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

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

APPEARANCES:

Planning Commissioners present:

Cord D. Anderson, Vice Chair
Theresia C. McMurdo
Ken K. Hayashida
Gifford K. F. Chang
Donald W. Y. Goo
(temporary appointee)

Planning Commissioners recused:

Arthur B. Tolentino
(prior notice given)
Steven S. C. Lim
(prior notice given)
Wilfred A. Chang, Jr.
(prior notice given)
Arthur D. challacombe
(prior notice given)
9th member - vacant
Deputy Corporation Counsel:

Rozelle A. Agag

[Advisory to the Commission]

Planning Commission staff:

Gloria Takara,

Secretary-Hearings Reporter

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

Kamilla C. K. Chan, Esq.
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

For Intervenors Ko Olina Community Association and Senator Maile Shimabukuro:

Calvert G. Chipchase, Esq.
Christopher T. Goodin, Esq.
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
For Intervenor Schnitzer Steel Hawaii Corp.:

Ian L. Sandison, Esq.
Watanabe Ing LLP
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawaii 96813

For Intervenor Colleen Hanabusa:

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

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

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

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

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

Okay. Second item on the agenda. We're all here for continued from March 7th 2018 and rescheduled from April 4th, 2018 contested case hearing regarding the Ewa State Special Use Permit amendment application 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. To request in front of
us today include 1) for a new special use permit to
supersede existing special use permit to allow a 9.25-acre
expansion and time extension for Waiamanalo Gulch Sanitary
Landfill, and 2) to delete Condition 14 of the Special Use
Permit No. 2008/SUP-2 which states as follows: "Condition
14. Municipal solid waste shall be allowed at the WGSN up to
July 31st, 2012, provided that only ash and residue from
H-POWER shall be allowed at the WGSN after July 31st, 2012."

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

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

Prior to commencing into any further discussion,
it's required that all Planning Commissioners present today
can attest that we have reviewed the documents and the
transcripts to the proceedings in this matter, and that we
have received, studied, examined and understood the evidence
and the entire record from both the 2008 and 2011
application proceedings.
I'm going to go around to each Commissioner and confirm that each of us can attest to just that. Commissioner Chang.

MEMBER G. CHANG: Yes.

VICE CHAIR ANDERSON: Commissioner McMurdoo.

MEMBER McMURDO: Yes.

VICE CHAIR ANDERSON: Commissioner Goo.

MEMBER GOO: Yes.

VICE CHAIR ANDERSON: Commissioner Hayashida.

MEMBER HAYASHIDA: Yes.

VICE CHAIR ANDERSON: And myself as well. Yes.

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

For the final two. Each party today will present, and ask a favor that each of you present up to 30 minutes and combine action items 2 and 3 today in your presentation. At that time we will discuss and take decision making on
each of those separately, but for the presentation purposes
and just for time, I'd ask that you present both of them
together. So the next--the two action items are Intervenors
Ko Olina Community Association and Maile Shimabukuro's
motion to reopen the contested case hearing. And the third,
adoption of proposed Findings of Fact, Conclusions of Law,
and Decision of Order. We'll turn over to the applicant,
Department of Environmental Services first for presentation.
I appreciate, and thank you for the long winded introduction
and everything.

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

VICE CHAIR ANDERSON: Yes, go ahead.

MS. CHAN: Okay.

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

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

MR. WURDEMAN: Richard Wurdeman for Intervenor
Colleen Hanabusa. Thank you. I'd like to object to--And it
wouldn't apply to Mr. Goo as this is obviously his first
month or so of serving on the Commission, but with all due
respect to the other remaining board members here, I'd
object to your participation in this proceeding at this point because you have already prejudged this matter back on March 1st, 2017. You already adopted Findings of Fact, Conclusions of Law, Decision and Order, and in doing so and later admittedly so by the Environmental Services and as determined by the LUC that this body had violated its own rules under, I think it's Planning Commission Rule, Section 2-75 of the Rules of the Planning Commission. In doing so and that in other pertinent rules that Commission failed to follow its rule in adopting, and that's why we're back here today. What I would respectfully submit that this Commission, and I would object to the participation of all those members other than Mr. Goo today making any decisions because— and I cite Mauna Kea Anaina Hou as authority on this that you have prejudged the matter and have already adopted it previously, and we now have it again before you.

So, I object accordingly.

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

MS. CHAN: Okay. Thank you. The City is requesting that the Planning Commission adopt its proposed Findings of Fact, Conclusions of Law, and Decision and Order subject to several exceptions raised by the City. First, ENV you know appreciates that the Commission has taken action to ensure compliance with Planning Commission Rule
2-76, you know in making that attestation at the beginning of this hearing. However, we would also ask that any final written decision issued in this matter include a finding that goes to that effect that clearly states in the written decision that that action was taken.

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

There's sort of a third category of the request that we're seeking, and that's to make other corrections in the proposed decision. Primarily that would be the addition of a few paragraphs to supplement the procedural history. We noted that the proposed decision that was issued in January of 2019 is, I believe identical to the one that was
issued at the end of 2017. So, it's missing the procedural history for roughly a year. We've included in our written exceptions some suggested language that could be used for that purpose.

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

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

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

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

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

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

Now to address the five points of clarification that the LUC requested the Planning Commission clarify. We believe that all of these are addressed by various portions of the proposed decision. So, turning to LUC's request No. 1, which was to clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order. And to just briefly touch upon what Rule 2-75 states, it imposes certain requirements whenever one or more of the Commissioners who are to render the final decision have not heard and examined all of the evidence. It requires that final decision not be made until a proposal for decision is served upon the parties, which was clearly done here in January of 2019. The proposed decision must contain a statement of reasons including the determination of each issue of fact or law necessary to the proposed decision, and we would submit that you accomplish that. The parties be afforded an opportunity to file written exceptions, which we have as well in the last few weeks and to present oral argument to the commission members who are to render the final decision. So, that's what we're here for today. So, we're accomplishing all of those things. It's clear that in the proposed decision,
paragraphs 64, 65 and 66 address compliance with Rule 2-75. Currently, there are blanks to be filled in with dates that each of those points were taken cared of. And, so we would request that the Planning Commission in issuing its final decision ensure that they include all of this information.

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

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

We believe that Conclusion of Law No. 6, addresses
and answers the question about whether the record needs to include such updated information. In that, the Planning Commission concluded that it denied the party's motions to reopen the case to supplement the record because it had sufficient evidence to render its decision, and we would continue to assert that there is enough in the record right now for the Planning Commission to make that determination.

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

LUC's request No. 4, seeks clarification of the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order. It's clear that the Planning Commission takes the position that the 2009 LUC decision is still valid. As the Planning Commission has approved the application to modify the special use permit by making certain modifications including the deletion of two conditions and the additional three conditions.
In Conclusion of Law No. 7, the Planning Commission also concludes that Condition No. 14 of the LUC Order which impose the July 31st, 2012 deadline for acceptance of municipal solid waste was not material to its conclusions. Therefore, the Planning Commission, I think has provided clarification that the SUP was effective as of 2009 and at this point it's simply being modified.

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

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

The situation is distinguishable from the Mauana Kea case where a permit was issued prior to holding a contested case hearing. That's clearly not what's happening here.
There is no pre-judgment of the case. There's no evidence of that. I think it's an allegation that's completed unfounded. The mere fact that the Planning Commission has taken a consistent position over the course of time doesn't mean that the case was pre-judged.

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

There are also situations where H-POWER may not be able to combust or process municipal solid waste for more
then 72 hours. There's a limit in their solid waste management permit as to how much waste can be stored on site at any given point in time. So once they start exceeding that capacity they have to look for other options which typically would include diversion to the landfill.

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

So, there is abundant evidence that the landfill is still needed. We can't operate H-POWER unless we have a backup option. That was made clear through testimony in the 2012 proceeding. We would also point out that the Planning Commission has consistently taken the position that the duration of use for Waimanalo Gulch would be to capacity. That was evident in the 2009 Planning Commission's decision and specifically Commissioner Kerry Komatsubara had explained that he believed that the focus should not be picking on a date. That the term would be until we reach capacity. This current Commission continues to allow use to capacity. Back in the March 2017 hearing, it was again made clear that the third condition would be that the City, ENV in particular, in this case identify an alternate site by December 31st, 2022, that would be used upon Waimanalo Gulch
reaching capacity. And, again, the January 2019 decision continues to include that term. And to be clear a time limit on the proposed use of the landfill or a limit does not necessarily need to be a time limit. In this case, there is a finite amount of space at Waimanalo Gulch that can be used for landfilling. And so we would submit that the use is measured not necessarily by the number of years but by the amount of space we have. And it's a 200-acre site. There will come a day where we have no available space and that is something that ENV continues to look at, continues to monitor on a regular basis, and is prepared to address as well.

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

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

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

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

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

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

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

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

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

And finally the City is deeply concerned about any
unwarranted further delays in this contested case proceeding
as, I think we're all aware that the LUC remanded this case
in May or June of 2017. We're coming up on two years.
Statements that were made during the LUC proceeding leaves
the City to believe that there's a perception that the City
is somehow intentionally delaying this, and so we are
concerned that any further delay is going to prejudice us as
an applicant in that proceeding. We don't stand to benefit
from any further delay. We would like this to be wrapped
up. We understand that there's certain circumstances that
were beyond everyone's control including the need to appoint
a temporary commissioner and the time that was needed for
that process, including time to allow the new commissioner
to review the record. But we would object to any further
delay that would prevent us from bringing this case to a
conclusion.

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

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

VICE CHAIR ANDERSON: Uh-huh.

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

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

MS. CHAN: Yes, we would agree. And that's something that's also covered in--something that we're required to do under state law which is the integrated solid waste management plan. The Department has been going
through the process of reviewing and updating that plan, and I believe that there are certain components that touch upon that very question that you raised.

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

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

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

MS. CHAN: Yes.

VICE CHAIR ANDERSON: ...sooner than later.

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

MS. CHAN: Yes.

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

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

VICE CHAIR ANDERSON: Okay.

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

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

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

VICE CHAIR ANDERSON: Okay.

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

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

MS. CHAN: Yeah. If it's a 7 to 4:30 that they've
indicated in there, I believe that's already in our permit.

VICE CHAIR ANDERSON: Okay.

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

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

Thank you.

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

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

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

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

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

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

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

One, is that everybody has invested a lot of time
and effort in this proceeding. I've been involved in this
proceeding for 7-1/2 years, and it went on before me
probably another three to take it to ten; a little more than
that, 11 years. And in that time this Commission has had 20
hearing days, has heard from about 20 witnesses, and has
received about 300 exhibits into evidence. It is an extraordinary amount of effort on this permit, and I think it reflects the seriousness of the proceeding and the number of parties who are interested in it including those who don't appear themselves. Like members of the community who are represented both by Senator Shimabukuro who is a party of this proceeding and my client, and by the Ko Olina Community Association who is a part of this proceeding and also my client. And, I should note that Mr. Goodin, Christopher Goodin is appearing on behalf of those parties as well. And, so everybody agrees with all of the time and effort that has been expended in this and this proceeding has not just been here. We've been to the Land Use Commission three times. We've been in the Circuit Court, and we've been in the Hawaii Supreme Court. And, so after all that time and all that effort everybody wants to get it right, everybody wants to bring this proceeding to conclusion and everybody wants to not have to do it over it again. We all agree on that.

The problem is that if the Commission proceeds as proposed, we will be doing it over again. And, we will be doing it over again for a couple of reasons. One, is compliance with Rule 2-75 and 2-76. Rule 2-76, is the attestation rule, and I understand the Commissioners today made an attestation. The problem is one of timing. This
decision, this proposed decision was circulated, was adopted by the Commission and circulated to the parties in 2017. The attestation had to occur before the decision was circulated. This is not a newly adopted decision. It's just a re-circulation of the former decision. And so the attestation was wrong then, it's wrong now because it did not occur before the proposed decision was adopted. It violates Rule 2-75 because Mr.--Commissioner Goo, was not a member of the Commission at the time this proposed decision was circulated. So, it didn't even have what would constitute the available quorum voting on it before it was adopted. So, what should have happened, and an easy thing that we could've done and we proposed it, was bring us all back in, make the attestation at that time, then vote to adopt the proposed decision, send it all out to the parties. We'll submit our objections, bring us all back, and we'll have the hearing on it. That suggestion was rejected and that's not the procedure we followed. And, so we will find ourselves again having to re-do it because of that procedural glitch.

The other reason that we will find ourselves doing it all over again is the Land Use Commission's instructions to this Commission. Remember when the decision was adopted and it went up to the Land Use Commission for approval, it was remanded, and it was remanded with these instructions.
And we've talked about it, and we will get into a little bit of the details of them. But conceptually these instructions were questions that the Land Use Commission had on this decision. Well, as proposed we're sending the same decision back to them. And, so if the Land Use Commission a year ago thought the decision was not adequate because of all of these questions and nothing has changed in the decision or the record or anything else, then it's still inadequate. All right. We're just sending the same decision back up to the Land Use Commission, unless they're just frustrated and just want to proceed any way. We'll get the same result which is to come back here and do it again. We're trying to avoid that so that when we go back up to the Land Use Commission, we go back up for the last time and then wherever it goes from there, their decision appeals, that's out of your hands, but at least we've done it completely and right for this last time.

And, so that brings me to the motion to reopen, which I'll talk about a little bit about first. I know everybody else talked about the decision first. But, I think that puts the cart before the horse. The motion to reopen is intended directly to address the Land Use Commission's instructions in this matter. The Land Use Commission in its decision addressed a couple of subject matters. The first being landfill site selection process.
And so you see in instruction 2 and part of instruction 3, which we put on the screen, those deal with ENV's progress towards selecting and developing a new site. Since 2010 as the Chair noted, the City has been under an obligation to proceed reasonably, diligently with not only the selection of a new landfill site, but the development of a new landfill site. The evidence closed in 2012, in April 2012. So we have no evidence of what the City has done from 2012 to today. Not only to site a new landfill, but to develop a new landfill and that condition was their existing condition on a permit that they say it was good and in effect and continued. They don't oppose that condition today. Well, if they're not complying with conditions in existing order that they don't object to and don't oppose, what assurances do we have that they'll abide by conditions in a new order. And, frankly, why do they get an expansion of and continuation of the landfill indefinitely when they haven't and don't comply with existing conditions. The LUC felt that evidence was important to be updated and not updated indefinitely, but you should absolutely have a complete record at the time you make a decision. And if the record is seven years old for an ongoing operation under which their existing obligations like this one to identify and develop a new landfill site, then you have a problem with your record, and it needs to be updated and that's what the
Land Use Commission concluded.

The Land Use Commission was also focused on another issue that the Chair raised in his question of the City and that is waste diversion efforts and capacity. And those do go in hand-in-hand, but they only go hand-in-hand because the City has asked that the landfill be opened until capacity. Since 2003, every final decision regarding a special permit for the landfill has had a closure deadline. And it has had a closure deadline because a deadline was consistent with the representations to the community when the landfill was first developed, that it would close, that it would just not operate to capacity that there would be an end point, originally 20 years. That hasn't happened, but this Commission and the Land Use Commission have both saw fit at different times to impose closure deadlines. Those closure deadlines are fictional if the landfill remains open to capacity, particularly in this case where there is no evidence since 2012 of what that capacity is. We have no idea based on the record when the landfill will reach capacity. We simply don't know. Part of the reason we don't know is we don't know what the current landfill rate is, and we don't know what the City's current and planned diversions are. And so the Land Use Commission has this question, what is the capacity, how long is capacity; if that is your deadline. You need to know
what the diversions are, current and planned, the
landfilling rates and the estimated capacity time before you
can answer those questions. If you don't, you haven't
addressed the landfill or the LUC's questions.

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

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

We don't have any evidence in the record of those
operations and how the landfill is operating since 2012.
I mean, seven years ago. And since effect on your neighbors is part of what you need to show, that you don't have effect on your neighbors, there needs to be evidence in the record of the operations for the last seven years. And that's the point that the Land Use Commission was communicating. We can't have that because the evidence hasn't been reopened, so it's impossible to address the Land Use Commission's instructions. And, so unless we do, unless we close the seven-year gap before you reach a final decision in this matter, will go up to the Land Use Commission on the same order, with the same record. It will have the same questions, and we will probably be back here doing the same thing. And, so we would suggest let's invest the time now, get it over with it, and be done, and then move on to the next body.

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

With respect to the balance of the findings, we
submitted our written objections detailing why certain
findings aren't supported by evidence, why certain
conclusions aren't supported by evidence or law, and why
there's need to be additional findings to reflect what is in
the record. I don't intend to go through all of those. It
would be impossible, and you all would hate me for it.
Instead, what I want to focus on is the Order because the
Order is the thing that affects the community directly.
The findings are just the evidence and the conclusions are
just the bases that support the Order. The Order is the
thing that allows the landfill to continue on operation and
the thing that imposes the condition on the landfill. So
the effect on the community is minimized to the greatest
extent practicable. That's necessary as I said because
we're dealing with a special use permit. This is
agricultural land. A landfill is decidedly not an
agricultural use. And, so if you want to put a landfill on
agricultural land you have two choices. One, go in for
district boundary amendment and follow all the processes and
procedures required for an EPA, move it to urban land, and
have it zoned something that would support a landfill. Go
through all those political processes or you come in for a
special use permit. And a special use permit allows you to
do a non-agricultural use on agricultural land if you meet
certain conditions. And the basic condition is that it be
an unusual and reasonable use. Here, the City is asking for
200 acres. So, a landfill would be larger than it ever has
been before. It's asking to accept all municipal solid
waste, MSW, and ash and residue. So, basically all the
waste generated by the City, and it's asking for no closure
dealine. Those are each extraordinary requests and to meet
that standard of unusual and reasonable, the City needs to
do certain things. The first that we look at is what is the
time limit for that use. Remember, we're dealing with a
special use not a district boundary amendment. If you move
it over to urban, there's no time limit the land is in
urban. If you keep it in ag and asks for a special use
permit, it presumes there's a durational limit to that
special use. You cannot use it forever or you've
effectively done a district boundary amendment without going
through that more rigorous and political process. The
City's response to that is simply to say capacity is a
duration. But that's not true for two reasons. One, we
don't know what the capacity is. So, if capacity is the
duration, we should at the very minimum know what that
duration is or will be. The second is the waste diversion
efforts. If the City continues to divert waste to the
maximum extent possible, the life of the landfill continues
to be extended. And, so you have for all practical
purposes, an infinite use. That's not what's contemplated
under a special use permit. What's contemplated under special use permit is the time. And, so you see that in solar projects or wind projects or any other project, there is a limit to this. We are at 30 years of this special use on agricultural land. That's getting pretty indefinite as it is. The City wants to continue for who knows how much longer. The second thing that we look at, the second thing that the City would need to do is to establish the proposed use is consistent with the objectives of state land use law. And we can pull those from various sources including the state plan. The state plan says that an objective of state land use laws to avoid costly or irreparable environmental damage to achieve the desired quality in surface ground and coastal waters and to reduce the threat to life and property from flooding and other manmade hazards and disasters. The City needs to present evidence on those. The Planning Commission needs to take those considerations into effect because that's what our legislatures have established as state land use policy.

The third and final one that I want to talk about is the one I mentioned earlier. And that is whether the desired use would adversely affect surrounding property. It's a special use. If you get the privilege of using your land in a way that is not allowed by your zoning and your state land use law, then you can't affect surrounding
properties through that use. And, so to satisfy those three
requirements, we have proposed various conditions on the
operation of the landfill. We haven't come in as Ko Olina
and Senator Shimabukuro and said close it today. We
recognize there is a need for the landfill, but we also
recognize that the landfill needs to comply with state law
and with the standards for a special use permit. And, so in
order to do that there needs to be a number of conditions
imposed on the operation of the landfill. We have grouped
those conditions into four categories. Operations,
reporting and enforcement, diversion of waste, and finally
closure.

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

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

And the first is operations. And, so we have
asked at Condition 2.c for the bolded changes up there and
in our papers as well. This condition is patterned after a
condition that's already incorporated and that deals with
compliance with various regulatory standards. It's a
landfill. It has subject to regulation, and you've already
proposed to acquire that it meet its regulatory obligations.
All we've done in our proposed condition is to identify
additional regulatory sources. The condition itself
references the Revised Ordinances of Honolulu and the
regulations of the State Department of Health. To that
we've added the Environmental Protection Agency because the
evidence is replete, replete with examples of the EPA
investigating, citing and warning this landfill. It has
exercised extensive regulatory jurisdiction over this
landfill and as a condition of a special use that's not
supposed to adversely affect surrounding properties. The
landfill should comply with the EPA regulations as well.
And so we've said the EPA and other state and federal agency
requirements.

The other thing that we asked to do in Condition
2.c is to make clear that a violation of those regulations
is a violation of this permit. If you're going to condition
a permit on compliance with regulations, and you already do,
we just ask to expand it. But if you're going to that, then
it has to be that a violation of those regulations is a
violation of the permit. If you didn't mean to require them
to comply with the law, you would drop this condition
entirely. If you're going to impose this condition in any
form, then it has to be that if they violate that law, they've also violated the condition. That's your responsibility in approving the special use permit.

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

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

If we move on from regulation and approvals, we really get in to what a just be a good neighbor conditions. You exist with people around you. Ko Olina is just one of the many people who drive by or live near or have folks who
live near this landfill. And, so be a good neighbor. And
the first way we've asked you to be a good neighbor is
through dust mitigation. So, your existing Condition 2
requires a dust mitigation plan. But it doesn't incorporate
that plan as part of the order. So as long as they adopt
the plan they've complied with the condition. But if they
don't follow the plan, they're not in violation of the
order. That doesn't make any sense. If you're going to
require a plan, that plan should be incorporated and made by
part of the order, so if they don't do it they're in
violation of your order.

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

The objection I heard today which is not an
objection that was ever put in the record through evidence,
is that well maybe a landscaping plan in some way might
somehow and in some specified way a violater or other
permits or approvals. If that's the only objection to it, then we have no problem modifying that condition to say, to the extent consistent with applicable approvals and requirements. I don't mean to set ENV up in an impossible position. We just may not have to suffer that for the community as they operate the special use.

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

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

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

Moving on from the operational conditions to reporting and enforcement. We heard a little bit about that from the City. And it's true that the City does currently have reporting requirements. We're not really seeking to modify those in any radical way. Instead what we're asking for, if you look at Condition 1.f, it's very similar to the existing Condition 15. What we've added is bolded. And all we've added is in the report, this is a condition requiring a report, is published, you send a copy of it to the association. That's all. We've been a party to this proceeding for 11 years. I don't think it's too much to ask that when you're reporting on something that we've invested a tremendous amount of time and money in for the benefit of the community that we be given a copy of the report.
The same is true of the next condition. If you look at the next condition it deals with the public hearings. We've actually reduced the hearing burden from three to six months in our proposed condition. And all we've done is additional requirement is to simply give us notice of it when it will be. And, we think, as counsel for ENV noted, it can be poorly attended. If you make them a little less frequent because they don't need updates as often, and you give notice to the people who care about them that there is going to be a hearing, I think it will be attended and certainly it be more meaningful. And, that's all we've asked for in this condition.

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

The next condition is Condition 1.e, and this really gets to the enforcement point. It's great to have conditions on the operation of the landfill. It doesn't do anybody any good if they're not enforced. As currently
structured to enforce a condition, the Planning Commission rather on its own would have to take up enforcement. All we've done through this Condition 1.e, is ask that Ko Olina be given an opportunity at certain defined points of the year following these reports to come before the Planning Commission on a motion for an order to show cause to establish a violation of a condition. We can be out there identifying whether the landfill complies with the conditions that this Commission has imposed and if it doesn't bring them to the Commission's attention. The Commission still makes the decision. The Commission still decides whether there has been a violation. If so, whether there is a consequence to it. But now there's somebody who is paying attention, who is out there, who is in the community who can bring it before this body.

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

When we developed our bolded language directing the use of alternative technologies to the extent reasonably practicable. So, if it's there, it's reasonably
practicable, use it. We followed a list of diversions that the City has already agreed to as part of the proceeding, this proceeding, in an effort to stay the case for a period of time. So, these are already things that the City represents it's doing, can do, will do. Let's incorporate them as part of the order so the directive to use alternative technologies mean something. So we can show the public and show everyone else that we are making not just a generalized statement that would be great to have diversion, but we have these specific things. The City is doing these specific things, and we as the Commission are requiring them.

The next condition dealing with diversion of waste is another thing that we did not come up with out of thin air. This condition would require that from the date of the order, from when you enter the order through 2024, the City can only use the landfill for waste that cannot be disposed of within the City by any other means. So, if there's no other means, the City can use the landfill. If there is another means, the City shouldn't use the landfill except when H-POWER is down or in cases of emergencies. We did not make that condition up. The City proposed that condition in 2012. On the screen is a direct quote from the City's proposed conditions in 2012. In 2012, the City told this Commission that by January 1, 2014, we will do exactly what
I just said. If it can be put somewhere else or disposed of somewhere else, we won't use Waimanalo except when H-POWER is down or there is emergency. The City proposed that condition itself as part of the 2012 proceedings because that's what the evidence showed. Evidence overwhelmingly showed the impact of the landfill on the community, overwhelmingly showed the need for the development and use of alternative technologies and to reduce dependence on the landfill. So, in 2012 the City was willing--by 2014 to abide by this condition. It's 2019. It's more than five years later, five years after--The City was willing to abide by this condition. We should impose on them now. They had more than enough time to get up to speed to comply with this condition.

The last subject is closure. The current condition identifies a date of December 31, 2022 to identify a new site. The identification of a new site doesn't mean anything unless it's tied to closure. One, because the City won't do it, and we see that over the history of this case and before. And, two, because of the relationship that the City and the Chair talked about earlier between closure and site selection. If we don't know how long the site is going to be there, we can't really plan for a new site because we don't know what the land use will be, what the surrounding community will be, what the needs will be at that time
because we don't know what that time is. And, so we just
won't ever get there. The other reason that the unlimited
closure doesn't work is what I eluded to earlier. That a
special use necessarily contemplates a finite use, some
durational limit. And, so that is expressly incorporated
into the Land Use Commission's rules at 15-15-95 and was
expressly addressed by the Hawaii Supreme Court in the
Waianae Coast decision involving an amusement park. There
the site was 103 acres with no definite end point. Even
though we all know an amusement park isn't going to last
forever. It's not going to be in use in 200, 300 years, or
even 50 probably. But there was no limit stated in the
special use permit. And so the Supreme Court recognized,
and I'll quote it because it's important. "Unlimited use of
the special use permit to effectuate essentially what
amounts to a boundary change when undermine the protection
from piecemeal changes to the zoning scheme guaranteed
landowners by the more extensive procedural protections of
boundary amendments statutes." That very idea. That if the
use is unlimited, it's not really a special use. There
needs to be some duration to it. So, then the question
comes, as the Chair eluded to earlier, what is that magic
number. All right. The best evidence in the record is that
it's three to five years to select a new site; select and
develop a new site to put it in operation. That came in the
form of expert testimony that we offered and from the City's
own witness in the 2008 proceedings. We haven't sought to
impose that stringent a requirement on the City. We've
instead try to be flexible. And, so what we've done is to
say extensive evidence on the screen in what the closure
condition or how long it would take to site any landfill,
but it's in our papers as well. And, so what we've said is
until 2024, the site will only be used if it can't be
landfilled elsewhere. That sort of basic waste diversion
condition. After that period, we would say it should be
closed as to everything except ash and residue from H-POWER.
And we isolated ash and residue from H-POWER because those
are the most difficult waste to divert. We've also added
automobile shredder residue because that is also a difficult
waste to divert. So, in a little more than five years stop
using it for everything except the hardest waste to divert.
That would continue until March 1, 2027 at which point the
landfill would stop accepting waste in any form. So, we're
looking effectively eight years out from now. The landfill
stops accepting waste in any form. More than enough time to
call an alternative site up and running if the City really
wants to. And that's the question. Does the City really
want to? Whether it wants to or not, this is a special use
permit. We have kicked the can down the road on this
landfill and on this permit for a long time. It's time
after all of this effort and all of these years to finally hold the City to its promises. The promises it made when the landfill was sited there and when it was subsequently approved. It's time to close it. We set out a reasonable schedule to do so, and we've imposed or asked for reasonable conditions in the interim. I thank you for your time.

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

MR. CHIPCHASE: Thank you, Chair.

VICE CHAIR ANDERSON: Mr. Wurdeman.

MR. WURDEMAN: Thank you. Again, Richard N. Wurdeman for Intervenor Colleen Hanabusa. We have, and I'll keep this brief for my presentation and brief today. We have submitted our exceptions and positions to this Commission. And we'd like to again, and in there we included the renewal of our objections on the record not including or the proceedings not including Intervenor Hanabusa for which this Commission is certainly relying in its proposed Findings of Fact, Conclusions of Law, and Decision and Order, on the 2011 record which was an application to delete Condition 14 of the Special Use Permit No. 2008/SUP-2. And without leaving those due process objections, as far as the exceptions raised on the clearly erroneous Findings of Fact because we did not participate in
that proceeding, we would respectfully join in and as
indicated in our submission to the Commission, join in with
KOCA and Maile Shimabukuro on those various exceptions to
the extent that they're not inconsistent with what we're
already submitting before this Commission. Mr. Chipchase is
correct certainly about the impacts on the community, the
length of the processes, the promises that have been made
from the get go through each renewal application process to
the community. The community came out in every forum
imaginable to express their concerns, objections, the impact
on them and frankly they feel let down. They feel let down
that the City has never been held accountable to date.
Continues to operate this landfill and many believe because
of its location on this island that people are not hearing
them because people don't care. And, we ask that this
Commission, as articulated by Mr. Chipchase, and I'll say it
as well, that the City needs to be held accountable. All
those promises of, you know, this is the last application in
back 2003, this seven-year number which was a testimony back
in 2008, 11 years ago. And all that appears to have
happened in 11 years. Is the City--last year apparently
from what I heard earlier is they came up with some less
that narrowed down the prospective sites in 11 years. And,
so obviously they don't care because nobody is holding them
accountable, and they're not going to ever care if nobody
holds them accountable. And that's what we're asking the Commission to do.

Interestingly, in the--and this is in Condition 67, or proposed Findings of Fact 67 I should say. Their citation to the Condition No. 4 of the 2009 Planing Commission, and it cites and underlined and puts in bold print there, to begin to identify develop one or more new landfill site, and then it talked on the second thing, it talks about if the City will allot funds in the fiscal year 2010, etc. But what it doesn't include in there and what is in the 2009 decision of the LUC is the diligent in which the City is supposed to act. And they have not act with any diligence whatsoever. And the Land Use Commission did remand it. And before I touch upon on that, what really sent this record down was because the Land Use Commission agreed that the Planning Commission did not comply with its own rules particularly Rule 2-75 when it adopted, when they made a final ruling on the Findings of Fact, Conclusions of Law, Decision and Order. It had done its business back in 2017 without following its own rules. And, to say that there is some kind of difference from pre-judging or pre-approving of the matter and now try to comply with its rule after-the-fact, begs the question that this Commission had already pre-judged its determination, and we renew those objections as well. And that's what the remand was.
Schnitzer Steel tries to distinguish it differently, but that's what the remand was really about. Was that this Commission didn't comply with its own rules by allowing this exception process by the various parties before it did so. It jumped the gun. It approved and how do you unring the bell. The only way you can do it is by those who haven't made that pre-determination, pre-judgement, not participating in this vote.

But with respect to--where we do differ certainly from KOCA, we agree to everything up to this point, but where we do disagree is where they are agreeable to conditions to further allowing for operations pursuant to certain conditions up to a certain point that Mr. Chipchase discussed. What the Commission should do, we submit, and actually if the Land Use Commission, way back in 2009 had simply relied on its record or relied on the record made down before the Planning Commission and in doing so made its own, added its own Findings and Conclusions rather than just incorporating the Planning Commission's findings. I don't think that the decision of the Supreme Court would've come out the way it did because it would've certainly been sufficient evidence to establish Condition No. 14 based on the record that went before it and to support the intension of the Commission at that time. But the Commission didn't do that. They simply incorporated the Findings of Fact,
Conclusions of Law, and the Commission then went ahead and made various conditions and the subject of that was really Condition No. 14, which could have otherwise been supported by the record. And, Ms. Hanabusa made that argument way back then to support closure and that record is certainly, continues to support closure. It should be considered.

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

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

VICE CHAIR ANDERSON: Thank you. Any questions out of the Commissioners at this time? [no response] If you guys don't mind, we'll call a 5-minute recess to just get up
and stretch our legs and be back in 5 minutes. [bangs gavel]

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

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

My opinion may be different than others in this room.

As far as Item No. 2, I believe it was myself, a few years ago in 2017, it suggested the December 31st, 2022 date. Bases of that was by the time in, I think it was March, I have on my notes, March 1st, 2017 at that hearing, the seven-year time frame had been kicked around, and we probably weren't confident in ENV's progress through that seven-year identification development and opening of the landfill. So, in '17 a 5-1/2 year feature date was at the
time perceived as reasonable, assuming that perhaps ENV had
done a 1-1/2 of that seven-year process and had 5-1/2 years
to go. Dovetailing that in to the suggestion of the 2024
date and the three-year transition of 2027, perhaps that
identification by 2022 does have some merit and does fall in
line with that schedule. But nonetheless that was the basis
of that suggestion.

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

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

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

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

That said, that was my attempt to clarify the five
items by the LUC. Up next there's a lot of information in
front of us with the conditions. My opinion is a lot of
them have merit. It would probably be foolish, we would all
be here for months and months on end to go through every
condition in every facet of the D&O, meaning the Findings of
Fact, Conclusions of Law, D&O. I think it's prudent that we
go through the D&O recommended conditions. Prior to doing
that, I want to enter into executive session to ask some
questions with counsel to see what that procedural would
look like and also what the scope and the ability we have to
add further conditions, if perhaps aren't on paper yet.
There are couple suggestions that I have. I just want to
make sure that it's within our reach or our authority to add
conditions such as these. So, if you don't mind, I'd like
to enter into executive session. Do I need a motion for
that? Can I get a motion, please?

MEMBER McMURDO: So move.

MEMBER G. CHANG: Second.

VICE CHAIR ANDERSON: All in favor.

ALL COMMISSIONERS: Aye.

VICE CHAIR ANDERSON: Any opposed? [no response]

All right. Executive session. [bangs gavel]

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

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

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

VICE CHAIR ANDERSON: Yes--

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

VICE CHAIR ANDERSON: Yes, yes.
MS. CHAN: ...certain issues that were brought up--

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

MS. CHAN: Okay. Thanks.

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

MS. CHAN: Yes, please. And, I'll keep it brief.

So, I'll try to hit each point with quick comments and response. First, with respect to the attestation, I think there's been a question as to whether the timing of the Commission's attestation is appropriate. The City's position is that provided that the Commission does it before issuing its final decision, which is clearly what you're doing today, that it is, in fact, appropriate and in compliance with your rules.

I think there was a comment, I believe it was from KOCA about the LUC remand and the fact that the proposed decision that's before us now is identical to the one that was remanded back in 2017. And, I would just point out that it's not identical. That there are paragraphs in the 2019 proposed decision that address the LUC's questions. So, those things I believe have been addressed. The City had pointed out before that the December 2017 proposed decision
and the one that was issued in January appeared to be identical to us. There were a number of comments made about not knowing whether the City is complying with certain conditions, and I believe that it's primarily Conditions No. 6, 15, and 16 in the 2009 LUC Order. We would just state, and I think we brought it up in the prior hearing that the City continues to comply with all those conditions and everything in the 2009 LUC decision other than the one that was struck by the Supreme Court. We would point out that there's Condition No. 12 that goes to how enforcement of those conditions are supposed to be taken care of. So, I know KOCA raised the question about how do we ensure that the City is doing what it is supposed to do essentially. And there's a process already set-up in the order that does that.

KOCA has also asked in Condition 1.e, and I think a few of the others essentially to be, to have the City provide notice to them directly of certain things and to provide copies of reports directly to them. They are essentially asking to be granted rights that don't exist under the rules. They're really seeking to be regarded the same way that the Planning Commission is in terms of the City's obligations under our permit to provide report and things. ENV does post reports up on their website when they're providing them to the Planning Commission and to the
LUC. So they are publicly available, and we would object to any additional requirements that we treat, particularly in any third party and only select third parties differently from the general public. There was a request to put in a 2024 closure deadline. We would emphasize that's not supported by the evidence, and I don't believe there's any basis that's been put in to the proposed decision that would support that closure deadline.

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

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

It's not a mandate that that be included.

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

VICE CHAIR ANDERSON: Okay. Thank you.

MS. CHAN: Thank you.
VICE CHAIR ANDERSON: Are you guys okay procedurally if we just move through the suggested exceptions and address them together?

MEMBER G. CHANG: Yes.

VICE CHAIR ANDERSON: Okay.

MEMBER McMURDO: Can I ask just a question?

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

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

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

MEMBER McMURDO: Okay. Thank you.

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

MS. CHAN: Uh-huh.

VICE CHAIR ANDERSON: Hypothetically, if that 200
acres was used up today, is there additional room for additional expansion in the current location, would you know by chance?

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

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

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

VICE CHAIR ANDERSON: Yes--

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

VICE CHAIR ANDERSON: Yes--

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

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

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

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

MR. SANDISON: Oh--

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

MS. SANDISON: I beg your pardon?

VICE CHAIR ANDERSON: The section is purpose and need.

MR. SANDISON: Okay.

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

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

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

MR. SANDISON: At the top of my head, I do not
know the answer to the question.

VICE CHAIR ANDERSON: Okay. Any further questions?

MR. SANDISON: If I may--

VICE CHAIR ANDERSON: Yes.

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

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

With regard to Intervenor Colleen Hanabusa's
exceptions, are there any questions regarding their filing?

[no response] All right.

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

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

VICE CHAIR ANDERSON: Okay.
MR. CHIPCHASE: If I might, I mean the condition already requires compliance with various regulatory bodies. So, the idea that the Commission doesn't have the authority to do that is ludicrous. It's already doing that. It's done that in every order that I looked at relating to this landfill. So, of course, it does because the body has jurisdiction over the special use permit, and it can impose such conditions as it determines are necessary to avoid negative impact on the surrounding community and protect the health, welfare and safety of people in the environment. And, so compliance with regulations in obtaining all approvals which the Commission already requires does exactly that squarely within the Commission's jurisdiction as it exercised for years and years on this project. Why, adding the EPA in reference to other federal and state laws in one case municipal laws. All we're doing is bringing under existing conditions the full regulatory bodies that have jurisdiction over this landfill. That's the only change. It's not expanding the Commission's jurisdiction in any way. It's just making the existing condition comprehensive.

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

MR. SANDISON: I think our position is that the Commission already incorporates by reference in all federal law and so forth. And the only change that KOCA is really
performing, is suggesting to specifically identify the EPA. Schnitzer's view would be that it is does not materially change what already exist in the Decision and Order.

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

MR. CHIPCHASE: Well, I think, I would look at in two-fold, right. I mean, there are overlapping regulatory authority by a lot of different agencies. This is just not the Planning Commission and the EPA. DOH--Different bodies of the City have regulatory jurisdiction and within DOH there's the solid waste branch, the water brach, they all have their own regulatory frameworks. We can go on and on about regulatory overlap, and so that's not really the question. The question is in this body's determination or in the exercise of this body's jurisdiction, which is the approval of the special use permit, are there conditions that are helpful, help to mitigate the impact on the community? The EPA as we've seen through these proceedings, and I'd be happy to pull any of the examples back up on the screen. EPA has extensively cited this landfill operation
for a lot of different reasons over many years. The most obvious or at least well reported example of that was the release of waste and leachate in 2010 and again in 2011, poured over Ko Olina's property, into [inaudible], and into the ocean. EPA was extensively involved in that. And so the idea of incorporating into existing regulatory conditions are referenced to a body that has exercised regulatory jurisdiction over this landfill for very good reasons, because they did impact neighboring properties and subject that this Commission is necessarily concerned about. It shouldn't be controversial, and frankly I've always been surprised that the City fights it all against this condition, and this changed the condition.

VICE CHAIR ANDERSON: Okay. Thank you.

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

So, yes, because this property is an agricultural use property we come to the Planning Commission to receive a special use permit in order to operate a landfill there.
But that's not truly overlap with the Department of Health's jurisdiction over our Solid Waste Management Permit or the EPA, if you're looking at other environmental matters. We are subject to various regulations, but it's for very different reasons.

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

VICE CHAIR ANDERSON: Yep.

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

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

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

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

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

VICE CHAIR ANDERSON: Okay.

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

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

MEMBER McMURDO: I think in KOCA's wording.

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

VICE CHAIR ANDERSON: Page 50, 51--

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

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

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

MS. CHAN: Correct. So, for example, if it's a Department of Health issue that we are being cited for, we
would already be responding to them. And I would view the additional--including and as part of this order, meaning that then we would be brought before the Planning Commission under a separate proceeding.

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

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

MR. CHIPCHASE: And the Commission may judge that. The Commission may determine, yes, you violated it; and, yes, that is a violation of our order because we require compliance, but we respect your solution, right? But that's a judgment the Commission can make when it has all the facts and circumstances. This just creates the vehicle for that discussion.
VICE CHAIR ANDERSON: Further discussion on that
one? [no response] Next proposed condition I'd like to
bring up is Condition 3.

MEMBER McMURDO: KOCA's condition?

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

MEMBER McMURDO: What page is that again?

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

And sitting here I'm not confident in seven years, can
handle that. I mean entitlements alone--there's a
sufficient amount of time there but because a seven-year
period has been given, I'd like to hold you folks to it.

Any questions specifically from the Commissioners on this
condition? Any questions for ENV? I know you stated
earlier ENV that I believe that 2024 and 2027 dates would be
difficult to achieve. Has anything that's transpired today
change that position?

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

VICE CHAIR ANDERSON: Okay.

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

MS. CHAN: Sure. I would agree that's been an
ongoing concern that's been raised in this proceedings, but
I would respectfully disagree with the notion that that's the reason that we're still in the proceeding. There's been other reasons of this case is still ongoing.

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

MS. CHAN: Sure.

MEMBER G. CHANG: Yeah.

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

VICE CHAIR ANDERSON: I guess I would also add that kind of goes in line with further or earlier suggestion that you felt it was beyond, I believe it was KOCA's authority to request that these semi-annual updates be presented directly to them rather you have an online website or those notices
are implemented. This might be an example of that report
might be public, I don't know, I haven't seen it, but it
would be appreciated as a neighborly gesture working on this
hearing that we would have received that report. I know
perhaps it's not you specifically, but that would be an
example of there is material out there that would help our
understanding of the status that would've been helpful.
Likewise, if there's updates available that not only does it
just go online, but it actually gets delivered to the
Intervenors or neighbors or the public in that area.

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

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

MEBBER McMURDO: I think that's reasonable.

VICE CHAIR ANDERSON: Are there any other specific
conditions within KOCA's exceptions that we would like to
address at this time?

MEMBER Goo: I have.

VICE CHAIR ANDERSON: Go ahead.

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

MS. CHAN: Understood.

MEMBER G. CHANG: See, our thoughts is that if we
stick to some date that you give us, we kind of feel just as
much for the community. And when you hear a date like that,
then the expectation is there, although they don't hear the
extension, the exception rule. And so Commissioner Goo is
pretty good about planning and understanding the process to
get there. And his thought is that if you know we don't
think we're going to get there, then we should address it
and let the community know and then we when we can follow
that time line, then the community would be more open to
saying, "hey, welcome we're good neighbors too. We
understand." And that's what we want to try to prevent this
from further getting into public testimony matters.

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

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

VICE CHAIR ANDERSON: ...for some specifics.

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

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

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

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

MEMBER McMURDO: Truck scheduling?

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

VICE CHAIR ANDERSON: I would add really quick that the image of the landfill you folks put up on the board as a landscaping example, without getting in the specifics of where you were calling out landscaping needs, it appeared
at least that the entire landfill site had been landscaped with hydromulch grass, whatever it may be. At the top of the screen it looked like it was an active landfill site that perhaps that was the reference where landscaping would be needed. If that's the case, I'm not sure if the maturity of landscaping would take multiple years and by that time may be that site would change. I don't know the solution there, but it did seem at least aesthetically that the entire hillside was landscaped with grass.

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

MEMBER McMURDO: When was that photo taken?

MR. CHIPCHASE: That was part of the evidence in this case. So it's seven years old. And that no question is an issue. We don't have evidence of the current state of operations in a lot of respects. And so if the Commission elects not to reopen evidence, then that's the evidence that we're stuck with. Is what was admitted formerly before this
body. We don't have an opportunity to see a picture of the landfill site today. I site inspected in probably January 2012, and I can tell you in January 2012 it was pretty blithe looking. And so is it still as blithe today. I can't honestly tell you. I haven't been up there in eight years. But that's the state of the record that we're stuck with. And so that's the record is the only thing the Commission can base its determination on. In terms of what I characterized as good neighbor conditions, you know I can tell you the state of the record says, whatever requirements or in any other document they're not enough. There is no contrary--you know take dust for example. There's no contrary testimony or dust is not an issue. The only testimony in the record before this body is dust is an issue. So, yes, there is a dust mitigation plan required by this body. No, it is not working. And so what we ask is incorporate the terms of that as part of the condition so that we can make it work. Yes, there are queuing in other litter control requirements that are part of any management of a landfill. No, they are not working. There was no testimony from the operator or from ENV or from anyone else in this record that litter is not issue. That odors are not an issue; noise is not an issue. That having [inaudible] uniform that they are all issues. And so the conditions that counsel refers to in other documents aren't doing the
job. In this body being concerned predominantly with the
effect of a special use on neighboring properties has before
it, ample evidence of negative effect. And rather than come
in and say, despite the many promises over many years, and
we could pull all of that testimony back up that it would be
closed years and years before now. We haven't asked for
that. We recognize the need for it but as long as we're
stuck with it, and hopefully not more than eight years, we
want it to be a good neighbor and that's the basis for those
conditions. And, I think squarely within its bodies,
jurisdiction and oversight to ensure that special uses don't
negatively effect surrounding property.

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

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

MEMBER GOO: Is that right?

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

MEMBER GOO: Is there someone at the City that
sort of has that?

MS CHAN: To do--

MEMBER GOO: To do all the good neighbor things?

28:18

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

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

There is a person, a City employee whose job it is to
be--for lack of a better term, I'm not sure what his title
is, but it's like he manages the landfill among other
facilities as well. I'm not sure that it would be
appropriate to have that same position necessarily be
responsible for overseeing site selection because that might
be a separate process, but I understand what you're getting
at. That having a more streamlined process, a single person
would be ideal.

MEMBER GOO: Some one that we call on and say,

have you done all these things or if you have any problems?

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

MS. CHAN: Uh-hmm.

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

MEMBER G. CHANG: None here.

VICE CHAIR ANDERSON: Any further discussion or is
anyone willing to make--Well, I guess let's rewind a little
bit and let's look at the two remaining actions we have in
front of us. At this point, I guess we can take a look
at action 2, and if there's any--Again, action 2 is
Intervenor's Ko Olina Community Association and Maile
Shimabukuro's motion to reopen the contested case hearing.
Is there any further discussions or questions for the parties, ENV, that we need to ask? Willing to make a motion at this time on that action?

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

VICE CHAIR ANDERSON: Is there a second?

MEMBER G. CHANG: I second.

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

MEMBER G. CHANG: None.

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

ALL COMMISSIONERS: Aye.

VICE CHAIR ANDERSON: Any opposed? [no response]

Motion carries. Thank you. The next action, No. 3, adoption of proposed Findings of Fact, Conclusions of Law, and Decision and Order. I think we've discussed this rather thoroughly this afternoon, entertained presentations, questions from the various parties, looked into most of the conditions that at least appealed to us and vetted the applicability with ENV and KOCA and Schnitzer and Ms. Hanabusa. Any further discussion here or are we ready to make a motion on some of the conditions that we
suggested?

MEMBER G. CHANG: No further discussion.

Ready for a motion.

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

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

MEMBER HAYASHIDA: Of Exhibit--

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

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

MEMBER G. CHANG: ...and--

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

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

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

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

MEMBER G. CHANG: All--
MEMBER McMURDO: The conditions and the
exceptions--

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

MEMBER G. CHANG: Plus items 89 to 102--
MEMBER HAYASHIDA: Plus items 89 and 102--
MEMBER G. CHANG: ...of their Exhibit A in the
motion.

VICE CHAIR ANDERSON: Okay. And--
MEMBER G. CHANG: And all--

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

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

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

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

VICE CHAIR ANDERSON: 3.a, b and c--
MEMBER McMURDO: ...a, b, and c, as well as 1.c--

MEMBER G. CHANG: 1.g--

VICE CHAIR ANDERSON: 1.g--

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

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

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

MEMBER McMURDO: Yeah.

MEMBER G. CHANG: 2.e--

MEMBER McMURDO: I would--

MEMBER G. CHANG: 2.g--

MEMBER McMURDO: I would actually do just c--

VICE CHAIR ANDERSON: 2.c--

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

MEMBER G. CHANG: 2.e--

MEMBER HAYASHIDA: 2.c--

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

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

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

MEMBER HAYASHIDA: What page is that on?

MEMBER McMURDO: 82--

MEMBER G. CHANG: Yeah.
MEMBER McMurdo: ...of Exhibit 1.

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

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

MEMBER Hayashida: 1.c and 1.d.

MEMBER McMurdo: Yeah.

[colloquy between Vice Chair Anderson and Counsel Agag]

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

COUNSEL AGAG: Point of order.

VICE CHAIR ANDERSON: Yes.

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

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

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

COUNSEL AGAG: Yep.

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

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

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

MEMBER McMURDO: Right.

VICE CHAIR ANDERSON: True.

COUNSEL AGAG: So why we don't we take the motion off the table now, continue discussion with KOCA, and then
we'll have a clean motion.

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

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

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

MEMBER McMURDO: Exhibit 1--

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

MEMBER G. CHANG: Page 82--

MEMBER McMURDO: Page 81 right now--

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

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

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

VICE CHAIR ANDERSON: Understand that point.

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

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

VICE CHAIR ANDERSON: Open to suggestion by the way. That's just my personal opinion.
MEMBER G. CHANG: Commissioner, would you want

every three months or every semi?

MEMBER McMURDO: No. G talks about--which one are

you talking about?

VICE CHAIR ANDERSON: C and d I believe is

semi-annual, which is twice a year.

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

MEMBER McMURDO: I wasn't suggesting the others.

So just c and d.

MEMBER G. CHANG: C and d; okay.

VICE CHAIR ANDERSON: 2--

MEMBER McMURDO: I don't have anything for 2, but

if the Commissioner wants to do that--

VICE CHAIR ANDERSON: Give me a second. So, the

two EPAs are 2.c and 2.d; okay. And--

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

VICE CHAIR ANDERSON: 2.e was dust mitigation.

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

From our perspective it's not--I don't think these are

on--If you're already doing it for something else, why not.

MEMBER G. CHANG: Correct

MEMBER McMURDO: Right. So--

VICE CHAIR ANDERSON: Okay.

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

VICE CHAIR ANDERSON: Okay. Any further--
MEMBER McMURDO: Anyone else want to--

VICE CHAIR ANDERSON: On KOCA--

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

MEMBER HAYASHIDA: Again, with 3--

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

MEMBER HAYASHIDA: It forces them to close the landfill?

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

MEMBER McMURDO: It closes.

MEMBER GOO: Everything closes.

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

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

VICE CHAIR ANDERSON: That is the discussion right now. Some of that basis I believe is on the sentiment that we've heard whether it be from Commissioners or Intervenors. Some of that is based off of this 7-year time period that it takes to identify, develop and operate or open. I think there's some hesitancy on my part and perhaps without putting words in other Commissioners, that seven years is realistic. There's a lot of time and energy that has to go into that time period or that effort. I'm hoping that some
of that has already been done. So we're not starting from
scratch, seven years. But note that's eight years from now.

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

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

MEMBER GOO: That's right.

VICE CHAIR ANDERSON: Okay.

MEMBER HAYASHIDA: I'll support Don on that.

VICE CHAIR ANDERSON: Okay.

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

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

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

MEMBER GOO: Okay. So you can gather it up and
make sure it's correct.

MS. CHAN: Those are--

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

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

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

MS. CHAN: The City would object to those;
correct; yes.

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

MEMBER GOO: If the record supports it, then that's fine. When Ms. Chan reports back to us some more detailed information, I'd be curious. Because I find in reading the minutes that the definition of completion, development are different, and I'm not sure if there's an understanding that those who were testifying what those really mean. Development is different and construction is
different. All of those things are different, and they are very time consuming. So given that it's already proven until we can prove it otherwise, I'll accept that.

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

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

VICE CHAIR ANDERSON: Okay.

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

VICE CHAIR ANDERSON: Okay.

MEMBER GOO: This hearing or this subject?

VICE CHAIR ANDERSON: The hearing I believe.

MEMBER HAYASHIDA: We have a motion to--

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

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

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

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

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

VICE CHAIR ANDERSON: No. Thank you for that, and I believe there was a motion that was withdrawn, and we were going through discussion, going through systemically the various versions of exceptions and looking at conditions. So the recommendation is to go on the record saying that I
don't think we're at the point where we've agreed to this, the several conditions whether it be ENV's or Schnitzer's or KOCAs. They've been discussed, but we haven't agreed to them yet. The one condition of them all that we've reviewed it appears that requires further research on our own to look back through testimony and documentation is that of 3.a, 3.b, and 3.c within KOCAs exemptions [sic]. I believe--does that clarify enough for the record?

MR. SANDISON: And I apologize--
VICE CHAIR ANDERSON: It's appreciated.
MR. SANDISON: Lawyer before the tribunal, but I am also to some degree a guardian of the record.
VICE CHAIR ANDERSON: No. It's appreciated. Thank you. Are there any further conditions we want to bring up, discuss, whether it be KOCAs--Is there anything from Intervenor Colleen Hanabusa that we'd like to entertain? [no response] No. Are you comfortable there, Rozelle? If so, scheduling.

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

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

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

MEMBER G. CHANG: April 11th--

VICE CHAIR ANDERSON: April 11th or 25th.
MEMBER G. CHANG: I'm good at 11th.

MEMBER HAYASHIDA: 11th is okay.

MEMBER GOO: 11th is okay.

MEMBER McMURDO: Yes, 11th is fine.

VICE CHAIR ANDERSON: Intervenors?

MR. CHIPCHASE: Yes, Chair.

MR. WURDEMAN: April 11th is fine.

MR. SANDISON: All of those dates are okay.

MS. CHAN: The 11th is fine.

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

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

MEMBER McMURDO: Second.

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

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

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

ALL COMMISSIONERS: Aye.


MEMBER G. CHANG: Motion to adjourn.

VICE CHAIR ANDERSON: Second.

MEMBER McMURDO: Second.
VICE CHAIR ANDERSON: All in favor.

ALL COMMISSIONERS: Aye.

VICE CHAIR ANDERSON: Any opposed? [no response]

Motion carries. [bangs gavel]

ADJOURNMENT

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

--000--

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

Gloria Takara
Secretary-Hearings Reporter

Adopted on: April 11, 2019