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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)
)
1) For a New Special Use Permit)
to Supersede Existing Special Use)
Permit to Allow a 92.5-Acre)
Expansion and Time Extension for)
Waimanalo Gulch Sanitary Landfill,)
Waimanalo Gulch, Oahu, Hawaii, Tax)
Map Key No. (1) 9-2-03: 72 and 73,)
)
2) 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 WGS� up to)
July 31, 2012, provided that only)
ash and residue from H-POWER shall)
be allowed at the WGS� after)
July 31, 2012.")
_____)

CONTINUED - CONTESTED CASE HEARING

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

PC10

1 Taken at Mission Memorial Conference Room, Mission
2 Memorial Building, 550 South King Street, Honolulu, Hawaii,
3 96813, commencing at 1:30 p.m. on December 6, 2017, pursuant
4 to Notice.

5

6 APPEARANCES:

7 Planning Commissioners present:

8

Theresia C. McMurdo, Acting Chair

9

Cord D. Anderson

10

Ken K. Hayashida

11

Wilfred A. Chang, Jr.

12

Gifford K. F. Chang

13

14 Planning Commissioners excused:

15

Arthur B. Tolentino

16

[recused, prior notice given]

17

Kaiulani K. Sodaro

18

[recused, prior notice given]

19

Steven S. C. Lim

20

[recused, prior notice given]

21

Arthur D. Challacombe

22

[recused, prior notice given]

23

24

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1 Deputy Corporation Counsel:

2 Rozelle A. Agag

3 [Advisory to the Commission]

4

5 Planning Commission staff:

6 Gloria Takara,

7 Secretary-Hearings Reporter

8

9 For the City and County of Honolulu, Department of

10 Environmental Services:

11 Kamilla C. K. Chan, Esq.

12 Deputy Corporation Counsel

13 City and County of Honolulu

14 530 South King Street, Room 110

15 Honolulu, Hawaii 96813

16

17 For Intervenor Ko Olina Community Association and Senator

18 Maile Shimabukuro:

19 Calvert G. Chipchase, Esq.

20 Christopher T. Goodin, Esq.

21 Cades Schutte LLP

22 1000 Bishop Street, Suite 1200

23 Honolulu, Hawaii 96813

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25

1 For Intervenor Schnitzer Steel Hawaii Corp.:

2 Avery C. Matro, Esq.

3 Carlsmith Ball LLP

4 ASB Tower, Suite 2200

5 1000 Bishop Street

6 Honolulu, Hawaii 96813

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8 For Intervenor Colleen Hanabusa:

9 Richard N. Wurdeman, Esq.

10 1003 Bishop Street, Suite 720

11 Honolulu, Hawaii 96813

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Acting Chair McMurdo: Good afternoon. It's 1:30, and we'll call the meeting to order. Today is Wednesday, December 6, and the first item on the agenda is the approval of minutes of October 25 and November 8. Has everybody read the minutes?

All Commissioners: Yes.

Acting Chair McMurdo: Any amendments?

Member Hayashida: None.

Member Anderson: None.

Acting Chair McMurdo: None. If not, may I have a motion to approve the minutes.

Member Hayashida: So move.

Member Anderson: Second.

Acting Chair McMurdo: Any objections? [no response] If none, the minutes are approved.

And, we will now move to the contested case hearing, which is a continuation of the contested case hearing. We have received objections to the agenda, and I just wanted to note that we've received both objections and the Department of Environmental Services response. We have looked at that, and we do follow the legal requirements for notification for a continued case hearing.

So moving on to the action item which talks about

1 the adoption of proposed Findings of Fact, Conclusions of
2 Law, and Decision and Order. We have all received the
3 transcripts, pleadings, submissions and evidence in this
4 matter, and we have all reviewed it. With regard to this
5 agenda item the intent is to adopt the proposed findings so
6 that we can send a copy of the proposed Findings of Fact,
7 Conclusions of Law, and Decision and Order to all the
8 parties and intervenors. After that we will be setting a
9 briefing schedule where all parties will have time to review
10 the proposed findings and submit written objections and
11 comments to the Commission. We also intend to set a hearing
12 date in which the parties may provide oral testimony and
13 comment on the proposed findings.

14 Does anybody have any questions or objections on
15 the Commission? [no response] Members?

16 Member Anderson: No, none.

17 Acting Chair McMurdo: No.

18 Member G. Chang: No objection.

19 Acting Chair McMurdo: No objections. If there
20 are no objections, we will adopt the proposed Findings of
21 Fact, Conclusions of Law, and Decision and Order.

22 So let's schedule a deadline for the written
23 comments and objections. If you look at--Do you have your
24 calendar in front of you?

25 Would you like to set 30 days? Would that be

1 sufficient, 30, 60--What's the pleasure of the--So, 30 days
2 would be--

3 Mr. Chipchase [from the audience]: Chair, if I
4 may, I'm Cal Chipchase for Intervenors Ko Olina Community
5 Association and Senator Maile Shimabukuro.

6 Acting Chair McMurdo: Yes.

7 Mr. Chipchase: Normally we would not schedule
8 things without calling the parties up and appear on the
9 record and addressing other parties having any comments on
10 the agenda item before they were decided. So, that
11 happened. Now we've moved on to scheduling and the parties
12 haven't been called to appear and haven't been offered an
13 opportunity to comment on it. I think we don't know that's
14 the procedure we would want to go down.

15 Acting Chair McMurdo: Well, we just approved
16 that procedure and the procedure is you would have the
17 opportunity to comment after the proposed findings are sent
18 out to you, and we would schedule another meeting where you
19 can make your, provide your testimony at that time.

20 Mr. Chipchase: Oh, no, I understand that. And, so
21 that happened without the parties having an opportunity to
22 comment. I understand that.

23 Acting Chair McMurdo: Okay.

24 Mr. Chipchase: What I'm saying now is, is now
25 we're setting schedules as to when we're going to be

1 presenting objections and appearing before the Commission
2 again--

3 Acting Chair McMurdo: Okay.

4 Mr. Chipchase: ...it's probably a good idea to
5 hear from the other people.

6 Acting Chair McMurdo: Okay. Good point.
7 Proceed.

8 Mr. Chipchase: Well, I think everybody should
9 probably be part of the--

10 Acting Chair McMurdo: Sure. Go right ahead. Who
11 would like to start?

12 Ms. Chan: Good afternoon, Chair and members. My
13 name is Kamilla Chan, Deputy Corporation Counsel,
14 representing the City.

15 Acting Chair McMurdo: Okay.

16 Ms. Matro: And good afternoon, Chair and
17 Commissioners. Avery Matro present for Intervenor Schnitzer
18 Steel Hawaii Corp.

19 Mr. Goodin: Christopher Goodin for Ko Olina
20 Community Association and Senator Maile Shimabukuro.

21 Mr. Wurdeman: And Richard A. Wurdeman for
22 Intervenor Colleen Hanabusa. Good afternoon.

23 Acting Chair McMurdo: Welcome. Who would like to
24 start with comments with regard to any date scheduling?

25 Ms. Chan: For the City 30 days would be

1 sufficient.

2 Acting Chair McMurdo: Okay. And from Schnitzer
3 Steel Hawaii.

4 Ms. Matro: And our position would be 30 days is
5 acceptable just noting that a minimum of 12 days is what the
6 rules require.

7 Mr. Goodin: We would object to any further
8 briefing or scheduling on this matter until our motion is
9 decided, which is next on the agenda item, specifically the
10 motion to reopen this proceeding. I think that's
11 appropriately considered before coming to a decision,
12 deciding whether additional evidence should be provided to
13 supplement the record before a decision is entered. But, I
14 mean if the Commission does proceed with decision-making, we
15 think that given the holiday season it should be at least 60
16 days out so that we can appropriately consider this matter.

17 Acting Chair McMurdo: Okay.

18 Mr. Wurdeman: Yes. And, I already have planned
19 trips during the holidays, so I ask for a little additional
20 time.

21 Acting Chair McMurdo: Okay. Does anybody object
22 on the Commission with regard to having, giving them 60
23 days?

24 Member Anderson: No objections.

25 Acting Chair McMurdo: Any objections? [no

1 response] I think we can grant that. So, 60 days would
2 be--So, we're in February, February 5 would be 60 days.

3 Member Hayashida: The 7th is our General Plan
4 meeting, yeah?

5 Acting Chair McMurdo: We don't have to meet on
6 that day it's just for them to submit comments. So, any
7 objections from any of the parties to February 5? Does this
8 work with everybody?

9 Ms. Matro: No objection.

10 Acting Chair McMurdo: Okay. Thank you. And then
11 we need to--So, written objections and comments are due
12 February 5. The hearing date--Everyone agrees to February
13 5, including Commissioners?

14 Member Anderson: Works.

15 Acting Chair McMurdo: And then for the hearing
16 date if we do another 30 days from that. Okay. March 7th.
17 Commissioners are available on March 7th? Any trips, any
18 of the parties, March 7? [no response] We have to find out
19 from the other Commissioners whether they're available. Oh,
20 oh, the other ones are recused. Is 30 days enough for you?

21 Member Hayashida: It's enough time for me. I have
22 a trip scheduled in March. I don't know what date it is.

23 Acting Chair McMurdo: Okay.

24 Member G. Chang: We can set it now, and if
25 there's a change--

1 Member Hayashida: Yeah, just change it.

2 Acting Chair McMurdo: Yeah.

3 Member G. Chang: Or do we want to set it now and
4 just it open and not--

5 Acting Chair McMurdo: I think we need to set it.

6 Member Anderson: I think it'd be prudent to set
7 the date and if travel plans are impacted we can change it.
8 And confirming March 7th works for all of you?

9 All Parties: Yes.

10 Acting Chair McMurdo: All right. So, we set
11 March 7th as the hearing date.

12 Okay. All right. So, that's it for the briefing
13 schedule.

14 For discussion we need to discuss the Intervenor's
15 Ko Olina Community Association and Maile Shimabukuro's
16 Motion to Reopen the Contested Case Hearing. We do note
17 that we've received three motions from the parties with
18 regard to reopening this hearing, and three times it's been
19 denied. Any of the Commissioners want to take it up today?
20 [no response] The parties want to say something?

21 Mr. Chipchase: Well, it's not on the agenda item
22 for decision. It's not an agenda item for decision, it's for
23 discussion. And, so I don't really think we can take action
24 on it today, but it needs to be acted upon before Findings
25 of Fact, Conclusions of Law are adopted. And, unlike the

1 other motions, if you look at what the LUC has asked the
2 Planning Commission to clarify, you can't clarify those
3 things without reopening the proceeding. You don't have the
4 evidence in the record to do it. All I'm trying to do is to
5 stop us from going up only to come back down again. I just
6 want us to finally get it done, and done right so it can go
7 up the LUC and the LUC can make its decision. My fear is
8 that if we don't do it right, we're going to be right back
9 here in six months or whatever it is doing it again. And, I
10 would really like not to do that. So, I think we should set
11 it for decision, and I think that decision should be made
12 before we submit objections to the proposed decision that
13 the Commission adopted for circulation purposes today.

14 Acting Chair McMurdo: Again, as you noted it's
15 not for action.

16 Mr. Chipchase: Right. So, all I'm asking is it to
17 be set and set for decision before our objections, the
18 parties objections to the proposed Findings of Fact,
19 Conclusions of Law, Decision and Order are submitted.

20 Acting Chair McMurdo: Okay. Does anybody else
21 have comments? The City?

22 Ms. Chan: Just to state that our position is that
23 the reopening would be unnecessary. The Land Use Commission
24 remanded the case and is asking for the Planning Commission
25 to clarify five points, and we believe that the evidentiary

1 record is complete and that those items can be addressed
2 without any further reopening.

3 Ms. Matro: Schnitzer has no position on this item.

4 Acting Chair McMurdo: Okay. We should move on
5 then. Thank you. Not having anything further--We don't
6 have anything further. Commissioners, do you have a motion
7 to adjourn?

8 Member Hayashida: Motion to adjourn.

9 Member G. Chang: Second.

10 Vice Chair McMurdo: No objections, we're
11 adjourned. Thank you.

12 ADJOURNMENT:

13 There being no further business before the
14 Planning Commission, the meeting was adjourned by Acting
15 Chair McMurdo at approximately 2:00 pm.

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1 I certify that the foregoing is
2 a true and correct transcription
3 of the proceedings, prepared to
4 the best of my ability, of the
5 meeting held on Wednesday,
6 December 6, 2017.

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9 Gloria Takara
10 Secretary-Hearings Reporter

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Adopted on: March 7, 2018