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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 Action, etc. at Ihilani Hotel, Lurline Room, 92-1001 Olani Street, Hawai'i, commencing at 9:05 a.m. on September 14, 2012, pursuant to Notice.

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

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

## COMMISSIONERS:

KYLE J.K. CHOCK, CHAIRPERSON

RONALD HELLER, VICE CHAIR

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

LANCE M. INOUE

ERNEST MATSUMURA

NICHOLAS W. TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER

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:

CRAIG IHA, ESQ.

MATT DVONCH, ESQ.

JOBIE MASAGATANI, DHHL

For the County:

DON KITAOKA, ESQ.

Deputy Corporation Counsel

RANDY HARA, DPP

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI,

Office of Planning

For Haseko:

DAVID AUSTIN, ESQ.

For HHFDC:

SANDRA CHING

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

Docket No. SPO9-403 DEPT. OF ENVIRONMENTAL SERVICES,  
CITY & COUNTY OF HONOLULU (Waimanalo Gulch Sanitary  
Landfill)

For the Petitioner: DANA VIOLA, DEFS  
BRIAN BLACK

For the County: DON KITAOKA, ESQ.  
Deputy Corporation Counsel  
DPP

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

For Intervenor Colleen Hanabusa:

RICHARD M. WURDEMAN, ESQ.

For Intervenor Ko Olin Community Association  
and Senator Maile Shimabukuro:

CAL CHIPCHASE, ESQ.

## I N D E X

Docket A99-728 HCDCA

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1 CHAIRMAN CHOCK: (Gavel) Good morning. I'd  
2 like to call this meeting to order. The first item of  
3 business this morning is the adoption of minutes from  
4 September 6th and 7th. Do I have a motion to approve?

5 COMMISSIONER BIGA: So moved.

6 COMMISSIONER HELLER: Second. It's been  
7 moved and seconded. Anyone opposed? Motion carries.  
8 Our tentative meeting schedule, Executive Officer.

9 MR. ORODENKER: Thank you, Mr. Chair. The  
10 next meeting is scheduled for October 4th and 5th on  
11 Maui, continuation of the West Maui Land matter. And  
12 October 18th and 19th location to be determined,  
13 probably the Big Island, Y-O Limited Partnership  
14 Amendment. Then November 1st and 2nd back on Maui for  
15 Kaonoulu Order to Show Cause.

16 CHAIRMAN CHOCK: Okay. Thank you, Dan.  
17 This is an action meeting on A99-728 Housing and  
18 Community Development Corporation of Hawai'i to  
19 consider Petitioner state of Hawai'i Department of  
20 Hawaiian Home Lands' Motion for Order amending the  
21 Findings of Facts, Conclusions of Law and Decision and  
22 Order dated September 8th, 1999 to:

23 1. Recognize DHHL's standing to seek and  
24 obtain the relief requested by the Petition;  
25 re-designate a new docket A99-728(c) covering that

1 portion of the Petition Area identified as Tax Map Key  
2 (1)9-1-016;142 comprising approximately 67 acres of  
3 land separate and apart from the remaining 715 acres  
4 reclassified under Docket No. A99-728.

5 Release the Petition Area "C" from the  
6 conditions of the 1999 Decision and Order and issue  
7 new Findings of Fact, Conclusions of Law and Decision  
8 and Order for the subject property.

9 Will the Parties please identify themselves  
10 for the record:

11 MR. DVONCH: Deputy Attorney General  
12 Matthew Dvonch for the Department of Hawaiian  
13 Homelands.

14 MR. IHA: Deputy Attorney General Craig Iha  
15 for the Department of Hawaiian Homelands.

16 MR. KITAOKA: Good morning, Mr. Chair. Don  
17 Kitaoka, deputy corporation counsel on behalf of the  
18 Director of the Department of Planning and Permitting  
19 City and County of Honolulu. With me today is Randy  
20 Hara from that department.

21 MS. MASAGATANI: I'm Jobie Masagatani,  
22 Chairman Designate Department of Hawaiian Homelands.

23 CHAIRMAN CHOCK: Good morning. Sorry about  
24 that, Jobie.

25 MS. MASAGATANI: No problem.

1           MR. YEE: Good morning. Deputy Attorney  
2 General Bryan Yee on behalf of the Office of Planning.  
3 With me is Rodney Funakoshi from the Office of  
4 Planning.

5           MS. CHING: Good morning. Deputy Attorney  
6 General Sandra Ching for Hawai'i Housing Finance and  
7 Development Corporation.

8           MR. AUSTIN: David Austin on behalf of  
9 Haseko.

10          CHAIRMAN CHOCK: Okay. On July 5th, 2012  
11 the Commission met and only heard public testimony,  
12 due to lack of quorum to vote, and deferred on  
13 proceedings. On September 5th the Commission mailed  
14 the agenda notice to the Parties and the statewide and  
15 O'ahu mailing list.

16          On September 11th the Commission received  
17 DHHL's First Amended Proposed Findings of Fact and  
18 Conclusions of Law and Decision and Order. The  
19 Commission received Petitioner's stipulation regarding  
20 the DHHL's First Amended Proposed Findings of Fact,  
21 Conclusions of Law and Decision and Order.

22          Let me briefly run over our hearing  
23 procedure for the Motion. First I will call on those  
24 individuals desiring to provide public testimony to  
25 identify themselves.



1 All such individuals will be called in turn  
2 to our witness box where they will be sworn in prior  
3 to their testimony.

4 After completion of the public testimony  
5 portion of the proceedings I will give the  
6 opportunities for the parties to admit to the record  
7 any further exhibits.

8 After the admission of exhibits to the  
9 record Movant will then make its presentation on its  
10 motion. Following that presentation the other Parties  
11 will make their comments.

12 At the conclusion of presentation by the  
13 Parties the Commission will conduct its deliberations.  
14 Are there any questions on our procedure relating to  
15 the Motion this morning?

16 Any individuals wishing to provide public  
17 testimony we'll have our executive officer call you  
18 forward to be sworn in and come forward when your name  
19 is called.

20 MR. ORODENKER: Yes, Mr. Chairman. We have  
21 Victoria Cannon followed by Glenn Oamilda.

22 VICTORIA CANNON  
23 being first duly sworn to tell the truth, was examined  
24 and testified as follows:

25 THE WITNESS: Yes, I do.

1 CHAIRMAN CHOCK: Your name and address for  
2 the record, please.

3 THE WITNESS: My name is Victoria Cannon,  
4 C-A-N-N-O-N 92-102 Oloa Place in Makakilo.

5 CHAIRMAN CHOCK: Go ahead.

6 THE WITNESS: Good morning, Commissioners.  
7 Thank you for this opportunity. I'm here in  
8 opposition to this request at this particular time. I  
9 think it's out of place. We're talking to historic  
10 properties in this proposed request. The OR&L  
11 Railroad and the Verona Villages Project. These  
12 projects need proper consideration.

13 Somehow this has gotten sidetracked to the  
14 Land Use Commission level. I won't pretend to know  
15 how that goes on. But there was a land swap. It did  
16 not include the rezone. And now here we are at your  
17 level rather than at the public input level. I don't  
18 understand how that could be allowed to happen.

19 But if it's your process I hope you  
20 consider it not pono and that you consider it to be  
21 handled more properly. That's my testimony. Thank  
22 you.

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

1 MR. ORODENKER: Glenn Oamilda followed by  
2 Georgette Stevens.

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

6 THE WITNESS: Yes.

7 CHAIRMAN CHOCK: Name and address for the  
8 record.

9 THE WITNESS: Aloha, Commissioners. My  
10 name is Glenn Oamilda. I live in 'Ewa Beach, 91-1179  
11 Puamaeole Place in 'Ewa Beach 96706. O-a-m-i-l-d-a.  
12 Born and raised in Waipahu on a sugar plantation. Now  
13 I live in 'Ewa Beach. So I've lived there all my  
14 life. I'm here to -- strong opposition to the Makana  
15 Ali'i designation, re-designation.

16 I think in proper planning I think this  
17 Project is really not consistent with the surrounding  
18 'Ewa, 'Ewa area. I think there's three concerns that  
19 I have is that it will eventually encroach into two  
20 historic sites. One is the Verona Village site. The  
21 other is the old OR&L Bus Depot.

22 The third concern of mine is 'Ewa. In the  
23 'Ewa Plains is culturally sensitive. That area in  
24 question has never been mitigated underground as well  
25 as aboveground.

1           So the community's requesting that an EIS  
2 plus an Archaeological Inventory Survey be taken. We  
3 know that proper planning is not the place for this.  
4 If the state has any concept of, which I think they  
5 do, of proper planning, it's in the middle of an  
6 empty, empty field. I think in making Kapolei the  
7 Second City we should build from the inside out.

8           I think this is improperly placed if this  
9 is going to be the Makana Ali'i Shopping Center. So  
10 we reject, you know, the idea of placing a shopping  
11 center in the middle -- or the ends of Kualakahi, the  
12 North South Road. So those concerns we have.

13           The other one too, Mr. Chairman, is that  
14 the whole idea -- and the public has been, really  
15 embroiled in the state, you know, coming up with land  
16 uses to garner using public lands as an economic  
17 engine. And the public resents that idea. I think  
18 it's a movement by the state.

19           Recently P-L-E-C, I mean it's been in the  
20 paper that the state is involved in taking private  
21 land or Crown Lands or ceded lands as an economic  
22 engining to go around and look for private investors  
23 and such that people with -- outside of the area  
24 people with money, they can do privatization on lands  
25 that are public.

1           So I think this is one concern that the  
2 public also has about having the state come in and in  
3 this case Hawaiian Home Lands.

4           As I understand the process with this  
5 property is that it *should* go to a commission for  
6 public review and public oversight. It hasn't. It  
7 hasn't come to the Board. I think you guys will  
8 decide.

9           You guys will amend the old 1995 through  
10 1996 that the state had classified this area as a  
11 sports complex. Because of situations that happen the  
12 money dried up.

13           And now that it has been conveyed to DHHL I  
14 think it should go through the proper route of going  
15 through the Commission, have public oversight and  
16 determine what is the proper use of that property. I  
17 don't think this is the proper venue for this  
18 particular 67 acres that the DHHL is requesting of you  
19 guys to, you know, to rezone.

20           So I think the community has a legitimate  
21 concern. And I think, as you guys as public  
22 decision-makers, you should take that into  
23 consideration the feelings of the public.

24           And I think we haven't had a proper  
25 discussion in the community as far as the Ka Makana

1 Ali'i land use is concerned. So that's mine. Thank  
2 you.

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

6 MR. ORODENKER: Georgette Stevens followed  
7 by Dr. Kioni Dudley.

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

11 THE WITNESS: I do.

12 CHAIRMAN CHOCK: Your name and address for  
13 the record.

14 THE WITNESS: Georgette Stevens. P. O. Box  
15 75-414 Kapolei 96717. Aloha, Members of the Land Use  
16 Commission. I'm here to support DeBartolo Ka Makana  
17 Ali'i Regional Center. Ka Makana Ali'i is important  
18 to the continued development of Kapolei. A regional  
19 shopping center is necessary for the movement forward  
20 in the development of this new city.

21 The hotel's plan will be a welcome addition  
22 to this island because as it is today hotel occupancy  
23 is at its peak at almost 100 percent occupancy. Plus  
24 many hotels do not even offer kama'aina rates anymore.  
25 Most importantly, the center will bring much needed

1 employment opportunities for our people.

2           Where will our keiki work after they  
3 graduate from college, many of whom will be graduating  
4 from UH West O'ahu? Now with the shopping they'll be  
5 able to have employment there. It is my understanding  
6 there are few regional malls being built across the  
7 country.

8           And to have one being built here is an  
9 opportunity we cannot afford to miss. I encourage  
10 your support of this Project and mahalo for this  
11 opportunity to share my mana'o.

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

14           MR. ORODENKER: Dr. Kioni Dudley followed  
15 by Homelani Scheidel.

16                           DR. KIONI DUDLEY  
17 being first duly sworn to tell the truth, was examined  
18 and testified as follows:

19           THE WITNESS: I do.

20           CHAIRMAN CHOCK: Name and address for the  
21 record.

22           THE WITNESS: My name is Dr. Kioni Dudley.  
23 My address is 92-1365 Hauone Street, Kapolei.

24           Mr. Chair and, Commissioners, I'm  
25 testifying this morning in opposition to A99-728. I

1 ask you to deny the Motion to Amend the Decision and  
2 Order of September 8th, 1999. As I have testified  
3 before, this Project is simply in the wrong place.  
4 I'm not the only person who says so.

5           The location has run into strong opposition  
6 from the city and county which argues that it doesn't  
7 fit the area at all. That it is completely contrary  
8 to the city plans. And if put there it will likely  
9 not succeed.

10           What is a huge Project like this, a huge  
11 mall like this, doing in the middle of the homesteads?  
12 It's huge. Ten buildings including office buildings  
13 and hotels, but surrounded -- there's nothing  
14 surrounding it but houses. Nothing to support it.  
15 And that is why everyone is saying that it is doomed  
16 to fail.

17           You don't build a complex like this in the  
18 middle of nowhere. A complex like this needs to be in  
19 a place where it can be a magnet, where it has the  
20 space to attract other buildings around it. Everyone  
21 knows that once a new McDonald's goes in, very soon  
22 afterwards there'll be a Jack 'n The Box and a Taco  
23 Bell. Why? Because competitors know that's where the  
24 people are going to be coming for food.

25           So you see soon a KFC and a Burger King and



1 soon all the fast foods will be there.

2           It's the same with the City. One building  
3 attracts another. A city forms because of  
4 convenience. That's where you go to do business.  
5 Businesses need other businesses that they depend on  
6 and work with to be close by. You need room for a  
7 city to grow around a complex like this. And it can't  
8 happen at the bottom of North/South Road. It can't  
9 happen where it's surrounded only by houses. This  
10 Project is just more unplanned ugly urban sprawl.

11           There is a place for this complex and  
12 there's a great need for it out here. The place is  
13 downtown Kapolei, the business district 3 miles down  
14 the road.

15           In downtown Kapolei there are 50 square  
16 blocks that are sitting empty. Go take a look this  
17 morning on your way back to town. It's empty. There  
18 are empty streets. There are empty blocks. Half of  
19 downtown Kapolei is just bushes with no streets  
20 whatsoever.

21           Give us our City. If the downtown business  
22 district of Kapolei were developed it could easily  
23 provide a hundred thousand jobs out here. Our people,  
24 our people need work near home. That would solve the  
25 freeway problem too. You know of our huge problem out

1 here. Each week commuters spend one whole extra day  
2 of work sitting in traffic. That's how bad it is.  
3 One whole day a week every week sitting in traffic.

4           Quality of life, family time together,  
5 leisure and health would all benefit greatly if we  
6 could build up the Second City, not this place  
7 three miles down the road.

8           With such a reduction in cars there would  
9 be no need for rapid transit, elevated rapid transit.  
10 How could we move this into downtown Kapolei? That's  
11 the question. DHHL needs to own their own property in  
12 order to collect the rents.

13           Well, downtown Kapolei -- Kapolei is the  
14 swap center of the world. We swap everything. This  
15 piece of property is coming before you because it was  
16 in a...swap. Okay? Now, I recently wrote an article  
17 in the Honolulu Weekly saying we should have Campbell  
18 Estate swap downtown Kapolei with them. Maybe it's  
19 Campbell Estate. If we take a look at downtown  
20 Kapolei -- this is the empty downtown Kapolei, by the  
21 way -- all of this line of buildings along here, those  
22 belong to the City. The City swapped -- making this  
23 road just this part of the road, for this whole piece  
24 of property. It's block after block after block,  
25 seven blocks that belong to the City.

1           Now, if we take the Project that needs to  
2 be in the City, which this will Project they're  
3 proposing, and move it into downtown Kapolei, we can  
4 build a city around it, make a hundred thousand jobs,  
5 put our people to work, get the people off the  
6 freeway. That makes sense.

7           If the City does the swap, then they will  
8 get the land that used to be a sports complex. And it  
9 could be a beautiful complex. And it could be the  
10 Project that really makes this city beautiful because  
11 we have such a wonderful sports complex down there.

12           It's all possible. And these people are  
13 not ready yet for a decision that supports them. Tell  
14 them -- deny the Project, or tell them: Go back.  
15 Look at this again.

16           See if it needs to be inside the Second  
17 City. Put it there and then come back. They won't  
18 need to come back because they can swap it and the  
19 City can build a sports complex. Thank you very much  
20 for your attention.

21           CHAIRMAN CHOCK: Parties, any questions?  
22 Commissioners? Thank you, Dr. Dudley.

23           MR. ORODENKER: Homelani Scheidel.

24                           HOMELANI SCHEIDEL  
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN CHOCK: Name and address.

4 THE WITNESS: My name is Homelani Scheidel,  
5 91-1016 Kalanimakani Street, Kapolei 96707. Good  
6 morning, members of the State Land Use Commission.  
7 Aloha. My name is Homelani Scheidel and I'm the  
8 president of the Maluohai Residents Association. In  
9 addition to the 226 homes in our homestead there's  
10 Kaupea with 326 homes and when completed Kanehili will  
11 have 400 homes.

12 Plans are underway to build a thousand plus  
13 homes in East Kapolei too. And in total we will have  
14 almost 2,000 homestead beneficiaries with an estimated  
15 population of 8,000 Native Hawaiians living in the  
16 Kapolei region within a radius of less than two miles  
17 in less than five years.

18 In the matter of the Petition of the  
19 Housing and Community Development Corporation of  
20 Hawai'i, state of Hawai'i docket A99-728 dated  
21 September 8th, 1999, proposal for reclassification  
22 item 18: The Petitioner's overall Project goals and  
23 objectives for the property included the following:  
24 Promote housing development for the people in the  
25 state of Hawai'i; create more housing, recreational

1 and support facilities in the 'Ewa Development Plan,  
2 the DP area for the residents of Hawai'i.

3 The Department of Hawaiian Home Lands,  
4 DHHL, has established itself as a developer of  
5 affordable homes not only in this region but  
6 statewide.

7 In line with the HCDC's goals DHHL is  
8 committed to developing homes for its beneficiaries  
9 and building partnerships to provide support  
10 facilities in the Kapolei/ 'Ewa regions.

11 Lease payments from Kamakani Ali'i will  
12 support DHHL's mission and goals to reduce the numbers  
13 of Native Hawaiians on their Applicant wait list.  
14 Kamakani Ali'i is not only an integral component of  
15 DHHL's plan to serve its beneficiaries statewide, it  
16 is a support facility that will increase employment  
17 opportunities and improve economic development and  
18 sustainability for all residents of Hawai'i.

19 In July I presented a report in support of  
20 this Project. And I would just like to mention, based  
21 on previous testimonies that as a beneficiary and as a  
22 leader in our homestead, I do want this Commission to  
23 know that this Project has come before the Hawaiian  
24 Homes Commissioners several times.

25 More recently it has had beneficiary

1 consultation within Kapolei at our March 2012 Hawaiian  
2 Homes Commissioners' meeting with the Kapolei  
3 homesteads.

4           So the other thing I would like to point  
5 out to Dr. Dudley is that your question about why is  
6 this Project, what is it doing in the middle of  
7 homesteads? I'm offended by your comment because this  
8 Project -- are you saying that it shouldn't be in  
9 homesteads or in the area of homesteads?

10           The concept of this Project is to provide  
11 employment opportunities not only to those in  
12 homesteads but also to those in the region. There  
13 will be 12,000 other homes that this Commission has  
14 already approved.

15           The fact that it should be in the middle of  
16 downtown, has any one of you been stuck in traffic in  
17 Kapolei on Kamakila Boulevard for two hours when it  
18 would normally take you six minutes to get home? I  
19 have. Not once, not twice, but several times. And  
20 this was before I even retired from Bank of Hawai'i  
21 whose building sits across from Zippy's.

22           So you want to put a huge complex like this  
23 in the middle of Downtown Kapolei where the  
24 infrastructure of roads cannot accommodate that kind  
25 of traffic? I'm sorry, Dr. Dudley, I don't agree with

1 you.

2 Mahalo for allowing me the opportunity to  
3 testify in support of Ka Makana Ali'i. Thank you.

4 CHAIRMAN CHOCK: Parties, any questions?  
5 Commissioners? Thank you for your testimony. Is  
6 there anyone else from the public who wishes to come  
7 forward, provide testimony on this please do so at  
8 this time. Okay. I think we're done..... Sir, come  
9 forward.

10 JOHN BOND  
11 Being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13 THE WITNESS: Yes, I do.

14 CHAIRMAN CHOCK: Your name and address.

15 THE WITNESS: My name is John Bond. I'm at  
16 1144 La'aula Street in 'Ewa Beach, 'Ewa Gentry.

17 CHAIRMAN CHOCK: Proceed.

18 THE WITNESS: Speaking as a local resident  
19 of the area there I have a background and history, I  
20 also feel that this is the wrong location for this  
21 mall because the plans are to basically, basically  
22 hugely disrupt the O'ahu Railway line which was the  
23 original one that was set up by King Kalakaua back in  
24 the 1800.

25 In addition, Verona Village will be hugely

1 affected. That's supposed to be on the National  
2 Historic Register and State Register now.

3 The OR&L is on the National Register.  
4 Their property has just been put on the State  
5 Register. Right across the Street Roosevelt Road is  
6 Marine Corps Station 'Ewa which right now is going  
7 through a battle field survey which will probably make  
8 it a national landmark, so forth.

9 So the plans that were put forth 10 years  
10 ago and city that build commons have been -- are no  
11 longer accurate. The historical analysis of the areas  
12 shows that all these roads and plans, and plans that  
13 once the shopping center put those in and the Burger  
14 Kings and everything else will not fit what is a very  
15 sensitive cultural district of 'Ewa Plantation, OR&L  
16 Railway, the Marine Corps base.

17 Then in addition the HART programmatic  
18 agreement just recently has revealed publically what  
19 we have been saying a long time which is it is a  
20 sacred Hawaiian site. It's a wahi pana. The wahi  
21 pana area has been recommended to be a historic  
22 district under the category A & B of the National  
23 Historic Register.

24 So that's another whole layer of very  
25 significant sites, just an important Hawaiian spot, it



1 is an extremely important Hawaiian spot based on the  
2 analysis of many scholars of Hawaiian history,  
3 Hawaiian culture, so forth.

4           So the reason why you have Hawaiian  
5 developments out there like Kaupea and Kanehili is  
6 because that fact that area is Kanehili. It's an  
7 ancient Hawaiian landing spot where the very first  
8 Polynesians came to Hawai'i, planted breadfruit trees,  
9 created trails, which was the 1825 mountain trails  
10 identified.

11           It has a huge history which has been sort  
12 of pushed to the side. Now it's come to the forefront  
13 again it's just the wrong place to put a shopping  
14 center/hotel.

15           And what's really, frankly, is a stealth  
16 Transit-Oriented Development plan because I think  
17 that's what's gonna happen. Next year they're going  
18 to try to pass Bill 755 again and turn this into a big  
19 TOD and tell everybody's else, "Get out of here.  
20 We're developing your property at gun point," pretty  
21 much, cause that's how they're gonna do it.

22           So just wrong. It's gonna upset a lot of  
23 people out there. It's just the wrong place to put  
24 this. The people back 10 years ago who thought about  
25 this, Belt Collins, planned all these roads and no

1 consideration at all of the historic nature of this  
2 area Verona Village, 'Ewa Villages, the OR&L, Marine  
3 Corps Station 'Ewa, Kanehili, everything that's there.  
4 It's just the wrong place for a major development.

5           So by the way, right down the road in 'Ewa  
6 Beach is a major new shopping center going in:  
7 Safeway and a bunch of other stores. There's a  
8 shopping center there. There's a big 'nother shopping  
9 center down the other side of Kapolei. So we have  
10 plenty of shopping centers.

11           So, again, I believe too that the theory  
12 that this is going to be hugely successful is wrong.  
13 It's just going to be kind of an eyesore place not  
14 quite developed correctly unless, again, they're going  
15 to try to force people at gun point to make this the  
16 final railway station stop after east Kapolei which  
17 maybe that's what the plan is.

18           That's going to be the reason for why they  
19 have to develop this thing. But it just does not fit  
20 in this area.

21           Truthfully I'd be happy to supply you folks  
22 with a lot of background that I think is not being  
23 understood or accepted. I read the EA for the  
24 shopping center. And they did some cultural surveys.  
25 But they did not anywhere near cover enough of what's

1 really out there. It was just kind of a gloss over.  
2 Unfortunately that's what a lot of what we're seeing  
3 right now.

4           Some of the projects coming in, the EA's  
5 and 106's that they're doing are just not adequate.  
6 Somebody's just ticking off a box saying, "Okay. We  
7 did that," when in fact they really didn't consult the  
8 community. And that's a big problem.

9           The community's really -- while they were  
10 so happy with Hawai'i Public Development Corporation  
11 and so forth, there's just so many things are going on  
12 here that are being shoved in their face and pushed  
13 over. We just don't like it.

14           That's really my opinion and the opinion  
15 of, I think, a lot of people out here. So thanks very  
16 much for letting me testify and ramble on.

17           CHAIRMAN CHOCK: Thank you for your  
18 testimony. Parties, any questions? Commissioners?  
19 Anyone else wishing to provide public testimony?  
20 Okay. Parties, anyone with any additional exhibits to  
21 be submitted? State?

22           MR. IHA: No, Mr. Chair.

23           CHAIRMAN CHOCK: County?

24           MR. KITAOKA: No exhibits but we plan to  
25 put on a witness to provide testimony for the

1 Commission.

2 CHAIRMAN CHOCK: OP?

3 MR. YEE: No exhibits.

4 CHAIRMAN CHOCK: Haseko?

5 MR. AUSTIN: No, nothing.

6 CHAIRMAN CHOCK: Petitioner, would you  
7 like to make your presentation at this time?

8 MR. IHA: Yes, thank you, Mr. Chair. Good  
9 morning, Mr. Chair, Members of the Commission. This  
10 is a very important Project for the Department of  
11 Hawaiian Homelands. It's going to generate  
12 significant lease revenue with which the Department  
13 will be able to help fund its mission of placing  
14 Native Hawaiian beneficiaries on Hawaiian homesteads.

15 This Project is built on state Hawaiian  
16 Homelands. It's not a PLBC project. It's coming  
17 about at this point through literally years of public  
18 meetings through the Hawaiian Homes Commission and  
19 public comment. It's been highly vetted.

20 DeBartolo and the Project were selected  
21 through a very detailed vetting process that the  
22 Commission approved. The Commission late last year  
23 considered and approved the environmental assessment  
24 for the Project and issued a finding of no significant  
25 impact.

1 I'd just like to note that the  
2 environmental assessment included an Archaeological  
3 Inventory Survey and cultural assessment.

4 As part of the AIS 62 test pits were dug on  
5 the property and not one of them uncovered any bedrock  
6 or archaeological features. Of course, if any  
7 archaeological or cultural features are uncovered,  
8 work would halt so the appropriate investigation can  
9 be done.

10 I'd also like to note that the Parties have  
11 agreed to add an additional condition into the  
12 Decision and Order to deal with the crossing of the  
13 OR&L Railroad tracks.

14 At this point there is one crossing that's  
15 been agreed to. And the DHHL will be required to  
16 consult with State Historic Preservation Division and  
17 other interested stakeholders as to the final number  
18 and location of any crossings of that railroad track.

19 To recap what we've done since we were  
20 before the Commission in July: DHHL and the Office of  
21 Planning have been working to resolve OP's concerns  
22 with the Proposed Decision and Order.

23 We've addressed those concerns. And DHHL  
24 filed a First Amended Proposed Findings of Fact,  
25 Conclusions of Law and Decision and Order this week

1 Wednesday.

2 On Thursday we filed a stipulation executed  
3 by DHHL, the Office of Planning, Haseko and HHFDC.  
4 It's a full stipulation to DHHL's First Amended  
5 Decision and Order.

6 So the only issues before us as far as the  
7 Parties are concerned are the City's objections to  
8 three of the proposed conditions of the D&O. Those  
9 are Condition 9, which deals with the Traffic Impact  
10 Analysis Report; Condition 16, which deals with the  
11 open space plan; and Condition 17, which deals with  
12 the urban design plan.

13 I'd just like to go through those three  
14 issues very quickly. I'd like to start with  
15 Conditions 16 and 17 because they are basically the  
16 same issue.

17 They involve what normally would be city  
18 approval of the Project conceptual design plans.  
19 Condition 16 of the original Decision and Order in  
20 this docket required the Petitioner to obtain city  
21 approval of an open space plan.

22 And Condition 17 requires city approval of  
23 an urban design plan.

24 These types of plans would ordinarily have  
25 to be approved through the normal course of

1 development by the city if you are a private  
2 developer. But DHHL has requested that these  
3 conditions be amended to reflect the fact that the  
4 property is Hawaiian Home Lands and not subject to  
5 city zoning.

6 Hence, the Project is not required to  
7 obtain city approval of open space or urban design  
8 plan. That's not to say that DHHL does not consider  
9 issues such as connectivity, open space to be  
10 unimportant. In fact, DHHL is going to consider all  
11 of these issues when it approves DeBartolo's design  
12 and construction plans as the Project proceeds.

13 And I think for both legal and policy  
14 reasons the condition should be amended as requested.  
15 And what it all boils down to is this: Which entity,  
16 DHHL or the city, will have the final say as to what  
17 this Project ultimately looks and feels like. For two  
18 reasons we believe that that entity should be DHHL.

19 As far as the legal reason if this were a  
20 straight reclassification the Commission would be  
21 required under HAR 15-15-50 to assess the conformity  
22 of the Project to applicable city zoning and plans,  
23 policies and guidelines. This is exactly what DHHL  
24 wants these conditions to be amended to reflect.

25 We want Conditions 16 and 17 to be amended

1 to reflect "if applicable..." In this case city  
2 review and approval is not applicable because under  
3 the Hawaiian Homes Commission Act and principles of  
4 state sovereign immunity, the Hawaiian Homes  
5 Commission, not the city, determines what the uses of  
6 Hawaiian Home Lands will be.

7 Those principles are embodied in the  
8 Hawaiian Homes Commission Act itself and in case law  
9 from the Hawai'i Supreme Court such as Kepo'o vs.  
10 Watson.

11 So to add in a requirement -- to  
12 affirmatively require DHHL to go before the city for  
13 approvals of these plans would be adding a requirement  
14 and a burden on the Project that is not supported by  
15 existing law.

16 Now, from a policy perspective it also  
17 makes sense that DHHL should be the entity to approve  
18 designs for open space and urban design concepts. And  
19 that's because directly to the south of the Project  
20 are -- the vast majority of the land directly south of  
21 the Project is subject to HCDA zoning and not city  
22 zoning.

23 As I believe we heard in public testimony  
24 most of the surrounding land around this Project is  
25 Hawaiian Homesteads which is already not subject to



1 city zoning and not subject to a city urban design  
2 plan.

3           So it makes, it makes -- it just makes  
4 sense for the Hawaiian Homes Commission to be the  
5 entity that will determine what the Project will look  
6 and feel like and the character of the use as part of  
7 the agreements with, between DeBartolo and DHHL.

8           DeBartolo is required to submit conceptual  
9 design plans as well as follow up plans for DHHL  
10 review and approval.

11           And as part of that process DHHL is going  
12 to be looking into elements of connectivity, open  
13 space, what provisions are made for pedestrian and  
14 bicycle access and so forth.

15           And DHHL also uses a number of public  
16 meetings and community consultations to inform its  
17 planners. So the process will not involve abandoning  
18 these concepts.

19           All we're asking is that the Department of  
20 Hawaiian Home Lands be the entity to approve these  
21 designs, not the city. That's not to say that DHHL  
22 won't consider the city's input.

23           DHHL finds it very valuable and we will  
24 give the city opportunities to comment on the designs,  
25 comment on the plans. But it would just not make

1 sense for the city to be the actual approving  
2 authority. This applies to both Conditions 16 and 17.

3 With respect to Condition 9 involving the  
4 Traffic Impact Analysis Report, the city didn't  
5 initially object to DHHL's motion with respect to  
6 Condition 9.

7 So what DHHL did is we kept the original  
8 Condition 9 language in the Decision and Order and  
9 added additional provisions to satisfy concerns that  
10 the Office of Planning had. And the language added in  
11 to satisfy the Office of Planning's concerns,  
12 Memorandum of Agreement between DOT and DHHL regarding  
13 contributions to regional traffic improvements.

14 Now the city is requesting that before DHHL  
15 and DOT can agree to its Memorandum of Agreement, that  
16 the city be the entity to approve the TIAR before the  
17 state and DHHL could reach an agreement between  
18 themselves.

19 Again, this is unnecessary. It's not  
20 supported by the law. And it really wouldn't add  
21 anything to the process of addressing local and  
22 regional traffic improvements.

23 And I think one of the biggest reasons is  
24 that the Project still needs to access Kapolei Parkway  
25 which is a city street. So the Project is still going

1 to need to obtain city permits and approvals to access  
2 Kapolei Parkway and to construct improvements on  
3 Kapolei Parkway. And nobody disputes that.

4 So the city will have an opportunity to  
5 raise its traffic concerns and to address any concerns  
6 that it has, including concerns with the TIAR, as part  
7 of the Project's access to Kapolei Parkway. So,  
8 again, the city's requested amendment to Condition 9  
9 is unnecessary.

10 That's all I have for now. Though I would  
11 like to reserve the right to call rebuttal witnesses  
12 if necessary after the city makes its presentation.  
13 Thank you.

14 CHAIRMAN CHOCK: Thank you, Mr. Iha.  
15 County.

16 MR. KITAOKA: At this time Department of  
17 Planning and Permitting, who I'll refer to as DPP,  
18 calls Kathy Sokugawa as a witness.

19 KATHY SOKUGAWA  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: Yes.

23 CHAIRMAN CHOCK: Name and address.

24 THE WITNESS: Kathy Sokugawa, 650 South  
25 King Street, Honolulu, Hawai'i.

1 CHAIRMAN CHOCK: Proceed.

2 DIRECT EXAMINATION

3 BY MR. KITAOKA:

4 Q What is your occupation?

5 A Planner, urban and regional planner.

6 Q How long have you been so employed?

7 A Over 30 years.

8 Q Can you acquaint the Commission briefly  
9 about your background and education in the subject  
10 matter.

11 A I attended the department of -- the School  
12 of Architecture at the University of Hawai'i and I  
13 went on to the Planning School me at UH. I've been  
14 employed in the state government and city government  
15 since the early -- late 1970s.

16 Most notably some of the work that I did  
17 was revising the comprehensive zoning code into the  
18 current land use ordinance.

19 Currently I am the division chief for the  
20 planning division which is in charge of updating all  
21 of the regional development plans and the General Plan  
22 of the county.

23 Q Could you briefly describe your duties and  
24 responsibilities in that position?

25 A Our division is about 20 people, and most

1 of them are planners. We do Community Plans as well  
2 not just the Regional Plan but the General Plan  
3 update. We also represent the City before the Land  
4 Use Commission. We process zone change. We also are  
5 doing the neighborhood Transit-Oriented Development  
6 plans.

7 MR. KITAOKA: For the Commission's benefit  
8 I'd like to like point out that the position of the  
9 Department of Planning and Permitting is outlined in  
10 two submittals. One submittal that was filed May 1st  
11 which was DPP's response to DHHL's motion. And also  
12 in a supplemental letter sent on July 2nd, 2012 which  
13 sets forth DPPs position.

14 Q With respect to conditions that Mr. Iha  
15 spoke about, one being the bikeway -- pedestrian  
16 bikeway Master Plan and Open Space Plan and the Urban  
17 Design Plan, could you explain to the Commission why  
18 you think it's important for DPP to have input on  
19 those plans?

20 A Let me just say that -- although not  
21 answering the question -- we do support splitting out  
22 the conditions for the Petition Area. I don't think  
23 we ever mentioned that. But for ease of monitoring  
24 and downstream permitting I think we are very  
25 supportive of that request.

1           When you have overlapping conditions it  
2 makes it very difficult and slows down the permitting  
3 process later on.

4           With respect to those conditions we feel  
5 very strongly, almost passionately, about our regional  
6 plans and the principles contained in our regional  
7 plans. They get implemented through the zone change  
8 process and other downstream permits for which this  
9 Project will not be coming to the county for  
10 implementation and consistency.

11           In all fairness to all other major projects  
12 in the region, we wanted to make a pitch that they  
13 should also comply with the Urban Design Plan  
14 condition that, again, even the Land Use Commission  
15 has imposed on other projects in the 'Ewa Plain.

16           Again, it's not just that we want to  
17 maintain -- it's not that we want control. It's not  
18 because we want regulation on more projects obviously.  
19 We have more than we can handle. But it's the  
20 commitment to the regional community design and how  
21 this is a neighbor, a new neighbor into the 'Ewa  
22 Plain. We want to assure that it has the right fit  
23 for what else is going on in the neighborhood.

24           Again: Compact, walkable, connected  
25 communities. We're less concerned about what happens

1 on the interior of the Project. But we are very much  
2 concerned how it interacts on its perimeter and the  
3 adjacent areas.

4           Therefore, this is a condition that we,  
5 again, has the most projects in 'Ewa including their  
6 low income mutual housing rental project which is just  
7 up the street from them, had an Urban Design Plan  
8 requirement. And they met that successfully. So  
9 again, it's an issue of fairness for us and the  
10 concern for overall community design.

11           Q        Could you explain to the Commission what  
12 are the elements of such urban design plans and the  
13 other plans covered by Condition 16?

14           A        We deal with a lot of issues. But, again,  
15 it's not the minutia of architectural façades  
16 necessarily but we want to look at the front yards,  
17 how they connect up for pedestrians, for bicyclists,  
18 do the driveway cut locations meet up with the  
19 driveway cuts across the street?

20                    Do they create a walkable neighborhood and  
21 a Project that others would walk to or bicycle to  
22 rather than take their car? And in a long-term sense  
23 we'd like the Project to look at how they're going to  
24 redevelop over time.

25                    We have a lot of experience with older

1 neighborhoods where because of previous commitments on  
2 utility locations driveway cuts, decisions made with  
3 tenants, that it forecloses really good redevelopment  
4 options for the future.

5           So we'd also like to look at whether  
6 they're planning for the next phase of the development  
7 on the property. It's not a critical thing.  
8 Obviously we want them to get their permits going  
9 faster, earlier than later. But, again, it's a  
10 consideration for long-term planning.

11           We look at open space. But, again,  
12 primarily it's how they fit in as a neighbor to other  
13 neighbors in the community.

14           Q       Okay. DHHL has made assurances that it  
15 would basically comply with BMX zoning in their  
16 buildings and they will have conformance with the 'Ewa  
17 Development Plan and other city plans.

18           Do you have any comment about those kinds  
19 of assurances and whether you're comfortable with the  
20 level of assurances that are present in the pleadings  
21 by DHHL?

22           A       As we understand -- and we are not fighting  
23 that -- the state law is very clear in exempting  
24 Department of Hawaiian Homelands from county zoning,  
25 county planning and maybe even the Decision and Order



1 of the Land Use Commission.

2 I think I'm here today on two principles.  
3 One is to advocate and remind everyone that there is a  
4 county planning process; that there is content in  
5 those plans that we believe all projects should comply  
6 with.

7 Secondly, I want to ease as much as  
8 possible downstream monitoring. After this Commission  
9 make its decision there are several more permits that  
10 the Project needs related to grading, building  
11 permits, street improvements, traffic improvements.

12 And one of the things that the county,  
13 especially, gets criticized for is how long it takes  
14 for permits to get approved. Anything we can do to  
15 make clear the requirements for getting that permit we  
16 would be supportive of.

17 And that's why we're pushing this issue  
18 that we're a little bit concerned because the language  
19 as I understand it is a little bit vague. That they  
20 will do it to the extent possible or applicable. The  
21 downstream I don't know what exactly that means from a  
22 downstream monitoring standpoint.

23 Yes, BMX4 has a certain number of uses.  
24 Yes, it has a certain height limit. But, you know,  
25 compliance with the zoning code is a lot more than

1 that. It's about signage.

2 It's about how many parking spaces, how  
3 wide the parking spaces are, what kind of landscape  
4 qualifies? It's a huge amount of regulatory standards  
5 that normally we would be plan checking.

6 And I'm not sure if the public and Hawaiian  
7 Home Lands is fully aware and how they're going to  
8 resolve that issue.

9 So, again, my concern would be: How does  
10 that slow down the permitting process or even further  
11 downstream when there's a complaint?

12 Q In reading the conditions DHHL is proposing  
13 that those that are, that pertain to the City and  
14 County of Honolulu be qualified with the phrase "if  
15 applicable". Do you think that that provides clarity  
16 as to whether it is applicable or not?

17 A Again, I'm reacting from the downstream  
18 permitting. We get nailed by everybody for taking so  
19 long on our permits. But, again, in plain language  
20 reading of that language would say: If applicable,  
21 yes. You got commercial, yes you're going to do this  
22 'cause you're commercial.

23 There's nothing really clear in the  
24 decision that says "But this is not applicable to  
25 Hawaiian Home Lands and DeBartolo Project."

1           Again, it's going to have a tendency to  
2 slow down the process because then you're going to  
3 have to have conversations all the way down to  
4 consultants, the sub-consultants, the staff of the  
5 DPP, other agencies about what "if applicable" means.

6           Q       You also heard the presentation by DHHL by  
7 Mr. Iha. Do you have any general comments in reaction  
8 to those comments?

9           A       Again, I would like to say that we've had  
10 many hours and meetings with Hawaiian Home Lands'  
11 representatives and with the developer of this  
12 particular Project.

13                   And I would hope that those conversations  
14 continue. They're extremely cordial. I think people  
15 are trying their best to accommodate the other party.  
16 But the process of consensual review is not working.

17                   And I think the only way that we can be  
18 assured that our 'Ewa plans and the principles  
19 contained in those plans and the vision, if you will,  
20 for the long term for 'Ewa as is required for all  
21 other developers, that it be -- approval of the urban  
22 design plan for this Project be required by the  
23 Department of Planning and Permitting.

24           Q       You've also stated that all major projects  
25 in the Kapolei region basically are submitting urban

1 design plans --

2 A Correct.

3 Q -- to DPP?

4 A Correct.

5 Q Could you just mention a few of them?

6 A Sure. The city of Kapolei has had one  
7 since the beginning. Tonight the American Society of  
8 Landscape Architects will be awarding the urban design  
9 plan for UH West O'ahu in their 500-acre project. And  
10 that requirement was a requirement a condition of this  
11 Land Use Commission.

12 We were given authority to approve that  
13 plan. It wasn't a quick process, but, again, it's at  
14 a level where it's winning awards.

15 Haseko, OceanPoint has an urban design plan  
16 requirement. Ko Olina has an urban design  
17 requirement. Again, almost every major project in the  
18 'Ewa Plain, including Mutual Housing's project up the  
19 street, has had an urban design plan requirement.

20 Q Do you have any other comments you'd like  
21 to make in response to Mr. Iha's presentation?

22 A Again, I understand Hawaiian Home Lands.  
23 We're not fighting the legal authority of Hawaiian  
24 Home Lands to bypass this county processes and  
25 regulations. But I think in the spirit of being a

1 good neighbor we are trying our best to implement the  
2 'Ewa Regional Plan.

3 MR. KITAOKA: I have no further questions,  
4 Mr. Chair.

5 CHAIRMAN CHOCK: Petitioners, any questions  
6 for this witness?

7 MR. IHA: No, Mr. Chair.

8 CHAIRMAN CHOCK: State?

9 MR. YEE: I just have a few for  
10 clarification.

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q What are your recommendations for revisions  
14 to the conditions, that is revisions to the proposal  
15 from DHHL?

16 A I believe they're embedded in the  
17 transmittal July 2nd from the corporation counsel. We  
18 actually proposed rewriting Conditions 16, 17.

19 Q With respect to concern about clarity, if  
20 the term "if applicable" was understood to mean "for  
21 the duration of DHHL's ownership of the land" would  
22 that at least give you some clarification? I  
23 understand you wouldn't agree. Would that at least  
24 give you clarification as to the meaning of the  
25 condition?

1           A       Yes. Again, in downstream permits we're  
2 dealing with dozens of staff level people reviewing  
3 the plans: Engineers, architects, plan checkers. And  
4 so if it clearly said "as long as it's not applicable"  
5 then I don't have to buck all of that up from the  
6 front counter.

7                   It's clear in the condition itself and  
8 they'll just know what to do with that. Again, it's  
9 not a substantive issue but it will definitely help on  
10 downstream permitting.

11          Q       I noted, for example, Mr. Kitaoka's  
12 question to you was as to whether the city wanted  
13 *input* into issues about the urban design plan and  
14 other things. Then I heard your response, which had,  
15 I think, a more substantive, broader response. I just  
16 wanted to follow up on the term "input."

17                   Is the city asking for more than just an  
18 opportunity comment, but also a right to be the  
19 decision-maker as to compliance with the urban design  
20 requirements of the city?

21          A       Let me say that we have had, again, many  
22 hours of conversation on urban design issues related  
23 to the Project based on a voluntary basis. And I  
24 would have to say although it's been extremely cordial  
25 it's not working. So we would like the ability to

1 approve the plan.

2 Q So just so we're clear. So it's not enough  
3 that the city merely have an opportunity to give  
4 comments to the Hawaiian Homes Commission. It wants  
5 to be able -- it wants to approve or not approve  
6 whether the plan actually meets the city urban design  
7 requirements.

8 A Correct.

9 Q Okay. With respect to urban design  
10 requirements I take it these involve a certain level  
11 of judgment in review? That it's not like a checklist  
12 where a certain number of parking lots, certain size.  
13 It involves a certain issue of judgment about  
14 walkability, et cetera?

15 A Correct. But in the process of doing the  
16 urban design review process we work closely with our  
17 traffic review branch on the street issues. Then it  
18 goes out for agency comments. So it's not a singular  
19 action by the department itself. But we do ask for  
20 review by others.

21 Q Okay. So it's not a completely unfettered  
22 discretion, but there's a level of judgment that's  
23 applied.

24 A Correct. And, again, it would be against  
25 the regional plan policies.

1 MR. YEE: That's all. Thank you.

2 CHAIRMAN CHOCK: Haseko, any questions for  
3 this witness?

4 MR. AUSTIN: No, not at this time.

5 VICE CHAIR CHOCK: County?

6 MR. KITAOKA: Just a couple redirect.

7 REDIRECT EXAMINATION

8 BY MR. KITAOKA:

9 Q Since I don't have a witness regarding the  
10 Traffic Impact Analysis Report, what is DPP's position  
11 on Condition No. 9 related to the Traffic Impact  
12 Analysis Report?

13 A This one is, again, mostly for clarity  
14 purposes. I understand what the state's position  
15 about the agreement versus the TIAR. For us it's  
16 coordination. Yes, the city only has jurisdiction  
17 over Kapolei Parkway.

18 But whatever happens on the state roads  
19 impacts the county roads, the local roads, so we would  
20 like it to be much for collaborative from the  
21 beginning.

22 And I believe the Land Use Commission has  
23 several times, if not all the times, agreed to TIAR  
24 conditions which are collaborative, which includes the  
25 city from the beginning.



1           I don't think that's been a problem in any  
2 of those conditions being implemented. But, again,  
3 it's to endorse collaborative planning at the very  
4 earliest stages from the beginning rather than kind of  
5 leaving it a little mysterious, a little bit not  
6 totally clear.

7           And maybe we're the second tier for sure.  
8 But again we are supportive of any kind of  
9 collaborative at the earliest possible time.

10           MR. KITAOKA: No further questions.

11           VICE CHAIR CHOCK: Commissioners, any  
12 questions for this witness? Commissioner MacDonald.

13           COMMISSIONER McDONALD: Hi, Kathy. Thank  
14 you for your testimony.

15           THE WITNESS: Hi.

16           COMMISSIONER McDONALD: You mentioned about  
17 the potential impacts to the DPP permits that the  
18 parties would need to receive such as building permit,  
19 grading permit. And I believe the grading permit  
20 falls under site development approvals.

21           THE WITNESS: Site development, yes.

22           COMMISSIONER McDONALD: So if the Project  
23 doesn't go through your urban design review, what  
24 would happen as far as the approvals required for the  
25 grading permit? I believe the grading permit needs to

1 officially be signed off by the director of DPP which  
2 the Urban Design review branch falls under.

3 THE WITNESS: No. The Urban Design  
4 branch -- well, there's an Urban Design branch in one  
5 division. There's a grading permit in another  
6 division. The Urban Design *Plan* would be under my  
7 division.

8 COMMISSIONER McDONALD: So during the site  
9 development and review do the plans get sent to your  
10 office?

11 THE WITNESS: If there is an urban design  
12 plan requirement they will send it to us for  
13 compliance with the Urban Design Plan. If there's no  
14 Urban Design Plan requirement, it will not be sent to  
15 us.

16 COMMISSIONER McDONALD: So everything will  
17 be handled under...

18 THE WITNESS: Site development.

19 COMMISSIONER McDONALD: Site development.

20 THE WITNESS: Correct.

21 COMMISSIONER McDONALD: I see.

22 THE WITNESS: It will just be a ministerial  
23 permit.

24 COMMISSIONER McDONALD: What about traffic  
25 review, the Traffic Review branch and their approvals

1 required for the site development approvals?

2 THE WITNESS: To the extent that the  
3 traffic studies, reports affect the construction or  
4 tied to a construction in the roadway, it gets  
5 coordinated with the other branches. They're all in  
6 the same division.

7 COMMISSIONER McDONALD: Right. But at that  
8 point if, if the Project is not required to get the  
9 TIAR approvals from the city, at that point would it  
10 be possible that the Traffic Review branch would  
11 request a review of the TIAR?

12 THE WITNESS: They could request one, but  
13 whether they have legal foundation to require it or  
14 stop the permit may be problematic.

15 COMMISSIONER McDONALD: Okay. Thank you.

16 CHAIRMAN CHOCK: Commissioner Heller.

17 COMMISSIONER HELLER: Yes. Just following  
18 up on that last point. With respect to Condition 9,  
19 the way it's currently proposed, can you be more  
20 specific about exactly what DPP wants that's different  
21 from the way Condition 9 is currently proposed?

22 THE WITNESS: Again, I don't have -- I  
23 don't have in front of me the latest draft of the  
24 Decision and Order. I'm just referring to our July  
25 2nd transmittal which we just inserted our name in

1 specific paragraphs in that -- in that condition.

2 COMMISSIONER HELLER: So are you asking for  
3 approval rights over the Memorandum of Understanding  
4 or over the TIAR or both?

5 MR. KITAOKA: For the Commission's benefit  
6 the submittal that was made by DPP on July 2nd asked  
7 for acceptance of the TIAR from the city as well as  
8 DOT.

9 COMMISSIONER HELLER: The TIAR as  
10 distinguished from the Memorandum of Understanding.

11 MR. KITAOKA: That's correct. Prior to the  
12 execution of the MOA.

13 COMMISSIONER HELLER: Thank you. That  
14 answers my question.

15 CHAIRMAN CHOCK: Commissioner Inouye.

16 COMMISSIONER INOUE: I'm trying to  
17 understand the process on this line of questioning.  
18 Specifically in the permit process I think I  
19 understood you to say in both the traffic Condition 9  
20 as well as 16 and 17 urban design, that if this  
21 Commission's Order is what's proposed that the City  
22 will not be able to force its input into the design,  
23 is that correct?

24 THE WITNESS: Yes.

25 COMMISSIONER INOUE: And I believe

1 Mr. Kitaoka, were you reading from the Condition 9? I  
2 don't have it in front of me, your proposal.

3 MR. KITAOKA: Yes. In fact the proposal  
4 that was sent in on July 2nd has on it DPP's proposal.  
5 It's basically with respect to Condition 16 to take,  
6 again, take out the words "if applicable" so that it  
7 *is* applicable.

8 And in Condition No. 17 DPP has proposed a  
9 new version of Condition 17 in which the DPP would  
10 have the approval and input authority for the urban  
11 design plan.

12 With respect to Condition 9, as I explained  
13 to Commissioner Heller, it's asking for the acceptance  
14 of the TIAR by the city along with DOT prior to the  
15 Memorandum of Agreement with the state.

16 COMMISSIONER INOUE: Okay. Let me take  
17 Condition 9 first. Can't that be written such that, I  
18 believe that Ms. Sokugawa testified to, that they  
19 would like to stop problems when they do have to come  
20 to you on the connection to your roadway?

21 Can it be written so that those, the  
22 Petitioner would come to a traffic --

23 MR. KITAOKA: The Traffic Review branch for  
24 Condition No. 9. And what DPP is requesting at this  
25 time is that the TIAR be submitted to DPP for its

1 approval.

2 COMMISSIONER INOUE: Yeah. Rather than  
3 it's approved but for somehow comments so that as it  
4 relates to the connection to your roadway.

5 MR. KITAOKA: Right.

6 COMMISSIONER INOUE: Not necessarily have  
7 its approval.

8 MR. KITAOKA: You're asking if DPP would be  
9 satisfied with having input or the ability to comment  
10 prior to the Memorandum of Agreement be entered into,  
11 correct?

12 COMMISSIONER INOUE: Yes. Especially in  
13 relation to the future Petition they have to come into  
14 Traffic to make sure the connection will be approved.

15 MR. KITAOKA: And I believe Ms. Sokugawa's  
16 concern in that regard is that although communications  
17 have been extensive and cordial, without approval  
18 power DPP is representing that those kinds of  
19 communications and efforts have not been proven to be  
20 successful through experience. So that's why DPP is  
21 asking for approval.

22 COMMISSIONER INOUE: Yeah. I understand.  
23 I won't belabor it further. But I'm trying to make a  
24 distinction of approving --

25 MR. KITAOKA: Sure.

1           COMMISSIONER INOUE: -- the traffic within  
2 the development and its effects on the connection.  
3 Because if they go merrily on and do their thing  
4 without your approval, then they come to you. That's  
5 the testimony I heard, you don't want to stop the  
6 process at that point.

7           So I'm trying to figure out a way to word  
8 that condition so that doesn't happen, rather than  
9 just a pure approval which could mean approval of  
10 stuff inside as well. I'll leave it up to the  
11 Parties.

12           THE WITNESS: I don't want to make it  
13 larger than maybe it seems to be. But technically as  
14 the language here is nobody approves anything on the  
15 TIAR. It's just accepted. So that's maybe a slight  
16 difference. But I want to underscore that to my  
17 knowledge joint approval or acceptance of these TIARs  
18 by DOT and DTS is a very common condition, if not at  
19 the Land Use Commission it's imposed at the county  
20 zoning process.

21           And to my knowledge it hasn't worked out  
22 where there's some fundamental disagreement. So I  
23 cannot say that the world will fall apart if you don't  
24 include us in it. But based on past -- it's a way to  
25 make it really clear that it should be a collaborative

1 process so that there is no ambiguity and that the  
2 county should be part of the process as early as  
3 possible.

4 COMMISSIONER INOUE: Okay. On the  
5 question of Condition 16 and 17, you mentioned that  
6 you have an urban plan mainly for the external  
7 portion. Again, can those conditions be worded not  
8 necessarily to approve the entire items mentioned,  
9 those Conditions 16 and 17, but for the external  
10 portions of the Project?

11 THE WITNESS: And, again, we tried to do  
12 that in a rewrite of Condition 17. We tried to  
13 itemize what things we should be covering. It isn't  
14 the whole breadth of urban design plans.

15 COMMISSIONER INOUE: That's in your  
16 proposed Condition 17? Is that what you're saying?

17 THE WITNESS: Yeah. We rewrote Condition  
18 17. We updated it, so to speak. And we tried to be  
19 clear on what element would be reviewed. It's rather  
20 lengthy.

21 COMMISSIONER INOUE: That's okay. Yeah,  
22 I'll take some time to read it later. But the other  
23 question I had was, let's see -- on the other projects  
24 where this Commission has imposed conditions where you  
25 folks approved.



1           For example, UH West O'ahu. Are they in  
2 the same condition in this case where DHHL has, I want  
3 to use the word "exemption" from urban design review?

4           THE WITNESS: The university system  
5 fortunately or unfortunately is not exempt from the  
6 county process. So they did have to abide with your  
7 condition which we administered.

8           COMMISSIONER INOUE: Do you have an  
9 example where an entity, whether it be state or city  
10 entity, or government entity, has an exemption but  
11 this Commission required more than to basically  
12 override that exemption?

13          THE WITNESS: Again, not to my knowledge  
14 unless...

15          COMMISSIONER INOUE: No examples.

16          MR. KITAOKA: If I may I could provide some  
17 clarification on that point briefly in that DPP is not  
18 contesting the exemption per se. As you will notice  
19 Conditions No. 14 and 15 the words "if applicable" DPP  
20 is not objecting to that. And 14 says "Petitioner  
21 shall apply for zoning approval." DPP is not asking  
22 for zoning approval or zoning authority over this  
23 Project.

24                 Also in Condition No. 15 it imposes a  
25 condition that the Petitioner shall comply with county

1 zoning requirements. This is not what DPP is asking  
2 for. So DPP is not asking to change Conditions 14 and  
3 15.

4 But as a planner DPP is asking for approval  
5 process of planning documents so that it would provide  
6 that necessary integration into the community that DPP  
7 wants to ensure.

8 COMMISSIONER INOUE: Thank you. I  
9 understand.

10 CHAIRMAN CHOCK: Commissioners, any further  
11 questions for this witness? Thank you, Ms. Sokugawa.  
12 Office of Planning, how much time do you need for your  
13 presentation?

14 MR. YEE: Ten to 15 minutes.

15 CHAIRMAN CHOCK: Okay. Why don't we take a  
16 brief recess and we'll come back with Office of  
17 Planning.

18 (10:15 recess was held.)

19 CHAIRMAN CHOCK: (10:30 gavel) Office of  
20 Planning, go ahead.

21 MR. YEE: Thank you. The Office of  
22 Planning would first like to express our appreciation  
23 to the Department of Hawaiian Home Lands for its  
24 cooperation and cooperative attitude in this case.

25 We particularly appreciate the fact that

1 they were willing to come before the Land Use  
2 Commission and subject itself to its conditions and  
3 the process.

4           We'd also like to thank them for being  
5 cooperative in its discussions with the Office of  
6 Planning. In the initial motion the Office of  
7 Planning reviewed, made comments and we had comments  
8 all along the way up until probably a couple days ago,  
9 when the Office of Planning finally signed off on a  
10 stipulated Decision and Order.

11           In those discussions there were a variety  
12 of changes made in reaction to the Office of  
13 Planning's concerns. And I did want to address just a  
14 few of those.

15           First, the term "if applicable" is added to  
16 a number of conditions in this case. From the Office  
17 of Planning's perspective we wanted to ensure that  
18 although we acknowledge DHHL's unique position in the  
19 state hierarchy, and pursuant to its right to control  
20 its own lands under the Hawaiian Homes Commission Act  
21 and that superseding authority over control of its  
22 lands, we wanted to make sure that the conditions,  
23 even if they thought were not applicable to them,  
24 would be applicable if the land was ever sold to  
25 another entity, to another private entity.

1           For that reason, many of the conditions  
2 continue from the prior case to this case with the  
3 addition of the clause "if applicable."

4           That term was added because of the  
5 possibility, although there is no current intention to  
6 do so, but because of the possibility that the land  
7 could always be sold to someone else.

8           And we wanted to make sure that if it was  
9 sold to someone else, then the exemptions that we're  
10 giving to DHHL because of its unique relationship,  
11 would not necessarily apply to the next body.

12           We were cognizant of many of the concerns  
13 that were expressed by the public witnesses, in  
14 particular the archaeological issues. We consult with  
15 the State Historic Preservation Division. They  
16 frankly did not identify -- or the primary issue that  
17 they identified was the impact to the railroad.

18           To be clear, the OR&L Railroad is not with  
19 the Petition Area so the impact is not from  
20 construction. Rather, the impact would be if there  
21 any connections from the roadways that would cross the  
22 railway.

23           There was an agreement with OR&L and the  
24 State Historic Preservation Division and the developer  
25 and DHHL for one crossing. We specifically included

1 Condition 28 which would require SHPD and DOT approval  
2 before any other crossings are allowed as well as  
3 control of the type of crossing and the logistics of  
4 that crossing.

5           This was important because of while we  
6 recognize that conditions may change in the future, we  
7 wanted to ensure that State Historic Preservation  
8 Division and OR&L's obviously has a significant impact  
9 on SHPD's positions, would be considered -- in fact  
10 would have to be considered as SHPD's approval would  
11 be necessary.

12           We also want to ensure that you understand  
13 that although someone had said in the EIS should be  
14 done, a final environmental assessment was completed  
15 and accepted. And the time period for that review is  
16 over as well as an AIS was done.

17           There was one party that was concerned that  
18 we were using government lands as an economic engine.  
19 I just want to be clear that as much as the state  
20 strongly supports the PLDC, this is not a PLDC issue.  
21 This is not the use of government land as an economic  
22 engine.

23           It is the use of Hawaiian Home Lands for  
24 the purpose of generating income for Native Hawaiian  
25 beneficiaries.

1           It is important to DHHL to do so because,  
2 as some of you probably do know, the time period in  
3 which DHHL is receiving their \$10 million each year  
4 will be ending in a couple years. And DHHL is  
5 expected to generate its own income.

6           This will be an important component to that  
7 plan so that it has a continuous income for future  
8 beneficiaries and future generations.

9           We wanted to note that there was concern  
10 about the location. And you will note that among the  
11 documents that you received was a market study, a  
12 market study that was, frankly, requested by the  
13 Office of Planning because we wanted to ensure there  
14 was a basis for choosing this location and that there  
15 was a reason that it would be economically feasible  
16 for this location to be used as a mall.

17           So with the addition -- and I will also  
18 note that the Traffic Impact Analysis Report, which  
19 was done in addition to the traffic evaluation  
20 performed in the environmental assessment, was done at  
21 the insistence of the Office of Planning because we  
22 wanted to ensure that you had the appropriate  
23 information to make a decision in this case.

24           So that the Office of Planning's review of  
25 this was not simply to -- was not *simply* to review and

1 approve another governmental agency's actions, but  
2 that a critical analysis of that proposal was applied.

3 To the extent that the comments from the  
4 public involved, well, "stores should not go here. It  
5 should go in this other particular location in the  
6 City of Kapolei," that type of micromanagement of  
7 economic construction is one not really done by the OP  
8 and certainly not at the LUC level which has sort of  
9 broader reviews and considerations.

10 This particular Project, the land's already  
11 been urbanized. So the decision of urbanization has  
12 already occurred. Now we're simply looking at the  
13 particular use and the impacts from that use.

14 With respect to the particular issues that  
15 were brought by the City, the Office of Planning is  
16 not taking a position on those particular conditions.  
17 We have no objection to the conditions as proposed by  
18 DHHL. But we don't necessarily take sides in the  
19 dispute between the City and DHHL on the particular  
20 conditions at issue.

21 We do note, however, that all the Parties  
22 are in agreement with the basic Motion to Amend and  
23 separation of the dockets. So the question that's  
24 facing you based on the Parties' comments and  
25 considerations is not whether or not to grant, but

1 simply the form of the Order and the particular  
2 conditions that are imposed.

3           We certainly note and appreciate DHHL's  
4 concerns that it have control over its land; that it  
5 manages its land, that it controls its land pursuant  
6 to the constitution; and as well as we appreciate the  
7 City's general concerns on planning issues and the  
8 desire for good planning by all parties in the region.

9           So we appreciate both sides and we defer to  
10 the LUC on the decision.

11           The one particular issue I wanted to raise  
12 just in case it ever came up, was that the term  
13 "acceptance" in Condition 9 is a specific term that  
14 the Department of Transportation is asking for.

15           The term "approval" is not used  
16 specifically because the Department of Transportation  
17 has said: We're looking at the TIAR to determine the  
18 impacts. We're not going to tell you that every  
19 single thing you do in that TIAR was absolutely  
20 correct and we're giving the DOT approval of this so  
21 that you can go out and say, "Well, DOT approved it."

22           And in particular in some cases, for  
23 example, there might be a city road that is impacted  
24 or a county road that's impacted that the DOT approval  
25 or the DOT acceptance would not impact.



1           So we want to make sure that that term is  
2 kept, that the term "acceptance" is kept in because  
3 it's specifically requested -- required by DOT.

4           And finally, as I said, we take no position  
5 on the condition and similarly wanted to note that if  
6 the Commission followed through on some of its  
7 questions involving comments rather than approval by  
8 the City, the Office of Planning also has no objection  
9 to that either.

10           So if you wanted to cut the baby in half,  
11 so to speak, and allow the city to provide comments to  
12 make sure the City had an item to provide comments but  
13 not approval, the Office of Planning also has no  
14 objection to that as well. Thank you very much.

15           CHAIRMAN CHOCK: Thank you. Haseko, any  
16 presentation?

17           MR. AUSTIN: No, we do not.

18           CHAIRMAN CHOCK: Petitioner, do you have  
19 any rebuttal witness that you'd like to offer?

20           MR. DVONCH: No, Mr. Chair. Although I  
21 would like to make a few rebuttal arguments.

22           CHAIRMAN CHOCK: Proceed.

23           MR. DVONCH: With respect to Condition 9,  
24 the TIAR, I believe that the existing condition -- and  
25 part of the condition that DHHL has proposed is very

1 clear. "Petitioner, its successor and assigns shall  
2 participate in the pro rata funding and construction  
3 of local and regional transportation improvements and  
4 programs necessitated by the proposed development in  
5 designs and schedules accepted and determined by the  
6 State Department of Transportation and the City and  
7 County of Honolulu."

8 In no way, shape or form can this be  
9 interpreted as excluding the DPP from the process. I  
10 think that what DPP's proposed condition does,  
11 although it's described as an acceptance of the TIAR,  
12 it really -- it really determines whether or not DHHL  
13 and DOT can ever enter into a Memorandum of Agreement.

14 It says, "Petitioner shall obtain  
15 acceptance of the Project's Traffic Impact Analysis  
16 Report from DOT and the city and county of Honolulu  
17 prior to execution of the MOA."

18 Of course, if the city and county of  
19 Honolulu does not accept the TIAR, DHHL and DOT under  
20 this language would be barred from ever entering into  
21 an MOA. Hence, the City would actually have final  
22 approval over whether or not DHHL or DOT could ever  
23 enter into an agreement.

24 So we submit that the condition proposed by  
25 DHHL is both clear and addresses the County's

1 concerns. It should remain as proposed.

2 With respect to Condition 16 the "if  
3 applicable" language, DHHL would have no objection as  
4 Mr. Yee and Ms. Sokugawa discussed. DHHL would have  
5 no objection clarifying these terms wherever "if  
6 applicable" is stated to clarify saying that so long  
7 as DHHL remains the fee owner of the property this  
8 condition shall not apply. If there are other fee  
9 owners then the condition shall apply or some kind of  
10 clarifying language to that effect.

11 With respect to DPP's proposed Condition  
12 17, what they're proposing is that before issuing any  
13 building, subdivision or grading permit the city must  
14 approve a conceptual urban design plan.

15 And not only does it inject a requirement  
16 that isn't supported by existing law with respect to  
17 the urban design plan, it would be turning what should  
18 be ministerial permits such as building permits,  
19 subdivision, grading permits, into discretionary  
20 permits. Because the threshold would be whether or  
21 not the city has approved an urban design plan. So  
22 their proposed condition is unsupported and  
23 unjustified from that perspective as well.

24 And I want to just circle back around to  
25 DHHL's control of the use of its land. The Hawaiian

1 Homes Commission Act of 1920, which predates  
2 statehood, was adopted as part of the Hawai'i State  
3 Constitution upon statehood, clearly says -- and no  
4 one's disputing this -- that the Hawaiian Homes  
5 Commission controls the uses of Hawaiian Home Lands.

6 To the extent that this Commission's rules  
7 allows conditions based on a project's conformity with  
8 applicable county zoning rules, regulations, policies,  
9 because DHHL is never subject to these requirements,  
10 there is really no legal basis to imposing an  
11 additional requirement that would all of a sudden  
12 allow the city approval process over the use of these  
13 Hawaiian Home Lands. And we would strongly object to  
14 the City's proposed conditions.

15 And I'd like to close by saying the DHHL is  
16 not forsaking any urban planning process. Quite to  
17 the contrary, DHHL has its own planning division.  
18 They've formulated through many months of public input  
19 as well as input from the City their various regional  
20 plans. They have a Kapolei Regional Plan.

21 And as this Project proceeds and the  
22 developer submits its design plans to DHHL, those  
23 plans will be vetted by DHHL's Planning Department.  
24 And it will also be vetted by members of the community  
25 through public meetings.

1           So this certainly isn't dispensing with the  
2 urban planning process. DHHL's proposed Decision and  
3 Order would simply put the ultimate responsibility for  
4 that process in the entity -- in the entity that is  
5 under the Hawai'i Constitution, the Hawaiian Homes  
6 Commission's Act, it's a responsible entity, and  
7 that's HHL. Thank you very much.

8           CHAIRMAN CHOCK: Thank you very much,  
9 Petitioner. Commissioners, do you have any questions  
10 for any of the Parties? Commissioner Inouye.

11           COMMISSIONER INOUE: I'd like to ask, I  
12 guess, the attorneys for all the Parties what your  
13 take on the Commission's power to do something like  
14 that the City would like us to do, that is to impose  
15 conditions that Petitioner is saying is within the  
16 exclusive jurisdiction of DHHL.

17           CHAIRMAN CHOCK: County, maybe we can start  
18 with you.

19           MR. KITAOKA: Of course it's County's  
20 position that the Commission *should* impose conditions  
21 that would be reasonable and prudent to assure  
22 compatibility with adjacent land uses. So it's not  
23 basically a jurisdictional issue in our view. It's an  
24 issue that the LUC is empowered to impose reasonable  
25 conditions that would ensure prudent development.

1           This is a case where DHHL is doing  
2 something that it doesn't usually do. It usually  
3 provides affordable housing or Hawaiian Homesteads.

4           It's building a shopping center. So its  
5 compatibility with adjacent land uses in this instance  
6 is important. It's important in the eyes of the City  
7 because that compatibility will affect the overall  
8 regional plan.

9           So urban design plans that are required of  
10 all developers in the area are meant to ensure  
11 consistency, connectivity and compatibility.

12           The comment that Mr. Yee made that is  
13 turning ministerial permits into discretionary,  
14 actually highlights the problem in that if, in fact,  
15 DHHL bypasses all zoning regulations and all zoning  
16 standards of the City, it will simply be going to the  
17 city for ministerial permits that would have to be  
18 granted if it meets code, which doesn't lend itself to  
19 the City having any effective say or input to ensuring  
20 compatibility and connectivity with adjacent land  
21 uses.

22           That's why we believe the LUC has the  
23 discretion to impose conditions to ensure prudent  
24 development.

25           CHAIRMAN CHOCK: I take it you have a

1 response, Mr. Iha.

2 MR. IHA: Yes, Mr. Chair. The DHHL doesn't  
3 dispute the LUC's authority. It does dispute the  
4 city's characterization of DHHL's position. The DHHL  
5 is not saying that it's not going to go through an  
6 urban planning process.

7 I believe that the City's position is  
8 premised entirely on the proposition that only the  
9 city can be the approving authority. If the City  
10 doesn't approve then the process is necessarily  
11 flawed.

12 I think you heard Ms. Sokugawa testify that  
13 collaborations were not effective. And in the city's  
14 perspective the only way to make them effective would  
15 be if the city has the approval authority over it. So  
16 I take issue with that characterization.

17 As I've stated earlier, DHHL has a process.  
18 It involves the community. In this case the  
19 surrounding community is Hawaiian Home Lands. I can't  
20 think of a better entity to make the determination as  
21 to what the Project's feel and appearance should be  
22 because the communities that surround this Project are  
23 going to be HCDA zoned or they're going to be Hawaiian  
24 Homesteads.

25 MR. YEE: I don't have a specific answer

1 for you. I guess I can only suggest the dilemma is  
2 this: On the one hand you have the Hawaiian Homes  
3 Commission Act incorporated into the state  
4 constitution which says that DHHL has control over its  
5 lands. These are clearly DHHL lands.

6 In the absence of LUC process it's clear  
7 the City cannot force DHHL to comply with its urban  
8 design requirements. So what additional authority  
9 does LUC have that the City does not to impose this  
10 requirement, as I think the question is being posed?

11 I think an argument could be made that in  
12 coming to the Commission for the Motion to Amend, DHHL  
13 is submitting itself to the standard and criteria that  
14 the LUC generally imposes upon other developers. And  
15 that you would then have to analyze the urban design  
16 approval as to whether there is an appropriate nexus  
17 to the generic criteria you have in approval for  
18 review.

19 If I could just make one small comment,  
20 which is that we expressed earlier an appreciation for  
21 DHHL's decision to come before you. And I would want  
22 to make sure no process we do now would discourage  
23 them from coming back with any other Project. Thank  
24 you.

25 CHAIRMAN CHOCK: Commissioners, any other



1 questions for the Parties? Commissioner McDonald.

2 COMMISSIONER McDONALD: Is it still the  
3 practice of DHHL to dedicate the public -- I mean  
4 their roads, infrastructure to the counties?

5 MR. DVONCH: I believe that that would be  
6 the ultimate goal. There are issues with the county  
7 accepting infrastructure dedication. I think both  
8 with respect to government agencies, and other kinds  
9 of developments that certainly would be the ultimate  
10 goal.

11 With DHHL's dedication it would be a little  
12 different because Hawaiian Home Lands can never be  
13 alienated. The Department of Hawaiian Home Lands in  
14 large part for the most part needs to retain fee  
15 ownership of its properties.

16 So dedication would be accomplished through  
17 other -- through other types of property transactions  
18 such as an easement or a license. Yes, Commissioner,  
19 I believe that would be the ultimate goal.

20 COMMISSIONER McDONALD: I think one other  
21 housekeeping item. I think Haseko may want to chime in  
22 on this. But in Condition No. 13, 13D, it states  
23 "Petitioner shall be responsible for implementing  
24 interim drainage improvements that will limit  
25 channelized runoff to 2500 cubic feet per second at

1 the property's southern boundary."

2 Based on the landslides I don't think you'd  
3 get 2500 CFS off of this property. I think this more  
4 tends to be the original petition.

5 So I think more appropriate language with  
6 regards to Condition 13 would probably be in order to  
7 benefit probably more so the county because it  
8 basically is telling me they can limit the runoff to  
9 2500, meaning they can release 2500 CFS into the  
10 drainage system, not having to detain or address the  
11 potential impacts of additional runoff from the  
12 development.

13 MR. IHA: Mr. Commissioner, one of the  
14 areas that the Office of Planning and DHHL went back  
15 and forth on, and we came to an agreement on, were  
16 Best Management Practices, low impact development  
17 methods to minimize runoff.

18 And we believe that those are sufficiently  
19 addressed as representations in the Findings of Fact.  
20 I don't have -- I'm not an engineer. I can't speak to  
21 your, to any specific amendments to this particular  
22 provision. But we have addressed drainage concerns  
23 elsewhere within the Proposed Decision and Order.

24 COMMISSIONER McDONALD: Right. I'm not  
25 questioning the intent of addressing the drainage, but

1 just that the language of this condition, I don't  
2 think is appropriate for the Project. So I think more  
3 appropriate language would -- a revision to this 2500  
4 CFS -- allowing 2500 CFS at the property's southern  
5 boundary needs to be amended. Unless the county's  
6 okay with that, with the 2500 CFS.

7 MR. KITAOKA: I also am not an engineer. I  
8 can't tell the difference between 2500 or a hundred.

9 COMMISSIONER McDONALD: Well, how about  
10 language to limit the runoff to predevelopment  
11 conditions? But, again, I'm not sure, well, I recall  
12 the county having some type of requirement. And this  
13 was probably more in line in the Haseko Development  
14 where developments could not allow one drop of water  
15 off their site. And I'm not sure that's existing.

16 MR. KITAOKA: Basically whatever water was  
17 retained on site shall be retained. And that the  
18 development wouldn't increase runoff from one  
19 region -- from one property to the other, basically.

20 I believe that was the general  
21 understanding.

22 MR. DVONCH: And if I may add. The Project  
23 is going to be required to comply with the master  
24 drainage plan or any amended master drainage plans.  
25 The City also imposes requirements related to drainage

1 as I believe part of the grading permits and other  
2 permits.

3 So I think the City's concerns would  
4 probably be addressed at that stage.

5 COMMISSIONER McDONALD: Well, personally  
6 I'd be a little more comfortable with language stating  
7 that: The development will limit the discharge at the  
8 southern boundary to pre-development conditions,"  
9 something of that sort.

10 MR. KITAOKA: That sounds reasonable to us  
11 at the city.

12 COMMISSIONER McDONALD: Rather than talking  
13 specific numbers.

14 MR. KITAOKA: Right.

15 MR. IHA: Mr. Commissioner, I hate to --  
16 I'm not an engineer. Again, I can't at this point say  
17 whether such a condition -- how, how much or whether  
18 it would adversely affect the Project. I think as a  
19 general matter the representations that have been made  
20 in the filings address drainage, address the master  
21 drainage plan and address required mitigation  
22 measures.

23 So I would presume that a successful  
24 implementation of those measures would limit runoff to  
25 an acceptable amount.

1           COMMISSIONER McDONALD: Okay. But it's not  
2 2500 CFS. I can almost guarantee you that. Just  
3 identifying a specific number is the thing that  
4 bothers me.

5           CHAIRMAN CHOCK: Mr. Iha, would you like to  
6 maybe take a 1 minute recess in place to consult with  
7 your partner?

8           MR. IHA: That would be good.

9                                 (Recess was held.)

10          CHAIRMAN CHOCK: (Gavel) All right. We're  
11 back on the record. Mr. Iha, any comments?

12          MR. IHA: Yes. Mr. Chair, I think that we  
13 can resolve this. Clearly the 2500 cubic square feet  
14 is for the entire original Petition Area, would be  
15 inappropriate for this particular parcel. I think we  
16 can resolve it by just deleting the entire first  
17 sentence of that paragraph.

18                 Because the second sentence requires that  
19 "all flows and drainage patterns across the southern  
20 boundary of Petition Area C shall remain as  
21 conceptually described in the 'Ewa Villages Drainage  
22 Master Plan.

23                 These requirements shall remain in force  
24 until long-range regional drainage improvements are in  
25 place in accordance with the approved Drainage Master

1 Plan for the Project."

2 So whatever, whatever the flows are under  
3 that particular Master Plan or any amended Master  
4 Plans would be the requirement -- would be the  
5 drainage requirement for this Project.

6 That way we wouldn't have to -- at this  
7 point DHHL would just be speculating as to what the  
8 runoff -- as to (A) what the predevelopment runoff  
9 would have been and how the drainage would be  
10 affected.

11 The environmental assessment does -- the  
12 environmental assessment does go through a study of  
13 the effective drainage of this Project. But those  
14 projected -- that projected runoff would be dealt with  
15 by the mitigation measures that the DHHL has  
16 represented in its Findings of Fact.

17 So I believe if you delete the first  
18 sentence you would leave that paragraph relying on the  
19 'Ewa Villages drainage Master Plan, which is already  
20 an approved document. And other projects are  
21 complying with it as well.

22 MR. KITAOKA: It would be the City's  
23 position basically that No. 1. Predevelopment runoff  
24 is fine with us.

25 No. 2. If the number is not desired

1 because it's not accurate, then a number as determined  
2 by the *City* would be another (audience laughter)  
3 another solution to the problem.

4 MR. YEE: The Office of Planning has no  
5 objection to, I think, either proposal. We would only  
6 note just technically if you go to predevelopment  
7 levels you probably want to eliminate the specific  
8 boundary. Because we just don't know whether they're  
9 directing runoff to the southern boundary versus to  
10 any other boundary.

11 So it's possible total runoff the property  
12 may be equal to predevelopment levels. We don't know  
13 exactly where the channelized runoff -- which  
14 direction the channelized runoff is going.

15 So if you wanted to include predevelopment  
16 levels it would be limit channelized runoff to  
17 redevelopment levels for events up to a 100-year  
18 storm. But we also have no objection to deleting the  
19 whole sentence and just leaving it for the interim  
20 drainage plans.

21 MR. KITAOKA: There is a basic policy that  
22 whatever's going, running off now not be increased.  
23 So predevelopment levels is fine with us.

24 MR. IHA: Again, I think we would object to  
25 that. The -- for an example the property is taking in

1 runoff from other areas from other developments. To  
2 an extent that intake of surface water would increase,  
3 the development itself would have some impact.

4 So I believe that would just be a lot more  
5 cleaner and more reasonable to just delete that whole  
6 entire first sentence.

7 CHAIRMAN CHOCK: Any follow up questions,  
8 Commissioner McDonald?

9 COMMISSIONER McDONALD: I'm okay with  
10 deleting the entire first sentence. I just didn't  
11 want to have something in the conditions, you know, if  
12 the fact be revised that's inaccurate and not a  
13 representation of the present Project.

14 CHAIRMAN CHOCK: Commissioners, any further  
15 questions? Commissioners, what is your pleasure on  
16 this matter?

17 COMMISSIONER HELLER: I'm sorry. I did  
18 have one other question.

19 CHAIRMAN CHOCK: Commissioner Heller.

20 COMMISSIONER HELLER: With regard to the  
21 "if applicable" language and the explanation of what  
22 that's intended to mean, I note that in most of the  
23 proposed conditions it refers to "Petitioner" and then  
24 the words "and its successors and assigns."

25 Those words "and successors and assigns"



1 are not included in paragraphs 14 and 15. Is that an  
2 intentional omission?

3 MR. IHA: It was probably an oversight.  
4 Certainly if the ownership of the property changes  
5 hands to some entity that's subject to city zoning,  
6 then DHHL, of course, wouldn't expect that that entity  
7 would be exempt.

8 COMMISSIONER HELLER: So the words  
9 "successors and assigns" immediately after  
10 "Petitioner" probably should have been included in 14  
11 and 15 as well.

12 MR. IHA: That is correct.

13 COMMISSIONER HELLER: Thank you.

14 CHAIRMAN CHOCK: Any other questions?

15 MR. KITAOKA: I might have a problem with  
16 including "successors and assigns" if they're not  
17 privy to the same exemption as DHHL. A "successor and  
18 assign" could be someone outside of DHHL. 'Cause  
19 whatever entity that succeeds to DHHL may not have the  
20 same exemption that DHHL has.

21 COMMISSIONER HELLER: My understanding was  
22 the reason for the words "if applicable" was to cover  
23 that contingency.

24 MR. KITAOKA: Right. So the clarification,  
25 I guess, that is being proposed at this time is that

1 it be specifically stated that it's not applicable to  
2 DHHL, but will be applicable to its successors that  
3 are different from DHHL.

4 MR. IHA: Mr. Commissioner, I think if we  
5 could -- I think we could just address Mr. Kitaoka's  
6 concern that wherever the D&O says "if applicable"  
7 that language would be replaced by "in the event DHHL  
8 is no longer the fee owner of the property," and I  
9 think that would suffice. I think that would make the  
10 Decision and Order very clear.

11 COMMISSIONER HELLER: Are the other Parties  
12 in agreement with that?

13 MR. KITAOKA: Except that it refers to  
14 "Petitioner shall apply". And Petitioner at this time  
15 is DHHL. Maybe further clarification is necessary?

16 COMMISSIONER HELLER: Would it be easier to  
17 just add a sentence somewhere that says, "The meaning  
18 of "if applicable" is based on whether DHHL continues  
19 to own the property?"

20 MR. KITAOKA: Perhaps.

21 MR. YEE: Commissioner, as I'm quickly  
22 going through the Project I will say there is at least  
23 one instance in the Condition 6. My recollection, and  
24 I'm struggling a little bit because I didn't look at  
25 the issue beforehand -- I'm thinking that the term "if

1 applicable" meant that there are portions of the  
2 property that are not within the LDN in that sentence.

3 COMMISSIONER HELLER: I see what you're  
4 saying. We can't just make the generic statement that  
5 the words "if applicable" always mean this.

6 MR. YEE: But as I'm going through it I  
7 think that's -- and perhaps No. 20. Condition 20  
8 might I think, it's not an issue of the owner of the  
9 fee. It's the location of the habitat conservation  
10 plan. But other than those two I think we have no  
11 objection.

12 MR. IHA: Mr. Commissioner, as I'm going  
13 through this, I think -- the conditions at issue in  
14 this discussion are 14, 15, 16, 17. So for those  
15 conditions only could we start them by saying "In the  
16 event DHHL is no longer the fee owner of the  
17 property," comma, "Petitioner's successors and assigns  
18 shall apply" -- or "Petitioner's successors and  
19 assigns shall comply." I think that would cover  
20 the -- I think that would cover the situation where  
21 DHHL's conveyed the property to somebody else.

22 MR. YEE: We have no objection.

23 MR. KITAOKA: City has no objection to  
24 that.

25 COMMISSIONER HELLER: Thank you.

1           CHAIRMAN CHOCK: Commissioners, any other  
2 questions? Commissioner Inouye.

3           COMMISSIONER INOUE: Yeah. I'm not sure  
4 I'm a very good drafter at these things. But I am  
5 still bothered by Conditions 9, 16, 17, the City's  
6 well intentions I think to speed up the process.

7           So let me just throw out something and have  
8 you guys look at it. On Condition 9. And I think I'm  
9 looking at the City's proposal in the second paragraph  
10 towards the end.

11           Putting something in there that "Petitioner  
12 shall obtain acceptance of the Project's Traffic  
13 Impact Analysis Report from the DOT and consider  
14 written comments from the city and county of Honolulu  
15 as to the TIAR's import on connection to its" whatever  
16 its roadway is called. And I wanted comments from all  
17 of you on the type of language. I'm open to a lot of  
18 language in the report.

19           MR. KITAOKA: I guess from the City's point  
20 of you view that's better than nothing. (audience  
21 laughter) So it's a compromise. The City's asking  
22 for approval. You're saying that the City shall have  
23 input and that the Petitioner shall consider the  
24 City's comments basically. And that's okay if you're  
25 not willing to go with the approval or the acceptance.

1 I shouldn't say "approval", the "acceptance"

2 MR. IHA: DHHL would be fine with that  
3 language.

4 CHAIRMAN CHOCK: OP?

5 MR. YEE: No objection.

6 CHAIRMAN CHOCK: Haseko, you okay?

7 MR. AUSTIN: Yes.

8 COMMISSIONER INOUE: Okay. Thank you. On  
9 Conditions 16 and specifically 17 I'm looking at 16  
10 for now. Something to the effect as saying in any  
11 case 'cause there's that "if applicable" language  
12 there -- in any case the City's written comments will  
13 be taken into consideration in the plan, particularly  
14 as it relates to the external portions of the Project.

15 Again, I'm not a drafter so I would  
16 entertain other language to that effect.

17 MR. KITAOKA: Since it's basically having  
18 the City have input I don't think it's important to  
19 distinguish external from internal. It would be  
20 difficult to define what "external" means. And since  
21 you're only allowing City input, I don't think that  
22 that has any consequence.

23 COMMISSIONER INOUE: So what you're saying  
24 is: Leave it alone.

25 MR. KITAOKA: No. What I'm saying is if

1 you're going to allow the City to make comments you  
2 need not make the distinction between external or  
3 internal application because the City is basically  
4 concerned with the Project's connectivity with  
5 adjacent land uses. So it wouldn't really have an  
6 interest in governing internal design except how it  
7 affects regional impacts.

8           So there's no need to distinguish between  
9 internal and external because that distinction would  
10 be difficult to define.

11           COMMISSIONER INOUE: Understood. But you  
12 would prefer the language there than not.

13           MR. KITAOKA: It's better than nothing.  
14 If, in fact, you're saying that they must consider the  
15 City's comments, City will accept that if that's where  
16 the Commission wants to go.

17           COMMISSIONER INOUE: Okay. Then as to 17  
18 I'm proposing similar type of language. So, you know,  
19 I entertain comments over language.

20           MR. KITAOKA: It depends because the City  
21 is proposing new language in Condition 17. If you're  
22 conditioning the new language and trying to temper the  
23 approval type language into comment input type  
24 language, that's fine with the City.

25           To modify the City's proposal is fine.

1           MR. IHA: We would object to modifying the  
2 city's proposal. I think 16 is not that much  
3 different. But 17 carries with it a number of, you  
4 know, triggers as you will, or milestones that could  
5 actually wind up hindering the development of the  
6 Project.

7           If you condition building permits,  
8 subdivision and grading permits, things like that, on  
9 an urban design plan. So I think if the modified  
10 language is going to be inserted it should be into the  
11 proposed language from DHHL.

12           We didn't really change that much from the  
13 original Decision and Order other than to say "if  
14 applicable".

15           I have two comments to the revision. The  
16 first is DHHL would like -- is going to consider  
17 comments from the City. So that's fine. I think the  
18 language should be clear that DHHL will consider  
19 comments, but is not required to adopt or accept the  
20 comments.

21           I believe that that should be clear. And I  
22 would like some kind of language that would require  
23 the City to submit timely comments.

24           We wouldn't want to be in a situation where  
25 the City doesn't submit comments until, you know, the

1 Project is ready to go forward, and you would have to  
2 stop to consider these written comments even if they  
3 come in late. So those would be only two comments.

4 COMMISSIONER INOUE: Would the City have  
5 any problem with putting that language into -- not  
6 your language, the City's language, but the language  
7 by the other Parties.

8 MR. KITAOKA: This is, again, at the  
9 discretion of the Commission how far it's going to go.  
10 The further away from the City's position that it  
11 should have approval, the less desirable it is for the  
12 City. But we will defer to the Commission as to its  
13 discretion.

14 COMMISSIONER INOUE: OP?

15 MR. YEE: We have no objection. Purely as  
16 an assisting on wordsmithing. If I can recall the  
17 language on the term "if applicable" I think it had to  
18 do with fee ownership that was suggested. Something  
19 like "in any case".

20 Instead of saying something like, "in any  
21 case" perhaps you might want to say "regardless of the  
22 fee ownership all timely comments submitted by the  
23 City to the Petitioner" -- or "all timely comments  
24 submitted by the City shall be considered by the  
25 Petitioner." Just sort of put a period.



1           I will say I have played with the idea of  
2 saying what the comments are about. But then thought  
3 well, maybe it's just easier not to say. And so  
4 that's my only wordsmithing comment to you.

5           COMMISSIONER INOUE: Mr. Yee, I appreciate  
6 that. The other Parties, I think you all understand  
7 what I'm trying to get at.

8           MR. KITAOKA: The City certainly  
9 understands what you're trying to get at. I guess the  
10 question is how we get there. Perhaps if we can  
11 propose language or the Commission can propose  
12 language that we can all work out I suppose it would  
13 be okay.

14           COMMISSIONER INOUE: Can you folks take  
15 five minutes and look at that? I'm just looking at  
16 the time. I don't want to prolong this too long.

17           (Recess was held in place. 11:30)

18           CHAIRMAN CHOCK: (gavel) Okay. Parties,  
19 we're back on the record. (gavel) Okay. This is  
20 what we're going to do. We're going to recess on this  
21 matter, let you folks come up with some proposed  
22 language. We're going to move to the next item on our  
23 agenda.

24           Before we adjourn for the day we're going  
25 to call you guys back up again and deliberate and take

1 that language under consideration.

2 Any questions? So we don't waste any more  
3 time kind of tryin' to wordsmith and edit on the fly  
4 here as well. We only have the room until 1:00. So  
5 we don't have very much time.

6 Parties, any questions or comments? Want  
7 to try to get this done today for you guys.

8 MR. IHA: Thank you, Mr. Chair.

9 CHAIRMAN CHOCK: Let's take a brief recess  
10 and move to the next item on the agenda.

11 (Recess)

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1 CHAIRMAN CHOCK: This is a meeting on  
2 Docket No. SP09-403 DEPARTMENT OF ENVIRONMENTAL  
3 SERVICES, CITY AND COUNTY OF HONOLULU, (O'ahu) to  
4 deliberate and discuss procedural issues and action,  
5 if necessary, on Civil No. 09-1-2719-11 regarding this  
6 Special Use Permit that encompasses the approximately  
7 107.5 acre Waimanalo Gulch Sanitary Landfill and an  
8 approximately 93-acre lateral expansion, Tax Map Key:  
9 9-2-03:72 and 73.

10 Would the Parties please identify  
11 themselves.

12 MS. VIOLA: Deputy Corporation Counsel Dana  
13 Viola on behalf of the Department of the Environmental  
14 Services, city and county of Honolulu.

15 MR. KITAOKA: Don Kitaoka, deputy  
16 corporation counsel on behalf of the Department of  
17 Planning and Permitting city and county of Honolulu.

18 MR. YEE: Bryan Yee, Deputy Attorney  
19 General on behalf of the Office of Planning. With me  
20 is Rodney Funakoshi from the Office of Planning.

21 MR. WURDEMAN: Good morning. Richard M.  
22 Wurdeman for Intervenor Colleen Hanabusa.

23 MR. CHIPCHASE: Good morning. Cal Chipchase  
24 for Intervenor the Ko Olina Community Association and  
25 Senator Maile Shimabukuro.

1           CHAIRMAN CHOCK: I believe we have a couple  
2 disclosures that the Commissioners wanted to make  
3 before proceeding. Commissioner Teves.

4           COMMISSIONER TEVES: Just wanted to  
5 disclose that my company, Commercial Electric, back in  
6 2011 did perform two small projects for the Ko Olina  
7 Community Association. Both of those projects were  
8 quite small. And I had no personal contact with  
9 anybody in the Projects. In fact I do not know anyone  
10 from Ko Olina Community Association. So I just wanted  
11 to disclosure that. I feel that I can make an  
12 impartial decision.

13           CHAIRMAN CHOCK: Commissioner Heller.

14           COMMISSIONER HELLER: Yes, thank you. I  
15 think I actually put a disclosure on the record back  
16 in the summer when we heard this matter previously,  
17 but I want to make sure.

18           I am representing the Association of  
19 Apartment Owners at Beach Villas, which is a member of  
20 the Ko Olina Community Association. I'm representing  
21 the Association in a lawsuit *against* Ko Olina  
22 Community Association.

23           So I guess it could be viewed as kind of  
24 affecting either way because I'm representing a client  
25 who is adverse to Ko Olina Community Association but

1 my client is also a *member* of the Ko Olina Community  
2 Association. Just wanted to make sure if anybody has  
3 an issue with that we can deal with it.

4 CHAIRMAN CHOCK: Parties, any concerns or  
5 objections to these disclosures?

6 MS. VIOLA: No, thank you.

7 MR. YEE: No objection from OP.

8 CHAIRMAN CHOCK: Mr. Wurdeman?

9 MR. WURDEMAN: We're not taking any  
10 position on it.

11 CHAIRMAN CHOCK: Mr. Chipchase?

12 MR. CHIPCHASE: No objection.

13 CHAIRMAN CHOCK: Thank you very much. Let  
14 me update the record and then we'll go into public  
15 testimony followed by an executive session.

16 On July 5th the Commission met, discussed  
17 and deliberated on the procedural issues arising from  
18 Civil NO. 09-1-2719-11.

19 The Applicant orally moved for an  
20 additional two weeks for the parties to file written  
21 briefs with the LUC to more fully address the  
22 procedural issues and a motion was made and carried.

23 An Order issued granting the Parties time  
24 to file their written briefs by the close of business  
25 on July 19, 2012, was served to the Parties on July

1 12, 2012.

2 OP and Schnitzer Steel were also allowed to  
3 file written briefs with the LUC by the aforementioned  
4 date.

5 On July 9th, the Commission received  
6 written correspondence from Schnitzer Steel.

7 On July 18th, the Commission received  
8 Schnitzer Steel's Position Statement.

9 On July 19th the Commissioner received:  
10 Department of Environmental Services, city and county  
11 of Honolulu's Brief in Support of the LUC Retaining  
12 Jurisdiction of the Docket No. SP09-403, Declaration  
13 of Timothy E. Steinberger, Exhibits "A" through "F".

14 Intervenor Colleen Hanabusa's Memorandum  
15 Regarding Procedural Issues Arising from Civil  
16 No.09-1-2719-11, Exhibits 1 and 2.

17 Intervenor Ko Olina Association and Maile  
18 Shimabukuro's Brief in Support of Remand with  
19 Instructions, Exhibits 1-10, K2, K15, K52, K85, K155,  
20 K208.

21 OP's Written Brief on Procedural Issues.

22 July 23rd the Commission received an  
23 Amended Certificate of Service from Intervenor Ko  
24 Olina Community Association and Maile Shimabukuro.

25 On August 29, 2012 the Commission received

1 Notice of Withdrawal and Substitution of Counsel for  
2 Intervenors Colleen Hanabusa, Ko Olina Community  
3 Association and Maile Shimabukuro.

4 Let me go over the procedures for this  
5 docket. First, I will call on those individuals  
6 desiring to provide public testimony for the  
7 Commission's consideration to identify themselves.

8 All such individuals will be called in turn  
9 to our witness box where they will be sworn in prior  
10 to their testimony.

11 Please be reminded that the Commission will  
12 not be considering the merits of the Special Use  
13 Permit No. 2008/SUP-2 petition, rather, the Commission  
14 will be considering its procedural options on remand.

15 After the completion of the Petitioner's  
16 presentation, Intervenor Hanabusa will make their  
17 presentation.

18 After the completion of Intervenor  
19 Hanabusa's presentation, Ko Olina Community  
20 Association and Maile Shimabukuro will make their  
21 presentation.

22 After the completion of Intervenor KOCA and  
23 Maile Shimabukuro's presentation, we will receive any  
24 public comments from the State Office of Planning.

25 After we receive public comments from the

1 State Office of Planning, then the Commission will  
2 conduct its deliberations.

3 I also will remind the Parties that we'll  
4 be taking short breaks from time to time. Any  
5 questions regarding our procedures for today?

6 MS. VIOLA: No questions.

7 MR. YEE: No.

8 CHAIRMAN CHOCK: Okay. We're going to go  
9 into public testimony at this time. Executive  
10 Officer.

11 MR. ORODENKER: We have Minnie Munson  
12 followed by Cynthia Rezentes.

13 CHAIRMAN CHOCK: Please come forward.

14 MR. ORODENKER: Minnie Munson? Cynthia  
15 Rezentes followed by Beverly Munson.

16 CHAIRMAN CHOCK: We're going to be limiting  
17 public testimony to three minutes.

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

21  
22 CHAIRMAN CHOCK: This is a meeting on  
23 Docket No. SP09-403 Department of Environmental  
24 Services, city and county of Honolulu to deliberate  
25 and discuss procedural issues and action if necessary



1 on Civil No. 09-1-2719-11 regarding this Special Use  
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14 I'm representing the Association in a lawsuit against  
15 Ko Olina Community Association. So I guess it could  
16 be viewed as kind of affecting either way because I'm  
17 representing a client who's adverse to Ko Olina  
18 Community Association. But my client is also a member  
19 of Ko Olina Community Association. Just wanted to  
20 make sure if anybody had an issue with that we can  
21 deal with it.

22 CHAIRMAN CHOCK: Parties, any concerns or  
23 objections to these disclosures?

24 MS. VIOLA: No, thank you.

25 MR. YEE: No objection.

1 CHAIRMAN CHOCK: Mr. Wurdeman?

2 MR. WURDEMAN: We're not taking any  
3 position on it.

4 CHAIRMAN CHOCK: Mr. Chipchase?

5 MR. CHIPCHASE: No objection.

6 CHAIRMAN CHOCK: Okay. Thank you very  
7 much. Let me update the record. And then we'll go  
8 into public testimony followed by an executive  
9 session.

10 On July 5th the Commission met, discussed  
11 and deliberated n the procedural issues arising  
12 from Civil No. 09-1-2719-11. The Applicant orally  
13 moved for an additional two weeks for the parties to  
14 file written briefs with the LUC to more fully  
15 address the procedural issues. And a motion was made  
16 and carried.

17 An order issued granting the parties time  
18 to file their written briefs by the close of business  
19 on July 19, 2012 was served to the parties on July 12,  
20 2012. OP and Schnitzer Steel were also allowed to  
21 file written briefs with the LUC by the aforementioned  
22 date.

23 On July 9th the Commission received written  
24 correspondence from Schnitzer Steel.

25 On July 18th the Commission received

1 Schnitzer Steel's Position Statement.

2 On July 19th the Commission received  
3 Department of Environmental Services, City and County  
4 Honolulu's Brief In Support of the LUC Retaining  
5 Jurisdiction of the Docket No. SP09-403, Declaration  
6 of Timothy Steinberger; Exhibits A through F.

7 Intervenor Colleen Hanabusa's Memorandum  
8 Regarding Procedural Issues Arising From Civil No.  
9 09-1-2719-11, Exhibits 1 and 2.

10 Intervenor Ko Olina Association and Maile  
11 Shimabukuro's Brief in Support of Remand with  
12 Instructions, Exhibits 1 through 10, K2, K15, K52,  
13 K85, K155, K208.

14 OP's Written Brief on Procedural Issues.

15 On July 23rd the Commission received an  
16 Amended Certificate of Service from Intervenor Ko  
17 Olina Community Association and Maile Shimabukuro.

18 On August 29, 2012 the Commission received  
19 Notice of Withdrawal and Substitution of counsel for  
20 Intervenor Colleen Hanabusa, Ko Olina community  
21 Association and Maile Shimabukuro.

22 Let me go over the procedures for this  
23 docket. First, I will call on those individuals  
24 desiring to provide public testimony for the  
25 Commission's consideration to identify themselves.

1 All such individuals will called in turn to our  
2 witness box where they will be sworn in prior to their  
3 testimony.

4 Please be reminded that the Commission will  
5 not be considering the merits of the Special Use  
6 Permit No. 2008/SUP-2 petition; rather, the Commission  
7 will be considering its procedural options on remand.

8 Petitioner will make its presentation.  
9 After the completion of Petitioner's presentation  
10 Intervenor Hanabusa will make their presentation.  
11 After completion of Intervenor Hanabusa's presentation  
12 Ko Olina Community Association and Maile Shimabukuro  
13 will make their presentation.

14 After the completion of Intervenor KOCA and  
15 Maile Shimabukuro's presentation, we will receive any  
16 public comments from the State Office of Planning.  
17 And then the Commission will its deliberations. I  
18 will also remind the Parties that we will be taking  
19 short breaks from time to time. Any questions  
20 regarding our procedures for today?

21 MS. VIOLA: No questions.

22 MR. WURDEMAN: No.

23 CHAIRMAN CHOCK: Okay. We're going to go  
24 into public testimony at this time. Executive  
25 Officer?

1 MR. ORODENKER: We have Minnie Munson  
2 followed by Cynthia Rezentes.

3 CHAIRMAN CHOCK: Please come forward.

4 MR. ORODENKER: Minnie Munson?

5 THE WITNESS: Had to leave.

6 MR. ORODENKER: Cynthia Rezentes followed  
7 by Beverly Munson.

8 CHAIRMAN CHOCK: We're going to be  
9 limiting public testimony to three minutes.

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

13 THE WITNESS: Yes, I do.

14 CHAIRMAN CHOCK: Name and address.

15 THE WITNESS: Cynthia Rezentes, 87-149  
16 Maipela Street, Waianae, 96792. Thank you very much.  
17 I'm here today to speak in favor of the Land Use  
18 Commission sending this issue back to the City and the  
19 Planning Commission.

20 Currently they have opened another case  
21 that's going on regarding some other issues upon this  
22 particular Special Use Permit. And it would probably  
23 make sense to have everything come up to the Land Use  
24 Commission at one time rather than you decide to go  
25 down one path at this point in time and then anything

1 further potentially coming back up from the Planning  
2 Commission again.

3 My specific concern is if you take this  
4 matter forward within your Commission to deliberate,  
5 the Supreme Court has essentially negated one  
6 condition, but there are other conditions that also  
7 need to be reconsidered in my mind.

8 So it makes sense to have a complete record  
9 come forward to you with everything that has been  
10 discussed over the last however many years since the  
11 original condition was set forth and your Decision and  
12 Order was put forth. So thank you.

13 CHAIRMAN CHOCK: Parties, any questions?

14 MS. VIOLA: None, thank you.

15 MR. CHIPCHASE: None.

16 CHAIRMAN CHOCK: Commissioners, any  
17 questions? Thank you for your testimony.

18 MR. ORODENKER: Beverly Munson followed by  
19 Kirk Fritz.

20 BEVERLY MUNSON  
21 being first duly sworn to tell the truth, was examined  
22 and testified as follows:

23 THE WITNESS: I do.

24 CHAIRMAN CHOCK: Your name and address,  
25 please.

1           THE WITNESS: My name is Beverly Munson.  
2 My address is 590 Farrington Highway #524, Kapolei.  
3 Thank you for allowing me to testify this morning.  
4 I've been attending these hearings since 2004 and it's  
5 unfortunate that all those eight years ago the city  
6 promised if they were given an extension they would be  
7 allowed -- they would need seven years to resolve this  
8 problem.

9           And here we are eight years later and we're  
10 no further along in the process than we were when they  
11 said they just needed seven years.

12           So it's unfortunate we have to continue  
13 this, but I think Cynthia stated it very well. So in  
14 the interest of time and brevity, I would just like  
15 to, as she has, ask that you remand this to the  
16 Planning Commission to consolidate for your decision  
17 and take advantage of many, many hours of testimony  
18 and written declarations that have already been  
19 produced that, I think, summarize the facts very well.  
20 Thank you.

21           CHAIRMAN CHOCK: Thank you. Parties, any  
22 questions?

23           MS. VIOLA: No.

24           CHAIRMAN CHOCK: Commissioners? Thank you  
25 for your testimony.



1 THE WITNESS: Thank you.

2 MR. ORODENKER: Kirk Fritz.

3 KIRK FRITZ

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

6 THE WITNESS: Yes, I do.

7 CHAIRMAN CHOCK: Name and address, please.

8 THE WITNESS: Kirk Fritz residing at  
9 91-1039 La'aulu Street, 'Ewa Beach, 96706.

10 CHAIRMAN CHOCK: Proceed.

11 THE WITNESS: I was personally here for the  
12 internal cleanup that happened from the January 2011  
13 outfall of hard waste and medical waste. And it  
14 personally affected my operations here at Ko Olina.  
15 You never want to see something like that happen in  
16 this environment.

17 Right behind our wall right here we have  
18 ancient Hawaiian grounds. And we also, of course,  
19 have a multi-use campus with residential, resort and  
20 commercial, golf course and marina, et cetera.

21 What we are asking is that the LUC to -- we  
22 are asking the LUC to remand its proceeding back to  
23 the Planning Commission so the two applications may be  
24 a consolidated decision. I feel with the long  
25 history -- I've just read through that history -- that

1 this just needs to come to an end. The City has  
2 repeatedly promised to close the landfill. And the  
3 City has repeatedly broken its promises. So I thank  
4 you for this time to testify.

5 CHAIRMAN CHOCK: Thank you for your  
6 testimony. Parties, any questions? Commissioners?  
7 Thank you for your testimony. Is there anyone else  
8 from the public wishing to provide testimony at this  
9 time? Please come forward. Aloha.

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

13 THE WITNESS: I do. Kamaki Kanahale,  
14 89-237 Kauwahi Avenue, Nanakuli. Aloha, Mr. Chairman  
15 and Members of the Commission. My names is Kamaki  
16 Kanahale, President of the Hawaiian Homestead  
17 Community Association, president of the O'ahu Council  
18 of Homestead Associations, and State Chairman of the  
19 Sovereign of the Hawaiian Homelands Assembly which  
20 makes up 30 community associations across the state of  
21 Hawai'i; the largest Native Hawaiian Homestead  
22 Community Association in the State totaling 170  
23 elected officers to those associations representing  
24 close to 53,000 Native Hawaiian Homesteaders living on  
25 the land.

1 I raise this point simply because all of us  
2 on every one of the islands have the same pilikia of  
3 the garbage dump. So it is with wholehearted support  
4 that all of our colleagues across all Hawaiian  
5 Homelands Trusts is here to support terminating our  
6 dump.

7 Mr. Chairman, I sit as Hawai'i's longest  
8 Hawaiian Homestead Community Association president  
9 statewide during a duration of 25 years from 1987 to  
10 2012.

11 I highlight this specifically because it  
12 was in that first year I composed my first testimony  
13 as president in opposition of the Waimanalo *dump*  
14 as it was referred to at that time

15 Here we are full circle, a full blooming  
16 city, a spectacular West O'ahu University Campus, an  
17 amazing Ko Olina Resort with all of the comforts and  
18 even more spectacular, a city within a city and  
19 definitely that everybody knows: Disney.

20 Point being why and whose fault is this  
21 that in the advancement of the times with computers  
22 and scientific innovations resides an archaic,  
23 obsolete, inexcusable travesty of a community blight,  
24 a garbage dump that continues to win the day.

25 So, Members of this Commission, allow me to

1 ask that you terminate the game-playing by the City  
2 that has been falling upon both you and we as  
3 community people. I'm here to ask the support not  
4 unlike that of the three previous speakers to ask that  
5 the LUC remand the proceeding back to the Planning  
6 Commission so that the two applications will be  
7 consolidated for decision.

8           This way the LUC will be able to consider  
9 all evidence presented to the Planning Commission when  
10 making this decision.

11           It is difficult for us to have come this  
12 long way. Yet we feel that if we ask the Planning  
13 Commission and the Land Use Commission to hold the  
14 City accountable by finally setting a time, a date for  
15 closure, finally history would have come full circle  
16 and will end not allowing the next generation, our  
17 opio, to have to be here 25 years from now asking for  
18 the same thing.

19           It is unfortunate. It is sad. May I  
20 remind the Land Use Commission that while the Supreme  
21 Court case was pending, the City also played games  
22 with you and applied to the Honolulu Planning  
23 Commission to eliminate the closure date and allow  
24 Waimanalo Gulch to remain open.

25           And so it begins. I'm asking that it end

1 today. And your support would be appreciated. Mahalo  
2 nui loa. Aloha.

3 CHAIRMAN CHOCK: Thank you. Parties,  
4 questions? Commissioners? Thank you for your  
5 testimony. Anyone else from the public wishing to  
6 provide public testimony?

7 MAILE SHIMABUKURO,  
8 being first duly sworn to tell the truth, was examined  
9 and testified as follows:

10 THE WITNESS: I do.

11 CHAIRMAN CHOCK: Name and address, please.

12 THE WITNESS: Maile Shimabukuro, 86-024  
13 Glenmonger Street in Waianae. I'm opposed to this  
14 application for three reasons. The first is the  
15 danger to public safety and health. The second is  
16 operational deficiencies and the landfill's long  
17 history of violations. And third is promises not  
18 kept.

19 First, going to the broken promises. This  
20 landfill was supposed to close in 1997, eight years  
21 after it began operations. In 2003 when it reached  
22 capacity.

23 In 2008 when it was promised to be closed  
24 and had been directed to be closed. In 2009 it was  
25 directed to be closed. And now 2012 when it's

1 directed to stop accepting MSW.

2 But unfortunately the Environmental  
3 Services has been breaking promises. For over a  
4 decade the communities near the landfill suffered very  
5 much for this. Going to why the landfill is harmful  
6 and unsafe.

7 I receive many complaint letters such as,  
8 similar to what you just heard before about things  
9 like odors, noise, dust, the blasting, the blight,  
10 traffic, litter flying out of the trucks, all of these  
11 things leading up to the really bad disaster in  
12 December 2010 and January 2011 that sent contaminated  
13 runoff into the community.

14 Leading up to these disasters the last year  
15 I wanted to talk about the long history of violations  
16 that the landfill has had from EPA, DOH and other  
17 agencies. There's been upwards of 20 violations,  
18 upwards of \$3 million in fines.

19 Most recently there was a failure to take  
20 gas head readings for a year from mid-2010 to August  
21 2011 where staff ended up fabricating the records of  
22 these readings.

23 Other violations included inadequate  
24 liners, failed leachate systems, halt to the gas  
25 collection system and violations concerning the cell

1 construction operation. And this brings me to cell  
2 E6.

3 This is the construction operation of the  
4 cell. Waste Management constructed cell E6 and filled  
5 it with garbage, including medical waste, before the  
6 necessary drainage infrastructure was completed.

7 Cell E6 was a contributing factor leading  
8 to the contaminated runoff disaster from the landfill  
9 that polluted the Windward Coastline last year from  
10 Kalaeloa to Wai'anae.

11 The contaminated runoff that rushed down  
12 the mountainside and into the ocean included unknown  
13 quantities of medical waste, landfill debris, leachate  
14 and sewage sludge. This includes -- the medical waste  
15 included sharps, chemotherapy waste, pathological  
16 waste including blood and urine samples.

17 What was really sad is there was no  
18 communication to the community about what happened.  
19 We only found out something was terribly wrong when  
20 this runoff showed up on the beaches.

21 It endangered the children playing on the  
22 beaches from Pokai Bay to Kalaeloa where warning signs  
23 were very slow to get posted. And what's also very  
24 troubling is the Environmental Services in an email  
25 steadfastly refused to abide by DOH demand to post

1 signs by using technical arguments against it.

2 Environmental Services also has not made  
3 reasonably diligent efforts to find alternatives to  
4 the landfill. The only reason the landfill has not  
5 closed and the City has not kept its promises is that  
6 Environmental Services have failed to make these  
7 diligent efforts.

8 In 2008 they were supposed to have  
9 identified a new landfill site. In 2009 they were  
10 given a 2-year extension. But, unfortunately,  
11 Environmental Services has only claimed they're  
12 working towards alternative technologies. They're no  
13 closer to utilizing these technologies today than they  
14 were in 2003.

15 For these reasons I feel the landfill is no  
16 longer viable. It's time for the landfill to stop  
17 accepting MSW and for Environmental Services to  
18 finally find a new site and confirm the new  
19 technologies.

20 Environmental Services must be held  
21 accountable for its promises and obligations to the  
22 community. And the application to modify should be  
23 denied. Thank you.

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



1 Thank you for your testimony. Anyone else from the  
2 public wishing to provide public testimony? Please  
3 come forward. Anyone else?

4 JOSEPH KANAI

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

7 THE WITNESS: I do.

8 CHAIRMAN CHOCK: Name and address, please.

9 THE WITNESS: Joseph Kanai 5-1027 Mo'ohela  
10 Street, Mililani, Hawai'i.

11 CHAIRMAN CHOCK: Proceed.

12 THE WITNESS: First of all, good morning  
13 Commissioners. I'm going to prepare -- or read  
14 a prepared statement. "As general manager of Resort  
15 Management Company which provides various management  
16 services on behalf of our residential and commercial  
17 owners at Ko Olina, I'm taking this opportunity to  
18 comment on the Waimanalo Gulch Sanitary Landfill.

19 "We're very concerned about its devastating  
20 impact on our community. Our property was built  
21 relying on the promised pending closure of the  
22 landfill.

23 "Unfortunately we continue to endure the  
24 adverse impacts of that operation including heavy  
25 truck traffic, noise, odors, windblown litter and

1 light abuse from the resort.

2 "This is extremely difficult for our  
3 residents, guests, and travel partners to sum up  
4 particularly when the alternatives to ship and recycle  
5 as well as the expanding capacity of H-Power exists.  
6 Moreover, we are very concerned that our outcries  
7 against repeated extensions of landfill operations  
8 over the last 15 years continue to fall on deaf ears.

9 "The State Department of Health continues  
10 to express concerns about leachate, asbestos, grade  
11 stability and methane gas production. There's little  
12 explanation of how violations of both federal and  
13 state laws in the operation of the landfill will be  
14 prevented.

15 "How can we be assured that such violations  
16 will not continue? Enduring the adverse impacts of  
17 the landfill as well as health concerns any longer is  
18 not acceptable to us. We implore you to do what is  
19 right and shut it down permanently."

20 So I guess the bottom statement is we are  
21 asking the LUC to remand its proceeding back to the  
22 Planning Commission so that the two applications may  
23 be consolidated for decision. Thank you for this  
24 opportunity to comment on this very serious matter.

25 CHAIRMAN CHOCK: Parties, any questions?

1 Commissioners? Thank you for your testimony. I  
2 believe that concludes public testimony. Before we  
3 take a motion to go into executive session, I want to  
4 let the Parties know I want to, when we come back and  
5 reconvene, give you all not more than 10 minutes to  
6 present your case.

7 Then I'd like to deliberate and vote on  
8 this matter today. We only have the room until 1  
9 o'clock. So we need to be as efficient and brief as  
10 possible.

11 Do we have a motion?

12 COMMISSIONER BIGA: So moved.

13 COMMISSIONER INOUE: Second.

14 CHAIRMAN CHOCK: Any opposed? We're in  
15 executive session. (11:50 recess) We just have  
16 received word that we have the room until 2:00. So I  
17 apologize for the lengthy executive session.  
18 Petitioner, are you ready to proceed?

19 MS. VIOLA: Yes.

20 CHAIRMAN CHOCK: Go ahead.

21 MS. VIOLA: First of all, the City would  
22 object to certain representations made in the  
23 testimony and certain representations made by the  
24 Parties in the papers. But at this point in time I  
25 will not be addressing those objections 'cause I want

1 to -- and will not be addressing the merits of this  
2 matter, the underlying matter. I will limit my  
3 comments to what is at issue presently which is the  
4 procedural issues. But I want to put the case into  
5 perspective.

6 So what we have here is essentially back in  
7 2009 the Planning Commission granted the Special Use  
8 Permit to the City to use the Waimanalo Gulch Sanitary  
9 Landfill as a landfill for MSW and ash until it  
10 reaches capacity.

11 And the LUC subsequent to that decision  
12 agreed with the Planning Commission. They adopted all  
13 of the Findings by the Planning Commission and in  
14 support of the approval of the SUP. But they modified  
15 the deadline. They specified a deadline for the  
16 receipt of MSW for July 31st, 2012.

17 Now, because the city, as it has repeated  
18 through the previous proceeding and has repeated in  
19 the present proceeding, we explained that the City and  
20 county of Honolulu and the State of Hawai'i, we need a  
21 landfill. We need a landfill because there's still  
22 waste that cannot be otherwise disposed.

23 So the City had to appeal the deadline.  
24 And the City appealed only the deadline. That's what  
25 went up to the Supreme Court. But there was no

1 assurance that the Supreme Court would render a  
2 decision before the deadline.

3           There was also no assurance that the  
4 Supreme Court would render a decision in favor of the  
5 City by the deadline.

6           So the City felt compelled -- this is the  
7 reason. The City is not -- did not go to the Planning  
8 Commission to play fast and loose with the rules. The  
9 City had an obligation to manage the waste and  
10 therefore they had to address the deadline.

11           Because if the deadline wasn't adjusted,  
12 then the City would be facing a potential public  
13 health hazard which would be waste with nowhere to go,  
14 if the landfill was essentially closed to MSW by July  
15 31st, 2012.

16           But before the conclusion of the Planning  
17 Commission proceeding the Supreme Court rendered a  
18 decision. And the Supreme Court agreed with the City  
19 and stated that the deadline was unfounded. The  
20 deadline was unreasonable, not workable based on the  
21 facts that the Land Use Commission had adopted.

22           But what the Supreme Court also did in that  
23 context is the Supreme Court determined that it  
24 couldn't determine, essentially, that the deadline or  
25 the striking of the deadline was material to the

1 decision on the SUP.

2 That's the decision that the Land Use  
3 Commission is facing now. That was the issue on  
4 remand. The issue on remand is whether or not the  
5 Land Use Commission would have made the decision to  
6 approve the SUP without the deadline.

7 The Intervenors, I think, would have you --  
8 would be misleading you in saying that what is before  
9 the Land Use Commission could be the entire SUP.  
10 That's not what the Supreme Court did.

11 The Supreme Court was only faced with one  
12 issue. And that was the deadline, the validity of the  
13 deadline.

14 They ruled on the validity of the deadline  
15 by striking it and saying that it was unreasonable.  
16 Then they remanded the issue because they could not  
17 determine, based on the facts of the case, whether or  
18 not that deadline was material to the granting of the  
19 SUP.

20 That's what's at issue here today, not the  
21 underlying proceeding, not everything else in relation  
22 to the SUP because that's not before the Supreme  
23 Court.

24 Now, the Supreme Court also added, though,  
25 a footnote which essentially encouraged the Land Use

1 Commission to consider the facts in the 2011  
2 proceeding.

3           Why the Supreme Court did this when they're  
4 limiting the issue on remand, I'm not perfectly sure  
5 on that.

6           I'm not at all clear why they would do  
7 that. I would assume, though -- but I could  
8 definitely state that the Supreme Court was not  
9 directing the Land Use Commission to reopen the case  
10 and consider everything in the 2011 proceeding.

11           If that was the intent of the Supreme Court  
12 it would have been stated in the decision. It  
13 wouldn't have been in a footnote. It wouldn't have  
14 been quote, unquote "encouragement."

15           I think that the Intervenors are misleading  
16 or trying to bring in facts essentially, again, facts  
17 that the City wouldn't necessarily agree with. That  
18 to paint the picture of the City as the villain as  
19 using -- wanting to use the landfill indiscriminately,  
20 wanting to dump everything into the landfill.

21           That simply is not the case. And the facts  
22 of the underlying case in 2009 as well as the facts in  
23 2011 prove that.

24           And the 2011 proceedings doesn't have to be  
25 disregarded. As I've indicated in my papers, the 2011

1 proceeding has already been transmitted to the Land  
2 Use Commission. And the Land Use Commission can read  
3 the entire record. They can consider everything in  
4 the record akin to how they consider all public  
5 testimony.

6           The Land Use Commission is not -- also  
7 would not have the jurisdiction to direct the Planning  
8 Commission to take any action because -- in the 2011  
9 proceeding because that proceeding -- is not before  
10 the Land Use Commission.

11           So the Planning Commission has already  
12 essentially taken a position on this and communicated  
13 that position to the Land Use Commission in the sense  
14 that they stated that the Land Use Commission  
15 presently has the ability to make the decision on  
16 remand pursuant to the Supreme Court decision.

17           They have because the issue is the  
18 deadline, because the issue is whether or not the  
19 deadline was material to the granting of the SUP in  
20 the first place.

21           So the City would argue that the Land Use  
22 Commission should retain this matter and decide it on  
23 the present case. And that any concerns regarding  
24 judicial efficiency is really essentially a non-issue  
25 because once the Land Use Commission makes a decision



1 on this issue the Planning Commission will either  
2 dismiss the case or, as they've indicated in their, I  
3 think very clearly in their communication.

4 Because they've communicated this is the  
5 Land Use Commission's jurisdiction, the Land Use  
6 Commission's decision, Land Use Commission's  
7 condition. And also because -- but if the Planning  
8 Commission doesn't take that action that the City has  
9 already represented that they would unilaterally  
10 withdraw that Petition.

11 So there is no -- there's no chance of  
12 there being duplicative proceedings or the City trying  
13 to manipulate this decision process.

14 And on that basis the City would request  
15 that the Land Use Commission decide this matter  
16 expeditiously by keeping the matter and that they rely  
17 on the 2009 record as well as the 2011 record from the  
18 essentially Planning Commission case as public  
19 testimony. Thank you.

20 CHAIRMAN CHOCK: Thank you. OP.

21 MR. YEE: The Office of Planning only looks  
22 at this as a procedural issue. It's not looking at  
23 the substantive issues.

24 Our recommendation is that you either  
25 remand this matter back to the Planning Commission for

1 the purpose of allowing consolidation with the Special  
2 Use Permit proceeding currently before the Planning  
3 Commission, or to stay this matter before the LUC for  
4 the purpose of allowing the Planning Commission to  
5 complete its proceeding and a possible consolidation  
6 fo the two matters before the LUC.

7           Basically as we see it there are two  
8 pending cases. Both involve the same permit for the  
9 same landfill. If the Planning Commission dismisses  
10 their case, then it's completed. And you can move  
11 forward with this.

12           If the Planning Commission grants an  
13 amendment to the SUP they can then forward this matter  
14 up to you. You can consolidate. But the bottom line  
15 for us is that we don't want to -- we want to avoid  
16 the possibility of consecutive decisions for the same  
17 permit for which they have in common the question of  
18 the deadline.

19           Whether which of the two we have no  
20 preference. It's equally efficient for the Office of  
21 Planning, the LUC in either way.

22           While I suppose we would have been  
23 interested to know if the Planning Commission had a  
24 position on this, either of those two alternatives is  
25 acceptable to the Office of Planning. Thank you.

1                   CHAIRMAN CHOCK: Thank you. Intervenor  
2 Hanabusa?

3                   MR. WURDEMAN: Thank you, Mr. Chair. I've  
4 already submitted my written position. I would like  
5 to make a few comments on some of the issues raised by  
6 the City in its oral presentation. They have quite an  
7 interesting construction of what the Supreme Court  
8 said.

9                   First of all, I don't believe the Supreme  
10 Court agreed with the City as the issue or the way  
11 that was characterized by the City attorney. I think  
12 more appropriately what the Supreme Court did was it  
13 agreed with the Land Use Commission based on this  
14 Commission's counsel's arguments before that body in  
15 which -- and I was present there in the argument and I  
16 also argued on behalf of Intervenor. But it was  
17 basically to remand to fix up the record.

18                   Because as this Commission knows what it  
19 did in 2009 was essentially adopt or simply adopted  
20 the Findings and Conclusions of the Planning  
21 Commission and then it added further conditions as  
22 part of the approval.

23                   So what this body through its counsel  
24 argued before the Supreme Court was give us another  
25 opportunity to get the record clear, clearer. And I

1 think that's what's presently before this Land Use  
2 Commission, is how do we adequately support the  
3 decision that this Commission's already made back in  
4 2009?

5           Given the time that's gone by, the July 31,  
6 2012 deadline has now since passed and that was the  
7 basis of the appeal and what's before us.

8           So what the issue was back in -- and it was  
9 eloquently stated by some of those who provided public  
10 testimony earlier today, Mr. Kanahale and  
11 Ms. Shimabukuro in particular, they talked about all  
12 the promises that have been made over the years,  
13 including the promise in 2003 that this was going to  
14 be the last time the City asked for a Special Use  
15 Permit to operate the Waimanalo Gulch Landfill.

16           And they assured all, this Commission  
17 included, that in 5 years "we're gonna close it".

18           What happened was they then reneged on  
19 their promises to this Commission, the Planning  
20 Commission, the community. And they then asked for an  
21 extension. Planning Commission gave them two years.  
22 That was shortened subsequently by this Commission.

23           And in 2009 as those Members of the  
24 Commission were still sitting on this board who were  
25 present then, there was a great concern by the

1 Commission during that process that these promises  
2 have been made; that the City hasn't been acting the  
3 way it should be. And it imposed the deadline that it  
4 did.

5           Interestingly, one of the other conditions  
6 that this Commission had imposed was by November 2010  
7 the City would have exercised reasonable diligence in  
8 identifying and developing landfill sites.

9           Two years has gone by. Other than one very  
10 feeble effort of throwing out a list of proposed sites  
11 that interestingly was then changed, I don't know,  
12 within a week, because they said they had made some  
13 kinds of miscalculations. Seemingly that's about all  
14 the City has done in three years.

15           So they're not living up to the intent.  
16 They're not living up to the conditions that this  
17 Commission put on it to put the City's feet to the  
18 fire. They're stagnant again. They're taking  
19 advantage of the community. They're taking advantage  
20 of this Commission. The City thinks they can just  
21 stay there forever despite what conditions are imposed  
22 on 'em. That obviously was not the position of this  
23 Commission. I think what can be done is the  
24 Commission can just deny the Petition at this point.

25           The burden's on the city. It's a

1 non-conforming use to be operating a landfill at  
2 Waimanalo Gulch. The City has not shown any good  
3 faith to date. And our position would be that this  
4 Commission could, if it articulated with Findings  
5 including the promises that were back in 2003, that it  
6 could shut down this landfill. Or deny the Petition.

7           Currently it is our position that the City  
8 is operating the landfill illegally anyway because  
9 there's not a formal approval by this Commission. The  
10 Supreme Court was not unclear about Condition 14. The  
11 Supreme Court was very clear that it appeared to them  
12 that that was a material condition of the approval.  
13 And as such there needed to be sufficient evidence to  
14 support that.

15           So it's clear that that's been the Land Use  
16 Commission's intent to hold the City's feet to the  
17 fire. That was what essentially was argued before the  
18 Supreme Court and this Commission's request to remand  
19 to clear up the situation.

20           Intervenor Hanabusa does not believe a  
21 remand is necessary at this point. That this  
22 landfill -- that the Petition can be denied because  
23 anything short of that the City will never take anyone  
24 seriously in moving this landfill.

25           In the alternative I think the Office of

1 Planning raised an interesting scenario that I think  
2 can essentially be consistent with their argument.  
3 But if they -- if the Commission stayed these  
4 proceedings, remanded back the modification  
5 proceedings that the Planning Commission has sent up  
6 without making a decision on and then consolidating it  
7 later back up to the Land Use Commission, that's an  
8 alternative I think.

9 But our position, and what we're  
10 respectfully requesting this Commission now to just  
11 simply deny the Petition.

12 VICE CHAIR CHOCK: Thank you. Intervenor  
13 Ko Olina Community Association and Maile Shimabukuro.

14 MR. CHIPCHASE: Thank you. The question  
15 before you today really comes down to one basic fact  
16 and then four points related to that fact. I'll get  
17 to those in a second.

18 I have to digress from that structure to  
19 talk a little bit about the Hawai'i Supreme Court  
20 opinion because the City is playing fast and loose  
21 with what the Court did.

22 The City, and I wrote it down, wrote, "The  
23 court not -- " said, "the Court could not determine  
24 whether Condition 14 was material and so issued a  
25 limited remand." That's not at all what the Hawai'i

1 Supreme Court did. You don't have to take my word for  
2 that.

3           This is from section C of the brief. It's  
4 on Page 17 and 18 of the Opinion rather, section C  
5 quote, "Having held that Condition 14 cannot stand  
6 because it is inconsistent with the evidence shown in  
7 the record and not supported by substantial evidence,  
8 the LUC's approval of SUP-2 also cannot stand because  
9 Condition 14 was a material condition to the LUC's  
10 approval."

11           That's what the Hawai'i Supreme Court said.  
12 It already determined you in issuing that approval  
13 made Condition 14 material to your approval. Because  
14 Condition 14 couldn't stand, the whole SUP couldn't  
15 stand. The court vacated the SUP. There is no SUP  
16 for the landfill right now. And remanded to you for  
17 further proceedings. It wasn't a limited remand.

18           This is from Page 19 of the same opinion,  
19 in section 5 the conclusion quote, "We vacate the  
20 circuit court's judgment affirming the LUC's approval  
21 of SUP-2 and remand this matter to the circuit court  
22 with instructions that the circuit court remand this  
23 matter to the LUC for further proceedings consistent  
24 with this opinion."

25           No limitation on the kinds of evidence



1 you're to take in or on the scope of your  
2 decision-making. We'll get to the footnote that  
3 Counsel mentioned in a moment. Let me go back to  
4 where I started. Let me go back to the basic fact and  
5 four points.

6           The basic fact is that there are currently  
7 two records involving exactly the same issues, exactly  
8 the same landfill, almost exactly the same Parties.  
9 One is the record you have now. That's the record  
10 from the 2008 proceeding on the City's application for  
11 a SUP. The other is the record that the Planning  
12 Commission has. That's the record on the City's  
13 application to amend that SUP. That is not an  
14 incomplete record. That's not an ongoing record.

15           Evidence was closed. The Parties submitted  
16 closing arguments or performed closing arguments.  
17 They submitted Findings and Conclusions. They  
18 responded to each other's Findings and Conclusions.  
19 It is a complete record and it's sitting there with  
20 the Planning Commission.

21           That brings me to my four points. The  
22 first begins by acknowledging that the LUC wants to  
23 get this right. You want to make the right decision.  
24 But the second point, to make the right decision  
25 you'll need all the facts. Mistakes happen when you

1 make decisions based on incomplete information.

2           My third point. You don't have all the  
3 facts. You do not have the benefit as evidence, not  
4 as public testimony, but as evidence taken under oath,  
5 witnesses subjected to cross-examination. You do not  
6 have that record as evidence from the 2011 application  
7 to amend the SUP. The Planning Commission has that.

8           My fourth point. The only way to get that  
9 evidence to have all the facts, the compete record  
10 that's been developed, it's 5 months of hearings  
11 before the Planning Commission, is to remand with  
12 instructions to consolidate.

13           Issue a single decision based on the  
14 consolidated proceeding and transmit the entire record  
15 to the LUC for review and decision. That's all we're  
16 asking for. Have all the facts.

17           The City, on the other hand, is asking the  
18 LUC to proceed with incomplete information. The city  
19 is afraid of the record before the Planning  
20 Commission. Does not want you to consider it. That  
21 makes no sense. It's a formula for error. And it's  
22 inconsistent with the Supreme Court's decision.

23           As I said the 2008 application was approved  
24 with Condition 14. The City appealed Condition 14.  
25 That condition was struck down, but remember the court

1 didn't stop there.

2           As we've heard in the opinion from the  
3 Hawai'i Supreme Court, it determined that the  
4 condition 14 was material, that the entire SUP had to  
5 be invalidated and therefore a remand to the LUC for  
6 further proceedings was necessary.

7           Far from limiting the scope of the evidence  
8 that the LUC was to consider on remand, the Hawai'i  
9 Supreme Court took the extraordinary step of adding  
10 footnote 16. I'll read the footnote to you. It's  
11 Page 19 of the Opinion.

12           Quote, "We have been informed in pleadings  
13 filed by the LUC that on June 28, 2011 the City filed  
14 a request for modification of Condition 14 with the  
15 Planning Commission and that a contested case hearing  
16 is ongoing in that proceeding. On remand we encourage  
17 the LUC to consider any new testimony developed before  
18 the Planning Commission."

19           The court wants you to have all the facts.  
20 In response to that encouragement by the Hawai'i  
21 Supreme Court the LUC was prepared to get all the  
22 facts. Former Chairperson Lezy, after this body so  
23 moved, sent a letter to the Planning Commission  
24 advising it that if they stayed, the LUC would remand  
25 the Planning Commission so that those proceedings

1 could be consolidated. That is consistent with the  
2 Supreme Court's decision.

3 At that point the Planning Commission took  
4 a wrong turn. Instead of waiting for that remand to  
5 happen the Planning Commission merely transmitted its  
6 record to you.

7 I don't know if the Planning Commission was  
8 trying to save time, thought it was more efficient,  
9 thought you could consolidate the two proceedings, but  
10 procedurally that's not how it works. The Planning  
11 Commission does not transmit records, can't transmit  
12 records until it makes a decision.

13 On an SUP like this the Planning Commission  
14 was charged with gathering the evidence. Once the  
15 evidence is gathered and it enters Findings and  
16 Conclusions, all of that comes to you. But until it  
17 takes those steps, gathering the evidence and enter  
18 the decision, the record does not come to you for  
19 review and decision.

20 It's not too late to correct the wrong  
21 turn. Put us back on the right track. You can remand  
22 to the Planning Commission pursuant to HAR 15-15-96A.  
23 Under this section you have the power to remand any  
24 proceeding to the Planning Commission for further  
25 proceedings.

1           It's not up to the Planning Commission  
2 whether to accept the remand from you. The rule  
3 authorizes the LUC to make the remand. The Planning  
4 Commission has to accept it.

5           With the power to remand comes the power to  
6 direct how the remand goes. You can direct the  
7 Planning Commission, as OP has observed, to do the  
8 most efficient thing which is consolidate the two  
9 proceedings for a single decision that you then  
10 review.

11           This is consistent with the Hawai'i Supreme  
12 Court's decision, as I said. It's consistent with  
13 your brief to the Hawai'i Supreme Court in which you  
14 mentioned the ongoing contested case proceeding.

15           You obviously recognized that the ongoing  
16 contested case proceeding was relevant, was related  
17 and it was important that those facts be brought to  
18 the attention of the Hawai'i Supreme Court.

19           The Court agreed and said it wants you to  
20 consider those things. Chairman Lezy's letter  
21 reflects that. We're going to consider all the facts.  
22 Remand and consolidate. That's why he wrote the  
23 letter. And that's what we should do now.

24           The City would have you make a decision.  
25 The City says you have enough information to rule.

1 But there's a difference between making a ruling and  
2 making the right ruling. And you cannot make the  
3 right ruling unless you have all the facts.

4 CHAIRMAN CHOCK: One minute.

5 MR. CHIPCHASE: You don't have them today.  
6 And I will wrap up in less than one minute. A brief  
7 comment on the OP's alternative that you stay and  
8 allow the Planning Commission to enter a decision.

9 You heard today that the City will simply  
10 dismiss its application if there's not a remand for  
11 consolidation. The City does not like that record.  
12 The city does not want you to have that record. They  
13 can't have the opportunity to short circuit the  
14 process to cut out all the work that the Parties have  
15 done, all the testimony, by dismissing that case.

16 The only course, the only way to get all  
17 the facts is to remand this proceeding for  
18 consolidation. Thank you.

19 CHAIRMAN CHOCK: Thank you. Petitioner.

20 MS. VIOLA: First of all, you do have the  
21 record. The City is not trying to hide anything. You  
22 have the entire record of the proceedings in the 2011  
23 case. By stating that you don't have complete  
24 information that's false. You have the complete  
25 record.

1           Second of all, the City is not afraid of  
2 those facts. The City would assert that you have in  
3 front of you that they would essentially bolster the  
4 argument the City made in the 2009 proceeding.

5           Thirdly, the Planning Commission was really  
6 clear as to why they sent you the record.  
7 Specifically they said the Planning Commission --  
8 there's no necessity to remand the record of the AP's  
9 current application.

10           This is because the Planning Commission  
11 already made its decision based on the records in the  
12 file of the 2009 proceedings in the form of the  
13 Planning Commission's order and previously transmitted  
14 those records including that decision to the LUC on  
15 August 10, 2009.

16           There's no request to modify the Planning  
17 Commission's order and it remains unchanged. There's  
18 nothing prohibiting the Planning Commission from  
19 forwarding that record to you in the form of public  
20 testimony so you can consider it. There's a broad  
21 basis for accepting public testimony in these  
22 proceedings. There's nothing precluding the Planning  
23 Commission from likewise sending you the record for  
24 your consideration.

25           Lastly, in terms of the Supreme Court

1 decision. On Page 35 the conclusion to their  
2 decision, the Supreme Court states, and I quote, "In  
3 the present case the relevant question is whether the  
4 LUC would have reached the same conclusion approving  
5 the SUP without its imposition of Condition 14. Based  
6 on the record you cannot so conclude."

7 So the issue is whether or not the Planning  
8 Commission would have granted the SUP but for the  
9 imposition of that deadline. Supreme Court states  
10 that unequivocally on Page 35 of the decision.

11 And that's the basis for remand. They do  
12 not leave it open for reconsideration of the entire  
13 SUP. That's not the jurisdiction of the Supreme  
14 Court.

15 The Supreme Court stated in the opinion the  
16 only thing they were considering was the deadline.  
17 It's very clear that if they're only considering one  
18 issue that they remanded, the remand was based on the  
19 consideration and their rejection of that deadline.  
20 Thank you.

21 CHAIRMAN CHOCK: Thank you, Petitioner.  
22 Commissioners, what is your pleasure on this matter?  
23 Commissioner McDonald.

24 COMMISSIONER McDONALD: With regard to  
25 SP09-403 Department of Environmental Services, city



1 and county of Honolulu, I move to remand the 2008  
2 application to the Planning Commission for  
3 consolidation with the 2011 application for the  
4 purpose of providing this Commission the Findings of  
5 Facts, Conclusions of Law and Decision and Order as a  
6 consolidated case.

7 CHAIRMAN CHOCK: Is there a second?

8 COMMISSIONER HELLER: Second.

9 CHAIRMAN CHOCK: Seconded by Commissioner  
10 Heller. Discussion? Commissioner Heller.

11 COMMISSIONER HELLER: Yes. I think the  
12 problem here is that we've got two cases with two  
13 records going on at the same time. I'm, frankly, not  
14 sure what the best way is to resolve that and get it  
15 combined into one case and one place with one record.

16 But it seems to me that remanding and  
17 hoping that the Planning Commission will then  
18 consolidate the cases is at least a reasonable  
19 approach. I don't see a better one.

20 So recognizing that we're in kind of  
21 procedurally uncharted waters to some extent I think  
22 the best thing we can do right now is remand to the  
23 Planning Commission, ask them to put the whole package  
24 together in one package with a decision. And then we  
25 can take their decision and do whatever we need to do

1 with it.

2 CHAIRMAN CHOCK: Commissioner Inouye.

3 COMMISSIONER INOUE: Yes, thank you,  
4 Chair. This is a tough one for me anyway. I don't  
5 like to tell another agency what to do. So I have a  
6 difficulty telling you to do something. However, the  
7 alternative is to stay it.

8 And from what I understand that means that  
9 our decision, our subsequent decision that's being  
10 considered is out the window. So you're really  
11 operating without our approval. You don't have the  
12 land use designation. And, you know, that bothers me.  
13 That means you're operating illegally.

14 So I think I agree with Commissioner  
15 McDonald to go ahead and give you some advice to  
16 consolidate, get this matter over with. We need a  
17 good record to make the decision. So anyway that's my  
18 comments on the motion.

19 CHAIRMAN CHOCK: Commissioners, any other  
20 comments? Executive Officer, please poll the  
21 Commission.

22 MR. ORODENKER: The motion by Commissioner  
23 McDonald is to remand the 2008 case for consolidation  
24 with the 2011 case for the purpose of providing facts  
25 for the Decision and Order.

1 Commissioner McDonald?

2 COMMISSIONER McDONALD: Yes.

3 MR. ORODENKER: Commissioner Heller?

4 COMMISSIONER HELLER: Yes.

5 MR. ORODENKER: Commissioner Matsumura?

6 COMMISSIONER MATSUMURA: Yes.

7 MR. ORODENKER: Commissioner Inouye?

8 COMMISSIONER INOUE: Yes.

9 MR. ORODENKER: Commissioner Teves?

10 COMMISSIONER TEVES: Yes.

11 MR. ORODENKER: Commissioner Contrades is  
12 excused. Commissioner Makua is also excused.

13 Commissioner Biga?

14 COMMISSIONER BIGA: Yes.

15 MR. ORODENKER: Chair Chock?

16 CHAIRMAN CHOCK: Yes.

17 MR. ORODENKER: Mr. Chairman, the motion  
18 passes with seven votes.

19 (Recess was held.)

20 CHAIRMAN CHOCK: Thank you, Parties. We'll  
21 now proceed with the initial item on our agenda. So  
22 why don't we recess in place and give the parties an  
23 opportunity to reset and then wrap up for the day.

24 (1:00.)

25 (2:10 recess)

1 CHAIRMAN CHOCK: (gavel) We're back on the  
2 record on A99-728. Parties, have we resolved some of  
3 these language issues?

4 MR. IHA: Yes, we have, Mr. Chairman.

5 CHAIRMAN CHOCK: How would you like to  
6 proceed?

7 MR. IHA: As for the agreement that the  
8 Parties have is with respect to language only. So the  
9 City is still -- still wants to reserve its position.  
10 But with respect to the amendments that Commissioner  
11 Inouye has suggested, the parties have agreed to the  
12 following language: For Condition No. 9 keep the  
13 language proposed by DHHL and insert in the second  
14 paragraph second-to-the-last sentence language to that  
15 sentence.

16 So that it reads as follows: "Petitioner  
17 shall obtain acceptance of the Project's Traffic  
18 Impact Analysis Report, TIAR, from DOT and consider  
19 written comments from the City prior to execution of  
20 the MOA."

21 With respect to Condition 16 the Parties  
22 have agreed to the following language. "In the event  
23 DHHL is no longer the fee owner of the property,  
24 future fee owners and their successors and assigns  
25 shall, prior to issuance of any building permit,

1 subdivision or grading permit within Petition Area C,  
2 submit an open space and pedestrian/bikeway Master  
3 Plan to the City for its review and approval.

4 "Regardless of the fee ownership  
5 Petitioner, its successors and assigns shall consider  
6 all timely comments submitted by the City."

7 With respect to Condition 17 the Parties  
8 have agreed to the following language. "In the event  
9 DHHL is no longer the fee owner of the property,  
10 future fee owners and their successors and assigns  
11 shall, prior to issuance of any building permit,  
12 subdivision or grading permit within Petition Area C,  
13 submit a conceptual urban design plan to the City for  
14 its review and approval.

15 "The urban design plan shall depict the  
16 overall design theme and architectural character of  
17 streetscapes, residential neighborhoods and town  
18 centers.

19 "The plan shall also include a conceptual  
20 landscape plan showing treatment of Project entries,  
21 major roadways and common areas. Regardless of the  
22 fee ownership Petitioner, its successors and assigns  
23 shall consider all timely comments submitted by the  
24 City."

25 There's also agreement with respect to

1 clarifying the "if applicable" language on Conditions  
2 4 and 15. So for those two conditions only replace  
3 the language "if applicable" with "in the event DHHL  
4 is no longer the fee owner of the property, future fee  
5 owners and their successors and assigns shall" -- so  
6 with respect to Condition 4 it would be "shall apply  
7 for City zoning approval after State Land Use  
8 Commission reclassifies," et cetera.

9 With respect to Condition 15 it would be,  
10 "In the event DHHL is no longer the fee owner of the  
11 property, future fee owners and their successors and  
12 assigns shall comply with county zoning requirements,  
13 et cetera. Thank you.

14 CHAIRMAN CHOCK: Parties, are you all in  
15 agreement?

16 MR. KITAOKA: Well, for clarification the  
17 City will agree that this is the language that  
18 expresses the position of Commissioner Inouye. But  
19 the City still requests the language that was proposed  
20 in its submittal dated July 2, 2012, and objects to  
21 the language that is being proposed *but* does agree  
22 that this language accurately reflects the intention  
23 of Commissioner Inouye.

24 And with respect to Conditions No. 14 and  
25 15 the City will stipulate to the proposed conditions

1 as stated by Mr. Iha.

2 CHAIRMAN CHOCK: Okay. Thank you. County?  
3 OP?

4 MR. YEE: OP has no objection.

5 CHAIRMAN CHOCK: Haseko?

6 MR. AUSTIN: No objection.

7 MS. CHING: HHFDC has no objection.

8 CHAIRMAN CHOCK: Thank you, HHFDC. Okay.  
9 Commissioners, what is your pleasure on this matter?  
10 Commissioner Heller.

11 COMMISSIONER HELLER: I move that we accept  
12 the amendment to the Findings of Fact, Conclusions of  
13 Law and Decision and Order in the form that has been  
14 stipulated as the Proposed First Amendment with the  
15 changes just read into the record by Mr. Iha.

16 COMMISSIONER MATSUMURA: Second.

17 CHAIRMAN CHOCK: It's been moved and  
18 seconded. Discussion?

19 COMMISSIONER TEVES: Mr. Chair, for the  
20 purview of Commissioner Heller, Commissioner  
21 Matsumura, on Condition 10, I would like to add --  
22 well, this pertains to the civil defense agencies, I  
23 would like to add "the civil defense measures shall be  
24 operational prior to occupancy of any residences or  
25 business."

1 CHAIRMAN CHOCK: Thank you, Commissioner  
2 Teves.

3 COMMISSIONER HELLER: I would accept that  
4 as a friendly amendment.

5 CHAIRMAN CHOCK: Commissioner Matsumura?

6 COMMISSIONER MATSUMURA: I'll accept.

7 CHAIRMAN CHOCK: Commissioner McDonald?

8 COMMISSIONER McDONALD: I just want to be  
9 sure that Condition No. 9 regarding the storm runoff  
10 drainage is also a part of the Conditions, 13B.

11 MR. IHA: That would be 13B.

12 COMMISSIONER McDONALD: 13B.

13 MR. IHA: And to reiterate DHHL's position  
14 would be to simply delete the first sentence of that  
15 paragraph.

16 COMMISSIONER McDONALD: Yes. And I would  
17 agree with that.

18 COMMISSIONER HELLER: If that's an  
19 amendment to the motion that's also a friendly  
20 amendment.

21 COMMISSIONER MATSUMURA: Accept.

22 CHAIRMAN CHOCK: Thank you. Commissioners,  
23 any other comments, questions, discussion? Will the  
24 executive officer please poll the Commission.

25 MR. ORODENKER: Thank you, Mr. Chair. The



1 motion is to accept the amendments to -- the proposed  
2 amendments to the Decision and Order as amended by the  
3 Parties with amendments to the motion by Commissioners  
4 Teves and McDonald.

5 Commissioner Heller?

6 COMMISSIONER HELLER: Yes.

7 MR. ORODENKER: Commissioner Teves?

8 COMMISSIONER TEVES: Yes.

9 MR. ORODENKER: Commissioner McDonald?

10 COMMISSIONER McDONALD: Yes.

11 MR. ORODENKER: Commissioner Matsumura?

12 COMMISSIONER MATSUMURA: Yes.

13 MR. ORODENKER: Commissioner Inouye?

14 COMMISSIONER INOUE: Yes.

15 MR. ORODENKER: Commissioner Biga?

16 COMMISSIONER BIGA: Yes.

17 MR. ORODENKER: Chair Chock?

18 CHAIRMAN CHOCK: Yes.

19 MR. ORODENKER: Mr. Chair, the motion  
20 passes with 7 votes.

21 CHAIRMAN CHOCK: All right. Thank you very  
22 much, Parties. Appreciate your patience on the  
23 matter. I know we had to reschedule this meeting  
24 because of a quorum issue the last time around.  
25 Appreciate your patience in working with us on that so

1 without further adieu we're adjourned. Have a good  
2 weekend, everybody. Aloha.

3  
4 (The proceedings were adjourned at 1:20 p.m.)

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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 matter on the 14th day of September 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 matter.

DATED: This\_\_\_\_\_ day of\_\_\_\_\_2012

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

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