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

In the Matter of the
Application of

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

FILE NO. 2008/SUP-2



CONTESTED CASE HEARING

Ewa-State Special Use Permit to Modify SUP No. 2008/SUP-2
(SP09-403), Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Auditorium, Mission
Memorial Building, 550 South King Street, Honolulu, Hawaii
96813, commencing at 9:00 a.m., October 18, 2023, pursuant
to Notice.

1 APPEARANCES:

2
3 Planning Commission:

4 PANE MEATOGA III, Chair

5 RYAN KAMO, Vice Chair [remote]

6 MELISSA MAY, Member [remote]

7 KAI NANI KRAUT, Member

8 JOY KIMURA, Member

9
10 For the Planning Commission:

11 ROZELLE A. AGAG, ESQ.

12 Deputy Corporation Counsel

13 Department of the Corporation Counsel

14 530 South King Street, Room 110

15 Honolulu, Hawaii 96813

16
17 For the City and County of Honolulu, Department of
18 Environmental Services:

19 JEFFREY HU, ESQ.

20 KAMILLA C.K. CHAN, ESQ.

21 Deputies Corporation Counsel

22 City and County of Honolulu

23 530 South King Street, Room 110

24 Honolulu, Hawaii 96813

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1 APPEARANCES (cont'd):

2 For Ko Olina Community Association and Senator Maile

3 Shimabukuro:

4 CALVERT G. CHIPCHASE, ESQ.

5 CHRISTOPER T. GOODIN, ESQ.

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10 Honolulu, Hawaii 96813

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12 For Schnitzer Steel Hawaii Corp.:

13 IAN L. SANDISON, ESQ.

14 JOYCE W.Y. TAM-SUGIYAMA, ESQ.

15 RIHUI YUAN, ESQ.

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I N D E X

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WITNESS: ROGER BABCOCK, JR.

Counsel Hu 11, 65

Counsel Chipchase 41, 101

Planning Commission 67

WITNESS: NICOLAS GAROFOLO

Counsel Yuan 68

Counsel Chipchase 82

WITNESS: SCOTT SLOAN

Counsel Sandison 85

1 CONTESTED CASE HEARING

2
3 CHAIR MEATOOGA III: Aloha and good morning
4 everyone, and welcome fellow Commission members to the
5 October 18th, 2023 meeting of the Planning Commission. For
6 our listeners and for the record I'm Chair Pane Meatoga. As
7 of today I'd like to introduce our new Commissioner Ms. Joy
8 Kimura.

9 KIMURA: Good morning everyone. It's an honor to
10 be here, and I look forward to serving on the Planning
11 Commission.

12 CHAIR MEATOOGA III: Thank you. We appreciate you
13 taking the opportunity to serve here with us. The following
14 members are physically present here in the Mission Memorial
15 Auditorium. Commissioner Kraut, myself and Commissioner
16 Kimura. On-line we have Vice-Chair Ryan Kamo and
17 Commissioner May. For Vice-Chair Kamo and Commissioner May,
18 could you please let us know if you're in your remote
19 location that you are present and by yourself?

20 VICE CHAIR KAMO: Chair, I'm on-line and by
21 myself.

22 MAY: Hi. This is Commissioner May, I am on-line,
23 and I am by myself.

24 CHAIR MEATOOGA III: Thank you. Commissioners, we
25 do have quorum. So present here today is the Planning

1 Commission and DIT staff to manage and support the WebEx and
2 audiovisual platform. Also joining us today is the
3 Commission attorney, deputy corp counsel Rozelle Agag.

4 COUNSEL AGAG: Thank you, Chair, and good morning
5 everyone.

6 CHAIR MEATOOGA III: Couple of housekeeping rules.
7 For those present here in the Auditorium, bathrooms are
8 located in the next building in Honolulu Hale; 3:30 p.m.
9 King Street becomes a tow-away zone, and we this Auditorium
10 until 4:30. Due to our scheduling, we will do a hard stop
11 at 4:30 today.

12 At this time, I'd like to officially open the
13 public hearing. For the record it is now 9:11 a.m. Just as
14 a reminder for us Commissioners, we need to identify
15 ourselves first before we speak or make any motions.
16 This meeting is being audio-visually recorded which will be
17 posted at a later date.

18 With that being said the first item on our agenda
19 is approval of minutes. This is the minutes of the October
20 4, 2023 meeting as previously circulated to be approved by
21 the Commission. Members of the Commission, do I have a
22 motion to approve.

23 KIMURA: Oh, Chair, Commissioner Kimura speaking.
24 I'd like to abstain from the vote.

25 CHAIR MEATOOGA III: So noted. Thank you.

1 KRAUT: Commissioner Kraut, I move to approve.

2 CHAIR MEATOGA III: Okay. Thank you. Do I have
3 a second?

4 VICE CHAIR KAMO: Vice Chair Kamo second.

5 CHAIR MEATOGA III: Thank you. Minutes have been
6 moved and seconded to approve the October 4, 2023 meeting.
7 Are there any discussions? [no response] Any objections?
8 [no response] Any reservations? [no response] We will
9 note that Commissioner Kimura will abstain. Hearing no
10 objections or reservations at this time, the count will
11 actually end up being 4, so that would not be the majority
12 of the Planning Commission. So we will defer this matter to
13 the next meeting. Thank you, everyone.

14 Next item on the agenda is the contested case
15 hearing, the Waianae State Special Use Permit 2008/SUP-2,
16 Waimanalo Gulch Sanitary Landfill. The petitioner, City and
17 County of Honolulu, Department of Environmental Services;
18 Landowner: City and County of Honolulu; Location: 92-460
19 Farrington Highway, Waianae; Tax Map Keys: 9-2-050-005 and
20 006; Existing Use: Municipal Solid Waste Landfill; Existing
21 Zoning: AG-2 General Agricultural District; Land Area:
22 Approximately 200.622 acres; Request: Request is to modify
23 the date in condition No. 1 of the Planning Commission's
24 Finding of Fact, Conclusions of Law; Decision and Order,
25 dated June 10, 2019 for a Special Use Permit No. 2008/SUP-2

1 from December 31st, 2022 to December 31st, 2024. This is
2 the date when the Applicant is required to identify an
3 alternative landfill site.

4 Good morning, everyone. Please make your
5 appearances for the record starting with ENV.

6 COUNSEL HU: Good morning, Chair, and members of
7 the Planning Commission. Deputy Corporation Counsel Jeffrey
8 Hu and Kamilla Chan for the City and County of Honolulu,
9 Department of Environmental Services. And with us today is
10 Director Roger Babcock. Thank you.

11 CHAIR MEATOGA III: Okay. Thank you. Next we'll
12 go to Schnitzer.

13 COUNSEL YUAN: Good morning. Rihui Yuan and Ian
14 Sandison here for Schnitzer Steel Hawaii Corp, otherwise
15 known as Schnitzer.

16 CHAIR MEATOGA III: Thank you. And for KOCA?

17 COUNSEL CHIPCHASE: Good morning, Chair, members.
18 Cal Chipchase and Chris Goodin for KOCA and Maile
19 Shimabukuro.

20 CHAIR MEATOGA III: Thank you. Is there anyone
21 from DPP who would like to make an appearance for the record
22 at this time? [no response] Okay. Hearing and seeing none,
23 we will move forward.

24 Before we move forward with evidence, we have a
25 few housekeeping rules. Commissioners Melissa May and

1 Commissioner Joy Kimura were not present at the August 9th,
2 2023 contested case hearing. Commissioners, you must now
3 attest to the fact that you have reviewed the transcript of
4 the proceedings ofn August 29th, 2023, and that you have
5 studied, examined and understand the record of the hearing
6 including any written submissions by the parties.

7 Commissioner May, do you attest?

8 MAY: Yes. I attest. I have reviewed and
9 understand the whole materials.

10 CHAIR MEATOGA III: Thank you. Commissioner
11 Kimura, do you attest?

12 KIMURA: Yes. I attest. I have reviewed and
13 understand the materials.

14 CHAIR MEATOGA III: Thank you. Just for
15 information only. The stipulation to admit intervenor
16 Schnitzer's additional exhibits into evidence, certificate
17 of service filed on October 3rd, 2023.

18 Next, the Planning Commission notes that its in
19 receipt of Schnitzer's stipulation to admit intervenor's
20 Schnitzer additional exhibits into evidence filed on October
21 3rd, 2023. The Planning Commission accepts that stipulation
22 to admit Schnitzer's additional exhibits into evidence.

23 We addressed this at the last meeting but for
24 clarity the Planning Commission will admit all submissions
25 by all parties into the record including the original

1 request from ENV, any recommendations or reports from DPP
2 and exhibits lists as amended by the parties submitted by
3 ENV, Schnitzer and KOCA.

4 Do the parties have any other stipulations,
5 amendments or submission to present to the Commission before
6 we begin evidence?

7 COUNSEL CHIPCHASE: No, Chair.

8 COUNSEL HU: No. Thank you.

9 CHAIR MEATOGA III: Okay. Thank you. Since all
10 parties gave opening statements on August 9th, we will now
11 move to the presentation of evidence by the parties starting
12 with ENV followed by Schnitzer and then KOCA. Each witness
13 will have four levels of questioning, direct, cross
14 examination by all parties, questioning from Commissioners
15 and re-direct. Please plan accordingly. Do the parties
16 agree to waive the witness exclusionary rule or is there a
17 party that would like to invoke that rule?

18 COUNSEL CHIPCHASE: On behalf of KOCA and Senator
19 Shimabukuro, we waive that rule.

20 CHAIR MEATOGA III: Okay.

21 COUNSEL HU: We waive it.

22 COUNSEL YUAN: Schnitzer waives.

23 CHAIR MEATOGA III: Okay. Thank you. There's no
24 other housekeeping matters. ENV please present your first
25 witness.

1 COUNSEL HU: Okay. ENV would like to present its
2 witness, Dr. Roger Babcock.

3 CHAIR MEATOGA III: Please stand and raise your
4 right hand.

5

6 **ROGER BABCOCK, JR.**

7 called as a witness, being first duly sworn to tell the
8 truth, the whole truth and nothing but the truth, was
9 examined and deposed as follows:

10 CHAIR MEATOGA III: Thank you. You may be seated.
11 Counsel, you may begin.

12

13 **E X A M I N A T I O N**

14 **COUNSEL HU:**

15 Q: Good morning. Could you please state your
16 full name and job title for the record, please?

17 A: Yes. Good morning. My name is Roger Babcock,
18 Jr. I am the Director of the Department of Environmental
19 Services for the City and County of Honolulu.

20 Q: Could you provide us with a brief history of
21 your educational background as well as any professional
22 licenses obtained?

23 A: Sure. So I am a civil engineer by training.
24 So I have a bachelor's in civil engineering from UC Davis, a
25 master's from Cal Poly in San Luis Obispo and doctorate in

1 civil engineering from UCLA. That was obtained in 1991.
2 I have professional licenses, a PE in Hawaii and California.

3 Q: Dr. Babcock, can you please provide us a brief
4 history of your professional background such as your work
5 history?

6 A: Sure. After completing my education I worked
7 as a consultant for a wastewater design firm in California
8 called Carollo Engineers. I then came to Hawaii to be a
9 professor of Civil Engineering in the College of Engineering
10 in 1995. I was there through 2020, then I came and joined
11 the City administration of Mayor Blangiardi in January 2021
12 as Director of the Department of Facility Maintenance. I
13 stayed there for one year, and then moved over to the
14 Department of Environmental Services beginning in January of
15 2022.

16 Q: So in terms of being Director of ENV, you have
17 been there since January of last year?

18 A: Correct.

19 Q: So, that would be a little over a year?

20 A: Correct.

21 Q: And what is your role as ENV's Director?

22 A: So ENV has six divisions which include an
23 administrative division; four divisions related to
24 wastewater which are treatment and disposal, collection
25 system maintenance, engineering and construction and

1 environmental quality, and then one division which is refuse
2 which includes collection, disposal and recycling.

3 Q: So in terms of refuse, what is your role
4 there?

5 A: So overall role is being the Director. So
6 there are multiple branches. There's a chief and multiple
7 branch heads that run the operations. So general oversight
8 and planning for the Department.

9 Q: So do you oversee, for example, City-wide
10 management of solid waste generated in cities?

11 A: Correct. So there's collection, involves the
12 residential curbside collection program, the three different
13 colored carts, grey, blue and green. So that's the
14 collection side. There' also manual collection. We don't
15 do commercial or industrial collection or military.
16 Disposal involves the convenient centers. There's six
17 convenient centers. There's three transfer stations, and
18 then there's the H-POWER waste energy facility and Waimanalo
19 Gulch Sanitary Landfill.

20 Q: So just to be clear, as the Director of ENV,
21 do you have personal knowledge of the operations of H-POWER
22 and the Waimanalo Gulch Sanitary Landfill?

23 A: Yes, I do.

24 Q: I guess throughout these proceedings, if I say
25 WGSL, you'll understand that to be the Waimanalo Gulch

1 Sanitary Landfill?

2 A: Yes.

3 Q: Okay. So, why are we here today? In other
4 words why did ENV file its December 2022. Application with
5 the Planning Commission?

6 A: So the City has been making efforts to
7 identify a new landfill site even prior to the Decision and
8 Order from 2019. But since then the City--beginning at that
9 time the City began efforts to try and site the new
10 landfill.

11 In the year 2020, the state legislature
12 passed Act 73 which introduced new restrictions to locating
13 landfills including a half mile buffer between the landfill
14 and residential properties, schools, hospitals as well as
15 excluding all conservation lands. So at that time the City
16 looked, re-evaluated available land areas on the island and
17 compared it to what had been done in the past.

18 Beginning in 2003 was the first blue ribbon panel
19 and there were various efforts among over the years since
20 then. But between 2019 and 2020 things changed, so there
21 was an evaluation done to figure out what sites would remain
22 viable with the new restrictions.

23 So then in 2021 the Mayor formed a landfill
24 advisory committee, and it met a total of eight times
25 between October 2021 and June of 2022 with the objective to

1 identify and help select, make a recommendation for a new
2 site. The LAC, Landfill Advisory Committee, was given six
3 sites to evaluate based upon the new restrictions from Act
4 73. So they went through that process. During that time
5 frame there was the Red Hill fuel and spill and
6 contamination of part of the water system, and so there was
7 heightened awareness among the LAC members, the public and
8 the Board of Water Supply.

9 So at their November meeting the Board of Water
10 Supply came and made presentation and expressed their
11 concerns about locating the landfill, identifying a landfill
12 site where it could be, located near potable water,
13 potential potable water supplies. So they encouraged the
14 advisory committee not to recommend any of the sites that
15 they were evaluating, and the committee did vote to not
16 recommend any of the sites at that time. They did finish up
17 their work and in their final report they ranked all of the
18 six sites. They recommended not using any of them and to do
19 a re-evaluation and look for other sites that were, that
20 would be outside of what's called the Board of Water Supply
21 No Pass Zone. They recommended looking at military sites or
22 federal sites, looking at amending potentially or repealing
23 Act 73 to open up new sites and/or looking at possibility of
24 imminent domain purchased land, perhaps residential land and
25 convert it to avoid the buffer requirement.

1 So the City--So at that point there was not enough
2 time to re-do, to do all those evaluations and identify a
3 site before December of last year. So that's why we've
4 requested the extension to be able to do those additional
5 evaluations and identify a site

6 Q: Thank you. I guess I'd like to also ask you
7 about some background details about the H-POWER and WGSL
8 starting with H-POWER. Can you tell us what is H-POWER?

9 A: So, H-POWER is a waste energy facility. It
10 was constructed in 1990, began operations in 1990 in order
11 to take all municipal solid, comossible solid waste and
12 reduce its volume by 90% in order to reduce the amount of
13 volume and space needed for landfilling. It also reduces
14 the weight about 75% and the volume of about 90%. It also
15 generates a lot of energy, close to 10% of the energy needs
16 for the island. But its main function is volume reduction.
17 So that means we need a lot less landfill if we have
18 H-POWER.

19 Q: I'm sorry, this is very basic, but H-POWER,
20 does it stand for Honolulu Program of Waste Energy Recovery?

21 A: That's correct; yeah.

22 Q: And so you're saying it burns waste and
23 converts it into electricity pretty much?

24 A: Correct.

25 Q: And currently are there still waste at H-POWER

1 cannot accept?

2 A: Yeah, that's correct. So H-POWER does produce
3 ash and ash residue which is two forms. There's a fly ash
4 which is from the combustion; the air that comes off of
5 combustion and then there's bottom ash and those we need to
6 have a landfill to dispose of those things. But there are
7 certain waste that are not permitted to be combusted at
8 H-POWER. And right now those include auto shredder residue
9 and asbestos containing materials. We're not permitted to
10 burn medical sharps, but other medical waste is acceptable.
11 I believe there might be some other restrictions, but I'm
12 sorry I'm not sure.

13 Q: Okay. But the ones you talked about just now
14 like the auto shredder residue, the medical sharps,
15 asbestos, so those cannot be accepted at H-POWER and so
16 where would those have to go?

17 A: So those go the landfill--

18 Q: To be disposed, right?

19 A: To be disposed of.

20 Q: And so that would have to be WGSF?

21 A: Correct. The only other landfill is a
22 construction and demolition waste landfill which is not
23 permitted to accept municipal solid waste or anything other
24 than what's defined as construction and demolition waste.

25 Q: And you also talked about the leftover ash and

1 processed residue that gets generated in the process of
2 burning that waste at H-POWER. And would that leftover ash
3 and residue also need to be disposed in a permitted
4 landfill?

5 A: Yes, that's correct. So the operating permit
6 for H-POWER requires that there is a landfill for disposal
7 of the ash residues.

8 Q: So does H-POWER require a solid waste permit?

9 A: That's correct. H-POWER requires a solid
10 waste permit in order to be able to process the municipal
11 solid waste.

12 Q: And I know we've been talking about this, but
13 as part of that solid waste permit does that require the
14 permitted landfill which is WGSL?

15 A: That is correct. It requires a permitted
16 landfill to accept that waste.

17 Q: So in summary is the WGSL critical and
18 necessary to the operation of H-POWER?

19 A: It is. Without a permitted landfill we can't
20 operate H-POWER.

21 Q: I'd like to talk with you about the Waimanalo
22 Gulch Sanitary Landfill, WGSL. And so what is it?

23 A: So WGSL is a permitted Class D, municipal
24 solid waste landfill, federal law governing solid and
25 hazardous waste. And so it is a Class D landfill. It's

1 really two landfills in one.

2 The way the permit works is it's an ash monofill
3 which means there are cells. All landfills are composed of
4 cells, which have a liner on the bottom and an active, sort
5 of working area where waste is being deposited. Areas where
6 ash is deposited, only ash is permitted in those areas. And
7 then there's MSW cells which are separate where other MSW
8 and other wastes can be accepted.

9 Waimanalo Gulch Landfill opened in 1989 and has
10 been expanded over the years to continue to accept waste
11 from H-POWER and the other sources that we mentioned.

12 Q: And like H-POWER does WGSL also require a
13 solid waste permit to operate?

14 A: Correct. It requires a solid waste permit.
15 Both facilities also require other permits, air permits,
16 stormwater permits.

17 Q: Okay. I'd like to turn your attention to ENV's
18 Exhibit A6. I think it should be in that binder in front of
19 you. Can you tell us what this Exhibit A6 is, or please
20 take a look at it after you're done.

21 A: Yes, thank you. Yes. So this is our solid
22 waste permit for Waimanalo Gulch Sanitary Landfill. It's
23 the most recent renewal. It has an effective date of March
24 3rd of this year 2023, and it has an expiration date of
25 March 2nd, 2028.

1 Q: I'm sorry. I'd like to show opposing counsel
2 a copy of your binder.

3 [Counsel Hu walks over to Counsel Chipchase and
4 shows Counsel Chipchase a binder]

5 Okay. Sorry. And so we're talking about the
6 DOH's Solid Waste Management Permit for the Waimanalo Gulch
7 Sanitary Landfill, and why does the DOH require a permit?

8 A: Well, a solid waste permit is required in order
9 to set certain conditions about how its operated in order to
10 protect public health.

11 Q: So does this permit require compliance with
12 various regulations and conditions in operating the
13 landfill?

14 A: Yes, it does.

15 Q: Okay. So is it fair to say that the landfill,
16 and I'm talking about the WGSL is heavily regulated?

17 A: That's fair to say.

18 Q: And so where is the WGSL located?

19 A: WGSL is located on Farrington Highway, and I
20 guess you'd call that Kapolei, Kapolei area.

21 Q: I'd like to turn your attention to Exhibits A1
22 through A5. I'm sorry for our viewers in cyperspace. We
23 don't have the photos in front of you, but I encourage you
24 to download ENV's Application which has the exhibits. I'm
25 sorry, ENV's exhibits on either DPP's website. Okay. So,

1 Dr. Babcock for these photos A1 through A5, can you tell us
2 who took these?

3 A: These photos A1 through A5 were taken by the
4 Honolulu Fire Department using a drone.

5 Q: And are these photos of the WGSL?

6 A: That's correct. These are photos of the WGSL.

7 Q: Do you know when they were taken?

8 A: I'm sorry, I don't know the date.

9 Q: Okay. Would it be sometime--I think there's a
10 date stamp on the top left corner. It's really small, but
11 it looks like it says 2022.09.22, which means, I guess
12 September 22 of last year, does that sound about right?

13 A: That sounds correct.

14 Q: Okay. For Exhibit A1, what does that show?

15 A: Yeah. Exhibit A1 shows the lower part of the
16 landfill at the entrance roadway, the scale house and part
17 of the roadway, the service road that ascends the landfill
18 up to where the working part is, and the lower part that's
19 shown there is all former fill area that's now closed.

20 Q: And, I guess you can see Farrington Highway
21 and across from that would be Ko Olina, correct?

22 A: That's correct.

23 Q: Could you turn to Exhibit A2.

24 A: Yes.

25 Q: And is that also kind of showing the entrance

1 but more like a zoomed out?

2 A: Yeah. It's a similar photo, but it's from
3 further up the mountain looking down.

4 Q: Can you turn to Exhibit A3, please? Is that
5 the western boundary of the landfill?

6 A: That's correct, and it's the Kahe Power Plant
7 behind it in a distance.

8 Q: So it's a HECO Kahe Power Plant?

9 A: Correct.

10 Q: And Exhibit A4 does that show kind of similar
11 what looks like a lot but just, I guess it's going towards
12 the back of the landfill?

13 A: Yes, correct. So this is looking uphill at
14 the landfill. You can see a lot of former landfill area in
15 the foreground in the middle, and then the way at the top is
16 the working area of the landfill where waste is being
17 deposited now. And you can see that this is known as a
18 canyon fill type landfill. So there are ridges on both
19 sides that you can see that have been filled in with waste
20 over the years.

21 Q: Thank you. And can we turn to Exhibit A5.
22 Does that show the current active portion of the landfill?

23 A: That's correct. That's the current active
24 portion.

25 Q: So where is the ash monofill and where is the

1 MSW landfill?

2 A: So everything looks kind of small in the
3 picture but the ash monofill is in the back, so the upper
4 middle portion of the photo is the ash monofill and the MSW
5 fill portion is kind of in the middle towards the bottom. I
6 guess where you can see, I think you can see some vehicles
7 in there where there's--That's MSW portion.

8 Q: Okay. So we're done with those exhibits.
9 Thank you.

10 So currently when is the landfill expected to
11 reach full capacity?

12 A: So on an annual basis waste management which
13 is our contract operator does a flyover and does an
14 estimation of airspace available. Most recent estimate is
15 from, I don't know the exact date but fairly recent in the
16 last couple months gave an estimate of, at current, assuming
17 current fill rates there's capacity 'til 2036.

18 Q: So is a MSW landfill necessary for the public
19 health and safety of the entire Oahu community?

20 A: Yes. It's important that there is an approved
21 and sanitary way to dispose of municipal solid waste, other
22 residuals and ash.

23 Q: And so on this island is the WGSJ the only MSW
24 landfill in operation right now?

25 A: That is correct.

1 Q: And you mentioned the other landfill is he PVT
2 landfill?

3 A: Correct. PVT, though, is permitted
4 construction and demolition waste landfill, no municipal
5 solid waste.

6 Q: And that's not operated by the City, correct?

7 A: Correct. That is privately operated, not
8 operated by the City.

9 Q: Do we also need a MSW, and when I say MSW, I'm
10 sorry, I mean municipal solid waste landfill for emergencies
11 too?

12 A: Yeah. That's correct. So we have our normal
13 operations which is disposing of municipal solid waste from
14 the City, from commercial operations, hotels, multi-family,
15 military, all state, all sources come to our facilities. So
16 we have to have an operating landfill to be able to process
17 all that material to dispose of. Yeah.

18 Q: Thank you. Next, I'd like to ask you what
19 actions ENV took towards siting a new landfill starting from
20 after the 2019 Planning Commission and Land Use Commission
21 decisions were issued, and I know you kind of briefly talked
22 about it earlier, but I'd like to just go into this with
23 more detail with you.

24 I know it's not in front of you, but in ENV's
25 Application, Exhibits A and B, I believe ENV had the two

1 2019 Decisions. And I'm talking about the Land Use
2 Commission and the Planning Commission's 2019 Decisions.

3 Do you--Let me just provide you with my copy.
4 [Counsel Hu walks over to Counsel Chipchase and shows
5 Counsel Chipchase a binder and provides it to Mr. Babcock]

6 So, are you familiar with these two decisions and
7 orders?

8 A: Yes, I am.

9 Q: Both Decisions and Orders contain a condition
10 of a December 31, 2022 deadline to identify an alternative
11 landfill site that may be used upon closure of the WGSL, is
12 that correct?

13 A: That's correct.

14 Q: And in ENV's Application in front of the
15 Planning Commission were request to only modify this
16 condition?

17 A: That's correct.

18 Q: Can you just turn to Exhibit B, page 104,
19 paragraph 7, and I think that should show LUC's condition
20 No. 7 about providing semi-annual reports to both the
21 Planning Commission and the Land Use Commission regarding
22 areas such as the status of ENV's efforts in identifying and
23 developing a new landfill site. I'm sorry, can you just
24 confirm?

25 A: Yes, that's correct.

1 Q: Paragraph 7.

2 A: Yes, paragraph 7.

3 Q: Okay. So has ENV been providing these
4 semi-annual reports to the Planning Commission and the LUC?

5 A: Yes. ENV has been providing the reports.

6 Q: Can you turn to Exhibits A7 through A13 that's
7 in the other binder. Can you tell us if those are the
8 reports?

9 A: Yeah. So, these are the reports that are
10 submitted, all the semi-annual reports. The first one is
11 dated July 15, 2020 covering the period of a six-month
12 period from June 2019 through April 2020, and then there are
13 six more reports, semi-annual reports.

14 Q: Can I turn your attention to A13, would that
15 be the most recent semi-annual report?

16 A: Yes. This is the most recent semi-annual
17 report dated July 7, 2023.

18 Q: I'd like to turn your attention to page 4. On
19 the bottom, second to the last paragraph, it starts with an
20 initial review at the available sites in Fall 2022, reduce a
21 number of potential landfill sites to four. Can you just
22 explain or elaborate on this paragraph, please?

23 A: Yes. So this is referring to the work that
24 was done after the passage of Act 73 to look at what sites
25 would still be available and be in compliance with that Act,

1 with the new state restrictions.

2 So it refers to a short-listed sites from 2017
3 which some of those were now eliminated. So it identifies
4 the four areas that are still viable.

5 Q: I know you previously talked about Act 73, but
6 can you turn to Exhibit A14.

7 A: Yes.

8 Q: Is that the text for Act 73?

9 A: Yes. That's the text.

10 Q: Okay. And, I think you already told us but
11 can you just tell us again what Act 73 did?

12 A: Yes. The relevant parts that no waste or
13 disposal facility shall be located in a conservation
14 district except in emergency circumstances where it would be
15 necessary to mitigate significant risk public safety,
16 provided further that emergency circumstances shall not
17 exceed three years. In addition, it mentions the buffer
18 provision which is in part Section 2(b). It defines a
19 buffer zone as the distance between the edge of waste or
20 waste activity and the nearest residential, school or
21 hospital property line, and the other part of the text
22 mentions that should be at least one-half mile.

23 Q: Thank you. Can I turn your attention to
24 Exhibit A15, please?

25 A: Yes.

1 Q: So can you tell us about this map, what does
2 this map show?

3 A: So this map is available on our, the ENV
4 website, and it shows the island of Oahu. It's a GIS based
5 map. It shows the conservation district subzones, and it
6 shows the half-mile buffer from residential areas as blue,
7 and it shows the conservation area as green. So those are
8 the areas which are restricted from waste disposal
9 facilities by
10 Act 73.

11 Q: So the remaining unrestricted by Act 73
12 carries the areas in white?

13 A: That's correct. The areas in white are not
14 restricted by Act 73, but some of them are restricted by
15 other restrictions.

16 Q: Okay. Thank you. Sorry. Let's go back to
17 A13. A13 is going to be our base because it seems to have
18 the history.

19 So I'd to turn your attention to page 6.
20 It says on August 27, 2021, ENV launched a new landfill
21 siting website containing an interactive map tool. Do you
22 see that?

23 A: Yes, I see that.

24 Q: Okay. And so that map on the bottom or the
25 photograph on the bottom of page 6, is that interactive?

1 I guess does that show the interactive map from the ENV's
2 website?

3 A: Yes. It shows the map from our website.

4 Q: And is that similar to Exhibit A18?

5 A: Yes. It appears to be the same map.

6 Q: And so what does A18 show, what does this map
7 show?

8 A: So this map shows all of the various
9 restrictions for siting a landfill. So we can see the Act
10 73 restrictions the same blue color and green color.
11 There's federal lands noted in grey; tsunami evacuation zone
12 restrictions are shown in dark blue; airport buffer
13 restriction which is 10,000 feet are shown. There are five
14 airports shown with that restriction, and it also shows, you
15 know a couple of things, it does show the landfill location,
16 Waimanalo Gulch, and it identifies the potential sites that
17 the Landfill Advisory Committee was tasked with evaluating.

18 Q: Thank you. I'd like to turn attention back to
19 Exhibit A13, page 6, again on the bottom it says on
20 September 24, 2021, Mayor Rick Blangiardi appointed nine
21 members to the Landfill Advisory Committee (LAC). So what
22 was the purpose of the LAC? I know you kind of talked about
23 it earlier. I'd like to get into a little more detail.
24 Thank you.

25 A: Yeah. So the Landfill Advisory Committee was

1 tasked with evaluating the six proposed landfill sites and
2 making a recommendation to the City on where the next
3 landfill should be. So as part of that they did a lot of
4 investigations. They've heard a lot of presentations. They
5 did site visits. They developed scoring criteria and
6 weighing scores and agreed to a scoring process, and then
7 score all of the six sites and that resulted a ranking of
8 the six sites from 1 through 6.

9 Q: I think you mentioned earlier they had eight
10 meetings, is that correct?

11 A: That's correct, they had eight meetings.
12 Yes.

13 Q: And after the conclusion of the meetings, did
14 they create a report?

15 A: Yes. So they created a report and all of
16 eight meetings were public meetings conducted in accordance
17 with the Sunshine Law.

18 Q: Do you recall when the last meeting was held?

19 A: The last meeting was in June. I'm not sure
20 the exact date.

21 Q: Was it June of last year?

22 A: Yes. June of 2022.

23 Q: Okay. Sorry. I know you don't have...

24 [Counsel Hu walks over to Counsel Chipchase and
25 shows Counsel Chipchase a binder]

1 A: Yes. The last meeting was on June 6 of 2022.

2 Q: I'd like to turn your attention to Exhibit D
3 of ENV's Application. Can you take a look through that and
4 let us know what that is?

5 A: Yes. Exhibit D is the Oahu Landfill Siting
6 Study and Landfill Advisory Committee Recommendations. It's
7 the final report from our Landfill Advisory Committee.

8 Q: So, who drafted this report?

9 A: So the report was drafted by our consultant
10 which helped facilitate the meetings and the information
11 gathering as a resource for the advisory committee. That's
12 HDR Engineers, and the committee reviewed everything and
13 approved the report and ultimately voted for its approval.

14 Q: So the committee, did they make any revisions?

15 A: Yes.

16 Q: Okay. And then they ultimately approved that
17 report?

18 A: That's correct; yeah.

19 Q: And can you let us know what kind of things
20 are in that report?

21 A: So the report has--It talks about the site
22 identification process. It talks about the site evaluation
23 and recommendations including essentially what their role
24 was. It talks about the public outreach efforts were done,
25 how the sites were identified. More details about the

1 evaluation process, the evaluation criteria, essentially the
2 scoring method that they used, the methodology of how
3 criteria would be weighted, how would they be rated, how
4 they'd be scored, how the calculations would be done, and
5 how that process worked which was using--They did the
6 scoring not in open session but by voting kind of by ballot,
7 and then it describes the results as well as the ranking
8 that resulted and their recommendations in addition to that.

9 They also were provided the opportunity to write
10 their own individual commentary and to be included in an
11 appendix, so all of the advisory committee members could
12 write whatever they wanted and have it be in the report.

13 Q: Thank you. You mentioned LAC's
14 recommendations. I'd like to turn your attention to page
15 6-4.

16 A: Yes. Page 6-4 has the LAC Recommendation of
17 Siting Results.

18 Q: And can you let us know what their
19 recommendations were?

20 A: Yeah. Right above there it has the ranking
21 based on the scoring that they did and it ranks all the
22 sites.

23 So the recommendations include three different
24 bullet points. One is with respect to the noting that all
25 of the final six landfill sites are located within the Board

1 of Water Supply No Pass Zone, and it notes how the members
2 were in majority agreement that the LAC does not recommend
3 any of the final sites due to their location within the No
4 Pass Zone.

5 It also mentions how the LAC discussed options and
6 that the City should consider sites only outside the No Pass
7 Zone.

8 Q: Was there any recommendations about amending a
9 certain Act?

10 A: Correct. The LAC did recommend potential
11 amendment options for Act 73 including reducing the one-half
12 mile buffer residential setback distance or removal of
13 specific conservation flood zones. For example, the general
14 subzone. They expressed concerns that Act 73 along with
15 time constraints may have limited the ability to perform a
16 more extensive evaluation outside the No Pass Zone.

17 Q: Did the LAC make any other recommendations?

18 A: They did. So in addition to recommending,
19 looking at amending Act 73 they also recommended looking at
20 federal sites which had not been included in the sites given
21 to them to analyze as part of their process and also
22 recommended further actions, efforts by the City to
23 encompass federal lands for siting landfills. And they also
24 recommended looking at siting through initiation of eminent
25 domain process (e.g. minimal residences on the parcels in

1 order to potentially acquire small number of residential
2 properties to meet the requirements of Act 73).

3 Q: Okay. Thank you. Before we get into the
4 actions that ENV took after receipt of the LAC final report,
5 I'd like to ask you about the BWS No Pass Zone. I know we
6 briefly talked about it earlier.

7 I'd like to turn your attention to Exhibit A16,
8 and also I'm going to collect that other binder from you.

9 So Exhibit A16, is this a map in the LAC final
10 reports?

11 A: Yes, it is.

12 Q: And, I guess you can see that right from the
13 top right corner?

14 A: Yes, that's correct.

15 Q: And so what does this map show? Does this
16 show the No Pass Zone?

17 A: This map shows the No Pass Zone as a dotted
18 red line.

19 Q: And so what is the Board of Water Supply No
20 Pass Zone.

21 A: Board of Water Supply identifies the No Pass
22 Zone as areas where there is potential for unprotected
23 groundwater resources that potentially could be used for
24 potable water. The areas outside the No Pass Zone are on
25 the outer edges of the island where there is a caprock,

1 generally a caprock protected layer to the underlying water.

2 Q: And so when we're talking about the No Pass
3 Zone, and we're looking at the dotted lines on this map, so
4 we're talking about all of the areas inside, right?

5 A: That's correct; yeah. So the No Pass Zone is
6 the area on the interior of the island inside of the dotted
7 line.

8 Q: If we compare Exhibit A16 with Exhibit A18, is
9 there any area outside the No Pass Zone that also satisfies
10 all the restrictions including those imposed by Act 73.

11 A: There are some federal lands outside the area
12 that would satisfy all the requirements and outside the No
13 Pass Zone.

14 Q: So aside from the federal land, is there any
15 other land?

16 A: No.

17 Q: Thank you. I'd like to turn your attention
18 back to Exhibit A13, page 7. Below that map it says on
19 October 24, 2022, ENV briefed the board members of the
20 Honolulu Board of Water Supply (BWS) about the status of the
21 landfill site selection. Do you see that paragraph?

22 A: Yes. I see that paragraph.

23 Q: Okay. So what was the purpose of ENV's
24 briefing to the BWS board members?

25 A: So the purpose of the meeting which was a

1 regular board meeting of the Board of Water Supply was to
2 understand their position, the official position of the
3 Board with respect to the No Pass Zone.

4 Q: Thank you. Were you at that meeting?

5 A: I was at that meeting.

6 Q: Did the Board give ENV a response at that
7 meeting after ENV inquired about BWS official position on
8 the sites?

9 A: At the meeting there was presentation,
10 questions and discussion, and there was a follow-up letter
11 afterwards which gave that position.

12 Q: Okay. We will get to that follow-up letter.
13 At the bottom of that paragraph can you read that to us?

14 A: Yeah, that's correct. The BWS Board did not
15 provide a response to ENV's inquiry at that meeting, the
16 informational briefing.

17 Q: Thank you. And so you mentioned the follow-up
18 letter, and I'd like to turn your attention to the next
19 paragraph on page 7, bottom of page 7. It says on November
20 3, 2022 ENV sent a follow-up letter. That's what you're
21 referring to?

22 A: That's correct. So that is the ENV letter to
23 Board of Water Supply is dated November 3rd, 2023 [sic].

24 CHAIR MEATOGA III: Just to interject for a quick
25 second. At 10:30 we'd like to take a quick 10-minute break

1 if everyone is amenable to that. Okay. Thank you. Please
2 proceed.

3 Q: So I'd like to turn your attention to Exhibit
4 F of ENV's Application. So what was the purpose of this
5 letter?

6 A: This letter is from ENV dated November 3rd,
7 2022. It says, and this is referring to our informational
8 briefing October 24th, and it asks for an official position
9 from the Board with respect to this six sites in the No Pass
10 Zone.

11 Q: Okay. And I'd like to turn your attention to
12 Exhibit C of ENV's Application. Is that the BWS response
13 letter that you referenced earlier?

14 A: That's correct. This is the Board of Water
15 Supply response letter dated November 16, 2022.

16 Q: Okay. And what was BWS's position in that
17 response letter?

18 A: The Board of Water Supply position is that
19 they do not approve any of the six proposed landfill sites.

20 Q: On pages 3 and 4, did the BWS also site
21 issues to Red Hill?

22 A: I'm sorry, could you repeat that?

23 Q: On pages 3 and 4 of that letter, did BWS also
24 cite to Red Hill as an issue?

25 A: Yeah, that's correct. The Board of Water

1 Supply mentions on page 3 that the people of Oahu are still
2 coping with what the Hawaii Department of Health described
3 as a humanitarian and environmental disaster caused by fuel
4 releases from the U.S. Navy's Red Hill Bulk Fuel Storage
5 Facility that resulted in the contamination of Oahu's
6 drinking water supplies.

7 Q: And just to be clear, that's not related to the
8 landfill, correct?

9 A: That's correct.

10 Q: So what did ENV do after receipt of this BWS
11 response letter?

12 A: So after receiving this response letter we
13 proceeded to prepare our Application for extension of the
14 deadline to name a site.

15 Q: So at this point it's close to the end of
16 2022, and you know at this point of receiving that letter
17 and ENV is preparing its Application, ENV knows BWS's
18 position, knows that the three recommendations made by the
19 LAC, right, you mentioned either amend Act 73 or may be the
20 eminent domain or obtaining federal lands. My question is
21 why did ENV request for a two-year extension instead of just
22 say like a one-year extension?

23 A: So the reason for requesting two years is
24 because looking at some of these alternatives would involve
25 actions that will take some time. So, we requested two

1 years in order to have time to do the evaluation and have
2 discussions with federal government.

3 Q: I know we kind of touched on this, but my next
4 question is what landfill siting efforts has ENV been taking
5 after or since the time ENV's filing of its current request
6 for extension?

7 A: So ENV has been pursuing all of the
8 recommendations, the actions recommended by the Landfill
9 Advisory Committee. So we've been making contact with
10 federal agency government about the potential for using
11 their parcels. We have been evaluating the possibility of
12 doing eminent domain to acquire properties to looking at
13 potential of that as well as looking into what the
14 potentials are for considering an amendment to Act 73.

15 Q: So for the federal land, are you able to get
16 into any more details about that?

17 A: Well, the federal lands--So currently that is
18 our main pursuit is pursuing federal lands. The discussions
19 are ongoing but because of the nature of the request and
20 what's involved I can't elaborate further on specific
21 progress.

22 Q: You know how long will these discussions take
23 before ENV knows whether the US agencies and military would
24 agree to federal lands?

25 A: I can't speculate.

1 Q: In ENV's Application, ENV stated that it may
2 also work with state legislature on new law or amendments to
3 existing law including Act 73 that would open up potential
4 landfill outside the No Pass Zone. Can you let us know that
5 the status is on this?

6 A: So we've looked into the potential of
7 modifying the restrictions to see what sites would
8 potentially become available. There are some sites that
9 could potentially become available if Act 73 was amended.
10 However, at this time we are not pursuing legislation.
11 We're going to pursue the other options first.

12 Q: What about the--In ENV's Application, it also
13 stated that it would evaluate feasibility of acquiring
14 residential properties adjacent to potential landfill sites
15 to create sites that would comply with the half-mile buffer.
16 What's the status on this?

17 A: So that evaluation has largely been completed
18 but it's not finalized, but there doesn't appear to be any
19 good options from that evaluation.

20 Q: Thank you. I have no further questions right
21 now. Thank you.

22 CHAIR MEATOGA III: Okay. Thank you. Up next we
23 have cross examination by Schnitzer or would we prefer to
24 take this 10-minute break right now while we're in
25 transition? Okay. We will stand in recess for 10 minutes.

1 [Chair Meatoaga III called for a 10-minute recess
2 and reconvend at 1:00 p.m.]

3 CHAIR MEATOAGA III: All right. Perfect. We have
4 all of our Commissioners here. We are reconvening. I
5 believe we ended off with cross examination by Schnitzer.
6 Please proceed.

7 COUNSEL YUAN: Schnitzer waives cross examination.

8 CHAIR MEATOAGA III: Okay. Do we have cross
9 examination by KOCA?

10 COUNSEL CHIPCHASE: Yes, we do.

11 CHAIR MEATOAGA III: Okay. Please proceed. Could
12 we allow them to share screen so we can see it.

13 COUNSEL CHIPCHASE: We're ready to proceed, Chair.

14 CHAIR MEATOAGA III: Okay. Please proceed.

15

16 E X A M I N A T I O N

17 **BY COUNSEL CHIPCHASE:**

18 Q: Good morning, Director Babcock. My name is
19 Cal Chipchase.

20 A: Good morning

21 Q: And appreciate the timeline that you went
22 through with Counsel. That helps me to sort of streamline
23 my questions for you.

24 I want to further kind of nail down some dates and
25 make sure I understand the totality of the history. But I

1 really want to start with most basic question is how long
2 have you been on the job?

3 A: I started at ENV on January 1st, 2022.

4 Q: And Director would you agree with me that the
5 Waimanalo Gulch Sanitary Landfill is on land that is within
6 the State Agricultural District?

7 A: Yeah, that's correct.

8 Q: Would you also agree with me that it is a
9 matter of state law, a landfill is not an agricultural use?

10 A: That's correct.

11 Q: And so is it also correct that this landfill
12 requires a Special Use Permit in order to continue
13 operating?

14 A: That's correct.

15 Q: And if you understand the process, would you
16 agree with me that the Planning Commission, the Honolulu
17 Planning Commission conducts an evidentiary hearing and
18 issues a report and recommendation, a recommended Findings
19 and conclusions I should say to the Land Use Commission, and
20 then the Land Use Commission makes a decision whether to
21 grant or deny or to grant with conditions a Special Use
22 Permit?

23 A: That's correct.

24 Q: When you were testifying earlier, you
25 referenced a 2019 Decision by the State Land Use Commission,

1 would that be the November 2019 decision?

2 A: Correct.

3 Q: And it's in that Decision that the Land Use
4 Commission imposed a closure deadline of March 2nd, 2028, is
5 that right?

6 A: That's right.

7 Q: And it's that same decision that also imposed
8 a site selection deadline, meaning the deadline by which the
9 City had to select a site to replace Waimanalo, is that
10 right?

11 A: That's correct.

12 Q: And that site selection deadline was December
13 2022, is that right?

14 A: That's correct.

15 Q: You were discussing the timeline of the site
16 selection committee and the different actions it took and
17 also some considerations, and I just want to make sure that
18 I have all of the dates correct. Director, when was Act 73
19 adopted?

20 A: Act 73 was adopted in 2022. I'm not sure of
21 the exact date.

22 Q: Are you sure it was 2022?

23 A: Sorry. 2020. Act 73 was in 2020. Sorry
24 about that.

25 Q: Not at all. When did the site selection

1 committee--Well, let me take this back because there have
2 been a number of site selection committees over the years.
3 So I want to make sure that we are clear. Following the
4 LUC's November 2019 Decision, when did the most recent site
5 selection committee begin its work?

6 A: It began its work in October of 2021.

7 Q: And when it began its work, was it provided
8 the sites to consider? In other words did the City give the
9 committee certain sites to consider as part of its work?

10 A: Yes. So the way the committee functioned was
11 they were given the sites to evaluate by the City.

12 Q: And did any of the sites that was given to
13 evaluate include sites that would be restricted because of
14 Act 73?

15 A: The sites that they were given were not
16 restricted by Act 73.

17 Q: Okay. So in other words when the committee
18 began its work, the City had already taken Act 73 into
19 account?

20 A: That is correct; yes.

21 Q: And, Director, you mentioned that the Board of
22 Water Supply testified at one of the committee meetings and
23 identified the No Pass Zone, did I remember that correctly?

24 A: That's correct. They testified at the
25 November meeting of the Landfill Advisory Committee. I

1 believe that--

2 COUNSEL HU: I think that might be misstating his
3 testimony earlier.

4 COUNSEL CHIPCHASE: Me or him?

5 COUNSEL HU: What you said earlier.

6 Q: Let me just ask it over again, Director.

7 Did the Board of Water Supply testify at one of
8 the site selection committee meetings?

9 A: Yes, they did.

10 Q: And do you recall which meeting that was?

11 A: I believe it was the November meeting.

12 Q: Would it help to reference your binder?

13 A: I think it would.

14 Q: I believe it's in your Application.

15 COUNSEL HU: Yes. It's in our Application, but I
16 don't think you testified to that today. But it's in ENV's
17 Application.

18 A: I can't recall the exact date.

19 Q: All right. We will try to find a date for you
20 just to make sure, but your best recollection was November
21 of which year?

22 A: So that's November of 2021.

23 Q: And when the Board of Water Supply testified
24 in November 2021, did it raise its concerns with respect to
25 the No Pass Zone?

1 A: It did.

2 COUNSEL HU: I'm sorry, did you say the Board?

3 COUNSEL CHIPCHASE: Of Water Supply.

4 COUNSEL HU: Okay. So when you're talking about the
5 Board, you're talking about the Board of Water Supply,
6 you're not talking about the board members of the Board of
7 Water Supply?

8 COUNSEL CHIPCHASE: I'm talking about the--Well, I
9 really should have the colloquy with the witness.

10 Do you understand that I'm referencing the
11 testimony of the Board of Water Supply at the site selection
12 committee meeting?

13 WITNESS: Correct. So, the managing director,
14 Chief Engineer Managing Director Ernest Lau and Deputy
15 Director Erwin Kawata made the presentation to the Landfill
16 Advisory Committee.

17 Q: And when that presentation was made in
18 November 2021, did the chief engineer raise the concerns
19 with respect to the No Pass Zone.

20 A: Yes. That was the reason for his testimony.

21 Q: And at that point did the City ask the Board
22 of Water Supply for its official position as a Board on the
23 No Pass Zone?

24 A: No. We did not ask the Board of Water Supply
25 for their official position at that time.

1 Q: And at that time did the City reevaluate the
2 sites that it had proposed the site selection committee to
3 remove sites that would be impacted by the No Pass Zone?

4 A: No. We did not do that.

5 Q: Was that November 2021 meeting the first time
6 that any issue with respect to the No Pass Zone had arisen
7 in siting the landfill?

8 A: To my knowledge it had not been raised before.

9 Q: Director, when did the site selection
10 committee vote on the recommendations that ultimately were
11 incorporated in its report?

12 A: The final recommendations were voted on in
13 June of 2022.

14 Q: At that time in June 2022, did the City ask
15 the Board of Water Supply for its official position on the
16 No Pass Zone?

17 A: We asked to appear before the Board, and we
18 got on the agenda for their October board meeting.

19 Q: In June of 2022 when the site selection
20 committee had made its vote on its recommendations, did ENV
21 at that time petition to amend the 2019 LUC Order to extend
22 its site selection deadline?

23 A: No. We did not do it at that time.

24 Q: When did ENV file its petition to extend the
25 deadline to site a landfill?

1 A: It was in December of 2022.

2 Q: So the same month as the deadline to site the
3 landfill?

4 A: That's correct.

5 Q: When did the City begin discussions with the
6 federal government regarding a potential acquisition of
7 federal land for a new site?

8 A: I believe in the past inquiries have been made
9 even before this round of selection. The current efforts
10 would have begun. I'm not positive of the exact dates when
11 that would've started, but it would've been about the same
12 time frame in December or beginning of the current year.

13 Q: And when did the City began evaluating the
14 potential acquisition of residential properties?

15 A: About the same time the beginning of 2023.

16 Q: You mentioned earlier that Act 73 was adopted
17 in 2020. What steps have the City taken since that time to
18 have Act 73 amended?

19 A: The actions that we've taken were to look at
20 if there are any potential sites that could become feasible
21 by amending the Act or rescinding the Act that would
22 potentially make sides available outside of the No Pass
23 Zone. So we've done that evaluation.

24 Q: And did that evaluation identify any sites
25 that would be available outside of the No Pass Zone?

1 A: Yes. There are sites outside the No Pass
2 Zone. They're shown on that site selection map. I believe
3 they're in yellow color on that map.

4 Q: Has the City taken any steps to request from
5 the legislature that Act 73 be either amended or rescinded?

6 A: Not at this time.

7 Q: Can you tell me why not?

8 A: That would be a difficult process that would
9 take a lot of effort and which will potentially be pursued
10 if our current efforts with respect to federal lands aren't
11 successful.

12 Q: Would it be fair to say then the City views
13 the pursuit of federal lands as a first step in finding a
14 new site, and if that's unsuccessful then it may consider
15 amending or seeking to amend Act 73?

16 A: It's difficult to speculate but the idea of
17 pursuing amendment to Act 73 is still a possibility.

18 Q: Just based on your earlier description the
19 City decided rather than pursuing an amendment to Act 73
20 that it would pursue federal lands, is that fair?

21 A: We're currently pursuing federal lands as our
22 main effort.

23 Q: And is it then fair to say that the City won't
24 consider seeking to amend Act 73 unless it is unable to
25 acquire a federal site?

1 A: I think that's fair to say.

2 Q: Director, earlier you testified about the
3 efforts to identify or to work with the federal government
4 to identify sites. Can you identify for us which federal
5 sites you're pursuing?

6 A: So the discussions are about all potential
7 federal sites that are located outside the No Pass Zone.
8 Those sites are depicted on the sites selection tool map.
9 And so if you look carefully at that you can see that it
10 would include Lualualei lands. This is an Iroquois Point,
11 Iroquois lands; there's Waipio Peninsula lands; there's some
12 lands in Bellows area. All those are outside the No Pass
13 Zone.

14 Q: And Director when you testified earlier
15 regarding those discussions with the federal government, you
16 made the comment that you can't elaborate on them. Can you
17 tell us why you're unable to elaborate on those discussions?

18 A: Mainly because I'm not part of that
19 discussion.

20 Q: Who is part of that discussion?

21 A: That would be the Mayor.

22 Q: The Mayor personally?

23 A: Yes.

24 Q: Other than the Mayor, has anyone been involved
25 in the discussions with the federal government regarding a

1 potential acquisition of federal land for a site?

2 A: As far as I know it would include the Managing
3 Director, but other than that I don't know of anyone else.

4 Q: Do you know what the status of those
5 discussions is?

6 A: I do not.

7 Q: Do you know when those discussions are
8 expected to conclude?

9 A: I do not.

10 Q: Director, just coming back to some of the
11 dates we talked about. ENV filed its petition in December
12 2022 asking for an extension of the site selection deadline
13 to December 2024. Unbelievably to me we're already in
14 October 2023. Does the extension that ENV has requested
15 give it enough time to identify another site?

16 A: Our intension is to be able to identify a site
17 within the two-year extension.

18 Q: Do you believe that a two-year extension is
19 enough time to identify another site whether through federal
20 lands or by an amendment to Act 73?

21 A: I believe it's possible.

22 Q: Do you believe it's likely?

23 A: I can't speculate. I believe it's possible.

24 Q: Director, why hasn't the City concurrently
25 pursue amending Act 73 while it looks at the acquisition of

1 federal lands?

2 A: The potential for amending Act 73 would be
3 very challenging and so we are not pursuing it at this time.

4 Q: I understand you're not; I'm trying to
5 understand why not? Is it only because you believe it would
6 be challenging?

7 COUNSEL HU: I think he answered your questions
8 about this numerous times and even on direct. Objection.

9 COUNSEL CHIPCHASE: I'm simply trying to
10 understand why it's challenging, and if that's the only
11 reason that they haven't pursued it.

12 CHAIR MALLEAGA III: Okay. I guess we can be very
13 specific. Is that the only reason?

14 WITNESS: Yes.

15 Q: Director, I want to look now at some of the
16 prior history in the efforts to select a site for Waimanalo
17 or to replace Waimanalo.

18 And so now finally we've got the slides up on the
19 screen. I know it's a little bit of a pain to ask you to
20 turn around but bare with me if you would.

21 So we've put on the screen a Finding from the LUC 2019
22 Decision and Order. That Decision you've referenced with
23 Counsel and we've talked about a little bit. And if you
24 look at Finding 283, do you see that in 2003 the City
25 committed to the community that it would close the landfill

1 in 2008?

2 A: Yes, I see that.

3 Q: And if you look at the next Finding, you have
4 284, and my eye sight is terrible, could you tell me what
5 the Finding is above that? I'm sorry it's Finding 39. Do
6 you see that?

7 A: Yep, I can see that.

8 Q: And below there we have Finding 284. You see
9 in Finding 284 there's a reference to Mr. Doyle. Do you see
10 at the time he was the Chief of the Division of Refuse?

11 A: Correct.

12 Q: And I believe you testified earlier that
13 within your Department, ENV Refuse is one of the divisions,
14 I believe?

15 A: That's correct; it's one of the division.

16 Q: And it's the division that handles municipal
17 solid waste, is that correct?

18 A: That's correct.

19 Q: So do you see that Mr. Doyle is Chief of that
20 division explained to the Land Use Commission that the
21 original plan was to have Waimanalo operate for 15 years
22 which would've been 2018.

23 A: That's correct.

24 Q: But as a compromise with the community they
25 agreed to close Waimanalo after five additional years or in

1 2008?

2 A: That's correct, that's what it says.

3 Q: And if you look at the next slide at 285, you
4 see that the Land Use Commission found that in 2003 Mr.
5 Doyle had repeatedly expressed the City's commitment to
6 close Waimanalo in 2008?

7 A: Yep, correct.

8 Q: And do you see in this next Findings, Finding
9 286 from that LUC Order that indeed the landfill be a permit
10 to continue a landfill and expand it in 2003 was continued
11 on the closure of the landfill by 2008.

12 A: Correct.

13 Q: And if we look at the next Finding--I'm sorry,
14 we will go back one to 286. And do you see the expansion
15 was also conditioned on selecting a new site by June 1st
16 2004?

17 A: I can see it there, June 1st, 2004.

18 Q: Thank you, Director. Now, if we move on to
19 the next Finding at 291, do you see that there was a
20 subsequent amendment to that Special Use Permit to extend
21 the landfill just one more year to 2009?

22 A: Correct.

23 Q: And Director I know it was well before your
24 time and your position, but do you understand that rather
25 than close the landfill as stated in the further amendment

1 by 2009, the City sought an expansion of landfill until it
2 reached capacity?

3 A: Correct.

4 Q: And as a result there's part of those
5 proceedings you understand as accounted here that the Land
6 Use Commission instead directed the City to close the
7 landfill by July 31, 2012.

8 A: Yep.

9 Q: Do you have an understanding that instead of
10 respecting that deadline the City appealed challenging that
11 closure condition?

12 A: At a later date; yeah.

13 Q: And do you also have an understanding that the
14 City also came back in and requested an amendment to that
15 condition extending the Special Use Permit for the life of
16 the landfill?

17 A: Yeah, I believe that's correct; yeah.

18 Q: And to the best that you understand, would you
19 agree with me that that request was made in 2011?

20 A: I can't verify that for sure, but it would
21 make sense if that was when it was done.

22 Q: More less correct, would you agree with me
23 there?

24 A: I agree; yeah.

25 Q: And lastly, would agree that the City's

1 request to extend the landfill to its capacity made in
2 around 2011 ultimately resulted in the Land Use Commission's
3 2019 Decision and Order that we've talked about here?

4 A: Yeah, that would make sense. The prior slide
5 showed from the 2009 one that it did say or until it reaches
6 capacity as well; yeah.

7 Q: Right. So it requested in 2009 that resulted
8 in this closure condition of 2012; the City asked to amend
9 that and that resulted in the 2019 Decision and Order.
10 Is that fair?

11 A: Sounds fair.

12 Q: Okay. So the last proceeding to extend the
13 closure condition took more less seven or eights years to
14 conclude?

15 A: Correct.

16 Q: If we go back to the 2009 Decision, and we
17 look at Finding 59 in that later 2019 Decision, do you see
18 that the City was directed to identify and develop a new
19 site by November 1, 2010?

20 A: Yes, I can see that.

21 Q: And do you see that, correction, further
22 required the City to exercise reasonable diligence in the
23 site selection process?

24 A: Yep, I can see that.

25 Q: And if we look at Finding 426 from that 2019

1 Decision and Order, do you see that the LUC found that this
2 closure date afforded the City a minimum of 18 years to site
3 and develop a new landfill?

4 A: Yes, I see that.

5 Q: If we look at Finding 418 of that same 2019
6 Decision and Order, the Land Use Commission found that it
7 had taken the City approximately 2-1/2 years to site permit
8 and bring into operation the Waimanalo Gulch Sanitary
9 Landfill?

10 A: Correct.

11 Q: And if we look at Finding 424, do you see that
12 the LUC also found that a period of five to seven years was
13 a reasonable time in which a landfill can be sited and
14 developed if the Applicant proceeds with reasonable
15 diligence?

16 A: Yes, I see that.

17 Q: And so lastly, if we look at Finding 425 from
18 that 2019 Decision and Order, do you see that the LUC found
19 that its closure deadline, the most recent and currently
20 applicable closure deadline of March 2, 2028 gives the City
21 more than seven years from that date of that 2019 Order to
22 site and develop a landfill?

23 A: Yes, I can acknowledge that.

24 Q: Would you agree with me that the City did not
25 appeal that 2019 Decision?

1 A: I believe that's correct; yep.

2 Q: So as we sit here today that 2019 Decision is
3 still in effect and still governs the permit that the City
4 has and needs to operate the landfill on agriculture land?

5 A: That's correct.

6 Q: I'd like to look at a status report that the
7 City submitted in June 2020. And this is Exhibit K444, and
8 I've put the relevant portion up on the screen for you. As
9 I said the status report is from June 2020, and so this is
10 after about eight months after the LUC's 2019 Decision and
11 Order. And it talks about the history of an earlier site
12 selection effort. So do you see as part of that discussion
13 the report notes that the City had convened the Landfill
14 Advisory Committee in 2011 and in 2012?

15 A: Correct.

16 Q: And that the City had 11 potential sites
17 identified and ranked by the end of 2012?

18 A: Correct.

19 Q: And further that the City had retained a
20 consultant to review and analyse those sites?

21 A: That's right.

22 Q: And at that report, the consultant's report
23 was issued in 2017?

24 A: Right.

25 Q: Do you have an understanding as to why it took

1 five years for the consultant to issue its report?

2 A: I do not.

3 Q: By the time of the LUC's Order the City had
4 the consultant's report for two years, and by the time of
5 2020, June 2020 status report that we have up on the screen,
6 the City had the consultant's report for almost three years.
7 Do you know why three years after having the consultant's
8 report in hand, the City had still not selected a new site?

9 A: I can't speculate on that.

10 Q: Can you tell us why in the eight years between
11 the end of the Landfill Advisory Committee's work in 2012
12 and the 2020 status report, the City had not selected a new
13 site?

14 A: I can't speculate.

15 COUNSEL HU: Just for the record, Director Babcock
16 was Director of ENV starting from 2022.

17 COUNSEL CHIPCHASE: January 2022, I believe.

18 WITNESS: January, correct; yeah.

19 COUNSEL CHIHCHASE: I have one more to share. I
20 was just telling Chris that because Director's earlier
21 testimony, I could speed up some of the other question.

22 Q: Director, we were talking about the No Pass
23 Zone earlier--I'm sorry, I put on the screen Exhibit K58.
24 I'll give you a moment to read that if you would for me.

25 COUNSEL HU: Counsel, what is K-58, like what's the

1 actual document, instead of just a snip-it that you're
2 showing us?

3 COUNSEL CHIPCHASE: It's from the 2003 Site
4 Selection Committee report.

5 COUNSEL HU: Thank you.

6 COUNSEL CHIPCHASE: You're welcome.

7 [pause]

8 Q: Did you have an opportunity to read that
9 slide, Director?

10 A: Yes.

11 Q: Okay. And Director have you seen this portion
12 of the 2003 report before?

13 A: I've seen this before.

14 Q: So then do you have an understanding that the
15 BWS No Pass Line has been an issue for discussion since at
16 least 2003?

17 A: Yes.

18 Q: And do you have an understanding as reflected
19 in this report that rather than follow the BWS No Pass Zone
20 in 2003, the City developed its own restrictions related to
21 landfill and groundwater contamination based on among other
22 things, discussions with BWS staff?

23 A: I'm sorry, could you restate that again?

24 Q: Sure. Is it also your understanding that the
25 City developed its own less restrictive parameters for

1 evaluating landfill sites impact on groundwater based among
2 other things, discussions with Board of Water Supply staff?

3 A: Yeah. I believe that's what it says there in
4 this Exhibit; correct.

5 Q: And is it also your understanding that those
6 restrictions which the City adopted when siting its landfill
7 were taken into account in the 2011 and 2012 site selection
8 process?

9 A: I believe that is what makes sense. I'm not
10 100% sure on that; yeah.

11 Q: Understood. Is it also your understanding
12 that those City restrictions with respect to site selection
13 or groundwater contamination were also taken into account
14 when the City provided the sites to the 2021 Committee for
15 its consideration.

16 A: I can't say for sure, but I would think they
17 would've been considered

18 Q: Director, I want to talk a little bit
19 about--Well, before I do that you mentioned that in October
20 2022, I believe, you were finally on the Board's agenda to
21 get its official position with respect to its No Pass Zone,
22 correct?

23 A: Correct.

24 Q: And is it your understanding that the Board of
25 Water Supply that is has no authority to determine where a

1 landfill will be sited?

2 COUNSEL HU: Calls for a legal conclusion.

3 COUNSEL CHIPCHASE: I just asked for your
4 understanding.

5 WITNESS: The Board of Water Supply has their own
6 rules and those are different then--What's mentioned here is
7 the UIC line which is a State Department of Health line with
8 respect to, that applies to onsite wastewater disposal
9 essentially and other disposal into generally directing
10 injection into groundwater. So--

11 Q: Let me ask--I'm sorry, please finish.

12 A: I'm finished.

13 Q: Okay. I didn't mean to speak over you. Let me
14 ask it this way. The Board of Water Supply does not have
15 authority to tell the City that it cannot site a landfill in
16 a particular location, do you agree with me?

17 A: I think that's a legal question, and I'm not
18 sure the answer.

19 Q: Fair enough. With respect to reporting, am I
20 correct that the City currently provides reports, public
21 reports on landfill issues including site selection?

22 A: Yes, correct; yeah.

23 Q: And I just don't recall, are those quarterly
24 or annual reports?

25 A: The reports that go to the LUC are

1 semi-annual.

2 Q: And are those reports in writing?

3 A: Yes.

4 Q: Does the City have any objection to providing
5 quarterly reports in-person to the Honolulu Planning
6 Commission regarding its efforts to site any landfill?

7 A: No. We wouldn't object to that.

8 Q: The current petition to amend only relates to
9 the site selection deadline. The City has not sought to
10 change the closure date of March 2, 2028. What does the
11 City need to do from today to meet that closure deadline?

12 COUNSEL HU: Objection. It's kind of beyond the
13 scope about the City's Application and beyond the scope of
14 this hearing.

15 CHAIR MEATOGA III: Sustained.

16 Q: Director, as you could see from the history of
17 it, we recounted, would you understand that some members of
18 the community could be skeptical of the City's intension to
19 site any landfill?

20 A: Siting any landfill is very difficult, and I
21 think the public understands that.

22 Q: Certainly. Do I understand from your
23 testimony that you don't believe that the community in West
24 Oahu has any reason to be concerned about the City's
25 intension to site any landfill?

1 A: They shouldn't have any concern about our
2 intension. Our intension is to site a new landfill as soon
3 as possible and within the requested extension period.

4 Q: Thank you, Director, I have no further
5 questions at this time.

6 A: Thank you.

7 CHAIR MEATOGA III: Thank you. Commissioners, do
8 we have any questions for the witness? Commissioners
9 on-line--I can see, are your cameras on?

10 VICE CHAIR KAMO: No questions at this time, Chair.
11 Thank you.

12 CHAIR MEATOGA III: Okay. Thank you.
13 Commissioner May, I can't see you for some reason?
14 Do you have any questions for the witness?

15 MAY: I do not. Thank you.

16 CHAIR MEATOGA III: Okay. Thank you. Hearing and
17 seeing none, we will now go to re-direct questioning by ENV.

18 COUNSEL HU: Thank you, Chair. May I just have a
19 couple of minutes to just look over my notes, please?

20 CHAIR MEATOGA III: Sure.

21 COUNSEL HU: Thank you.

22 [pause]

23 CHAIR MEATOGA III: If you're ready, please
24 proceed.

25 COUNSEL HU: Thank you.

1

2

E X A M I N A T I O N

3

BY COUNSEL HU:

4

Q: Hi, Director Babcock. I just have a couple follow-up questions after Counsel's questions.

5

6

Counsel mentioned the BWS attending an LAC meeting back in November 2021, do you recall the line of questioning?

7

8

A: Yes.

9

10

Q: So after that meeting--Well, I suppose that during that meeting is that when BWS gave a presentation of--I'm sorry, let me ask you this. At that meeting what did BWS do, if you recall?

11

12

13

A: Yeah. I don't recall all of the specifics, but they expressed their concern about the six sites being evaluated, all being within their No Pass Zone and that could be a risk to potential drinking water supply.

14

15

16

Q: Thank you. And after BWS gave its presentation, was there another presentation given by ENV's consultants?

17

18

A: Yes. So the consultant HDR gave a presentation on landfill requirements for protection of resources including all the requirements for future landfill, municipal solid waste which includes a multi-layer liner system on the bottom, a leached collection system as

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1 well as closure requirements, monitoring requirements of
2 grounwater upstream and downstream. And they also presented
3 the City would design a double layered, a second layer in
4 the landfill liner which is what's required for a Class C
5 hazardous waste landfill in order to offer additional
6 protection or risk reduction.

7 Q: Thank you. And I think you testified this
8 previously, but who permits landfills or which agency
9 permits landfills?

10 A: So it's the State Department of Health, Solid
11 and Hazardous Waste Branch, but there's also air pollution
12 control. We have an air permit and there's also City
13 permits. There's a stormwater permit and building permits
14 during construction.

15 Q: Thank you. I think you mentioned--I'm sorry,
16 this is another topic. Counsel asked you about the status
17 of the discussions with the federal agencies or military and
18 the status of those discussions, and you mentioned you don't
19 know because you said the Mayor or the MD attends those
20 discussions. But are those discussions ongoing or not?

21 A: Yes, they are ongoing.

22 Q: Okay. And do you get briefed by the MD or
23 Mayor concerning at least some details?

24 A: Very limited details but just that discussions
25 are ongoing.

1 Q: Okay. Thank you. And I have no further
2 questions. Thank you.

3 CHAIR MEATOGA III: Thank you. Continuing on.
4 Again, any questions from the Commissioners to the witness
5 before he is excused? Questions?
6

7 E X A M I N A T I O N

8 BY COMMISSIONER KRAUT:

9 Q: Commissioner Kraut. I have a question.
10 I believe it's with regard to the 2017 site selection.
11 You were testifying that HDR did the latest presentation.
12 I was wondering who the consultant was that facilitated the
13 site selection on the previous report, if you have that
14 information?

15 A: I'm sure that I have that information. Yeah,
16 I'm sorry, I don't know the answer to that.

17 CHAIR MEATOGA III: Thank you. Any other
18 questions from the Commissioners on-line, Commissioner May,
19 Vice Chair Kamo?

20 VICE CHAIR KAMO: Not at this time, Chair. Thank
21 you.

22 MAY: None.

23 CHAIR MEATOGA III: Thank you. The witness is
24 excused.

25 Okay. At this time does ENV have any other

1 witnesses that they would like to call for?

2 COUNSEL HU: I'm sorry, Chair, we have no more
3 witnesses to call. Thank you.

4 CHAIR MEATOGA III: Thank you. At this time, we
5 will move forward. Schnitzer, do you have any witnesses?

6 COUNSEL YUAN: Yes. Schnitzer would like to call
7 Nicholas Garolfo.

8 CHAIR MEOTAGA III: Thank you very much, sir.
9 Before you sit down if you could raise your right hand,
10 please?

11

12

NICHOLAS GAROFOLO,

13 called as a witness, being first duly sworn to tell the
14 truth, the whole truth and nothing the truth, was examined
15 and deposed as follows:

16 CHAIR MEATOGA III: Thank you very much. Please
17 proceed.

18

19

E X A M I N A T I O N

20 **BY COUNSEL YUAN:**

21 Q: Good morning, Mr. Garolfo.

22 A: Good morning.

23 Q: My name is Rihui Yuan. For purposes of our
24 discussion today, I'm going to refer to you Schnitzer Steel
25 Hawaii Corp. as Schnitzer, would that be all right with you?

1 A: It's fine.

2 Q: How long have you been in the scrap metal
3 industry?

4 A: About 17 years.

5 Q: And how long have you been working for
6 Schnitzer?

7 A: For Schnitzer since November 2010.

8 Q: And what were you doing prior to beginning
9 work with Schnitzer?

10 A: I worked for another scrap metal recycling
11 company.

12 Q: Could you please tell the Commission what your
13 current role is at Schnitzer?

14 A: Currently I'm the regional general manager for
15 Hawaii.

16 Q: And does that include the Kapolei facility?

17 A: Correct.

18 Q: What are your responsibilities as regional
19 general manager and at the Kapolei facility?

20 A: I oversee all operations in Hawaii,
21 commercially, operationally and financially.

22 Q: Could you describe Schnitzer's operations?

23 A: So what Schnitzer Steel is we're a scrap metal
24 processor. So we take scarp metal from different entities
25 that the community, industry and whatnot, and we process it

1 down, and then we sell to a mill that then creates new steel
2 with it.

3 Q: You talked about taking scrap metal from the
4 community and industry, could you describe what industries
5 and what you mean by community?

6 A: So the biggest producer of scrap metal in the
7 State of Hawaii is actually the City and County of Honolulu,
8 and through few different mechanisms. One is H-POWER.
9 H-POWER is owned by the City and County as far as I know,
10 but it's operated by a company called Covanta, and that's
11 who we deal with. They create a metal waste product, and
12 their product that we take and process. The City and County
13 also has multiple other things that create metal, the
14 convenient centers, Kapaa Transfer Station, Bulky Pick Up,
15 abandoned vehicles, derelict vehicles, turn-over vehicle
16 program. We also take from private industry, demolition
17 jobs, constructions companies, things like that.

18 Q: Thank you. And how much scrap does Schnitzer
19 process per year?

20 A: Around 150,000 tons.

21 Q: How many truck loads is that?

22 A: Depending, it can be anywhere from 7,000 to
23 10,000 truck loads.

24 Q: You discussed earlier that Schnitzer gets its
25 scrap metal from industry, H-POWER, demolition. Did

1 Schnitzer pay for the scrap?

2 A: Yes, we do.

3 Q: And you also mentioned that Schnitzer
4 processes 120,000 to 150,000 tons of scrap annually. What
5 percentage of that is processed and actually diverted from
6 the landfill?

7 A: So when we bring in around 150,000 tons a year
8 we ship out anywhere between 100,000 and 120,000 tons.
9 So it shrinks between 20 and 30% on average. And when I say
10 shrink that means from what we bring in, we process it down,
11 we sell the metal and then the remainder is the waste,
12 that's the shrink I'm referring to.

13 Q: So 20 to 30% would be shrunk down and 70 to
14 80% would be diverted from the landfill, would that be
15 correct?

16 A: Correct.

17 Q: And the 20 to 30% that would be what is called
18 automobile shredder residue?

19 A: Correct.

20 Q: And what is automobile shredder residue or ASR
21 comprised of?

22 A: So we call it ASR. It's an industry term for
23 us. It's not just created from automobiles. It's created
24 from anything that we run through our shredding process.
25 And the residue that you're referring to is anything that is

1 essentially non-metallic. Like if you looked at a car or an
2 appliance there's plastic and rubber and different
3 materials. Our system sorts out the metal and the residue
4 is what's leftover and that would be in that 20 to 30%.

5 Q: And if that's 20 to 30% of 150,000 would that
6 be about 30,000 tons of ASR produced annually?

7 A: Give or take, yes.

8 Q: If I could turn your attention to Exhibit S-3,
9 could you tell us what this document is?

10 A: That's a spreadsheet of what we've shipped out
11 of ASR.

12 Q: And that's for ASR from 2020 to 2023 for
13 Schnitzer's Kapolei facility?

14 A: Correct.

15 Q: Did you prepare this chart?

16 A: My office did.

17 Q: And where did you get the information that is
18 in this chart?

19 A: It gets weighed over a certified truck scale.

20 Q: And based on this chart how many tons of ASR
21 has Schnitzer generated so far this year?

22 A: This chart goes up to July of 2023.
23 Currently, as of year to date yesterday for the current we
24 were just over 21,000 tons.

25 Q: Thank you for the updated figure. And how is

1 this ASR disposed of after it gets shrunk down?

2 A: It's taken to the landfill.

3 Q: And is that because of the solid waste
4 management permit issued by the Department of Health?

5 A: Correct.

6 Q: If I could turn your attention to Exhibit
7 marked S-2, could you tell us what this document is?

8 A: The Solid Waste Management permit.

9 Q: More specifically, could you tell us--

10 A: I'm sorry, that's the one the Solid Waste
11 Management permit in my book.

12 Q: Oh, sorry, we're on S-2, could you tell us
13 about the renewal application?

14 A: Public interest letter.

15 Q: First if we could go to page 3 of S-2. Could
16 you talk about your certification of this renewal
17 application?

18 A: Oh, okay, it's a renewal application.

19 Q: And you signed off on this as general manager?

20 A: Correct.

21 Q: And you reviewed this renewal application
22 before it was submitted?

23 A: Yes.

24 Q: There are a few different attachments to this
25 application. If we could turn to the one marked, Attachment

1 P-2 Public Interest.

2 I'd like to go over some statements with you. It
3 says on the top of the second page, on average SSHIC, that's
4 Schnitzer, exports approximately 100,000 net tons of scrap
5 metal annually. Is that still true today?

6 A: Correct.

7 Q: And on top of the next page it says, SSHIC
8 permits expeditious, competent and permissible removal of
9 end of life vehicles, appliances and other metallic bearing
10 items from back roads and vacant lots. Can you explain more
11 about how Schnitzer's operations reduces illegal waste
12 disposal practices?

13 A: So we're like the end user, like the final
14 outlet for those things to go to get processed. Like I
15 spoke earlier like the City and County produces a lot of
16 scrap. Like one of them is their abandoned vehicle
17 contract. We don't actually tow the cars. The towing
18 company does that but they bring the vehicles, the end of
19 life vehicles to us to be processed.

20 Q: Thank you. If we could turn to the next page
21 of Application P-2, Section 3.0, Alternatives to the
22 Proposed Action. This section discusses the alternatives if
23 the Department of Health did not grant Schnitzer a permit to
24 operate, correct?

25 A: Correct.

1 Q: And in the third paragraph, the first
2 sentence, the Alternative mention is transporting
3 miscellaneous scrap material off island and back to the
4 mainland for shredding is totally unacceptable both
5 environmentally and economically. Can you explain why
6 shipping the scrap off island would be unacceptable
7 environmentally and economically?

8 A: When environmentally it has to be processed
9 down to a certain extent first to get rid of things like
10 gases, fluids and hazardous materials, just stuff like that.
11 Finally it makes no sense. It'd be way too expensive. If
12 you ship a car, a brand new car in here, it's like a
13 thousand dollars a car to ship a waste. That would be
14 similar so you need to process it down to a certain extent
15 to make it, to be able to ship out basically.

16 Q: Thank you. And that's just with respect to
17 the scrap. So what about shipping just the ASR that's been
18 processed, would that be feasible?

19 A: Another thing the cost is extremely high.
20 Also there's environmental concerns and there's also safety
21 concerns.

22 Q: Could you elaborate on the environmental and
23 safety concerns, please?

24 A: So the environmental concerns have to do with
25 as far as my knowledge, the soil and agricultural concerns

1 what not leaving and going to other places. And the safety
2 one is combustion. Sometimes ASR if it's not, you know,
3 spread out and dried out and condensed, it can combust and
4 start a fire. So a lot of the shipping lines won't let you
5 ship it.

6 Q: Thank you for elaborating. And if Schnitzer
7 had to ship ASR off island that would also effect it's
8 current business model of purchasing scarp from businesses
9 and individuals from the island?

10 A: Correct.

11 Q: And how would it impact that?

12 A: The added cost and effort to try to do that
13 would completely change our business model. It would most
14 likely create an environment where it would have to be
15 handled more like waste where you'd have to charge money to
16 accept it versus paying money like we do now.

17 Q: Thank you. And if shipping is not feasible,
18 then is it correct to say that the only economical disposal
19 option for Schnitzer shredder residue is on island?

20 A: Yes, correct.

21 Q: And pursuant to the Solid Waste Management
22 permit, is Waimanalo Gulch the only economical place to
23 dispose of Schnitzer shredder residue?

24 A: Correct.

25 Q: Thank you. If we could move on to that same

1 section in S-2, the next paragraph, the paragraph beginning
2 with likewise. Likewise, disposing of valuable scrap
3 material in the local landfill would unnecessarily consume
4 landfill capacity. So if Schnitzer closes, why would that
5 result in a higher consumption of landfill capacity?

6 A: All the stuff that we take in and process and
7 condense down would essentially have to go to the landfill
8 because there would be no other place to put it. So you can
9 imagine trying to bury a full on icebox or washer and dryer
10 something like that. I don't know compaction of a landfill,
11 but I would imagine that isn't ideal.

12 Q: Thank you. And I'd like to do some show and
13 tell now. If I could refer to the demonstrative A, we have
14 marked as S-7.

15 [Counsel Yuan holds a clear plastic bag bag of
16 material inside.]

17 Can you tell us what this is?

18 A: That is a gallon bag of shredded steal.

19 Q: And this is the shred that you are talking
20 about that gets processed out, is that correct?

21 A: Yeah. Before it was a car and appliance and
22 some light gage. I don't know exactly, obviously what that
23 was but that's what it comes from.

24 Q: And this metal would be shipped off island to
25 third party purchasers who are going to do what with this?

1 A: Correct. It would be shipped to a mill
2 somewhere, usually in Asia to make new steel with.

3 Q: Thank you. If I could refer you to
4 demonstrative Exhibit S-8, can you tell us what this is?

5 A: That is a quart bag of ASR.

6 Q: Thank you. And this is the 20 to 30% that you
7 talked about, I guess filtered out?

8 A: Correct.

9 Q: So basically for every gallon of scrap that
10 Schnitzer processes would actually go the landfill is this
11 quart sized bag?

12 A: Correct.

13 Q: Thanks. If we could turn to Exhibit S-1, can
14 you tell us what S-1 is?

15 A: That's our Solid Waste Management permit.

16 Q: Thank you. And this is addressed to you as
17 general manager of the Kapolei facility?

18 A: Correct.

19 Q: Are you familiar with this document?

20 A: Yes.

21 Q: Can you tell us what this permit allows you to
22 do?

23 A: It's basically our operating permit.

24 Q: So it allows you to operate as a metal
25 recycler?

1 A: Correct.

2 Q: And on the upper right hand header we see
3 there are page numbers. If we turn to page 11 of 21,
4 Section B, titled Operational, Storage, and Processing
5 Requirements for Shredder Yard (Parcel 25), are you there?

6 A: Yes.

7 Q: Can you tell us what this section is and what
8 it says with respect to Schnitzer storing ASR and shred on
9 site?

10 A: So this section goes over what we're allowed
11 to stock pile and store at our facility. The ASR section it
12 says we're allowed to have 200 tons of ASR, and we must ship
13 at least once a week, about ASR once a week to the landfill.

14 Q: Thank you. And so you're referring to Permit
15 Condition 37 on page 12?

16 A: Yes. That's the part that goes over the ASR,
17 correct.

18 Q: Okay. And that says maximum on-site storage of
19 SR shall be limited to 200 tons?

20 A: Correct.

21 Q: If Schnitzer could not dispose of ASR in a
22 landfill how long would it take to reach the 200 tons
23 storage limit?

24 A: Less than a week.

25 Q: And could you tell us why the 200 tons storage

1 limit is provided for in this Solid Waste Management permit.

2 A: I believe for the reasons of combustion and
3 starting fires

4 Q: And that's what you've discussed earlier with
5 respect to ASR cumbusting?

6 A: Yes.

7 Q: Okay. And hypothetically, if the Department
8 of Health waived the 200 tons storage limit because the
9 landfill was not available, how long would Schnitzer be able
10 to operate then?

11 A: No more than probably two weeks.

12 Q: Okay. And then at that point Schnitzer would
13 run out of space?

14 A: Correct.

15 Q: If I could turn your attention back to S-1,
16 page 19, Permit Condition 65. It starts with non-hazardous,
17 non-recyclable materials, and it states that they shall be
18 properly disposed of at a DOH-permitted solid waste disposal
19 facility. What are the DOH-permitted solid waste disposal
20 facility that accepts Schnitzer's ASR currently?

21 A: Currently, just Waimanalo Gulch Landfill.

22 Q: And what options would be available to
23 Schnitzer if the only economical site for disposing of its
24 shredder residue closed without an alternative site?

25 A: What options would be available? I'm not

1 aware of any locally.

2 Q: Thank you. Until Schnitzer has a viable
3 alternative in place, what would happen to Schnitzer's
4 operations if Waimanalo Gulch closed without an alternative
5 landfill in place?

6 A: Within two weeks we'd have to stop accepting
7 material.

8 Q: And that means you would have to stop
9 accepting materials from industry--

10 A: From everyone, H-POWER included.

11 Q: Okay. Thank you for elaborating. And would a
12 cessation of Schnitzer's operations affect the public?

13 A: If we shut down, then the abandoned cars, the
14 derelict cars, the bulky pick up items, the convenient
15 centers, H-POWER, all those places would run out of places
16 to take the metal and essentially I would imagine create
17 dump sites all over the island.

18 Q: And in your 17 to 18 year experiences working
19 in the scrap metal industry, have you ever seen the effect
20 of a landfill closure on a community?

21 A: Not necessarily a landfill closure, but I've
22 seen the effect of a scrap yard closure.

23 Q: And could you elaborate on that?

24 A: Years back on Maui they lost their one scarp
25 yard. I believe it was shut down due to environmental

1 issues, but they did not have one ready to open at the time
2 and massive dump sites started to accumulate all over the
3 island for derelict cars, appliances, anything that was
4 metal.

5 COUNSEL YUAN: Thank you. I have no further
6 questions.

7 CHAIR MEATOGA III: Okay. Thank you very much.
8 ENV would you like to cross examine?

9 COUNSEL HU: No questions from ENV. Thank you.

10 CHAIR MEATOGA III: Okay. Cross examine from KOCA?

11 COUNSEL CHIPCHASE: Yes, please.

12

13

14

E X A M I N A T I O N

15 **BY COUNSEL CHIPCHASE:**

16 Q: Hi. Cal Chipchase. I have just a couple of
17 questions. If I understand your testimony correctly,
18 Schnitzer needs a landfill site on Oahu that is permitted to
19 accept ASR, is that a fair summary?

20 A: Yes.

21 Q: That landfill site doesn't have to be
22 Waimanalo, is that also fair?

23 A: All it needs to be is in our Solid Waste
24 Management permit that we can take it to that facility.

25 Q: Whether that's Waimanalo or some other

1 permitted ASR facility?

2 A: Correct.

3 COUNSEL CHIPCHASE: Okay. No further questions.

4 CHAIR MEATOGA III: Okay. Thank you. Questions
5 from Commissioners?

6 KIMURA: No questions at this time.

7 CHAIR MEATOGA III: Okay. Questions from
8 Commissioners on-line?

9 MAY: None from me. Thank you.

10 VICE CHAIR KAMO: Chair, no questions for me.
11 Thank you.

12 CHAIR MEATOGA III: Thank you. Any re-direct
13 questioning from Schnitzer?

14 COUNSEL YUAN: None for me. Thank you.

15 CHAIR MEATOGA III: Okay. Thank you very much.
16 You are excused.

17 MR. GAROFOLO: Thank you.

18 CHAIR MEATOGA III: Now we have about 5 more
19 minutes before lunch. Do Schnitzer have any other
20 additional witnesses?

21 COUNSEL YUAN: My colleague Ian Sandison will be
22 presenting Schnitzer witness, Scott Sloan.

23 CHAIR MEATOGA III: Okay. Now because we have 5
24 minutes, did you guys want to wait until after lunch to
25 present?

1 COUNSEL SANDISON: Yes. We want to wait after
2 lunch.

3 CHAIR MEATOGA III: Okay. Is that amendable for
4 everyone here?

5 COUNSEL CHIPCHASE: Totally amendable, Chair.
6 Would this be a good time to discuss some housekeeping
7 matters, though?

8 CHAIR MEATOGA III: Sure. Okay. We can do that
9 after recess.

10 COUNSEL CHIPCHASE: Well, the first housekeeping
11 matter is that the Kualoa hearing is slated to begin at
12 1:30.

13 CHAIR MEATOGA III: That is correct.

14 COUNSEL CHIPCHASE: So I didn't want to waste Mr.
15 Sandison's witness time if they won't be able to present at
16 that time.

17 CHAIR MEATOGA III: I see. From the planning
18 perspective, we currently have one more meeting scheduled
19 for November 1st for this meeting.

20 We do have on our docket as well the next case
21 that is before the Planning Commission which is Kualoa
22 Ranch. Looking at the time wise we have slated for 1:30.
23 We can push on until--I mean, after lunch push until 1:30.
24 We could probably push it to may be 2 and after that
25 reconvene on November 1st.

1 COUNSEL SANDISON: We think this witness will go
2 fairly quickly. He has flown in from the mainland, and if
3 we can, we'd like to get through him today simply because I
4 don't know his availability for the next day.

5 COUNSEL CHHIPCHASE: And I totally understand
6 that. Would it then be acceptable for us to reconvene at 1?

7 CHAIR MEATOGA III: Yes.

8 COUNSEL CHIPCHASE: Very good, Chair.

9 CHAIR MEATOGA III: All right. Thank you,
10 everyone. We will recess for lunch and reconvene at 1.

11 [Lunch recess.]

12 CHAIR MEATOGA III: Thank you very much. We would
13 like to reconvene from our recess to continue our Planning
14 Commission meeting. The time is now 1:01.

15 Where we left off with our second witness from
16 Schnitzer. Sorry, sir, if you could please stand.

17
18 **SCOTT SLOAN,**
19 called as a witness, being first duly sworn to tell the
20 truth, the whole truth and nothing but the truth, was
21 examined and deposed as follows:

22 CHAIR MEATOGA III: Thank YOU. All right. Please
23 proceed.

24
25 **E X A M I N A T I O N**

1 **BY COUNSEL SANDISON:**

2 Q: Could you please state your full name?

3 A: Scott Bradley Sloan.

4 Q: And where do you work?

5 A: I work for Schnitzer Steel Industries Inc.

6 Q: And how long have you been in that position?

7 A: I've been at the company for 15 years. I've
8 been in my current position for 10.

9 Q: And could you describe the various positions
10 you've held at Schnitzer?

11 A: Yeah. I joined the company in 2008 as the
12 regional environmental manager in charge of Washington,
13 Montana and Alaska. In 2010 I was promoted to the metal
14 recycling business environmental director position. In 2014
15 I was promoted to the corporate environmental vice president
16 position.

17 Q: Could you briefly describe the scope of work
18 in your current position?

19 A: Yeah. I currently manage a staff of seven who
20 primarily oversee environmental engineering for capital
21 projects, major environmental remediation projects,
22 superfund the big legacy cleanups. Also have folks that
23 manage corporate programs for development and implementation
24 on corporate policy, and I have a group of senior
25 environmental managers reporting to me that provide

1 compliance assurance and governance over the company's
2 operating facilities.

3 Q: Thank you. Could you explain the relationship
4 between Schnitzer Industry and the intervenor here today,
5 Schnitzer Steel Hawaii Corp.?

6 A: Yes. Schnitzer Steel Hawaii Corp, is a wholly
7 owned subsidiary of Schnitzer Steel Industries Inc.
8 Operates essentially independently here in the Hawaiian
9 islands with our facility in Kapolei, the main facility with
10 the metal shredding process, and the smaller feeder yard in
11 Puunene on Maui.

12 Q: And could you briefly explain your role with
13 respect to ASR, Automobile Shredder Residue generated at
14 Kapolei?

15 A: Yeah. I've been involved in assisting the
16 Schnitzer Steel Hawaii Corp. efforts for with ASR disposal
17 since I became metal recycling business national director in
18 2010 and have been looking to find alternatives to landfill
19 disposal. It's one of the company's mission is to be
20 sustainable, and we looked at one option with H-POWER and
21 Covanta in detail in 2013 through 2015, and we're continuing
22 to look at other options involving turning the ASR into an
23 alternative fuel.

24 Q: Could you briefly describe what those other
25 options are?

1 A: Yeah. So we're currently very closely engaged
2 in an effort with a major foreign automobile manufacturer
3 who's implemented this technology successfully in other
4 countries to take out some of the, I think it's plastics for
5 recycling from the ASR and the remainder of it can be turned
6 into briquettes which are essentially service an alternative
7 fuel source, an alternate to metallurgical in the steel
8 manufacturing process. And that's one option that we're
9 engaged in.

10 We're also looking at gasification where the
11 material has certain parts of it separated and then the
12 remainder is placed in a pressure vessel where it's
13 subjected to heat and pressure and converted to a gaseous
14 fuel.

15 And there's a similar process called pyrolysis
16 where the material can be converted into an alternate liquid
17 fuel.

18 So we're looking at all three of those alternatives right
19 now.

20 Q: Is it true that in the past Schnitzer has
21 looked at disposal, automobile shredder residue in municipal
22 waste energy facilities throughout the United States?

23 A: We have, but those efforts have been mostly
24 closely focused here in Hawaii.

25 Q: And could you describe Schnitzer's attempts to

1 work with the waste energy facility here in Hawaii?

2 A: Yes. So from 2013 to 2015 we worked together
3 with Covanta Honolulu Resource Recovery Venture to try and
4 come up with a method of approving ASR for disposal at the
5 H-POWER facility. It's in their permit that they're allowed
6 to take ASR down to the percentage, how it has to be blended
7 with municipal solid waste. And so it was an option that
8 was very attractive to us, and so we helped educate the
9 Covanta folks who operate the H-POWER plant, that's the
10 relationship. The plant is owned by the City and County,
11 but it's operated by Covanta. We educated them on what ASR
12 is, how it's produced.

13 Our efforts to keep hazardous materials out of it
14 and our confirmation efforts to periodically test it to make
15 sure it doesn't have hazardous concentrations of certain
16 components. And they did some test runs with the
17 concurrence of the Hawaii Department of Health both solid
18 waste and clean air branch. And the efforts didn't come to
19 fruition but over a three-year period we worked very closely
20 with them to see if we could come up with that as a
21 solution.

22 Q: Thank you. I'd like to turn your attention to
23 Exhibit S-9. Could you briefly review that and describe
24 that document to us?

25 A: Yes. S-9 is a Confidentiality Agreement that

1 we entered into with CHRRV, Covanta, in 2013 at the
2 beginning of cooperative efforts to find a solution. We
3 were going to share information with them about our
4 processes and our materials, and they were going to share
5 information with us on their permits and their processes.
6 So we did it through a Confidential Information Agreement,
7 and I might note that this Agreement has expired.

8 Q: Can I turn your attention to Exhibit S-10,
9 could you briefly review that and explain that document?

10 A: Yes. Exhibit S-10 is a presentation that
11 Schnitzer prepared to educate Covanta on shredder residue,
12 how it's produced, what the composition of it is, the source
13 control efforts that we undertake to keep hazardous
14 materials out of it, and then the efforts that we implement
15 to do periodic testing to ensure that there aren't hazardous
16 components in the shredder residue and just essentially to
17 get them comfortable with the material. And also a review
18 of the data over a three-year period demonstrating the
19 material is in very good shape for these purposes.

20 Q: Can I turn your attention to Exhibit S-11.
21 Could you review that and briefly explain what this document
22 is?

23 A: Yes. S-11 is an inter-office memo from
24 Covanta, CHRRV folks. Kind of beginning the process often
25 middle of 2013 to educate their management on some of the

1 potential concerns from their standpoint.

2 There could be concentrations of PCB and heavy
3 metals in the auto shredder residue that would be concerning
4 to them. They also mentioned some concerns about mercury,
5 and the memo goes on to list out some proposals that they
6 had for coming and auditing our facility to make sure PCB
7 articles are segregated from the scrap before it comes in.

8 Mercury switches are identified and removed and
9 also making sure that our disposal methods for PCB articles
10 and mercury switches are correct.

11 Q: Thank you. Would you please turn your
12 attention to Exhibit S-12, and can you tell us what this
13 document is?

14 A: Yes. This is a letter to our scrap metal
15 suppliers that was issued as part of a broader program. We
16 implemented what were called the Institute for Scrap
17 Recycling Industries Voluntary Procedures for Plastic
18 Recycling. It's a long name, but it's essentially it's a
19 set of procedures that our industry group came up with for
20 plastic recycling to make sure the PCBs were
21 appropriately controlled and were not present in
22 concentrations that would be problematic.

23 And this set of procedures, and we'll call it the
24 voluntarily procedures from here on out had been further
25 extended to combustion and incineration of auto shredder

1 residue because the concerns were the same that PCBs be
2 controlled and not be present.

3 This letter is a compliance component of those
4 voluntary procedures to make sure that all of our suppliers
5 understand what their role is in keeping PCB articles and
6 PCBs in general out of the scrap string.

7 Q: Thank you. Could you turn attention to
8 Exhibit S-13 and describe this to us?

9 A: Yeah. This is a really key component of our
10 work with Covanta. There had been a proposal in the
11 mainland to incinerate auto shredder residue as a fuel for
12 cement kilns. And one of our competitors had approached
13 Environmental Protection Agency to seek their approval of
14 that process, and that was the initial effort that cited the
15 voluntary procedures for plastics recycling as being
16 sufficient to also ensure PCBs were appropriately controlled
17 for combusting ASR.

18 And so Covanta and Schnitzer jointly retained the
19 attorney at Lowenstein Sandler to write a letter
20 specifically outlining what our plan was for H-POWER and
21 seeking the same approval from the National Program
22 chemical's division at EPA headquarters to implement the
23 proposal to incinerate ASR at H-POWER. And the proposal was
24 approved with some conditions, but it was well received.

25 Q: Let's move on to Exhibit S-14, could you

1 describe that document, please?

2 A: Yes. This is the approval that I just
3 referenced coming from Tanya Mottley at USEPA, and she
4 basically said that if we implement the voluntary procedures
5 for plastics recycling that the same conditions were present
6 in our proposal that were in the previous one for combusting
7 and cement kiln on the mainland.

8 Q: Thank you. Now can we turn to Exhibit S-15,
9 and can you describe that document?

10 A: Yes. This a follow-up letter from the HDOH,
11 Clean Air Branch to CHRRV after our meeting expressing their
12 potential concerns about the proposal that we had. And
13 their primary concerns were No. 1, the control of PCB and
14 heavy metal content in the ASR. Also they wanted to confirm
15 that Covanta--If this proposal moved forward would blend the
16 ASR at the proper percentage that's called out in their air
17 permit. And they also were questioning whether or not a
18 source testing would be conducted as a pilot test to take
19 air samples from the stack at H-POWER to make sure that the
20 emissions were in compliance with their permits.

21 Q: Could I turn your attention to Exhibit S-16,
22 please?

23 A: Yes. So, this is the broader document that I
24 referred to previously with the supplier letter. This is
25 our guide book and program for implementing the voluntary

1 procedures at the Kapolei facility. We had this prepared by
2 a consultant who is very astute in these matters, and it's
3 essentially our playbook on how to implement the procedures
4 properly and retain the--So that the facilities operated in
5 accordance with the conditions the EPA would expect and are
6 referenced in the approval letter from USEPA.

7 Q: Thank you. Now I ask you to turn your
8 attention to Exhibit S-17, and could you describe this
9 document to us?

10 A: Yes. This document is a response to Exhibit
11 S-15 which is the Clean Air Branch's expression of potential
12 concerns about the issue. The issues related to burning
13 ASR. And they take all of the potential concerns that were
14 voiced by HDOH Clean Air Branch, and they address them one
15 at a time, and they essentially conclude that the concerns
16 are valid but there are ways that we intend to manage the
17 process cooperatively between us and Covanta to make sure
18 that all of the potential concerns are appropriately
19 addressed.

20 Q: Could I ask you to review Exhibit S-18 and
21 describe that?

22 A: Yes. S-18 is another individual component of
23 the voluntary procedures. This is an audit. The voluntary
24 procedures require a third-party audit be conducted once per
25 year, and this is that first third-party audit that was

1 conducted by the same environmental consulting firm that
2 wrote the voluntary procedures document for us. This was
3 completed in August of 2015.

4 Q: Thank you. Could you turn your attention to
5 Exhibit S-19 and describe that document?

6 A: Yes. S-19 is a submittal letter for a source
7 testing results. And by source testing I mean the
8 analytical results from the samples that were taken from the
9 stack at the H-POWER plant in July 2015, and there were
10 samples collected both when the boilers were burning ASR and
11 when they were not.

12 The data is presented and reports that are
13 attached to this letter, and the reports essentially show
14 that the emissions were in compliance during all the tests
15 for all three burn units, both when they were and were not
16 burning ASR.

17 There were some slight variations but nothing that
18 would indicate big differences. And one of the things
19 that's indicated in the cover letter is that Covanta was
20 going to continue to evaluate this process, but there were
21 some operational issues during the ASR process during the
22 test period.

23 Q: After going through all of this efforts, what
24 became of the notion of burning ASR at the H-POWER?

25 A: I think the statement in this letter

1 submitting the source test results is probably the biggest
2 clue that we have.

3 Covanta did explain to us that there had been
4 operational issues that were leading them kind of away from
5 the proposal. And at the end of 2015 it sort of went off
6 into the ether and there haven't been any discussions since
7 then. They didn't seem interested in continuing to pursue
8 incineration or shredder residue.

9 Q: Thank you. Can I turn your attention now to
10 Exhibit S-5.

11 A: Yes. This is a printout of a webpage
12 describing an advance energy project credit program from the
13 federal government. This is part of the Biden
14 Administration Infrastructure Bill where tax credits are
15 available for companies who implement energy, conservation
16 programs and also greenhouse gas emission reduction
17 programs. This is just a background document on that
18 program right there.

19 Q: And is it fair to say that Schnitzer has
20 devoted and continues to vote substantial efforts to finding
21 an alternative to disposal of ASR in the Waimanalo Gulch
22 Landfill?

23 A: Absolutely. We have a team of folks that's
24 lead by our chief sustainability officer and involves some
25 very high level engineers that are working on the three

1 proposals that I mentioned earlier. The briquetting of ASR
2 to produce an alternative to metallurgical coal for steel
3 manufacturing and also the production of alternative gaseous
4 fuel and liquid fuel.

5 Q: Is it also fair to say that as of now there is
6 no alternative to disposal of ASR in Waimanalo Gulch
7 Landfill?

8 A: As of right now there is not.

9 COUNSEL SANDISON: No further questions. Thank
10 you.

11 CHAIR MEATOGA III: Okay. Thank you very much.
12 ENV would you like to cross examine the witness?

13 COUNSEL HU: No questions from ENV. Thank you,
14 Chair.

15 CHAIR MEATOGA III: KOCA, would you like to cross
16 examine?

17 COUNSEL CHIPCHASE: No questions, Chair.

18 CHAIR MEATOGA III: Okay. Do I have questions
19 from Commissioners? Questions from Commissioners on-line?

20 VICE CHAIR KAMO: No questions, Chair. Thank you.

21 MAY: Me neither.

22 CHAIR MEATOGA III: Okay. Thank you very much.
23 You're excused. All right. So we're at 1:20 everyone. So
24 we will be continuing on in our agenda.

25 Just wanted to make sure on the timing for our

1 continued meeting. We do have November 1st listed there.
2 Did we want to explore other scheduling options or
3 concurrent hearings that may be needed?

4 COUNSEL CHIPCHASE: Chair, if I may, does
5 Schnitzer have any further witnesses?

6 COUNSEL SANDISON: No. Schnitzer rests.

7 COUNSEL CHIPCHASE: Chair, we have four witnesses.
8 I expect examination not to take more than collective 2
9 hours. What time are we set to begin on the 1st?

10 CHAIR MEATOGA III: I believe 1 o'clock.

11 COUNSEL CHIPCHASE: I believe, Counsel and Chair
12 and members that's adequate to conclude this hearing. Does
13 anyone feel differently.

14 COUNSEL SANDISON: No objection.

15 COUNSEL HU: No objection.

16 COUNSEL CHIPCHASE: So, I would say optimistically,
17 Chair, we stick to November 1st at 1 o'clock, and we look to
18 conclude that day.

19 The last matter that I have--I know the Chair
20 sustained the objection to my question to Director Babcock
21 regarding the steps required to--from here to site and
22 develop a new landfill.

23 With respect and in light of the roughly 50
24 minutes of testimony from Schnitzer that it needs some
25 landfill somewhere. I do believe that my one question to

1 Director Babcock is now relevant that was admitted without
2 objection from the City. And since Director Babcock is
3 here, I would with respect to ask to call him, ask that
4 single question, and then at the next hearing move onto my
5 other witnesses.

6 CHAIR MEATOGA III: Do we have any objections?

7 COUNSEL HU: Sorry. What's your single question?

8 COUNSEL CHIPCHASE: The question you objected to
9 was, what's steps are required to site and develop. What
10 does ENV need to do from here to site and develop a new
11 landfill? You objected that as beyond the scope. Chair
12 sustained the objection. But in light of Schnitzer's
13 testimony that it needs a landfill somewhere. I believe
14 that question is relevant, and I'd ask to be able to ask the
15 Director that question and only that question, and then to
16 move on.

17 CHAIR MEATOGA III: I thought I sustained the
18 objection to asking Director Babcock, why they would not
19 pursue amending Bill 75?

20 COUNSEL CHIPCHASE: You asked me to rephrase,
21 which I did.

22 CHAIR MEATOGA III: Right. Okay.

23 COUNSEL OHIPCHASE: It was a separate question
24 that the objection was sustained, and that was the steps
25 required to develop, from here to develop the landfill.

1 CHAIR MEATOGA III: ENV?

2 COUNSEL HU: I thought your question was about
3 closure deadline?

4 COUNSEL CHIPCHASE: Yeah. So the specific
5 question, what does ENV need to do from here today to meet
6 the closure date which is site a new landfill, right?
7 If you want me to rephrase it I'm happy to, but that, the
8 idea of what's necessary to meet that date or what is
9 necessary to site and develop a landfill was the substance
10 of my question.

11 COUNSEL HU: So ENV is going to object to this
12 reopening.

13 COUNSEL CHIPCHASE: And I would say, I would have
14 not brought it up again, Chair, if Schnitzer had not,
15 without objection from ENV spent 20 minutes or 50 minutes
16 talking about its need for someplace to put ASR.

17 CHAIR MEATOGA III: Would it be possible to
18 rephrase that question?

19 COUNSEL CHIPCHASE: I think--I mean, I can
20 rephrase what was written, and it would simply be standing
21 where we are today.

22 Director, what steps are necessary to site and
23 develop a new landfill to replace Waimanalo?

24 COUNSEL HU: Again, ENV's Application here--I feel
25 like I'm repeating our Application and what I've said. It's

1 merely the two-year request, and I know Counsel is saying
2 that whatever Schnitzer testified opens the door. I don't
3 think it's relevant to what ENV has been testifying. I
4 guess I just continue my objection in recalling Dr. Babcock.

5 CHAIR MEATOGA III: Okay. You discontinue your
6 objection?

7 COUNSEL HU: I continue.

8 CHAIR MEATOGA III: Oh, you continue. It seems
9 like you're asking for specific steps, is that correct?

10 COUNSEL CHIPCHASE: Just whatever the Director
11 understands on his own sitting here today.

12 CHAIR MEATOGA III: I believe if it's in general
13 terms to his understanding, then I will allow it.

14 COUNSEL CHIPCHASE: Thank you, Chair. And for our
15 first witness, then I'll like to recall Director Babcock.

16

17 E X A M I N A T I O N

18 (Recall of ROGER BABCOCK, JR.)

19 BY COUNSEL CHIPCHASE:

20 Q: Director, I don't believe you still need to be
21 sworn in. Do you understand you're still under oath?

22 A: Yes.

23 Q: Very good. Director, I know you've heard that
24 colloquy. But for the record I would just ask you, your
25 understanding as we sit here today in October 2023, what

1 steps are necessary to site and develop a new landfill so we
2 can replace Waimanalo Gulch?

3 A: I'll answer that question. So there are
4 several steps. The first step would be to identify a viable
5 site that is possible for us to take the next steps which
6 would be to do an environmental documentation, environmental
7 impact statement process, which in of itself involves
8 several studies that has to be done and put together, public
9 meetings and things like that. That needs to get approved.

10 At the same time we would be pursuing if its
11 property that has be purchased, we would be initiating that
12 process, then we would need to concurrently or at the same
13 time we would be going through--We would be having a
14 landfill design, and so we would be contracting that with a
15 design firm, and then we would need to get, potentially need
16 to get building permits for that construction, and then
17 construction would have to happen before we'd be able to
18 open the landfill.

19 Would also, you know, the solid waste permit would
20 need other permits from, would need to be obtained or
21 amended in order for that to be able to open.

22 So I believe those are the steps, pretty much all
23 the steps that would need to be taken.

24 COUNSEL CHIPCHASE: Thank you, Director, no
25 further questions.

1 CHAIR MEATOGA III: Okay. Thank you.

2 DIRECTOR BABCOCK: Thank you.

3 CHAIR MEATOGA III: Okay. We will reconvene,
4 continue on with this portion of the meeting on November
5 1st.

6 COUNSEL CHIPCHASE: Very good, Chair.

7 CHAIR MEATOGA III: Thank you, everyone.

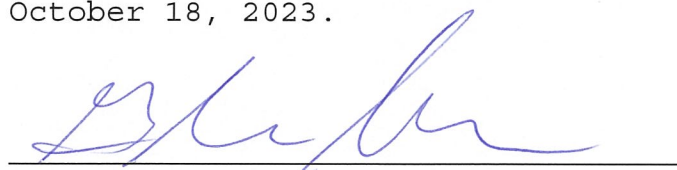
8 [Meeting adjourned]

9

10 I certify that the foregoing is
11 a true and correct transcription
12 of the proceedings, prepared to
13 the best of my ability, of the
14 meeting held on Wednesday,
15 October 18, 2023.

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Gloria Takara

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Secretary-Reporter

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Planning Commission

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