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Attorneys for Intervenors

KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For a New Special Use Permit to
Supersede Existing Special Use Permit
to Allow A 92.5-Acre Expansion and
Time Extension for Waimānalo Gulch
Sanitary Landfill, Waimānalo Gulch,
O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72
And 73

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
MOTION FOR RECUSAL OR
DISQUALIFICATION OF CHAIR
DEAN HAZAMA**

**MEMORANDUM IN SUPPORT OF
MOTION**

**DECLARATION OF CHRISTOPHER
T. GOODIN**

EXHIBITS A - E

CERTIFICATE OF SERVICE

2017 JUN 20 PM 4: 26
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

R2

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.”

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO’S MOTION FOR
RECUSAL OR DISQUALIFICATION OF CHAIR DEAN HAZAMA**

Intervenors Ko Olina Community Association (the “**Association**”) and Maile Shimabukuro (together, “**KOCA**”) move for the recusal or disqualification of Planning Commission Chair Dean Hazama from participating in further proceedings before the Commission on the consolidated 2008 and 2011 applications of Department of Environmental Services of the City and County of Honolulu (the “**ENV**”) for a special use permit for the Waimanalo Gulch Sanitary Landfill (the “**Landfill**”).

During the Planning Commission hearing held in August 2015, Chair Hazama announced on the record that it was imperative to secure a permit for the Landfill as soon as possible. The Chair repeated his view in a subsequent interview with the Honolulu Star-Advertiser.

The Chair was not present for any portion of the evidentiary hearing in this matter. At the time the Chair announced his position, the parties had not submitted draft findings of fact and conclusions of law. At the time, no decision on the application was before the Commission. At the time, every Commissioner should have

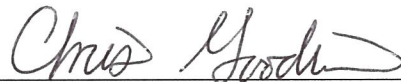
reserved judgment until he had considered all submissions and heard the views of all parties. Yet the Chair announced that ENV's position had already carried the day with him.

It is clear that Chair Hazama prejudged ENV's applications. To preserve the fact and appearance of a neutral decisionmaker, the Chair should be recused or disqualified from participating in further hearings in this matter.

This motion is made pursuant to Planning Commission Rule 2-67 and is based on the attached memorandum, declaration and exhibits and on the records and files herein.

DATED: Honolulu, Hawai'i, June 20, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
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FILE NO. 2008/SUP-2

**MEMORANDUM IN SUPPORT OF
MOTION**

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from H-POWER shall be allowed at the
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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

On March 1, 2017 the Honolulu Planning Commission (the “**Commission**”) adopted its findings of fact, conclusions of law and decision and order (the “**Decision**”) on Department of Environmental Services of the City and County of Honolulu (the “**ENV**”) consolidated applications for a special use permit (“**SUP**”) authorizing the continued operation of the Waimanalo Gulch Sanitary Landfill (“**WGSL**” or “**Landfill**”) until it reaches “capacity.” Seven months earlier, Commission Chair Dean Hazama announced that ENV had already prevailed in the matter. Specifically, during the hearing held on August 15, 2016, Chair Hazama explained that “the overbearing matter of importance is the fact that we need to get the City’s SUP,” concluded that “the City needs a SUP” and predicted that “the first step is the City needs to get this SUP approved.” Ex. A at 26:3-5, 26:10, 28:2-3.

The Chair repeated his views in an interview with the Honolulu Star Advertiser published on August 19, 2016. In the interview, the Chair informed the State of Hawaii that “he expects the commission will recommend the LUC grant the [C]ity’s request for extended use of the landfill,” explained that “we have to have an operating landfill. I think it is unreasonable to expect the [C]ity to just close it down” and expressed his “hope[] that we can move this along so that at least the [C]ity will have a valid permit that will allow it to operate it.” Ex. B.

Chair Hazama obviously prejudged the outcome of the proceeding concerning the continued use of the Landfill. The Chair reached his conclusion without the benefit

of hearing the evidence or first considering the parties' draft findings of fact and conclusions of law. In addition to announcing his predetermination that the Landfill should continue to operate, the Chair expressed his opinion of what *the Commission* as a whole would do and indicated that he would push his fellow Commissioners toward that outcome.

“In an adjudicatory proceeding before an administrative agency, due process of law generally prohibits decisionmakers from being biased, and more specifically, prohibits decisionmakers from prejudging matters and the appearance of having prejudged matters.” *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015). Chair Hazama supports ENV's position and the continued operation of the Landfill. Chair Hazama reached this conclusion long before the conclusion of the proceeding. The Chair's participation in this matter has violated KOCA's due process rights. The continued participation of Chair Hazama in this matter will exacerbate the procedural error and deepen the injury to KOCA. To begin to repair the damage to the integrity of these proceedings, the Chair should be recused or disqualified from further participation in them.

II. BACKGROUND

On December 3, 2008, ENV filed an application (the “**2008 Application**”) for a new special use permit (“**SUP**”) for the WGSL. After the Commission recommended approval of the 2008 Application, the Land Use Commission (“**LUC**”) granted the 2008 Application with certain conditions (“**LUC's 2009 Decision**”), including a condition prohibiting ENV from disposing of Municipal solid waste at the Landfill

after July 31, 2012 (“**Condition 14**”). ENV appealed the decision to the circuit court and later to the Hawai‘i Supreme Court.

While the appeal of the 2008 Application was proceeding, on June 28, 2011, ENV filed an application to modify the SUP by deleting the LUC’s Condition 14 (the “**2011 Application**”), which would allow ENV to use the Landfill until it reaches capacity. After the conclusion of eight hearing days, the parties submitted proposed findings of fact, conclusions of law, and decisions and orders.

Before the Commission announced a decision, the Hawai‘i Supreme Court determined that the record did not support Condition 14. The court did not strike Condition 14 or reverse the LUC’s decision, however. Instead, the court vacated the LUC’s decision because Condition 14 was a material condition to the approval. Accordingly, the decision could not stand without Condition 14. The court remanded the case to the LUC for further proceedings.

The LUC subsequently remanded the 2008 Application to the Commission for consolidation with the 2011 Application and directed the Commission to enter a single decision in the consolidated proceeding. In a hearing on August 17, 2016, the Commission consolidated the 2008 Application and 2011 Application proceedings.

On January 27, 2017, the parties filed proposed findings of fact, conclusions of law, and decisions and orders. On February 10, 2017, the parties filed responses.

On March 1, 2017, the Commission held a hearing regarding the proposed findings of fact, conclusions of law and decisions and orders (“**March 1 Hearing**”). Ex. C (transcript). At the hearing, Counsel for Intervenor Colleen Hanabusa renewed

his written objection to Chair Hazama's participation based upon Chair Hazama's comments to the Star-Advertiser in August 2016. *Id.* at 16:9-18:7, 18:19-21. The Commission then went into executive session. *Id.* at 18:22-19:5.

After returning from executive session, Chair Hazama refused to recuse himself. According to the Chair, his comments reflected his "personal opinions taken out of context in regards to the news article." *Id.* at 19:19-20:7. Counsel for Hanabusa moved to call as a witness Star-Advertiser reporter Gordon Pang, who had written the article. *Id.* at 20:16-17. Mr. Pang was sitting in the audience. *Id.* Chair Hazama denied the request. *Id.* at 20:18. KOCA joined in Hanabusa's request for Chair Hazama to recuse himself from the proceedings. *Id.* at 22:5-6. Nevertheless, the Chair continued to participate in the hearing.

After further discussion, the Commission voted to adopt (1) ENV's findings of fact and conclusions of law except for any findings predating 2011, (2) the decision and order and conditions from the LUC's 2009 Decision except for Condition 14, (3) two conditions proposed by KOCA and (4) a condition proposed by Commissioner Cord Anderson setting a deadline to identify a new landfill to replace WGSL. *Id.* at 32:6-35:1. The Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order in 2008/SUP-2 on April 28, 2017 (the "**2017 Decision**").

In accordance with state law, the decision went before the LUC for review. On May 12, 2017, KOCA filed its Motion to Deny and Remand, which raised due process and other procedural issues, and its Motion to Deny the Applications Unless

Additional Conditions are Imposed regarding the substance of the Commission's 2017 Decision.

On May 24, 2017, the LUC heard KOCA's motions. The LUC voted to approve in part and deny in part KOCA's Motion to Deny and Remand. *See* Ex. D (transcript) at 99:14-101:1. The LUC did not consider the Motion to Deny the Applications Unless Additional Conditions are Imposed.

On June 6, 2017, the LUC entered its written order and remanded the proceeding to the Planning Commission to:

(1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGSL, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

See Ex. E (6/6/17 Order).

III. DISCUSSION

All City Officials are required to take an oath under the Honolulu Charter by which they "solemnly swear (or affirm)" to "faithfully support the Constitution and laws of the United States of America, the Constitution and laws of the State of Ha-

waii and the Charter and laws of the City and County of Honolulu, and conscientiously and **impartially** discharge” their duties. Charter 13-118 (emphasis added). This oath reflects the settled constitutional principle that an “impartial decision maker is a core guarantee of due process, fully applicable to adjudicatory proceedings before administrative agencies.” *1616 Second Ave. Restaurant, Inc. v. N.Y. State Liquor Authority*, 550 N.E.2d 910, 911 (N.Y. 1990). Accordingly, in an “adjudicatory proceeding before an administrative agency, due process of law generally prohibits decisionmakers from being biased, and more specifically, **prohibits decisionmakers from prejudging matters and the appearance of having prejudged matters.**” *Mauna Kea*, 136 Hawai‘i at 389, 363 P.3d at 237 (emphasis added).

The “standard for evaluating the existence of improper prejudgment in an adjudicative context is whether a disinterested observer may conclude that (the agency) has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.” *Id.* at 389-90, 363 P.3d at 237-38 (citing *Cinderella Career & Finishing Schs., Inc. v. F.T.C.*, 425 F.2d 583, 591 (D.C. Cir. 1970)); *Cinderella*, 425 F.2d at 590 (vacating agency decision on ground that FTC Chair should have recused himself based on comments he made during a public speech regarding issues involved in the pending administrative case). “[I]f there exists **any reasonable doubt** about the adjudicator’s impartiality at the outset of a case, provision of the most elaborate procedural safeguards will not avail to create [an]

appearance of justice.” *Mauna Kea*, 136 Hawai‘i at 390, 363 P.3d at 238 (emphasis added).

Applying this standard, courts recognize that where “an administrative official has made public comments concerning a specific dispute that is to come before him in his adjudicatory capacity, he will be disqualified on the ground of prejudgment if a disinterested observer may conclude that he has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.” *1616 Second Ave. Restaurant*, 550 N.E.2d at 912 (quotations omitted). For example, in *1616 Second Avenue Restaurant*, the State Liquor Authority was investigating allegations that a restaurant had been serving alcohol to minors. *Id.* at 911. While the investigation was pending and prior to a final decision on the charges, the chairman of the State Liquor Authority testified before the state senate that he was “going to bring [the restaurant] to justice.” *Id.* at 912-13. On review, the court held that the chairman’s testimony “could only be regarded by a disinterested observer as evidencing [the chairman’s] belief that petitioner had in fact violated the law regarding the sale of alcohol to minors and his commitment to establishing that fact in the SLA proceeding.” *Id.* at 913, 914. As the court explained, such

public statements that indicate prejudgment are especially problematic. . . . Such statements ‘may have the effect of entrenching [the official] in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record.’ . . . In effect, to find petitioner innocent would require a public confession or error by the Chairman. That is an impermissible burden to place on petitioner.

Id. at 912 (brackets in original) (citation omitted). Accordingly, the court disqualified the chairman. *Id.* at 912-13.

Similarly, in *Woodlawn Heights Taxpayers & Community Ass'n v. N.Y. State Liquor Authority*, the State Liquor Authority considered an application to modify an existing liquor license. 307 A.D.2d 826, 827 (N.Y. App. Div. 2003). Neighboring residents strongly opposed the application. At a public meeting, one of the commissioners “stated his opinion that the area actually needed more establishments like [the applicant], and that contrary to [the community’s] position, the area was not oversaturated with such establishments.” *Id.* Despite those comments, the commissioner refused to recuse himself, and the authority voted to approve the application. *Id.*

On appeal, the court found that the “comments which are at the core of the issue concerning the alteration, were offered in a public forum, before any vote was taken, and clearly indicate a preconceived bias on the part of that commissioner.” *Id.* The “preconceived bias” of one commissioner invalidated the authority’s decision. Thus, the court vacated the decision granting the modification and remanded the proceeding for reconsideration without the participation of the biased commissioner. *Id.*

In terms at least as strong as the public comments at issue in *1616 Second Avenue Restaurant* and *Woodlawn Heights*, Chair Hazama announced that ENV’s application must be approved before he had even received the parties’ proposed findings of fact and conclusions of law. On August 15, 2016, Chair Hazama told his fellow commissioners and everyone in attendance at the hearing that “the overbear-

ing matter of importance is the fact that we need to get the City's SUP," that "the City needs a SUP" and that "the first step is the City needs to get this SUP approved." Ex. A at 26:3-5, 26:10, 28:2-3.

The Chair confirmed his views to the entire state in the Honolulu Star-Advertiser article published on August 19, 2016. According to the Chair:

- "he expects the commission will recommend the LUC grant the [C]ity's request for extended use of the landfill[;]"
- "we have to have an operating landfill. I think it is unreasonable to expect the [C]ity to just close it down[;]" and
- "That's my hope, that we can move this along so that at least the [C]ity will have a valid permit that will allow it to operate it."

Ex. B (8/19/16 Honolulu Star-Advertiser article).

When the Chair later voted to approve the ENV's permit application on March 1, 2017, he revealed that his views had not changed. Echoing his comments on the record and to the newspaper, the Chair explained that "we have really no other choice in my opinion but we have to have an operating landfill," that "in reality of the matter is that we need a landfill" and that "we need a landfill," as "[w]e just can't put it in somebody's backyard." Ex. C at 24:10-11, 24:13-14 and 24:24-25.

Chair Hazama's statements "could only be regarded by a disinterested observer as evidencing" his belief that the ENV's applications should be approved. *1616 Second Ave. Restaurant, Inc.*, 550 N.E.2d at 164; *see also Mauna Kea*, 136 Hawai'i at 389, 363 P.3d at 237. The statements were made **prior to** the submission of the parties' proposed findings of fact, conclusions of law and decisions and orders and

before the Commission had heard argument from the parties or take up the application for decision. The Chair's statements addressed the core issue of whether the ENV was entitled to a SUP, "were offered in a public forum, before any vote was taken, and clearly indicate a preconceived bias." *See Woodlawn Heights*, 307 A.D.2d at 827.

The Chair confirmed his preconceived bias when he announced his decision on March 1, 2017. Without waiting for the conclusion of the proceedings, the Chair determined that ENV's application should be approved. When it came time to make a decision, the Chair made sure that his views prevailed.

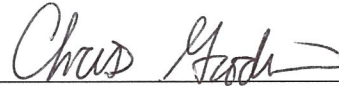
The Chair should have recused himself. His insistence on participating in the proceeding denied KOCA due process. His continued participation in the proceeding will deprive KOCA of the right to an impartial decision-maker and will render any decision invalid. *See, e.g., Marris v. City of Cedarburg*, 498 N.W.2d 842, 847 (Wisc. 1993) ("A clear statement 'suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision.'").

IV. CONCLUSION

No party wants this proceeding to be reversed on appeal for procedural errors. To preserve the fact and appearance of a neutral decisionmaker, the Chair should be recused or disqualified from participating in further hearings in this matter.

DATED: Honolulu, Hawai'i, June 20, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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Sanitary Landfill, Waimānalo Gulch,
O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72
And 73

FILE NO. 2008/SUP-2

**DECLARATION OF CHRISTOPHER
T. GOODIN**

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 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.”

DECLARATION OF CHRISTOPHER T. GOODIN

I, Christopher T. Goodin, hereby declare as follows:

1. I am one of the attorneys for Ko Olina Community Association and Senator Maile Shimabukuro in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the transcript of proceedings in this action on August 17, 2016.

3. Attached hereto as Exhibit B is a true and correct copy of an article dated August 19, 2016, titled Landfill's fate will gain clarity in fall, by Gordon Pang published in the Star-Advertiser.

4. Attached hereto as Exhibit C is a true and correct copy of the transcript of proceedings in this action on March 1, 2017.

5. Attached hereto as Exhibit D is a true and correct copy of the transcript of proceedings before the Land Use Commission ("LUC") on May 24, 2017.

6. Attached hereto as Exhibit E is a true and correct copy of the LUC's Order Granting in Part and Denying in Part Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand, entered on June 6, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, June 20, 2017.



CHRISTOPHER T. GOODIN

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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) DRAFT August 17, 2016
) Planning Commission
) transcript
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 WGSLS up to)
July 31, 2012, provided that only)
ash and residue from H-POWER shall)
be allowed at the WGSLS 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 1:37 p.m. on August 17, 2016, pursuant
to Notice.

1 APPEARANCES:

2

3 Planning Commissioners present:

4

Dean I. Hazama, Chair

5

Cord D. Anderson, Vice Chair

6

Arthur B. Tolentino

7

Daniel S. M. Young

8

Wilfred A. Chang, Jr.

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10 Planning Commissioners excused:

11

Kaiulani K. Sodaro

12

Steven S. C. Lim

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Ken K. Hayashida

14

Theresia C. McMurdo

15

16 Planning Commission staff:

17

Gloria Takara, Secretary-

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Hearings Reporter

19

20 Deputy Corporation Counsel:

21

Jennifer D. Waihee-Polk

22

(Advisory to the Commission)

23

24

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1 DPP representative:

2 Raymond Young

3

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

6 Kamilla C. K. Chan, Esq.

7 Deputy Corporation Counsel

8 City and County of Honolulu

9 530 South King Street, Room 110

10 Honolulu, Hawaii 96813

11

12 For intervenor Ko Olina Community Association and Senator
13 Maile Shimabukuro:

14 Calvert G. Chipchase, IV, Esq.

15 Cades Schutte

16 1000 Bishop Street, Suite 1200

17 Honolulu, Hawaii 96813

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19 For intervenor Schnitzer Steel Hawaii Corp.:

20 Arsima Muller, Esq.

21 Carlsmth Ball LLP

22 ASB Tower, suite 2200

23 1001 Bishop Street

24 Honolulu, Hawaii 96813

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For intervenor Colleen Hanabusa:

Richard D. Wurdeman, Esq.
1003 Bishop Street, Suite 720
Honolulu, Hawaii 96813

(Secretary-Hearings Reporter note: A separate transcript of
this Planning Commission meeting was prepared for the
portion of the meeting regarding the public hearing on zone
request 2016/Z-4 (NS), Church of Christ at Pearl Harbor)

P R O C E E D I N G S

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Chairman: Okay. At this time we'll move onto our next item on the agenda. A continued contested case hearing, Ewa-State Special Use Permit Amendment Application 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. At this time I'd like to ask the Department to provide an update to the Commission.

Mr. Young: Thank you, Mr. Chair. Mr. Chair, members of the Planning Commission, my name is Raymond Young. I'm the planner that was assigned to the project with respect to the Special Use Permit for the Waimanalo Gulch Sanitary Landfill. If I may, I would like to just start with some basic background information as to when the permit was established and subsequent amendments after that.

Now, since this a permit that exceeded 15 acres all these dates of decisions and most of the events are established by the Land Use Commission. So, for example, when the permit was first granted, the SUP, that was back in April 20, 1987. It was for 60-1/2 acres and subsequent to that two years later in October 1989, there was an amendment to add another 26 acres because they had inadvertently left out the accessory uses. So, essentially it started out as an 86-1/2 acre project. And at that time there was very little opposition, some from the neighbors, but at that time the West Beach Resort which was proposed by Herbert Horita was

1 effort to come up with stipulated Findings of Fact,
2 Conclusions of Law. And that is that we made a great deal
3 of progress, a great deal agreement I would say on
4 diversionary goals. And it's that source of agreement that
5 gave us hope that we can may be reach agreement on the rest
6 of the things, the other parts of the order that we would
7 have to agree to before we could present the stipulated
8 Order to this body. And recognizing that we did not want it
9 to go on forever, we set a deadline to the Stay rather than
10 having us come back to you and say, we give up; we set firm
11 deadline for us and recognizing, I think to our own
12 frustration that maybe everyone's frustration including
13 Mr. Wurdeman and Ms. Hanabusa is that communication may not
14 have been as good as it could have been. We set out those
15 report deadlines in the stipulation. If the Commission
16 wanted further additional reports, if the Commission wanted
17 the parties to appear and update the Commission, I'm certain
18 my clients have no objection to that. We would be as open
19 and transparent as this body thinks is appropriate for it
20 and for the community.

21 Chair Hazama: Here's the problem is the '09
22 Planning Commission's D&O basically put milestone dates on
23 reports updates, etc. But because that was technically
24 never enacted. None of that went into place.

25 Mr. Chipchase: Exactly.

1 Chair Hazama: So, that does concern me as well.

2 While I understand what you're saying regarding the
3 extension and all of that, I think for me anyway, the
4 overbearing matter of importance is the fact that we need to
5 get the City's SUP and, therefore, I don't know how much
6 harm it will do you if we don't actually grant the Stay and
7 actually continue with the proceedings for a D&O with the
8 consolidated thing. That's just my opinion. We've kind of
9 kept this can on the road long enough. We do need a SUP,
10 the City needs a SUP. I believe that by consolidating the
11 issues together and then providing them with a D&O. Of
12 course you'd be able to provide whatever your input is at
13 that time regarding conditions, etc. But providing that
14 back to the LUC, I think will not only prevent them from
15 remanding it back to us again, but we'll be able to move
16 forward and get the SUP approved.

17 Ms. Chan: Chair, your statement reminded me of
18 something else that I forgot to mention--

19 Chair Hazama: Okay.

20 Ms. Chan: One of the conditions in the 2009 D&O
21 from this body did require the City to start looking into
22 other landfills--

23 Chair Hazama: That's correct.

24 Counsel Chan: ...that was the condition because
25 they were keeping it open-ended to capacity, but they didn't

1 want the City be faced in with a situation where we weren't
2 prepared with the landfill once we did hit capacity. And, I
3 know Mr. Wurdeman has stated that nothing really has been
4 done on that front. I did want to mention that the City had
5 a panel back in 2012 that they came up with 11 or 12 sites.
6 And that list needed further evaluation after that initial
7 list was compiled. So that is something the City is
8 actively working on. They broke up the project, I believe
9 into two phases and they're kind of through most of the
10 first phase in terms of evaluating what the current disposal
11 is at the landfill. Because as you know the more we divert
12 to H-Power and recycling and the less we put into landfill.
13 So, they're having to reevaluate those things as well as well
14 what's going to be appropriate at that time we do hit
15 capacity. So, that's going to be, I believe in the second
16 part of what they're evaluating. So, they are working on
17 certain things, I believe are contained in that D&O.

18 Chair Hazama: I understand, but nothing is
19 infinite. The key, I think is working with the Department
20 of Health. And the LUC is a state Commission, so they can
21 further compel the Department of Health to determine what
22 the trigger is to when the City actually needs to get a new
23 landfill.

24 Ms. Chan: And the City does recognize this. Yes,
25 We are going to--We need to look at what the options are at

1 that point in time as well or prior to that point in time.

2 Chair Hazama: I think first step is the City
3 needs to get this SUP approved. I think that's the first
4 step. So--

5 Mr. Wurdeman: Mr. Chair, if I could just couple
6 of points. You know, Ms. Hanabusa's position is obviously
7 been to close the landfill period. So, if there's some kind
8 of stipulated agreement between all of the other parties but
9 her, to be presented to the Commission as a proposed
10 stipulated Decision and Order for its consideration.

11 You know that would potentially give Ms. Hanabusa and as
12 the person not in agreement and having then to deal with a
13 record. She didn't participate in the second proceeding
14 while the case was up on Supreme Court as Schnitzer didn't
15 participate in the first proceeding but in the second
16 proceeding. As such, she would have to object to be placed
17 in that situation where she may have to be bound by the
18 record in which she wasn't even participating in. So, I
19 just wanted to make those comments to the Commission.

20 [colloquy between Chair Hazama and Counsel
21 Waihee-Polk]

22 Okay. So your client is part of the '09,
23 correct?

24 Mr. Wurdeman: Yes.

25 Chair Hazama: And Schnitzer is participating the

1 '11?

2 Ms. Muller: Yes.

3 Chair Hazama: So, I guess my comment is
4 consolidating it would allow you to participate--both of you
5 participate in it?

6 Ms. Muller: That's right, that's why we support
7 the consolidation.

8 Chair Hazama: Understood. So, I guess we'd be
9 okay.

10 Mr. Wurdeman: Ms. Hanabusa obviously didn't have
11 an opportunity to present evidence to cross-examine
12 witnesses. I mean, she participated in a several day
13 contested case process in '08 and '09 herself. And she
14 certainly satisfied with the record that she made but, I
15 guess we're--she would have to object because she's shooting
16 in the dark not knowing completely what this second record
17 is that we're consolidating as one. And the potential
18 situation where there may be an agreement with all of the
19 other parties but for Ms. Hanabusa, and we're now trying to
20 make arguments on a record that she didn't even participate.

21 Chair Hanabusa: Understood. But, I guess, my
22 only comment is the crocks of the 2011 proceeding was
23 regarding the date requirement was struck down by the
24 Supreme Court anyway. So, I mean, there's really no meat in
25 it. So, I don't know why she would be concerned with that

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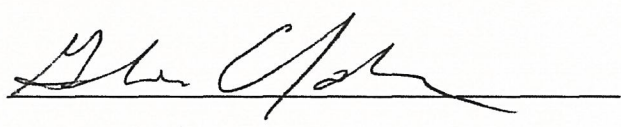
ADJOURNMENT

There being no further business before the Planning Commission, the meeting was adjourned by Chair Hazama at approximately 2:54 p.m.

--o0o--

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, August 17, 2016.

DRAFT August 17, 2016
Planning Commission
transcript



Gloria Takara
Secretary-Hearings Reporter

Hawaii News

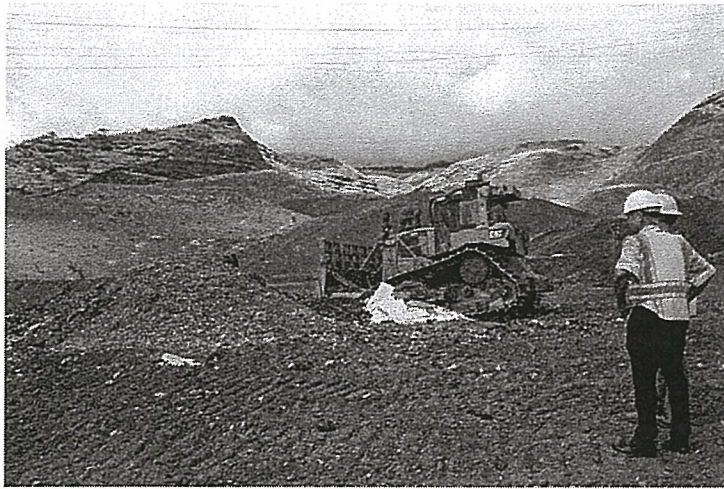
Landfill's fate will gain clarity in fall

By Gordon Y.K. Pang

Posted August 19, 2016

August 19, 2016

Updated August 19, 2016 5:30am



STAR-ADVERTISER / MARCH 15

Mayor Kirk Caldwell walked the grounds with Brian Bowen, right, Sr. District Manager for Waste Management of Hawaii after he held a press conference at the Waimanalo Gulch Landfill in Kapolei on March 15.

The Honolulu Planning Commission decided this week to make a recommendation in October on the future of the Waimanalo Gulch Sanitary Landfill in West Oahu.

Meanwhile, the attorney representing former U.S. Rep. Colleen Hanabusa continues to oppose the use of the West Oahu landfill and argue that the city should be fined daily by the state for operating it illegally.

Dean Hazama, Planning Commission chairman, said Thursday that the commission voted Wednesday to deny a request by the city, the Ko Olina Community Association and state Sen. Maile Shimabukuro (D, Kalaeloa-Waianae-Makaha), and Schnitzer Steel to extend proceedings through April while they continue to hash out a long-delayed settlement to resolve the matter of whether the landfill should be allowed to continue operations.

The commission is now slated on Oct. 26 to issue a recommendation — to be forwarded to the state Land Use Commission — on whether the city should get an extension of a special permit that allows the landfill to continue, Hazama said.

For years the Ko Olina association and Hanabusa fought to shut down the landfill, opposing city efforts to expand and extend its operable life. They argued that the landfill's odors and other concerns were an affront to Leeward Coast residents and that the city has been foot-dragging on its promised efforts to examine the idea of relocating the landfill.

But the association and Shimabukuro, Hanabusa's successor as the area's state senator, have been working on a settlement with the city while Hanabusa has not, said Richard N. Wurdeman, Hanabusa's attorney.

Hazama said he expects the commission will recommend the LUC grant the city's request for extended use of the landfill. While he appreciates the argument being made by Wurdeman and Hanabusa, Hazama said, "we have to have an operating landfill. I think it's unreasonable to expect the city to just close it down."

The LUC had previously issued a permit extension for the city, but only with the stipulation that the city stop accepting municipal solid waste (except ash) beyond July 31, 2012. The Hawaii Supreme Court ruled in May 2012, however, that the state acted improperly by imposing a deadline for the landfill's closure despite the continuing need for the facility to operate beyond that date. The court also determined that the LUC, even though it issued the special-use permit, did not have the authority to impose a deadline on the city.

The court kicked the matter back to the LUC, which in turn remanded it to the Planning Commission for its recommendation. The matter has been in the city commission's hands since December 2012.

"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.

Wurdeman took exception to Hazama's comments, noting that attorneys both recommending approval and rejection of an extension of the landfill's life have until Oct. 14 to submit proposed findings and conclusions.

"It makes you wonder whether they're predetermining the case," Wurdeman said. "I'm disheartened to hear Mr. Hazama making his conclusion without the matter being fully heard and briefed by the board."

The Supreme Court stated in May 2012 that the imposition of a July 31, 2012, end date was a material condition of the special-use permit, he said.

City officials have argued that the city has made strides in reducing the amount of trash going to the landfill, such as developing a third boiler at the city's waste-to-energy incinerator at HPOWER, but that it's taking time to implement other alternative disposal methods.

City Environmental Services Director Lori Kahikina, in a statement Thursday, reiterated that position: "In light of the city's steeply declining use of the landfill and its ongoing effort to reduce waste streams, we look forward to working toward our goals of increased recycling and further diversion of waste from the landfill, while having a reliable landfill available to protect the public's health and safety."

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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 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.")
_____)

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.

1 APPEARANCES:

2

3 Planning Commissioners present:

4

Dean I. Hazama, Chair

5

Cord D. Anderson

6

Daniel S. M. Young

7

Ken K. Hayashida

8

Wilfred A. Chang, Jr.

9

10 Planning Commissioners excused:

11

Arthur B. Tolentino

12

Kaiulani K. Sodaro [recused,

13

prior notice given]

14

Steven S. C. Lim [recused,

15

prior notice given]

16

Theresia c. McMurdo, Vice Chair

17

[prior notice given]

18

19 Deputy Corporation Counsel:

20

Jennifer D. Waihee-Polk

21

(Advisory to the Commission)

22

23 Planning Commission staff:

24

Gloria Takara,

25

Secretary-Hearings Reporter

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
6 530 South King Street, Room 110
7 Honolulu, Hawaii 96813
8

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

11 Calvert G. Chipchase, Esq.
12 Christopher T. Goodin, Esq.
13 Cades Schutte LLP
14 1000 Bishop Street, Suite 1200
15 Honolulu, Hawaii 96813
16

17 For intervenor Schnitzer Steel Hawaii Corp.:

18 Arsima Muller, Esq.
19 Carlsmith Ball LLP
20 ASB Tower, Suite 2200
21 1000 Bishop Street
22 Honolulu, Hawaii 96813
23
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1 For intervenor Colleen Hanabusa:

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Richard N. Wurdeman, Esq.

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1003 Bishop Street, Suite 720

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Honolulu, Hawaii 96813

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P R O C E E D I N G S

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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.

1 discussion?

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

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

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

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

24 Member Anderson: I make a motion for executive
25 session.

1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Basically the
3 Commission has made a motion to go into executive session to
4 consult with the Commissioner's attorney on the authority,
5 duties, privileges and immunities pertaining to Section
6 205-5 of the Hawaii Revised Statutes as amended in Chapter
7 2, Subchapters 4 and 5 of the Rules of the Planning
8 Commission in accordance with HRS 92-5. Okay.

9 Mr. Wurdeman: Mr. Chairman, may I be heard please
10 before you go into executive session. The City's last
11 motion was for a Part 1 of the February 10th filing and not
12 Part 2. And not it only was it our findings timely filed on
13 July 17th, 2009, but we reiterated our reliance on October
14 12, 2016, and two separate times, not only was it filed
15 timely but it was reiterated that it be relied upon timely
16 in October well before any other parties submitted anything,
17 one. Two, is in the second part that wasn't the subject of
18 the City's motion is my objections to this Chair presiding
19 over this matter because of this Chair's apparent
20 pre-determination of the facts and conclusions in the
21 attached newspaper article in the Honolulu Star Advertiser
22 that it was dated August 19th, 2016, in which is part of my
23 February 10, 2016 [sic] submission. And that is
24 respectfully challenging you, Mr. Chairman, in presiding
25 over these matters when you've already pre-determined this

1 case.

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

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

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

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

1 [EXECUTIVE SESSION MINUTES]

2 Out: 2:26 p.m.

3 In: 2:44 p.m.

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

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

10 Member Hayashida: I reviewed the records.

11 Chairman: Okay. Commissioner Chang.

12 Member Chang: I have as well.

13 Chairman: Okay. Commissioner Young.

14 Member Young: So have I.

15 Chairman: Okay.

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

18 Chairman: Okay. And, likewise, I have as well.

19 In regards to, for the record, Mr. Wurdeman, your
20 presumption on my influence over the entire Commission, I
21 think is incorrect. So, I'm one Commissioner that has one
22 vote equal to the weight of any other Commissioner on this
23 body.

24 In regards to your request regarding Part 2.

25 Because we received, the Commission has received it, so it

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

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

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

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

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

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

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

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

24 Chairman: That's fine.

25 Mr. Chipchase: The motion made by Commissioner

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

25 I don't believe that those kinds of decision

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

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

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

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

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

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

21 Chairman: Okay. Any objections to accepting the
22 motion?

23 Member Anderson: No.

24 Chairman: Okay. Commissioners--

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

1 an additional condition added upon my motion?

2 Chairman: Yes.

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

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

6 Member Anderson: I'll second it.

7 Chairman: Now, do you have any objections?

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

25 Chairman: Okay. Any further discussions? [no

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

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

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

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

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

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

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

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

14 Member Hayashida: Withdraw my motion.

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

17 Member Anderson: Second.

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

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

25 Chairman: Okay. So moved.

1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Any discussion?

3 [no response] Okay. Seeing none, any objections or any
4 abstentions? [no response] Okay. Seeing none, then
5 Commissioner Anderson's original motion--

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

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

15 Member Anderson: Conclusions of Law; correct.

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

18 Member Anderson: Correct.

19 Chairman: Okay. And what was--

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

1 three conditions you mentioned earlier?

2 Member Anderson: Correct. That's my
3 understanding.

4 Chairman: Okay.

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

8 Chairman: Oh, okay. Correct, correct.

9 Okay. So, adding on the deletion of Condition 14, you're
10 still accepting ENV's Findings of Fact, Conclusions of Law
11 and adding your three additional conditions.

12 Member Anderson: Yes, while removing Condition
13 14.

14 Chairman: Okay.

15 Member Anderson: Does that clarify things a little
16 bit?

17 Member Hayashida: Yes.

18 Member Anderson: Okay.

19 Chairman: In regards to the Findings of Fact and
20 Conclusions of Law; in regards to striking anything prior to
21 2011?

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

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

1 second?

2 Member Hayashida: Second.

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

9 Member Anderson: Yes, and removing 14.

10 Chairman: And removing 14.

11 Member Anderson: Yes.

12 Chairman: And 14 was the date restriction.

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

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

20 Member Anderson: Yes.

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

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response]

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

2 You have anything else, Commissioners? Okay.

3 Seeing none, do you have a motion to adjourn?

4 Member Hayashida: Motion to adjourn.

5 Chairman: It's been moved.

6 Member Young: Second.

7 Chairman: Moved and seconded. Any objections? [no

8 response] Any abstentions? [no response] Okay. Thank you

9 very much, Commissioners. This meeting is adjourned.

10 [bangs gavel].

11 ADJOURNMENT:

12 There being no further business before the
13 Planning Commission, the meeting was adjourned by Chair
14 Hazama at approximately 3:28 p.m.

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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 March 1, 2017.

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Gloria Takara

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Secretary-Hearings Reporter

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ADOPTED ON: March 15, 2017

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State OF HAWAII

LAND USE COMMISSION

Hearing held on May 24, 2017

Airport Conference Center

400 Rogers Blvd., Suite 700, Room #3

Honolulu, Hawaii 96813

Commencing at 9:00 a.m.

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

SP09-403 Department of Environmental Services,
City and County of Honolulu (Waimanalo Gulch
Sanitary Landfill), (Oahu)

V. Executive Session

VI. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairman
3 JONATHAN SCHEUER, Vice Chairman
4 ARNOLD WONG, Vice Chairman

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 DAWN N.S. CHANG
9 NANCY CABRAL

10 DIANE ERICKSON, ESQ.
11 Deputy Attorney General

12 STAFF:

13 DAN ORODENKER, Executive Director
14 RILEY K. HAKODA, Planner/Chief Clerk
15 BERT K. SARUWATARI, Planner

16 CALVIN CHIPCHASE, ESQ.
17 CHRISTOPHER GOODIN, ESQ.
18 For Ko Olina Community Association and
19 Maile Shimabukuro

20 RICHARD WURDEMAN, ESQ.
21 For Colleen Hanabusa

22 IAN SANDISON, ESQ.
23 AVERY MONTRO, ESQ.
24 For Schnitzer Steele Hawaii

25 DANA VIOLA, ESQ.
KATHLEEN KELLY, ESQ.
Deputies Corporation Counsel
For Department of Environmental Services
City and County of Honolulu

Bryan YEE, ESQ.
RODNEY FUNAKOSHI, Planner
Office of Planning
State of Hawaii

RAY YOUNG, planner
Department of Planning and Permitting
City and County of Honolulu

1 CHAIRMAN ACZON: Good morning. This is the
2 May 24/25th, 2017 Land Use Commission meeting. The
3 Chair notes for the record that there is a
4 typographical error in Agenda item II. The date of
5 the minutes to be considered is actually April 26,
6 2017.

7 The first order of business is adoption of
8 any corrections or comments on that. If not, is
9 there a motion to adopt?

10 COMMISSIONER CHANG: I move to adopt.

11 COMMISSIONER ESTES: Second the motion.

12 CHAIRMAN ACZON: A motion has been made by
13 Commissioner Chang and seconded by Commissioner
14 Estes.

15 All in favor say "aye". Opposed?

16 VICE CHAIR SCHEUER: Abstain.

17 CHAIRMAN ACZON: The minutes are adopted
18 with one abstention.

19 Commissioner Chang, do you have any -- let
20 me go through the next agenda. The next agenda item
21 is the tentative meeting schedule. Mr. Orodener.

22 EXECUTIVE DIRECTOR: Thank you, Mr. Chair,

23 On May 31st, we have a special meeting to
24 handle the Lana'i remand case. That will be on Maui.

25 June 14th was set aside for this Waimanalo

1 statements for the record.

2 CHAIRPERSON ACZON: Thank you, Commissioner
3 Okuda.

4 Anybody else? Vice Chair Scheuer.

5 VICE CHAIR SCHEUER: I'm trying to be as
6 polite as I can in echoing Commissioner Chang's
7 communication of the sense of urgency on the parties,
8 particularly on the Planning Commission.

9 I think parties who believe they have been
10 aggrieved in this matter have waited far, far too
11 long for some kind of meaningful finality.

12 I think for a member of the general public,
13 when they understand that they get a ticket leaving
14 their car parked in a meter for too long, but the
15 county can operate a landfill for years without a
16 permit, does not encourage people's general faith in
17 government and in our operations. I'll stop there.

18 CHAIRPERSON ACZON: Thank you, Vice Chair
19 Scheuer.

20 Commissioner Cabral.

21 COMMISSIONER CABRAL: I would like to
22 express that same concern. As I read through all of
23 this, and again, I'm in a small business, I almost
24 feel like it's been somewhat of a shell game or some
25 intentional -- one has to wonder if there's not

1 conversations over the water cooler, that, oh, well,
2 we'll just keep pushing this around legally and we
3 will never have to close this landfill or deal with
4 it.

5 And so I think that since this will come
6 before us again, I would urge the Planning Commission
7 to deal with this in a really responsible and timely
8 manner. Thank you.

9 CHAIRPERSON ACZON: Thank you, Commissioner
10 Cabral.

11 Anybody else? Hearing no further
12 discussions, Mr. Orodener, please poll the
13 Commissioners.

14 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
15 The motion is to deny in part and grant in part
16 instructions to the Planning Commission for further
17 proceedings.

18 Commissioner Wong?

19 VICE CHAIR WONG: Aye.

20 EXECUTIVE DIRECTOR: Commissioner Cabral?

21 COMMISSIONER CABRAL: Aye.

22 EXECUTIVE DIRECTOR: Commissioner Mahi is
23 absent.

24 Commissioner Chang?

25 COMMISSIONER CHANG: Aye.

1 EXECUTIVE DIRECTOR: Commissioner Scheuer?

2 VICE CHAIR SCHEUER: Aye.

3 EXECUTIVE DIRECTOR: Commissioner Estes?

4 COMMISSIONER ESTES: Aye.

5 EXECUTIVE DIRECTOR: Chair Aczon?

6 CHAIRPERSON ACZON: Aye.

7 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

8 Oh, wait a minute. My apology. Sorry I missed you,
9 sorry.

10 Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE DIRECTOR: My apologies. Thank
13 you.

14 Mr. Chair, the motion passes.

15 CHAIRPERSON ACZON: Thank you. Since the
16 Motion to Remand was voted on by the Commissioners,
17 the other option items on this document are rendered
18 moot. Than you very much.

19 Next item on the agenda is an executive
20 session. Motion?

21 COMMISSIONER CABRAL: I'll move to go into
22 execute session for other matters.

23 CHAIRPERSON ACZON: Any second?

24 VICE CHAIR WONG: Second.

25 CHAIRPERSON ACZON: Moved and seconded.

1 All in favor say "aye". Opposed? Motion carries.

2 (Executive session.)

3 (The proceedings adjourned at 12:03 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on May 24, 2017, at 9:00 a.m., the proceedings contained herein 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 copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 24th day of May, 2017, in Honolulu, Hawaii.

S/S Jean Marie McManus
JEAN MARIE McMANUS, CSR #156



LAND USE COMMISSION
STATE OF HAWAII

2017 JUN -6 P 1:38

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL	)	ORDER GRANTING IN PART
SERVICES, CITY AND COUNTY OF	)	AND DENYING IN PART
HONOLULU	)	INTERVENORS KO OLINA
	)	COMMUNITY ASSOCIATION
For A New Special Use Permit To	)	AND MAILE SHIMABUKURO'S
Supersede Existing Special Use Permit To	)	MOTION TO DENY AND
Allow A 92.5-Acre Expansion And Time	)	REMAND; AND CERTIFICATE
Extension For Waimānalo Gulch Sanitary	)	OF SERVICE
Landfill, Waimānalo Gulch, O`ahu,)	
Hawai`i, Tax Map Key: 9-2-03: 72 And 73)	
_____)	

ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S
MOTION TO DENY AND REMAND

AND

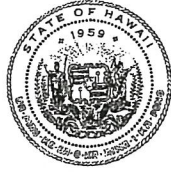
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

June 6, 2017 by

Executive Officer

EXHIBIT E



LAND USE COMMISSION
STATE OF HAWAII

2017 JUN -6 P 1:38

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL	)	ORDER GRANTING IN PART
SERVICES, CITY AND COUNTY OF	)	AND DENYING IN PART
HONOLULU	)	INTERVENORS KO OLINA
	)	COMMUNITY ASSOCIATION
For A New Special Use Permit To	)	AND MAILE SHIMABUKURO'S
Supersede Existing Special Use Permit To	)	MOTION TO DENY AND
Allow A 92.5-Acre Expansion And Time	)	REMAND
Extension For Waimānalo Gulch Sanitary)	
Landfill, Waimānalo Gulch, O`ahu,)	
Hawai`i, Tax Map Key: 9-2-03: 72 And 73)	
_____)	

ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO
OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S
MOTION TO DENY AND REMAND

On May 24, 2017, the State Land Use Commission ("LUC") met in Honolulu, Hawai`i, to consider (1) Ko Olina Community Association's and Maile Shimabukuro's ("KOCA/Shimabukuro") Motion to Deny and Remand;¹ (2) KOCA/Shimabukuro's Alternative Motion to Deny the Applications Unless

¹ On May 19, 2017, the City and County of Honolulu Department of Environmental Services ("Applicant") filed a Response to KOCA/Shimabukuro's Motion to Deny and Remand. On May 22, 2017, Colleen Hanabusa ("Hanabusa") filed a Joinder to KOCA/Shimabukuro's Motion to Deny and Remand.

Additional Conditions are Imposed (“Alternative Motion to Deny”);² and (3) the City and County of Honolulu Planning Commission’s (“Planning Commission”) Findings of Fact, Conclusions of Law, and Decision and Order relating to its proceedings on remand regarding the Applicant’s application for a new special use permit to supersede the existing special use permit³ to allow for the expansion of the Waimānalo Gulch Sanitary Landfill (“WGSL”) (“2008 Application”) and the application to modify Land Use Commission Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications (“2011 Application”).

Calvert G. Chipchase, Esq., and Christopher T. Goodin, Esq., appeared on behalf of KOCA/Shimabukuro.⁴ Dana Viola, Esq., and Kathleen

² On May 19, 2017, the Applicant filed a Response to KOCA/Shimabukuro’s Alternative Motion to Deny.

³ The existing special use permit is identified as County Special Use Permit File No. 86/SUP-5 (LUC Docket No. SP87-362).

⁴ By letter dated May 23, 2017, to the LUC, Mr. Chipchase requested that the LUC enter a proposed form of an Order Granting in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand. The proposed Order provided (1) that the 2008 and 2011 Applications be denied without prejudice to entry of a single, consolidated findings of fact; conclusions of law, and decision and order by the Planning Commission on both Applications pursuant to Planning Commission Rule §2-75 (“New Decision”); (2) that consideration by the LUC of the New Decision on both Applications shall not be precluded by Hawai’i Administrative Rules (“HAR”) §15-15-96(b); (3) that both Applications and the records be remanded to the Planning Commission for further proceedings; (4) that the remaining portion of KOCA/Shimabukuro’s Motion to Deny and Remand concerning the recusal of Planning Commission Chair Dean I. Hazama and KOCA/Shimabukuro’s Alternative Motion to Deny be Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu 2 Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand

Kelly, Esq., appeared on behalf of the Applicant.⁵ Richard N. Wurdeman, Esq., appeared on behalf of Hanabusa. Ian L. Sandison, Esq., and Avery Matro, Esq., appeared on behalf of Schnitzer Steel Hawai'i Corp. ("Schnitzer Steel").⁶ Bryan C. Yee, Esq., and Rodney Funakoshi were present on behalf of the State Office of Planning ("OP"),⁷ and Raymond Young was present on behalf of the City and County of Honolulu Department of Planning and Permitting.

At the meeting, the LUC heard oral argument from the parties and public testimony from Messrs. Yee and Young on KOCA/Shimabukuro's Motion to Deny and Remand.⁸ All of the parties expressed support for the remand of the record on the 2008 and 2011 Applications to the Planning Commission.

Following discussion, a motion was made and seconded to grant in part and deny in part KOCA/Shimabukuro's Motion to Deny and Remand on the basis that the record of the Planning Commission's proceedings on remand relating to the 2008 and 2011 Applications is not complete, and to therefore deny

withdrawn without prejudice to refile; and (5) that this Order is without prejudice to any arguments that the parties have raised or may raise regarding the Applications.

⁵ On May 23, 2017, the Applicant filed a response to Mr. Chipchase's May 23, 2017, letter.

⁶ On May 23, 2017, Schnitzer Steel filed a response to Mr. Chipchase's May 23, 2017, letter.

⁷ On May 22, 2017, OP filed comments in which it recommended additional and amended conditions to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order.

⁸ At the start of the proceeding, Commissioner Dawn Chang disclosed that a couple of years ago she was a consultant to the WGSL on a criminal matter. There were no objections by the parties to her participation in the proceeding.

the request to deny both Applications and to instead remand the matter to the Planning Commission pursuant to HAR §15-15-96(a) for further proceedings to (1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGSL, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order. As part of the motion, the movant clarified that the issue raised by KOCA/Shimabukuro in their Motion to Deny and Remand that the participation of the Planning Commission Chair in the proceeding, including voting on the matter, violated KOCA/Shimabukuro's right

to due process is not within the jurisdiction of the LUC, and is therefore denied as a basis of the remand. There being a vote of 7 ayes and 1 excused,⁹ the motion carried.

ORDER

The LUC, having duly considered KOCA/Shimabukuro's Motion to Deny and Remand, the oral and written arguments presented by the parties, and a motion having been made and seconded at a meeting on May 24, 2017, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that the Motion to Deny and Remand is granted in part and denied in part. Accordingly, the record on the 2008 Application and 2011 Application shall be REMANDED to the Planning Commission pursuant to HAR §15-15-96(a) for further proceedings to (1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the

⁹ The ninth seat on the LUC is currently vacant.

subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGSL, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

All other matters raised by the Motion to Deny and Remand are hereby DENIED either because they are contrary to HRS chapters 205 and 91 or because they are not within the jurisdiction of the LUC.¹⁰

¹⁰ KOCA/Shimabukuro's Alternative Motion to Deny is rendered moot by this action and shall not require consideration by the LUC.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 6th day of June, 2017, per motion on May 24, 2017.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

6/6/17

Certified by:


DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF) CERTIFICATE OF SERVICE
HONOLULU)
For A New Special Use Permit To Supersede)
Existing Special Use Permit To Allow A)
92.5-Acre Expansion And Time Extension)
For Waimānalo Gulch Sanitary Landfill,)
Waimānalo Gulch, O`ahu, Hawai`i, Tax Map)
Key: 9-2-03: 72 And 73)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. Leo Asuncion, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

Bryan Yee, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
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CERT. George Atta, Director
Department of Planning and Permitting
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650 South King Street
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CERT. IAN L. SANDISON, Esq.
Carlsmith Ball LLP
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CERT. Kamilla Chan, Esq.
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CERT. Department of Environmental Services
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Honolulu, Hawaii 96813

CERT. CADES SCHUTTE LLP
CHRISTOPHER G. CHIPCHASE
CHRISTOPHER T. GOODIN
1000 Bishop St. Suite 1200
Honolulu, HI 96813

Dated: June 6, 2017 Honolulu, Hawaii.



Daniel Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF) AMENDED
HONOLULU) CERTIFICATE OF SERVICE
For A New Special Use Permit To Supersede)
Existing Special Use Permit To Allow A)
92.5-Acre Expansion And Time Extension)
For Waimānalo Gulch Sanitary Landfill,)
Waimānalo Gulch, O'ahu, Hawai'i, Tax Map)
Key: 9-2-03: 72 And 73)

AMENDED CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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CERT. Kamilla Chan, Esq.
Deputy Corporation Counsel
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CHRISTOPHER T. GOODIN
1000 Bishop St. Suite 1200
Honolulu, HI 96813

CERT. PLANNING COMMISSION
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dated: June 15, 2017 Honolulu, Hawaii.



Daniel Orodener, Executive Officer

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAI'I

In the Matter of the Application of the
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For a New Special Use Permit to
Supersede Existing Special Use Permit
to Allow A 92.5-Acre Expansion and
Time Extension for Waimānalo Gulch
Sanitary Landfill, Waimānalo Gulch,
O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72
And 73

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

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 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.”

CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing document was
duly served on the following persons by hand delivery:

DONNA Y. L. LEONG, ESQ.
Corporation Counsel
KAMILLA C. K. CHAN, ESQ.
DANA M. VIOLA, ESQ.
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, HI 96813

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
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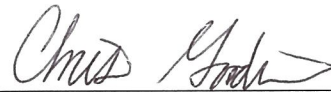
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