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
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 WGSU up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSU after July 21, 2012."

CONTINUED - CONTESTED CASE HEARING

Ewa-Special Use Permit Amendment Application - 2008/SUP-2 (RY), Waimanalo Gulch Sanitary Landfill
Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street, Honolulu,
Hawaii, 96813, commencing at 1:35 p.m, on April 11, 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 D. Challacombe
   [prior notice given]
   Arthur B. Tolentino
   [prior notice given]
   Steven S. C. Lim
   [prior notice given]
   Wilfred A. Chang, Jr.
   [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 Intervenor 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.
Joyce W. Y. Tam-Sugiyama, 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: [bangs gavel] Good afternoon. Call the Thursday, April 11th, 2019 Honolulu City and County, Planning Commission to order. Thank you, Gloria, for setting everything up today on the agenda.

The first item up is approval of minutes from the March 7th, 2018 and February 22 [sic], 2019 meetings relating to the Waimanalo Gulch Sanitary Landfill.

MEMBER HAYASHIDA: I'll make a motion to approve the minutes.

MEMBER MCMURDO: Second.

VICE CHAIR ANDERSON: All in favor.

ALL COMMISSIONERS: Aye.

VICE CHAIR ANDERSON: Any opposed? [no response]

Minutes are approved as presented.

Second item up on the agenda, bear with me here, continued from February 22nd [sic], 2019, the 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 for a new Special Use Permit to supersede existing special use permit to allow 92.5 acre expansion and time extension for Waimanalo Gulch Sanitary Landfill; and 2) to delete Condition No. 14, of the Special Use Permit No. 2008/SUP-2. Two items up for action today.
We're going to take them out of order, if we don't mind.
We'll take the Department of Environmental Services motion
for leave to file supplemental brief; memorandum in support
of motion and Declaration from Kamilla Chan. I believe all
Commissioners are in receipt of said motion. At this time
ENV sounds like you want to share.

MS. CHAN: Thank you. Kamilla Chan for the City
and County of Honolulu, the applicant in this matter.
We filed the motion for leave to file a supplemental brief
after the last hearing to address two issues. One was the
Commission's discussion and, as I believe, it still stands
consideration of the adoption of a condition that is
inconsistent with the evidence that's in the record and is
not supported by substantial evidence.

And the second issue was the Commission's inquiry
about matters that are outside of the record of this case
and are concerned that those matters outside of the record
are part of the decision making in this matter.

In our brief we've addressed the fact that there
are certain facts that are in the record that would not
support the closure condition that was discussed at the last
hearing. And we've layed out the evidence in the record
that we were able to quickly identify as either supporting a
particular position or not supporting the condition that the
Commission was discussing at the last hearing. And again to
point out that if the Planning Commission is considering that particular deadline, which would call for a partial closure beginning in 2024 and a complete closure a few years after that. There are a number of wastes that we are required to landfill at this point in time. There are no other disposal options other than landfilling. That's primarily wastewater screenings, animal carcasses, tank bottom sludge, certain contaminated soil. It's a very narrow set of waste streams, but it's still a very real concern for ENV in order to protect public health and safety. Without the access to Waimanalo Gulch the City would also have a problem remaining compliant with its operating permit for H-POWER. It requires to have a permitted facility as a backup, and as it stands right now Waimanalo Gulch is the only other repository for that type of waste.

Finally, the evidence in the record would not establish that ENV would be able to get to that point of not meeting Waimanalo Gulch within the time frames that are set out. Because of the partial closure that would be imposed beginning in 2024, that would leave ENV with no where else to dispose of those wastes. The record is very clear that it would take a minimum of seven years from that point at which a landfill site is selected in order for ENV to have a landfill available and ready to use. So, for those reasons
it is ENV's position that the condition that was being
considered and discussed by the Planning Commission at the
last hearing is not supported by the evidence.

VICE CHAIR ANDERSON: Any questions? [no response]

To address the statement of minimum seven years, my memory
isn't the greatest, but I believe years ago when we pressed
ENV whether it was--I don't know who we were speaking with
if seven years was adequate time, and it was never, I don't
believe a minimum of seven years. It was how long is it
going to take and they felt comfortable at seven years was
the date that they could identify and open a new site.

Again, I could be off, but that's my memory.

MS. CHAN: Yes. We would encourage the Commission
to ensure that the evidence supports any deadline that's
imposed.

VICE CHAIR ANDERSON: Yep. Any questions,
Commissioners? [no response] Mr. Sandison, working from
right to left.

MR. SANDISON: We certainly concur with the City
that in the Commission's Findings of Fact, Conclusions of
Law, and Decision and Order, that it must clearly set forth
that the evidentiary basis for any condition that is setting
a date for, except for the landfill stopping acceptance of
certain waste and certainly for the complete closure of the
landfill. We don't necessarily agree with any of the dates
that have been proposed, I think we strongly encourage the
Commission in drafting its Findings of Fact, to make
specific Findings of Fact regarding the evidence that
supports any condition that is in fact imposed. Thank you.

VICE CHAIR ANDERSON: Okay. Mr. Chipchase.

MR. CHIPCHASE: Chair, thank you Commissioners.

Cal Chipchase and Chris Goodin for Intervenors Ko Olina
Community Association and Senator Maile Shimabukuro. The
discussion that sort of branched off in two ways.

One is the actual motion to file supplemental briefing
that's before the Commission, and that's what the argument
is really on. And on that point as we pointed out in our
reply at this stage in the proceedings it's not appropriate
to file supplemental pleadings. If ENV was granted leave to
file supplemental pleading, we would of course want an
opportunity to respond to it. They would want an
opportunity to reply, and we would be back here for further
hearing. It can't just file something that's considered on
the day that we're here for decision making. So not
appropriate to grant that leave.

The other direction that it's gone into is what is
the evidence show and whether it's appropriate to consider
things outside of the record. And we all agree that it's
not appropriate to consider things outside of the record.
The record closed in 2012. That record includes the 2008
proceeding as well. And in large part the record includes
the 2003 proceeding. There were a number of transcripts and
exhibits that were introduced in the 2003 proceeding on the
same landfill. For that time they've requested a five-year
extension that we were introduced. So, we really have a
pretty deep and long record and that is the basis for the
Commissioner's decisions. The Commission's decisions, it
couldn't consider, for example, ENV submitted a status
report that is not part of the record and that couldn't be
considered. So on that level we all agree.

Where we defer is in what the record shows.
Anticipating the Commissioners might have questions as to
what the record actually shows as to closure, as to the
City's promises, as to its representations, both to the
community and to the regulatory bodies, the LUC in
particular, regarding closure and the time to site and
develop a new landfill. We prepared slides that answer
those things with express record citations. We don't intend
to make another presentation. The Commission was amply
generous with its time the last time, but we do want to be
responsive to any questions. And we feel very confident
that the City has represented that a landfill could be
developed within five years. At most, as the Chair
suggested, there was testimony in the last proceeding, the
2012 proceeding from the then director who said he felt safe
at seven years. And so we believe the deadlines—we set
fourth are amply supported, and we've prepared excerpts of
the times given by every person who testified that we could
find in the record between 2003 and 2012. Thank you.

VICE CHAIR ANDERSON: Thank you. Mr. Wurdeman.

MR. WURDEMAN: Thank you. Richard N. Wurdeman for
Intervenor Colleen Hanabusa. I'd just like to add that when
we last left this Commission at the last hearing there
wasn't going to be anymore briefing. That was made pretty
clear, and we're coming today for disposition. So with
that, with ENV popping up with this motion in between and
try to reargue points, I think it's inappropriate and that
request should be denied.

With respect to the issue about seven years, I
mean, seven years have been talked about ten years ago in
the proceedings in the 2008 application, and here we are ten
years later and the City, ENV is saying, well, we're not
sure that seven years is efficient. So, now they're saying
17 years may not be sufficient. But really, and as I have
reiterated time and time again, unless there's some firm
deadlines put on the City, I don't believe that they'll ever
take the responsibility seriously and will look for
alternative sites like they're supposed to unless they are
given a time frame to follow. So, with that I thank you for
allowing me to make those comments.
VICE CHAIR ANDERSON: Thank you. Any further questions? [no response] Hearing what I've heard, I would make a request to the Commissioners to deny the, ENV's motion for leave to file supplemental brief, memorandum in support of motion, Declaration of Kamilla Chan, but that's just my own opinion. Open it up for you folks to present a motion.

MEMBER HAYASHIDA: I make a motion to deny Department of Environmental Services, City and County, motion to leave to file--

MEMBER MCMURDO: Second.

MEMBER HAYASHIDA: ...supplemental brief, memorandum in support of motion.


ALL COMMISSIONERS: Aye.


Second action item on the agenda today, adoption of proposed Findings of Fact, Conclusions of Law, and Decision and Order, relating to the Waimanalo Gulch Sanitary Landfill. I believe we left off our last hearing on February 22nd [sic]. Commissioner McMurdо, I know we had a motion on the table--
MEMBER McMURDO: Right.

VICE CHAIR ANDERSON: ...and in discussion.

Would you mind restating that at least to put the motion up
for vote, and then we can discuss it as needed.

MEMBER McMURDO: I don't have the original--

[colloquy between Counsel Agag and Vice Chair
Anderson]

MS. CHAN: If I may, and I may be incorrect on
this, but were we not in discussion. I think there was an
attempt to put a motion--

VICE CHAIR ANDERSON: That's what counsel has just
advised.

MS. CHAN: Okay. Thank you.

VICE CHAIR ANDERSON: Apologies.

MS. CHAN: No problem. I just wanted to make sure
I understood where we were.

VICE CHAIR ANDERSON: Yep.

[colloquy between Counsel Agag, Vice Chair
Anderson and Member McMurdo]

Counsel just advised me that Commissioners
collectively, individually, I don't want to phrase that, had
asked for more time to look back at the records to see what
the record reflected, to catch up to speed, to refresh
themselves. After doing so, are there any additional
suggestions or comments stemming from that effort?
Otherwise, Commissioner McMurdо if you could find anything up for discussion we should just refresh ourselves with the topics.

I guess personally my main concern, and I guess it always has been whether I voiced it clearly or not, is the identification of a proposed landfill. The firm deadline of the closure perhaps isn't as critical for me personally, it's the identification process, because to me that's the hardest and highest hurdle to get over. And I would feel much more comfortable when the time comes whether it's a specific date we give today or capacity issue or something that occurs in the future that a proposed alternative site is identified and readily available, so we're not back here or ENV is not back there in a situation where 10 years from now when they reach capacity or whenever the landfill, five years, two years from now, is at the point where they don't have an alternate site located. But open for discussion.

MEMBER HAYASHIDA: I think we're all concerned about that, but I don't know if that's what we're asked to do.

VICE CHAIR ANDERSON: Yes.

MEMBER MCMURDO: I think it might help to have KOCA's 3a, 3b, and 3c wording in front of us. I don't have it in front of me. So, do you have that?

MR. CHIPCHASE: I can put it on the screen,
Commissioner.

MEMBER McMURDO: Yes. Could you do that.

MR. CHIPCHASE: Yes.

MEMBER McMURDO: That would help. Is that okay, Chair?

VICE CHAIR ANDERSON: That's fine.

[KOCA shows slide on the screen]

MEMBER McMURDO: Seems longer than what I remember.

MR. CHIPCHASE: That's 3a, Commissioner. So that is directly based on a condition that the City proposed in 2012. It effectively closes the landfill to waste that can be landfilled by other means. And so that is consistent with the City's condition and that would last for five years. Then the second stage that we talked about, Commissioners, was dealing with the more difficult wastes to dispose of by alternative means. The ash and the ASR, which are as everyone would agree, I think the most difficult to find other homes for and that would last for a period of three years, and then at the end of that full eight is our stage 3 would be the closure.

MEMBER McMURDO: Okay. That's not what I remember from. Is that what you remember? I don't remember all of that from the last time. I remember a shorter one. I don't remember those dates.

MR. CHIPCHASE: It is the same, Commissioner. It's
actually the same one in various forms that we pushed for
seven years now. So, if it had been adopted seven years ago
we would be coming up on the conclusion of it.

VICE CHAIR ANDERSON: We may have paraphrased
ourselves the last meeting on 3a, 3b, 3c. Could you flip
back to 3a, please.

Sorry, bear with us as we look up the record.

[colloquy between Counsel Agag, Vice Chair
Anderson and Member McMuro]

[pause]

If you guys have any idea where 3a, 3b and 3c is
in your exhibit it would be appreciated. If you guys know
exactly where it is.

MR. CHIPCHASE: Chris is pulling it up now.
We're trying to.

MR. GOODIN: Trying to.

MR. SANDISON: A place to find it is in the April
10th position statement that Schnitzer filed it. It's on
page 3.

[pause]

MEMBER HAYASHIDA: Chair, I think back the issue on
having the closure date. LUC actually asked us to look at
it.

VICE CHAIR ANDERSON: Yes.

MEMBER HAYASHIDA: That statement right there.
Identifying the site. The LUC asked us to look--

MR. CHIPCHASE: If you look at our proposed Findings of Fact, Conclusions of Law, Decision and Order that are stamped/received January 27, 2017, begins on page 85.

VICE CHAIR ANDERSON: So regrouping from some of the notes from the previous hearing, I believe there was consensus on KOCA's condition of 1c, 2c, 2d, 2e, 2g, 2i, 2j. And the three items that we're looking into now are 3a, 3b, and 3c regarding the closure time line, which we can all agree is fairly critical.

MEMBER MCMURDO: Yeah.

VICE CHAIR ANDERSON: I have 3a, 3b, 3c in front of us. I think as far as the sequencing I'm comfortable with, it's just the timing that we can discuss. If we're comfortable with the timing or anything we've--

MEMBER HAYASHIDA: I think that someone has to present evidence from the record that says that this is necessary.

VICE CHAIR ANDERSON: Says that what is necessary?

MEMBER HAYASHIDA: 3a, 3b, 3c.

MEMBER MCMURDO: That supports the condition.

MEMBER HAYASHIDA: That supports the condition; yes.

MR. CHIPCHASE: So we will pull up the evidence
regarding the timing for siting a new landfill in a moment here.

VICE CHAIR ANDERSON: Okay.

MR. CHIPCHASE: And it will have record citations.

MS. CHAN: I'm sorry, could we get some clarification. Are we allowing the parties further argument or is the Commission in discussion?

VICE CHAIR ANDERSON: We're in discussion.

MS. CHAN: Okay.

MEMBER HAYASHIDA: As long as you have evidence--

VICE CHAIR ANDERSON: I hear you. It was made very clear that these dates, perhaps may be applicable is not the right word, but unless there's evidence to support that decision, that decision cannot be made, but at the same token I've heard evidence that can be construed on both sides of the coin here.

MEMBER HAYASHIDA: Show me the evidence, and then we can discuss it.

VICE CHAIR ANDERSON: Okay.

MR. CHIPCHASE: Chris, you want to pull up the references.

MEMBER HAYASHIDA: I think that's internal for our Commissioners.

MR. GOODIN: Sure.

VICE CHAIR ANDERSON: Yes. Either of you guys have
any points to clarify or discussion? I mean, the assumption
is we're well aware of the evidence at this time.

MEMBER G. CHANG: (inaudible)

MEMBER HAYASHIDA: If you're going to make a
proposal, then you need to have a basis of the evidence.

VICE CHAIR ANDERSON: Yes. We have to justify that
motion starting with 1c all the way through 3c and
everything in between, and we have to be confident that
record supports that suggestion. I think it's her motion.
[referring to Member McMurod]

MEMBER MCMURDO: Did I make a motion yet?

MEMBER HAYASHIDA: You can withdraw it or you
can--

MEMBER MCMURDO: I don't think I made a motion yet.
Where we left off is we were talking about all of the
conditions that we were trying to get consensus on. So, I
have not made the motion yet.

COUNSEL AGAG: I'll take a look on the record. My
recollection is that there was a motion on the floor that we
were discussing.

MEMBER MCMURDO: Because I don't think I fully
completed it because we were talking about the different
conditions. Right?

MEMBER HAYASHIDA: I think there's a motion.

MEMBER MCMURDO: So this page 91, is it 91?
VICE CHAIR ANDERSON: Yep.

MEMBER MCMURDO: Rozelle suggested that we take
the motion off the table and continue discussion, and so we
were discussing. That's how we ended it.

COUNSEL AGAG: I think that issue was whether or
not we were going to adopt the D&O, and the Commission, you
guys were discussing what conditions to add in to the D&O.
And at that point, you had all discussed accepting all of
ENV's exceptions, all of Schnitzer Steel's exceptions, and
at that point you guys were also looking at what exceptions
you would be accepting from KOCA's recommendations and
exceptions. And although you didn't complete the motion, I
believe that was the agenda item that's up for discussion is
the acceptance of the Decision and Order, Findings of Fact,
Conclusion of Law, and Decision and Order. So at discussion
at this point, and I think everyone was in consensus the
last time of all of the different KOCA's exceptions, with
the exceptions--and I'm looking at the record from the last
hearing, the exception of 3a, 3b, and 3c, at which point the
Commission decided to continue discussion so they could look
at their own records to determine whether or not you were
going to accept 3a, 3b and 3c as conditions or as exceptions
and additions into the D&O. So that's where we left off at
discussion.

VICE CHAIR ANDERSON: I'm reading on page 99, line
22, line 21. I suggested, "no, thank you for that". And I believe there was a motion that was withdrawn. So I think we've agreed that the motion was withdrawn. So, the motion that was proposed the last time, as you would say, to include ENV, to include--

MEMBER MCMURDO: Schnitzer Steel--

VICE CHAIR ANDERSON: ...Schnitzer--

MEMBER MCMURDO: ...plus 89 to 102.

VICE CHAIR ANDERSON: Yes. So, someone got to make a motion, and then we can discuss from that point.

MEMBER MCMURDO: I would move to accept all of ENV's exceptions and all of Schnitzer Steel's exceptions, plus 89 to 102 of the 2009 Findings of Fact, and I will end there for my motion.

VICE CHAIR ANDERSON: Okay. Can I get a second.

MEMBER G. CHANG: Second.

VICE CHAIR ANDERSON: Okay. Up for discussion.

So to be clear you're including ENV, Schnitzer and--

MEMBER McMURDO: And that's it--

CHAIRMAN: And that's it--

MEMBER MCMURDO: For now--

MEMBER G. CHANG: Exceptions 89 to 102.

VICE CHAIR ANDERSON: Yes.

MEMBER McMURDO: Yes.

[colloquy between DCC Agag and Vice Chair
VICE CHAIR ANDERSON: Any discussion on addressing where we left off the last time and where we're at right now with the exclusion of any conditions from KOCA?

Any discussion on that point?

MEMBER HAYASHIDA: So we took ENV's, Schnitzer,
KOCA--

MEMBER MCMURDO: No, no--

VICE CHAIR ANDERSON: The last hearing we left off in discussion there was a motion and it was taken off to include ENV's, Schnitzer's and select KOCA's conditions. The motion in front of us right now is ENV and Schnitzer with nothing from KOCA.

MEMBER MCMURDO: It doesn't prevent from anybody else to put forward another motion, right?

VICE CHAIR ANDERSON: Absolutely.

MEMBER MCMURDO: I wanted--I thought it's easier for us to separate. To me there's two different things, their exceptions and these are additional conditions that they're putting on, correct?

VICE CHAIR ANDERSON: True. But I think the exceptions or the action item today is one. I don't think it can be two part. I think the motion has to include everything.

MEMBER MCMURDO: It has to be one.
VICE CHAIR ANDERSON: Everything.

COUNSEL AGAG: So, let me just be clear. The action here is for the adoption of the proposed Findings of Fact, Conclusions of Law, and Decision and Order. What we're deciding upon is whether or not the Commissioners will take into account the exceptions provided for by the parties. And discussion from last time was the exceptions that you all would've considered, and you had gotten all the way, you know, I mean, you are still open to discussing whatever you want to include, but there is no separate motion. It's going to be a motion to adopt the entire Findings of Fact, Conclusions of Law, and Decision and Order, and you are including what elements you want to go in there.

VICE CHAIR ANDERSON: Yes.

MEMBER MCMURDO: Okay.

MEMBER HAYASHIDA: And the current one has ENV which is Items 1 and 2, is that what I hear?

VICE CHAIR ANDERSON: You would have to look back to their proposed--

MEMBER MCMURDO: That is from the last meeting--

VICE CHAIR ANDERSON: The reference here is to their proposed D&O. And if I'm gauging the room, I think we have fairly good consensus on ENV and Schnitzer with the addition of 89 to 102, and (inaudible) we left out. It's
just now--That's the motion on table. Is there a discussion for anything from KOCA that we had considered last time? [no response] I know looking at the list, 1c through 2j, and everything in between there we discussed the last time and feel relatively good about the evidence reflecting that.

MEMBER HAYASHIDA: No discussion.

VICE CHAIR ANDERSON: Okay. No discussion.

MEMBER McMURDO: I think too what the Chair has mentioned, I mean I like what you said, and if there's a way we can get some kind of time line, I would prefer that.

VICE CHAIR ANDERSON: Okay. Right now the motion will not contemplate a time line.

MEMBER McMURDO: Right. I withdraw my motion then.

VICE CHAIR ANDERSON: Okay. So currently no motion on the table. I'll restate the fact that it does appear we have consensus on ENV and Schnizter with the exception of 89 to 102. I'm hearing some discussion perhaps needed on closure time line. If you want to entertain that or anything from KOCA.

MEMBER HAYASHIDA: It's my understanding that we got to deal with the questions that the LUC asked us.

VICE CHAIR ANDERSON: Yes, those four.

MEMBER McMURDO: I do believe we did address them in our Decision and Order.

VICE CHAIR ANDERSON: Yes, I think--
MEMBER MCMURDO: Our Decision and Order covers those.

VICE CHAIR ANDERSON: The draft D&O.

MEMBER MCMURDO: Yes. The draft before includes that.

VICE CHAIR ANDERSON: Yes, the four points.

MEMBER MCMURDO: Yes.

VICE CHAIR ANDERSON: We were asked to clarify--I think we clarified those the last time on the record. That was my understanding we clarified that on the record. I had the lengthy scrip that I went down methodically.

MEMBER HAYASHIDA: So we have that all done?

VICE CHAIR ANDERSON: Yes.

MEMBER McMURDO: Yes.

VICE CHAIR ANDERSON: Just the action item today is the adoption of the proposed D&O.

MEMBER HAYASHIDA: Okay. I'll make a motion that the adoption of Findings of Fact, Conclusion of Law, and Decision and Order with the exceptions, ENV's exceptions and all of Schnitzer Steel's exceptions plus 89 to 102 of the 2009--

MEMBER McMURDO: Findings of Fact--

MEMBER HAYASHIDA: ...Findings of Fact.

VICE CHAIR ANDERSON: Okay. Can I get a second.

MEMBER Goo: Second.
VICE CHAIR ANDERSON: Second. Okay. Up for discussion. I believe that's the same motion that we had in front of us earlier.

MEMBER McMURDO: Are we discussing?

VICE CHAIR ANDERSON: Open for discussion, and again gauging the Commissioners, perhaps it appears apparent that we're going to leave it at ENV and Schnitzer.

MEMBER McMURDO: Am I the only one that feels that there should be a time line?

MEMBER HAYASHIDA: Does the record support the time line decision?

MEMBER McMURDO: I believe so.

MEMBER HAYASHIDA: State off the time line that the record shows.

MEMBER GOO: Time line was a long time ago, but it's in the records.

VICE CHAIR ANDERSON: 2008, correct. If I'm going to address it. I think what Commissioner Hayashida is saying is if we're going to entertain something that's not in the current motion right now, what is perhaps whether it's included in 3a, 3b, 3c or whatever that condition might be. If we're going to entertain any sort of closure date whether that's an identification date, a sequence closing date and a final closing date, whatever that process is, we have to be clear that there's evidence on the record that
substantiates that decision, that recommendation. And, I think as I said earlier, it does appear that there's evidence that can be construed in either matter on both sides of the coin. We all know that the record closed in 2012, so anything from then to now cannot enter into our decision making. That was made clear at our last hearing. So, we have to look at the evidence prior to 2012 or the evidence in front of us and determine do we feel confident imposing any sort of closure date or identification site date.

MEMBER G. CHANG: I think Commissioner Goo had some questions--

MEMBER GOO: I'm okay. Going back, you don't want to change anything from the record, but if it was referring to 2008 schedule, and it's all been recorded, right? And that's referred to this motion.

VICE CHAIR ANDERSON: What specific reference to, the schedule?

MEMBER GOO: Yes.

VICE CHAIR ANDERSON: The seven years?

MEMBER GOO: Whatever was in the 2008 records.

VICE CHAIR ANDERSON: Okay. I'm not clear exactly what you're--

MEMBER GOO: Erase it, erase it.

VICE CHAIR ANDERSON: Okay.
MEMBER GOO: The time line needs to be something that's previously approved and had rationale behind it. 
And that was in 2008, is that right?

MEMBER HAYASHIDA: The Supreme Court took it out--
MEMBER GOO: They took it out. So, we have nothing?

MR. CHIPCHASE: To address your question Commissioner, there was a time line established in 2005 that ENV agreed to. There is a time line established in 2007 that ENV testified to, and there was a time line in 2011 and 2012 that ENV testified to. That is all part of the record.

MEMBER GOO: Is that what we're referring to now?

MS. CHAN: If KOCA--

COUNSEL AGAG: You need to limit the discussion just between the Commissioners. This is not a time where parties should intervene in discussion.

VICE CHAIR ANDERSON: Correct.

MS. CHAN: Chair, if I may have a chance to respond to that because KOCA has continuously advocated for its position in this hearing.

VICE CHAIR ANDERSON: Go ahead.

MS. CHAN: With respect to the deadlines, the City has always supported to capacity. The evidence in the record establishes very clearly that there are waste streams that have no other means of disposal. So we would disagree
with KOCA's characterization.

VICE CHAIR ANDERSON: Agree. But that statement along with earlier statements is the assumption that Waimanalo Gulch Sanitary Landfill is the only operating landfill, meaning in the future if there is a proposed site and up and running within the seven years, which is the date that's been reflected in the record numerous times, that that waste that has no other place to go would have a place to go.

MS. CHAN: I understand what you're saying.

VICE CHAIR ANDERSON: Okay.

MS. CHAN: I'm just observing that the City's positions in prior hearings is being misconstrued today.

VICE CHAIR ANDERSON: Understood.

MS. CHAN: I don't want to get into a lengthy argument because I understand where the Commission is at in terms of decision making, and that would be inappropriate at this time.

VICE CHAIR ANDERSON: Understood.

COUNSEL AGAG: I'm going to insist at this time that the Commissioners discuss amongst themselves without any input from the parties. We are now in discussion. Argument has been closed. Please discuss amongst yourself.

MEMBER MCMURDO: Can we have an opportunity to speak to counsel about--
COUNSEL AGAG: You can make a motion to enter into executive session.

MEMBER MCMURDO: I'd like to make a motion to go into executive session to confer with our counsel.

VICE CHAIR ANDERSON: Before I ask for a second, procedurally are we okay to address that motion while Commissioner Hayashida's motion is on the table?

COUNSEL AGAG: Yes.

VICE CHAIR ANDERSON: Is there a second.

MEMBER G. CHANG: Second.

VICE CHAIR ANDERSON: All in favor.

ALL COMMISSIONERS: Aye.

VICE CHAIR ANDERSON: Any opposed? [no response]

Thank you. We're in executive session. Please give us a few minutes.

[At 2:16 p.m., the Planning Commissioners convened into executive session. Those not participating in executive session exited the hearings room.

There being no further business in executive session, the Commission adjourned from executive session.

Those not participating in executive session returned to the hearings room to resume proceedings at 2:32 p.m.]

VICE CHAIR ANDERSON: [bangs gavel] Meeting is in session. Commissioner McMurdo your microphone, please.

Okay. Where we left off. Commissioner Hayashida, would you
mind restating your motion for clarity.

MEMBER HAYASHIDA: For adoption of the proposed Findings of Fact, Conclusions of Law, and Decision and Order with the exception of all of ENV's exceptions, Schnitzer Steel's exceptions plus 89 through 102 of the 2009 FOF. These are mainly exceptions for housekeeping and clerical items.

VICE CHAIR ANDERSON: Understood.

MEMBER G. CHANG: Second.

VICE CHAIR ANDERSON: Thank you. Any discussion?

MEMBER MCMURDO: I just want to state for the record that the Commissioners need to be reminded that the reason this has come back to us is that the LUC remanded it back to us, and we needed to answer four items, and I believe we did with our Decision and Order. So putting anything in addition to that I'm not sure that will help us going forward.

VICE CHAIR ANDERSON: And I believe looking back at the record the question of site identification was addressed on Condition No. 2 of the LUC's items. I believe that date was December 31st, 2022. So, that was addressed at the last hearing on the record. Any further discussion?

MEMBER G. CHANG: None.

VICE CHAIR ANDERSON: Okay. Call for a vote.

All in favor.
ALL COMMISSIONERS: Aye.
VICE CHAIR ANDERSON: Any opposed? [no response]
Motion carries. That concludes the agenda items today.
Can I get a request, motion to adjourn?
MEMBER G. CHANG: I make a 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]
[bangs gavel] Meeting adjourned.

ADJOURNMENT
There being no further business before the Planning Commission, the meeting was adjourned by Vice Chair Anderson at approximately 2:45 p.m.

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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,
April 11, 2019.

Gloria Takara
Secretary-Hearings Reporter

Adopted on: August 27, 2019