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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.

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

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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

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WITNESS: KEN WILLIAMS

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1 CONTESTED CASE HEARING

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CHAIRWOMAN PINGREE: Good afternoon. Call the meeting to order. Today is day four of the Contested Case Hearing Ewa-State Special Use Permit Amendment Application 2008/SUP-2 Waimanalo Gulch Sanitary Landfill.

Would you kindly identify yourselves for the record, Counsel?

MS. VIOLA: Dana Viola and Brian Black on behalf of the City.

MR. SANDISON: Ian Sandison and Arsima Muller on behalf of intervenor Schnitzer.

MR. CHIPCHASE: Cal Chipchase and Chris Goodin for intervenors Ko Olina Community Association and Senator Maile Shimabukuro.

CHAIRWOMAN PINGREE: Thank you very much. We had, of course, the objection to the subpoena that was presented to us in our last session. At that time, the commissioners didn't have the opportunity to review it. Of course, during that period of time we've had the opportunity, so what I'd like to do is to ask today if counsel for Waste Management of Hawaii is present.

MR. KONDO: I am. Wray Kondo with

1 Watanabe Ing.

2 CHAIRWOMAN PINGREE: And you are ready
3 today?

4 MR. KONDO: I wasn't informed of anything
5 about the subpoena.

6 CHAIRWOMAN PINGREE: You weren't informed
7 of --

8 MR. KONDO: We filed an objection and I
9 haven't heard anything since then.

10 CHAIRWOMAN PINGREE: So today we're
11 planning to bring that before the commission.

12 MR. KONDO: Yes. All right.

13 CHAIRWOMAN PINGREE: Thank you so much.
14 Counsel, you're ready as well?

15 MR. CHIPCHASE: Yes.

16 CHAIRWOMAN PINGREE: Mr. Kondo, can you
17 please come on up? Please have a seat.

18 Counsel, would you kindly identify
19 yourself for the record?

20 MR. KONDO: Yes. My name is Wray Kondo.
21 I'm with Watanabe Ing law firm.

22 CHAIRWOMAN PINGREE: Thank you.

23 Mr. Kondo, please proceed with your
24 objection before the commission.

25 MR. KONDO: Okay. I submitted a written

1 objection. It was received -- I believe filed on
2 January 12th -- or January 20, 2012. And the basis
3 for the objection is I had a -- one phone
4 conversation and a couple of emails with Mr. Goodin
5 and I explained to him that after our review of the
6 subpoena it appeared that he had all of the
7 responsive documents. So I then identified what
8 documents were responsive in my objection. I
9 attached one letter, which was a transmittal of a
10 document or a report that I believe KOCA and Ms.
11 Shimabukuro already have. Other than that, we don't
12 have anything else.

13 Since then, I haven't been contacted by
14 the attorneys asking for any further documents or
15 identifying with more specificity anything else that
16 they may be looking for.

17 CHAIRWOMAN PINGREE: So if you could recap
18 the basis of your objection, please?

19 MR. KONDO: One, the documents that are
20 sought have already been produced or are in the
21 possession of the attorneys for KOCA and
22 Shimabukuro.

23 Would you like me to identify all the
24 different documents?

25 CHAIRWOMAN PINGREE: I don't think so.

1 MR. KONDO: It's identified in my
2 objections.

3 With respect to the objection portion, we
4 just noted that the other documents protected by
5 attorney-client privilege or work product are not
6 discoverable, not responsive. That's about it.

7 CHAIRWOMAN PINGREE: Thank you.

8 MR. CHIPCHASE: Thank you, Chair. Perhaps
9 it's just a simple matter of confusion, but as I
10 understand the subpoena -- or the objections -- some
11 documents have been produced and others that are
12 responsive but are deemed to be privileged or
13 protected have not been produced. That's how I read
14 these two parts to Mr. Kondo's objection.

15 Among the objections are the documents
16 contain highly confidential proprietary and
17 commercial and other sensitive business information,
18 and that's just not a valid objection in any forum
19 for withholding documents, particularly documents
20 that go to an investigation into fabricated wellhead
21 readings, which is part of the overall issue before
22 this commission; has the landfill operated in a
23 safe, compliant way for all of these years, and as
24 we've maintained it hasn't.

25 So if Mr. Kondo is taking the position

1 that other than what we have and what he's given us
2 no responsive documents at all anywhere exist, then
3 I'll accept his representation. But if it's that,
4 We've given you what we want to give you and we're
5 withholding the rest, that, I think, is an improper
6 objection and a frustration of these proceedings.

7 MR. SANDISON: We will not involve
8 ourselves in this.

9 MS. VIOLA: We will defer to Waste
10 Management.

11 MR. KONDO: And in response, I think what
12 Mr. Chipchase's former position was is correct -- we
13 have produced everything that's responsive. All
14 investigation correspondence have been produced. I
15 think the letters -- there were two reports.

16 MR. GOODIN: External.

17 MR. CHIPCHASE: Those were the external
18 reports and correspondence. The subpoena covered,
19 among other things, the internal investigation
20 documents that underlaid the reports that serve as
21 the bases for the reports that went to the agency.

22 MR. KONDO: I think those were attached as
23 exhibits to the reports.

24 What specific documents are you folks
25 looking for? There are no internal investigation

1 reports other than the firm EIL was retained to
2 conduct the investigation. They came in. They did
3 the investigation. They then attached exhibits to
4 the report. They then submitted a letter together
5 with that report, and I believe you have those
6 letters. Those were already identified in our
7 response and objection.

8 Specifically, in paragraph number three on
9 page three of our response and objections, we note
10 the EIL 2009 to 2011 Waimanalo Gulch Sanitary
11 Landfill monthly perimeter gas monitoring letter
12 reports prepared for Waste Management which Dwight
13 Miller of Parametrix relied on as a reference in
14 preparing intervenors' Exhibit 146.

15 We also identified in paragraph four on
16 page three intervenors' Exhibit K-157 listed in
17 intervenors' December 20, 2011 second amended
18 exhibit list; the wellhead monitoring issue is
19 described and explained in the August 30, 2011
20 letter from Timothy E. Steinberger, Director of
21 applicant ENV to Ronald Ho of the Clean Air Branch,
22 Department of Health, State of Hawaii, and John
23 Brock of the EPA, and the attached August 29, 2011
24 semi-annual report January 1, 2011 through June 30,
25 2011 prepared by Environmental Information Logistics

1 relating to Waimanalo Gulch Sanitary Landfill
2 covered source permit number 0489-01C.

3 Paragraph five on page three of our
4 response and objections: Intervenors' Exhibit K-158
5 lists an intervenors' December 20, 2011 second
6 amended exhibit list, the wellhead monitoring issue
7 is further described and explained in the August 18
8 -- and that was an error -- we put sic, s-i-c --
9 August 18, 2011 letter from Justin Lottig,
10 environmental protection manager of Waste
11 Management, to John Brock of the EPA and Ronald Ho
12 of the Clean Air Branch, Department of Health, State
13 of Hawaii. We noted that intervenors' Exhibit K-158
14 refers to the semi-annual report dated August 30,
15 2011 and was actually submitted on September 2, 2011
16 and not on August 18th, 2011. Waste Management
17 represents that the date of intervenors' Exhibit
18 K-158 should be September 2, 2011.

19 Paragraph number six on page four, we
20 identified intervenors' Exhibit K-160, which is
21 listed in intervenors' January 5, 2012 third amended
22 exhibit list, the September 28, 2011 landfill gas
23 extraction assessment prepared by EIL relating to
24 Waimanalo Gulch Sanitary Landfill. This assessment
25 is undertaken to investigate the fabricated wellhead

1 monitoring readings which is the subject of the
2 subpoena.

3 And that's the report that I was referring
4 to which contains the attachments, which I believe
5 was the underlying documents that they had
6 requested. And the report states, and I quote:
7 There is no evidence of adverse changes in the
8 condition of the well field. In particular, there
9 is no evidence of any SOE, or subsurface oxidation
10 event, no smoke, no odor, no localized subsidence
11 adjacent to any well. Therefore, despite the
12 absence of some data during the time period in
13 question, the available data shows no wild swings
14 and no adverse changes in the condition of the well
15 field. In particular, there is no evidence of an
16 SOE or even conditions that would present a risk of
17 an SOE. Further, the data indicates even if the
18 manual data was included in any evaluation, it would
19 not significantly alter any of the conclusions or
20 materially skew the data. That's intervenors'
21 Exhibit K-160 at page 32.

22 In paragraph seven at page four of our
23 response and objections we submitted attached
24 Exhibits 1, which is an October 3, 2011 letter of
25 Joseph R. Whelan, general manager of Waste

1 Management, sent to Timothy Steinberger, director of
2 applicant ENV, relating to the landfill gas
3 management system investigation report and which
4 transmitted intervenors' Exhibit K-160. I'd assume
5 that letter they already have. I did not notice it
6 as an exhibit in any of intervenors' exhibit list
7 and so we attached it as an Exhibit 1 to our
8 response. And we believe those are all the
9 responsive documents.

10 MR. CHIPCHASE: And so I have no choice
11 but to accept that representation. I know that the
12 underlying document referenced interviews and we've
13 never seen any copies of interviews. It's hard to
14 believe that only external communications were
15 generated as part of this investigation. We've
16 never seen any copies of internal -- any internal
17 communications as part of the investigation.

18 But if the representation remains that
19 these documents which we know we have and without
20 exception were all public documents, then we can
21 move on.

22 CHAIRWOMAN PINGREE: Thank you. We will
23 move on. Thank you very much.

24 Thank you, sir.

25 MR. KONDO: Thank you.

1 CHAIRWOMAN PINGREE: We'll take the next
2 witness. Thank you.

3 MR. CHIPCHASE: Okay. Thank you. As our
4 first witness, Chair, we would like to call Ken
5 Williams.

6 Mr. Goodin is now going to hand out copies
7 of his testimony and some of the exhibits
8 referenced, for the commission's ease.

9 CHAIRWOMAN PINGREE: Thank you.

10 Would you kindly raise your right hand?
11

12 KEN WILLIAMS,
13 called as a witness, being first duly sworn to tell
14 the truth, the whole truth and nothing but the
15 truth, was examined and deposed as follows:
16

17 MR. WILLIAMS: Aloha. My name is Ken
18 Williams and I am the general manager of the Ko
19 Olina Community Association, also known as KOCA. I
20 have worked at the resort since 1989, when I started
21 as the senior project manager for then West Beach
22 Estates. During the last 22 years, I have been able
23 to witness the development and growth of the resort,
24 as well as the landfill operations. On behalf of
25 KOCA, I represent all Ko Olina Resort property

1 owners, hotels, time shares, residential projects
2 and commercial businesses, including retail centers
3 and shops, the golf course and marina.

4 KOCA opposes the application to modify.
5 As an overview, these are my main reasons -- our
6 main reasons. Number one, it's a danger to public
7 health and safety. Number two, operational
8 deficiencies in the landfill's long track record of
9 violations, punctuated by the December 2010 and
10 January 2011 contaminated run-off catastrophes.
11 Number three, promises not kept. ENV made promises
12 to close the landfill and should be held to its
13 promises to the community; not just Ko Olina, but
14 the entire leeward area. The community relied on
15 these promises. Number four: The landfill
16 jeopardizes Ko Olina's economic benefits to the
17 community, the City and the state of Hawaii.

18 A little landfill history: I don't mean
19 to regurgitate, but real quickly, the landfill was
20 permitted in 1987. It opened for operation in 1989
21 and it was supposed to close, the first time at
22 least, in 1997. Fast forward to 2003. The landfill
23 was expanded by 26 acres and the term was extended
24 by five years. Also in 2003, promises were made on
25 record that it would close in 2008, by Frank Doyle,

1 acting ENV director. Based on those sincere
2 promises the community stood down in reliance that
3 the City would hold to its word and close the
4 landfill. As we all know today, contrary to that
5 promise, the City ultimately filed for a new special
6 use permit to expand by an additional 93 acres
7 doubling the size of the landfill.

8 As you know, the Planning Commission
9 approved expansion until capacity was reached. The
10 SLUC, State Land Use Commission, approved the permit
11 on the condition that municipal solid waste, MSW,
12 would be allowed to be dumped at the landfill up to
13 July 31st, 2012, with only ash and residue after
14 that date. Thus the landfill was supposed to close
15 in 1997, eight years after it began operations; in
16 2003, when it reached capacity; again in 2008, when
17 it was promised to be closed and had been directed
18 to be closed; in 2009 when it was directed to be
19 closed; and now in 2012, when it is directed to stop
20 accepting MSW.

21 The ENV has been breaking promises and
22 kicking the can down the road for over a decade and
23 the community surrounding the landfill has suffered
24 for it. The landfill is harmful and unsafe. Many
25 complaint letters have been sent in this regard to

1 the City and Waste Management from businesses, condo
2 presidents, nearby property owners, landowners,
3 residents as well as from KOCA.

4 Impacts include -- I'll just run down the
5 list. It's not comprehensive -- but major ones are
6 odors, noise, dust, blasting, visual blight, truck
7 traffic, flying litter.

8 There were requests for the City to find
9 alternatives, requests for the City to remove this
10 landfill from our community as promised and requests
11 begging the City to not allow a recurrence of the
12 recent floods and community contamination.

13 This leads me to what I call the disasters
14 in December 2010 and January 2011 that sent
15 contaminated run-off into the community. I'm not
16 exaggerating when I say disasters, because we were
17 on the ground there and we saw what happened.

18 I'm going to start by saying that the
19 Waimanalo landfill -- and it may be a reiteration
20 for all of you -- is referred to as a canyon fill
21 landfill. In this case, it is a canyon fill
22 landfill on a mountainside, on the slopes of a
23 mountain, making the site a natural drainage way.
24 Canyon fill landfills rely on multiple berms. When
25 these berms fail, the canyon fill landfills uphill

1 of communities like ours are more dangerous than the
2 typical landfill, and that would be a landfill that
3 we would -- a puka in the ground where we'd throw
4 our opala in. Failure can be catastrophic, as
5 evidenced by the disasters.

6 Leading up to these events last year, I
7 would be remiss if I did not first mention the
8 landfill's long history of violations with the
9 Environmental Protection Agency and Department of
10 Health, violations upward of 20, fines upwards of
11 2.5 million dollars, and the most recent was a
12 failure to take gas head readings for a year, from
13 mid 2010 to August 2011, where staff may have ended
14 up fabricating the readings. These readings are
15 essential in determining and detecting if there are,
16 among other things, methane fires burning under
17 ground. Other violations for which the landfill was
18 fined involved inadequate liners, failed leachate
19 system, problems with the gas collection system and
20 violations concerning cell construction and
21 operation.

22 Now, this brings me to cell E6, the
23 construction and operation of cell E6. Waste
24 Management constructed cell E6 and filled it with
25 garbage, including medical waste, before the

1 necessary drainage infrastructure was completed.
2 Can you imagine; it would be like building your
3 house and living in it before the drainage system
4 was fully completed. This is what happened at cell
5 E6 and this is what was a contributing factor
6 leading to the contaminated runoff disaster from the
7 landfill that polluted the leeward coastline last
8 year from Kalaeloa all the way to Waianae.

9 The contaminated runoff that rushed down
10 the mountainside and into the ocean included unknown
11 quantities. And, you know, you guys have seen the
12 pictures. I'm not sure what exhibit this is, but
13 this is some of the medical waste that was
14 collected, just some of it, and you can refer to the
15 other photos that are provided in your packet. It
16 included medical waste, landfill debris, leachate,
17 and sewage sludge. Medical waste included sharps,
18 chemotherapy wastes and pathological wastes
19 including blood and urine samples intact.

20 There was no communication to Ko Olina
21 from ENV or Waste Management. We found out
22 something was terribly wrong when the landfill
23 runoff was washing up on our beaches. The Ko Olina
24 staff closed the lagoons and initiated cleanup. We
25 couldn't wait for someone to tell us there was a

1 problem, because it was obvious. And we had no idea
2 that it was happening. It was obvious that we had a
3 problem caused by the landfill.

4 We cannot forget that this happened only
5 one year ago. We cannot forget how this threatened
6 the health and safety of our community. We cannot
7 forget how this endangered our children, left to
8 play on the beaches from Pokai Bay to Kalaeloa,
9 where warning signs were slow to get posted. We
10 cannot forget that signs were not posted because,
11 per an ENV email, they steadfastly refused to abide
12 by a DOH demand to post signs, making a technical
13 argument that signs were not required because the
14 landfill does not qualify as a waste water treatment
15 use or disposal system. Now I hear in testimony the
16 signs couldn't be posted because the signs on hand
17 were not worded correctly. That's a hard one to
18 take. Meanwhile, medical waste was washing up on
19 the beaches, including needles and blood samples.

20 The City argues that the landfill is
21 needed for the public's health and safety. What
22 about the health and safety of those who were
23 threatened from Ewa to Waianae by the contaminated
24 runoff that washed up on our beaches? Is the health
25 and safety of leeward coast residents not important?

1 This catastrophe in itself should be more than
2 reason enough to deny this application.

3 I'm going to just cover an independent
4 economic analysis that Ko Olina Resort conducted
5 about one year ago, in January of 2011. It's in
6 your Exhibit K-22. It's called the economic
7 analysis and it's done by C.B. Richard Ellis in
8 January 2011. This study shows that the current
9 economic benefits from Ko Olina Resort are, right
10 now, \$520 million in direct spending annually, 2,800
11 jobs locally, indirect and induced benefits of \$280
12 million and 1,500 additional jobs, \$60.7 dollars in
13 annual taxes to the City and State. That was
14 current impact.

15 Future impact: At full build-out the
16 economic benefits will balloon to \$1.4 billion in
17 total economic activities, 8,000 jobs, \$138 million
18 in taxes to the City and the State, plus a \$194
19 million one time tax -- in one-time taxes from
20 construction period spending.

21 Construction period impacts -- the last
22 one -- \$3.7 billion in direct spending, two billion
23 in indirect and induced economic benefits, and
24 26,700 jobs. This is a total of a one-time economic
25 benefit of \$5.7 billion, about equal to what we'd be

1 spending on the rail.

2 The landfill threatens all these ongoing
3 and future economic benefits. I would argue that a
4 landfill would not be approved to be built today
5 across the street from a substantial residential and
6 tourist destination that provides such valuable
7 benefits to the community.

8 May I add that these benefits are not only
9 economic, as the landfill operation also adversely
10 affects our local families who enjoy the lagoons
11 through Ko Olina's public parking and access.

12 The ENV has not made reasonably diligent
13 efforts to find alternatives to the landfill. The
14 only reason the landfill is not closed and the City
15 has not kept its promise is that the ENV has failed
16 to make reasonably diligent efforts to find
17 alternatives to the landfill.

18 In 2008, when the ENV was supposed to have
19 identified and developed a new landfill site, the
20 ENV was instead in the process of requesting an
21 extension of the landfill. In 2009, the ENV was
22 given a two-year extension to accept municipal solid
23 waste. During this time, the two commissions
24 directed ENV to exercise reasonable diligence in
25 locating and developing a new site. The Land Use

1 Commission issued its order in 2009. The ENV waited
2 for a full year to begin landfill site selection
3 committee meetings in October 2010. The committee
4 was to provide its recommendation to the mayor by
5 August 2011. The date was pushed to October. It is
6 now February 2012 and the committee has still not
7 made its recommendation.

8 May I also add that although members on
9 the committee were chosen from different communities
10 from around Oahu, including neighborhoods like
11 Mililani and Kailua -- areas, by the way, that are
12 understandably fighting tooth and nail to keep that
13 landfill out of their communities, and rightfully so
14 -- I find it very odd that no one from Ko Olina or
15 Kapolei, for that matter, were asked to participate
16 in the landfill selection process. Ko Olina bears
17 the daily brunt of the impacts of Waimanalo Gulch
18 landfill and it stands to reason that representation
19 on this committee should have been mandatory, but we
20 weren't even considered.

21 As for alternatives, ENV claimed to be
22 working towards utilizing alternative technologies.
23 The ENV is no closer to utilizing these types of new
24 technologies today than it was in 2003. Instead of
25 exercising reasonable diligence in developing new

1 landfill sites and new technologies, for the last
2 eight years the ENV has continued to kick the can
3 down the road and has continued to put decision
4 makers like yourselves in a tenuous position, with
5 your backs against the wall, unnecessary and unfair.
6 The adverse effects of the landfill continue to get
7 worse, not better.

8 The Ko Olina Resort's operations generates
9 millions of dollars for the economy, thousands of
10 jobs for local workers and millions of dollars in
11 tax revenue. All of those benefits to the
12 surrounding community, the City and the State are
13 cast in doubt by the landfill's shadow. This
14 landfill is no longer viable. It is time for the
15 landfill to stop accepting solid waste and for the
16 ENV to find a new site and new technologies. The
17 ENV must be held accountable for its promises and
18 obligations to the community. The application to
19 modify should be denied. Thank you.

20 CHAIRWOMAN PINGREE: Thank you, Mr.
21 Williams.

22 MS. DAWSON: Mr. Williams, may the
23 commissioners have a copy of your testimony?

24 CHAIRWOMAN PINGREE: Excuse me. I think
25 we have to proceed with the ENV. Then when we're

1 done, we'll take questions.

2 MS. DAWSON: Thank you.

3 MS. VIOLA: She was just asking for a copy
4 of his testimony. Did you pass them out?

5 (Discussion off the record.)

6

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

8 BY MS. VIOLA:

9 Q. Good afternoon, Mr. Williams.

10 A. Good afternoon.

11 Q. Is it correct to state that Ko Olina or --
12 let me ask you: When was the Ko Olina Resort
13 purchased?

14 CHAIRWOMAN PINGREE: Dana, would you
15 please speak into your mike or get a little closer?
16 Thank you.

17 BY MS. VIOLA:

18 Q. Can you tell me when the Ko Olina Resort
19 was purchased by Mr. Stone, Jeff Stone?

20 A. By Mr. Stone or Mr. Horita?

21 Q. Mr. Stone.

22 A. Mr. Stone. In 1998.

23 Q. In 1998. So that coincides pretty much
24 with when you started working with Ko Olina?

25 A. No. I started in 1989.

1 Q. Okay. In 1998, what is -- let me put it
2 this way: What was the progress in terms of
3 development for Ko Olina from 1989 to 1998?

4 A. In terms of what was built in that time?

5 Q. Uh-huh.

6 A. All of the infrastructure. Several
7 hundred million dollars worth of infrastructure, the
8 Ko Olina Golf Course, the -- at the time, it was a
9 hotel built by Pan Pacific hoteliers, Ihilani Resort
10 and Spa. Let's see. The marina was built, as well
11 as -- what's the other -- you're saying up until
12 1998? Excuse me. I'm sorry.

13 Q. Up through 1998.

14 A. That would be it.

15 Q. Let me show you what I will mark as
16 Exhibit A-34 for the City's exhibits.

17 Do you recognize this document?

18 A. No, I don't.

19 Q. What is the title of the document?

20 A. It says The Resort Group World Class
21 Experience.

22 Q. Okay. Can you look at page one of the
23 document, under Jeff R. Stone, Founder?

24 A. Page two?

25 Q. Yes. Page two, at the bottom, bottom

1 paragraph.

2 A. Okay.

3 Q. Do you agree with the representations made
4 in that paragraph?

5 A. The first paragraph?

6 Q. Both paragraphs.

7 A. Give me some time to read it, please.

8 Q. Okay.

9 A. Yeah, I agree with this.

10 Q. For the record, could you read the second
11 -- the last paragraph?

12 A. The whole thing?

13 Q. Yes.

14 A. Starting with, He acquired?

15 Q. Yes.

16 A. He required the stalled Ko Olina Resort
17 project, dormant for more than ten years, in 1998
18 and he viewed it with innovation, energy and
19 vitality. His vision of creating Oahu's first
20 active family resort destination undoubtedly
21 contributed to the success of businesses in the
22 neighboring West Oahu region and throughout the
23 state. Stone's infusion of attention and vigor into
24 the area has strengthened community and visitor
25 interest in the destination and revitalized the

1 island of Oahu as a multi-resort destination by
2 attracting numerous national and international
3 investors to Ko Olina, including Walt Disney
4 Resorts, Massachusetts Mutual life Insurance,
5 Marriott International, Brookfield Homes, the
6 Weinberg Foundation and Alexander and Baldwin.

7 Q. That's enough. Thank you. And it's your
8 testimony that you agree with that representation?

9 A. I think, you know, it definitely wasn't
10 stalled. I mean, it was stalled when he purchased
11 it, no question. I lived through those ten years
12 and we did have some development in the early '90s,
13 as you probably all recall, but with the way the
14 economy went, it took -- in about 1992, 1993, yes,
15 we did sit dormant until 1998.

16 Q. But it's accurate to say that since 1998
17 there has been significant development and
18 revitalization?

19 A. Yes, there has been, no question.

20 Q. You referenced in your testimony the 1981
21 and 1983 Ewa Development Plans. I think it's listed
22 as Exhibit K-132 of the Ko Olina Community
23 Association's exhibits.

24 A. Okay.

25 Q. I'm asking if you're aware of the 1981 and

1 1983 Ewa Development Plans, since it's referenced in
2 your testimony.

3 A. I'm sure I have reviewed that at one time
4 or another as project manager for the resort.

5 Q. It is referenced in your written
6 testimony.

7 A. Okay.

8 Q. So you are aware of those plans?

9 A. Yes.

10 Q. So you're familiar with the Ewa
11 Development Plan?

12 A. I am familiar -- I have a working
13 knowledge of it, yes. I need to have a --

14 Q. You believe that you need to have a
15 working knowledge of the Ewa Development Plan?

16 A. When I started in 1989, yes, it would have
17 been very important as a project manager to
18 understand the big picture of the plan.

19 Q. And you are aware that the Ewa Development
20 Plan has since been revised, since 1983?

21 A. Yes. I am aware of the -- it's been
22 revised, yes.

23 Q. Let me show you what I want to mark as --
24 I'm sorry.

25 MS. VIOLA: Before I do that, I'd like to

1 enter Exhibit A-34 into evidence.

2 CHAIRWOMAN PINGREE: Thank you.

3 MS. VIOLA: I'm now going to show the
4 witness what the City has marked as Exhibit A-35.

5 BY MS. VIOLA:

6 Q. For the record, could you identify what
7 the document you've been presented with is?

8 A. Ewa Development Plan August 1997.

9 Q. Could you turn to page 4-23 of the plan?
10 Section 4.5 is at the bottom of page 4-23. Do you
11 see that?

12 A. Yes.

13 Q. And it's entitled Solid Waste Handling and
14 Disposal?

15 A. Yes.

16 Q. Could you read that paragraph out loud?

17 A. Two major solid waste handling and
18 disposal facilities are located in Ewa. The H-POWER
19 plant at Campbell Industrial Park is operating at
20 maximum capacity, receiving over 600,000 tons of
21 solid waste each year. The Waimanalo Gulch Sanitary
22 Landfill, located between the proposed Makaiwa Hills
23 residential development and Kahe Valley is the major
24 active waste disposal site on Oahu. It will run out
25 of capacity within ten to 25 years. The solid waste

1 integrated management plan prepared by the
2 Department of Public Works and adopted by the City
3 Council in 1995 identified existing landfills which
4 could be expanded and potential sites for developing
5 new landfills to provide new capacity. The
6 Waimanalo Gulch was identified as having potential
7 for expansion. Ewa sites for new landfills
8 identified in the plan included the mauka part of
9 Kahe Valley, a site within the West Loch magazine
10 blast zone and a site in east Kapolei.

11 Q. So according to this Ewa Development Plan
12 that you just read, the Waimanalo Gulch could
13 operate from ten to 25 years as of 1997; is that
14 correct?

15 A. That's what it says, yes.

16 Q. So that is until 2007 or up to 2022;
17 right? Quick addition --

18 A. Yes. That's what it says.

19 Q. In 1998, when Jeff Stone was interested in
20 acquiring the property and began developing it, at
21 that time Jeff Stone, and conceivably Ko Olina, was
22 already aware via the Ewa Development Plan that the
23 Waimanalo Gulch could operate for as long as into
24 2022?

25 A. I'm not sure if we were, no.

1 Q. Well, you stated that as a -- I guess as a
2 land manager or manager for Ko Olina --

3 A. In 1989, yes.

4 Q. So you wouldn't --

5 A. This is 1998 you're talking about now?

6 Q. Yes.

7 A. No.

8 Q. 1989, you're saying?

9 A. That's when I started.

10 Q. So only then would you consider it
11 valuable to know about the Ewa Development Plan?

12 A. During that time when I was an actual
13 development project manager, yes.

14 Q. So Ko Olina and Jeff Stone, since he was
15 involved in developing that area, would you consider
16 it a responsibility of his and developers working
17 with him to be aware of the Ewa Development Plan
18 that was currently in existence at the time that he
19 purchased the property?

20 A. I can't speak for Jeff Stone.

21 Q. I guess as someone who was working for Ko
22 Olina and under a reasonable interpretation of yours
23 as a business person, would you consider it
24 reasonable for them to be aware of the Ewa
25 Development Plan?

1 A. I can't speak for the group that purchased
2 the property.

3 Q. Can you state that as of 1998, when they
4 purchased the property, that the Ewa Development
5 Plan which is dated 1997 was already in existence?

6 A. 1997 is before 1998, so yes.

7 Q. But you are not saying that they should
8 have been aware of it?

9 A. I can't speak for them.

10 Q. So you can't speak for -- you're
11 representing Ko Olina, all the residents and --

12 A. I'm representing the Ko Olina Community
13 Association, yes.

14 Q. Right. But you're representing, also, the
15 business interests of this association or the
16 business interests of the Ko Olina Resort community.

17 A. The business interests as in --

18 Q. Well, your testimony was that Ko Olina
19 generates over 500 million -- is that what you said?

20 A. That's correct.

21 Q. -- in profits for the state.

22 A. Yes.

23 Q. Is that what you said?

24 So is that more than just community
25 interest? That has a knowledge of other than

1 community interest -- you would acknowledge that the
2 community does have knowledge of the business
3 potential for Ko Olina?

4 A. That does represent the business interest
5 and economic forecast for Ko Olina, yes.

6 Q. Right. And economic forecast, not only
7 the community interest.

8 A. Not only the community -- I don't
9 understand the question.

10 Q. Well, you're saying that you can't state
11 that Ko Olina should have been aware of the Ewa
12 Development Plan because you can't speak for the
13 developer, because you are only representing
14 community interest.

15 A. That's correct.

16 Q. But you're representing more than
17 community interest when you talk about business
18 development and future development; isn't that
19 correct?

20 A. Well, in respect to what the resort can
21 bring to the State, the City and our community, yes.

22 Q. Right. And that involved a pretty
23 extensive study that you already provided as an
24 exhibit, this fiscal and economic benefits analysis.

25 A. That's correct.

1 Q. That's part of your testimony?

2 A. That's correct.

3 Q. Your testimony was that based on this
4 report and based on the business -- I guess business
5 profits from this community or this resort
6 community, that you wouldn't -- you wouldn't
7 conceive of the landfill being allowed to be, I
8 guess, built in that area now.

9 A. Per my testimony, that's correct.

10 Q. So based on that opinion, which I think is
11 beyond, I guess, a community -- I guess community
12 analysis, you're saying -- you're trying to predict
13 whether or not the landfill would have been
14 permitted at this point in time?

15 A. I have lost you. I'm not sure what you're
16 asking me at this point.

17 Q. What I'm asking you is essentially to make
18 a reasonable conclusion based on your expertise as
19 you've presented to this committee based on your
20 being a representative of Ko Olina, based on your
21 being a representative of the business interests,
22 based on your opining as to whether or not the
23 landfill would be sited presently, as to whether or
24 not in 1998 when the resort is being developed, that
25 they should have been aware of the Ewa Development

1 Plan that was an organizational document existing at
2 that time.

3 Wouldn't you presume that as responsible
4 developers they would be aware of it?

5 A. I think the operative word there is
6 presume and I am not going to make an assumption
7 for, you know, the group that I can't make an
8 assumption for. I'm not sure what they -- if they
9 did or did not.

10 Q. So based on your experience, then, would
11 you think it irresponsible to disregard a plan
12 that's in existence if you were to develop?

13 A. To disregard a plan -- restate that,
14 please.

15 Q. If you were a developer, would you
16 consider it to be irresponsible to disregard a plan
17 for the community, or ignore, not be aware of a plan
18 for the community in which you were developing?

19 A. I would -- if I were the developer, yes, I
20 would consider reviewing the development plan.

21 Q. And like you stated earlier, you were
22 aware of it in the '80s, when you had that capacity
23 at Ko Olina?

24 A. Correct.

25 Q. Okay. You also state that the City

1 repeatedly went back on promises and that the City
2 decided to close the landfill in 2004. That's
3 correct; right?

4 A. That's correct.

5 Q. Let me show you what we have identified --
6 I don't have copies of this exhibit. It's attached
7 to the ENV's exhibits. This is Exhibit A-111 -- I'm
8 sorry -- A-11.

9 CHAIRWOMAN PINGREE: Dana, you said A-11?

10 MS. VIOLA: A-11.

11 BY MS. VIOLA:

12 Q. Do you recognize that document?

13 A. No, I don't.

14 Q. Well, can you read the title of the
15 document?

16 A. It's a resolution selecting a site for a
17 new City landfill.

18 Q. And it's a resolution by what body?

19 A. The City Council.

20 Q. The City Council of the City and County of
21 Honolulu?

22 A. That's correct.

23 Q. What is the number of the resolution?

24 A. It's 04-348, CE1, FD1.

25 Q. Thank you. Can you read the first

1 paragraph on page one?

2 A. Whereas by order of the State Land Use
3 Commission, the City Council was required to select
4 a site for a new City landfill no later than June 1,
5 2004.

6 Q. Can you also read the fourth paragraph on
7 page two, and it starts, Be it further resolved?

8 A. Be it further resolved by the council and
9 in accordance with the conditions set forth by the
10 State Land Use Commission that the Waimanalo Gulch
11 site is selected as the site for the City's landfill
12 because --

13 Q. You don't have to go through all the
14 reasons.

15 So based on this resolution, which was
16 passed -- if you look at the last page, the
17 resolution was passed.

18 A. Okay.

19 Q. So based on this resolution, it was the
20 City Council, not the City administration, who
21 picked Waimanalo Gulch as the new landfill site;
22 is that correct?

23 A. By this document, yes.

24 Q. And that it was pursuant to the direction
25 of the Land Use Commission, as stated in that

1 resolution, as well?

2 A. That's correct.

3 Q. On page four of your testimony -- let me
4 just say generally in your testimony you cite the
5 success of Ko Olina in attracting and creating
6 building opportunities for Walt Disney, J.W.
7 Marriott, Marriott Vacation Club, Brookfield Homes,
8 Centex Homes, Armstrong Builders and others to build
9 at Ko Olina; is that right?

10 A. You're reading from where?

11 Q. Your testimony.

12 A. What number?

13 Q. I believe it's page four, paragraph ten of
14 your testimony, and pages 23 and 24 of your
15 testimony.

16 A. That's correct.

17 Q. So these successes have all occurred while
18 the landfill has been in operation; correct?

19 A. That's correct.

20 Q. On page 24, paragraph 59 also of your
21 testimony --

22 A. Page -- I'm sorry?

23 Q. 24.

24 A. 24.

25 Q. Paragraph 59. You claim that the landfill

1 threatens ongoing and future economic benefits;
2 correct?

3 A. Yes, I do.

4 Q. Yet despite the landfill being in
5 operation since 1989 and despite the fact that it
6 predated Ko Olina and the other businesses in the
7 area, Ko Olina, as you testified, has been
8 successful in attracting and creating building
9 opportunities; is that right?

10 A. That's correct.

11 Q. Lastly, you heard -- I believe you were
12 here when Tim Steinberger testified; is that
13 correct?

14 A. Yes, I was.

15 Q. And you heard him state that the City does
16 not have the means to dispose of certain waste, in
17 particular sewage sludge -- did you hear him say
18 that -- by July 31st, 2012?

19 A. I don't quite recall that he said that.
20 Did he say that?

21 Q. Yes.

22 A. Okay.

23 Q. If the landfill is indeed closed by July
24 31st, 2012 and the City doesn't have the means to
25 dispose of these waste streams, in particular sewage

1 sludge, where will this waste go?

2 A. You're asking me?

3 Q. Yes.

4 A. I'm up here trying to explain that
5 promises were made that it would stop. I'm up here
6 for the community's sake that these promises have
7 been broken several times. I'm not up here to solve
8 the problem. I mean, I wish I could. I wish I was
9 an engineer. I know way too much about landfills
10 because of my involvement in this opposition over
11 the last eight, ten years. But I'm not in a
12 position to tell you how to take care of the City's
13 responsibility for our trash.

14 Q. But if you're concerned about your
15 community, wouldn't you equally be concerned about
16 your community if there's nowhere for this waste to
17 go?

18 A. I believe there are other places for it to
19 go, but I would leave that up to the experts, which
20 are coming up soon.

21 Q. If there are no places for the waste to
22 go, wouldn't it be more of a concern for you if
23 you're speaking on behalf of the community to be
24 concerned about a deadline that would essentially
25 mean there's no place to dispose of sewage sludge?

1 A. I do not believe that there is nowhere
2 else for this trash to go or no other alternatives
3 for it to be disposed. And based on that, I
4 wouldn't be able to answer that question.

5 Q. But if the question is -- and that's not
6 the question. The question is: If there is no
7 alternative disposal method, wouldn't you be
8 concerned that your community would suffer if
9 there's no place for this waste to go except for the
10 landfill?

11 A. I don't believe that is the case, so I'm
12 not gonna suppose, you know, a scenario where --
13 which I don't believe. I believe there is
14 alternatives, there are other ways to dispose of our
15 trash.

16 And I'm just a layman. I mean, but if you
17 give me -- this is Hawaii. Okay? We're the most
18 isolated land mass in the world. If we don't take
19 the bull by the horns and be the leader in these
20 alternative technologies, then nobody will do it. I
21 mean, we have the most at stake, Hawaii -- our
22 tourism, our land, our culture -- to be the leader
23 in alternative technology. So I'm not going to sit
24 here and --

25 Sorry if I'm getting emotional here, but,

1 you know, we all grew up here and we all respect our
2 land. We all respect each other's communities. I
3 don't want to see somebody else with the landfill.
4 I don't want this landfill to continue. But I do
5 know that we are savvy enough and we should have the
6 motivation to be in the forefront of this effort for
7 Hawaii. And with that, sermon, I'll stop. Sorry.

8 Q. You don't need to apologize. But Mr.
9 Williams, if your premise is inaccurate,
10 specifically in regard to -- there may be
11 alternative technologies in the future, which is
12 what Mr. Steinberger testified, but as of July 31st,
13 2012, which is approximately four months from now,
14 five months from now, if there are no alternative
15 disposal methods for waste streams, in particular
16 something as I think would be upsetting to see
17 disposing of in any alternative methods, sewage
18 sludge -- if there is nothing available as of July
19 31st, 2012, wouldn't that be more of a concern for
20 the resort community and the community members?

21 A. Our concern is that there has been years
22 and years wasted without efforts towards finding an
23 alternative technology. There are certain things in
24 life where if you don't put your feet -- put
25 someone's feet to the fire, nothing will get done,

1 and I think this is one of those cases. Unless we
2 stick a deadline out there that is for real, that is
3 immovable, that it's not going to bend every time
4 someone doesn't try hard enough to get it done, it's
5 not going to get done. So for me to sit here and
6 say, you know -- well, I'll leave it at that.

7 Q. Are you aware that Hawaii now is fourth in
8 the nation as leading in landfill diversion?

9 A. We should be first.

10 Q. Well, the city that's first, which is San
11 Francisco, still is looking at landfills. So I'm
12 asking you -- you stated that ENV has not made
13 progress since 2003, I think.

14 A. That's correct.

15 Q. -- in landfill diversion. Did you hear
16 Mr. Steinberger testify regarding the additional
17 tonnage that's going to be handled at H-POWER?

18 A. Yes, I did.

19 Q. Do you consider that to be a landfill
20 diversion alternative?

21 A. Yes, I do, and I applaud their efforts. I
22 mean, I'm not gonna -- you know, it's -- I do. I do
23 appreciate those efforts that have been done. It's
24 just not enough.

25 Q. But that will divert approximately 900,000

1 tons of -- according to Mr. Steinberger, 900,000
2 tons of MSW from the landfill every year.

3 Based on that diversion, would you change
4 your testimony, would you think that actually the
5 City and ENV has made progress since 2003 in
6 landfill diversion?

7 A. Not enough.

8 Q. But they have made some --

9 A. We need the landfill to close as promised.
10 I'm sorry.

11 CHAIRWOMAN PINGREE: Dana, we're going to
12 take a short break. I have a commissioner who needs
13 to take a short break, as well.

14 MS. VIOLA: Okay.

15 CHAIRWOMAN PINGREE: We'll resume in ten
16 minutes.

17 (Discussion off the record.)

18 (Break taken.)

19 CHAIRWOMAN PINGREE: We're back on the
20 record. Mr. Williams, you're still under oath.

21 THE WITNESS: Yes.

22 CHAIRWOMAN PINGREE: Thank you.

23 ENV?

24 MS. VIOLA: Nothing further.

25 MR. SANDISON: Just a very brief

1 cross-exam.

2

3

E X A M I N A T I O N

4 BY MR. SANDISON:

5 Q. Mr. Williams, I believe you were asked
6 earlier whether you knew of alternatives for the
7 disposal of waste that won't be able to go to
8 H-POWER and also when the condition 14 goes into
9 effect at the end of July, and I believe that you
10 responded that there were -- that you thought there
11 are some alternatives, but that will be addressed by
12 another witness. Is that correct?

13 A. I did say that, yes.

14 Q. Who is that other witness?

15 A. His name escapes me right now, but I
16 believe he's coming up soon.

17 MR. SANDISON: Okay.

18

19

E X A M I N A T I O N

20 BY MS. VIOLA:

21 Q. I'm sorry. Would it be Dwight Miller?

22 A. Dwight Miller, that's it. Yes. Sorry
23 about that.

24 MS. VIOLA: Nothing further.

25 MR. SANDISON: Nothing further.

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E X A M I N A T I O N

BY MR. CHIPCHASE:

Q. Ken, you opened by -- as part of your opening summary you talked about some of the economic benefits of Ko Olina, some of the things that Ko Olina does. I don't want to dwell on those again, but I just wanted to make sure that I had the numbers straight and understood exactly what we were talking about.

If we look just in terms of the number of businesses at Ko Olina, ballpark, what are we talking about?

A. You know, I should have a number for you, but we have a hotel, a time share, a marina, a golf course, shops totalling about maybe six -- so that's ten. We have shops within the hotels themselves, like a Chuck's Steak House and other smaller businesses, jewelry shops and whatnot. So a couple dozen, at least, not to mention, you know, property owners who also treat it as a business, even though it's vacant. So many.

Q. Are these all big businesses? Are we talking about mom and pops, local businesses, too?

A. It runs the gamut. You'll have

1 international, like the Disney Corporation just
2 opened Aulani, all the way down to Ko Olina
3 Barbecue, run by a family who have a few chains of
4 plate lunch places, so everything in between.

5 Q. All of these businesses collectively,
6 about how many people do they employ? Ko Olina
7 Resorts in total, how many people work there?

8 A. The estimate is about 2,800.

9 Q. What will it be at full build-out?

10 A. Full build-out, I think I had said
11 earlier, through the economic study, of course, its
12 forecast is 8,000, 8,000 jobs, direct jobs.

13 Q. And Ko Olina is not just a business park.
14 I mean, people live there; right?

15 A. That's correct.

16 Q. How many people call Ko Olina home?

17 A. Let's see. Residential units, we have
18 probably 1,100. We have another resort community.
19 That's another 300; units, that is. And then you
20 have -- you also have time share owners, which can
21 run up pretty quickly based on their weekly
22 intervals. So thousands.

23 Q. So with the time shares and the hotel
24 resorts, no doubt Ko Olina is a visitor destination;
25 right?

1 A. That's correct.

2 Q. But it's not only visitors to the islands
3 that come to Ko Olina, is it?

4 A. No. As I said in my testimony, a lot of
5 local families come to -- you know, we have probably
6 the most extensive public access policy, with 200
7 parking stalls, so people do come to the beaches.
8 It is the community playground, ocean playground for
9 many of the Kapolei, some Waianae residents, as
10 well. They come from far and wide to enjoy our
11 private -- not private, but privately-funded
12 beaches.

13 Q. So that's the lagoons you're talking
14 about?

15 A. That's correct.

16 Q. In your testimony, you covered the spills
17 in December 2010 and January 2011, and you talked
18 about everything that you found -- or a lot of the
19 things that you found and we have the pictures.
20 Because of those spills, how long were the lagoons
21 closed?

22 A. I think it was around ten days.

23 Q. Who did the work to clean up those
24 lagoons?

25 A. We have a contracted company that we use

1 for our security. You may know these guys. They
2 were all from the surrounding communities. We call
3 them the Aloha Team, and they do everything from
4 security to being our resort ambassadors to cleaning
5 up the beaches in emergencies like that.

6 Q. Earlier, when you were talking with Ms.
7 Viola, you talked about the planning for Ko Olina.
8 She pointed you to, I think, paragraph seven of your
9 declaration, and in paragraph seven -- and we don't
10 need to dwell on it, but I'll read it very quickly.
11 In the early 1980s, when the City started siting the
12 landfill, the Ko Olina Resort area was called West
13 Beach and was underdeveloped. However, even at that
14 time the West Beach area was planned to be developed
15 as a resort.

16 Do you see that in your testimony?

17 A. Yes, I do.

18 Q. And then you provide citations and
19 references in support of that; right?

20 A. Correct.

21 Q. And Ms. Viola referenced you to a document
22 she marked A-35. Do you still have that with you?

23 A. Yes, I do.

24 Q. I believe she pointed you to page 4-23 of
25 the document. Do you remember that?

1 A. Yes.

2 Q. So she had you read the two paragraphs
3 under section 4.5, Solid Waste Handling and
4 Disposal, out of this Ewa Development Plan dated
5 August 1997, but revised May 2000. And you looked
6 at the sentence -- she had you read the sentence:
7 It will run out of capacity within ten to 25 years.

8 Do you see that?

9 A. Yes, I do.

10 Q. Do you understand the sentence, It will
11 run out of capacity to mean it will continue
12 operating for ten to 25 years?

13 A. No, I don't.

14 Q. Does anything under paragraph 4.5 talk
15 about a planned expansion of the landfill?

16 A. No, I don't -- no, it doesn't.

17 Q. Do you understand that -- what do you
18 understand a development plan to be?

19 A. It's a general guideline of plans for a
20 certain area that is revised on a regular basis.

21 Q. In fact, looked at and revised every five
22 years; isn't it?

23 A. Yeah. I think that is right.

24 Q. You were asked about what Mr. Stone may or
25 may not have known. Do you remember that line of

1 questions?

2 A. Yes, I do.

3 Q. Do you have any idea what representations
4 or assurances or promises Mr. Stone or any member of
5 that group may have been given?

6 A. No, I don't.

7 Q. Mr. Williams, I'd like you to look at
8 paragraph 16 of your declaration. During your
9 summary you talked about promises made and promises
10 broken, and I just wanted to focus in on this one
11 paragraph among many in there. You start off and
12 you say -- and I'll read it for you -- according to
13 Frank Doyle, then acting director of Environmental
14 Services, quote, We had originally thought that we
15 could have this landfill operate for another 15
16 years, and then as part of our discussion with the
17 community and in trying to take a look at their
18 concerns, it was reduced to a five-year operation.

19 Do you see that?

20 A. Yes, I do.

21 Q. You see that that's a transcript of
22 proceedings from the 2003 Land Use Commission;
23 right?

24 A. That's correct.

25 Q. So that's a promise Frank Doyle made to

1 the Land Use Commission in 2003?

2 A. That's correct.

3 Q. And that's among the promises you feel
4 were broken; right?

5 A. Yes, I do.

6 Q. Was that a promise by the City Council?

7 A. No.

8 Q. Was that a promise by the State?

9 A. No.

10 Q. In fact, it was a promise by the ENV's
11 then acting director; wasn't it?

12 A. That's correct.

13 Q. You're familiar with this proceeding, the
14 proceeding that we're in, and you understand that
15 the ENV has made an application; right?

16 A. Yes.

17 Q. -- an application to continue operating
18 the landfill beyond July 31st, 2012; right?

19 A. That's correct.

20 Q. Has the City's application asked for a
21 one-year extension?

22 A. No.

23 Q. Has it asked for a two-year extension?

24 A. No.

25 Q. Has it asked for an extension until they

1 can get the third boiler at H-POWER up and running?

2 A. That's correct.

3 Q. No. I'm sorry. They've only asked for an
4 extension until they can get the third boiler up and
5 running?

6 A. No. That's incorrect.

7 Q. Right. In fact, they've asked to delete
8 the condition entirely; right?

9 A. That is right.

10 MR. CHIPCHASE: Thank you.

11

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

13 BY MS. VIOLA:

14 Q. Mr. Williams, can you again refer to
15 Exhibit A-35? And that's, again, page 4-23, the
16 paragraph that you read into evidence. And it
17 continues on to page 4-24. And you stated just now
18 that it doesn't make any mention of expansion
19 related to Waimanalo Gulch.

20 A. Yes.

21 Q. Is that still your testimony, if you look
22 at the top -- the first paragraph on page 4-24?

23 A. Yes.

24 Q. Do you see one, two, three -- the fourth
25 line down says: The Waimanalo Gulch was identified

1 as having potential for expansion?

2 A. It has potential, yes.

3 Q. Isn't that an indication that it has
4 potential for expansion?

5 A. Yes.

6 Q. Yes. And when you say capacity into 2022,
7 couldn't you read both of those statements as the
8 landfill could be operating as long as until 2022
9 with expansion?

10 A. Could you restate that, please? I'm
11 sorry.

12 Q. Your testimony was that you didn't feel
13 that this development plan reference made to
14 Waimanalo Gulch would indicate that there was any
15 intention to use it through 2022. Is that correct?

16 A. Correct.

17 Q. So despite the fact that this states that
18 it would have a capacity to operate through 2022 and
19 that there is acknowledged the potential for
20 expansion, you don't think it would be unreasonable
21 to interpret that as potentially being able to
22 operate through 2022?

23 A. It would be.

24 MS. VIOLA: Thank you.

25 THE WITNESS: You're welcome.

1 MS. VIOLA: Nothing further.

2 MR. SANDISON: Nothing further.

3 CHAIRWOMAN PINGREE: Dana, I apologize if
4 I missed it, but Exhibit A-35, did you put that into
5 evidence?

6 MS. VIOLA: Thank you, Commissioner. The
7 City would like to move A-35 into evidence.

8 CHAIRWOMAN PINGREE: Thank you.

9 MR. CHIPCHASE: Nothing further.

10 CHAIRWOMAN PINGREE: Thank you, Mr.
11 Williams.

12 THE WITNESS: Thank you.

13 MR. CHIPCHASE: Intervenors will call Bev
14 Munson.

15 CHAIRWOMAN PINGREE: Thank you. Hi, Bev.
16 If you'd kindly raise your right hand.

17

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

22

23 MS. MUNSON: Good afternoon. Thank you
24 all for taking the time to hear what I have to share
25 with you today. For the record, my name is Beverly

1 Munson and my mailing address is 590 Farrington
2 Highway, number 524, Kapolei 96707. I'm coming to
3 you today as someone who is a direct neighbor of
4 Waimanalo Gulch Sanitary Landfill and I'm one
5 person, but I'm not just speaking on my own. I have
6 here signed -- we are a complex -- a condominium
7 complex directly across the street from Waimanalo
8 Gulch, directly across Farrington Highway. We have
9 116 units, and I have signatures from 87 of our
10 owners who have said, We, the undersigned owners and
11 residents of Ko Olina, urge the Honolulu decision
12 makers to close the current Waimanalo Gulch landfill
13 in July 2012 and designate a new landfill to be
14 opened outside of District 1.

15 So on behalf of all the people who have
16 signed this document and myself, I would like to
17 share with you what it is like to live directly
18 below Waimanalo Gulch landfill.

19 Now, one of the first things that you may
20 be thinking about is, Well, it was there when you
21 bought your house. If it's so bad, why did you buy
22 it? When we bought our home, the landfill was
23 scheduled to close in 2008, and so that meant, for
24 some of us, maybe five or four years, depending on
25 when our homes were finished, they would no longer

1 be a neighbor. And we felt that was reasonable,
2 that was a minor inconvenience. And then we moved
3 there and we learned how the landfill has actually
4 been operated.

5 The first morning I sat on my new lanai
6 for a cup of coffee to enjoy the ocean and the view,
7 what I saw was hundreds of plastics bags blowing
8 into the ocean, and I have to tell you I was
9 sickened and appalled. We live in a place where we
10 talk a lot about protecting the aina, protecting the
11 marine life, the environment, and plastic bags were
12 blowing down, and I thought, Well, this is pretty
13 bad, and I ran out and started trying to grab as
14 many as I could and neighbors ran out and several of
15 us were trying to gather these bags up and keep them
16 from going into the ocean. We thought, Well, this
17 must be an aberration, something must have happened,
18 and then it happened again and again and again, and
19 it didn't stop until we started going to City
20 Council meetings and complaining about these things.

21 Also, when we first moved in, the stench
22 from the landfill was so bad that many days when you
23 walked outside, your throat would actually clench up
24 and your eyes would water. Garbage wasn't being
25 covered up and it was blowing down onto the roads

1 and blowing into our property and the smell from the
2 decomposing garbage and the methane gas that was
3 being produced was actually causing some people with
4 respiratory ailments such as asthma and emphysema to
5 have to stay indoors with their windows closed. We
6 had two owners in the early days that went to the
7 emergency room because of their condition. It was
8 very, very bad. And again, it wasn't until we
9 started going to City Council meetings and any
10 public body that would listen to us that this issue
11 was resolved. That's the beginning of the history,
12 and it hasn't gotten any better.

13 I've now lived there eight years and we
14 continue -- as recently as last week, you know, I
15 got up in the morning, 5:00 in the morning, and
16 opened my window to enjoy the morning breeze, and
17 what did I smell? The dump. So we still have smell
18 problems.

19 We still have dust problems. If we do not
20 clean off our lanai -- when I say clean off our
21 lanai, hose it off every single day, we have piles
22 of dirt everywhere, and it's coming right down from
23 there. Now, you may say, Well, you have dirt and
24 dust as part of living in Hawaii. We all accept
25 that. That's part of our environment. But think

1 about this: How would you like to have a lanai
2 where every time you clean off your table and sweep
3 that dust away, you wonder what kind of carcinogens
4 are in that dirt and what you're exposing yourself
5 to?

6 And you might be thinking, Well, that's a
7 little dramatic, but in fact, the EPA cited the City
8 for not keeping records of carcinogens, and so
9 they've accepted the deposit of carcinogens, but
10 they haven't kept records of where they're deposited
11 so anybody can verify that they've been deposited
12 correctly. So now I'm wondering, Gosh, did I buy
13 into a Love Canal community, where I'm being exposed
14 to things that I'm going to down the road develop
15 illnesses simply because I'm being exposed to this
16 because the City and Waste Management haven't
17 followed the rules that are designed to protect the
18 public health and safety?

19 We have -- a couple of years ago -- let me
20 back up. 20 years ago, states like California
21 banned the dumping of electronic waste into
22 landfills. My husband and I, two years ago, went up
23 to the landfill and we had a TV we needed to get rid
24 of. We had full expectation that we were going to
25 be directed to take it to an electronic waste

1 facility where those things were deposited, and they
2 said, Just drive up this road and there will be guys
3 at the end of it and they'll take it out of your car
4 and take care of it for you. We drove up. They
5 came. They got it and they tossed our TV right into
6 the landfill and a bulldozer immediately smashed it
7 and buried it right in with the rest of the garbage.
8 So how many tons of electronic waste are up there
9 leaching who knows what kind of chemicals that then
10 is running off down into our property and the ocean?

11 We have -- we now know we have medical
12 waste that's been deposited up there and not
13 effectively contained, and it goes on and on and on.

14 So if we look at -- we just take the last
15 ten years and look at the repeated violations and
16 citations, plus the unknowns -- there's been no
17 citation that I'm aware of for dumping electronic
18 waste into the landfill. That's an outdated
19 practice. Other parts of America -- and we are a
20 part of America -- don't allow that. They're
21 protecting the people and the environment and the
22 future generations by making sure those things are
23 not in landfills. And we continue to engage in
24 outdated practices that create a public health and
25 safety issue that is unknown to us, but I believe is

1 going to be of serious magnitude.

2 I know that, having served on many boards
3 and committees, it is really difficult when you're
4 asked to make a decision, and it is especially
5 difficult when you don't have a firsthand experience
6 with it, and I -- to the best of my knowledge, none
7 of you live directly next to the landfill, so you
8 have to rely on what people tell you and you're
9 hearing testimony from various aspects of this
10 complex problem. What I would like to ask you to
11 do, as we go through my testimony this afternoon and
12 the cross-examination, to ask yourself, If I lived
13 across the street from this, would it be okay for
14 me? And if it's not okay for you, why should it be
15 okay for us?

16 So let's take a look at some of the
17 things. I think you've picked up by my comments,
18 but to be perfectly clear, I'm here on behalf of
19 myself and all of these people to object to the
20 City's request to lift condition 14 and to eliminate
21 a closure date, the 2012 closure date, and to ask
22 you to please deny their request.

23 I believe that the landfill, based on its
24 history as I know it, poses a present and future and
25 potential public health and safety hazard and that

1 there are issues that we need to consider, such as
2 we keep piling up garbage and carving out mountains
3 and adding this decomposing waste on top of it.

4 We've had citations on leachate. Are we creating
5 landslide issues from this? Those type of things.

6 I also -- a very important thing in this
7 consideration, I believe, is that the City has said
8 over and over and over again in the time that I've
9 been going to these hearings -- and I want to back
10 up a little bit and tell you that politically my
11 entire life I've been apathetic. I've voted and
12 that's about it. I have never gotten involved in a
13 community cause before. But when you see bags
14 flying into the ocean and you smell stench and you
15 see runoff and you see spills of dumping medical
16 waste, I can't stand by and not speak up. Because
17 how are you going to know what it's like if somebody
18 like me and these people don't come forward and try
19 to share our experience with you?

20 And what I have heard in the time that
21 I've been coming to these meetings since moving into
22 my home is over and over and over again the City
23 says, We need an extension, we need more time, and
24 then nothing happens. You hear no reports of any
25 progress. You see no definitive plans, timelines,

1 We're going to do this and this and this and this is
2 how long it's going to take and this is how much
3 it's going to cost. All that happens is that the
4 next time a deadline is getting close, they make an
5 appeal and say, We need more time, and decision
6 makers such as yourself are pushed up against the
7 wall in saying, Wow, if we don't approve this
8 extension, there's no place else to put the garbage,
9 so we're going to be the body that's going to end up
10 putting garbage on the streets, we can't do that,
11 we're going to have to give this extension.

12 And at some point in time somebody has to
13 hold the City accountable and say, You've had
14 multiple extensions, we've given you multiple times
15 to get the job done and you're not doing the job,
16 we're going to hold you accountable. At some point
17 in time, somebody needs to say no. I could say no
18 to the City, but I'm just one voter. I don't carry
19 a lot of weight. We depend on bodies such as this
20 one to hold people accountable. So I urge you to
21 think about that and to look back and say how many
22 times has the City asked for an extension because
23 they've needed more time, and in the time that's
24 been given them, what have they accomplished.

25 They will tell you, Oh, we expanded

1 H-POWER and we're expanding H-POWER and we tried to
2 ship garbage off-island, but, well, there was
3 problems with that. We started a recycling program.

4 Well, you know, our recycling program on
5 this island is abysmal in comparison to what the
6 rest of the country is doing. I was recently on a
7 business trip to San Francisco, and in hotels our
8 wastebasket had four slots so we could dispose. I
9 then stayed at a home in San Francisco and I said,
10 Do you guys have recycling, and they said, Yeah, put
11 it in that can, I said, But that's the garbage can.
12 And they said, That's right, we have a recycling
13 center that sorts all garbage and recycles
14 everything. And I said, What do you mean
15 everything? And they said, See that Chinese
16 take-out container, they have the technology to get
17 rid of that little wire handle and recycle that
18 cardboard so it doesn't go into the landfill.

19 So the technology is out there. Other
20 cities are doing this, and all we accomplish is
21 extending the landfill date and engaging in outdated
22 technology or outdated practices. Let's just throw
23 the TVs in there and, well, if we have a spill,
24 yeah, we'll probably have some electronic waste
25 going into the ocean, but, you know, those things

1 happen. Sometimes it rains real hard. It's just
2 not acceptable. It's just not acceptable.

3 So here's a good example to the point I
4 just made. When I -- in October, I was on a
5 business trip and the big announcement in California
6 in October was the city of San Jose -- the
7 population of San Jose is about 958,000, 959,000.
8 Our population is about the same. And the city of
9 San Jose has engaged a very specific plan with
10 timelines, how much it's going to cost to move to be
11 landfill-free. If they can do it -- if we have
12 other cities in America that are our size who are
13 struggling with money just like we are -- they don't
14 have any better revenue stream than we do -- why
15 can't we be looking at those things? But all I see
16 from the City is, We need another extension because
17 it takes time. Well, how much time do you need?

18 I don't know about all of your jobs, but
19 in my jobs, all of my jobs, if I didn't do my job
20 for seven or eight years or ten years, I would have
21 been fired. I would have been unemployed. And yet
22 we have people in City departments that have been
23 saying, I need more time, it's complex, it's hard,
24 it's expensive, and have not done anything but
25 prepare for the next extension plea for eight years.

1 I'm asking why are they still employed? If they
2 can't get the job done, then we need to get somebody
3 in here who can.

4 And by granting an extension, by granting
5 their request to remove that 2012 date, all you're
6 doing is enabling their refusal to move forward and
7 get the job done. The only time they're going to
8 step up to the plate and get it done is when they
9 have no more options. So extensions are not going
10 to help us. They're going to hurt us.

11 I'd like to talk a little bit about the
12 medical waste spill of last January. Before I begin
13 that -- I'm not a waste management expert. I'm just
14 someone who tries to be conscientious about what I
15 do with my garbage. I recycle. I try to reduce
16 waste.

17 But prior to moving here, I was the head
18 of human resources for two acute care hospitals in
19 California, part of the Sutter Health system.
20 Sutter Health runs Kahi Mohala out in Ewa Beach.
21 And as a senior manager in that organization, every
22 Monday morning we had senior management meetings.
23 As part of that meeting, we had infectious control
24 briefings. By sitting in on those briefings, I
25 learned a lot about medical waste disposal and I

1 learned a lot about infectious diseases.

2 And I need to tell you that needles, the
3 way -- if we saw all the needles and the urine cups
4 and the blood vials with blood still in them and,
5 oh, by the way, labels of patient names on them on
6 our beaches -- those weren't properly disposed of.
7 They should have been disposed of in a way that
8 there's no way they could have escaped.

9 And I attended the hearing, the emergency
10 hearing of the City Council right after the spill,
11 and one City Council member said, but isn't it true
12 that they're all sterilized before they go into the
13 landfill so they don't pose a public health threat?

14 Hopefully, they were sterilized. That's
15 what the providers that produce that medical waste
16 are supposed to do. But once they're deposited into
17 a landfill, they pick up other contaminants, and so
18 if you have a needle or you have one of those glass
19 blood vials that someone steps on on the beach,
20 maybe the contents inside has been sterilized and
21 hopefully any blood-borne pathogens that are in that
22 have been destroyed, because hopefully it's been
23 properly processed. But if there's been any hiccup
24 in the system, you may have something in that vial
25 that could be very lethal. And if not, you then

1 have the glass vial that's been exposed to all kinds
2 of bacteria while it's been in the landfill,
3 bringing it down to the people. Someone steps on
4 it, they can get flesh-eating bacterium, they can
5 get critical bacterial and viral infections that can
6 leave them incapacitated for life.

7 So one more situation -- and I need to
8 tell you, where that all washed down the first
9 point, the pipe it came out of is adjacent to my
10 property and it was right down there on -- we call
11 it Little Beach. That's not the official name, but
12 we call it Little Beach, right on Little Beach,
13 which is adjacent to our property.

14 So the City needs more time. They want --
15 I think they recognize by asking -- you notice they
16 haven't asked for an extension. They just want you
17 to eliminate the date of closure, and I think they
18 realize they're just going to keep coming back and
19 asking and that maybe people are getting tired of
20 listening to the extension request, so maybe we can
21 slip it by by just removing the closure date and
22 then we can just go on and on forever and ever.

23 But what's going to happen is all of us
24 who live near there, we're going to have to live
25 with the outfall. What is the City going to do when

1 there's another spill like we had last January --
2 and everybody says, Oh, it was a 40-year storm and
3 et cetera. If it happened once, it can happen
4 again. So what are we going to do when somebody
5 gets hurt?

6 Mayor Carlisle's opening comments after
7 that at that City Council meeting was, Let's put
8 this into perspective, no property was damaged or
9 lost and no lives were lost. I'm sorry. It was all
10 I could do to contain myself and be respectful.
11 It's probably a good thing that he left and it
12 wasn't appropriate for me to follow him out of the
13 room, but I wanted to give him a piece of my mind.
14 Because I'm sorry. We don't know who's been hurt.
15 We haven't had any reports. We got lucky. Next
16 time we might not get lucky.

17 So to summarize, I'm assuming that you're
18 on this commission because you want to make a
19 difference in our City. You want to have a
20 positive, productive, progressive impact, and you
21 have an opportunity to do that. If you deny the
22 City's request, you will be making a positive
23 difference, because you will be saying to the City,
24 You need to get accountable and you need to get with
25 the times and deal with this problem in a

1 sustainable way.

2 If you grant that request, you'll be
3 making a difference because you will be allowing
4 them to continue to push it off to someone else and
5 in the meantime the environment and the people are
6 impacted. Thank you very much.

7 MS. VIOLA: No questions.

8 MR. SANDISON: No questions.

9

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

11 BY MR. CHIPCHASE:

12 Q. I just wanted to clarify one thing you
13 said. You pointed to a document and you said, These
14 people, that's who you're talking about. Could you
15 just explain what document you're talking about?

16 A. Yes. The petition that was signed by
17 homeowners in our community, the 87 people --

18 And by the way, I want to tell you, one of
19 the reasons we did this petition is that -- I serve
20 on our board of directors and we had a discussion
21 about, Well, we believe we know what our homeowners
22 want, but we probably ought to ask them. And so we
23 put together this brief petition. We sent it out by
24 email to all our owners and we said, The board of
25 directors wants you to tell us how we -- do you want

1 us to represent you and say we want the landfill
2 closed or is it not an issue for you. If it is an
3 issue for you, please sign this petition and send it
4 back us to. This was in the height of the Christmas
5 season, when people are really busy, a lot of them
6 traveling and on vacation. And in three days we had
7 87 signatures back. I need to tell you we've never
8 gotten that kind of response on anything else we've
9 sent out to our condo association. So I think that
10 points out how important it is to them.

11 MR. CHIPCHASE: That's all. Thank you.

12 MR. SANDISON: No questions.

13 MS. VIOLA: No questions.

14 CHAIRWOMAN PINGREE: Commissioners, any
15 questions?

16 MS. MUNSON: Thank you very much for your
17 time and your efforts in struggling with this.

18 MR. CHIPCHASE: Intervenors call Cynthia
19 Rezentes.

20 MS. VIOLA: Excuse me, Commissioners. If
21 I could just interject at this point. I just want
22 to remind the commission that there's a prehearing
23 agreement that the witnesses would be restricted to
24 ten minutes on the summary. My witnesses, as well
25 as Mr. Sandison's witness, was contained by that

1 time and we're just looking to enforce the
2 provisions of the prehearing agreement, as well as
3 to expedite this proceeding as much as possible.

4 CHAIRWOMAN PINGREE: We'll be mindful.
5 Thank you.

6 MS. VIOLA: Thank you.

7 CHAIRWOMAN PINGREE: If you would kindly
8 raise your right hand, please.

9
10 CYNTHIA REZENTES,
11 called as a witness, being first duly sworn to tell
12 the truth, the whole truth and nothing but the
13 truth, was examined and deposed as follows:

14
15 MS. REZENTES: My name is Cynthia
16 Rezentes, and I am a long-time resident of the
17 Waianae coast, born and raised out there. I
18 actually am educated from there and went on to
19 further education and got my bachelor's and master's
20 of science degree in electrical engineering. So I
21 do have an engineering background, albeit it's
22 electrical and not civil in this particular case,
23 but I do believe that that has allowed me to be able
24 to understand some aspects of what's been going on
25 with this landfill.

1 I got involved with this landfill back in
2 the '98 and '99 time frame. At that point in time,
3 I had already been associated with the neighborhood
4 board system since approximately 1994. I was a
5 member of the Waianae Coast Neighborhood Board and
6 then I'm now currently on the Nanakuli-Mailii
7 Neighborhood Board. So I've had a long time to be
8 able to track this particular project in the
9 community.

10 In the '98, '99 time frame, when the City
11 first started talking about coming back to the
12 community to prepare us for an expansion of the
13 landfill for, at that time, another 15 years, one of
14 the things that became evident from my discussion
15 with a number of the people in the community was
16 that there had been an implied understanding that
17 once the original acreage had been filled that the
18 landfill was supposed to be closed. So that also
19 started me on trying to follow this.

20 In addition to my own experiences, as we
21 drive up and down Farrington Highway, at that point
22 in time the odors from the landfill were really bad.
23 You didn't want to drive past there with your
24 windows down. And at that time the management was
25 such that especially in windy weather when H-POWER

1 was down, you could essentially be guaranteed of a
2 hillside full of white plastic trash bags on the
3 trees, and you could actually see them in the air as
4 they were floating around. So there were a lot of
5 concerns about the landfill at that particular point
6 in time.

7 So the visual observations, the odor
8 observations, plus the information that was coming
9 out of the community that the landfill was supposed
10 to be closed after the initial filling of what had
11 been permitted in 1985, I believe -- and the first
12 trash was put in the landfill in '89 -- led me to
13 support, especially for the community, that the
14 landfill really should be closed. So it's been a
15 constant process over the years.

16 In the 2002 time frame, with all of the
17 going back and forth with draft supplemental EISs
18 and the community fighting it, we finally got a
19 statement from Frank Doyle, who at the time was
20 representing ENV, that in five years that we should
21 be able to close Waimanalo Gulch.

22 In fact, what they were stating at the
23 time was we probably wouldn't have need for
24 landfills after five years, and that translated, in
25 2003, to the Land Use Commission actually supporting

1 the City stating that five years was long enough to
2 be able to close Waimanalo Gulch to allow the
3 expansion of Waimanalo Gulch until 2008. Now, in
4 that expansion it included an additional footprint,
5 but from 2003 to 2008, it also included an
6 additional permit to go up another 30 feet in
7 height.

8 As we got closer to 2008 again, it came
9 up, Well, we still need to expand this and now we're
10 trying to look at a larger footprint, and that
11 essentially over the years led up to the last Land
12 Use Commission decision and order which was
13 essentially, Okay, July 2012, that's the date, and
14 that was predicated on the -- everyone's
15 understanding that the third boiler, the mass burn
16 unit at H-POWER, was supposed to be up around the
17 end of 2011 and to give approximately six months for
18 the shakedown and bringing it up to full speed by
19 the middle of 2012.

20 As you're aware, there were a couple of
21 things that happened in those time frames. One,
22 there were a number of violations filed against the
23 management of the landfill. That's where the
24 record-setting \$2.8 million came in that was
25 eventually reduced from a dollar standpoint, but it

1 was dollars plus so many things had to be mitigated,
2 which those costs were to be borne by the City or
3 Waste Management.

4 And also, subsequent to that -- and I'm
5 sure you've already covered this in a lot of detail
6 -- is that entire episode where we had that breach
7 December and January of the storm water out of the
8 facility and then all of the medical waste, also,
9 that ended up in our near shore waters.

10 So at this point in time, being with this
11 process and project through all of the iterations
12 and promises, and yes, we're going to do something,
13 yes, we're going to close it, yes, we only need so
14 much more time, I am still of the opinion that at
15 some point in time we've got to say enough is
16 enough.

17 We need to look at alternatives. We need
18 to come up with another plan. This project has had
19 management challenges from the beginning, continues
20 to have management challenges, and it's time to be
21 able to say that's it.

22 People will ask, Well, what happens if we,
23 say, allow the deadline to occur, so that after July
24 31st, 2012, quote, unquote, no more waste will be
25 accepted into Waimanalo Gulch? You know, in some

1 ways I think it would be a good heads up and an eye-
2 opener for everybody on island.

3 There is an out, and it may not be the
4 most pleasant way to go, but we could -- I mean,
5 there could always be declared an emergency. It's
6 not as if the Department of Health has not taken
7 over landfills in this state before, and that is
8 always an option. But it may put more pressure and
9 more onus on the City to take care of this waste
10 management problem and be able to look for
11 alternatives quicker than if we just continue
12 allowing this to limp along and every so many years
13 drag the community out to fight this again and fight
14 the City.

15 So, you know, again, in my mind we do need
16 to hold ENV and Waste Management accountable for
17 what has happened in the past and for all the
18 promises that have been made. Thank you.

19 CHAIRWOMAN PINGREE: Thank you.

20 MS. VIOLA: No questions.

21 MR. SANDISON: No questions.

22

23

24

25

E X A M I N A T I O N

1 BY MR. CHIPCHASE:

2 Q. Cynthia, I just wanted to point out one
3 paragraph on your declaration. Do you have it with
4 you?

5 A. Uh-huh.

6 Q. Paragraph 28 --

7 A. Uh-huh.

8 Q. -- you talk about, and you talked about
9 today, how we're faced with another request, we're
10 here again; right? And you pose in paragraph 28
11 three questions that you feel are important to
12 making the determination for the commission to
13 consider; right?

14 A. Yes.

15 Q. Why do you feel these three questions are
16 important?

17 A. Well, if you don't mind, I'll read the
18 three questions, unless everybody has it in front of
19 them. The questions I posed is: Has the City made
20 every effort to protect the community that suffers
21 so much from the landfill? Has the City made every
22 effort to find and develop another landfill site?
23 And has the City made every effort to reduce the
24 waste going into Waimanalo Gulch Sanitary Landfill
25 or looked at other alternative methods for waste

1 disposal?

2 In my mind, I don't believe so. And part
3 of that is because if you look at other island
4 countries or nations, they are also facing this same
5 situation. Japan is facing this same situation.
6 They're coming up with different methods in which to
7 attempt to address the solid waste, whether it's
8 plasma arc gasification, vitrification, whatever.
9 The other thing is, when you look at some of the
10 European nations, they're also faced with some of
11 the same problems, because they're small independent
12 countries and they're also land restricted, and they
13 need to be able to deal with that for their
14 population.

15 So I'm really wondering whether or not
16 we've really explored all of the alternatives. You
17 know, have we tried to find another site? There
18 were sites that were identified before, but because
19 we ended up selecting Waimanalo Gulch again for
20 expansion, nothing was done there.

21 And by the way, I would not necessarily
22 advocate for some of those sites that were selected
23 from the blue ribbon panel, even though I was on it,
24 just because of where they're at. But, you know,
25 again, are we doing enough to be able to figure out

1 a different way of handling our municipal solid
2 waste?

3 One of the latest things I've just learned
4 -- I went to the Waimanalo Gulch quarterly meeting
5 that the Land Use Commission has mandated needs to
6 occur so that the City can give the public an idea
7 of where we are, and one of the things I didn't
8 quite realize until this last meeting was the mass
9 burn unit which I thought was supposed to handle
10 everything that currently the two boilers at H-POWER
11 couldn't handle, will not be able to handle
12 everything. And I'm still waiting for all of those
13 items to be identified on their website, which says
14 exactly what even that will not be able to handle.

15 So again, you know, we don't even have our
16 hands wrapped around the situation yet in my mind as
17 far as what our resources are today, what we can or
18 cannot handle, at least precisely in my mind, and
19 then where are we going to go with the future.

20 Don't get me wrong. I don't live in a
21 vacuum. I know that there needs to be some kind of
22 a backup plan for disasters, but I'm looking at day
23 to day and I'm saying that I'm not sure that we've
24 done enough from a day-to-day perspective in being
25 able to handle our waste properly yet.

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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PAUL DUKE HOSPODAR,
called as a witness, being first duly sworn to tell
the truth, the whole truth and nothing but the
truth, was examined and deposed as follows:

MR. HOSPODAR: Hello, committee members.
My name is Paul Duke Hospodar. I'm the security
director and resort operations director for Ko Olina
Resort. I've been filling that capacity for the
last 14 years, also a resident of Ko Olina since
1998 and I still live there. But besides being a
resort director, I'm also a member of one of the
neighborhood AOA boards, so I'll speak from two
capacities, one being a resident and one being a
resort director.

I actually had a couple of pages of bullet
points, but I won't belabor you with the extensive
notes and probably just stay to the general concerns
of not only my community but, you know, the resort
as a whole. I know there are some pictures that
were handed out to you. I'll spend the majority of
the time speaking about the pictures, because like
they say, pictures do speak a thousand words. I
keep one picture with me, and that was day one of

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

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

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

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.

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 lasted 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

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

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

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

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

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. Rezentes' 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

1 and we'll take it up on March 7th when we meet
2 again.

3 MS. VIOLA: Thank you.
4

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

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

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 E X A M I N A T I O N

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

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.

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.

1 CHAIRWOMAN PINGREE: So we're scheduled
2 for March 7th and for March 14th if at all possible.
3 I know that our counsel, of course, will confirm
4 that with you.

5 MR. YOUNG: What about the 21st?

6 CHAIRWOMAN PINGREE: It doesn't sound like
7 we're going to need it.

8 MR. SANDISON: Schnitzer will be available
9 on March 14th.

10 MS. VIOLA: The City also will be
11 available for March 14th.

12 MR. CHIPCHASE: That's fine with us, as
13 well, Chair.

14 CHAIRWOMAN PINGREE: All right. Thank you
15 very much. Anything else? Otherwise, I'd like to
16 call for a motion --

17 MS. VIOLA: Chair, before we finish, I
18 don't believe Cynthia Rezentes was sworn in.

19 CHAIRWOMAN PINGREE: I believe I did.

20 MS. VIOLA: She was?

21 MR. CHIPCHASE: She was.

22 CHAIRWOMAN PINGREE: Thank you for asking.

23 MR. TOLENTINO: Motion to adjourn.

24 MR. YOUNG: Second.

25 CHAIRWOMAN PINGREE: Thank you. The

1 meeting is adjourned. Thank you very much.

2 (Meeting adjourned at 4:05 p.m.)

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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

