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 WGSL up to
July 31, 2012, provided that only
ash and residue from H-POWER shall
be allowed at the WGSL after
July 31, 2012."

CONTINUED – CONTESTED CASE HEARING
Ewa-State Special Use Permit Amendment Application –
2008/SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room, Mission
Memorial Building, 550 South King Street, Honolulu, Hawaii
96813, commencing at 1:35 p.m. on October 12, 2016, pursuant
to Notice.
APPEARANCES:

Planning Commission present:

Dean I. Hazama, Chair
Arthur B. Tolentino
Wilfred A. Chang, Jr.
Ken K. Hayashida
Theresa C. McMurdo

Planning Commissioners excused:

Cord D. Anderson, Vice Chair
Kaiulani K. Sodaro [recused, prior notice given]
Daniel S. M. Young
Steven S. C. Lim [recused, prior notice given]

Planning Commission staff:

Gloria Takara,
Secretary-Hearings Reporter

Deputy Corporation Counsel:

Jennifer D. Waihee-Polk
(Advisory to the Commission)
For the City and County of Honolulu, Department of Environmental Services:

Kamilla C. K. Chan, Esq.
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

For intervenor Ko Olina Community Association and Senator Maile Shimabukuro:

Calvert G. Chipchase, IV, Esq.
Cades Shutte
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

For intervenor Schnitzer Steel Hawaii Corp.:

Arsima Muller, Esq.
Carlsmithe Ball LLP
ASB Tower, Suite 2200
1000 Bishop Street
Honolulu, Hawaii 96813
For intervenor Colleen Hanabusa:

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

Chairman: Okay. Good afternoon. I call this meeting to order of the Honolulu Planning Commission October 12, 2016. First order of business on our agenda are approval of minutes for July 6th, July 20th, August 3rd, August 17th, as well as executive sessions on July 20th, August 3rd and August 17th. Commissioners are in receipt of the draft minutes and executive session minutes. Are there are any changes or corrections to the minutes?

Member Tolentino: Move to approve as circulated.

Chairman: Okay. So moved.

Member Hayashida: Second.


Moving on to our agenda, 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 parties to come up, please. Good afternoon. Okay. For the record if we could go through introductions first.

Ms. Chan: Kamilla Chan Deputy Corporation for the City.
Mr. Chipchase: Cal Chipchase, counsel for intervenors Ko Olina Community Association and Maile Shimabukuro.

Ms. Muller: Arsimia Muller and Ian Sandison for intervenor Schnitzer Steel Hawaii Corp.

Chairman: Okay. All right. Thank you. This is a continued hearing. We'll move on to the motions that were filed. So, the first motion, I guess, are the next item on the agenda is consideration of order remanding county Special Use Permit File No. 2008/SUP-2 to the City and County of Honolulu, Planning Commission Docket No. SP09-403. Item No. A, Intervenor Ko Olina Community Association, Maile Shimabukuro's Motion to Reopen the Contested Case Hearing to Admit Limited Additional Documentary Evidence to Correct an Error that was Discovered after the Hearing Closed.

Mr. Chipchase.

Mr. Chipchase: Thank you, Chair. If I could suggest something to the Commission, it would be that we take up the issue of continuing the hearing first and that's because of intervenor Hanabusa's statement filed yesterday requesting a further continuance of the hearings on all three motions and confirming that counsel for Ms. Hanabusa would not be available today. And so with that, Chair and members you have a situation where all the parties, the City and all intervenors have agreed that these motions at least
should be continued. And, I indeed, I think that given Mr. Wurdeaman's unavailability there might be due process issues with proceeding with them in his absence, and so I would suggest the way to approach it is to discuss when and how to continue the motions and in what order they should be heard.

Chairman: Okay. My only point back to you is regarding the first two motions, A and B. R. Wurdeaman was made aware of that during our August 17th hearing. So, he was well aware ahead of time that these two motions would be filed and, I guess, if he had any objections or he had more then enough time to file himself regarding any objections or, you know. So, I kind of understand what you're saying regarding the third one because that wasn't discussed during the August 17th meeting, but I think the first two motions were discussed.

Ms. Chan: If I may, Chair, I believe it's listed as motion B, the City's motion to reopen was not discussed at the prior hearing. That's something that we filed after that hearing.

Chairman: Okay.

Ms. Chan: I believe Mr. Wurdeaman has also stated that he's--It sounds like he's a position on that motion as well, the City's motion.

Mr. Chipchase: That's my recollection as well,
Chair.

Chairman: Okay. But, I mean as far as your particular--The problem that we're going to have with continuing this is that there's a lot of moving parts to this and trying to nail down a date with all the parties here, you know, it's kind of difficult.

Mr. Chipchase: I understand it, and I have a suggestion on that. We know that Mr. Wurdeman and all parties are available on the 26th, because we had set that day for considerations of Findings of Fact, Conclusions of Law, and Decision and Order. So, I would suggest that we move the City's motion to continue to that day because we know Mr. Wurdeman and everyone else would be available for that hearing. And that decision, the decision on that motion to me sets the timing for the rest of the issues that are before this body. The decision on that either to grant or deny it to me then leads to setting the motion to reopen, my motion to reopen and City's motion to reopen. And our response to the City's motion to reopen, we've requested the opportunity to submit rebuttal evidence in the form of documentation and in the form of eliminated additional witness to inquire as to certain statements that were made in both the City's motion and the evidence that the City would like to submit. So, that decision, the decision on the motion to reopen then will dictate how much additional
hearing time we need, which will in turn control when we're able to submit Findings of Fact, Conclusions of Law, and Decision and Order. Obviously have to be after that hearing time. And, so I think if we took it sequentially where we heard the City's motion to continue on the 26th and we know everyone will be here, then we'll be in a position to set the hearings on the motions to reopen to set the additional time for hearing, to close the hearing and then to set the final resolution of that matter. That would be my suggestion given. The numerous issues is, as the Chair mentioned, in the problem of not having all parties here today. We have a day where we know they will be available.

Chairman: So just to be clear, you're saying that regarding the City's motion that you plan to call witnesses?

Mr. Chipchase: Yes, Chair. So not to dive too deeply into the merits of the City's motion to reopen without Mr. Wurdeman here. I'm a little hesitant. But just to sort of explain what our position is. The City has moved to reopen evidence to submit the most recent report on the landfill to the Land Use Commission. That report is attached to the City's motion and it makes a number of statements in there regarding capacity, regarding City's efforts to identifying landfill, regarding conversionary efforts and various other things. Those statements since we closed evidence so long ago, in some ways differ from and in
some ways potentially update evidence that was in the record before. In response to the City's motion we recognize that this body and the LUC should have the most up-to-date information. No question there. So we don't object in principal to reopening evidence to allow that report and our motions similarly seeks to update the evidence.

But when evidence is reopened a party may request that it be conditioned on the opportunity to submit rebuttal evidence, and we would like that opportunity in response to the City's motion to test a couple of the assertions that are made in the motion. And, so what we would propose to the Commission is that the motion be granted subject to reopening of evidence for an additional hearing day, so we that we may examine one witness and submit certain limited documentary evidence, most of which we discussed in our response.

Chairman: Assuming the Commission grants the reopening request.

Mr. Chipchase: Of course.

Chairman: So basically if the Commission says--decides not to, then there are no witnesses that you will be able to call.

Mr. Chipchase: That's absolutely correct, Chair.

Chairman: Okay. Can I get a motion then to move into executive session at this time.

Member Hayashida: Motion to move into executive
Member McMurdo: Second.

Chairman: Moved and seconded. Any objections?

[no response] Any abstentions? [no response] Okay. At this time the Commission will move into executive session to discuss with corporation counsel. [bangs gavel]

[At 1:43 p.m. the Commissioners with Deputy Corporation Counsel Jennifer D. Waihee-Polk convened in executive session. All those not participating in the executive session exited the hearings room. At 2:47 p.m., the Commissioners reconvened into regular session.]

Chairman: Okay. Call the meeting back to order.

[bangs gavel] Apologize for the delay. Okay. Moving on, I guess we will proceed with A. So you're ready to present at this time?

Mr. Chipchase: Sure, Chair. The motion to reopen that Ko Olina filed back in 2012 was to address an issue with respect to the submission of the landfill rankings. While we were in hearing in 2012, the City was going through its initial site selection process and produced a ranking, and there was extensive testimony before this body on that process, the ranking and the site selection in general. This all relates to among other things condition that the City's SUP is going back to a number of years, conditions that have never been challenged requiring the
City to with reasonable diligence to identify and develop a new landfill site to replace Waimanalo Gulch recognizing that Waimanalo Gulch was always meant to be temporary. So, you see the evidence from that record in the prior proceeding, then you see in the City's motion to reopen among the other statements that they want to include are updates on the site selection process. So, the two exhibits that we had sought to introduce K259 and 260 were simply the updated correcting rankings. In the record as it existed, there were rankings that proved to be erroneous. The consultant issued a statement explained the error and issued corrected rankings and sought to introduce those into evidence.


Ms. Chan: Thank you. The City's position remains the same as it was before that it really comes down to the relevance of the exhibits that KOCA is seeking to introduce. They don't have any bearing on the actual issue that's before the Planning Commission. And on that basis, we do oppose their motion to reopen.

Chairman: Okay. Thank you. Ms. Muller, do you have any--

Ms. Muller: Thank you, Chair. Actually Schnitzer is not taking a position on the motion. We have no
objection.

Chairman: You have no position. Okay. Oh, wait, you have no objections or you take no position?

Ms. Muller: Sorry. We have no objection to it.

Chairman: Okay. Commissioners, regarding Item A, intervenor's motion. Any questions for any of the intervenors? [no response] Okay. Seeing none, do we have a motion on Item A?

Member Tolentino: I'll make the motion to grant KOCA reopening of testimony—to reopen the contested case hearing to admit limited additional documentary evidence to correct an error that was discovered after the hearing closed.

Chairman: Okay. Do I have a second on that motion?

Member Hayashida: I'll second the motion.

Chairman: Okay. Moved and seconded. We're in discussion then. Commissioners, any further discussion or comments on it? [no response] I don't necessarily agree or disagree or take a position on whether there is an error regarding the ratings of the landfill, possible landfill sites, etc. I do feel, however, that the Commission's role in this matter is not to select or deselect or not select a particular site for a potential new landfill. The issue before the Commission is on whether to approve or disapprove the special use permit application and in that manner send
it forward to the Land Use Commission for final review and
approval. It's not the Commission's duty or responsibility
to establish or identify a landfill for the City. I think
it's the City's job to do that, but it's outside the bounds
of what the Commission should be doing. So that's just my
comment on that.

Okay. Commissioners, any further discussion or
questions? [no response] Seeing none, then we'll have a
vote. So regarding the motion to reopen on Item A, all
those in favor, say aye.

Member Tolentino: Aye.
Member Chang: Aye.
Chairman: Okay. All those opposed?
Member McMurdlo: Nay.
Member Hayashida: Nay.
Chairman: Okay. So, two ayes and three nays. The
motion, therefore, failed. Okay.
Moving on to Item B, Department of Environmental
Services, City and County of Honolulu's Motion to Reopen the
Contested Case Hearing for the Limited Purpose of Taking
Ms. Chan: We would stand with our written
submission and just reiterate that the City is seeking to
add the additional information from our annual report that's
already submitted to the Planning Commission and actually to
the Land Use Commission as well in compliance with our obligations under the permit. We feel that it's part of the Planning Commission's actual records already since it is submitted to your guys annually. And, so we would request that you take official notice of that annual report.

   Chairman: Okay. If you can briefly summerize what points on the report you feel are relevant.

   Ms. Chan: At the time that the contested case hearing ended--

   Chairman: Which one?

   Ms. Chan: The 2011 application to delete Condition No. 14. There were still waste streams that the City was working toward diverting that they were not able to divert at that point in time. One of the big ones is sewage sludge. So, we would request that you take judicial notice of the fact that those types of waste streams. Medical waste would be another one, since been diverted and they are no longer going to the landfill. So, it does affect the number of tons of solid waste that's going to the landfill every year. And it does also go to our compliance with the other conditions in the permit as well.

   Member McMurdoo: It relates to capacity?

   Ms. Chan: It relates directly to capacity.

   There's been a significant amount of diversion just in the last few years. And that's something that the parties
have--I would submit that the parties have acknowledged that by way of agreeing to the stipulation that we had brought before this Planning Commission before in the form of a motion. Those waste streams were identified as well in that filing. I don't believe there's necessarily a dispute about that. I don't intend to speak for any of the other parties, but for the diversion--from our perspective, there's no real dispute about what's been diverted in the last few years.

Chairman: Okay. Commissioners, any questions at this time from the City? [no response] No. Okay.

Mr. Chipchase you have any--

Mr. Chipchase: Thank you, Chair. With respect to the City's motion to admit the report in evidence, I would note that although it's forwarded to this body and to the LUC as part of the City's reporting obligation, it's not in evidence in this contested case since quasi-judicial proceedings. So, as it stands today, it can't be considered. If it were to be considered, our position is that the Commission should allow us the opportunity to submit rebuttal evidence because frankly just picking up on a couple of the points that Ms. Chan raised, landfill capacity the City's intentions with respect to duration of Waimanalo Gulch were a significant issue in the 2011 contested case proceeding. And now that proceeding that has been consolidated with 2008 and so all issues are back
before this Commission, not just Condition 14 and
continuance of the landfill. Capacity in the City's
intension given the apparently elongated capacity are an
issue. We also believe that the report and the report does
contain statements with respect to site selection. Those
issues remain relevant, although this body does not select
the site for the City, the permits have historically and in
conformance with this body's rules and LUC's rules,
obligated the City to identify a new landfill site with
reasonable diligence. And so the City's progress and
compliance with the existing conditions are not just the
formal order but orders going back through time remains
irrelevant consideration is why there was extensive
testimony developed in 2011 proceedings. There are other
points, they're all laid out in my paper. I'm happy to take
them one by one, but at the end of the day the question is
whether to allow the additional evidence. If this body
does, then I'm entitled to an opportunity to submit rebuttal
evidence. And we have presented that rebuttal evidence in
two forms. Documentation showing the impact on surrounding
properties since the closure of the contested case. Those
are in the form of both civil and criminal violations
against the operator and certain members of the operator
staff and in the form of testamentary evidence we proposed.
Director Kahikina would be most able to answer the questions
that we have with respect to the report. Thank you.

Chairman: Okay. Thank you. Ms. Muller, do you
have any--

Ms. Muller: Thank you, Chair. Actually we don't
have a position on this motion. Schnitzer Steel doesn't
have a position on this motion.

Chairman: So you have no position. Okay.

Commissioners, you have any questions of any of the
intervenors at this time? [no response] Okay.

Member Hayashida: Motion to approve the
Department of Environmental Services, City and County of
Honolulu, Motion to Reopen the Contested Case Hearing for
Limited Purpose of Taking Official Notice of Facts.

Member Tolentino: Second.

Chairman: Okay. Moved and seconded.

Commissioners, we are in discussion. Do we have any
discussions on the matter? Any further discussion? I do
understand the City's position the fact that there is--And
logically you would expect updated information and a status
report especially since its been so long regarding capacity.

I'm not sure whether, in fact, adding that report into the
record, adding a status report into the record at this time,
I think is pertinent to the business before the Commission.
But I understand there's been a lot of changes, and like I
said a status report in 2016 should logically provide
updated information, some updated status of what's going on here. But I would tend to agree with Mr. Chipchase that previous status reports were not admitted into the record by the Commission. So, I think adding one now might be kind be unfair maybe to the prior proceedings. Anyway, any other discussion? [no response] Okay. We have a motion and a second. All those in favor of the motion, say aye.

Member Tolentino: Aye.
Member Chang: Aye.
Member Hayashida: Aye.
Chairman: Three ayes. All those oppose?
Member McMurdo: Nay.
Chairman: Nay. Okay. So, 3:2. The motion, therefore, fails. Okay. The last order of business is Item C, Department of Environmental Services, City and County of Honolulu, Motion for Extension of Time. Ms. Chan.

Ms. Chan: The City has been working and discussing with primarily KOCA and we've had some brief discussions with Schnitzer as well about, you know, the subject matter that's before the Commission, and we believe we're making further progress and that if given even a little bit more time we could probably get there and at least resolve some of the issues if not something more substantive. I know that the motion that the City file did request to next April, but in further discussions we're willing to go with a
90-day extension just to give us a little more time to finish up our discussions, to have some time, should we reach some type of agreement to be able to submit a Findings of Fact together as well that we can present to the Commission. And, I think 90 days would give us sufficient time to do that.

Chairman: So what date are you looking for?

Ms. Chan: That would take us to the end of January. I think realizing that we have the holidays coming up in between as well, it'll probably create some scheduling problems, and it'll be difficult to finish up our work.

Chairman: Okay. Because my staff gave us a calendar. So, if we look at the end of January, submission would be the 27th of January. For the intervenors is one week, is the 3rd of February for rebuttal sufficient time?

Mr. Chipchase: If I might, Chair, just have two weeks. I anticipate it'll be long.

Chairman: Okay. 10 February for rebuttals and to give us and corp counsel sufficient time we will then schedule a D&O Planning Commission meeting on March 1st. Is there any comments or objections from any of the parties? I know Mr. Wurdemann is not here, but we will break the great news to him later.

Mr. Chipchase: None from us, Chair.

Chairman: City?
Ms. Chan: None.

Ms. Muller: None from us. Thank you.

Chairman: Okay. So it poses no scheduling problems for any of the parties.

Mr. Chipchase: No, Chair.

Ms. Chan: No.

Chairman: Okay. Anybody have anything else?

Member Tolentino: No. So, I'll make a motion to approve and grant the Department of Environmental Services, City and County of Honolulu, Motion for Extension of Time.

Member Hayashida: Second.

Member Tolentino: Date as noted, January 27th, and rebuttal on February 10th.

Chairman: Correct. Okay.

Member McMurdo: And the hearing of March 1st.

Chairman: Yes.

Member Hayashida: Second.

Chairman: Moved and seconded. Any discussion?

[no response] Okay. Any objections to approving the motion?

[no response] Any abstentions?[no response] Okay. The motion has been approved and filing will be moved to 27th of January. Okay. Any other announcements?

Member Tolentino: Chair, can we go back to Item A, I have a clarification for the vote.

Chairman: Three ayes and two nays.
Member Tolentino: Oh, three ayes and two nays.

Okay. And that was for approval--

Chairman: That was for approval; yes.

Member Tolentino: Okay. Thank you.

Chairman: Any announcements?

Mr. Chipchase: No announcements. I heard motion to deny, right, 3:2?

Chairman: No. The motion was to approve, but because we need all five votes it doesn't pass so the motion is denied.

Mr. Chipchase: I follow; yes.

Chairman: Kathy, you want to come up now or you want to--

Ms. Sokugawa: Just a short announcement for the Planning Commissioners. The Hawaii Congress of Planning Officials conference will be held here next year. City and County Planning Commissioners are kind of the hosting body. So next year we'll try something very different and have more involvement by the Commission itself. So, we haven't set a date or time yet, but think about what topics or what speakers you would like us to cover as part of the program, and we can try to consider that as much as we can. Again, there is no date or time yet, but we are in charge of it next year. Thank you.

Chairman: Okay. Commissioners, motion to
adjourn.

Member McMurdo: So moved.

Member Tolentino: Second.

Chairman: Moved and seconded. Any objections?

[no response] Any abstentions? [no response] Okay. This meeting is adjourned. 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 3:47 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, October 12, 2016.

[Signature]

Gloria Takara
Secretary-Hearings Reporter