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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)
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 Kay No.)
(10) 9-2-:03: 72 and 73)
2) To delete Condition No. 14)
of Special Use Permit)
No. 2008/SUP-2 (also referred to)
as a 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

PC6

1 Taken at Mission Memorial Conference Room, Mission
2 Memorial Building, 550 South King Street, Honolulu, Hawaii,
3 96813, commencing at 1:35 p.m. on August 16, 2017, pursuant
4 to Notice.

5
6 APPEARANCES:

7 Commissioners present: Dean I. Hazama, Chair
8 Theresia G. McMurdo, Vice Chair
9 Cord D. Anderson
10 Ken K. Hayashida
11 Wilfred A. Chang, Jr.
12 Gifford K. F. Chang

13 Commissioners excused: Arthur B. Tolentino [recused,
14 prior notice given]
15 Kaiulani K. Sodaro [recused,
16 prior notice given]
17 Steven S. C. Lim [recused,
18 prior notice given]

19
20 Planning Commission staff: Gloria Takara,
21 Secretary-Hearings Reporter

22
23 Deputy Corporation Counsel: Don K. Kitaoka
24 (Advisory to the Commission)

25

1 For the City and County of Honolulu, Department of
2 Environment Services:

3 Kamilla C. K. Chan, Esq.
4 Deputy Corporation Counsel
5 City and County of Honolulu
6 530 South King Street, Room 110
7 Honolulu, Hawaii 96813

8
9 For Invervenor Ko Olina Community Association and Senator
10 Maile Shimabukuro:

11 Calvert G. Chipchase, Esq.
12 Christopher T. Goodin, Esq.
13 Cades Shutte, LLP
14 1000 Bishop Street, Suite 1200
15 Honolulu, Hawaii 96813

16
17 For Intervenor Schnitzer Steel Hawaii Corp.:

18 Ian L. Sandison, Esq.
19 Arsima Muller, Esq.
20 Carlsmith Ball, LLP
21 ASB Tower, Suite 2200
22 1000 Bishop Street
23 Honolulu, Hawaii 96813

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1 For Intervenor Colleen Hanabusa:

2 Richard D. Wurdeman, Esq.
3 Pauahi Tower, Suite 720
4 1003 Bishop Street
5 Honolulu, Hawaii 96813

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Chairman: Okay. Good afternoon, everyone.
Sorry for the slight delay. At this time I call the meeting of the Honolulu Planning Commission, Wednesday, August 16, 2017 to order. [bangs gavel] First order of business on our agenda, continued contested case hearing, Ewa State Special Use Permit amendment application 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. Are the parties here? Please come up.

Mr. Goodin: Good afternoon, Commissioners.
Christopher Goodin for Ko Olina Community Association and Senator Maile Shimabukuro.

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

Ms. Chan: Kamilla Chan Deputy Corporation Council for the City.

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

Chairman: Okay. Welcome. So, we have consideration of Order Granting in Part and Denying in Part Intervenor's KoOolina Community Association and Maile Shimabukuro's motion to deny and remand. Intervenor's Ko Olina Community Association and Maile Shimabukuro's motion for recusal or disqualification of Chair as well as intervenor's Colleen Hanabusa's renewal of objections to

1 Chair's participation and votes in instance case and joinder
2 to intervenor's previous motion for recusal or
3 disqualification filed June 20th, 2017. KOCA your motion
4 first.

5 Mr. Goodin: Thank you, Chair. As a preliminary
6 matter I'd object to the Chair's participation in the
7 hearing on this motion to disqualify for the reason stated
8 in the motion itself. As far as the substance of our
9 motion. I'll keep it very brief. The Chair's continued
10 participation creates a legal error that undermines the
11 integrity of these proceedings and may ultimately invalid
12 the decision by this Commission when reviewed in Court.

13 We respectfully submit that it's in everyone's interest for
14 the Chair to be disqualified at this juncture. Thank you.

15 Chairman: Okay. Commissioners, any questions of
16 the first motion? [no response] Okay. Moving onto--
17 Mr. Wurdeman, you have the second motion.

18 Mr. Wurdeman: Thank you. Mr. Chair and members
19 of the Commission. We've certainly gone over my objections
20 previously when we were before you, and we once again
21 incorporate those arguments and as indicated we've joined in
22 the Ko Olina Community Association's motion that's currently
23 before you and as the Commission notices the City has taken
24 no position on this motion, and I can share with the
25 Commission that the opinion shared by the Land Use

1 Commission when this matter was before them before they sent
2 it back on remand. There are at least a couple of
3 Commissioners who spoke strongly about the Chair's
4 participation on remand and even brought up the issue as to
5 whether the Land Use Commission could, if the Chair did not
6 recuse himself on the remand, if the Commission could at
7 that point reject the application. So, that's how strongly
8 the Land Use Commission obviously feels about it. I mean,
9 I've made my arguments previously. I think it's absolutely
10 clear Maunakea Aina Hou as to what the responsibilities and
11 even the appearance of unfairness and impropriety is a
12 grounds for recusal. And it's clear that the comments that
13 were made to the media previously that were put in quotes
14 was a clear indication of the predetermination of the issue
15 we believe of the Chair who subsequently voted in favor of
16 the application following our objections consistent with his
17 earlier remarks and for all of those reasons we respectfully
18 ask that the Chair recuse himself at this time.

19 Thank you.

20 Chairman: Okay. Thank you. Commissioners, any
21 questions of the second motion?

22 Member G. Chang: None.

23 Chairman: Okay. At this time, Commissioners,
24 motion to go into executive session.

25 Member Hayashida: Motion to go into executive

1 session.

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

3 Member G. Chang: Second.

4 Chairman: Moved and seconded. Any objections?

5 [no response] Any abstentions? [no response] Seeing none.

6 At this time the Commission will move into executive session
7 to consult with Corp Counsel on the authority, duties,
8 privileges and immunities pertaining to the above matters
9 and Section 205-6 of the Hawaii Revised Statutes, as
10 amended, and Chapter 2, subchapters 4 and 5 of the Rules of
11 the Planning Commission in accordance with HRS 92-5(a)(4).

12 Okay. At this if we can ask the room to be
13 cleared, please.

14 [At this time those not participating in the
15 executive session exited the hearings room. Deputy Corp
16 Counsel Don S. Kitaoka and the Planning Commissioners
17 remained in the hearings room.]

18 Chairman: Okay. We call the meeting back to
19 order at this time. [bangs gavel] Okay. So, we have two
20 motions before the Commission regarding KOCA's motion for
21 recusal or disqualification as well as Colleen Hanabusa's
22 motion which is basically the same motion. So, at this
23 time, you know, I just say an open statement, I have this
24 Chair and as Commissioner express certain inclinations
25 regarding certain topic or issues, however, those

1 inclinations were formed after reviewing all evidence that
2 was submitted in this case. Considering the length of these
3 proceedings that's more than sufficient time to review all
4 evidence that was submitted by all parties. So, in my
5 opinion it is my statement that while I'm not going to deny
6 that I made the inclinations that I can remain open and
7 impartial to these proceedings and, therefore, I personally
8 will not be recusing myself on these proceedings. However,
9 in fairness, I will entertain a motion or any motion before
10 the Commission in support of two motions. Are there any
11 motions?

12 Member G. Chang: None

13 Member McMurdo: None. I don't think it's
14 necessary.

15 Chairman: Okay. Any further discussion on the
16 issue? [no response] Okay. Seeing none at this time the
17 Commission also would express to all parties our intent to
18 issue a proposed revised Decision and Order in accordance
19 with the rules of the Planning Commission Section 2-75. So,
20 we will issue the Decision and Order.

21 Mr. Goodin: May we comment, Chair?

22 Chairman: Go ahead.

23 Mr. Goodin: Thank you. KOCA--Now that we have a
24 decision on our motion to disqualify, we intend to promptly
25 file a motion to reopen evidence in light of the Land Use

1 Commission's remand order, specifically the Land Use
2 Commission's remand order ask for clarification on whether
3 the records needs to include updated information on the
4 operation of the WGS�, the landfill site selection process
5 and waste diversion efforts of the City and County of
6 Honolulu. I realize that ENV previously filed a motion on
7 those points, but now in a remand order and based on the
8 comments from the Land Use Commission, the Land Use
9 Commission has asked for the same thing, and so we will be
10 filing a motion in short order to reopen evidence on those
11 points of site selection and development, diversion efforts,
12 the amount of time until the landfill will be filled to
13 capacity based on diversion efforts. And one other thing
14 we'd like to update the record which closed back in April of
15 2012, is the criminal and enforcement proceedings and
16 activities against the landfill. So, those are all issues we
17 believe are appropriate to update the record on, and we will
18 be filing a motion shortly. Hope we can get a quick hearing
19 date.

20 Chairman: Your comment is just notifying us of
21 your intent?

22 Mr. Goodin: Of our intent to file the motion.

23 Chairman: Okay. Any other comments from the
24 parties?

25 Mr. Wurdeman: Mr. Chairman, if I may be heard,

1 and with all due respect going back to the decision that you
2 just made, I'd like the opportunity to call you as a
3 witness and cross-examine you under oath, if I may be having
4 the opportunity. This is a critical issue. Your statements
5 in--"Hazama said he expects the Commission will recommend
6 that LUC grant the City's request for extended use of the
7 landfill. While he appreciates the argument being made by
8 Wurdeman and Hanabusa, Hazama said "we have to have an
9 operating landfill. I think it's unreasonable to expect the
10 City to just close it down." That's one of the quotes.
11 Later you say that's my hope that we can move this along so
12 that at least the City will have a valid permit that will
13 allow it to operate it", Hazama said. And this is several
14 months before the hearing and the decision-making before
15 you.

16 And, I would like the opportunity rather than just an offer
17 by the Chair that you be questioned under oath on
18 representation.

19 Chairman: During these proceedings?

20 Mr. Wurdeman: Yes.

21 Chairman: We don't question people under oath
22 during these proceedings.

23 Mr. Wurdeman: Well, that's my request, sir.

24 Chairman: Okay. That's fine. Any other comments
25 or questions from any of the parties? [no response] Okay.

1 Seeing none. That's all regarding this matter for today.

2 We have another issue before us on our agenda as well.

3 Thank you. Thank you for your patience.

4 Chairman: Okay. Next item on our agenda is
5 discussion, decision-making regarding limited meetings, HRS
6 92-3.1(a), (1)(2)(3), to determine that it is necessary to
7 meet at a location that is dangerous to health or safety or
8 that the onsite inspection is necessary and public
9 attendance is not practicable to the following location.
10 So, it's the Honoliuli Wastewater Treatment Plant at 91-1000
11 Geiger Road, Ewa Beach. Well, there are some proposed dates
12 regarding the prospective visits. Obviously, that is based
13 on the facility schedule as well as Commissioner schedule.
14 Caution, I guess advise Commissioners at this time we don't
15 have the necessary 2/3rds of the Commission here to
16 necessarily vote or make a final decision today, but we are
17 able to enter into discussions regarding potential site
18 visit. In regards to a Limited Meeting, the reason why we
19 do that is if we don't we otherwise we'd have to open this
20 up to the public.

21 Counsel Kitaoka: You can bring Ray up--

22 Chairman: Yes. Ray come up.

23 Member Hayashida: This is regarding Honouliuli
24 treatment plant site?

25 Chairman: Yes. I believe that we will have a

1 pending SUP on this matter?

2 Mr. Young: That is correct. The SUP that has
3 been filed and we are in the process of preparing a
4 recommendation and, I believe the Application has been sent
5 to the Commission if not, a hard copy will be sent to all of
6 the Commissioners very soon.

7 I believe your staff has scheduled it and the
8 public hearing is for September 13th. In
9 this particular SUP will exceed 15 acres, so it will need to
10 go before the Land Use Commission for final review.

11 Chairman: During the site visit--Are you--If
12 we--does it become a limited a meeting? Would you be able
13 to accommodate public's request for this event?

14 Mr. Young: Yes. I believe with the help of the
15 petitioner and ENV, we are prepared to accommodate the
16 public if they do attend the site visit with the Commission,
17 and we are prepared to record the site visit for the record.

18 And we've had experience with this kind of a site visit
19 before. In fact, it was for the Waimanalo Gulch Landfill
20 where the Commission at that time visited both the landfill
21 and HPower.

22 Chairman: Okay. Any questions of the Department,
23 Commissioners?

24 Member McMurdo: I have a question. Why is it
25 necessary for this particular issue to have a site visit?

1 Mr. Young: This matter came about in discussing, I
2 guess the--Well, it's not a thing that's necessary. We
3 thought it might be informative for the Commissioners to be
4 better informed to make their decision on this. The last
5 time the site visit occurred for Waimanalo Gulch and
6 H-Power, and by the way, the landfill, H-Power and the
7 wastewater treatment plant is all under the purview of the
8 Department of Environmental Services. So, it kind of makes
9 sense for the Commissioners today, which were not present at
10 the last time, to be also informed about--

11 Member McMurdo: I guess my question is we have a
12 number of issues that come before us and we don't do site
13 visits for each one.

14 Mr. Young: That's correct.

15 Member McMurdo: You provide us with the
16 information we need, and we make our decisions.

17 Mr. Young: Yes. That's correct.

18 Member McMurdo: I don't feel it's necessary to
19 have a site visit for every single issue we have.

20 Some of us are familiar also with--I'm familiar with all
21 three from that area. So, I'm just expressing my opinion.

22 Chairman: And this is completely up to the
23 Commission whether you actually go on this. However, if we
24 do go on a site visit, we have to have quorum there. So, it
25 wouldn't be just one or two of us with the ability to attend

1 this. We would actually have to have five of us attending.
2 So, out of all eight of us now, four Commissioners didn't
3 want to go. In essence, you wouldn't be able to go anyway.
4 That's my understanding. Any other questions? Any
5 further--I guess you can discuss, I mean how many of you
6 would be interested in going or attending or really want to
7 go kind of thing.

8 Member Hayashida: I'm recusing myself on the
9 application. One of our projects.

10 Chairman: Okay. I guess it doesn't effect the
11 notice. As far as the actual SUP meeting itself. Does ENV
12 have like a deadline that they impose to you that said,
13 "hey, if you guys want to go you have to tell us by this
14 certain date?" I guess what is your drop date on this?

15 Mr. Young: No. That wasn't relayed to us that
16 they would need to know by a certain date.

17 But the earlier better. Actually we were not prepared to
18 move ahead on the planning and the details until today's
19 meeting has occurred. So, if you decide to proceed with it,
20 then we will be coordinating with ENV and anybody else that
21 might be involved in setting this up for you.

22 Chairman: Commissioners, any preference,
23 questions? So, I think it looks at this time we're not even
24 going to have quorum to even go. So, we appreciate the
25 offer and it might be a good idea. I think just the

1 logistics and the rules probably will prevent us from
2 attending.

3 Member McMurdo: Well, you already pulled the
4 members. So, four don't want to go?

5 Chairman: Well, if four don't then the only other
6 option we could technically form an interaction group where
7 less than a quorum could attend.

8 Member McMurdo: I think the Board of Water Supply
9 we did a trip out, and we just had certain rules that we had
10 to follow. We couldn't discuss. We couldn't--

11 Chairman: Yes. You just kind of visit and then--

12 Member McMurdo: It was just purely a visit.

13 Chairman: At this point in time it doesn't look
14 like it's going to work out. But thank you.

15 Mr. Young: You're welcome.

16 Chairman: Okay. There are no other issues on our
17 agenda. Commissioners, can I get a motion to adjourn.

18 Member McMurdo: So moved.

19 Member G. Chang: Second. Gifford.

20 Chairman: Moved and seconded. Any objections?

21 [no response] Any abstentions? [no response] Okay. Thank
22 you very much. Meeting is adjourned. [bangs gavel]

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