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 as 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."	File No. 2008/SUP-2

CONTINUED - CONTESTED CASE HEARING

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

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

APPEARANCES:

Planning Commissioners present:

Dean I. Hazama, Chair
Cord D. Anderson
Daniel S. M. Young
Ken K. Hayashida
Wilfred A. Chang, Jr.

Planning Commissioners excused:

Arthur B. Tolentino
Kaiulani K. Sodaro [recused, prior notice given]
Steven S. C. Lim [recused, prior notice given]
Theresia c. McMurdo, Vice Chair [prior notice given]

Deputy Corporation Counsel:

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

Planning Commission staff:

Gloria Takara,
Secretary-Hearings Reporter

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, Esq.
Christopher T. Goodin, Esq.
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

For intervenor Schnitzer Steel Hawaii Corp.:

Arsima Muller, Esq.
Carlsmith Ball LLP
ASB Tower, Suite 2200
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Honolulu, Hawaii 96813

For intervenor Colleen Hanabusa:

Richard N. Wurdeman, Esq.

1003 Bishop Street, Suite 720

Honolulu, Hawaii 96813

P R O C E E D I N G S

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

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

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

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

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

Chairman: Okay. Ms. Chan.

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

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

supplementing its response.

Chairman: Okay. Mr. Wurdeman.

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

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

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

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

2009 submission is what you have submitted before the Commission?

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

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

Ms. Chan: Yes. We're seeking to strike that.

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

Ms. Chan: No. And our position is that was previously decided by the Planning Commission. They considered--

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

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

Chairman: Right. However---

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

the Planning Commission.

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

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

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

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

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

Mr. Wurdeman: Correct.

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

questions.

Member Hayashida: So, it's irrelevant, right? I mean--

Chairman: The motion--

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

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

Chairman: Okay. So moved.

Member Hayashida: Second.

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

[EXECUTIVE SESSION MINUTES]

Out: 1:43 p.m.

In: 2:11 p.m.

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

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

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

Member Hayashida: Second.

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

All Commissioners: Aye.

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

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

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

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

Member Anderson: Yes.

Mr. Wurdeman: Okay.

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

All Commissioners: Aye.

Chairman: Any opposed? [no response] Any

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

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

Okay. For the record, appearances, please.

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

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

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

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

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

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

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

[colloquy between DCC Waihee-Polk and Commissioner Anderson]

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

Chairman: Okay.

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

Chairman: Okay. Do we have a second?

Member Hayashida: Second.

Chairman: Okay. It's moved and seconded. Okay. Commissioners, we are now in discussion. Any further

discussion?

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

Chairman: Okay. However, we have the record. So, we have all evidentiary records and have reviewed them. So, that's each Commissioner's responsibility, and we also have your submittal. So, we have everything.

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

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

Member Anderson: I make a motion for executive session.

Member Hayashida: Second.

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

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

case.

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

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

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

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

[EXECUTIVE SESSION MINUTES]

Out: 2:26 p.m.

In: 2:44 p.m.

Chairman: Okay. Thank you. I call this meeting back to order. [bangs gavel]

Okay. For the record, Commissioners, I need confirmation from you that you have reviewed all evidence and the entire record from the 2008 and 2011 SUP proceedings. Commissioners.

Member Hayashida: I reviewed the records.

Chairman: Okay. Commissioner Chang.

Member Chang: I have as well.

Chairman: Okay. Commissioner Young.

Member Young: So have I.

Chairman: Okay.

Member Anderson: Yes. I have reviewed all of the records presented to us. Thank you.

Chairman: Okay. And, likewise, I have as well. In regards to, for the record, Mr. Wurdeman, your presumption on my influence over the entire Commission, I think is incorrect. So, I'm one Commissioner that has one vote equal to the weight of any other Commissioner on this body.

In regards to your request regarding Part 2. Because we received, the Commission has received it, so it

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

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

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

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

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

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

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

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

Chairman: That's fine.

Mr. Chipchase: The motion made by Commissioner

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

I don't believe that those kinds of decision

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

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

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

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

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

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

Chairman: Okay. Any objections to accepting the motion?

Member Anderson: No.

Chairman: Okay. Commissioners--

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

an additional condition added upon my motion?

Chairman: Yes.

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

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

Member Anderson: I'll second it.

Chairman: Now, do you have any objections?

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

Chairman: Okay. Any further discussions? [no

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

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

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

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

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

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

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

Member Anderson: Yes.

Chairman: So, it's not necessarily--

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

Chairman: Okay.

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

Chairman: Is it on the record already or--

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

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

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

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

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

Chairman: Okay. Thank you.

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

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

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

[colloquy between DCC Waihee-Polk and all Commissioners]

Member Anderson: Chair, make a motion for

executive session, please.

Member Hayashida: Second.

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

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

Mr. Wurdeman: I join in with that assertion.

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

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

Chairman: Okay.

[EXECUTIVE SESSION MINUTES]

In: 3:00 pm.

Out: 3:18 p.m

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

Okay. Commissioners, any further discussion on the matter?

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

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

Decision and Order, Item--

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

Member Hayashida: This the document--

Member Anderson: Yes.

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

Member Anderson: Commissioner Hayashida's.

Chairman: Yes.

Member Anderson: Correct.

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

Member Anderson: Yes.

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

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

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

Member Hayashida: You want me to withdraw my motion?

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

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

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

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

Member Hayashida: Withdraw my motion.

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

Member Anderson: Second.

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

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

Chairman: Okay. So moved.

Member Hayashida: Second.

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

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

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

Member Anderson: Conclusions of Law; correct.

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

Member Anderson: Correct.

Chairman: Okay. And what was--

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

three conditions you mentioned earlier?

Member Anderson: Correct. That's my understanding.

Chairman: Okay.

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

Chairman: Oh, okay. Correct, correct. Okay. So, adding on the deletion of Condition 14, you're still accepting ENV's Findings of Fact, Conclusions of Law and adding your three additional conditions.

Member Anderson: Yes, while removing Condition 14.

Chairman: Okay.

Member Anderson: Does that clarify things a little bit?

Member Hayashida: Yes.

Member Anderson: Okay.

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

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

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

second?

Member Hayashida: Second.

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

Member Anderson: Yes, and removing 14.

Chairman: And removing 14.

Member Anderson: Yes.

Chairman: And 14 was the date restriction.

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

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

Member Anderson: Yes.

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

All Commissioners: Aye.

Chairman: Any opposed? [no response]

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

You have anything else, Commissioners? Okay. Seeing none, do you have a motion to adjourn?

Member Hayashida: Motion to adjourn.

Chairman: It's been moved.

Member Young: Second.

Chairman: Moved and seconded. Any objections? [no response] Any abstentions? [no response] Okay. Thank you very much, Commissioners. This meeting is adjourned. [bangs gavel].

ADJOURNMENT:

There being no further business before the Planning Commission, the meeting was adjourned by Chair Hazama at approximately 3:28 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, March 1, 2017.

Gloria Takara

Secretary-Hearings Reporter

ADOPTED ON: **March 15, 2017**