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BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the
Application of

DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
Application to Modify SUP)
No. 2008/SUP-2 (SP09-403) by)
Modifying (1) Condition No. 1)
of the Planning Commission's)
Findings of Fact, Conclusions)
of Law, and Decision and Order,)
dated June 10, 2019, and)
(2) Condition No. 5 of the)
LUC's Findings of Fact,)
Conclusions of Law, and Decision)
and Order Approving with)
Modifications the City and)
County of Honolulu Planning)
Commission's Recommendation)
to Approve Special Use Permit,)
certified on November 1, 2019)
_____)

FILE NO. 2008/SUP-2



CONTESTED CASE HEARING

Ewa - State Special Use Permit to Modify SUP No. 2008/SUP-2
(SP09-403), Waimanalo Gulch Sanitary Landfill

Taken at Fasi Municipal Building, 6th Floor
Conference Room, 650 South King Street, Honolulu, Hawaii
96813, commencing at 1:30 p.m., April 3, 2024, pursuant to
Notice.

1 APPEARANCES:

2

3 Planning Commission:

4 PANE MEATOGA III, Chair

5 RYAN KAMO, Vice Chair

6 MELISSA MAY, Member

7 KAI NANI KRAUT, Member

8 JOY KIMURA, Member

9

10 For the Planning Commission:

11 ROZELLE A. AGAG, ESQ.

12 Deputy Corporation Counsel

13 Department of the Corporation Counsel

14 530 South King Street, Room 110

15 Honolulu, Hawaii 96813

16

17 For the City and County of Honolulu, Department of

18 Environmental Services:

19 JEFFREY HU, ESQ.

20 KAMILLA C.K. CHAN, ESQ.

21 Deputies Corporation Counsel

22 City and County of Honolulu

23 530 South King Street, Room 110

24 Honolulu, Hawaii 96813

25

1 APPEARANCES: (cont'd)

2

3 For Ko Olina Community Association and Senator Maile

4 Shimabukuro:

5 CALVERT G. CHIPCHASE, ESQ.

6 KATHERINE E. BRUCE, ESQ.

7 Cades Shutte LLP

8 Cades Schutte Building

9 1000 Bishop Street, Suite 1200

10 Honolulu, Hawaii 96813

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12 For Schnitzer Steel Hawaii Corp.:

13 IAN L. SANDISON, ESQ.

14 JOYCE W.Y. TAM-SUGIYAMA, ESQ.

15 RIHUI YUAN, ESQ.

16 Watanabe Ing LLP

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19 Honolulu, Hawaii 96813

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WEBVTT

4 "Chair Meatoga III" - Conference Center" (2820884992)

00:00:12.959 --> 00:00:20.940

Aloha, everyone, and welcome fellow Commission members to the April 3rd, 2024 meeting of the Planning Commission.

5 "DIT SX80 - Conference Center" (2820884992)

00:00:20.940 --> 00:00:35.400

For our listeners and for the record, I am Chair Pane Meatoga III. The following members are physically present here on the 6th Floor Conference Room. Ryan Kamo, Commissioner Kamo and myself. And joining remotely we have Commissioners Melissa May, Kai Nani Kraut and Joy Kimura.

6 "DIT SX80 - Conference Center" (2820884992)

00:00:35.400 --> 00:00:47.940

Before we begin, for members who are online, can you just attest that you are alone and by yourself in your respective areas. Start with Commissioner Kimura.

7 "Joy Kimura" (1299177984)

00:00:51.863 --> 00:00:56.469

I'm by myself. This is Commissioner Kimura. I'm by myself.

8 "Chair Meatoga III" - Conference Center" (2820884992)

00:00:56.469 --> 00:00:59.760

Thank you. Commissioner Kraut?

9 "Kai Nani Kraut" - Conference Center" (2820884992)

00:00:59.760 --> 00:01:03.245

Thank you. Commissioner Krait. I'm here and by myself.

Chair Meatoga: Thank you. Commissioner May?

10 "Melissa May" (359880960)

00:01:03.245 --> 00:01:05.947

I'm here and by myself. This is Commissioner May. Thank you.

11 "Chair Meatoga III" - Conference Center" (2820884992)

00:01:05.947 --> 00:01:15.930

All right. Thank you. Present to you today is the Planning Commission and DIT staff to manage and support the Webex audio-visual platform. Also joining with us today is

12 "DIT SX80 - Conference Center" (2820884992)

00:01:15.930 --> 00:01:19.500

the Commission attorney deputy court counsel Rozelle Agag.

Counsel Agag: Good afternoon.

13 "Chair Meatoga III" - Conference Center" (2820884992)

00:01:19.500 --> 00:01:23.790

All right. For housekeeping matters, those present here in the

14 "DIT SX80 - Conference Center" (2820884992)

00:01:23.790 --> 00:01:32.220

Conference Room, bathrooms are located on the ground floor next to the elevators; 3:30 p.m. King Street becomes a tow away zone, and we have this Conference Room until 4:30 p.m.

15 "DIT SX80 - Conference Center" (2820884992)

00:01:32.220 --> 00:01:38.880

At this time I like to officially open the hearing. For the record it's now 1:31 p.m.

16 "DIT SX80 - Conference Center" (2820884992)

00:01:38.880 --> 00:01:43.230

And just as a reminder for us Commissioners, we need to

17 "DIT SX80 - Conference Center" (2820884992)

00:01:43.230 --> 00:01:46.650

identify ourselves before we speak or make any motions.

18 "DIT SX80 - Conference Center" (2820884992)

00:01:46.650 --> 00:01:58.260

With that being said the first item on the agenda is to approve the minutes, the minutes of the November 15th and February 7th, 2024 meetings as previously circulated to be approved by the Commission.

19 "DIT SX80 - Conference Center" (2820884992)

00:01:58.260 --> 00:02:09.627

Do I have motion?

Vice Chair Kamo: Vice Chair Kamo makes a motion to approve the minutes as previously circulated.

Chair Meatoga III: Thank you. Do I have a second?

Kimura: Second.

20 "Chair Meatoga III" - Conference Center" (2820884992)

00:02:09.627 --> 00:02:18.480

It is moved and seconded to approve the November 15th and February 7th meeting minutes as previously circulated. Is there any discussions,

21 "DIT SX80 - Conference Center" (2820884992)

00:02:18.480 --> 00:02:22.710

any objections, any reservations? [no response]

22 "DIT SX80 - Conference Center" (2820884992)

00:02:22.710 --> 00:02:29.580

All right. Hearing and seining none, Chair votes aye. The minutes are approved. Next, on the agenda we'll continue with the continued case hearing,

23 "DIT SX80 - Conference Center" (2820884992)

00:02:29.580 --> 00:02:36.810

Waianae State Special Use Permit 2008/SUP-2, Waimanalo Gulch Sanitary Landfill.

24 "DIT SX80 - Conference Center" (2820884992)

00:02:36.810 --> 00:02:42.540

Good afternoon, everyone. Please make your appearances for the record. We'll start with ENV.

25 "Counsel Hu" - Conference Center" (2820884992)

00:02:42.540 --> 00:02:48.870

Good afternoon, Chair and Planning commission. Deputy corporation counsel Jeffrey Hu for

26 "DIT SX80 - Conference Center" (2820884992)

00:02:48.870 --> 00:02:52.470

the Department of Environmental Services, also ENV.

27 "Counsel Tam-Sugiyama" - Conference Center" (2820884992)

00:02:52.470 --> 00:02:57.120

Good afternoon, Joyce Tam-Sugiyama,

28 "DIT SX80 - Conference Center" (2820884992)

00:02:57.120 --> 00:03:01.890

and with me are Ian Sanderson and Rihui Yuan for Schnitzer Steel.

Chair Meatoga III: Thank you.

29 "Counsel Chipchase" - Conference Center" (2820884992)

00:03:01.890 --> 00:03:06.090

Afternoon, Chair, Commissioners. Cal Chipchase, Chris Goodin and Kathy Bruce

30 "DIT SX80 - Conference Center" (2820884992)

00:03:06.090 --> 00:03:13.440

for Ko'Olina Community Association and Senator Maile Shimabukuro.

Chair Meatoga III: Thank you. Before we begin, does anyone have any housekeeping matters to discuss?

Counsel Chipchase: None for me, Chair.

Counsel Tam-Sugiyama: No, Chair.

Counsel Hu: No, Chair.

31 "Chair Meatoga III" - Conference Center" (2820884992)

00:03:13.440 --> 00:03:18.840

Okay. If nothing else, we will begin.

32 "DIT SX80 - Conference Center" (2820884992)

00:03:18.840 --> 00:03:26.790

On March 27, 2024, the parties have filed responses to the Planning Commission, proposed Findings of Fact, Conclusions of Law and Decision and Order.

33 "DIT SX80 - Conference Center" (2820884992)

00:03:26.790 --> 00:03:46.680

We will now hear oral arguments from each side of the parties before Planning Commission deliberates on this matter. Each side will have 30 minutes for oral arguments, following by questions by the Commissioners. We will start with the petitioner, the Department of Environmental Services. You may begin.

Counsel Hu: Thank you. And, I'd just like to thank the Planning Commission for taking the time to prepare this draft.

34 "DIT SX80 - Conference Center" (2820884992)

00:03:46.680 --> 00:03:50.760

ENV is generally okay with the language of this draft Order.

35 "DIT SX80 - Conference Center" (2820884992)

00:03:50.760 --> 00:03:55.860

And so we just like to take this time to respond to the other parties

36 "DIT SX80 - Conference Center" (2820884992)

00:03:55.860 --> 00:03:59.910

filings starting with KOCA.

37 "DIT SX80 - Conference Center" (2820884992)

00:03:59.910 --> 00:04:07.680

So, if I may, I'd like to turn your attention to KOCA's filings

38 "DIT SX80 - Conference Center" (2820884992)

00:04:07.680 --> 00:04:14.250

just because it'll probably help you understand what I'm talking about. Thank you.

39 "DIT SX80 - Conference Center" (2820884992)

00:04:14.250 --> 00:04:20.250

KOCA lays it out pretty well.

40 "DIT SX80 - Conference Center" (2820884992)

00:04:20.250 --> 00:04:24.930

I mean, lays out the Order. So, on page 1,

41 "DIT SX80 - Conference Center" (2820884992)

00:04:24.930 --> 00:04:28.259

KOCA has the first issue.

42 "DIT SX80 - Conference Center" (2820884992)

00:04:28.259 --> 00:04:33.809

For issue No. 1, we

43 "DIT SX80 - Conference Center" (2820884992)

00:04:33.809 --> 00:04:40.349

think it's inappropriate and unnecessary for the Planning Commission to provide an opinion

44 "DIT SX80 - Conference Center" (2820884992)
00:04:40.349 --> 00:04:46.199
on whether the No Pass Zone and the BWS approval of the landfill site are

45 "DIT SX80 - Conference Center" (2820884992)
00:04:46.199 --> 00:04:53.639
legal requirements for the siting of a landfill. ENV has made it fairly clear in its application that

46 "DIT SX80 - Conference Center" (2820884992)
00:04:53.639 --> 00:05:02.039
in light of the contamination of drinking water associated with Red Hill, ENV believes it is obligated to proceed with extreme caution

47 "DIT SX80 - Conference Center" (2820884992)
00:05:02.039 --> 00:05:10.109
in identifying a new site, which includes taking into consideration, the BWS is concerns about the No Pass Zone.

48 "DIT SX80 - Conference Center" (2820884992)
00:05:10.109 --> 00:05:15.419
And so, therefore is looking at the potential of siting a landfill on

49 "DIT SX80 - Conference Center" (2820884992)
00:05:15.419 --> 00:05:27.749
Federal lands that are outside the No Pass Zone And you might have seen in the news reports last month on the City, Managing Director's presentation to City Council about the potential Federal sites.

50 "DIT SX80 - Conference Center" (2820884992)
00:05:27.749 --> 00:05:47.749
And so that leads me to the second issue raised by KOCA, which is also on the same page, page 1 on the bottom. Regarding Director Babcock's testimony in October of 2023, regarding his lack of knowledge at that time of the specific details

51 "DIT SX80 - Conference Center" (2820884992)
00:05:47.749 --> 00:05:53.699
regarding discussions with the military.

52 "DIT SX80 - Conference Center" (2820884992)
00:05:53.699 --> 00:05:57.089
We believe that the Planning Commission correctly omitted KOCA's

53 "DIT SX80 - Conference Center" (2820884992)
00:05:57.089 --> 00:06:00.779
proposed Findings of Fact 62

54 "DIT SX80 - Conference Center" (2820884992)
00:06:00.779 --> 00:06:10.529
from the draft Order. Since it is unnecessary to support the conclusion that ENV is agreeable to the additional in person reporting requirements.

55 "DIT SX80 - Conference Center" (2820884992)

00:06:10.529 --> 00:06:15.599

And while we understand KOCA's concern about the need for information,

56 "DIT SX80 - Conference Center" (2820884992)

00:06:15.599 --> 00:06:22.469

we want to remind everyone that the discussions between the City and its Federal counterparts involved with delicate topic,

57 "DIT SX80 - Conference Center" (2820884992)

00:06:22.469 --> 00:06:26.189

and it is ongoing, but it's a slow process.

58 "DIT SX80 - Conference Center" (2820884992)

00:06:26.189 --> 00:06:32.189

Again, the City recently provided updates to the City Council about those discussions.

59 "DIT SX80 - Conference Center" (2820884992)

00:06:32.189 --> 00:06:50.759

And aside from KOCA, there are other communities who are also interested in the results of those discussions, and the City will continue to be transparent as possible. Once the City has a viable option, the City will be very public about it and will promote extensive community engagements.

60 "DIT SX80 - Conference Center" (2820884992)

00:06:50.759 --> 00:06:56.729

So, next is the third issue raised by KOCA, which is on page 2,

61 "DIT SX80 - Conference Center" (2820884992)

00:06:56.729 --> 00:06:59.849

bottom paragraph. And this is regarding

62 "DIT SX80 - Conference Center" (2820884992)

00:06:59.849 --> 00:07:06.089

the draft Orders, Finding of Fact 87. And so Finding of Fact 87 provides,

63 "DIT SX80 - Conference Center" (2820884992)

00:07:06.089 --> 00:07:12.239

"when the BWS No Pass Zone and Act 74 are applied as restrictions,

64 "DIT SX80 - Conference Center" (2820884992)

00:07:12.239 --> 00:07:16.289

there were zero potential alternative landfill sites on O'ahu.

65 "DIT SX80 - Conference Center" (2820884992)

00:07:16.289 --> 00:07:22.049

And it cites to ENV's 2022 application at page 8."

66 "DIT SX80 - Conference Center" (2820884992)

00:07:22.049 --> 00:07:26.519

So ENV's application

67 "DIT SX80 - Conference Center" (2820884992)

00:07:26.519 --> 00:07:34.619
did include a footnote No. 12 that you essentially said the zero potential alternative landfill sites does not take into account Federal lands.

68 "DIT SX80 - Conference Center" (2820884992)
00:07:34.619 --> 00:07:39.179
However, we think KOCA's proposed verbiage changes the meaning of

69 "DIT SX80 - Conference Center" (2820884992)
00:07:39.179 --> 00:07:43.679
Finding of Fact 87. So instead we

70 "DIT SX80 - Conference Center" (2820884992)
00:07:43.679 --> 00:07:51.239
would propose that Finding of Fact 87 be kept as is, but with an additional language at the end so

71 "DIT SX80 - Conference Center" (2820884992)
00:07:51.239 --> 00:07:56.549
that it reads "when the BWS No Pass Zone, and Act 73

72 "DIT SX80 - Conference Center" (2820884992)
00:07:56.549 --> 00:07:59.579
are applied as restrictions

73 "DIT SX80 - Conference Center" (2820884992)
00:07:59.579 --> 00:08:03.569
there were zero potential alternative landfill sites on O'ahu,

74 "DIT SX80 - Conference Center" (2820884992)
00:08:03.569 --> 00:08:06.719
outside of Federal lands."

75 "DIT SX80 - Conference Center" (2820884992)
00:08:06.719 --> 00:08:11.849
Or something to that effect we think would be better.

76 "DIT SX80 - Conference Center" (2820884992)
00:08:11.849 --> 00:08:16.409
Okay. So next then to

77 "DIT SX80 - Conference Center" (2820884992)
00:08:16.409 --> 00:08:21.659
page 3 of KOCA's Finding.

78 "DIT SX80 - Conference Center" (2820884992)
00:08:21.659 --> 00:08:30.539
And I think this is the middle or the first

79 "DIT SX80 - Conference Center" (2820884992)
00:08:30.539 --> 00:08:35.009
Full paragraph.

80 "DIT SX80 - Conference Center" (2820884992)
00:08:35.009 --> 00:08:42.839
Basically EBV is agreeable to the proposal of adding the language "is therefore reasonable and necessary."

81 "DIT SX80 - Conference Center" (2820884992)
00:08:42.839 --> 00:08:46.799
Then

82 "DIT SX80 - Conference Center" (2820884992)
00:08:46.799 --> 00:08:57.029
on page 4 of KOCA's Finding, if I may turn your attention to that, please, and we are okay with the revised language of the reporting requirements.

83 "DIT SX80 - Conference Center" (2820884992)
00:08:57.029 --> 00:09:01.319
And this is on the top of page 4. And then next

84 "DIT SX80 - Conference Center" (2820884992)
00:09:01.319 --> 00:09:06.599
KOCA's non-substantive corrections.

85 "DIT SX80 - Conference Center" (2820884992)
00:09:06.599 --> 00:09:13.259
ENV is okay with the first three bullet points. So for Findings of Fact 16 through 17,

86 "DIT SX80 - Conference Center" (2820884992)
00:09:13.259 --> 00:09:16.529
Findings of Fact 48 and

87 "DIT SX80 - Conference Center" (2820884992)
00:09:16.529 --> 00:09:20.189
Findings of Fact 66. We're fine with those

88 "DIT SX80 - Conference Center" (2820884992)
00:09:20.189 --> 00:09:25.289
proposed revisions. And then for Findings of Fact 67,

89 "DIT SX80 - Conference Center" (2820884992)
00:09:25.289 --> 00:09:31.799
we would disagree with that one. From our review of the 2004 LUC Order,

90 "DIT SX80 - Conference Center" (2820884992)
00:09:31.799 --> 00:09:39.029
the extension was to December 1, 2004 and 2009.

91 "DIT SX80 - Conference Center" (2820884992)
00:09:39.029 --> 00:09:43.709
And I'm hoping somebody else can also confirm that.

92 "DIT SX80 - Conference Center" (2820884992)
00:09:43.709 --> 00:09:51.389

Okay. And then lastly in regards to Schnitzer's filing, we are agreeable to their proposals.

93 "DIT SX80 - Conference Center" (2820884992)

00:09:51.389 --> 00:09:58.649

Thank you.

Chair Meatoga III: Okay. Thank you very much. We'll move on to Schnitzer. Please proceed.

94 "Counsel Tam-Sugiyama" - Conference Center" (2820884992)

00:09:58.649 --> 00:10:07.019

Thank you, Chair. As set forth in its responses, Schnitzer's position is that the Commission's proposed Order should be amended to include

95 "DIT SX80 - Conference Center" (2820884992)

00:10:07.019 --> 00:10:12.119

additional findings as to why the extension is justified under the circumstances.

96 "DIT SX80 - Conference Center" (2820884992)

00:10:12.119 --> 00:10:27.119

Schnitzer responses set forth the specific revisions to be made, and I will not reiterate them here. But I would like to draw the Commission's attention to the Commissioner's draft Conclusion of Law No. 2, which is on page 20 of its proposed Findings.

97 "DIT SX80 - Conference Center" (2820884992)

00:10:27.119 --> 00:10:40.559

And, so in Conclusions of Law No. 2, it says that the applicant has the burden of proof, and then in turn in Conclusions of Law

98 "DIT SX80 - Conference Center" (2820884992)

00:10:40.559 --> 00:10:51.299

No. 6 on page 21 on the next page. The Commission summarizes several factual findings that lead to its ultimate conclusion that the applicant has met its burden of proof.

99 "DIT SX80 - Conference Center" (2820884992)

00:10:51.299 --> 00:10:58.919

However, that summary is incomplete because it does not include the evidence showing that the site proposed by the City

100 "DIT SX80 - Conference Center" (2820884992)

00:10:58.919 --> 00:11:02.879

were included in prior site selections as available sites, but

101 "DIT SX80 - Conference Center" (2820884992)

00:11:02.879 --> 00:11:16.199

those sites were nonetheless rejected due to Act 73 and the Board of Water Supply and the Landfill Advisory Committee's rejection of the sites in the aftermath of the Red Hill fuel oil leak.

102 "DIT SX80 - Conference Center" (2820884992)

00:11:16.199 --> 00:11:19.679

So, therefore Schnitzer respectfully submits that the Findings

103 "DIT SX80 - Conference Center" (2820884992)

00:11:19.679 --> 00:11:32.819

that the City reasonably thought its proposed sites would be available and that those sites were rejected due to reasons beyond the City's control are critical pieces of the substantial evidence to support this Commission's conclusion

104 "DIT SX80 - Conference Center" (2820884992)

00:11:32.819 --> 00:11:39.929

that the City met its burden of proof as to why the permit should be modified to extend the deadline for site selection.

105 "DIT SX80 - Conference Center" (2820884992)

00:11:39.929 --> 00:11:46.229

And, again, the corresponding change style effect were set forth in our responses, and I won't

106 "DIT SX80 - Conference Center" (2820884992)

00:11:46.229 --> 00:11:50.309

torture all of us and go through all that. Thank you.

107 "Chair Meatoga III" - Conference Center" (2820884992)

00:11:50.309 --> 00:11:53.429

All right. Thank you. Please go ahead.

108 "Counsel Chipchase" - Conference Center" (2820884992)

00:11:53.429 --> 00:12:01.889

Thank you. We'll put our proposed changes up on the screen so they're easy to see.

[VISUAL PRESENTATION - SLIDES]

109 "DIT SX80 - Conference Center" (2820884992)

00:12:01.889 --> 00:12:04.889

Okay. All right.

117 "DIT SX80 - Conference Center" (2820884992)

00:12:43.019 --> 00:12:52.469

Okay. Chair, Commissioners, I will be brief. I'll cover our proposed changes, and then I'll address some of the comments made by my counterparts.

118 "DIT SX80 - Conference Center" (2820884992)

00:12:52.469 --> 00:12:57.209

The first one is Condition 2,

119 "DIT SX80 - Conference Center" (2820884992)

00:12:57.209 --> 00:13:03.449

and we really regard our proposed additions as essentially typographical

120 "DIT SX80 - Conference Center" (2820884992)

00:13:03.449 --> 00:13:20.819

Corrections. The ending part of the first main paragraph appear to be missing a line and then there appeared to be some minor typographical errors in the other parts. This is one of the conditions that the City, one of the changes, I should say, that the City has accepted as appropriate.

121 "DIT SX80 - Conference Center" (2820884992)

00:13:20.819 --> 00:13:26.129

And, so we would ask that the Order be adopted with this modification.

122 "DIT SX80 - Conference Center" (2820884992)

00:13:26.129 --> 00:13:44.699

The second non-substantive changes, Conclusion of Law paragraph 6. And if you read that paragraph on the sentence that we've excerpted there is stated without the red additions. And it appears to be an incomplete sentence. And so we would propose to add

123 "DIT SX80 - Conference Center" (2820884992)

00:13:44.699 --> 00:13:52.859

that change to Conclusion of Law 6, and the City has indicated that it agrees with that change as well.

124 "DIT SX80 - Conference Center" (2820884992)

00:13:56.039 --> 00:14:01.109

The next change that we propose is the Finding of Fact 17.

125 "DIT SX80 - Conference Center" (2820884992)

00:14:01.109 --> 00:14:21.109

It it looks like the beginning of 17 had intended to carry over some information from a prior Finding from, perhaps Finding 16. That information was not carried over in 16. It looks like this is what the Commission was getting in this Finding. And so we would propose to add the.

126 "DIT SX80 - Conference Center" (2820884992)

00:14:21.109 --> 00:14:28.859

Which, in red, which I think clarifies the Finding and again, I believe the City is okay with this change as well.

127 "DIT SX80 - Conference Center" (2820884992)

00:14:31.859 --> 00:14:39.449

The next paragraphs that that we believe warrant some correction,

128 "DIT SX80 - Conference Center" (2820884992)

00:14:39.449 --> 00:14:54.419

are at 48, 66 and 67/ The first change is just deleting a pair of brackets, the second and third changes in paragraph 66 are just fixing two dates.

129 "DIT SX80 - Conference Center" (2820884992)

00:14:54.419 --> 00:15:03.119

And appears to be misaligned and the City has indicated and agrees with both of those changes. The third change, we believe, is an appropriate date correction.

130 "DIT SX80 - Conference Center" (2820884992)
00:15:03.119 --> 00:15:21.479

But the City believes the date is correctly stated. We will try to confirm that one way or the other by the end of the meeting. In any event, everybody is in agreement that we want the correct date in there. And that's the end of that revision.

131 "DIT SX80 - Conference Center" (2820884992)
00:15:21.479 --> 00:15:31.499

Mr. Goodin is confirming that it's actually correct as written, and it is 2004. So we withdraw the request to amend paragraph 67.

132 "DIT SX80 - Conference Center" (2820884992)
00:15:31.499 --> 00:15:35.459
We made a number of

133 "DIT SX80 - Conference Center" (2820884992)
00:15:35.459 --> 00:15:46.109
substantive suggestions as well. The City went over those. I won't reiterate what we put into the writing. I will respond to one of the comments that counsel made

134 "DIT SX80 - Conference Center" (2820884992)
00:15:46.109 --> 00:15:49.679
and that was the correction that we offered to--Finding

135 "DIT SX80 - Conference Center" (2820884992)
00:15:49.679 --> 00:15:55.169
87 stating that there were no other potential sites.

136 "DIT SX80 - Conference Center" (2820884992)
00:15:55.169 --> 00:16:12.209
As we proposed to correct it, it accounts for both Federal sites and the potential to use eminent domain, which Dr. Babcock did discuss as an opportunity that the City could engage in. And so with the use of eminent domain there are, in fact, other sites because they could be acquired.

137 "DIT SX80 - Conference Center" (2820884992)
00:16:12.209 --> 00:16:15.989
The correction that the City has proposed limits it only to

138 "DIT SX80 - Conference Center" (2820884992)
00:16:15.989 --> 00:16:21.539
Federal sites/ That would be inconsistent with the testimony. And so if that Finding were corrected

139 "DIT SX80 - Conference Center" (2820884992)
00:16:21.539 --> 00:16:25.859
respectfully submit that our correction is more comprehensive.

140 "DIT SX80 - Conference Center" (2820884992)

00:16:25.859 --> 00:16:28.949

The balance of of my time--

141 "DIT SX80 - Conference Center" (2820884992)

00:16:28.949 --> 00:16:39.599

I'll talk about Schnitizr's position. As counsel stated for the City, they don't object to themselves, to ENV's proposed Order and accept

142 "DIT SX80 - Conference Center" (2820884992)

00:16:39.599 --> 00:16:46.439

the bulk of our non-substantive changes. Schnitzer on the other hand seeks to make a number of changes

143 "DIT SX80 - Conference Center" (2820884992)

00:16:46.439 --> 00:16:55.799

to the proposed Order. I've grouped those into four basic categories. The first is simply repeating arguments that have already been considered.

144 "DIT SX80 - Conference Center" (2820884992)

00:16:55.799 --> 00:17:08.879

This is the second time we've argued Findings before this Commission on this on this mattes. Schnitzer's arguments were heard, my arguments were heard the papers were submitted. Some were rejected, some were accepted on both sides of it.

145 "DIT SX80 - Conference Center" (2820884992)

00:17:08.879 --> 00:17:14.789

Schnitzer by and large repeats arguments that it's already made and offers no new reasoning to support them.

146 "DIT SX80 - Conference Center" (2820884992)

00:17:14.789 --> 00:17:23.999

Schnitzer proposes a pair of procedural Findings that are technically correct. They're absolutely correct statements.

147 "DIT SX80 - Conference Center" (2820884992)

00:17:23.999 --> 00:17:33.629

They're just not necessary for this Order. They don't change the substance of it. They're not necessary in reciting the history of this case. They're immaterial

148 "DIT SX80 - Conference Center" (2820884992)

00:17:33.629 --> 00:17:37.799

and so we don't believe the need to include it.

149 "DIT SX80 - Conference Center" (2820884992)

00:17:37.799 --> 00:17:57.799

The third category and some of these overlap, but the third category is is to simply make Findings that go beyond the scope of this proceeding, Findings and Conclusions. And so when we started this proceeding, I said that one of our reasons for being here was to ensure that it is limited

to the issue that's actually before the Commission. Just the extension of the deadline to site

150 "DIT SX80 - Conference Center" (2820884992)

00:17:57.799 --> 00:18:15.389

a new landfill, and not get into Findings and Conclusions that might relate to other proceedings or for shadow other proceedings. The Commission's Order is very true to the purpose of this proceeding. It does not go beyond what is the motion or petition that is actually before the Commission.

151 "DIT SX80 - Conference Center" (2820884992)

00:18:15.389 --> 00:18:19.109

Schnitzer's proposed Findings and Conclusions would go beyond

152 "DIT SX80 - Conference Center" (2820884992)

00:18:19.109 --> 00:18:26.519

that purpose and start to make findings and conclusions related to things that are not appropriate for the Commission to consider

153 "DIT SX80 - Conference Center" (2820884992)

00:18:26.519 --> 00:18:29.999

at this time. And the last category

154 "DIT SX80 - Conference Center" (2820884992)

00:18:29.999 --> 00:18:34.439

relates to a couple of findings, maybe three or four Findings

155 "DIT SX80 - Conference Center" (2820884992)

00:18:34.439 --> 00:18:43.379

that are simply incorrect, and we've highlighted a couple of them on the screen. Most notably one of the ones we highlighted is a finding that purports

156 "DIT SX80 - Conference Center" (2820884992)

00:18:43.379 --> 00:18:54.599

to account all of the City's efforts, notwithstanding the limitations in the act and in the No Pass Zone to site other locations. Dr. Babcock was, in fact, quite clear

157 "DIT SX80 - Conference Center" (2820884992)

00:18:54.599 --> 00:18:58.049

that the only effort they've made is to identify Federal sites

158 "DIT SX80 - Conference Center" (2820884992)

00:18:58.049 --> 00:19:01.589

at this point. And everything else has been rejected at least at this point

159 "DIT SX80 - Conference Center" (2820884992)

00:19:01.589 --> 00:19:05.849

as a consideration. And so we believe the Commission correctly

160 "DIT SX80 - Conference Center" (2820884992)

00:19:05.849 --> 00:19:12.299
captures the substance of Dr. Babcock's testimony on that and the other points. And we would ask that

161 "DIT SX80 - Conference Center" (2820884992)
00:19:12.299 --> 00:19:15.869
no changes to be made. And so

162 "DIT SX80 - Conference Center" (2820884992)
00:19:15.869 --> 00:19:29.609
we appreciate the work that the Commission did. We appreciate the work on the Findings and Conclusions. We offer those non-substantive suggestions, and I would say at least the one correction to the Finding related to other available sites

163 "DIT SX80 - Conference Center" (2820884992)
00:19:29.609 --> 00:19:33.869
should be made to the Commission's Order before it is sent to the LUC. Thank you.

164 "Chair Meatoga III" - Conference Center" (2820884992)
00:19:33.869 --> 00:19:39.359
Okay. Thank you very much. All right. Commissioners, we've heard all the presentations.

165 "DIT SX80 - Conference Center" (2820884992)
00:19:39.359 --> 00:19:43.619
At this time are there any questions from Commissioners for any of the parties?

166 "Vice Chair Kamo" - Conference Center" (2820884992)
00:19:43.619 --> 00:19:54.449
Vice Chair Kamo has a question for ENV. As we were going through the history of these proceedings, one

167 "DIT SX80 - Conference Center" (2820884992)
00:19:54.449 --> 00:19:58.019
thing kept jumping out at us, and it was

168 "DIT SX80 - Conference Center" (2820884992)
00:19:58.019 --> 00:20:01.409
as to the timing of ENV's filing,

169 "DIT SX80 - Conference Center" (2820884992)
00:20:01.409 --> 00:20:08.879
letting everyone know that we would not be making the deadline. Why was that filed so late, nine days before

170 "DIT SX80 - Conference Center" (2820884992)
00:20:08.879 --> 00:20:16.739
the actual deadline.

Counsel Hu: I'm trying to think if we already addressed this before. Sorry. Bu

171 "DIT SX80 - Conference Center" (2820884992)
00:20:16.739 --> 00:20:22.469
it's filed late because we tried to

172 "DIT SX80 - Conference Center" (2820884992)
00:20:22.469 --> 00:20:25.649
do as much as we can to meet that deadline.

173 "DIT SX80 - Conference Center" (2820884992)
00:20:25.649 --> 00:20:29.819
And, so I think you'll see in the history that's laid out.

174 "DIT SX80 - Conference Center" (2820884992)
00:20:29.819 --> 00:20:32.969
We went so far as

175 "DIT SX80 - Conference Center" (2820884992)
00:20:32.969 --> 00:20:38.609
to present before the BWS board members,

176 "DIT SX80 - Conference Center" (2820884992)
00:20:38.609 --> 00:20:43.979
and then when we saw a

177 "DIT SX80 - Conference Center" (2820884992)
00:20:43.979 --> 00:20:48.809
letter from BWS as to whether or not those six potential sites

178 "DIT SX80 - Conference Center" (2820884992)
00:20:48.809 --> 00:20:54.209
would be okay. And so, you know, they said, no.

179 "DIT SX80 - Conference Center" (2820884992)
00:20:54.209 --> 00:21:00.899
And then it takes a little time to draft the application, I'm

180 "DIT SX80 - Conference Center" (2820884992)
00:21:00.899 --> 00:21:08.099
being a little facetious. It took a while to draft the application. So,
you know by the time it was filed it was already

181 "DIT SX80 - Conference Center" (2820884992)
00:21:08.099 --> 00:21:12.419
nine days out.

Vice Chair Kamo: Yeah. With Christmas in the middle.

182 "Counsel Hu" - Conference Center" (2820884992)
00:21:12.419 --> 00:21:20.639
Just to add,

183 "DIT SX80 - Conference Center" (2820884992)
00:21:20.639 --> 00:21:30.989

the presentation or the response from BWS came on November 16, 2022. So it was right before Thanksgiving as well.

184 "Vice Chair Kamo" - Conference Center" (2820884992)

00:21:30.989 --> 00:21:39.899

Got it. And these proceedings, I think have taken a while since we initially started our discussions.

185 "DIT SX80 - Conference Center" (2820884992)

00:21:39.899 --> 00:21:47.549

And the extension that we're considering now is going up until December 31st, 2024, which

186 "DIT SX80 - Conference Center" (2820884992)

00:21:47.549 --> 00:21:51.269

doesn't leave us a whole lot of time,

187 "DIT SX80 - Conference Center" (2820884992)

00:21:51.269 --> 00:21:59.039

and if we don't meet that deadline, I have a strong feeling we'll be in the same boat. What types of assurances do we have

188 "DIT SX80 - Conference Center" (2820884992)

00:21:59.039 --> 00:22:02.549

this time, the City is going to make more progress?

189 "Counsel Hu" - Conference Center" (2820884992)

00:22:02.549 --> 00:22:07.289

Well, frankly, I

190 "DIT SX80 - Conference Center" (2820884992)

00:22:07.289 --> 00:22:11.129

cannot give you an assurance other than that

191 "DIT SX80 - Conference Center" (2820884992)

00:22:11.129 --> 00:22:14.309

we've got the Mayor and the Managing Director

192 "DIT SX80 - Conference Center" (2820884992)

00:22:14.309 --> 00:22:21.959

out there discussing with our Federal counterparts and today

193 "DIT SX80 - Conference Center" (2820884992)

00:22:21.959 --> 00:22:25.349

MD is going to be presenting to the City Council

194 "DIT SX80 - Conference Center" (2820884992)

00:22:25.349 --> 00:22:30.989

Regarding City Council's questions about Waipio.

195 "DIT SX80 - Conference Center" (2820884992)

00:22:30.989 --> 00:22:34.949

And, I guess assurances is that every--the City administration, not just ENV, but

196 "DIT SX80 - Conference Center" (2820884992)
00:22:34.949 --> 00:22:39.269
the top of the City is heavily interested in

197 "DIT SX80 - Conference Center" (2820884992)
00:22:39.269 --> 00:22:42.749
finding that next landfill site, and

198 "DIT SX80 - Conference Center" (2820884992)
00:22:42.749 --> 00:22:47.159
I guess that's the most assurance I can give you at this point. Because

199 "DIT SX80 - Conference Center" (2820884992)
00:22:47.159 --> 00:22:53.459
with the Federal lands, to my knowledge, there's no

200 "DIT SX80 - Conference Center" (2820884992)
00:22:53.459 --> 00:23:00.389
legal way to obtain them other than, you know we're kind of at their
whims.

201 "DIT SX80 - Conference Center" (2820884992)
00:23:00.389 --> 00:23:12.809
So I hope that-

Vice Chair Kamo: We appreciate the complexity there. Do we still feel
like the December 31st deadline is achievable?

202 "Counsel Hu" - Conference Center" (2820884992)
00:23:12.809 --> 00:23:21.899
Yes. That's what we believe.

203 "Vice Chair Kamo" - Conference Center" (2820884992)
00:23:21.899 --> 00:23:33.989
And are there specific milestones that the City can report on? I think
we've got, said in here, monthly reporting or quarterly reported
exercises. What milestones would you be tracking to make sure that we
can meet this deadline?

204 "Counsel Hu" - Conference Center" (2820884992)
00:23:33.989 --> 00:23:39.329
Right. That's a good question.

205 "DIT SX80 - Conference Center" (2820884992)
00:23:39.329 --> 00:23:44.639
I think ENV intent to just follow

206 "DIT SX80 - Conference Center" (2820884992)
00:23:44.639 --> 00:23:50.639
what's required in the draft proposal.

207 "DIT SX80 - Conference Center" (2820884992)
00:23:50.639 --> 00:23:56.039

And,

208 "DIT SX80 - Conference Center" (2820884992)

00:23:56.039 --> 00:24:02.489

I guess those are the milestones ENV that would be presenting at the in-person reporting to the Planning Commission.

209 "DIT SX80 - Conference Center" (2820884992)

00:24:02.489 --> 00:24:07.619

You know, if not, if the information isn't out there already, you know via

210 "DIT SX80 - Conference Center" (2820884992)

00:24:07.619 --> 00:24:12.449

the Managing Director. You know, we've seen the Managing Director already providing,

211 "DIT SX80 - Conference Center" (2820884992)

00:24:12.449 --> 00:24:17.279

you know more information than ENV had provided previously to the Planning Commission.

212 "Vice Chair Kamo" - Conference Center" (2820884992)

00:24:17.279 --> 00:24:23.009

Thank you. Appreciate it.

Counsel Hu: Thank you.

Chair Meatoga III: All right. Any other questions from Commissioners for any of the parties? [no response]

213 "DIT SX80 - Conference Center" (2820884992)

00:24:29.309 --> 00:24:33.539

All right. Hearing and seeing none. I guess that will conclude this part of the presentation.

[colloquy between Counsel Agag and Chair Meatoga III]

214 "DIT SX80 - Conference Center" (2820884992)

00:24:33.539 --> 00:24:36.839

Any any

215 "DIT SX80 - Conference Center" (2820884992)

00:24:36.839 --> 00:24:40.109

questions Commission members? This is the time. [no response]

216 "DIT SX80 - Conference Center" (2820884992)

00:24:40.109 --> 00:24:47.729

All right.

217 "DIT SX80 - Conference Center" (2820884992)

00:24:47.729 --> 00:24:51.899

Thank you very much everyone for your presentation and for your considerations.

218 "DIT SX80 - Conference Center" (2820884992)
00:24:51.899 --> 00:24:57.059
At this time before we go into the deliberations,

219 "DIT SX80 - Conference Center" (2820884992)
00:24:57.059 --> 00:25:03.479
wanted to make an announcement to the parties regarding the PC's meaning
for adoption for the

220 "DIT SX80 - Conference Center" (2820884992)
00:25:03.479 --> 00:25:09.359
Planning Commission's Findings of Fact. First choice we have is May 15,
2024,

221 "DIT SX80 - Conference Center" (2820884992)
00:25:09.359 --> 00:25:13.559
second choice we have is May 29th, 2024,

222 "DIT SX80 - Conference Center" (2820884992)
00:25:13.559 --> 00:25:24.689
1:30 p.m., here on the 6th floor. How does that look for your folks and
your schedule?

223 "Counsel Chipchase" - Conference Center" (2820884992)
00:25:28.139 --> 00:25:41.009
Chair, we'll make either day work if there's a conflict. My preference
would be for the 29th, but if that's not available with the other parties
than I defer.

224 "Counsel Hu" - Conference Center" (2820884992)
00:25:41.009 --> 00:25:45.029
Sure. Either date works for ENV. Thank you.

225 "Counsel Tam-Sugiyama" - Conference Center" (2820884992)
00:25:45.029 --> 00:25:48.209
Either date works. I'm not

226 "DIT SX80 - Conference Center" (2820884992)
00:25:48.209 --> 00:25:58.499
trying to be facetious. My preference is May 15th, but I can defer.

Chair Meatoga III: Okay. Appreciate it. Thank you very much.

Counsel Agag: Wait before we leave. Jeff, can you

227 "DIT SX80 - Conference Center" (2820884992)
00:25:58.499 --> 00:26:01.559
with regards to your statement

228 "DIT SX80 - Conference Center" (2820884992)
00:26:01.559 --> 00:26:04.649
regarding

229 "DIT SX80 - Conference Center" (2820884992)
00:26:04.649 --> 00:26:10.439
the

230 "DIT SX80 - Conference Center" (2820884992)
00:26:10.439 --> 00:26:18.899
No Pass Zone on KOCA's, I guess it's the Finding of Fact 87.

231 "DIT SX80 - Conference Center" (2820884992)
00:26:18.899 --> 00:26:29.039
Just take a moment to write down exactly what you want. What your suggested language is so that we have the opportunity for everyone to hear it.

232 "DIT SX80 - Conference Center" (2820884992)
00:26:29.039 --> 00:26:38.009
We're not going to make it up at this point. So can you just take a moment write down exactly what you want. Everyone can hear what it is and make

233 "DIT SX80 - Conference Center" (2820884992)
00:26:38.009 --> 00:26:42.929
whatever suggestions if they have any objections to it. Don't mean to put on the spot.

234 "DIT SX80 - Conference Center" (2820884992)
00:26:42.929 --> 00:26:47.819
But we have a little bit of time here. You guys did not take your 30 minutes.

235 "DIT SX80 - Conference Center" (2820884992)
00:26:47.819 --> 00:26:52.589
We can take a break if you want.

Counsel Hu: No. Um, yeah.

Chair Meatoga III: Would you like to reassess for them?

236 "Counsel Hu" - Conference Center" (2820884992)
00:26:52.589 --> 00:26:57.389
No. I have the language, and I think I kind of confused

237 "DIT SX80 - Conference Center" (2820884992)
00:26:57.389 --> 00:27:01.679
everyone because I also said to something to that extent, right?

238 "DIT SX80 - Conference Center" (2820884992)
00:27:01.679 --> 00:27:05.729
So, let me just pull that up again.

239 "DIT SX80 - Conference Center" (2820884992)
00:27:13.649 --> 00:27:17.249
Okay.

240 "DIT SX80 - Conference Center" (2820884992)
 00:27:17.249 --> 00:27:21.539
 So, my proposal would be

241 "DIT SX80 - Conference Center" (2820884992)
 00:27:21.539 --> 00:27:28.349
 "when the BWS No Pass Zone and Act 73 are applied as restrictions,

242 "DIT SX80 - Conference Center" (2820884992)
 00:27:28.349 --> 00:27:33.779
 there were zero potential alternatives landfill sites on O'ahu,

243 "DIT SX80 - Conference Center" (2820884992)
 00:27:33.779 --> 00:27:37.019
 outside of Federal lands."

244 "Counsel Agag" - Conference Center" (2820884992)
 00:27:37.019 --> 00:27:40.199
 Okay. Does

245 "DIT SX80 - Conference Center" (2820884992)
 00:27:40.199 --> 00:27:52.499
 any objections or-

Counsel Chipchase: I just to restate, and I appreciate that opportunity to have it clear that the Finding as proposed is incomplete because eminent domain, of course, is an option.

246 "DIT SX80 - Conference Center" (2820884992)
 00:27:52.499 --> 00:27:58.739
 And that, therefore, frees up a host of other potential landfill sites that could be acquired by eminent domain.

247 "DIT SX80 - Conference Center" (2820884992)
 00:27:58.739 --> 00:28:05.249
 And so we believe that that our correction to 87 as stated in our submissions captures

248 "DIT SX80 - Conference Center" (2820884992)
 00:28:05.249 --> 00:28:08.549
 both Federal sites and the potential for there to be other sites

249 "DIT SX80 - Conference Center" (2820884992)
 00:28:08.549 --> 00:28:18.359
 through the use of eminent domain.

Counsel Hu: Can I respond to that?

Chair Meatoga III: Sure.

250 "Counsel Hu" - Conference Center" (2820884992)
 00:28:18.359 --> 00:28:23.939
 Well, you know Act 73, one of the restrictions is 1/2-mile buffer

251 "DIT SX80 - Conference Center" (2820884992)
00:28:23.939 --> 00:28:29.369
from residential properties. So, you know, if we're talking about
eminent domain, yeah, if like

252 "DIT SX80 - Conference Center" (2820884992)
00:28:29.369 --> 00:28:34.829
eminent domain an entire 1/2-mile radius, then yeah, then we have plenty
of

253 "DIT SX80 - Conference Center" (2820884992)
00:28:34.829 --> 00:28:41.789
Sites, right, but you know that's not going to be the case. So I disagree
with the counsel's statement

254 "DIT SX80 - Conference Center" (2820884992)
00:28:41.789 --> 00:28:45.299
and counsel's proposal.

255 "Chair Meatoga III" - Conference Center" (2820884992)
00:28:45.299 --> 00:28:50.429
Okay. Noted. All right. Any other opinions in the matter since we're
at this juncture.

256 "DIT SX80 - Conference Center" (2820884992)
00:28:50.429 --> 00:28:53.699
All right. Hearing and seeing none, then I'm going to close.

257 "DIT SX80 - Conference Center" (2820884992)
00:28:53.699 --> 00:28:58.979
We're good. Thank you, everyone for your presentation. We'll now be
going into deliberation.

Counsel Chipchase: Thank you, Chair.

258 "Chair Meatoga III" - Conference Center" (2820884992)
00:28:58.979 --> 00:29:08.519
We'll take a 5 minute recess.

903 "Chair Meatoga III" - Conference Center" (2820884992)
01:32:18.929 --> 01:32:24.419
All right. I want to thank everyone, we've come to the conclusion of our
deliberation for the contested case hearing.

904 "DIT SX80 - Conference Center" (2820884992)
01:32:24.419 --> 01:32:30.959
Members do I have a motion to adjourn the Planning Commission April 3rd,
2024 meeting.

905 "Vice Chair Kamo" - Conference Center" (2820884992)
01:32:30.959 --> 01:32:37.008
Vice Chair Kamo makes a motion to adjourn.

Chair Meatoga III: Thank you. Do I have a second?

906 "Melissa May" (359880960)
01:32:37.008 --> 01:32:39.820
Commissioner May second.

907 "Chair Meatoga III" - Conference Center" (2820884992)
01:32:39.820 --> 01:32:44.429
I have a second. Do I have any discussion, any objections, reservations?
[no response]

908 "DIT SX80 - Conference Center" (2820884992)
01:32:44.429 --> 01:32:51.479
Hearing or seining none, the Chair votes aye. The Planning Commission
April 3rd, 2024 meeting will now be adjourned. Before that

909 "DIT SX80 - Conference Center" (2820884992)
01:32:51.479 --> 01:33:01.289
reverse order, our next meeting will be on May 15th at 1:30 p.m., here in
the Frank Fasi Building and online. We are in the Frank Fasi Building,
6th Floor Conference Room.

910 "DIT SX80 - Conference Center" (2820884992)
01:33:01.289 --> 01:33:07.769
All right. With that we are adjourned. Thank you.

Counsel Agag: Did you say the time?

Chair Meatoga III: At 1:30 p.m [bangs gavel]

I certify that the foregoing is
a true and correct transcription
of the proceedings, prepared to
the best of my ability, of the
meeting held on Wednesday,
April 3, 2024.

Gloria Takara
Secretary-Reporter
Planning Commissioin