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KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2012 JUL 19 P 3:22

In The Matter Of The Application Of The

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For A New Special Use Permit To Super-
sede Existing Special Use Permit To
Allow A 92.5-Acre Expansion And Time
Extension For Waimānalo Gulch Sani-
tary Landfill, Waimānalo Gulch, O'ahu,
Hawai'i, Tax Map Key: 9-2-03: 72 And 73

DOCKET NO. SP09-403

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION
AND MAILE SHIMABUKURO'S
BRIEF IN SUPPORT OF
REMAND WITH INSTRUCTIONS**

**EXHIBITS 1-10, K2, K15, K52,
K85, K155, K208**

CERTIFICATE OF SERVICE

BRIEF IN SUPPORT OF REMAND WITH INSTRUCTIONS

Ko Olina Community Association and Maile Shimabukuro (together “KOCA”) submit their brief in support of remanding the December 3, 2008 application (the “2008 Application”) for a new special use permit for the Waimanalo Gulch Sanitary Landfill (the “Landfill”) to the Honolulu Planning Commission (the “Planning Commission”) with instructions to consolidate the 2008 Application with the June 28, 2011 application to modify SUP-2 (the “2011 Application”) and enter findings, conclusions and a decision and order in the consolidated proceeding.

I. INTRODUCTION

In recent proceedings before the Planning Commission, the parties developed an extensive record regarding the appropriate closure deadline for the Landfill, operational and regulatory problems at the Landfill, the impact of the Landfill on the community and the ENV’s compliance with conditions imposed in the LUC’s Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications (the “2009 Order”). These are the same basic issues presented in this proceeding on the 2008 Application. The new record establishes the following facts (among others):

- The ENV *concedes* that by January 2, 2014, the Landfill should close to most forms of municipal solid waste (“MSW”).¹
- The third boiler at H-POWER will be operational in October or November 2012.²

¹Ex. 1 at 33 (¶ 1) (ENV’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order). The documents cited in this brief are from the 2011 Application proceeding. Complete or excerpted copies of the documents are attached hereto for the Commission’s convenience.

- The third boiler will be able to accept sewage sludge and medical waste.³
- Nearly three years after the LUC issued its 2009 Order, the City still has not identified its replacement landfill site.⁴
- In the last six years, the Landfill has been cited for more regulatory violations than any other landfill in the state.⁵
- The Landfill continues to harm the community, and the community continues to oppose the Landfill.⁶

The Department of Environmental Services (the “ENV”) would like to relegate these facts and the rest of the extensive underlying record to “public testimony.” According to the ENV, the Land Use Commission (the “LUC”) could not use this supposed “public testimony” to vary or change the record developed in the 2008 Application.

This is nonsense. The record in the 2011 Application is not public testimony. The Planning Commission held eight hearing days. During those hearing days, the Commission heard sworn testimony from fifteen witnesses, including two expert witnesses, and admitted more than 260 exhibits into evidence. The parties present-

²Ex. 2 at 176:7–10, 211:12–15 (4/11/12 Tr.: ENV Director Timothy E. Steinberger).

³Ex. 3 at 71:7–10, 75:13–22 (1/11/12 Tr.: Steinberger); Ex. 2 at 90:3–20, 171:16–172:10, 174:1–6, 196:20–24, 203:25–204:4 (4/11/12 Tr.: Steinberger).

⁴Ex. K15 at 6 (¶ 4) (10/22/09 LUC order); *cf.* Ex. 4 at 112:1–113:10 (4/4/12 Tr.: landfill site selection committee member Janice Marsters).

⁵Ex. 5 at 15:25–16:13, 39:24–40:3 (1/25/12 Tr.: State Department of Health Solid and Hazardous Waste Branch Chief Steven Chang).

⁶Ex. 6 at 1–2 (¶¶ 1–2), 20 (¶¶ 43–44) (Ken Williams Written Direct Testimony); Ex. 7 at 7 (¶ 10.e) (Maile Shimabukuro Written Direct Testimony); Ex. K52 (12/23/10 State Department of Health investigation report).

ed closing arguments, submitted proposed findings and conclusions and filed responses to the proposed findings and conclusions. In short, the record in the 2011 Application is the product of a complete and extensively litigated contested case proceeding.

As the LUC knows, the Landfill has burdened the community for twenty-five years. During that time, the City has repeatedly promised to close the Landfill.⁷ And the LUC has repeatedly ordered the City to close the Landfill.⁸ Now the City is asking the LUC to extend the Landfill until it reaches capacity. The LUC's decision on the City's request should be based on the most complete record available. The LUC should have all of the facts.

The only genuine question is the proper procedure for putting the entire record before the LUC. To that end, KOCA submits that the 2008 Application should be remanded to the Planning Commission pursuant to HAR § 15-15-96(a). As part of the remand, the LUC should direct the Planning Commission to consolidate the 2008 Application and the 2011 Application pursuant to Planning Commission Rule § 2-61. Upon consolidation, the record for the 2011 Application will be joined with the record for the 2008 Application. The record will be complete. There will be no need for further evidentiary hearings.

The Planning Commission previously entered findings, conclusions and a decision and order dated August 4, 2009 for the 2008 Application. With the benefit of a

⁷K85 at 96:18–22, 125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.: Doyle).

⁸Ex. K2 at 9 (¶ 12) (6/9/03 LUC order); Ex. K155 at 18 (¶ 12) (3/14/08 LUC order); Ex. K15 at 8 (¶ 14) (10/22/09 LUC order).

more complete record, the Planning Commission will enter new findings, conclusions and a decision and order. This new order will address whether the Landfill should be granted a new special use permit and if a permit is granted, which conditions should attach to it. The Planning Commission will then transmit the complete record and the supplemental order to the LUC for decision.

II. BACKGROUND

On October 22, 2009, the LUC approved the 2009 Order. As part of the 2009 Order, the LUC imposed Condition 14, which required the Landfill to stop accepting MSW, except for H-POWER ash and residue, after July 31, 2012. The ENV appealed Condition 14 to the Hawai'i Supreme Court.

While the appeal was pending, the ENV filed the 2011 Application with the Planning Commission. In the Application, the ENV asked the Planning Commission to modify the 2009 Order by deleting Condition 14. KOCA and Schnitzer Steel Hawaii Corp. intervened. The 2011 Application deals with essentially the same issues as the 2008 Application—including whether the Landfill should continue operating under a special use permit—and the applications involve essentially the same parties.

The contested case proceeding on the 2011 Application lasted five months. The Planning Commission received sworn written direct testimony from eleven witnesses. Fifteen witnesses provided live testimony under oath and were subject to cross-examination. More than 260 exhibits were admitted into evidence. The Commission heard opening statements and closing arguments by counsel. And the parties submitted proposed findings of fact and conclusions of law and filed responses thereto.

Three weeks before the Planning Commission was scheduled to make its decision, the Hawai'i Supreme Court concluded that the record did not reflect the “substantial evidence”⁹ necessary to support Condition 14. *Dep't of Env'tl. Servs. v. Land Use Comm'n (“ENV”)*, 127 Hawai'i 5, 17 (2012). But the court also recognized that Condition 14 was “a material condition to the LUC's approval.” *Id.* at 17. Because a material condition of the order could not stand, the court held that “the LUC's approval of SUP-2 also cannot stand” *Id.* Accordingly, the court vacated the order and remanded the proceeding on SUP-2 to the LUC “for further hearings as the LUC deems appropriate.” *Id.* at 18. The entire 2009 Order approving SUP-2 has been vacated. *Id.* at 17–18. There is presently no order approving the use of Waimanalo Gulch for the Landfill. On remand, the LUC must determine whether to approve SUP-2 and, if so, which conditions should attach to the permit.¹⁰

The supreme court does not expect the LUC to limit its review to the record developed for the 2008 Application. On the contrary, the court's opinion specifically recognized that “on June 28, 2011, [the ENV] filed a ‘[r]equest for modification of condition 14 of SUP file No. 2008/SUP-2’ with the Planning Commission, and that contested case hearing is ongoing in that proceeding.” *Id.* at 19 n.16 (alteration

⁹“Substantial evidence” is “credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.” *ENV*, 127 Hawai'i at 12 (quotations omitted).

¹⁰The LUC may “approve, approve with modification, or deny the petition” for SUP-2, or “the petition may be remanded to the county planning commission for further proceedings.” HAR § 15-15-96(a); *see also* HRS § 205-6(e). The commission may also “impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.” HRS § 205-6(d); *see also* HAR § 15-15-96(a).

added). In light of the new contested case, the court “encourage[d] the LUC to consider any new testimony developed before the Planning Commission in that case.” *Id.* The court plainly wants the LUC to consider all of the facts in deciding whether to approve SUP-2.

Consistent with the court’s opinion, on May 22, 2012, former LUC Chair Normand R. Lezy sent a letter on behalf of the LUC requesting that the Planning Commission stay its May 25, 2012 proceedings. The chair informed the Planning Commission that in the event a stay was entered, the LUC staff would “forward the record on remand to the Planning Commission upon receipt from the circuit court so that it may consolidate the proceedings consistent with the spirit and intent of the HSC’s decision.” As the chair observed, the Planning Commission’s “consolidation of the remand and the [ENV’s] current request would better serve the public interest and provide a more economical disposition of both matters.”

On May 25, 2012, the Planning Commission entered a six-month stay of all proceedings as to the 2011 Application. But instead of waiting for the remand from the LUC, the Planning Commission transmitted its record to the LUC. By letter dated May 29, 2012, Planning Commission Chair Gayle Pingree informed the LUC of its actions.

III. ARGUMENT

There is no legal support for the ENV’s argument that the record developed in the 2011 Application should be treated as “public testimony” and should not be relied upon by the LUC to enter findings, conclusions and conditions. The proper course is to remand the 2008 Application to the Planning Commission for consolida-

tion with the 2011 Application and the entry of findings, conclusions and a decision and order in the consolidated proceeding. At that point, the LUC will have the benefit of the complete record and will be in a position to make its decision.

A. There Is No Legal Support for the ENV's Argument.

The new record for the 2011 Application is not mere "public testimony." Under HAR § 15-15-10(b), the LUC is required to allow interested persons to submit testimony and data on any agenda item in an open meeting. The evidence in 2011 Application was not submitted by interested members of the public speaking on an agenda item at an LUC meeting or a Planning Commission meeting. Rather, the evidence was developed in a lengthy contested case proceeding. During this proceeding, the ENV had a full opportunity to present witnesses and exhibits, to cross-examine adverse witnesses and to offer rebuttal witnesses and exhibits. There is no authority for treating this extensive record as public testimony.

Nor would such a result be consistent with the supreme court's decision. There would be no point in the court's direction to "consider" the new record if the LUC could not act on it. For example, under the ENV's view, the LUC would be aware of the ENV's concession that by January 2, 2014, the Landfill should close to most forms of MSW.¹¹ Yet the LUC could not act on the concession. Similarly, the LUC would know, because it is part of the record in the 2011 Application, that H-POWER's third boiler will be operational in October or November 2012¹² and will

¹¹Ex. 1 at 33 (¶ 1) (ENV's Proposed Findings of Fact, Conclusions of Law, and Decision and Order).

¹²Ex. 2 at 176:7–10, 211:12–15 (4/11/12 Tr.: Steinberger).

have the ability to accept sewage sludge and medical waste.¹³ But the LUC could not develop conditions based on those facts. Or again, the LUC would discover that nearly three years after it issued the 2009 Order, the City still has not identified an alternative landfill site, even though the order required the ENV to exercise “reasonable diligence” in developing a new site.¹⁴ Yet the LUC would have to ignore this fact. As a final example, the LUC would learn that deviations from the Landfill’s design plans and industry standards led the operators to fill a cell before completing the diversion channel.¹⁵ When heavy rains hit the leeward coast in January 2011, the cell flooded and the Landfill released unknown amounts of medical and other wastes into the ocean.¹⁶ But the LUC could not use those facts to take action that would protect the public from future harm.

This is not the result that the supreme court intended when it “encourage[d] the LUC to consider any new testimony developed before the Planning Commission in [the 2011 Application] case.” *ENV*, 127 Hawai‘i at 19 n.16. The court invalidated Condition 14 for lack of substantial evidence. *Id.* at 17. The court vacated the 2009

¹³Ex. 3 at 71:7–10, 75:13–22 (1/11/12 Tr.: Steinberger); Ex. 2 at 90:3–20, 171:16–172:10, 174:1–6, 196:20–24, 203:25–204:4 (4/11/12 Tr.: Steinberger).

¹⁴Ex. K15 at 6 (¶ 4) (10/22/09 LUC order); *cf.* Ex. 4 at 112:1–113:10 (4/4/12 Tr.: Marsters).

¹⁵Ex. 2 at 31:24–32:10, 66:7–9, 66:15–17 (4/11/12 Tr.: Landfill engineer Hari D. Sharma); Ex. 2 at 74:10–15 (4/11/12 Tr.: Steinberger); Ex. 8 at 39:25–40:4, 126:13–20, 128:14–130:4, 172:19–173:3 (3/7/12 Tr.: Miller); Ex. 9 at 8:7–17 (4/4/12 Tr. Supp.: State Department of Health Deputy Director Gary Gill); Ex. K208 at 1 (¶ 4) (1/22/11 Honolulu Civil Beat article quoting Director Gill).

¹⁶Ex. 10 at 83:24–84:3, 85:19–86:18, 88:1–11, 94:7–95:1 (2/8/12 Tr.: Ko Olina Security and Resort Operations Director Paul Duke Hospodar).

Order because it recognized that Condition 14 was a material part of the LUC's approval. *Id.* at 17–18. It was for this reason that the court sent the order back to the LUC for further proceedings. *Id.* at 19 n.16. The only way to give meaning to the supreme court's direction is to treat the evidence developed in the 2011 Application as evidence.

B. Remanding this Matter to the Planning Commission Would Ensure that the New Evidence in the 2011 Application is Properly Before the LUC.

The statutes and rules governing special permits contemplate a two-step process for areas greater than fifteen acres. In the first step, the Planning Commission receives evidence and makes a decision based on the evidence to approve, approve with conditions or deny the special use permit application. *See, e.g.*, HAR § 15-15-95(a), (e). If the Planning Commission approves the application, it transmits the record and decision to the LUC. *Id.* In the second step, the “LUC reviews the [application] based upon the record developed in the planning commission proceeding and upon the memoranda and arguments before the LUC.” *Maha‘ulepu v. Land Use Comm’n*, 71 Haw. 332, 334–35 (1990). The LUC makes the final decision.

Here, the record developed by the Planning Commission includes the record for the 2008 Application and the record for the 2011 Application. Those records are presently separate, even though they deal with precisely the same subjects and they have been litigated by essentially the same parties.

The record for the 2008 Application is clearly before the LUC. The 2008 Application has been remanded to the LUC, along with the accompanying record, for further consideration. On the other hand, the 2011 Application is not clearly before

the LUC because the Planning Commission has not made a decision on the application. Before we move on to step two (LUC consideration), we should complete step one (Planning Commission recommendation) for the 2011 Application.

To do so, the LUC should remand the 2008 Application to the Planning Commission pursuant to HAR § 15-15-96(a). This rule provides in part that “[u]pon determination by the [LUC], the petition may be remanded to the county planning commission for further proceedings.” The LUC should also instruct the Planning Commission to consolidate the 2008 Application with the 2011 Application pursuant to Planning Commission Rule § 2-61, which allows the commission to “consolidate for hearing or for other purposes . . . two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the commission finds that such consolidation . . . will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.” Upon consolidation, the new record for the 2011 Application would be part of the “record developed in the planning commission proceeding [for the 2008 Application].” See *Maha‘ulepu*, 71 Haw. at 334–35. The Planning Commission would then complete step one by entering findings, conclusions and a decision and order based the full record and the proposed findings and responses submitted by the parties. There would be no need for further evidentiary hearings. Considering the entire record, the Planning Commission would recommend whether the Landfill should be granted a new special use permit and if a new permit is granted, which

conditions should attach. The Planning Commission would then transmit the complete record and the supplemental order to the LUC for final decision.

As the LUC suggested in its May 22, 2012 letter, remand and consolidation is “consistent with the spirit and intent of the [supreme court’s] decision,” serves the “public interest and provide[s] for a more economical disposition of both matters.” Upon receiving the new record and order, the LUC will be able to properly and fully consider the new record in deciding whether to approve the special use permit and if approved, which conditions should apply.

IV. CONCLUSION

No statute or rule supports treating the record developed in the 2011 Application as “public testimony” upon which the LUC cannot enter findings, conclusions and conditions. Nor would such a result be consistent with the supreme court’s direction to consider the entire record. The proper course is to remand the 2008 Application to the Planning Commission for consolidation with the 2011 Application and the entry of findings, conclusions and a decision and order in the consolidated proceeding.

DATED: Honolulu, Hawai'i, July 19, 2012.

CADES SCHUTTE
A Limited Liability Law Partnership

A handwritten signature in cursive script, appearing to read "Chris Goodin", written over a horizontal line.

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

RECEIVED

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12 MAY -2 PM 14

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL	)	DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF	)	SERVICES, CITY AND COUNTY OF
HONOLULU	)	HONOLULU'S PROPOSED FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW, AND
To delete Condition No. 14 of Special Use	)	DECISION AND ORDER; CERTIFICATE
Permit No. 2008/SUP-2 (also referred to as	)	OF SERVICE
Land Use Commission Docket No. SP09-403))	
which states as follows:)	
)	
"14. Municipal solid waste shall be allowed at)	
the WGSJ up to July 31, 2012, provided that)	
only ash and residue from H-POWER shall be)	
allowed at the WGSJ after July 31, 2012.")	

**DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

COMES NOW DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND
COUNTY OF HONOLULU (hereinafter, "Applicant," "ENV," or "City"), by and through its
attorneys, DANA VIOLA and ROBERT BRIAN BLACK, Deputies Corporation Counsel, and

respectfully submits this Proposed Findings of Fact, Conclusions of Law, and Decision and Order, pursuant to the Rules of the Planning Commission, City and County of Honolulu § 2-74.

DATED: Honolulu, Hawaii, May 2, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dana Viola', is written over a horizontal line.

DANA VIOLA
ROBERT BRIAN BLACK
Deputies Corporation Counsel
Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL	)	DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF	)	SERVICES, CITY AND COUNTY OF
HONOLULU	)	HONOLULU'S PROPOSED FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW, AND
To delete Condition No. 14 of Special Use	)	DECISION AND ORDER
Permit No. 2008/SUP-2 (also referred to as)	
Land Use Commission Docket No. SP09-403))	
which states as follows:)	
)	
"14. Municipal solid waste shall be allowed at)	
the WGS� up to July 31, 2012, provided that)	
only ash and residue from H-POWER shall be)	
allowed at the WGS� after July 31, 2012.")	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

This matter came on for a contested case hearing before the Planning Commission, City and County of Honolulu (the "Planning Commission"), on December 7, 2011, January 11, 2012, January 25, 2012, February 8, 2012, March 7, 2012, April 4, 2012, April 11, 2012, and April 23, 2012. Based on the record in this matter, including the evidence adduced at the contested case hearing, the credibility of the witnesses testifying at the hearing, and the proposed findings of fact, conclusions of law, and decisions and orders submitted by the parties and their respective responses thereto, the Planning Commission hereby makes the following findings of fact, conclusions of law, and decision and order:

zoning ordinances, and to approve special use permits use permits for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified in accordance with the RPC. Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2000 Edition); Hawaii Revised Statutes Section 205-6(a).

2. Hawaii Revised Statutes Section 91-19(5) provides that:

[T]he party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

The Applicant has the burden of proof to show by a preponderance of the evidence that the Application meets the provisions of Section 2-45 of the RPC.

3. The Applicant has met the provisions of Section 2-45 of the RPC in obtaining SUP No. 2008/SUP-2 and now applies anew for a modification of SUP No. 2008/SUP-2 pursuant to Sections 2-18 and 2-49 of the RPC and the Rules of the State of Hawaii, Land Use Commission, Section 15-15-70.

4. Based on the findings set forth above, the Planning Commission concludes that Applicant has shown good cause to amend SUP No. 2008/SUP-2.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE Applicant's Application to Modify the Special Use Permit No. 2008/SUP-2 by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition No. 14, subject to the following conditions:

1. MSW, including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGSL up to January 1, 2014, provided HPOWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City.
2. During periods of HPOWER scheduled maintenance when the facility may shut down one or more of its boilers, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.
3. Under emergency circumstances, as reasonably determined by the Director of the Department of Environmental Services, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.

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4. All remaining conditions of SUP No. 2008/SUP-2 shall remain in full force and effect.

Dated at Honolulu, Hawaii, this _____ day of _____, 2012.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

By _____
GAIL PINGREE, Chair

By _____ (recused)
KA'IULANI K. SODARO, Vice Chair

By _____
BEADIE K. DAWSON, Member

By _____
CORD D. ANDERSON, Member

By _____ (recused)
KARIN HOLMA, Member

By _____ (recused)
RODNEY KIM, Member

By _____
JAMES C. PACOPAC, Member

By _____
ARTHUR B. TOLENTINO, Member

By _____
DANIEL S. M. YOUNG, Member

1 BEFORE THE PLANNING COMMISSION
2 OF THE CITY AND COUNTY OF HONOLULU
3 STATE OF HAWAII

4
5 In the Matter of the) FILE NO. 2008/SUP-2
6 Application of)
7)
8 DEPARTMENT OF ENVIRONMENTAL)
9 SERVICES, CITY AND COUNTY)
10 OF HONOLULU)
11)
12 To delete Condition No. 14)
13 of Special Use Permit No.)
14 2008/SUP-2 (also referred)
15 to as Land Use Commission)
16 Docket No. SP09-403) which)
17 states as follows:)
18)
19 "14. Municipal solid waste)
20 shall be allowed at the)
21 WGSL up to July 31, 2012,)
22 provided that only ash and)
23 residue from H-POWER shall)
24 be allowed at the WGSL)
25 after July 31, 2012.")
)

18 CONTESTED CASE HEARING

19 Ewa-State Special Use Permit Amendment Application -
20 2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

21
22 Taken at Mission Memorial Conference Room,
23 Mission Memorial Building, 550 South King Street,
24 Honolulu, Hawaii 96813, commencing at 9:05 a.m., on
25 April 11, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 CORD D. ANDERSEN, Member
 9 DANIEL S.M. YOUNG, Member
 10 BEADIE DAWSON, Member
 11 JAMES C. PACOPAC, Member
 12 ARTHUR TOLENTINO, Member
 13
 14 For the Planning Commission:
 15 WINSTON K.Q. WONG, ESQ.
 16 Deputy Corporation Counsel
 17 Department of the Corporation Counsel
 18 530 South King Street, Room 110
 19 Honolulu, Hawaii 96813
 20
 21
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 23
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I N D E X

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 2
 3 WITNESS: HARI D. SHARMA
 4 Ms. Viola 7, 57
 5 Mr. Chipchase 44
 6 Member Dawson 57
 7 Chairwoman Pingree 65
 8
 9 WITNESS: TIMOTHY STEINBERGER
 10 Ms. Viola 70, 192
 11 Mr. Chipchase 138
 12 Member Dawson 206
 13 Chairwoman Pingree 209
 14 Member Anderson 211
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1 Appearances (continued):
 2 For the City and County of Honolulu, Department of
 3 Environmental Services:
 4 DANA MIE OSHIRO VIOLA, ESQ.
 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
 7 City and County of Honolulu
 8 530 South King Street, Room 110
 9 Honolulu, Hawaii 96813
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 11 For Ko Olina Community Association and Senator Maile
 12 Shimabukuro:
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 14 CHRISTOPHER T. GOODIN, ESQ.
 15 Cades Schutte
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 17 Honolulu, Hawaii 96813
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 19 For Schnitzer Steel Hawaii Corp.:
 20 IAN L. SANDISON, ESQ.
 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Bail LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

Page 5

CONTESTED CASE HEARING

1
 2 CHAIRWOMAN PINGREE: We'll call the
 3 meeting to order. Today is April 11, 2012 and this
 4 is day seven of the contested case hearing Ewa-
 5 State Special Use Permit Amendment Application
 6 2008/SUP-2, Waimanalo Gulch Sanitary Landfill.
 7 Identification of counsel, please, for the
 8 record?
 9 MS. VIOLA: Dana Viola and Brian Black on
 10 behalf of the City.
 11 MR. SANDISON: Ian Sandison and Arsim
 12 Muller on behalf of intervenor Schnitzer Steel of
 13 Hawaii Corp.
 14 MR. CHIPCHASE: Cal Chipchase and Chris
 15 Goodin for intervenors Ko Olina Community
 16 Association and Senator Maile Shimabukuro.
 17 CHAIRWOMAN PINGREE: Thank you. Good
 18 morning. I believe we left off with your rebuttal
 19 witnesses.
 20 MS. VIOLA: Yes. Can we take a procedural
 21 matter? I believe there was a filing for rebuttal
 22 witnesses on behalf of KOCA, the intervenors.
 23 CHAIRWOMAN PINGREE: Right.
 24 MS. VIOLA: The City would like to state
 25 an objection at this time to any purely repetitive

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1 Low permeability material is very low permeability;
 2 I would say tenth to the power minus seven, which is
 3 ten million of centimeter per second flow, very low,
 4 and then at the top of that we put a HDP,
 5 high-density polyethylene layer. At this landfill,
 6 we have put two layers of that, one below this low
 7 permeability material and one above this. And the
 8 permeability, the rate of flow going through this
 9 for high-density polyethylene is tenth to the power
 10 minus 12, which is -- tenth to the power minus six
 11 is a million, nine is, I guess, a billion, and
 12 twelve is, I guess, a trillion --
 13 (Discussion off the record.)
 14 A. So it is tenth to the power minus twelve
 15 centimeters per second. I think that should be
 16 enough. So we have done that.
 17 Then the leachate levels, the leachate
 18 levels -- the leachate is one of the major issues in
 19 landfills, because the water from the sky will fall
 20 -- I'm not talking about the water going around it,
 21 but the water in the landfill. Some of it run off
 22 and you take it out, but some will percolate and
 23 that percolates to the waste and then collects the
 24 chemicals to the waste, and we call it leachate.
 25 And then the leachate goes down at the top of that

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1 lining system and is collected someplace.
 2 The criteria in the regulations are, at
 3 one time, on the lining system should not have
 4 leachate head more than 12 inches. And again, the
 5 in-built factor of safety, what we have done is we
 6 have designed the system in such a way that for a
 7 short period of time when the operation is going on
 8 -- because the operation doesn't happen for the
 9 whole landfill at one time; only one or two percent
 10 of the area. At that time, we had designed the head
 11 to be between eight inches and ten inches. On the
 12 -- which is one or two percent. Whereas for other
 13 98 percent, for long-term basis, the head is 4.5 to
 14 six inches. So, you know, there has been other
 15 level of safety factors there.
 16 For surface water, the GEI has designed
 17 the surface water. Regulations require 25-year, 24-
 18 hour storm design. They have designed it for a
 19 hundred year, 24-hour; that is every hundred year
 20 for 24 hours. So which is again -- so we have not
 21 just followed the regulatory criteria, but we have
 22 gone above and beyond the requirements.
 23 BY MS. VIOLA:
 24 Q. In relation to what you just referred to,
 25 the surface drain or the diversion channel, Mr.

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1 Miller concludes that the building of the channel
 2 during the same time as the construction was not
 3 standard engineering practice.
 4 Do you agree with that conclusion?
 5 A. Well, in general -- in general, I would
 6 agree with it, because I would have the diversion of
 7 the water completed before the landfill --
 8 construction can continue both at the same time, but
 9 before you place the waste in there. Before you
 10 place the waste, the diversion should be completed.
 11 But what I understand -- because this is
 12 an operation issue. What I understand is we had --
 13 actually, Geosyntec and GEI had prepared the
 14 construction drawings. I think we started in 2006
 15 or seven, around that time, and supplemented these
 16 construction drawings in 2010, January or something.
 17 And the Department of Health and other regulatory
 18 had approved it, but then it was found out that the
 19 diversion channel area, the SUP issue, Special Use
 20 Permit issue, because I think there was some
 21 archaeological issue that had to be resolved, and it
 22 was being resolved but it got delayed, and so they
 23 would allow Waste Management -- the various agencies
 24 would not allow Waste Management to go and construct
 25 the diversion channel.

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1 And it took, I guess, many months before
 2 it was approved, and within two weeks -- and this is
 3 what Waste Management has told me -- within two
 4 weeks they went there to construct it.
 5 Q. Within two weeks of what?
 6 A. Within two weeks of receiving the approval
 7 for that diversion channel area.
 8 In the beginning, they had said go ahead
 9 because they felt that this would resolve very
 10 quickly. But then there was -- so both were being
 11 constructed --
 12 And construction is not the problem; it is
 13 the waste placement. And what I understand is the
 14 landfill was running out of space. So the
 15 Department of Health -- that's my understanding it
 16 is -- said, go ahead and place the waste, and, Are
 17 you sure that it will take care of 24-hour, 25-year
 18 storm, as required by Title 40, 258. And they said,
 19 Yes, it can. And so under the circumstances, with
 20 those limitations, this -- the waste was placed
 21 there.
 22 And as a matter of fact, I'm told by
 23 surface water people that the first storm, in
 24 December 2010, which was 25-year storm, was
 25 contained. The design contained it. It was the

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1 A. If I understand the question, you're
2 asking that why didn't they have the diversion
3 channel in place --
4 Q. Yes.
5 A. -- prior to this storm.
6 Q. Correct.
7 A. And it was intended to be. The plan and
8 design was intended to have that. And the
9 construction had already started.
10 But my understanding is that during this
11 process, the landfill expansion area, there was
12 approval to go ahead and there was some issue about
13 archaeological factors and that was the last hurdle
14 to get approval for construction in that area.
15 So we were -- we were going to construct
16 them both sequentially, not place the waste before
17 the diversion channel is completed. And when this
18 thing was approved, the go ahead now and construct
19 it, within two weeks Waste Management started
20 mobilizing and constructing it.
21 Unfortunately, this waste had to be placed
22 somewhere. Nowhere else was there space. So they
23 placed in that area, and then again, unfortunately,
24 the God's action, the more-than-expected rainfall
25 came in and they all coincided at the same time.

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1 Design-wise, it was supposed to be the way
2 it was -- if it was built and constructed like that,
3 the issue would not have come up. We would not have
4 had this problem.
5 Q. So there was no other space to put this
6 waste?
7 A. There were spaces, but there were no other
8 space where you could safely put that amount of
9 waste. Because if you put it somewhere at the top,
10 well, still it was --
11 CHAIRWOMAN PINGREE: Thank you.
12 THE WITNESS: Thank you.
13 CHAIRWOMAN PINGREE: Any other questions?
14 Thank you, Dr. Sharma.
15 THE WITNESS: Thank you.
16 CHAIRWOMAN PINGREE: We appreciate your
17 time.
18 MS. VIOLA: Could I suggest -- and counsel
19 can weigh in -- that we take an early lunch so we
20 can take Mr. Steinberger in one block, so we don't
21 have to start him now and then break for lunch and
22 finish with him in the afternoon?
23 CHAIRWOMAN PINGREE: That's fine with the
24 commissioners. We'll ask counsel.
25 MR. CHIPCHASE: I'd just like to know how

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1 long do you expect you'll go on just direct?
2 MS. VIOLA: A little longer than Mr.
3 Sharma. So how long was I; about an hour? About an
4 hour and half with him, I think.
5 MR. CHIPCHASE: Well, we could finish
6 direct and then start cross right after lunch.
7 MS. VIOLA: I don't think I'll finish
8 within an hour.
9 MR. CHIPCHASE: All right. If that's the
10 representation, then I have no problem.
11 CHAIRWOMAN PINGREE: Right now it's 10:55.
12 We'll resume at noon. Thank you.
13 (Lunch recess.)
14 CHAIRWOMAN PINGREE: We're back on the
15 record.
16 MR. CHIPCHASE: Chair, before we take up
17 the ENV's next witness, the court reporter pointed
18 out to me on the break that during our prior hearing
19 she did not transcribe the video clip that was
20 played for Director Gill, so I'd like to provide her
21 with a copy of just those sections that I played for
22 the commission so that she may transcribe them and
23 they form a coherent part of the transcript.
24 CHAIRWOMAN PINGREE: Counsel?
25 MS. VIOLA: No objection.

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1 MR. SANDISON: No objection.
2 CHAIRWOMAN PINGREE: Thank you. Yes.
3 I think we're going to begin with ENV.
4 MS. VIOLA: The City would like to recall
5 Tim Steinberger.
6 CHAIRWOMAN PINGREE: Dana, can you recap,
7 again, the scope of the rebuttal? That was the
8 lengthy one we heard the last time?
9 MS. VIOLA: Yes.
10 CHAIRWOMAN PINGREE: Okay.
11 MS. VIOLA: In general, Tim Steinberger
12 will be rebutting statements made by Mr. Miller
13 regarding alternative disposal options, operation of
14 the Waimanalo Gulch Sanitary Landfill, engineering
15 standards as followed by Mr. Miller, and
16 archaeological concerns as stated by Mister --
17 archaeological and cultural concerns as stated by
18 Shad Kane.
19 And I can go through -- do you want me to
20 go through all the specifics?
21 CHAIRWOMAN PINGREE: I think we had heard
22 it prior. You had read it prior.
23 MS. VIOLA: Yes.
24 CHAIRWOMAN PINGREE: As I recall, it was
25 pretty broad.

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1 year representation?
 2 A. I believe so.
 3 Q. In their order, did they refer to Mr.
 4 Doyle's estimation of seven plus years?
 5 A. I believe so.
 6 Q. I also wanted to ask you questions
 7 regarding the circumstances leading to the
 8 concurrent construction of the western drainage
 9 system as well as the operating cell E6.
 10 Dr. Sharma testified that his
 11 understanding was that the intention was to build
 12 the western drainage diversion system prior to
 13 opening the cell for collection of waste.
 14 Was that your understanding, as well?
 15 A. Yes, it was.
 16 Q. What was your understanding as to the
 17 reason why the concurrent construction was
 18 essentially allowed?
 19 A. Well, the process began actually prior to
 20 2009, and I have to say this is before I was with
 21 the City, and that started with the EIS. And as I
 22 understand, the EIS, after it was completed, was
 23 contested, which took time, and then, of course, it
 24 came to the Planning Commission, of which there were
 25 intervenors involved, which also created delays.

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1 Once the decision was rendered by the
 2 Planning Commission and went over to the Land Use
 3 Commission, the process continued. So it went on
 4 for quite some time before the SUP could actually be
 5 issued.
 6 So given that you cannot go onto the site
 7 and start your work until you have the necessary
 8 permit, it sort of put Waste Management and the City
 9 at a great disadvantage, because during this time
 10 you're still transporting waste to the landfill, and
 11 they were rapidly coming to the end of the capacity
 12 of the permitted cells.
 13 So the Department of Health recognized
 14 this, and in the Department of Health's permit that
 15 they finally issued, they allowed the concurrent
 16 construction, knowing that if there was not access
 17 to the landfill, that the public health issue would
 18 be monumental.
 19 And so, you know, that was from my
 20 observation and that was what I lived with from 2009
 21 up until about 2010.
 22 Q. Mr. Miller criticized the Department of
 23 Environmental Services' use of biosolids or disposal
 24 of biosolids by stating that landfilling of
 25 biosolids is not done anywhere else in the country.

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1 As far as you understand, is that
 2 accurate?
 3 MR. CHIPCHASE: I think that's actually a
 4 misstatement. I'll make the same objection I had
 5 before, that I do not agree that the statements made
 6 reflect what Mr. Miller said. I don't intend to
 7 interrupt every question to insert that objection,
 8 but I note it for the record and we have the
 9 transcript to verify.
 10 BY MS. VIOLA:
 11 Q. Let me clarify. Mr. Miller testified that
 12 landfilling of biosolids is not only archaic, but
 13 rarely done elsewhere in the U.S.
 14 Is that an accurate statement as far as
 15 you're aware?
 16 A. As far as I'm aware from reading the
 17 transcript, that is correct.
 18 Q. As far as you are aware, is the substance
 19 of that statement accurate?
 20 A. Well, given the information that we get
 21 from the National Association of Clean Water
 22 Agencies -- the acronym is NACWA. This is a group
 23 of municipalities that deal mostly in water and
 24 wastewater issues -- the data they have shows that
 25 nationally about 28 percent of all biosolids is

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1 landfilled.
 2 And I'll just continue down giving you the
 3 data that I received from NACWA. 45 percent is land
 4 applied, and actually, that 45 percent includes what
 5 they would consider to be used as alternative daily
 6 cover. In other words, it actually goes to the
 7 landfill but it's used as a daily cover, so in a
 8 sense it's encapsulated in the landfill. There's
 9 also 17 percent that is incinerated, and currently,
 10 the EPA is changing their rules having to do with --
 11 having to deal with incinerated sludge, making it
 12 far more difficult to get permitted for
 13 incineration. So many of these municipalities that
 14 currently incinerate may be looking at other
 15 alternatives, such as land-filling or hopefully
 16 going to some type of a land application.
 17 And to give you an idea -- I know this is
 18 on the landfill, but maybe just a little education
 19 on biosolids. When using the EPA definition, before
 20 biosolids are extracted from the wastewater and it
 21 goes into a separate treatment system, they refer to
 22 them as sludge. Once it goes into that treatment
 23 system and it exits the treatment system, they then
 24 call it biosolids. So we have raw sludge and
 25 biosolids.

1 would be, actually, the second to the last full
 2 paragraph on the last page. The final sentence
 3 says: Once it's running at full capacity -- meaning
 4 the plasma gasification plant -- it will process 25
 5 tons of waste a day.
 6 Do you see that?
 7 A. No, I don't.
 8 Okay. I see it. Thank you.
 9 Q. Mr. Steinberger, I've handed you a
 10 printout from the company we were just reading
 11 about, S4 Energy Solutions' website. It's marked
 12 Exhibit K198. Do you have that?
 13 A. Yes, I do.
 14 Q. If you look down at the About S4 Energy
 15 Solutions section, it says: S4 Energy Solutions was
 16 established as a joint venture between Waste
 17 Management, Inc. and InEnTec, LLC. to develop,
 18 operate and market plasma gasification facilities
 19 using plasma enhanced melter technology.
 20 Do you see that?
 21 A. Yes, I do.
 22 Q. Waste Management operates the Waimanalo
 23 Gulch Sanitary Landfill; correct?
 24 A. That's correct.
 25 Q. How much medical waste does Oahu generate

1 Q. On the subject of diversion, San
 2 Francisco, I think you said, is at a 78 percent
 3 diversion rate.
 4 A. That's what they indicate, yes.
 5 Q. And they accomplished that without any
 6 waste-to-energy facility?
 7 A. That is true.
 8 Q. Mr. Steinberger, I've handed you a copy of
 9 a document marked Exhibit K196. It's a printout
 10 from a San Francisco website. If you look down at
 11 the -- really the heading of the article is titled
 12 Zero Waste. Do you see that?
 13 A. Yes, I do.
 14 Q. And down below it lists Achievements, and
 15 it says: San Francisco has some of the best waste
 16 reduction programs and policies in the country and
 17 we couldn't have done it without the cooperation and
 18 support of the city agencies, and it goes on from
 19 there.
 20 Do you see that?
 21 A. I see that.
 22 Q. Down below it talks about some of the
 23 things that San Francisco has done to achieve a high
 24 diversion rate. One of them, the first bullet says:
 25 Adopted goals of 75 percent landfill diversion by

1 each year?
 2 A. I don't really have that off the top of my
 3 head. I have to go back to the records that Waste
 4 Management maintains.
 5 Q. Mr. Steinberger, really I just want to
 6 refresh your recollection on that point, because we
 7 did talk about it the last time we met. I'm going
 8 to hand you a copy of your transcript and if you
 9 would look down with me where we discussed medical
 10 waste. I've highlighted it.
 11 A. Yes.
 12 Q. So Mr. Steinberger, after looking at that,
 13 your prior testimony, does that refresh your
 14 recollection that we generate about 10,000 tons of
 15 medical waste annually?
 16 A. Yes. I believe that was from a document
 17 that you showed me.
 18 Q. That's right.
 19 A. And I agreed that that was what was in the
 20 document.
 21 Q. So a plasma gasification plant that
 22 processes roughly 25 tons a day would very nearly
 23 take care of all the medical waste generated on
 24 Oahu, wouldn't it?
 25 A. Yes, it would.

1 2010 and zero waste by 2020.
 2 Do you see that?
 3 A. I see that.
 4 Q. You understand, of course, that zero waste
 5 is a term of art; right?
 6 A. Yes.
 7 Q. It means at least 90 percent diversion
 8 from landfill?
 9 A. Yes. I realize that, and it's a
 10 philosophy.
 11 Q. Right. Exactly, a philosophy. So that's
 12 the goal San Francisco has adopted?
 13 A. That's what they've adopted.
 14 And similar to King County, that has
 15 several goals over the years, this may be amended as
 16 they approach 2020. Only time will tell.
 17 Q. Only time will tell. That's true. But if
 18 we look at what they've actually done, if we look
 19 down at the second bullet point, it says they've
 20 diverted 77 percent, over 1.367 million tons from
 21 the landfill; right?
 22 A. That's right.
 23 Q. Number two, reduced landfill disposal to
 24 its lowest level in 29 years.
 25 Do you see that?

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1 treatment facility, as well?
2 A. No, they're not.
3 Q. Currently, is H-POWER able to burn
4 biosolids?
5 A. In its current position, boilers one and
6 two, no, it could not.
7 Q. Once the third boiler comes up, will
8 H-POWER be able to burn biosolids?
9 A. Once the third boiler comes up, we are
10 making provisions for it to accept biosolids.
11 Q. Once the third boiler comes up,
12 approximately when would H-POWER be able to burn
13 biosolids?
14 A. It would probably be in the late fall.
15 Q. Of 2013?
16 A. No. Of 2012.
17 Q. Late fall of 2012, H-POWER would be able
18 to burn biosolids?
19 A. That's what they're showing on schedule
20 right now. Now, this was a change order to the
21 contract that was recently made, so whether or not
22 they run into delays on this, you know, is anybody's
23 guess.
24 Q. Ms. Munson and I believe also Mr. Miller
25 noted that electronic waste is still being dumped at

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1 the landfill. Is it ENV's position or does ENV
2 encourage the dumping of e-waste at the landfill?
3 A. No. But it is allowed by federal law and
4 by the state Department of Health.
5 Q. So if a homeowner -- I'm sorry. It's
6 allowed to whom?
7 A. Only to homeowners. Commercial is
8 restricted. They cannot go to the landfill.
9 Q. But by law, homeowners still can dispose
10 of it in the landfill?
11 A. Homeowners can, yes.
12 Q. So if a homeowner shows up at the
13 landfill, essentially the landfill has to accept the
14 e-waste?
15 A. As long as it is not a large quantity of
16 e-waste. It has to be reasonable and look as though
17 it is only a homeowners' e-waste.
18 Q. Can ENV control the homeowner?
19 A. As far as the amount of e-waste that they
20 take to the landfill, yes, they do note that when
21 somebody comes in -- say if somebody comes in with
22 five or six TVs in the back of their pickup, they're
23 going to be turned away. But if they come in with
24 one TV, maybe a flat screen and an old CRT, they'll
25 probably be allowed in.

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1 Q. Can they turn away someone who has one TV?
2 A. No. They do not.
3 Q. What steps has ENV taken to, I guess,
4 discourage disposal of e-waste at the landfill?
5 A. Well, as you may be aware, the state, a
6 couple of years ago, started legislation to restrict
7 e-waste, and what they asked for was the Department
8 of Health to go out to the industry and require the
9 industry to provide an alternative disposal type of
10 means for e-waste. And this went on for some time
11 -- I think almost for two years -- before they came
12 back with the industry's plan. The industry's plan
13 was you can box it up and mail it back to us at your
14 expense and we'll take care of it, which obviously
15 is not practical.
16 So at this point, you know, we continue to
17 look at alternatives to e-waste. We know that there
18 are processing companies out there that can handle
19 e-waste. But, you know, it's -- e-waste has just
20 been very difficult, because even if we do identify
21 a location where you can take the e-waste, it's an
22 issue of whether or not the homeowner will take it
23 to that location or will they continue to set it out
24 for bulky pickup. And of course, we do have the
25 ability to restrict pick up of the e-waste by the

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1 bulky crews, but then what will be the ultimate fate
2 of that e-waste? Will it end up somewhere else as
3 the illegal dump? So it's been difficult.
4 I know that we have had discussions about
5 an advance disposal fee on e-waste, so that if you
6 buy it, say, from Best Buy, Best Buy has to take it
7 back. But they charge you when you buy it, and at
8 that point you go back and you get the credit for
9 returning it back in. So, you know, there's a lot
10 of things that we've been looking at.
11 And with the new type of electronic waste
12 that's coming out, we are always keeping our eyes
13 open as to what are the components in the e-waste.
14 Are there any type of pollutants that we really
15 don't want to deal with? As you know, CFLs are
16 really great for Hawaiian Electric, but they're not
17 really great for landfills. When you used to buy a
18 CFL, they gave you a mail-back box. They no longer
19 do that. So now CFLs end up in the trash can. CFLs
20 do have some material in it that is not really that
21 friendly to the environment.
22 Q. Could you explain what a CFL is?
23 A. That's those coil fluorescent lights.
24 Q. There's also been some testimony,
25 specifically from Ms. Munson again, that the intent

1 somebody in Portland, Oregon.
 2 Q. I asked why can't Honolulu do that, and I
 3 think I got two parts, two answers to that.
 4 Specifically on medical waste, Honolulu
 5 didn't handle the processing or decontamination of
 6 medical waste; right?
 7 A. That's correct.
 8 Q. But Honolulu does own the landfill; right?
 9 A. Honolulu does own the landfill.
 10 Q. And Honolulu does own H-POWER, although it
 11 doesn't operate it?
 12 A. That's correct.
 13 Q. So Honolulu does, in the end, deal with
 14 the disposal of medical waste; right?
 15 A. In the end, yes, it ends up in the
 16 facility.
 17 Q. So if, as Dr. Sharma writes in his book,
 18 burning medical waste is the most common practice
 19 these days, why can't Honolulu do that?
 20 A. First off, you would have to understand
 21 what occurs at H-POWER. H-POWER processes some
 22 600,000 tons plus a year. And under the current
 23 configuration, there is a significant amount of
 24 preparation that goes before it is taken into the
 25 burner, and so we produce what's called a refuse-

1 A. When the third boiler becomes operational?
 2 Q. Yeah. Why couldn't we?
 3 A. Well, again, I'd have to sit down and talk
 4 to Covanta and see whether or not there's any reason
 5 why the new boiler, which is of a different
 6 technology, cannot handle the medical waste.
 7 Q. But just you, sitting here today, do you
 8 know of any reason?
 9 A. No, not given what I know about the third
 10 boiler and the way that it operates. I don't see
 11 why they could not take the material up there, as
 12 long as it's free of sharps.
 13 Q. And the same is true with biosolids;
 14 right? I mean, I understand that ideally Honolulu
 15 wants to convert the biosolids into the highest
 16 grade reusable product, the class A you talked
 17 about.
 18 A. Yes.
 19 Q. And that's what the Synagro facility does;
 20 right?
 21 A. Yes.
 22 Q. And the in-vessel conversion facility,
 23 when it's on line in 2013, will do that, as well;
 24 right?
 25 A. That's correct.

1 derived fuel, and I may use the abbreviation RDF.
 2 And during that preparation, the waste that goes in
 3 is broken up and taken down into smaller components.
 4 Some of these smaller components tend to get caught
 5 up into the apparatus, which then requires you to
 6 take the system down to do maintenance to free it of
 7 any of the debris that may be caught within there,
 8 within the apparatus. So given that, for that
 9 reason, we have hesitated -- or certainly Covanta
 10 has hesitated at taking medical waste.
 11 That being said, they have taken medical
 12 waste in the past. And some of the medical waste
 13 that they've taken has been in the forms of sheets
 14 and in forms of gloves and smocks and these kind of
 15 things. So they have taken it before.
 16 Now, with the third boiler on line,
 17 there's not as much pre-preparation. So since
 18 there's not much pre-preparation, there may be the
 19 opportunity to where they can take it. You know,
 20 it's going to -- we will see how it works out.
 21 Q. Well, sitting here today, can you tell me
 22 once the third boiler is operational -- let's just
 23 peg it off that date -- why Honolulu couldn't do
 24 what according to Dr. Sharma is mostly done with
 25 medical waste?

1 Q. For any remaining sewage sludge -- or
 2 treated biosolids, I suppose, coming out of the
 3 wastewater treatment plant, you could burn that in
 4 the third boiler, couldn't you?
 5 A. You could -- well, you could certainly run
 6 it through as a -- and incinerate it. The question
 7 comes down to how much BTU value is there in the
 8 sludge after it's been digested.
 9 Q. How much energy it's going to produce?
 10 A. How much energy it's going to produce.
 11 And keep in mind, when you digest sludge, the whole
 12 process reduces your volatile organic compound and
 13 that's what releases your methane so that methane
 14 can be reused at the treatment facility to generate
 15 electricity. So once that's removed out of the
 16 sludge, your BTU value from the raw sludge to the
 17 digested sludge is significantly reduced.
 18 Plus, it's coming in at about, I'm going
 19 to say, about 28 to 30 percent solid, so there's a
 20 lot of moisture in it, so that moisture also
 21 requires a certain amount of energy to process. So
 22 what it comes out to is there's probably not much
 23 energy returned from the digested biosolids.
 24 Q. Low net energy?
 25 A. Low net energy or no energy at all.

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1 Q. All right. But it can be burned?
2 A. It can be burned.
3 Q. So if the City's priority is let's get
4 biosolids out of the landfill, when the third boiler
5 is on line, you will have the ability to do that?
6 A. We'll have the ability to do that.
7 Q. Let's talk a little bit about other
8 priorities. Mr. Steinberger, I've handed you a
9 document marked Exhibit K25I. It's a printout from
10 the Honolulu.gov website.
11 Do you see that?
12 A. Yes, I do.
13 Q. It appears to me to be a press release
14 from the Department of Environmental Services. Is
15 that what it looks like to you?
16 A. It probably was initially a press release
17 that was then placed on the City's website.
18 Q. Okay. I'd just like to look at a couple
19 parts of it. One of the things it talks about here
20 is the third boiler. If we look down at the -- I
21 guess it's the fourth full paragraph, where it
22 starts, In response.
23 Do you see that?
24 A. Yes, I do.
25 Q. If we just scan down -- it's kind of a

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1 long sentence and I don't want to have to take us
2 through all of it. But if we look down at the very
3 last semi-colon: And expanding the facility in line
4 with both the population growth and the types of
5 waste handled allowing the city to divert 90 percent
6 of all municipal solid waste from the landfill with
7 the combination of recycling and energy recovery.
8 Do you see that?
9 A. Yes, I do.
10 Q. And if we look down at the second page,
11 the very last paragraph in this ENV press release,
12 it says, quote: When complete in mid 2012, H-POWER
13 will be capable of powering 75,000 Oahu homes,
14 contributing eight percent of Oahu's power using a
15 renewable source and diverting nearly 90 percent of
16 our non-recyclable household opala from the
17 landfill.
18 Do you see that?
19 A. Yes, I do.
20 Q. So that's just with the addition of
21 H-POWER. That doesn't take into account the in-
22 vessel conversion facility that you talked about.
23 A. Well, it's all -- it's talking about the
24 entire program.
25 Q. Well, let me make sure I understand that.

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1 This is talking about H-POWER coming on line in mid-
2 2012; right?
3 A. Yes.
4 Q. And I understand that got pushed back to
5 the end of the year, certainly by the very beginning
6 of next year. Right?
7 A. Right now, they're expecting to start
8 first fire at the end of this month, shake down
9 through August, September, and then they should be
10 fully functional by October, November.
11 Q. The in-vessel conversion facility doesn't
12 come on line until 2013?
13 A. That's correct.
14 Q. So this 90 percent diversion is
15 accomplished without considering that
16 as-yet-completed facility?
17 A. Well, again, you know, we're talking about
18 goals. We're not talking about firm numbers.
19 Again, if you go back to page one, we're talking
20 about a combination of our recycling and energy
21 recovery units.
22 Now, you know, originally we were hoping
23 to have the HER facility on line by 2012. However,
24 the contractor has now slipped into 2013. So again,
25 it's just one of those unpredictable things as to

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1 why is it taking extra time. He's in the permitting
2 process right now himself.
3 Q. So when that facility comes on line, now
4 we hope in 2013, we're looking at the capacity to
5 accept 15- to 20,000 tons of sewage sludge annually;
6 right?
7 A. We could accept sewage sludge, but again,
8 the --
9 Q. I'm sorry. I meant the HER facility.
10 A. The HER facility, yes.
11 Q. And in addition to that, another 80- to
12 85,000 tons of green waste?
13 A. Yes.
14 Q. Mr. Steinberger, I've handed you a copy of
15 a document marked K230. It's titled Technical
16 Memorandum Sand Island WWTP Evaluation of Sludge
17 Processing Alternatives, Oahu, Hawaii, Final March
18 2012.
19 Do you see that?
20 A. Yes, I do.
21 Q. It's prepared by AECOM for the Department
22 of Environmental Services.
23 A. Correct.
24 Q. If I understand this -- this is just an
25 excerpt, but if I understand the evaluation

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1 A. That's correct.

2 Q. So when Mr. Chipchase says, Well, why

3 can't we do what San Francisco is doing and get rid

4 of the remaining waste, is that necessarily

5 accurate? I mean, do we have the option of using

6 these alternative technologies for the remaining

7 waste stream that goes to the landfill?

8 A. Well, again, as you correctly stated, San

9 Francisco is diverting approximately 23 [sic]

10 percent, and they consider themselves at the very

11 high end. And I think their ultimate goal, if I'm

12 correct, said that they wanted to get to 80 percent,

13 which means that they're still going to be diverting

14 waste to a landfill. Of course, the major

15 difference with them is they can put it on a train

16 and take it to another county and we can't.

17 Q. So they're conceivably dealing with the

18 same type of waste that still has to be land-

19 filled --

20 A. Yes.

21 Q. -- as Honolulu is?

22 A. Yes.

23 Q. For example, he also pointed to L.A. and

24 King County as being able to land-apply biosolids.

25 Is that something that is available to Honolulu?

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1 A. Well, we certainly don't have the

2 available land that either the state of Washington

3 or California has. And keep in mind, the type of

4 biosolids that King County is diverting is mostly

5 class B, which is a lower standard type of biosolid,

6 which means that it does not have a complete

7 pathogen kill. So that's why they take it out into

8 a very broad, open country, as opposed to if you

9 have a type A, you have a more -- a broader use of

10 that product.

11 Same with Los Angeles. Los Angeles has

12 been hauling theirs out to Kern County, and this is

13 the Hyperion plant, and recently Kern County passed

14 an ordinance that was going to prohibit the land

15 application of class B biosolids, so in response,

16 Los Angeles went to what we call a Kern County class

17 A. In other words, it's not a full class A. They

18 don't have a complete pathogen kill in order to

19 classify it as an EPA class A, but it's higher

20 quality than the class B. So that was how they

21 responded. But again, Kern County is the largest

22 county in California and it extends all the way to

23 the Arizona border, so they're pretty far away from

24 anybody and anything.

25 Q. Currently, does the Department of Health

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1 approve of any land application of class B

2 biosolids?

3 A. As I indicated, there's only one area, and

4 that is over on the County of Kauai, and they're

5 applying a class B -- a limited amount of class B

6 for foraging crops; in other words, grass.

7 Q. So other than this specific instance,

8 there's no approved land application -- DOH-approved

9 land application for class B biosolids on Oahu?

10 A. No, there's not.

11 Q. So that option of land application that's

12 been utilized by L.A. and King County is not an

13 option that's available for Honolulu?

14 A. Certainly not at this time.

15 Q. Mr. Chipchase also talked to you at some

16 length regarding the gasification facility in, I

17 think, Oregon or -- let me refer to the exhibit.

18 A. Columbia Ridge landfill in Oregon.

19 Q. I think that's Exhibit 193. Let me

20 clarify with you, Mr. Steinberger -- once the third

21 boiler is up and running, will H-POWER be able to

22 burn medical waste?

23 A. The configuration is such that there

24 should not be a restriction against it. Again,

25 we'll be discussing this with Covanta and see if it

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1 has been included in their waste stream analysis.

2 Q. But Covanta has already indicated that

3 there's one particular type of medical waste that

4 they will not accept; is that correct?

5 A. They do not want to handle sharps.

6 Q. And this K193 exhibit, Mr. Chipchase

7 identified that you could, I guess, incinerate --

8 also incinerate sharp -- I think the implication was

9 that you could also incinerate sharps. Is that

10 correct?

11 A. I don't know if he ever indicated that.

12 Perhaps it was implied.

13 Q. Let me put it this way, then: If we have

14 the ability to burn medical waste at the H-POWER

15 facility, would we need a plasma arc facility to

16 burn medical waste?

17 A. No, we won't.

18 Q. Would it be cost effective to have a

19 plasma arc facility in Hawaii to just burn sharps?

20 A. No, it would not.

21 Q. Mr. Chipchase also discussed with you at

22 length whether H-POWER can burn materials such as

23 biosolids, class B biosolids that have no BTU value.

24 A. Correct.

25 Q. I'm going to ask you that question again.

1 A. That is correct.
 2 Q. And also as a back-up on a permit
 3 condition, as a matter of fact, for H-POWER?
 4 A. That is correct.
 5 Q. So besides sludge without BTU value,
 6 special waste with no alternative disposal, disaster
 7 debris, emergency contingencies and as a back-up for
 8 H-POWER, do you think that's enough justification
 9 for the continuation of the landfill?
 10 A. I think it is a justification for a
 11 landfill, because it certainly addresses the big
 12 issue of public health and the environment.
 13 Q. Could you elaborate on that in terms of
 14 public health and the environment?
 15 A. Well, everything we do in the department
 16 focuses around public health and the environment,
 17 and they're co-mingled; you can't separate the two.
 18 We're dealing -- and I hate to say this, but our
 19 department tends to be reactive to what the public
 20 gives us. It's not always a good picture of what we
 21 have to deal with from the public, but we do.
 22 And it is our responsibility to make sure
 23 that we handle this waste in such a way that we do
 24 not impact or endanger the public's health and that
 25 we do not create a negative impact on the

1 City has already entered into would conceivably take
 2 care of sludge or divert sludge from the landfill;
 3 is that correct?
 4 A. That's the intent, that's correct.
 5 Q. Except for what's coming from the Waianae
 6 treatment plant?
 7 A. Waianae treatment plant.
 8 Q. Wastewater treatment?
 9 A. Right.
 10 Q. So Mr. Steinberger, we've established the
 11 need for a landfill and we've established that the
 12 ENV is committed to further diversion of the waste
 13 from the landfill.
 14 How do you justify the current request not
 15 -- to essentially delete the deadline? Why would
 16 the deadline restrict ENV's ability to protect human
 17 health and the environment?
 18 A. Well, simply put, when you have put a gate
 19 across your ability to function to where you can't
 20 get in, so the gate's open and then it closes, and
 21 now you're still dealing with wastes that are coming
 22 from the public that you have to responsibly
 23 address, it's just not a responsible way to handle
 24 an environmental program, and it's certainly not
 25 responsible to the public.

1 environment. So this entire what I call the
 2 triangle of solid waste management has to do with
 3 our waste-to-energy, our recycling and the landfill.
 4 If you lose that landfill, the other two basically
 5 collapse and it has a significant impact on the
 6 public's health and the environment.
 7 Q. So you would agree with Mr. Miller's
 8 statement -- and I'll read from his transcript on
 9 page 99 -- that he does not believe that Honolulu
 10 can do without a landfill?
 11 A. I agree with that statement.
 12 Q. So in that context, how do you justify or
 13 what do you envision the future holds for ENV in
 14 terms of future waste diversion?
 15 A. Well, I would like to continue looking at
 16 opportunities to, you know, get that last bit of
 17 high-hanging fruit, and you know, what some people
 18 call that last mile, that we can get the last drop
 19 of water out of the sponge, realizing we're still
 20 going to have the sponge left over. So this is the
 21 direction we want to go in. So we have a lot of
 22 programs that we're looking at and that we
 23 constantly are either piloting or considering a
 24 pilot in the future.
 25 Q. Currently, the existing contracts that the

1 Q. Are there conceivably situations that you
 2 envision could occur, based on the history of the
 3 landfill, that essentially wouldn't be anticipated
 4 and that could potentially create a threat to human
 5 health and the environment?
 6 A. Yes. I mean, we certainly did not
 7 anticipate this storm that occurred last January of
 8 2011, so -- and there's other issues, and I think
 9 I've already elaborated on them, as to whether or
 10 not -- say what if HER does not continue to be able
 11 to function and now we're left with having to deal
 12 with a lot of biosolids accumulating at the
 13 treatment plant? I mean, what do you do with it if
 14 you don't have the time or an unconstrained ability
 15 to develop some other program like we had --
 16 It took us from 1994 to get to where we
 17 are now in biosolids. What happens if that door
 18 closes and now we have to go through a whole new
 19 process again to find out, okay, what are we going
 20 to do with the biosolids, what are we going to do
 21 with screenings, which has still not been addressed?
 22 What is the Navy going to do? What is the Army
 23 going to do, which has not been addressed? Right
 24 now, they are very dependent on the landfill. So
 25 these are issues that are out there that we have to

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1 The other means that you can do this is by
 2 composting, where by allowing going into an
 3 anaerobic condition, you can actually elevate the
 4 temperature significantly within your piles of
 5 compost and once you get above that 130, 140 degrees
 6 for so many days, you now have achieved your class A
 7 biosolid.
 8 Now, for the pelletizing operation at Sand
 9 Island, Department of Health only requires periodic
 10 testing, and I think it's on an annual basis. For
 11 composting, it's every pile before it is released
 12 must be tested for pathogen count. So it's a little
 13 bit more intensive as far as going with the
 14 composting as opposed to with the pelletizing.
 15 Q. If you had the ability to upgrade, could
 16 you then not divert more or have secondary uses for
 17 the other product?
 18 A. The answer is yes. But it's very
 19 expensive to go the pelletizing route, and so we
 20 chose to do that at Sand Island because there was
 21 adequate volume coming into the digesters which
 22 produced an adequate amount of waste gas, which is
 23 mostly methane, in order to heat that dryer.
 24 Now, at the other plants, because the
 25 waste stream is considerably less than Sand Island,

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1 you're not producing the same quantity and quality
 2 of methane. So, you know, you would probably have
 3 to find some other source of energy in order to dry
 4 that biosolid to elevate it up to a class A. And
 5 then, of course, to pelletize it, you have to have
 6 this type of a drum dryer that rolls everything into
 7 place.
 8 CHAIRWOMAN PINGREE: Thank you.
 9
 10 EXAMINATION
 11 BY MR. ANDERSON:
 12 Q. You mentioned the third boiler is going to
 13 be completed by late fall, I believe?
 14 A. We should be completely operational by --
 15 we better be completely operational by November.
 16 Q. Are there any other foreseeable hang-ups;
 17 power purchase agreements with HECO or any other
 18 entitlement issues that still have to clear?
 19 A. You know, on the power purchase agreement,
 20 that's about to go to the PUC. I expect it to be
 21 taken over there soon, because as of this past week,
 22 we've been pretty much wrapping up the last little
 23 details in the power purchase agreement.
 24 CHAIRWOMAN PINGREE: Any others?
 25 Thank you very much.

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1 THE WITNESS: Thank you all for your time.
 2 I know it's on your time and I appreciate the
 3 opportunity to come in here and go through this
 4 process and certainly explain to you what our
 5 program is. So thank you very much.
 6 CHAIRWOMAN PINGREE: Before we finish
 7 today, what I'd like to do is talk a little bit
 8 about how we're going to move on the agenda. As you
 9 know, our next meeting is on April 17th, and we
 10 start at 9:00 again in the morning. That's Tuesday,
 11 next week Tuesday.
 12 What I'm assuming is that's our last day.
 13 We're going to have two -- from what I understand,
 14 two rebuttal witnesses.
 15 MR. CHIPCHASE: Chair, I guess I would
 16 like to know, does ENV rest?
 17 MS. VIOLA: We rest, and reserve the right
 18 for rebuttal based on what comes out from your
 19 witnesses' testimony. But we anticipate that we've
 20 rested. We don't think we're going to be calling
 21 additional witnesses. We want to reserve the right,
 22 but I anticipate --
 23 CHAIRWOMAN PINGREE: That's fine. You can
 24 reserve the right. But bring the witness on
 25 Tuesday. Okay?

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1 MS. VIOLA: I also want to object -- I
 2 mean, I renew the objection I stated at the
 3 beginning of the proceeding today that I would
 4 assert that especially if the witnesses that Mr.
 5 Chipchase is going to bring in to testify regarding
 6 the clean-up, that's repetitive, it's redundant.
 7 That's basically one provision that would be
 8 precluded from an administrative proceeding.
 9 The City did not present rebuttal
 10 testimony saying they didn't conduct -- that KOCA
 11 didn't conduct clean-up. What the City was
 12 rebutting was the comment made by Mr. Hospodar that
 13 the City didn't do anything, and unless Mr.
 14 Chipchase's witness is going to say that he knows
 15 for a fact that the City didn't do anything, then
 16 that testimony, I would think, would be purely
 17 repetitive.
 18 CHAIRWOMAN PINGREE: What is the scope of
 19 this witness?
 20 MR. CHIPCHASE: Well, this particular
 21 witness actually is going to address the value and
 22 scope of the City and Waste Management's efforts to
 23 clean up following the spill. It is directly on
 24 that topic. So it's definitely not redundant.
 25 But just on the nature of the objection --

C E R T I F I C A T E

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on April 11, 2012, at 9:00 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

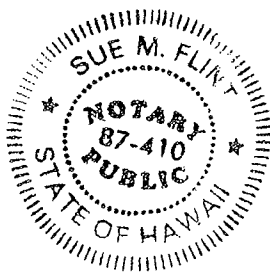
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 223-page transcript dated April 11, 2012, was subscribed and sworn to before me this 15th day of April, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)
)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
)
To delete Condition No. 14)
of Special Use Permit No.)
2008/SUP-2 (also referred)
to as Land Use Commission)
Docket No. SP09-403) which)
states as follows:)
)
"14. Municipal solid waste)
shall be allowed at the)
WGSL up to July 31, 2012,)
provided that only ash and)
residue from H-POWER shall)
be allowed at the WGSL)
after July 31, 2012.")
_____)

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 9:00 a.m., on
January 11, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 BEADIE K. DAWSON, Member
 9 CORD D. ANDERSEN, Member
 10 DANIEL S.M. YOUNG, Member
 11 JAMES C. PACOPAC, Member
 12 ARTHUR B. TOLENTINO, Member
 13
 14 For the Planning Commission:
 15 WINSTON K.Q. WONG, ESQ.
 16 Deputy Corporation Counsel
 17 Department of the Corporation Counsel
 18 530 South King Street, Room 110
 19 Honolulu, Hawaii 96813
 20
 21
 22
 23
 24
 25

Page 3

1 Appearances (continued):
 2 For the City and County of Honolulu, Department of
 3 Environmental Services:
 4 DANA MIE OSHIRO VIOLA, ESQ.
 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
 7 City and County of Honolulu
 8 530 South King Street, Room 110
 9 Honolulu, Hawaii 96813
 10
 11 For Ko Olina Community Association and Senator Maile
 12 Shimabukuro:
 13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.
 14 CHRISTOPHER T. GOODIN, ESQ.
 15 Cades Schutte
 16 1000 Bishop Street, Suite 1200
 17 Honolulu, Hawaii 96813
 18
 19 For Schnitzer Steel Hawaii Corp.:
 20 IAN L. SANDISON, ESQ.
 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Ball LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

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I N D E X

1
 2
 3 WITNESS: TIMOTHY STEINBERGER
 4
 5 EXAMINATION BY: PAGE
 6
 7 Mr. Sandison 12, 169
 8 Mr. Chipchase 13, 159
 9 Ms. Viola 122, 165
 10 Planning Commission 171
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Page 5

CONTESTED CASE HEARING

1
 2 CHAIRWOMAN PINGREE: Good morning and
 3 Happy New Year. Today, of course, is January 11th,
 4 2012 and we're here for the contested case hearing
 5 Ewa-State Special Use Permit Amendment Application -
 6 2008/SUP-2(RY) Waimanalo Gulch Sanitary Landfill.
 7 Just from a procedural issue, applicant,
 8 ENV, will present its case first and then of course
 9 Schnitzer and KOCA will go after. Questioning of
 10 witnesses will follow the same order.
 11 Any objections?
 12 MR. SANDISON: Do you want appearances?
 13 CHAIRWOMAN PINGREE: I'm sorry?
 14 MR. SANDISON: Appearances? Do you want
 15 to do our appearances?
 16 CHAIRWOMAN PINGREE: If you would kindly
 17 just identify who you are and who you represent.
 18 MS. VIOLA: Deputy Corporation Counsel
 19 Dana Viola and Brian Black on behalf of the
 20 Department of Environmental Services.
 21 MR. SANDISON: Ian Sandison representing
 22 Schnitzer Steel Hawaii Corp., and I have with me
 23 Arsimu Muller.
 24 MR. CHIPCHASE: Cal Chipchase and Chris
 25 Goodin for intervenors, the Ko Olina Community

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1 Incineration is considered a well-established
2 technology.
3 A. Yes.
4 Q. Do you see that? But you referenced
5 another technology, a direction that you were going
6 in. Did you mean the in-vessel conversion
7 facilities?
8 A. Yes, I was.
9 Q. Would you tell us about that facility?
10 A. This facility is being constructed --
11 actually, they're still in the permit process and I
12 believe they'll be coming before this commission
13 within the next few months. It is a facility that's
14 being planned for central Oahu area, Wahiawa, I
15 believe, to be specific, and it is a facility that
16 currently is dealing in some green waste composting.
17 But the answer in response to the -- they
18 were the only respondent to the RFP, and this will
19 include adding the biosolids that are generated at
20 our treatment plants, with the exception of Waianae
21 treatment plant, because the salt content is so high
22 in the sludge that it would be detrimental to being
23 able to process or put it into compost for use. And
24 it's basically a polishing unit. It would take the
25 anaerobically-digested sludge and then convert it to

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1 -- or raise it up to what we call a class A
2 bio-solid, which is highest and best use according
3 to the Department of Health and EPA. So that's the
4 intent.
5 And obviously, we're looking at, in our
6 next step, to start tapping into the residential
7 food waste. Right now, the food waste is going into
8 the gray bin, and some of you may even put it down
9 your garbage disposal. But right now in the gray
10 bin, obviously, it's going to H-POWER. However,
11 we're looking at tapping into that and putting it so
12 that it can be included into the green bin waste,
13 which would then be taken up to that facility.
14 Q. So if I understood that summary correctly,
15 the new in-vessel facility will be able to handle
16 all the remaining sewage sludge that isn't currently
17 diverted, except for one facility.
18 A. Waianae. Also, Hawaii Kai, which is a
19 privately-owned facility. They take all of their
20 biosolids up to the landfill. That's their only
21 means of disposal.
22 This term sewage sludge also includes what
23 we call screenings, and screenings is that debris
24 that is collected at the very front end of the
25 treatment plant that you do not want to interfere in

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1 the biological process through the treatment plant.
2 So those screenings really have no value. They're
3 kind of like H-POWER residue. It's grit.
4 Q. Is there any reason that the Hawaii Kai
5 facility would not be able to utilize the in-vessel
6 conversion facility?
7 A. That would be a decision by Hawaii
8 American Water Company.
9 Q. So other than the Waianae plant and the
10 Hawaii Kai plant, all of the sewage sludge should be
11 dealt with through the in-vessel conversion
12 facility?
13 A. That is the intent.
14 Q. When is the facility targeted to be on
15 line?
16 A. We just received a request for an
17 extension out into 2013 from the --
18 Q. Did you grant the request for extension?
19 A. I believe we did.
20 Q. So by sometime in 2013, this facility
21 should be fully operational?
22 A. That is, again, the target date.
23 Q. And so in addition to that, ENV is working
24 with H-POWER'S operator, which I understand to be
25 Covanta --

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1 A. Yes.
2 Q. -- to be able to burn any remaining sewage
3 sludge.
4 A. We are looking at it as an option. Again,
5 we were a little bit concerned after our January
6 event that we had nowhere to go with sludge, and we
7 certainly don't want to end up in that situation
8 again. So we're looking as a backup at being able
9 to utilize the new, third boiler as a means for
10 incinerating and converting that bio-solid into
11 energy.
12 Q. So if the will was there, if the will was
13 there, you could eliminate sewage sludge in the
14 landfill?
15 A. We could eliminate biosolids in the
16 landfill if -- again, if the RFP and the contractor
17 manages to meet all of the regulatory requirements
18 that are established by the Department of Health.
19 Keep in mind that this is a highly-
20 regulated business, wastewater is, and the
21 Department of Health is very picky about what they
22 allow to go out, because they have some very,
23 obviously, strict concerns about public health.
24 Q. Let's go back to that list you had on
25 paragraph eight of your declaration. We talked

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1 about sewage sludge. If you go down the list for me
2 and -- to inorganic filter cake. What's inorganic
3 filter cake?
4 A. You know, I can't give you an exact
5 definition of what the inorganic filter cake is.
6 It's an item that shows up on the list of special
7 wastes.
8 Q. And then the last item on that list is
9 treated medical waste. Do you see that?
10 A. Yes.
11 Q. How much medical waste goes into the
12 landfill annually?
13 A. That exact number, I don't have.
14 Q. Mr. Steinberger, I'm going to hand you
15 what we intended to identify as a rebuttal exhibit,
16 and if this refreshes your recollection, that's fine
17 with me, and then I would offer it into evidence, as
18 well.
19 Do you recognize that cover page as being
20 from the integrated solid waste management plan?
21 A. Yes.
22 Q. On the second page of that section eight,
23 do you recognize this as also being from that plan?
24 A. Yes.
25 Q. Are you able to identify the gross tonnage

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1 of medical waste that goes into the landfill from
2 this document?
3 A. Well, it would be difficult to say,
4 because I'm not sure who Hawaii Biomedical utilizes
5 as their hauler, if it would fall under Honolulu
6 Disposal or they would fall under Rolloffs Hawaii or
7 if they'd fall under other haulers.
8 Q. Do you see the description of the waste on
9 the right-hand side?
10 A. Yes.
11 Q. Do you see Rolloffs Hawaii?
12 A. I see it.
13 Q. So it identifies as medical waste 10,000
14 tons --
15 A. Yes.
16 Q. -- of medical waste annually going into
17 the landfill; right?
18 A. Yes.
19 Q. That medical waste could be burned, too,
20 couldn't it?
21 A. The medical waste could be burned, it
22 could be combusted. Again, there's an issue that
23 the workers -- or Covanta has with running medical
24 waste through the RDF facility, and as far as
25 whether or not it is combusted at the source and

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1 otherwise, Hawaii Medical Biowaste, that is their
2 decision, whether they incinerate or not. I believe
3 right now they meet the regulations by sterilizing
4 and then they take it up to the landfill. But yes,
5 it could be combusted as long as it doesn't impact
6 the air permit for H-POWER.
7 Q. So if we look back at paragraph eight at
8 the list of things that really aren't combustible,
9 we can identify, you know, materials -- separate
10 from water, such as car and equipment washing, off-
11 site specifications and outdated products,
12 underground storage tanks, resins, petroleum, diesel
13 fuel, used oil debris, gasoline and jet fuels,
14 sandblast grit, bag house dust, dried paint, perhaps
15 inorganic filter cake -- we don't know what that is
16 -- treated utility poles and empty containers.
17 That's really what is non-combustible? Is that your
18 testimony?
19 A. That would be what we're saying that we
20 would not accept at H-POWER, yes.
21 Q. What percentage of municipal solid waste
22 are those items that I listed? How many tons of
23 those specific items that I went through are going
24 into the landfill?
25 A. You know, I'd have to get the breakdown of

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1 that exact amount. However, I can tell you that
2 recently the amount of MSW going to the landfill has
3 drastically decreased. We're operating anywhere
4 from between 300 to 500 tons a day, as opposed to at
5 one time we were as high as 900 to a thousand tons a
6 day.
7 Q. That's right. And so I guess just looking
8 at these specific items, though, it would seem to me
9 that they would comprise a relatively small
10 percentage of MSW. Would you agree with that?
11 A. I would say it's probably a small
12 percentage. But again, I would have to see the
13 breakdown sheet.
14 Q. I understand. So when H-POWER's third
15 boiler is on line and when the in-vessel conversion
16 system is on line, the City is close to not needing
17 a general purpose municipal solid waste landfill,
18 isn't it?
19 A. We are slowly working our way out of the
20 landfill business as far as MSW goes.
21 Q. In fact, if the in-vessel conversion
22 facility comes on line in 2013, by the end of 2013,
23 with the in-vessel conversion system and H-POWER,
24 you're close to not needing a general purpose
25 municipal solid waste landfill, aren't you?

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1 I know on the wastewater side we have been
2 going out to the communities because we have
3 projects in those communities and we have been
4 asking for input, specifically the Kailua community
5 and also the area over towards Ala Moana park, that
6 area and Moiliili, because we have some significant
7 projects and we've been asking for community input
8 on those projects. So on the wastewater side, I
9 know we've been doing this quite a bit. As far as
10 the landfill siting, I would have to get back to the
11 consultant and ask them.
12 Q. I know the advisory site selection
13 committee is made up primarily of community
14 volunteers, as I understand it.
15 A. Yes.
16 Q. I want to know what role is the consultant
17 playing in this. Let me clarify on that. The
18 consultant has been -- I believe it's the same
19 consultant, R. M. Towill -- has been advising the
20 advisory committee and doing some of the technical
21 work for them since 2001 or two, I believe.
22 A. I believe you're correct that they were
23 the original consultant on the blue ribbon
24 committee.
25 Q. Is R. M. Towill submitting any technical

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1 information to you on some of their searches?
2 A. I have not seen anything specifically from
3 R. M. Towill. They have -- like I said, the
4 information that has been presented that is now --
5 that was presented to the committee was, in a sense,
6 not much different than the information that was
7 submitted back in 2003.
8 Q. Yes.
9 A. And that being that there's only so many
10 sites below the UIC line that meets those physical
11 qualifications. Actually, I believe two or three
12 sites, or maybe more, have dropped off of the list
13 because other uses for the sites have occurred
14 since. So the population of sites, I believe, has
15 decreased.
16 Now, the new issue of going above the UIC,
17 the consultant is still involved in doing that
18 research, and so we have not seen anything to date,
19 and we're waiting for him to come back and say, Yes,
20 we are now prepared to go forward and provide this
21 information to the advisory committee.
22 Now, the consultant doesn't direct the
23 advisory committee. They are the technical side of
24 it. So when the advisory committee asks for
25 information, technical information such as this,

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1 that's the consultant's job.
2 Now, part of the consultant's job is also
3 to provide a facilitator and it's important that we
4 keep things on track. I think that earlier -- not
5 in this session, but certainly last year we were
6 indicating that we'd like to bring this to
7 resolution by fall of 2011, and here we are in early
8 2012 and we want to bring it to conclusion. So we
9 want that facilitator to keep things on track as
10 much as possible.
11 Q. It seems that the previous facilitator did
12 reasonably well in at least providing minutes of the
13 discussion and the issues that were discussed. But
14 the facilitator did not seem to have any collection
15 of technical information. It was merely the
16 reaction of the committee members. So I'm not sure
17 what you're asking of your facilitator.
18 A. I will have to get back with my staff and
19 ask them exactly what is -- what they see as the
20 role of the facilitator and has the facilitator been
21 successful in dealing with that.
22 Q. I think they've probably been very
23 successful, but I don't think they've been tasked
24 with dealing with the right material. My question
25 on Towill consulting activities is that they have

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1 been the consultant to ENV or the committee for
2 almost ten years. Who pays them?
3 A. The City pays them.
4 Q. The City pays them.
5 A. Yes. They're paid by a CIP appropriation
6 from the City Council.
7 Q. Do you have any idea how much they have
8 been paid?
9 A. For this last go-around, the appropriation
10 was \$500,000. I do not know how much has been paid
11 out at this time.
12 Q. I imagine it was considerably more.
13 That's my guess. However, I'm wondering why we stay
14 with the same consultant who has not come up with
15 reasonable or intensive technical information that
16 would tell us about the sites that are most
17 appropriate, least likely to be objected to, or
18 everything is going to be objected to but most
19 appropriate in terms of its effectiveness for a new
20 site. How is this consultant kept on? Is it just
21 an ongoing contract that keeps them on and on and
22 on?
23 A. No. Actually, with each appropriation, if
24 it's not a supplemental appropriation -- in other
25 words, it's going to add money to a contract -- if

C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on January 11, 2012, at 9:00 a.m., the foregoing contested case hearing was held;

That the hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

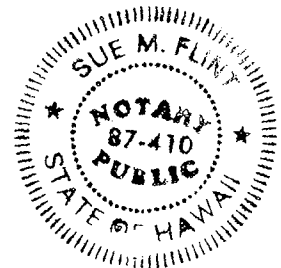
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 210-page transcript of the contested case hearing in File No. 2008/SUP-2 dated January 11, 2002 was subscribed and sworn to before me this 19th day of January, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)
)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
)
To delete Condition No. 14)
of Special Use Permit No.)
2008/SUP-2 (also referred)
to as Land Use Commission)
Docket No. SP09-403) which)
states as follows:)
)
"14. Municipal solid waste)
shall be allowed at the)
WGSL up to July 31, 2012,)
provided that only ash and)
residue from H-POWER shall)
be allowed at the WGSL)
after July 31, 2012.")
_____)

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 9:05 a.m., on
April 4, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 CORD D. ANDERSEN, Member
 9 DANIEL S.M. YOUNG, Member
 10 BEADIE DAWSON, Member
 11 JAMES C. PACOPAC, Member
 12
 13 For the Planning Commission:
 14 WINSTON K.Q. WONG, ESQ.
 15 Deputy Corporation Counsel
 16 Department of the Corporation Counsel
 17 530 South King Street, Room 110
 18 Honolulu, Hawaii 96813
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Page 4

I N D E X

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 2
 3 WITNESS: TOM ZELENKA
 4 Mr. Sandison 8, 24
 5 Mr. Goodin 13
 6 Ms. Viola 26
 7 Member Dawson 28
 8 Member Pacopac 29
 9 WITNESS: JANICE MARSTERS
 10 Ms. Viola 32
 11 Mr. Chipchase 59
 12 Member Dawson 117
 13 Chairperson Pingree 122
 14 WITNESS: MAILE SHIMABUKURO
 15 Testimony 124
 16 WITNESS: MAEDA TIMSON
 17 Testimony 133
 18 WITNESS: GARY GILL
 19 Ms. Viola 144, 156
 20 Mr. Chipchase 153
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Page 3

1 Appearances (continued):
 2 For the City and County of Honolulu, Department of
 3 Environmental Services:
 4 DANA MIE OSHIRO VIOLA, ESQ.
 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
 7 City and County of Honolulu
 8 530 South King Street, Room 110
 9 Honolulu, Hawaii 96813
 10
 11 For Ko Olina Community Association and Senator Maile
 12 Shimabukuro:
 13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.
 14 CHRISTOPHER T. GOODIN, ESQ.
 15 Cades Schutte
 16 1000 Bishop Street, Suite 1200
 17 Honolulu, Hawaii 96813
 18
 19 For Schnitzer Steel Hawaii Corp.:
 20 IAN L. SANDISON, ESQ.
 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Ball LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

Page 5

1 CONTESTED CASE HEARING
 2 CHAIRWOMAN PINGREE: Good morning. Call
 3 the meeting to order. Today is day six of the
 4 contested case hearing Ewa-State Special Use Permit
 5 Amendment Application - 2008/SUP-2, Waimanalo Gulch
 6 Sanitary Landfill.
 7 Identification of counsel for the record,
 8 please?
 9 MS. VIOLA: Dana Viola and Brian Black on
 10 behalf of the City.
 11 MR. SANDISON: Good morning. Ian
 12 Sandison, and with me is Arsima Muller on behalf of
 13 Schnitzer Steel Hawaii Corporation.
 14 MR. CHIPCHASE: Cal Chipchase and Chris
 15 Goodin for the Ko Olina Community Association and
 16 Maile Shimabukuro, and with us today is Ken Williams
 17 for the association.
 18 CHAIRWOMAN PINGREE: Thank you very much.
 19 As I recall, we left off with KOCA.
 20 MR. CHIPCHASE: That's right, Chair. At
 21 this point, Chair, the counsel have discussed the
 22 order of witnesses, because the City and Schnitzer
 23 were allowed to do rebuttal witnesses and my next-
 24 in-order witnesses are not available until this
 25 afternoon. We've agreed, with your leave, to move

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1 Q. Fair enough. Because we don't have group
2 meeting minutes yet, the only thing I have is a
3 photograph of the tear-off sheet that you guys used
4 to rank the sites.
5 A. Okay.
6 Q. And so if you could turn to page three of
7 Exhibit K226, the Civil Beat article --
8 A. Yes.
9 Q. It's not the best photograph, and I don't
10 mean to spend a lot of time on it because of that.
11 A. Right.
12 Q. But if we could look at the item number
13 three on the left-hand side of that closest to us
14 tear-off sheet. Do you see that?
15 A. Right.
16 Q. It looks to me like it says: Location,
17 res. Do you see that?
18 A. Yes.
19 Q. And it has six votes?
20 A. Yes.
21 Q. So if I scan the other items, I don't see
22 anything else that got six votes.
23 A. That's correct.
24 Q. And if I look on the other side of it, the
25 location relative to H-POWER, number 11 -- do you

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1 see that?
2 A. Yes.
3 Q. It got five votes.
4 A. Yes.
5 Q. And it looks to me like there's several
6 other criteria that got five votes.
7 A. Yes.
8 Q. Do you see that? So at least on this
9 initial pass, location relative to H-POWER along
10 with the other items that got five votes was the
11 second highest weighted criteria.
12 A. It was -- it was one of the criteria that
13 received five votes.
14 Q. And only one criteria received six, so far
15 as I can tell.
16 A. That's correct.
17 Q. Location relative to H-POWER is relevant
18 because of the cost of hauling the ash and residue
19 from H-POWER; is that right?
20 A. Yes. I understand that is the concern.
21 Q. So if the committee didn't need to
22 consider ash or residue because it's currently
23 allowed at Waimanalo, that wouldn't have been one of
24 the criteria you looked at in selecting a landfill?
25 A. I would say that would be correct.

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1 Q. So after telling the consultant to go back
2 again in the ninth meeting and remove a screen and
3 then weighting the criteria, you're scheduled to
4 hold a tenth meeting?
5 A. That's correct.
6 Q. Do you know when the tenth meeting is
7 scheduled?
8 A. I believe they're trying to schedule it
9 now.
10 Q. I see.
11 A. I had an email this morning asking about
12 availability of dates.
13 Q. I see. So to your knowledge, no meeting
14 date has been set and they haven't posted an agenda?
15 A. That's correct. I think they're trying to
16 find a date that is most available to the committee
17 members.
18 Q. I know that's hard. Does the committee
19 anticipate that at this tenth meeting it will apply
20 the criteria to the final list of sites?
21 A. I sure hope so.
22 Q. Do you anticipate that at this next
23 meeting, at the tenth meeting, the committee will
24 make its recommendation of sites to the mayor?
25 A. I believe that's the plan.

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1 Q. Is the committee going to publish a report
2 on the process and on its recommendation?
3 A. Yes.
4 Q. Do you know whether the report will be
5 published in conjunction with this tenth meeting or
6 will come later?
7 A. I believe it will come later, because
8 we've been given portions of it to review and
9 comment upon in draft form, and we haven't seen all
10 of it, so --
11 Q. After this tenth meeting and the
12 publication of the report, is that the end of the
13 role of the committee in the site selection process?
14 A. As I understand it.
15 Q. Could we, if I could, have you look back
16 at Exhibit K144, which was the excerpt from the
17 Integrated Solid Waste Management Plan update dated
18 October 2008?
19 A. Yes.
20 Q. If I could have you turn to page 11-5.
21 It's that flow chart we looked at earlier. Do you
22 see that?
23 A. Yes.
24 Q. I want to understand where the process is
25 in relation to this process set out here.

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on April 4, 2012, at 9:00 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

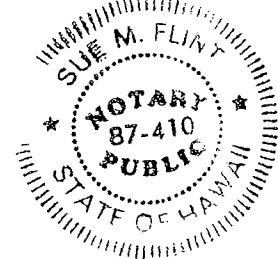
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 170-page transcript dated April 4, 2012, was subscribed and sworn to before me this 8th day of April, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)

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DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)

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To delete Condition No. 14)
of Special Use Permit No.)
2008/SUP-2 (also referred)
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residue from H-POWER shall)
be allowed at the WGSL)
after July 31, 2012.")
_____)

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 1:30 p.m., on
January 25, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 CORD D. ANDERSEN, Member
 9 DANIEL S.M. YOUNG, Member
 10 JAMES C. PACOPAC, Member
 11 ARTHUR B. TOLENTINO, Member
 12
 13 For the Planning Commission:
 14 WINSTON K.Q. WONG, ESQ.
 15 Deputy Corporation Counsel
 16 Department of the Corporation Counsel
 17 530 South King Street, Room 110
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Page 4

I N D E X

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 3 WITNESS: STEVEN Y.K. CHANG
 4 EXAMINATION BY: PAGE
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 6 Mr. Chipchase 14, 66
 7 Ms. Viola 58
 8 Planning Commission 69
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 11 WITNESS: LARRY SNODGRASS
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 13 Mr. Goodin 78
 14 Mr. Sandison 84
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1 Appearances (continued):
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 3 Environmental Services:
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 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
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 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Ball LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

Page 5

CONTESTED CASE HEARING

1
 2
 3 CHAIRWOMAN PINGREE: Good afternoon.
 4 Today is January 25th, 2012 and it's day number
 5 three of the contested case hearing on the Ewa-
 6 State Special Use Permit Amendment Application -
 7 2008/SUP-2 Waimanalo Gulch Sanitary Landfill.
 8 As I recall, we left off with ENV. ENV,
 9 do you have another witness to call or a ten-minute
 10 oral summary?
 11 MS. VIOLA: Just a procedural note -- do
 12 you want to handle the subpoena that -- I'm not sure
 13 how you want to handle the subpoena.
 14 MR. CHIPCHASE: For Waste Management?
 15 CHAIRWOMAN PINGREE: The subpoena was just
 16 placed in front of us today, so I'm not quite sure
 17 if the commissioners had an opportunity to review
 18 it, so I would prefer not.
 19 MS. VIOLA: Okay.
 20 CHAIRWOMAN PINGREE: Thank you.
 21 MR. CHIPCHASE: Chair, before we begin,
 22 this is Cal Chipchase and Christopher Goodin for the
 23 Ko Olina Community Association and Senator
 24 Shimabukuro and here with me today is Ken Williams
 25 for the association.

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1 to reserve cross until after you're done.
 2 MR. CHIPCHASE: Well, procedurally,
 3 Schnitzer is the first intervenor and its order is
 4 first, so --
 5 MR. SANDISON: I have no cross at this
 6 time, but we'll reserve the opportunity to do cross
 7 if issues are raised during Ko Olina's cross that
 8 are germane.
 9 CHAIRWOMAN PINGREE: Thank you.
 10
 11 EXAMINATION
 12 BY MR. CHIPCHASE:
 13 Q. Good afternoon, Mr. Chang. My name is Cal
 14 Chipchase. I represent the Ko Olina Community
 15 Association and Senator Shimabukuro, who have
 16 intervened in this proceeding, investigative
 17 proceeding. I have a few questions for you.
 18 The first thing I'd like to do is --
 19 MR. CHIPCHASE: Chair, do the
 20 commissioners have a copy of his written testimony?
 21 CHAIRWOMAN PINGREE: Yes.
 22 MR. CHIPCHASE: If not, I have extra
 23 copies.
 24 CHAIRWOMAN PINGREE: Does anyone need an
 25 extra copy?

Page 15

1 BY MR. CHIPCHASE:
 2 Q. Mr. Chang, I understand that you read most
 3 of your testimony into the record. I'm going to
 4 hand you a copy of your testimony just to make sure
 5 we're looking at the same document.
 6 A. Okay.
 7 Q. Mr. Chang, is the document I handed you a
 8 copy of your written testimony in this matter dated
 9 December 13, 2011?
 10 A. Yes, it is.
 11 Q. And I understand -- hang onto it. Okay.
 12 I understand that the Solid and Hazardous Waste
 13 Branch is responsible for regulatory compliance with
 14 the Waimanalo Gulch landfill. Is that right?
 15 A. Yes, it is.
 16 Q. I think you linked that regulatory
 17 compliance to protecting human health and the
 18 environment. Was that right?
 19 A. Yes.
 20 Q. And I believe you identified the City and
 21 County of Honolulu Department of Environmental
 22 Services, ENV, as the owner of the landfill, and
 23 Waste Management as the operator. Is that right?
 24 A. That's correct.
 25 Q. How many landfills are there in the state

Page 16

1 of Hawaii, public and private?
 2 A. Active landfills or --
 3 Q. Active landfills.
 4 A. I believe last count we had 13.
 5 Q. And of those 13 landfills, how many are
 6 permitted to accept municipal solid waste?
 7 A. All but two.
 8 Q. So we have 11 that are permitted to accept
 9 municipal solid waste?
 10 A. Yes. I'm trying to count off the top of
 11 my head. I'm coming up with nine right now. Sorry.
 12 Q. Between nine and 11?
 13 A. Right.
 14 Q. And does the Solid and Hazardous Waste
 15 Branch -- or is the Solid and Hazardous Waste Branch
 16 responsible for the regulation of all of those
 17 landfills?
 18 A. Yes, we are.
 19 Q. And you are the chief of that branch?
 20 A. That's correct.
 21 Q. And I think you said you've been the chief
 22 for 18 years.
 23 A. Yes.
 24 Q. So since about 1993?
 25 A. Yes.

Page 17

1 Q. So as the chief of the Solid and Hazardous
 2 Waste Branch, you're familiar with the operation of
 3 Waimanalo Gulch Sanitary Landfill for at least about
 4 the last 18 years?
 5 A. Yes.
 6 Q. So in your capacity as chief, you know
 7 that the Waimanalo Gulch landfill has been cited for
 8 violations by the Department of Health and now by
 9 the EPA?
 10 A. Yes.
 11 Q. I'd like to look at a couple of those
 12 violations, starting in 2006. Mr. Chang, I've
 13 handed you a copy of a document marked Exhibit K-59.
 14 It's a January 31st, 2006 letter to Waste Management
 15 of Hawaii and the Department of Environmental
 16 Services from the State of Hawaii Department of
 17 Health. Do you see that?
 18 A. Yes.
 19 Q. And attached to that is a notice and
 20 finding of violation and also an order.
 21 A. Yes.
 22 Q. I believe if you'll look to the
 23 certificate of service for the notice of violation,
 24 you signed the certificate of service for the Solid
 25 and Hazardous Waste Branch.

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1 acknowledgment that Waimanalo Gulch Sanitary
 2 Landfill had used fabricated wellhead gas readings
 3 from about mid 2010 to 2011, intervenor subpoenaed
 4 all monitoring records and all internal
 5 investigation documents from Waste Management of
 6 Hawaii.
 7 Are you aware that Waste Management of
 8 Hawaii has refused to produce to intervenors and to
 9 this commission documents associated with their
 10 internal investigation of these fabricated readings?
 11 A. I'm not aware of that.
 12 Q. Mr. Chang, I've handed you two documents.
 13 MR. CHIPCHASE: And what I would like to
 14 do, Chair, is just to move these two documents into
 15 evidence as K164 and K-165. The first document is
 16 intervenor's subpoena to Waste Management and the
 17 second document is Waste Management's response to
 18 the subpoena.
 19 CHAIRWOMAN PINGREE: That's fine.
 20 MS. VIOLA: Can I see the documents?
 21 BY MR. CHIPCHASE:
 22 Q. Mr. Chang, when we first started talking,
 23 you said there were 13 landfills in the state and
 24 between nine and 11 were authorized to accept MSW.
 25 Do you remember that?

Page 39

1 A. Yes.
 2 Q. Then we looked at a number of findings by
 3 the Department of Health and by the EPA and then the
 4 fabricated gas wellhead reading report from 2006
 5 through just a couple of months ago.
 6 How many of the other 13 landfills in the
 7 state over that same period have been cited by the
 8 EPA for violating the Clean Water Act?
 9 A. For clean water, I'm sorry, but I -- I
 10 would not be able to tell you exactly. More my area
 11 would be the solid waste.
 12 Q. Okay. Fair enough. In that same period,
 13 are you aware of any other of the 13 landfills that
 14 submitted fabricated gas wellhead readings?
 15 A. I'm not aware of that.
 16 Q. Are you aware of any other landfills that
 17 were subject to an 18-count notice of violation by
 18 the Department of Health?
 19 A. For solid waste?
 20 Q. For solid waste.
 21 A. I'd have to go back -- there are some that
 22 do have multiple counts. I'm not sure if other
 23 landfills were cited for up to 18.
 24 Q. Looking at those other landfills, are you
 25 aware of any that have had as many findings of

Page 40

1 violation as Waimanalo Gulch Sanitary Landfill in
 2 that same five-year period?
 3 A. In the last five years, probably not.
 4 Q. Mr. Chang, I'd like to take a look at
 5 paragraph nine of your declaration. This is a
 6 paragraph you shared with the commission earlier in
 7 your summary, and you talk about the July 31st, 2012
 8 deadline; right?
 9 A. Yes.
 10 Q. And then you identify ways that there's no
 11 option other than the Waimanalo Gulch Sanitary
 12 Landfill. Right?
 13 A. (Witness nods.)
 14 Q. And you list automotive shredder waste, TV
 15 monitors, outdated food or contaminated products,
 16 pharmaceuticals, sterilized foreign waste from ships
 17 and airplanes, sterilized medical waste except for
 18 medical sharps and petroleum contaminated soil. Do
 19 you see that in there?
 20 A. Yes.
 21 MS. VIOLA: Objection. That's a
 22 mischaracterization of what his testimony says. It
 23 doesn't say that there are no alternative disposal
 24 methods.
 25 BY MR. CHIPCHASE:

Page 41

1 Q. All right. Then let's go through them.
 2 Looking at the first item under paragraph
 3 nine, automotive shredder waste -- you say that
 4 while SHWB, the Solid and Hazardous Waste Branch,
 5 does not preclude H-POWER from disposing of this
 6 waste, H-POWER has expressed reservations about
 7 processing this waste stream because it tends to
 8 burn at very high temperature.
 9 Do you remember that testimony that's in
 10 here?
 11 A. Yes.
 12 Q. So for the shredder waste, you're talking
 13 about the plastics and others things that are left
 14 over after the recycler takes the metal; is that
 15 right?
 16 A. Well, in the case of most of the material
 17 they handle, automobile carcasses are run through a
 18 shredder. The metals are removed and then you have
 19 residue which is the plastic, the seats and the
 20 dashboards and stuff, that contain both ferrous and
 21 non-ferrous materials, and the facility tries to
 22 remove that either by magnet or by dielectric
 23 currents and then the residuals of the stuff
 24 basically is the material that's sent to the
 25 landfill for disposal.

C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on January 25th, 2012, at 1:30 p.m., the foregoing contested case hearing was held;

That the hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

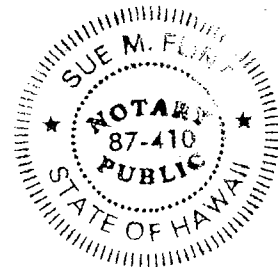
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 92-page transcript of the contested case hearing in File No. 2008/SUP-2 dated January 25, 2012 was subscribed and sworn to before me this 5th day of February, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



CADES SCHUTTE LLP

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Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

"14. Municipal solid waste shall be
allowed at the WGS� up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGS� after July 31, 2012."

FILE NO. 2008/SUP-2

INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
WRITTEN DIRECT TESTIMONY
OF KEN WILLIAMS

DECLARATION OF KEN
WILLIAMS

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

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'11 DEC 13 P3:42

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S WRITTEN DIRECT TESTIMONY OF
KEN WILLIAMS**

Pursuant to the Stipulation to Amend Briefing Schedule as Provided in the Planning Commission of the City and County of Honolulu's Order Regarding Prehearing Conference dated November 29, 2011, Intervenors Ko Olina Community Association and Maile Shimabukuro submit written direct testimony through the attached declaration of Ken Williams.

DATED: Honolulu, Hawai'i, December 13, 2011.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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**

FILE NO. 2008/SUP-2

**DECLARATION OF KEN
WILLIAMS**

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

“14. Municipal solid waste shall be
allowed at the WGSL up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012.”

DECLARATION OF KEN WILLIAMS

I, Ken Williams, hereby declare as follows:

1. I am the Executive Vice President of Ko Olina Community Association (“KOCA”) and make this declaration based on personal knowledge in opposition to the Honolulu Department of Environmental Services’ (“ENV”) Application to Modify Special Use Permit No. 2008/SUP-2 by deleting Condition 14 in the Hawai‘i Land Use Commission’s Order Adopting the Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009.

2. I oppose the Application because Waimanalo Gulch Sanitary Landfill (the “Landfill”) is a danger to public health and safety, as evidenced by its long track record of citations punctuated by the recent spill in January 2011; because the ENV has promised to close the Landfill and the ENV should be held to its word; and because the Landfill poses a grave risk of harm to public welfare, as it jeopardizes all of the economic benefits that Ko Olina provides to the surrounding community, the City and County of Honolulu (the “City”), and the State of Hawai‘i (the “State”).

BACKGROUND

3. KOCA is the master association for the Ko Olina Resort and Marina (the “Ko Olina” or “Resort”), which is a 642-acre resort master planned community with a combination of resort, residential, commercial, and recreational uses.

4. KOCA is tasked with ensuring that the livability, vibrance, and values of the Resort are maintained at the highest levels.

5. Ko Olina Resort is located across the street from the Landfill.

6. As KOCA’s Executive Vice President, this testimony is submitted on behalf of all owners at the Resort, including hotel, timeshare, golf course, marina, and residential owners, and other members of KOCA.

KO OLINA WAS ALWAYS INTENDED TO BE A RESORT AREA, AND THE LANDFILL WAS SUPPOSED TO BE CLOSED YEARS AGO

7. In the early 1980s, when the City started the siting of the Landfill, the Ko Olina Resort area was called West Beach and was underdeveloped. However, even

(Cell E6) and entered it into operation. Operation and filling of Cell E6 occurred **before** the necessary drainage infrastructure was complete.

THE DISASTERS IN DECEMBER AND JANUARY

36. On December 23, 2010, the Department of Health Clean Water Branch documented the unauthorized pumping of leachate from Cell E6 into State waters in its Investigation Report. See Exhibit K52, a true and correct copy of an Investigation Report by Matthew Kurano and Jamie Tanimoto of the Department of Health Clean Water Branch signed January 4, 2011.

37. This activity was completely inconsistent with and in contravention of, among other things, the Planning Commission's and Land Use Commission's findings regarding the Landfill's storm water diversion system:

74. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the exiting sedimentation basin if it originates onsite (surface run-off). . . . The water is eventually discharged to the ocean subject to the State Department of Health ("DOH") permitting requirements under the national pollution discharge elimination system ("NPDES"). . . .

75. Leachate does not come into contact with storm water. The storm water or surface water system is separate from the leachate collection system.

Exhibit K12, a true and correct copy of the Findings of Fact, Conclusions of Law, and Decision and Order by the Planning Commission dated August 4, 2009, at 15 (transcript citations omitted); Exhibit K15, a true and correct copy of the Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications by the Land Use

Commission dated October 22, 2009, at 5. The ENV was required to comply with these findings, but failed to do so. *See Exhibit 77*, a true and correct copy of the Transcript of Proceedings before the Land Use Commission dated February 2, 2011, at 152:25–153:5, 179:13–17 (Land Use Commission Chairman Devens, affirming that the ENV is required to comply with the Commissions' Findings of Fact and questioning whether there was a violation of Finding of Fact 74).

38. As a result of the December 2010 discharge, the City was ordered to issue a press release regarding the possible release of contaminated stormwater and leachate into state waters, but the City refused to issue the press release, claiming that the storm water was not leachate. Exhibit K55, a true and correct copy of an E-mail with attachment from Timothy Steinberger to Gary Gill, Steven Chang, and Joanna Seto of the Hawai'i Department of Health dated January 12, 2011.

39. On January 12, 2011, the Department of Health contacted the ENV and "demanded the posting of signs warning of contaminated water discharges from WGSL, given the predicted rainfall." *Id.*

40. In an e-mail sent January 12, 2011, the ENV's Director, Timothy Steinberger, steadfastly refused to post signs, making a technical argument that signs were not required because the Landfill does not qualify as a "wastewater treatment, use or disposal system" as defined by a Hawai'i regulation. *Id.*

41. The e-mail was sent at 9:45 p.m. *Id.*

42. At that very moment, the rain was pouring at the Landfill. Between 9:00 p.m. and 10:00 p.m., the Landfill received close to three inches of rain. Exhibit K56 at 1, a true and correct copy of Station Summaries from Palehua Hawaii on January 12 and 13, 2011.

43. The heavy rains dislodged unknown quantities of municipal solid waste, sewage sludge, leachate, and medical solid waste from the Landfill into coastal waters. Medical solid waste includes sharps, chemotherapy wastes, and pathological wastes.

44. By the morning of January 13, 2011, significant quantities of medical waste and other Landfill debris were washing up in the Ko Olina Lagoons. Quickly this waste spread to beaches up the Leeward Coast and east as far as Nimitz Beach. See Exhibit K80, a true and correct copy of an Article, Medical Waste Clean-up Efforts Underway: More Medical Waste Wash Up On West Shores 5 Days After Landfill Spill, dated January 17, 2011 (“Robert and Barbara Billand showed off what they found after combing White Plains and Nimitz Beaches. [¶] Two plastic bags of used syringes, scissors and used vials that appeared to have blood inside.”).

a. Exhibit K105 is a set of true and correct copies of photographs at Ko Olina Resort of municipal solid waste and debris from the Landfill following the January spill.

b. Exhibit K108 is a set of true and correct copies of photographs at Ko Olina Resort of medical solid waste from the Landfill following the January spill.

Exhibit K154 is a set of true and correct copies of photographs of medical waste found at or around Ko Olina following the January spill taken by the Department of Health Clean Water Branch.

c. Exhibit K109 is a set of true and correct copies of photographs of the muddy waters filled with debris off the shores of Ko Olina Resort following the January spill.

45. Upon learning of the spill, Ko Olina Resort immediately closed the Lagoons. Exhibit K106 is a set of pictures at Ko Olina of the empty Lagoons during the beach closure. Exhibit K113 is a true and correct copy of a "Keep Out" sign posted at one of the Ko Olina Lagoon following the January spill.

46. Based on the December and January spills, the EPA found that the City and Waste Management had violated the Clean Water Act by failing to prevent runoff of surface water that had contacted waste; failing to control erosion to prevent loss of cover or washout of refuse slopes; failing to properly manage leachate; and failing to adequately retain and remove silt from surface water before it was discharged from the Landfill. Exhibit K123, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

47. The ENV and Waste Management were slow to clean up the municipal solid waste. Consequently, Ko Olina's workers had to assist in the cleanup, as explained by the testimony of Duke Hospodar. Exhibit K103 is a set of true and correct copies of photographs of the Ko Olina Aloha Team's efforts to clean up the

waste at the Resort from the Landfill. Exhibit K104 is a set of true and correct photographs of before and after photographs of the clean-up efforts following the January spill. Exhibit K110 is a set of true and correct copies of videos of the Ko Olina Aloha Team's efforts to clean up the waste at the Resort from the Landfill.

48. Ko Olina Resort spent substantial time, effort, and money to clean up the municipal solid waste and medical waste that washed up on Ko Olina's beaches. The clean-up costs were not less than \$19,629.18. *See* Exhibit K139, a true and correct copy of an invoice for the clean-up work associated with the January 2011 spill.

49. In addition, Ko Olina's reputation as a premiere resort destination was tarnished and undermined by the news reports that the Ko Olina Lagoons were covered with medical waste from the Landfill. *See* Exhibit K99, a set of true and correct copies of news articles covering the January spill and its effects on Ko Olina; Exhibit K133 is a set of true and correct copies of local news videos covering the January spill and its effects on Ko Olina.

50. It is amazing how far-reaching the bad news of the January spill has spread. Ko Olina Resort and Marina had a booth at a boat show in Seattle after the spill. The Ko Olina representative in the booth, Charles Leonard, General Manager of Ko Olina Marina, was asked repeatedly whether the Ko Olina beaches were contaminated with medical waste. *See* Exhibit K77, a true and correct copy of a

Transcript of Proceedings Before the Land Use Commission dated February 2, 2011,
at 252:10–18 (testimony of Charles Leonard).

51. The spill would not have happened if the Landfill had been closed as scheduled in 1997, in 2003, in 2008, or again in 2009.

**THE LANDFILL THREATENS ALL OF ONGOING AND FUTURE
ECONOMIC BENEFITS PROVIDED TO THE COMMUNITY BY
KO OLINA RESORT**

52. Ko Olina provides substantial economic benefits to the surrounding community, the City, and the State.

53. An independent economic analysis was conducted by CB Richard Ellis in January 2011 entitled Fiscal & Economic Benefits Analysis, Ko Olina Resort & Marina, Honolulu, HI. A true and correct copy of the report is marked as Exhibit K22.

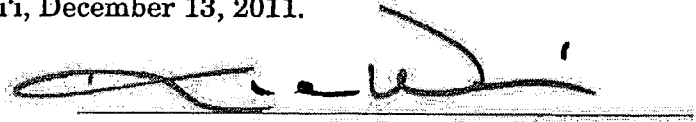
54. Current operations of Ko Olina Resort generate \$520 million in direct spending annually and provide 2,800 jobs locally. Additionally, this generates indirect and induced benefits of \$280 million and 1,500 additional jobs locally and statewide.

55. Future developments at Ko Olina will almost double the benefits generated by the existing Ko Olina Resort, providing \$1.4 billion in total annual economic activity (\$925 million directly and \$501 million indirect and induced) and supporting 8,000 jobs (5,200 directly and 2,800 indirect and induced).

56. Construction period impacts for future proposed developments at Ko Olina will include over \$3.7 billion in direct spending, creating 26,700 jobs. Indirect and

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: Honolulu, Hawai'i, December 13, 2011.

A handwritten signature in black ink, appearing to read 'Ken Williams', is written over a horizontal line.

KEN WILLIAMS

RECEIVED

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'11 DEC 13 P3:51

DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

"14. Municipal solid waste shall be
allowed at the WGSL up to July 31, 2012,
provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012."

FILE NO. 2008/SUP-2

INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
WRITTEN DIRECT TESTIMONY
OF MAILE SHIMABUKURO

DECLARATION OF MAILE
SHIMABUKURO

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

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

FILE NO. 2008/SUP-2

DECLARATION OF MAILE
SHIMABUKURO

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2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012.”

DECLARATION OF MAILE SHIMABUKURO

I, Maile Shimabukuro, hereby declare as follows:

1. I make this declaration based on personal knowledge in opposition to the Honolulu Department of Environmental Services' (the "ENV") Application to Modify Special Use Permit No. 2008/SUP-2 by deleting Condition 14 in the Hawai'i Land Use Commission's Order Adopting the Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009.

2. I oppose the Application because the Waimanalo Gulch Sanitary Landfill (the "Landfill") is a hazard to public health and safety; because the Landfill works

very difficult for me to watch yet another Application be approved by DPP when you have got to be aware of the violations and blatant disregard for public health and welfare on the part of WMI, ENV and others in the City." A true and correct copy of the Letter is marked as Exhibit K46.

10. Over the years, the City and County of Honolulu and the Landfill's operator, Waste Management of Hawaii, Inc. ("Waste Management"), have been assessed close to \$3 million in fines for violating environmental regulations through the Landfill's operations:

a. On January 31, 2006, the Hawai'i Department of Health issued an 18-count notice of violation finding that the City and Waste Management had violated environmental regulations by, among other things, overfilling Landfill cells; exceeding allowable leachate levels in the leachate collection systems; failing to maintain records of the location of asbestos disposal at the Landfill; failing to control the generation of dust from vehicular traffic; failing to minimize free litter generation in the Landfill; and failing to monitor explosive gases. The Landfill was assessed a fine of close to \$2.5 million. See Exhibit K59, a true and correct copy of a Letter from Laurence K. Lau of the Hawai'i Department of Health to Paul Burns of Waste Management and Eric Takamura of the ENV regarding Notice of Violation/Order dated January 31, 2006, with enclosures.

b. On April 5, 2006, the United States Environmental Protection Agency (the "EPA") issued a notice of violation finding that the City and Waste Management had violated the Clean Air Act by, among other things, failing to

submit timely a design plan to the EPA; failing to install timely a gas collection and control system; and failing to install a gas collection and control system that complies with regulatory requirements. The notice of violation stated that the EPA could issue an administrative penalty order of up to \$32,500 per day of violation or bring a civil action for civil penalties of not more than \$32,500 per day for each violation. *See* Exhibit K60, a true and correct copy of a Letter from Deborah Jordan of the EPA to Paul Burns of Waste Management and Eric S. Takamura of the ENV dated April 5, 2006, with enclosure.

c. On May 13, 2010, the Hawai'i Department of Health issued a 3-count notice of violation finding that the City and Waste Management had violated Hawai'i law for improperly constructing a Landfill berm and failing to notify the Department of Health of these issues for about 2 and ½ years. The Department of Health assessed a penalty of \$424,000 for the violations. *See* Exhibit K66, a true and correct copy of a Letter from Laurence K. Lau of the Hawai'i Department of Health to Joe Whelan of Waste Management and Timothy Steinberger of the ENV regarding Notice and Finding of Violation/Order dated May 13, 2010, with enclosures.

d. On December 23, 2010, the Hawai'i Department of Health Clean Water Branch found that the Landfill was discharging storm water contaminated with leachate into State waters near Ko Olina. Exhibit K52, a true and correct copy of an Investigation Report by Matthew Kurano and Jamie Tanimoto of the Hawai'i Department of Health Clean Water Branch signed January 4, 2011.

e. On January 12 and 13, 2011, heavy rains dislodged unknown amounts of municipal solid waste from a cell within the Landfill into State waters near Ko Olina Resort. Municipal solid waste, including medical solid waste, washed up all along the Leeward Coast. It was found near where I live at Pokai Bay. See Exhibit K80, a true and correct copy of an Article, Medical Waste Clean-up Efforts Underway: More Medical Waste Wash Up On West Shores 5 Days After Landfill Spill, dated January 17, 2011 (“4 miles away at Pokai Bay, city lifeguards found four syringes on the shore.”).

f. On November 29, 2011, the EPA found that the City and Waste Management had violated the Clean Water Act based on the December 2010 and January 2011 events by failing to prevent run-off of surface water that had contacted waste; failing to control erosion to prevent loss of cover or washout of refuse slopes; failing to properly manage leachate; and failing to adequately retain and remove silt from surface water before it was discharged from the site. Exhibit K123 at 3, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

11. These environmental violations vividly illustrate that the Landfill poses an unreasonable risk of harm to the health and safety of the residents of the Leeward coast. This risk cannot be justified.

12. The Landfill also poses an issue of social and environmental justice. My constituents on the Leeward Coast has been burdened with much more than their fair share of environmental injustices.

provided to the City and State combined. See Exhibit K22, Fiscal & Economic Benefits Analysis Ko Olina Resort & Marina, Honolulu, HI by CBRE Strategic Consulting dated January 2011.

34. Why on earth would we put a landfill across the street from such a powerful economic engine? Why would we put a landfill next to a resort, where thousands of people live, work and visit every year?

CONCLUSION

35. The Land Use Commission imposed the July 2012 deadline because its members recognized the plight of the Leeward community and the broken promises of closure. The Land Use Commission was trying to send a strong message to the City that it must look for alternatives to the Landfill as the City has been promising all along. The Land Use Commission wanted to hold the City accountable. The Land Use Commission wanted to save my community from further harm.

36. Condition 14 should stand. The Application to Modify should be denied.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: Honolulu, Hawai'i, December 13, 2011.



MAILE SHIMABUKURO

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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)

DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)

To delete Condition No. 14)
of Special Use Permit No.)
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be allowed at the WGSL)
after July 31, 2012.")

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 9:10 a.m., on
March 7, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 CORD D. ANDERSEN, Member
 9 DANIEL S.M. YOUNG, Member
 10 BEADIE DAWSON, Member
 11 JAMES C. PACOPAC, Member
 12
 13 For the Planning Commission:
 14 WINSTON K.Q. WONG, ESQ.
 15 Deputy Corporation Counsel
 16 Department of the Corporation Counsel
 17 530 South King Street, Room 110
 18 Honolulu, Hawaii 96813
 19
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 21
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 23
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Page 4

I N D E X

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 3
 4 WITNESS: SHAD KANE
 5 Mr. Chipchase 6
 6
 7 WITNESS: DWIGHT MILLER
 8 Mr. Chipchase 20, 109, 184
 9 Ms. Viola 30, 155
 10 Mr. Sandison 105, 182
 11 Planning Commission 189
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Page 3

1 Appearances (continued):
 2 For the City and County of Honolulu, Department of
 3 Environmental Services:
 4 DANA MIE OSHIRO VIOLA, ESQ.
 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
 7 City and County of Honolulu
 8 530 South King Street, Room 110
 9 Honolulu, Hawaii 96813
 10
 11 For Ko Olina Community Association and Senator Maile
 12 Shimabukuro:
 13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.
 14 CHRISTOPHER T. GOODIN, ESQ.
 15 Cades Schutte
 16 1000 Bishop Street, Suite 1200
 17 Honolulu, Hawaii 96813
 18
 19 For Schnitzer Steel Hawaii Corp.:
 20 IAN L. SANDISON, ESQ.
 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Ball LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

Page 5

CONTESTED CASE HEARING

1
 2
 3 CHAIRWOMAN PINGREE: Good morning. Call
 4 the meeting to order. Today is day five of the
 5 contested case hearing in the Ewa-State Special Use
 6 Permit Amendment Application-2008/SUP-2, Waimanalo
 7 Gulch Sanitary Landfill.
 8 Counsel, if you would kindly identify
 9 yourselves for the record.
 10 MS. VIOLA: Dana Viola, Deputy Corporation
 11 Counsel, and Brian Black on behalf of the City.
 12 MR. SANDISON: Ian Sandison and Arsim
 13 Muller on behalf of intervenor Schnitzer Steel
 14 Hawaii Corp.
 15 MR. CHIPCHASE: Cal Chipchase and Chris
 16 Goodin for the Ko Olina Community Association and
 17 Senator Maile Shimabukuro.
 18 CHAIRWOMAN PINGREE: Thank you very much.
 19 As I recall, you --
 20 MR. CHIPCHASE: Yes. Chair, for our next
 21 witness we would call Shad Kane.
 22 CHAIRWOMAN PINGREE: Good morning, Mr.
 23 Kane.
 24 THE WITNESS: Good morning.
 25 CHAIRWOMAN PINGREE: Would you kindly

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1 perimeter probe GP-8 were noted in 2008 and 2009
 2 (sic), but gas is apparently being controlled by
 3 improvements or adjustments to the gas extraction
 4 system.
 5 A. Correct.
 6 Q. And you also say that the high
 7 temperatures in the landfill gas bear watching and
 8 the December 2010 and January 2011 storm water
 9 events were catastrophic beyond the 25-year 24-hour
 10 storm that the landfill was engineered to withstand.
 11 Right?
 12 A. Correct.
 13 Q. So you're saying that by law, the landfill
 14 was only required to design for a 25-year 24-hour
 15 storm?
 16 A. That is what I'm saying there.
 17 Q. And that unfortunately, this -- this
 18 larger storm, catastrophic storms, unfortunately led
 19 to release of some wastes to the ocean.
 20 A. Correct.
 21 Q. However, Waste Management Hawaii, WMH,
 22 made engineering improvements to the drainage system
 23 in response to the event.
 24 A. Correct.
 25 Q. Just continuing on with your conclusions:

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1 The groundwater underlying Waimanalo Gulch Sanitary
 2 Landfill is brackish and not usable for drinking
 3 water and the groundwater monitoring data have not
 4 shown verifiable impacts.
 5 A. Correct.
 6 Q. So that conclusion to this technical
 7 report, that seems to imply that you don't have
 8 concerns about, for example, landfill gas, leachate
 9 and groundwater, and that the storm event was
 10 catastrophic and therefore not something that the
 11 operators were required to design for?
 12 A. I think, as I made in my statement, that I
 13 would add to that conclusion that the lack of
 14 diligence in completing drainage improvements prior
 15 to starting operation -- well, first off, prior to
 16 completing construction and construction that was
 17 not to the original design intent for the cell, as
 18 well as not completing the drain improvements prior
 19 to the construction of the cell and operation of the
 20 cell, specifically, that led to the catastrophic
 21 release of the medical waste.
 22 I am not saying necessarily that that
 23 wouldn't have happened, but it certainly would have
 24 helped to have had those drainage improvements
 25 completed. I mean, that's just essentially due care

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1 in your operation and construction of a site, to
 2 have your drainage improvements completed prior to
 3 construction of your cell and operation of your
 4 cell.
 5 Q. Are you aware of the entity that is
 6 authorized to regulate the design and operation of a
 7 landfill?
 8 A. Yes.
 9 Q. What agency is that?
 10 A. Department of Health.
 11 Q. Department of Health. Specifically, the
 12 Solid and Hazardous Waste Branch; is that correct?
 13 A. Correct.
 14 Q. They would oversee the design as well as
 15 the operation of the landfill to assure that the
 16 facility is in compliance with the law; is that your
 17 understanding?
 18 A. That is their intent.
 19 Q. Are you aware that as reflected in the
 20 solid and hazardous waste permit for this facility,
 21 that the DOH had condoned the simultaneous
 22 construction of the western drainage system and the
 23 cell?
 24 A. That is my understanding.
 25 Q. Right. So as the agency that is

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1 responsible for regulating the design and use of the
 2 landfill, they essentially had that responsibility
 3 in granting the permit; isn't that correct?
 4 A. I am not specifically knowledgeable of
 5 that exact element of the permit and their approval
 6 of that, but that would be true.
 7 I would also add, however, that it is an
 8 owner and operator's required duty to ensure that
 9 they are protecting human health and the
 10 environment.
 11 Q. Is it also the Department of Health's duty
 12 to protect -- isn't that their authority, to protect
 13 human health and the environment?
 14 A. To oversee that. It is not their duty --
 15 in my understanding, in the way that myself as a
 16 professional engineer on these projects, I do not
 17 take it as their duty to ensure that I have done
 18 everything right myself. That is my duty as the
 19 professional engineer stamping and signing those
 20 plans.
 21 Q. But because the facility has to get a
 22 permit from this entity, from the Department of
 23 Health -- before they can operate, they have to get
 24 a permit.
 25 A. Yes.

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1 is those are minimums that we're looking at. And
 2 typically, you would look at opportunities not to go
 3 out of your way to have additional cost and so
 4 forth, but definitely from a risk management
 5 standpoint on your site to ensure that you aren't
 6 going to have major issues of off-site discharge or
 7 damage to your infrastructure on site or damage to
 8 your operating area that could cause, you know, a
 9 difficulty in operating during wet weather. It's
 10 those types of things that typically I see operators
 11 being a little bit more diligent on, and in specific
 12 areas, possibly, you know, going beyond.
 13 A good example of that really is the
 14 bypass channel, bypass system. As I noted before,
 15 typically I would have recommended that be in line
 16 and on line prior to the cell being constructed or
 17 completed at least and definitely before it was
 18 filled. It's just good practice. It's a good way
 19 to reduce your risk at the site. So that's
 20 typically what I would see in a site like that.
 21 And yeah, maybe Department of Health would
 22 allow something less than that because it's allowed
 23 by the rules and regulations, but, you know, rules
 24 and regulations don't cover everything, and they
 25 don't necessarily cover all of your potential risk,

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1 both to your facility as well as off site. That's
 2 where the diligence of the engineer and the operator
 3 come in, to ensure that you have that.
 4 Q. Is it the State's fault, then? The
 5 January and December spills, are they the State's
 6 fault?
 7 A. Well, I don't see them as the State's
 8 fault, because it's really the requirement of the
 9 owner/operator to build -- to design and build a
 10 facility that's going to be able to contain the
 11 waste and be able to bypass the surface water, be
 12 able to contain surface water in-site, you know, if
 13 it's contaminated, and then be able to treat it.
 14 Those are the requirements of the owner/operator.
 15 It's not the State's requirement to do that.
 16 The State is, in fact, a regulatory body.
 17 They're ensuring kind of the checklist -- okay,
 18 they've followed these rules -- but not necessarily
 19 from the standpoint of the engineering intent of it.
 20 And that's why I noted earlier on that myself, as an
 21 engineer, I will make sure that I look at those
 22 risks that are out there and that I don't put myself
 23 at risk as a professional, but also, I don't put my
 24 client at risk in how some of these things are both
 25 constructed, as well as sequenced in that

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1 construction.
 2 Q. Well, let's talk about construction
 3 sequencing from a broader perspective, more from the
 4 industry standard. What is the industry standard
 5 for construction of these bypass systems and these
 6 diversion systems?
 7 A. What I would say, I mean, is that
 8 typically -- so I will be pretty broad-brushed in
 9 that, because every site is different, and what that
 10 means by a bypass might be different on one site
 11 than another.
 12 Q. Well, let's be more specific then.
 13 We're dealing with a canyon.
 14 A. Yeah. So a canyon fill such as this,
 15 where we are controlling water that's coming in from
 16 a point source -- I mean, it's from the canyon, a
 17 fairly narrow canyon, fairly easy -- I'll put it
 18 this way, an easy area to collect that water from, I
 19 mean, and get it into a bypass. I would have that
 20 in place. I mean, that is so fundamental, and the
 21 industry standard, typically, is to have that in
 22 place, have that bypass in place prior to putting
 23 this -- what is a multi-million dollar investment in
 24 the ground and then starting to operate that,
 25 because you want to protect your investment. You

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1 want to protect the investment, as well as what that
 2 investment is protecting, which is groundwater,
 3 surface water, public health and safety that's down
 4 slope of it. So I guess that would be the standard
 5 that I would say out there.
 6 That's why I note that it's a little
 7 different on every site, because you're looking at
 8 somewhat different circumstances, but the point is
 9 what you're doing is protecting health and safety,
 10 primarily public health and safety and the
 11 environment, and part of that also is your own
 12 economic interest of protecting your investment that
 13 you have in the ground.
 14 In this case, with those storm events,
 15 there was damage to the investment, you know, damage
 16 to the liner, damage to waste, needing to clean up
 17 after that, but then also there was the damage to
 18 the environment and public health and safety.
 19 Q. And in fact, you're aware the EPA cited
 20 Waste Management --
 21 A. Correct.
 22 Q. -- and the City for damage to the
 23 environment?
 24 A. For that very reason, yes.
 25 Q. So if you had been advising the operator

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1 and the City, would you have said that it was
 2 reasonable to go forward with filling the cell
 3 before the diversion system had been completed?
 4 A. No, I would not.
 5 Q. In your review of the records -- and let
 6 me take a step back. You talked about you've
 7 reviewed documents in this case.
 8 A. Uh-huh.
 9 Q. Give me a sense of the volume of documents
 10 that you and your team have looked at.
 11 A. Yeah. I kind of have to visualize this,
 12 because we looked at most of them on line or
 13 electronically, but, you know, probably in a
 14 bookshelf, it probably would have been about this
 15 wide of documents that we reviewed, so we reviewed
 16 essentially the operating record of the landfill,
 17 the design report leading up to it, the engineering
 18 report, the plans and specifications, the monitoring
 19 record of the landfill, the solid waste management
 20 plan, all of the attachments to that, as well as
 21 other studies that were done for biosolids and other
 22 special waste handling in the community. So it's
 23 kind of a myriad of different areas, but it was a
 24 lot of materials that we reviewed in that, which is
 25 really what's necessary.

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1 Because as I noted before, this is a --
 2 when you're looking at solid waste and you're the
 3 owner, essentially, of the solid waste system in a
 4 community, it is all the way from that comprehensive
 5 holistic plan all the way down to those facilities
 6 that you're operating and the operations for those
 7 facilities, as well as the design for those
 8 facilities, and then ultimately all of the
 9 environmental protections and environmental
 10 monitoring and all that. So it's a pretty big
 11 record that comes into play when you do that.
 12 Q. In this collection, this bookshelf of
 13 documents, we talked about the EPA order. Was that
 14 the only violation or warning letter that you
 15 reviewed?
 16 A. Well, no. I mean, the past violation
 17 letters that they received from the State, as well
 18 as from EPA -- you know, I guess what it -- it laid
 19 out to me that it was -- it was a pretty long record
 20 of violations or questionable operating practices
 21 and release -- you know, environmental releases and
 22 so forth.
 23 I think one of the ones that was probably
 24 most -- somewhat most egregious to me was then
 25 ultimately the falsification of the monitoring

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1 records that was done at the site. That came to
 2 light after we had done our study, but I looked at
 3 the process on that, as well, and those are some
 4 real concerns. This is a public facility with --
 5 you know, the public is counting on the City to
 6 protect the public health and safety and the
 7 environment, and that really calls it into question
 8 when, you know, one of the operations people was not
 9 doing -- actually, to the point of illegally doing
 10 those activities.
 11 Q. So on that topic of gas monitoring, with
 12 Ms. Viola you looked at your report in, I think,
 13 Exhibit K146, and we looked at page nine, and we
 14 looked at your conclusion on gas well monitoring,
 15 and I think you just said that that statement was
 16 made before it came to light --
 17 A. Yes.
 18 Q. -- that gas head readings had been
 19 fabricated for some period of time. Right?
 20 A. It was.
 21 Q. What's the purpose of taking these gas
 22 head readings?
 23 A. Well, the gas head readings, they're
 24 really taken to determine the overall system
 25 operational efficiency, as well as determine if

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1 there's other concerns at the site. So by being
 2 able to detect different constituents in those gas
 3 readings, you can determine if there's oxygen
 4 intrusion into the landfill or if you might have a
 5 landfill fire, so you might have carbon monoxide
 6 being generated in those or -- and these are for on-
 7 site wells. For off-site wells, obviously you don't
 8 want to have any hits of anything off-site or
 9 outside of the landfill itself. So those are really
 10 important readings to ensure that your environmental
 11 protections are in place and that you don't have
 12 issues of particularly a landfill fire or oxygen
 13 intrusion into the landfill which then could cause a
 14 landfill fire, or actually show that you're emitting
 15 methane or other constituents outside of the
 16 landfill.
 17 Q. If we look at the history -- and I know
 18 you've read the testimony -- if we looked at the
 19 history of violations at the site and sort of ending
 20 with this failure to monitor, really an employee's
 21 willful failure to monitor, is this kind of
 22 operational practice common for the landfills that
 23 you've worked on operationally?
 24 A. No. I would say not at all. I mean, I
 25 have not worked on a site that has had anywhere near

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1 occurred in January -- the storms that occurred in
 2 December 2010 and January 2011.

3 A. Uh-huh.

4 Q. Were you aware that the storm, especially
 5 in January, was of the magnitude of a 100-year
 6 storm?

7 A. I wasn't sure of the exact magnitude of it
 8 or how it was classified. I don't think I've ever
 9 seen that specific --

10 Q. But you characterize it in your report as
 11 a catastrophic storm; is that correct?

12 A. Catastrophic results from the storm, I
 13 believe is how I termed it, but I'm not exactly sure
 14 how that wording is exactly.

15 Q. Let's refer to your declaration -- your
 16 report. It's in your conclusion section.

17 A. Conclusion, yeah.

18 Q. So it's page nine. I think you say, The
 19 December 2010 and January 2011 storm events were
 20 catastrophic beyond the 25-year 24-hour storm the
 21 landfill was engineered to withstand.

22 A. Yes. Correct.

23 Q. Are you saying that you would expect the
 24 landfill to essentially be designed and operated to
 25 meet any potentiality, including a catastrophic

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1 storm?

2 A. No, I do not.

3 What I would say here in this is that --
 4 and this really goes back to my statement this
 5 morning, as well -- is that this system wasn't even
 6 operational. The bypass wasn't even operational,
 7 from my understanding, at the time of those storm
 8 events, at least as fully -- as designed, because
 9 the construction hadn't been complete. So we don't
 10 know if that would have been able to convey a storm
 11 event, from my understanding. So what happened is
 12 that it was internal and it was -- so we had the
 13 storm event. It caused issues in the landfill that
 14 may not have happened if that high flow bypass --
 15 everything that we saw constructed yesterday had
 16 been in place at that time.

17 Q. But you also don't know, in making that
 18 statement --

19 A. I do not know that. That's true.

20 Q. -- that if that system that was in place,
 21 that the same thing wouldn't have happened, because,
 22 as you called it, it was a catastrophic storm.

23 A. What I do know and what I could make as an
 24 observation out there at the site is that if that
 25 had been in place and it had been functioning fully,

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1 is that the amount of water that would have been in
 2 the site would have been less. So I would
 3 conjecture, true, to say that the damage would have
 4 been less, because there would have been less storm
 5 water into the cell, because it would -- at least
 6 some of it would have been conveyed by that.

7 Q. But you can't say with any assurance that
 8 there would have been no damage or that it would
 9 have been completely avoided by the installation of
 10 the diversion channel?

11 A. I cannot say that, that's true.

12 Q. So you're not testifying that the landfill
 13 has to be managed or -- designed to address all
 14 potentialities?

15 A. No, I'm not saying that.

16 Q. Because -- why would you say that?

17 A. I said no, I'm not saying that.

18 Q. Yes. Why would you not say that?

19 A. What I'm saying, again, is that -- and
 20 what I've noted a couple of times is that those
 21 facilities that are designed and constructed to
 22 protect the integrity of the landfill, to reduce or
 23 eliminate the run-on of surface water onto the site,
 24 those need to be in place and operational, in my
 25 mind, prior to -- I would say prior to construction

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1 of the landfill -- but in some cases, you know,
 2 that's a risk taken by the operator/owner -- but
 3 definitely prior to filling.

4 Q. Do you --

5 A. Because all the -- sorry. All the
 6 protections were not in place.

7 Q. Do you know why they -- Waste Management
 8 of Hawaii and the DOH, in allowing them to do the
 9 simultaneous construction, do you know why they made
 10 that choice?

11 A. Specifically, I do not.

12 Q. Could you envision any situation where
 13 that choice would be justified?

14 A. The only time I would see that it would be
 15 justified is if in fact the conveyance was not
 16 necessary to truly protect the physical integrity of
 17 that infrastructure that was in place, but even more
 18 specifically the waste mass that was being placed
 19 there.

20 Q. What if there was nowhere else to put
 21 waste?

22 A. Well, I guess what that would tell me,
 23 again -- and this actually is quite telling, if that
 24 was the case, because that's why you build --

25 Q. Before you respond, the question is: If

C E R T I F I C A T E

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on March 7, 2012, at 9:00 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

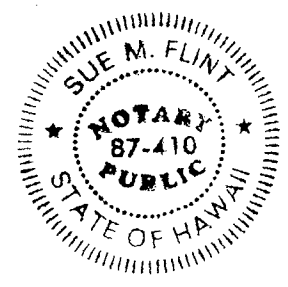
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 225-page transcript dated March 7, 2012, was subscribed and sworn to before me this 11th day of March, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)
)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
)
To delete Condition No. 14)
of Special Use Permit No.)
2008/SUP-2 (also referred)
to as Land Use Commission) S U P P L E M E N T
Docket No. SP09-403) which)
states as follows:)
)
"14. Municipal solid waste)
shall be allowed at the)
WGSL up to July 31, 2012,)
provided that only ash and)
residue from H-POWER shall)
be allowed at the WGSL)
after July 31, 2012.")
-----)

CONTESTED CASE HEARING (SUPPLEMENT)

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 9:05 a.m., on
April 4, 2012, pursuant to Notice.

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BEFORE: SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii

APPEARANCES:

Planning Commission:

- GAYLE PINGREE, Chairwoman
- CORD D. ANDERSEN, Member
- DANIEL S.M. YOUNG, Member
- BEADIE DAWSON, Member
- JAMES C. PACOPAC, Member

For the Planning Commission:

WINSTON K.Q. WONG, ESQ.
 Deputy Corporation Counsel
 Department of the Corporation Counsel
 530 South King Street, Room 110
 Honolulu, Hawaii 96813

1 Appearances (continued):

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

4 DANA MIE OSHIRO VIOLA, ESQ.

5 ROBERT BRIAN BLACK, ESQ.

6 Deputies Corporation Counsel

7 City and County of Honolulu

8 530 South King Street, Room 110

9 Honolulu, Hawaii 96813

10

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

13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.

14 CHRISTOPHER T. GOODIN, ESQ.

15 Cades Schutte

16 1000 Bishop Street, Suite 1200

17 Honolulu, Hawaii 96813

18

19 For Schnitzer Steel Hawaii Corp.:

20 IAN L. SANDISON, ESQ.

21 ARSIMA A. MULLER, ESQ.

22 Carlsmith Ball LLP

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24 1001 Bishop Street

25 Honolulu, Hawaii 96813

1 REPORTER'S NOTE: Per agreement of Counsel on
 2 4-11-12, this portion of the transcript, reflecting
 3 Mr. Chipchase's examination of Gary Gill, was
 4 re-transcribed to include the videotape
 5 presentation.

6 I N D E X

7
8 WITNESS: TOM ZELENKA

9 Mr. Sandison 8, 24
 10 Mr. Goodin 13
 11 Ms. Viola 26
 12 Member Dawson 28
 13 Member Pacopac 29

14 WITNESS: JANICE MARSTERS

15 Ms. Viola 32
 16 Mr. Chipchase 59
 17 Member Dawson 117
 18 Chairperson Pingree 122

19 WITNESS: MAILE SHIMABUKURO

20 Testimony 124

21 WITNESS: MAEDA TIMSON

22 Testimony 133

23 WITNESS: GARY GILL

24 Ms. Viola 144, 156
 25 Mr. Chipchase 153

1 CONTESTED CASE HEARING (SUPPLEMENT)

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

4 BY MR. CHIPCHASE:

5 Q. Good afternoon, Mr. Gill.

6 A. Hello.

7 Q. My name is Cal Chipchase. I represent the
8 Ko Olina Community Association and Senator
9 Shimabukuro. I will do my best to lead you as well
10 as Ms. Viola did, but if I fall short, let me know.

11 MS. VIOLA: Objection.

12 BY MR. CHIPCHASE:

13 Q. Do you remember appearing on a show called
14 PBS Insight in March 2011?

15 A. Island Insights.

16 Q. Island Insights on PBS?

17 A. I do.

18 Q. And Maeda Timson was on that show, as
19 well?

20 A. Yes, she was.

21 Q. I'd like to show you just a couple of
22 clips from that appearance, if I could.23 (The following is transcription from
24 videotape.)

25 MR. BOYLAN: Gary, I think you took some

1 pictures of some of that.

2 MR. GILL: That I did. I'm happy to show
3 them if --

4 MR. BOYLAN: And we'd love to show them.
5 Could we bring some of those pictures up on the
6 screen for -- here's the first one.

7 MR. GILL: Here we go. Just to get people
8 oriented, this is looking down on the landfill, and
9 that large shiny thing to the lower right is the
10 lake, the collected storm water that was stored on
11 the top of the landfill, which is what gave us so
12 much concern.

13 That is an active cell. It's where
14 garbage had been placed and then it got deluged with
15 the rain and eroded from the landfill and ultimately
16 flushed into the storm drain system and ultimately
17 into the ocean.

18 I think we have a few more to go through.

19 MR. BOYLAN: I think we've got another
20 one.

21 MR. GILL: We've got a whole bunch, but --
22 okay. This is a close-up of the lake itself, and
23 the concern that we had to deal with is this is
24 after any material had been washed -- this is a day
25 or so after the flood itself, but you can see the

1 containment of the water up there, and the concern
2 would be that this could erode and potentially have
3 a catastrophic collapse of the landfill unless that
4 water was dealt with.

5 So it will show you -- this is the
6 sedimentation basin below the landfill where
7 floatable plastic material, including medical waste,
8 was flushed down over the top of this --

9 MR. BOYLAN: That thing, the boundary
10 there or --

11 MR. GILL: The yellow boom was put in
12 afterwards to catch -- that wasn't there during the
13 flood itself. But the water is supposed to be
14 caught here and then sift through a filter before it
15 goes out into the ocean, and it basically just
16 overflowed.

17 And you'll see the berm in the next
18 picture, how this is containing that sedimentation
19 basin. And it's clean now, but this is a day or so
20 after the flood and it was pretty much, you know,
21 covered with plastic material, styrofoam, anything
22 that floated off of the lake up above.

23 And then from here, that's just an example
24 of -- a small sample of the medical waste that was
25 included in what flushed into the ocean.

1 And here's the -- where it basically
2 enters the cove right before the ocean. The City
3 posted signs because of the contamination, and of
4 course, you'll see brown water entering the ocean.
5 This is a day or so after the flood, as the lake was
6 brought down.

7 So you had a concern -- basically, the
8 reason that the flood took place is the diversion of
9 all that water that was supposed to -- it's not
10 supposed to go over the landfill. It's supposed to
11 be channeled off to the side. And that channel had
12 not been completed at the time that the big rains
13 came, and so basically a torrent of water came down
14 from the mountains, over the top of the landfill,
15 eroded what had been put in the landfill, floated
16 plastics out, down the storm drain and out into the
17 ocean.

18 (End of videotape transcription.)

19 BY MR. CHIPCHASE:

20 Q. So Mr. Gill, when you talk about the
21 flood, you're talking about the January 2011 flood?

22 A. That's the flood that over-capped the
23 containment basin and took solid waste into the
24 ocean, yes.

25 Q. Toward the end of that clip you talked

1 about why the flood happened.

2 MR. CHIPCHASE: I wonder, can we just play
3 that last part of the clip again?

4 (The following is transcription from
5 videotape.)

6 MR. GILL: -- basically, the reason that
7 the flood took place is the diversion of all that
8 water that was supposed to -- it's not supposed to
9 go over the landfill. It's supposed to be channeled
10 off to the side. And that channel had not been
11 completed at the time that the big rains came, and
12 so basically a torrent of water came down from the
13 mountains, over the top of the landfill, eroded what
14 had been put in the landfill, floated plastics out,
15 down the storm drain and out into the ocean.

16 (End of videotape transcription.)

17 BY MR. CHIPCHASE:

18 Q. Toward the end of the show, toward the end
19 of Island Insights, you make the same point about
20 the reason for the flood being that the diversion
21 channel wasn't in place. We'll play that very
22 quick.

23 (The following is transcription from
24 videotape.)

25 MR. BOYLAN: Gary, did you have any

1 response to some of Maeda's statements?

2 MR. GILL: Well, just to put it into
3 perspective, there's -- no waste is supposed to
4 leave the landfill, okay, so -- medical waste or
5 other. And it happened this time because the storm
6 water diversion system had not been put in place.

7 It is in place now, by the way, so if a
8 large storm happens, this kind of water is not going
9 to be going through the top of the landfill.

10 (End of videotape transcription.)

11 BY MR. CHIPCHASE:

12 Q. You also talked about the failure to have
13 the diversion system in place before the Senate Ways
14 and Means Committee. Do you remember that?

15 A. I'm not remembering before the Senate Ways
16 and Means Committee or what you might be referring
17 to.

18 Q. Fair enough. Mr. Gill, I've handed you a
19 copy of Exhibit K208, and I'll wait until it gets
20 passed out.

21 Mr. Gill, Exhibit 208 is a printout of an
22 article that appeared in Civil Beat. If I could
23 direct you down to the third and fourth paragraphs,
24 and I'll read them. Quote: What happened should
25 not have happened, health department Deputy Director

1 Gary Gill told the Hawaii Senate Ways and Means
2 Committee this week. Quote: The rains flooded the
3 landfill. All of that water is supposed to be
4 diverted around the landfill. The landfill has been
5 expanded a number of times and the diversion system
6 has not kept up with the expansions.

7 The next paragraph is Permit Conditions,
8 and here's some of the things that you talked about
9 with Ms. Viola.

10 Permit conditions require landfill
11 operators to have geomembrane sheets and pumps on
12 hand during construction of the diversion channel.
13 It's unclear whether those preventive measures were
14 used or ineffective.

15 Do you see that?

16 A. I do see it.

17 Q. I have one more clip from PBS Insight to
18 show you. You talked with Ms. Viola about the
19 City's efforts to divert waste from the landfill;
20 right? I'm sorry. You have to answer yes or no.

21 A. Yes, I spoke about that.

22 MR. CHIPCHASE: Can we play the last clip?

23 (The following is transcription from
24 videotape.)

25 MR. GILL: We still have electronic waste.

1 We still have tires. We still have lots of parts of
2 the waste stream which we are way behind -- the city
3 of Portland, I think, has reached 60 percent in
4 terms of waste diversion, and you can fight over the
5 numbers and how they calculate them, but we're doing
6 about half as well as we need to, and not only as a
7 city, but as a state, especially because we're an
8 island state.

9 (End of videotape transcription.)

10 MR. CHIPCHASE: Doing about half as well
11 as we need to. Thank you.

12 Your witness.

13 (End of supplemented transcript.)

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on April 4, 2012, at 9:00 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter supplemented and reduced to typewriting under my supervision;

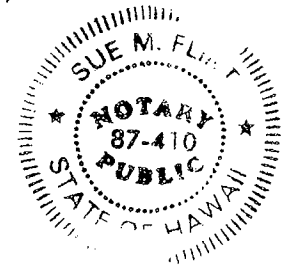
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 13-page supplement to the transcript dated April 4, 2012, was subscribed and sworn to before me this 15th day of April, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



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

In the Matter of the) FILE NO. 2008/SUP-2
Application of)
)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
)
To delete Condition No. 14)
of Special Use Permit No.)
2008/SUP-2 (also referred)
to as Land Use Commission)
Docket No. SP09-403) which)
states as follows:)
)
"14. Municipal solid waste)
shall be allowed at the)
WGSL up to July 31, 2012,)
provided that only ash and)
residue from H-POWER shall)
be allowed at the WGSL)
after July 31, 2012.")
_____)
)

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 1:37 p.m., on
February 8, 2012, pursuant to Notice.

Page 2

1 BEFORE: SUE M. FLINT, RPR, CSR 274
 2 Notary Public, State of Hawaii
 3
 4 APPEARANCES:
 5
 6 Planning Commission:
 7 GAYLE PINGREE, Chairwoman
 8 CORD D. ANDERSEN, Member
 9 DANIEL S.M. YOUNG, Member
 10 BEADIE DAWSON, Member
 11 ARTHUR B. TOLENTINO, Member
 12
 13 For the Planning Commission:
 14 WINSTON K.Q. WONG, ESQ.
 15 Deputy Corporation Counsel
 16 Department of the Corporation Counsel
 17 530 South King Street, Room 110
 18 Honolulu, Hawaii 96813
 19
 20
 21
 22
 23
 24
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Page 4

I N D E X

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 2
 3
 4 WITNESS: KEN WILLIAMS
 5 Summary 14
 6 Ms. Viola 25, 46, 54
 7 Mr. Sandison 46
 8 Mr. Chipchase 47
 9
 10 WITNESS: BEVERLY MUNSON
 11 Summary 56
 12 Mr. Chipchase 71
 13
 14 WITNESS: CYNTHIA REZENTES
 15 Summary 73
 16 Mr. Chipchase 79
 17
 18 WITNESS: PAUL DUKE HOSPODAR
 19 Summary 83
 20 Mr. Chipchase 94
 21 Planning Commission 95
 22
 23
 24
 25

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1 Appearances (continued):
 2 For the City and County of Honolulu, Department of
 3 Environmental Services:
 4 DANA MIE OSHIRO VIOLA, ESQ.
 5 ROBERT BRIAN BLACK, ESQ.
 6 Deputies Corporation Counsel
 7 City and County of Honolulu
 8 530 South King Street, Room 110
 9 Honolulu, Hawaii 96813
 10
 11 For Ko Olina Community Association and Senator Maile
 12 Shimabukuro:
 13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.
 14 CHRISTOPHER T. GOODIN, ESQ.
 15 Cades Schutte
 16 1000 Bishop Street, Suite 1200
 17 Honolulu, Hawaii 96813
 18
 19 For Schnitzer Steel Hawaii Corp.:
 20 IAN L. SANDISON, ESQ.
 21 ARSIMA A. MULLER, ESQ.
 22 Carlsmith Ball LLP
 23 ASB Tower, Suite 2200
 24 1001 Bishop Street
 25 Honolulu, Hawaii 96813

Page 5

CONTESTED CASE HEARING

1
 2
 3 CHAIRWOMAN PINGREE: Good afternoon. Call
 4 the meeting to order. Today is day four of the
 5 Contested Case Hearing Ewa-State Special Use Permit
 6 Amendment Application 2008/SUP-2 Waimanalo Gulch
 7 Sanitary Landfill.
 8 Would you kindly identify yourselves for
 9 the record, Counsel?
 10 MS. VIOLA: Dana Viola and Brian Black on
 11 behalf of the City.
 12 MR. SANDISON: Ian Sandison and Arsima
 13 Muller on behalf of intervenor Schnitzer.
 14 MR. CHIPCHASE: Cal Chipchase and Chris
 15 Goodin for intervenors Ko Olina Community
 16 Association and Senator Maile Shimabukuro.
 17 CHAIRWOMAN PINGREE: Thank you very much.
 18 We had, of course, the objection to the subpoena
 19 that was presented to us in our last session. At
 20 that time, the commissioners didn't have the
 21 opportunity to review it. Of course, during that
 22 period of time we've had the opportunity, so what
 23 I'd like to do is to ask today if counsel for Waste
 24 Management of Hawaii is present.
 25 MR. KONDO: I am. Wray Kondo with

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1 MR. CHIPCHASE: Nothing further.
2 CHAIRWOMAN PINGREE: Thank you.
3 MS. VIOLA: Nothing.
4 CHAIRWOMAN PINGREE: Any questions from
5 the commissioners?
6 Thank you very much.
7 MR. CHIPCHASE: Chair, if we could take
8 ten minutes and make sure my last witness for today
9 is ready to go --
10 CHAIRWOMAN PINGREE: No problem.
11 MR. CHIPCHASE: Thank you.
12 (Break taken.)
13 CHAIRWOMAN PINGREE: We're back on the
14 record.
15 MR. CHIPCHASE: Chair, the intervenors
16 call Paul Duke Hospodar.
17 MR. HOSPODAR: Good afternoon,
18 distinguished members of this committee. I consider
19 it a privilege to be here to speak before you. My
20 name --
21 MR. CHIPCHASE: She has to swear you in
22 first.
23 CHAIRWOMAN PINGREE: Pardon me. I
24 apologize. I didn't swear you in. I'm very sorry.
25 If you'd raise your right hand.

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1
2 PAUL DUKE HOSPODAR,
3 called as a witness, being first duly sworn to tell
4 the truth, the whole truth and nothing but the
5 truth, was examined and deposed as follows:
6
7 MR. HOSPODAR: Hello, committee members.
8 My name is Paul Duke Hospodar. I'm the security
9 director and resort operations director for Ko Olina
10 Resort. I've been filling that capacity for the
11 last 14 years, also a resident of Ko Olina since
12 1998 and I still live there. But besides being a
13 resort director, I'm also a member of one of the
14 neighborhood AOA boards, so I'll speak from two
15 capacities, one being a resident and one being a
16 resort director.
17 I actually had a couple of pages of bullet
18 points, but I won't belabor you with the extensive
19 notes and probably just stay to the general concerns
20 of not only my community but, you know, the resort
21 as a whole. I know there are some pictures that
22 were handed out to you. I'll spend the majority of
23 the time speaking about the pictures, because like
24 they say, pictures do speak a thousand words. I
25 keep one picture with me, and that was day one of

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1 the event when we found the needles from the breach
2 of the Waimanalo Gulch, so that's what I'll keep
3 before me instead of the bullet points.
4 As a resident, you know, it's not hard to
5 find other residents indignant with the whole
6 process. We don't want to say that the political
7 process is being perverted by considering the
8 removal of condition 14, but when we look at this
9 condition to be modified, altered or removed,
10 condition 14, to a resident and to the community, is
11 almost the heart of this whole agreement. Without
12 it, the rest of the conditions really mean nothing
13 to us. That was our light at the end of the tunnel,
14 to say it in short words. It gave us some reason to
15 believe that eventually the impact would be shared
16 throughout other communities.
17 In 1999, when I first became aware of the
18 gulch, the landfill, I didn't think too much of it.
19 I said, you know, it's probably pretty good
20 planning. I mean, we live on an island. This is an
21 unnecessary impact. It's prehistoric technology,
22 but we each need to bear the burden of these kind of
23 impacts. So I said, you know, good planning on
24 behalf of the City.
25 2003, as an extension was given, I said by

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1 the time Waimanalo Gulch will be moving on, our
2 resort would be building out, so it gave -- it did
3 give us some sense of relief and to say, Okay, hey,
4 listen, we beared our part of the burden, Kailua
5 did, other places have shared in landfills. It's
6 our time, so we accepted that.
7 By removal of condition 14, it really --
8 it almost seems that these processes are
9 pre-determined sequences of events and outcomes. It
10 really feels that the words and the commitments made
11 inside these provisions have any weight (sic). And
12 that's on the resident side.
13 It's just -- it's hard to see after 20
14 plus years that there's no place to put a landfill.
15 I mean, we're in the outer edges of space and we
16 can't figure out how to build a landfill somewhere
17 else. And that's just -- you know, sometimes it's
18 concerning.
19 As a resort director, my main focus is
20 with these pictures, and I don't want to say myopic
21 -- maybe a lack of proper planning on an emergency
22 response action plan. To be at the front lines of
23 this clean-up and hear -- I believe it was Ken
24 Williams who called me one day and said he heard on
25 the news that the calvary was coming, that, you

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1 know, the people who were responsible for this
2 breach were gonna send help. For ten days we got no
3 help. My managers did report that there was some, I
4 guess you could say, temporary help type of
5 individuals sent to the breach site, but other than
6 that, for ten days we were left alone, hoping that
7 someone would come down and at least give us some
8 assistance.

9 It was an egregious breach, I mean,
10 something that should never happen. I mean, the
11 fact that the containment system in and of itself
12 wasn't completed is concerning, but not to have an
13 appropriate emergency action plan, a response plan,
14 is very concerning to a community, if not to a
15 resort. We live in the midst of Campbell Industrial
16 Park that has a clean -- we have, you know, Hawaiian
17 Electric that has their response plans. They work
18 very genuine with us.

19 But it was quite frightening, I mean, to
20 the point where we couldn't even determine if these
21 breached material was AIDS infected, was it -- you
22 know, the blood -- what was it called -- the
23 autoclave, does the autoclave work, how does it
24 work.

25 We asked for documents, at least give us

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1 some comfort that the autoclave or the gamma ray or
2 the microwave -- I'm not sure how this stuff is
3 decontaminated -- was done and it was done properly.
4 I mean, we had a catastrophic breach here. I mean,
5 what else could possibly, you know, alerted people
6 to say this community needs to have these comforts;
7 one, the breached material, the blood, the bladders,
8 the vials, the needles were decontaminated and this
9 is recorded. I can't speak for the community
10 association, but I have yet to get any answers to
11 questions that we've petitioned to the community
12 association about this matter, and to this date
13 still we have no record of how the stuff was
14 decontaminated. Is it recorded -- that if some kid
15 15 years from now steps on a vial of blood in one of
16 our lagoons we can say, Don't worry, this may have
17 been a by-product of a breach, you know, it's okay,
18 it's clean. At least give us that level of comfort.

19 So from that I'll just segue into the
20 pictures, because, like I said, the pictures says it
21 all. When I got the original pictures that I have
22 in front of me via my phone, I immediately called
23 for a shutdown of the lagoons. All I had to do was
24 see one needle; never mind the stacks of needles
25 that my guys were sending me via email.

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1 By 8:00, 8:10, 8:15, I was down on site.
2 When I seen the massive amounts of debris, it was,
3 to me, my Exxon Valdez. I said, My God, I said,
4 this is incredible, how can this happen in this day
5 and time. So I immediately called our construction
6 team just to remove six inches of sand. One needle
7 was one too many. Hundreds of needles, bladders,
8 vials, bags full of medical waste was just beyond
9 comprehension. I just said, Just remove the sand,
10 let's not take any risk here, we can always find new
11 sand and replace it.

12 Second part of that -- I didn't want to
13 become footage for media worldwide, using this
14 catastrophe that washed up on our beaches as a point
15 of contention of other arguments. So the immediate
16 removal of the imminent danger was our first
17 concern, and that's what you see on your first page
18 there.

19 In my testimony, I noticed last night
20 when I was going through it, I had mentioned we had
21 four 20-foot containers. They were actually 40-foot
22 containers. That's one of my employees, Kimo,
23 standing on top of that trash. We filled four of
24 those with debris. Kind of an ironic thing is that
25 when we had to dump it, Waimanalo Gulch actually

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1 charged us for dumping the waste. I've got those
2 receipts in here. So that was kind of an insult to
3 pain -- or pain to insult, but --

4 The third page, you'll see sand. That
5 doesn't look too bad. That's nice clean sand. That
6 is nice clean prestigious sand that we took from the
7 beach because the media was starting to inundate us
8 and we didn't want them jumping up there and getting
9 a picture. You can see just to the right of the
10 picture, that's actually the debris I was trying to
11 get covered.

12 The next picture, our sand machine. There
13 you'll find some of the waste. This waste here is
14 environmental waste. When you see the brown, that
15 was a lot of twigs, branches and stuff that was
16 comingled or coagulated with the medical waste,
17 which made our cleanup efforts much more intense,
18 and we just -- basically, like I said, for ten days
19 we just ran a sand cleaner up and down all four
20 beaches and we didn't want to leave any stone
21 unturned, to the point where we actually went out
22 and bought a metal detector and swept every beach
23 with a metal detector.

24 I live on property. I've got four kids.
25 My kids play on these beaches. I have a picture in

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1 here -- I had a representative from one of the
2 hotels come and say, Would you let your kids play on
3 this beach? I actually brought my dog and my
4 cherished son down there just to run the beaches and
5 say, you know, I'm confident in my efforts to clean
6 up. But, you know, beyond that, I don't know what
7 else the ocean can bring in to us.

8 The next page, again, my crew out there
9 every day, you know, PPE equipment, just sweeping,
10 and every day as the tide came in, more debris would
11 be washed upon our property. Again, same thing.

12 There's a -- my IT guy. They love that,
13 getting out of the office with the metal detectors.
14 They love those contraptions so they helped out a
15 lot. We were pulling lots of just points out of
16 sand. They would -- the naked eye could not see.

17 Then the last picture, which is a great
18 picture -- that's the picture I have in front of me
19 -- that's the first picture that was sent to me when
20 I ordered the closing of the beach. Like I said,
21 one needle is one needle too many.

22 And again, you know, I go back to the
23 condition 14 authorization, modification, removal --
24 it's the heart of this document. It's what we
25 believed in. It's what we felt that was going to

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1 carry us through these years of, you know, real
2 estate downfall, and hopefully, you know, that being
3 re-established --

4 I hate to use the word Bermuda Triangle,
5 but, you know, when you look at the dump, you look
6 at the power plant, you look at Campbell, you know,
7 what more impact can be placed on the leeward coast?
8 We have all these unsightly impacts. And I mean, as
9 a resident, it would have been nice to have seen the
10 gulch or the City plant at least a tree coming to
11 and from the dump.

12 You know, don't pit my community against
13 another community with giving one community money,
14 another one a threat of receiving a dump if it
15 leaves us. I mean, that's how I don't see planning
16 should be done.

17 It would have been nice just to see any
18 kind of beautification around the area that maybe,
19 hey, maybe the future communities will be fighting
20 over the landfill; you know, look what they do for
21 the neighborhoods they're in.

22 I was just talking to a gal outside about
23 the Pro Bowl. I seen Waste Management had a great
24 plug there during the Pro Bowl. I said, Hey, you
25 know, plug us with some beautification, put up some

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1 sound walls, put those monies that a million dollar
2 commercial cost you into the community, I said, and
3 maybe you'll be fighting for a landfill in the
4 future. Who knows?

5 I mean, other than that, I mean, I don't
6 want to get too passionate. Like I said, I have
7 many -- many hats in the game here. But you know,
8 if there's any questions on direct or redirect or
9 from the committee, I'd be happy to answer.

10 I hope I didn't speak too fast. After
11 noon my twang and drawl starts coming out. Sorry.

12 MS. VIOLA: No questions. Thank you.

13 MR. SANDISON: No questions.

14 MR. CHIPCHASE: Duke, I just wanted to
15 make sure I was clear on a couple of points.

16 MS. VIOLA: I'd like to just make an
17 objection. We didn't ask any cross-examination
18 questions and we agreed to the submission of written
19 testimony and I understand -- or I've just been
20 hearing Mr. Chipchase reiterate what's already in
21 the testimony. We're struggling to get through this
22 proceeding and to have enough time to go through all
23 of the necessary witness, and on the basis of the
24 prehearing conference and agreement all the parties
25 submitted written testimony. So I don't really feel

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1 it's necessary for him to reiterate content that's
2 already contained in the written testimony.

3 CHAIRWOMAN PINGREE: Excuse me.

4 Mr. Chipchase, are you going to reiterate
5 what's already in the written testimony?

6 MR. CHIPCHASE: No. And in fact, in each
7 case it's been testimony that they've given they
8 haven't read from their written testimony. They
9 provided summaries of them, which I think is
10 appropriate, and questions that I want to make sure
11 -- points that I want to make sure as part of their
12 summaries, not from their written testimony. And in
13 this case, I don't even intend to refer back to his
14 written testimony.

15 MS. VIOLA: If I could respond to that --
16 that's actually incorrect, because he pointed to
17 portions of Ms. Rezenten's testimony that she just
18 referred to in her summary and was contained in her
19 testimony. So that is the basis of the objection.

20 CHAIRWOMAN PINGREE: Thank you, Dana.

21 I'm going to go ahead and allow this. I
22 believe this is your last witness today.

23 MR. CHIPCHASE: It is.

24 CHAIRWOMAN PINGREE: And I'm going to go
25 back and review the pre-planning conference minutes

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1 and we'll take it up on March 7th when we meet
 2 again.
 3 MS. VIOLA: Thank you.
 4
 5 EXAMINATION
 6 BY MR. CHIPCHASE:
 7 Q. Duke, I just wanted to understand, when
 8 did you first become aware that trash had washed out
 9 of the landfill?
 10 A. That would have been approximately 6:30 on
 11 the 13th.
 12 Q. Did anyone from the City tell you that
 13 trash had washed out of the landfill? In other
 14 words, was Ko Olina notified by the City?
 15 A. I can't speak for Ko Olina. I know my
 16 department or myself was not contacted by anybody
 17 from the City or -- we actually ran into people from
 18 the Department of Health and the EPA. We all met up
 19 at the breach site that led to the ocean.
 20 Q. Just so it was clear -- you oversaw the
 21 clean-up for Ko Olina?
 22 A. For the ten days of complete clean up, I
 23 oversaw it, correct.
 24 Q. Other than the reference you made to
 25 noticing some temporary workers, did you receive any

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1 help in that clean-up effort from the City?
 2 A. Zero help.
 3 MR. CHIPCHASE: Thank you.
 4 CHAIRWOMAN PINGREE: Is that it?
 5 MR. CHIPCHASE: That's it.
 6 CHAIRWOMAN PINGREE: Any questions,
 7 commissioners?
 8 MS. DAWSON: I have one question.
 9 MR. HOSPODAR: Yes, ma'am.
 10
 11 EXAMINATION
 12 BY MS. DAWSON:
 13 Q. Has any summary been made of the cost in
 14 labor and materials and so forth to clean up this
 15 whole mess?
 16 A. Yes, ma'am. We did submit a complete
 17 inventory of our staff, our hours and our equipment
 18 to Ko Olina Community Association.
 19 Q. What was the overall cost?
 20 A. I'm going to guess. I was thinking it was
 21 around -- on our side, about \$28,000, about 28,000
 22 for the ten days.
 23 Q. Does that include the sand?
 24 A. That doesn't include the replenishing of
 25 the sand. The replenishing of the sand, because

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1 we're waiting on a Corps of Engineers permit, we
 2 couldn't do that at that time. So we're waiting on
 3 that permit to get the sand back in.
 4 Q. So it's not complete yet?
 5 A. No. It's not complete, ma'am, no.
 6 CHAIRWOMAN PINGREE: Any other questions?
 7 I have just something for the record.
 8 MR. HOSPODAR: Yes, ma'am.
 9 CHAIRWOMAN PINGREE: My notes say that
 10 when you introduced yourself you introduced yourself
 11 as Paul.
 12 MR. HOSPODAR: Yes.
 13 CHAIRWOMAN PINGREE: However, your
 14 declaration states Duke.
 15 MR. CHIPCHASE: Paul Duke.
 16 CHAIRWOMAN PINGREE: Okay. It's Paul
 17 Duke?
 18 MR. HOSPODAR: Yes. Everyone -- they'll
 19 say Paul. I'll say, Paul who?
 20 CHAIRWOMAN PINGREE: One and the same
 21 then?
 22 MR. HOSPODAR: Yes, ma'am.
 23 CHAIRWOMAN PINGREE: Thank you very much.
 24 MR. HOSPODAR: Thank you. Thank you for
 25 your time.

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1 CHAIRWOMAN PINGREE: That's the last
 2 witness for today. For housekeeping duties, our
 3 next meeting is March 7th, and that March 7th
 4 meeting is going to run from 9:00 to 4:30.
 5 Typically, we'll end at about 4:15 so that the next
 6 party can come in for a 4:30 meeting. I need to
 7 know, please, from counsel how much more time we
 8 need after the 7th.
 9 MR. CHIPCHASE: I believe our next hearing
 10 date, Chair, after the 7th is the 8th, and that's a
 11 half day. Is that right?
 12 CHAIRWOMAN PINGREE: No. The last one is
 13 March 7th that we had agreed upon.
 14 MR. CHIPCHASE: I'm sorry. I thought we
 15 had also agreed on March 8th. My mistake.
 16 CHAIRWOMAN PINGREE: That's fine.
 17 MR. CHIPCHASE: I wouldn't think more than
 18 a half a day.
 19 CHAIRWOMAN PINGREE: All right. I'd like
 20 to propose March 14th. I'm going to pencil for all
 21 day.
 22 MS. VIOLA: Thank you.
 23 CHAIRWOMAN PINGREE: That will be from
 24 nine to four.
 25 MS. VIOLA: Nine to 4:00.

C E R T I F I C A T E

STATE OF HAWAII)

) SS.

CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on February 8th, 2012, at 1:30 p.m., the foregoing contested case hearing was held;

That the hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

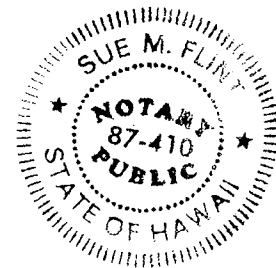
That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 100-page transcript of the contested case hearing in File No. 2008/SUP-2 dated February 8, 2012 was subscribed and sworn to before me this 22nd day of February, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU (FKA DEPARTMENT OF)
PUBLIC WORKS, CITY AND COUNTY OF)
HONOLULU)
)
For An Amendment To The Special Use)
Permit Which Established A Sanitary Landfill)
On Approximately 86.5 Acres Of Land Within)
The State Land Use Agricultural District At)
Waimanalo Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawaii, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))
_____)

DOCKET NO. SP87-362

DECISION AND ORDER
APPROVING AMENDMENT
TO SPECIAL USE PERMIT

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

6/9/03

Date

by *Anthony M. ...*
Executive Officer

DECISION AND ORDER APPROVING AMENDMENT TO SPECIAL USE PERMIT

EXHIBIT K2

EXHIBIT F

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) DECISION AND ORDER
SERVICES, CITY AND COUNTY OF) APPROVING AMENDMENT
HONOLULU (FKA DEPARTMENT OF) TO SPECIAL USE PERMIT
PUBLIC WORKS, CITY AND COUNTY OF)
HONOLULU)
)
For An Amendment To The Special Use)
Permit Which Established A Sanitary Landfill)
On Approximately 86.5 Acres Of Land Within)
The State Land Use Agricultural District At)
Waimanalo Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))

DECISION AND ORDER APPROVING AMENDMENT TO SPECIAL USE PERMIT

On January 17, 2003, the Department of Environmental Services, City and County of Honolulu ("Applicant"), formerly known as the Department of Public Works, City and County of Honolulu, filed an application to amend an existing special use permit ("Amendment") with the Department of Planning and Permitting, City and County of Honolulu ("DPP"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR"). The Applicant proposes to expand the existing Waimanalo Gulch Sanitary Landfill on approximately 21 acres of land within the State Land Use Agricultural District at

Waimanalo Gulch, Honouliuli, Ewa, O'ahu, Hawai'i, identified as TMK No: 9-2-03: portion 72 and portion 73 ("Property").¹ The Property is owned by the City and County of Honolulu and is under the jurisdiction of the Applicant.

On January 22, 2003, the DPP accepted the Amendment.

On March 5, 2003, the Planning Commission, City and County of Honolulu ("Planning Commission"), conducted a hearing on the Amendment, pursuant to a public notice published on January 31, 2003. After due deliberation, the Planning Commission recommended approval of the Amendment to the Land Use Commission ("LUC"), subject to the existing nine conditions and two additional conditions.

On March 13, 2003, the LUC received a copy of the decision and record of the Planning Commission's proceedings on the Amendment.

The LUC has jurisdiction over the Amendment. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the LUC to approve special use permits and amendments thereto for areas greater than 15 acres where application for LUC approval is made within 60 days after the decision is rendered on the request to the Planning Commission.

On March 27, 2003, the LUC met in Waipahu, O'ahu, to consider the Amendment.² Frank Doyle and Maile R. Chun, Esq., appeared on behalf of the

¹ The actual landfill expansion is planned on approximately 14.9 acres. Accessory structures and uses, including, but not limited to berms and detention basins, are planned on the remaining acreage.

Applicant. David K. Tanoue, Esq.; Eric G. Crispin; Barbara Kim-Stanton; and Raymond Young appeared on behalf of the DPP. Russell Y. Tsuji, Esq., and Abe Mitsuda were also present on behalf of the Office of Planning. At the meeting, the Applicant presented a chart entitled "Mayor's Blue Ribbon Landfill Site Selection Committee, New Landfill Timeline, March 27, 2003," which the LUC accepted as Exhibit Number 33 to the record in this proceeding. The Applicant represented, among other things, that it would continue to seek alternate disposal sites and other technologies and waste recovery programs to reduce the amount of waste that is disposed of in landfills.

Conformance With Special Use Permit Criteria

Following discussion by the Commissioners, a motion was made and seconded to grant the Amendment, subject to the conditions as reflected in the minutes of the meeting, including, among other requirements, that if a new landfill site is not selected by December 31, 2003, the special use permit would immediately expire. An amendment clarifying this motion was then made and seconded to amend the date to December 1, 2003; by which the Blue Ribbon Landfill Site Selection Committee is to recommend a new landfill site and to further specify that if the City Council fails to select the new site by June 1, 2004, the special use permit would immediately expire.

The LUC found that i) By Order dated April 20, 1987, the LUC approved a special use

² Pursuant to section 92-3, HRS, Ernest Adaniya, Greg Perry, Darrell Bussell, Paul B. Kekina, Lieutenant Commander Chuck Lewis, Richard Payne, Gail Butchart, Todd Apo, Cynthia K.L. Rezendes, and Kevin Mizuno presented oral testimony, and State Senator Brian Kanno and Councilmember Nestor Garcia submitted written testimony.

permit to establish the Waimanalo Gulch Sanitary Landfill on approximately 60.5 acres. By Order dated October 31, 1989, the LUC approved an amendment to the special use permit to expand the landfill by approximately 26 acres; ii) The current expansion is consistent with the solid waste handling and disposal policies of the 'Ewa Development Plan and will serve all of O'ahu's residents and visitors; iii) The Property is currently in open space and is located adjacent to the existing landfill; iv) No agricultural production occurs on the Property; v) There are no historic sites on the Property and there are no traditional cultural practices that have been identified that are specific to the Property; vi) There are no threatened or endangered species of flora and fauna nor are there any species of concern on the Property; vii) The expansion of the landfill will not adversely affect surrounding properties provided mitigation measures and all applicable government rules and requirements are followed; viii) The Applicant will comply with Federal and State regulations governing siting, design standards, operating requirements, groundwater monitoring and corrective action, closure, post-closure care, and financial assistance; ix) The Property will be restricted from handling or treating toxic hazardous waste material; x) Permanent and temporary fencing will be utilized to control litter in the expansion cells; xi) Vacuum equipment will be employed to clean the litter from the fences, and cleanup crews will be deployed when notice is received that litter has drifted offsite; xii) The Applicant will implement odor and gas emission control measures including a gas recovery and monitoring system, regular use

of odor misters, regular use of cover material, early onsite queuing of waste haulers, and diversion of sewage sludge offsite for drying and processing at the Sand Island Wastewater Treatment Plant; xiii) The expansion is not expected to result in noise levels greater than produced from current activities; xiv) Most of the short-term noise generated will be during operation and mobilization of heavy construction equipment; xv) The Applicant will comply with State noise regulations to mitigate short-term impacts; xvi) Longer term measures to ensure noise abatement include properly muffling equipment with noise attenuation devices, scheduling rock crushing during normal landfill operation hours, and landscaping with vegetation; xvii) Upon closure of the landfill, the Applicant and Waste Management of Hawaii, Inc., the operator of the landfill, will be responsible for capping the entire landfill, monitoring groundwater, methane gas, and leachates for 30 years; xviii) Exposed areas will be seeded or hydromulched, as appropriate, using plants similar to those found around the landfill; xix) Fabric to mimic rock outcrops will also be strategically placed to break up the homogenous appearance of the filled areas relative to the surrounding hillside; xx) The impact of the landfill on Ewa and Nanakuli residential values was studied; xxi) Proximity to the landfill is not a consistent contributor to property values and does not adversely affect property values; xxii) The existing landfill has been in operation since 1989 and the relevant support infrastructure and services for the proposed expansion are adequate; xxiii) The approved capacity of the landfill is rapidly approaching its

maximum; xxiv) The landfill receives on a daily basis 600 tons of ash residue from the Honolulu Program on Waste Energy Recovery and 800 tons of municipal solid waste for a total of 1,400 tons per day; xxv) The Applicant evaluated alternative sites and technologies for the disposal of municipal solid waste; xxvi) The expansion of the landfill is the only feasible alternative that can be implemented in time to dispose of municipal solid waste after the approved landfill capacity is exhausted; and xxvii) The Property has extremely rocky soils and is not conducive to crop production, and the steep terrain is not appropriate for pasture use.

Following discussion by the Commissioners, a vote was taken on the amendment to the motion. There being a vote tally of 7 ayes, 1 nay, and 1 absent, the amendment carried. A vote was then taken on the main motion, as amended. There being a vote tally of 7 ayes, 1 nay, and 1 absent, the motion carried.

ORDER

Having duly considered the complete record of the Amendment and the oral arguments presented by the parties in the proceeding, and a motion and amendment thereto having been made at a meeting conducted on March 27, 2003, in Waipahu, O'ahu, and the motion and amendment having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion and amendment, the Commission hereby APPROVES the Amendment granted by the Planning Commission to expand the existing Waimanalo Gulch Sanitary Landfill on

approximately 21 acres of land within the State Land Use Agricultural District at Waimanalo Gulch, Honouliuli, Ewa, O'ahu, Hawai'i, identified as TMK No: 9-2-03: portion 72 and portion 73, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. The Blue Ribbon Site Selection Committee shall make its recommendation for a new landfill site to the City Council by December 1, 2003. The City Council shall select a new site by June 1, 2004. If a new site is not selected by June 1, 2004, this Special Use Permit shall immediately expire.
2. In the event that Condition No. 1 is satisfied, Condition No. 14 shall become effective.
3. That an earth berm shall be installed prior to the commencement of any waste disposal operations.
4. The landscaping plans which would include plant names, sizes, quantities and location shall be submitted to the Department of Planning and Permitting for approval and shall be implemented within 90 days of completion of the berm work.
5. The facility shall be operational between the hours of 7:00 a.m. and 4:30 p.m. daily.
6. The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all on-site and off-site improvements

involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.

7. The Planning Commission or Director of the Department of Planning and Permitting may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

8. The Applicant shall notify the Planning Commission of termination of use for appropriate Planning Commission action or disposition of the permit.

9. In accordance with Chapter 11-60, "Air Pollution Control," Hawai'i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.

10. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai'i and all of its agencies and/or employees for any lawsuit or legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the landfill.

11. The Applicant shall coordinate construction and operation of the landfill with the Hawaiian Electric Company.

12. Within 5 years from the date of this Special Use Permit Amendment approval or date of the Solid Waste Management Permit approval for this expansion, whichever occurs later but not beyond May 1, 2008, the 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan.

13. Prior to commencing land filling in the 21-acre expansion area, the Applicant shall submit to the Director of the Department of Planning and Permitting for review and approval, a metes and bounds description and map of the approved landfill area as permitted by this Special Use Permit and amendments thereto. Any minor modifications to allow reasonable adjustments of the approved area due to engineering and/or health and safety requirements may be approved by the Director of the Department of Planning and Permitting; provided that there is no net increase to the approved area of 107.5 acres. A copy of the metes and bounds description and map shall be provided to the Land Use Commission.

14. The Applicant shall promptly provide, without any prior notice, annual reports to the Department of Planning and Permitting and the Land Use Commission in connection with the status of the landfill expansion and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

15. The City and County of Honolulu shall select a new landfill site. The recommendation for a new site shall be forwarded to the Planning Commission and City Council no later than December 1, 2003.

16. The City and County of Honolulu shall ensure that funding for design and planning is included in the FY05 budget to demonstrate the City's commitment to the new site and to ensure that no further extensions are necessary.

17. The City and County of Honolulu shall initiate the public comment and environmental review process for the new site no later than December 31, 2004.

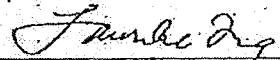
18. The City and County of Honolulu shall, to the extent feasible, use alternative technologies to provide a comprehensive waste stream management program that includes H-Power, plasma arc, plasma gasification, and recycling technologies.


19. The City and County of Honolulu shall appropriately implement by executive order or ordinance the seven bullet points identified in the Applicant's Exhibit 3, Appendix H, page 1-3, regarding the third boiler at H-Power, wood recovery, metal recovery, gypsum recovery, enhanced enforcement of landfill bans, implementation of the bottle bill, and establishment of user fees.

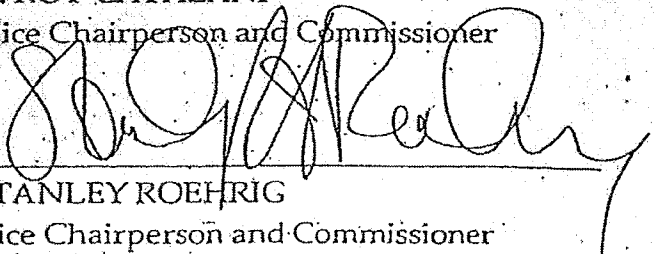
ADOPTION OF ORDER


The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 5th day of June, 2003. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

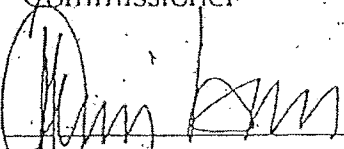
LAND USE COMMISSION
STATE OF HAWAII

By 
LAWRENCE N. C. ONG
Chairperson and Commissioner

By 
P. ROY CATALANI
Vice Chairperson and Commissioner

By 
STANLEY ROHRIG
Vice Chairperson and Commissioner

By 
BRUCE A. COMPA
Commissioner

By 
PRAVIN DESAI
Commissioner

By Isaac Fiesta, Jr.
ISAAC FIESTA, JR.
Commissioner

By Steven Montgomery
STEVEN MONTGOMERY
Commissioner

By Randall Sakumoto
RANDALL SAKUMOTO
Commissioner

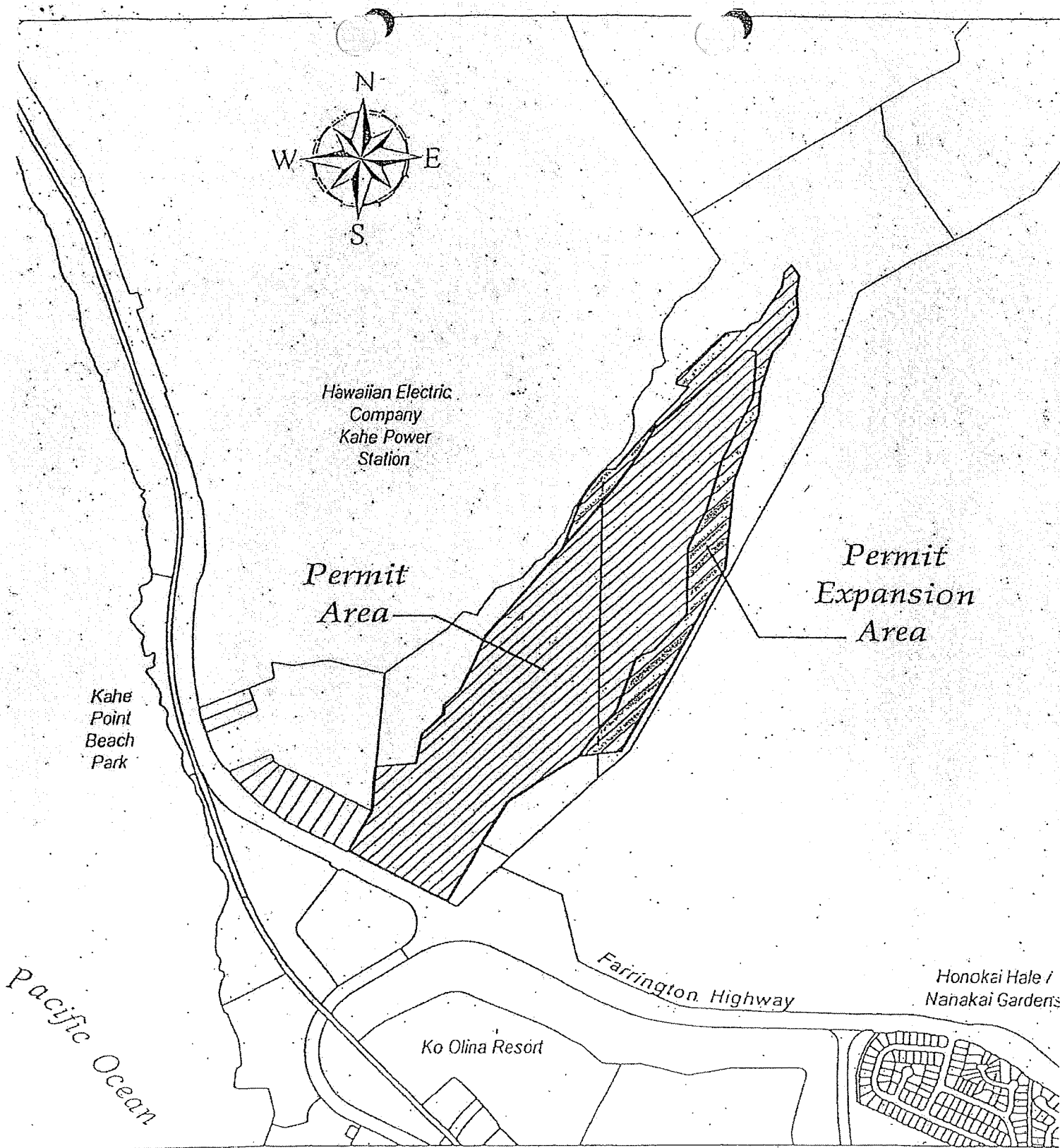
By OPPOSED
PETER YUKIMURA
Commissioner

APPROVED AS TO FORM:

Dean D. Crick
Deputy Attorney General

Filed and effective on
June 9, 2003

Certified by:
Anthony J. Alving
Executive Officer



SP87-362 DEPARTMENT OF ENVIRONMENTAL SERVICES,
 CITY AND COUNTY OF HONOLULU
 (fka Department of Public Works, City and County of Honolulu)

LOCATION MAP

TMK No.: 9-2-3: portion 72 and portion 73
 Waimanalo Gulch, Honolulu, Ewa, O'ahu, Hawaii
 Scale 1" = 1,000 ft
 EXHIBIT "A"





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
)
DEPARTMENT OF ENVIRONMENTAL) ORDER ADOPTING THE CITY
SERVICES, CITY AND COUNTY OF) AND COUNTY OF HONOLULU
HONOLULU) PLANNING COMMISSION'S
) FINDINGS OF FACT,
For A New Special Use Permit To) CONCLUSIONS OF LAW, AND
Supersede Existing Special Use Permit To) DECISION AND ORDER WITH
Allow A 92.5-Acre Expansion And Time) MODIFICATIONS
Extension For Waimānalo Gulch Sanitary)
Landfill, Waimānalo Gulch, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: 72 And 73)
_____)

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH
MODIFICATIONS

On July 31, 2009, the City and County of Honolulu Planning Commission ("Planning Commission") met at the City Council Committee Meeting Room, Second Floor, in Honolulu, Hawai'i, to consider a new special use permit application ("Application") filed by the Department of Environmental Services, City and County of Honolulu ("Applicant"), to supersede the existing special use permit to allow a 92.5-acre expansion and time extension for the

EXHIBIT K15

EXHIBIT M

existing Waimānalo Gulch Sanitary Landfill ("WGSL") located at Waimānalo Gulch, O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72 and 73 ("Property").

After due deliberation and consideration of the record in this matter, the Planning Commission recommended approval of the Application (County Special Use Permit File No. 2008/SUP-2), subject to ten conditions, and further recommended approval of the withdrawal of County Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect, and that all conditions previously placed on the Property under County Special Use Permit File No. 86/SUP-5 shall be null and void.

On August 11, 2009, the Land Use Commission ("LUC") received the decision and a portion of the record of the Planning Commission's proceedings on the Application.

On August 20, 2009, the LUC received the remaining portion of the record.

On September 10, 2009, the Ko Olina Community Association, Colleen Hanabusa, and Maile Shimabukuro ("Intervenors") filed a Motion To Intervene.¹

¹ At the September 24, 2009 meeting the LUC recognized Ms. Hanabusa, Ms. Shimabukuro and the Ko Olina Community Association as intervenors in the LUC's proceeding based upon their intervenor status before the Planning Commission and therefore denied the Motion to Intervene as moot.

On September 17, 2009, the Applicant filed a Memorandum In Opposition To Intervenors Ko Olina Community Association, Colleen Hanabusa, And Maile Shimabukuro's Motion To Intervene.

On September 21, 2009, Intervenors filed a Motion To Deny Petition.

On September 23, 2009, the Applicant filed a Memorandum In Opposition To Intervenors Ko Olina Community Association, Colleen Hanabusa And Maile Shimabukuro's Motion To Deny Petition.

On September 24, 2009, the LUC conducted a meeting on the Application in the Kaua'i Meeting Room, Sheraton Waikiki Hotel, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Jesse K. Souki, Esq., appeared on behalf of the Applicant. Colleen Hanabusa, Esq.; Ken Williams; and Maile Shimabukuro were present on behalf of the Intervenors. Bryan C. Yee, Esq., and Abbey Mayer were also present on behalf of the State Office of Planning, and Don Kitaoka, Esq., and Robert Bannister were present on behalf of the Department of Planning and Permitting.² At the meeting, both the Applicant and Intervenors provided

² Pursuant to section 92-3, HRS, the LUC heard public testimony from Fred Dodge; William Aila, Jr.; City Council Chair Todd Apo; Mel Kahele; Abbey Mayer; and Robert Bannister. The LUC also received written testimony from Ka'eo Gouveia; Nobuko Maria Mori; Ali Mahmoodi; Laura Kay Rand; Mario Beekes; Lorita Nordlum; Paulette Dibibar; Clara Batongbacal; Elizabeth Dunne; Kalena Hew Len; Kamaki Kanahale; Ralph F. Harris; James C. Banigan III; Greg Nichols; Howard Perry, Jr.; and Michael Nelson. At the meeting, the LUC denied Intervenors' Motion To Deny Petition.

oral argument in support of their respective positions on the Application.

Following discussion, a motion was made and seconded to grant the Application subject to (1) the withdrawal of County Special Use Permit File No. 86/SUP-5 and LUC Docket No. SP87-362, provided that the existing conditions therein shall be incorporated to the extent they are consistent with and applicable to this decision and are not duplicative of any additional conditions imposed hereafter; (2) the conditions as recommended by the Planning Commission in County Special Use Permit File No. 2008/SUP-2 (LUC Docket No. SP09-403) and modified as appropriate; and (3) the following additional conditions: municipal solid waste shall be allowed at the WGSJ up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSJ after July 31, 2012; the Honolulu City Council through the City Administration shall report to the public every three months on their efforts regarding the continued use of the WGSJ, including any funding arrangements that are being considered by the City Council and the City Administration; and the City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSJ. By a vote of 5 ayes, 3 nays, and 1 absent, the motion carried.

The LUC, upon consideration of the Planning Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order, the oral

arguments of the parties and the record and files herein, and good cause existing and upon motion duly passed by the LUC,

HEREBY ORDERS that the LUC shall adopt the Planning Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order as its own Findings Of Fact, Conclusions Of Law, And Decision And Order, subject to the following conditions:

1. The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all onsite and offsite improvements involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.
2. In accordance with Chapter 11-60.1 "Air Pollution Control," Hawai'i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.
3. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai'i and all of its agencies and/or employees for

any lawsuit or legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the landfill.

4. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 (SP09-403) and shall determine whether modification or revocation of 2008/SUP-2 (SP09-403) is appropriate at that time. The Planning Commission shall make a recommendation to the Land Use Commission.

5. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.

6. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission and the Land Use Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGSL's operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission and Land Use Commission on June 1 of each year subsequent to the date of this Decision and Order.

7. Closure Sequence "A" for the existing landfill cells at WGSL as shown on Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.

8. WGSL shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24 hours a day.

9. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGSL with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

10. The operations of the WGS� under 2008/SUP-2 (SP09-403) shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.

11. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

12. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 (SP09-403) shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 (SP09-403) should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

13. The Applicant shall notify the Planning Commission and Land Use Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2 (SP09-403).

14. Municipal solid waste shall be allowed at the WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012.

15. The Honolulu City Council through the City Administration shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City Council and the City Administration.

16. The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSL.

APPROVED AS TO FORM

Diane Jackson
Deputy Attorney General

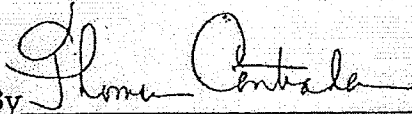
LAND USE COMMISSION
STATE OF HAWAII

By *Ransom Piltz*
RANSOM PILTZ
Chairperson and Commissioner

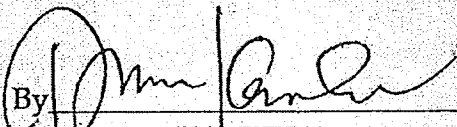
By (Excused)
VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner

By *Reuben S. F. Wong*
REUBEN S. F. WONG
Vice-Chairperson and Commissioner

By (Nay)
KYLE CHOCK
Commissioner

By 
THOMAS CONTRADES
Commissioner

By (Nay)
LISA M. JUDGE
Commissioner

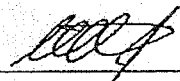
By 
DUANE KANUHA
Commissioner

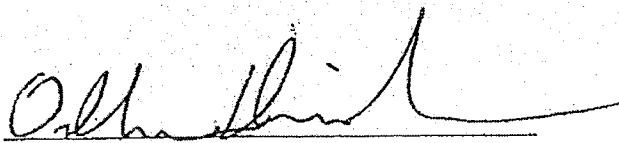
By (Nay)
NORMAND LEZY
Commissioner

Filed and effective on:

October 22, 2009

Certified by:

By 
NICHOLAS W. TEVES, JR.
Commissioner


ORLANDO DAVIDSION
Executive Officer

Investigation Report
Department of Health
Clean Water Branch

FILE

ID #: PA0991A

Date of investigation: 12/23/2010

Page 1 of 3

Permit/File/WQC No: R50A533

Island: Oahu

Facility: City and County of Honolulu

Complaint/Background Description:

On December 23, 2010, the Department of Health (DOH), Clean Water Branch (CWB), conducted an inspection of the City and County of Honolulu (CCH) Waimanalo Gulch municipal solid waste landfill (Landfill) which is located at 92-460 Farrington Highway, Kapolei, Hawaii. The inspection was conducted in response to a notification that the Landfill was discharging storm water contaminated with leachate through the Landfill's detention basin to the Pacific Ocean. Matthew Kurano, Jamie Tanimoto, and Michael Tsuji of the DOH-CWB conducted the inspection. Mr. Justin Lottig, Market Area Environmental Protection Manager for Waste Management was present during the inspection. Waste Management operates the Landfill.

Permit History

The CCH, Refuse Division, owns the Landfill and has National Pollutant Discharge Elimination System (NPDES) permit coverage through a general permit authorizing the discharge of storm water associated with industrial activities from the Landfill to State waters. The Landfill's Notice of General Permit Coverage (NGPC), File No. HI R50A533, only authorizes the discharge of storm water which has come into contact with landfill activities. Discharges of effluent, leachate, or other wastewater discharges are not permitted by the issued NGPC.

The NGPC, File No. HI R50A533, was effective as of August 30, 2010, and expires on October 21, 2012.

Findings Description:

The weather was mostly cloudy throughout the inspection. Heavy rains preceded the inspection. The following findings were either observed or noted before, during or after the inspection:

1) On December 23, 2010, the DOH-CWB was notified by the DOH, Solid and Hazardous Waste Branch (SHWB) that the Landfill was discharging leachate to State waters. The notification to the DOH-CWB was made by the DOH-SHWB after DOH-SHWB representatives observed storm water contaminated by leachate being pumped from the Landfill earlier that day. In response to the notification of discharge by the Landfill, DOH-CWB representatives conducted an investigation into the reported discharges.

2) At approximately 3:30 p.m. on December 23, 2010, M. Kurano, J. Tanimoto, and M. Tsuji met with J. Lottig of Waste Management at the Landfill (Image 1). J. Lottig stated that on Sunday, December 19, 2010, the Landfill experienced a heavy rain event. J. Lottig stated that as a result of the rain event and a failure in the Landfill's storm water bypass system, the E6 cell was inundated with storm water. J. Lottig stated that between Sunday afternoon on December 19, 2010, and December 23, 2010, the Landfill intermittently pumped storm water which accumulated in the Landfill's E6 cell into the Landfill's storm water drainage system. The Landfill's storm water drainage system discharges to the Pacific Ocean at a shoreline outfall of the Ko Olina resort. J. Lottig indicated that storm water that was pumped may have contacted solid waste.

3) By definition in Hawaii Administrative Rules, Section 11-58.1-03, "Leachate" means water or other liquid that has percolated or passed through or emerged from solid waste and contains dissolved, soluble, suspended, or miscible materials removed from the waste or due to contact with solid waste or gases therefrom. Storm water is defined in Hawaii Administrative Rules, Section 11-55-01 as, "...storm water runoff, snow melt runoff, and surface runoff and drainage." The Landfill is authorized to discharge storm water from the Landfill's storm water drainage system. The Landfill is not authorized to discharge leachate to State waters. Effluent from the Landfill's leachate collection system is transported to a wastewater treatment plant for proper treatment and disposal.

4) J. Lottig stated that the E6 cell was last in operation on Saturday, December 18, 2010, and that a 12" layer of

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intermediate "cover" had been placed on the municipal solid waste at the end of the business day. J. Lottig stated that the E6 cell contains solid waste and a leachate collection system. J. Lottig stated that the E6 cell has approximately 40 vertical feet of constructed cells within it. Contents of the E6 cell include municipal solid waste such as general refuse, medical waste, as well as intermediate cover material. J. Lottig stated that the E6 cell has a leachate collection system that has a leachate sump which collects leachate from the E6 cell. A solid waste filled earthen berm bisects the bottom of the E6 cell.

5) J. Lottig stated that the E6 cell is lower than the surrounding grade which effectively makes it a bowl-like structure. J. Lottig stated that there is a single 36" pipe which runs under the E6 cell which was designed to act as a storm water bypass system for the E6 cell. The pipe is designed to transport storm water from the watershed and gulch above the Landfill to the Landfill's storm water drainage system. J. Lottig indicated that the single subsurface pipe was designed so that the storm water running down Waimanalo Gulch would bypass the active cells including the E6 cell and not come into contact with municipal solid waste before ultimately discharging into the Pacific ocean. J. Lottig indicated that the subsurface drainage pipe was designed to prevent storm water from flowing into the E6 cell, and contacting active work areas. J. Lottig stated that the storm water that normally collects in the E6 cell flows through the cell into the leachate collection system where it would be collected and transported to the Waianae Wastewater Treatment Plant for treatment as industrial wastewater.

6) J. Lottig stated that on Sunday, December 19, 2010, the subsurface drainage pipe that conveyed storm water under the E6 cell had become plugged and that the storm water flowing down Waimanalo Gulch had run into the E6 cell from the North. Due to the grade and shape of the E6 cell, the E6 cell retained the storm water. J. Lottig stated that until the subsurface storm water bypass pipe was cleared on Sunday afternoon, December 19, 2010, storm water collected in the E6 cell, ultimately filling the E6 cell. J. Lottig estimated that the depth of storm water that filled the E6 cell was approximately 38 feet.

7) J. Lottig stated that at no time on December 19, 2010 did the storm water that collected within the E6 cell flow out of the Landfill except when it was actively pumped by Goodfellows Brothers. J. Lottig stated that following the clearing of the subsurface drainage pipe, Waste Management personnel including himself, Joseph Whelan, General Manager for Waste Management, and Matt Heaike from Goodfellow Brothers., met to discuss the implications of not pumping the storm water from the E6 cell to the Landfill's storm water drainage system. J. Lottig stated that it was decided to pump the ponded water from the E6 cell into the storm water drainage system. J. Lottig stated that he did not order the pumping of the potentially contaminated storm water into the Landfill's storm water drainage system but that the order to pump could have been made by J. Whelan.

8) J. Lottig stated that between Sunday, December 19, 2010 and Thursday, December 23, 2010, the Landfill's contractor operated a pump to reduce the level of potentially contaminated storm water that had accumulated in the E6 cell. J. Lottig stated that he could not approximate the volume of water pumped into the Landfill's storm water drainage system at the time of inspection.

9) The Landfill's E6 cell (Photograph 1) was observed during the inspection. Ponding water was observed within the E6 cell. The E6 cell appeared to have been inundated by storm water as evidenced by high water marks observed on the sides of the cell. Significant amounts of exposed waste were not observed within the area upstream of the berm that bisects the E6 cell at the time of inspection. It appeared that the standing water saturated the E6 cell, and may have penetrated the leachate collection system while exposing solid waste which was buried in the cell.

10) In the North side of the E6 cell, an overturned porta-potty and a submerged piece of Landfill equipment was observed. The South side of the E6 cell, downstream of the berm (Photograph 2) was observed at the time of inspection. Significant amounts of exposed solid waste and refuse were observed within the area downstream of the berm in the E6 cell. The earthen berm which separated the E6 cell was damaged at the time of inspection. The DOH-CWB representatives observed a section of the intermediate cover had washed away, exposing solid waste from within the berm. The Landfill's contractor appeared nearly finished with covering the

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berm's exposed solid waste with new ground cover at the time of the inspection.

11) Where the ponding water was observed percolating through the solid waste downstream area of the E6 cell, a strong odor was detected by DOH-CWB representatives. The downstream area of the cell appeared significantly polluted with a mixture of solid waste and storm water.

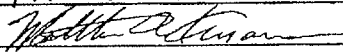
12) The storm water observed within the E6 cell was clearly in contact with and passed through solid waste. As such, the liquid observed within the E6 cell was Landfill leachate.

13) No windblown litter was observed in the upper E6 cell area or in the area surrounding the E6 cell. The nearby litter fences (Photograph 4) were clean at the time of inspection. The solid waste observed within the downstream area of the E6 cell did not appear to have blown in. The solid waste appeared to originate from the E6 cell.

14) Statements by J. Lottig as well as the hoses and pumping apparatus observed in the E6 cell was clear evidence that leachate was purposefully discharged into the Landfill's storm water drainage system. The Landfill's storm water drainage system discharges into State waters at a shoreline outfall in the Pacific Ocean West of the Landfill. The Landfill is not authorized to discharge leachate to State waters. Since the subsurface drainage pipe that is designed to divert storm water from the upper watershed was cleared prior to the initiation of pumping activities, it appears that the unauthorized discharges were preventable. J. Lottig stated that the DOH was not contacted prior to the Landfill's initiation of pumping activities which resulted in the discharge of leachate to State waters. It is a violation of Hawaii Revised Statute 342D-50 to discharge a water pollutant to State waters without authorization.

In conclusion, it appears that the Landfill owners and operators, including the CCH and Waste Management violated Hawaii Water Pollution rules and regulations by discharging water pollutants to State waters without authorization. Further enforcement actions may be required to insure remediation of the violation.

At this time, the DOH-CWB will be pursuing enforcement action in the form of a Notice of Apparent Violation, and Request For Information. Further escalating enforcement actions may also be forthcoming as updated information regarding this case is received.

Name: Matthew Kurano
Signature: 
Title: EHS
Date: 1/4/11

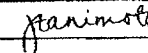
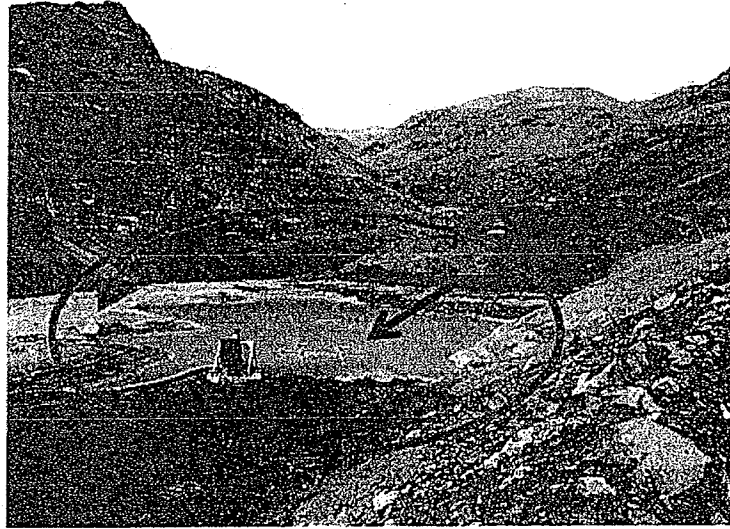
Name: Jamie Tanimoto
Signature: 
Title: EHS
Date: 1/4/11

EXHIBIT K52



Photograph # 1

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: North facing view of the E6 cell upstream of the berm. Ponding water (Red Circle), an overturned porta-pottie (Red Arrow) and a submerged piece of equipment (Blue Arrow) was observed in the cell at the time of inspection. No significant amount of solid waste was observed in the area of the E6 cell upstream of the berm



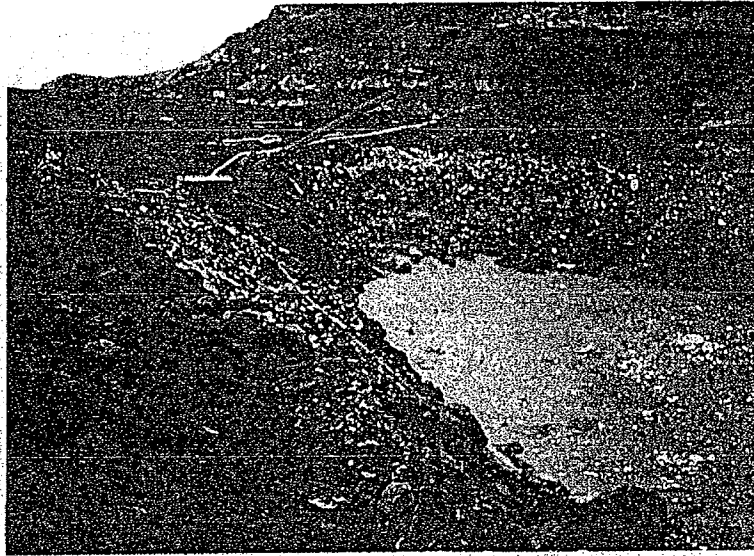
Photograph # 2

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View facing North of the E6 cell downstream of the berm. The berm (Red Arrow) bisecting the E6 cell appeared to have ruptured and exposed solid waste was observed throughout the downstream side of the E6 cell. Goodfellow Brothers was covering the exposed solid waste with soil in an apparent attempt to repair the berm damage at the time of inspection.



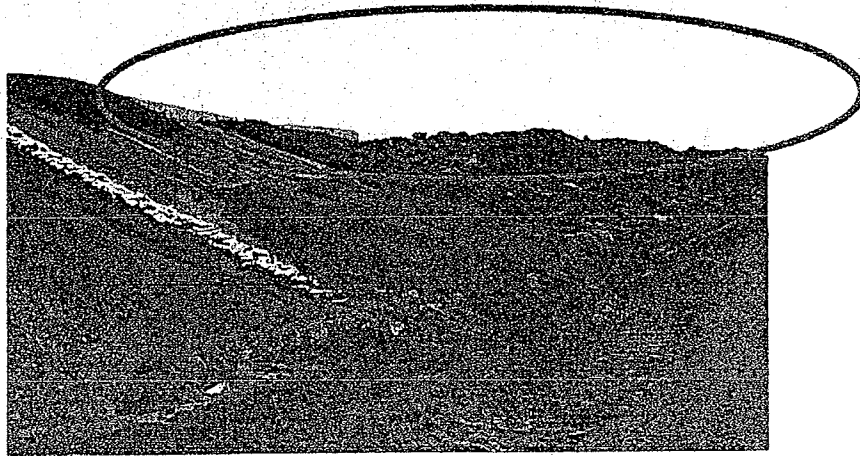
Photograph # 3

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of the E6 cell facing South. Solid waste was observed throughout the downstream side of the E6 cell. Pumping apparatus (Red Arrow) and hoses were observed connecting the E6 cell to the storm drainage system.



Photograph # 4

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of a litter fence (Red Circle) above the E6 cell. No windblown litter was observed accumulated in the litter fence at the time of inspection.

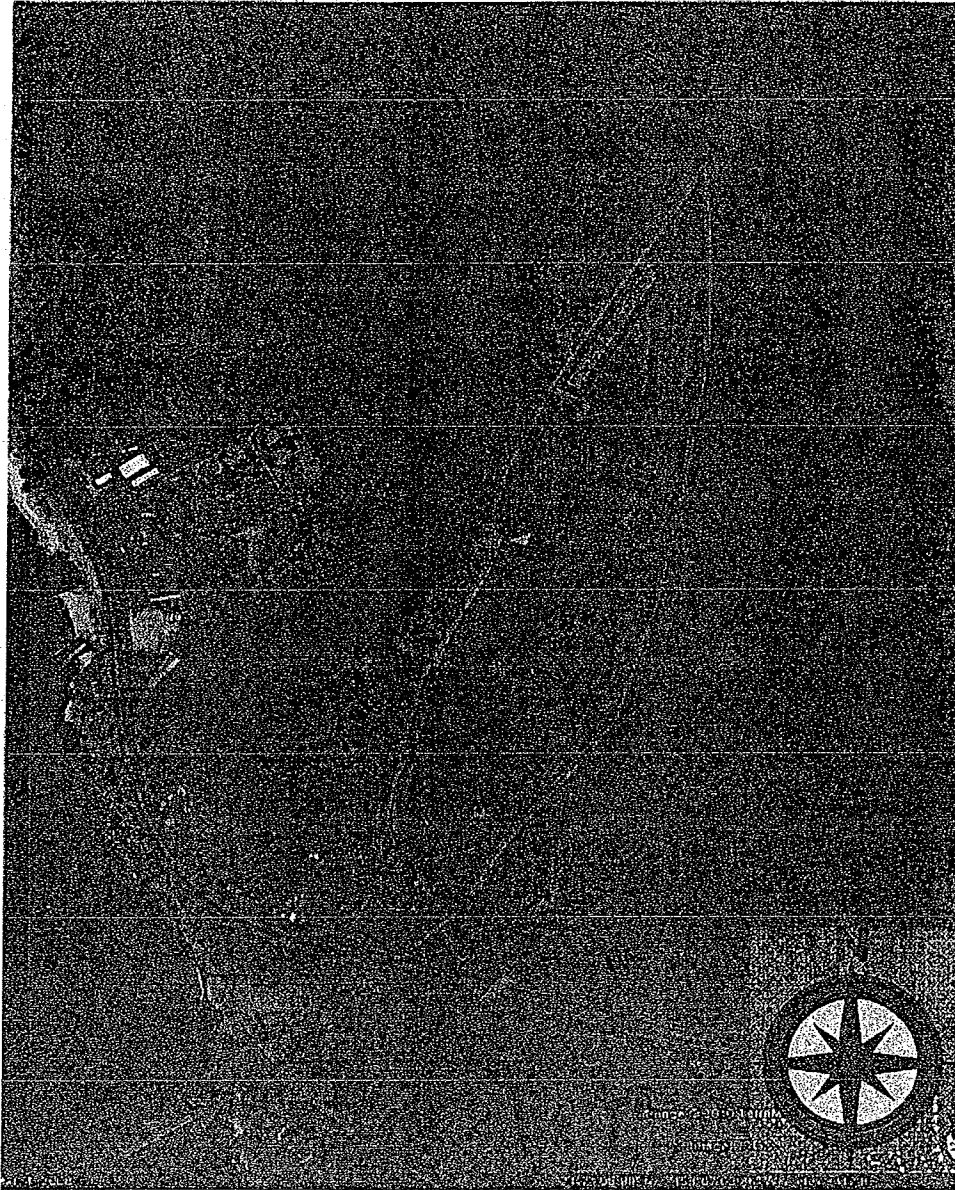
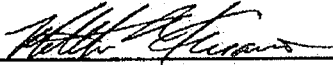


Image 1

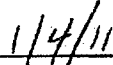
Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of the Landfill (Red Outline). The E6 cell (Black Outline) was observed at the time of inspection. An earthen berm traversed the E6 cell. Discharges from the Landfill's storm water detention basin (Red Circle) enter into the Pacific Ocean at a shoreline outfall (Red Arrow) north of Ko Olina.

I certify that the four (4) attached photos described above were taken by the undersigned and are a true, accurate, and unaltered representation of what was observed on December 23, 2010 at the Waimanalo Gulch Sanitary Landfill, 92-460 Farrington Highway, Kapolei, Hawaii.



Matthew R. Kurano



Date

COPY

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LAND USE COMMISSION

STATE OF HAWAII

STATUS REPORT

VOLUME I PAGE

A89-635 HENRY H. SHIGEKANE)	1
REVOCABLE TRUST, JOANNE H.)	
SHIGEKANE REVOCABLE TRUST,)	
ROBERT R. MIDKIFF, AND)	
ELIZABETH M. MORRIS (OAHU))	
)	
ACTION)	
SP87-362 DEPARTMENT OF	)	75
ENVIRONMENTAL SERVICES, CITY &)	
COUNTY OF HONOLULU)	
(fka Department of Public Works,)	
City & County of Honolulu) (Oahu))	

LAND USE COMMISSION
STATE OF HAWAII
2003 MAR 11 P 1:54

H E A R I N G

ORIGINAL

Held on March 27, 2003, in the Legacy II Room, Hawai'i
Okinawa Center, 94-587 Ukee Street, Waipahu, Hawai'i, 96797
commencing at 9:30 a.m.

3764

REPORTED BY: HOLLY M. HACKETT, RPR, CSR #130
Certified Shorthand Reporter

EXHIBIT 68

Holly M. Hackett, CSR RPR
(808) 525-6551 Fax (808) 538-6458

EXHIBIT K85
Exhibit B-5

- 1 APPEARANCES:
- 2 COMMISSIONERS:
- 3 ROY CATALANI
- 4 BRUCE COPPA
- 5 PRAVIN DESAI
- 6 ISAAC FIESTA, JR.
- 7 LAWRENCE N.C. ING
- 8 STANLEY ROEHRIG
- 9 RANDALL SAKUMOTO
- 10 PETER YUKIMURA
- 11 EXECUTIVE OFFICER: ANTHONY CHING
- 12 SECRETARY: CAROLINE LORENZO
- 13 STAFF PLANNERS: RUSSELL KUMABE, BERT SARUWATARI
- 14 DEPUTY ATTORNEY GENERAL: RUSSELL SUZUKI
- 15 A98-635 HENRY H. SHIGEKANE REVOCABLE TRUST, et al.
- 16 For Shigekane Revocable Trust: DICKSON LEE, ESQ.
- 17 MRS. SHIGEKANE
- 18 For Midkiff-Morris Revocable Trust: DONNA LEONG, Atty.
- 19 For the State of Hawai'i: RUSSELL TSUJI, ESQ.
- 20 Deputy Attorney General
- 21 ABE MITSUDA, Office of Planning
- 22 For Aha Hui Malama O Kaniakapupu: GERARD JERVIS, ESQ.
- 23 SP87-362 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY &
- 24 COUNTY OF HONOLULU
- 25 For the Petitioner: MAILE CHUN, Deputy Corp. Counsel
- FRANK DOYLE, Acting Director DES
- For Department of Planning and Permitting: DAVID TANOUE, Deputy Corp. Counsel
- ERIC CRISPIN, Director
- For the State: RUSSELL TSUJI
- Deputy Attorney General
- ABE MITSUDA, Office of Planning

I N D E X

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1 choice is to talk.

2 CHAIRPERSON ING: Okay, good. And we thank you
3 for your appearance this morning. Anything further? If not
4 we are done with this agenda item. I think we are scheduled
5 to be back at 1:00. So we have a short one hour break, no
6 times for naps. Thank you.

7 (Lunch recess.)

8 CHAIRPERSON ING: I'll reconvene the Land Use
9 Commission meeting. We have before us SP87-362 Department
10 of Environmental Services, City and County of Honolulu,
11 their request to consider a 21-acre expansion to the
12 existing 86.5-acre Waimanalo Gulch sanitary landfill located
13 within the State Land Use Agricultural District at Waimanalo
14 Gulch, Honouliuli, Ewa, O'ahu.

15 On March 13, 2003 the Commission received from
16 the Department of Planning and Permitting, the Planning
17 Commission's findings of fact, conclusions and Decision and
18 Order and its entire record of the proceedings regarding the
19 application of the Department of Environmental Services,
20 City and County of Honolulu for an amendment to the State
21 Special Use Permit File No. 86/SUP-5.

22 Subsequently we received a letter dated March 5,
23 2003. This is from Councilman Nestor Garcia who in his
24 letter, let me summarize, says, "We reluctantly recognize
25 that another extension may be inevitable." He supports the

1 ask the Commission to move forward to approve the project
2 for all the communities on O'ahu.

3 CHAIRPERSON ING: Thank you. Questions from the
4 parties beginning with the City Planning Department.

5 MR. CRISPIN: None.

6 CHAIRMAN ING: No questions. Office of Planning.

7 MR. TSUJI: We just had one question on the
8 expansion area. How many acres is that?

9 MR. DOYLE: 21 acres I believe.

10 MR. TSUJI: Thank you.

11 CHAIRPERSON ING: No other questions. Any
12 questions from the Commissioners? Commissioner Catalani.

13 COMMISSIONER CATALANI: Thank you, Mr. Doyle. I
14 think I missed your comment when you first opened up
15 regarding reducing the size to five acres. What was that in
16 the context of?

17 MR. DOYLE: I got that corrected. It's five
18 years not five acres. And it was we had originally thought
19 that we would have this landfill operate for another 15
20 years. And then as part of our discussions with the
21 community and in trying to take a look at their concerns it
22 was reduced to a five-year operation.

23 COMMISSIONER CATALANI: That five years is based
24 upon a timeline to establish a new site?

25 MR. DOYLE: Yes, it does take that into

1 COMMISSIONER COPPA: 1989.

2 MR. DOYLE: Yes.

3 COMMISSIONER COPPA: My next question is to ask
4 you to be as honest as you can to me because I think I'm
5 trying to see what it's going to look like, whether it's two
6 years from now or five years from now.

7 Do you honestly think that we will have a site,
8 another site picked for a landfill? And if so do you think
9 that you could commit that without a doubt that this
10 landfill will close?

11 MR. DOYLE: We have made the commitment, yes.

12 COMMISSIONER COPPA: I think in '89 you went to
13 '99 --

14 MR. DOYLE: No.

15 COMMISSIONER COPPA: -- for an expansion. Wasn't
16 there a set date it was going to close?

17 MR. DOYLE: No there wasn't. What we said was we
18 went in for a landfill permit for 15 years of operation. We
19 never said that the landfill would close. People may have
20 thought that but we never said that.

21 COMMISSIONER COPPA: I have been to a couple of
22 the Neighborhood Board meetings out at Kapolei.

23 MR. DOYLE: Right.

24 COMMISSIONER COPPA: I guess it was the
25 impression --

1 made a decision on -- we really have no choice.

2 What do we do? Fill up H-1 or H-2 with rubbish
3 and let it pile up or do we expand this? Do we try to set
4 some milestones along the way to ensure that in five years
5 it absolutely closes? I'm not going to be a Commissioner
6 five years from now so...

7 MR. DOYLE: Yeah. My understanding, and I'll ask
8 the Department of Planning and Permitting to help me on
9 this, though, my understanding is that we have those
10 conditions on us already in the permit.

11 COMMISSIONER COPPA: Okay. Well, anyway, I just
12 had to express that.

13 MR. DOYLE: Yeah. Let me just tell you that it's
14 not unreasonable for us to conform to that timeline to have
15 the committee established and to pick the site. Though the
16 whole community is involved in this. Everybody understands
17 the unfortunate situation that we're in.

18 COMMISSIONER COPPA: But you've looked at 40
19 landfills around the island.

20 MR. DOYLE: Yes.

21 COMMISSIONER COPPA: Where do we go? You said we
22 have to have a landfill no matter what.

23 MR. DOYLE: Right.

24 COMMISSIONER COPPA: Of all the things that
25 Commissioner Roehrig pointed out about using these other

1 alternates, we have to have a landfill.

2 MR. DOYLE: Right. At the time that we made the
3 selection, we selected Waimanalo Gulch to be expanded. Now,
4 based on our commitment to be out of that area within five
5 years there still are other alternatives.

6 COMMISSIONER COPPA: Oh, there is other
7 alternatives?

8 MR. DOYLE: Yes, there are alternative sites.
9 They may not be happy alternatives but they're alternative
10 sites.

11 COMMISSIONER COPPA: And the Blue Ribbon
12 committee will decide.

13 MR. DOYLE: Yes. Exactly. Yes, yes.

14 COMMISSIONER COPPA: Thank you very much.

15 CHAIRPERSON ING: Commissioner Desai.

16 COMMISSIONER DESAI: I think coupled with the new
17 sites that you're looking for as beyond the Waimanalo Gulch,
18 what new technology are you going to employ? Because there
19 is a concern that our sites are not very many, we are a
20 small place.

21 If we don't find a new site coupled with
22 technologies that helps us, I think the population is
23 increasing, our habits are bad, as a nation, as a state in
24 creating waste.

25 I was just talking to Mr. Crispin here. You got

1 with this Blue Ribbon committee.

2 As far as, you know, our shortcutting I'd like to
3 let the Planning people talk better to that.

4 Certainly that wasn't our intention. As I said
5 we have been at this since 1999 to produce a plan that had
6 lots of community input. We think we have done it in the
7 documents that we have produced.

8 I think the Environmental Impact Statement that's
9 been massaged over and over both on the 15-year and a
10 five-year plan has received lots of community input.

11 But I'd like Eric, perhaps, to speak to the
12 planning process.

13 MR. CRISPIN: We'd be happy to.

14 CHAIRPERSON ING: You'll be next. That's the
15 potential problem. All the sites you may be looking at
16 ranking them top three or top five, if they're close to
17 urban communities those communities will oppose it. And you
18 may be back here five years from now saying we had five,
19 three sites selected and everyone was against the sites and
20 now we have to expand this site again.

21 MR. DOYLE: No, that's not the case. The city
22 has committed and the Planning Commission has certified that
23 we will be out of that site, that's a condition, we will be
24 out of that site in five years.

25 Everything that we are going to be doing over

1 that time period, this time period before you is to be out
2 of that site. That's the city's commitment.

3 CHAIRMAN ING: Thank you. Commissioner Roehrig.

4 COMMISSIONER ROEHRIG: How many acres a month do
5 you need for a disposal at this site? We did some simple
6 math and it looks like three acres a year. Is that about
7 right?

8 MR. DOYLE: I'll defer, if I can, to the people
9 who are operating the site. They can probably give you a
10 better answer.

11 COMMISSIONER ROEHRIG: No, just give me an
12 estimate. I'll go for that. We will get the refinement
13 from them. What's an estimate? You folks put down you want
14 15 acres for next five years, 15 acres more. So how much is
15 that a year? That's three acres.

16 MR. DOYLE: Well, 20.

17 COMMISSIONER ROEHRIG: Well, some of that is
18 fill. You have 15 acres of fill area but the rest for
19 buildings, et cetera, et cetera, right?

20 MR. DOYLE: This is for landfill.

21 COMMISSIONER ROEHRIG: 20 acres for landfill. So
22 that's five times four, right? Four acres a year? Is that
23 how fast you fill it up?

24 MR. DOYLE: What happens in a landfill some sites
25 vary contour than others. One particular section of the

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) FINDINGS OF FACT, CONCLUSIONS
SERVICES, CITY AND COUNTY OF) OF LAW, AND DECISION AND ORDER
HONOLULU (fka DEPARTMENT OF) ADOPTING WITH MODIFICATIONS,
PUBLIC WORKS, CITY AND COUNTY) THE CITY AND COUNTY OF
OF HONOLULU)) HONOLULU PLANNING
) COMMISSION'S RECOMMENDATION
For An Amendment To The Special Use) TO APPROVE AMENDMENT TO
Permit Which Established A Sanitary) SPECIAL USE PERMIT
Landfill On Approximately 107.5 Acres)
Of Land Within The State Land Use)
Agricultural District At Waimānalo)
Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: Portion 72)
And Portion 73 (fka Tax Map Key: 9-2-)
03: Portion 2 And Portion 13))
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ADOPTING WITH MODIFICATIONS, THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S RECOMMENDATION TO APPROVE AMENDMENT
TO SPECIAL USE PERMIT

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

MAR 14 2008

Date

by

Rodney L. Mail
Interim Executive Officer

EXHIBIT K155

EXHIBIT J

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) FINDINGS OF FACT, CONCLUSIONS
SERVICES, CITY AND COUNTY OF) OF LAW, AND DECISION AND ORDER
HONOLULU (fka DEPARTMENT OF) ADOPTING WITH MODIFICATIONS,
PUBLIC WORKS, CITY AND COUNTY) THE CITY AND COUNTY OF
OF HONOLULU) HONOLULU PLANNING
) COMMISSION'S RECOMMENDATION
For An Amendment To The Special Use) TO APPROVE AMENDMENT TO
Permit Which Established A Sanitary) SPECIAL USE PERMIT
Landfill On Approximately 107.5 Acres)
Of Land Within The State Land Use)
Agricultural District At Waimānalo)
Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: Portion 72)
And Portion 73 (fka Tax Map Key: 9-2-)
03: Portion 2 And Portion 13))
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ADOPTING WITH MODIFICATIONS, THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S RECOMMENDATION TO APPROVE AMENDMENT
TO SPECIAL USE PERMIT

The Land Use Commission ("LUC"), having examined the complete record of the City and County of Honolulu Planning Commission's ("Planning Commission") proceedings on the City and County of Honolulu Department of Environmental Services' ("Applicant") application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Waimānalo Gulch

Sanitary Landfill ("WGSL") from May 1, 2008, to May 1, 2010, or until the WGSL reaches its permitted capacity, whichever occurs first ("Application")¹, and upon consideration of the matters discussed therein, at its meetings on February 21, 2008, March 6, 2008, and March 7, 2008, in Honolulu, Hawai'i, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On July 6, 2007, the Applicant filed the Application with the City and County of Honolulu Department of Planning and Permitting ("DPP"), DPP Docket `Ewa – State Special Use Permit No. 86/SUP-5, pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").

2. The Applicant sought to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the WGSL from May 1, 2008, to May 1, 2010, or until the WGSL reached its permitted capacity, whichever occurred first. No other amendments were requested at that time.

3. On August 30, 2007, the DPP accepted the Application for processing as of August 30, 2007.

¹ The LUC adopted Condition Number 10 in its entirety as Condition Number 12 in its Decision and Order Approving Amendment ("D&O Approving Amendment") filed June 9, 2003.

4. On October 12, 2007, the Notice of the Planning Commission public hearing on the Application was published in the *Honolulu Star-Bulletin*.

5. On October 25, 2007, Colleen Hanabusa, Esq., filed a Petition to Intervene and Request for Contested Case.

6. On October 26, 2007, Ken Williams, General Manager and Vice President, filed a Petition to Intervene on behalf of the Ko Olina Community Association ("KOCA").²

7. On November 2, 2007, the Applicant filed its Memoranda in Opposition to Ms. Hanabusa's and KOCA's Petitions to Intervene.

8. On November 14, 2007, the Planning Commission considered the Application and the Petitions to Intervene at the Mission Memorial Auditorium, City Hall Annex, in Honolulu, Hawai'i. At the hearing, the Planning Commission heard public testimony from eight individuals primarily in opposition to the Application. The Planning Commission also received written testimony from numerous individuals in support and in opposition to the Application. After due deliberation, the Planning Commission granted the requests to intervene and consolidated said requests into one contested case proceeding. The Planning Commission subsequently closed the public hearing and scheduled the matter for a contested case hearing.

² KOCA is a community association which represents various resort and residential owners throughout the Ko Olina Resort. The resort is located makai of Farrington Highway and is situated across from the WGSL.

9. On November 30, 2007, the Planning Commission Chair held a prehearing conference with the parties in the contested case hearing.

10. On December 7, 2007, the Planning Commission conducted the contested case hearing on the Application at Kapolei Hale, Conference Rooms A and B, in Kapolei, Hawai'i. Following the presentation of the parties' respective cases-in chief, the Planning Commission closed the hearing.

11. On December 21, 2007, KOCA and Ms. Hanabusa filed a Proposed Findings of Fact and Conclusions of Law.

12. On December 21, 2007, KOCA and Ms. Hanabusa filed a Closing Argument.

13. On December 21, 2007, the Applicant filed a Closing Argument.

14. On December 21, 2007, the Applicant filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

15. On January 8, 2008, KOCA and Ms. Hanabusa filed a Response to the Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

16. On January 8, 2008, the Applicant filed a Rebuttal to Intervenors' Proposed Findings of Fact and Conclusions of Law and Intervenors' Closing Argument.

17. On January 16, 2008, the Planning Commission acted on the Application at the Mission Memorial Auditorium, City Hall Annex, in Honolulu,

Hawai'i. After due deliberation and consideration of the record in this matter, the Planning Commission recommended approval of the Application to the LUC and issued its Findings of Fact, Conclusions of Law, and Decision and Order.

18. On January 31, 2008, the LUC received the decision and the complete record of the Planning Commission's proceedings on the Application.

19. On February 15, 2008, Ms. Hanabusa filed the following pleadings: Petition for Declaratory Orders and Request for Hearing; Petition for Intervention; and Motion to Dismiss, on behalf of herself and KOCA.

20. On February 21, 2008, the Applicant filed its Memorandum in Opposition to Petition for Declaratory Orders and Request for Hearing; Memorandum in Opposition to Motion to Dismiss; and Request for Official Notice.³

21. On February 21, 2008, the LUC met in Conference Room 204, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i, to consider the Application. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the meeting. At the meeting, Commissioner Contrades disclosed that his daughter is employed by the Corporation Counsel, City and County of Honolulu, but that he did not discuss the

³ The Request for Official Notice requested the LUC to take official notice of true and correct copies of (i) *Honolulu Advertiser* and *Honolulu Star-Bulletin* articles dated December 12, 2007, regarding the settlement of the State Department of Health's ("DOH") Notice of Violation; (ii) the settlement agreement dated December 7, 2007, between the DOH, the City and County of Honolulu, and Waste Management Hawaii, Inc. ("WMH"); and (iii) Modification of Solid Waste Permit No. LF-0054-02 for the WGS� dated February 20, 2008.

Application with her. The Applicant, Ms. Hanabusa, and KOCA had no objections to the participation of Commissioner Contrades in the proceeding. Following the receipt of public testimony⁴, the LUC deferred the matter to its March 6, 2008, meeting in Honolulu, Hawai'i.

22. On February 26, 2008, Ms. Hanabusa filed: a Supplemental Petition for Declaratory Orders and Request for Hearing; a Second Supplemental Petition for Declaratory Orders; and a Motion to Strike Request for Official Notice on behalf of herself and KOCA.

23. On March 4, 2008, the Applicant filed its Memorandum in Opposition to Supplemental Petition for Declaratory Orders and Request for Hearing; a Memorandum in Opposition to Second Supplemental Petition for Declaratory Orders; and a Memorandum in Opposition to Motion to Strike Request for Official Notice.

24. On March 6, 2008, the LUC resumed its meeting on the Application and the pleadings filed by the Applicant and Ms. Hanabusa and KOCA in Conference Room 405, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the continued meeting. At the

⁴ Pursuant to section 92-3, HRS, T. George Paris, Ralph F. Harris, Ashley Fraser, Greg Nichols, Kimberly Carhart, Robert Weiss, Cynthia K.L. Rezendes, Edgar Gum and Mark Donnelly, Ken Williams, and Mary Lou Kobayashi provided written testimony on the Application. The LUC also heard testimony from Lincoln Naiwi.; Beverly Munson; Lee Munson; Mel Kahele; Ron Amemiya; James K. Manaku, Sr.; Cynthia K.L. Rezendes; Duke Hospodar; Kimo Keli'i; Patty Teruya; Mary Lou Kobayashi; and Councilmember Todd Apo.

meeting, the LUC recognized Ms. Hanabusa and KOCA as intervenors in the LUC's proceeding based on their intervenor status before the Planning Commission, and therefore by a vote tally of 8 ayes, 0 nays, and 1 absent, denied their Petition for Intervention on the grounds that it is rendered moot. Thereafter, a motion was made and seconded to take Ms. Hanabusa's Petition for Declaratory Orders and Request for Hearing and Supplemental Petitions filed thereafter under advisement. There being a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Following the receipt of public testimony⁵, and upon further discussion, a motion was made and seconded to deny the Applicant's Request for Official Notice on the grounds that the documents for which official notice was requested: (i) are not part of the Planning Commission record that is to be considered by the LUC pursuant to section 205-6, HRS, and (ii) did not meet the criteria cited in section 15-15-63(k), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Having denied the Applicant's Request for Official Notice, the Motion to Strike Request for Official Notice filed by Ms. Hanabusa was deemed moot. Thereafter, a motion to deny Ms. Hanabusa's Motion to Dismiss was made and seconded on the grounds that: (i) the Planning Commission's recommendation to approve the Application subject to the Applicant obtaining DOH approval of its grade modification request, was not a precondition based on the clear language of the

⁵ Pursuant to section 92-3, HRS, Ralph F. Harris, Edgar Gum and Mark Donnelly, Josiah Ho'ohuli, Nina Fisher, Cynthia K.L. Rezendes, Isireli Qalo, and Pele Toomata provided written testimony on the Application. The LUC also heard testimony from Ralph F. Harris, Mike Nelson, Isireli Qalo, Greg Nichols, Pele Toomata, and Russell Duong.

condition; and (ii) the LUC has the authority to modify its conditions based on past practice and its interpretation of section 15-15-95(e), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Following deliberation by the LUC, a motion was made and seconded to grant the Application. Upon discussion, the motion was amended and seconded to include the following two additional conditions: (i) the LUC will not accept any further amendments to this special use permit and will not grant any further time extensions; and (ii) within one year, the Applicant will submit to the LUC an approved closure plan for the WGSL. By a vote tally of 4 ayes, 4 nays, and 1 absent, the motion failed. Thereafter, a motion was made to grant the Application but to limit the time extension to one year. The motion was not seconded and therefore failed. Following further deliberation, a motion was made and seconded to deny the Application. By a vote tally of 3 ayes, 5 nays, and 1 absent, the motion failed. Following discussion, the LUC continued the meeting to March 7, 2008.

25. On March 7, 2008, the LUC resumed its meeting on the Application in Conference Room 405, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the continued meeting. At the meeting, a motion was made and seconded to adopt the recommendation of the Planning Commission with an amendment to the closure date of the WGSL from May 1, 2010, to November 1, 2009, and with the additional condition requiring the Applicant to

report to the LUC every six months on the actions taken to alleviate the further use of the WGS. Following deliberation by the LUC, a vote was taken on the motion. There being a vote tally of 6 ayes, 2 nays, and 1 absent, the motion carried.

DESCRIPTION OF PROPERTY

26. The WGS is located at 92-460 Farrington Highway, Honouliuli, 'Ewa, O'ahu, and is situated on TMK: 9-2-03: por. 72 and por. 73 ("Property").

27. The Property is located within the State Land Use Agricultural District. The Property is owned by the City and County of Honolulu.

28. The WGS currently consists of approximately 107.5 acres and is under the jurisdiction of the Applicant and operated under contract to WMH. It has been in operation since 1989 and is currently the only landfill permitted to receive municipal solid waste ("MSW") on O'ahu.

BACKGROUND OF THE WGS

29. The WGS was established pursuant to LUC Docket No. SP87-362. As approved, the WGS consisted of approximately 60.5 acres of land and included highway and roadway improvements, an administrative building, a scale and scalehouse, a maintenance shed, a drainage system, a leachate collection system, leachate and gas monitoring wells, landscaping and irrigation, security fencing, and utilities.

30. By Findings of Fact, Conclusions of Law and Decision and Order filed October 31, 1989, the LUC approved the request of the Applicant's predecessor, the Department of Public Works, City and County of Honolulu, to expand the WGS� by 26 acres for a total land area of approximately 86.5 acres.

31. By D&O Approving Amendment filed June 9, 2003, the LUC approved the expansion of the WGS� by an additional 21 acres for a total land area of approximately 107.5 acres. A Final Supplemental Environmental Impact Statement ("FSEIS") dated December 2002 and accepted by the DPP on January 10, 2003, covers the currently permitted footprint of the WGS�. The FSEIS also addresses the current operations and impacts associated with the continued use of the WGS� beyond the May 1, 2008, deadline for accepting waste.

NEED FOR REQUEST

32. By Resolution No. 04-348, CD1, FD1, the City Council selected the WGS� as the municipal landfill to serve the needs of O'ahu for the foreseeable future. As a result of this selection, the Applicant has been preparing an application to amend the existing special use permit to expand the WGS� by an additional 92.5 acres of land. An Environmental Impact Statement ("EIS") is also being prepared for this expansion.

33. Due to the discovery of stone uprights in the proposed expansion area, the completion of the EIS has been delayed pending resolution of the matter with

the State Historic Preservation Division. Concerns that the expansion could not be completed by May 1, 2008, prompted the Applicant to file the Application.

34. The current permitted area of the landfill has a useful life of approximately two years beyond the May 1, 2008, deadline if the DOH approves the Applicant's request to modify Solid Waste Management Permit No. LF-0054-02 ("Permit"), which was renewed on May 15, 2003, and expires on April 30, 2008. The modification to the Permit would increase the heights of the cells within the ash monofill and MSW portions of the WGSL.

35. The additional useful life of the WGSL is the result of the Applicant's efforts to divert solid waste and improved landfill operating methods to optimize the WGSL's capacity. The Applicant has diverted solid waste from the WGSL through the H-POWER waste-to-energy facility and through its reuse and recycling programs for MSW. In 2003, the Planning Commission and the LUC approved the May 1, 2008, deadline to close the WGSL based on a 5-year expectancy of the then proposed 21-acre expansion of the WGSL. It was not known at that time that the above measures would contribute to an increase in the life expectancy of the WGSL.

36. The Applicant expects additional diversion to occur through its efforts to expand its waste-to-energy program, biosolids reuse, and possibly off-island shipping of some MSW.

37. Despite the Applicant's efforts to divert solid waste from the WGS�, a landfill is currently necessary for proper solid waste management to avoid the potential health and safety issues for O'ahu's residents. There will always be material that cannot be combusted, recycled, reused, or shipped. A landfill is also needed to manage solid waste during natural disasters and other contingencies. Currently, technology has not advanced far enough to eliminate the need for a landfill on O'ahu.

38. The H-POWER facility requires periodic equipment shutdown for maintenance. During these periods, H-POWER does not accept or burn solid waste and the waste is diverted to the WGS�. In addition, if the WGS� were unable to accept H-POWER ash and residue, H-POWER might have to close in a matter of days inasmuch as there is no approved landfill for that material.

NOTICE OF VIOLATION

39. On January 31, 2006, the DOH issued a Notice of Violation ("NOV") to the Applicant and WMH which contained 18 violations associated with the management and operation of the WGS�.

40. WMH had already brought into compliance 16 of the 18 violations at the time the DOH issued the NOV.

41. The two areas in the DOH NOV for which the WGS� was not in compliance when the NOV was issued were the 4-B sump for leachate control and the

grade exceedences. On September 26, 2007, the DOH approved the replacement of the 4-B sump.

42. The remaining unresolved compliance issue in the NOV is the grade exceedences. There is presently a lack of permitted capacity in the ash monofill portion of the WGSL, and certain portions of the MSW section are over currently permitted grades: The Applicant has submitted a grade modification request to the DOH to correct these exceedences and allow for additional capacity in the ash monofill portion of the WGSL.

43. The DOH has completed its technical review of the grade modification request and issued a draft permit.

44. During design for the 14.9-acre expansion of the WGSL in 2001, WMH conducted a stability analysis for the entire landfill. Although the Property was stable, differences in the coarseness of the landfill liner used caused the factor of safety in some places of the WGSL to be lower than the standard 1.5 factor of safety required by the DOH.

45. WMH worked with the DOH to lower the permitted landfill height to increase the factor of safety, which resulted in some areas of the MSW portion and one area of the ash monofill portion of the WGSL to become out of compliance due to overfill.

46. The DOH was notified of the overfill in those areas. To address the issue, a toe berm was constructed at the front of the WGSL.

47. If the DOH approves the grade modification request, there would be approximately 4.7 years, as of March 2, 2007, of additional capacity in the ash monofill portion of the WGSL. The grade modification request does not change the MSW peak elevation of 510 feet as specified by the Permit. The Permit does not have a specific elevation for the ash monofill portion of the WGSL but references the grading plan submitted by the DOH together with the Permit application.

48. The Application does not affect the WGSL's footprint, its permitted landfill elevations, its daily tonnages of solid waste, or any of its operations.

49. If the WGSL closes by May 1, 2008, there will be no permitted landfill to serve the MSW needs on O'ahu.

CONCLUSIONS OF LAW

1. The LUC has jurisdiction over the Application pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, the LUC finds that an extension to the deadline to accept solid waste at the WGSL from May 1, 2008, to November 1, 2009, or until the WGSL reaches its permitted

capacity, whichever occurs first, meets the guidelines for determining an "unusual and reasonable" use within the State Land Use Agricultural District.

3. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC. Due to improved landfill operations and ongoing recycling efforts, the projected capacity of the WGS� has increased beyond its previous five-year life expectancy. Although alternative methods to address the municipal solid waste stream are currently implemented, a landfill is still necessary to accommodate the ash, residue, and waste that cannot be processed by H-POWER or alternative technologies. Closure of the WGS� by May 1, 2008, would be adverse to the public's health and safety.

4. Based upon the record of the proceedings before the Planning Commission, the desired use would not adversely affect surrounding property. The WGS� is already an established use at the Property and has been conditioned to avoid generating impacts upon the surrounding environment. Odor impacts from the WGS� are due to the disposal of sewage sludge and related wastewater residue. The immediate coverage of soil and the use of odor misters have been employed to mitigate these impacts. A portion of the sewage sludge is being processed into soil amendment instead of being disposed of at the WGS�. At the time landfill capacity is reached, the Applicant and the operator will be responsible for capping the entire facility and monitoring groundwater, methane gas, and leachates for 30 years. Additional measures

to reduce the impact of the WGS� after its closure include hydro-mulching and seeding exposed areas with vegetation similar to that which currently exists around the WGS� grounds. Faux rock outcrops will also be added to improve the visual appearance of the site.

5. Based upon the record of the proceedings before the Planning Commission, the use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection. Since the WGS� began operations in 1989, facilities and services continue to be adequate without requiring public agencies to provide additional infrastructure to support its operation.

6. Based upon the record of the proceedings before the Planning Commission, the preponderance of the evidence established that unusual conditions, trends, and needs had arisen since the district boundaries and rules were established. Pursuant to Resolution No. 04-348, CD1, FD1, the WGS� was chosen as the site for the City and County's landfill despite its omission from the Blue Ribbon Advisory Committee's list of recommended sites for a new landfill. Due to the advisory nature of the committee's final report and the violations of the State's sunshine law that voided the report, the City Council believed that it was not bound by the recommendations of the report. After reviewing potential landfill sites, the City Council determined that the current site of the WGS� was the best site given the amount of capacity projected,

economic considerations, an existing management contract, and the availability of cost and revenue data. The resolution also supports the Application for a time extension to the existing WGS�. If the WGS� were to close on May 1, 2008, existing alternative avenues and planned programs to address the MSW stream would not be sufficient nor would they be implemented in time to alleviate the need for the WGS�.

7. Based upon the record of the proceedings before the Planning Commission, the land upon which the proposed use is sought is unsuited for the uses permitted within the district. The Property contains extremely rocky soils and is not conducive to crop production. The steep terrain also limits use of the Property for pasture purposes. Due to the presence of the WGS�, agricultural uses at the Property are not feasible. However, upon the closure of the WGS�, there is the possibility that agricultural uses could occur, subject to the requirements of the DOH and other governmental agencies.

8. Any of the proposed findings of fact or conclusions of law submitted by any of the parties not already ruled on by the LUC by adoption or rejected by clearly contrary findings of fact or conclusions of law are hereby denied and rejected. Any conclusion of law that is or should be a finding of fact is to be taken as such notwithstanding its denomination as a conclusion of law; any finding of fact that is or should be a conclusion of law is to be taken as such notwithstanding its denomination as a finding of fact.

DECISION AND ORDER

Having duly considered the complete record in this matter, the oral arguments presented by the parties in this proceeding, the LUC, through a motion having been duly made at a meeting conducted on March 7, 2008, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, hereby ORDERS as follows:

1. The recommendation of the Planning Commission is ADOPTED WITH MODIFICATIONS, with Condition Number 12 of the LUC's D&O Approving Amendment filed June 9, 2003, amended to read as follows:

12. The 200-acre Property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan by November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first.

2. The amendment to Condition Number 12 is subject to the following condition:

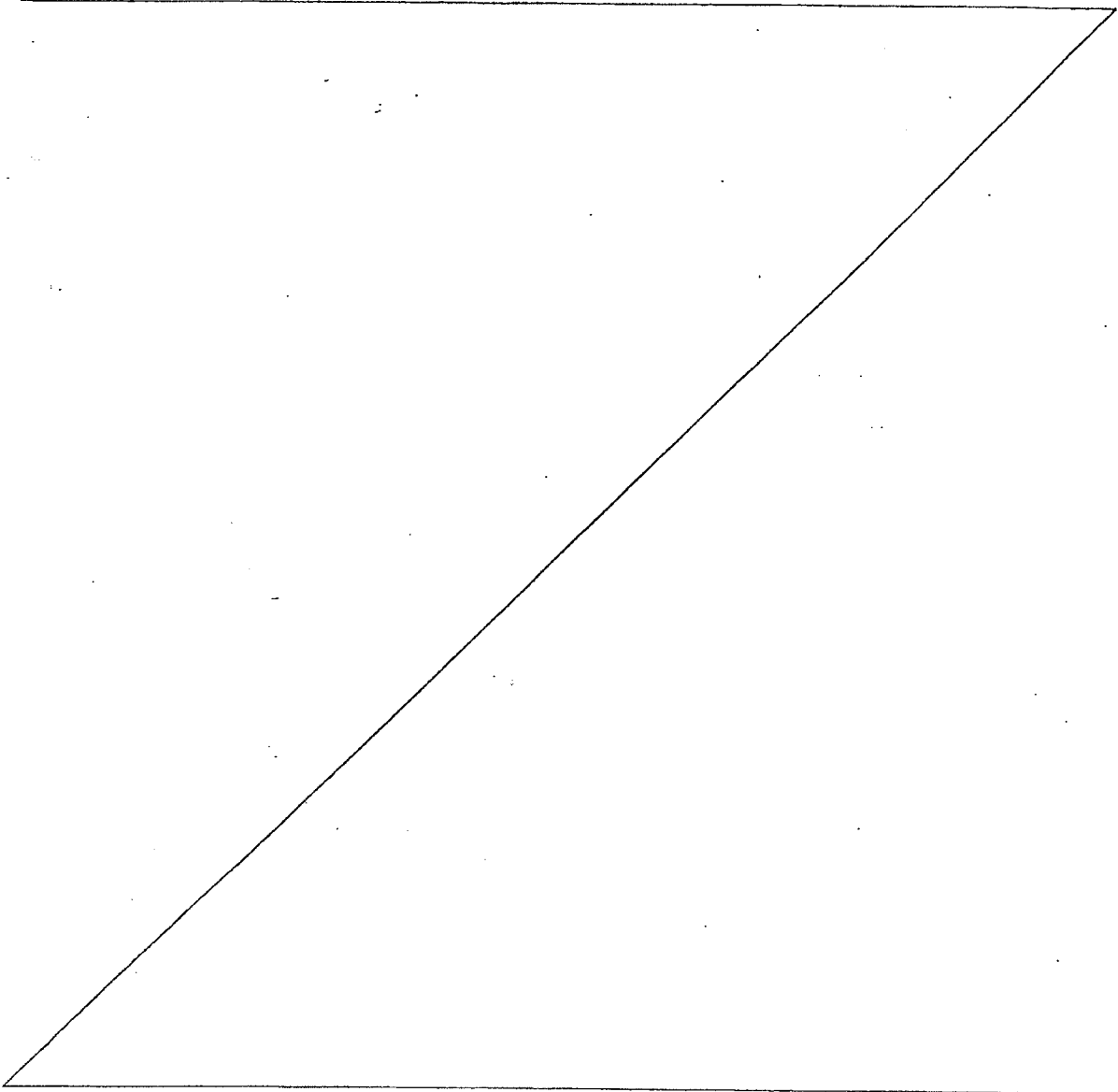
The Applicant must obtain approval of its pending grade modification request for the WGS� from the DOH.

IT IS FURTHER ORDERED that the following additional condition to the D&O Approving Amendment filed June 9, 2003, is imposed:

The Applicant shall report to the LUC every six months on the actions taken to alleviate the further use of the WGS�.

IT IS ALSO ORDERED that all other conditions to the LUC's D&O

Approving Amendment filed June 9, 2003, shall remain in full force and effect.⁶



⁶ Condition Number 1 was amended pursuant to the LUC's Order Granting in Part and Denying in Part Motion to Amend and/or Stay the Decision and Order Approving Amendment to Special Use Permit dated June 3, 2003 filed May 10, 2004.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 14th day of March, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 14th day of March, 2008, per motion on March 7, 2008.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

Diane Jackson
Deputy Attorney General

By Lisa M. Judge
LISA M. JUDGE
Chairperson and Commissioner

By _____
DUANE KANUHA
Vice-Chairperson and Commissioner

By _____ (voted "NAY")
KYLE CHOCK
Commissioner

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ day of _____, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

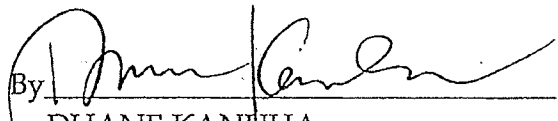
Done at _____, Hawai'i, this _____ day of _____, 2008, per motion on March 7, 2008.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

Deputy Attorney General

By _____
LISA M. JUDGE
Chairperson and Commissioner

By 
DUANE KANUHA
Vice-Chairperson and Commissioner

By _____ (voted "NAY")
KYLE CHOCK
Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By _____ (absent)
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY")
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:
MAR 14 2008

By _____
REUBEN S.F. WONG
Commissioner

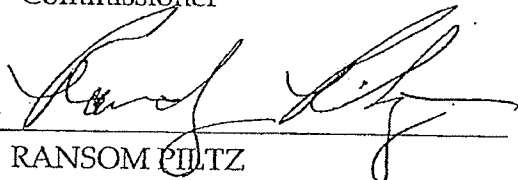
Certified by:

Rodney A. Maile
RODNEY A. MAILE
Interim Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent) _____
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY") _____
NORMAND LEZY
Commissioner

By _____

RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

RODNEY A. MAILE
Interim Executive Officer

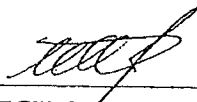
By _____
REUBEN S.F. WONG
Commissioner

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent)
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY")
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By  _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

RODNEY A. MAILE
Interim Executive Officer

By _____
REUBEN S.F. WONG
Commissioner

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent)
VLADIMIR PAUL DEVENS
Commissioner

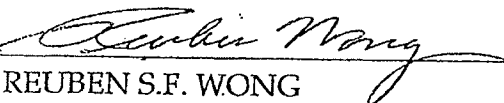
By _____ (voted "NAY")
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

By 
REUBEN S.F. WONG
Commissioner

RODNEY A. MAILE
Interim Executive Officer

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After Landfill Spill, Lots of Questions, Few Answers

By Michael Levine and Adrienne LaFrance | 01/22/2011

It's now been a little more than a week since the operators of Waimanalo Gulch Sanitary Landfill, facing rising waters and pounding rain, sent a torrent of stormwater containing garbage and medical waste out into the ocean off of Ko Olina on Oahu's Leeward Coast.



Michael Levine/Civil Beat

The episode — which resulted in syringes and vials of blood and urine washing onshore, closing some beaches — raises one obvious question: How could this happen?

One answer is the weather. The worst three hours of last week's rain were in excess of a 200-year storm event for the rain gauge closest to Waimanalo Gulch. But the weather isn't enough reason to give landfill operators a pass.

"What happened should not have happened," Health Department Deputy Director Gary Gill told the Hawaii Senate's Ways and Means Committee this week. "The rains flooded the landfill — all of that water is supposed to be diverted around the landfill ... The landfill has been expanded a number of times and the water diversion system has not kept up with expansions."

Permit conditions required landfill operators to have geomembrane sheets and pumps on hand during construction of the diversion channel. It's unclear whether those preventive measures were used or ineffective.

Health officials said the medical waste that ended up in the ocean didn't pose any serious health threat. Yet one of the strange aspects of this story is that no single agency can claim responsibility for oversight of medical waste. In fact, three local entities each point to the other as responsible.

If there was wrongdoing, it remains to be seen whether there will be any penalties.

The federal Environmental Protection Agency, which sent staffers to Honolulu to help coordinate the clean-up, is still focused on the aftermath.

"If there's going to be any enforcement, we don't know yet," EPA regional spokesman Dean Higuchi told Civil Beat. "The concern right now is to make sure the clean-up of any waste on the beaches is done, that the landfill has capacity to handle any rain that appears in the future. To make sure it doesn't happen again: That's the bottom line."

The general manager of Waste Management, the company that operates Waimanalo Gulch and other landfills across the country, has declined to answer Civil Beat's questions thus far. A spokesman said the company is focusing on clean-up and re-opening the landfill as bulky items pile up on sidewalks islandwide.

Waimanalo Gulch landfill remains closed. City officials say it won't open until Thursday at the earliest. Two Honolulu City Council committees are hosting a joint hearing Monday morning to address the situation. Until then, here's what we know so far — and what we're waiting to find out.

What, Exactly, Was Discharged?

What we know: The Department of Health's Clean Water Branch — acting on behalf of the U.S. EPA and following the terms of the Clean Water Act — issued a National Pollutant Discharge Elimination System permit to the city's Department of Environmental Services in August 2010.¹

The permit sets limits on the concentrations of more than a dozen chemicals that can be released in a discharge of stormwater — for example, 10 milligrams of ammonia per liter.

Read the full National Pollutant Discharge Elimination System permit [here](#) [pdf].

What we don't know: The full content of the discharge is unclear. The Clean Water Branch says it has tested for bacteria at ocean sites, and that samples of stormwater taken at the landfill before the discharge were turned over

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to the Department of Health. What would happen if the discharge included more chemicals than permitted and contributed to a violation of applicable water quality standards?

Why Is The Public Being Told Not To Worry About Infectious Medical Waste?

What we know: Infectious waste isn't allowed in the landfill in the first place. State law requires all medical waste to be sterilized before it reaches Waimanalo Gulch.

"In accordance with state solid waste regulations, the landfill should not be accepting infectious waste," Lene Ichinotsubo, chief of the Health Department's Solid and Hazardous Waste Branch, wrote in an e-mail. "Generators of infectious waste, such as hospitals and clinics, are required to treat infectious waste prior to taking them to the landfill."

A spokesman for the company that operates the landfill, Waste Management, said the company reviews federally mandated classification of medical waste provided by the hospitals that generate the waste to make sure it meets requirements.

"Federal regulations require generators of medical waste to characterize their waste and certify that it has been properly treated prior to disposal," Keith DeMello, Waste Management's spokesman, wrote in an e-mail. "The generators' waste profiles are then reviewed and approved by WM."

Honolulu Managing Director Doug Chin said Waste Management works with a company called Hawaii Bio-Waste Systems, Inc., which treats medical waste at high temperatures and high pressure to sanitize it.

The process is called autoclaving, and Hawaii Bio-Waste provides it for hospitals and medical centers like Queens Medical Center, Kaiser Permanente, Tripler Army Medical Center, Kapiolani Women's and Children, according to the company's website.

"Medical waste goes through three things," said Markus Owens, spokesman for the city's Environmental Services Department. "The bill of lading, which is kind of like a waste characterization of saying what's in there, non-hazardous manifest and a certificate of sterilization."

Health Department spokeswoman Janice Okubo said the landfill provided proof the medical waste went through the appropriate process.

"We asked the landfill for a chain of custody type of documentation so we could verify that the materials were sterilized before they were accepted," Okubo told Civil Beat. "They do have to document where they come from."

As such, officials report the threat the vials of blood pose is comparable to many other kinds of litter.

"There's no question that the debris is gross," Chin told Civil Beat. "It's not something that anyone would want to encounter, and yet, at no time has the Department of Health — or the EPA for that matter — ever determined that the medical waste was anything other than debris."

What we don't know: Civil Beat is still working on tracking down the documents that officials say verify the medical waste is noninfectious.

Waste Management's general manager, Joe Whelan, has declined Civil Beat's repeated requests for interviews this week. Officials at Hawaiian Bio-Waste Systems have also declined to respond to voicemails and other interview requests.

When It Comes To Medical Waste, Who Is In Charge?

What we know: City officials, State Department of Health officials and the Waste Management spokesman all agree that medical waste must be treated before it reaches the landfill. But there appears to be confusion about who is in charge of oversight. And it appears that the government relies on the good word of those it's supposed to regulate that what they're putting into a landfill is what they say it is.

"We can only go with what the Department of Health tells us," said Owens, spokesman for the city's Environmental Services Department, when asked about oversight. "They're the ones who know what has to be in place for the permit, to accept this type of waste."

But State Department of Health officials explain that while they grant permits, they don't track compliance.

"We don't screen it because the state does not operate the landfill," said Ichinotsubo, chief of the Health Department's Solid and Hazardous Waste Branch. "We're the regulators, the city and the landfill are the operators."

Meantime, the landfill operator refers questions about oversight back to the state.

"Regarding the documentation of medical waste, I do need to refer you back to the DOH," DeMello, Waste Management's spokesman, wrote in an e-mail.

Asked about this merry-go-round of accountability, Honolulu Managing Director Chin said he believes there is a layered approach to oversight.

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"Verifying and confirming that the waste is in fact sterilized is very, very important," Chin told Civil Beat. "That's what the Department of Health is relying on when they're permitting the landfill to take the waste. It's what we're relying on for our understanding that the debris discharged out to the ocean and washing up on the beaches is sanitized. What I'm understanding is the certification they go through is not just a piece of paper."

What we don't know: Who is conducting inspections to verify medical waste is properly handled? State law requires the landfill to submit a report on medical waste every year in July, but multiple requests to officials with the city, state and Waste Management for that document were unsuccessful.

Was Rain Just Bad Luck?

What we know: The city is supposed to update its stormwater safety plan before changing the landfill.

The National Pollutant Discharge Elimination System permit requires that the city revise its Storm Water Pollution Control Plan for all proposed modifications to the facility — including the expansion that was approved by the Land Use Commission in October 2009.

The most recent version of the Storm Water Pollution Control Plan was dated January 2009 but was received in June 2010, according to Joanna Seto, supervisor of the Clean Water Branch's Engineering Section. That document does not include the off-site run-on bypass or landfill expansion best management practices required by the National Pollutant Discharge Elimination System permit, but a subsequent Surface Water Management Plan was received by the Health Department in August 2010.

Both plans reference management practices designed to handle a 25-year, 24-hour storm event.

Kevin Kodama, a senior hydrologist with the National Weather Service's Honolulu Forecast Office, told Civil Beat the rain gauge closest to Waimanalo Gulch measured 10.3 inches of precipitation between approximately 6 p.m. on Jan. 12 and 6 p.m. the following day. That total exceeded the 25-year, 24-hour rain event for that gauge, according to a [table of precipitation frequency estimates](#), but falls short of a 50-year, 24-hour event.

Rain was more intense for some shorter periods. The worst six-hour peak of 7.22 inches was in excess of a 100-year event and the worst three-hour stretch of 6.23 inches was in excess of a 200-year event, Kodama said.

"They got hit pretty good," he said.

The Palehua Fire Weather Station gauge in question received more rain during the storm than any other gauge on the island. Owned by the state Department of Land and Natural Resources Division of Forestry and Wildlife, the gauge is located about two miles mauka (north-northeast) of the landfill. While not all of the rainfall at that location necessarily ended up in Waimanalo Gulch, the data indicates that region of the island was hit particularly hard by the storm.

Read the Storm Water Pollution Control Plan [here](#) [pdf] and the full Surface Water Management Plan [here](#) [pdf].

Did the Landfill Adhere to Permit Safety Requirements?

What we know: In addition to the permits and plans administered by the Department of Health's Clean Water Branch, another division of the department has a role in the operation of all landfills: the Solid and Hazardous Waste Branch.

After the expansion was approved in late 2009, that branch in June 2010 approved an application to modify and renew the landfill's Solid Waste Management Permit. Among the permit conditions is an entire section dedicated to managing surface water.

Requirements included a western bypass channel and a "drainage system of pipe and swale conveyances running along the eastern side of the landfill." During construction of those systems, when there is no means to convey water around the landfill, the landfill operators were instructed to pre-stage six-millimeter or thicker geomembrane sheets, pumps and other equipment to control and direct surface water.

Before starting construction on the new landfill cells, operators were instructed to determine the amount of geomembrane sheeting and pumps necessary to do the job, and told to update drainage system drawings to accommodate runoff from the new cells as they were being constructed.

Read the full Solid Waste Management Permit [here](#) [pdf].²

What we don't know: There are numerous questions beyond simple compliance with the permit conditions. Here are the questions Civil Beat asked DeMello, the Waste Management spokesman:

- Does Waste Management believe it complied with all permits and regulations?
- When did Waste Management start construction on the diversion channel? Was there a lag between the issuance of the land use permit in October 2009 and work on the diversion channel? If so, why?
- Was the goal always to have the channel construction completed around the end of January, or did Waste Management originally target a completion date before the start of the rainy season? If the schedule changed, why?

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- Were there previous diversion channels that were rendered obsolete by the recent expansion, or was this the first diversion channel of its kind at the facility?
- Will additional channels be necessary if the landfill's life is extended beyond July 2012?
- Are stormwater runoff issues compounded as the landfill nears capacity?

Do Other Cities Share Honolulu's Approach?

What we know: To begin to understand how Honolulu compares to other municipalities, we looked to another oceanfront county: San Diego. Turns out, the California border town is a pioneer when it comes to waste management.

As in Hawaii, [California law](#) requires medical waste to be treated before it goes in a landfill, and requires certain kinds of medical waste — like body parts — to be incinerated.

"It could be a dental office, a veterinary office, a medical office, a large hospital ... If you generate medical waste, you have to basically render it safe before it ends up in a landfill," said Maryam Sedghi, supervising environmental health specialist for San Diego County's Hazardous Materials Division. "Other waste we have, like let's say pathology waste, in that particular case, you can't autoclave that and throw it in a landfill, you pretty much have to send that to an incinerator."

But many of the similarities between how Honolulu and San Diego manage disposal of medical waste end there. Because California is such a big state, some county-level agencies obtain the authority — through what's called the [Certified Unified Program Agencies](#) — to oversee and enforce some laws.

For San Diego, it means Sedghi and her colleagues closely track medical waste on its path from hospitals to landfills. In other words: it's clear who's in charge. There's no self regulation, the way there is in Hawaii.

"Our division handles all of the hazardous materials, hazardous waste, permitting, and we also go out and look at the hospitals, medical offices," Sedghi told Civil Beat. "We have a pretty rigorous program. Our inspectors go out and inspect every medical facility, every hospital, you name it. Anyone who generates any biohazardous material or medical waste, we're there. We don't accept any kind of self certifications. We ask the doctors to obtain a permit with us, and we inspect them on a regular basis."

In other California counties, Sedghi said, the state is responsible for oversight. She said the approach in San Diego is better because it doesn't split the authority between a number of agencies, or put the onus on the state, which has a much broader scope of health-related responsibilities.

"When you have a big authorizing agency, it's just not easy to ensure the laws and the regulations are followed," Sedghi said. "For us, as a local agency, it makes a lot of sense. You have a rapport with the businesses, you're already there inspecting them for other reasons, you know your own county and you know what the policies are. We definitely have a very clear division of authority and maybe that's something that is a helpful thing when you know exactly what you're supposed to do."

What Does The Spill Mean for the Future of Waimanalo Gulch?

What we know: The Hawaii Land Use Commission has a say in the use of all agricultural lands larger than 15 acres — and the Waimanalo Gulch Sanitary Landfill qualifies. The commission granted special use permits in 1987, 1989, 2003 and 2009, giving the city permission to operate the landfill.

The special use permit issued in October 2009, like its predecessors, requires the city to "obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management and Board of Water Supply for all onsite and offsite improvements involving access, storm draining, leachate control, water, well construction and wastewater disposal." In all, there are 16 permit conditions.

The Land Use Commission could hold hearings about last week's stormwater discharge and ask questions of landfill operators. City Council member Tuli Gabbard Tamayo has already scheduled one such hearing. Waste Management and the city's Department of Environmental Services will presumably be in attendance Monday.

While it's conceivably possible for the Land Use Commission to revoke a special use permit for failure to comply with conditions, doing so would leave Oahu without a municipal landfill. However, last week's episode and any enforcement action taken by the state Department of Health or the EPA could weigh upon commissioners if they're asked to again extend the life of the landfill past the current July 31, 2012 target.

Land Use Commission Executive Officer Orlando "Dan" Davidson declined to speak on the record about the matter.

Read the full Land Use Commission special permit [here](#) [pdf].

DISCUSSION: *What other questions remain in the wake of the landfill spill? Join the conversation.*

1. The National Pollutant Discharge Elimination System General Permit Coverage is regulated under [Sections 11:55-34 to 34.12](#) [pdf] and Appendices [A](#) [pdf] and [B](#) [pdf] of the Hawaii Administrative Rules. [Another appendix](#)

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[pdf] includes standard permit conditions. [Section 342D](#) of the Hawaii Revised Statutes covers water pollution.

2. Relevant sections are Sections B-3 and B-4 (Pages 20-21) and Section G (Pages 41-43).

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For A New Special Use Permit To Super-
sede Existing Special Use Permit To
Allow A 92.5-Acre Expansion And Time
Extension For Waimānalo Gulch Sani-
tary Landfill, Waimānalo Gulch, O'ahu,
Hawai'i, Tax Map Key: 9-2-03: 72 And 73

DOCKET NO. SP09-403

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing document was
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A handwritten signature in cursive script, appearing to read "Chris Goodin", written over a horizontal line.

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