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BEFORE THE PLANNING COMMISSION  
OF THE 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." )  
-----)

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 9:06 a.m., on  
May 25, 2012, pursuant to Notice.

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BEFORE: SUE M. FLINT, RPR, CSR 274  
Notary Public, State of Hawaii

APPEARANCES:

Planning Commission:

- GAYLE PINGREE, Chairwoman
- CORD D. ANDERSEN, Member
- DANIEL S.M. YOUNG, Member
- BEADIE DAWSON, Member
- JAMES C. PACOPAC, Member

For the Planning Commission:

WINSTON K.Q. WONG, ESQ.  
 Deputy Corporation Counsel  
 Department of the Corporation Counsel  
 530 South King Street, Room 110  
 Honolulu, Hawaii 96813

1 Appearances (continued):

2

3 For the City and County of Honolulu, Department of  
4 Environmental Services:

5 ROBERT BRIAN BLACK, ESQ.  
6 Deputy Corporation Counsel  
7 City and County of Honolulu  
8 530 South King Street, Room 110  
9 Honolulu, Hawaii 96813

10

11 For Ko Olina Community Association and Senator Maile  
12 Shimabukuro:

13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.  
14 CHRISTOPHER T. GOODIN, ESQ.  
15 Cades Schutte  
16 1000 Bishop Street, Suite 1200  
17 Honolulu, Hawaii 96813

18

19 For Schnitzer Steel Hawaii Corp.:

20 IAN L. SANDISON, ESQ.  
21 Carlsmith Ball LLP  
22 ASB Tower, Suite 2200  
23 1001 Bishop Street  
24 Honolulu, Hawaii 96813

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1                    CONTESTED CASE HEARING  
2

3                    CHAIRWOMAN PINGREE: Good morning. Today  
4 is May 25th, 2012, day nine of the Ewa-State Special  
5 Use Permit Amendment Application 2008/SUP-2,  
6 Waimanalo Gulch Sanitary Landfill.

7                    Counsel, would you kindly identify  
8 yourselves for the record?

9                    MR. BLACK: Brian Black, here on behalf of  
10 the Department of Environmental Services.

11                    MR. SANDISON: Ian Sandison, here on  
12 behalf of Schnitzer Steel Hawaii Corp., intervenor.

13                    MR. CHIPCHASE: Cal Chipchase and Chris  
14 Goodin for intervenors Ko Olina Community  
15 Association and Senator Maile Shimabukuro. Also  
16 with us today is Ken Williams, general manager of  
17 the association.

18                    CHAIRWOMAN PINGREE: Thank you very much.  
19 What I'd like to do is to begin today with taking up  
20 the matter -- and I'm sure you're all privy to this  
21 information -- the letter from the Land Use  
22 Commission. That letter is dated May 22nd, 2012,  
23 addressed to the Planning Commission, in reference  
24 to the county's Special Use Permit 2008/SUP-2.

25                    I'm going to presume you've all read and

1 reviewed this information. What I'd like to do, of  
2 course, is to ask for any comments by counsel in  
3 reference to the letter, and we'll start with ENV,  
4 please.

5 MR. BLACK: Thank you, Commissioner. I  
6 believe this ties in to our request in the  
7 alternative in our initial notice regarding the  
8 Supreme Court decision for a stay of the proceeding  
9 until the remand has run its course.

10 Yesterday, we filed -- just to give the  
11 commissioners an idea of what the procedure is, and  
12 I have copies here for the commissioners. We filed  
13 a notice regarding the procedure after the Supreme  
14 Court decision. That lays out each of the steps for  
15 what will happen, including the fact that there  
16 needs to be a judgment on appeal from the Supreme  
17 Court that has not happened yet and additional steps  
18 after that.

19 So the letter identifies what the Land Use  
20 Commission currently intends to do. Our request  
21 would be that this commission defer any further  
22 action at this point until the remand has run its  
23 course and either something happens that would bring  
24 a further proceeding before this commission or the  
25 Land Use Commission does something else.

1 CHAIRWOMAN PINGREE: Does that conclude  
2 for you?

3 MR. BLACK: Yes. I would say, though, as  
4 a procedural matter, if the Planning Commission is  
5 not going to decide anything at this point, under  
6 Rule 2-72, currently there is a 60-day requirement  
7 to have a decision from this body after the hearing  
8 closes, and so ENV would agree to lift that 60-day  
9 requirement, and I think if all the parties agree,  
10 that 60-day requirement could be waived.

11 CHAIRWOMAN PINGREE: Thank you.

12 MR. SANDISON: It's Schnitzer's position  
13 that it would also agree under 2-72 to allow  
14 additional time for the Planning Commission to  
15 render a decision in the current matter. It is our  
16 expectation that the LUC's direction as it has  
17 explained in the letter would occur and that the  
18 matter will be referred down here and that the  
19 Planning Commission would consolidate the two  
20 matters and that there would be one decision going  
21 back up to the Land Use Commission.

22 CHAIRWOMAN PINGREE: Thank you.

23 MR. CHIPCHASE: Intervenor Ko Olina's  
24 expectation is similar to Schnitzer's, but I'd like  
25 to take a step back, because I don't necessarily --

1 I don't agree with the process that the ENV has set  
2 out in its papers to you and as described this  
3 morning.

4 It is absolutely true that you need a  
5 judgment on appeal, but there's nothing uncertain  
6 about what that judgment will be or the direction to  
7 the LUC or to the Circuit Court and then to the LUC  
8 or the LUC's direction to this body -- its request  
9 to this body.

10 I'll start with the Supreme Court opinion.  
11 They say it all over the opinion. I won't focus on  
12 every time, but I'd just like to focus on the very  
13 last page of the opinion, the conclusion section on  
14 page 36. The court says: We vacate the Circuit  
15 Court's judgment affirming the LUC's approval of  
16 SUP-2 and remand this matter to the Circuit Court  
17 with instructions that the Circuit Court remand this  
18 matter to the LUC for further proceedings consistent  
19 with this opinion.

20 So when the ENV expresses, Well, we don't  
21 know what the Circuit Court might do, parties may  
22 brief it, it's just not accurate. The Supreme Court  
23 has specifically instructed the Circuit Court to  
24 remand to the LUC for further proceedings. There's  
25 no ambiguity. That's what will happen. The Circuit

1 Court doesn't even need to have a hearing on it. It  
2 has its instruction. It can remand.

3 Then what happens in the LUC? The Land  
4 Use Commission has already said what will happen in  
5 the LUC. There's no uncertainty in the chairman's  
6 letter. I won't read the whole thing. You have it.  
7 I'd just focus on the very last sentence of the  
8 letter. In the event the Planning Commission stays  
9 its proceeding on the DES's request, I have  
10 instructed my staff to forward the record on remand  
11 to the Planning Commission upon receipt from the  
12 Circuit Court so that it may consolidate the  
13 proceedings consistent with the spirit and intent of  
14 the Hawaii Supreme Court's decision.

15 That is not an ambiguous direction. If  
16 you defer decision-making -- we'll talk about what  
17 that means in a second. If you defer decision-  
18 making today, the Land Use Commission has already  
19 instructed its staff to forward the record to you  
20 with the expectation that you will consolidate the  
21 proceedings. No question about the process. That  
22 is exactly what will happen. And the chairman is  
23 right; that is expressly consistent with the Hawaii  
24 Supreme Court's expectation when it encouraged very  
25 directly the Land Use Commission to consider the



1 full testimony and record developed over these five  
2 months in this proceeding.

3 Hawaii Supreme Court wants the Land Use  
4 Commission to have the full record. The Land Use  
5 Commission wants to have the full record. The  
6 process has been laid out without any ambiguity or  
7 doubt. So what does that mean today?

8 Mr. Black is quite right that Rule 2-72  
9 ordinarily requires you to make a decision within 60  
10 days unless the parties agree to a longer period.  
11 You that have agreement. You've heard on the record  
12 today every party, including Ko Olina, agree to a  
13 longer period for decision-making. So that burden  
14 of 60 days is lifted from you. What happens next?

15 We know what the Circuit Court and the LUC  
16 are going to do. The prior proceeding is coming  
17 back to this body. So the decision-making should  
18 only be lifted until the prior matter is returned  
19 and the commission should decide today that as soon  
20 as the prior matter is returned, it will consolidate  
21 the proceedings, the proceedings will be deemed  
22 consolidated pursuant to Rule 2-61. The commission  
23 has that power on its own initiative, to consolidate  
24 those matters for decision-making. That is the  
25 outcome that we should reach today.

1           But before we continue decision-making on  
2     the final order, we should take up and decide  
3     Ko Olina's motion to reopen, and that's part of the  
4     big difference between a stay and a continuation of  
5     decision-making. The rules do not expressly provide  
6     for a stay, but they do expressly provide for a  
7     longer period to make your decision. Rule on Ko  
8     Olina's motion for reopening, continue decision-  
9     making until you receive the record from the Land  
10    Use Commission; upon receipt of the record from the  
11    Land Use Commission, the matters are deemed  
12    consolidated for decision-making. That's the  
13    process. It's streamlined and it gets us to the end  
14    of this proceeding as soon as possible.

15           CHAIRWOMAN PINGREE: Thank you.

16           MR. CHIPCHASE: Thank you.

17           CHAIRWOMAN PINGREE: I am going to ask for  
18    a motion to move to an executive meeting so that we  
19    can confer with counsel as to what our duties are  
20    with regard to the Planning Commission.

21           Can we have a motion?

22           MR. YOUNG: So moved.

23           MR. PACOPAC: Second.

24           CHAIRWOMAN PINGREE: Thank you. Why don't  
25    we resume at 9:45? Okay. Thank you.

1 (Discussion off the record.)

2 (Executive meeting held.)

3 CHAIRWOMAN PINGREE: Back on the record.

4 Thank you.

5 Before we begin, what I'd like to do is to  
6 make it clear that we went back on the record and  
7 the hearing portion -- the hearing is not closed.  
8 The evidence-taking portion of the hearing was  
9 closed on April 23rd, 2012, and that's confirmed in  
10 our transcripts, so I needed that for the record.

11 Thank you.

12 At this time, I'm going to ask for a  
13 motion.

14 MR. PACOPAC: I'd like to move for a six-  
15 month stay on our proceedings and pending the  
16 decision of the LUC or any future request by the  
17 parties to the Planning Commission.

18 Also, I'd like to -- an exception to this,  
19 also, is that we want an exception to the stay for  
20 the Planning Commission -- that we will transmit the  
21 current proceedings to the LUC as soon as possible,  
22 our record, transmit our record of our proceedings  
23 to the LUC as soon as possible.

24 MS. DAWSON: I'll second that motion.

25 CHAIRWOMAN PINGREE: I'd like to have any

1 discussion among the commissioners.

2 MS. DAWSON: Among us?

3 MR. YOUNG: I'm good.

4 CHAIRWOMAN PINGREE: I'd like to have  
5 something on the record, please. I don't feel that  
6 the record should be remanded back to the Planning  
7 Commission. The Planning Commission had made their  
8 decision back in 2009 and had shared that  
9 recommendation with the LUC. The LUC at that time,  
10 of course, included certain stipulations, one of  
11 which that we're dealing with today. So as far as  
12 I'm concerned, this Planning Commission had made a  
13 recommendation. Any other --

14 MS. DAWSON: I think the amount of time  
15 that the commission has invested in hearing evidence  
16 and in taking the proper motions under  
17 consideration, I think, speak volumes for the due  
18 diligence of this commission.

19 CHAIRWOMAN PINGREE: Thank you.

20 Commissioners, anything else? I'd like to  
21 take a vote on the motion. All in favor of the  
22 motion say aye.

23 (Unanimous Aye.)

24 CHAIRWOMAN PINGREE: Any opposed?

25 (No response.)

1 CHAIRWOMAN PINGREE: Thank you. Because  
2 of the motion, the approved motion, we won't take  
3 anything further on the agenda today, and I'm going  
4 to call for the meeting to adjourn.

5 MR. PACOPAC: So moved.

6 CHAIRWOMAN PINGREE: Before we adjourn, I  
7 was reminded that for the record a letter of  
8 response will be sent to the LUC stating our  
9 position from the Planning Commission, and copies,  
10 of course, to the appropriate parties.

11 Call for a motion.

12 MR. YOUNG: So moved.

13 MR. PACOPAC: Second.

14 CHAIRWOMAN PINGREE: Thank you.

15 (Meeting adjourned at 10:07 a.m.)  
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C E R T I F I C A T E

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STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on May 25, 2012, at 9:06 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 14-page transcript dated May 25, 2012, was subscribed and sworn to before me this 2nd day of June, 2012, in Honolulu, Hawaii.

*Sue M. Flint*

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SUE M. FLINT, RPR, CSR 274  
Notary Public, State of Hawaii  
My Commission Exp: July 23, 2015

