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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
TO STRIKE SCHNITZER'S
FEBRUARY 2018 PROPOSED
FINDINGS**

**MEMORANDUM IN SUPPORT OF
MOTION**

**DECLARATION OF CHRISTOPHER
T. GOODIN**

EXHIBITS 1 - 4

CERTIFICATE OF SERVICE

2018 FEB 13 AM 11:44
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

R7

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 TO STRIKE SCHNITZER’S
FEBRUARY 2018 PROPOSED FINDINGS**

Pursuant to Honolulu Planning Commission Rule § 2-67, Intervenors Ko Olina Community Association and Maile Shimabukuro (together, “**KOCA**”) move to strike Schnitzer Steel Hawaii Corp.’s (“**Schnitzer**”) Proposed Findings of Fact, Conclusions of Law and Decision and Order filed February 5, 2018 (the “**Schnitzer’s findings**”).

The Planning Commission set a deadline of January 27, 2017 for the parties to file proposed findings. Ex. 1 (10/12/16 transcript) at 20:13-14 (Chairman: “submission would be the 27th of January”); Ex. 2 (10/13/16 letter, copying Schnitzer’s counsel: “Deadline for submission of amended Proposed Findings of Facts, Conclusions of Law, and Decision and Order to the Planning Commission is Friday,

January 27, 2017.”). This filing deadline was mandatory,¹ and Schnitzer filed proposed findings on that date.

The Planning Commission subsequently entered its decision. On review, the State Land Use Commission remanded the matter to the Planning Commission for further proceedings.

On December 6, 2017, the Planning Commission adopted a new proposed decision and granted the parties until February 5, 2018, to file exceptions to the proposed decision. Ex. 3 (12/6/17 transcript) at 10:10-12. The Commission did not allow the parties to file their own proposed decisions.

On February 5, 2018, Schnitzer filed its exceptions to the Planning Commission’s proposed findings. Schnitzer also filed a new set of proposed findings. The findings are untimely.

All findings were due on January 27, 2017. The Commission did not set a later date for the submission of findings or allow parties to submit a new set of findings on February 5, 2018. Accordingly, Schnitzer’s untimely filing should be stricken.

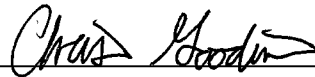
Striking Schnitzer’s untimely findings is in line with the Planning Commission’s decision to strike Intervenor Colleen Hanabusa’s Renewal of Submission of Proposed Findings of Fact and Conclusions of Law. Intervenor’s findings were

¹ See Planning Commission Rule § 2-15(a) (“All pleadings, briefs, submittals, petitions, exhibits, lists, reports, maps, exceptions, memoranda, and other legal papers required to be filed with the commission in any proceeding shall be filed at the office of the planning commission at Honolulu, Hawaii, within the time limit prescribed by statute, rules and regulations, or by order of the commission.”).

submitted two weeks after the January 27, 2017 deadline. For that reason, the Commission struck the findings. Ex. 4 (3/1/17 transcript) at 12:1-13:1. The Commission should likewise strike Schnitzer's findings.

DATED: Honolulu, Hawai'i, February 13, 2018.

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
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Application of

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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 Intervenors Ko Olina Community Association and Senator Maile Shimabukuro in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit 1 is, with the exception of underlining by counsel, a true and correct copy of an excerpt of the transcript of proceedings before the Honolulu Planning Commission on October 12, 2016.

3. Attached hereto as Exhibit 2 is a true and correct copy of a letter dated October 13, 2016, from former Honolulu Planning Commission Chairman Dean I. Hazama to Richard D. Wurdeman.

4. Attached hereto as Exhibit 3 is, with the exception of underlining by counsel, a true and correct copy of an excerpt of the transcript of proceedings before the Honolulu Planning Commission on December 6, 2017.

5. Attached hereto as Exhibit 4 is, with the exception of underlining by counsel, a true and correct copy of an excerpt of the transcript of proceedings before the Honolulu Planning Commission on March 1, 2017.

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

DATED: Honolulu, Hawai'i, February 13, 2018.



CHRISTOPHER T. GOODIN

1 BEFORE THE PLANNING COMMISSION
2 CITY AND COUNTY OF HONOLULU
3 STATE OF HAWAII

4 In the Matter of the) File No. 2008/SUP-2
5 Application of)
6 DEPARTMENT OF ENVIRONMENTAL)
7 SERVICES, CITY AND COUNTY)
8 OF HONOLULU)

8 To delete Condition No. 14 of)
9 Special Use Permit No. 2008/SUP-2)
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16 July 31, 2012.")

17 CONTINUED - CONTESTED CASE HEARING
18 Ewa-State Special Use Permit Amendment Application -
19 2008/SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

20 Taken at Mission Memorial Conference Room, Mission
21 Memorial Building, 550 South King Street, Honolulu, Hawaii
22 96813, commencing at 1:35 p.m. on October 12, 2016, pursuant
23 to Notice.

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, IV, Esq.
12 Cades Shutte
13 1000 Bishop Street, Suite 1200
14 Honolulu, Hawaii 96813

15
16 For intervenor Schnitzer Steel Hawaii Corp.:

17 Arsima Muller, Esq.
18 Carlsmith Ball LLP
19 ASB Tower, Suite 2200
20 1000 Bishop Street
21 Honolulu, Hawaii 96813

1 APPEARANCES:

2
3 Planning Commission present:

4 Dean I. Hazama, Chair
5 Arthur B. Tolentino
6 Wilfred A. Chang, Jr.
7 Ken K. Hayashida
8 Theresia C. McMurdo

9
10 Planning Commissioners excused:

11 Cord D. Anderson, Vice Chair
12 Kaiulani K. Sodaro [recused,
13 prior notice given]
14 Daniel S. M. Young
15 Steven S. C. Lim [recused,
16 prior notice given]

17
18 Planning Commission staff:

19 Gloria Takara,
20 Secretary-Hearings Reporter

21
22 Deputy Corporation Counsel:

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

1 For intervenor Colleen Hanabusa:

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

EXHIBIT 1

1 before this Commission, not just Condition 14 and
 2 continuance of the landfill. Capacity in the City's
 3 intension given the apparently elongated capacity are an
 4 issue. We also believe that the report and the report does
 5 contain statements with respect to site selection. Those
 6 issues remain relevant, although this body does not select
 7 the site for the City, the permits have historically and in
 8 conformance with this body's rules and LUC's rules,
 9 obligated the City to identify a new landfill site with
 10 reasonable diligence. And so the City's progress and
 11 compliance with the existing conditions are not just the
 12 formal order but orders going back through time remains
 13 irrelevant consideration is why there was extensive
 14 testimony developed in 2011 proceedings. There are other
 15 points, they're all laid out in my paper. I'm happy to take
 16 them one by one, but at the end of the day the question is
 17 whether to allow the additional evidence. If this body
 18 does, then I'm entitled to an opportunity to submit rebuttal
 19 evidence. And we have presented that rebuttal evidence in
 20 two forms. Documentation showing the impact on surrounding
 21 properties since the closure of the contested case. Those
 22 are in the form of both civil and criminal violations
 23 against the operator and certain members of the operator
 24 staff and in the form of testamentary evidence we proposed.
 25 Director Kahikina would be most able to answer the questions

1 that we have with respect to the report. Thank you.
 2 Chairman: Okay. Thank you. Ms. Muller, do you
 3 have any--
 4 Ms. Muller: Thank you, Chair. Actually we don't
 5 have a position on this motion. Schnitzer Steel doesn't
 6 have a position on this motion.
 7 Chairman: So you have no position. Okay.
 8 Commissioners, you have any questions of any of the
 9 intervenors at this time? [no response] Okay.
 10 Member Hayashida: Motion to approve the
 11 Department of Environmental Services, City and County of
 12 Honolulu, Motion to Reopen the Contested Case Hearing for
 13 Limited Purpose of Taking Official Notice of Facts.
 14 Member Tolentino: Second.
 15 Chairman: Okay. Moved and seconded.
 16 Commissioners, we are in discussion. Do we have any
 17 discussions on the matter? Any further discussion? I do
 18 understand the City's position the fact that there is--And
 19 logically you would expect updated information and a status
 20 report especially since its been so long regarding capacity.
 21 I'm not sure whether, in fact, adding that report into the
 22 record, adding a status report into the record at this time,
 23 I think is pertinent to the business before the Commission.
 24 But I understand there's been a lot of changes, and like I
 25 said a status report in 2016 should logically provide

1 updated information, some updated status of what's going on
 2 here. But I would tend to agree with Mr. Chipchase that
 3 previous status reports were not admitted into the record by
 4 the Commission. So, I think adding one now might be kind be
 5 unfair maybe to the prior proceedings. Anyway, any other
 6 discussion? [no response] Okay. We have a motion and a
 7 second. All those in favor of the motion, say aye.
 8 Member Tolentino: Aye.
 9 Member Chang: Aye.
 10 Member Hayashida: Aye.
 11 Chairman: Three ayes. All those oppose?
 12 Member McMurdo: Nay.
 13 Chairman: Nay. Okay. So, 3:2. The motion,
 14 therefore, fails. Okay. The last order of business is Item
 15 C, Department of Environmental Services, City and County of
 16 Honolulu, Motion for Extension of Time. Ms. Chan.
 17 Ms. Chan: The City has been working and discussing
 18 with primarily KOCA and we've had some brief discussions
 19 with Schnitzer as well about, you know, the subject matter
 20 that's before the Commission, and we believe we're making
 21 further progress and that if given even a little bit more
 22 time we could probably get there and at least resolve some
 23 of the issues if not something more substantive. I know
 24 that the motion that the City file did request to next
 25 April, but in further discussions we're willing to go with a

1 90-day extension just to give us a little more time to
 2 finish up our discussions, to have some time, should we
 3 reach some type of agreement to be able to submit a Findings
 4 of Fact together as well that we can present to the
 5 Commission. And, I think 90 days would give us sufficient
 6 time to do that.
 7 Chairman: So what date are you looking for?
 8 Ms. Chan: That would take us to the end of
 9 January. I think realizing that we have the holidays coming
 10 up in between as well, it'll probably create some scheduling
 11 problems, and it'll be difficult to finish up our work.
 12 Chairman: Okay. Because my staff gave us a
 13 calendar. So, if we look at the end of January, submission
 14 would be the 27th of January. For the intervenors is one
 15 week, is the 3rd of February for rebuttal sufficient time?
 16 Mr. Chipchase: If I might, Chair, just have two
 17 weeks. I anticipate it'll be long.
 18 Chairman: Okay. 10 February for rebuttals and to
 19 give us and corp counsel sufficient time we will then
 20 schedule a D&O Planning Commission meeting on March 1st. Is
 21 there any comments or objections from any of the parties? I
 22 know Mr. Wurdeman is not here, but we will break the great
 23 news to him later.
 24 Mr. Chipchase: None from us, Chair.
 25 Chairman: City?

1 Ms. Chan: None.

2 Ms. Muller: None from us. Thank you.

3 Chairman: Okay. So it poses no scheduling
4 problems for any of the parties.

5 Mr. Chipchase: No, Chair.

6 Ms. Chan: No.

7 Chairman: Okay. Anybody have anything else?

8 Member Tolentino: No. So, I'll make a motion to
9 approve and grant the Department of Environmental Services,
10 City and County of Honolulu, Motion for Extension of Time.

11 Member Hayashida: Second.

12 Member Tolentino: Date as noted, January 27th,
13 and rebuttal on February 10th.

14 Chairman: Correct. Okay.

15 Member McMurdo: And the hearing of March 1st.

16 Chairman: Yes.

17 Member Hayashida: Second.

18 Chairman: Moved and seconded. Any discussion?
19 [no response] Okay. Any objections to approving the motion?
20 [no response] Any abstentions? [no response] Okay. The
21 motion has been approved and filing will be moved to 27th of
22 January. Okay. Any other announcements?

23 Member Tolentino: Chair, can we go back to Item A,
24 I have a clarification for the vote.

25 Chairman: Three ayes and two nays.

1 Member Tolentino: Oh, three ayes and two nays.
2 Okay. And that was for approval--

3 Chairman: That was for approval; yes.

4 Member Tolentino: Okay. Thank you.

5 Chairman: Any announcements?

6 Mr. Chipchase: No announcements. I heard motion to
7 deny, right, 3:2?

8 Chairman: No. The motion was to approve, but
9 because we need all five votes it doesn't pass so the motion
10 is denied.

11 Mr. Chipchase: I follow; yes.

12 Chairman: Kathy, you want to come up now or you
13 want to--

14 Ms. Sokugawa: Just a short announcement for the
15 Planning Commissioners. The Hawaii Congress of Planning
16 Officials conference will be held here next year. City and
17 County Planning Commissioners are kind of the hosting body.
18 So next year we'll try something very different and have
19 more involvement by the Commission itself. So, we haven't
20 set a date or time yet, but think about what topics or what
21 speakers you would like us to cover as part of the program,
22 and we can try to consider that as much as we can. Again,
23 there is no date or time yet, but we are in charge of it
24 next year. Thank you.

25 Chairman: Okay. Commissioners, motion to

1 adjourn.

2 Member McMurdo: So moved.

3 Member Tolentino: Second.

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

7 ADJOURNMENT:

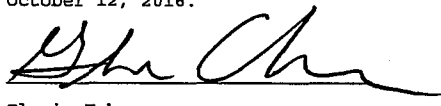
8 There being no further business before the
9 Planning Commission, the meeting was adjourned by Chair
10 Hazama at approximately 3:47 p.m.

11

12 --o0o--

13

14 I certify that the foregoing is
15 a true and correct transcription
16 of the proceedings, prepared to
17 the best of my ability, of the
18 meeting held on Wednesday,
19 October 12, 2016.

20 

21
22 Gloria Takara
23 Secretary-Hearings Reporter

24

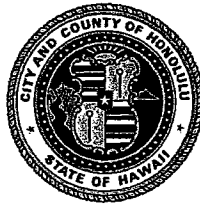
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PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8007 • FAX: (808) 768-6743
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honoluludpp.org

KIRK CALDWELL
MAYOR



DEAN I. HAZAMA, Chair
CORD D. ANDERSON, Vice-Chair
ARTHUR B. TOLENTINO
KA'IULANI K. SODARO
DANIEL S. M. YOUNG
STEVEN S. C. LIM
KEN K. HAYASHIDA
WILFRED A. CHANG, JR.
THERESIA C. McMURDO

October 13, 2016

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7010 3090 0002 0442 7757**

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

Attorney for Intervenor
Colleen Hanabusa

RE: Contested Case Hearing – Ewa State Special Use Permit Amendment Application – 2008/SUP-2 Waimanalo Gulch Sanitary Landfill (WGSL) Consideration of Order Remanding County Special Use Permit File No. 2008/SUP-2 to the City and County of Honolulu Planning Commission (Docket No. SP09-403)

Dear Mr. Wurdeman:

At the October 12, 2016 Planning Commission meeting, the Commission moved to approve Department of Environmental Services, City and County of Honolulu's Motion for Extension of Time. Planning Commission's October 26, 2016 meeting has been cancelled.

Deadline for submission of amended Proposed Findings of Facts, Conclusions of Law, and Decision and Order to the Planning Commission is Friday, **January 27, 2017**. Deadline for submission of rebuttals to the Planning Commission is Friday, **February 10, 2017**. The Planning Commission will consider adoption of the Proposed Findings of Facts, Conclusions of Law, and Decision and Order on Wednesday, **March 1, 2017**, at 1:30 p.m., in the Mission Memorial Conference Room, 550 South King Street, Honolulu, Hawaii.

If you have any questions, please contact the Planning Commission at 768-8007.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean I. Hazama".

Dean I. Hazama, Chairman
Planning Commission

EXHIBIT 2

Richard D. Wurdeman, Esq.

Page 2

October 13, 2016

cc: George I. Atta, Director, Department of Planning and Permitting
Don S. Kitaoka, Deputy Corporation Counsel
Jennifer D. Waihee-Polk, Deputy Corporation Counsel for the Planning Commission
Bryan C. , Esq., Deputy Attorney General
Leo Asuncion, Acting Director, Office of Planning
Kamilla C. K. Chan, Deputy Corporation Counsel
✓ Calvert G. Chipchase, Esq.
Arsima A. Muller, Esq.

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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)	
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DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY)	
OF HONOLULU)	
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To delete Condition No. 14, of)	DRAFT
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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 December 6, 2017, pursuant
to Notice.

1 APPEARANCES:

2 Planning Commissioners present:

3 Theresia C. McMurdo, Acting Chair

4 Cord D. Anderson

5 Ken K. Hayashida

6 Wilfred A. Chang, Jr.

7 Gifford K. F. Chang

8

9 Planning Commissioners excused:

10 Arthur B. Tolentino

11 [recused, prior notice given]

12 Kaiulani K. Sodaro

13 [recused, prior notice given]

14 Steven S. C. Lim

15 [recused, prior notice given]

16 Arthur D. Challacombe

17 [recused, prior notice given]

18

19 Deputy Corporation Counsel:

20 Rozelle A. Agag

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

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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 Avery C. Matro, Esq.
19 Carlsmith Ball LLP
20 ASB Tower, Suite 2200
21 1000 Bishop Street
22 Honolulu, Hawaii 96813

23
24
25

1 For Intervenor Colleen Hanabusa:

2 Richard N. Wurdeman, Esq.

3 1003 Bishop Street, Suite 720

4 Honolulu, Hawaii 96813

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

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

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

9 Ms. Matro: No objection.

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

14 Member Anderson: Works.

15 Acting Chair McMurdo: And then for the hearing
16 date if we do another 30 days from that. Okay. March 7th.

17 Commissioners are available on March 7th? Any trips, any
18 of the parties, March 7? [no response] We have to find out
19 from the other Commissioners whether they're available. Oh,
20 oh, the other ones are recused. Is 30 days enough for you?

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

23 Acting Chair McMurdo: Okay.

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

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

7

DRAFT

8

9 Gloria Takara

10 Secretary-Hearings Reporter

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13 Adopted on: _____

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BEFORE THE PLANNING COMMISSION
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Ewa-State Special Use Permit Amendment Application -
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1 APPEARANCES:

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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,
prior notice given]

13

14

Steven S. C. Lim [recused,
prior notice given]

15

16

Theresa c. McMurdo, Vice Chair
[prior notice given]

17

18

19 Deputy Corporation Counsel:

20

Jennifer D. Waihee-Polk

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(Advisory to the Commission)

22

23 Planning Commission staff:

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Gloria Takara,

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Secretary-Hearings Reporter

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1 For intervenor Colleen Hanabusa:

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1 Chairman: Okay. Ms. Chan.

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

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

1 supplementing its response.

2 Chairman: Okay. Mr. Wurdeman.

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

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

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

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

1 2009 submission is what you have submitted before the
2 Commission?

3 Mr. Wurdeman: Yes. That's what was submitted in
4 2009, which is still pending before the Commission and upon
5 which intervenor Hanabusa is still relying.

6 Chairman: Okay. Corporation Counsel, then
7 therefore your motion to strike applies to Mr. Wurdeman's
8 2017--I guess, that is where the confusion is coming in.
9 His February 10th 2017 submission to the Planning Commission
10 that is what you are motioning to strike?

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

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

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

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

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

24 Chairman: Right. However---

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

1 the Planning Commission.

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

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

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

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

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

20 Mr. Wurdeman: Correct.

21 Chairman: Okay. Commissioners, any questions at
22 this time? [no response] Okay. We have to take action on
23 the motion before us in regards to Environmental Services
24 motion to strike intervenor Colleen Hanabusa's February
25 10th, 2017 document. Do we have a motion? You can ask

1 questions.

2 Member Hayashida: So, it's irrelevant, right?

3 I mean--

4 Chairman: The motion--

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

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

9 Chairman: Okay. So moved.

10 Member Hayashida: Second.

11 Chairman: Moved and seconded. Any objections?

12 [no response] Any abstentions? [no response] Okay. The
13 Commission will move into executive session to consult with
14 Corporation Counsel on authority, duties, privileges,
15 immunities pertaining to Section 205-6 of the Hawaii Revised
16 Statutes as amended in Chapter 2, Subchapters 4 and 5 of the
17 Rules of the Planning Commission and in accordance with HRS
18 92-5. Okay. We're in executive session.

19 [EXECUTIVE SESSION MINUTES]

20 Out: 1:43 p.m.

21 In: 2:11 p.m.

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

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

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

5 Member Hayashida: Second.

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

7 All Commissioners: Aye.

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

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

13 Chairman: We're striking your February 10th,
14 2017--

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

17 Member Anderson: Yes.

18 Mr. Wurdeman: Okay.

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

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response] Any

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

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

5 Okay. For the record, appearances, please.

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

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

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

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

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

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

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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10 Gloria Takara

11 Secretary-Hearings Reporter

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14 ADOPTED ON: March 15, 2017

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

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 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.”

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:

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DATED: Honolulu, Hawai'i, February 13, 2018.

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