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

In the Matter of Application of

DEPARTMENT OF ENVIRONMENTAL) DPP File No. 2008/SUP-2
SERVICES, CITY AND COUNTY OF)
HONOLULU)
Application to Modify SUP)
No. 2008/SUP-2 (SP09-403) by)
Modifying Condition No. 1 of the)
Planning Commission's Findings of)
Fact, Conclusions of Law, and)
Decision and Order, dated)
June 10, 2019, and (2) Condition)
No. 5 of the LUC's Findings of)
Fact, Conclusion of Law, and)
Decision and Order Approving with)
Modifications the City and County)
of Honolulu's Planning Commission's)
Recommendation to Approve Special)
Use Permit, certified on)
November 1, 2019)
_____)

CONTESTED CASE HEARING

Waianae - State Special Use Permit - 2008/SUP-2 (FK),
Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Auditorium, Mission
Memorial Building, 550 South King Street, Honolulu, Hawaii,
96813, commencing at 1:30 p.m., on August 9, 2023, pursuant
to Notice.

1 Planning Commissioners present:

2 PANE MEATOGA III, Chair

3 RYAN KAMO, Vice Chair

4 KEN HAYASHIDA [remote]

5 HILARIE ALOMAR [remote]

6 KAI NANI KRAUT [remote]

7

8 Planning Commissioners excused:

9 MELISSA MAY

10 [prior notice given]

11 NATHANIEL KINNEY

12 [prior notice given]

13

14 For the Planning Commission

15 ROZELLE AGAG, ESQ.

16 Deputy Corporation Counsel

17 Department of the Corporation Counsel

18 530 South King Stret, Room 110

19 Honolulu, Hawaii 96813

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

3 JEFFREY HU, ESA.

4 KAMILLA CHAN, ESQ.

5 Deputy Corporation Counsels

6 City and County of Honolulu

7 530 South King Street, Room 110

8 Honolulu, Hawaii 96813

9

10 For Ko Olina Community Association and Senator Maile
11 Shimabukuro:

12 CALVERT CHIPCHASE, ESQ.

13 CHRISTOPHER GOODIN, ESQ.

14 STACEY GRAY, ESQ.

15 KATHERINE BRUCE, ESQ.

16 Cades Schutte LLP

17 1000 Bishop Street, Suite 1200

18 Honolulu, Hawaii 96813

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1 For Schnitzer Steel Hawaii Corp.:

2 IAN SANDISON, ESQ.

3 JOYCE TAM-SUGIYAMA, ESQ.

4 RIHUI YUAN, ESQ.

5 Watanabe Ing LLP

6 999 Bishop Street, Suite 1250

7 Honolulu, Hawaii 96813

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9 (Secretary-Reporter's note: A separate minutes summary of
10 this Planning Commission meeting was prepared.)

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P R O C E E D I N G

CHAIR MEATOGA III: Okay. Next on our agenda, agenda Item No. V, public hearing continued. Public hearing kept opened and continued from the June 28th, 2023 meeting, original public hearing notice published in the Honolulu Star-Advertiser on Monday, May 29, 2023. Date, time and location of the continued public hearing was announced on June 28th, 2023. This is in regards to the Waianae State Special Use Permit 2008/SUP-2, Waimanalo Gulch Sanitary Landfill. Petitioners: City and County of Honolulu, Department of Environmental Services, Landowner: City and County; Location: 92-460 Farrington Highway, Waianae; Tax Map Keys: 9-2-050: 005 and 006; Existing Use: Municipal Solid Waste Landfill; Existing Zoning: AG-2 General Agricultural District; Land Area: Approximately 200.62 acres; Request: The request is to modify the date in Condition No. 1 of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019 for Special Use Permit No. 2008/SUP-2 from December 31, 22 to December 31, 2024. This is the date when the Applicant is required to identify an alternative landfill site.

So, before moving forward, I would like to ask Commissioner Hilarie Alomar, can you attest and confirm that

1 all the records of the June 28th, 2023 meeting, including
2 the WebEx audiovisual recording and transcripts were
3 provided and made available to you

4 COMMISSIONER ALOMAR: Yes. This is Commissioner
5 Alomar, all materials were made available, and I reviewed
6 them and listened to them.

7 CHAIR MEATOGA III: Okay. Thank you. Is there a
8 follow-up presentation by DPP? [no response] Okay. At this
9 time we are going to start public testimony. Telephone
10 participants can press *9 to unmute and remute themselves.
11 Please mute your devices except when to testify.
12 We ask for your patience as there may be a delay. We ask
13 that you state your full names, spell both your first and
14 last names and start with your testimony. If you've already
15 submitted written testimony, please do not read or repeat
16 it. Instead summarize or you may add anything new.
17 Each speaker may not have anyone read their statement and
18 will be limited to three minutes.

19 Let's begin. First, we'll take any public
20 testifiers here in the Auditorium and next we'll go to any
21 registered remote testifiers. So, do we have anyone here
22 that would like testify on this agenda item? [no response]
23 Okay. Hearing and seeing none, do we have any registered
24 testifiers on-line? [no response] How's it looking there,
25 Greg? Okay. No registered testifiers in the Auditorium.

1 Okay. Moving into our agenda. Any questions or discussion
2 from Commissioners in regards to public testimony? [no
3 response] Okay. Hearing and seeing none.

4 Thank you very much. We will now keep the public
5 testimony hearing open and vote to close the public hearing
6 after we make a decision on the motions to intervene as
7 required by Planning Commission rules.

8 We will now move to the contested case hearing
9 portion of our meeting. Calling agenda Item No. V, which I
10 believe I read out loud. We have several motions for our
11 consideration. In effort to move things along before we
12 hear arguments on each of the motions I will give you my
13 recommendations to the Commission. The parties can then
14 decide whether arguments are needed.

15 So, let's start with agenda Item No. V, Action
16 Item No. 1. Ko Olina Community Association, also known as
17 KOCA and Maile Shimabukuro's Motion to Recognize Them as
18 Existing Parties or in the Alternative, Petition to
19 Intervene, filed June 9, 2023.

20 Based on KOCA's motion and ENV's response, the
21 Chair recommends that the Commission find, 1) the 2019
22 Planning Commission and Land Use Commission decisions and
23 orders are still in effect and controlling; 2) that these
24 proceedings are limited to ENV's request to modify or change
25 the December 31st, 2022 deadline; and 3) for the purpose of

1 determining intervening status, these proceedings are
2 continuation of the proceedings that led up to the 2019 PC
3 and LUC Decisions and Orders. With regards to KOCA's motion
4 to intervene, Chair recommends the Commission fine, 1) KOCA
5 has granted intervenor status and in past proceedings and
6 met the requirements to intervene under the Planning
7 Commission rules, PCR 2-53 in those proceedings. 2) There
8 are no new facts that would change KOCA's interests or
9 status in the SUP, and 3) there's no opposition to KOCA's
10 participation as a party in these proceedings; 4) ENV has
11 taken no position with regards to KOCA's intervenor status
12 and lastly there is no evidence to deny KOCA's intervenor
13 status since its position is substantially different from
14 the other parties involved and that of the public also
15 KOCA's participation will not render the proceedings
16 inefficient or unmanageable. Based on those findings, the
17 Chair recommends that the Commission confirm KOCA's status
18 as party intervenor and grant KOCA's petition to
19 intervene. Do the parties still want to present arguments?

20 COUNSEL CHIPCHASE: Chair, I'm Cal Chipchase
21 together with Chris Goodin. We represent the Ko Olina
22 Community Association and Senator Maile Shimabukuro. I
23 don't wish to present argument, Chair. I agree with the
24 Chair's recommendations. I do have one clarification that I
25 request. And that is does the Chair's recommendation also

1 include Senator Shimabukuro who is also a party to the prior
2 proceeding and has asked to be recognized as a party in this
3 proceeding?

4 CHAIR MEATOGA III: Yeah, that is correct.

5 COUNSEL CHIPCHASE: Thank you, Chair.

6 CHAIR MEATOGA III: Commissioners, do you have any
7 questions for the parties? [no response] Okay. Hearing
8 and seeing none. Commissioners, is there any discussions?
9 [no response] Okay. Commissioners, any deliberations?
10 [no response] Okay. Commissioners, do I have a motion to
11 confirm KOCA's status as a party intervenor and grant KOCA's
12 and Maile Shimabukuro's position to intervene based on my
13 recommendation of findings stated earlier?

14 VICE CHAIR KAMO: Vice Chair Kamo makes a motion.

15 CHAIR MEATOGA III: Thank you. Do I have a
16 second?

17 COMMISSIONER HAYASHIDA: Commissioner Hayashida,
18 second.

19 CHAIR MEATOGA III: Thank you. We have a second
20 from Commissioner Hayashida. Any discussion? [no response]
21 Any objections? [no response] Any reservations? [no
22 response] Okay. Thank you very much. Hearing none, the
23 Chair votes aye and the motion has passed. Thank you.

24 Moving on to agenda item roman numeral V, Action
25 Item No. 2, Ko Olina Community Association and Maile

1 Shimabukuro's Objection to Notice of Hearing. Based on
2 KOCA's motion and ENV's response, the Chair recommends the
3 following: That the Planning Commission process ENV's 2022
4 application to modify as required by Planning Commission
5 rules 2-49(a), which require that ENV's application be
6 processed in the same manner as the original petition for
7 SUP and that a public hearing on the request be held prior
8 to any Commission action. Since there was a new Notice for
9 today's contested case hearing and the proper Notice was
10 provided, I will ask if KOCA would like to withdraw its
11 objection?

12 COUNSEL CHIPCHASE: Yes, Chair.

13 CHAIR MEATOGA III: Thank you. Okay.

14 Commissioners, is there a motion to accept the withdrawal?

15 VICE CHAIR KAMO: Vice Chair Kamo makes the motion
16 to accept the withdrawal.

17 CHAIR MEATOGA III: Okay. Thank you. Do I have a
18 second?

19 COMMISSIONER HAYASHIDA: Commissioner Hayashida
20 second.

21 CHAIR MEATOGA III: Thank you. Any discussions,
22 Commissioners? [no response] Any objections? [no
23 response] Any reservations? [no response] Hearing none,
24 Chair votes aye, and the motion is carried.

25 Okay. Moving on to agenda item roman numeral V,

1 action Item No. 3. Schnitzer Steel Hawaii Corp's Petition
2 to intervene, filed June 13, 2023. Based on Schnitzer's
3 motion and ENV's--Is there counsel for Schnitzer here?

4 COUNSEL TAM-SUGIYAMA: Hi. This is Joyce
5 Tam-Sugiyama with my colleague Ian Sandison here for
6 Schnitzer.

7 CHAIR MEATOGA III: Good. Okay. Thank you very
8 much. Let me read this again. Schnitzer Steel Hawaii
9 Corporation's petition to intervene filed June 13th, 2023.
10 Based on Schnitzer Steel Hawaii Corporation petition to
11 intervene filed June 13th, 2023. Based on Schnitzer's
12 motion and ENV's response, Chair recommends the following:
13 Schnitzer was granted intervenor's status in past
14 proceedings and met the requirements to intervene under PCR
15 2-53 in those proceedings. There is no opposition to
16 Schnitzer's participation as a party in these proceedings.
17 There are no new facts that would change Schnitzer's
18 interest or status in the SUP. ENV has taken no position
19 with regards to--Am I saying this right, Schnitzer?

20 COUNSEL TAM-SUGIYAMA: Schnitzer.

21 CHAIR MEATOGA III: Close enough. Okay.
22 Schnitzer's intervenor status.

23 Lastly, there is no evidence to deny Schnitzer's
24 intervenor status since its position is substantially
25 different from other parties involved and that of the

1 public. Also KOCA's participation will not render the
2 proceedings inefficient or unmanageable.

3 Based on those findings, Chair recommends the
4 Commission confirms Schnitzer status as a party, intervenor
5 and grants Schnitzer's petition to intervene.

6 Do the parties still want to present arguments?

7 COUNSEL CHIPCHASE: For Ko Olin, no, Chair, and no
8 objection.

9 CHAIR MEATOGA III: Thank you.

10 COUNSEL HU: For the City, Department of
11 Environmental Services, no Chair. And this is Deputy
12 Corporation Counsel Jeffrey Hu.

13 CHAIR MEATOGA III: Thank you. Does Schnitzer have
14 a position on this?

15 COUNSEL TAM-SUGIYAMA: We have nothing to add to
16 our motion.

17 CHAIR MEATOGA III: Perfect. Okay.

18 Commissioners, do you have any questions for the parties?

19 [no response] Okay. Hearing and seeing none,

20 Commissioners, do you need any deliberation at this time?

21 [no response] Okay. At this time, do I have a motion to
22 confirm Schnitzer status as a party, intervenor and grant
23 Schnitzer's petition to intervene.

24 VICE CHAIR KAMO: Vice Chair Kamo makes a motion to
25 confirm.

1 CHAIR MEATOGA III: Okay. I have a motion from
2 Vice Chair Kamo. Do I have a second?

3 COMMISSIONER HAYASHIDA: Commissioner Hayashida,
4 second.

5 COMMISSIONER ALOMAR: Commissioner Alomar, second.

6 CHAIR MEATOGA III: Thank you, Commissioner Alomar
7 and Commissioner Hayashida. Appreciate that. Are there any
8 discussions, Commissioners? [no response] Any objections?
9 [no responses] Any reservations? [no response] Okay.
10 Hearing and seeing none, Chair votes aye, and the motion is
11 carried.

12 Moving on the agenda to V, Action Item No. 4.
13 Schnitzer Steel Hawaii Corp's Motion to Enlargement of Time,
14 filed June 13, 2023. Based on Schnitzer's motion and ENV's
15 response, I recommend that the Commission find: Schnitzer
16 was able to timely file their motion to intervene and the
17 issue is moot. I ask if Schnitzer would like to withdraw it
18 motion?

19 COUNSEL TAM-SUGIYAMA: Yes. We will withdraw the
20 motion.

21 CHAIR MEATOGA III: Okay. Commissioners, is there
22 a motion to accept the withdrawal?

23 VICE CHAIR KAMO: Vice Chair Kamo makes the motion
24 to accept the withdrawal.

25 CHAIR MEATOGA III: Thank you. Do I have a second?

1 COMMISSIONER KRAUT: Commissioner Kraut, second.

2 CHAIR MEATOGA III: Thank you. Any discussions?

3 [no response] Any objections? [no response] Any

4 reservations? [no response] All right. Hearing none,

5 Chair votes aye, and the motion is carried.

6 Okay. Now that we have set all that up, let us
7 move--Now the Commission has made decisions on the motion to
8 intervene, the Commission can now close public hearing on
9 agenda Item IV. Do I have a motion to close public hearing?

10 VICE CHAIR KAMO: Vice Chair Kamo makes a motion
11 to close public hearing.

12 CHAIR MEATOGA III: All right. Do I have a second?

13 COMMISSIONER KRAUT: Commissioner Kraut, second.

14 CHAIR MEATOGA III: I have a motion and a second.

15 Is there any discussion? [no response] Any objections?

16 [no response] Any reservations? [no response] All right.

17 Hearing none, Chair votes aye and the motion is carried.

18 Okay. Now that's out of the way we can begin the
19 presentation of evidence in the contested case hearing.

20 Presentation of evidence by parties relating to the Waianae

21 State Special Use Permit 2008/SUP-2, Waiamanalo Gulch

22 Sanitary Landfill request to modify an extension, condition,

23 to the State's Special Land Use Permit to extend the

24 deadline to 31, 2024 for identifying an alternative landfill

25 site.

1 Before we begin, the Planning Commission would
2 like to state its position on this application for
3 modification. So, would all the parties currently present,
4 we'd like to put everyone's name on the record. So, could
5 each party identify themselves for the record starting with
6 ENV.

7 COUNSEL HU: Hi, good afternoon. This Jeffrey Hu
8 deputy corporation counsel. With me is Kamilla Chan, and we
9 represent ENV, which is, as you know Department of
10 Environmental Services, and with us here as well is ENV's
11 Director Dr. Roger Babcock, right behind me.

12 CHAIR MEATOOGA III: Okay. Thank you. I guess
13 we'll move on to the next side over there?

14 COUNSEL TAM-SUGIYAMA: Hi. This is Joyce
15 Tam-Sugiyama, and again with my colleague Ian Sandison here
16 on behalf of Schnitzer Hawaii Corp, and we also have
17 corporate representative Nick Garofolo, who's the general
18 manager.

19 CHAIR MEATOOGA III: Okay. Thank you. And on this
20 side?

21 COUNSEL CHIPCHASE: Yes, Chair. Cal Chipchase and
22 Chris Goodin for the Ko Olina Community Association and
23 Senator Maile Shimabukuro. Also with us is Kathy Bruce from
24 my office and Ken Williams, who's the general manager of the
25 association.

1 COUNSEL AGAG: We'll just do some housekeeping
2 matters before we start. Thank you for making your
3 appearances, and thank you for waiting. We only have the
4 conference room until 5. We'll try and get through this as
5 much as we can. What we are foreseeing today is once we get
6 some issues on the record, we will start with opening
7 statements, and I think the rules allow for parties on the
8 same side 30 minutes, which at this point it looks like ENV
9 and Schnitzer will have to share 30 minutes. If you can
10 decide amongst yourselves how you want to split up those 30
11 minutes. That would be great. KOCA will have its full 30
12 minutes. If we can get through that today that would be
13 great. What the Commissioner would like to know eventually
14 how many witnesses you would like to put up, and we'd also
15 need to consider the amount of exhibits that we're going to
16 accept. We can talk about this afterwards, off record, for
17 some housekeeping matters. But we also need to consider
18 dates for future hearings. We have a problem with this
19 year's schedules. We are having some quorum issues. So
20 like today we have double matters on issue. So, if we can
21 be really flexible with our days, that would be great.

22 Okay. With that being said, I'm going to have
23 Chair put something on the record, and we then we can start
24 with evidence.

25 CHAIR MEATOGA III: Okay. Thank you. Before we

1 begin, the Commission would like to state its position on
2 the application for modification. The Commission finds
3 that, the Planning Commission's June 10th, 2019 Finding of
4 Fact, Conclusion of Law, and Decision and Order is currently
5 in effect and controlling at this time. SUP No. 2008/SUP-2.
6 Land Use Commission Finding of Fact, Conclusion of Law, and
7 Decision and Order certified on November 1, 2019 is
8 currently in effect and controlling at this time. SP09-403.
9 That the application before this Commission was filed on
10 December 23rd, 2022 from ENV to modify, 1) Condition No. 1
11 of the Planning Commission's 2019 Decision and Order and 2)
12 Condition No. 5 of the LUC's 2019 Decision and Order.
13 Specifically, ENV seeks to modify conditions that set on
14 December 31, 2022 deadline for ENV to identify an
15 alternative landfill site. ENV is requesting for a two-year
16 extension of time to re-evaluate its options. That the
17 scope of the contested case hearing in this matter will be
18 narrowly construed to ENV's limited request to modify the
19 deadline for ENV to identify an alternative landfill site.

20 All other orders and conditions in the Planning Commission
21 and LUC's Orders pertaining to the SUP will remain in effect
22 and untouched by this Commission. With those parameters in
23 mind, begin with the presentation of evidence from the
24 parties.

25 So, in regards--Do the parties plan to use all

1 exhibits submitted?

2 COUNSEL AGAG: You can hold off.

3 CHAIR MEATOGA III: Hold off. Okay. So, with
4 being stipulated, let us begin with opening statements. ENV
5 and Schnitzer will have 30 minutes to share with ENV going
6 first.

7 COUNSEL HU: We have PowerPoint that DIT is
8 helping us set-up right now. Thank you.

9 CHAIR MEATOGA III: Please proceed.

10 COUNSEL HU: Okay. Good afternoon, members of the
11 Planning Commission. Again, my name is Jeffrey Hu. I'm the
12 deputy corporation counsel representing ENV. So ENV's
13 application before this Commission is about one issue only
14 which is a modification of a single condition from ENV's
15 Special Use Permit for the Waimanalo Gulch Sanitary
16 Landfill. That condition sets forth December 31, 2022
17 deadline for the City to identify a new landfill site.
18 We're here solely seeking to modify that single condition,
19 and we are respectfully requesting a two-year extension of
20 time to identify a new landfill sites.

21 Sorry technical difficulties. Sorry. Okay. So
22 this condition is found in the Land Use Commission's 2019
23 Decision and Order, but the condition originated in this
24 Planning Commission's Decision and Order. And for this
25 reason, ENV is making this request first with this Planning

1 Commission. And due to circumstances beyond the Planning
2 Commission, Land Use Commission and ENV's control the
3 original December 31, 2022 deadline that was imposed as not
4 enough time. And as stated in ENV's application before you
5 we are talking about Act 73 limiting the areas for potential
6 sites, and we are talking about the Board of Water Supply's
7 disapproval of all the potential sites because of the No
8 Pass Zone and in light of the Red Hill emergency.

9 Now, let's talk about Act 73 first. Act 73 was
10 signed into law and set in September 2020. Almost a full
11 year after the 2019 Planning Commission's decision and as
12 well as the 2019 Land Use Commission's decision. And so Act
13 73 prevents the siting of the landfill on State Conservation
14 Districts and it also imposes a one-half mile buffer zone
15 around residential properties, schools and hospitals.

16 And there are various legal restrictions already
17 in place when siting a new landfill such as tsunami
18 inundation zones and airport buffer zones. Act 73 added
19 additional restrictions and further limited to potential
20 areas for new sites. And as you can see on this map there
21 are other restrictions such as a developed and undevelopable
22 lands. And so developed lands are lands that contain a
23 major building or buildings and undevelopable lands are
24 areas that already have a plan development in place.

25 In September 2021, Mayor Blangiardi established

1 a landfill advisory committee, which I may refer as LAC.
2 The LAC consisted of nine members of the general public with
3 background and experience that would enable them to fairly
4 and effectively evaluate potential landfill sites on behalf
5 of the residents of the City and County of Honolulu. With
6 the help of ENV, the LAC held eight meetings pursuant to the
7 Sunshine Law which were open to the general public and
8 public testimony. ENV wanted to keep the process of
9 evaluating and siting the next landfill transparent and hope
10 to have the public's input from the beginning.

11 The LAC member served in an advisory roll in
12 evaluating and scoring and ranking potential landfill sites
13 under consideration. The understanding was that would make
14 a recommendation of a site to the City, but the City would
15 make the final decision. So, the LAC scored and ranked six
16 potential sites, but ultimately did not recommend any of
17 them because all were located within the No Pass Zone.
18 In the LAC's final report it lists certain recommended
19 courses of action such as amending Act 73, exploring eminent
20 domain options and obtaining federal lands outside
21 of the No Pass Zone.

22 The Board of Water Supply or BWS describes a No
23 Pass Zone as areas that have no thick **caprock** serves as a
24 barrier that prevent surface contamination from reaching the
25 aquifer below. And so in this map here we have the, the

1 white areas represents the areas within the No Pass Zone, an
2 the dark blue are areas outside of the No Pass Zone.

3 And so the Board of Water Supply No Pass Zone is
4 the second main reason for ENV's reason for a two-year
5 extension of time to find a new landfill site. In November
6 2022, the BWS provided it's official position on the six
7 potential site evaluated by the LAC, which the BWS
8 disapproved all of them. According to the BWS in light of
9 the Red Hill emergency protecting this island's fresh water
10 aquifer is more paramount then ever.

11 So here on this slide I've attempted to overlay
12 the map with the No Pass Zone on top of ENV's map of the
13 siting restrictions. And so as you can see when you combine
14 the No Pass Zone with all of the restrictions in place for
15 siting a landfill the result is that there no potential
16 areas to site a new landfill other then perhaps on federal
17 owned land. I'm not sure if this Commission can, but
18 there's some faint white areas there and those were the
19 areas that were potential siting areas. And so all of them
20 are within the bigger gray area, the No Pass Zone.

21 So in conclusion because of Act 73 and the Board
22 of Water Supply's position regarding the No Pass Zone, ENV
23 was not able to identify a new landfill site by December 31,
24 2022. In hopes of finding a new landfill site that is
25 legally compliant and outside the No Pass Zone, ENV request

1 to modify the Planning Commission and Land Use Commission
2 single condition. This will allow ENV more time to follow
3 the landfill advisory's recommendations. Since ENV's filing
4 of its application with this Planning Commission, ENV has
5 taken a hard look at amending Act 73 and eminent domain
6 options. ENV is also still in ongoing negotiations with the
7 military to use federal land that is outside the No Pass
8 Zone. Considering what is at stake and taking into account
9 the intent of the BOard of Water Supply's No Pass Zone, ENV
10 believes asking for more time to find an equitable and
11 practical solution is both necessary and the best forward.

12 Thank you.

13 CHAIR MEATOGA III: Okay. Thank you very much.

14 Moving on to Schnitzer. Schnitzer please proceed with your
15 opening statement.

16 COUNSEL TAM-SUGIYAMA: Thank you. Schnitzer Steel
17 Hawaii is here in support of the City's request for a
18 two-year extension to identify a new landfill site.
19 Schnitzer operates Hawaii's largest metal recycling facility
20 and is the largest commercial user of the Waiamanalo Gulch
21 Landfill. The evidence will show that Schnitzer's
22 operations provide a vital service to the state. It
23 recycles roughly 120,000 tons of end of life vehicles, old
24 appliances and other metal scrap per year. Scrap that would
25 otherwise build up in a landfill or worse be illegally

1 dumped in back roads, alleys, beaches, stream banks, fields
2 and other undeveloped lands all around Oahu and the neighbor
3 islands. We will present evidence that will show that in
4 processing the 120,000 tons of scrap per year, roughly
5 20,000 tons of that is produced as what is known automobile
6 shredder residue, and let's non-recyclable waste and that
7 waste cannot be sold or recycled, and it needs to go to a
8 landfill. You will see that the Hawaii Department of Health
9 requires that Schnitzer dispose of it in a municipal
10 landfill and that the only landfill in Hawaii that currently
11 accepts ASR is Waimanalo Gulch. That is until there is
12 another municipal landfill that is open to accept it. And so
13 what would happen if Schnitzer cannot dispose of its
14 non-recyclable waste in a landfill on island anymore?
15 You're going to hear that based on the storage limits of
16 Schnitzer's permit with the Department of Health It could
17 only operate for a few days at most if it had no where to
18 dispose of the ASR. You will hear that situation worsens if
19 there's a long-term landfill closure. Right now Schnitzer
20 generally purchases the scrap and the end-of-life vehicles
21 that are processes. If Waiamanalo Gulch closes without a
22 replacement landfill in operation those economics gets
23 flicked. And because of the cost to ship waste off island
24 to a mainland landfill, Schnitzer will then have to charge
25 rather than pay people to take the scarp. And suddenly

1 we've lost a significant incentive for people to bring their
2 old cars, appliances and other scrap to a tune of 120,000
3 tons per year to Schnitzer. And we have a perfect recipe
4 for a legal dumping all around the island.

5 The bottom line is that an operating municipal
6 landfill is important to Schnitzer as well as to the welfare
7 of the people and lands of Hawaii. It doesn't necessarily
8 have to be the Waimanalo Gulch Landfill, as long as it is a
9 permitted landfill on Oahu that will accept non-recyclable
10 waste like ASR. And Schnitzer recognizes that it is
11 difficult and complicated to site a new landfill. And that
12 is why Schnitzer supports the City's request for an
13 extension of time so that it can do that and find an
14 alternate site. Thank you.

15 CHAIR MEATOGA III: Thank you. Okay. KOCA.

16 COUNSEL CHIPCHASE: Thank you, Chair. Again, Cal
17 Chipchase for Ko Olina. I'll refer to it as KOCA because
18 that's how we've called for 12 years. You can call it
19 Schnitzer if you'd like, Chair, but I'll refer to it as KOCA.
20 And as I thought about what to share with the Commission for
21 my opening statement. I was influenced by the proceeding
22 that we just sat through with the Samoan Methodist Church
23 and the issues that arose just for that small use,
24 relatively low impact use on AG land. And one of the things
25 we've heard from the Department of Planning and Permitting

1 in opposing that application was that there should be AG
2 uses on AG land. This is agricultural land, the Waimanalo
3 Gulch Sanitary Landfill is sited on agricultural land, but
4 it's not an agricultural use, obviously. The code, both the
5 City's code and the State law allows non-agricultural uses
6 to be conducted on agricultural land provides for that
7 possibility, that exception. And that's the exception that
8 the City, ENV has operated this landfill under since 1989
9 that allows for non-ag use on AG land. When you do that,
10 when you use AG land for something that is not an
11 agricultural use, it comes with conditions. It always comes
12 with conditions, and those conditions are in large part
13 intended to protect surrounding communities from the impact
14 of a non-agricultural use on agricultural land.

15 If you purchase property, you live on property and
16 you adjoin an agricultural property you might accept the
17 risk of having an agricultural use, livestock, crops,
18 machinery, those sorts of things come with an AG use.

19 You don't accept, you don't presume that you're going to
20 have to accept a non-agricultural use. And so the code is
21 set up to protect those adjoining owners, those communities
22 from the impact of that non-agricultural use. What you see
23 here in the Land Use Commission Order from November 2019 is
24 one such condition. The condition requiring ENV to identify
25 a new landfill site by December 31, 2022. The condition

1 they're seeking to modify through these proceedings,
2 recognizing, accepting indeed embracing the limitations of
3 this proceeding that we're here to talk only about that
4 condition. We still need to put the condition in context.
5 The context of that condition is the LUC's Order that the
6 landfill must close by March 28th, 2028. That is the
7 closure deadline for the landfill. The site selection
8 deadline was set with the intension to give ENV enough time
9 to identify a site so that it could be developed prior to
10 the closure of Waiamanalo Gulch. And so we wouldn't find
11 ourselves in the situation that Schnitzer discussed where we
12 have waste, in their case ASR, automobile shredder residue,
13 that has no other home. We established a new home and then
14 we close the old one. And so while we're only looking at
15 modifying the identification condition we have to recognize
16 the relationship that bares to the closure condition, and we
17 have to recognize that closure condition was put in place in
18 no small part because of the harm that this landfill has
19 caused to the surrounding community for decades and decades
20 and decades. And so we can't consider any of them entirely
21 in a vacuum. We have to have all the information. We have
22 to think about them all together in deciding what we do.
23 What you as a Commission does with this seemingly narrow
24 request. On that seemingly narrow request this idea to
25 extend the time to site a new landfill. Ko Olina has not

1 opposed the modification of that condition; has not said,
2 "do not give the City more time to site a landfill." We
3 want the City to site a new landfill. We recognize that has
4 to happen before the new landfill can be developed. So, why
5 are we here then? Why has Ko Olina invested again the time
6 and expense to participate in these proceedings, these
7 seemingly narrow proceedings.

8 The first reason is to give voice to this
9 community that since 1989 has born the impact for the entire
10 island of a landfill in its backyard. And if you look at
11 the Land Use Commission's 2019 Order, you will see
12 throughout it findings recognizing that impact on the
13 community in fairness of it that one community for so many
14 years should bare that burden. Ko Olina and Senator
15 Shimabukuro 12 years ago participated with me in these
16 proceedings when my hair was much darker then it is today.
17 Before me, before I worked with them they were in here
18 opposing these requests, working with the City, seeking to
19 move the landfill, and they continue today to want to give
20 voice to that community that they live in and that they
21 represent.

22 The second reason that Ko Olina has invested, the
23 time and expense to participate again in these proceedings
24 is to remind the Commission that the reason for the request
25 is not circumstances outside of the City's control. Not

1 things that were not known, not things that just happened,
2 not things that could not have been addressed, but as was
3 true for decades the reason we're here again seeking a
4 further extension is an action, an unwillingness to act
5 within the deadlines that are set, and we will see that
6 pattern over and over again going back to 2003. Promises
7 made, promises not kept, actions required, actions not
8 taken. That's really why we're here again today.

9 The third reason that we're participating in these
10 proceedings is because of that relationship that I described
11 between this site identification condition and the condition
12 to close landfill by March 28th, 2028. We want to ensure
13 that this isn't a first step to a second petition to amend.
14 First they extend the site selection deadline, then a year
15 or two, back here moving to extend the closure deadline. We
16 don't want that. We want assurances on the record before
17 this Commission that they will not seek to extend the
18 closure deadline. If this really is a sincere effort to
19 timely site a new place and develop it, so that Waiamanalo
20 Gulch can finally, finally close.

21 The fourth and final reason that we're here today
22 and we'll participate in these proceedings is because we're
23 asking the Commission to include a condition requiring
24 quarterly updates to this body in person from ENV
25 identifying the status of their efforts to site a new

1 landfill. What we have seen and what you will in the
2 evidence is that if only written reports are required we see
3 the same thing recycled over and over and over again. The
4 same statements, the same updates, the same things which
5 ultimately amount and have amounted to nothing. ENV needs
6 to come here as this body is the body, at least initially,
7 authorizing the modification of this condition, come before
8 you and explain to you and explain to the public where they
9 are in siting a new landfill. If there are questions, then
10 they can be asked. If they have not made progress, we can
11 know, and we can know why. And so coming back to where I
12 began, non-agricultural uses on agricultural land can be
13 authorized but they need to come with conditions. And what
14 we'll be asking from this Commission are conditions related
15 to assurances this landfill closes as scheduled, and we get
16 regular quarterly updates before this body in person, making
17 sure they are on track, so that we're not back here in two
18 years or 10 years or 12 years again. Thank you.

19 CHAIR MEATOGA III: Thank you. Okay. We're now
20 moving to the presentation of evidence part. ENV, how many
21 witnesses do you have?

22 COUNSEL HU: Chair, we have one.

23 CHAIR MEATOGA III: You have one.

24 COUNSEL AGAG: Do you think it'll be finished by 5
25 o'clock or will require more time?

1 COUNSEL HU: We're going to need more time than 20
2 minutes. Sorry.

3 COUNSEL AGAG: Okay. Then I'm going to recommend
4 that we stop at this point, but we will go off record and if
5 the parties can stay and stay with the Commission we can
6 talk about scheduling for the next couple of hearings. But
7 you guys know where we are as far as what's on our plate,
8 and where we are going to put you guys on that record so
9 that we can get this done as soon as possible.

10 Does that work for everyone?

11 COUNSEL CHIPCHASE: Yes, counsel.

12 COUNSEL AGAG: Okay.

13 CHAIR MEATOGA III: Sorry. I didn't hear a yes
14 from you folks? [referring to ENV and Schnitzer]

15 COUNSEL TAM-SUGIYAMA: Yes.

16 COUNSEL HU: Yes.

17 CHAIR MEATOGA III: Thank you.

18 COUNSEL CHIPCHASE: Would it be all right if I
19 made a suggestion as part of that?

20 COUNSEL AGAG: Would it be possible to deal with
21 the receipt of the exhibits, so that when we begin evidence
22 we're not dealing with that issue and moving them in
23 one-by-one, we take them in, and then streamline the parties
24 presentation.

25 COUNSEL AGAG: We can. We were thinking about that

1 as part of housekeeping issues. I guess one question is,
2 will the parties stipulate to the acceptance of all of the
3 exhibits submitted to the Planning Commission as part of the
4 record. If there is no stipulation, then we'll have to go
5 through each and accept every exhibit as it comes up.

6 COUNSEL CHIPCHASE: For Ko Olina, we stipulate.

7 COUNSEL AGAG: Okay. We will wait for the other
8 side. With that stipulation are you expecting to use every
9 single exhibit and bring up every single witness identified
10 on your exhibit list?

11 COUNSEL CHIPCHASE: We intend to call three
12 witnesses. I won't pull up every single exhibit as part of
13 the discussion, but they are important for the record and
14 the final decision before the Land Use Commission.

15 COUNSEL AGAG: Okay. Note taken.

16 COUNSEL CHIPCHASE: Thank you.

17 CHAIR MEATOGA III: Schnitzer, do you have a
18 position?

19 COUNSEL TAM-SUGIYAMA: We don't object to the
20 admission of all the exhibits.

21 COUNSEL HU: ENV is fine with stipulating to the
22 exhibits.

23 COUNSEL AGAG: Okay. So, at this time I'm going
24 to ask that the Chair and the Commission vote--Actually, I
25 don't think you guys need to vote. Just accept that the

1 parties have stipulated that the all of the exhibits
2 submitted to the Commission as well as their exhibit lists
3 and their witness lists will be admitted in these
4 proceedings as part of the record. And you don't have to
5 repeat that.

6 CHAIR MEATOGA III: Okay. Commissioners, do we have
7 a motion to accept the exhibit lists as stipulated by the
8 parties.

9 VICE CHAIR KAMO: Vice Chair makes that motion.

10 CHAIR MEATOGA III: Do I have a second?

11 COMMISSIONER HAYASHIDA: Commissioner Hayashida,
12 second.

13 CHAIR MEATOGA III: Okay. Thank you. All right.

14 Any discussions? [no response] Any objections? [no
15 response] Any reservations? [no response] All right.
16 Hearing none, Chair votes aye. Motion carries.

17 COUNSEL AGAG: Okay. So moving forward, we don't
18 have to deal with the formalities of having to accept every
19 single exhibit, and that will all be part of the record.

20 COUNSEL CHIPCHASE: Very good.

21 COUNSEL AGAG: Before we adjourn, we can still
22 continue on and discuss of our dates. Glo, do you have some
23 proposed dates for--Well, ENV you have one witness?

24 COUNSEL HU: Yes, that's correct.

25

1 [off the record to discuss scheduling]

2 COUNSEL AGAG: Okay. Great. I don't think
3 there's any other business. Is anybody else have anything
4 to add or any concerns at this point as far as proceedings
5 wise?

6 COUNSEL HU: For KOCA's witnesses are they going
7 to be identifying them or, they mentioned they only have
8 three witnesses but their witness list is more extensive
9 then that.

10 COUNSEL AGAG: Understood.

11 COUNSEL CHIPCHASE: We put in a kitchen sink but
12 we'll only bring a few pots. The witness Chris will be--

13 COUNSEL GOODIN: Ken Williams, Cynthia Rezentes,
14 and Bev Munson.

15 COUNSEL HU: I'm sorry, who's the last person?

16 COUNSEL GOODIN: Beverly Munson.

17 COUNSEL HU: Thank you.

18 COUNSEL AGAG: Just so you're clear we're going to
19 do direct. For each witness it will be direct, cross
20 examination by each party, questions from the Commissions
21 and then re-direct. Four levels for each. Okay.

22 COUNSEL CHIPCHASE: Very good.

23 COUNSEL AGAG: I think we're good. If there's
24 nothing else counsel, anything from the Commission?

25 CHAIR MEATOGA III: Commissioners, any questions

1 or concerns?

2 COUNSEL TAM-SUGIYAMA: I do have a logistical
3 question, I just want to confirm whether or not we need to
4 bring additional copies of our exhibits for the Commission
5 for the contested case hearing?

6 CHAIR MEATOGA III: I have a thumb drive full of
7 exhibits.

8 COUNSEL TAM-SUGIYAMA: Okay. Great. Thank you.

9 CHAIR MEATOGA III: All right. With that we are
10 adjourned. [bangs gavel]

11 COUNSEL CHIPCHASE: Thank you, Chair.

12

13 ADJOURNMENT:

14 There being no further business before the
15 Planning Commission, the meeting was adjourned by Chair
16 Meatoga III at approximately 4:55 p.m.

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1 I certify that the foregoing is
2 a true and correct transcription
3 of the proceedings, prepared to
4 the best of my ability, of the
5 meeting held on Wednesday,
6 August 9, 2023.

7
8 A handwritten signature in blue ink, appearing to read 'Gloria Takara', is written over a horizontal line.

9 Gloria Takara
10 Secretary-Reporter
11 Planning Commission

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