

1                   BEFORE THE LAND USE COMMISSION  
2                   STATE OF HAWAII

3  
4                   May 18, 2016  
5                   Commencing at 9:30 a.m.

6                   State Office Tower  
7                   235 Beretania Street, Room #405  
8                   Honolulu, Hawaii 96813

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11    AGENDA

- 12    I        Call to Order
- 13    II       Adoption of Minutes.
- 14    III      Tentative Meeting Schedule
- 15    IV       Status Report and Appropriate Action, if any  
16              SP09-403 Department of Environmental Services,  
17              City and County of Honolulu (Waimanalo Gulch  
                Sanitary Landfill) O'ahu)
- 18    V        Discussion and Action, if Appropriate,  
              2016 Legislation Status Report
- 19    VI       Discussion and Action, if Appropriate,  
              Appointment of Hearings Officer for Land Use  
20    Commission Docket      No. A89-649 Lanai Resorts LLC
- 21    VII      Executive Session  
22              To consult with the Commissioner's Attorney  
23              regarding the Commission's duties, rights,  
                responsibilities and obligations with respect  
                to Land Use Commission personnel matters
- 24    VIII     Adjournment
- 25    BEFORE:   Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson  
3 ARNOLD WONG, Vice Chair

4 COMMISSIONERS:

5 NANCY CABRAL  
6 DAWN N.S. CHANG  
7 LINDA ESTES  
8 KENT HIRANAGA

9 DIANE ERICKSON, ESQ  
10 Deputy Attorney General

11 STAFF:

12 DANIEL ORODENKER, Executive Director  
13 RILEY HAKODA, Chief Clerk/Planner  
14 BERT SARUWATARI, Planner  
15 BRIANA BERNARDINO, Secretary

16 KAMILLA CHAN, ESQ.  
17 For Dept. Of Environmental Services

18 CALVERT CHIPCHASE, ESQ.  
19 For Ko Olina Community Association  
20 and Maile Shimabukuro

21 RICHARD N. WURDEMAN, ESQ.  
22 Attorney for Colleen Hanabusa

23 BRYAN YEE, ESQ.  
24 KATHRYN MINEO, Planner  
25 RODNEY FUNAKOSHI, Planner  
For Office of State Planning

1 CHAIRPERSON ACZON: Good morning.

2 This is the May 18, 2016 Land Use  
3 Commission Meeting.

4 Before I start I would like to introduce  
5 the newest member of the Commission, Ms. Dawn Chang  
6 joining us with vast experience on this docket. So I  
7 want to ask Ms. Chang to kind of introduce herself.

8 COMMISSIONER CHANG: Thank you very much.  
9 Aloha mai kakou. My name is Dawn Chang. Thank you  
10 very much, Chair.

11 It is with great pleasure and honor that  
12 I'm sitting on the Land Use Commission, and I hope to  
13 bring my experience as an asset to the Commission.  
14 So thank you very much.

15 CHAIRPERSON ACZON: Thank you.

16 The first order of business is adoption of  
17 April 20, 2016 minutes. Are there any corrections or  
18 comments? If not, is there a motion to adopt the  
19 minutes?

20 COMMISSIONER ESTES: So moved.

21 VICE CHAIR WONG: Second.

22 CHAIRPERSON ACZON: The motion has been  
23 made by Commissioner Estes and seconded by  
24 Commissioner Wong to adopt the minutes. All in favor  
25 say "aye", opposed?

1           The minutes are adopted unanimously.

2           The next item is the tentative meeting  
3     schedule.   Mr. Orodenker?

4           EXECUTIVE DIRECTOR:   Thank you, Mr. Chair.

5           Our next meeting is scheduled for June 8th  
6     and 9th on Maui, and that will be a workshop and  
7     training program for the Commissioners.

8           June 22nd and 23rd meeting is still open as  
9     is July 6th and 7th.

10          August 10th and 11th will be on Kaua'i,  
11     Kaua'i Island Charter School and Kaua'i Community  
12     College.

13          And August is open -- the rest of August is  
14     open.

15          The next meeting will be the HCPO-Poipu  
16     Grand Hyatt.   That's on Kaua'i September 21st and  
17     22nd.

18          CHAIRPERSON ACZON:   Thank you, Mr.  
19     Orodenker.   Commissioners, do you have any questions?

20          The next agenda item is a meeting on Docket  
21     No. SP09-403 Department of Environmental Services,  
22     City and County of Honolulu to receive a Status  
23     Update regarding this Special Use Permit that  
24     encompasses the approximately 107.5 acre Waimanalo  
25     Gulch Sanitary Landfill and an approximately 93.122

1 acre lateral expansion, Tax Map Key: 9-2-03, Lot 72  
2 and 73, and take appropriate action, if any.

3 Will the parties please identify themselves  
4 for the record?

5 MS. CHAN: Kamilla Chan, Deputy Corporation  
6 Counsel for Department of Environmental Services.

7 MR. CHIPCHASE: Cal Chipchase for the  
8 Intervenors Ko Olina Community Association and Maile  
9 Shimabukuro.

10 MR. YEE: Deputy Attorney General Bryan Yee  
11 on behalf of Office of State Planning.

12 COMMISSIONER CHANG: If I may make a  
13 disclosure. I did represent as a consultant for one  
14 of the employees in Waste Management in the criminal  
15 case before the U.S. District Court.

16 CHAIRPERSON ACZON: Parties, any  
17 objections?

18 MR. CHIPCHASE: No objection.

19 MR. YEE: No objection.

20 CHAIRPERSON ACZON: Thank you. Ms. Chan?

21 MS. CHAN: No.

22 CHAIRPERSON ACZON: Let me update the  
23 record.

24 On October 22nd, 2015, the Commission met  
25 and received a status report from the Department of

1 Environmental Services, City and County of Honolulu.  
2 The Commission considered the status report and the  
3 comments presented by the other Parties in this  
4 proceeding and received mandated reports from the  
5 Department of Environmental Services in November of  
6 2015 and January and March of 2016.

7 On May 10, 2016, the Commission mailed the  
8 Land Use Commission May 18th, 2016 Agenda notice to  
9 the Parties, the Statewide, and Oahu mailing lists.

10 For the members of the Public, please be  
11 reminded that the Commission will not be considering  
12 the merits of the Special Use Permit on No.  
13 2008/SUP-2 petition; rather, the County is to provide  
14 the Commission an update about the current state of  
15 the proceedings related to this Special Permit  
16 pending before the Honolulu Planning Commission.

17 Public Testimony in regards to this matter  
18 will be heard after the County has completed its  
19 report and the Commissioners have completed their  
20 questioning.

21 Let me go over the procedures for this  
22 docket.

23 First I will call for the County to provide  
24 its status update on this matter.

25 After the County's report and the questions

1 from the Commission, those individuals desiring to  
2 provide public testimony for the Commission's  
3 consideration will be asked to identify themselves  
4 and will be called in order to our witness box where  
5 they will be sworn in prior to their testimony.

6 After completion of the public testimony,  
7 the Intervenors will then be heard in the following  
8 order:

9 Intervenor Hanabusa, then Intervenor.  
10 Ko Olina Community Association and Senator Maile  
11 Shimabukuro.

12 The State Office of Planning will then be  
13 given the opportunity to comment.

14 The Commission will then ask any final  
15 questions it might have of the Parties.

16 The Chair would also note that from time to  
17 time I will be calling for short breaks.

18 Are there any questions on our procedure  
19 for today?

20 Applicant, Ms. Chan, please provide your  
21 status.

22 MS. CHAN: Thank you.

23 So back in October of 2015 representatives  
24 for Ko Olina Community Association (KOCA) and the  
25 City agreed that they would file a stipulation with

1 the Planning Commission. The parties at that time  
2 committed to an 18-month continuation of the  
3 negotiation and wanted to have the continuation of  
4 the negotiations and needed to work out specific  
5 objectives.

6 At that time the parties anticipated  
7 needing about two months to work out those  
8 objectives. And so in that time, the parties did  
9 work together.

10 I think it's fair to say that they put in  
11 pretty significant efforts to identify the various  
12 waste streams, and there are variations -- we were  
13 very diligent in going through those.

14 It did take a little bit longer than we  
15 anticipated, but we do have, as a result of that, an  
16 agreement in writing, a stipulation. And as of right  
17 now the City, KOCA, Senator Shimabukuro and Schnitzer  
18 Steel have all signed that agreement.

19 So that stipulation would continue the  
20 proceedings at the Planning Commission to April 22nd,  
21 2017. The only party that hasn't signed the  
22 stipulation at this time is Ms. Hanabusa. I have  
23 been in contact with her attorney, Mr. Wurdeman, and  
24 have forwarded a copy of that stipulation to him. He  
25 did leave me a voice mail message indicating that his



1 client was not in agreement with the stipulation.

2 (Richard Wurdeman present.)

3 So that's the only party that hasn't signed  
4 at this point in time.

5 So otherwise we're ready to file that at  
6 the Planning Commission, going forward, the City is  
7 continuing its commitment to work on the diversion of  
8 those waste streams and we remain optimistic that we  
9 can further negotiations during that period of time.

10 CHAIRPERSON ACZON: Commissioners, any  
11 questions for Ms. Chan? None.

12 Are there any individuals desiring to  
13 provide public testimony for this docket?

14 We are onto Mr. Wurdeman. Please identify  
15 yourself and proceed with your comments.

16 MR. WURDEMAN: Thank you.

17 Richard N. Wurdeman for Intervenor Colleen  
18 Hanabusa.

19 Way back in 2009, October 22nd, almost  
20 seven years ago, this matter came before the Land Use  
21 Commission. And one of the conditions at that time  
22 was, of course, taken up to the Hawaii Supreme Court  
23 by the City Environmental Services.

24 The Supreme Court noted that condition  
25 which, after July 31, 2012, only until that date

1 would municipal solid waste be allowed at the WGSL.  
2 That was sent up and contested by Environmental  
3 Services. The Supreme Court sent the case back down  
4 saying that was certainly a material condition.

5 And when it came back on remand, there was  
6 a condition that wasn't supported by the findings  
7 that were presented by the Land Use Commission at the  
8 time. And so when it came back down on remand,  
9 Intervenor Hanabusa objected to it being sent to the  
10 Planning Commission.

11 COURT REPORTER: I can't hear you.

12 MR. WURDEMAN: Just prior to the hearing,  
13 the Chair at the time of the Land Use Commission had  
14 written to the Planning Commission saying, hold on, I  
15 know there is a second proceeding that's ongoing, but  
16 we're going to send this record down that's coming  
17 back down from the Supreme Court. The Planning  
18 Commission wrote back. They said don't send it to  
19 us.

20 And so what happened is it did go down over  
21 our objections. And we initially agreed to  
22 continuance to see if there could be some kind of  
23 resolution. But this has certainly gone beyond a  
24 normal course of the continuance to see if there is  
25 some kind of reasonable resolution.

1           Way back in 2009 this Land Use Commission  
2    had also made it a requirement that the city use  
3    diligence in locating a new landfill.

4           And I think about, I don't know, roughly a  
5    year into the process they came out with a list that  
6    was subsequently changed on the site, they said there  
7    was a miscalculation.

8           But ever since that very preliminary  
9    initial step, we've heard absolutely nothing about  
10   what efforts the city has taken on locating any  
11   landfill.

12           And we would like to get that information  
13   from the city, where they are in the process.

14           And if the goal is to close the landfill  
15   down by early next year, and present a new landfill  
16   site, and my client is willing to agree to a  
17   continuance for that basis, but if the City has no  
18   intention of doing what this Land Use Commission  
19   wanted it to do way back in 2009, then Intervenor  
20   Hanabusa does have some issues with this matter to go  
21   on and on for an indefinite amount of time.

22           CHAIRPERSON ACZON: Commissioners, any  
23   questions for Mr. Wurdeman?

24           We'll move on to Mr. Chipchase for Ko Olina  
25   Community Association and Maile Shimabukuro.

1                   MR. CHIPCHASE: Thank you, Chair.

2                   I take no issue with virtually everything  
3   Mr. Wurdeman said in recounting the history. That's  
4   almost entirely correct.

5                   The question I think though is where do we  
6   go from here? And we have been in this as long as  
7   Ms. Hanabusa, and we have suffered the same  
8   frustrations and delays and challenges.

9                   And so I respect and appreciate everything  
10   that he said with respect to that, but where do we go  
11   from here? Right now the case sits with the Planning  
12   Commission on remand from this body for a  
13   consolidation of two matters.

14                  And we have been in discussion with the  
15   City now attempting to reach a stipulated resolution,  
16   a stipulated Findings of Facts, Conclusions of Law,  
17   Decision and Order presented to first to the Planning  
18   Commission and then to this body for three years and  
19   unable to do so.

20                  What we have achieved is the stipulation  
21   that we discussed at the Commission back in  
22   October 2015 when Ms. Chan summarized quite  
23   accurately. The intention of that stipulation was at  
24   the time to provide for an 18-month standing within a  
25   more structured framework than we had thus far been

1     able to achieve based around the waste streams and  
2     the City's intentions with respect to those waste  
3     streams.

4             In October we envisioned a stay lasting 18  
5     months from then. We're up to -- with three status  
6     reports, and we thought it would take us about two  
7     months to finalize the form of that stay.

8             It took about six months, seven months to  
9     finalize the form of that stay, but we didn't extend  
10    the end point of the stay, we kept that deadline set.

11            So we remain on track with respect to the  
12    overall arch of the stay, and the point that it was  
13    intended to accomplish. The only date that's changed  
14    in the entire stipulation is one status report from  
15    the City back a month from May to June. Otherwise,  
16    despite the length of time to negotiate the form of  
17    that stipulation, which has some substantive points,  
18    we stayed within that frame point.

19            On our side, we are committed to using that  
20    period to continue to negotiate a resolution. And it  
21    may not involve every party. Every party may not  
22    agree, but as many as possible reaching that  
23    conclusion before the Planning Commission to make  
24    recommendation and this body to make its decision.

25            We may come to the end of that period

1 without a resolution, and we may need to resume the  
2 hearing, and this body may need to make a decision on  
3 a contested argument, contested case. That's  
4 certainly possible.

5 But there is enough progress and enough  
6 hope there that I think it's worth another year,  
7 worth the time that we had committed to in October to  
8 see this through and see if we can get it done.

9 If we can, then that's the best answer for  
10 everyone. If we can, we are not materially worse off  
11 with that stay, in fact, we're better off, even if we  
12 don't reach a resolution, because in this time the  
13 City's committed to doing certain things.

14 And if the City is able to do those things,  
15 at least we have a more full record, at least we have  
16 more information before this body that you need to  
17 make a decision.

18 So with respect to everything that Mr.  
19 Wurdeman said in Ms. Hanabusa's position, we  
20 completely understand all of them. I believe that  
21 the right course remains to let this matter be stayed  
22 by the Planning Commission where its stayed either  
23 through the stipulation or through motion effectively  
24 informed by all but one party. And then see through  
25 the status reports how the City progresses and see

1       then where we are at the end of that period.

2                   CHAIRPERSON ACZON:  Commissioners, any  
3       questions for Mr. Chipchase?

4                   Mr. Yee, would you like to comment?

5                   MR. YEE:  Yes, thank you.

6                   I assume that the Commission has received  
7       some sort of status report about the progress and  
8       about this case, how it proceeded from start to  
9       finish.  But I do want to take a few minutes just to  
10      go over some of the highlights of that past history,  
11      because I know many of you were not personally  
12      present during some of these proceedings.

13                  I'm going to start back in 2009 where Mr.  
14      Wurdeman said was the date that the Land Use  
15      Commission reviewed the Special Permit that came up  
16      to you.  And at that point the Land Use Commission  
17      imposed a condition requiring that the landfill be  
18      closed by 2013.  It went up to the Supreme Court.  
19      The Supreme Court reversed, remanded basically saying  
20      there really wasn't enough information from the  
21      record to draw this conclusion, but the conditions  
22      that were set was so material to the case, that it  
23      was not prepared to simply reverse that one condition  
24      that affirmed the remainder of the approval.

25                  They sent the entire thing back to the Land

1     Use Commission to ask Commission, what do you want to  
2     do now? While that was proceeding, there was a  
3     Motion to Amend the sanitary landfill study or permit  
4     before the Planning Commission.

5             So for the very same permit that was on  
6     appeal to the Supreme Court there was also a Motion  
7     to Amend it before the Planning Commission. So there  
8     were two actions proceeding about the same permit all  
9     of which would have questioned or possibly changed  
10    the conditions of that permit.

11            So the Land Use Commission decided, I'm not  
12    going to do these things sequentially, I'm just going  
13    to send the Supreme Court the matter that we had  
14    already reviewed in October of 2009, and then send it  
15    back to the Planning Commission to consolidate the  
16    two matters, come up with a single decision, and send  
17    it back to Land Use Commission so they would have a  
18    single document, single record on which to base its  
19    decision. That was in 2012. In 2012 the Land Use  
20    Commission sent it back to the City.

21            In 2014 the Land Use Commission then issued  
22    an order saying, give me status reports every two  
23    months. Because, obviously at that point it had been  
24    awhile that anything had happened before the Land Use  
25    Commission. So the Land Use Commission wanted to



1 know why it's taking so long.

2 As Ms. Chan has stated, apparently there  
3 was a stipulation to continue the matter from the  
4 Planning Commission for 18 months, which then moved  
5 the matter to April 2017.

6 So one of the issues of whenever you remand  
7 something, it's a little bit out of your control,  
8 it's before the Planning Commission. They have got  
9 jurisdiction.

10 So while I understand Mr. Wurdeman's  
11 concern about how long it's been taking, to the  
12 extent, and if Senator Hanabusa agrees to the  
13 stipulation, that's the current status of the matter  
14 before the Planning Commission. And it's really not,  
15 I think -- while I understand the frustration, I  
16 don't know that it's a matter that the Land Use  
17 Commission can deal with, it's a matter the Planning  
18 Commission should deal with.

19 In other words, Mr. Wurdeman is concerned  
20 about that stipulation, he doesn't think it should be  
21 stayed that long. He thinks this matter should  
22 proceed, then those concerns need to be addressed at  
23 the Planning Commission, and tell the Planning  
24 Commission I know we entered into a stipulation, but  
25 here's the reasons why we need to proceed or this is

1       why we think something should go on differently.

2               I'm not going to say whether that's  
3       successful or not successful, all I'm trying to say  
4       is those issues, I think, are properly brought before  
5       the Planning Commission.

6               I will say that from the Office of  
7       Planing's point of view, our concern wasn't so much  
8       the end result. So we weren't necessarily saying we  
9       want the parties to have a particular result before  
10       the Planning Commission. What we wanted at this  
11       point in the process -- remember it was remanded back  
12       in 2012, so it's been three-and-a-half, almost four  
13       years since this matter was remanded to the Planning  
14       Commission. What we did want to know is, so what's  
15       going to happen when you forward this, as Mr.  
16       Chipchase was discussing.

17               To some extent, I think, if there is a  
18       stipulation to 2017, I'm not sure there is anything  
19       we can do at this point. That's a matter for the  
20       parties to deal with before the Planning Commission.  
21       I think at some point maybe closer in time to that,  
22       we would certainly want to know what's the likelihood  
23       of something going on. In other words, are you going  
24       to a contested case hearing? Have you reached a  
25       stipulation, a stipulation with some people, but the

1 rest -- you know, someone else is going to fight it  
2 out, certainly we would want to know that  
3 information.

4 But I don't know that there is anything to  
5 be done by the Land Use Commission at this point in  
6 time. So from the Office of Planning's perspective  
7 we appreciate those things you brought up. We  
8 understand, and to some extent share, frankly, the  
9 concern about how long it's taken to get back to us.  
10 But ultimately we are not aware of anything that the  
11 Land Use Commission can do that would speed up that  
12 process, and we defer to the Planning Commission as  
13 to how they proceed.

14 CHAIRPERSON ACZON: Commissioners, any  
15 questions for Mr. Yee?

16 COMMISSIONER CHANG: Bear with me. I'm a  
17 novice to this and not really familiar, but I'm  
18 trying to understand the process as well.

19 So at this point in time, all that's before  
20 us is a status report. I appreciate the summary of  
21 the historic -- some background on the case.

22 So perhaps this is a matter more to address  
23 to the City.

24 So what is the Planning Commission's  
25 position? Or will they be taking this matter back?

1 Or is this what the 18-month continuance is, is to  
2 give time to go back to the Planning Commission who  
3 will then make a determination on this matter before  
4 it comes back to LUC?

5 MS. CHAN: Yes. What we would be doing is  
6 filing, hopefully, the stipulation with the Planning  
7 Commission that would --

8 COURT REPORTER: Speak up, please.

9 COMMISSIONER CABRAL: Turn the volume up.

10 MS. CHAN: And in the meantime we were --  
11 at this point it would be for them to take up.

12 CHAIRPERSON ACZON: Any questions for Mr.  
13 Yee? Commissioner Wong.

14 VICE CHAIR WONG: Just all this information  
15 just brought up for the city.

16 Recently on the news I saw that -- or is  
17 it -- see if I'm wrong here.

18 I saw that they amended the Special Use  
19 Permit for Waimanalo Gulch, or something went through  
20 the neighborhood board for the Waimanalo Gulch?

21 MS. CHAN: Not that I'm aware of. Do you  
22 recall specifically --

23 VICE CHAIR WONG: I just was wondering.

24 The other thing that Mr. Wurdeman brought  
25 up was: So what is that status of the Blue Ribbon

1 Committee? I mean, just for our information, because  
2 there was a list that came out into the news, I  
3 remember, but then it just dropped like nothing  
4 happened. So just for my own edification.

5 MS. CHAN: At this point the City is  
6 working with that list of 11 sites. And I believe  
7 that that committee looked at it from a community  
8 aspect, but there is other things that need to be  
9 considered and evaluated, including infrastructure,  
10 structural need, environmental concerns, things like  
11 that. So that's what they're working on right now.

12 VICE CHAIR WONG: So the question, from  
13 what I gather from the information, it takes  
14 approximately seven years to start up a new landfill.

15 So does that mean when that site, the new  
16 site is found, Waimanalo Gulch would be open until  
17 that seven years; is that correct?

18 MS. CHAN: I believe seven years came up --  
19 and, of course, I apologize, I didn't handle the case  
20 prior to this year. I believe seven years came up in  
21 testimony as to how long it would take. I don't  
22 believe that's a hard and fast deadline of any sort.

23 But, yes, from the City's perspective, we  
24 continue to use Waimanalo Gulch until it's at  
25 capacity. And when it's moving towards capacity, we

1 would need to be concerned with ultimate sites. I'm  
2 not saying we are waiting until at capacity, but for  
3 the time being there is capacity at Waimanalo Gulch.

4 VICE CHAIR WONG: Mr. Yee, we received an  
5 agreement from the Supreme Court, and we pretty much  
6 said, Planning Commission, do your thing.

7 MR. YEE: Yes.

8 VICE CHAIR WONG: I mean pretty much.

9 What occurs for us if the Planning  
10 Commission punts or don't do anything, you know,  
11 after? So what is our involvement?

12 MR. YEE: Well, if the Planning Commission  
13 does nothing, at some point the City is going to be  
14 faced with the question of, they have a Special  
15 Permit that was approved by the Planning Commission,  
16 it went up to the Land Use Commission whose approval  
17 was based upon a condition that may or may not be a  
18 material element of their approval, and for which the  
19 Land Use Commission approval was then reversed.

20 The City is proceeding on a theory that  
21 they are nevertheless allowed to continue to operate  
22 the landfill despite the lack of the LUC's approval.  
23 And I know that at least they said that during the  
24 hearings. They didn't go into the analysis of why  
25 that would be true. But I would think at some point

1 the City might have to be faced with that question if  
2 push came to shove.

3 But having given that one caveat, there's  
4 going to be very little, I think, the Planning  
5 Commission will do. Obviously they'll send  
6 communications to the Planning Commission. But, for  
7 example, let's suppose a special permit has been  
8 taken out of the Waimanalo Gulch. A Special Permit  
9 goes to the County Planning Commission. The Planning  
10 Commission denies the permit or doesn't act on the  
11 permit, there is absolutely nothing for the LUC to  
12 do. It has no power to pull it up. It has no  
13 ability to require the Planning Commission to do  
14 something. If the Planning Commission denies it --  
15 there are limited powers, I think (unintelligible) --  
16 there is a case where some jurisdictional parties to  
17 provide information.

18 If I may, I will note, it might be helpful  
19 for the Land Use Commission to receive a copy of that  
20 18-month continuance, the stipulation, signed by the  
21 Planning Commission, because the status reports that  
22 are being provided to you are intending to tell you  
23 here's what's going on.

24 And I don't believe that document was ever  
25 submitted, at least I don't see it, in part because

1 the status reports, they are very similar, every two  
2 months. So I think it would be helpful in executing  
3 for the City to perhaps attach to their next status  
4 report because a lot of what they're doing down below  
5 is quite frankly dealing with substance of a larger  
6 question.

7 And I understand that's related to the  
8 Special Permit. But at some point, you know, that  
9 document has been -- you know, the Land Use  
10 Commission wants to know what's going on with the  
11 document. Even if you don't solve the problem, we  
12 would like to know what about the permit about the  
13 sanitary landfill is continuing.

14 VICE CHAIR WONG: Chipchase, do you know  
15 what I'm going to ask?

16 MR. CHIPCHASE: I don't intend to be a mind  
17 reader, but I did before we went too far down the  
18 road, I did want to correct one thing.

19 The stipulation hasn't been filed with the  
20 Planning Commission yet, and Mr. Wurdeman has not  
21 signed it. I understand he's not intending to sign  
22 it, though I don't mean to speak for him.

23 The reason you haven't seen it is, if I'm  
24 accurate, Ms. Chan, we finalized it within the last  
25 two weeks, ten days, something like that.



1 MS. CHAN: That's correct.

2 MR. CHIPCHASE: It is only now recently in  
3 a form acceptable to the City and Ko Olina. So the  
4 next step would be if Mr. Wurdeman signed it on  
5 behalf of his client is agreeable to the State to  
6 present it to the Planning Commission for adoption.

7 At that point I would think that it  
8 certainly be in a form that should be transmitted to  
9 LUC and to the Office of Planning.

10 If Mr. Wurdeman doesn't sign it, then the  
11 stipulation, by itself, won't accomplish the stay  
12 because you have a party that doesn't agree. And it  
13 will take a motion that I expect will go much longer,  
14 and the Planning Commission will have to make a  
15 decision.

16 I want to make sure everyone understood  
17 that that's the status of the stipulation.

18 If I may pick on just one tiny point,  
19 although this could be a big deal.

20 For the seven-year duration to develop a  
21 landfill is actually hotly contested. We believe  
22 that the time is more like three to five years.

23 VICE CHAIR WONG: So I guess the question  
24 for any of the parties is: Let's say Mr. Wurdeman  
25 doesn't sign the stipulation, then everything is

1     pretty much thrown out the window and Planning  
2     Commission doesn't have anything to work on. So what  
3     is next for us? I mean in terms of -- we still have  
4     agreement with the Supreme Court so, you know, we  
5     should do something about this remand, if not, we're  
6     kind of coming nose to nose with the Supreme Court.

7             MR. YEE: I agree in terms of the dilemma  
8     you're in. I thank Mr. Chipchase for the correction.  
9     I was proceeding under the assumption there was an  
10    agreement by the parties for an 18-month continuance.  
11    That's what I understood before. I apologize if I  
12    misunderstood.

13            But if there is not an agreement for an  
14    18-month continuance, and given the fact that I've  
15    heard Mr. Wurdeman talk about how concerned he is  
16    with the lack of progress on this, I am now more  
17    concerned that there's not going to be a stipulation  
18    among all parties to an 18-month continuance. Then I  
19    would expect parties to go before the Planning  
20    Commission and sort this out and, you know, and let  
21    us know.

22            There's still -- you're still stuck in a  
23    way. I don't know that you can put it back, I don't  
24    know that. I would be -- you can try, but I would be  
25    concerned if you try to rescind your remand of it,

1     you've sort of already done it. And so to some  
2     extent you're sort of stuck at the discretion of the  
3     Planning Commission.

4             I will say normally it's not an issue  
5     because obviously governmental bodies, City and State  
6     work very hard to do their job. So to some extent  
7     I'm still prepared to -- to some extent, I'm prepared  
8     to, nevertheless, still trust in the Planning  
9     Commission that they are going to make a reasonable  
10    decision about the progress of this case.

11            I am more concerned now, frankly, that  
12    there is not a full stipulation as to how long it  
13    takes since 2012 when this got remanded, that there  
14    is still -- I mean there seems to be a dim light at  
15    the end of the tunnel, but I would like to see  
16    progress being made on making it clear on what's  
17    going to happen.

18            So at this point, I nevertheless hold to my  
19    original position that there is very little for you  
20    to do. But there is more things that will needed  
21    from the City in a similar time frame that I had  
22    originally envisioned. I had envisioned, frankly,  
23    that there was going to be very little to do, but it  
24    sounds like now some matters will be brought before  
25    the Planning Commission, going to have to be brought

1     within months, if anything. It would have been  
2     better if the parties could have made it clearer what  
3     each was going to do about it. But if they don't,  
4     they don't. That's all the information you have. So  
5     the status report -- and at some point reschedule and  
6     discuss.

7                 VICE CHAIR WONG: A question for the City.

8                 So let's say the stipulation for 18 months.  
9     What if the Special Use Permit, existing one,  
10    whatever one there is, ends or expires? Or the  
11    Special Use Permit working on right now, when does it  
12    expire?

13                MS. CHAN: Just one second.

14                MR. YEE: I don't think there was an  
15    expiration date on the original. That was the  
16    subject of -- there's a difference of opinion, I  
17    believe, on the Planning Commission. I was saying I  
18    think the original special permit came before the  
19    Land Use Commission and did not have an end date,  
20    that was the subject of disagreement. It was allowed  
21    to continue until they ran that case.

22                MS. CHAN: That was my understanding as  
23    well.

24                VICE CHAIR WONG: So the question was two  
25    Special Use Permits, correct, or is that --

1 MR. CHIPCHASE: Only one.

2 MS. CHAN: There is a second proceeding,  
3 the one that was remanded by the Supreme Court, that  
4 was the initial application. And while the City was  
5 waiting for the Supreme Court to make a decision on  
6 that, there was some uncertainty as to when that  
7 decision would come down.

8 So the City filed a second application to  
9 essentially deal with that Condition No. 14, the  
10 deadline for closure.

11 And so that's what was still before the  
12 Planning Commission at the time that the Supreme  
13 Court decision was made -- and the Land Use  
14 Commission --

15 VICE CHAIR WONG: So there was no  
16 geographical -- I mean, the size to keep the  
17 Waimanalo Gulch open until it's to capacity, correct?

18 MS. CHAN: The issue that was before the  
19 Supreme Court was the deadline of July 31st of 2012  
20 and the thing that the Supreme Court struck.

21 MR. WURDEMAN: The Supreme Court made it  
22 clear that it was very obvious to them that that was  
23 a material condition of the Land Use Commission  
24 approval, and that's why they sent it back down.

25 The second proceeding was modification that

1 the City has talked about, that was never ruled on by  
2 the Planning Commission. They had finished all the  
3 proceedings, but before they ruled on it, or made a  
4 final decision on it, the Supreme Court ruled and the  
5 case came down.

6 So that second, that modification that the  
7 City is talking about, second proceeding, that -- by  
8 the way, Intervenor was not a party to, only a party  
9 to the original proceedings. That has never been  
10 ruled on by the Planning Commission.

11 The first case from the Supreme Court came  
12 back down, it was remanded by LUC over our  
13 objections, and so it just sat there ever since.

14 Whether the Planning Commission ever  
15 decides to rule on that the modification, that second  
16 proceeding or not, or whether there is a pending  
17 motion that was filed about three years ago to  
18 consolidate, that still hasn't been ruled on either.

19 But you're absolutely correct, we have no  
20 idea whether the Planning Commission will ever do  
21 anything. And they initially wrote to the Chair, as  
22 I indicated earlier, of the Land Use Commission at  
23 the time, that they didn't intend to do anything and  
24 not to send it back down.

25 So in answer to the other question that you

1     raised about the current status of the Special Use  
2     Permit. I mean, it's our position that there is no  
3     valid Special Use Permit in effect for the City to  
4     run the Waimanalo Gulch landfill at this time.

5             CHAIRPERSON ACZON: I have a question for  
6     Mr. Wurdeman. I know you weren't here at the last  
7     hearing we had where the parties talk about the  
8     stipulation and existing one, have you reviewed that?

9             MR. WURDEMAN: Yes.

10            CHAIRPERSON ACZON: So your position is  
11     that the parties came --

12            MR. WURDEMAN: Well, we haven't  
13     participated and our position has always been to  
14     close the landfill.

15            As I commented on earlier, I think that if  
16     there was some concrete closure date from the City to  
17     add to its proposal, then that's something we  
18     certainly would review. But my concern is that  
19     they're not really taking that search very seriously  
20     that the Land Use Commission wanted it to take seven  
21     years ago.

22            And other than the comments that Ms. Chang  
23     offered this morning, and the initial Blue Ribbon  
24     Committee findings of a list, we have no other  
25     information other than that. And that's pretty

1       problematic.

2                   CHAIRPERSON ACZON:   So your position is  
3       close the landfill on that property?

4                   MR. WURDEMAN:   That's also consistent with  
5       what the Land Use Commission back in 2009 was trying  
6       to do with the 2012 deadline that it set that the  
7       Supreme Court vacated by giving or ordering the City  
8       to exercise diligence in looking for alternative  
9       sites.

10                   And like I said, if the City can offer  
11       us -- hold the City to the fire here, the City can  
12       give us a date in February of next year we're going  
13       to close the landfill, and we're going to continue to  
14       do all these other items, then that's something  
15       certainly that we will look at.

16                   But I think it's also difficult to agree or  
17       agree to stipulations when it's pretty clear to us  
18       that the City continues to operate without a valid  
19       approved Special Use Permit to run the Waimanalo  
20       Gulch sanitary landfill.

21                   CHAIRPERSON ACZON:   For me I want to --  
22       don't want to waste everybody's time, and at the end  
23       of the day, we not going to do anything because one  
24       party is not approving.

25                   Is Mr. Wurdeman's conditions being part of



1 discussion, or with the City and the other parties?

2 MS. CHAN: Specifically the remainder --

3 CHAIRPERSON ACZON: The closure.

4 MS. CHANG: We haven't really discussed  
5 that. And to be clear, the City's position is that  
6 we continue to operate under that 2009 Special Use  
7 Permit, but for the deadline that was struck by  
8 Supreme Court. The City continues to evaluate not  
9 just the sites on that list, the 11 sites, but also  
10 the longevity of this particular landfill.

11 It's an on-going process, you know. As we  
12 continue to divert waste, that does extend the life  
13 of the landfill. That is something we continue to  
14 look at.

15 CHAIRPERSON ACZON: Commissioner Cabral.

16 COMMISSIONER CABRAL: I'm trying to track  
17 on this. Certainly it's multifaceted, to say the  
18 least.

19 I wanted to get clarification, if I could.  
20 Now, since October you folks have been in meeting and  
21 trying to negotiate, and you came up with an  
22 agreement that all the parties except attorney  
23 Wurdeman has agreed to.

24 Mr. Wurdeman, did I hear you correctly that  
25 you said you folks did not participate in those

1 discussions, or were you a party to the meetings?

2 MR. WURDEMAN: We have not participated in  
3 the ongoing discussions. There was a draft of a  
4 stipulation that was sent to us I think at the end of  
5 December that was subsequently modified. But other  
6 than that, we haven't actually participated and sat  
7 down with the City and talked about possible  
8 solutions and stipulations and those types of things.

9 COMMISSIONER CABRAL: So the people  
10 involved with this work in this last six, seven  
11 months has been the City, the Association, Homeowners  
12 Association, the Planning Department?

13 MS. CHAN: Let me clarify that. I  
14 apologize, it was really Mr. Chipchase and the City.  
15 Mr. Chipchase represents both KOCA, the community  
16 association, as well as Senator Shimabukuro.

17 So we were in the lengthy discussions  
18 regarding the contents of that stipulation.

19 And we reached out to Mr. Wurdeman the end  
20 of last year as it was being drafted, and more  
21 recently as we were fine-tuning it, we also sent it  
22 over to him for review and comment.

23 COMMISSIONER CABRAL: Okay. Thank you very  
24 much.

25 CHAIRPERSON ACZON: I'll entertain a

1 motion. Commissioner Wong.

2 VICE CHAIR WONG: I would like to make a  
3 motion to go into executive session to consult with  
4 the Board's attorney on questions, Commission's  
5 duties, to support the powers, dealings, privileges,  
6 and immunities and liabilities.

7 CHAIRPERSON ACZON: Any questions?

8 COMMISSIONER CHANG: Before we go into  
9 executive session, can I ask a question? I think it  
10 would be relevant.

11 CHAIRPERSON ACZON: Go ahead.

12 COMMISSIONER CHANG: The question I have is  
13 the stipulation that the parties, at least Mr.  
14 Chipchase and Ms. Chan have entered into or  
15 entertaining, does it comprehensively resolve the  
16 issues, so that the Land Use Commission, should the  
17 matter come back to the Land Use Commission to  
18 resolve the remand, is there an adequate  
19 administrative record that will come back to Land Use  
20 Commission? So is your stipulation resolving all of  
21 the issues that the Supreme Court remanded back to  
22 Land Use Commission?

23 MR. CHIPCHASE: No. The purpose of the  
24 stipulation is really to create a framework through  
25 which the parties can continue discussions.

1           The second point is putting an end date to  
2     those discussions so they don't drag on forever. We  
3     will give ourselves this much more time to try to  
4     reach a resolution, if we can, as we sit here today,  
5     that's the end. Which is why, even though it took so  
6     long to finalize the stipulation, we didn't extend  
7     the end of the stay.

8           MS. CHAN: The parties are committed to  
9     that time frame, and I believe Mr. Chipchase  
10    mentioned earlier, I think it does provide us with  
11    more guidance than we had in the past.

12          COMMISSIONER CHANG: But the stay doesn't  
13    resolve all the issues. So even if you had a  
14    18-month stay, at the end of that stay, assuming the  
15    best case to resolve whatever issues you've  
16    identified, it will still not resolve the underlying  
17    issues that the Land Use Commission has to ultimately  
18    resolve?

19          MS. CHAN: I don't want to speak for KOCA.  
20    From the City's perspective we are hoping we can have  
21    things we put out in the stipulation. Of course  
22    there are no guarantees, as Mr. Chipchase mentioned  
23    earlier. But that is what we're working towards.

24          MR. CHIPCHASE: That is what we are working  
25    for. If the parties were able to reach an agreement

1 or some of them, it wouldn't be a stay, it would be a  
2 stipulated Findings of Fact, Conclusions of Law and  
3 Decision and Order presented to the Planning  
4 Commission for their decision, and then  
5 recommendation to this body that would ultimately  
6 make the decision.

7 We did spend some time trying to work on  
8 that product rather than stipulation starting way  
9 back in 2013. We weren't able to get there. One of  
10 the biggest issues was the closure deadline. You've  
11 seen a marked difference of opinion on when that  
12 would close. Our position has always been it should  
13 close as soon as possible. Ms. Hanabusa's position  
14 has been the same. The City's position has been it  
15 should remain open until capacity.

16 We were unable to bridge that issue in the  
17 discussions regarding Findings of Fact, Conclusions  
18 of Law and Decision and Order, and other issues. I  
19 don't mean to say that was the only thing, but that  
20 was a big hurdle for the parties.

21 And so rather than trying to tackle the  
22 entire -- or trying to crack the entire issue, what  
23 we were able to do is agree on a stipulation, a more  
24 limited document, no question about it, that simply  
25 stay the proceedings so that we can continue those

1 more substantive and difficult discussions, both in a  
2 framework that at least sets out diversionary goals  
3 for the City and certain benchmark that we're trying  
4 to achieve.

5 So at the end of that 18 months, April  
6 2017, we have a shot at a stipulated findings that  
7 involves some or more of the parties. If we don't  
8 achieve that, at least we have a more fully developed  
9 record that this body will have to rule on.

10 As Mr. Wurdeman had mentioned, in the  
11 amendment proceedings, the proceedings that went to  
12 the Planning Commission to amend the Special Use  
13 Permit while the Supreme Court case is pending, those  
14 have been completed.

15 We got to a point of submitting Findings of  
16 Facts, Conclusions of Law for the Planning Commission  
17 to rule on. We were done. We were a day or two away  
18 from the Planning Commission's decision-making on  
19 those findings.

20 So there is a fully-developed record on  
21 many of -- I would say all of the issues that the  
22 Supreme Court wanted clarification on, and a more  
23 fully developed record for sitting with the Planning  
24 Commission, which is a big part of why this body  
25 remanded to the Planning Commission the Supreme Court

1     portion of the case so that those could be  
2     consolidated and this body would have the benefit of  
3     a fully developed and comprehensive record on those  
4     issues.

5                 COMMISSIONER CHANG:   One final question.

6                 Mr. Wurdeman, if you do not sign the  
7     stipulation, what's the recourse?  Do you go back to  
8     the Planning Commission and ask for a hearing?

9                 MR. WURDEMAN:   Well, I mean, again, it's --  
10    outside of the short continuance back in February of  
11    2013, we have never agreed to these an extended --  
12    this extended process.

13                I contacted, at one point, the Planning  
14    Commission counsel just to get an idea if there is  
15    ever going to be a scheduling.  And that was at least  
16    a couple few years ago, and he's now retired.

17                But, you know, there didn't seem to be any  
18    motivation on their part to really move forward at  
19    all.  And I think maybe in line with the City's  
20    position that they like to try to work out some kind  
21    of resolution.  But in any event, I'm not sure what  
22    the answer is to your question.

23                CHAIRPERSON ACZON:   There was a motion from  
24    Commissioner Wong to go into executive session.

25                Is there a second?

1 COMMISSIONER CHANG: Second.

2 CHAIRPERSON ACZON: Moved and seconded.

3 Those in favor say "aye", opposed? Motion carries.

4 (Executive session.)

5 CHAIRPERSON ACZON: We're back on the  
6 record.

7 Commissioners, do you have any other final,  
8 final, final comments, questions for the parties?

9 COMMISSIONER CHANG: I just want to share,  
10 I guess my -- I would like to be optimistic as you  
11 are here, but my concern is that we're going to be  
12 back here in 18 months and no closer to an ultimate  
13 resolution. So I would urge the parties, either  
14 finding a stipulation where you can agree; if not,  
15 find a way to quickly get this before the Planning  
16 Commission for resolution so that we can deal with  
17 our remanded issue.

18 I would urge the parties to try to find a  
19 way to resolve this as quickly as possible. Thank  
20 you.

21 VICE CHAIR WONG: Just for the City.

22 I know it was asked. Once the stipulation  
23 is finalized, can we get a copy of it?

24 MS. CHAN: Oh, yes.

25 CHAIRPERSON ACZON: Anybody else?



1           Commissioners, this is a status report. We  
2   are not required to take any action at this time. If  
3   no action is taken, the requirement of continued  
4   status reports will remain and this docket will  
5   remain open.

6           Commissioners, are there any further  
7   discussion?

8           Commissioner Wong.

9           VICE CHAIR WONG: Just wanted to make a  
10   motion right now for our Executive Director and legal  
11   counsel to work on some sort of letter to the City  
12   regarding what is the status, what's happening, and  
13   everything else for our edification.

14          COMMISSIONER CHANG: I'll second the  
15   motion.

16          CHAIRPERSON ACZON: Motion by Commissioner  
17   Wong, seconded by Commissioner Chang.

18          Any further discussion? Hearing none, Mr.  
19   Orodenker, can you poll the Commission?

20          VICE CHAIR WONG: The motion is for the  
21   Executive Officer and Deputy Attorney General to  
22   draft a letter to the County explaining our  
23   understanding of the status and the Land Use  
24   Commission's position on what that status is.

25          Commissioner Wong?

1                   VICE CHAIR WONG:   Yes.

2                   EXECUTIVE DIRECTOR:   Commissioner Chang?

3                   COMMISSIONER CHANG:   Yes.

4                   EXECUTIVE DIRECTOR:   Commissioner Mahi is

5   absent.   Commissioner Scheuer is absent.

6                   Commissioner Hiranaga?

7                   COMMISSIONER HIRANAGA:   Aye.

8                   EXECUTIVE DIRECTOR:   Commissioner Cabral?

9                   COMMISSIONER CABRAL:   Yes.

10                  EXECUTIVE DIRECTOR:   Commissioner Estes?

11                  COMMISSIONER ESTES:   Yes.

12                  EXECUTIVE DIRECTOR:   Chair Aczon?

13                  CHAIRPERSON ACZON:   Yes.

14                  EXECUTIVE DIRECTOR:   Thank you.   Mr. Chair,

15   the motion carries unanimously.

16                  CHAIRPERSON ACZON:   The next agenda item is

17   discussion and action, if appropriate, on the Land

18   Use Commission 2016 Legislative Report.

19                  Mr. Orodenker?

20                  EXECUTIVE DIRECTOR:   Thank you, Mr. Chair.

21   All of the bills that were associated with the

22   expansion of the LUC's powers of enforcement died.

23                  The final Bill 2617 died in committee,

24   House Bill 2617, so those are off the table.

25                  There was one bill that did pass, now that

1 session is over, that did pass that impacts the Land  
2 Use Commission is House Bill 1581 related to the  
3 proceedings. You may have seen some information on  
4 that in the newspaper, it became Act 48. Basically  
5 what it allows is that if there is a decision by Land  
6 Use Commission, regard to appeal the record to the  
7 Supreme Court and does not have to go through the  
8 circuit court with certain exceptions.

9 It doesn't have a major impact on our  
10 proceedings. I think it will speed things up. The  
11 only impact that it may have is that if the Supreme  
12 Court remands the proceedings back to the Land Use  
13 Commission.

14 It also supports appointing -- it may  
15 appoint a master to oversee or watch over the  
16 proceedings.

17 I don't think that that's problematic,  
18 since we always try to do things right any way, and  
19 having a master may lessen the likelihood of a second  
20 appeal. It does make staff a little bit nervous but  
21 not a major impact for us.

22 Not sure it would impact anything right  
23 now. We don't have anything coming before the  
24 Supreme Court. And other than that, thank God,  
25 session is over.

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CERTIFICATE

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HONOLULU )

I, JEAN MARIE McMANUS, do hereby certify:

That on May 18th, 2016 at 9:30 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 18th day of May, 2016, in Honolulu,  
Hawaii.

  
\_\_\_\_\_  
JEAN MARIE McMANUS, CSR #156