

## ERRATA

PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU  
MISSION MEMORIAL CONFERENCE ROOM  
550 SOUTH KING STREET  
HONOLULU, HAWAII 96813

WEDNESDAY, APRIL 11, 2019

The following corrections were made to the adopted April 11, 2019 Waimanalo Gulch Sanitary Landfill (WGSL) minutes:

- (1) Page 5, line 17, replace **bare** with *bear*
- (2) Page 14, line 9, replace **hirdle** with *hurdle*

PC20

1                   Taken at Mission Memorial Conference Room,  
2 Mission Memorial Building, 550 South King Street, Honolulu,  
3 Hawaii, 96813, commencing at 1:45 p.m., on March 7, 2018,  
4 pursuant to Notice.

5  
6 APPEARANCES:

7 Planning Commissioners present:

8                   Theresia C. McMurdo, Vice Chair

9                   [Acting Chair]

10                  Cord D. Anderson

11                  Ken K. Hayashida

12                  Wilfred A. Chang, Jr.

13                  Gifford K. F. Chang

14  
15 Planning Commissioners recused:

16                  Kaiulani K. Sodaro, Chair

17                  (prior notice given)

18                  Arthur B. Tolentino

19                  (prior notice given)

20                  Steven S. C. Lim

21                  (prior notice given)

22                  Arthur D. Challacombe

23                  (prior notice given)

24

25

1 Deputy Corporation Counsel:

2

Rozelle A. Agag

3

(Advisory to the Commission)

4

5 Planning Commission staff:

6

Gloria Takara,

7

Secretary-Hearings Reporter

8

9 For the City and County of Honolulu, Department of

10 Environmental Services:

11

Kamilla C. K. Chan, Esq.

12

Deputy Corporation Counsel

13

City and County of Honolulu

14

530 South King Street, Room 110

15

Honolulu, Hawaii 96813

16

17 For Intervenor Ko Olina Community Association and Senator

18 Maile Shimabukuro:

19

Calvert G. Chipchase, Esq.

20

Christopher T. Goodin, Esq.

21

Cades Schutte LLP

22

1000 Bishop Street, Suite 1200

23

Honolulu, Hawaii 96813

24

25

1 For Intervenor Schnitzer Steel Hawaii Corp.:

2 Avery C. Matro, Esq.

3 Carlsmith Ball LLP

4 ASB Tower, Suite 2200

5 1000 Bishop Street

6 Honolulu, Hawaii 96813

7

8 For Intervenor Colleen Hanabusa:

9 Richard N. Wurdeman, Esq.

10 1003 Bishop Street, Suite 720

11 Honolulu, Hawaii 96813

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2  
3 Vice Chair McMurdo: We're going to call the  
4 meeting to order. [bangs gavel] Today is Wednesday,  
5 March 7th and this is a continuation of the contested  
6 case hearing, but first we will approve the minutes of  
7 December 6th, 2017. Does anyone have any changes to  
8 the minutes, any comments? [no response] No. If there  
9 are no objections the minutes are approved.

10 Before we continue on to the agenda, we'd like for  
11 the record, Commissioners. We need to attest that we  
12 have reviewed the transcripts of the proceedings in  
13 this matter. That we have received, studied and  
14 examined and understand the evidence and the entire  
15 record from both the 2008 and 2011 application  
16 proceedings. We'd like to individually make and  
17 attestation for each one of you for both today's  
18 hearing and for clarity for the December 7, 2017  
19 meeting.

20 Commissioner Anderson: Yes, no.

21 Member Anderson: A simple yes will do it?

22 Vice Chair McMurdo: Yes.

23 Member Anderson: Yes.

24 Vice Chair McMurdo: Commissioner Hayashida.

25 Member Hayashida: Yes.

1 Vice Chair McMurdo: Commissioner Chang.

2 Member G. Chang: Yes.

3 Vice Chair McMurdo: Oh, the other Chang?

4 Member W. Chang: Yes.

5 Vice Chair McMurdo: And for me, yes. Now that we  
6 have that out of the way. If there are no objections,  
7 Commissioners, I'd like to take the agenda out of order  
8 and start with agenda Item No. 2. Interveners Ko Olina  
9 Community Association and Maile Shimabukuro's Motion to  
10 strike Schnitzer's February 18th proposed findings and  
11 responsive papers. Are there any objections to  
12 starting with that?

13 Member G. Chang: None.

14 Vice Chair McMurdo: All right. And then we will  
15 combine the first and third together.

16 Ms. Matro: Good afternoon, Commissioners. Avery  
17 Mancho on behalf of Intervener Schnitzer Steel.

18 Vice Chair McMurdo: Okay.

19 Mr. Chipchase: Commissioners, Cal Chipchase and  
20 Chris Goodin on behalf of Intervenor's Ko Olina  
21 Community Association and Senator Maile Shimabukuro.  
22 Ken Williams who's the general manager of this  
23 association is present today as well.

24 Vice Chair McMurdo: We'll hear first from the  
25 movers.

1           Mr. Chipchase: Sure. Commissioners, the idea  
2 behind the motion is simple. Schnitzer is part of its  
3 exceptions submitted an entirely new set of Findings of  
4 Fact, Conclusions of Law, Decision and Order. The time  
5 to do that, the time for the parties to propose  
6 Findings of Fact, Conclusions of Law, and a Decision  
7 and Order have long since passed. And, so that portion  
8 of the objections, that portion of Schnitzer's  
9 exceptions should be stricken and not considered.

10           Vice Chair McMurdo: Okay. And Schnitzer's.

11           Ms. Matro: Thank you, Commissioners. We will  
12 defer to the Commission's discretion, as far as this issue.  
13 I believe Schnitzer made it very clear in our exceptions  
14 that the purpose of Exhibit A was to illustrate this  
15 Commission's need to fully consider and articulate this  
16 Commission's consideration of the 2009 record created during  
17 the 2008 contested case appeal. I believe the Supreme Court  
18 has made it abundantly clear that agencies need to fully  
19 articulate their considerations of the full record in their  
20 Findings of Fact. Most recently in the decision in Kilakila  
21 and that was merely the purpose of Schnitzer's Exhibit A was  
22 to illustrate the difference between merely saying we  
23 incorporate our findings from 2009 into this current  
24 decision and fully articulating the reasons for each and  
25 every Finding of Fact that this Commission issues. And that

1 was merely the purpose of Schnitzer's Exhibit A. It was not  
2 put forth an entirely new proposed Findings of Fact and  
3 Conclusions of Law. And, so for those reasons, I think our  
4 reasoning for including it is clear, but we will defer to  
5 the Commission on that ground.

6 Mr. Chipchase: Chair, if I may just very briefly.  
7 Chairman: Sure.

8 Mr. Chipchase: I utterly respect those reasons  
9 and Schnitzer is correct. I mean that is an error in the  
10 proposed decision circulated by the Commission is now fully  
11 articulating those things. So, Schnitzer's effort  
12 highlights that failing of the decision. The corrective  
13 mechanism is not for Schnitzer to submit an alternative form  
14 for the Commission to adopt. Corrective action is for the  
15 Commission to start over and to circulate a proposed  
16 decision that does those things that Counsel just  
17 articulated.

18 Chairman: Okay. Are there any other comments?  
19 Anyone from the public that would like to make a comment?  
20 [colloquy between DCC Agag and Vice Chair McMurdo]. Okay.  
21 Hearing none, thank you

22 Chairman: At this time I'd recommend to the  
23 Commissioners that we grant Ko Olina Community Association's  
24 motion to strike Schnitzer's February 2018 proposed  
25 findings. Is there a motion to that effect?



1 Member Anderson: I make a motion.

2 Vice Chair McMurdo: Any second?

3 Member G. Chang: Second.

4 Vice Chair McMurdo: Okay. Is there any  
5 discussion? [no response] Hearing none. Anyone opposed?

6 Member G. Chang: None.

7 Vice Chair McMurdo: Anyone in favor?

8 All Commissioners: Aye.

9 Vice Chair McMurdo: It's passed. So, we granted  
10 KOCA's motion. Thank you.

11 Mr. Chipchase: Thank you.

12 Vice Chair McMurdo: Now, we're going to take Item  
13 No. 1 and No. 3 together. We will be giving each party 15  
14 minutes each to cover your arguments for each.

15 Mr. Chipchase: Chair, if I might beg some  
16 indulgence on that time. I am respectful of the  
17 Commissioner's time, utterly. We have invested many years  
18 and a lot in this process, and I'd like a little more time  
19 than that to present, particularly considering that a number  
20 of the Commissioners--I believe all the Commissioners  
21 actually would consider both proceedings, did not attend  
22 every hearing. Understand the attestation but sometimes  
23 helps to see some of the evidence that's been introduced. I  
24 think it also helps when we're dealing with very complicated  
25 conditions to be able to compare them--

1 Vice Chair McMurdo: Okay.

2 Mr. Chipchase: ...and so for those reasons, I'd  
3 ask for more time.

4 Vice Chair McMurdo: Now, in terms of your--You'll  
5 be speaking for your side?

6 Mr. Chipchase: Yes.

7 Vice Chair McMurdo: So, you'll have 30 minutes  
8 for your side and each, 15 minutes each.

9 Mr. Chipchase: Very good. Thank you, Chair.

10 Vice Chair McMurdo: We'll start with the  
11 applicant.

12 Ms. Chan: Kamilla Chan for the applicant, the City  
13 and County of City of Honolulu. The City request that the  
14 Planning Commission adopt its Proposed Findings of Fact,  
15 Conclusion of Law, Decision and Order, subject to the City's  
16 exceptions.

17 First, the City believes that proposed condition  
18 No. 1 should be supplemented to include the basis of the  
19 December 31, 2022 date that's been put into the decision  
20 which is a deadline for the City to identify an alternative  
21 landfill site that is to be used upon Waimanalo Gulch  
22 reaching capacity. As drafted, we believe that it may not  
23 adequately address the concern that was expressed by the  
24 LUC. The City also request that the Planning Commission make  
25 other corrections to the proposed decision, which would

1 include Finding of Facts, paragraphs 65 and 66, which is  
2 just a minor correction to call it exceptions instead of  
3 exemptions, as well as Proposed Conclusion of Law No. 1,  
4 which we believe was intended to cite to the most current  
5 version of the charter.

6 And, we would also recommend correcting Proposed  
7 Condition No. 2, which inaccurately refers to the type of  
8 permit that the City has for Waimanalo Gulch. It's a solid  
9 waste management permit, not hazardous waste.

10 The City concurs with the Planning Commission's  
11 approach to issuing its proposed decision and order by  
12 incorporating, by reference the 2009 LUC order and approving  
13 the application to modify that decision and deleting  
14 Conditions No. 4 and 14 and adding the conditions that have  
15 been added in the 2017 proposed decision. We do not believe  
16 that the Decision needs to be a complete integration of the  
17 two. We think it's adequate the way it has been handled in  
18 the proposed decision. There's a number of things in the  
19 proposed decision that make it clear that it's resolving  
20 both the 2008 and 2011 applications. For example,  
21 Conclusions of Law No. 4 states that the conclusion is based  
22 on the findings set fourth in the August 4th, 2009 Findings  
23 of Fact, Conclusions of Law and Decision and Order and on  
24 the findings set fourth in the 2017 proposed decision.

25 Conclusions of Law No. 7 also states that the

1 Planning Commission never imposed that closure deadline that  
2 was struck by the Supreme Court. And accordingly, the  
3 Planning Commission then logically and reasonably concludes  
4 that Condition No. 14 was not material to its decision and  
5 proceeds to approve the application to modify the permit.  
6 That's a second application was filed in 2011. And, so we  
7 think that it addresses all the things that have been  
8 requested by the LUC.

9 The Planning Commission's proposed decision as it  
10 stands right now addresses four of the five points that  
11 that the LUC has requested for clarification.

12 Paragraphs 64, 65, and 66 address compliance with Rule  
13 2-75, which goes to the first item that the LUC wanted  
14 to be clarified.

15 Conclusion of Law, No. 6 addresses the question  
16 about whether the record needs to include updated  
17 information. It's clear that the Planning Commission is  
18 concluding that it denied the parties motions to reopen  
19 the case and to supplement the record because it had  
20 sufficient evidence to render that decision.

21 The Planning Commission also addresses No. 4 and No.  
22 5 of the LUC's request for clarification. Regarding the  
23 effective date of the decision, it's clear with the way  
24 you're addressing it, that it would be the effective  
25 date of the original order back in 2009.

1           And for No. 5, again, throughout the decision it's  
2           very clear that both applications are being addressed.

3           The only one that we believe needs to be clarified  
4           is No. 2, which I've already covered, but just to state  
5           the basis for that closure deadline. There is no  
6           violation of due process in this case. We are clearly  
7           still in the process of this contested case hearing.  
8           There has been no permit issued, no decisions made, so  
9           to go to the allegations about a violation of due  
10          process or prejudgment of the case, we don't believe  
11          that any of that is true here.

12          Intervenors KOCA and Maile Shimabukuro are seeking  
13          to have a closure deadline. I think they call it a  
14          staged approach to closure of the landfill. That  
15          position is not supported by the evidence. It's in the  
16          record. The evidence clearly establishes that there  
17          are wastes that still need to be landfilled. That  
18          includes things like automobile shredder residue, ash  
19          from H-Power, large animal carcasses, medical sharps  
20          and at the time of the hearing it was also sludge from  
21          the wastewater treatment plants that were being sent  
22          to the landfill. There are also circumstances where  
23          items that normally disposed at H-Power need to be sent  
24          to the landfill for disposal. And that could be for a  
25          number of reasons including scheduled maintenance at

1 H-Power. Each year they shut down the boilers. I  
2 believe it's two weeks at a time for servicing.  
3 There's also unexpected closures that occur. They need  
4 to shut down completely and have waste diverted to the  
5 landfill. There's also situations where there's debris  
6 from hurricanes, tsunamis, just large storms even that  
7 cannot be accommodated at H-Power and would need to be  
8 sent to the landfill.

9 So, there's abundant evidence in the record that  
10 there's an ongoing need for the landfill, and we're not  
11 at a point where we could operate without one.

12 There's also abundant evidence in the record that  
13 the technology is just not there yet, despite ENV's  
14 ongoing efforts to find ways to divert more waste from  
15 the landfill.

16 The Planning Commission has taken a consistent  
17 position, at least since 2009 that the duration of the  
18 special use permit is to capacity.

19 In 2009, the Planning Commission determined that  
20 the term or length of the new SUP shall be until the  
21 Waimanalo Gulch Landfill reaches capacity as compared  
22 to a definite time period of "x" number of years. At  
23 that time, Commissioner Komatsubara explained that he  
24 believed that the focus should not be solely on picking  
25 a date. And, it was very clear that it allowed

1           Waimanalo Gulch to operate until it reached capacity  
2           even though it would have an obligation to start  
3           looking for a new site.

4           He also went to say that he'd rather not say it to  
5           certain date and that he'd rather focus an effort to find a  
6           new site and have the applicant come in to explain what it  
7           has been doing to find a new site.

8           Consistent with that, the proposed decision  
9           continues to allow Waimanalo Gulch to operate to capacity,  
10          and it also imposes a deadline by which it needs to identify  
11          a new site. But it was very clear on the record, even at  
12          the March 1st, 2017 hearing that Waimanalo Gulch would  
13          continue to operate to capacity. The identification of a  
14          landfill site by the date that's put in to the decision did  
15          not mean that Waimanalo Gulch was to be closed. And, I  
16          think that's further clarified in the December proposed  
17          decision that was issued.

18          The fact that there is no time limit measured by a  
19          number of years doesn't make that condition or that term to  
20          be invalid in any way. The LUC's rules provide to the  
21          Planning Commission shall establish, if appropriate, a time  
22          limit for the duration of the proposed use which shall be a  
23          condition of the special permit. So, even if a time limit  
24          should be imposed, there's no requirement that be measured  
25          by months or years. For this circumstance having it be

1 until landfill reaches capacity is still a deadline in the  
2 SUP.

3 I also wanted to point out that a permit that  
4 allows Waimanalo Gulch to operate to capacity is not an  
5 unlimited use of the landfill. There are restrictions on  
6 the type of waste that can be accepted at Waimanalo Gulch  
7 and that includes restrictions that are imposed by the  
8 Department of Health regulations, by the landfill special  
9 use permit, and even by our operator, Waste Management of  
10 Hawaii's own procedures. They have limits on what can be  
11 put in there.

12 So, in summary the closure deadline that's being  
13 proposed by KOCA and Ms. Shimabukuro is just not supported  
14 by the facts and the evidence in this case.

15 Vice Chair McMurdo: Thank you.

16 Ms. Matro: Thank you, Commissioners. Again,  
17 Avery Matro for Schnitzer Steel. And Schnitzer would agree  
18 with the City's point, except for their point regarding the  
19 integration of the 2009 record, for the reason stated  
20 before. Schnitzer believes that this Commission will **air**  
21 and not explicitly making those findings part of its issue  
22 decision now. Again, although the City points to the  
23 reference to the 2009 records and the Conclusions of Law,  
24 the Hawaii Supreme Court has made it clear that a conclusion  
25 requires evidence to support it and findings of appropriate



1 definitiveness to express it. And, therefore, this  
2 Commission cannot simply refer back to an entire record as  
3 the basis for supporting certain conclusions. It needs to  
4 explicitly and definitively point at the specific findings  
5 that support those conclusions. And, so Schnitzer would  
6 urge this Commission to thoughtfully consider the 2009  
7 record and incorporate their previous findings of fact into  
8 its issued decision here. Thank you.

9 Vice Chair McMurdo: Thank you. Okay.

10 Mr. Chipchase: Chair, before my clients begin, Mr.  
11 Wurdeman who represents Colleen Hanabusa who would like to  
12 offer a few words to the Commission from her perspective.

13 Vice Chair McMurdo: Okay.

14 Mr. Wurdeman: Thank you. Richard N. Wurdeman on  
15 behalf of Intervenor Colleen Hanabusa. And the Commission  
16 has before our objections to the Findings of Fact,  
17 Conclusions of Law, Decision and Order that has already been  
18 issued by this Commission dated December 6, 2017 in  
19 violation of its own rules. We do believe that since the  
20 Commission did take that step prematurely that it's already  
21 predisposed and made these proceedings today essentially  
22 meaningless in making its final rule. And I cite Mauna Kea  
23 Anaina Hou Supreme Court case and the dozens of authorities  
24 referenced in that decision by this body predisposing of  
25 this issue. As also raised in the filing of the objections

1 from intervenor Colleen Hanabusa there's been a complete  
2 disregard of the 2008, 2009 record, which is the whole basis  
3 for the SUP. The subsequent record was for deletion of  
4 Condition 14, that's what the application was, but we  
5 object, and we believe that this body has also permitted  
6 reversible error by completely disregarding the entire  
7 record and not making specific Findings of Fact, Conclusions  
8 of Law, that we can even address in exceptions, and it's  
9 making a decision with none of that. And Schnitzer is to an  
10 extent right. I mean this is something that this body needs  
11 to do. So, with that we have our objections and if you have  
12 any further questions, I'm happy to answer them.

13 Vice Chair McMurdo: Thank you.

14 Mr. Chipchase: Thank you, Chair. We have a  
15 PowerPoint presentation that goes along with my comments. I  
16 will say just a brief word about what you just heard, and I  
17 don't intend to repeat it in my presentation and that is the  
18 failure to incorporate specific findings related to 2009 is  
19 reversible error. You have three parties coming to you and  
20 saying that. I think all parties come from the perspective  
21 that we would rather not do this over again. That is go  
22 up to the LUC and come back down. So, my theme is  
23 essentially that. Let's just do things the right way. We  
24 should result that follows the proper procedure does what we  
25 need to do. And as part of that we believe incorporates

1 appropriate conditions.

2 Mr. Goodin is slow with the projector. If we dont  
3 mind me setting it up here. He'll be as quick as he  
4 possibly can.

5 Vice Chair McMurdo: Okay. All right.

6 Mr. Chipchase: Thank you.

7 [pause]

8 Vice Chair McMurdo: Why don't we have a 5-minute  
9 recess for you to put that all together.

10 Mr. Chipchase: That's a wonderful idea, Chair.

11 Vice Chair McMurdo: All right.

12 [Chairwoman McMurdo calls for a 5-minute recess  
13 and reconvenes]

14 [PowerPoint presentation by Mr. Chipchase]

15 Chairwoman: All right. Call meeting to order  
16 again.

17 Mr. Chipchase: Thank you, Chair. Thank you for  
18 indulgence. We've taken this hearing seriously, of course,  
19 because this is a serious matter. The application is a  
20 serious matter. Because of the serious time and effort that  
21 everyone of us has invested in. If we loo at the history of  
22 these proceedings, we see that there have been more than 20  
23 hearings. It's actually closer to 25 hearings, and that  
24 doesn't include the LUC, that doesn't include the Courts.  
25 Those are just hearings before this body. During those

1 hearings nearly 20 witnesses testified under oath. People  
2 who came and were sworn and testified here. Not in public  
3 testimony but under oath before you. And there are more than  
4 300 exhibits in the record. Some of those exhibits like the  
5 Environmental Impact Statement are a couple thousand pages.  
6 I mean this is a heavy, heavy record in a heavy manner that  
7 has been going on for a long time. Respecting the effort  
8 that all the Commissioners have invested and all the parties  
9 have invested, we submit that we need to do things right.  
10 Part of doing things right is you heard today is properly  
11 incorporating findings from the 2009 decision. The other  
12 parties have covered that, and I won't repeat it.

13           The other part of it is follow the balance of the  
14 procedures that this Commission has in place and the  
15 instructions from the LUC on remand, but also looking at the  
16 conditions imposed. Because the conditions imposed will tell  
17 us whether the use that the City is asking for permission to  
18 engage in or to continue is reasonable and unusual, is  
19 appropriate under the standards that we have.

20           Looking first at the procedure and looking at the  
21 LUC's remand instructions. You heard a little bit from the  
22 City about Condition 2 and what needs to be added to  
23 Condition 2 to satisfy the LUC's remand instruction. With  
24 respect to the City, I don't think that goes nearly far  
25 enough. The instruction asks the Commission to clarify the

1 basis for its condition requiring ENV to identify a new site  
2 on December 31, by December 31, 2022. That instruction is  
3 not followed anywhere in the proposed decision. There's no  
4 reference to the source of that date, and there's no  
5 reference to the evidence on which it could be based or was  
6 based, and indeed there's no evidence in the record that  
7 supports that specific date. The next instruction I want to  
8 look at is remand instruction 3, which directed the  
9 Commission to clarify whether the record needs to include  
10 updated information on the operation of the landfill, the  
11 landfill site selection process and the waste diversion  
12 efforts of the City and County of Honolulu.

13           The proposed decision does not do any of that and  
14 it is not sufficient simply to deny motions to reopen. The  
15 instruction was to clarify whether, not simply to reject and  
16 that is what the Commission has done. So, if we look at the  
17 evidence in this case, we see that it closed in April 2012,  
18 nearly six years ago. What has been happening for the last  
19 six years. There's several important points that are  
20 fundamental to the Commission's decision that we don't have  
21 any evidence on for six years. The first is how long will  
22 the landfill be there? The Commission proposes to adopt the  
23 condition that allows the landfill to operate until it  
24 reaches capacity. When is that? Does any Commissioner here  
25 know or have any idea when the capacity of the landfill will

1 be reached. There's nothing in the record on that point.  
2 There's certainly no new and updated information from the  
3 last six years taking into account capacity, taking into  
4 account the expansion landfill, taking into account waste  
5 diversion. When will that be?

6 What does that condition, that closure date of capacity  
7 actually mean?

8 The second thing that we don't know anything  
9 about, at least over the last six years is what continued  
10 effect does the landfill have on the community? The record  
11 is replete with evidence of landfills impact on the  
12 community, the violations, the spills, the litter, the  
13 trash, the debris, the truck noise, the odors. And we'll  
14 look at a little bit of that today. What has been happening  
15 for the last six years. We don't know. There's nothing in  
16 the record on any of that. Nor is there anything at all in  
17 the record on what the City has been doing to identify and  
18 develop a new site. The City is obligated, has been for a  
19 long time obligated by this body and by the LUC to identify  
20 and develop a new landfill site. What has the City been  
21 doing for the last six years in fulfillment of that  
22 condition. We don't know. To effectuate the LUC's remand  
23 instruction. KOCA brought a motion to reopen, to reopen  
24 evidence on a series of a specific points, not to reopen  
25 generally, not to redo the entire proceedings, but to

1 address a series of specific points. As of this moment  
2 right now, that motion has still not even been acted upon;  
3 not been scheduled for hearing, not been heard and not  
4 decided. It is not enough just to have a blanket denial of  
5 that motion in the order. We're entitled to be heard on and  
6 with respect we should have been heard on it before we got  
7 to this point in the Commission's proceedings.

8           The last remand instruction that I wanted to look  
9 at is with respect to the effective date, and that's  
10 instruction 4. You heard the City's view on that. Well,  
11 it's obvious from the context. If you cobble everything  
12 together it's clear what they mean. With respect, it isn't,  
13 it isn't. The instruction is to clarify an effective date.

14       There is no effective date in the order. So, is it  
15 effective when signed? Is it effective retroactively  
16 somehow? Is it effective as when the prior decision was  
17 invalidated? We don't know and without that kind of  
18 information the decision just doesn't address what the LUC--  
19 LUC said it needed it to address before it could consider  
20 the Commission's proposed decision. It's an error not to  
21 address all of those remand instructions clearly. And, it's  
22 an error not to follow procedure that has its deciding  
23 motions to reopen, hearing them and deciding what to do with  
24 evidence before we proceed to decision making. It's also an  
25 error to proceed with attestation the way the Commission did

1 in this case. The rule is Rule 2-76, and we put it up on  
2 the screen. And as you will see with the italicized word.  
3 The attestation needs to come before a decision. In this  
4 case at the last hearing, the Chair announced the proposed  
5 decision had been adopted and then all parties signed it,  
6 and then it went out to the parties for exception. Today  
7 the Commission attempted to correct that oversight by  
8 retroactively attesting to the fact of having reviewed the  
9 record prior to the adoption of the decision in December.  
10 The rule doesn't work that way. It's black or white. It  
11 needs to be done before. So, that alone renders the decision  
12 invalid. It means us going back up and coming back down to  
13 do it over again. With respect, we simply we want to follow  
14 the right procedures, to do everything right. To develop a  
15 complete record. To answer the LUC's questions and to  
16 follow the procedures that are proper in the adoption of the  
17 decision, so that when it goes up, wherever it goes, it  
18 doesn't come back for technical reasons.

19 The other part of doing it right is the substance  
20 of the decision.

21 Male from the back of the hearings room: Excuse  
22 me. Sorry to interrupt this meeting, but is there a  
23 Christopher Goodin here?

24 [Mr. Goodin walks to the back of the hearings  
25 room]



1           Mr. Chipchase: Chris was getting some handouts  
2 that, I think will be useful in some of my comments, and so  
3 I appreciate your indulgence there as well.

4           You know, getting into the substance of the  
5 decision, of course, there are the Findings of Fact,  
6 Conclusions of Law and we filed our exceptions and the City  
7 filed its exceptions, and Schnitzer and Ms. Hanabusa. I'm  
8 not going to go through all of those, you know. You know,  
9 all the differences of views on what the evidence shows,  
10 what the finding should be, what the conclusion should be.  
11 You have our written submissions. What I'd like to talk  
12 about instead today with you is the Decision and Order. The  
13 part that imposes the conditions on the operation of the  
14 landfill because it's that part that authorizes the use and  
15 in authorizing the use puts the restrictions on it. And  
16 principally those restrictions are designed to protect the  
17 community and the environment and ensure that the landfill  
18 is a good neighbor if it's going to be our neighbor at all

19       And, so in looking at those conditions, I want to start by  
20 talking about what the City is requesting here. The City is  
21 seeking effectively in these combined proceedings a new  
22 special use permit for the landfill. The landfill is  
23 decidedly not an agricultural use. This is agricultural  
24 land and that's why all of you have to make a decision.

25       The LUC will have to make its decision as well. In that

1 request its asking for a 200-acre site. So, it's grown from  
2 its original conceptions, and it just continued to grow.

3 It's bigger then it was on the initially proposed and to  
4 allow the disposal of municipal solid waste, ash and  
5 residue. So, basically everything as you heard today that  
6 they're allowed to take under their permits and other  
7 regulations. Take it all and landfill it. At least give us  
8 the ability to do that. And then to allow us to do that for  
9 the duration of the landfill. Whatever that might be,  
10 however, much we can squeeze into (inaudible), that is how  
11 long we want the landfill to remain open. We won't tell you  
12 how long that will be. There is nothing in the record as to  
13 how long that will be, just let us do it until it reaches  
14 capacity. Well, it's a special use permit and the City is  
15 the applicant. So, the City has the burden of proof. And  
16 its burden is to show that the proposed use is unusual and  
17 reasonable. Inherent in the concept of what a special use  
18 is, is that it is not effectively a permanent use. If you  
19 want to make what is effectively a permanent use, there's a  
20 whole other procedure called the boundary amendment, for  
21 which this matter would, you know, involve extensive  
22 hearings and extensive other proceedings.

23 Instead of that, they're asking for a special use permit.  
24 In the contemplation of that, that it's limited in some way  
25 temporally that it doesn't go on forever or it really is a

1 boundary amendment. And the Supreme Court and the Land  
2 Commission's rules are clear that you cannot have a special  
3 use permit that is effectively a boundary amendment, that  
4 effectively accomplishes what you would need to do and show  
5 to achieve a boundary amendment. The guidelines then for a  
6 special use permit, taken into account that this is not an  
7 ag use, and it's not a boundary amendment. It's something  
8 unusual and reasonable that we're putting on to this land.

9 And those guidelines are incorporated in the Planning  
10 Commission rules. There are five of them. I'd like to just  
11 focus on two of them today. The first is that the use is  
12 not contrary to, so that it's consistent with the objectives  
13 of state Land Use law and those objectives are found in a  
14 variety of documents, statutes, regulations, planning  
15 documents, the state plan. And the state plan being chiefly  
16 among them, includes three important concepts.

17 The first is that agency should make land use decisions  
18 that avoid costly or reputable environmental damage. So,  
19 focusing on the environment. The second is that agency  
20 should make decisions that achieve desired quality and  
21 surface ground and coastal water. So, focusing on the  
22 quality of our water. And the last is that agency should  
23 make decisions that reduce the threat to life and property  
24 from flooding and other man induced hazards and disasters.  
25 So, don't approve things that are going to make things worse

1 for people.

2           The Planning Commission must take these objectives  
3 into account when it makes its decision. The second  
4 guideline that I wanted to highlight and will spend much  
5 More time talking about today is this idea of adverse  
6 effect. The concept of adverse effect. A proposed special  
7 use cannot have an adverse effect on the community. It's so  
8 ingrained in the idea of special uses that the Commission is  
9 empowered to impose conditions to mitigate against that  
10 adverse effect. So, you have a use, it might have an adverse  
11 affect to impose conditions to address that. And that takes  
12 us to our discussion today. What are the conditions in the  
13 order and what should they be to ensure that you've met your  
14 obligations under the guidelines including mitigating any  
15 adverse effect on the community. We've broken the conditions  
16 down into four categories. Operations, reporting and  
17 enforcement, diversion of waste and closure. I'll go  
18 through them as quickly as I can. Starting with operations.

19       And with this we're really talking about the day-to-day  
20 operation landfill. I mean, keep in mind landfills open  
21 seven days a week. And as to ash, it's 24-hours  
22 a day. So, this is a constant consistent presence from the  
23 community everyday of their lives. How is it operating and  
24 how can we make it operate in a way that has the least  
25 impact on the community. To that end, we have Condition

1 2.c. Condition 2.c is very similar to Planning Commission  
2 incorporated Condition 7. When the Commission adopted this  
3 decision, it included and incorporated almost all, just one  
4 condition left out. The closure condition from the Land Use  
5 Commission's prior order. And, so when we look at  
6 incorporated that's the idea is that you've pulled into your  
7 decision many of the conditions, most of the conditions that  
8 the LUC had. And this condition, your Condition 7,  
9 incorporated our Condition 2.c deals with this idea of  
10 operating in compliance with the law. So, it's a landfill.  
11 It's got a lot of laws. Operate in compliance with it.  
12 Your condition identifies the City and County of Honolulu  
13 and the State Department of Health. With respect, we would  
14 say why stop there? Those are the only laws that as the  
15 Land Use decision, you would require compliance with.  
16 Shouldn't you require compliance with all of the laws that  
17 govern this landfill. Because it's only in operating in  
18 compliance with the law that the landfill could be a  
19 reasonable use. It doesn't meet all the laws. If it's not  
20 in compliance with all of the laws, it's not a reasonable  
21 use. And, so we would add the EPA, which the evidence shows  
22 has extensive regulatory jurisdiction hearing, (inaudible)  
23 of the landfill a number of times, and any other state or  
24 federal law that applies to the landfill. The other thing  
25 that we would do, is say that a violation of those laws is a

1 violation of this order. What good does it do to say you  
2 have to comply with all laws. If there's no consequence in  
3 the special use proceeding for violating those laws, what  
4 have you done to ensure a reasonable use, if they can  
5 violate the laws, but you can't take back their permit. You  
6 cannot say that is a violation of what we authorized you to  
7 do. So, we would add those concepts in to the regulatory  
8 compliance condition. And it's consistent with what we've  
9 seen in this case. These aren't abstract ideas. Like, oh  
10 the landfill might be a bad neighbor. The landfill has been  
11 a bad neighbor. The landfill has violated the law, and  
12 we've included a snapshot of what the evidence shows in this  
13 case as to those violations, culminating with the state's  
14 testimony that if all the landfills in the state. No other  
15 landfill had racked up more violations in a 5-year period  
16 than this landfill. It needs to comply with the law or it's  
17 not being a reasonable use. It's not being a good neighbor.

18           The second condition that I wanted to talk about  
19 under operations is Condition 2.d which is like your  
20 incorporated Condition 1. And this is get all your permits.  
21 So, comply with all the laws, get all your permits. You  
22 have that idea. You go get your permits. You just limit  
23 the scope of the permits they need to get. With respect, we  
24 would say any permit you need, state, federal, municipal,  
25 whatever it is, go get them. Because it's only in getting

1 those permits that you could possibly be of reasonable use  
2 of agricultural land, you could possibly be a good neighbor.

3 The next condition that I wanted to talk about is  
4 2.e. And this deals with dust control. It's very similar  
5 to your Condition 2 requiring a dust control plan. What we  
6 have said is that it's fine to require planning. We think  
7 that's great, and appreciate it. But the plan should be  
8 incorporated as part of the decision you're making.

9 The evidence in this case shows that dust is a real problem  
10 for the community, for the neighbors, for the people right  
11 across the stret. So, consistent with that problem, you  
12 guys have required a dust control plan. That's great.  
13 Having it incorporated as part of the order, so that you  
14 have something you can enforce. So, if they don't address  
15 the dust that you've told them to address, you can do  
16 something about, and that's what we've proposed in our  
17 condition. That takes me to Condition 2.f which deals with  
18 visual blight. There's no comparable condition in the  
19 proposed decision. The idea here is to develop a  
20 landscaping plan, and implement it that takes no account the  
21 surrounding environment and addresses erosion. Visual  
22 blight is a real impact on the community. It is a negative  
23 effect of this landfill. There was testimony to that effect  
24 and the photograph of evidence is uncontested. That's your  
25 view. It's a visual blight. That is an adverse effect on

1 the community. Let's address that. There's no reason not  
2 to make the City address that in the form of a landscaping  
3 plan.

4           Quickly wrapping up the other conditions that I  
5 wanted to talk about with operations. We have 2.g and 2.j  
6 which deal with the trucks coming in and out.  
7 Trucks, City and commercial trucks come in and out of the  
8 landfill all day. And the consequences of that are traffic  
9 and litter and some noise. Develop a schedule to make sure  
10 they come at appropriate times. To make sure that you don't  
11 have truck stacking on the highway and make them tie their  
12 loads, so that litter isn't blowing off the trucks and onto  
13 the highway and into people's yards, and parks and open  
14 spaces. Simple good neighbor operational conditions that we  
15 believe should be part of this body's decision making sure  
16 that it is a reasonable use that it's not adversely  
17 affecting the community.

18           Similar to that is Condition 2.h, which is  
19 intended to mitigate noise and odor. The evidence shows  
20 that noise and order are a problem. That they adversely  
21 affect the community. Let's address those by requiring a  
22 plan to do so. Make them address the adverse effects that  
23 they're causing.

24           Lastly, is wind blown waste, Condition 2.i that we  
25 propose. Wind blown waste is a problem. It blows into



1 people's yards, it blows onto the highway. It blows all  
2 over. Develop and implement a schedule to pick it up.  
3 It shouldn't be up to the community to pick up waste  
4 developed by use that's supposed to be reasonable. It's  
5 supposed not to have an effect on the community. It's  
6 supposed to be a good neighbor.

7           If we turn from operations to reporting and  
8 enforcement. So, we move from the day-to-day use of the  
9 landfill to keeping the public informed and enforcing the  
10 things that you guys have imposed. You have adopted or you  
11 have proposed to adopt Condition 1.c which is our condition.  
12 We appreciate that. We think that goes a long way to  
13 effective reporting to the community. With respect, I  
14 believe, that there are two other reporting conditions that  
15 I would like to see modified in part.

16           The first is Condition 1.f, which is very much  
17 like your Condition 15. The only difference is that when the  
18 City publishes these reports, we would ask that they provide  
19 a copy to Ko'Olina. We've been in these proceedings for a  
20 long, long time and represent a lot of people and  
21 businesses. It is helpful to us to be able to get the  
22 information out to our constituents for the senator whom I  
23 represent to get the information out to her to constituents.  
24 It's great to do reporting. It means nothing if the public  
25 isn't informed, and all we're asking for is to give us a

1 copy.

2           Very similarly on Condition 1.g. Condition 1.g is  
3 like your Condition 16, which requires a public hearing. As  
4 written, you have required the hearing every three months.  
5 We would say the public hearing could be every six, that it  
6 could be less frequent, so it's more substantive, but we  
7 would like notice of it. Reasonable notice. And, I think  
8 we proposed 14 days before the hearing. So, that people can  
9 actually go to it. So that they can plan for it. So they  
10 can attend. So these public hearings are not just the City  
11 talking to a couple of people, but the community can be  
12 involved. So, if the senator can get it out. So, if the  
13 neighborhood boards can get it out. So, if the association  
14 can get it out. And the reporting condition can actually  
15 mean something.

16           Well, reporting is necessary and as you see up on  
17 the screen, the boards and the senator have been deeply  
18 involved. The boards consistently voting to close. The  
19 senator constituents consistently recommending closure.  
20 And, so they need to be kept informed. And this reporting  
21 is most meaningful if there's a mechanism to enforce as  
22 well. And so what we have asked is at our Condition 1.e is  
23 to give us the ability to come back before you in order to  
24 show cause. If you impose all of these conditions to make  
25 sure that it's a good neighbor, that it's being a reasonable

1 use, but we can't enforce them. We can't do anything if  
2 they're not. What good does it do? To authorize the  
3 landfill that can remain open until capacity. It never has  
4 to come back before you under your proposed decision. But  
5 nobody can enforce anything. You would have to still  
6 respond today? Issue an order to show cause. Let the people  
7 who are on the ground who deal with it everyday, who hear  
8 from people every day. At least have the ability to come  
9 back before you and say we believe there's been a violation.  
10 We would like you to issue an order to show cause. We think  
11 that's consistent with your responsibility, the community  
12 and with our participation in the case and our presence in  
13 the community.

14 I'd like to move from reporting and enforcement to  
15 diversion. And, here, I think we get into thornier things.  
16 I think that what we've proposed in operations and reporting  
17 and enforcement is non-controversial things. These are just  
18 basic things to make sure it's a reasonable use. Diversion  
19 of waste is a little more difficult, but I'd like you to  
20 understand where we're coming from. The diversion of waste  
21 as a concept is already in your order, and its been in the  
22 orders for a long time. And that's in the form of this  
23 alternative waste condition. Your Condition 2, what would  
24 be our Condition 2.b. If the City can't just use the  
25 landfill as its first and only stop. We have a

1 responsibility, the community to the environment to the land  
2 to try to do better than just burying trash. And, so City  
3 you look at alternative means. And the City has done a lot  
4 recently to move toward better alternatives to landfilling.  
5 There's no question about it, and they deserve credit for  
6 it. The problem that we have with the condition is that it  
7 doesn't incorporate with the City has set itself it's  
8 willing to do. The City said in a stipulation that it signed  
9 and KoOlina signed that it would take these actions to  
10 diversify the waste stream to keep trash out of Waimanalo  
11 Gulch, specific items. Specific action points at specific  
12 times. That stipulation, those ideas should be incorporated  
13 into the waste diversion condition. So, it's not just a  
14 general statement to look for alternatives, but to hold the  
15 City to what it said it would do, specific reasonable  
16 objectives that the City has already signed off on. Those  
17 objectives should be incorporated as part of an order that  
18 says, you need to look at alternatives. Don't just landfill  
19 as the first resort, look at these alternatives. Ask the  
20 City to do, make the City do what it said it would do.

21           The diversion of waste through alternative means  
22 is great, but it doesn't operate effectively in isolation.  
23 There also must be a limitation on waste coming into the  
24 landfill. And what we have proposed at Condition 3.a is  
25 that limitation. That if you can landfill it by some other

1 means, you have to do that. Unless there's an emergency or  
2 H-Power shutdown for maintenance or any other reason.  
3 Effective as of the date of the order, if you can dispose of  
4 it by other means, you have to do that. This condition did  
5 come from us. We did not make this condition up. This is a  
6 condition that the City imposed or the City asked this  
7 Commission to impose on itself in 2012. When the City  
8 submitted findings and conclusions in 2012, it included this  
9 condition. This is a direct quote that "waste, if it can be  
10 disposed of through other means, will be disposed of through  
11 other means. Unless there's an emergency or there's an  
12 H-Power shutdown." The City asked you to impose that on  
13 because it saw the evidence that it had been introduced in  
14 this case, and knew that a condition like that, limiting the  
15 waste stream is reasonable. Six years later, this body is  
16 proposing to do less for the community to allow a more  
17 intense use than the City itself asked the Commission to  
18 impose in 2012. Effective January 21, 2014. So, four years  
19 ago, this condition, that limitation on waste should have  
20 began. It hasn't yet. We would ask that it begins an  
21 effective date of the order.

22 The last topic, and I appreciate your time with me  
23 is closure. Okay. We've addressed the operations. We've  
24 addressed reporting. We've addressed enforcement. We've  
25 limited the waste stream. All of those things go to having

1 the smallest impact as possible. The best neighbor possible.

2 The most reasonable use possible. How long does that use  
3 remain. How long does it continue and that brings us to  
4 closure. Your Condition 1 would allow the landfill to  
5 continue to operate until it reaches capacity.

6 With respect, I don't believe that a condition that allows  
7 operation to capacity is consistent with a special use. A  
8 special use is durational. It isn't permanent and capacity  
9 does not provide a duration. Particularly on a record where  
10 there is no evidence of what that capacity is. None of  
11 us--I don't know. As we sit here today have any idea, 10  
12 years, 15 years, 20 years, 50 years. We don't know. And  
13 you cannot impose or you cannot grant a special use permit  
14 that has no identified end date. Not even a theoretical end  
15 date. I suppose as a theoretical in a sense of capacity, we  
16 don't know that means in the context of this order.

17 So, as you can see on the screen, that contravenes  
18 both Land Use Commission rules and Hawaii Supreme Court  
19 precedent because it effectively operates as a boundary  
20 amendment. And the LUC's attorney, in prior proceedings, on  
21 the same permit, explained to the Court exactly that. That  
22 if you give the county unfettered indefinite use of a  
23 special use permit, you've effectively approved a boundary  
24 amendment. That effective approval of boundary amendment  
25 through a special use process, violates Supreme Court

1 precedent, violates statutes and rules, violates Chapter  
2 205. There must be an end date. Recognizing the tension  
3 here. The tension that you guys have to balance the  
4 development of the site, the use of the site and replacement  
5 of the site. Condition 4, directs the City and has long  
6 directed the City to identify and develop a new landfill  
7 site to supplement or replace Waimanalo. That has been on  
8 the books for a long, long time. As we have seen, the City  
9 will not identify and develop a new land fill site as long  
10 as it can operate Waimanalo. It just won't. Nothing in the  
11 record that we have indicates any reasonable diligence by  
12 the City. The date on the screen is 2010. It's 2018.  
13 Nothing in the record that we have indicates any reasonable  
14 diligence by the City to identify and develop a site. Now  
15 submit it, if we reopen evidence, we will see nothing in the  
16 real reopened evidence demonstrates reasonable diligence to  
17 identify and develop a new site. You need both conditions  
18 working together. A closure condition and an obligation to  
19 identify a new site. So, the question really then is how  
20 long will it take to identify and develop a new site. The  
21 best evidence in the record is 5 years. That comes from  
22 Mr. Miller, who's admitted as an expert in landfill site  
23 selection design and from Frank Doyle, when he testified was  
24 the acting director of ENV. They both identified 5 years as  
25 a reasonable time, even an outside time, in Mr. Doyle's

1 case, to identify and develop a new landfill site. So, how  
2 have we approached it in our proposed decision and order. We  
3 have approached it as counsel for the City explained in a  
4 staged way. The first stage is this diversion condition,  
5 this waste limitation condition that we've talked about.  
6 Effective date to the order, going to a period of almost six  
7 years from now, you cannot accept anything that you can  
8 landfill. We've talked about how that is consistent  
9 ultimately more generous than the condition the City  
10 proposed in 2012. Even today the City recognizes the need  
11 for waste diversion condition. This is from the City's  
12 proposed findings and conclusions. Its current ones in 2017.  
13 It would make that waste diversion condition effective  
14 December 31, 2026. So, even the City today would impose a  
15 waste diversion condition. It would stretch it out 13 years  
16 after its original proposed condition with no explanation.  
17 The real reason for stretching it out is the City thinks  
18 that everybody has forgotten what the evidence showed. In  
19 2012, the evidence was very fresh. There was an obvious  
20 need to impose a waste diversion condition as soon as  
21 possible for the City that was 2014. Now that the evidence  
22 has been sitting for a while, the City thinks it can propose  
23 a longer duration. But even that longer duration is better  
24 than the order the Commission has proposed. The Commission's  
25 order has no waste diversion restriction. So, even today the



1 applicant is saying, we will accept a waste diversion  
2 restriction. It's too far off from the future, but we will  
3 accept it. And the Commission has not proposed to impose  
4 that. With respect that is not doing everything you can to  
5 mitigate the adverse effect of the landfill. So, where would  
6 we go after Stage 1, waste diversion condition. For us, that  
7 would be Stage 2. And Stage 2 is to further restrict the  
8 waste. Six years from now, the waste would be further  
9 restricted to just ash and automobile shredder residue.  
10 Because those waste streams are really hard to divert.  
11 There's presently a method to divert them. And, so they  
12 would have an additional of duration or disposition landfill  
13 to let us get up to speed with technology. To move things  
14 along and to let the City get farther along with the  
15 development and siting of a new landfill.

16           And that would bring us to Stage 3, which would be  
17 finally the closure of the landfill about 9 years from now.  
18 That's more than enough time. It's almost double what the  
19 experts have said, would be needed to site and develop a new  
20 landfill site. Close it. And when you do, when you close  
21 it, it will be almost 40 years after the landfill open.  
22 Remember, we're not coming here on a new application for a  
23 new use. We're coming here on a series of successive  
24 applications continuing, continuing, continuing the life of  
25 this landfill. At some point enough is enough. And on all

1 of the prior applications, the City represented it would  
2 close it, that we were temporary, that it would not go on  
3 forever. Somewhere along the line the City abandoned those  
4 promises to this body, to the LUC, to the community and  
5 wanted to continue the landfill forever. With respect, a  
6 40-year landfill operation. It's very difficult to say that  
7 is an unusual and reasonable use, temporarily limited and  
8 therefore entitled to be a special use.

9 Vice Chair McMurdo: You need to summerize.

10 Mr. Chipchase: I am. Chair, I'm wrapping up, and I  
11 appreciate it. The community has dealt with  
12 these issues for a long time, 40 years will be long enough.  
13 Thank you.

14 Vice Chair McMurdo: Thank you, Mr. Chipchase.  
15 Commissioners, do you have any questions for the parties?

16 Ms. Chan, can I ask you about some of the issues  
17 that have been brought up.

18 Ms. Chan: Sure.

19 Vice Chair McMurdo: With regard to capacity

20 Ms. Chan: Yes

21 Vice Chair McMurdo: ...and some of the conditions  
22 that you, ENV says they would accept. Can you address  
23 those.

24 Ms. Chan: Okay.

25 Vice Chair McMurdo: With regard to what

1 Mr. Chipchase has brought up.

2 Ms. Chan: Yes, thank you, Chair. To clarify, the  
3 purpose of that stipulation that Mr. Chipchase  
4 referenced, and I think may have mischaracterized is  
5 that stipulation was something that we have been  
6 discussing in terms that we reached in order to stay  
7 the proceedings. At that point in time the parties  
8 were attempting to, I think in good faith to negotiate  
9 a joint proposed findings of fact. Those negotiations  
10 obviously fell through and that's why we're here today.  
11 But that was the terms of the stipulation. Those are  
12 commitments that ENV was entering into for that time  
13 period up until, I believe April of 2017. We were  
14 trying to give ourselves some time to work out some  
15 very difficult issues. So to say that the City should  
16 somehow be held to that now, I think is a  
17 mischaracterization of what we were doing.

18 As far as the capacity of the landfill, with the  
19 situation now where the evidence is up through 2012,  
20 there is further diversion efforts that are not  
21 captured in the evidence in this proceeding. Because  
22 of the, I think good work that my clients have done to  
23 further divert waste from the landfill that has  
24 extended the duration that the capacity would last. I  
25 think that could be addressed in different ways, not

1 necessarily in the way that KOCA is requesting, but to  
2 the extent that this Commission would want the  
3 Department to report annually on its current capacity  
4 at the landfill. I think thats something that can be  
5 done. That is something that they regularly track. I  
6 dont want anyone to be mislead to think that the  
7 Department sits there ideally not considering what  
8 their current operations are and how much they're  
9 putting in the landfill and what space is available.  
10 That is something that theyre very vigilant about, and  
11 I think the evidence shows that as well.

12 Vice Chair McMurdo: Thank you. Commissioners, do  
13 you have any other questions?

14 Ms. Chan: Oh, if--I'm sorry. I forgot one more  
15 thing. The conditions that KOCA is proposing [siren,  
16 pause]. The conditions that they're proposing  
17 especially the ones that go to incorporating other  
18 obligations that the City has under its other permits,  
19 with all due respect, I think these Commissioners that  
20 sit here today know what their role is in approving the  
21 special use permit. What KOCA is requesting you do is  
22 to broaden the scope of your authority and to become  
23 the regulators of conditions that we are required to  
24 comply under other regulations and under other bodies,  
25 including the Department of Health. And, I think thats

1 completely inappropriate to incorporate that into this  
2 permit.

3 Vice Chair McMurdo: What about the good neighbor  
4 conditions they're proposing?

5 Ms. Chan: Such as, which one specifically?

6 Vice Chair McMurdo: Dust control, noise and odor, litter

7 Ms. Chan: If you take a look in the evidence, those are  
8 things that we're already obligated to do under the  
9 solid waste management permit, I believe. Those are  
10 things that ENV has already addressed. Dust control,  
11 even the trucks--You know, getting back to the  
12 diversion efforts and the decreased reliance on the  
13 landfill that we've experienced with the expansion at  
14 H-Power. There are fewer trucks going up there. Sp.  
15 tjere are things that ENV has done and is continuing to  
16 do to mitigate its impact on the community.

17 Vice Chair McMurdo: So, ENV wouldn't object if  
18 these conditions were included?

19 Ms. Chan: We believe that they're not necessary  
20 in this permit and shouldn't be there since they're  
21 already addressed elsewhere.

22 Vice Chair McMurdo: Okay. Any other questions?

23 [no response] Am I the only one who has questions?

24 Member G. Chang: So, basically the presentation  
25 provided, you would disagree with majority of the

1 presentation?

2 Ms. Chan: Correct. We stand by our previous  
3 arguments and our filings that we believe that the  
4 proposed decision and order from December with the few  
5 exceptions and modifications that we're requesting. We  
6 would be in support of that.

7 Vice Chair McMurdo: Okay. Commissioners, any  
8 other questions? [no response] No. All right. Thank  
9 you very much for your presentations and information.  
10 We really appreciate all your time. The Commissioners  
11 will now go into closed session to deliberate.

12 [colloquy between Vice Chair McMurdo and DCC  
13 Rozelle Agag.]

14 We will be deliberating for action, Items 1 and 3  
15 together. But we will be--We plan to do the actual  
16 decision-making in public with another date. Do we  
17 have a date for continued--Everybody available March  
18 21st? We will be deliberating today and the  
19 decision-making will be made just for that day.

20 Mr. Chipchase: Chair, I don't believe that I'm  
21 available March 21st. I'm sorry for that.

22 Vice Chair: The others--Next dates are April 4,  
23 April 18, or April 18.

24 Mr. Chipchase: Either would be fine.

25 Vice Chair McMurdo: Either one. Ms. Chan, are

1           you available?

2           Ms. Chan: I'm available in March, and I would urge  
3           this Commission to act as quickly as possible. I think  
4           the April dates would be fine as well.

5           Vice Chair McMurdo: Commissioners, are you  
6           available? Which dates do you prefer?

7           Member W. Chang: I have a conflict on the 18th.

8           Vice Chair McMurdo: So, the 4th then. Everybody  
9           available April 4th?

10          All Commissioners: Yes.

11          Vice Chair McMurdo: Okay. So, we will do  
12          decision-making on April 4th. Mr. Wurdemann [from the  
13          audience]?

14          Mr. Wurdeman from the audience: That's fine.  
15          That works for me, Chair.

16          Vice Chair McMurdo: And everyone is okay with  
17          April 4th?

18          Ms. Matro: Yes. Schnitzer is fine. Thank you.

19          Vice Chair McMurdo: Anyway--So, everyone is  
20          excused right now. We will be doing our deliberations,  
21          and then we will meet again on April 4th.

22          Mr. Chipchase: So, we'll distribute what  
23          Mr. Goodin interrupted us to bring us and take down our  
24          board. Before I do that, I have to, I have to object  
25          to deliberations in a non-public forum.

1 I don't believe that you may close the door to the public,  
2 in particular the parties, for any reason except to  
3 consult with your counsel about legal matters, to  
4 solicit legal advice. And, so I do believe that  
5 deliberation, the discussion needs to be done in  
6 public.

7 Vice Chair McMurdo:

8 Okay.

9 Ms. Chan: If I may just respond to that, we would  
10 disagree with KOCA. This is a contested case  
11 proceeding, and so I think that's fine.

12 Vice Chair McMurdo: Okay. It is a contested case  
13 hearing, and so we're allowed to deliberate with our  
14 counsel. All right. Thank you very much.

15 Mr. Chipchase: Thank you.

16 Ms. Matro: Thank you.

17 Ms. Chan: Thank you.

18 Mr. Chipchase: Thanks everyone.

19 I appreciate your time.

20 Mr. Wurdemann from the audience: Thank you.

21 Vice Chair McMurdo: We'll take a 5-minute recess  
22 to just have the room cleared.

23 [At 2:44 p.m., Vice Chair McMurdo calls for a  
24 5-minute recess and reconvenes at 2:49 p.m.]

25 [At 2:49 p.m., Commissioners and DCC Rozelle Agag



1 convene in closed session]

2 [At 3:28 p.m., Commissioners and DCC Rozelle exits  
3 closed session and those not participating in closed  
4 session re-enters the conference room]

5 Vice Chair McMurdo: All right. We're back from  
6 closed session. If there no objections, we move to  
7 adjourn.

8 ADJOURNMENT

9 There being no further business before the  
10 Planning Commission, the meeting was adjourned by Vice Chair  
11 McMurdo at approximately 3:30 p.m.

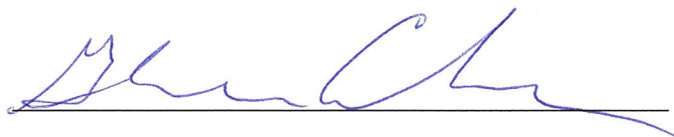
12 --oOo--

13

14 I certify that the foregoing is  
15 a true and correct transcription  
16 of the proceedings, prepared to  
17 the best of my ability, of the  
18 meeting held on Wednesday,  
19 March 7, 2018.

20

21



22

Gloria Takara

23

Secretary-Hearings Reporter

24

25

Adopted on: April 11, 2019