Department  
4 of Hawaiian Home Lands is to manage the Home Lands'  
5 Trust effectively and to develop and deliver land to  
6 Native Hawaiians.

7           Before this can happen infrastructure must  
8 be put in place. Income derived from Ka Ma Kana Ali'i  
9 will support this very critical process. DHHL, in  
10 line with their mission, will partner with others  
11 towards developing self-sufficient and healthy  
12 communities. DHHL has held beneficiary consultations  
13 on the Ka Makani Ali'i Project.

14           DeBartolo is an icon in real estate  
15 development who has embraced our culture sense of  
16 place and has been respectful in their approach to  
17 design. I'm confident that they will continue to  
18 engage in community input during the course of  
19 development.

20           Ka Ma Kana Ali'i will not just benefit  
21 beneficiaries of the Trust. It will be far reaching  
22 to the people of our state and nation. It will be a  
23 source of economic development, job creation, social  
24 gathering and community support. More importantly, it  
25 perpetuates the vision and legacy of Prince Jonah

1 Kuhio Kalaniana'ole Pi'ikoi.

2 Ka Ma Kana Ali'i is a continuous gift from  
3 our ancestors to be nurtured, shared and allowed to  
4 prosper. Mahalo for allowing me the opportunity to  
5 testify in support of Ka Ma Kana Ali'i.

6 CHAIRMAN CHOCK: Parties, any questions?  
7 Commissioners? Thank you for your testimony.

8 MR. ORODENKER: Shirley Swinney.

9 SHIRLEY SWINNEY

10 being first duly sworn to tell the truth, was examined  
11 and testified as follows:

12 THE WITNESS: Yes.

13 CHAIRMAN CHOCK: Name and address for the  
14 record.

15 THE WITNESS: Aloha, Commission. My name  
16 is Shirley Swinney. My address is 91-216 Koanimakani  
17 Place in Kapolei. And I'm the president of Kapolei  
18 Community Development Corporation. It's a homestead  
19 beneficiary organization that serves Kapolei.

20 My testimony this morning is in support of  
21 the DeBartolo Ka Ma Kana Ali'i regional center. As a  
22 homestead leader in Kapolei I've carefully watched the  
23 development of Ka Ma Kana Ali'i.

24 At the invitation of the Department of  
25 Hawaiian Home Lands and DeBartolo, myself and many

1 others who live and work in the region, were able to  
2 lend our voices to the planning and design for a  
3 regional center that would not only become an economic  
4 engine but will also consider its relevance to the  
5 host culture and its impact to the nearby communities.

6           Ka Ma Kana Ali'i will provide new shopping,  
7 dining, lodging, commercial communities for the  
8 public. Importantly, by bringing potential employment  
9 to the area residents, it will reduce the need for  
10 travel on our congested roadways. The overall  
11 convenience and services will be a welcome addition in  
12 the way that we will live.

13           Ka Ma Kana Ali'i is in an ideal location  
14 near to UH West O'ahu, the Salvation Army Kroc Center  
15 and new homes coming up at East Kapolei. And it's  
16 accessible via the new Kualakahi Parkway and the  
17 planned rail transit line.

18           There will be something for everyone:  
19 Family entertainment including cinema, retail stores,  
20 restaurants, fitness center, and outdoor cafés. Ka Ma  
21 Kana Ali'i will be situated on 67 acres of land leased  
22 from the Department of Hawaiian Home Lands. Revenues  
23 from the Ka Ma Kana Ali'i master lease will enable  
24 DHHL to finance the building of homes for Native  
25 Hawaiians.

1           Ka Ma Kana Ali'i is an integral part of  
2 making Kapolei a place where families can  
3 live/work/play and learn. Thank you for this  
4 opportunity to testify in support of DeBartolo Ka Ma  
5 Kana Ali'i Regional center.

6           CHAIRMAN CHOCK: Parties, any questions?  
7 Commissioners? Thank you for your testimony. That  
8 concludes the list of registered testifiers. Anybody  
9 in the audience wishing to provide testimony at this  
10 time? Please come forward.

11           DR. MATTHEW LOPRESTI  
12 being first duly sworn to tell the truth, was examined  
13 and testified as follows:

14           CHAIRMAN CHOCK: Name and address for the  
15 record.

16           THE WITNESS: Aloha. My name's Dr. Matthew  
17 Lopresti. I live in 'Ewa Beach, 91-1401 Keoni  
18 Boulevard. No. 2106. I'm here today to testify  
19 strongly in favor of this Project. I was excited about  
20 it from the moment I heard about it. I don't know how  
21 many of you live on Leeward O'ahu or on the 'Ewa  
22 Plain, but the 'Ewa Plain is in desperate need of  
23 commercial venues for people.

24           In 'Ewa Beach, 'Ewa alone we have over  
25 60,000 people who live there and we have one



1 supermarket. So we need this kind of thing. I  
2 understand that they're looking for an anchor that  
3 will provide a supermarket there. We currently have a  
4 Safeway being developed. But at the end of the day  
5 that's not going to be enough just to have two. So  
6 we're gonna need more than that.

7           It's great to see so many people from  
8 Kapolei and from 'Ewa supporting this on both sides.  
9 As one of the people mentioned before this is the  
10 first time I've heard any single person oppose it.

11           Another thing I'm excited about in this  
12 Project is that they're gonna have kama'aina hotels  
13 for kama'aina people. That means I can have my family  
14 visit me from the mainland and they could visit at an  
15 affordable rate. I live in a townhome. I don't have  
16 a lot of room for them to stay. And they need to stay  
17 somewhere, and Waikiki could be too expensive for  
18 that. So we'll have real hotels for real families.

19           It's also going to reduce traffic, as I  
20 think the previous lady had mentioned, because people  
21 are not going to have to travel as far for jobs,  
22 they're not going to have to travel as far for  
23 recreation or for food. So that's a big plus.

24           Ms. Golojuch mentioned synergy. And  
25 that's exactly what this Project brings. It's

1 synergy, synergy with the current plans, synergy with  
2 what the community needs and what the community wants.  
3 Ultimately I see this as an effective management of  
4 DHHL lands. So that really fulfills their  
5 responsibilities for the communities and the  
6 neighborhoods that they're building.

7 I would kindly ask DeBartolo to consider  
8 one thing though, when picking hotels that would come  
9 in, is to really consider choosing a hotel that values  
10 the dignity of its workers and would allow for unions  
11 like Local 5 to provide quality jobs for our  
12 community. I support this. That's it.

13 CHAIRMAN CHOCK: Parties, any questions?  
14 Commissioners? Thank you for your testimony.

15 THE WITNESS: Thank you.

16 CHAIRMAN CHOCK: Anyone else from the  
17 audience wishing to provide public testimony? Okay.  
18 So, again, I apologize for the inconvenience this  
19 morning to the parties and to the public on our quorum  
20 issue. Please work with staff on scheduling future  
21 date.

22 And with that we'll take a five minute  
23 recess in place and continue on with the next matter  
24 on our agenda.

25 (Recess was held. 9:55-10:00)

1 Docket SP09-403

2 CHAIRMAN CHOCK: This is a continued  
3 meeting on Docket SP09-403 Department of Environmental  
4 Services, city and county of Honolulu to deliberate  
5 and discuss procedural issues and action, if  
6 necessary, on Civil No. 9-1-2719-11 regarding the  
7 Special Use Permit that encompasses approximately  
8 107 acres Waimanalo Gulch Sanitary Landfill and an  
9 approximately 93-acre lateral expansion, Tax Map Key  
10 No. 9-2-3, 72 and 73.

11 Will the parties please identify  
12 themselves.

13 MR. WURDEMAN: Good morning, Mr. Chair.  
14 Attorney Richard L. Wurdeman. I'm attorney of record  
15 for Intervenors Ko Olina Community Association, Maile  
16 Shimabukuro, and Colleen Hanabusa. This morning I'll  
17 be deferring the position of Ko Olina Community  
18 Association and Ms. Shimabukuro to my learned counsel  
19 to my right here. And I will be articulating position  
20 on behalf of my client Intervenor Colleen Hanabusa.

21 CHAIRMAN CHOCK: Good morning,  
22 Mr. Wurdeman.

23 MR. CHIPCHASE: Good morning. Cal Chipchase  
24 and Christopher Goodin representing the Ko Olina  
25 Community Association and Senator Shimabukuro.

1 CHAIRMAN CHOCK: Thank you.

2 MR. SANDISON: Good morning. Ian Sandison  
3 on behalf of Intervenor Schnitzer Steel, Hawai'i  
4 corporation. I have with me today R. C. Mamuller  
5 (phonetic).

6 CHAIRMAN CHOCK: Is Schnitzer Steel --  
7 question, procedural question for you: Is Schnitzer  
8 Steel a recognized intervenor in these proceedings  
9 recognized by the Land Use Commission?

10 MR. SANDISON: It is not. It is a  
11 recognized intervenor in the proceeding below and the  
12 planning commission.

13 CHAIRMAN CHOCK: I think we're going to ask  
14 you to speak as a member of the public because you  
15 have not been recognized and admitted as an intervenor  
16 in this particular proceeding with the Land Use  
17 Commission, so I'll ask you to take a seat with the  
18 public, and then at that time present whatever  
19 testimony you have.

20 MS. VIOLA: Good morning. Dana Viola,  
21 deputy corporation counsel on behalf of the city and  
22 county of Honolulu Department of Environmental  
23 Services.

24 MR. YEE: Good morning. Deputy Attorney  
25 General Bryan Yee on behalf of the Office of Planning.

1 With me is Rodney Funakoshi from the Office of  
2 Planning.

3 CHAIRMAN CHOCK: Let me update the record.  
4 On May 4th the Supreme Court issued an opinion  
5 overturning LUC Docket No. SP09-403.

6 On May 22, 2012 the Commission sent written  
7 correspondence to the planning commission urging the  
8 city's planning commission to stay its May 25th, 2012  
9 proceedings on the Department of Environmental  
10 Services, city and county of Honolulu's current  
11 Application to Modify the Special Use Permit No.  
12 2008/SUP-2 by modifying the LUC's order adopting the  
13 city and county of Honolulu planning commission's  
14 Findings of Fact, Conclusions of Law and Decision and  
15 Order with modifications dated October 22, 2009 until  
16 the LUC remanded the records contained in file No.  
17 2008/SUP-2 to the planning commission.

18 On May 31, 2012 the Commission received the  
19 planning commission's response letter advising that a  
20 six-month stay of its proceedings of the Department of  
21 Environmental Services Current Application was  
22 warranted pending the LUC's decision after remand from  
23 the circuit court on the aforementioned appeal. Also  
24 that there was no necessity to remand the records  
25 contained in File No. 2008/SUP-2.

1           On June 6th the circuit court remanded LUC  
2 SP09-403 to the Land Use Commission for further  
3 proceedings consistent with the Supreme Court's  
4 decision of May 4th, 2012.

5           On June 18, 2012 the Commission received  
6 City and County's files and Department of  
7 Environmental Services' current application regarding  
8 the deletion of LUC Condition 14, written  
9 correspondence from David Tanoue, and copies of the  
10 proceedings, and a listing of all exhibits, and a copy  
11 of the record on DVD digital media and a list of all  
12 exhibits.

13           Let me go over our procedures for this  
14 docket. First, I will call those individuals desiring  
15 to provide public testimony for the Commission to come  
16 forward and identify themselves. All such individuals  
17 will be called in turn to our witness box where they  
18 will be sworn in prior to their testimony.

19           Please be reminded that the Commission will  
20 not be considering the merits of Special Use Permit  
21 No. 2008/SUP-2. Rather, the Commission will be  
22 considering its procedural options on remand.

23           After completion of public testimony  
24 Petitioner will then make its presentation. After  
25 completion of the Petitioner's presentation

1 Intervenor will make their presentation.

2           After completion of Intervenor's  
3 presentation we'll receive any public comments from  
4 the state Office of Planning. I'd also note for the  
5 parties and the public that from time to time I'll be  
6 calling for short breaks. Are there any questions as  
7 to our procedure for today, parties?

8           I believe at this time our Deputy Attorney  
9 General would like to make a disclosure for the  
10 record.

11           MS. HIRAKAMI: Yes. I'd just like to state  
12 that in addition to being the deputy attorney general  
13 representing the Land Use Commission in this matter,  
14 I'm also one of the deputies assigned to represent the  
15 state of Hawai'i 2011 Reapportionment Commission in  
16 the federal lawsuit Kostick vs. Nago.

17           All of the Reapportionment Commission  
18 Members were sued in their official capacity. That  
19 includes Mr. Chipchase. So, accordingly, I represent  
20 Mr. Chipcase in his official capacity in that federal  
21 lawsuit. I do not have any actual bias or prejudice  
22 for or against any party because of that  
23 representation. I just wanted to disclose it on the  
24 record.

25           CHAIRMAN CHOCK: Parties, any questions or

1 concerns with the disclosure or Ms. Hirakami's  
2 participation in this docket?

3 MR. WURDEMAN: None for myself.

4 MR. CHIPCHASE: No.

5 MS. VIOLA: No.

6 MR. YEE: No.

7 CHAIRMAN CHOCK: Commissioners, any  
8 concerns? Okay. We're going to proceed at this time  
9 with public testimony. Is there anyone from the  
10 public wishing to provide public testimony, come  
11 forward at this time.

12 IAN SANDISON  
13 being first duly sworn to tell the truth, was examined  
14 and testified as follows:

15 THE WITNESS: I so swear.

16 CHAIRMAN CHOCK: Name and address for the  
17 record, please.

18 THE WITNESS: My name is Ian Sandison. I'm  
19 an attorney with Carlsmith Ball. We are located at  
20 ASB Tower Suite 2200, 1001 Bishop Street, Honolulu,  
21 Hawai'i 96813.

22 CHAIRMAN CHOCK: Proceed.

23 THE WITNESS: Good morning. Again, my name  
24 is Ian Sandison. I represent Schnitzer Steel Hawaii  
25 Corp. which is an intervenor in the Department of



1 Environmental Services, city and county of Honolulu's  
2 application to delete Condition 14 of Special Use  
3 Permit 2008/SUP-2, also known as LUC Docket No. SP is  
4 9-403, which is currently in a contested case before  
5 the Planning Commission of the City and County of  
6 Honolulu.

7 Condition 14 was imposed by *this* Commission  
8 on October 22, 2009 after a separate contested case  
9 had been conducted before the Planning Commission.  
10 Schnitzer was not a party to that original contested  
11 case.

12 The notice of this meeting was sent to us  
13 on June 27, 2012. In the notice we were requested to  
14 be present for discussion in this matter. Although we  
15 appreciate the opportunity to appear before this  
16 Commission in the matter, we respectfully request that  
17 this Commission allow the parties more time to fully  
18 brief these complex procedural issues currently being  
19 considered.

20 We join in the city in this request for an  
21 additional two weeks for the parties to brief the  
22 issues before the Commission renders a decision.

23 Should the Commission proceed with its  
24 deliberations today, then the Schnitzer's position  
25 that these proceedings, which were remanded back to

1 the Commission pursuant to the Hawai'i Supreme Court's  
2 decision in Department of Environmental Services vs.  
3 Land Use Commission, should be further remanded to the  
4 planning commission for consolidation and  
5 consideration along with the pending application.

6 It is our position that remanding the  
7 proceedings to the Planning Commission would result in  
8 a more complete record and would be the most efficient  
9 course of action. It would also be the most  
10 consistent with the Supreme Court's decision.

11 The Supreme Court rendered its decision on  
12 May 4th, 2012 after the pending contested case had  
13 closed and just three weeks before the Planning  
14 Commission was set to act on the pending application.

15 The Supreme Court remanded the original  
16 application back to the Circuit Court who then  
17 remanded it back to this Commission. Under Hawaii  
18 Administrative Rules § 15-15-96(a), this Commission  
19 has four options with respect to the remanded  
20 application: It can approve the permit as it was  
21 originally issued by the Planning Commission. It can  
22 approve the permit with modification. It can deny it.  
23 Or it can remand it back to the Planning Commission  
24 for further proceedings.

25 On May 21, 2012 this Commission passed a

1 motion to send a letter to the Planning Commission  
2 asking it to defer decision-making on the pending  
3 application until it could remand the original  
4 application back to the Planning Commission.

5 Then-Chair Normand Lezy sent such a letter later that  
6 day.

7           At its May 25, 2012 hearing, which was set  
8 for decision-making on the pending matter, the  
9 Planning Commission instead issued a six-month stay of  
10 the proceedings before it. The Planning Commission  
11 members also expressed frustration about the potential  
12 for having the original application remanded back to  
13 them.

14           On May 29, 2012 the Planning Commission  
15 Chair Gayle Pingree sent a response to Chair Lezy's  
16 May 22, 2012 letter. In the response Chair Pingree  
17 stated that there was no necessity to remand the  
18 original application back to the Planning Commission  
19 as there had been no request to modify the Planning  
20 Commission's original order dated August 10th, 2009.

21           Although Chair Pingree is correct that  
22 there is no request to modify the Planning  
23 Commission's original permit, remanding the proceeding  
24 back to the Planning Commission for consolidation is  
25 the best way to ensure that all new information gained

1 as part of the pending application is adequately  
2 considered.

3 As a prime example Schnitzer is not a party  
4 to the original proceeding. Schnitzer was added to  
5 the pending proceeding as a scrap metal recycler that  
6 relies upon the availability of Waimanalo Gulch  
7 Sanitary Landfill for its operation, and that would be  
8 impacted by any decision to close the landfill or  
9 otherwise restrict the types of solid waste that can  
10 go into the landfill.

11 This information was not available in the  
12 original proceeding. And even now it is only  
13 available in the record currently before the Planning  
14 Commission. The Planning Commission was the one that  
15 heard this new information and is in the best place to  
16 render a decision based on the new information.

17 In addition, remanding the original  
18 application to the Planning Commission for  
19 consolidation is consistent with the Supreme Court's  
20 decision. In its decision the Supreme Court noted,  
21 and I quote, "We have been informed in pleadings filed  
22 by the LUC that on June 28th, 2011 DES filed a request  
23 for modification of Condition 14 of SUP file No.  
24 2008/SUP-2 with the Planning Commission and that a  
25 contested case hearing is ongoing in that proceeding.

1 On remand we encourage the LUC to consider any new  
2 testimony developed from the Planning Commission in  
3 that case."

4 That's footnote 16 to the Supreme Court  
5 decision in the Department of Environmental Services  
6 v. Land Use Commission.

7 Clearly the Supreme Court expects this  
8 Commission to render a decision based on all the  
9 facts. To do so the Commission would need to have a  
10 complete record before it. However, it cannot  
11 consider any new facts unless they are part of the  
12 record received from the Planning Commission in the  
13 first place. Please see Administrative Rule  
14 15-15-96(a).

15 If this Commission were to decide on the  
16 original application without remanding it to the  
17 Planning Commission first, it is difficult for it --  
18 it would be difficult for it to do so other than based  
19 on the record as it existed at the time it was made in  
20 the decision back in 2009. Such a course of action  
21 would be contrary to the Supreme Court's expectation.

22 Remanding the original application back to  
23 the Planning Commission for consolidation and  
24 consideration along with the pending application is  
25 the best way to ensure that a complete and up-to-date

1 record is considered by this Commission. Thank you  
2 very much for the opportunity to testify.

3 CHAIRMAN CHOCK: Thank you for your  
4 testimony. Parties, any questions?

5 MR. WURDEMAN: None.

6 MS. VIOLA: None.

7 CHAIRMAN CHOCK: OP?

8 MR. YEE: No.

9 CHAIRMAN CHOCK: Commissioners, any  
10 questions? Thank you. Anyone else in the audience  
11 wishing to provide public testimony please come  
12 forward. Petitioner, please proceed.

13 MS. VIOLA: The Petitioner agrees with  
14 Schnitzer Steel that we feel that the procedural  
15 issues are complicated and therefore warrants further  
16 briefing by the parties. And we're going to move at  
17 this time to allow the parties to submit written  
18 filings about two weeks.

19 I'll proceed with an argument essentially  
20 just to warrant a number of positions -- a number of  
21 options for the Land Use Commission to take.  
22 Primarily, I don't agree that remand is the only  
23 option for the Land Use Commission.

24 I think that the Land Use Commission can  
25 consider the 2009 record and can decide consistent

1 with the Supreme Court's decision and consistent with  
2 the footnote 16 by considering the record that's  
3 already been transmitted to them.

4           They can consider that record similar to  
5 how they consider public testimony in these  
6 proceedings. So they can rely on the 2009 record,  
7 rely on the findings that were not invalidated by the  
8 Supreme Court, and consider the new Planning  
9 Commission proceeding like they would consider public  
10 testimony.

11           Remand would only be necessary if upon  
12 consideration of the record in the current proceeding,  
13 the ongoing proceeding, that would contradict any of  
14 the findings that the Planning Commission and the Land  
15 Use Commission has already established.

16           The Land Use Commission thereafter would  
17 have to warrant remand based on their consideration of  
18 the testimony, aka the new record from the Planning  
19 Commission. So the city would argue that the Land Use  
20 Commission does have within its authority to rule on  
21 the existing 2009 record consistent with the Supreme  
22 Court decision.

23           The Planning Commission can, sorry -- the  
24 Land Use Commission cannot consider the record from  
25 the Planning Commission in the current proceeding as a

1 basis for finding new facts as the Land Use  
2 Commission, pursuant to statute, is the reviewing  
3 body, not the original fact finders.

4           So it cannot weigh the new evidence without  
5 a recommendation from the Planning Commission as it is  
6 the Planning Commission that would weigh the weight of  
7 the testimony and determine the credibility of the  
8 witnesses in the contested case proceeding.

9           However, that said, the city's position is  
10 that the Land Use Commission does have the means to  
11 decide presently without remand to make a decision on  
12 this current SUP with the current record and by  
13 considering the 2012 proceeding by the Planning  
14 Commission.

15           Because there's disagreement amongst the  
16 parties, as you will hear, I do feel it is necessary,  
17 based on the complexity of the matter to -- and again  
18 the unique situation that's presented to the Land Use  
19 Commission, to allow the parties to further brief this  
20 issue so the Land Use Commission can be fully notified  
21 of all their potential options in terms of these  
22 procedural matters. That's all.

23           CHAIRMAN CHOCK: Commissioners, any  
24 questions for the county? Okay. Intervenor, normally  
25 just as a matter of procedure we normally have the



1 intervenor to my far left, your far right. I was a  
2 little confused as to the new lineup.

3 MR. CHIPCHASE: Just took the only seat  
4 open, Chair.

5 CHAIRMAN CHOCK: Happy you're here. I'm  
6 normally accustomed to seeing the Intervenor's  
7 attorney as a 5-foot tall Asian-American woman. So  
8 the new young bucks kinda had me confused for a  
9 minute. Proceed.

10 MR. CHIPCHASE: Thank you, Chair. Just  
11 because the parties don't agree on what should happen  
12 doesn't mean the issue's procedurally complex, that  
13 there's anything more to say in written briefing.  
14 Schnitzer Steel laid out your options under 96(a) and  
15 what they are. And I'll get to those in the second.

16 I'll just review a little bit of the  
17 history on how we got here. The new proceeding before  
18 the planning commission was initiated by the city.  
19 The city filed an application to modify Condition 14.  
20 We intervened and that triggered a contested case  
21 proceeding. We spent five months in that contested  
22 case proceeding.

23 The commission heard written or had written  
24 direct testimony from 11 witnesses, heard live  
25 testimony from a total of 15 witnesses, all of whom

1 were sworn in and subject to cross-examination. The  
2 commission admitted more than 260 exhibits into  
3 evidence. The parties submitted detailed findings and  
4 conclusions and responses to each others' findings and  
5 conclusions. There is a full and complete record of  
6 testimony and exhibits sitting with the Planning  
7 Commission.

8           This evidence goes to the very issues that  
9 are before the Land Use Commission. When should the  
10 landfill close? What is the impact of the landfill on  
11 the community? Has the city been reasonably diligent,  
12 as your order requires, in developing a new landfill  
13 site?

14           The Land Use Commission needs the benefit  
15 of this new evidence as evidence, not as public  
16 testimony. This wasn't people from the public who  
17 merely came up and testified. These were people who  
18 were sworn and subject to vigorous cross-examination  
19 sometimes lasting an entire day.

20           Through the course of those proceedings the  
21 record is much different than the record that was  
22 before you in 2008. And I'll give you a couple  
23 examples of that. One is that in the city's own  
24 findings and conclusions submitted to the Planning  
25 Commission, the city now concedes that the Gulch

1 should close to most forms of municipal solid waste by  
2 January 1, 2014. That was not the city's position in  
3 2009. That's only become the city's position after we  
4 developed a new record before the Planning Commission.

5 We've also developed the evidence that it's  
6 been nearly three years since this body ordered the  
7 City to select a new site with reasonable diligence.  
8 And as of today, almost three years later, they still  
9 have not identified a site, let alone started to  
10 develop one.

11 The evidence also shows that the third  
12 boiler, which was the subject of discussion in the  
13 prior proceeding, will now be online by this fall.  
14 And that that third boiler will have the capacity to  
15 take sewage, sludge and medical waste, thereby getting  
16 some of the most offensive and dangerous waste off of  
17 Waimanalo Gulch and out of the community.

18 When the Supreme Court, as Mr. Sandison  
19 explained, invalidated Condition 14, it went on to  
20 invalidate the entire Order approving the SUP because  
21 the Court recognized that Condition 14 was a material  
22 part of this Commission's decision to approve the SUP  
23 in the first place.

24 The Court then took the extraordinary step  
25 of encouraging this body to consider the new record

1 developed before the Planning Commission. That is not  
2 a normal remand instruction. The Court added that  
3 instruction, added that footnote because it  
4 understands that this body should have the benefit of  
5 the full record.

6           The Court wants this body to have it. This  
7 body should have it. The only question then is:  
8 What's the best way to get this evidence before the  
9 Land Use Commission? As Mr. Sandison explained that  
10 is set out clearly in 15-15-96(a) four options, one of  
11 which is to remand to the Planning Commission for  
12 further proceedings.

13           That body then has the ability to  
14 consolidate these two cases, which really are from the  
15 very same issues, for final decision which has already  
16 been completely set up through findings and  
17 conclusions by both parties and ready to go.

18           We don't need to reopen evidence. This  
19 body can remand with specific instructions on what the  
20 planning commission should do to proceed to decision.  
21 At that point this body will get the entire record  
22 back, have the benefit of the planning commission's  
23 findings and conclusions on that entire record and  
24 then have the whole record before it available for  
25 this body to make the final decision.

1           That's the best course. It's the course  
2 clearly laid out in the rules and it's the course that  
3 we advocate today. Thank you.

4           CHAIRMAN CHOCK: Commissioners, any  
5 questions? OP.

6           MR. YEE: The Office of Planning supports  
7 remand back to the Planning Commission. We do this  
8 basically because in our view there are currently two  
9 Special Use Permit proceedings pending. One is to  
10 amend an existing SUP to allow the Waimanalo Gulch  
11 Landfill to continue. The other is for a new Special  
12 Use Permit to be issued to allow the Waimanalo Gulch  
13 Landfill to continue. Both deal with the same  
14 geographic area and the same use. They're simply  
15 different processes that are pending in different  
16 forms. And they're at the moment proceeding  
17 independently.

18           It just makes the most sense to us that you  
19 combine the two together into a single proceeding  
20 since, really, it doesn't appear that the city would  
21 need both of these approvals. They would either need  
22 an amendment to the existing SUP permit to allow its  
23 extension of both geographic area and time. Or they  
24 need a new SUP for that same geographic area without a  
25 time period.

1           So from our perspective it really -- this  
2 complex, the complexity that exists is simplified by  
3 simply combining the two processes together. And  
4 because the Planning Commission has not yet issued a  
5 decision, it makes no sense in our view to send it  
6 back to the Planning Commission to make a single  
7 decision, send the entire thing up to you and you can  
8 make a single decision after that. So we support the  
9 remand. Thank you.

10           CHAIRMAN CHOCK: Commissioners, any  
11 questions for OP?

12           MR. WURDEMAN: Excuse me, Mr. Chair, may I  
13 be heard with respect to Intervenor Hanabusa, please?

14           CHAIRMAN CHOCK: Go ahead.

15           MR. WURDEMAN: Thank you. With respect to  
16 the Supreme Court decision I know as counsel in that  
17 matter that went before the Supreme Court for the  
18 Intervenor. What was very significant to me in that  
19 decision was that the Supreme Court could have  
20 certainly just reversed the decision of the Land Use  
21 Commission with respect to Condition 14, but it  
22 didn't.

23           What it did is it recognized the role of  
24 the Land Use Commission and the process and its power  
25 to approve with conditions or even to reject what the

1 Planning Commission decided to do. And what it did it  
2 remanded because Condition 14, of course, was a  
3 material condition of the LUC's approval of SUP-2.

4 And what they said was based on the steps  
5 that were taken by the Land Use Commission, in  
6 particular just the adoption of the Findings and  
7 Conclusions of Planning Commission and then adding  
8 various conditions to that that what this Land Use  
9 Commission really needed to do was to beef up its  
10 record. It made a decision.

11 The Supreme Court respected that role of  
12 the Land Use Commission in the process. But in doing  
13 so, and the footnote 16 was in the opinion was  
14 referenced by two of the attorneys previously, but  
15 it's further support of the Supreme Court saying:  
16 Here's some options to help you do just that. The  
17 Planning Commission wants a condition like Condition  
18 14. Let's get some substantial evidence to support  
19 it.

20 And if need be please consider the record  
21 that was established in this other proceeding before  
22 the Planning Commission.

23 So Ms. Hanabusa was not an intervenor in  
24 those proceedings before the Planning Commission.  
25 We're not fully aware of all of the nuances and facts

1 that were developed in that matter. She would prefer  
2 not going back to the Planning Commission but she  
3 would not at all be opposed to consideration of the  
4 full record that was developed in those proceedings.

5 Those proceedings should certainly not be  
6 treated as public testimony as suggested by the city.  
7 And that wouldn't be consistent with what the Supreme  
8 Court suggested in footnote 16 in that they're trying  
9 to say let's get some more findings of fact based on  
10 what was developed before the Planning Commission.

11 So I certainly disagree with the city's  
12 assessment of how that record should be treated. But  
13 we would welcome the inclusion of that record in the  
14 Planning Commission. We're just in a slight  
15 disagreement on how it should be taken in procedurally  
16 and considered by this board.

17 CHAIRMAN CHOCK: Commissioners, any  
18 questions?

19 MS. VIOLA: Chair, if I may can I respond  
20 to some of the representations made by the other  
21 parties?

22 CHAIRMAN CHOCK: Go ahead.

23 MS. VIOLA: The sole issue of this new  
24 proceeding before the Planning Commission, the sole  
25 issue of the Petition that was entered by the city was



1 the deadline, the deadline, the July 21st, 2012  
2 deadline. That is the subject matter of the Supreme  
3 Court decision. The Supreme Court has summarily  
4 determined that that deadline is invalid.

5 Now, Mr. Chipchase refers to a lot of other  
6 issues which were not the subject matter of the City's  
7 petition. The sole issue was the validity of the  
8 deadline. And the Supreme Court has already addressed  
9 that.

10 Now, my recommendation in terms of the Land  
11 Use Commission being able to make a decision based on  
12 the 2009 record, is not inconsistent with the Supreme  
13 Court recommendation. Let me read the e-mail. I mean  
14 this is a footnote. It's a footnote in the Supreme  
15 Court decision. And it states that: "On remand we  
16 encourage the LUC to consider any new testimony  
17 developed before the planning commission in that  
18 case."

19 This footnote does not direct the Land Use  
20 Commission to adopt new Findings based on the record,  
21 as Mr. Wurdeman would indicate. It indicates that the  
22 Land Use Commission is to consider, encouraged to  
23 consider much as they do the way the Land Use  
24 Commission considers public testimony.

25 Mr. Chipchase also states or indicates that

1 the extensive record, the details in this case, would  
2 basically go unnoticed by the Land Use Commission if  
3 this is not remanded. That's not the case as well.

4 By considering the record, considering the  
5 testimony, reading the testimony, reviewing the  
6 testimony as the Land Use Commission would any kind of  
7 public testimony, the Land Use Commission would be  
8 considering or would be, as the Supreme Court  
9 indicates, would be considering new testimony.

10 So I would assert that contrary to the  
11 representations of the other parties that remand is  
12 not necessary. And the Planning Commission has  
13 already indicated to the Land Use Commission upon that  
14 same request that they do not feel that a remand is  
15 warranted. They do not feel that a consolidation of  
16 the case is warranted either.

17 They've forwarded the record already to the  
18 Land Use Commission and indicated clearly that they do  
19 not feel it is their position to make new findings or  
20 consolidate the case for the Land Use Commission to  
21 make a decision.

22 That 2009 record as well as consideration  
23 of the record before the Planning Commission presently  
24 is all that the Land Use Commission needs to make a  
25 decision consistent with the Supreme Court opinion.

1 Thank you.

2 CHAIRMAN CHOCK: Thank you. We're going to  
3 take a five minute recess for our court reporter and  
4 then resume.

5 (Recess was held 10:35)

6 CHAIRMAN CHOCK: (gavel) Okay. We're back  
7 on the record, Commission. What is your pleasure,  
8 Commissioners? Actually I believe we have an oral  
9 motion from the Petitioner for a 2-week....

10 MS. VIOLA: Yes. Request to submit.

11 CHAIRMAN CHOCK: Commissioners, what is  
12 your pleasure?

13 COMMISSIONER McDONALD: Chair, I'd like to  
14 move to approve county's motion to file their briefs  
15 for the Commission.

16 CHAIRMAN CHOCK: Is there a second?

17 COMMISSIONER INOUE: I'll second that.

18 CHAIRMAN CHOCK: Deliberations?

19 Commissioners, any comments?

20 COMMISSIONER INOUE: This is the motion  
21 for two weeks motion.

22 CHAIRMAN CHOCK: Two weeks. I'll ask our  
23 executive officer to poll the Commission.

24 MR. ORODENKER: Thank you, Mr. Chair.  
25 Motion to allow the parties two weeks to brief the

1 matter before the Commission: Commissioner McDonald?

2 COMMISSIONER McDONALD: Yes.

3 MR. ORODENKER: Commissioner Inouye?

4 COMMISSIONER INOUE: Yes.

5 MR. ORODENKER: Commissioner Makua?

6 COMMISSIONER MAKUA: Yes.

7 MR. ORODENKER: Commissioner Matsumura?

8 COMMISSIONER MATSUMURA: Yes.

9 MR. ORODENKER: Chair Chock?

10 CHAIRMAN CHOCK: Yes.

11 MR. ORODENKER: Mr. Chairman, the motion  
12 carries unanimously.

13 CHAIRMAN CHOCK: So, parties, two weeks.

14 MS. VIOLA: From this date.

15 CHAIRMAN CHOCK: From this date.

16 MR. ORODENKER: Mr. Chairman, clarification  
17 on the motion, please. Is the two-week time period to  
18 run from today?

19 CHAIRMAN CHOCK: Yes, today.

20 MR. ORODENKER: Thank you.

21 CHAIRMAN CHOCK: Schnitzer Steel, you may  
22 file a position paper as part of that proceeding, but  
23 you're not considered a party. Okay. Any other  
24 questions, parties?

25 MR. WURDEMAN: Mr. Chair, so once the

1 briefs are submitted to the Commission will there be a  
2 further status conference?

3 CHAIRMAN CHOCK: Yes. Staff will work with  
4 the parties on scheduling a future hearing date. Any  
5 other questions, parties?

6 MR. CHIPCHASE: Just to be absolutely  
7 clear: Two week simultaneous briefing, no replies or  
8 responses, everybody's just submitting. Very good.

9 CHAIRMAN CHOCK: Okay. Any other comments?  
10 Commissioners, any questions? Okay. That concludes  
11 this matter on our agenda. I believe our next issue  
12 was an executive session we do not need to have this  
13 morning. So we will adjourn for the day. Thank you.

14

15 (The proceedings were adjourned at 11:00)

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17 --oo00oo--

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## C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matters on the 5th day of July 2012;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matters.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012

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HOLLY M. HACKETT, HI CSR #130, RPR  
Certified Shorthand Reporter