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

In the Matter of the) File No. 2008/SUP-2
Application of)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
1) For a New Special Use Permit)
to Supersede Existing Special)
Use Permit to Allow a 92.5-Acre)
Expansion and Time Extension)
for Waimanalo Gulch Sanitary)
Landfill, Waimanalo Gulch, Oahu,)
Hawaii, Tax Map No.)
(1) 9-2-03: 72 and 73,)
)
2) 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 21, 2012.")
_____)

CONTINUED - CONTESTED CASE HEARING

Ewa-Special Use Permit Amendment Application -
2008/SUP-2 (RY), Waimanalo Gulch Sanitary Landfill

PC18

1 Taken at Mission Memorial Conference Room,
2 Mission Memorial Building, 550 South King Street, Honolulu,
3 Hawaii, 96813, commencing at 1:33 p.m., on Thursday,
4 February 28, 2019, pursuant to Notice.

5
6 APPEARANCES:

7 Planning Commissioners present:

8 Cord D. Anderson, Vice Chair

9 Theresia C. McMurdo

10 Ken K. Hayashida

11 Gifford K. F. Chang

12 Donald W. Y. Goo

13 [temporary appointee]

14
15 Planning Commissioners recused:

16 Arthur B. Tolentino

17 [prior notice given]

18 Steven S. C. Lim

19 [prior notice given]

20 Wilfred A. Chang, Jr.

21 [prior notice given]

22 Arthur D. challacombe

23 [prior notice given]

24 9th member - vacant

25

1 Deputy Corporation Counsel:

2 Rozelle A. Agag

3 [Advisory to the Commission]

4

5 Planning Commission staff:

6 Gloria Takara,

7 Secretary-Hearings Reporter

8

9 For the City and County of Honolulu, Department of

10 Environmental Services:

11 Kamilla C. K. Chan, Esq.

12 Deputy Corporation Counsel

13 City and County of Honolulu

14 530 South King Street, Room 110

15 Honolulu, Hawaii 96813

16

17 For Intervenors Ko Olina Community Association and Senator

18 Maile Shimabukuro:

19 Calvert G. Chipchase, Esq.

20 Christopher T. Goodin, Esq.

21 Cades Schutte LLP

22 1000 Bishop Street, Suite 1200

23 Honolulu, Hawaii 96813

24

25

1 For Intervenor Schnitzer Steel Hawaii Corp.:

2 Ian L. Sandison, Esq.

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4 First Hawaiian Center

5 999 Bishop Street, Suite 1250

6 Honolulu, Hawaii 96813

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8 For Intervenor Colleen Hanabusa:

9 Richard N. Wurdeman, Esq.

10 1003 Bishop Street, Suite 720

11 Honolulu, Hawaii 96813

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P R O C E E D I N G S

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3 VICE CHAIR ANDERSON: Call the meeting of the
4 Planning Commission to order. [bangs gavel] Welcome.
5 Thank you folks for finally making it on the docket. I know
6 this was delayed, gosh, almost a year. So, appreciate
7 everyone's time and efforts going into today. I want to
8 take a special thanks to Gloria and DPP staff for setting
9 up and putting this on the agenda. And also to Commissioner
10 Goo for volunteering his time for the Waimanalo Gulch
11 Sanitary Landfill proceedings.

12 First item up on the agenda today is approval of
13 minutes from the March 7th, 2018 meeting. We may not have a
14 quorum for decision making on this today. So, we will be
15 taking no action at this time on the meeting.

16 COUNSEL AGAG: You can continue it to the next
17 available meeting; reschedule it at the next meeting.

18 VICE CHAIR ANDERSON: Okay. We're going to push
19 this off to the next meeting when we have a quorum. The
20 next Planning Commission hearing when we have quorum.

21 Okay. Second item on the agenda. We're all here
22 for continued from March 7th 2018 and rescheduled from April
23 4th, 2018 contested case hearing regarding the Ewa State
24 Special Use Permit amendment application 2008/SUP-2,
25 Waimanalo Gulch Sanitary Landfill. To request in front of

1 us today include 1) for a new special use permit to
2 supersede existing special use permit to allow a 9.25-acre
3 expansion and time extension for Waiamanalo Gulch Sanitary
4 Landfill, and 2) to delete Condition 14 of the Special Use
5 Permit No. 2008/SUP-2 which states as follows: "Condition
6 14. Municipal solid waste shall be allowed at the WGS� up to
7 July 31st, 2012, provided that only ash and residue from
8 H-POWER shall be allowed at the WGS� after July 31st, 2012."

9 Couple notes today. If you don't mind, we're
10 going to try to limit it to each party for a 30-minute
11 presentation.

12 Housekeeping matter. Ideally, I have a little
13 daughter to pickup this afternoon and a flight to catch.
14 So, if we can finish by 5 o'clock today that would be
15 appreciated. Hopefully we get to the point of decision
16 making. If not, we have to continue it and before everyone
17 leave we'll work with Gloria to get it on everyone's
18 calendar.

19 Prior to commencing into any further discussion,
20 it's required that all Planning Commissioners present today
21 can attest that we have reviewed the documents and the
22 transcripts to the proceedings in this matter, and that we
23 have received, studied, examined and understood the evidence
24 and the entire record from both the 2008 and 2011
25 application proceedings.

1 I'm going to go around to each Commissioner and
2 confirm that each of us can attest to just that.
3 Commissioner Chang.

4 MEMBER G. CHANG: Yes.

5 VICE CHAIR ANDERSON: Commissioner McMurdo.

6 MEMBER McMURDO: Yes.

7 VICE CHAIR ANDERSON: Commissioner Goo.

8 MEMBER GOO: Yes.

9 VICE CHAIR ANDERSON: Commissioner Hayashida.

10 MEMBER HAYASHIDA: Yes.

11 VICE CHAIR ANDERSON: And myself as well. Yes.

12 Up next for action today there are three items.
13 We're going to group items 2 and 3 together, and we're going
14 to take action Item No. 1 right now. Stipulation allowing
15 an extra day to file Intervenors Ko Olina Community
16 Association and Maile Shimabukuro's exceptions to Planning
17 Commission's January 15, 2019, proposed Findings of Fact,
18 Conclusions of Law, and Decision and Order. I believe
19 that's a non-issue at this point. I think we're okay with
20 the one day issue there. Any discussion there? [no
21 response] Okay. So, we'll take no action on that matter.

22 For the final two. Each party today will present,
23 and ask a favor that each of you present up to 30 minutes
24 and combine action items 2 and 3 today in your presentation.
25 At that time we will discuss and take decision making on

1 each of those separately, but for the presentation purposes
2 and just for time, I'd ask that you present both of them
3 together. So the next--the two action items are Intervenors
4 Ko Olina Community Association and Maile Shimabukuro's
5 motion to reopen the contested case hearing. And the third,
6 adoption of proposed Findings of Fact, Conclusions of Law,
7 and Decision of Order. We'll turn over to the applicant,
8 Department of Environmental Services first for presentation.
9 I appreciate, and thank you for the long winded introduction
10 and everything.

11 MS. CHAN: Thank you. Kamilla Chan for the City
12 and County of Honolulu, the applicant in this matter. May I
13 proceed?

14 VICE CHAIR ANDERSON: Yes, go ahead.

15 MS. CHAN: Okay.

16 MR. WURDEMAN: Excuse me. Before she proceed, I
17 thought we're just making our appearances. But if I could
18 before we start with the Department of Environmental
19 Services representative, I'd like to object--

20 VICE CHAIR ANDERSON: Real quick, Mr. Wurdeman--

21 MR. WURDEMAN: Richard Wurdeman for Intervenor
22 Colleen Hanabusa. Thank you. I'd like to object to--And it
23 wouldn't apply to Mr. Goo as this is obviously his first
24 month or so of serving on the Commission, but with all due
25 respect to the other remaining board members here, I'd

1 object to your participation in this proceeding at this
2 point because you have already prejudged this matter back on
3 March 1st, 2017. You already adopted Findings of Fact,
4 Conclusions of Law, Decision and Order, and in doing so and
5 later admittedly so by the Environmental Services and as
6 determined by the LUC that this body had violated its own
7 rules under, I think it's Planning Commission Rule, Section
8 2-75 of the Rules of the Planning Commission. In doing so
9 and that in other pertinent rules that Commission failed to
10 follow its rule in adopting, and that's why we're back here
11 today. What I would respectfully submit that this
12 Commission, and I would object to the participation of all
13 those members other than Mr. Goo today making any decisions
14 because--and I cite Mauna Kea Anaina Hou as authority on
15 this that you have prejudged the matter and have already
16 adopted it previously, and we now have it again before you.
17 So, I object accordingly.

18 VICE CHAIR ANDERSON: Okay. Thank you. ENV if you
19 don't mind would you proceed, please?

20 MS. CHAN: Okay. Thank you. The City is
21 requesting that the Planning Commission adopt its proposed
22 Findings of Fact, Conclusions of Law, and Decision and Order
23 subject to several exceptions raised by the City. First,
24 ENV you know appreciates that the Commission has taken
25 action to ensure compliance with Planning Commission Rule

1 2-76, you know in making that attestation at the beginning
2 of this hearing. However, we would also ask that any final
3 written decision issued in this matter include a finding
4 that goes to that effect that clearly states in the written
5 decision that that action was taken.

6 Second, we believe that proposed Condition No. 1
7 should be supplemented to include the basis of the December
8 31, 2022 date that's in the proposed decision. And that's
9 the date on which the City is to identify an alternative
10 landfill site that would be used upon Waimanalo Gulch
11 reaching capacity. As you know, the LUC remanded the record
12 in the 2008 and 2011 applications for further proceedings to
13 clarify five items and that date that was selected is item
14 No. 2 on the LUC's list. As drafted, ENV would submit that
15 the proposed decision probably doesn't address that very
16 clearly, and so we would ask that the Planning Commission
17 clarify the basis for that date, and if for some reason
18 there is no basis for that date, we would ask that be struck
19 from the condition.

20 There's sort of a third category of the request
21 that we're seeking, and that's to make other corrections in
22 the proposed decision. Primarily that would be the addition
23 of a few paragraphs to supplement the procedural history.
24 We noted that the proposed decision that was issued in
25 January of 2019 is, I believe identical to the one that was

1 issued at the end of 2017. So, it's missing the procedural
2 history for roughly a year. We've included in our written
3 exceptions some suggested language that could be used for
4 that purpose.

5 Second, we would ask that paragraphs that are
6 currently numbered 65 and 66 be corrected to reflect that
7 the parties would be filing exceptions rather than
8 exemptions as the Commission's Rule 2-75 talks about the
9 filing of its exceptions.

10 We would also seek revisions of a couple of other
11 paragraphs in the decision. One would be Conclusion of Law
12 No. 1, which we believe the Planning Commission's intent
13 would've been to cite the current version of the City
14 Charter, and I believe it reflects an older date on there.

15 We would also ask that Condition No. 2, which
16 erroneously refers to a Solid and Hazardous Waste Permit be
17 corrected. In the 2012 hearing, the City submitted Exhibit
18 A4 which is our Solid Waste Management Permit. It's not a
19 Hazardous Waste Permit. So, we just ask that be corrected
20 to accurately reflect what's in the evidence and in the
21 record.

22 The City would like to also note that we concur
23 with the Planning Commission's approach in issuing this
24 Decision and Order.

25 It incorporates by reference the 2009 LUC Order,

1 and it approves the application to modify Special Use Permit
2 No. 2008/SUP-2. It also modifies the LUC's Order adopting
3 the Planning Commission's 2009 Order by deleting Conditions
4 No. 4 and 14 and by adding three additional conditions. The
5 City does not concur with the position that there must be an
6 integration of the 2009 and the 2019 proposed decisions. We
7 think it's clear that the Planning Commission's proposed
8 decision resolves both of those applications. The Planning
9 Commission accomplishes this in several ways. In Conclusion
10 of Law No. 4, it's clearly stated that the conclusion is
11 based on the findings set forth in the August 4th, 2009
12 Findings of Fact, Conclusions and Law, and Decision and
13 Order and the findings set forth in this current 2019
14 proposed decision.

15 Second, it's stated in Conclusion of Law No. 7,
16 that the Planning Commission never imposed the deadline for
17 disposal of municipal solid waste. That is your recall as
18 Condition No. 14 in the LUC's Order which was struck by the
19 Supreme Court. And, so as a result the Planning Commission
20 logically and reasonably concludes that Condition No. 14 was
21 not material to the conclusions that it reached in the 2009
22 application proceeding. So, accordingly, this proposed
23 decision, in this proposed decision the Planning Commission
24 proceeds to approve the request to modify the 2009 Decision
25 and Order. So, we think it's abundantly clear that the

1 Planning Commission's proposed decision in fact results both
2 of those applications.

3 Now to address the five points of clarification
4 that the LUC requested the Planning Commission clarify. We
5 believe that all of these are addressed by various portions
6 of the proposed decision. So, turning to LUC's request
7 No. 1, which was to clarify whether the Planning Commission
8 followed Section 2-75 of the Rules of the Planning
9 Commission in issuing its Findings of Fact, Conclusions of
10 Law, and Decision and Order. And to just briefly touch upon
11 what Rule 2-75 states, it imposes certain requirements
12 whenever one or more of the Commissioners who are to render
13 the final decision have not heard and examined all of the
14 evidence. It requires that final decision not be made until
15 a proposal for decision is served upon the parties, which
16 was clearly done here in January of 2019. The proposed
17 decision must contain a statement of reasons including the
18 determination of each issue of fact or law necessary to the
19 proposed decision, and we would submit that you accomplish
20 that. The parties be afforded an opportunity to file
21 written exceptions, which we have as well in the last few
22 weeks and to present oral argument to the commission members
23 who are to render the final decision. So, that's what we're
24 here for today. So, we're accomplishing all of those
25 things. It's clear that in the proposed decision,

1 paragraphs 64, 65 and 66 address compliance with Rule 2-75.
2 Currently, there are blanks to be filled in with dates that
3 each of those points were taken care of. And, so we would
4 request that the Planning Commission in issuing its final
5 decision ensure that they include all of this information.

6 For LUC's Request No. 2, that's the one asking the
7 Planning Commission to clarify the basis for the December
8 31, 2022 date within which the applicant is to identify an
9 alternative site that will be used upon the Waimanalo Gulch
10 reaching its capacity and the implications it has on closure
11 of Waimanalo Gulch and the subsequent commencement of
12 operations at the alternative landfill site. So, as I
13 stated briefly earlier, we trust that there is a basis for
14 that date. So, we would ask that the record include any
15 kind of clarification as to what the basis is for the
16 inclusion of December 31st, 2022 in the decision, but then
17 alternatively if that's not included, that the date be
18 struck since it's not--we would argue it's not supported by
19 the evidence.

20 The request for clarification No. 3, seeks
21 clarification as to whether the record needs to include
22 updated information on the operation of Waimanalo Gulch, the
23 landfill site selection process and the waste diversion
24 efforts of the City and County of Honolulu.

25 We believe that Conclusion of Law No. 6, addresses

1 and answers the question about whether the record needs to
2 include such updated information. In that, the Planning
3 Commission concluded that it denied the party's motions to
4 reopen the case to supplement the record because it had
5 sufficient evidence to render its decision, and we would
6 continue to assert that there is enough in the record right
7 now for the Planning Commission to make that determination.

8 We would also point out that Waimanalo Gulch is an
9 operating landfill. That the information regarding are
10 ongoing operations is constantly involving, constantly
11 changing and being added to. So, it's impractical to, I
12 think assert the argument that there is an ongoing need to
13 continue to supplement the record to bring it, so-called up
14 to date. If that were to be done, we would never reach a
15 point where we could conclude this proceeding and have a
16 permit issued.

17 LUC's request No. 4, seeks clarification of the
18 effective date of the Planning Commission's Findings of
19 Fact, Conclusions of Law, and Decision and Order. It's
20 clear that the Planning Commission takes the position that
21 the 2009 LUC decision is still valid. As the Planning
22 Commission has approved the application to modify the
23 special use permit by making certain modifications including
24 the deletion of two conditions and the additional three
25 conditions.

1 In Conclusion of Law No. 7, the Planning
2 Commission also concludes that Condition No. 14 of the LUC
3 Order which impose the July 31st, 2012 deadline for
4 acceptance of municipal solid waste was not material to its
5 conclusions. Therefore, the Planning Commission, I think
6 has provided clarification that the SUP was effective as of
7 2009 and at this point it's simply being modified.

8 The final LUC request seeks clarification of
9 whether the Planning Commission is ruling on both the 2008
10 application and 2011 application in its Findings of Fact,
11 Conclusions of Law, and Decision and Order. And, again, we
12 think throughout the decision including the introductory
13 paragraphs, Conclusion of Law No. 4. Among them it's very
14 clear that the Planning Commission's actions cover both of
15 those applications.

16 To address some of the specific allegations that
17 have come up in the Intervenor's exceptions. First, the
18 allegation about a violation of due process. There has been
19 no violation of due process as we are still in the contested
20 case hearing. City as well as the Intervenors had an
21 opportunity to file written exceptions and are here today to
22 present their oral argument to the Commission.

23 The situation is distingusable from the Mauana Kea
24 case where a permit was issued prior to holding a contested
25 case hearing. That's clearly not what's happening here.

1 There is no pre-judgment of the case. There's no evidence
2 of that. I think it's an allegation that's completed
3 unfounded. The mere fact that the Planning Commission has
4 taken a consistent position over the course of time doesn't
5 mean that the case was pre-judged.

6 I'd also like to address the closure deadline
7 that's been proposed by Intervenors Ko Olina Community
8 Association and Ms. Shimabukuro. That closure deadline is
9 not supported by the evidence. It seeks complete closure of
10 the landfill at a certain point in time. And it's clear
11 that the evidence in the record establishes that there are
12 wastes that need to be disposed at the landfill. Namely,
13 these are things like auto shredder residue, ash, medical
14 sharps, large animal carcasses and at the time of the
15 hearing sewage sludge. There are circumstances where waste
16 that cannot--that is normally sent to H-POWER cannot be sent
17 there and needs to be landfilled. And these are situations
18 where the H-POWER facility has to undergo annual
19 maintenance. They shut down each boiler completely for
20 roughly two weeks every year and during those periods they
21 need to divert to the landfill, and then that's in order to
22 keep H-POWER as a functioning facility during the rest of
23 the year.

24 There are also situations where H-POWER may not be
25 able to combust or process municipal solid waste for more

1 then 72 hours. There's a limit in their solid waste
2 management permit as to how much waste can be stored on site
3 at any given point in time. So once they start exceeding
4 that capacity they have to look for other options which
5 typically would include diversion to the landfill.

6 And finally there are situations such as tsunamis,
7 hurricanes and other natural disasters that would require
8 accessibility to the landfill because we would be looking at
9 a very large amount of debris that would need be disposed of
10 in a timely manner.

11 So, there is abundant evidence that the landfill
12 is still needed. We can't operate H-POWER unless we have a
13 backup option. That was made clear through testimony in the
14 2012 proceeding. We would also point out that the Planning
15 Commission has consistently taken the position that the
16 duration of use for Waimanalo Gulch would be to capacity.
17 That was evident in the 2009 Planning Commission's decision
18 and specifically Commissioner Kerry Komatsubara had
19 explained that he believed that the focus should not be
20 picking on a date. That the term would be until we reach
21 capacity. This current Commission continues to allow use to
22 capacity. Back in the March 2017 hearing, it was again made
23 clear that the third condition would be that the City, ENV
24 in particular, in this case identify an alternate site by
25 December 31st, 2022, that would be used upon Waimanalo Gulch

1 reaching capacity. And, again, the January 2019 decision
2 continues to include that term. And to be clear a time
3 limit on the proposed use of the landfill or a limit does
4 not necessarily need to be a time limit. In this case, there
5 is a finite amount of space at Waimanalo Gulch that can be
6 used for landfilling. And so we would submit that the use
7 is measured not necessarily by the number of years but by
8 the amount of space we have. And it's a 200-acre site.
9 There will come a day where we have no available space and
10 that is something that ENV continues to look at, continues
11 to monitor on a regular basis, and is prepared to address as
12 well.

13 The City objects to certain conditions that are
14 proposed by KOCA and Ms. Shimabukuro as well, and I'll try
15 to group these together so we can get through all of them
16 quickly.

17 Proposed Condition 1.g., would require ENV to
18 present to the Planning Commission in a public hearing every
19 six months on the status of the City's efforts to either
20 reduce or continue use of Waimanalo Gulch. The City would
21 object to this because one of the existing conditions, and
22 it's in the LUC's 2009 Decision, Conditions No. 15 and 16
23 already requires us to hold certain meetings and ENV does
24 hold quarterly meetings in Kapolei. And to be quite frank
25 they're poorly attended. But we do continue to hold that,

1 make that available so that we are able to provide that kind
2 of information to the public.

3 Proposed Condition No. 2.d, which addresses
4 certain approvals that ENV would be required to obtain. We
5 would contend that the proposed condition unreasonably
6 broadens the condition that's proposed in LUC's Condition
7 No. 1. In LUC's Condition No. 1, the Condition is tied
8 closely to on-site and off-site improvements involving
9 access, storm drainage, leachate control, water, well
10 construction and waste water disposal. The condition
11 proposed by KOCA expands even further to include any on-site
12 and off-site improvements or activities, and it does so
13 without any basis.

14 Condition No. 2.f, deals with landscaping, and it
15 specifically asks that ENV be required to incorporate the
16 features of the surrounding natural landscape that enables
17 the landfill to blend seamlessly into its environment and
18 reduce erosion and rivulets at the landfill. This condition
19 has nothing to do with our special use permit. There is
20 concern that this condition would actually interfere with
21 the City's other obligations under our other permits. Our
22 special waste management permit as well as our storm water
23 pollution control plan and other documents already have
24 certain requirements that we're required to meet, and so we
25 would object to anything that would interfere with other

1 legal obligations.

2 There are several conditions that expand the
3 Planning Commission's jurisdiction beyond its scope. One is
4 Condition is 2.c, which seeks to make any violation of any
5 applicable statute, rule or regulation or any violation or
6 condition of the solid waste management permit for the
7 landfill to be a violation of this order. EPA and DOH
8 already have their own authority to enforce such regulations
9 and permit conditions, and we would respectfully state that
10 the Planning Commission should not be involved in the
11 enforcement of what would be within the jurisdiction of
12 those other agencies.

13 Proposed Condition 2.e, talks about violations of
14 Chapter 11-60.1 of the Hawaii Administrative Rules. That is
15 enforceable by DOH.

16 And Conditions 2.g; 2.h; 2.i; 2.j, 4 and 5, seek
17 to include conditions that address things like the queuing
18 of vehicles on Farrington Highway, the minimization of noise
19 and odors and things of that nature. We don't object to
20 doing those things. The objections really centered around
21 the fact that these are already conditions that are clearly
22 covered by our solid waste management permits. We're
23 already obligated to do that and that's already enforceable
24 by DOH.

25 Sorry, one second. Regarding the request to

1 reopen the contested case hearing. The City's position is
2 that the motion to reopen should be denied for three
3 reasons. First, the evidentiary record is complete. The
4 evidence in the proceeding was closed in April of 2012, and
5 the record accurately reflects all of the evidence that was
6 available at that time. The scope of the remanded
7 proceeding is limited to the five clarifications that the
8 LUC had requested and again as we stated earlier we believe
9 the Planning Commission has enough in the evidence to be
10 able to do that.

11 The information that is sought to be added is not
12 relevant to this proceeding, again, because it is a complete
13 record that the Planning Commission is working with.

14 And finally the City is deeply concerned about any
15 unwarranted further delays in this contested case proceeding
16 as, I think we're all aware that the LUC remanded this case
17 in May or June of 2017. We're coming up on two years.
18 Statements that were made during the LUC proceeding leaves
19 the City to believe that there's a perception that the City
20 is somehow intentionally delaying this, and so we are
21 concerned that any further delay is going to prejudice us as
22 an applicant in that proceeding. We don't stand to benefit
23 from any further delay. We would like this to be wrapped
24 up. We understand that there's certain circumstances that
25 were beyond everyone's control including the need to appoint

1 a temporary commissioner and the time that was needed for
2 that process, including time to allow the new commissioner
3 to review the record. But we would object to any further
4 delay that would prevent us from bringing this case to a
5 conclusion.

6 You know, as we've realized in recent months it's
7 very difficult to get all of these parties together as well
8 as the Commissioners. There were eight different dates that
9 were offered, and I don't dispute that the other parties
10 were busy and not able to make it, but we've gone through a
11 number of rounds of trying to pick a date where we could all
12 be here. So, I would submit that there's no reason to
13 reopen the record and to do so would only cause further
14 delay and prejudice to the City. Thank you.

15 VICE CHAIR ANDERSON: Thank you. Commissioners,
16 any further questions? [no response] I have a few
17 questions. What is--I know it's been a topic of discussion
18 before, and I'll--after the parties have had a chance to
19 present, I'll get through and identify each of the LUC's
20 five items for clarification. But what is the status of the
21 ENV's site selection process? It's been talked about for
22 several years now with various deadlines and the time frame
23 of seven years has always been kind of that happy number,
24 kind of the number that has been thrown around. What is the
25 status of ENV's site selection?

1 MS. CHAN: The site selection process itself?

2 VICE CHAIR ANDERSON: Uh-huh.

3 MS. CHAN: So, the Department has gone through a
4 pretty lengthy process at trying to review and identify
5 potential landfill sites. Part of the difficulty that we
6 encounter, though, is determining what would be an
7 appropriate site at the time that the landfill is needed.
8 So, that's something they've struggled with. But there was
9 a report issued about a year ago, I believe may be a little
10 bit longer that had narrowed down those sites as well. So,
11 it's an ongoing process for the Department which involves
12 not just looking at available sites, but also being mindful
13 of their available capacity at the landfill.

14 VICE CHAIR ANDERSON: Yeah. Okay. Thank you.
15 And I understand it's not an easy process whether it's a
16 specific site selection, whether it's understanding what
17 technologies are today, what are they going to be tomorrow,
18 in the future, to identify what the capacities needs will
19 be. So, I understand it's a difficult process but,
20 nonetheless, it's something that I know is kind of critical
21 to this whole solution here.

22 MS. CHAN: Yes, we would agree. And that's
23 something that's also covered in--something that we're
24 required to do under state law which is the integrated solid
25 waste management plan. The Department has been going

1 through the process of reviewing and updating that plan, and
2 I believe that there are certain components that touch upon
3 that very question that you raised.

4 VICE CHAIR ANDERSON: Okay. So--And sorry to harp
5 on it. If we're looking at the seven-year process to
6 identify a site, if hypothetically or theoretically
7 speaking, the KOCA's suggestion of the 2024 date, the
8 three-year wind down and full-time closure 2027, is that a
9 possibility?

10 MS. CHAN: I would say--the reduced rivulets in
11 the landfill is something that I believe can be achieved
12 provided that the technology is there, provided that it's
13 feasible, reliable, affordable technology. But the other
14 component to that is we would still need a backup. So, if
15 you're asking about complete closure of the landfill, that's
16 even with technology available, I'm doubtful that we would
17 be permitted to operate any of those facilities without a
18 backup site.

19 VICE CHAIR ANDERSON: Yeah. And I'm talking about
20 not only--I mean, part and parcel to closing the landfill is
21 also identifying the secondary site. And, I know again your
22 comments earlier about capacity and time, but I kind of see
23 it hand in hand. Yes, there may be 200 acres available, and
24 there's only x-amount capacity. But at some point we're
25 going to have to get to the resolution of identifying a

1 secondary site--

2 MS. CHAN: Yes.

3 VICE CHAIR ANDERSON: ...sooner than later.

4 Because no matter how long that capacity takes, ten years,
5 one year, a hundred years, the time is going to come when
6 we're going to need a secondary landfill site with the
7 technology we have today. So, I just want to make it clear
8 that it should be on your folks radar to keep proceeding
9 with that process.

10 MS. CHAN: Yes.

11 VICE CHAIR ANDERSON: What is the hours of
12 operation of the landfill by chance, would you know?

13 MS. CHAN: I believe the permit indicates it's
14 like 7 or 7:30 to 4, 4:30.

15 VICE CHAIR ANDERSON: Okay.

16 MS. CHAN: I'm sorry, I don't recall specifically.

17 VICE CHAIR ANDERSON: Yeah. That's fine. Thank
18 you.

19 MS. CHAN: That's with respect to certain waste;
20 they're allowed to accept ash 24-hours a day.

21 VICE CHAIR ANDERSON: Okay.

22 MS. CHAN: I don't know off hand--

23 VICE CHAIR ANDERSON: Yeah. I only asked that
24 question because I saw it on one of KOCA's conditions that--

25 MS. CHAN: Yeah. If it's a 7 to 4:30 that they've

1 indicated in there, I believe that's already in our permit.

2 VICE CHAIR ANDERSON: Okay.

3 MS. CHAN: And that would be the hours by which we
4 operate.

5 VICE CHAIR ANDERSON: Okay. Any further questions
6 from the Commissioners? [no response] All right.

7 Thank you.

8 Next, I'd like to call, just working from left to
9 right. Mr. Sandison, Intervenor Schnitzer, please.

10 MR. SANDISON: Good afternoon. Ian Sandison
11 appearing on behalf of Schnitzer Steel Hawaii Corporation
12 Intervenor. Please note this morning that I have filed a
13 notice of withdrawal and appearance of counsel and a change
14 in contact information associated with my move to the
15 Watanabe Ing law firm. Thank you.

16 First of all, I'd like to respond briefly to Mr.
17 Wurdeman's objections concerning some of the Planning
18 Commission members here today. I believe the facts of this
19 case are quite disquishable from the Mauna Kea Anaina Hou
20 matter. The Planning Commission is hearing this matter on
21 remand in its judicial capacity and, of course, any judge or
22 commission is able to hear a matter that comes back on
23 remand and its prior decision does no disqualify the judge
24 or this commission from hearing a matter on remand.

25 Secondly, as a procedural matter we do believe

1 that the 2008 application needs to be included in the
2 Findings of Fact, Conclusions of Law, and as you will see in
3 our briefing we have provided specific revisions to the
4 Commission's draft that would easily incorporate that. We
5 believe that failure to do so risks or creates yet another
6 potential procedural issue as this matter proceeds up to the
7 Land Use Commission and possibly up through an appellate
8 process.

9 Finally, would note that we have with respect to
10 matter 2, Schnitzer has taken no position with respect to
11 KOCA's motion to reopen the contested case and with that we
12 will stand on our pleadings.

13 VICE CHAIR ANDERSON: Thank you. Any questions
14 for Mr. Sandison? [no response] All right. Thank you.
15 Next Intervenor KOCA. Mr. Chipchase.

16 MR. CHIPCHASE: Thank you, Chair. I'd like to
17 start with what everybody agrees on because we have been
18 doing this for so very long. We spent a lot of time
19 together, and there are some things that we do agree on.

20 One, is that everybody has invested a lot of time
21 and effort in this proceeding. I've been involved in this
22 proceeding for 7-1/2 years, and it went on before me
23 probably another three to take it to ten; a little more than
24 that, 11 years. And in that time this Commission has had 20
25 hearing days, has heard from about 20 witnesses, and has

1 received about 300 exhibits into evidence. It is an
2 extraordinary amount of effort on this permit, and I think
3 it reflects the seriousness of the proceeding and the number
4 of parties who are interested in it including those who
5 don't appear themselves. Like members of the community who
6 are represented both by Senator Shimabukuro who is a party
7 of this proceeding and my client, and by the Ko Olina
8 Community Association who is a part of this proceeding and
9 also my client. And, I should note that Mr. Goodin,
10 Christopher Goodin is appearing on behalf of those parties
11 as well. And, so everybody agrees with all of the time and
12 effort that has been expended in this and this proceeding
13 has not just been here. We've been to the Land Use
14 Commission three times. We've been in the Circuit Court,
15 and we've been in the Hawaii Supreme Court. And, so after
16 all that time and all that effort everybody wants to get it
17 right, everybody wants to bring this proceeding to
18 conclusion and everybody wants to not have to do it over it
19 again. We all agree on that.

20 The problem is that if the Commission proceeds as
21 proposed, we will be doing it over again. And, we will be
22 doing it over again for a couple of reasons. One, is
23 compliance with Rule 2-75 and 2-76. Rule 2-76, is the
24 attestation rule, and I understand the Commissioners today
25 made an attestation. The problem is one of timing. This

1 decision, this proposed decision was circulated, was adopted
2 by the Commission and circulated to the parties in 2017.
3 The attestation had to occur before the decision was
4 circulated. This is not a newly adopted decision. It's
5 just a re-circulation of the former decision. And so the
6 attestation was wrong then, it's wrong now because it did
7 not occur before the proposed decision was adopted. It
8 violates Rule 2-75 because Mr.--Commissioner Goo, was not a
9 member of the Commission at the time this proposed decision
10 was circulated. So, it didn't even have what would
11 constitute the available quorum voting on it before it was
12 adopted. So, what should have happened, and an easy thing
13 that we could've done and we proposed it, was bring us all
14 back in, make the attestation at that time, then vote to
15 adopt the proposed decision, send it all out to the parties.
16 We'll submit our objections, bring us all back, and we'll
17 have the hearing on it. That suggestion was rejected and
18 that's not the procedure we followed. And, so we will find
19 ourselves again having to re-do it because of that
20 procedural glitch.

21 The other reason that we will find ourselves doing
22 it all over again is the Land Use Commission's instructions
23 to this Commission. Remember when the decision was adopted
24 and it went up to the Land Use Commission for approval, it
25 was remanded, and it was remanded with these instructions.

1 And we've talked about it, and we will get into a little bit
2 of the details of them. But conceptually these instructions
3 were questions that the Land Use Commission had on this
4 decision. Well, as proposed we're sending the same decision
5 back to them. And, so if the Land Use Commission a year ago
6 thought the decision was not adequate because of all of
7 these questions and nothing has changed in the decision or
8 the record or anything else, then it's still inadequate.
9 All right. We're just sending the same decision back up to
10 the Land Use Commission, unless they're just frustrated and
11 just want to proceed any way. We'll get the same result
12 which is to come back here and do it again. We're trying to
13 avoid that so that when we go back up to the Land Use
14 Commission, we go back up for the last time and then
15 wherever it goes from there, their decision appeals, that's
16 out of your hands, but at least we've done it completely and
17 right for this last time.

18 And, so that brings me to the motion to reopen,
19 which I'll talk about a little bit about first. I know
20 everybody else talked about the decision first. But, I
21 think that puts the cart before the horse. The motion to
22 reopen is intended directly to address the Land Use
23 Commission's instructions in this matter. The Land Use
24 Commission in its decision addressed a couple of subject
25 matters. The first being landfill site selection process.

1 And so you see in instruction 2 and part of instruction 3,
2 which we put on the screen, those deal with ENV's progress
3 towards selecting and developing a new site. Since 2010 as
4 the Chair noted, the City has been under an obligation to
5 proceed reasonably, diligently with not only the selection
6 of a new landfill site, but the development of a new
7 landfill site. The evidence closed in 2012, in April 2012.
8 So we have no evidence of what the City has done from 2012
9 to today. Not only to site a new landfill, but to develop a
10 new landfill and that condition was their existing condition
11 on a permit that they say it was good and in effect and
12 continued. They don't oppose that condition today. Well,
13 if they're not complying with conditions in existing order
14 that they don't object to and don't oppose, what assurances
15 do we have that they'll abide by conditions in a new order.
16 And, frankly, why do they get an expansion of and
17 continuation of the landfill indefinitely when they haven't
18 and don't comply with existing conditions. The LUC felt
19 that evidence was important to be updated and not updated
20 indefinitely, but you should absolutely have a complete
21 record at the time you make a decision. And if the record
22 is seven years old for an ongoing operation under which
23 their existing obligations like this one to identify and
24 develop a new landfill site, then you have a problem with
25 your record, and it needs to be updated and that's what the

1 Land Use Commission concluded.

2 The Land Use Commission was also focused on
3 another issue that the Chair raised in his question of the
4 City and that is waste diversion efforts and capacity.
5 And those do go in hand-in-hand, but they only go
6 hand-in-hand because the City has asked that the landfill be
7 opened until capacity. Since 2003, every final decision
8 regarding a special permit for the landfill has had a
9 closure deadline. And it has had a closure deadline because
10 a deadline was consistent with the representations to the
11 community when the landfill was first developed, that it
12 would close, that it would just not operate to capacity that
13 there would be an end point, originally 20 years. That
14 hasn't happened, but this Commission and the Land Use
15 Commission have both saw fit at different times to impose
16 closure deadlines. Those closure deadlines are fictional if
17 the landfill remains open to capacity, particularly in this
18 case where there is no evidence since 2012 of what that
19 capacity is. We have no idea based on the record when the
20 landfill will reach capacity. We simply don't know. Part
21 of the reason we don't know is we don't know what the
22 current landfill rate is, and we don't know what the City's
23 current and planned diversions are. And so the Land Use
24 Commission has this question, what is the capacity, how long
25 is capacity; if that is your deadline. You need to know

1 what the diversions are, current and planned, the
2 landfilling rates and the estimated capacity time before you
3 can answer those questions. If you don't, you haven't
4 addressed the landfill or the LUC's questions.

5 The last subject that the LUC focused on in its
6 questions was operations. And the evidence regarding
7 operations of the landfill is important for couple of
8 reasons.

9 One, as we will talk about in a little more detail
10 when we get into the findings. This is a special use
11 permit. Part of the requirement for having a special use
12 permit is that there's no adverse effect on the surrounding
13 properties, on the neighboring communities. That's a
14 requirement because you're asking for something
15 extraordinary. You're asking for something that is not
16 allowed on the type of land you have. And so you need to be
17 able to show that you won't adversely affect neighboring
18 properties. Well, the evidence in the prior proceeding that
19 closed in April 2012, was that the landfill has had an
20 enormous effect, an enormously negative effect on the
21 surrounding communities. And we'll talk a little bit about
22 that when we look at the conditions that we've requested in
23 this case.

24 We don't have any evidence in the record of those
25 operations and how the landfill is operating since 2012.

1 I mean, seven years ago. And since effect on your neighbors
2 is part of what you need to show, that you don't have effect
3 on your neighbors, there needs to be evidence in the record
4 of the operations for the last seven years. And that's the
5 point that the Land Use Commission was communicating. We
6 can't have that because the evidence hasn't been reopened,
7 so it's impossible to address the Land Use Commission's
8 instructions. And, so unless we do, unless we close the
9 seven-year gap before you reach a final decision in this
10 matter, will go up to the Land Use Commission on the same
11 order, with the same record. It will have the same
12 questions, and we will probably be back here doing the same
13 thing. And, so we would suggest let's invest the time now,
14 get it over with it, and be done, and then move on to the
15 next body.

16 And that takes me to the proposed decision itself.
17 The idea of beginning where we all agree. I'll transport
18 into the proposed decision and that is that some procedural
19 history does need to be updated. And, so the City has
20 proposed certain procedural findings, and we don't object to
21 a specific set of them. We don't object to finding 64
22 through 75. I believe those accurately reflect the updated
23 procedural history, and it makes sense to make those
24 changes.

25 With respect to the balance of the findings, we

1 submitted our written objections detailing why certain
2 findings aren't supported by evidence, why certain
3 conclusions aren't supported by evidence or law, and why
4 there's need to be additional findings to reflect what is in
5 the record. I don't intend to go through all of those. It
6 would be impossible, and you all would hate me for it.
7 Instead, what I want to focus on is the Order because the
8 Order is the thing that affects the community directly.
9 The findings are just the evidence and the conclusions are
10 just the bases that support the Order. The Order is the
11 thing that allows the landfill to continue on operation and
12 the thing that imposes the condition on the landfill. So
13 the effect on the community is minimized to the greatest
14 extent practicable. That's necessary as I said because
15 we're dealing with a special use permit. This is
16 agricultural land. A landfill is decidedly not an
17 agricultural use. And, so if you want to put a landfill on
18 agricultural land you have two choices. One, go in for
19 district boundary amendment and follow all the processes and
20 procedures required for an EPA, move it to urban land, and
21 have it zoned something that would support a landfill. Go
22 through all those political processes or you come in for a
23 special use permit. And a special use permit allows you to
24 do a non-agricultural use on agricultural land if you meet
25 certain conditions. And the basic condition is that it be

1 an unusual and reasonable use. Here, the City is asking for
2 200 acres. So, a landfill would be larger than it ever has
3 been before. It's asking to accept all municipal solid
4 waste, MSW, and ash and residue. So, basically all the
5 waste generated by the City, and it's asking for no closure
6 deadline. Those are each extraordinary requests and to meet
7 that standard of unusual and reasonable, the City needs to
8 do certain things. The first that we look at is what is the
9 time limit for that use. Remember, we're dealing with a
10 special use not a district boundary amendment. If you move
11 it over to urban, there's no time limit the land is in
12 urban. If you keep it in ag and asks for a special use
13 permit, it presumes there's a durational limit to that
14 special use. You cannot use it forever or you've
15 effectively done a district boundary amendment without going
16 through that more rigorous and political process. The
17 City's response to that is simply to say capacity is a
18 duration. But that's not true for two reasons. One, we
19 don't know what the capacity is. So, if capacity is the
20 duration, we should at the very minimum know what that
21 duration is or will be. The second is the waste diversion
22 efforts. If the City continues to divert waste to the
23 maximum extent possible, the life of the landfill continues
24 to be extended. And, so you have for all practical
25 purposes, an infinite use. That's not what's contemplated

1 under a special use permit. What's contemplated under
2 special use permit is the time. And, so you see that in
3 solar projects or wind projects or any other project, there
4 is a limit to this. We are at 30 years of this special use
5 on agricultural land. That's getting pretty indefinite as
6 it is. The City wants to continue for who knows how much
7 longer. The second thing that we look at, the second thing
8 that the City would need to do is to establish the proposed
9 use is consistent with the objectives of state land use law.
10 And we can pull those from various sources including the
11 state plan. The state plan says that an objective of state
12 land use laws to avoid costly or irreparable environmental
13 damage to achieve the desired quality in surface ground and
14 coastal waters and to reduce the threat to life and property
15 from flooding and other manmade hazards and disasters. The
16 City needs to present evidence on those. The Planning
17 Commission needs to take those considerations into effect
18 because that's what our legislatures have established as
19 state land use policy.

20 The third and final one that I want to talk about
21 is the one I mentioned earlier. And that is whether the
22 desired use would adversely affect surrounding property.
23 It's a special use. If you get the privilege of using your
24 land in a way that is not allowed by your zoning and your
25 state land use law, then you can't affect surrounding

1 properties through that use. And, so to satisfy those three
2 requirements, we have proposed various conditions on the
3 operation of the landfill. We haven't come in as Ko Oline
4 and Senator Shimabukuro and said close it today. We
5 recognize there is a need for the landfill, but we also
6 recognize that the landfill needs to comply with state law
7 and with the standards for a special use permit. And, so in
8 order to do that there needs to be a number of conditions
9 imposed on the operation of the landfill. We have grouped
10 those conditions into four categories. Operations,
11 reporting and enforcement, diversion of waste, and finally
12 closure.

13 In terms of operation, and what I want to do when
14 I look at these is I will only look at the differences
15 between our proposed conditions and the conditions that have
16 already been proposed by the Planning Commission.

17 There is no need to repeat conditions that's already
18 included. We don't object to them. All we're doing is
19 asking for additional conditions, or in some cases modifying
20 conditions you've already proposed to meet those standards
21 that I talked about.

22 And the first is operations. And, so we have
23 asked at Condition 2.c for the bolded changes up there and
24 in our papers as well. This condition is patterned after a
25 condition that's already incorporated and that deals with

1 compliance with various regulatory standards. It's a
2 landfill. It has subject to regulation, and you've already
3 proposed to acquire that it meet its regulatory obligations.

4 All we've done in our proposed condition is to identify
5 additional regulatory sources. The condition itself
6 references the Revised Ordinances of Honolulu and the
7 regulations of the State Department of Health. To that
8 we've added the Environmental Protection Agency because the
9 evidence is replete, replete with examples of the EPA
10 investigating, citing and warning this landfill. It has
11 exercised extensive regulatory jurisdiction over this
12 landfill and as a condition of a special use that's not
13 supposed to adversely affect surrounding properties. The
14 landfill should comply with the EPA regulations as well.
15 And so we've said the EPA and other state and federal agency
16 requirements.

17 The other thing that we asked to do in Condition
18 2.c is to make clear that a violation of those regulations
19 is a violation of this permit. If you're going to condition
20 a permit on compliance with regulations, and you already do,
21 we just ask to expand it. But if you're going to that, then
22 it has to be that a violation of those regulations is a
23 violation of the permit. If you didn't mean to require them
24 to comply with the law, you would drop this condition
25 entirely. If you're going to impose this condition in any

1 form, then it has to be that if they violate that law,
2 they've also violated the condition. That's your
3 responsibility in approving the special use permit.

4 The next condition that we've asked for is--And,
5 so we have up here on the screen just the various different
6 warnings and violations that we've talked about culminating,
7 and I think the testimony from the State Department of
8 Health that in five years prior to our close of evidence no
9 other landfill in the state had accumulated as many
10 violations as Waimanalo.

11 If we move on to the next condition, we have a
12 Condition 2.d. Again patterned after an existing
13 incorporated condition, LUC Condition 1, and that is to
14 obtain all necessary approvals. So, the first thing we
15 talked about is comply with the law. The second thing we
16 talked about is get all necessary approvals. You require
17 them to do that. That's part of a condition that they don't
18 oppose. All we've added again is the EPA in all other
19 federal, state or municipal requirements. If they need
20 approvals from these bodies, get those approvals. That's
21 it. There's nothing more to the condition.

22 If we move on from regulation and approvals, we
23 really get in to what a just be a good neighbor conditions.

24 You exist with people around you. Ko Olina is just one of
25 the many people who drive by or live near or have folks who

1 live near this landfill. And, so be a good neighbor. And
2 the first way we've asked you to be a good neighbor is
3 through dust mitigation. So, your existing Condition 2
4 requires a dust mitigation plan. But it doesn't incorporate
5 that plan as part of the order. So as long as they adopt
6 the plan they've complied with the condition. But if they
7 don't follow the plan, they're not in violation of the
8 order. That doesn't make any sense. If you're going to
9 require a plan, that plan should be incorporated and made by
10 part of the order, so if they don't do it they're in
11 violation of your order.

12 The next condition deals with landscaping. And
13 it's hard to see how landscaping is not a part of their
14 special use permit. If we look at the next slide, we see
15 that the visual blight of the landfill was extensively
16 addressed in testimony, and it is evident from the pictures
17 that are in evidence. If you're going to engage in a
18 special use, do what you can and not make the special use
19 unattractive to everybody who has to drive by, live, work
20 and play in the area. And, so we've asked for is a
21 landscaping plan to address that.

22 The objection I heard today which is not an
23 objection that was ever put in the record through evidence,
24 is that well maybe a landscaping plan in some way might
25 somehow and in some specified way a violater or other

1 permits or approvals. If that's the only objection to it,
2 then we have no problem modifying that condition to say, to
3 the extent consistent with applicable approvals and
4 requirements. I don't mean to set ENV up in an impossible
5 position. We just may not have to suffer that for the
6 community as they operate the special use.

7 The next condition deals with the queuing of
8 trucks. And there is heavy truck traffic because of the
9 landfill, commercial and City trucks principally. The
10 landfill is open to the public. We understand that the
11 public comes when the public comes. But commercial and City
12 vehicles can be scheduled. When they're not scheduled,
13 there can be extensive queuing on the highway which isn't
14 good for any resident, visitor or person who has to work out
15 there. And, so all we've asked is for a schedule of those
16 kinds of vehicles to avoid that problem. That's just being a
17 good neighbor.

18 The next two conditions deal with litter.
19 Windblown litter whether from the trucks, the queuing on the
20 highway or traveling to the dump or from the landfill itself
21 is a problem. And there is extensive testimony in the
22 record regarding windblown trash. All we've asked through
23 these two conditions is to require trucks to tie down their
24 loads so that we avoid that and to have a plan to pick up
25 what they call fugitive waste, waste that is landfilled but

1 escapes from it because of the winds.

2 The last condition in this good neighbor category
3 deals with noise and odor. It's a landfill. It is noisy,
4 and it can smell and that affects the community. And, so
5 all we've asked is for a plan to minimize the emission of
6 noise and odor from the landfill. We don't say prevent it,
7 make sure nothing happens, don't ever let noise or odor
8 escape from the landfill, but come up with a plan. Operate
9 as a good neighbor in this community by minimizing those
10 noise or that noise and those odors. Again, record is
11 extensive on the effect of noise and odor on the community.

12 Moving on from the operational conditions to
13 reporting and enforcement. We heard a little bit about that
14 from the City. And it's true that the City does currently
15 have reporting requirements. We're not really seeking to
16 modify those in any radical way. Instead what we're asking
17 for, if you look at Condition 1.f, it's very similar to the
18 existing Condition 15. What we've added is bolded. And all
19 we've added is in the report, this is a condition requiring
20 a report, is published, you send a copy of it to the
21 association. That's all. We've been a party to this
22 proceeding for 11 years. I don't think it's too much to ask
23 that when you're reporting on something that we've invested
24 a tremendous amount of time and money in for the benefit of
25 the community that we be given a copy of the report.

1 The same is true of the next condition. If you
2 look at the next condition it deals with the public
3 hearings. We've actually reduced the hearing burden from
4 three to six months in our proposed condition. And all
5 we've done is additional requirement is to simply give us
6 notice of it when it will be. And, we think, as counsel for
7 ENV noted, it can be poorly attended. If you make them a
8 little less frequent because they don't need updates as
9 often, and you give notice to the people who care about them
10 that there is going to be a hearing, I think it will be
11 attended and certainly it be more meaningful. And, that's
12 all we've asked for in this condition.

13 If we look at the slides that are up, we have
14 extensive testimony from the Senator about the Neighborhood
15 Board's position, both the Waianae Neighborhood Board and
16 the Kapolei Neighborhood Board, all of which have
17 consistently voted to close the landfill. I'm not aware of
18 any vote by either board ever not to close the landfill when
19 the issue has come before them. So, the community does care
20 about these things, and they should get notice of these
21 meetings.

22 The next condition is Condition 1.e, and this
23 really gets to the enforcement point. It's great to have
24 conditions on the operation of the landfill. It doesn't do
25 anybody any good if they're not enforced. As currently

1 structured to enforce a condition, the Planning Commission
2 rather on its own would have to take up enforcement. All
3 we've done through this Condition i.e., is ask that Ko Olina
4 be given an opportunity at certain defined points of the
5 year following these reports to come before the Planning
6 Commission on a motion for an order to show cause to
7 establish a violation of a condition. We can be out there
8 identifying whether the landfill complies with the
9 conditions that this Commission has imposed and if it
10 doesn't bring them to the Commission's attention. The
11 Commission still makes the decision. The Commission still
12 decides whether there has been a violation. If so, whether
13 there is a consequence to it. But now there's somebody who
14 is paying attention, who is out there, who is in the
15 community who can bring it before this body.

16 When we move on from reporting and enforcement, we
17 get to diversion of waste. The first condition is really
18 something we all should get behind and that is simply to
19 continue ENV's efforts to use alternative technologies, and
20 it's very similar to the condition that's already there.
21 Use alternative technologies. What we've done is flush it
22 out, and we didn't flush it out out of thin air.

23 When we developed our bolded language directing the use of
24 alternative technologies to the extent reasonably
25 practicable. So, if it's there, it's reasonably

1 practicable, use it. We followed a list of diversions that
2 the City has already agreed to as part of the proceeding,
3 this proceeding, in an effort to stay the case for a period
4 of time. So, these are already things that the City
5 represents it's doing, can do, will do. Let's incorporate
6 them as part of the order so the directive to use
7 alternative technologies mean something. So we can show the
8 public and show everyone else that we are making not just a
9 generalized statement that would be great to have diversion,
10 but we have these specific things. The City is doing these
11 specific things, and we as the Commission are requiring
12 them.

13 The next condition dealing with diversion of waste
14 is another thing that we did not come up with out of thin
15 air. This condition would require that from the date of the
16 order, from when you enter the order through 2024, the City
17 can only use the landfill for waste that cannot be disposed
18 of within the City by any other means. So, if there's no
19 other means, the City can use the landfill. If there is
20 another means, the City shouldn't use the landfill except
21 when H-POWER is down or in cases of emergencies. We did not
22 make that condition up. The City proposed that condition in
23 2012. On the screen is a direct quote from the City's
24 proposed conditions in 2012. In 2012, the City told this
25 Commission that by January 1, 2014, we will do exactly what

1 I just said. If it can be put somewhere else or disposed of
2 somewhere else, we won't use Waimanalo except when H-POWER
3 is down or there is emergency. The City proposed that
4 condition itself as part of the 2012 proceedings because
5 that's what the evidence showed. Evidence overwhelmingly
6 showed the impact of the landfill on the community,
7 overwhelmingly showed the need for the development and use
8 of alternative technologies and to
9 reduce dependence on the landfill. So, in 2012 the City was
10 willing--by 2014 to abide by this condition. It's 2019.
11 It's more than five years later, five years after--The City
12 was willing to abide by this condition. We should impose on
13 them now. They had more than enough time to get up to speed
14 to comply with this condition.

15 The last subject is closure. The current
16 condition identifies a date of December 31, 2022 to identify
17 a new site. The identification of a new site doesn't mean
18 anything unless it's tied to closure. One, because the City
19 won't do it, and we see that over the history of this case
20 and before. And, two, because of the relationship that the
21 City and the Chair talked about earlier between closure and
22 site selection. If we don't know how long the site is going
23 to be there, we can't really plan for a new site because we
24 don't know what the land use will be, what the surrounding
25 community will be, what the needs will be at that time

1 because we don't know what that time is. And, so we just
2 won't ever get there. The other reason that the unlimited
3 closure doesn't work is what I eluded to earlier. That a
4 special use necessarily contemplates a finite use, some
5 durational limit. And, so that is expressly incorporated
6 into the Land Use Commission's rules at 15-15-95 and was
7 expressly addressed by the Hawaii Supreme Court in the
8 Waianae Coast decision involving an amusement park. There
9 the site was 103 acres with no definite end point. Even
10 though we all know an amusement park isn't going to last
11 forever. It's not going to be in use in 200, 300 years, or
12 even 50 probably. But there was no limit stated in the
13 special use permit. And so the Supreme Court recognized,
14 and I'll quote it because it's important. "Unlimited use of
15 the special use permit to effectuate essentially what
16 amounts to a boundary change when undermine the protection
17 from piecemeal changes to the zoning scheme guaranteed
18 landowners by the more extensive procedural protections of
19 boundary amendments statutes." That very idea. That if the
20 use is unlimited, it's not really a special use. There
21 needs to be some duration to it. So, then the question
22 comes, as the Chair eluded to earlier, what is that magic
23 number. All right. The best evidence in the record is that
24 it's three to five years to select a new site; select and
25 develop a new site to put it in operation. That came in the

1 form of expert testimony that we offered and from the City's
2 own witness in the 2008 proceedings. We haven't sought to
3 impose that stringent a requirement on the City. We've
4 instead try to be flexible. And, so what we've done is to
5 say extensive evidence on the screen in what the closure
6 condition or how long it would take to site any landfill,
7 but it's in our papers as well. And, so what we've said is
8 until 2024, the site will only be used if it can't be
9 landfilled elsewhere. That sort of basic waste diversion
10 condition. After that period, we would say it should be
11 closed as to everything except ash and residue from H-POWER.
12 And we isolated ash and residue from H-POWER because those
13 are the most difficult waste to divert. We've also added
14 automobile shredder residue because that is also a difficult
15 waste to divert. So, in a little more than five years stop
16 using it for everything except the hardest waste to divert.
17 That would continue until March 1, 2027 at which point the
18 landfill would stop accepting waste in any form. So, we're
19 looking effectively eight years out from now. The landfill
20 stops accepting waste in any form. More than enough time to
21 get an alternative site up and running if the City really
22 wants to. And that's the question. Does the City really
23 want to? Whether it wants to or not, this is a special use
24 permit. We have kicked the can down the road on this
25 landfill and on this permit for a long time. It's time

1 after all of this effort and all of these years to finally
2 hold the City to its promises. The promises it made when
3 the landfill was sited there and when it was subsequently
4 approved. It's time to close it. We set out a reasonable
5 schedule to do so, and we've imposed or asked for reasonable
6 conditions in the interim. I thank you for your time.

7 VICE CHAIR ANDERSON: Thank you. Any questions by
8 the Commissioners at this time? [no response] No questions.
9 Thank you, Mr. Chipchase.

10 MR. CHIPCHASE: Thank you, Chair.

11 VICE CHAIR ANDERSON: Mr. Wurdeman.

12 MR. WURDEMAN: Thank you. Again, Richard N.
13 Wurdeman for Intervenor Colleen Hanabusa. We have, and I'll
14 keep this brief for my presentation and brief today. We
15 have submitted our exceptions and positions to this
16 Commission. And we'd like to again, and in there we
17 included the renewal of our objections on the record not
18 including or the proceedings not including Intervenor
19 Hanabusa for which this Commission is certainly relying in
20 its proposed Findings of Fact, Conclusions of Law, and
21 Decision and Order, on the 2011 record which was an
22 application to delete Condition 14 of the Special Use Permit
23 No. 2008/SUP-2. And without leaving those due process
24 objections, as far as the exceptions raised on the clearly
25 erroneous Findings of Fact because we did not participate in

1 that proceeding, we would respectfully join in and as
2 indicated in our submission to the Commission, join in with
3 KOCA and Maile Shimabukuro on those various exceptions to
4 the extent that they're not inconsistent with what we're
5 already submitting before this Commission. Mr. Chipchase is
6 correct certainly about the impacts on the community, the
7 length of the processes, the promises that have been made
8 from the get go through each renewal application process to
9 the community. The community came out in every forum
10 imaginable to express their concerns, objections, the impact
11 on them and frankly they feel let down. They feel let down
12 that the City has never been held accountable to date.
13 Continues to operate this landfill and many believe because
14 of its location on this island that people are not hearing
15 them because people don't care. And, we ask that this
16 Commission, as articulated by Mr. Chipchase, and I'll say it
17 as well, that the City needs to be held accountable. All
18 those promises of, you know, this is the last application in
19 back 2003, this seven-year number which was a testimony back
20 in 2008, 11 years ago. And all that appears to have
21 happened in 11 years. Is the City--last year apparently
22 from what I heard earlier is they came up with some less
23 that narrowed down the prospective sites in 11 years. And,
24 so obviously they don't care because nobody is holding them
25 accountable, and they're not going to ever care if nobody

1 holds them accountable. And that's what we're asking the
2 Commission to do.

3 Interestingly, in the--and this is in Condition
4 67, or proposed Findings of Fact 67 I should say. Their
5 citation to the Condition No. 4 of the 2009 Planing
6 Commission, and it cites and underlined and puts in bold
7 print there, to begin to identify develop one or more new
8 landfill site, and then it talked on the second thing, it
9 talks about if the City will allot funds in the fiscal year
10 2010, etc. But what it doesn't include in there and what is
11 in the 2009 decision of the LUC is the diligent in which the
12 City is supposed to act. And they have not act with any
13 diligence whatsoever. And the Land Use Commission did
14 remand it. And before I touch upon on that, what really
15 sent this record down was because the Land Use Commission
16 agreed that the Planning Commission did not comply with its
17 own rules particularly Rule 2-75 when it adopted, when they
18 made a final ruling on the Findings of Fact, Conclusions of
19 Law, Decision and Order. It had done its business back in
20 2017 without following its own rules. And, to say that
21 there is some kind of difference from pre-judging or
22 pre-approving of the matter and now try to comply with its
23 rule after-the-fact, begs the question that this Commission
24 had already pre-judged its determination, and we renew those
25 objections as well. And that's what the remand was.

1 Schnitzer Steel tries to distinguish it differently, but
2 that's what the remand was really about. Was that this
3 Commission didn't comply with its own rules by allowing this
4 exception process by the various parties before it did so.
5 It jumped the gun. It approved and how do you unring the
6 bell. The only way you can do it is by those who haven't
7 made that pre-determination, pre-judgement, not
8 participating in this vote.

9 But with respect to--where we do differ certainly
10 from KOCA, we agree to everything up to this point, but
11 where we do disagree is where they are agreeable to
12 conditions to further allowing for operations pursuant to
13 certain conditions up to a certain point that Mr. Chipchase
14 discussed. What the Commission should do, we submit, and
15 actually if the Land Use Commission, way back in 2009 had
16 simply relied on its record or relied on the record made
17 down before the Planning Commission and in doing so made its
18 own, added its own Findings and Conclusions rather than just
19 incorporating the Planning Commission's findings. I don't
20 think that the decision of the Supreme Court would've come
21 out the way it did because it would've certainly been
22 sufficient evidence to establish Condition No. 14 based on
23 the record that went before it and to support the intension
24 of the Commission at that time. But the Commission didn't
25 do that. They simply incorporated the Findings of Fact,

1 Conclusions of Law, and the Commission then went ahead and
2 made various conditions and the subject of that was really
3 Condition No. 14, which could have otherwise been supported
4 by the record. And, Ms. Hanabusa made that argument way
5 back then to support closure and that record is certainly,
6 continues to support closure. It should be considered.

7 And one last point is that the modification of
8 Condition 4, which is what the decision seems to be
9 attempting to do in addition to Condition 14. And relying
10 on an application that just--And this is a 2011 record, the
11 application that just is to modify or delete, I should say
12 Condition 14, that that is beyond what that application was
13 all about, and that's what this Commission seems to be doing
14 by also relying on that record to make modifications and
15 deletions to Condition 4 as well.

16 So, we would in closing submit to this honorable
17 Commission that the record does support closure. That the
18 City has had 11 years since this has come up and has really
19 done essentially nothing. Has never been held accountable
20 and the voices of the people of the Leeward coast ought to
21 be heard. They've been impacted enough, and it's time to
22 hold the City to the fire. Thank you.

23 VICE CHAIR ANDERSON: Thank you. Any questions
24 out of the Commissioners at this time? [no response] If you
25 guys don't mind, we'll call a 5-minute recess to just get up

1 and stretch our legs and be back in 5 minutes. [bangs
2 gavel]

3 [At 3:18 p.m., Vice Chair Anderson calls for a
4 5-minute recess and reconvenes at 3:23 p.m.]

5 VICE CHAIR ANDERSON: [bangs gavel] Planning
6 Commission is back in session. I'd like to take the time to
7 at least clarify the LUC points, the five matters. Because
8 I read it maybe perhaps a little bit differently than
9 Mr. Chipchase. Whereas, I believe, you referenced it was
10 their conclusion. I wasn't at the LUC hearing, so to me
11 reading it verbatim, it seems more of a question and matter
12 of clarification rather than a conclusion. But to those
13 five points, confirming with counsel on point number one
14 with the issue of Section 2-75. I believe it is--We are
15 going through that process right now. Again, it can be
16 debated.

17 My opinion may be different than others in this room.

18 As far as Item No. 2, I believe it was myself, a
19 few years ago in 2017, it suggested the December 31st, 2022
20 date. Bases of that was by the time in, I think it was
21 March, I have on my notes, March 1st, 2017 at that hearing,
22 the seven-year time frame had been kicked around, and we
23 probably weren't confident in ENV's progress through that
24 seven-year identification development and opening of the
25 landfill. So, in '17 a 5-1/2 year feature date was at the

1 time perceived as reasonable, assuming that perhaps ENV had
2 done a 1-1/2 of that seven-year process and had 5-1/2 years
3 to go. Dovetailing that in to the suggestion of the 2024
4 date and the three-year transition of 2027, perhaps that
5 identification by 2022 does have some merit and does fall in
6 line with that schedule. But nonetheless that was the basis
7 of that suggestion.

8 On Item No. 3, whether the record needs to include
9 updated information on operation of the landfill.
10 I believe on April 23rd, 2012, the D&O on page 37 clearly
11 states that.

12 No. 4, Planning Commission eventually recommends
13 approval of the matter. Please clarify the effective date
14 pending outcome of today's hearing or whenever we get to the
15 point of recommending a D&O. That would be the effective
16 date.

17 And, point No. 5, clarify whether the Planning
18 Commission's ruling on both 2008 and 2011 applications.
19 I believe that's already included.

20 And No. 4, in the Conclusions of Law, proposed
21 Findings of Fact, D&O, on page 36, and also mentioned on
22 page 39.

23 That said, that was my attempt to clarify the five
24 items by the LUC. Up next there's a lot of information in
25 front of us with the conditions. My opinion is a lot of

1 them have merit. It would probably be foolish, we would all
2 be here for months and months on end to go through every
3 condition in every facet of the D&O, meaning the Findings of
4 Fact, Conclusions of Law, D&O. I think it's prudent that we
5 go through the D&O recommended conditions. Prior to doing
6 that, I want to enter into executive session to ask some
7 questions with counsel to see what that procedural would
8 look like and also what the scope and the ability we have to
9 add further conditions, if perhaps aren't on paper yet.
10 There are couple suggestions that I have. I just want to
11 make sure that it's within our reach or our authority to add
12 conditions such as these. So, if you don't mind, I'd like
13 to enter into executive session. Do I need a motion for
14 that? Can I get a motion, please?

15 MEMBER McMURDO: So move.

16 MEMBER G. CHANG: Second.

17 VICE CHAIR ANDERSON: All in favor.

18 ALL COMMISSIONERS: Aye.

19 VICE CHAIR ANDERSON: Any opposed? [no response]

20 All right. Executive session. [bangs gavel]

21 [At 3:48 p.m., the Planning Commissioners and
22 Counsel Agag went into executive session. All others not
23 participating exited the hearings room, and at 4:30 p.m.
24 re-enters the conference room to reconvene.]

25 VICE CHAIR ANDERSON: [bangs gavel] Planning

1 Commission is back in session. Thank you for indulging our
2 request to enter into executive session. I think we had
3 some things to be clarified by counsel, procedurally, but I
4 think there are some questions that have come about with
5 respect to the draft D&O and the merits of adding additional
6 conditions. So, I think I want to take the time--We have
7 another hour or so. Granted, we don't have to take all that
8 time but discuss the merits of some of these conditions, ask
9 questions, because I think there are quite a few questions
10 here for ENV. We'd ask you to answer. I ask that you
11 politely try to keep your responses somewhat contained and
12 not get off subject, whether it be Commissioners or the
13 parties, to keep things efficient and moving forward because
14 there are a number of conditions to move through. And out
15 of respect for each of your proposed conditions, I'd like to
16 go through all the conditions suggested for the D&O.

17 MS. CHAN: If I may ask a question--

18 VICE CHAIR ANDERSON: Yes--

19 MS. CHAN: ...I think it goes more toward
20 procedure and perhaps the process that you just outlined
21 might address it, but I was wondering whether the parties--I
22 mean, especially for the City who went first on presenting
23 our oral presentation, if we were going to have a chance to
24 respond to--

25 VICE CHAIR ANDERSON: Yes, yes.

1 MS. CHAN: ...certain issues that were brought
2 up--

3 VICE CHAIR ANDERSON: Yes, yes. We are looking
4 forward to that.

5 MS. CHAN: Okay. Thanks.

6 VICE CHAIR ANDERSON: So, with that, does ENV want
7 to take the next few minutes to respond to any questions or
8 comments made by Schnitzer, KOCA or Ms. Hanabusa?

9 MS. CHAN: Yes, please. And, I'll keep it brief.
10 So, I'll try to hit each point with quick comments and
11 response. First, with respect to the attestation, I think
12 there's been a question as to whether the timing of the
13 Commission's attestation is appropriate. The City's
14 position is that provided that the Commission does it before
15 issuing its final decision, which is clearly what you're
16 doing today, that it is, in fact, appropriate and in
17 compliance with your rules.

18 I think there was a comment, I believe it was from
19 KOCA about the LUC remand and the fact that the proposed
20 decision that's before us now is identical to the one that
21 was remanded back in 2017. And, I would just point out that
22 it's not identical. That there are paragraphs in the 2019
23 proposed decision that address the LUC's questions. So,
24 those things I believe have been addressed. The City had
25 pointed out before that the December 2017 proposed decision

1 and the one that was issued in January appeared to be
2 identical to us. There were a number of comments made about
3 not knowing whether the City is complying with certain
4 conditions, and I believe that it's primarily Conditions
5 No. 6, 15, and 16 in the 2009 LUC Order. We would just
6 state, and I think we brought it up in the prior hearing
7 that the City continues to comply with all those conditions
8 and everything in the 2009 LUC decision other than the one
9 that was struck by the Supreme Court. We would point out
10 that there's Condition No. 12 that goes to how enforcement
11 of those conditions are supposed to be taken care of. So, I
12 know KOCA raised the question about how do we ensure that
13 the City is doing what it is supposed to do essentially.
14 And there's a process already set-up in the order that does
15 that.

16 KOCA has also asked in Condition 1.e, and I think
17 a few of the others essentially to be, to have the City
18 provide notice to them directly of certain things and to
19 provide copies of reports directly to them. They are
20 essentially asking to be granted rights that don't exist
21 under the rules. They're really seeking to be regarded the
22 same way that the Planning Commission is in terms of the
23 City's obligations under our permit to provide report and
24 things. ENV does post reports up on their website when
25 they're providing them to the Planning Commission and to the

1 LUC. So they are publicly available, and we would object to
2 any additional requirements that we treat, particularly in
3 any third party and only select third parties differently
4 from the general public. There was a request to put in a
5 2024 closure deadline. We would emphasize that's not
6 supported by the evidence, and I don't believe there's any
7 basis that's been put in to the proposed decision that would
8 support that closure deadline.

9 I also wanted to distinguish the fact that the
10 deadline that the City proposed back in 2012 was not a
11 closure deadline. It structured, I think fairly similarly
12 but that was still to allow continued use under certain
13 limited circumstances. It was not complete closure.

14 There's been some discussion too about the time
15 limit provision. And KOCA referred to Rule 15-15-95. I
16 would urge the Commission to take a look at subsection F,
17 which talks about time limits being imposed if appropriate.

18 It's not a mandate that that be included.

19 And just as the last point, the City is not
20 seeking unlimited use of Waimanalo Gulch. We're simply
21 seeking to use it until the point that we reach capacity, so
22 that we are able to utilize the landfill that exist right
23 now.

24 VICE CHAIR ANDERSON: Okay. Thank you.

25 MS. CHAN: Thank you.

1 VICE CHAIR ANDERSON: Are you guys okay
2 procedurally if we just move through the suggested
3 exceptions and address them together?

4 MEMBER G. CHANG: Yes.

5 VICE CHAIR ANDERSON: Okay.

6 MEMBER McMURDO: Can I ask just a question?

7 VICE CHAIR ANDERSON: Oh, yes, sorry. I
8 apologize. Any questions from ENV?

9 MEMBER McMURDO: I just have a general question.
10 Did the City make a commitment to the community to close the
11 landfill?

12 MS. CHAN: My understanding, and this is just
13 based on my recollection was that at some point under a
14 prior permit, some years ago, I believe that there was a
15 statement that it was going to be closed but that was prior
16 to other events that lead to seeking expansion of the
17 landfill footprints. So, I think that was when we were
18 operating under a smaller acreage. I don't recall
19 specifically when that was but that was with respect to the
20 conditions that existed at that time.

21 MEMBER McMURDO: Okay. Thank you.

22 VICE CHAIR ANDERSON: You said that the current
23 site is 200 acres--

24 MS. CHAN: Uh-huh.

25 VICE CHAIR ANDERSON: Hypothetically, if that 200

1 acres was used up today, is there additional room for
2 additional expansion in the current location, would you know
3 by chance?

4 MS. CHAN: No--Sorry, could you repeat your
5 question?

6 VICE CHAIR ANDERSON: What I'm getting at is that
7 there's been claims that the landfill has--capacity has been
8 increased over time with different areas. Is there the
9 option or the ability for ENV to further increase the size
10 of the landfill?

11 MS. CHAN: No. We would need available land space.
12 The prior expansions that I believe you're referring to
13 were based on the existing landfill footprints.

14 VICE CHAIR ANDERSON: Yes--

15 MS. CHAN: So, it started off utilizing a very
16 small portion. So, now that we've expanded out to the full
17 acreage that we own there--

18 VICE CHAIR ANDERSON: Yes--

19 MS. CHAN: ...there wouldn't be anywhere else for
20 us to go once we reach capacity.

21 VICE CHAIR ANDERSON: Okay. Any other questions
22 for ENV at this time? [no response] Okay. If we look at
23 the exceptions provided by Department of Environmental
24 Services, there's a lot of merit here, whether it be
25 housekeeping, clerical misspellings. Are there any

1 questions specific to the conditions presented by ENV?

2 MEMBER HAYASHIDA: I think they're good
3 housekeeping--

4 VICE CHAIR ANDERSON: Okay. Next would be on
5 Schnitzer, Intervenor Schnitzer's exceptions. Mr. Sandison,
6 I noticed that in your recommendations that Items 89 and 102
7 of your exhibit were left out.

8 MR. SANDISON: Oh--

9 VICE CHAIR ANDERSON: I believe that's a section on
10 purpose and need.

11 MS. SANDISON: I beg your pardon?

12 VICE CHAIR ANDERSON: The section is purpose and
13 need.

14 MR. SANDISON: Okay.

15 VICE CHAIR ANDERSON: That section of point 89
16 through 102 was left out of your recommendation. Do you
17 recall any specific reason?

18 MR. SANDISON: No, I don't. And if that--Are you
19 saying there was an error in the exhibits attached or are
20 you referring to the lower--

21 VICE CHAIR ANDERSON: Yeah. The contents of your
22 exceptions. You kind of methodically go through all of the
23 points on your exhibit, and point 89 and 102 are not
24 included in your suggested exceptions.

25 MR. SANDISON: At the top of my head, I do not

1 know the answer to the question.

2 VICE CHAIR ANDERSON: Okay. Any further questions?

3 MR. SANDISON: If I may--

4 VICE CHAIR ANDERSON: Yes.

5 MR. SANDISON: ...I think one of the issues that
6 we, all the parties have some concern with are not wanting
7 to have procedural defects in the Decision and Order,
8 Finding of Fact, Conclusions of Law, and Decision and Order,
9 that goes up. And I urge the Commission in its
10 deliberations to carefully review with counsel and look at
11 the case law as to why--And the parties have all come up
12 with slightly different variations on this theme, but I
13 think we all agree that sending up to the Land Use
14 Commission a document that has few procedural issues as
15 possible. And certainly the spirit of what Schnitzer is
16 proposing is nothing of substance as to fix procedural
17 problems, and that's the ones that perceive, and that's our
18 message today.

19 VICE CHAIR ANDERSON: Thank you. And it's one of
20 the questions I have and perhaps other Commissioners, is
21 that of the proposed conditions in front of us that there
22 might be some overlap. Hopefully there's no contradictory
23 conditions; if accepted, that would be the case. But thank
24 you very much.

25 With regard to Intervenor Colleen Hanabusa's

1 exceptions, are there any questions regarding their filing?

2 [no response] All right.

3 Ko Olina Community Association, do we have any
4 questions regarding their document? I know I do but most of
5 the questions are geared towards ENV. They make some
6 suggestions in here that while at the top of my head it seem
7 practical. Before committing either way, I'd like ENV's
8 response. Let's see, I guess specifically the one off the
9 top of my head is the EPA. So, while it seems good and well
10 that the EPA would be brought into the mix. I think a few,
11 two or three conditions that they're suggesting. I want to
12 get feedback from ENV to see how does that further
13 complicate the landfill operations. Is it redundant or is
14 it not. Just to get your feedback on what those conditions
15 would do for the landfill operations.

16 MS. CHAN: Yes. Thank you. We object because it
17 is, I guess in a sense redundant that it's already
18 obligations that we have independently to the EPA. And to
19 some extent I believe that there's some things that touch
20 upon obligations we have to the DOH and under permits issued
21 by those respective agencies. So, I would question whether
22 this Commission has the authority to include it, and more
23 importantly I think to start enforcing things that are
24 outside of the jurisdiction of the Planning Commission.

25 VICE CHAIR ANDERSON: Okay.

1 MR. CHIPCHASE: If I might, I mean the condition
2 already requires compliance with various regulatory bodies.

3 So, the idea that the Commission doesn't have the authority
4 to do that is ludicrous. It's already doing that. It's done
5 that in every order that I looked at relating to this
6 landfill. So, of course, it does because the body has
7 jurisdiction over the special use permit, and it can impose
8 such conditions as it determines are necessary to avoid
9 negative impact on the surrounding community and protect the
10 health, welfare and safety of people in the environment.

11 And, so compliance with regulations in obtaining all
12 approvals which the Commission already requires does exactly
13 that squarely within the Commission's jurisdiction as it
14 exercised for years and years on this project. Why, adding
15 the EPA in reference to other federal and state laws in one
16 case municipal laws. All we're doing is bringing under
17 existing conditions the full regulatory bodies that have
18 jurisdiction over this landfill. That's the only change.
19 It's not expanding the Commission's jurisdiction in any way.
20 It's just making the existing condition comprehensive.

21 MEMBER G. CHANG: What would be your thoughts in
22 Schnitzer's position on that?

23 MR. SANDISON: I think our position is that the
24 Commission already incorporates by reference in all federal
25 law and so forth. And the only change that KOCA is really

1 performing, is suggesting to specifically identify the
2 EPA. Schnitzer's view would be that it does not
3 materially change what already exist in the Decision and
4 Order.

5 VICE CHAIR ANDERSON: I guess also the question to
6 KOCA would be--and forgive me I'm not overly knowledgeable in
7 either the approvals needed or laws, compliance laws of the
8 EPA. But are there any specific examples within your EPA
9 suggestions that would change the current operations of the
10 landfill?

11 MR. CHIPCHASE: Well, I think, I would look at in
12 two-fold, right. I mean, there are overlapping regulatory
13 authority by a lot of different agencies. This is just not
14 the Planning Commission and the EPA. DOH--Different bodies
15 of the City have regulatory jurisdiction and within DOH
16 there's the solid waste branch, the water branch, they all
17 have their own regulatory frameworks. We can go on and on
18 about regulatory overlap, and so that's not really the
19 question. The question is in this body's determination or in
20 the exercise of this body's jurisdiction, which is the
21 approval of the special use permit, are there conditions
22 that are helpful, help to mitigate the impact on the
23 community? The EPA as we've seen through these proceedings,
24 and I'd be happy to pull any of the examples back up on the
25 screen. EPA has extensively cited this landfill operation

1 for a lot of different reasons over many years. The most
2 obvious or at least well reported example of that was the
3 release of waste and leachate in 2010 and again in 2011,
4 poured over Ko Olina's property, into [inaudible], and into
5 the ocean. EPA was extensively involved in that. And so
6 the idea of incorporating into existing regulatory
7 conditions are referenced to a body that has exercised
8 regulatory jurisdiction over this landfill for very good
9 reasons, because they did impact neighboring properties and
10 subject that this Commission is necessarily concerned about.
11 It shouldn't be controversial, and frankly I've always been
12 surprised that the City fights it all against this
13 condition, and this changed the condition.

14 VICE CHAIR ANDERSON: Okay. Thank you.

15 MS. CHAN: If I may just address one point. With
16 respect to the characterization about overlap, there are,
17 for example, a facility like the landfill would be subject
18 to various regulations and various permitting requirements.
19 For example, a special use permit as well as our Solid waste
20 Management Permit. I suppose you could characterize that as
21 some overlap. But what's really occurring there are the
22 different agencies have different responsibilities.

23 So, yes, because this property is an agricultural use
24 property we come to the Planning Commission to receive a
25 special use permit in order to operate a landfill there.

1 But that's not truly overlap with the Department of Health's
2 jurisdiction over our Solid Waste Management Permit or the
3 EPA, if you're looking at other environmental matters. We
4 are subject to various regulations, but it's for very
5 different reasons.

6 MR. CHIPCHASE: And I don't want to beat the dead
7 horse--

8 VICE CHAIR ANDERSON: Yep.

9 MR. CHIPCHASE: If that argument carried today,
10 then there would be no reason for the req--the restriction
11 as it exists. The condition as it exist requires compliance
12 with Department of Health regulations among other things.

13 So, if the idea were, okay, Planning Commission you don't
14 care how it's regulated or the regulatory agency might say,
15 then that condition should go away. But it always existed
16 and nobody ever argued that it shouldn't exist. All we're
17 doing is bringing full regulatory authority into it.

18 MEMBER G. CHANG: Mr. Wurdeman, what are your
19 thoughts on this?

20 MR. WURDEMAN: I would just add as far as the EPA
21 and expanding on what Mr. Chipchase said, I mean there were
22 criminal indictments in federal court as a result of EPA,
23 the enforcement and that large spill that went out into the
24 ocean. Certainly something that is needed and you know the
25 City has shown that it's needed in the mismanagement down

1 there in the past.

2 MS. CHAN: Chair. Just in response to that and as
3 well as Mr. Chipchase's comment. That the fact the EPA went
4 ahead and investigated and handled the criminal matter, I
5 think goes to prove that there is a process in place to
6 address those concerns.

7 VICE CHAIR ANDERSON: Okay.

8 MEMBER McMURDO: In terms of the wording when he
9 says, it violates the order, what is the consequence of
10 violating the order?

11 MS. CHAN: I'm sorry, which part are you referring
12 to?

13 MEMBER McMURDO: I think in KOCA's wording.

14 MR. CHIPCHASE: It's the last part of 2.c.

15 VICE CHAIR ANDERSON: Page 50, 51--

16 MEMBER McMURDO: A violation of any applicable
17 statutes, and it says, shall be a violation of this order.

18 MS. CHAN: I understand that to mean that the City
19 would then be subject to liability twice. Meaning that this
20 Planning Commission would add like an additional entity that
21 we would be responding to; separate and apart from any other
22 obligations we would have under those same statutes.

23 MEMBER McMURDO: You are obligated, aren't you?

24 MS. CHAN: Correct. So, for example, if it's a
25 Department of Health issue that we are being cited for, we

1 would already be responding to them. And I would view the
2 additional--including and as part of this order, meaning
3 that then we would be brought before the Planning Commission
4 under a separate proceeding.

5 MR. CHIPCHASE: The idea there, of course, members,
6 is that they need this separate permit. They don't just
7 need a DOH regulation. They need this body to say this is an
8 unusual and reasonable land use. And so you have the
9 condition. If they violate the condition, [inaudible]
10 enforceable by this body. So if you require compliance and
11 you don't comply, then it ought to be a violation of the
12 approval by this body because this body couldn't approve the
13 use as an unusual and reasonable, unless they comply with
14 all applicable laws.

15 MEMBER McMURDO: Although I could see two different
16 consequences, right? If ENV violates an EPA rule but
17 continues to work with EPA in remedying the violation, that
18 should be okay from our standpoint.

19 MR. CHIPCHASE: And the Commission may judge
20 that. The Commission may determine, yes, you violated it;
21 and, yes, that is a violation of our order because we
22 require compliance, but we respect your solution, right?
23 But that's a judgment the Commission can make when it has
24 all the facts and circumstances. This just creates the
25 vehicle for that discussion.

1 VICE CHAIR ANDERSON: Further discussion on that
2 one? [no response] Next proposed condition I'd like to
3 bring up is Condition 3.

4 MEMBER McMURDO: KOCA's condition?

5 VICE CHAIR ANDERSON: Yes. We're still on KOCA's--

6 MEMBER McMURDO: What page is that again?

7 VICE CHAIR ANDERSON: They go in to detail--If you
8 look at their main exceptions document on page 8, can also
9 be found in Exhibit 1 on page 85. Again, without beating a
10 dead horse I know we've discussed it earlier the basis of
11 identifying a site in December 31st, 2022. This 3.a; 3.b;
12 and 3.c, get into the 2024 the three-year transition process
13 and the 2027 opening of a new alternate landfill site that
14 has to be operational regardless if there remains capacity
15 or not at Waiamanalo Gulch. Something that has been kicked
16 around and proposed, ENV is that there's been a task here to
17 set out to identify a site whether it be by putting together
18 a group of constituents to identify a site. And you had
19 mentioned that there was a report done last year. I haven't
20 seen a copy, and I'm not sure if any of the Interveners
21 have. I can't say for certain the status of that and give
22 you an opinion on it. One of the recommendations was, and
23 again this is--I'm not sure if we have the ability to
24 provide it as a condition. I don't think we do but as a
25 strong suggestion without telling you how to do your work,

1 would be that you appoint a position specifically to handle
2 and staff within ENV or whichever department, a position to
3 handle all of this. Identifying the site, developing it,
4 construction. There's a lot of entitlements.

5 And sitting here I'm not confident in seven years, can
6 handle that. I mean entitlements alone--there's a
7 sufficient amount of time there but because a seven-year
8 period has been given, I'd like to hold you folks to it.
9 Any questions specifically from the Commissioners on this
10 condition? Any questions for ENV? I know you stated
11 earlier ENV that I believe that 2024 and 2027 dates would be
12 difficult to achieve. Has anything that's transpired today
13 change that position?

14 MS. CHAN: I don't believe I'm in a position to
15 respond to that. I'd have to consult with my clients.

16 VICE CHAIR ANDERSON: Okay.

17 MEMBER G. CHANG: But I think that's what the
18 major concern right now in the community. So we want to
19 kind of suggest and stress to you that that's why we're
20 still here. I think a lot of the people want to know the
21 process and progress of where we're at. Because they really
22 don't want to come back here again and reopen this again
23 with complaint from the community.

24 MS. CHAN: Sure. I would agree that's been an
25 ongoing concern that's been raised in this proceedings, but

1 I would respectfully disagree with the notion that that's
2 the reason that we're still in the proceeding. There's been
3 other reasons of this case is still ongoing.

4 MEMBER G. CHANG: Understood. But I think that
5 report that you kind of spoke about a while ago, we would be
6 apprised of it, that would really help us start to share it
7 with people so we know what's going on. And I think that's
8 what's causing a lot of the question marks right now.

9 MS. CHAN: Sure.

10 MEMBER G. CHANG: Yeah.

11 MS. CHAN: With respect to that, I mean I would
12 note the actions that ENV has taken including things like
13 even before the most recent report was issued, there was a
14 committee of community members. I don't recall specifically
15 who was on it, but there was a group that had done more of a
16 preliminary review. But all of those things have been done
17 to fulfill conditions under the 2009 decision. But, yes, I
18 can relay that back to the Department that the Commission is
19 interested in receiving a copy of that, if you haven't
20 already.

21 VICE CHAIR ANDERSON: I guess I would also add that
22 kind of goes in line with further or earlier suggestion that
23 you felt it was beyond, I believe it was KOCA's authority to
24 request that these semi-annual updates be presented directly
25 to them rather you have an online website or those notices

1 are implemented. This might be an example of that report
2 might be public, I don't know, I haven't seen it, but it
3 would be appreciated as a neighborly gesture working on this
4 hearing that we would have received that report. I know
5 perhaps it's not you specifically, but that would be an
6 example of there is material out there that would help our
7 understanding of the status that would've been helpful.
8 Likewise, if there's updates available that not only does it
9 just go online, but it actually gets delivered to the
10 Intervenors or neighbors or the public in that area.

11 MS. CHAN: Understood. The one condition that pops
12 into mind is our annual report and requirement. I mean it's
13 clear that we provide that to the Planning Commission as
14 well as the LUC. So those copies do go out.

15 MR. CHIPCHASE: If I--just one comment. You know
16 on the idea of sharing things. It's pretty typical for
17 agencies to have mailing lists and when they do updates or
18 make changes--I mean the LUC will notify a group of people
19 of every proceeding before them because those people have
20 expressed an interest. We've done more than express an
21 interest. We put hard time and money behind this for a
22 decade plus, and I don't think it would a be a lot to ask.

23 When you have updates or notices to just share it with us.

24 MEBBER McMURDO: I think that's reasonable.

25 VICE CHAIR ANDERSON: Are there any other specific

1 conditions within KOCA's exceptions that we would like to
2 address at this time?

3 MEMBER GOO: I have.

4 VICE CHAIR ANDERSON: Go ahead.

5 MEMBER GOO: Imagine you go back to staff to sort
6 of flesh out the 2027 date, the steps leading up to it.

7 You didn't say steps leading up to it, but I find it
8 reading the report that it's my observation that people
9 don't really understand what the seven-year entails. There
10 are items within that that are very time consuming. And if
11 you go back to ENV and say what you have estimated for your
12 EIS process or your building permit process. There are many
13 processes that take a lot time today and if that notice is
14 given to us, we can begin to anticipate whether we're going
15 to meet that 2027 deadline, rather than just bring it on the
16 community at 2026; sorry, we're going to have get an
17 extension. So I think because it has so many time consuming
18 steps that will be a good idea to share that estimate with
19 us.

20 MS. CHAN: Understood.

21 MEMBER G. CHANG: See, our thoughts is that if we
22 stick to some date that you give us, we kind of feel just as
23 much for the community. And when you hear a date like that,
24 then the expectation is there, although they don't hear the
25 extension, the exception rule. And so Commissioner Goo is

1 pretty good about planning and understanding the process to
2 get there. And his thought is that if you know we don't
3 think we're going to get there, then we should address it
4 and let the community know and then we when we can follow
5 that time line, then the community would be more open to
6 saying, "hey, welcome we're good neighbors too. We
7 understand." And that's what we want to try to prevent this
8 from further getting into public testimony matters.

9 MS. CHAN: Sure. And I think that was the intent
10 of the conditions that were included in the prior order that
11 required certain reporting and very specific things to
12 report on. So and whether that was in the form of the
13 annual report or the community meetings, those are the kinds
14 of things that ENV has been trying to communicate to the
15 public. And to clarify the thing that I said I needed to go
16 back to the Department to discuss was, I believe the
17 question was whether or not there's been anything that has
18 impacted the ability to meet certain dates. I may be
19 misstating your question, but--

20 VICE CHAIR ANDERSON: I think the general--You're
21 talking about the question that I'd ask earlier today, if
22 anything has transpired today that would change your opinion
23 of the 2024, 2027 dates. I think you made it clear that
24 perhaps you aren't the--You have to consult with your
25 client--

1 MS. CHAN: Right. Because--

2 VICE CHAIR ANDERSON: ...for some specifics.

3 MS. CHAN: Correct; yes. That would be something
4 very specific to that particular branch of the Department,
5 so I'd have to consult with them.

6 VICE CHAIR ANDERSON: Any other questions? [no
7 response] Running up on 30, 40 minutes remaining.

8 MEMBER McMURDO: I'm sorry. Would some of the
9 conditions that were mentioned with regard to monitoring
10 waste, landscaping, dust, truck schedules, are any of those
11 conditions--do you object to any of those conditions?

12 MS. CHAN: Object only to the extent that those are
13 the things that--with the exception of landscaping, that's a
14 separate condition, but all the other ones that you've
15 mentioned are all part of our Solid Waste Management Permit,
16 and that was submitted as Exhibit A4 in the 2012 proceeding.

17 MEMBER McMURDO: Truck scheduling?

18 MS. CHAN: It's under queuing of vehicles. There's
19 one for mud and dust control that are control noise and
20 odor. I think they're all listed separately. Landscaping is
21 not something that's included on there.

22 VICE CHAIR ANDERSON: I would add really quick
23 that the image of the landfill you folks put up on the board
24 as a landscaping example, without getting in the specifics
25 of where you were calling out landscaping needs, it appeared

1 at least that the entire landfill site had been landscaped
2 with hydromulch grass, whatever it may be. At the top of
3 the screen it looked like it was an active landfill site
4 that perhaps that was the reference where landscaping would
5 be needed. If that's the case, I'm not sure if the maturity
6 of landscaping would take multiple years and by that time
7 may be that site would change. I don't know the solution
8 there, but it did seem at least aesthetically that the
9 entire hillside was landscaped with grass.

10 MS. CHAN: I would add too that there are certain
11 regulations that apply to cover, and I'm not the expert in
12 this area, but for the landfill cells that are already
13 closed off and that are no longer being used, there are
14 certain requirements that need to be met and things that
15 would govern what appropriate cover is. You know as well as
16 for other active portions of the landfill. So that would
17 impede our ability to do certain things or plant certain
18 things in those areas.

19 MEMBER McMURDO: When was that photo taken?

20 MR. CHIPCHASE: That was part of the evidence in
21 this case. So it's seven years old. And that no question
22 is an issue. We don't have evidence of the current state of
23 operations in a lot of respects. And so if the Commission
24 elects not to reopen evidence, then that's the evidence that
25 we're stuck with. Is what was admitted formerly before this

1 body. We don't have an opportunity to see a picture of the
2 landfill site today. I site inspected in probably January
3 2012, and I can tell you in January 2012 it was pretty
4 blithe looking. And so is it still as blithe today. I
5 can't honestly tell you. I haven't been up there in eight
6 years. But that's the state of the record that we're stuck
7 with. And so that's the record is the only thing the
8 Commission can base its determination on. In terms of what
9 I characterized as good neighbor conditions, you know I can
10 tell you the state of the record says, whatever requirements
11 or in any other document they're not enough. There is no
12 contrary--you know take dust for example. There's no
13 contrary testimony or dust is not an issue. The only
14 testimony in the record before this body is dust is an
15 issue. So, yes, there is a dust mitigation plan required by
16 this body. No, it is not working. And so what we ask is
17 incorporate the terms of that as part of the condition so
18 that we can make it work. Yes, there are queuing in other
19 litter control requirements that are part of any management
20 of a landfill. No, they are not working. There was no
21 testimony from the operator or from ENV or from anyone else
22 in this record that litter is not issue. That odors are not
23 an issue; noise is not an issue. That having [inaudible]
24 uniform that they are all issues. And so the conditions
25 that counsel refers to in other documents aren't doing the

1 job. In this body being concerned predominantly with the
2 effect of a special use on neighboring properties has before
3 it, ample evidence of negative effect. And rather than come
4 in and say, despite the many promises over many years, and
5 we could pull all of that testimony back up that it would be
6 closed years and years before now. We haven't asked for
7 that. We recognize the need for it but as long as we're
8 stuck with it, and hopefully not more than eight years, we
9 want it to be a good neighbor and that's the basis for those
10 conditions. And, I think squarely within its bodies,
11 jurisdiction and oversight to ensure that special uses don't
12 negatively effect surrounding property.

13 MEMBER GOO: Cord, who is responsible for the good
14 neighbor actions that Chipchase refers to? Does ENV through
15 waste management do all of that, comply with it?

16 VICE CHAIR ANDERSON: From my understanding ENV
17 would be held responsible for implementing that sort of
18 condition. I can't answer it if it's specifically ENV or
19 waste management or who would actually transfer that
20 material, but they would be held responsible is my
21 understanding.

22 MEMBER GOO: Is that right?

23 MS. CHAN: I think to the extent that the City
24 would be the permittee; yes, that would fall on us.

25 MEMBER GOO: Is there someone at the City that

1 sort of has that?

2 MS CHAN: To do--

3 MEMBER GOO: To do all the good neighbor things?

4 28:18

5 MS. CHAN: Because it's already part of our Solid
6 Waste Management Permit. So, for example, there's a limit
7 on the number of vehicles that can que out on the road at
8 any given time or the litter pickup from windblown debris.
9 Those are things--Windblown debris I believe is something
10 that would be handled by waste management staff since they
11 operate the landfill, but that's still with ENV oversight
12 since they're simply contractors.

13 VICE CHAIR ANDERSON: I think perhaps to
14 paraphrase what Commissioner Goo is getting at is we'd like
15 a single responsible--whether it's a person or party that we
16 can talk to versus it's ENV, Department of Health, it's the
17 City, it's waste management. And to the suggestion earlier
18 that if it's within your budget that we identify a specific
19 staff or project manager to oversee pretty much all things
20 landfill related, whether it be oversee current operations,
21 oversee the selection of an alternative site, the
22 development, that whole process again might be overkill.
23 But it does seem that the process in place over the last 10
24 years, nine years, hasn't resulted in a lot of growth in
25 this area.

1 MS. CHAN: Perhaps it warrants some clarification.
2 There is a person, a City employee whose job it is to
3 be--for lack of a better term, I'm not sure what his title
4 is, but it's like he manages the landfill among other
5 facilities as well. I'm not sure that it would be
6 appropriate to have that same position necessarily be
7 responsible for overseeing site selection because that might
8 be a separate process, but I understand what you're getting
9 at. That having a more streamlined process, a single person
10 would be ideal.

11 MEMBER GOO: Some one that we call on and say,
12 have you done all these things or if you have any problems?

13 VICE CHAIR ANDERSON: I think it's an
14 accountability issue, perhaps, and responsibility as well.

15 MS. CHAN: Uh-hmm.

16 VICE CHAIR ANDERSON: Any other questions on any of
17 the existing proposed exceptions and conditions?

18 MEMBER G. CHANG: None here.

19 VICE CHAIR ANDERSON: Any further discussion or is
20 anyone willing to make--Well, I guess let's rewind a little
21 bit and let's look at the two remaining actions we have in
22 front of us. At this point, I guess we can take a look
23 at action 2, and if there's any--Again, action 2 is
24 Intervenor's Ko Olina Community Association and Maile
25 Shimabukuro's motion to reopen the contested case hearing.

1 Is there any further discussions or questions for the
2 parties, ENV, that we need to ask? Willing to make a motion
3 at this time on that action?

4 MEMBER HAYASHIDA: I'll make a motion to deny
5 Intervenors Ko Olina Community Association, Maile
6 Shimabukuro motion to reopen the contested case hearing.

7 VICE CHAIR ANDERSON: Is there a second?

8 MEMBER G. CHANG: I second.

9 VICE CHAIR ANDERSON: Any discussion beyond what
10 we've already entertained from the parties or amongst
11 ourselves?

12 MEMBER G. CHANG: None.

13 VICE CHAIR ANDERSON: Okay. Hearing no further
14 questions, I'll call for a vote. All in favor.

15 ALL COMMISSIONERS: Aye.

16 VICE CHAIR ANDERSON: Any opposed? [no response]
17 Motion carries. Thank you. The next action, No. 3,
18 adoption of proposed Findings of Fact, Conclusions of Law,
19 and Decision and Order. I think we've discussed this rather
20 thoroughly this afternoon, entertained presentations,
21 questions from the various parties, looked into most of the
22 conditions that at least appealed to us and vetted the
23 applicability with ENV and KOCA and Schnitzer and
24 Ms. Hanabusa. Any further discussion here or are we ready
25 to make a motion on some of the conditions that we

1 suggested?

2 MEMBER G. CHANG: No further discussion.

3 Ready for a motion.

4 MEMBER HAYASHIDA: Okay. Motion to adopt the
5 proposed Findings of Fact, Conclusions of Law, and Decision
6 and Order, but to include the exceptions of Department of
7 Environmental Services and also the exceptions of Schnitzer
8 Steel.

9 MEMBER G. CHANG: Including Items 89 to 102--

10 MEMBER HAYASHIDA: Of Exhibit--

11 MEMBER G. CHANG: ...of Exhibit A--

12 VICE CHAIR ANDERSON: And, I want to be--

13 MEMBER G. CHANG: ...and--

14 VICE CHAIR ANDERSON: Sorry. And, I want to be
15 clear it's, I guess for the record whether its exceptions,
16 conditions included within their exceptions, is what we're
17 referring to.

18 MEMBER G. CHANG: Correct. Shall we restate the
19 motion?

20 VICE CHAIR ANDERSON: If you don't mind. Sorry,
21 Commissioner Hayashida, one more time.

22 MEMBER HAYASHIDA: Adopt the proposed Findings of
23 Fact, Conclusions of Law, and Decision and Order to
24 include--

25 MEMBER G. CHANG: All--

1 MEMBER McMURDO: The conditions and the
2 exceptions--

3 MEMBER HAYASHIDA: The conditions and the
4 exceptions that the Department of Environmental Services,
5 the City and County of Honolulu and also Schnitzer Steel.

6 MEMBER G. CHANG: Plus items 89 to 102--

7 MEMBER HAYASHIDA: Plus items 89 and 102--

8 MEMBER G. CHANG: ...of their Exhibit A in the
9 motion.

10 VICE CHAIR ANDERSON: Okay. And--

11 MEMBER G. CHANG: And all--

12 VICE CHAIR ANDERSON: ...in addition to--go ahead.

13 MEMBER G. CHANG: In addition to the old Findings
14 of Fact and to include all of the new Findings of Fact, as I
15 understand--

16 VICE CHAIR ANDERSON: Sorry. To interject real
17 quick. What I've heard the motion is with reference to the
18 proposed Planning Commission's D&O is to include the
19 conditions within the exceptions of ENV, Schnitzer, plus
20 items 89 and 102 within Schnitzer, and then the question
21 would be are there any further conditions within Ms.
22 Hanabusa's or KOCA's recommended conditions?

23 MEMBER McMURDO: I'd like to include KOCA's time
24 line, the 3--

25 VICE CHAIR ANDERSON: 3.a, b and c--

1 MEMBER McMURDO: ...a, b, and c, as well as 1.c--

2 MEMBER G. CHANG: 1.g--

3 VICE CHAIR ANDERSON: 1.g--

4 MEMBER McMURDO: Was it d or c? The reporting.

5 VICE CHAIR ANDERSON: I believe it was c and g--

6 MEMBER G. CHANG: Right, 1.c and g.

7 MEMBER McMURDO: Yeah.

8 MEMBER G. CHANG: 2.e--

9 MEMBER McMURDO: I would--

10 MEMBER G. CHANG: 2.g--

11 MEMBER McMURDO: I would actually do just c--

12 VICE CHAIR ANDERSON: 2.c--

13 MEMBER McMURDO: Yeah, that's the one that I would
14 support.

15 MEMBER G. CHANG: 2.e--

16 MEMBER HAYASHIDA: 2.c--

17 VICE CHAIR ANDERSON: Is someone taking notes
18 because we're going to have to restate this--

19 MEMBER McMURDO: Yeah, I am. I got that down. I
20 would c, d--

21 MEMBER G. CHANG: And e--c, d, e and g; 2.i; 2.j;
22 3.a; 3.b; 3.c.

23 MEMBER HAYASHIDA: What page is that on?

24 MEMBER McMURDO: 82--

25 MEMBER G. CHANG: Yeah.

1 MEMBER McMURDO: ...of Exhibit 1.

2 VICE CHAIR ANDERSON: Commissioner, if you don't
3 mind on the suggested just so we're clear on the motion, on
4 the suggested conditions we're looking at from KOCA, that
5 they just be noted in numerical order, when we're ready. So
6 I've heard various--1, 2, and 3, any additional--

7 MEMBER McMURDO: But mines is more specific to 1.c
8 and 1.d. I'm not sure I agree with 1.e, but 1.c and 1.d.

9 MEMBER HAYASHIDA: 1.c and 1.d.

10 MEMBER McMURDO: Yeah.

11 [colloquy between Vice Chair Anderson and Counsel
12 Agag]

13 VICE CHAIR ANDERSON: Okay. When we're ready,
14 would someone please restate the proposed motion that deals
15 with the proposed Planning Commission's D&O. If I hear
16 correctly, accepting ENV's conditions, accepting Schnitzer's
17 conditions, plus 89 through 102 and the list of motions that
18 Commissioner McMurdo had just mentioned.

19 COUNSEL AGAG: Point of order.

20 VICE CHAIR ANDERSON: Yes.

21 COUNSEL AGAG: Why don't we do this. You can vote
22 individually on each exceptions so that you can move--So we
23 do one on ENV, one on Schnitzer. I don't--if you guys want
24 to discuss KOCA's conditions so that you guys are all on the
25 same page.

1 VICE CHAIR ANDERSON: Okay.

2 COUNSEL AGAG: So that way you guys have it, and
3 we have a clean record of what you guys are actually
4 required.

5 VICE CHAIR ANDERSON: So, question of clarity, then
6 motion would be to approve the proposed D&O with the
7 additions of conditions, for example, from ENV. We vote on
8 that--

9 COUNSEL AGAG: Yep.

10 VICE CHAIR ANDERSON: But at that point that
11 wouldn't be considered the final vote. Do we have the
12 opportunity to come back and say we want to vote on that
13 same D&O with further conditions? How do we word that?

14 MEMBER McMURDO: That's what I'm--So I think we
15 need to do the whole thing. We're trying to get consensus
16 on--

17 COUNSEL AGAG: So why don't we [inaudible]
18 discussion on the KOCA's conditions that you guys all need
19 to all agree upon still, because it doesn't sound like
20 everyone is in agreement on the specific conditions that
21 everyone wants to list.

22 MEMBER McMURDO: Right.

23 VICE CHAIR ANDERSON: True.

24 COUNSEL AGAG: So why we don't we take the motion
25 off the table now, continue discussion with KOCA, and then

1 we'll have a clean motion.

2 VICE CHAIR ANDERSON: Okay. Commissioner McMurdo,
3 if you want to take the lead here on your notes and work
4 down numerically.

5 MEMBER McMURDO: So on condition 1, I'm looking
6 only at Condition 1.c and d.

7 COUNSEL AGAG: Commissioner, you're looking at
8 Exhibit 1.

9 MEMBER McMURDO: Exhibit 1--

10 COUNSEL AGAG: ...of KOCA's--

11 MEMBER G. CHANG: Page 82--

12 MEMBER McMURDO: Page 81 right now--

13 MEMBER G. CHANG: Oh, 81, 82--

14 MEMBER McMURDO: That's Condition 1, page 82. I'm
15 suggesting we go with 1.c and then 1.d. Was there anyone
16 else have anything for the Condition 1? Do you want
17 something else? [no response] If not, then--

18 MEMBER G. CHANG: I thought we were going to think
19 of 1.g instead?

20 VICE CHAIR ANDERSON: Understand that point.

21 I just don't want to be redundant on requiring too
22 many--For example, 1.f is every three months. I mean--

23 MEMBER G. CHANG: Right. We'll be here all day.

24 VICE CHAIR ANDERSON: Open to suggestion by the
25 way. That's just my personal opinion.

1 MEMBER G. CHANG: Commissioner, would you want
2 every three months or every semi?

3 MEMBER McMURDO: No. G talks about--which one are
4 you talking about?

5 VICE CHAIR ANDERSON: C and d I believe is
6 semi-annual, which is twice a year.

7 MEMBER G. CHANG: That's enough. Okay.

8 MEMBER McMURDO: I wasn't suggesting the others.
9 So just c and d.

10 MEMBER G. CHANG: C and d; okay.

11 VICE CHAIR ANDERSON: 2--

12 MEMBER McMURDO: I don't have anything for 2, but
13 if the Commissioner wants to do that--

14 VICE CHAIR ANDERSON: Give me a second. So, the
15 two EPAs are 2.c and 2.d; okay. And--

16 MEMBER G. CHANG: There's 2.e also.

17 VICE CHAIR ANDERSON: 2.e was dust mitigation.

18 MEMBER McMURDO: 2.c; 2.d; 2.e; 2.g; i and j.

19 From our perspective it's not--I don't think these are
20 on--If you're already doing it for something else, why not.

21 MEMBER G. CHANG: Correct

22 MEMBER McMURDO: Right. So--

23 VICE CHAIR ANDERSON: Okay.

24 MEMBER McMURDO: And then Condition 3.a, b and c.

25 VICE CHAIR ANDERSON: Okay. Any further--

1 MEMBER McMURDO: Anyone else want to--

2 VICE CHAIR ANDERSON: On KOCA--

3 MEMBER G. CHANG: No, we're good.

4 MEMBER HAYASHIDA: Again, with 3--

5 VICE CHAIR ANDERSON: 3.a, b and c.

6 MEMBER HAYASHIDA: It forces them to close the
7 landfill?

8 VICE CHAIR ANDERSON: No. By 2024 it diverts
9 everything but ash and is it residue, the transitional
10 period from 2024 to 2027. But at 2027--

11 MEMBER McMURDO: It closes.

12 MEMBER GOO: Everything closes.

13 VICE CHAIR ANDERSON: Yes. And a new landfill site
14 is operational.

15 MEMBER HAYASHIDA: You're going to impose on the
16 City a requirement to shut them down by 2027?

17 VICE CHAIR ANDERSON: That is the discussion right
18 now. Some of that basis I believe is on the sentiment that
19 we've heard whether it be from Commissioners or Intervenors.
20 Some of that is based off of this 7-year time period that it
21 takes to identify, develop and operate or open. I think
22 there's some hesitancy on my part and perhaps without
23 putting words in other Commissioners, that seven years is
24 realistic. There's a lot of time and energy that has to go
25 into that time period or that effort. I'm hoping that some

1 of that has already been done. So we're not starting from
2 scratch, seven years. But note that's eight years from now.

3 MEMBER GOO: I will add that until we get a report
4 back from Chan about the description of the elements that
5 make up the time period.

6 VICE CHAIR ANDERSON: Okay. So if I hear you
7 correctly, you wouldn't want to take that matter up for vote
8 until we have that material in front of us?

9 MEMBER GOO: That's right.

10 VICE CHAIR ANDERSON: Okay.

11 MEMBER HAYASHIDA: I'll support Don on that.

12 VICE CHAIR ANDERSON: Okay.

13 MEMBER GOO: It's too risky. I mean the community
14 has bare bone with it our postponing, and if we give a date
15 now, we better be sure, and I'd like to have some support
16 from ENV.

17 VICE CHAIR ANDERSON: Not that we would be asking
18 for it right now, but my memory is a little foggy on that
19 seven-year process. I don't remember I think there was a
20 presentation on what went into site selection development
21 operation in seven years, would that be something that could
22 be furnished?

23 MS. CHAN: That I believe is part of the testimony
24 from the prior hearings.

25 MEMBER GOO: Okay. So you can gather it up and

1 make sure it's correct.

2 MS. CHAN: Those are--

3 MR. SANDISON: Excuse me for interjecting, but I
4 think you're limited to what the evidence that is before
5 you. So you'd have to review what was presented and
6 explaining the criteria that got to the seven years and for
7 the sake of this record, because this transcript will be
8 very carefully reviewed in the future, to be certain as you
9 reach a decision as weighty as this one, that you are citing
10 to evidence that is in the record that supports your
11 decision making. Thank you.

12 MS. CHAN: Just to add on to that I believe that in
13 prior filings we cited to specific testimony and evidence
14 that was submitted in to the record. I believe it touches
15 specifically on that deadline issue and as far as who
16 testified to that and where it is in the record. Off the
17 top of my head I don't recall which filing that would've
18 been in. But at some point I know ENV had advocated for
19 facts that were I think more expansive than the ones that
20 are included in the Planning Commission's current proposed
21 decision. So I believe it's contained there, the citations
22 to the record.

23 MEMBER G. CHANG: So you would object to items
24 3.a, b and c?

25 MS. CHAN: The City would object to those;

1 correct; yes.

2 MR. CHIPCHASE: Commissioner, Mr. Sandison is
3 correct that the Commissioners are limited to the evidence
4 that's in the record without reopening. That said, there is
5 extensive evidence on the time required to site a landfill.
6 Under oath, testified not only an expert witness that we
7 presented, recite, and design many landfills across the
8 country including landfills in Hawaii, we had the former
9 testimony or we had the testimony. We had ENV's former
10 Chair, who's the Acting Chair at the time, deputy at the
11 time. We have a testimony of the current, then at the time
12 current deputy, and we have testimony from who's then the
13 Chair of the site selection process. So there's extensive
14 evidence in the record to support developing, siting and
15 developing site within seven years or faster. As the
16 process has been going on for nine years already, I would
17 hope that they have moved that deadline or that time frame a
18 lot shorter. But the record supports that condition.

19 MEMBER GOO: If the record supports it, then
20 that's fine. When Ms. Chan reports back to us some more
21 detailed information, I'd be curious. Because I find in
22 reading the minutes that the definition of completion,
23 development are different, and I'm not sure if there's an
24 understanding that those who were testifying what those
25 really mean. Development is different and construction is

1 different. All of those things are different, and they are
2 very time consuming. So given that it's already proven
3 until we can prove it otherwise, I'll accept that.

4 VICE CHAIR ANDERSON: Commissioner Hayashida, do
5 you agree with, I guess the dialog back and forth that it
6 be--

7 MEMBER HAYASHIDA: I'd have to refresh my memory on
8 the time of completion of the seven year before I make that
9 decision whether we're going to put that into the record.
10 So--

11 VICE CHAIR ANDERSON: Okay.

12 MEMBER HAYASHIDA: Shall we make the motion to
13 continue this hearing on another date?

14 VICE CHAIR ANDERSON: Okay.

15 MEMBER GOO: This hearing or this subject?

16 VICE CHAIR ANDERSON: The hearing I believe.

17 MEMBER HAYASHIDA: We have a motion to--

18 VICE CHAIR ANDERSON: Well, technically I don't
19 believe there's a motion--

20 MEMBER HAYASHIDA: We're in discussion 3.a, b and
21 c, and I guess we're going to enter--So, we want to
22 vote--People don't feel like we have the information to vote
23 on--

24 VICE CHAIR ANDERSON: Well, for clarity we do have
25 information but just not in front of us.

1 MEMBER HAYASHIDA: Yeah.

2 VICE CHAIR ANDERSON: Fair enough. If that is the
3 case, we have to look into dates to schedule a continuance
4 hearing, because I believe with the bare quorum we need a
5 unanimous vote, correct, to carry anything?

6 MR. SANDISON: If I may interrupt, I think you're
7 down to really a very minor issue that doesn't require
8 additional briefing, but I think it should be clear on the
9 record that the Commissioners going back to carefully review
10 and refamiliarize themselves with the testimony concerning
11 the closure period and the steps that are involved and to
12 the reasonableness of any condition that is imposed. And at
13 a further hearing the Commissioners will be familiar with
14 that and the record as it pertains to that and at that point
15 the only business that would be before the board would be to
16 finalize this last little portion, which is really on the
17 conditions 3.a, b and c. Excuse me. I've been Mr.
18 Chipchase's wheelhouse here, but I think that's something
19 that we want to make clear. And all I'm trying to do here
20 is preserve this decision as it goes up.

21 VICE CHAIR ANDERSON: No. Thank you for that, and
22 I believe there was a motion that was withdrawn, and we were
23 going through discussion, going through systemically the
24 various versions of exceptions and looking at conditions.
25 So the recommendation is to go on the record saying that I

1 don't think we're at the point where we've agreed to this,
2 the several conditions whether it be ENV's or Schnitzer's or
3 KOCA's. They've been discussed, but we haven't agreed to
4 them yet. The one condition of them all that we've reviewed
5 it appears that requires further research on our own to look
6 back through testimony and documentation is that of 3.a,
7 3.b, and 3.c within KOCA's exemptions [sic]. I
8 believe--does that clarify enough for the record?

9 MR. SANDISON: And I apologize--

10 VICE CHAIR ANDERSON: It's appreciated.

11 MR. SANDISON: Lawyer before the tribunal, but I
12 am also to some degree a guardian of the record.

13 VICE CHAIR ANDERSON: No. It's appreciated. Thank
14 you. Are there any further conditions we want to bring up,
15 discuss, whether it be KOCA's--Is there anything from
16 Intervenor Colleen Hanabusa that we'd like to entertain? [no
17 response] No. Are you comfortable there, Rozelle? If so,
18 scheduling.

19 If I throw out a few dates, would you guys each
20 give a quick response of--Looking at March 6th and 20th--

21 MEMBER G. CHANG: 20th I cannot. I'm away.

22 VICE CHAIR ANDERSON: April 11th or April 25th;
23 11th on a Thursday.

24 MEMBER G. CHANG: April 11th--

25 VICE CHAIR ANDERSON: April 11th or 25th.

1 MEMBER G. CHANG: I'm good at 11th.

2 MEMBER HAYASHIDA: 11th is okay.

3 MEMBER GOO: 11th is okay.

4 MEMBER McMURDO: Yes, 11th is fine.

5 VICE CHAIR ANDERSON: Intervenors?

6 MR. CHIPCHASE: Yes, Chair.

7 MR. WURDEMAN: April 11th is fine.

8 MR. SANDISON: All of those dates are okay.

9 MS. CHAN: The 11th is fine.

10 VICE CHAIR ANDERSON: All right. Move for a
11 motion to continue.

12 MEMBER G. CHANG: I make a motion to continue.

13 MEMBER McMURDO: Second.

14 VICE CHAIR ANDERSON: Point of clarification. April
15 11th--

16 MEMBER G. CHANG: Yes. April 11th at 1:30.

17 VICE CHAIR ANDERSON: Call for a vote. All in
18 favor.

19 ALL COMMISSIONERS: Aye.

20 VICE CHAIR ANDERSON: Any opposed? [no response]
21 Vote carries. Motion to adjourn. Excuse me. Motion to
22 adjourn. Sorry.

23 MEMBER G. CHANG: Motion to adjourn.

24 VICE CHAIR ANDERSON: Second.

25 MEMBER McMURDO: Second.

1 VICE CHAIR ANDERSON: All in favor.

2 ALL COMMISSIONERS: Aye.

3 VICE CHAIR ANDERSON: Any opposed? [no response]

4 Motion carries. [bangs gavel]

5 ADJOURNMENT

6 There being no further business before the
7 Planning Commission, the meeting was adjourned by Vice Chair
8 Anderson at approximately 4:50 p.m.

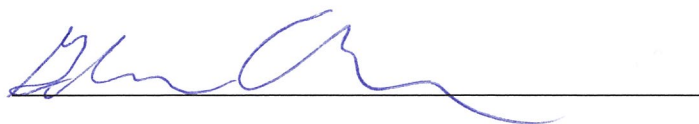
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10

11 I certify that the foregoing is
12 a true and correct transcription
13 of the proceedings, prepared to
14 the best of my ability, of the
15 meeting held on Thursday,
16 February 28, 2019.

17

18



19

Gloria Takara

20

Secretary-Hearings Reporter

21

22

Adopted on: April 11, 2019

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