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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

DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
Application to Modify SUP)
No. 2008/SUP-2 (SP09-403) by)
Modifying (1) Condition No. 1)
of the Planning Commission's)
Findings of Fact, Conclusions)
of Law, and Decision and Order,)
dated June 10, 2019, and)
(2) Condition No. 5 of the)
LUC's Findings of Fact,)
Conclusions of Law, and Decision)
and Order Approving with)
Modifications the City and)
County of Honolulu Planning)
Commission's Recommendation)
to Approve Special Use Permit,)
certified on November 1, 2019)
_____)

FILE NO. 2008/SUP-2



CONTESTED CASE HEARING

Ewa - State Special Use Permit to Modify SUP No. 2008/SUP-2
(SP09-403), Waimanalo Gulch Sanitary Landfill

Taken at Fasi Municipal Building, 6th Floor
Conference Room, 650 South King Street, Honolulu, Hawaii
96813, commencing at 1:30 p.m., May 15, 2024, pursuant to
Notice.

1 APPEARANCES:

2

3 Planning Commission:

4 RYAN KAMO, Vice Chair

5 HILARIE ALOMAR, Member

6 MELISSA MAY, Member

7 KAI NANI KRAUT, Member

8 JOY KIMURA, Member

9

10 For the Planning Commission:

11 ROZELLE A. AGAG, ESQ.

12 Deputy Corporation Counsel

13 Department of the Corporation Counsel

14 530 South King Street, Room 110

15 Honolulu, Hawaii 96813

16

17 For the City and County of Honolulu, Department of

18 Environmental Services:

19 JEFFREY HU, ESQ.

20 KAMILLA C.K. CHAN, ESQ.

21 Deputies Corporation Counsel

22 City and County of Honolulu

23 530 South King Street, Room 110

24 Honolulu, Hawaii 96813

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1 APPEARANCES: (cont'd)

2

3 For Ko Olina Community Association and Senator Maile
4 Shimabukuro:

5 CALVERT G. CHIPCHASE, ESQ.

6 KATHERINE E. BRUCE, ESQ.

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10 Honolulu, Hawaii 96813

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12 For Schnitzer Steel Hawaii Corp.:

13 IAN L. SANDISON, ESQ.

14 JOYCE W.Y. TAM-SUGIYAMA, ESQ.

15 RIHUI YUAN, ESQ.

16 Watanabe Ing LLP

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P R O C E E D I N G S

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3 VICE CHAIR KAMO: Aloha, everyone and welcome
4 fellow Commission members to the May 15th meeting of the
5 Planning Commission. For our listeners and for the record I
6 am Vice Chair Kamo. The following members are physically
7 present here in the 6th Floor Conference Room. Commissioner
8 Hilarie Alomar, Commissioner Joy Kimura, and myself Ryan
9 Kamo. Also joining us remotely are Commissioners Melissa May
10 and Commissioner Kai Nani Kraut. For those of you who are
11 remote can you confirm that you are alone at your remote
12 location. We'll start with Commissioner May.

13 MAY: Hello, I am alone at my remote location.

14 VICE CHAIR KAMO: And Commissioner Kraut.

15 KRAUT: Alone.

16 VICE CHAIR KAMO: Thank you very much.

17 We do have quorum today. And also present here today is
18 Planning Commission and DIT staff to manage and support the
19 WebEx audiovisual platform. Also joining us today is
20 Commission attorney deputy corporation counsel Rozelle Agag.

21 COUNSEL AGAG: Good afternoon, Commissioners.

22 VICE CHAIR KAMO: Good afternoon. A couple of
23 housekeeping matters. For those present in the Conference
24 Room, bathrooms are located on the ground floor next to the
25 elevators, and we have this Conference Room until 4:30 p.m.

1 At this time I'd like to officially open the
2 hearing and for the record is now 1:38 p.m. Just a reminder
3 for us Commissioners we do need to identify ourselves first
4 before we speak and/or make any motions.

5 With that being said the first item on the agenda
6 is the approval of minutes for March 6th, 2024, and April
7 3rd, 2024 meetings as previously circulated to be approved
8 by the Planning Commission.

9 First, we'll have Commissioner Kraut attest that
10 you have reviewed and understand the records for the March
11 6th, 2024 meeting, materials and transcripts. Commissioner
12 Kraut can you attest?

13 KRAUT: I attest.

14 VICE CHAIR KAMO: Perfect. Commissioner Alomar,
15 can you attest that you have reviewed and understand the
16 records of the April 3rd, 2024 meeting, materials and
17 transcripts?

18 ALOMAR: Yes. Commissioner Alomar, I attest.

19 VICE CHAIR KAMO: Thank you very much. At this
20 time do I have a motion to approve the minutes?

21 KIMURA: Commissioner Kimura, I'll make a motion to
22 approve.

23 VICE CHAIR KAMO: Do I have a second?

24 ALOMAR: Commissioner Alomar, second.

25 VICE CHAIR KAMO: Thank you very much. Any

1 discussion, objections, or reservations? [no response]

2 Hearing none, Chair votes aye, the meeting minutes of March
3 6th, 2024 and April 3rd, 2024 meetings are approved.

4 Next, we will have a continuation of the contested
5 case hearing. To refresh everyone's memory, the request is
6 to modify the date in Condition 1 of the Planning
7 Commission's Findings of Fact, Conclusions of Law, and
8 Decision and Order dated June 10th, 2019 for a Special Use
9 Permit 2008/SUP-2 from December 31st, 2022 to December 31st,
10 2024. This is the date when the Applicant is required to
11 identify an alternative landfill site.

12 Before we proceed, Commissioners for the record,
13 we each need to attest that we have reviewed the transcripts
14 of the proceedings in this matter, and that we have
15 received, studied, examined, and understand the evidence and
16 entire record from this contested case hearing. Further,
17 for those Commissioners who have missed hearing dates, you
18 are also attesting that you have reviewed the transcripts
19 and records for the dates that you have been absent and that
20 you have received, studied, examined and understand the
21 evidence and records presented on the dates that you were
22 absent. For this item we will have a roll call vote [sic],
23 and we will start with Commissioner Kimura.

24 KIMURA: Commissioner Kimura, I attest that I have
25 reviewed all the information and documents, and I have

1 reviewed the information for the meetings on June 28th, and
2 August 9th that I missed.

3 VICE CHAIR KAMO: And, I believe October 4th?

4 KIMURA: I was sworn in that date.

5 VICE CHAIR KAMO: Sworn in that date. Okay, great,
6 perfect. Thank you. Commissioner Alomar.

7 ALOMAR: Commissioner Alomar, I attest I have
8 reviewed all the documents and meetings that I missed, April
9 3rd--Sorry, I don't have the list--June 28th, 2023, October
10 18th, 2023, November 1st, 2023, and we covered the April 3rd
11 the last time.

12 VICE CHAIR KAMO: Perfect. Thank you.
13 Commissioner May.

14 MAY: Commissioner May, I attest I reviewed the
15 notes from the meetings I missed on August 9th, 2023 and
16 February 2nd, 2024.

17 VICE CHAIR KAMO: Thank you, Commissioner May.
18 And Commissioner Kai Nani Kraut.

19 KRAUT: I attest I have reviewed all the
20 documentation, evidence as presented at the various
21 meetings. I don't think I missed any of those?

22 VICE CHAIR KAMO: Correct. You have perfect
23 attendance. Thank you.

24 KRAUT: Hurray.

25 VICE CHAIR KAMO: And myself, Vice Chair Kamo, I

1 attest I have received and reviewed all the documentation
2 presented in this case.

3 Next, for the record we would like to acknowledge
4 all of those in attendance from ENV, Schnitzer and KOCA.
5 Starting with ENV.

6 COUNSEL HU: Good afternoon, Vice Chair, Planning
7 Commission members. Deputies corporation counsel Jeffrey Hu
8 and Kamilla Chan for ENV.

9 VICE CHAIR KAMO: Thank you very much.

10 And Schnitzer.

11 COUNSEL TAM-SUGIYAMA: Good afternoon, Joyce
12 Tam-Sugiyama, Rihui Yuan and Ian Sandison for Schnitzer
13 Steel.

14 VICE CHAIR KAMO: Thank you very much. And do we
15 have anyone present from KOCA?

16 COUNSEL AGAG: Just for the record, may the record
17 reflect that there is no representative for KOCA at today's
18 hearing. [joined remotely @ 11:55 of WebEx timestamp]

19 VICE CHAIR KAMO: Thank you very much. Before we
20 begin, does anyone have any housekeeping matters which they
21 would like to discuss at this time? [no response] And if
22 there's nothing else, I believe we will be moving on to the
23 deliberation and action portion of this meeting.

24 So, next we have deliberated as a Planning
25 Commission, and I would like to ask at this time if the

1 Commissioners are ready to vote on this item, or--

2 [colloquy between Counsel Agag and Vice Chair
3 Kamo]

4 --on the adoption of the Decision and Order.

5 COUNSEL HU: Oh, Vice Chair, sorry, may I
6 interrupt real quick?

7 VICE CHAIR KAMO: Sure.

8 COUNSEL HU: I do have comments on the most
9 current draft D&O that was provided to us for review, and I'm
10 not sure, if I may present my comments, and if I am then I'm
11 not sure when I was supposed to let you know?

12 COUNSEL AGAG: So we did have a hearing for the
13 parties to make a comment on the draft D&O, and that's when
14 all the parties presented on the draft. And based on your
15 presentations the Commissioners deliberated and created the
16 final Decision currently before the Commission for adoption.

17 So, are you going to be making--First of all, is
18 there any discussion from the Commissioners? Any further
19 discussion? [no response] Okay. I didn't think so. Are
20 you going to be presenting--I mean, what's the purpose of
21 this because you already had an opportunity.

22 COUNSEL HU: Yes. I understood, and so I reviewed
23 the revised D&O or the most up-to-date version, and I just
24 have one comment, one issue with one of the Findings of
25 Fact, which is paragraph 89. I don't believe it's accurate,

1 and I'm not sure if it's too late to revise, but at least I
2 can may be put something on the record, if I may?

3 COUNSEL AGAG: Do all the Commissioners have the
4 paragraph 89 with them?

5 VICE CHAIR KAMO: Commissioner May and
6 Commissioner Kraut, do you have the draft D&O and can
7 reference paragraph 89?

8 MAY: Yes.

9 KRAUT: I'm pulling it up; yes.

10 COUNSEL AGAG: Would you like to entertain the
11 explanation, Chair?

12 VICE CHAIR KAMO: Sure. Yes. At this point you
13 can present.

14 COUNSEL HU: Thank you. And so my main concern is
15 the accuracy of this Finding of Fact and particularly the
16 second sentence that begins with, "However, other sites,
17 including federal sites, remain possibilities under these
18 conditions." And I believe this statement incorrectly
19 implies that there are non-federal "other sites" that remain
20 possibilities under the restrictive conditions of Act 73 and
21 the No Pass Zone. But aside from certain federal sites,
22 there are currently zero potential other sites that meet
23 both these restrictions. And also there is no citation to
24 the record to support this statement about non-federal other
25 sites. And, so I realize it's pretty late, but I would

1 propose either that last sentence be revised to, "However,
2 certain federal sites remain possibilities under these
3 restrictions". And I would insert a citation to our
4 Application at page 8 as well as the trial transcripts of
5 Dr. Babcock at page 50, rows 2-13. But if the Planning
6 Commission does not agree with our proposed revision, then I
7 believe at minimum that citation to the trial transcript of
8 Dr. Babcock at page 50, rows 2-13 should be included because
9 that citation was referenced in KOCA's previous filings, and
10 I believe that this second sentence was taken from KOCA's
11 filings, and it is missing that citation.

12 VICE CHAIR KAMO: Thank you very much.

13 COUNSEL HU: Thank you.

14 VICE CHAIR KAMO: Commissioners, do you have any
15 questions for ENV?

16 DIT GREG CIELESS: Mr. Chipchase has joined.

17 [11:55 WebEx timestamp]

18 VICE CHAIR KAMO: Great, thank you.

19 COUNSEL AGAG: Sorry, before we go forward, can we
20 have Mr. Chipchase make his appearance on the record?

21 COUNSEL CHIPCHASE: Yes. Commissioners. Cal
22 Chipchase for Ko Olina Community Association and Senator
23 Maile Shimabukuro. I apologize for my tardiness. I've
24 actually been hanging out on some other link that was with
25 the original notice since 1:15 or so. And then I just got

1 the link resent to me. So, I'm very sorry for my tardiness.
2 But no reason to repeat the proceeding. I will say that my
3 understanding from the process that we agreed to was that
4 there wouldn't be further argument on the Commission's
5 proposed Findings or proposed Order. And, so I wasn't aware
6 that ENV was going to make a further presentation by doing
7 the same things that already argued. But nevertheless we
8 are where we are, and I'm happy to proceed.

9 VICE CHAIR KAMO: Thank you very much, and we
10 apologize for the confusion on the link. Thank you for
11 joining us. Commissioners, do we have any questions for ENV
12 at this point?

13 KRAUT: Commissioner Kraut, I have a question. Is
14 the request to add the citation?

15 COUNSEL HU: I believe at minimum just to make the
16 record accurate that the citation would be needed.

17 KRAUT: Okay. Is that the only request?

18 COUNSEL HU: Our request is to revise, but if
19 procedurally that's too late then our alternative request
20 would be to add a citation which is missing.

21 ALOMAR: So either or? This is Commissioner
22 Alomar.

23 COUNSEL HU: Yes, that's correct.

24 VICE CHAIR KAMO: Okay. Thank you for that.
25 Commissioners, any other questions for ENV?

1 ALOMAR: Procedurally, is it possible to make that
2 change here if that is accurate?

3 COUNSEL AGAG: Okay. Just so we're clear.
4 You're saying for Finding of Fact 89, paragraph 89, what is
5 the reference?

6 COUNSEL HU: The reference that KOCA had cited
7 previously is to transcript from October 18th, 2023 of Dr.
8 Babcock, at page 50, rows 2-13.

9 COUNSEL AGAG: Do you have a copy of your slide
10 that you can give to me so I can--

11 [Counsel Hu walks over to Counsel Agag and hands
12 her a document]

13 On your slide, is this right here?

14 COUNSEL HU: Yes.

15 COUNSEL AGAG: Okay. Mr. Chipchase and Schnitzer,
16 are there any objections to the late addition of that change
17 to the current D&O that's currently set for adoption?

18 COUNSEL TAM-SUGIYAMA: Schnitzer has no objections
19 to either of the proposed versions.

20 COUNSEL CHIPCHASE: We would object to the
21 substantive change, of course. For the addition of the
22 cite, I have no objection provided that Counsel's
23 representation is accurate that, that is the citation that
24 we, in fact, made. If it is not, then I would object to it.
25 I haven't been able to verify it.

1 COUNSEL AGAG: Mr. Hu, at this time can you
2 confirm that cite is indeed what KOCA listed? Just confirm
3 for us so that--

4 COUNSEL HU: I'm confirming that the cite is on
5 page 3 of KOCA's--I'm sorry, I don't have the actual filed
6 copy, but of KOCA's filing called, "Written Comments on
7 Planning Commission's Draft Findings of Fact, Conclusions of
8 Law, Decision and Order, and I believe it's dated March
9 27th, and the cites to Dr. Babcock's October 18th, 2023,
10 trial transcript on page 3, which is the same paragraph that
11 they are suggesting to make the Finding, the current Finding
12 which is when the BWS No Pass Zone and Act 73 are applied as
13 restrictions, the potential landfill sites identified by ENV
14 are not viable, however, other sites including federal sites
15 remain possibilities under these conditions. So, the
16 citation is not behind that statement, but it's before that
17 statement. It might be easier if I show you.

18 COUNSEL CHIPCHASE: I appreciate Counsel's effort
19 to confirm. I was able to pull up the file, and I do agree
20 the way he has described the citation is accurate.

21 COUNSEL HU: Thank you.

22 COUNSEL AGAG: Okay. So, the way I see it the
23 Commission has to make a decision as to whether or not they
24 are going to make substantive changes, the substance of the
25 paragraph and/or add the reference, the transcript

1 reference. Obviously, this is a late submission, you could
2 get a challenge from KOCA if there is some changes, but it's
3 really up to you guys. Now, we can go into further
4 deliberation. We can talk about it out loud or you guys can
5 discuss amongst yourselves.

6 ALOMAR: Commissioner Alomar, but substantively in
7 terms of the facts, is anyone, does anyone asserting that
8 there are other sites that aren't Federal in terms of the
9 substance of the correction?

10 COUNSEL CHIPCHASE: Yes, yes, Commissioners. As
11 Dr. Babcock testified the City has the power of eminent
12 domain and that is one of the matters that they considered
13 and opted not to pursue it further. And so the availability
14 of sites is not limited to Federal sites, it's limited to
15 other sites that the City could condemn if it so choose.

16 KRAUT: Commissioner Kraut; yes, I agree, I agree.
17 So, Commissioner Kraut, I would move to include the
18 citation, but I would not agree to change the substance of
19 the comment.

20 VICE CHAIR KAMO: Commissioners, is there any
21 other discussion on this item? [no response] Anyone object
22 to including the citation for this line?

23 COUNSEL AGAG: So, the motion is going to be motion
24 to adopt the D&O as amended to include the citation to
25 paragraph 89.

1 VICE CHAIR KAMO: Thank you for that and thank you
2 for the discussion. Before we move on from that, I do have
3 a question for ENV.

4 Since our last meeting, there was public
5 announcement that potential for Federal site, a potential
6 Federal site that was on the table for a location of the
7 future landfill is not going to be approved by the Federal
8 government. Does that change your outlook as to finding a
9 new location by the December 31st, 2024 deadline?

10 COUNSEL HU: That's definitely a huge setback. It
11 changes my personal outlook. I haven't had the chance to
12 speak with ENV nor the Administration, so I'm not sure
13 what's their plans are currently, but is definitely a huge
14 setback, in my opinion.

15 VICE CHAIR KAMO: Understood.

16 And I know we have our future reporting dates where we're
17 going to have in-person updates as to the progress that ENV
18 is making towards finding a new location. For me in
19 particularly, personally, I would like to see some
20 clarification on what the next steps are, and if December
21 31st, 2024 is not a realistic deadline, not waiting until
22 the last minute to identify that as a concern and having
23 those transparent discussions earlier in the year.

24 COUNSEL HU: Understood. Thank you.

25 VICE CHAIR KAMO: Commissioners, any other

1 discussion or questions for ENV at this point in time before
2 we move to a vote? [no response] Hearing none, do we have
3 any motions to adopt the Findings of Fact, Conclusions of
4 Law, and Decision and Order at this point in time?

5 KIMURA: Commissioner Kimura, I'll make a motion
6 to adopt the Findings of Fact, Conclusions of Law, Decision
7 and Order--

8 VICE CHAIR KAMO: Including amendments--

9 KIMURA: --including the amendments just discussed
10 for the citation.

11 COUNSEL AGAG: And just to be clear, it's for
12 paragraph 89, and to include the reference to the Babcock's
13 transcript.

14 KIMURA: Yes.

15 VICE CHAIR KAMO: Great. Thank you.

16 Commissioners, do I have a second?

17 ALOMAR: Commissioner Alomar, second.

18 VICE CHAIR KAMO: Thank you. Commissioner Alomar
19 second. Any discussion, objections, or reservations? [no
20 response]

21 Okay. For this item, we will do a roll call vote.
22 We will start with Commissioner Alomar.

23 ALOMAR: Aye. Commissioner Alomar.

24 VICE CHAIR KAMO: Commissioner Kraut.

25 KRAUT: I accept.

1 VICE CHAIR KAMO: Commissioner May.

2 MAY: Aye.

3 VICE CHAIR KAMO: Commissioner Kimura.

4 KIMURA: Yes.

5 VICE CHAIR KAMO: And Vice Chair Kamo votes aye,
6 the motion carries. And that concludes this item on the
7 agenda.

8 Moving on to adjournment. Do I have a motion to
9 adjourn the Planning Commission May 15th, 2024 meeting.

10 KIMURA: Commissioner Kimura, I'll make a motion
11 to adjourn the May 15th, 2024 Planning Commission meeting.

12 VICE CHAIR KAMO: And do I have a second?

13 KRAUT: Commissioner Kraut, second.

14 VICE CHAIR KAMO: Thank you. Any discussion,
15 objections or reservations? [no response] Hearing none,
16 Chair votes aye, and the Planning Commission May 15th, 2024
17 meeting is adjourned. It now 2:01 p.m.

18 [Meeting adjourned]

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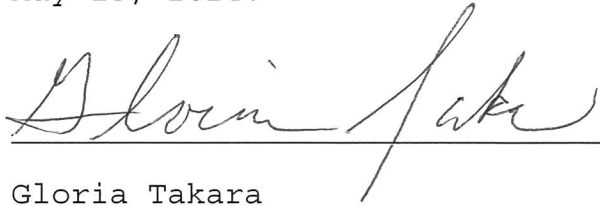
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1 I certify that the foregoing is
2 a true and correct transcription
3 of the proceedings, prepared to
4 the best of my ability, of the
5 meeting held on Wednesday,
6 May 15, 2024.

7 
8 _____

9 Gloria Takara
10 Secretary-Reporter
11 Planning Commission

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