

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 1:00 p.m., on November 1, 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 JEFRREY 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

25

1 Appearances (cont'd):

2 For Ko Olina Community Association and Senator Maile

3 Shimabukuro:

4 CALVERT G. CHIPCHASE, ESQ.

5 CHRISTOPHER T. GOODIN, ESQ.

6 KATHERINE E. BRUCE, ESQ.

7 Cades Schutte LLP

8 Cades Schutte Building

9 1000 Bishop Street, Suite 1200

10 Honolulu, Hawaii 96813

11

12 For Schnitzer Steel Hawaii Corp.:

13 IAN L. SANDISON, ESQ.

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

15 RIHUI YUAN, ESQ.

16 Watanabe Ing LLP

17 First Hawaiian Center

18 999 Bishop Street, Suite 1250

19 Honolulu, Hawaii 96813

20

21

22

23

24

25

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESS: KEN WILLIAMS

Counsel Chipchase ..... 8

Counsel Hu ..... 27

Planning Commission ..... 28, 29

WITNESS: DWIGHT MILLER

Counsel Chipchase ..... 30, 45

Counsel Hu ..... 42

## 1 CONTESTED CASE HEARING

2

3

4

5

6

7

8

9

10

11

12

CHAIR MEATOGA III: Aloha, everyone. Welcome fellow Commission members to the November 1st, 2023 meeting of the Planning Commission. For our listeners and for the record I'm Chair Pane Meatoga III. The following members are physically present here in the Mission Memorial Auditorium. Commissioner Kai Nani Kraut, Commissioner Joy Kimura and myself. On remote we have Vice Chair Ryan Kamo and Commissioner Melissa May. Vice Chair Kamo and Commissioner May, could you please open your camera. Thank you.

13

14

15

And for the record, can you confirm that if anyone else is present with you at your remote location? If you can unmute yourselves and let us know. Thank you.

16

17

VICE CHAIR KAMO: I can confirm I'm alone at my remote location.

18

19

20

CHAIR MEATOGA III: Commissioner May? Sorry, looks like we have you on mute as well. Could you please confirm? Commissioner May, can you hear me?

21

22

MAY: Yes. I'm sorry, my audio was not working for a minute there. I'm here now.

23

24

25

CHAIR MEATOGA III: Please confirm you're alone?

MAY: Yes. Commissioner May, I'm here and alone.

CHAIR MEATOGA III: Thank you very much. And for

1 the record we do have a quorum of five. Present here today  
2 is the Planning Commission and DIT staff to manage and  
3 support the WebEx audiovisual platform. Also joining with  
4 us today is the Commission attorney, deputy corp counsel  
5 Rozelle Agag.

6 COUNSEL AGAG: Good afternoon, Chair and  
7 Commissioners.

8 CHAIR MEATOGA III: Couple of housekeeping  
9 matters. For those present here in the Auditorium, the  
10 bathrooms are located in the next building in Honolulu Hale;  
11 3:30 p.m. King Street becomes a tow away zone; and we have  
12 the Auditorium until 6:30 p.m. today.

13 At this time I'd like to officially open the  
14 hearing. For the record, it is now 1:06 p.m. And just as a  
15 reminder for us Commissioners, we need to identify ourselves  
16 first before we speak or make any motions. This meeting is  
17 being audio-visually recorded which will be posted at a  
18 later date.

19 With that being said, first item on the agenda is  
20 the continued contested case hearing for Waianae State  
21 Special Use Permit, 2008/SUP-2, Waimanalo Gulch Sanitary  
22 Landfill.

23 Good afternoon everyone. Please make your  
24 appearances for the record starting with ENV.

25 COUNSEL HU: Good afternoon. Deputy corporation

1 counsel Jeffrey Hu and Kamilla Chan for ENV, and with us is  
2 ENV deputy director Michael O'Keefe.

3 CHAIR MEATOGA III: Okay. Thank you. We will move  
4 to Schnitzer.

5 COUNSEL TAM-SUGIYAMA: Hi. Joyce Tam-Sugiyama, and  
6 with me are Rihui Yuan and Ian Sandison for Schnitzer Steel.

7 CHAIR MEATOGA III: Thank you. And KOCA.

8 COUNSEL CHIPCHASE: Chair, Commission members, good  
9 afternoon. Cal Chipchase and with me are Chris Goodin and  
10 Kathy Bruce for Ko Olina Community Association and Maile  
11 Shimabukuro.

12 CHAIR MEATOGA III: Okay. Thank you. Before we  
13 begin, does anyone have any housekeeping matters that they  
14 would like to discuss?

15 COUNSEL CHIPCHASE: I'll offer, Chair, just for  
16 planning purposes. I intend to call two witnesses, total  
17 direction examination should be less than an hour.

18 CHAIR MEATOGA III: Okay. Thank you.

19 COUNSEL TAM-SUGIYAMA: Nothing from Schnitzer.

20 CHAIR MEATOGA III: ENV?

21 COUNSEL HU: Oh, nothing. Sorry, Chair.

22 CHAIR MEATOGA III: Okay. Thank you. Let's begin.

23 KOCA, please present your first witness.

24 COUNSEL CHIPCHASE: Thank you, Chair. I call Ken  
25 Williams.

1 CHAIR MEATOGA III: Okay. Mr. Williams, please  
2 come right over here and before you sit down let me just put  
3 you under oath. Please raise your right hand.

4

5

**KEN WILLIAMS,**

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

9

CHAIR MEATOGA III: Thank you. Please be seated.

10

11

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

12

**BY COUNSEL CHIPCHASE:**

13

Q: Ken, would you just state your name one more  
14 time for the record for me?

15

A: My name is Ken Williams.

16

Q: What's your position, Ken?

17

A: My position is the general manager of the Ko  
18 Olina Community Association.

19

Q: And what is the Ko Olina Community Association  
20 or KOCA?

21

A: KOCA, Ko Olina Community Association is a  
22 master association for Ko Olina Resort, a master plan resort  
23 community comprised of residential resort, commercial and  
24 recreational uses.

25

Q: And how many members are part of KOCA?



1           A: We have quite a few members. Resident wise we  
2 have about 3,000, and then we have numerous owners of the  
3 various hotel, commercial and commercial lots. We have  
4 about 4,000 to 5,000 per day at our hotels, not counting the  
5 golf course and the marina. And we also have a large base  
6 of owners in our timeshare system, tens of thousands that  
7 are all Ko Olina Community Association members, and I'm here  
8 today speak on behalf of everyone at KOCA.

9           Q: Okay. So your representation of KOCA's  
10 representation includes even the 3,000 or so full-time  
11 residents at Ko Olina?

12           A: Yes.

13           Q: And how long have you been with with Ko Olina?

14           A: Started in Ko Olina in September of 1989. I  
15 was hired by Herbert Horita at the time to be his project  
16 manager, to develop the infrastructure for West Beach  
17 Estates. I've been there every since. I moved to a more  
18 administrative position in the later years to help manage  
19 the property after this development.

20           Q: And help orientate us. Where is Ko Olina  
21 relative to the landfill?

22           A: Ko Olina is located directly across Farrington  
23 Highway.

24           Q: Why is Ko Olina or KOCA participating in these  
25 proceedings involving the landfill?

1           A: Well, we've been participating in these  
2 proceedings for quite a while now, and it's important that  
3 we continue to at least show our side of the story here.

4           This landfill has been open since 1989. We have  
5 gone through several extensions and expansions over the  
6 years. Here we are, I don't know some 34 years later or 30  
7 years later, and that's why I'm here.

8           The impacts of the landfill still are felt by Ko  
9 Olina Resort members as well as the larger community.

10          Q: And larger community you're talking about the  
11 Leeward coast community?

12          A: Yeah, it stretches. You know, I can stretch  
13 that all the way from Ewa to Kaena Point. It's a big swathe  
14 of land, I know, but there are a lot of impacts not only  
15 centered in and around the landfill, but there's a lot of  
16 transit on the freeway, whatnot.

17          Large garbage spill yesterday. I wish I took a  
18 picture of it but it happens quite often.

19          Q: Ken, I know you've mentioned that you've been  
20 participating in these proceedings for years. About how  
21 long has Ko Olina been involved in proceedings involving the  
22 landfill?

23          A: 10, 15 years I would say. I think we  
24 intervened in about--I'm not sure, 15 years.

25          Q: 2007 sound about right?

1           A: Yes, it does. Thank you.

2           Q: And you mentioned Ko Olina members or KOCA's  
3 members as well as the community. Has anyone else  
4 intervened as participating in these proceedings?

5           A: Yes. Senator Maile Shimabukuro has  
6 participated in the proceedings and has been a strong  
7 advocate for our community.

8           Q: And if I suggest that she intervened more than  
9 10 years ago originally, does that sound about right to you?

10          A: Yes, it does, absolutely.

11          Q: Beyond the senator and the Ko Olina community,  
12 have other residents of the Leeward coast also spoken out in  
13 opposition to the continued operation of the landfill?

14          A: Absolutely, hundreds have spoken out  
15 throughout the community, not only Ko Olina; yes.

16          Q: Ken, I'm going to put up on the screen what  
17 have been admitted as Exhibits K266 to K281 and K283 to  
18 K355. Ken, what do these exhibits represent?

19          A: These represent, I believe a lot of emails and  
20 communications from concerned residents and community  
21 members for the closure of the landfill.

22          Q: And collectively when you say closure, do you  
23 mean any further delay in closing the landfill?

24          A: That's correct; yes.

25          Q: I want to put another letter up on the screen,

1 Ken, and that's Exhibit K282. What do we have here, Ken?

2 A: That's a letter I submitted in May 2023 urging  
3 the Planning Commission to tighten the oversight on the  
4 alternatives landfill selection process. ENV has been  
5 trying to do this for many decades now and just trying to  
6 get more monitoring and maybe a little more push so that we  
7 can another landfill selected.

8 Q: And, Ken, is this the first time you've  
9 written urging more oversight or tightening the reigns, if  
10 you will, on the selection of a new landfill?

11 A: No. I definitely have commented and written  
12 letters on this before.

13 Q: And what about the community opposition, is  
14 this the first time you've seen community opposition to the  
15 continued operation of the landfill?

16 A: No. This has been pretty consistent through  
17 the years of us being in front of various forums like the  
18 Planning Commission and the Land Use Commission.

19 Q: Ken, based on your involvement in these  
20 proceedings since 2007 in your position with KOCA, what  
21 would you say the consensus of the KOCA members and the  
22 wider communities with respect to the landfill?

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

24 Q: Yeah. So if you look back at your history in  
25 being involved in the landfill 16 years now, and you think

1 about your position in Ko Olina being involved there now, 34  
2 years, what would you say your understanding of the  
3 consensus within Ko Olina and the broader community is  
4 regarding the continued operation of the landfill?

5 A: Well, we definitely want those promises kept;  
6 the promise to cease operations up there, and I don't think  
7 that sentiment has waned at all through the years. In fact,  
8 it's probably strengthened as there is now another request  
9 for an extension to site a landfill.

10 Q: Let's look a little bit of that history you  
11 mentioned, Ken. So we put up on the screen a beginning of a  
12 timeline, and you talked your relationship with Ko Olina,  
13 how long you've worked there. Am I correct that the vision  
14 for Ko Olina as a resort community dates back to the early  
15 1980s?

16 A: Yes, exactly. That's when, I think Herbert  
17 Horita got the vision, and then he started permitting. I  
18 didn't start until '89, so I caught really the tail end of  
19 the development of the construction but he still was a major  
20 portion. And, yes, we've been there since then.

21 Q: And so you caught the tail end in '89,  
22 somewhere right then the development of Ko Olina began in  
23 the '80s and then continued through the '90s and even into  
24 the 2000s?

25 A: Well, I can say for sure the infrastructure

1 started in 1986. That would've been all the roadways, the  
2 reservoirs, the lights, all that stuff you see up there  
3 right now along with the lagoons and the marina. That was  
4 all constructed within three years between 1986 and 1989.  
5 And then construction started on the various improvements,  
6 you know whatever the market could bear, and we started  
7 development in earnest.

8 Q: And as far as the landfill, am I correct that  
9 it was permitted in 1987?

10 A: Correct.

11 Q: And it began operations in 1989?

12 A: Correct.

13 Q: When it began operations, when it was  
14 permitted, what was the anticipated to represent life of the  
15 landfill going to be?

16 A: Eight years.

17 Q: So when permitted and opened the expectation  
18 was that it would close by 1997, is that right?

19 A: Absolutely correct.

20 Q: So then the landfill was supposed to have  
21 closed while Ko Olina was still in development, is that  
22 right?

23 A: Yes.

24 Q: Did the landfill close in 1997?

25 A: No, it did not.

1 Q: What happened after 1997?

2 A: I believe there was an extension.

3 Q: Okay. And that extension, if I have it right,  
4 was in 2003 as the landfill was approaching capacity?

5 A: That's correct.

6 Q: And when the expansion was proposed in 2003,  
7 was there community opposition to it?

8 A: Yes. There was very much so as strong--I  
9 think it was stronger then now because the long period of  
10 time that has passed.

11 Q: And the initial proposals for the expansion,  
12 am I correct, that the City proposed 15 years?

13 A: Yes, that's correct.

14 Q: And did the community push back on a 15-year  
15 expansion?

16 A: Yes. They did very hard, I think to the point  
17 where that expansion only ended up at 5 years.

18 Q: And was that 5-year expansion term something  
19 that was a compromise between the City and the community?

20 A: Right. It was pretty much promised that we  
21 would be heading towards the closure date if we agreed to  
22 that five-year.

23 Q: And did the LUC ultimately approve an  
24 expansion for 5 years?

25 A: Yes, they did.

1 Q: And was that on a condition that the landfill  
2 close by May 8th, 2008?

3 A: That's correct.

4 Q: We put on the screen from the 2019 Findings,  
5 16 years after the 2003 Order that set out the history we  
6 discussed. And for the record and for everybody this  
7 Exhibit K259.

8 Ken, looking back at the original footprint of the  
9 landfill, how many acres was it permitted for?

10 A: 60.5 acres.

11 Q: And in 2003 when the landfill was approved for  
12 another 5 years, how big did the landfill become?

13 A: It expanded to 107.5 acres.

14 Q: We put the next part of the history up on the  
15 screen. Ken, did the landfill close on May 1, 2008 as  
16 ordered?

17 A: No, it did not close.

18 Q: Am I right in 2008 the City asked for just one  
19 more year before closure?

20 A: Right, correct.

21 Q: And did the LUC approve an extension that  
22 required closure in 2009?

23 A: Yes.

24 Q: Did the landfill close in 2009?

25 A: No, it did not.



1 Q: What happened later in 2008?

2 A: Later in 2008, not sure.

3 Q: Did the City ask for further extension at that  
4 time?

5 A: Yes, they did. It wasn't until July 31, 2012.

6 Q: So, let's take a step back--

7 A: Okay.

8 Q: Instead of closing in 2008, did the City ask  
9 for a further extension or expansion of another 100 acres?

10 A: Yes, correct.

11 Q: All right. And did the LUC approve that  
12 expansion?

13 A: Yes, they did.

14 Q: But as a condition, did the LUC require the  
15 City to cease operations as to MSW by July 31, 2012.

16 A: That's where the date is; correct. No more  
17 receiving of MSW.

18 Q: Did the City accept that 2012 closure date?

19 A: Yes, they did.

20 Q: Did the City ultimately challenge it in Court?

21 A: Yes, they did.

22 Q: Let's jump then to the proceedings we're  
23 currently in. Did the City also petition to further amend  
24 the Order to allow an expansion of the time or extension of  
25 the time for the landfill until it reached capacity?

1           A: Yes.

2           Q: And did those proceedings, that Application to  
3 extend the landfill until capacity result in the 2019 LUC  
4 Order that we're here discussing?

5           A: That's correct.

6           Q: All right. Ken, remind me what the deadlines  
7 were given or imposed by the LUC in that 2019 Order?

8           A: The Order had asked that the landfill be sited  
9 by December 31st, 2022 and that the landfill would be closed  
10 on March 2nd, 2028.

11           By the way, that's my 69th birthday, so I expect a  
12 big party that day.

13           Q: I'm sure they'll bring you a cake, Ken.

14           We put those Findings from the LUC detailing or  
15 documenting that history on the screen.

16           So, Ken, just to quickly highlight those dates,  
17 the landfill was supposed to close in 1997, and then in  
18 2003, and then in 2008, and then in 2009, and then in 2012,  
19 and finally a new landfill site was supposed to be sited by  
20 December 31, 2022, is that right?

21           A: All of it is correct.

22           Q: So in other words, the landfill we're here  
23 talking about today was supposed to close more than 25 years  
24 ago?

25           A: That's correct.

1           Q: And so would it be fair to say that the City  
2 has had more than 25 years to find a new landfill site?

3           A: That's the point; yes.

4           Q: Has the City met any of those closure or  
5 siting deadlines?

6           A: Unfortunately not with the community.

7           Q: I want to talk a little about that community,  
8 Ken, and in particular the effects on the community. How  
9 has the landfill in your long history there affected the  
10 community?

11          A: Well, it's affected the community in various  
12 ways. Litter, noise, flying garbage, visual blight, highway  
13 trash and more. It is even worse than that, but there's  
14 been a lot of impacts on the association.

15                 I would say the other impact would be maybe their  
16 trust in the system. A lot of people have been doing this,  
17 including me, for a long time so I kind of look punch-drunk  
18 up here, but it's been a long haul to try and get what was  
19 promised.

20          Q: And, Ken, in response to some of those harms,  
21 have you personally made complaints to the City and to the  
22 operator?

23          A: Yes, I have on many occasions.

24          Q: I want to talk about one particular experience  
25 that I know was impactful to the community and to you

1 personally.

2 And so we're putting up on screen images from  
3 Exhibits K105, K108, and K109.

4 And, Ken, I want you to talk about what happened  
5 in 2011 just as we were beginning the proceedings for the  
6 further expansion or extension of the landfill?

7 A: Okay. So these pictures are small samples of  
8 what happened in 2011. It's something that really hit the  
9 resort and the community very hard. It probably was the  
10 worse nightmare that you could expect to have happened being  
11 next to a landfill. Some of the things that you might  
12 complain about at a hearing and be (inaudible) in the sky.  
13 This was absolutely horrendous.

14 On that evening, well during that time waste  
15 management had made the decision to open a trash cell that  
16 was not ready for opening. You know, I'm a developer, I  
17 helped develop Ko Olina and, you know, you kind of learn  
18 drainage. And there would never be a time when we would  
19 open a project up before the drainage system was put in.  
20 Pretty much waste management rolled the dice that day. We  
21 were the losers. The community was the losers.

22 Very unfortunate that one night while the cell sat  
23 there with no drainage, we had a very large storm,  
24 inundation. One of those storms that could be classified as  
25 a 100-year guy. We don't have too many of those out at Ko

1 Olina, and don't have moisture out at Ko Olina to tell you  
2 the truth. We're very blessed to have sunshine most of the  
3 years, but when it comes it comes, and it came hard that  
4 night.

5           We woke up, my phone was ringing off the hook. Got  
6 to the project, and what we saw was--It's hard to talk about  
7 because--All the waste that come out of the Kahe box  
8 culvert. There's a box culvert that runs through our  
9 property, underground on the north end. That culvert takes  
10 water from mauka, across Farrington Highway which is the  
11 landfill. The cell overflowed and the water with the trash  
12 found its way into the stormwater drainage system and that  
13 thing came down like you wouldn't believe. The box culvert  
14 was filled with garbage, all types. I can't even begin to  
15 name all the types of garbage but the ones that stood out  
16 most was were the medical waste sharps, blood samples,  
17 tissue samples. Everything they throw away at a hospital.

18           So we went down to our beaches and we saw the  
19 currents taking it both ways. It went both north and south,  
20 so it touched communities as far as Pokai Bay and as far as  
21 White Planes Beach. But, of course, Ko Olina got the brunt  
22 because we're right outside that outfall that stormwater box  
23 culvert, and the lagoons were littered with needles, blood  
24 samples, bags of stuff we didn't know what it was.

25           And the problem there was, the big problem was no

1 one called us. No one was in front of it; no one took  
2 responsibility for it. So we had to jump into action. I  
3 had to have my private Aloha team guys who are our risk  
4 managers, our security. We had to glove them up, boot them  
5 up, put safety glasses on and send them out to start hand  
6 picking a lot of this stuff up. Very dangerous. We're very  
7 fortunate no one had a long-term condition from it or  
8 injury. But we did what we had to do. We got to take care  
9 of our property, and that's what we do very well at Ko  
10 Olina. I'm not padding myself on the back, but we take  
11 special care, that stewardship of our property. When this  
12 happened, this kind of blew our minds. I called wastewater,  
13 Waste Management Hawaii, no return calls, no answer.  
14 Everybody was running for the hills, period.

15           So what we did is what we did. We cleaned it up,  
16 and we brought in heavy equipment also just to scrap some of  
17 the sand on the water's edge to make sure nothing was  
18 submerged. We did this for several times just to make sure  
19 we got everything; ran our sand cleaner more times than we  
20 wanted to and disposed all of this, of course, in the  
21 landfill. We're hoping that something like this never  
22 happens again. It's not something I like talking about.

23           Q: I understand, Ken. You described the  
24 immediate impact the clean-up efforts that the community and  
25 Ko Olina engaged in.

1           How has the fact of that incident in 2011, and  
2 then the spill a few days later; how has that impacted the  
3 community going forward?

4           A: Well, it has impacted the community in a large  
5 way. No one has forgotten that at Ko Olina. And more than  
6 ever we need this landfill relocated. It's time. The  
7 community has put up with it for a long time along with a  
8 lot of the other social ills of land use.

9           You guys all know Campbell Industrial Park, Kahe  
10 Power Plant. We have another C&D landfill out there. It  
11 just seems to be the place to site all of these uses, and  
12 that is unfair and unfortunate

13           Q: Did the 2011 spill result in any legal  
14 consequences for the operator?

15           A: I believe Waste Management and the City faced  
16 criminal charges, and they paid a criminal violation fee of  
17 whatever that is \$400,000, and a restitution fee of  
18 \$200,000.

19           Q: Over the history of the operation landfill in  
20 Ko Olina, was this the only violation for which the landfill  
21 had been cited?

22           A: I don't think so. I'm pretty sure there were  
23 other ones with methane gas and other things. But this is  
24 the one that looms largest in my mind.

25           Q: And, in fact, can we put on the screen

1 excerpts from the 2019 LUC Order detailing a number of  
2 violations that the landfill had been cited for over the  
3 years.

4 Ken, I know you've testified in these proceedings  
5 before, and have you had a chance to review your testimony  
6 from those prior proceedings?

7 A: Yes, I have.

8 Q: And do the concerns that you've expressed in  
9 the prior proceedings in the 2011 and 2012 still ring true  
10 for you today?

11 A: Yes. Nothing really has changed. It's just  
12 the same complaints, the same concerns that we have. All  
13 the things I've described so far.

14 Q: Part of your testimony, one thing that I note,  
15 Ko Olina and others have asked for over the years is to  
16 require updates before to the Planning Commission on the  
17 status for siting and developing a new landfill. Does Ko  
18 Olina still request those in-person updates today?

19 A: I think that's the best thing to do. We got  
20 to hold their feet to the fire. We need them to make a  
21 decision on choosing a new landfill so we can move forward  
22 with the relocation, the closure of the present landfill at  
23 Waimanalo Gulch.

24 Yes. We are still very, very focused on having  
25 this landfill closed.



1 I'm just going to say something really anecdotal.  
2 I'm half Hawaiian, and it might be anecdotal to most but not  
3 to me or anybody who might have grown up closely with the  
4 land here in Hawaii. Waimanalo actually means potable  
5 water. Okay. And, I know one of the biggest talk right now  
6 is about the underlying aquifers and whatnot. But the  
7 Hawaiians named that gulch Waimanalo. It's drinkable water,  
8 potable water. I don't discount any of the names in any of  
9 the places in Hawaii because it was a good reason for our  
10 Hawaiian brethren named it a certain way. So, I just leave  
11 it that with you.

12 Q: And, Ken, I know you talked a little bit about  
13 holding their feet to the fire and the importance of having  
14 the City come before the decision-makers, before the  
15 Planning Commission with its updates, so the public has not  
16 only have an opportunity to hear but to comment, and the  
17 Commissioners have an opportunity to hear those comments.  
18 But that idea of holding the City's feet to the fire, do you  
19 believe that the City has made reasonably diligent efforts  
20 to find alternatives to the landfills?

21 A: We're still here so my answer would have to be  
22 no; no.

23 Q: One other reasons that has been given for the  
24 delay this time around is Act 73. What's your reaction to  
25 Act 73 being a cause of the further delay in siting a

1 landfill?

2 A: Well, Act 73 was I think was passed a couple  
3 years ago, maybe three. We've had time to site another  
4 landfill since then. And all in total we've had 25, 30  
5 years to re-site this landfill.

6 Yes. I understand, we understand that Oahu needs  
7 a landfill. We're just saying that it's time to move it  
8 somewhere else and not have it at Waimanalo Gulch anymore.

9 Q: And, in fact, under Act 73, could the landfill  
10 be sited where it is today?

11 A: What I understand from Act 73, there is  
12 something in there about proximity, and if we use those  
13 proximity metrics on the current landfill it would not be an  
14 alternative site or site, qualified site because we're too  
15 close, our residential properties are too close and Ko  
16 Olina should have the same rights or the same respect in  
17 this should be considered.

18 Q: And today as part of this proceeding, what is  
19 KOCA and the Senator asking the Commission to do?

20 A: Well, basically just simply more oversight,  
21 more stringent oversight, more often show up in person,  
22 shine a bright light on the process, make sure it's moving  
23 towards a final decision. That's all we're asking.

24 Q: Thank you, Ken. I have no further questions.

25 CHAIR MEATOGA III: Okay. Thank you. Any cross

1 examination from ENV?

2 COUNSEL HU: Just briefly.

3

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

5 BY COUNSEL HU:

6 Q: Hi. I'm Jeffrey Hu. I represent ENV, the  
7 Department of Environmental Services. I just wanted to ask  
8 you, so you just said that KOCA is just asking for more  
9 oversight, is that correct?

10 A: Yeah. We want more oversight. So the first  
11 steps towards--So the first step towards closure can occur.  
12 Without choosing another site we can't move any further.

13 As we all know it's been 25 years of effective  
14 dragging has gotten us to where we are today. So, yes, that  
15 is the main purpose today but the main purpose is to get the  
16 landfill closed.

17 Q: Okay. So does KOCA oppose the two-year, ENV's  
18 request for a two-year extension of time to identify a new  
19 landfill site?

20 A: You know, you're going to need sometime. I  
21 don't know if two years is what you need. I would give you  
22 a year so that we can hit 2028. But we will need to agree  
23 to some type of--I mean, we're here. The date has already  
24 expired December 31st, 2022. I can't sit here and say, no I  
25 don't want to give you guys an extension. It's passe, so

1 yes we would agree to it as long as there is a site  
2 selected, and we move forward towards the opening of the new  
3 landfill and the closure of the present landfill on March  
4 2nd, 2028.

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

7 WITNESS: Thank you.

8 CHAIR MEATOGA III: Okay. Cross examination by  
9 Schnitzer.

10 COUNSEL TAM-SUGIYAMA: None from Schnitzer.

11 CHAIR MEATOGA III: Okay. Thank you. Do we ave  
12 any questions from Commissioners?

13 KRAUT: I have a question, Commissioner Kraut.

14

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

16 **BY COMMISSIONER KRAUT:**

17 Q: That half mile, do you guys know what the  
18 distance is from the gulch to the first residence and Ko  
19 Olina? Do you happen to have that data?

20 A: I don't have that exact data.

21 Q: Half mile, less than that?

22 A: I can get that for you, but I do not have that  
23 with me right now. I don't have that information.

24 Q: Okay. My next question is, obviously it's a  
25 very difficult topic, and I really think the City is going

1 to have to entertain eminent domain. How would you feel  
2 about your property going through that eminent domain  
3 process?

4 A: What property?

5 Q: Whatever property. If that--

6 A: Oh, you mean for the new landfill?

7 Q: Correct.

8 A: As long as it's located somewhere I'm okay  
9 with it. I mean if it's eminent domain needed to accomplish  
10 it; sure; yes.

11 KRAUT: Thank you.

12 CHAIR MEATOGA III: Any other questions from the  
13 Commissioners present or on-line? [no response]

14 Okay. I have a quick question for you, if you  
15 don't mind?

16

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

18 **BY CHAIR MEATOGA III:**

19 Q: So, when you say oversight, if you're in our  
20 shoes as the Planning Commission and we did this quarterly  
21 update meeting, what would you expect to see at that type of  
22 meeting?

23 A: Lowering the boom. Basically holding their  
24 feet to the fire. Whatever you need to do to urge  
25 compliance. It has happened so many times already where I'm

1 not getting down on any planning members, but in the past  
2 it's just always been able to be extended and pushed down  
3 the road further and further. I know the landfill is a  
4 tough decision and a tough issue, but we got to face it and  
5 got to keep our promises to the community.

6 CHAIR MEATOGA III: Thank you.

7 WITNESS: Thank you.

8 CHAIR MEATOGA III: Any other questions from the  
9 Commissioners? [no response] All right. Hearing and  
10 seeing none. Thank you very much. Appreciate it.

11 Counsel, your next witness?

12 COUNSEL CHIPCHASE: Yes, Chair, Ko Olina and  
13 Senator Shimabukuro call Dwight Miller.

14

15 **DWIGHT MILLER,**

16 called as a witness, being first duly sworn to tell the  
17 truth, the whole truth and nothing but the truth, was  
18 examined and deposed as follows:

19 CHAIR MEATOGA III: Thank you. Please be seated.  
20 All right. Proceed.

21

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

23 **BY COUNSEL CHIPCHASE:**

24 Q: Dwight, would you state your name for us one  
25 more time?

1 A: Dwight Miller.

2 Q: And Dwight what's your position?

3 A: I'm a principal consultant with Parametrix,  
4 Incorporated, a civil and environmental engineering firm.

5 Q: And what type of work do you do, a principal  
6 consultant?

7 A: So as a principal consultant I manage  
8 projects, and I also act as a principal and charge role on  
9 various projects. So these projects range from  
10 environmental restoration projects to solid waste to waste  
11 management, landfills and the like.

12 Q: Would you just summarize for us very briefly  
13 your education and experience?

14 A: So I have an environmental science bachelor's  
15 degree and an environmental engineering master's degree from  
16 Washington State University and environmental engineering  
17 master's degree from Washington State University, and I'm a  
18 professional engineer in Hawaii as well as in four other  
19 states.

20 Q: Have you worked as a professional engineer  
21 since obtaining your degrees?

22 A: I have, and I became a professional engineer  
23 in January of '89 and very soon after that I got (inaudible)  
24 in Hawaii.

25 Q: And Dwight have you testified in these very

1 Planning Commission proceeding before?

2 A: I have, in 2012.

3 Q: And in those prior iterations of this  
4 proceeding, were you qualified as an expert?

5 A: I was.

6 Q: And was that as an expert in the field of  
7 solid waste management including landfill siting and design?

8 A: Yes.

9 Q: And have you maintained the same practice  
10 focus in that field since you last testified?

11 A: I have.

12 COUNSEL CHIPCHASE: Chair, we'd ask that Mr.  
13 Miller be recognized as an expert, continue to be recognized  
14 as an expert in solid waste management including landfill  
15 siting and design.

16 CHAIR MEATOGA III: Okay.

17 Q: Dwight, on the screen I put two Findings from  
18 the LUC's 2019 Order which again is Exhibit K259. And as  
19 the LUC found in 2019, in the 2012 proceeding that you  
20 mentioned you testified that three to five years was how  
21 long it should take to site and develop a new landfill. Do  
22 you recall that?

23 A: I do.

24 Q: Does that remain an accurate estimate?

25 A: Yes.



1           Q: I put up on the screen another set of Findings  
2 from that same Order, and in the LUC's Findings they  
3 determined that seven years is sufficient time to site and  
4 develop a new landfill if the City proceeds with reasonable  
5 diligence. Would you agree that seven years is plenty of  
6 time to site a new landfill?

7           A: Yes, I would agree with that.

8           Q: Would you go so far as to say that seven years  
9 is more than enough time to site a landfill?

10          A: It's comfortably enough; yes.

11          Q: Dwight, did you have an opportunity to review  
12 the report of the Landfill Advisory Committee that was  
13 issued in June 2022?

14          A: I did.

15          Q: And did you have an opportunity to review the  
16 testimony of ENV Director Babcock in these proceedings from  
17 October of 2023?

18          A: I did; yes.

19          Q: And have you also had an opportunity to review  
20 the Application materials that the City submitted in 2022 in  
21 these proceedings asking for a continuation or extension of  
22 the deadline to identify a new landfill site?

23          A: Yes, I did.

24          Q: And so based on your review of those  
25 materials, do you have an understanding of what the City has

1 done in terms of identifying a new landfill site between the  
2 2019 Order and today in October and now November 2023?

3 A: Yes, I do.

4 Q: Based on your experience and your review of  
5 those materials, in your opinion has the City acted with  
6 reasonable diligence between 2019 and today?

7 A: I don't believe it has.

8 Q: And why is that?

9 A: I think the primary thing is that from 19--It  
10 took full two years prior to establishing the committee to  
11 do the site evaluation process. And so they had a lot of  
12 the information, a lot of the studies have been done prior,  
13 so the work that was done. So it just did not move very  
14 quickly in that time. So really wasted time that could've  
15 been used towards the siting process.

16 Q: Dwight, are you familiar with Act 73?

17 A: I am.

18 Q: In your opinion and based on your review of  
19 the materials, has the City acted with reasonable diligence  
20 to site a new landfill since the adoption of Act 73?

21 A: No. I think a couple things, as I noted, it  
22 did not move very quickly in setting up the committee and  
23 then starting the process of siting. Also understanding  
24 what was the requirements of Act 73 did not work in the  
25 diligence necessary to move forward in evaluating sites

1 against that and so forth.

2 Q: Dwight, the City has also pointed to the Board  
3 of Water Supply's No Pass Zone. Are you familiar with the  
4 No Pass Zone?

5 A: I am.

6 Q: What is the No Pass Zone?

7 A: So the No Pass Zone is essentially a line  
8 around the island of Oahu to delineate that area that is  
9 mauka of the line that is not protected by cap rock or other  
10 geologic features to protect groundwater.

11 Q: And I'm going to put on the screen an excerpt  
12 from the 2003 Landfill Advisory Committee's report.  
13 It's Exhibit K-58, and this is Section 3.3.

14 Dwight, did you have an opportunity to review this  
15 material as well?

16 A: I did; yes.

17 Q: And am I accurate in stating that in 2003 the  
18 committee back then 20 years ago, considered this No Pass  
19 Line or No Pass Zone?

20 A: That's right.

21 Q: And, am I also correct that back then, now 20  
22 years ago, ENV and its consultant concluded that a less  
23 conservative but more accurate approach would be used to  
24 assess whether a potential site was appropriate and that  
25 they also intended to that in consultation with the Board of

1 Water Supply?

2 A: That's correct.

3 Q: And would you agree that the No Pass Zone as  
4 drawn by BWS is a conservative boundary?

5 A: It is conservative; yes.

6 Q: And why do you say that?

7 A: You know, it's an estimate of the line around  
8 the island as opposed to you're looking at the very  
9 specifics in a given location along that point. And so by  
10 definition it has to be conservative. You want to protect  
11 groundwater and so you write that line conservatively.

12 Q: And so then would it be accurate to say that  
13 it's simply because the site falls within the No Pass Zone  
14 that does not necessarily mean that it's geologically  
15 unsuitable for a landfill?

16 A: That's correct.

17 Q: Dwight, I'm putting up on the screen now an  
18 excerpt from Exhibit K264 which is the 2012 report, the  
19 Mayor's Advisory Committee that's sort of next--the Mayor's  
20 Advisory Committee on landfill sites selection. Did you  
21 have an opportunity to review these materials as well?

22 A: I did; yes.

23 Q: Am I correct in stating that here again in  
24 2012 the City considered BWS's No Pass Zone in the site  
25 selection process?

1           A: That's correct.

2           Q: And, am I also correct in 2012 the committee,  
3 the Mayor's Advisory Committee decided to include sites that  
4 were within the No Pass Zone for consideration?

5           A: Correct.

6           Q: And so then is it also fair to say that when  
7 the Board of Water Supply raised the No Pass Zone issue in  
8 the next iteration the committee in 2021 and 2022, it was an  
9 issue that had already been known for 15 years?

10          A: Yep, 15, 20 years; yes.

11          Q: And in addition to looking at sites more  
12 specifically to determine whether they're geologically  
13 suited for a landfill, are there also ways to engineer a  
14 landfill to ensure that groundwater is protected?

15          A: Yes, there are. It's really a two-step  
16 process. One is siting the facility so that you have the  
17 best natural features that protect groundwater, protect the  
18 environment, and then the next step is to design and  
19 construct a very well designed facility that protects the  
20 environment. So with bottom liner, leachate collection and  
21 the other methods that are put into the landfill to protect  
22 the environment. That's right.

23          Q: Dwight, is it fair to say in that the last  
24 iteration, the latest iteration, the committee's decision to  
25 reject all sites within the No Pass Zone, the committee

1 imposed on itself limitations that the prior committees had  
2 not.

3 A: That's right.

4 Q: I want to talk about a recommendation that the  
5 iteration, the 2021, 2022 committee did make, and that was  
6 to pursue siting a landfill on federal lands. Are there  
7 federal sites on Oahu that are outside the No Pass Zone and  
8 otherwise at least on the surface suitable for a landfill?

9 A: Yes.

10 Q: And based on your review of Director Babcock's  
11 testimony, did he express that there's sites available as  
12 well?

13 A: Yeah, I believe he identified four. At first  
14 question identified (inaudible) possible.

15 Q: And in your sort of work history, your  
16 experience, Dwight, have you worked on federal sites as  
17 possible locations for landfill site?

18 A: Yes.

19 Q: And based on that experience, could you  
20 describe for us in general what the process is for siting  
21 landfill on federal lands?

22 A: So siting on federal lands, it's an  
23 acquisition process that you have to go through to actually  
24 get the property from the federal government to local  
25 agency.

1           And so what they're looking for is really the due  
2 diligence that's done in a siting process such as this, and  
3 so alternatively been evaluated, and then an environmental  
4 review process to determine if it's appropriate for the  
5 government to sell this property. So, it's a pretty  
6 rigorous process, but it's not impossible.

7           And, I think every agency is a little different  
8 but the ones that I've looked at we have not thrown sites  
9 out because they're under federal jurisdiction. It would  
10 just--We understood what the effort would be to do that.

11           Q: And so is it fair to say it's possible to  
12 acquire federal lands for a site, but it takes a lot of work  
13 and it takes time?

14           A: It does; yes.

15           Q: And in Dr. Babcock's, Director Babcock's  
16 testimony he explained that he had not been involved in the  
17 discussions with the federal government on an acquisition  
18 instead it had been the Mayor and the Managing Director.

19           In your experience, is it common practice for the  
20 municipality's mayor to lead those discussions as opposed to  
21 its director of waste management?

22           A: So when I had worked on it in the past, it's  
23 been a combination. So the director of solid waste  
24 director, something like that, along with their technical  
25 staff and the political organization would all be involved

1 in that process and work fairly closely in that process to  
2 ensure that all the technical aspects are looked at as well  
3 as those political nuances or any type of acquisition like  
4 that.

5 Q: So in your opinion is depending solely on the  
6 Mayor's office for those discussions consistent with  
7 reasonable diligence?

8 A: It doesn't appear to be. I'm surprised it's  
9 that.

10 Q: If we looked more broadly of that idea of  
11 reasonable diligence, would you agree with me that would  
12 require the City to pursue all possible avenues for siting a  
13 new landfill?

14 A: Yes.

15 Q: And would those possibilities include seeking  
16 to amend Act 73?

17 A: Yes, it would.

18 Q: And why is that?

19 A: Act 73 really does precludes sites that may be  
20 appropriate. So maybe having a narrower buffer instead of  
21 half-mile a quarter mile. But even simpler, looking at what  
22 are some natural features of a site that would provide for  
23 the isolation from residential properties that are actually  
24 better than half-mile buffer, typically something like ridge  
25 lines or other topographic features that would provide for



1 that separation.

2 Q: When you talk about separation, and you  
3 testified to this in May in 2012, but Ko Olina is located  
4 downslope from the landfill, is that right?

5 A: Yes.

6 Q: Dwight, I know Director Babcock testified that  
7 in his belief amending Act 73 would be difficult. In your  
8 experience, can you compare the difficulty amending an Act  
9 with working with the federal government to site a landfill?

10 A: Both of them I would imagine are difficult,  
11 but this is a difficult process. Siting a new landfill is a  
12 difficult process, and so it's really one of those things of  
13 looking at all angles that you need to take to work in  
14 reasonable diligence to look at all options.

15 Q: And as we sit here in November 2023, in your  
16 opinion what does the City need to do in order to make an  
17 extended, now 2024, if the Commission agrees, site a  
18 deadline?

19 A: So they really need to get, have a sense of  
20 urgency in this to lay out a schedule for evaluating the  
21 sites, looking at amending Act 73, looking at the federal  
22 sites, doing technical evaluation of it, not just at a  
23 political level, but really put the urgency behind this and  
24 ensuring that they're following through on that.

25 Q: And, Dwight, my final question is as we sit

1 here again in November 2023, is it still possible for the  
2 City to make the March 2028 closure deadline?

3 A: I believe it is. It is a push, but that's all  
4 the more reason to show some urgency in making this happen.

5 COUNSEL CHIPCHASE: Thank you, Dwight. I have no  
6 further questions.

7 CHAIR MEATOGA III: Okay. Thank you. All right.  
8 ENV for cross.

9 COUNSEL HU: Thank you, Chair.

10

11

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

12

#### BY COUNSEL HU:

13

Q: Hi. I'm Jeffrey Hu counsel for ENV. I have a  
14 few quick questions. So you mentioned you've reviewed ENV's  
15 Application for these hearings, is that correct?

16

A: Yes.

17

Q: Did you review all the exhibits as well?

18

A: I reviewed most of the exhibits. Yes.

19

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

21

Q: Okay. I just handed you Exhibit C to this  
22 Application. Did you review that one?

23

A: I believe I looked at this early on, so it's  
24 been a while since I looked at this.

25

Q: Sure, no problem. Do you want to take a few

1 minutes to just scheme through?

2 A: Sure.

3 CHAIR MEATOGA III: Sorry, Exhibit Z?

4 COUNSEL HU: "C", "C" as in Charlie.

5 [pause]

6 Q: Don't worry, I'm not going to test you.

7 A: No, no that's fine. I just wanted to make  
8 sure I had the gist of it; yeah.

9 Q: Sorry. I don't mean to rush you.

10 [pause]

11 A: Okay. I think I have the gist of it; yeah.

12 Q: Okay. Thank you. So, I guess this letter  
13 basically wanted the sections instead. The Board of Water  
14 Supply disapproves of the six potential sites, is that  
15 correct?

16 A: That's correct; that's how I read it; yeah.

17 Q: And do you have any thoughts or opinions as to  
18 the BWS's disapproval of the six potential sites that are  
19 located above the BWS No Pass Zone?

20 A: Right. So my understanding--I'm not sure how  
21 much they evaluated for the geologic conditions, if each of  
22 those sites individually--

23 Q: I'm sorry when you say they, who are you  
24 referring to?

25 A: BWS. So in their process of doing that. So

1 I'm not sure if was just because they were mauka of the line  
2 or if it was from further investigation.

3 I think what I generally said is that further  
4 investigation at more granular level at the site level is  
5 necessary to determine if the protections are there or not.

6 And so I'm not exactly sure if they, BWS  
7 specifically did that in their rejection of all six of these  
8 sites.

9 Q: Okay. If BWS did take a further look, you  
10 know really examine it, then do you think BWS concerns are  
11 valid?

12 A: If the environmental protections are not there  
13 that they believe are necessary for protection of the  
14 groundwater, then yes.

15 I think the point is that are these the only sites  
16 that are potentially available? My understanding is there  
17 could be other sites, either federal sites or other sites  
18 that are not mauka of the line that could be further  
19 evaluated.

20 Q: Okay. What is your understanding of what will  
21 happen if the Planning Commission denies ENV's request in  
22 its Application?

23 A: Well, I think as Mr. William said, already  
24 noted, already gone past the deadline, so I'm not sure what  
25 more can happen, and it's mainly, I mean that's more of a

1 policy issue not a technical issue for me to answer  
2 necessarily.

3 But I think the main point and in the last  
4 question I answered what needs to happen here is to show a  
5 greater sense of urgency in moving forward in evaluating  
6 sites so that the March 2nd, 2028 timeline can be made.  
7 And so that's the main point here is being urgent in moving  
8 forward with the evaluation of sites and opening sites that  
9 may have been thrown out because they're federal sites or  
10 whatever it might have been to ensure that a site is found.

11 Counsel Hu: Thank you. I have no further  
12 questions at this point.

13 CHAIR MEATOGA III: Thank you. Moving on to  
14 Schnitzer.

15 COUNSEL TAM-SUGIYAMA: No questions.

16 CHAIR MEATOGA III: Questions from--

17 COUNSEL CHIPCHASE: Oh, in terms of rebuttal.  
18 Thank you. I didn't have any on the last witness. I do have  
19 one on this.

20

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

22 **BY COUNSEL CHIPCHASE:**

23 Q: Dwight, based on your prior review of the 2003  
24 and 2012 site selection processes, would you agree with me  
25 that the sites that were rejected by BWS in the last

1 iteration had been included in prior site selections as  
2 available sites?

3 A: Yes.

4 COUNSEL CHIPCHASE: Thank you.

5 CHAIR MEATOGA III: Okay. Thank you. Questions,  
6 from Commissioners? [no response] Questions from  
7 Commissioners on-line? [no response] All right. Thank you  
8 very much.

9 COUNSEL CHIPCHASE: Chair, we have no further  
10 witnesses, and at this time rest.

11 CHAIR MEATOGA III: Okay. Thank you.

12 [colluquy between Counsel Agag and Chair Meatoga]

13 COUNSEL AGAG: Hi, everyone. Thank you so much. I  
14 think what we're going to do now is I'm just going to take  
15 this moment to advise the Commission procedurally about how  
16 to proceed. It shouldn't take too long.

17 What I'm planning on doing is making some  
18 decisions about scheduling and possibly submitting proposed  
19 D&Os, Findings of Fact, Conclusions of Law by all the  
20 parties involved. We do have time limits so we're not going  
21 to be closing the hearing at this point, especially if there  
22 is a possibility of anyone wanting to make a motion to  
23 re-open evidence for any reason. I just think at this point  
24 we don't have to do that this time.

25 But if I could just have a moment to discuss with

1 the Commissioners on how they want to proceed. If I could  
2 ask you to step out for a quick second, and we'll have some  
3 more clarity when you come back.

4 COUNSEL CHIPCHASE: Very good. And, if I just may  
5 as we shuffle up our stuff, if you would like us to do  
6 closing arguments on at least what has been submitted, we're  
7 perfectly ready to do that, and we'd appreciate that  
8 opportunity. And just to make sure the procedure runs  
9 smoothly, I think you need to go into executive session.  
10 I could be wrong.

11 COUNSEL AGAG: This is not subject to Sunshine.

12 COUNSEL CHIPCHASE: So you don't need a motion?

13 COUNSEL AGAG: I mean, we could just to cover our  
14 basis.

15 COUNSEL CHIPCHASE: If you're sure we don't, I'm  
16 happy to rest there and step on out.

17 COUNSEL AGAG: I am fine being overly cautious  
18 then not. But, yes--Is everyone prepared for closing  
19 statements today?

20 COUNSEL TAM-SUGIYAMA: Yes.

21 CHAIR MEATOGA III: ENV.

22 COUNSEL HU: Yes. But we'd like a recess first to  
23 discuss about the evidence before we put on closing.

24 COUNSEL AGAG: Sorry. Can you clarify?

25 COUNSEL HU: Oh, in case we need to call rebuttal

1 witness or something.

2 COUNSEL AGAG: Do you see any reason you foresee  
3 needing to call rebuttal witness?

4 COUNSEL HU: We'd like 10 minutes to just discuss  
5 internally.

6 COUNSEL AGAG: Okay.

7 COUNSEL CHIPCHASE: No objection.

8 COUNSEL AGAG: Why don't we go ahead and take  
9 right now take an executive session.

10 If someone would like to make a motion just to  
11 cover our basis.

12 CHAIR MEATOGA III: Commissioners, do I have motion  
13 for executive session.

14 KRAUT: Commissioner Kraut, I move that we go into  
15 executive session.

16 CHAIR MEATOGA III: Thank you. Do we have a  
17 second?

18 KIMURA: Commissioner Kimura, I'll second it.

19 CHAIR MEATOGA III: Any objections, discussions?

20 [no response] All right. Chair votes aye. We are now in  
21 executive session. Thank you, everyone.

22 [Discussion off the record]

23 [Executive Session held]

24 CHAIR MEATOGA III: All right, we're back in  
25 session. Okay. Just for the record, ENV do you have any



1 rebuttal evidence or witnesses?

2 COUNSEL HU: No, we do not, Chair. Thank you.

3 CHAIR MEATOGA III: Okay. Lastly, here on the  
4 agenda, Commissioners, do we have any final questions for  
5 the parties before we move into closing statements? [no  
6 response] Okay. Hearing and seeing none, we will go into  
7 closing statements. ENV you are up first. Please proceed.  
8 You have 30 minutes each side.

9 COUNSEL HU: Thank you, Chair. ENV is operating  
10 the Waimanalo Gulch Sanitary Landfill under a Special Use  
11 **Permit** issued by the State Land Use Commission. Under the  
12 rules of the Planning Commission, Section 2-45, it provides  
13 "certain unusual and reasonable uses within agricultural  
14 uses within agricultural districts other than those for  
15 which the district is classified may be permitted. The  
16 current use of the landfill on ag land was already approved  
17 by the Planning Commission and the Land Use Commission.  
18 Nothing has changed in that regard to that approval and the  
19 WGSL usage. The only difference today is that ENV is  
20 seeking to extend a special use permit condition related to  
21 a two-year deadline to identify a new landfill sites. Let  
22 me repeat that. ENV is requesting modification of a single  
23 Special Use Permit condition. ENV is seeking two more years  
24 in order to identify a new landfill site outside of the  
25 Board of Water Supply No Pass Zone.

1           This requested extension of time would take the  
2 identification deadline from December 31, 2022 to December  
3 31, 2024. ENV has presented evidence in its application and  
4 through Director Roger Babcock's testimony that the 2-year  
5 extension of time to identify a new landfill site is  
6 necessary and appropriate in light of several key factors  
7 that came up after the Special Use Permit was issued in  
8 2019.

9           First, Act 73's new legal restrictions imposed in  
10 2020 by the State Legislature greatly limited the number of  
11 viable sites. Again, Act 73 restricted siting a new  
12 landfill in state conservation districts and sites that are  
13 within half-mile of a school, hospital, or residential  
14 property.

15           Second, the Board of Water Supply expressed its  
16 official position in a November 16, 2022 letter in which the  
17 BWS disapproved all six potential sites that were evaluated  
18 and ranked by the Landfill Advisory Committee because all  
19 six sites were above the No Pass Zone and above the water  
20 aquifer. The BWS's position letter sited to among other  
21 things, the 2021 Red Hill incident that is still on  
22 everyone's mind right now.

23           Lastly, in 2022 the Landfill Advisory Committee  
24 did not recommend any of the six potential sites that had  
25 been evaluated. Instead the Landfill Advisory Committee

1 recommended that the City either amend Act 73, obtain  
2 federal land or utilize eminent domain.

3           Since the time of filing of ENV's Application  
4 before this Planning Commission, ENV has researched and  
5 carefully considered each of the Landfill Advisory  
6 Committee's recommendation.

7           As ENV's Director Roger Babcock stated, currently  
8 the main efforts are on high level discussions with the US  
9 military in hopes of obtaining an appropriate parcel of  
10 federal land that is situated outside of the BWS No Pass  
11 Zone as this would be a win for everyone.

12           And so I end with this. There are people working  
13 hard behind the scenes to find a solution to Honolulu's  
14 landfill siting issue. Please grant an extension until  
15 December 31, 2024 to allow ENV additional time to find and  
16 identify a new landfill site outside of the No Pass Zone.  
17 This would alleviate BWS and the entire community concern in  
18 light of Red Hill. Thank you.

19           CHAIR MEATOGA III: Okay. Schnitzer.

20           COUNSEL TAM-SUGIYAMA: The evidence presented has  
21 shown that the parties do not object to the extension of time  
22 to identify an alternative site for a new landfill.  
23 On that basis, the Commission should approve the City's  
24 request. Furthermore, the Commission heard evidence about  
25 how important in operating a landfill is to Oahu.

1           The Commission heard from Schnitzer's general  
2 manager Nicholas Garofolo who testified about how  
3 Schnitzer's operations benefit the public and the  
4 environment by processing and recycling scrap that would  
5 otherwise go straight into the landfill or be illegally  
6 dumped around the island.

7           Mr. Garofolo testified that by processing the  
8 scrap, Schnitzer significantly reduces the amount of  
9 material that goes into Waimanalo Gulch. Approximately 80%  
10 of the scrap material is processed and resold as scrap  
11 instead of going into the landfill. The Commission heard  
12 evidence that due to limitations beyond Schnitzer's control,  
13 Schnitzer needs to dispose of the remaining 20%  
14 non-recyclable automobile shredder residue at Waimanalo  
15 Gulch. The only municipal landfill on island that will  
16 accept it.

17           This Commission heard about the consequences of  
18 closing Waimanalo Gulch without a new landfill to take its  
19 place. Mr. Garofolo also testified that if no landfill was  
20 available Oahu for ASR disposal, Schnitzer would be forced  
21 to cease operation in a matter of days due to permit and  
22 space limitations.

23           Mr. Garofolo testified as to what he saw firsthand  
24 in a similar situation on Maui in the late 2000s when Maui's  
25 only scrap yard closed. Used cars, appliances and other

1 debris piled up all around the island. On a more populated  
2 island like Oahu those effects would be magnified.  
3 Schnitzer has been trying to prepare for a potential  
4 landfill closure.

5           The Commission heard Scott Sloan describe  
6 Schnitzer's efforts over the years to find an alternative to  
7 disposing of the ASR. Those efforts included a lengthy  
8 research and negotiation process with Covanta that involved  
9 the EPA and the State Department of Health that ultimately  
10 did not work out. Schnitzer investigated the possibility of  
11 shipping the ASR off island, but due to cost, safety and  
12 regulatory hurdles, off island disposal is impracticable.

13           Until there is a viable alternative for ASR  
14 disposal, an operating on-island landfill remains a viable  
15 part of Schnitzer, and thus Oahu's waste management  
16 processes.

17           But the importance of an operating landfill on  
18 Oahu is not in dispute. You heard Mr. Williams testified  
19 that Oahu needs a landfill. And the question is where  
20 should that landfill be?

21           The Commission heard testimony from Director  
22 Babcock that the City is diligently trying to find an  
23 alternative site for a new landfill. The Commission heard  
24 from Dr. Babcock that all six tentative sites proposed by  
25 the City were rejected because they were in the No Pass Zone

1 and that the combination of Act 73 and the restrictions  
2 against siting a landfill in a No Pass Zone severely limits  
3 the City's option for alternative sites. And you all heard  
4 the testimony from Mr. Williams about the 2011 incident that  
5 illustrates why those restrictions and protections have been  
6 imposed on the City.

7           The Commission also heard testimony about the  
8 different paths that the parties think that the City should  
9 pursue such as negotiations with federal authorities,  
10 repealing or amending Act 73 or eminent domain options.  
11 Whatever path or paths the City chooses to find new  
12 alternative sites, the result is the same. The City simply  
13 needs more time to do its work.

14           The Commission heard Mr. Miller testified that  
15 siting a landfill is a difficult process. On an island with  
16 limited land and drinking water resources, that process is  
17 much more difficult. The evidence presented shows that the  
18 City has been trying to find a new site. The six sites that  
19 were selected were previously thought available have now  
20 been rejected. The City now has to identify new  
21 alternatives not processed. Those efforts remain ongoing.

22           Therefore, Schnitzer respectfully submits that  
23 based on the evidence the Commission should grant the City's  
24 request for an extension of time to identify a new site for  
25 a landfill. Thank you.

1           CHAIR MEATOGA III: Thank you. KOCA.

2           COUNSEL CHIPCHASE: Chair, Commission, thank you.  
3 We appreciate the Commission's time and attention in this  
4 matter.

5           And as I said at the beginning there were really  
6 four reasons that Ko Olina was participating in these  
7 proceedings even though they only involve request to extend  
8 the time to site a new landfill and didn't directly  
9 implicate the time required to close, which means develop a  
10 new landfill.

11           Where I started is by reminding the Commission  
12 that we're here on a Special Use Permit. And so this is an  
13 agricultural lot. This is not an agricultural use. They  
14 need a Special Use Permit to continue the operation. That  
15 Special Use Permit can be conditioned as it was by the Land  
16 Use Commission in 2019 with this very citation or landfill  
17 siting deadline. That's why we're here is because there's a  
18 condition, and wanted to depart from that condition.

19           So when you look at whether to allow a departure  
20 from the condition, you come back to the standards of  
21 factors. You consider granting a Special Use Permit to  
22 begin with. Those standards, those considerations we've put  
23 them up on the board include that there's no adverse impact  
24 to the surrounding community.

25           As you seen in the Land Use Commission's Findings,

1 and we summerize, really just summerize here today, there  
2 have been adverse impacts historically, well documented  
3 adverse impacts on the surrounding community. Indeed those  
4 adverse impacts were such an extent that the Land Use  
5 Commission Chair voted against extending the permit by any  
6 time. He determined that based on the requirement to find  
7 no adverse impacts, he could not in good conscious vote to  
8 extend the permit. Not only because of the impacts that the  
9 landfill have but because of the environmental injustices  
10 that the west side had suffered with all of the other uses  
11 that are piled out west but benefit all of Oahu.

12 Those adverse impacts as Mr. Williams testified  
13 remain today despite admittedly better efforts to manage  
14 waste, better efforts to manage the landfill. They still  
15 exist today, and they're still relevant in the Commission's  
16 consideration of whether to extend the time.

17 I said too that I wanted to talk about the  
18 history, put this request in context. This is not the first  
19 time the City has been before the Commission asking for more  
20 time. Indeed it's not the first time Ko Olina has been  
21 involved in these proceedings asking for time. Mr. Williams  
22 has been involved since 2007. I personally been involved  
23 since 2011. We've been here before, and we've heard the  
24 same statements many times that the landfill is necessary;  
25 the landfill is essential. Indeed it is, and no one argues



1 differently. And permits get continued; permits get  
2 extended.

3           You have a deadline or a cut-off date, and then  
4 you reevaluate whether to continue that use. We understand  
5 that and accept that both statements as true.

6           But here in this instance you have a landfill that  
7 was intended to close and indeed has been ordered to close  
8 many, many, many times.

9 It has been promised to close, if the community would only  
10 agree to one more extension.

11           And so then I talked about what that history does  
12 for us in these proceedings. What it does for us is create  
13 a fear. A fear that this is the first step toward another  
14 request. This time, this next request to extend the time to  
15 site a new landfill; to close this landfill. That's the  
16 fear, not that they need more to identify, but they will ask  
17 this Commission, the Land Use Commission one more time to  
18 close the existing landfill. That's the fear and that fear  
19 was not alleviated Ko Olina, to the community represents in  
20 these proceedings. Quite the opposite.

21           What we took away from these proceedings is that  
22 the City hasn't created its own limitations. It has created  
23 its own limitations by making the decision not to seek to  
24 amend Act 73 for no reason other than it's difficult.  
25 Created its own limitations in choosing, and it is a choice

1 to accept the BWS No Pass Zone as limiting its siting  
2 options. And in making that choice the City departed from  
3 the choices it made in 2003 and 2012 to include sites that  
4 were within the No Pass Zone, but nonetheless deemed  
5 suitable for a landfill. Those sites are among the six that  
6 this landfill site selection committee, the most recent one,  
7 rejected it for no other reason than they were within the No  
8 Pass Zone. The City created its own limitations, and it has  
9 created its own limitation in dealing with the federal  
10 government as well.

11           You have heard from Director Babcock he has not  
12 even been involved in those discussions. The Director of  
13 the Department in charge with managing the City's municipal  
14 solid waste has been not been involved in those discussions.  
15 Indeed it's only been the Mayor and the Managing Director,  
16 and the Director of the agency that's before you doesn't  
17 even know the status of those discussions or where they may  
18 go. Not having the right people involved, not having the  
19 urgency to do this is a limitation that the City is creating  
20 for itself.

21           And we've heard finally briefly in passing that  
22 the option of eminent domain will probably be rejected to.  
23 But given no detail on why. Why eminent domain create more  
24 distance between a landfill site and residential sites under  
25 Act 73 has been taken or is expected to be taken off the

1 table.

2           And so when we hear that the City is creating its  
3 own limitations, it's limiting itself. We fear that the  
4 City is creating its own crisis. And so we will hear, we  
5 fear in a year or maybe two. But the City needs more time  
6 to close this landfill because it's been unable to site  
7 another landfill. And we will hear that the City needs a  
8 landfill, and will hear that Schnitzer has no place to put  
9 its automobile shredder residue. And those things are true,  
10 but they don't tell us how we got there. And what we fear,  
11 what we heard is that we will get there because the City has  
12 created its own crisis because the City has imposed its own  
13 limitations.

14           And so I get to the last point that I shared when  
15 we opened these proceedings sometime ago, what do we ask?  
16 What are we requesting from this Commission so we don't end  
17 up in that situation, we don't end up in that crisis.  
18 We're asking for more accountability. We're asking that ENV  
19 come and report before this body to be the initial  
20 authorizing body, allowing them to depart from this  
21 condition, report in-person quarterly to ensure that we are  
22 on track, to ensure that this body knows what is happening,  
23 to ensure no one is surprised.

24           The existing reporting and update requirements  
25 clearly haven't worked. They weren't enough to get the City

1 to comply with the deadline that has been on the books not  
2 for a year, not for two years, but since October 2019, for  
3 four years. This site siting deadline has been known and  
4 four years later we still don't have a site.

5 Mr. Miller talked about the delays and why it does  
6 not appear in his opinion, experience in landfill siting  
7 that the City has acted with reasonable diligence. I can't  
8 unwrite that history. The time that has passed. All I can  
9 do is urge this body to adopt conditions particularly the  
10 in-person quarterly report and condition to ensure we stay  
11 on top of things going forward. To ensure that we're not in  
12 the same spot in a year or two.

13 And when I asked Director Babcock on the stand  
14 whether he objected to that in-person reporting requirement,  
15 to his credit, I think, he agreed. He did not oppose coming  
16 back before the Commission on a quarterly basis and  
17 reporting the status, and I respect that, and I appreciate  
18 his willingness to do that.

19 You heard from Dr. Babcock and from Mr. Miller  
20 that despite the time lost in siting and developing a new  
21 landfill, it is still possible to meet that closure  
22 deadline. It's still possible but the City has to work  
23 quickly, has to work with urgency is the word that  
24 Mr. Miller used today, and I think that's right. I think  
25 that's right, and I think that imposing that quarterly

1 reporting condition that Dr. Babcock, Director Babcock  
2 agreed to accept is part of ensuring urgency.

3 And so Counsel is right, we don't oppose the  
4 extension of time. Mr. Williams said, I don't know whether  
5 two years is right or one year, but I don't oppose it. I  
6 know you need more time, the City does.

7 So the outcome is known. The question is where do  
8 we go from here? Do we get a new site, do we close the  
9 landfill as ordered? That's our hope. We're just asking  
10 you to help us get there. Thank you.

11 CHAIR MEATOGA III: All right. Thank you very  
12 much. Before we close this hearing, there's a couple of  
13 housekeeping and scheduling rules that we wanted to go over.

14 COUNSEL AGAG: Glo, if we can go off record.

15 COUNSEL CHIPCHASE: Sure.

16 [Discussion off the record]

17 CHAIR MEATOGA III: Okay. We will close this  
18 portion of the contested case hearing. Do I have a motion  
19 to close?

20 KRAUT: Commissioner Kraut, I move to close this  
21 hearing.

22 CHAIR MEATOGA III: Okay. Do I have a second?

23 KIMURA: Commissioner Kimura, I'll second it.

24 CHAIR MEATOGA III: Okay. Do I have any  
25 objections, reservations, discussion? [no response]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[Unanimous Aye]

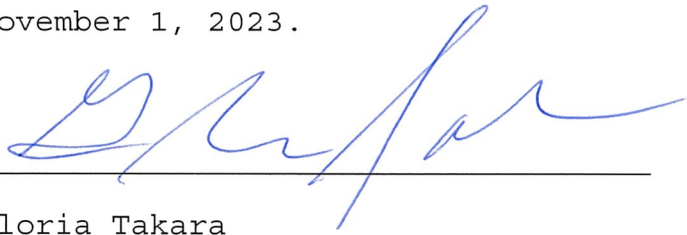
All right. Chair votes aye. Hearing none. Thank you.

All right. After this, is there any announcements from the Commissioners or DPP? [no response] All right. Hearing and seeing none, we are adjourned.

COUNSEL CHIPCHASE: Thank you, Chair. Thank you, everyone.

[Meeting adjourned]

I certify that the foregoing is a true and correct transcription of the proceedings, prepared to the best of my ability, of the meeting held on Wednesday, November 1, 2023.



Gloria Takara  
Secretary-Reporter  
Planning Commission