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

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 W GSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the W GSL 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.
APPEARANCES:

Planning Commissioners present:

Dean I. Hazama, Chair
Cord D. Anderson, Vice Chair
Arthur B. Tolentino
Daniel S. M. Young
Wilfred A. Chang, Jr.

Planning Commissioners excused:

Kaiulani K. Sodaro
Steven S. C. Lim
Ken K. Hayashida
Theresia C. McMurdo

Planning Commission staff:

Gloria Takara, Secretary-
Hearings Reporter

Deputy Corporation Counsel:

Jennifer D. Waihee-Polk
(Advisory to the Commission)

DPP representative:

Raymond Young
For the City and County of Honolulu, Department of Environmental Services:

Kamilla C. K. Chan, Esq.
Deputy Corporation Counsel
City and County of Honolulu
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For intervenor Ko Olina Community Association and Senator Maile Shimabukuro:

Calvert G. Chipchase, IV, Esq.
Cades Schutte
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Honolulu, Hawaii 96813

For intervenor Schnitzer Steel Hawaii Corp.:

Arsima Muller, Esq.
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For intervenor Colleen Hanabusa:

    Richard D. Wurdeman, Esq.
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    Honolulu, Hawaii  96813

(Note: A separate transcript of this Planning Commission meeting was prepared for the portion of the meeting regarding the public hearing on zone request 2016/Z-4 (NS), Church of Christ at Pearl Harbor)
Chairman: Okay. At this time we'll move onto our next item on the agenda. A continued contested case hearing, Ewa-State Special Use Permit Amendment Application 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. At this time I'd like to ask the Department to provide an update to the Commission.

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

Now, since this a permit that exceeded 15 acres all these dates of decisions and most of the events are established by the Land Use Commission. So, for example, when the permit was first granted, the SUP, that was back in April 20, 1987. It was for 60-1/2 acres and subsequent to that two years later in October 1989, there was an amendment to add another 26 acres because they had inadvertently left out the accessory uses. So, essentially it started out as an 86-1/2 acre project. And at that time there was very little opposition, some from the neighbors, but at that time the
West Beach Resort which was proposed by Herbert Horita was just getting approved by the Land Use Commission. So was pretty much vacant that area. Now years later in 2003, June 9, the SUP was amended to increase capacity for five years and 21-acre expansion. And at that time Land Use Commission imposed a condition among others that a new site be selected and to close the Waimanalo Landfill by May 1st of 2008.

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

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

The evidentiary portion of that hearing was closed
on April 23rd, 2012, and soon after that the Hawaii Supreme
Court ruled that particular condition which was under appeal
by the Department of Environmental Services was unsupported
and therefore the condition was struck and the case was
remanded back to the Circuit Court with instructions for
further remand to the Land Use Commission.

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

And on December 19th, 2012, another continuance
was granted to January of 2013 and subsequent to that on
February 20, 2013, another continuance was granted to April
2013. And no further request for continuances was
entertained after that. And that brings us up to today's
hearing. That concludes my presentation.

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

No. Okay. Thank you, Raymond. Okay.

Mr. Young: Thank you.

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

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

Chair Hazama: Good afternoon.

Mr. Chipchase: Good afternoon. Cal Chipchase for intervenors Ko Oli Community Association and Maile Shimabukuro.

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

Ms. Muller: Arsim Muller for intervenor Schnitzer Steel Hawaii Corp.

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

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

Chair Hazama: So, at this time we have consideration of Order Remanding the County Special Use
Permit No. 2008/SUP-2--

[colloquy between Counsel Waihee-Polk and Chair Hazama]

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

Ms. Chan: Okay. I guess starting with the Motion for Consolidation, ENV continues to oppose that motion.

Back in January 2013, we did file an opposition to KOCA's motion. The basis for our objection at this point is still the same. You know, we don't believe it's an administrational act that's being imposed at this point. Well, let me start with the Land Use Commission. They did remand the 2008 application that case back to the Planning Commission. But they did not have jurisdiction over the 2011 case, so they don't actually have jurisdiction to order a consolidation. So, there's no administrational act for this Commission to act upon.

Likewise, the Supreme Court was considering the 2009 order from the Land Use Commission. So, it too did not have jurisdiction over the 2011 matter that was still pending before the Planning Commission at that time. So,
consolidation is not appropriate for that reason. We also feel that it's not--consolidation is not appropriate under the Commission's rules for consolidation as it does not--It's Rule 2-61 that would allow for consolidation if it's contusive to the proper dispatch of the Commission's business and to the ends of justice. And in this case where the issue is condition No. 14. We don't believe that consolidation would be helpful to deal with the issue that the Supreme Court remanded which is really whether condition 14 was substantiated by the evidence and what should be, I think, properly considered by the LUC at this point.

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

Chair Hazama: Okay.

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

Chair Hazama: Yes, go ahead.

Counsel Chan: The Motion for Stay came about really through discussions with KOCA and with among the other parties in that process. One of the issues that have
come up was the diversion of waste from the landfill and
it's something that the City and KOCA had been working out
for period of time. And going back to October of 2015, we
had agreed to put on the record with the Planning Commission
a stipulation to work toward very specific waste streams for
diversion that we've mentioned in the Motion for Stay. And
with the idea that we would continue to work toward further
diversion. And so the deadline to April of 2017 is really
to give the parties more time to continue to discuss that
and really for ENV to continue working on its commitment to
diverting those waste streams. We've made progress so far
since the period of time where we really started reducing it
down to writing--You know, more waste streams have been
diverted including, I think, probably the more controversial
ones. I don't mean to speak for any of the other parties,
but sewage sledge has since been diverted to H-Power along
with the bulky waste. You know medical waste other than
then the sharps have since been diverted to H-Power as well,
and we're continuing to evaluate, you know, the other waste
streams that are there being sent to the landfill to see
what else we can send to H-Power. It's going to take some
time because there's other regulations and other things that
are going to come into play as we continue to work toward
diversion. So, that's really the intent of that. We're
hoping we can reach a point of entering into some type of
agreement, but we do need that extra time to get there.

Chair Hazama: Okay.

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

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

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

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

Chair Hazama: Thank you. Mr. Chipchase.

Mr. Chipchase: Yes. Thank you, Chair. So, if it's allright with the Commission, I'll take the motion sort of in reverse order in how I talk about them. And, I'll try to start with where it seems everybody agrees and that this
has been going on a long time. I think everybody is on the
same page there. This has been going on for a long time.
What we've tried to do through the Motion to Stay which
reflects a stipulation that was signed by my clients or on
behalf of my clients, the City and Schnitzer, is not to
postpone things indefinitely, not to add time to what we've
already experienced. And Ko Olina and Maile Shimabukuro
feel the delay as much as Ms. Hanabusa and the frustration
of the community is the same.

But what we're trying to do is to continue to
provide a vehicle, some time to continue discussions with
the City to end up at a point where we reach agreement. We
may not get there, but we've made enough progress in those
discussions to give it a go, to give it more time. And what
an agreement would look like and again taking up a point
of--There is no dispute on. The City needs a permit. The
City knows it needs a permit to operate a landfill. The City
doesn't think it can dismiss both proceedings and continue
operating the landfill. The City doesn't think that some
private agreement between my client and the City will result
in permission to operate the landfill. The City needs a
permit and that permit has to go through this body which
forwards a findings and conclusions to the LUC, which has to
approve the permit. So what an agreement between the
parties, if we're able to reach one would like that is
stipulated Findings of Fact, Conclusions of Law, Decision and Order. And we've been trying to get to that point now for more than three years. We haven't made it.

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

The consolidation of the two proceedings really goes back to the way the City handled this. The City had the 2008 application resulted in an approved permit continuing operating a landfill but had a closure deadline. While the City was appealing that closure deadline, the City filed the application to amend the permit to delete the closure deadline. In response to that application my client
intervened in the proceedings and we went through, gosh, i
don't know what it was, eight hearing days, nine hearing
days. I mean, it was an extensive record before this body
with expert witnesses on both sides, lots of testimony, lots
of documents. And just as we were at the point of this body
entering its Findings of Fact, Conclusions of Law, Decision
and Order, the Supreme Court came down with its decision. I
mean, that Decision as the City had explained, it struck the
closure deadline, but the Court recognized that closure
deadline was material to the LUC's approval. Meaning the
Court couldn't say that the LUC would've approved the permit
without the closure deadline. So, the Supreme Court vacated
the entire Order approving the permit. There is no Order
approving the permit. And you heard from the City and from
Mr. Wurdeman the two different views on the consequence of
that. Mr. Wurdeman believes that since the Order was
vacated there is no permit. The City is operating in an
illegal landfill. The City believes that it can continue
operating even though the permit was vacated because there
needs to be a landfill.

I'm not here today to take a position on that or
make those arguments to the body. My point is only that it
left us with a proceeding that was remanded to the LUC
specifically to address when and whether and how the
landfill should close in the 2008 application. And the 2011
application to amend the whole entirety of which concerned
whether, when and how the landfill should close. Reams of
evidence on both sides, two proceedings on that very issue
with an expressed direction from the Supreme Court go back
and revisit this closure issue. And encouraging them,
because the Court was aware of the 2011 proceedings,
encouraging you, hey guys, we know you have this other
proceeding, all of which concerns closure. We encourage you
to consider that.

The Land Use Commission when it got the remand
back decided that's good advice Supreme Court. We should
consider all of the evidence in both proceedings before we
make a decision on closure. Remand it to this body with
expressed directions to consolidate the two proceedings.
All we've done in our motion is just to effect what the LUC
has directed this body to do. And you've heard from the
City they don't think the LUC has the power to do that.
They don't think they have the power to order you to
consolidate. We can put that aside, I suppose. The question
is whether it makes sense. And it's really difficult to
argue that having gone through an entire proceeding, all the
way to the close of evidence and submittal of draft Findings
of Fact, Conclusions of Law, concerning whether and how the
landfill should close. But all of that proceeding should be
ignored, kept separately, dismissed as the City had said
today from the very issue that's on remand, whether, how and when the landfill should close. It's the same issue. That is the key in both cases. The record should be consolidated, and it should be consolidated no matter which way this goes. If we end up with an agreement, Stipulated Findings of Fact, Conclusion and Law, Decision and Order, it makes sense to have them filed in one single proceeding that resolves both applications that the City filed at the same time. If we're unable to get to that point, and we have to resume the contested case, it makes sense for this body and the LUC to have all he available evidence together in one single proceeding, so they make the best decision possible. Decision that is both correct, that has the best chance of being affirmed on appeal. Going the other way, right, refusing to consolidate the case leaves us with this. It leaves us with this body ignoring the LUC's direct order. Leaves with this body ignoring the expressed encouragement by the Hawaii Supreme Court, and leaves us with an entirely separate appeal from their refusal to consolidate the proceedings that will go up and effect whatever approval whether stipulated or not or ultimately able to reach.

So, I would submit that the City's position is not the right one in this case. The case should be consolidated. That's the most effective administrative substantive way to do it. It's consistent with the LUC and the Hawaii Supreme
Court. And once they're consolidated let's stay them. Let's stay those two proceedings. Let's give it another whatever it is, seven months, something like that, eight months to try and work it out. If we can't then we'll be back before this body and this body will have to make a decision. But if we can, then I think we've done a good thing for the community and for the entire state. Thank you.

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

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

Chair Hazama: Thank you. Okay.

Commissioners, do we have any questions of any of the
parties at this time? [no response]

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

Chair Hazama: Okay.

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

Chair Hazama: Okay. Questions? [no response] I think I share some of the frustration in how long this is.
It's like playing ping-pong back and forth between, I don't know how many different courts. But regarding, I guess the City's position, you know, if I'm reading what the Supreme Court's ruling was as well as the State Attorney General's opinion, it doesn't appear that they agree that the City's 2009 SUP application was ever approved by the LUC. And I don't think the LUC believes they approve the 2009 application either, although they did strike down the date requirement in the 2011. So, it does concern me that the City doesn't have a permit, technically. They don't have a permit. I don't think anybody disputes Supreme Court's decision or opinion that there is a need for the landfill land. It's currently the only one we have right now, so we have to keep it open. But from my understanding is that you don't have a permit. Your permit expired 2009 was the application to extend and expand a new permit, and that was never approved. So, that does cause some concern, I guess, from the taxpayer's side of the seat that you're going to need a permit.

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

Ms. Chan: Out of necessity.

Chair Hazama: Yes, I understand. But, I mean, that's what created the whole thing, and there are two actions. My only other comment was, and Mr. Wurdeman, I
agree that we have terms and they expire. So, it's been so
long that we have all new Commissioners now. That's just
the way things are. But by consolidating the actions it
allows the current Commission can now review all subsequent
actions and provide their comments and additional conditions
if they so desire. I think that's only fair for this
Commission because we're talking about a 2009 decision that
was made by Commissioners that no longer sit on this
Commission. And if I have to ask these guys to review and
approve a SUP, you know, in fairness to them, I would like
them to have input and the their ability to provide their
comments as well.

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

Mr. Chipchase: You know, the question is
challenging to answer, I think because the approach have
been different. So, I would like to see it not like a
quantitative difference where we compare this condition with
that condition, but really is a qualitative difference. And so what we try to effect through the stay was some qualitative changes where the City is held to or commits to attempting these further diversion area methods, and they're detailed in the draft stipulation, signed actually by three of the four parties. A draft stipulation that is attached is Exhibit A to the City's Motion to Stay.

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

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

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

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

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

Chair Hazama: Okay.

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

Chair Hazama: That's correct.

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

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

Ms. Chan: And the City does recognize this. Yes,
We are going to--We need to look at what the options are at that point in time as well or prior to that point in time.

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

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

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

[colloquy between Chair Hazama and Counsel Waihee-Polk]

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

Mr. Wurdeman: Yes.
Chair Hazama: And Schnitzer is participating the '11?

Ms. Muller: Yes.

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

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

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

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

Chair Hanabusa: Understood. But, I guess, my only comment is the crocks of the 2011 proceeding was regarding the date requirement was struck down by the Supreme Court anyway. So, I mean, there's really no meat in
it. So, I don't know why she would be concerned with that part of the record, is my question.

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

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

Mr. Wurdeman: Yes.

Chair Hazama: Okay.

Mr. Wurdeman: Certainly.

Chair Hazama: Okay.

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

Mr. Chipchase: If I could just very briefly, Chair. You'd asked what the harm would be in if just restarting proceedings now. And my only comment on that would be that we may end up with, we may up not being able to reach agreement on an Order quickly. And if we don't reach agreement on an Order, even if it's just some of the parties and not Ms. Hanabusa or just the City and KOCA and not Schnitzer, we'll end up with competing Orders and that has the potential for this body to make decision that is disputed by more people than if we were able to give the time. It's another eight months and see if we can reach a
single or only one dispute or two dispute as to certain
points in a stipulated Findings of Fact, Conclusions of Law
And, I think that at least gives us the potential to end up
with a better Order then if we start proceedings again
immediately.

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

Mr. Chipchase: Of course.

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

Mr. Chipchase: Understood, Chair.

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

All parties: Thank you.

Chair Hazama: Okay.

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

Okay. Can we get a motion to go into executive
session real quick.

Member Tolentino: So move.

Member Anderson:

Second.


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

EXECUTIVE SESSION MINUTES (Closed)]

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

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

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

Vice Chair Anderson: I'd like to make a motion on Item A. Motion to grant intervenors Ko Olina Community Association and Maile Shimakuro's motion to effect the consolidation of a separate proceedings in 2008/SUP-2 as
ordered by the State Land Use Commission on October 8, 2012.

Chair Hazama: Okay. So moved. Any second?

Member Young: Second.

Chair Hazama: Moved and seconded. Members, we're in discussion. Any discussion? At this time I do concur with the City's position that the LUC has no authority to compel the Planning Commission to consolidate the two Orders. However, for the sake of consistency, as well as I stated previously the ability for the current Commissioners to provide input into this matter, I do believe that consolidation of the issues is appropriate at this time.

Chair Hazama, any other questions? [no response] Okay. All those in favor of the motion, say aye.

All Commissioners: Aye.

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

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

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

Chair Hazama: It has been moved. Do I have a second?
Member Tolentino: Second.

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

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

Chair Hazama: Okay. October 26th?

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


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

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

Mr. Chipchase: Make sense.

Chair Hazama: So, October 26th is okay?

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

Ms. Muller: In October--

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

Ms. Muller: That's okay.

Mr. Chipchase: Yes, Chair.

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

Mr. Wurdeman: Yes.

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

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

[colloquy between Chair Hazama and Counsel Waihee-Polk]

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

Mr. Chipchase: Chair, if I may, there's one other motion, I believe it's still pending. Maybe Ms Chan can
correct me if I'm wrong. But at the conclusion of the
evidence in the 2011 proceedings, we had moved to supplement
the record with couple admissions. I don't believe that
motion has ever been acted upon. I'd be happy to resubmit
so everybody has a fresh look at, but I'd ask that we take
that up as well.

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

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

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

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

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

Chair Hazama: On the 26th--

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

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

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

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

Ms. Chan: I'm not--

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

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

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

Mr. Wurdeman: Very well.
Counsel Waihee-Polk: Okay. And I'll look into it.

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

Member Tolentino: So move.

Chair Hazama: So move. Any second?

Member Young: Second.

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

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

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

Gloria Takara
Secretary-Hearings Reporter