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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 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.

1 APPEARANCES:

2

3 Planning Commission present:

4

Dean I. Hazama, Chair

5

Arthur B. Tolentino

6

Wilfred A. Chang, Jr.

7

Ken K. Hayashida

8

Theresia C. McMurdo

9

10 Planning Commissioners excused:

11

Cord D. Anderson, Vice Chair

12

Kaiulani K. Sodaro [recused,

13

prior notice given]

14

Daniel S. M. Young

15

Steven S. C. Lim [recused,

16

prior notice given]

17

18 Planning Commission staff:

19

Gloria Takara,

20

Secretary-Hearings Reporter

21

22 Deputy Corporation Counsel:

23

Jennifer D. Waihee-Polk

24

(Advisory to the Commission)

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
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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 Shutte
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14 Honolulu, Hawaii 96813

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16 For intervenor Schnitzer Steel Hawaii Corp.:

17 Arsima Muller, Esq.
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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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P R O C E E D I N G S

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3 Chairman: Okay. Good afternoon. I call this
4 meeting to order of the Honolulu Planning Commission October
5 12, 2016. First order of business on our agenda are approval
6 of minutes for July 6th, July 20th, August 3rd, August 17th,
7 as well as executive sessions on July 20th, August 3rd and
8 August 17th. Commissioners are in receipt of the draft
9 minutes and executive session minutes. Are there are any
10 changes or corrections to the minutes?

11 Member Tolentino: Move to approve as circulated.

12 Chairman: Okay. So moved.

13 Member Hayashida: Second.

14 Chairman: Moved and seconded. Any objections? [no
15 response] Any abstentions? [no response] Okay. The minutes
16 and the executive session minutes has been adopted.

17 Moving on to our agenda, continued contested case
18 hearing, Ewa State Special Use Permit, Amendment Application
19 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. At this time,
20 I'd like to ask the parties to come up, please. Good
21 afternoon. Okay. For the record if we could go through
22 introductions first.

23 Ms. Chan: Kamilla Chan Deputy Corporation for the
24 City.

25

1 Mr. Chipchase: Cal Chipchase, counsel for
2 intervenors Ko Olina Community Association and Maile
3 Shimabukuro.

4 Ms. Muller: Arsima Muller and Ian Sandison for
5 intervenor Schnitzer Steel Hawaii Corp.

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

16 Mr. Chipchase.

17 Mr. Chipchase: Thank you, Chair. If I could
18 suggest something to the Commission, it would be that we
19 take up the issue of continuing the hearing first and that's
20 because of intervenor Hanabusa's statement filed yesterday
21 requesting a further continuance of the hearings on all
22 three motions and confirming that counsel for Ms. Hanabusa
23 would not be available today. And so with that, Chair and
24 members you have a situation where all the parties, the City
25 and all intervenors have agreed that these motions at least

1 should be continued. And, I indeed, I think that given
2 Mr. Wurdeman's unavailability there might be due process
3 issues with proceeding with them in his absence, and so I
4 would suggest the way to approach it is to discuss when and
5 how to continue the motions and in what order they should be
6 heard.

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

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

21 Chairman: Okay.

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

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

1 Chair.

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

7 Mr. Chipchase: I understand it, and I have a
8 suggestion on that. We know that Mr. Wurdeman and all
9 parties are available on the 26th, because we had set that
10 day for considerations of Findings of Fact, Conclusions of
11 Law, and Decision and Order. So, I would suggest that we
12 move the City's motion to continue to that day because we
13 know Mr. Wurdeman and everyone else would be available for
14 that hearing. And that decision, the decision on that
15 motion to me sets the timing for the rest of the issues that
16 are before this body. The decision on that either to grant
17 or deny it to me then leads to setting the motion to reopen,
18 my motion to reopen and City's motion to reopen. And our
19 response to the City's motion to reopen, we've requested the
20 opportunity to submit rebuttal evidence in the form of
21 documentation and in the form of eliminated additional
22 witness to inquire as to certain statements that were made
23 in both the City's motion and the evidence that the City
24 would like to submit. So, that decision, the decision on the
25 motion to reopen then will dictate how much additional

1 hearing time we need, which will in turn control when we're
2 able to submit Findings of Fact, Conclusions of Law, and
3 Decision and Order. Obviously have to be after that hearing
4 time. And, so I think if we took it sequentially where we
5 heard the City's motion to continue on the 26th and we know
6 everyone will be here, then we'll be in a position to set
7 the hearings on the motions to reopen to set the additional
8 time for hearing, to close the hearing and then to set the
9 final resolution of that matter. That would be my suggestion
10 given. The numerous issues is, as the Chair mentioned, in
11 the problem of not having all parties here today. We have a
12 day where we know they will be available.

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

15 Mr. Chipchase: Yes, Chair. So not to dive too
16 deeply into the merits of the City's motion to reopen
17 without Mr. Wurdeman here. I'm a little hesitant. But just
18 to sort of explain what our position is. The City has moved
19 to reopen evidence to submit the most recent report on the
20 landfill to the Land Use Commission. That report is
21 attached to the City's motion and it makes a number of
22 statements in there regarding capacity, regarding City's
23 efforts to identifying landfill, regarding conversionary
24 efforts and various other things. Those statements since we
25 closed evidence so long ago, in some ways differ from and in

1 some ways potentially update evidence that was in the record
2 before. In response to the City's motion we recognize that
3 this body and the LUC should have the most up-to-date
4 information. No question there. So we don't object in
5 principal to reopening evidence to allow that report and our
6 motions similarly seeks to update the evidence.

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

16 Chairman: Assuming the Commission grants the
17 reopening request.

18 Mr. Chipchase: Of course.

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

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

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

25 Member Hayashida: Motion to move into executive

1 session.

2 Member McMurdo: Second.

3 Chairman: Moved and seconded. Any objections?

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

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

12 Chairman: Okay. Call the meeting back to order.
13 [bangs gavel] Apologize for the delay. Okay. Moving on, I
14 guess we will proceed with A. So you're ready to present at
15 this time?

16 Mr. Chipchase: Sure, Chair. The motion to reopen
17 that Ko Olina filed back in 2012 was to address an issue
18 with respect to the submission of the landfill rankings.
19 While we were in hearing in 2012, the City was going through
20 its initial site selection process and produced a ranking,
21 and there was extensive testimony before this body on that
22 process, the ranking and the site selection in general.
23 This all relates to among other things condition that
24 the City's SUP is going back to a number of years,
25 conditions that have never been challenged requiring the

1 City to with reasonable diligence to identify and develop a
2 new landfill site to replace Waimanalo Gulch recognizing
3 that Waimanalo Gulch was always meant to be temporary. So,
4 you see the evidence from that record in the prior
5 proceeding, then you see in the City's motion to reopen
6 among the other statements that they want to include are
7 updates on the site selection process. So, the two exhibits
8 that we had sought to introduce K259 and 260 were simply the
9 updated correcting rankings. In the record as it existed,
10 there were rankings that proved to be erroneous. The
11 consultant issued a statement explained the error and issued
12 corrected rankings and sought to introduce those into
13 evidence.

14 Chairman: Okay. Thank you. Commissioners, any
15 questions at this time? [no response] No. Ms. Chan.

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

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

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

1 objection.

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

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

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

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

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

15 Member Hayashida: I'll second the motion.

16 Chairman: Okay. Moved and seconded. We're in
17 discussion then. Commissioners, any further discussion or
18 comments on it? [no response] I don't necessarily agree or
19 disagree or take a position on whether there is an error
20 regarding the ratings of the landfill, possible landfill
21 sites, etc. I do feel, however, that the Commission's role
22 in this matter is not to select or deselect or not select a
23 particular site for a potential new landfill. The issue
24 before the Commission is on whether to approve or disapprove
25 the special use permit application and in that manner send

1 it forward to the Land Use Commission for final review and
2 approval. It's not the Commission's duty or responsibility
3 to establish or identify a landfill for the City. I think
4 it's the City's job to do that, but it's outside the bounds
5 of what the Commission should be doing. So that's just my
6 comment on that.

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

11 Member Tolentino: Aye.

12 Member Chang: Aye.

13 Chairman: Okay. All those opposed?

14 Member McMurdo: Nay.

15 Member Hayashida: Nay.

16 Chairman: Okay. So, two ayes and three nays. The
17 motion, therefore, failed. Okay.

18 Moving on to Item B, Department of Environmental
19 Services, City and County of Honolulu's Motion to Reopen the
20 Contested Case Hearing for the Limited Purpose of Taking
21 Official Notice of Facts. Ms. Chan.

22 Ms. Chan: We would stand with our written
23 submission and just reiterate that the City is seeking to
24 add the additional information from our annual report that's
25 already submitted to the Planning Commission and actually to

1 the Land Use Commission as well in compliance with our
2 obligations under the permit. We feel that it's part of the
3 Planning Commission's actual records already since it is
4 submitted to your guys annually. And, so we would request
5 that you take official notice of that annual report.

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

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

10 Chairman: Which one?

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

22 Member McMurdo: It relates to capacity?

23 Ms. Chan: It relates directly to capacity.
24 There's been a significant amount of diversion just in the
25 last few years. And that's something that the parties

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

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

11 Mr. Chipchase you have any--

12 Mr. Chipchase: Thank you, Chair. With respect to
13 the City's motion to admit the report in evidence, I would
14 note that although it's forwarded to this body and to the
15 LUC as part of the City's reporting obligation, it's not in
16 evidence in this contested case since quasi-judicial
17 proceedings. So, as it stands today, it can't be
18 considered. If it were to be considered, our position is
19 that the Commission should allow us the opportunity to
20 submit rebuttal evidence because frankly just picking up on
21 a couple of the points that Ms. Chan raised, landfill
22 capacity the City's intentions with respect to duration of
23 Waimanalo Gulch were a significant issue in the 2011
24 contested case proceeding. And now that proceeding that has
25 been consolidated with 2008 and so all issues are back

1 before this Commission, not just Condition 14 and
2 continuance of the landfill. Capacity in the City's
3 intension given the apparently elongated capacity are an
4 issue. We also believe that the report and the report does
5 contain statements with respect to site selection. Those
6 issues remain relevant, although this body does not select
7 the site for the City, the permits have historically and in
8 conformance with this body's rules and LUC's rules,
9 obligated the City to identify a new landfill site with
10 reasonable diligence. And so the City's progress and
11 compliance with the existing conditions are not just the
12 formal order but orders going back through time remains
13 irrelevant consideration is why there was extensive
14 testimony developed in 2011 proceedings. There are other
15 points, they're all laid out in my paper. I'm happy to take
16 them one by one, but at the end of the day the question is
17 whether to allow the additional evidence. If this body
18 does, then I'm entitled to an opportunity to submit rebuttal
19 evidence. And we have presented that rebuttal evidence in
20 two forms. Documentation showing the impact on surrounding
21 properties since the closure of the contested case. Those
22 are in the form of both civil and criminal violations
23 against the operator and certain members of the operator
24 staff and in the form of testamentary evidence we proposed.
25 Director Kahikina would be most able to answer the questions

1 that we have with respect to the report. Thank you.

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

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

7 Chairman: So you have no position. Okay.
8 Commissioners, you have any questions of any of the
9 intervenors at this time? [no response] Okay.

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

14 Member Tolentino: Second.

15 Chairman: Okay. Moved and seconded.

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

21 I'm not sure whether, in fact, adding that report into the
22 record, adding a status report into the record at this time,
23 I think is pertinent to the business before the Commission.
24 But I understand there's been a lot of changes, and like I
25 said a status report in 2016 should logically provide

1 updated information, some updated status of what's going on
2 here. But I would tend to agree with Mr. Chipchase that
3 previous status reports were not admitted into the record by
4 the Commission. So, I think adding one now might be kind be
5 unfair maybe to the prior proceedings. Anyway, any other
6 discussion? [no response] Okay. We have a motion and a
7 second. All those in favor of the motion, say aye.

8 Member Tolentino: Aye.

9 Member Chang: Aye.

10 Member Hayashida: Aye.

11 Chairman: Three ayes. All those oppose?

12 Member McMurdo: Nay.

13 Chairman: Nay. Okay. So, 3:2. The motion,
14 therefore, fails. Okay. The last order of business is Item
15 C, Department of Environmental Services, City and County of
16 Honolulu, Motion for Extension of Time. Ms. Chan.

17 Ms. Chan: The City has been working and discussing
18 with primarily KOCA and we've had some brief discussions
19 with Schnitzer as well about, you know, the subject matter
20 that's before the Commission, and we believe we're making
21 further progress and that if given even a little bit more
22 time we could probably get there and at least resolve some
23 of the issues if not something more substantive. I know
24 that the motion that the City file did request to next
25 April, but in further discussions we're willing to go with a

1 90-day extension just to give us a little more time to
2 finish up our discussions, to have some time, should we
3 reach some type of agreement to be able to submit a Findings
4 of Fact together as well that we can present to the
5 Commission. And, I think 90 days would give us sufficient
6 time to do that.

7 Chairman: So what date are you looking for?

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

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

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

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

24 Mr. Chipchase: None from us, Chair.

25 Chairman: City?

1 Ms. Chan: None.

2 Ms. Muller: None from us. Thank you.

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

5 Mr. Chipchase: No, Chair.

6 Ms. Chan: No.

7 Chairman: Okay. Anybody have anything else?

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

11 Member Hayashida: Second.

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

14 Chairman: Correct. Okay.

15 Member McMurdo: And the hearing of March 1st.

16 Chairman: Yes.

17 Member Hayashida: Second.

18 Chairman: Moved and seconded. Any discussion?
19 [no response] Okay. Any objections to approving the motion?
20 [no response] Any abstentions?[no response] Okay. The
21 motion has been approved and filing will be moved to 27th of
22 January. Okay. Any other announcements?

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

25 Chairman: Three ayes and two nays.

1 Member Tolentino: Oh, three eyes and two nays.

2 Okay. And that was for approval--

3 Chairman: That was for approval; yes.

4 Member Tolentino: Okay. Thank you.

5 Chairman: Any announcements?

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

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

11 Mr. Chipchase: I follow; yes.

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

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

25 Chairman: Okay. Commissioners, motion to

1 adjourn.

2 Member McMurdo: So moved.

3 Member Tolentino: Second.

4 Chairman: Moved and seconded. Any objections?

5 [no response] Any abstentions? [no response] Okay. This

6 meeting is adjourned. Thank you very much. [bangs gavel]

7 ADJOURNMENT:

8 There being no further business before the
9 Planning Commission, the meeting was adjourned by Chair
10 Hazama at approximately 3:47 p.m.

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12 --o0o--

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14 I certify that the foregoing is
15 a true and correct transcription
16 of the proceedings, prepared to
17 the best of my ability, of the
18 meeting held on Wednesday,
19 October 12, 2016.

20

21



22 Gloria Takara

23 Secretary-Hearings Reporter

24

25