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 DEPARTMENT OF ENVIRONMENTAL SERVICES,
 CITY AND COUNTY OF HONOLULU

BEFORE THE LAND USE COMMISSION
 STATE OF HAWAII

In the Matter of the Application of	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL	)	DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF	)	SERVICES, CITY AND COUNTY OF
HONOLULU	)	HONOLULU'S RESPONSE TO
	)	INTERVENORS KO OLINA COMMUNITY
For A New Special Use Permit To	)	ASSOCIATION AND MAILE
Supersede Existing Special Use Permit To	)	SHIMABUKURO'S MOTION TO DENY
Allow A 92.5-Acre Expansion And Time	)	AND REMAND
Extension For Waimanalo Gulch Sanitary)	
Landfill, Waimanalo Gulch, O'ahu,	)	DECLARATION OF DANA VIOLA
Hawai'i, Tax Map Key: 9-2-03: 72 And 73)	
	)	EXHIBIT "1"
)	
In the Matter of the Application of	)	CERTIFICATE OF SERVICE
)	
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	
HONOLULU)	
)	
To delete Condition No. 14 of Special Use)	
Permit No. 2008/SUP-2 (also referred to as)	
Land Use Commission Docket No. SP09-403))	
which states as follows:)	
)	
"14. Municipal solid waste shall be allowed at)	
the WGSF up to July 31, 2012, provided that)	

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 LAND USE COMMISSION
 STATE OF HAWAII

only ash and residue from H-POWER shall be)
allowed at the WGSJ after July 31, 2012.”)
_____)

**DEPARTMENT OF ENVIRONMENTAL SERVICES RESPONSE TO
INTERVENORS KO OLINA COMMUNITY ASSOCIATION
AND MAILE SHIMABUKURO’S MOTION TO DENY AND REMAND**

Pursuant to Hawai`i Administrative Rules (“HAR”) § 15-15-70, Applicant Department of Environmental Services, City and County of Honolulu (the “Applicant” or “ENV”) objects to Intervenor Ko Olina Community Association and Maile Shimabukuro’s (collectively “KOCA”) motion to deny the Application filed December 3, 2008 (the “2008 Application”) and the Application filed June 28, 2011 (the “2011 Application” and together with the 2008 Application, the “Applications”).

ENV does not object to remanding the Applications to the Honolulu Planning Commission (“Planning Commission”) should this Commission determine that such remand is appropriate for the Planning Commission to complete the record of the proceeding below by demonstrating compliance with Rules of the Planning Commission § 2-75 and to more clearly issue a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order for the Applications.

Applicant objects to KOCA’s contentions regarding Honolulu Planning Commission Chair Dean I. Hazama and KOCA’s alleged erroneous findings of fact.

A. Remand Is Proper Only Without Taking Final Action on the Applications

KOCA’s request to deny the Applications and remand the matter to the Planning Commission is contrary to the plain language of the applicable law because remand is proper only when the Land Use Commission (“LUC” or “Commission”) does not act to approve, approve with modification, or deny the petition.

HAR § 15-15-96(a) provides:

Within forty-five days after receipt of the county planning commission's decision and the complete record of the proceeding before the county planning commission, as determined by the executive officer, the commission shall act to approve, approve with modification, or deny the petition. The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the petitioner. Upon determination by the commission, the petition may be remanded to the county planning commission for further proceedings.

(Emphasis added).

Likewise, Hawaii Revised Statutes ("HRS") § 205-6(e) provides in relevant part:

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition.

(Emphasis added).

The plain reading of the law shows that the LUC can take action on a special use permit ("SUP") petition in four ways – approve, approve with modifications, deny or remand. If the LUC approves, approves with modifications, or denies a petition, that is the final decision of the LUC. These final decisions would never result in a remand to the Planning Commission because an approval would adopt the underlying decision without the need for further proceedings, and modifications or a denial would be appealable to the circuit court pursuant to HAR § 15-15-96(c) and HRS 205-6(e).¹

¹HAR § 15-15-96(c) provides:

A denial or modification of the special permit, as the case may be, of the proposed use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawai'i rules of civil procedure.

HRS § 205-6 (e) provides in relevant part:

A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

Moreover, once the LUC approves, approves with modifications, or denies a petition, the LUC would no longer have jurisdiction to remand the matter to the Planning Commission for further proceedings. Consequently, the parties cannot waive any LUC rule to create LUC jurisdiction.

The fourth option for the LUC is to remand the matter to the Planning Commission for further proceedings. Applying HAR § 15-15-96(a) and HRS § 205-6(e) *in pari materia*, the LUC may remand without taking action upon the LUC's executive director determining that the record of the Planning Commission proceeding is not complete. For the Applications, the LUC executive director could reasonably determine that the record received from the Planning Commission does not demonstrate compliance with procedural rule § 2-75 and with the LUC's order to provide a single Findings of Fact, Conclusions of Law, and Decision and Order for the consolidated Applications, and that these are deficiencies make the record of the Planning Commission proceeding incomplete.²

Accordingly, it would be entirely appropriate for the LUC to remand the Applications to the Planning Commission to enable production of a complete record demonstrating compliance with Planning Commission Rule § 2-75 and a single order that

² HRS § 91-13.5(c) provides:

All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved; provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.

Because a decision on the Applications would not be required due to the fact that the Planning Commission record is incomplete and the matter would be remanded to the Planning Commission for further proceedings, the automatic approval of the Applications would not be triggered pursuant to HRS § 91-13.5.

combines the findings of fact, conclusions of law, decision and orders from the 2008 and 2011 Applications into a single recommended order. Such a remand precludes the LUC from denying the Application.

B. KOCA Fails to Establish Grounds For Recusal of Chair Hazama

ENV objects to KOCA's allegation that Chair Hazama could not fairly evaluate the record he heard and reviewed. KOCA cites to *Mauna Kea Anaina Hou*, 136 Hawai'i 376, 363 P.3d 224 (2015) to support its claim that a showing of "prejudgment" would alone require recusal. This is not the standard established in *Mauna Kea*. The Supreme Court held that the Board of Land and Natural Resources ("BLNR") violated Petitioners' procedural due process rights in issuing the final permit before completion of the contested case hearing because by finalizing the permit before the contested case hearing, BLNR in appearance and in fact had "prejudged" or "predetermined" the factual and legal issues, divesting Petitioners of the right to a meaningful opportunity to be heard.

Unlike the BLNR in *Mauna Kea*, Chair Hazama did not make any decisions or take any official action on the merits of the permit before the factual record was developed and considered. Chair Hazama also represented that he reviewed all evidence and the entire record, that he did not influence the other commissioners' decision-making, and that contrary to the representations in the media (which he claimed were taken out of context), he remained objective. Exhibit "1" at 19:18-23 and 20:3-7.

Here, neither Chair Hazama nor the Planning Commission took any official action on the Applications before the contested case hearing, and therefore *Mauna Kea* has no bearing on any remarks by Chair Hazama. Chair Hazama did nothing that would violate

KOCA's procedural due process rights or warrant his recusal from consideration of the Applications.

C. KOCA Misconstrues Finding of Facts

Although ENV does not dispute that the Planning Commission did not produce a single Findings of Fact, Conclusions of Law, and Decision and Order for the consolidated Applications, ENV objects to KOCA's alleged erroneous findings of fact as an attempt to misconstrue the facts and resurrect arguments, without new evidence, that both the Planning Commission and LUC have already resolved. For example:

- **Findings of Fact 53 to 61 and 103-110:** KOCA claims that these findings were erroneous because they reveal the failure to apply the setback requirements provided for in the City's Land Use Ordinances. This representation, not the findings, is clearly erroneous because both the Planning Commission and the LUC resolved this matter in the 2008 Application by relying on the Department of Planning and Permitting's ("DPP") determination that the setback requirements are not applicable to the Waimanalo Gulch Sanitary Landfill ("WGSL"). 2008 Application, 9/24/09, Transcript at 193:2 – 195:17. See DPP Report and Recommendation to Karin Holma, Chairperson and Members of the Planning Commission, dated May 1, 2009. Further, KOCA fails to point to any additional evidence in the 2011 Application proceeding that would bring into question or reopen consideration of the Planning Commission's and LUC's determination as to the setback requirements.
- **Finding of Fact 90:** KOCA erroneously claims that because a Council resolution is "not binding on the City," the finding that the Council's action

designating the WGS� as the City's landfill site is false. The legal nature of the resolution has no bearing on the fact that the Council took non-legislative action and selected WGS� as the City's landfill site. KOCA's assertion is false on its face. (See Revised Charter of the City and County of Honolulu, Section 3-201 – Non-legislative acts of the council may be by resolution -- but do not have the force and effect of law.)

- **Findings fail to mention the Landfill's violations of the state law:**

KOCA purposely misconstrues the Department of Health, Branch Chief, Solid and Hazardous Waste Division, Steven Chang's testimony by making it appear that Mr. Chang singled out WGS� among the 13 landfills in the State of Hawaii as having received more regulatory violations. KOCA fails to point out that Mr. Chang clarified that the only landfill on Oahu that accepts municipal solid waste, other than the Kaneohe Marine Corps Air Station which only accepts waste from their naval facility, is WGS�. Therefore, it stands to reason that there would be more regulatory violations for WGS� because it is the only landfill accepting MSW for everyone on Oahu who is not at Kaneohe Marine Corps Air Base. 2011 Application, 1/25/12 Transcript at 58:22-59:9

- **Consideration of the position of the State Office of Planning and**

Finding of Fact 103: KOCA claims that findings that purport to summarize state regulations should mention the State Office of Planning's letter. There is no legal requirement for the findings to specifically reference this letter and nothing alleged to show that the Office of Planning's recommendations were not considered in final decision-making.

- **Findings of Fact 60, 75, 77-81, and 101:** KOCA claims that these findings are clearly erroneous, no longer accurate, or contrary to the evidence on the record. KOCA's characterizations are incorrect because the findings are accurate statements of the facts at the time.

D. Conclusion

For the foregoing reasons, ENV opposes KOCA's motion insofar as it seeks the recusal of Mr. Hazama and misleadingly and inappropriately challenges the Planning Commission's findings of fact, but ENV does not object to the Commission remanding, without denying, the Applications to the Planning Commission to complete the record of the proceeding below by demonstrating compliance with Planning Commission Rule § 2-75 and by issuing a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order for the consolidated Applications.

DATED: Honolulu, Hawaii, May 19, 2017.

Respectfully submitted,



KAMILLA C. K. CHAN
DANA VIOLA
Deputies Corporation Counsel
Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application of)
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DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
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For A New Special Use Permit To)
Supersede Existing Special Use Permit To)
Allow A 92.5-Acre Expansion And Time)
Extension For Waimanalo Gulch Sani-)
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Hawai`i, Tax Map Key: 9-2-03: 72 And 73)
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In the Matter of the Application of)
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DEPARTMENT OF ENVIRONMENTAL)
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HONOLULU)
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To delete Condition No. 14 of Special Use)
Permit No. 2008/SUP-2 (also referred to as)
Land Use Commission Docket No. SP09-403))
which states as follows:)
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"14. Municipal solid waste shall be allowed at)
the WGSL up to July 31, 2012, provided that)
only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")
)
_____)

DOCKET NO. SP09-403
DECLARATION OF DANA VIOLA
EXHIBIT "1"

DECLARATION OF DANA VIOLA

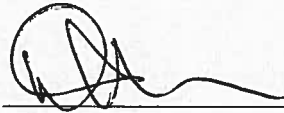
I, Dana Viola, hereby declare as follows:

1. I am one of the attorneys for the Department of Environmental Services, City and County of Honolulu in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit "1" is a true and correct copy of a draft of the transcript of proceedings in this action before the Honolulu Planning Commission on March 1, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 19, 2017.

A handwritten signature in black ink, appearing to read "DANA VIOLA", is written over a horizontal line.

DANA VIOLA

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

In the Matter of the) File No. 2008/SUP-2
Application of)
) DRAFT ONLY
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
To delete Condition No. 14 of)
Special Use Permit No. 2008/SUP-2)
(also referred to as Land Use)
Commission Docket No. SP09-403))
which states as follows:)
)
"14. Municipal solid waste)
shall be allowed as the WGS� up to)
July 31, 2012, provided that only)
ash and residue from H-POWER shall)
be allowed at the WGS� after)
July 31, 2012.")
_____)

CONTINUED - CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008/SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room, Mission
Memorial Building, 550 South King Street, Honolulu, Hawaii,
96813, commencing at 1:30 p.m. on March 1, 2017, pursuant to
Notice.

1 APPEARANCES:

2

3 Planning Commissioners present:

4

Dean I. Hazama, Chair

5

Cord D. Anderson

6

Daniel S. M. Young

7

Ken K. Hayashida

8

Wilfred A. Chang, Jr.

9

10 Planning Commissioners excused:

11

Arthur B. Tolentino

12

Kaiulani K. Sodaro [recused,
prior notice given]

13

14

Steven S. C. Lim [recused,
prior notice given]

15

16

Theresa c. McMurdo, Vice Chair
[prior notice given]

17

18

19 Deputy Corporation Counsel:

20

Jennifer D. Waihee-Polk

21

(Advisory to the Commission)

22

23 Planning Commission staff:

24

Gloria Takara,

25

Secretary-Hearings Reporter

1 For the City and County of Honolulu, Department of
2 Environmental Services: :

3 Kamilla C. K. Chan, Esq.
4 Deputy Corporation Counsel
5 City and County of Honolulu
6 530 South King Street, Room 110
7 Honolulu, Hawaii 96813
8

9 For intervenor Ko Olina Community Association and Senator
10 Maile Shimabukuro:

11 Calvert G. Chipchase, Esq.
12 Christopher T. Goodin, Esq.
13 Cades Schutte LLP
14 1000 Bishop Street, Suite 1200
15 Honolulu, Hawaii 96813
16

17 For intervenor Schnitzer Steel Hawaii Corp.:

18 Arsima Muller, Esq.
19 Carlsmith Ball LLP
20 ASB Tower, Suite 2200
21 1000 Bishop Street
22 Honolulu, Hawaii 96813
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For intervenor Colleen Hanabusa:

Richard N. Wurdeman, Esq.
1003 Bishop Street, Suite 720
Honolulu, Hawaii 96813

P R O C E E D I N G S

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2
3 Chairman: Good afternoon. Welcome to the Planning
4 Commission meeting for Wednesday, March 1st, 2017. Call
5 this meeting to order. [bangs gavel] First item on our
6 agenda is approval of our January 4th and January 18th, 2017
7 meeting minutes. Commissioners, do you have any questions,
8 corrections or concerns regarding both meeting minutes for
9 January 4th and January 18th. [no response] Okay. Seeing
10 none, any objections to adopting the minutes? [no response]
11 Any abstentions? [no response] Okay. The minutes have been
12 adopted.

13 Moving on to continued contested case hearing, Ewa
14 State Special Use Permit, amendment application 2008/SUP-2,
15 Waimanalo Gulch Sanitary Landfill, WGSL.

16 Okay. Moving on for action. First item for
17 action is Department of Environmental Services, City and
18 County of Honolulu, Motion to Strike Intervenor Colleen
19 Hanabusa's (1) Renewal of Submission of Proposed Findings of
20 Fact and Conclusions of Law. Department. Okay. For the
21 record.

22 Ms. Chan: Kamilla Chan for the City and County of
23 Honolulu.

24 Mr. Wurdeman: Richard N. Wurdeman for intervenor
25 Colleen Hanabusa.

1 Chairman: Okay. Ms. Chan.

2 Ms. Chan: Thank you, Chair. The City request that
3 the Planning Commission grant its motion to strike
4 intervenor Hanabusa's Proposed Findings of Fact and
5 Conclusions of Law on the basis that they were submitted
6 late. The deadlines were set by the Planning Commission
7 back in October and no objections were raised during the
8 four months that lapsed between then and the actual
9 deadline. Objections to the deadline could've been raised
10 before the deadline reached under the Planning Commission's
11 rules, yet objections were raised for the first time and the
12 Proposed Findings of Fact were filed two weeks after the
13 deadline. Bottom line is they are late. The Planning
14 Commission didn't set further extended deadlines for the
15 parties to respond to that submission. In the event that
16 the Planning Commission is intending to consider intervenor
17 Hanabusa's filings, the City would request additional time
18 to supplement its 2009 response.

19 I know intervenor Hanabusa argues that she refers
20 to those filings or the resubmission of those filings in her
21 October 7th, 2016 statement. However, it's not clear what
22 was going to be filed. It does reference that modifications
23 may be made into the pleading. There has been additional
24 evidence since the time that the 2009 filing was initially
25 filed with the Planning Commission and the City would be

1 supplementing its response.

2 Chairman: Okay. Mr. Wurdeman.

3 Mr. Wurdeman: Well, the reason why there's been
4 evidence since 2009 is one, there was a separate proceeding
5 in which Ms. Hanabusa did not participate. And over
6 strenuous objections this Commission consolidated its two
7 records, depriving her of her rights of due process to
8 confront witnesses in those proceedings, to present her own
9 evidence in those proceedings. And that's one point with
10 respect to evidence subsequent to July 17th, 2009. She
11 objects to again that record and that certainly not going to
12 be something that she's incorporating in her proposed
13 findings if she's objecting to it.

14 The second point is that Ms. Hanabusa has been the
15 one consistent party since the remand to object to a number
16 of continuances by the City, Environmental Services under
17 the guise of they were in negotiations with Ko Olina
18 Community Association. That went on for years. We were in
19 front of the Land Use Commission, and they wanted status
20 reports what's going on. The City kept--at one point gave
21 them a presentation about the recycling program that was
22 completely irrelevant to anything. And what has happened is
23 since 2009, the City during that first contested case
24 hearing. And this is another point that we continue to bring
25 up is that the City during those proceedings represented to

1 both the Planning Commission and the Land Use Commission
2 that it would be at least seven years in which to find an
3 alternative site. And, we are here now on the 8th year and
4 haven't done a darn thing to find an alternative site. And,
5 I think this is really reflective of their gamesmanship in
6 stalling in these proceedings. Because they didn't have,
7 never had any intention whatsoever of looking for
8 alternative sites. And, Ms. Hanabusa as a result relied
9 consistently upon her July 17th, 2009 filing which is
10 certainly timely, is filed as part of the record. She's
11 relying on it. The City filed its objections at that time.
12 In October 7th, 2016, she's indicated that she was going to
13 rely on that again, although there may have been some
14 changes to the names because two of the parties in that
15 original findings have proceeded with other counsel and have
16 submitted their own proposed findings. And those parties
17 did participate in the second proceedings, contested case
18 hearings. So, you know, given that this has been on file
19 since July 17th, 2009. We indicated that we are relying on
20 it. There is no surprise to the City, and we ask as a
21 result that their motion be denied.

22 Chairman: Okay. Thank you. Commissioners, any
23 questions of either party? [no response] So, Mr. Wurdeman,
24 then your contention is, therefore, that your Findings of
25 Fact, Conclusions of Law, Decision and Order, regarding your

1 2009 submission is what you have submitted before the
2 Commission?

3 Mr. Wurdeman: Yes. That's what was submitted in
4 2009, which is still pending before the Commission and upon
5 which intervenor Hanabusa is still relying.

6 Chairman: Okay. Corporation Counsel, then
7 therefore your motion to strike applies to Mr. Wurdeman's
8 2017--I guess, that is where the confusion is coming in.
9 His February 10th 2017 submission to the Planning Commission
10 that is what you are motioning to strike?

11 Mr. Chan: Yes. We're seeking to strike that.

12 Chairman: So, your motion is not to strike
13 intervenor's 2009 submission to the Land Use Commission?

14 Mr. Chan: No. And our position is that was
15 previously decided by the Planning Commission. They
16 considered--

17 Chairman: You mean the deadline? What was
18 decided previously--

19 Ms Chan: No. That 2009 filing was submitted when
20 the application was first brought before the Planning
21 Commission. That was the case that eventually went up to
22 LUC, to supreme court. The deadline was struck, and it came
23 back down to the Planning Commission.

24 Chairman: Right. However---

25 Ms. Chan: So, that's already been considered by

1 the Planning Commission.

2 Chairman: Correct. However, based on the October
3 meeting, that all parties were allowed to submit amendments
4 to the original filings, Decision and Order. So, I'm of the
5 belief that the 2009 filing stands. I mean, you're not
6 trying to strike his 2017?

7 Ms. Chan: We're striking, I guess the style, the
8 resubmittal of the 2009 filing.

9 Chairman: Okay. So, for clarification, Mr.
10 Wurdeman, now mainly perhaps the title of your filing is
11 misleading in the sense--

12 Mr. Wurdeman: Yes. If that's the case, then I
13 apologize for that, but we certainly just wanted to make it
14 a point that she continue to rely on her 2009 filing and
15 that was the only intent for that Part 1.

16 Chairman: Okay. So for clarification purpose, you
17 have not submitted any amendment of Findings of Fact,
18 Conclusions of Law, and Decision and Order, after your 2009
19 filing?

20 Mr. Wurdeman: Correct.

21 Chairman: Okay. Commissioners, any questions at
22 this time? [no response] Okay. We have to take action on
23 the motion before us in regards to Environmental Services
24 motion to strike intervenor Colleen Hanabusa's February
25 10th, 2017 document. Do we have a motion? You can ask

1 questions.

2 Member Hayashida: So, it's irrelevant, right?

3 I mean--

4 Chairman: The motion--

5 [colloquy between DCC Jennifer Waihee-Polk and
6 Chairman Hazama]

7 Member Anderson: Make a motion to move into
8 executive session, please.

9 Chairman: Okay. So moved.

10 Member Hayashida: Second.

11 Chairman: Moved and seconded. Any objections?

12 [no response] Any abstentions? [no response] Okay. The
13 Commission will move into executive session to consult with
14 Corporation Counsel on authority, duties, privileges,
15 immunities pertaining to Section 205-6 of the Hawaii Revised
16 Statutes as amended in Chapter 2, Subchapters 4 and 5 of the
17 Rules of the Planning Commission and in accordance with HRS
18 92-5. Okay. We're in executive session.

19 [EXECUTIVE SESSION MINUTES]

20 Out: 1:43 p.m.

21 In: 2:11 p.m.

22 Chairman: Okay. Thank you for your patience. I
23 call this meeting back to order. [bangs gavel] At this time
24 we are still in regards to the Environmental Services motion
25 to strike. Do we have a motion before the Commission?

1 Member Anderson: Sure. I'll make a motion to
2 strike intervenor Colleen Hanabusa's renewal of submission
3 of Proposed Findings of Fact and Conclusions of Law.

4 Chairman: Okay. So moved. Do we have a second?

5 Member Hayashida: Second.

6 Chairman: Okay. All those in favor, say aye.

7 All Commissioners: Aye.

8 Chairman: I'm sorry. Do we have any discussion on
9 the matter regarding this issue? [no response] I don't
10 see--

11 Mr. Wurdeman: Could I ask for a clarification? So,
12 you're striking--I'm sorry, what was--

13 Chairman: We're striking your February 10th,
14 2017--

15 Mr. Wurdeman: Okay. So, the July 2009 though is
16 still part of the record, that can't be stricken.

17 Member Anderson: Yes.

18 Mr. Wurdeman: Okay.

19 Chairman: I don't see any objections,
20 Mr. Wurdeman, or any of the parties, so like I said I don't
21 have a problem supporting the City's position on this issue.
22 Any further discussion, Commissioners? [no response] If
23 not, all those in favor, say aye.

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response] Any

1 abstentions? [no response] Okay. The motion is granted.

2 Okay. Moving on to the second item of the agenda,
3 Adoption of Findings of Fact, Conclusions of Law, and
4 Decision and Order. At this time I call all parties up.

5 Okay. For the record, appearances, please.

6 Mr. Wurdeman: Richard N. Wurdeman for intervenor
7 Colleen Hanabusa.

8 Ms. Chan: Kamilla Chan for the City and County of
9 Honolulu.

10 Ms. Muller: Arsima Muller for intervenor Schnitzer
11 Steel Hawaii Corp.

12 Mr. Chipchase: And Cal Chipchase and Chris Goodin
13 for Ko Olina Community Association and Senator Maile
14 Shimabukuro. With us in the hearing room is Ken Williams,
15 who's the general manager for the association, association's
16 designated representative and was a witness in these
17 proceedings.

18 Chairman: Okay. Thank you. So for the record,
19 Commissioners, the Planning Commission is in receipt of, I
20 guess, submission of Findings of Fact, Conclusions and Law,
21 Decision and Order for the parties with the exception of
22 Mr. Wurdeman. So, we have your records as well as your
23 rebuttals regarding each others decision and orders.

24 Okay. Commissioners. Also for the record I'd
25 like to confirm that the evidentiary portion of the

1 contested case hearing is closed. So before us now, I
2 guess, is Commission's action.

3 [colloquy between DCC Waihee-Polk and Commissioner
4 Anderson]

5 Member Anderson: Chair, I'd like to make a
6 motion, please.

7 Chairman: Okay.

8 Member Anderson: Motion to adopt the 2011 ENV
9 application Findings of Fact, Conclusions of Law, and
10 Decision and Order with the following conditions. I would
11 like to add from page 82 of intervenor Ko Olina Community
12 Association and Maile Shimabukuro's Proposed of Findings of
13 Fact, Conclusions of Law, and Decision and Order. Again,
14 page 82, Item C, that deals with ENV providing semi-annual
15 reports to the Planning Commission and LUC. The second
16 added condition will be on the same document, page 86, Item
17 No. 5, which deals with public health and safety conditions,
18 and the third condition would be that the City, ENV in
19 particular, ID an alternate site by December 31st, 2022,
20 that will be used upon Waimanalo Gulch Sanitary Landfills
21 reaching its capacity.

22 Chairman: Okay. Do we have a second?

23 Member Hayashida: Second.

24 Chairman: Okay. It's moved and seconded. Okay.

25 Commissioners, we are now in discussion. Any further

1 discussion?

2 Mr. Chipchase: Commissioners, I'm sorry to
3 interrupt. It's always been customary in presentations that
4 I've done in findings to be able to present the findings to
5 the Commission before they adopt them and ask for that
6 opportunity, particularly, as majority of the Commission
7 didn't have an opportunity to sit through the proceedings.

8 Chairman: Okay. However, we have the record.
9 So, we have all evidentiary records and have reviewed them.

10 So, that's each Commissioner's responsibility, and we also
11 have your submittal. So, we have everything.

12 Mr. Chipchase: No. I understand that you have
13 the record, Commissioners, and I appreciate that. But it
14 has always been customary in my experience to have an
15 opportunity to present those findings, and we certainly did
16 in the 2012, conclusion of 2012 proceedings, had an
17 opportunity to present those to the Commission. But there's
18 a dialog and discussion about why we're requesting certain
19 conditions before the Commission actually adopts a proposed
20 form of order. And I ask for that before the Commission
21 votes on the motion.

22 [colloquy between DCC Waihee-Polk and Chairman
23 Hazama and Member Anderson]

24 Member Anderson: I make a motion for executive
25 session.

1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Basically the
3 Commission has made a motion to go into executive session to
4 consult with the Commissioner's attorney on the authority,
5 duties, privileges and immunities pertaining to Section
6 205-5 of the Hawaii Revised Statutes as amended in Chapter
7 2, Subchapters 4 and 5 of the Rules of the Planning
8 Commission in accordance with HRS 92-5. Okay.

9 Mr. Wurdeman: Mr. Chairman, may I be heard please
10 before you go into executive session. The City's last
11 motion was for a Part 1 of the February 10th filing and not
12 Part 2. And not it only was it our findings timely filed on
13 July 17th, 2009, but we reiterated our reliance on October
14 12, 2016, and two separate times, not only was it filed
15 timely but it was reiterated that it be relied upon timely
16 in October well before any other parties submitted anything,
17 one. Two, is in the second part that wasn't the subject of
18 the City's motion is my objections to this Chair presiding
19 over this matter because of this Chair's apparent
20 pre-determination of the facts and conclusions in the
21 attached newspaper article in the Honolulu Star Advertiser
22 that it was dated August 19th, 2016, in which is part of my
23 February 10, 2016 [sic] submission. And that is
24 respectfully challenging you, Mr. Chairman, in presiding
25 over these matters when you've already pre-determined this

1 case.

2 And, I have some familiarity with this issue
3 because the cited decision, Mauna Kea Anaina Hou, is a case
4 that I argued before the Hawaii Supreme Court on.
5 Pre-determining matters before the parties have been allowed
6 and meaningful opportunity be heard. And given our timely
7 filings, it makes me wonder--And I have to call into
8 question, the last Board's ruling on intervenor Hanabusa's
9 decision. Because that was done without taking it into
10 consideration the Part 2 of my pleading, which was my
11 objections respectfully to you, presiding over this because
12 of your pre-determination on this matter. So, I'd like that
13 to be decided on before we move any further and talk about
14 anything further in these matters because obviously the
15 Chair does have a lot of influence on the other Commission
16 members. And, if the Chair has already decided on this
17 matter before all the proper submissions were made; and it's
18 obvious in the quotes back in August that was done by this
19 Chair. "We have to have an operating landfill. I think it's
20 unreasonable to expect the City to just close it down,"
21 Hazama said. Another quote is, "that's my hope that we can
22 move this along so that at least the City will have a valid
23 permit that will allow it to operate it," Hazama said. This
24 was all in the August news article that I reference. You
25 were quoted in that, Mr. Chair. And, intervenor Hanabusa

1 takes exception to given that that's your stated position
2 publicly that you are now in these proceeding precluding her
3 from submitting proposals that are contrary to your opinion
4 way back in August before all of these submissions were
5 made. So, I would like that objection to be made. I would
6 respectfully ask you to recuse yourself from these
7 proceedings because of your pre-determination of the issues.

8 And, finally, I would like to also ask that there
9 be a confirmation, because the law requires that especially
10 in light of, I believe, that--and if not all of the
11 Commissioners were present in both proceedings, I believe at
12 least most of the Commissioners were present. And the law
13 requires a review of all records, evidence going through
14 transcript, going through exhibits, of all those
15 proceedings, by each and every Commissioner before a vote
16 can be had, and I'd like that to be confirmed as well. With
17 all of the Commissioners, since none of them had, as far as
18 I know, sat through both of the proceedings. So, that would
19 also be my second request. But my first is I respectfully
20 ask yourself to recuse yourself because of your comments
21 that were made publicly back in August. Thank you.

22 Chairman: So, you had your say? So, the motion on
23 the floor is for executive session. Seconded it. Any
24 objections? [no response] Any abstentions? [no response]
25 Okay. At this time, we will move into executive session.

1 [EXECUTIVE SESSION MINUTES]

2 Out: 2:26 p.m.

3 In: 2:44 p.m.

4 Chairman: Okay. Thank you. I call this meeting
5 back to order. [bangs gavel]6 Okay. For the record, Commissioners, I need
7 confirmation from you that you have reviewed all evidence
8 and the entire record from the 2008 and 2011 SUP
9 proceedings. Commissioners.

10 Member Hayashida: I reviewed the records.

11 Chairman: Okay. Commissioner Chang.

12 Member Chang: I have as well.

13 Chairman: Okay. Commissioner Young.

14 Member Young: So have I.

15 Chairman: Okay.

16 Member Anderson: Yes. I have reviewed all of the
17 records presented to us. Thank you.18 Chairman: Okay. And, likewise, I have as well.
19 In regards to, for the record, Mr. Wurdeman, your
20 presumption on my influence over the entire Commission, I
21 think is incorrect. So, I'm one Commissioner that has one
22 vote equal to the weight of any other Commissioner on this
23 body.24 In regards to your request regarding Part 2.
25 Because we received, the Commission has received it, so it

1 is part of the record. We have not stricken it from the
2 record. Just for your clarification.

3 And in regards to your comments about my
4 objectivity in this matter, I believe that your citing, my
5 personal opinions taken out of context in regards to the
6 news article. So, I don't have any influence in regards
7 to--execution of my duties as Chair.

8 In regards to Mr. Chipchase's request, because
9 as--

10 Mr. Wurdeman: Excuse me, if I may, what does that
11 mean, Mr. Chair? Those are direct--I'd like a clarification
12 on how it was taken out of context because--

13 Chairman: I'm not going to clarify because I
14 didn't write the article. So, in regards to Mr. Chipchase's
15 request--

16 Mr. Wurdeman: Mr. Pang is here. I'd like to call
17 him as a witness then.

18 Chairman: Denied. In regards to Mr. Chipchase's
19 request, because the Commissioners have reviewed all
20 evidence, entire record that is on file, at this time we are
21 not going to be allowing any presentations.

22 Mr. Chipchase: Very well, Chair. Then for the
23 record allow me just to state my objection to that.

24 Chairman: That's fine.

25 Mr. Chipchase: The motion made by Commissioner

1 Anderson was made without public discussion. The decision or
2 the motion to adopt particular parties, Findings of Fact,
3 Conclusions of Law, is then made not in a public setting.
4 The genesis for it is not identified in any public
5 proceeding that I am aware of. The selection of particular
6 conditions from our proposed Findings of Fact, Conclusions
7 of Law, and Decision and Order that would amend the ENV's
8 proposed findings. I'm not aware that there was any public
9 deliberation or public discussion as to why those were to be
10 included in the motion. And, so it seems to me that the
11 decisions in this matter were not made open and publicly and
12 certainly were not made following the opportunity of the
13 parties to present their evidence in this case, in the form
14 of discussion and argument regarding the Findings of Fact,
15 Conclusions of Law, Decision and Order. It would then allow
16 the Commission to ask the parties questions and to fair it
17 out why particular conditions were included and why
18 particular conditions were not. I would note that as part
19 of that a number of the conditions that are existing in the
20 orders today from both this body and the LUC were not
21 included in the City's proposed submission. Yet, this
22 Commission would adopt those providing less protection,
23 providing less notice, providing less than its currently
24 imposed through prior orders.

25 I don't believe that those kinds of decision

1 should have been made in private or without an opportunity
2 for the parties to present the record. And, so I make an
3 objection to that process. I make an objection to the
4 refusal to allow argument on the motions and the
5 presentation today. And, I join in Mr. Wurdeman's motions,
6 both recusal and his objections to this process.

7 Mr. Wurdeman: And, I'd like to also join with
8 Mr. Chipchase's objections as well.

9 Chairman: Okay. Your objection is noted. Okay.
10 Moving on to the motion--So, I'll put the motion back on the
11 floor, been seconded. So we are in discussion regarding the
12 motion. Any discussions, Commissioners, at this time?

13 Member Hayashida: The only thing that I have is
14 the Findings of Fact before 2011, ENV's 2011 application do
15 not need to be included for the record.

16 Chairman: Are you making a motion to include the
17 changes?

18 Member Hayashida: I'll make the motion to include
19 the changes, to not include the Findings of Fact before
20 ENV's 2011 application.

21 Chairman: Okay. Any objections to accepting the
22 motion?

23 Member Anderson: No.

24 Chairman: Okay. Commissioners--

25 Member Anderson: Just to clarify. He--There was

1 an additional condition added upon my motion?

2 Chairman: Yes.

3 Member Anderson: Okay. Yeah, I have no objection
4 there.

5 Chairman: Okay. Is there a second to his motion?

6 Member Anderson: I'll second it.

7 Chairman: Now, do you have any objections?

8 Member Anderson: No objections. But I do have just
9 some general discussion points why I included, I guess, the
10 two conditions from KOCA and the timing of the
11 identification of an alternate site. Mr. Chipchase, I do
12 appreciate the thoroughness of your Findings of Fact,
13 Conclusions of Law, Decision and Order. Looking through the
14 numerous conditions in there, I did pick out these two
15 items, I think should be added to ENV's--Also with the--I
16 did have some reservations about identifying a specific date
17 when the landfill should be closed primarily due to the fact
18 that, I think that date is more contingent upon the capacity
19 and filling the capacity. Not a specific date. Thus, I felt
20 a little more comfortable identifying an alternate site at a
21 specific date and that site will just be, in other words, I
22 guess a stand-by site until the current landfill hits
23 capacity. That's a justification behind my three conditions
24 I added to the motion.

25 Chairman: Okay. Any further discussions? [no

1 response] I understand, I guess, and I appreciate the
2 parties positions. There are extensive submissions that you
3 gave us. We as Commissioners have to review and study all of
4 that and understand your position. So, you know, I
5 appreciate all the hard work you guys put into this.
6 However, I agree with Commissioner Anderson the fact that
7 putting dates necessarily on particular, this particular
8 subject matter and with the lack of another landfill or any
9 other option that is affordable to the residents of this
10 county, we have really no other choice in my opinion but we
11 have to have an operating landfill. I mean whether your
12 positions are that we don't or not, but I can appreciate
13 that. But in reality of the matter is that we need a
14 landfill.

15 Now, the City has two technology. I believe the
16 City has stated, you know, their increase and the capability
17 of reducing the amount of landfill, the amount of material
18 that's going into the landfill. And, I further have a
19 problem then with setting a date. I also think it's a more
20 function of capacity rather than just coming and trying for
21 any body whether it's this body or the LUC to try and set a
22 potential date when that landfill will be closed in the
23 absence of a working landfill or another existing landfill.
24 Whether you agree with me or not, you know, we need a
25 landfill. We just can't put it in somebody's backyard,

1 can't dump it in the ocean. We have to comply with whatever
2 EPA standards and Department of Health standards that are
3 required.

4 So, having said that, I concur with Commissioner
5 Anderson's assessment that we do--It should really be a
6 function of capacity. Having said that, however, personally
7 I believe the City had an obligation and have an obligation
8 to start working in identifying another landfill once this
9 once hits whatever capacity. I'm not so sure from reading
10 the submissions and the record that has been--That we're
11 actually up to a point where we need to be as far as finding
12 that. And, therefore--or I might not agree with the
13 motion's date, as far as the deadline. I think that it's
14 perfectly fine to set a deadline for the City to at least
15 identify their next landfill. I think that's an obligation
16 the City owes the people as well. And, I can appreciate
17 that. Any other discussion?

18 Member Anderson: I could echo some of your
19 comments, sir. One, in specific just to go on record, that
20 it is disheartening. I believe I've been part of this
21 Commission for several years now. I would say in 2012, the
22 City made some progress and, I think we had a presentation
23 identifying certain sites for replacement landfills. And so
24 it's disheartening. I'm not sure if the ball was dropped
25 there or what progress has been made to that effect in the

1 time being. And the 2022 date of identifying was 5.5 years
2 from today. That's debatable whether that's enough time or
3 not. It could be done in two years, it could be 10 years.
4 I'm not sure. I just picked 5 years.

5 Chairman: That's fine. So, to clarify your point
6 is for identification of a landfill, correct? Or a new
7 landfill?

8 Member Anderson: Yes.

9 Chairman: So, it's not necessarily--

10 Member Anderson: And I acknowledge that's going to
11 be a difficult decision by anyone. It's not that easy.

12 Chairman: Okay.

13 Ms. Chan: Chair, may I respond to the
14 concerns--the one concern that was raised of the siting of
15 the landfill and the City's work on that.

16 Chairman: Is it on the record already or--

17 Ms. Chan: No. My comment is just that the record
18 in this proceeding for all intents and purposes was closed
19 in 2012. So, there was no opportunity for the City to
20 supplement that record, to add in any additional
21 information, and that would be the reason that it appears
22 that nothing had occurred since that time.

23 Chairman: That may be true, however, the City's
24 requirement to submit your annual report has always been a
25 condition on the record.

1 Ms. Chan: And the City has continued to comply
2 with that as we reported in our annual report.

3 Chairman: Well, I guess my comment to that would
4 be that, yes, the City has complied with submission of the
5 record and even contentiousness to how far you've progressed
6 in regards to actually identifying the next landfill site.
7 So, that's not our fault.

8 Ms. Chan: No. I understand the concern. I just
9 wanted to clarify why some of that is not currently in the
10 record.

11 Chairman: Okay. Thank you.

12 Member Anderson: I appreciate it, and I think
13 some of my concern might have been even though I've reviewed
14 all of the material, I can't represent it verbatim, but I
15 believe that in 2012 thereabouts when we were given a
16 presentation on the alterate sites. I believe that might've
17 been triggered in 2008, and there were discussion about why
18 it has taken so long just to get to that point.

19 So, hopefully there has been progress since 2012. That's
20 all.

21 Chairman: Okay. Any further discussion,
22 Commissioners, at this time?

23 [colloquy between DCC Waihee-Polk and all
24 Commissioners]

25 Member Anderson: Chair, make a motion for

1 executive session, please.

2 Member Hayashida: Second.

3 Chairman: Moved and seconded. Any objections?

4 [no response] Any abstentions? [no response] Okay. At
5 this time the Commissioners move into executive session to
6 consult with the Commission's attorney on the authority,
7 duties, privileges and immunities pertaining to Section
8 205-6 of the Hawaii Revised Statutes as amended in Chapter
9 2, Subchapters 4 and 5 of the rules of the Planning
10 Commission in accordance with HRS 92-5.

11 Mr. Chipchase: Chair, I have to object going into
12 executive session while the motion to adopt an order is
13 pending. And, I believe that counsel stated reasons for the
14 executive session were to clarify the motion, which I
15 believe should be done publicly and not in executive
16 session.

17 Mr. Wurdeman: I join in with that assertion.

18 Counsel Waihee-Polk: I guess, further advice which
19 I don't want to say in open meeting. So, I'm just going to
20 say, I was trying--It's not something I want to discuss in
21 open meeting. It's a legal advice I want to provide to my
22 client, and it's not exactly that. That's partially what I
23 started to say, and then I realized as I spoke on, I was
24 actually starting to actually give advice openly in open
25 meeting, and that's not something I should be doing. So,

1 I've requested that, and we can hold that just so that I can
2 give one word of advice and you go back for discussion.

3 Chairman: Okay.

4 [EXECUTIVE SESSION MINUTES]

5 In: 3:00 pm.

6 Out: 3:18 p.m

7 Chairman: Okay. I'll call this meeting back into
8 order. [bangs gavel] We have a motion, seconded. We're on
9 discussion regarding Commissioner Hayashida's motion to
10 remove all items from 2011, well from prior to 2011
11 proceedings.

12 Okay. Commissioners, any further discussion on the
13 matter?

14 Member Anderson: Chair, I'd like to discuss a
15 little more openly just so I'm clear on couple things. I'm
16 fairly certain that my motion perhaps isn't overly clear at
17 the moment with the rest of the Commissioners. Try not to
18 lose sight of the fact that in front of us right now is the
19 LUC approved 2008/SUP-2. In my motion I reference that 2011
20 ENV application and include the D&O. I think I prefer
21 withdrawing my motion and clarifying and restating it. Just
22 looking at the LUC approved 2008/SUP-2. Removing Condition
23 14 and adding the three conditions I'd previously stated.
24 Does that help clarify things?

25 Member Hayashida: So, you're removing the ENV's

1 Decision and Order, Item--

2 Member Anderson: Yes. I'm removing Condition 14.

3 Member Hayashida: This the document--

4 Member Anderson: Yes.

5 Chairman: Well, let me ask you this question
6 then. The motion that you accepted was to strike from ENV's
7 submission anything prior to 2011, correct?

8 Member Anderson: Commissioner Hayashida's.

9 Chairman: Yes.

10 Member Anderson: Correct.

11 Chairman: So, then for clarification purposes
12 anything in the document prior to the 2011 proceedings then
13 would be stricken anyway, correct?

14 Member Anderson: Yes.

15 Chairman: Okay. Any other discussion there? I
16 mean, that's my understanding what his motion was.

17 Member Anderson: Yes. Technically, I just
18 mentioned I'd like to withdraw my motion and just restate it
19 to add some clarity. Is that okay with you, Chair? How
20 should we address that open motion on the table?

21 Chairman: Well, the problem with withdrawing is
22 he already--I guess--

23 Member Hayashida: You want me to withdraw my
24 motion?

25 Chairman: You need a motion too. So--I mean, I

1 think for clarification purposes--Oh, may be not. I
2 was thinking if he can restate the motion again, but he
3 already made a motion that you accepted. So we're still in
4 discussion on his motion. So, I guess that's fine. I mean,
5 if you want, if that's what you--

6 Member Anderson: I would prefer, yeah. I mean,
7 my intent is to just clarify the situation right now. It
8 seems like there is some indecision on all of our parts,
9 mine included, whether it's my motion and Commissioner
10 Hayashida's. I would almost prefer just to start a clean
11 slate and restate it clearly all at one time.

12 Chairman: Okay. So, then you need to withdraw
13 your motion.

14 Member Hayashida: Withdraw my motion.

15 Chairman: Motion to withdraw. Do we have a
16 second?

17 Member Anderson: Second.

18 Chairman: Moved and seconded. Any discussion on
19 the motion to withdraw? [no response] Seeing none, any
20 objections or any abstentions? [no response] Okay. Seeing
21 none, then Commissioner Hayashida's motion has been
22 withdrawn. Now you can go and withdraw yours.

23 Member Anderson: Okay. I would like to withdraw
24 my original motion due to lack of clarity, I believe.

25 Chairman: Okay. So moved.

1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Any discussion?
3 [no response] Okay. Seeing none, any objections or any
4 abstentions? [no response] Okay. Seeing none, then
5 Commissioner Anderson's original motion--

6 Member Anderson: So, the motion I'd like to make,
7 Chair, is look at the LUC approved 2008/SUP-2 to strike
8 Condition 14 and add the three conditions that I'd
9 previously mentioned from the KOCA D&O, page 82, Section C;
10 page 86, No. 5; and the identification of an alternate site
11 by December 31st, 2022.

12 Chairman: Okay. Clarification purposes, then the
13 ENV submission you are still accepting the Findings of
14 Fact--

15 Member Anderson: Conclusions of Law; correct.

16 Chairman: However, regarding the Decision and
17 Order, you're just adding the three conditions?

18 Member Anderson: Correct.

19 Chairman: Okay. And what was--

20 Mr. Chipchase: I'm sorry, that's not how I
21 understood the motion. If I could have clarity of that.
22 I thought Commissioner Anderson you were adopting these
23 Findings and Conclusions, but proposing to amend the
24 Decision and Order to be the LUC's approved Decision and
25 Order with deletion of Condition 14 and the addition of the

1 three conditions you mentioned earlier?

2 Member Anderson: Correct. That's my
3 understanding.

4 Chairman: Okay.

5 Member Anderson: I believe, Chair, we're saying
6 the same thing, although you may have left out removing, the
7 deletion of Condition 14.

8 Chairman: Oh, okay. Correct, correct.

9 Okay. So, adding on the deletion of Condition 14, you're
10 still accepting ENV's Findings of Fact, Conclusions of Law
11 and adding your three additional conditions.

12 Member Anderson: Yes, while removing Condition
13 14.

14 Chairman: Okay.

15 Member Anderson: Does that clarify things a little
16 bit?

17 Member Hayashida: Yes.

18 Member Anderson: Okay.

19 Chairman: In regards to the Findings of Fact and
20 Conclusions of Law; in regards to striking anything prior to
21 2011?

22 Member Anderson: Yes. Sorry. It goes without
23 saying picking up on what Commissioner Hayashida earlier
24 said that anything in there prior to 2011 would be removed.

25 Chairman: Okay. It's been moved. Do we have a

1 second?

2 Member Hayashida: Second.

3 Chairman: Okay. Moved and seconded. We are in
4 discussion on the motion basically for, I guess, my
5 clarification purposes, the D&O portion from the 2008/SUP-2
6 that was ruled on already by the LUC is what stands and then
7 you're just adding the three additional conditions today to
8 that?

9 Member Anderson: Yes, and removing 14.

10 Chairman: And removing 14.

11 Member Anderson: Yes.

12 Chairman: And 14 was the date restriction.

13 Member Anderson: Yes. Page 14 is basically solid
14 waste shall be allowed at WGS� up to July 31st, 2012,
15 provided that only ash and residue from HPOWER shall be
16 allowed at the WGS� after July 31st, 2012.

17 Chairman: That's basically your clarification
18 because my understanding is that the court have already
19 struck down Condition 14.

20 Member Anderson: Yes.

21 Chairman: Okay. All right. Any further
22 discussion, Commissioners? [no response] Okay. Seeing none,
23 the motion on the floor. All those in favor, say aye.

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response]

1 Any abstentions? [no response] Okay. The motion is passed.

2 You have anything else, Commissioners? Okay.

3 Seeing none, do you have a motion to adjourn?

4 Member Hayashida: Motion to adjourn.

5 Chairman: It's been moved.

6 Member Young: Second.

7 Chairman: Moved and seconded. Any objections? [no

8 response] Any abstentions? [no response] Okay. Thank you

9 very much, Commissioners. This meeting is adjourned.

10 [bangs gavel].

11 ADJOURNMENT:

12 There being no further business before the
13 Planning Commission, the meeting was adjourned by Chair
14 Hazama at approximately 3:28 p.m.

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1 I certify that the foregoing is
2 a true and correct transcription
3 of the proceedings, prepared to
4 the best of my ability, of the
5 meeting held on Wednesday,
6 March 1, 2017.

7

8

9

10 Gloria Takara

11 Secretary-Hearings Reporter

12

13

14 ADOPTED ON: _____

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BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application of)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
For A New Special Use Permit To)
Supersede Existing Special Use Permit To)
Allow A 92.5-Acre Expansion And Time)
Extension For Waimanalo Gulch Sani-)
tary Landfill, Waimanalo Gulch, O`ahu,)
Hawai`i, Tax Map Key: 9-2-03: 72 And 73)
)
_____)
In the Matter of the Application of)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
To delete Condition No. 14 of Special Use)
Permit No. 2008/SUP-2 (also referred to as)
Land Use Commission Docket No. SP09-403))
which states as follows:)
)
"14. Municipal solid waste shall be allowed at)
the WGSL up to July 31, 2012, provided that)
only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")
)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF the **DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S RESPONSE TO INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND** was duly served by hand-delivery to the following on the date below, addressed as follows:

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DATED: Honolulu, Hawai'i, May 19, 2017.



KAMILLA C. K. CHAN
DANA VIOLA
Deputies Corporation Counsel

17-03069/571970