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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 )  
)  
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 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." )  
\_\_\_\_\_ )

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 1:37 p.m. on August 17, 2016, pursuant  
to Notice.

1 APPEARANCES:

2

3 Planning Commissioners present:

4

Dean I. Hazama, Chair

5

Cord D. Anderson, Vice Chair

6

Arthur B. Tolentino

7

Daniel S. M. Young

8

Wilfred A. Chang, Jr.

9

10 Planning Commissioners excused:

11

Kaiulani K. Sodaro

12

Steven S. C. Lim

13

Ken K. Hayashida

14

Theresia C. McMurdo

15

16 Planning Commission staff:

17

Gloria Takara, Secretary-

18

Hearings Reporter

19

20 Deputy Corporation Counsel:

21

Jennifer D. Waihee-Polk

22

(Advisory to the Commission)

23

DPP representative:

24

Raymond Young

25

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, IV, Esq.  
12 Cades Schutte  
13 1000 Bishop Street, Suite 1200  
14 Honolulu, Hawaii 96813

15  
16 For intervenor Schnitzer Steel Hawaii Corp.:

17 Arsima Muller, Esq.  
18 CarlsmtH Ball LLP  
19 ASB Tower, suite 2200  
20 1001 Bishop Street  
21 Honolulu, Hawaii 96813

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24  
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1 For intervenor Colleen Hanabusa:

2 Richard D. Wurdeman, Esq.

3 1003 Bishop Street, Suite 720

4 Honolulu, Hawaii 96813

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22 (NOTE: A separate transcript of this Planning Commission  
23 meeting was prepared for the portion of the meeting  
24 regarding the public hearing on zone request 2016/Z-4 (NS),  
25 Church of Christ at Pearl Harbor)

## P R O C E E D I N G S

1  
2  
3 Chairman: Okay. At this time we'll move onto our  
4 next item on the agenda. A continued contested case  
5 hearing, Ewa-State Special Use Permit Amendment Application  
6 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. At this time  
7 I'd like to ask the Department to provide an update to the  
8 Commission.

9 Mr. Young: Thank you, Mr. Chair. Mr. Chair,  
10 members of the Planning Commission, my name is Raymond  
11 Young. I'm the planner that was assigned to the project  
12 with respect to the Special Use Permit for the Waimanalo  
13 Gulch Sanitary Landfill. If I may, I would like to just  
14 start with some basic background information as to when the  
15 permit was established and subsequent amendments after that.

16 Now, since this a permit that exceeded 15 acres  
17 all these dates of decisions and most of the events are  
18 established by the Land Use Commission. So, for example,  
19 when the permit was first granted, the SUP, that was back in  
20 April 20, 1987. It was for 60-1/2 acres and subsequent to  
21 that two years later in October 1989, there was an amendment  
22 to add another 26 acres because they had inadvertently left  
23 out the accessory uses. So, essentially it started out as an  
24 86-1/2 acre project. And at that time there was very little  
25 opposition, some from the neighbors, but at that time the

1 West Beach Resort which was proposed by Herbert Horita was  
2 just getting approved by the Land Use Commission. So was  
3 pretty much vacant that area. Now years later in 2003,  
4 June 9, the SUP was amended to increase capacity for five  
5 years and 21-acre expansion. And at that time Land Use  
6 Commission imposed a condition among others that a new site  
7 be selected and to close the Waimanalo Landfill by May 1st  
8 of 2008.

9 And on March 14th, 2008, the SUP closure deadline  
10 was again extended to November 1st, 2009, which essentially  
11 the Land Use Commission allowed the use of excess capacity  
12 resulting from the Department of Health's permitted increase  
13 in height of the landfill cells.

14 Subsequent to that the SUP area was amended to  
15 include the remainder of the City property, and this was  
16 back in October 22, 2009 to add another 93.1 acres for total  
17 of 200.6 acres. So the entire property owned by the City was  
18 then approved by the Land Use Commission to go for the  
19 sanitary landfill use, but the Land Use Commission did add a  
20 condition, No. 14, that says basically municipal solid waste  
21 would not be permitted to be disposed there after July 1st  
22 of 2012. Following that decision the Applicant, ENV,  
23 submitted a request in July 13th of 2011 to essentially  
24 delete that condition No. 14.

25 The evidentiary portion of that hearing was closed

1 on April 23rd, 2012, and soon after that the Hawaii Supreme  
2 Court ruled that particular condition which was under appeal  
3 by the Department of Environmental Services was unsupported  
4 and therefore the condition was struck and the case was  
5 remanded back to the Circuit Court with instructions for  
6 further remand to the Land Use Commission.

7 On May 25, 2012, now this is the Planning  
8 Commission. The Planning Commission granted a 6-month stay  
9 on the proceedings for the deletion of condition No. 14. So,  
10 what happened was the Supreme Court struck that condition  
11 while the Planning Commission was having their proceedings  
12 on the request to delete that condition and that's why the  
13 stay was granted essentially. However, the proceedings of  
14 that deletion of the condition was sent to the Land Use  
15 Commission and that occurred on June 18th, 2012, in response  
16 to a request that the proceedings be stayed and eventually  
17 the Land Use Commission issued an Order that the Planning  
18 Commission consolidate the record of the deletion  
19 proceedings and the prior proceedings that resulted in the  
20 201 acre approval.

21 And on December 19th, 2012, another continuance  
22 was granted to January of 2013 and subsequent to that on  
23 February 20, 2013, another continuance was granted to April  
24 2013. And no further request for continuances was  
25 entertained after that. And that brings us up to today's

1 hearing. That concludes my presentation.

2 Chair Hazama: Okay. Thank you. Commissioners,  
3 any questions of Department at this time? [no response]  
4 No. Okay. Thank you, Raymond. Okay.

5 Mr. Young: Thank you.

6 Chair Hazama: Okay. If I can call the parties up  
7 now. Good afternoon. For the record, if we can go through  
8 introductions and who you represent, please.

9 Mr. Wurdeman: Good afternoon. Richard Wurdeman on  
10 behalf of intervenor, Colleen Hanabusa.

11 Chair Hazama: Good afternoon.

12 Mr. Chipchase: Good afternoon. Cal Chipchase for  
13 intervenors Ko Olina Community Association and Maile  
14 Shimabukuro.

15 Ms. Chan: Kamilla Chan for the Department of  
16 Environmental Services.

17 Ms. Muller: Arsima Muller for intervenor Schnitzer  
18 Steel Hawaii Corp.

19 Chair Hazama: Okay. Corporation Counsel, do you  
20 have any additional comments?

21 Ms. Chan: Do you want us to specifically address  
22 the motions that are pending before the Commission at this  
23 time or--

24 Chair Hazama: So, at this time we have  
25 consideration of Order Remanding the County Special Use



1 Permit No. 2008/SUP-2--

2 [colloquy between Counsel Waihee-Polk and Chair  
3 Hazama]

4 ...So, I guess, we have basically two motions that  
5 are before the Commission at this time. One is by KOCA and  
6 Maile Shimabukuro requesting for consolidation of the 2008  
7 order and the second is a request by Environmental Services  
8 to Stay Proceedings to April 22nd, 2017. Okay. Go ahead,  
9 yeah, you can address the two motions.

10 Ms. Chan: Okay. I guess starting with the Motion  
11 for Consolidation, ENV continues to oppose that motion.  
12 Back in January 2013, we did file an opposition to KOCA's  
13 motion. The basis for our objection at this point is still  
14 the same. You know, we don't believe it's an administerial  
15 act that's being imposed at this point. Well, let me start  
16 with the Land Use Commission. They did remand the 2008  
17 application that case back to the Planning Commission. But  
18 they did not have jurisdiction over the 2011 case, so they  
19 don't actually have jurisdiction to order a consolidation.  
20 So, there's no administerial act for this Commission to act  
21 upon.

22 Likewise, the Supreme Court was considering the  
23 2009 order from the Land Use Commission. So, it too did not  
24 have jurisdiction over the 2011 matter that was still  
25 pending before the Planning Commission at that time. So,

1 consolidation is not appropriate for that reason. We also  
2 feel that it's not--consolidation is not appropriate under  
3 the Commission's rules for consolidation as it does  
4 not--It's Rule 2-61 that would allow for consolidation if  
5 it's contusive to the proper dispatch of the Commission's  
6 business and to the ends of justice. And in this case where  
7 the issue is condition No. 14. We don't believe that  
8 consolidation would be helpful to deal with the issue that  
9 the Supreme Court remanded which is really whether condition  
10 14 was substantiated by the evidence and what should be, I  
11 think, properly considered by the LUC at this point.

12 In addition, we would actually urge the Planning  
13 Commission to at this point dismiss the 2011 petition as  
14 there's no longer--There's really no longer an issue pending  
15 before the Planning Commission. The only issue raised by  
16 the 2011 application was the deletion of the condition that  
17 was actually struck by the Supreme Court. So, at this point  
18 we feel that it's not necessary to pursue that either.

19 Chair Hazama: Okay.

20 Ms. Chan: And as far as the Motion to Stay, do  
21 you want me to address that well?

22 Chair Hazama: Yes, go ahead.

23 Counsel Chan: The Motion for Stay came about  
24 really through discussions with KOCA and with among the  
25 other parties in that process. One of the issues that have

1 come up was the diversion of waste from the landfill and  
2 it's something that the City and KOCA had been working out  
3 for period of time. And going back to October of 2015, we  
4 had agreed to put on the record with the Planning Commission  
5 a stipulation to work toward very specific waste streams for  
6 diversion that we've mentioned in the Motion for Stay. And  
7 with the idea that we would continue to work toward further  
8 diversion. And so the deadline to April of 2017 is really  
9 to give the parties more time to continue to discuss that  
10 and really for ENV to continue working on its commitment to  
11 diverting those waste streams. We've made progress so far  
12 since the period of time where we really started reducing it  
13 down to writing--You know, more waste streams have been  
14 diverted including, I think, probably the more controversial  
15 ones. I don't mean to speak for any of the other parties,  
16 but sewage sledge has since been diverted to H-Power along  
17 with the bulky waste. You know medical waste other than  
18 then the sharps have since been diverted to H-Power as well,  
19 and we're continuing to evaluate, you know, the other waste  
20 streams that are there being sent to the landfill to see  
21 what else we can send to H-Power. It's going to take some  
22 time because there's other regulations and other things that  
23 are going to come into play as we continue to work toward  
24 diversion. So, that's really the intent of that. We're  
25 hoping we can reach a point of entering into some type of

1 agreement, but we do need that extra time to get there.

2 Chair Hazama: Okay.

3 Mr. Wurdeman: Thank you. Just to add a little  
4 bit more to the background that was articulated by the City  
5 representative, the Department's representative who came up  
6 earlier. The Supreme Court issued its decision on May 4th,  
7 2012, and intervenor Colleen Hanabusa would submit that for  
8 the last 4.5 years, the City and County has operated an  
9 illegal landfill at the Waimanalo Gulch Sanitary Landfill  
10 without a valid Special Use Permit. I mean, that's very  
11 troubling. It's interesting that the State Department of  
12 Health hasn't intervened at this point and started assessing  
13 fines against the City, daily fines what they should be  
14 doing. But the fact remains that for 4.5 years since the  
15 Supreme Court entered its decision, our City and County of  
16 Honolulu again has been operating an illegal landfill. The  
17 history of his landfill--I mean, going back to the 90s when  
18 the City made promises to gulch at some point. And as  
19 Environmental Services representative said that promise  
20 brought up again in 2003; by 2008 the landfill will be  
21 closed. Then 2008 comes around then the City says we have  
22 no other options, we need some more time. And it's been a  
23 cat and mouse game that the City has been playing for about  
24 two decades now. And there's always been discussion  
25 everytime its come before both the Planning Commission and

1 the Land Use Commission of some closure date.

2           And in 2009, this 2012 issue which was a material  
3 condition that was brought up by the ENV rep was discussed.  
4 Also during that time in 2009, the City was supposed to find  
5 an alternative site within seven years. And my math 2009  
6 plus seven takes us to 2016. And here we are, there's no  
7 alternative sites. The City has done essentially nothing in  
8 seven years other than as far as designate an initial list  
9 of proposed interested prospective sites that they  
10 might consider and that's been it. So that this pattern of  
11 20 years of broken promises by the City's continuing it.  
12 And my client absolutely and unconditionally wants that  
13 landfill closed period. We object to any continuances at  
14 this point. They've had more than enough time. They've had  
15 4.5 years to operate an illegal landfill without any  
16 repercussions whatsoever.

17           Back in 2012 when the Supreme Court issued its  
18 decision and prior to the case being remanded back to the  
19 LUC by the Hawaii Supreme Court via the First Circuit, the  
20 Chair at that time who is no longer the Chair sent to the  
21 Chair of the Planning Commission who is longer on this  
22 Commission, to hold on, we're going to remand this case for  
23 the Supreme Court back down to you so that you can consider  
24 that along with what has already been heard in this, I  
25 guess, Motion for Modification of a Condition--

1           Mr. Chipchase: Application--

2           Mr. Wurdeman: So, to consider the two records,  
3 the Planning Commission's Chair at that time, as I recall,  
4 went back to the Land Use Commission's Chair and said don't  
5 send us anything. We then had a hearing before the Land Use  
6 Commission. We objected to it being sent back to the  
7 Planning Commission. (inaudible) objected it was sent back  
8 to the Planning Commission and ever since then, I mean other  
9 than the Ko Olina Community Association and the City  
10 apparently discussing possible resolution, there's been no  
11 action taken by either agents. And we've been having  
12 periodic meetings with the Land Use Commission and in our  
13 last appearance before them a few months ago when we  
14 objected to a stipulation being entered for continuance  
15 until next year as the City has talked about. I guess the  
16 solution at that point was for the City to make a formal  
17 request of the Planning Commission to enter (inaudible) a  
18 stipulation. And so that's our position, we object to  
19 anymore continuances. Our position is this landfill needs  
20 to be closed. Thank you.

21           Chair Hazama: Thank you. Mr. Chipchase.

22           Mr. Chipchase: Yes. Thank you, Chair. So, if  
23 it's alright with the Commission, I'll take the motion sort  
24 of in reverse order in how I talk about them. And, I'll try  
25 to start with where it seems everybody agrees and that this

1 has been going on a long time. I think everybody is on the  
2 same page there. This has been going on for a long time.  
3 What we've tried to do through the Motion to Stay which  
4 reflects a stipulation that was signed by my clients or on  
5 behalf of my clients, the City and Schnitzer, is not to  
6 postpone things indefinitely, not to add time to what we've  
7 already experienced. And Ko Olina and Maile Shimabukuro  
8 feel the delay as much as Ms. Hanabusa and the frustration  
9 of the community is the same.

10 But what we're trying to do is to continue to  
11 provide a vehicle, some time to continue discussions with  
12 the City to end up at a point where we reach agreement. We  
13 may not get there, but we've made enough progress in those  
14 discussions to give it a go, to give it more time. And what  
15 an agreement would look like and again taking up a point  
16 of--There is no dispute on. The City needs a permit. The  
17 City knows it needs a permit to operate a landfill. The City  
18 doesn't think it can dismiss both proceedings and continue  
19 operating the landfill. The City doesn't think that some  
20 private agreement between my client and the City will result  
21 in permission to operate the landfill. The City needs a  
22 permit and that permit has to go through this body which  
23 forwards a findings and conclusions to the LUC, which has to  
24 approve the permit. So what an agreement between the  
25 parties, if we're able to reach one would like that is

1 stipulated Findings of Fact, Conclusions of Law, Decision  
2 and Order. And we've been trying to get to that point now  
3 for more than three years. We haven't made it.

4 We're not there yet. But we've made enough progress. And  
5 you heard some of the progress with respect to diversions at  
6 least today from the City. We've made enough progress that  
7 we're willing to give it more time and the stipulation sets  
8 out what that time--I believe it's April of 2017 and sets  
9 out different bench marks for updates that the City would  
10 submit so that everybody knows what is going on and what  
11 kind of progress we're making. So, that's the intent and the  
12 goal of the stipulation to see if we can arrive at  
13 stipulated Findings of Fact, Conclusions of Law, Decision  
14 and Order. It may not be agreeable to every party, but  
15 maybe we've got a majority of the parties or at least a  
16 couple of the parties on board with that, who can then come  
17 before this body for decision and action and then to the LUC  
18 for decision and action.

19 The consolidation of the two proceedings really  
20 goes back to the way the City handled this. The City had  
21 the 2008 application resulted in an approved permit  
22 continuing operating a landfill but had a closure deadline.  
23 While the City was appealing that closure deadline, the City  
24 filed the application to amend the permit to delete the  
25 closure deadline. In response to that application my client



1     intervened in the proceedings and we went through, gosh, i  
2     don't know what it was, eight hearing days, nine hearing  
3     days. I mean, it was an extensive record before this body  
4     with expert witnesses on both sides, lots of testimony, lots  
5     of documents. And just as we were at the point of this body  
6     entering its Findings of Fact, Conclusions of Law, Decision  
7     and Order, the Supreme Court came down with its decision. I  
8     mean, that Decision as the City had explained, it struck the  
9     closure deadline, but the Court recognized that closure  
10    deadline was material to the LUC's approval. Meaning the  
11    Court couldn't say that the LUC would've approved the permit  
12    without the closure deadline. So, the Supreme Court vacated  
13    the entire Order approving the permit. There is no Order  
14    approving the permit. And you heard from the City and from  
15    Mr. Wurdeman the two different views on the consequence of  
16    that. Mr. Wurdeman believes that since the Order was  
17    vacated there is no permit. The City is operating in an  
18    illegal landfill. The City believes that it can continue  
19    operating even though the permit was vacated because there  
20    needs to be a landfill.

21           I'm not here today to take a position on that or  
22    make those arguments to the body. My point is only that it  
23    left us with a proceeding that was remanded to the LUC  
24    specifically to address when and whether and how the  
25    landfill should close in the 2008 application. And the 2011

1 application to amend the whole entirety of which concerned  
2 whether, when and how the landfill should close. Reams of  
3 evidence on both sides, two proceedings on that very issue  
4 with an expressed direction from the Supreme Court go back  
5 and revisit this closure issue. And encouraging them,  
6 because the Court was aware of the 2011 proceedings,  
7 encouraging you, hey guys, we know you have this other  
8 proceeding, all of which concerns closure. We encourage you  
9 to consider that.

10           The Land Use Commission when it got the remand  
11 back decided that's good advice Supreme Court. We should  
12 consider all of the evidence in both proceedings before we  
13 make a decision on closure. Remand it to this body with  
14 expressed directions to consolidate the two proceedings.  
15 All we've done in our motion is just to effect what the LUC  
16 has directed this body to do. And you've heard from the  
17 City they don't think the LUC has the power to do that.  
18 They don't think they have the power to order you to  
19 consolidate. We can put that aside, I suppose. The question  
20 is whether it makes sense. And it's really difficult to  
21 argue that having gone through an entire proceeding, all the  
22 way to the close of evidence and submittal of draft Findings  
23 of Fact, Conclusions of Law, concerning whether and how the  
24 landfill should close. But all of that proceeding should be  
25 ignored, kept separately, dismissed as the City had said

1 today from the very issue that's on remand, whether, how and  
2 when the landfill should close. It's the same issue. That  
3 is the key in both cases. The record should be  
4 consolidated, and it should be consolidated no matter which  
5 way this goes. If we end up with an agreement, Stipulated  
6 Findings of Fact, Conclusion and Law, Decision and Order, it  
7 makes sense to have them filed in one single proceeding that  
8 resolves both applications that the City filed at the same  
9 time. If we're unable to get to that point, and we have to  
10 resume the contested case, it makes sense for this body and  
11 the LUC to have all the available evidence together in one  
12 single proceeding, so they make the best decision possible.  
13 Decision that is both correct, that has the best chance of  
14 being affirmed on appeal. Going the other way, right,  
15 refusing to consolidate the case leaves us with this.  
16 It leaves us with this body ignoring the LUC's direct order.  
17 Leaves with this body ignoring the expressed encouragement  
18 by the Hawaii Supreme Court, and leaves us with an entirely  
19 separate appeal from their refusal to consolidate the  
20 proceedings that will go up and effect whatever approval  
21 whether stipulated or not or ultimately able to reach.

22 So, I would submit that the City's position is not  
23 the right one in this case. The case should be consolidated.  
24 That's the most effective administrative substantive way to  
25 do it. It's consistent with the LUC and the Hawaii Supreme

1 Court. And once they're consolidated let's stay them.  
2 Let's stay those two proceedings. Let's give it another  
3 whatever it is, seven months, something like that, eight  
4 months to try and work it out. If we can't then we'll be  
5 back before this body and this body will have to make a  
6 decision. But if we can, then I think we've done a good  
7 thing for the community and for the entire state. Thank  
8 you.

9 Chair Hazama: Thank you. Okay. Ms. Muller.

10 Ms. Muller: Thank you, Commissioner. On the  
11 Motion to Effect Consolidation, Schnitzer was not an  
12 intervenor in the LUC proceedings, however, we were an  
13 intervenor in this Commission's proceeding. As  
14 Mr. Chipchase just argued it makes sense for those two  
15 proceedings to be merged. We went through a lengthy hearing  
16 before this Commission and not having the benefit of that  
17 when considering the permit just does not make sense. So,  
18 for that reason Schnitzer is in favor of the motion to  
19 affect consolidation. On the Motion to Stay Proceedings as  
20 Mr. Chipchase also indicated, Schnitzer was in favor of  
21 having the parties working on Stipulated Findings of Fact,  
22 Conclusions of Law. For that reason, Schnitzer is also in  
23 favor of the Motion to Stay Proceedings. Thank you.

24 Chair Hazama: Thank you. Okay.

25 Commissioners, do we have any questions of any of the

1 parties at this time? [no response]

2 Ms. Chan: Could I actually address a couple of  
3 things that came up?

4 Chair Hazama: Okay.

5 Ms. Chan: I won't take too long. It's come up  
6 with what the City's position is and the reasons for the  
7 second application. So, I just want to clarify a couple of  
8 things. The City's position as far as the SUP at this point,  
9 we do believe that the Supreme Court recognize that the  
10 Waimanalo Gulch Landfill is the only permitted landfill and  
11 that there is an actual health safety need to have an  
12 operable landfill. It's our position that the only thing  
13 that was struck was the deadline. And to clarify the reason  
14 for the 2011 application it was because we--It wasn't clear  
15 whether the Supreme Court would reach a decision. And out  
16 of responsibility and caution we took those steps to address  
17 the deadline that had been imposed by the LUC. The timing I  
18 recognize, you know, we did go through those, a number days  
19 of hearing. I think Mr. Chipchase's estimate is correct  
20 probably eight or nine days and the timing of the Supreme  
21 Court decision shortly after that is unfortunate, but we  
22 still don't believe that there's a need to continue with  
23 those proceedings based on that decision.

24 Chair Hazama: Okay. Questions? [no response] I  
25 think I share some of the frustration in how long this is.

1 It's like playing ping-pong back and forth between, I don't  
2 know how many different courts. But regarding, I guess the  
3 City's position, you know, if I'm reading what the Supreme  
4 Court's ruling was as well as the State Attorney General's  
5 opinion, it doesn't appear that they agree that the City's  
6 2009 SUP application was ever approved by the LUC. And I  
7 don't think the LUC believes they approve the 2009  
8 application either, although they did strike down the date  
9 requirement in the 2011. So, it does concern me that the  
10 City doesn't have a permit, technically. They don't have a  
11 permit. I don't think anybody disputes Supreme Court's  
12 decision or opinion that there is a need for the landfill  
13 land. It's currently the only one we have right now, so we  
14 have to keep it open. But from my understanding is that you  
15 don't have a permit. Your permit expired 2009 was the  
16 application to extend and expand a new permit, and that was  
17 never approved. So, that does cause some concern, I guess,  
18 from the taxpayer's side of the seat that you're going to  
19 need a permit.

20 The 2011 second action was filed by the  
21 Department, so you guys kind of created that.

22 Ms. Chan: Out of necessity.

23 Chair Hazama: Yes, I understand. But, I mean,  
24 that's what created the whole thing, and there are two  
25 actions. My only other comment was, and Mr. Wurdeman, I

1 agree that we have terms and they expire. So, it's been so  
2 long that we have all new Commissioners now. That's just  
3 the way things are. But by consolidating the actions it  
4 allows the current Commission can now review all subsequent  
5 actions and provide their comments and additional conditions  
6 if they so desire. I think that's only fair for this  
7 Commission because we're talking about a 2009 decision that  
8 was made by Commissioners that no longer sit on this  
9 Commission. And if I have to ask these guys to review and  
10 approve a SUP, you know, in fairness to them, I would like  
11 them to have input and the their ability to provide their  
12 comments as well.

13           Regarding the Motion for Extension, I am, I guess  
14 I was a little disappointed because I actually served on the  
15 Commission that granted the last stay. And there was very  
16 little communication or updates provided to the Commission  
17 since the Stay, and it's been a while. I guess my question  
18 to you, Mr. Chipchase is, and I know you guys all have the  
19 2009 Planning Commission D&O. How far, I mean, how much of  
20 a difference from what you have worked with the City so far,  
21 does that D&O not contain, I guess, is my question?

22           Mr. Chipchase: You know, the question is  
23 challenging to answer, I think because the approach have  
24 been different. So, I would like to see it not like as a  
25 quantitative difference where we compare this condition with

1 that condition, but really is a qualitative difference. And  
2 so what we try to effect through the stay was some  
3 qualitative changes where the City is held to or commits to  
4 attempting these further diversion area methods, and they're  
5 detailed in the draft stipulation, signed actually by three  
6 of the four parties. A draft stipulation that is attached  
7 is Exhibit A to the City's Motion to Stay.

8 So, those, negotiating those diversionary goals to  
9 an extraordinary amount of time and there was a great deal  
10 of direct party to party negotiation which the attorneys  
11 weren't even involved. And, so the parties themselves were  
12 able to come up with these goals as the framework or the  
13 benchmark maybe is a better way to put it, that would let us  
14 continue negotiations for Stipulated Findings of Fact,  
15 Conclusion of Law, Decision and Order. And, so that to me is  
16 how we approach it rather than looking at the 2009 Decision  
17 and Order and looking at how we can agree on adjusting this  
18 condition or that condition. We started with that approach  
19 in 2013 and went through exchanging drafts of Decision and  
20 Orders with the City, and we just couldn't close the gap.  
21 We just either had to abandon the effort or qualitatively  
22 shift to a different direction. And the result of that was  
23 the diversionary goals that are set out in the stipulation.

24 And, so I think to get back to what is different.  
25 What I'd like to cast it as what is different from today



1 from where we were in 2013 when we almost abandoned the  
2 effort to come up with stipulated Findings of Fact,  
3 Conclusions of Law. And that is that we made a great deal  
4 of progress, a great deal agreement I would say on  
5 diversionary goals. And it's that source of agreement that  
6 gave us hope that we can may be reach agreement on the rest  
7 of the things, the other parts of the order that we would  
8 have to agree to before we could present the stipulated  
9 Order to this body. And recognizing that we did not want it  
10 to go on forever, we set a deadline to the Stay rather than  
11 having us come back to you and say, we give up; we set firm  
12 deadline for us and recognizing, I think to our own  
13 frustration that maybe everyone's frustration including  
14 Mr. Wurdeman and Ms. Hanabusa is that communication may not  
15 have been as good as it could have been. We set out those  
16 report deadlines in the stipulation. If the Commission  
17 wanted further additional reports, if the Commission wanted  
18 the parties to appear and update the Commission, I'm certain  
19 my clients have no objection to that. We would be as open  
20 and transparent as this body thinks is appropriate for it  
21 and for the community.

22 Chair Hazama: Here's the problem is the '09  
23 Planning Commission's D&O basically put milestone dates on  
24 reports updates, etc. But because that was technically  
25 never enacted. None of that went into place.

1           Mr. Chipchase: Exactly.

2           Chair Hazama: So, that does concern me as well.

3           While I understand what you're saying regarding the  
4 extension and all of that, I think for me anyway, the  
5 overbearing matter of importance is the fact that we need to  
6 get the City's SUP and, therefore, I don't know how much  
7 harm it will do you if we don't actually grant the Stay and  
8 actually continue with the proceedings for a D&O with the  
9 consolidated thing. That's just my opinion. We've kind of  
10 kept this can on the road long enough. We do need a SUP,  
11 the City needs a SUP. I believe that by consolidating the  
12 issues together and then providing them with a D&O. Of  
13 course you'd be able to provide whatever your input is at  
14 that time regarding conditions, etc. But providing that  
15 back to the LUC, I think will not only prevent them from  
16 remanding it back to us again, but we'll be able to move  
17 forward and get the SUP approved.

18           Ms. Chan: Chair, your statement reminded me of  
19 something else that I forgot to mention--

20           Chair Hazama: Okay.

21           Ms. Chan: One of the conditions in the 2009 D&O  
22 from this body did require the City to start looking into  
23 other landfills--

24           Chair Hazama: That's correct.

25           Counsel Chan: ...that was the condition because

1 they were keeping it open-ended to capacity, but they didn't  
2 want the City be faced in with a situation where we weren't  
3 prepared with the landfill once we did hit capacity. And, I  
4 know Mr. Wurdeman has stated that nothing really has been  
5 done on that front. I did want to mention that the City had  
6 a panel back in 2012 that they came up with 11 or 12 sites.  
7 And that list needed further evaluation after that initial  
8 list was compiled. So that is something the City is  
9 actively working on. They broke up the project, I believe  
10 into two phases and they're kind of through most of the  
11 first phase in terms of evaluating what the current disposal  
12 is at the landfill. Because as you know the more we divert  
13 to H-Power and recycling and the less we put into landfill.  
14 So, they're having to reevaluate those things as well as well  
15 what's going to be appropriate at that time we do hit  
16 capacity. So, that's going to be, I believe in the second  
17 part of what they're evaluating. So, they are working on  
18 certain things, I believe are contained in that D&O.

19 Chair Hazama: I understand, but nothing is  
20 infinite. The key, I think is working with the Department  
21 of Health. And the LUC is a state Commission, so they can  
22 further compel the Department of Health to determine what  
23 the trigger is to when the City actually needs to get a new  
24 landfill.

25 Ms. Chan: And the City does recognize this. Yes,

1 We are going to--We need to look at what the options are at  
2 that point in time as well or prior to that point in time.

3 Chair Hazama: I think first step is the City  
4 needs to get this SUP approved. I think that's the first  
5 step. So--

6 Mr. Wurdeman: Mr. Chair, if I could just couple  
7 of points. You know, Ms. Hanabusa's position is obviously  
8 been to close the landfill period. So, if there's some kind  
9 of stipulated agreement between all of the other parties but  
10 her, to be presented to the Commission as a proposed  
11 stipulated Decision and Order for its consideration.

12 You know that would potentially give Ms. Hanabusa and as  
13 the person not in agreement and having then to deal with a  
14 record. She didn't participate in the second proceeding  
15 while the case was up on Supreme Court as Schnitzer didn't  
16 participate in the first proceeding but in the second  
17 proceeding. As such, she would have to object to be placed  
18 in that situation where she may have to be bound by the  
19 record in which she wasn't even participating in. So, I  
20 just wanted to make those comments to the Commission.

21 [colloquy between Chair Hazama and Counsel  
22 Waihee-Polk]

23 Okay. So your client is part of the '09,  
24 correct?

25 Mr. Wurdeman: Yes.

1 Chair Hazama: And Schnitzer is participating the  
2 '11?

3 Ms. Muller: Yes.

4 Chair Hazama: So, I guess my comment is  
5 consolidating it would allow you to participate--both of you  
6 participate in it?

7 Ms. Muller: That's right, that's why we support  
8 the consolidation.

9 Chair Hazama: Understood. So, I guess we'd be  
10 okay.

11 Mr. Wurdeman: Ms. Hanabusa obviously didn't have  
12 an opportunity to present evidence to cross-examine  
13 witnesses. I mean, she participated in a several day  
14 contested case process in '08 and '09 herself. And she  
15 certainly satisfied with the record that she made but, I  
16 guess we're--she would have to object because she's shooting  
17 in the dark not knowing completely what this second record  
18 is that we're consolidating as one. And the potential  
19 situation where there may be an agreement with all of the  
20 other parties but for Ms. Hanabusa, and we're now trying to  
21 make arguments on a record that she didn't even participate.

22 Chair Hanabusa: Understood. But, I guess, my  
23 only comment is the crocks of the 2011 proceeding was  
24 regarding the date requirement was struck down by the  
25 Supreme Court anyway. So, I mean, there's really no meat in

1 it. So, I don't know why she would be concerned with that  
2 part of the record, is my question.

3 Mr. Wurdeman: Well, I mean, like I said we're  
4 speculating as to what may or may not be in the record and  
5 as such we'd have to make record objections to that  
6 consolidation.

7 Chair Hazama: Okay. All right. But you're still  
8 willing to be a party in the proceedings, correct?

9 Mr. Wurdeman: Yes.

10 Chair Hazama: Okay.

11 Mr. Wurdeman: Certainly.

12 Chair Hazama: Okay.

13 Any other questions of the parties at this time? Any other  
14 comments, parties? No. Okay.

15 Mr. Chipchase: If I could just very briefly,  
16 Chair. You'd asked what the harm would be in if just  
17 restarting proceedings now. And my only comment on that  
18 would be that we may end up with, we may up not being able  
19 to reach agreement on an Order quickly. And if we don't  
20 reach agreement on an Order, even if it's just some of the  
21 parties and not Ms. Hanabusa or just the City and KOCA and  
22 not Schnitzer, we'll end up with competing Orders and that  
23 has the potential for this body to make decision that is  
24 disputed by more people than if we were able to give the  
25 time. It's another eight months and see if we can reach a

1 single or only one dispute or two dispute as to certain  
2 points in a stipulated Findings of Fact, Conclusions of Law  
3 And, I think that at least gives us the potential to end up  
4 with a better Order then if we start proceedings again  
5 immediately.

6 Chair Hazama: But then you'll have the  
7 opportunity to argue before LUC.

8 Mr. Chipchase: Of course.

9 Chair Hazama: So, I mean, it's just getting--I  
10 guess, my thing is let's get this thing cleared up for the  
11 LUC, put it back to them and then you guys--If there's  
12 Orders that you object with or a portion of the D&O that you  
13 don't agree with it, then obviously you have the opportunity  
14 to argue your points before the LUC at that point. At this  
15 point in time, I don't think they're going to take you up on  
16 the docket like anytime real soon anyways. So, for my  
17 position just a matter of let's just move this along and get  
18 this stuff going down the process.

19 Mr. Chipchase: Understood, Chair.

20 Chair Hazama: Okay. Thank you very much, parties.

21 All parties: Thank you.

22 Chair Hazama: Okay.

23 Commissioners, we have, I guess two Orders or two Motions  
24 before us.

25 Okay. Can we get a motion to go into executive

1 session real quick.

2 Member Tolentino: So move.

3 Member Anderson:

4 Second.

5 Chair Hazama: Any objections? [no response] Any  
6 abstentions? [no response] Okay. The Commission will now  
7 move [bangs gavel] into executive session. Thank you very  
8 much.

9 [At 2:32 p.m., the Planning Commission and Deputy  
10 Corporation Counsel Jennifer D. Waihee-Polk (advisory to the  
11 Commission) convened in executive session. Those not  
12 participating in the executive session exited the hearings  
13 room.]

14 [EXECUTIVE SESSION MINUTES (Closed)]

15 [There being no further business in executive  
16 session, the Planning Commission reconvened into regular  
17 session at 2:47 p.m.]

18 Chair Hazama: Okay. Calling the meeting back to  
19 order. [bangs gavel] Sorry for the delay.

20 Any additional questions, Commissioners, of the  
21 party at this time? [no response] Okay. Seeing none.

22 Vice Chair Anderson: I'd like to make a motion on  
23 Item A. Motion to grant intervenors Ko Olina Community  
24 Association and Maile Shimakuro's motion to effect the  
25 consolidation of a separate proceedings in 2008/SUP-2 as



1 ordered by the State Land Use Commission on October 8, 2012.

2 Chair Hazama: Okay. So moved. Any second?

3 Member Young: Second.

4 Chair Hazama: Moved and seconded. Members, we're  
5 in discussion: Any discussion? At this time I do concur  
6 with the City's position that the LUC has no authority to  
7 compel the Planning Commission to consolidate the two  
8 Orders. However, for the sake of consistency, as well as I  
9 stated previously the ability for the current Commissioners  
10 to provide input into this matter, I do believe that  
11 consolidation of the issues is appropriate at this time.  
12 Commissioners, any other questions? [no response] Okay.  
13 All those in favor of the motion, say aye.

14 All Commissioners: Aye.

15 Chair Hazama: Any opposed? [no response] Any  
16 abstentions? [no response] Okay. The motion to consolidate  
17 the two matters has been approved.

18 Regarding the second matter on the request for  
19 Motion to Stay in the proceedings.

20 Vice Chair Anderson: I'd like to make a motion,  
21 Chair. Motion to deny Department of Environmental Services,  
22 City and County of Honolulu, Motion to Stay Proceedings to  
23 April 22nd, 2017.

24 Chair Hazama: It has been moved. Do I have a  
25 second?

1 Member Tolentino: Second.

2 Chair Hazama: Moved and seconded. Commissioners,  
3 we're in discussion. At this time we're looking at--I  
4 guess, I will be willing to take the parties input as far as  
5 dates. We're looking at our current docket for the remainder  
6 of the year and October 12th looks like a good date for us.  
7 I will also, as part of this motion allow the parties to  
8 resubmit an amended Findings of Facts and Orders.

9 Mr. Wurdeman: I am flying in on the morning of  
10 the 12th. I think I get in about 12:30. So, I'm not sure  
11 if I'll be able to get here 1:30, assuming my flight is on  
12 time.

13 Chair Hazama: Okay. October 26th?

14 Mr. Chipchase: Chair, just want to clear that  
15 hearing will be, the purpose of that hearing will be for  
16 what?

17 Chair Hazama: D&O, D&O of the consolidated 2009,  
18 2011.

19 Mr. Chipchase: Okay. So, sometime advance to  
20 that we will submit the draft Findings of Fact--

21 Chair Hazama: Correct. So as I submit, as we  
22 approve the date, then I'll kind of back date it from there.

23 Mr. Chipchase: Make sense.

24 Chair Hazama: So, October 26th is okay?

25 Ms. Chan: Yes.

1           Chair Hazama: Okay. We will then continue this  
2 contested case hearing to October 26 at which time  
3 submission--is the 14th good as far as submission of amended  
4 Facts and Findings?

5           Ms. Muller: In October--

6           Chair Hazama: October 14th, yes; that's the  
7 question.

8           Ms. Muller: That's okay.

9           Mr. Chipchase: Yes, Chair.

10          Chair Hazama: Okay. Mr. Wurdeman, October 14th?

11          Mr. Wurdeman: Yes.

12          Chair Hazama: Okay. So, we will then continue  
13 this contested case hearing at 1:30 on October 26th here at  
14 Mission Memorial Conference Room, and your deadline for  
15 submitting an amended Decision of Findings of Facts is  
16 October 14th.

17          Mr. Chipchase: Mr. Chair, is there a date for  
18 responses to the amended Findings of Facts, responding  
19 parties submissions?

20                 [colloquy between Chair Hazama and Counsel  
21 Waihee-Polk}

22          Chair Hazama: Sure. Give you 'til the 21st; 21st  
23 of October for any rebuttals.

24          Mr. Chipchase: Chair, if I may, there's one other  
25 motion, I believe it's still pending. Maybe Ms Chan can

1 correct me if I'm wrong. But at the conclusion of the  
2 evidence in the 2011 proceedings, we had moved to supplement  
3 the record with couple admissions. I don't believe that  
4 motion has ever been acted upon. I'd be happy to resubmit  
5 so everybody has a fresh look at, but I'd ask that we take  
6 that up as well.

7 Counsel Waihee-Polk: I'll look into it; I'll look  
8 into the record.

9 Chair Hazama: If he doesn't amend it, the Findings  
10 of Fact, he can include the exhibits in that, couldn't you?

11 Counsel Waihee-Polk: Because it wasn't provided at  
12 the hearings you had. I saw that Motion. I thought it  
13 was--I will look into it and see if we did decide or not.

14 Mr. Chipchase: If its already been resolved, then  
15 my apologies. My memory about it is a little fuzzy. I  
16 thought if it hadn't been acted upon--

17 Counsel Waihee-Polk: It may not. I will go look  
18 into the record and see. If not, I guess we could raise it.

19 Chair Hazama: On the 26th--

20 Counsel Waihee-Polk: Oh, if you want before.

21 Chair Hazama: Yeah, we just going to need it  
22 before.

23 Counsel Waihee-Polk: Well, then we'll have an  
24 earlier one, I guess. I'll look into it.

25 Chair Hazama: What was your motion again?

1           Mr. Chipchase: It was a motion to reopen the  
2 record, submit some evidence. I believe the evidence  
3 related to the Blue Ribbon Committee on finding a Landfill,  
4 that was operating concurrently while we were going through  
5 these hearings. And, I think the evidence related to either  
6 the determination that committee without a decision or no  
7 further action was taken on locating any landfill. I'm not  
8 100% on that because it's a little fuzzy. I just noticed it  
9 on the my list of pending things as I came over here. So, I  
10 need to take another look at the substance of it. That's my  
11 recollection is what we addressed. Ms. Chan, do you have  
12 any recollection? She wasn't counsel at that time, but I  
13 don't know if you looked at it.

14           Ms. Chan: I'm not--

15           Counsel Waihee-Polk: I'll look into it, and then  
16 if you have to reset everything, you can; need to have a  
17 hearing on that.

18           Chair Hazama: Okay. And if we find that we have  
19 to have another hearing, we'll have that on the 12th then.  
20 Is that enough time for you?

21           Mr. Chipchase: Oh, that'll be fine. Mr. Wurdeman  
22 I don't know--How about I forward a copy of the motion to  
23 Mr. Wurdeman. You may not have an objection to it, so it  
24 wouldn't affect your travel even if you weren't to attend.

25           Mr. Wurdeman: Very well.

1                   Counsel Waihee-Polk: Okay. And I'll look into it.

2                   Chair Hazama: Okay. So, can we have a motion  
3 then to continue this contested case hearing to October  
4 26th, 1:30 p.m. here in the Mission Memorial Conference.

5                   Member Tolentino: So move.

6                   Chair Hazama: So move. Any second?

7                   Member Young: Second.

8                   Chair Hazama: Moved and seconded. Any objections?  
9 [no response] Any abstentions? [no response]. Okay. This  
10 contested case hearing is continued to October 26th. Thank  
11 you very much. [bangs gavel]

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1 ADJOURNMENT

2                   There being no further business before the  
3 Planning Commission, the meeting was adjourned by Chair  
4 Hazama at approximately 2:54 p.m.

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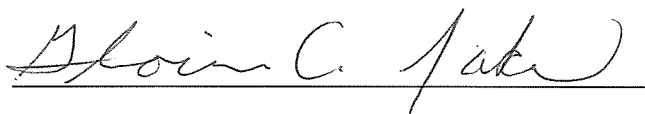
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8 I certify that the foregoing is  
9 a true and correct transcription  
10 of the proceedings, prepared to  
11 the best of my ability, of the  
12 meeting held on Wednesday,  
13 August 17, 2016.

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Gloria Takara

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Secretary-Hearings Reporter

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