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

In the Matter of the Application of)
)
)
DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU)
)
)
To delete Condition No. 14)
of Special Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as follows:

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

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

APPEARANCES:

Planning Commission:

GAYLE PINGREE, Chairwoman
CORD D. ANDERSEN, Member
DANIEL S.M. YOUNG, Member
BEADIE DAWSON, Member
ARTHUR B. TOLENTINO, Member

For the Planning Commission:

WINSTON K.Q. WONG, ESQ.
Deputy Corporation Counsel
Department of the Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawaii 96813
Appearances (continued):
For the City and County of Honolulu, Department of Environmental Services:

DANA MIE OSHIRO VIOLA, ESQ.
ROBERT BRIAN BLACK, ESQ.
Deputies Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

For Ko Olina Community Association and Senator Maile Shimabukuro:

CALVERT GRAHAM CHIPCHASE, IV, ESQ.
CHRISTOPHER T. GOODIN, ESQ.
Cades Schutte
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

For Schnitzer Steel Hawaii Corp.:

IAN L. SANDISON, ESQ.
ARSIMA A. MULLER, ESQ.
Carlsmith Ball LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
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CONTESTED CASE HEARING

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 Arsim 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
Watanabe Ing.

CHAIRWOMAN PINGREE: And you are ready today?

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

CHAIRWOMAN PINGREE: You weren't informed of --

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

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

MR. KONDO: Yes. All right.

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

MR. CHIPCHASE: Yes.

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

Counsel, would you kindly identify yourself for the record?

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

CHAIRWOMAN PINGREE: Thank you.

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

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

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

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

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

Would you like me to identify all the different documents?

CHAIRWOMAN PINGREE: I don't think so.
MR. KONDO: It's identified in my objections.

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

CHAIRWOMAN PINGREE: Thank you.

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

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

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

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

MS. VIOLA: We will defer to Waste
Management.

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

MR. GOODIN: External.

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

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

What specific documents are you folks
looking for? There are no internal investigation
reports other than the firm EIL was retained to
conduct the investigation. They came in. They did
the investigation. They then attached exhibits to
the report. They then submitted a letter together
with that report, and I believe you have those
letters. Those were already identified in our
response and objection.

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

We also identified in paragraph four on
page three intervenors' Exhibit K-157 listed in
intervenors' December 20, 2011 second amended
exhibit list; the wellhead monitoring issue is
described and explained in the August 30, 2011
letter from Timothy E. Steinberger, Director of
applicant ENV to Ronald Ho of the Clean Air Branch,
Department of Health, State of Hawaii, and John
Brock of the EPA, and the attached August 29, 2011
semi-annual report January 1, 2011 through June 30,
2011 prepared by Environmental Information Logistics
relating to Waimanalo Gulch Sanitary Landfill
covered source permit number 0489-01C.

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

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

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

In paragraph seven at page four of our response and objections we submitted attached Exhibits 1, which is an October 3, 2011 letter of Joseph R. Whelan, general manager of Waste
Management, sent to Timothy Steinberger, director of applicant ENV, relating to the landfill gas management system investigation report and which transmitted intervenors' Exhibit K-160. I'd assume that letter they already have. I did not notice it as an exhibit in any of intervenors' exhibit list and so we attached it as an Exhibit 1 to our response. And we believe those are all the responsive documents.

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

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

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

Thank you, sir.

MR. KONDO: Thank you.
CHAIRWOMAN PINGREE: We'll take the next witness. Thank you.

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

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

CHAIRWOMAN PINGREE: Thank you.

Would you kindly raise your right hand?

KEN WILLIAMS,

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. WILLIAMS: Aloha. My name is Ken Williams and I am the general manager of the Ko Olina Community Association, also known as KOCA. I have worked at the resort since 1989, when I started as the senior project manager for then West Beach Estates. During the last 22 years, I have been able to witness the development and growth of the resort, as well as the landfill operations. On behalf of KOCA, I represent all Ko Olina Resort property
owners, hotels, time shares, residential projects
and commercial businesses, including retail centers
and shops, the golf course and marina.

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

A little landfill history: I don't mean
to regurgitate, but real quickly, the landfill was
permitted in 1987. It opened for operation in 1989
and it was supposed to close, the first time at
was expanded by 26 acres and the term was extended
by five years. Also in 2003, promises were made on
record that it would close in 2008, by Frank Doyle,
acting ENV director. Based on those sincere
promises the community stood down in reliance that
the City would hold to its word and close the
landfill. As we all know today, contrary to that
promise, the City ultimately filed for a new special
use permit to expand by an additional 93 acres
doubling the size of the landfill.

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

The ENV has been breaking promises and
kicking the can down the road for over a decade and
the community surrounding the landfill has suffered
for it. The landfill is harmful and unsafe. Many
complaint letters have been sent in this regard to
the City and Waste Management from businesses, condo
presidents, nearby property owners, landowners,
residents as well as from KOCA.

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

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

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

I'm going to start by saying that the
Waimanalo landfill -- and it may be a reiteration
for all of you -- is referred to as a canyon fill
landfill. In this case, it is a canyon fill
landfill on a mountainside, on the slopes of a
mountain, making the site a natural drainage way.
Canyon fill landfills rely on multiple berms. When
these berms fail, the canyon fill landfills uphill
of communities like ours are more dangerous than the
typical landfill, and that would be a landfill that
we would -- a puka in the ground where we'd throw
our opala in. Failure can be catastrophic, as
evidenced by the disasters.

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

Now, this brings me to cell E6, the
construction and operation of cell E6. Waste
Management constructed cell E6 and filled it with
garbage, including medical waste, before the
necessary drainage infrastructure was completed. Can you imagine; it would be like building your house and living in it before the drainage system was fully completed. This is what happened at cell E6 and this is what was a contributing factor leading to the contaminated runoff disaster from the landfill that polluted the leeward coastline last year from Kalaeloa all the way to Waianae.

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

There was no communication to Ko Olina from ENV or Waste Management. We found out something was terribly wrong when the landfill runoff was washing up on our beaches. The Ko Olina staff closed the lagoons and initiated cleanup. We couldn't wait for someone to tell us there was a
problem, because it was obvious. And we had no idea that it was happening. It was obvious that we had a problem caused by the landfill.

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

The City argues that the landfill is needed for the public's health and safety. What about the health and safety of those who were threatened from Ewa to Waianae by the contaminated runoff that washed up on our beaches? Is the health and safety of leeward coast residents not important?
This catastrophe in itself should be more than reason enough to deny this application.

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

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

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

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

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

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

In 2008, when the ENV was supposed to have identified and developed a new landfill site, the ENV was instead in the process of requesting an extension of the landfill. In 2009, the ENV was given a two-year extension to accept municipal solid waste. During this time, the two commissions directed ENV to exercise reasonable diligence in locating and developing a new site. The Land Use
Commission issued its order in 2009. The ENV waited for a full year to begin landfill site selection committee meetings in October 2010. The committee was to provide its recommendation to the mayor by August 2011. The date was pushed to October. It is now February 2012 and the committee has still not made its recommendation.

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

As for alternatives, ENV claimed to be working towards utilizing alternative technologies. The ENV is no closer to utilizing these types of new technologies today than it was in 2003. Instead of exercising reasonable diligence in developing new
landfill sites and new technologies, for the last eight years the ENV has continued to kick the can down the road and has continued to put decision makers like yourselves in a tenuous position, with your backs against the wall, unnecessary and unfair. The adverse effects of the landfill continue to get worse, not better.

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

CHAIRWOMAN PINGREE: Thank you, Mr. Williams.

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

CHAIRWOMAN PINGREE: Excuse me. I think we have to proceed with the ENV. Then when we're
done, we'll take questions.

MS. DAWSON: Thank you.

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

(Discussion off the record.)

EXAMINATION

BY MS. VIOLA:

Q. Good afternoon, Mr. Williams.

A. Good afternoon.

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

CHAIRWOMAN PINGREE: Dana, would you please speak into your mike or get a little closer?

Thank you.

BY MS. VIOLA:

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

A. By Mr. Stone or Mr. Horita?

Q. Mr. Stone.

A. Mr. Stone. In 1998.

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

Q. Okay. In 1998, what is -- let me put it this way: What was the progress in terms of development for Ko Olina from 1989 to 1998?
A. In terms of what was built in that time?
Q. Uh-huh.
A. All of the infrastructure. Several hundred million dollars worth of infrastructure, the Ko Olina Golf Course, the -- at the time, it was a hotel built by Pan Pacific hoteliers, Ihilani Resort and Spa. Let's see. The marina was built, as well as -- what's the other -- you're saying up until 1998? Excuse me. I'm sorry.
A. That would be it.
Q. Let me show you what I will mark as Exhibit A-34 for the City's exhibits.
Do you recognize this document?
A. No, I don't.
Q. What is the title of the document?
A. It says The Resort Group World Class Experience.
Q. Okay. Can you look at page one of the document, under Jeff R. Stone, Founder?
A. Page two?
Q. Yes. Page two, at the bottom, bottom
paragraph.
A. Okay.
Q. Do you agree with the representations made in that paragraph?
A. The first paragraph?
Q. Both paragraphs.
A. Give me some time to read it, please.
Q. Okay.
A. Yeah, I agree with this.
Q. For the record, could you read the second -- the last paragraph?
A. The whole thing?
Q. Yes.
A. Starting with, He acquired?
Q. Yes.
A. He required the stalled Ko Olina Resort project, dormant for more than ten years, in 1998 and he viewed it with innovation, energy and vitality. His vision of creating Oahu's first active family resort destination undoubtedly contributed to the success of businesses in the neighboring West Oahu region and throughout the state. Stone's infusion of attention and vigor into the area has strengthened community and visitor interest in the destination and revitalized the
island of Oahu as a multi-resort destination by
attracting numerous national and international
investors to Ko Olina, including Walt Disney
Resorts, Massachusetts Mutual life Insurance,
Marriott International, Brookfield Homes, the
Weinberg Foundation and Alexander and Baldwin.

Q. That's enough. Thank you. And it's your
testimony that you agree with that representation?
A. I think, you know, it definitely wasn't
stalled. I mean, it was stalled when he purchased
it, no question. I lived through those ten years
and we did have some development in the early '90s,
as you probably all recall, but with the way the
economy went, it took -- in about 1992, 1993, yes,
we did sit dormant until 1998.

Q. But it's accurate to say that since 1998
there has been significant development and
revitalization?
A. Yes, there has been, no question.

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

Q. I'm asking if you're aware of the 1981 and
1983 Ewa Development Plans, since it's referenced in your testimony.

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

Q. It is referenced in your written testimony.

A. Okay.

Q. So you are aware of those plans?

A. Yes.

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

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

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

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

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

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

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

MS. VIOLA: Before I do that, I'd like to
enter Exhibit A-34 into evidence.

CHAIRWOMAN PINGREE: Thank you.

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

BY MS. VIOLA:

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


Q. Could you turn to page 4-23 of the plan?

Section 4.5 is at the bottom of page 4-23. Do you
see that?

A. Yes.

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

A. Yes.

Q. Could you read that paragraph out loud?

A. Two major solid waste handling and
disposal facilities are located in Ewa. The H-POWER
plant at Campbell Industrial Park is operating at
maximum capacity, receiving over 600,000 tons of
solid waste each year. The Waimanalo Gulch Sanitary
Landfill, located between the proposed Makaiwa Hills
residential development and Kahe Valley is the major
active waste disposal site on Oahu. It will run out
of capacity within ten to 25 years. The solid waste
integrated management plan prepared by the Department of Public Works and adopted by the City Council in 1995 identified existing landfills which could be expanded and potential sites for developing new landfills to provide new capacity. The Waimanalo Gulch was identified as having potential for expansion. Ewa sites for new landfills identified in the plan included the mauka part of Kahe Valley, a site within the West Loch magazine blast zone and a site in east Kapolei.

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

A. That's what it says, yes.

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

A. Yes. That's what it says.

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

A. I'm not sure if we were, no.
Q. Well, you stated that as a -- I guess as a land manager or manager for Ko Olina --
A. In 1989, yes.
Q. So you wouldn't --
A. This is 1998 you're talking about now?
Q. Yes.
A. No.
Q. 1989, you're saying?
A. That's when I started.
Q. So only then would you consider it valuable to know about the Ewa Development Plan?
A. During that time when I was an actual development project manager, yes.
Q. So Ko Olina and Jeff Stone, since he was involved in developing that area, would you consider it a responsibility of his and developers working with him to be aware of the Ewa Development Plan that was currently in existence at the time that he purchased the property?
A. I can't speak for Jeff Stone.
Q. I guess as someone who was working for Ko Olina and under a reasonable interpretation of yours as a business person, would you consider it reasonable for them to be aware of the Ewa Development Plan?
A. I can't speak for the group that purchased the property.

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

A. 1997 is before 1998, so yes.

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

A. I can't speak for them.

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

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

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

A. The business interests as in --

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

A. That's correct.

Q. -- in profits for the state.

A. Yes.

Q. Is that what you said?

So is that more than just community interest? That has a knowledge of other than
community interest -- you would acknowledge that the community does have knowledge of the business potential for Ko Olina?

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

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

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

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

A. That's correct.

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

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

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

A. That's correct.
Q. That's part of your testimony?
A. That's correct.

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

A. Per my testimony, that's correct.

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

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

Q. What I'm asking you is essentially to make a reasonable conclusion based on your expertise as you've presented to this committee based on your being a representative of Ko Olina, based on your being a representative of the business interests, based on your opining as to whether or not the landfill would be sited presently, as to whether or not in 1998 when the resort is being developed, that they should have been aware of the Ewa Development
Plan that was an organizational document existing at that time.

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

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

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

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

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

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

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

A. Correct.

Q. Okay. You also state that the City
repeatedly went back on promises and that the City decided to close the landfill in 2004. That's correct; right?

A. That's correct.

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

CHAIRWOMAN PINGREE: Dana, you said A-11?


BY MS. VIOLA:

Q. Do you recognize that document?

A. No, I don't.

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

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

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

A. The City Council.

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

A. That's correct.

Q. What is the number of the resolution?

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

Q. Thank you. Can you read the first
paragraph on page one?

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

Q. Can you also read the fourth paragraph on
page two, and it starts, Be it further resolved?
A. Be it further resolved by the council and
in accordance with the conditions set forth by the
State Land Use Commission that the Waimanalo Gulch
site is selected as the site for the City's landfill
because --

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

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

A. Okay.

Q. So based on this resolution, it was the
City Council, not the City administration, who
picked Waimanalo Gulch as the new landfill site;
is that correct?
A. By this document, yes.

Q. And that it was pursuant to the direction
of the Land Use Commission, as stated in that
resolution, as well?

A. That's correct.

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

A. You're reading from where?

Q. Your testimony.

A. What number?

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

A. That's correct.

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

A. That's correct.

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

A. Page -- I'm sorry?

Q. 24.

A. 24.

Q. Paragraph 59. You claim that the landfill
threatens ongoing and future economic benefits; correct?

A. Yes, I do.

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

A. That's correct.

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

A. Yes, I was.

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

A. I don't quite recall that he said that.

Did he say that?

Q. Yes.

A. Okay.

Q. If the landfill is indeed closed by July 31st, 2012 and the City doesn't have the means to dispose of these waste streams, in particular sewage
sludge, where will this waste go?

A. You're asking me?

Q. Yes.

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

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

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

Q. If there are no places for the waste to go, wouldn't it be more of a concern for you if you're speaking on behalf of the community to be concerned about a deadline that would essentially mean there's no place to dispose of sewage sludge?
A. I do not believe that there is nowhere else for this trash to go or no other alternatives for it to be disposed. And based on that, I wouldn't be able to answer that question.

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

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

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

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

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

A. Our concern is that there has been years and years wasted without efforts towards finding an alternative technology. There are certain things in life where if you don't put your feet -- put someone's feet to the fire, nothing will get done,
and I think this is one of those cases. Unless we stick a deadline out there that is for real, that is immovable, that it's not going to bend every time someone doesn't try hard enough to get it done, it's not going to get done. So for me to sit here and say, you know -- well, I'll leave it at that.

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

A. We should be first.

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

A. That's correct.

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

A. Yes, I did.

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

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

Q. But that will divert approximately 900,000
tons of -- according to Mr. Steinberger, 900,000
tons of MSW from the landfill every year.

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

A. Not enough.

Q. But they have made some --

A. We need the landfill to close as promised.

I'm sorry.

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

MS. VIOLA: Okay.

CHAIRWOMAN PINGREE: We'll resume in ten
minutes.

(Discussion off the record.)

(Break taken.)

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

THE WITNESS: Yes.

CHAIRWOMAN PINGREE: Thank you.

ENV?

MS. VIOLA: Nothing further.

MR. SANDISON: Just a very brief
cross-exam.

EXAMINATION

BY MR. SANDISON:

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

A. I did say that, yes.

Q. Who is that other witness?

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

MR. SANDISON: Okay.

EXAMINATION

BY MS. VIOLA:

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

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

MS. VIOLA: Nothing further.

MR. SANDISON: Nothing further.
EXAMINATION

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

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

A. The estimate is about 2,800.

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

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

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

A. That's correct.

Q. How many people call Ko Olina home?

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

Q. So with the time shares and the hotel resorts, no doubt Ko Olina is a visitor destination; right?
A. That's correct.

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

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

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

A. That's correct.

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

A. I think it was around ten days.

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

A. We have a contracted company that we use
for our security. You may know these guys. They were all from the surrounding communities. We call them the Aloha Team, and they do everything from security to being our resort ambassadors to cleaning up the beaches in emergencies like that.

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

Do you see that in your testimony?

A. Yes, I do.

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

A. Correct.

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

A. Yes, I do.

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

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

A. Yes, I do.

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

A. No, I don't.

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

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

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

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

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

A. Yeah. I think that is right.

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

A. Yes, I do.

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

A. No, I don't.

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

A. Yes, I do.

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

A. That's correct.

Q. So that's a promise Frank Doyle made to
the Land Use Commission in 2003?

A. That's correct.

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

A. Yes, I do.

Q. Was that a promise by the City Council?

A. No.

Q. Was that a promise by the State?

A. No.

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

A. That's correct.

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

A. Yes.

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

A. That's correct.

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

A. No.

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

A. No.

Q. Has it asked for an extension until they
can get the third boiler at H-POWER up and running?

A. That's correct.

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

A. No. That's incorrect.

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

A. That is right.

MR. CHIPCHASE: Thank you.

EXAMINATION

BY MS. VIOLA:

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

A. Yes.

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

A. Yes.

Q. Do you see one, two, three -- the fourth line down says: The Waimanalo Gulch was identified
as having potential for expansion?

A. It has potential, yes.

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

A. Yes.

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

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

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

A. Correct.

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

A. It would be.

MS. VIOLA: Thank you.

THE WITNESS: You're welcome.
MS. VIOLA: Nothing further.
MR. SANDISON: Nothing further.
CHAIRWOMAN PINGREE: Dana, I apologize if I missed it, but Exhibit A-35, did you put that into evidence?
MS. VIOLA: Thank you, Commissioner. The City would like to move A-35 into evidence.
CHAIRWOMAN PINGREE: Thank you.
MR. CHIPCHASE: Nothing further.
CHAIRWOMAN PINGREE: Thank you, Mr. Williams.
THE WITNESS: Thank you.
MR. CHIPCHASE: Intervenors will call Bev Munson.
CHAIRWOMAN PINGREE: Thank you. Hi, Bev. If you'd kindly raise your right hand.

BEVERLY MUNSON,
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:

MS. MUNSON: Good afternoon. Thank you all for taking the time to hear what I have to share with you today. For the record, my name is Beverly
Munson and my mailing address is 590 Farrington Highway, number 524, Kapolei 96707. I'm coming to you today as someone who is a direct neighbor of Waimanalo Gulch Sanitary Landfill and I'm one person, but I'm not just speaking on my own. I have here signed -- we are a complex -- a condominium complex directly across the street from Waimanalo Gulch, directly across Farrington Highway. We have 116 units, and I have signatures from 87 of our owners who have said, We, the undersigned owners and residents of Ko Olina, urge the Honolulu decision makers to close the current Waimanalo Gulch landfill in July 2012 and designate a new landfill to be opened outside of District 1.

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

Now, one of the first things that you may be thinking about is, Well, it was there when you bought your house. If it's so bad, why did you buy it? When we bought our home, the landfill was scheduled to close in 2008, and so that meant, for some of us, maybe five or four years, depending on when our homes were finished, they would no longer
be a neighbor. And we felt that was reasonable, that was a minor inconvenience. And then we moved there and we learned how the landfill has actually been operated.

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

Also, when we first moved in, the stench from the landfill was so bad that many days when you walked outside, your throat would actually clench up and your eyes would water. Garbage wasn't being covered up and it was blowing down onto the roads.
and blowing into our property and the smell from the
decomposing garbage and the methane gas that was
being produced was actually causing some people with
respiratory ailments such as asthma and emphysema to
have to stay indoors with their windows closed. We
had two owners in the early days that went to the
emergency room because of their condition. It was
very, very bad. And again, it wasn't until we
started going to City Council meetings and any
public body that would listen to us that this issue
was resolved. That's the beginning of the history,
and it hasn't gotten any better.

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

We still have dust problems. If we do not
clean off our lanai -- when I say clean off our
lanai, hose it off every single day, we have piles
of dirt everywhere, and it's coming right down from
there. Now, you may say, Well, you have dirt and
dust as part of living in Hawaii. We all accept
that. That's part of our environment. But think
about this: How would you like to have a lanai where every time you clean off your table and sweep that dust away, you wonder what kind of carcinogens are in that dirt and what you're exposing yourself to?

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

We have -- a couple of years ago -- let me back up. 20 years ago, states like California banned the dumping of electronic waste into landfills. My husband and I, two years ago, went up to the landfill and we had a TV we needed to get rid of. We had full expectation that we were going to be directed to take it to an electronic waste
facility where those things were deposited, and they
said, Just drive up this road and there will be guys
at the end of it and they'll take it out of your car
and take care of it for you. We drove up. They
came. They got it and they tossed our TV right into
the landfill and a bulldozer immediately smashed it
and buried it right in with the rest of the garbage.
So how many tons of electronic waste are up there
leaching who knows what kind of chemicals that then
is running off down into our property and the ocean?

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

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

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

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

I believe that the landfill, based on its history as I know it, poses a present and future and potential public health and safety hazard and that
there are issues that we need to consider, such as
we keep piling up garbage and carving out mountains
and adding this decomposing waste on top of it.
We've had citations on leachate. Are we creating
landslide issues from this? Those type of things.

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

And what I have heard in the time that
I've been coming to these meetings since moving into
my home is over and over and over again the City
says, We need an extension, we need more time, and
then nothing happens. You hear no reports of any
progress. You see no definitive plans, timelines,
We're going to do this and this and this and this is how long it's going to take and this is how much it's going to cost. All that happens is that the next time a deadline is getting close, they make an appeal and say, We need more time, and decision makers such as yourself are pushed up against the wall in saying, Wow, if we don't approve this extension, there's no place else to put the garbage, so we're going to be the body that's going to end up putting garbage on the streets, we can't do that, we're going to have to give this extension.

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

They will tell you, Oh, we expanded
H-POWER and we're expanding H-POWER and we tried to
ship garbage off-island, but, well, there was
problems with that. We started a recycling program.

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

So the technology is out there. Other
cities are doing this, and all we accomplish is
extending the landfill date and engaging in outdated
technology or outdated practices. Let's just throw
the TVs in there and, well, if we have a spill,
yeah, we'll probably have some electronic waste
going into the ocean, but, you know, those things
happen. Sometimes it rains real hard. It's just
not acceptable. It's just not acceptable.

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

I don't know about all of your jobs, but
in my jobs, all of my jobs, if I didn't do my job
for seven or eight years or ten years, I would have
been fired. I would have been unemployed. And yet
we have people in City departments that have been
saying, I need more time, it's complex, it's hard,
it's expensive, and have not done anything but
prepare for the next extension plea for eight years.
I'm asking why are they still employed? If they can't get the job done, then we need to get somebody in here who can.

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

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

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

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

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

Hopefully, they were sterilized. That's what the providers that produce that medical waste are supposed to do. But once they're deposited into a landfill, they pick up other contaminants, and so if you have a needle or you have one of those glass blood vials that someone steps on on the beach, maybe the contents inside has been sterilized and hopefully any blood-borne pathogens that are in that have been destroyed, because hopefully it's been properly processed. But if there's been any hiccup in the system, you may have something in that vial that could be very lethal. And if not, you then
have the glass vial that's been exposed to all kinds of bacteria while it's been in the landfill, bringing it down to the people. Someone steps on it, they can get flesh-eating bacterium, they can get critical bacterial and viral infections that can leave them incapacitated for life.

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

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

But what's going to happen is all of us who live near there, we're going to have to live with the outfall. What is the City going to do when
there's another spill like we had last January --
and everybody says, Oh, it was a 40-year storm and
et cetera. If it happened once, it can happen
again. So what are we going to do when somebody
gets hurt?

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

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

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sustainable way.

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

    MS. VIOLA: No questions.

    MR. SANDISON: No questions.

    EXAMINATION

    BY MR. CHIPCHASE:

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

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

    And by the way, I want to tell you, one of
the reasons we did this petition is that -- I serve
on our board of directors and we had a discussion
about, Well, we believe we know what our homeowners
want, but we probably ought to ask them. And so we
put together this brief petition. We sent it out by
email to all our owners and we said, The board of
directors wants you to tell us how we -- do you want
us to represent you and say we want the landfill closed or is it not an issue for you. If it is an issue for you, please sign this petition and send it back to us. This was in the height of the Christmas season, when people are really busy, a lot of them traveling and on vacation. And in three days we had 87 signatures back. I need to tell you we've never gotten that kind of response on anything else we've sent out to our condo association. So I think that points out how important it is to them.

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

MR. SANDISON: No questions.

MS. VIOLA: No questions.

CHAIRWOMAN PINGREE: Commissioners, any questions?

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

MR. CHIPCHASE: Intervenors call Cynthia Rezentes.

MS. VIOLA: Excuse me, Commissioners. If I could just interject at this point. I just want to remind the commission that there's a prehearing agreement that the witnesses would be restricted to ten minutes on the summary. My witnesses, as well as Mr. Sandison's witness, was contained by that
time and we're just looking to enforce the
provisions of the prehearing agreement, as well as
to expedite this proceeding as much as possible.

CHAIRWOMAN PINGREE: We'll be mindful.

Thank you.

MS. VIOLA: Thank you.

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

CYNTHIA REZENTES,
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:

MS. REZENTES: My name is Cynthia
Rezentes, and I am a long-time resident of the
Waianae coast, born and raised out there. I
actually am educated from there and went on to
further education and got my bachelor's and master's
of science degree in electrical engineering. So I
do have an engineering background, albeit it's
electrical and not civil in this particular case,
but I do believe that that has allowed me to be able
to understand some aspects of what's been going on
with this landfill.
I got involved with this landfill back in the '98 and '99 time frame. At that point in time, I had already been associated with the neighborhood board system since approximately 1994. I was a member of the Waianae Coast Neighborhood Board and then I'm now currently on the Nanakuli-Maili Neighborhood Board. So I've had a long time to be able to track this particular project in the community.

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

In addition to my own experiences, as we drive up and down Farrington Highway, at that point in time the odors from the landfill were really bad. You didn't want to drive past there with your windows down. And at that time the management was such that especially in windy weather when H-POWER
was down, you could essentially be guaranteed of a hillside full of white plastic trash bags on the trees, and you could actually see them in the air as they were floating around. So there were a lot of concerns about the landfill at that particular point in time.

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

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

In fact, what they were stating at the time was we probably wouldn't have need for landfills after five years, and that translated, in 2003, to the Land Use Commission actually supporting
the City stating that five years was long enough to be able to close Waimanalo Gulch to allow the expansion of Waimanalo Gulch until 2008. Now, in that expansion it included an additional footprint, but from 2003 to 2008, it also included an additional permit to go up another 30 feet in height.

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

As you're aware, there were a couple of things that happened in those time frames. One, there were a number of violations filed against the management of the landfill. That's where the record-setting $2.8 million came in that was eventually reduced from a dollar standpoint, but it
was dollars plus so many things had to be mitigated, which those costs were to be borne by the City or Waste Management.

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

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

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

People will ask, Well, what happens if we, say, allow the deadline to occur, so that after July 31st, 2012, quote, unquote, no more waste will be accepted into Waimanalo Gulch? You know, in some
ways I think it would be a good heads up and an eye-opener for everybody on island.

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

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

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: No questions.

MR. SANDISON: No questions.

EXAMINATION
BY MR. CHIPCHASE:

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

A. Uh-huh.

Q. Paragraph 28 --

A. Uh-huh.

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

A. Yes.

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

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

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

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

And by the way, I would not necessarily advocate for some of those sites that were selected from the blue ribbon panel, even though I was on it, just because of where they're at. But, you know, again, are we doing enough to be able to figure out
a different way of handling our municipal solid waste?

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

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

Don't get me wrong. I don't live in a vacuum. I know that there needs to be some kind of a backup plan for disasters, but I'm looking at day to day and I'm saying that I'm not sure that we've done enough from a day-to-day perspective in being able to handle our waste properly yet.
MR. CHIPCHASE: Nothing further.

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: Nothing.

CHAIRWOMAN PINGREE: Any questions from the commissioners?

Thank you very much.

MR. CHIPCHASE: Chair, if we could take ten minutes and make sure my last witness for today is ready to go --

CHAIRWOMAN PINGREE: No problem.

MR. CHIPCHASE: Thank you.

(Break taken.)

CHAIRWOMAN PINGREE: We're back on the record.

MR. CHIPCHASE: Chair, the intervenors call Paul Duke Hospodar.

MR. HOSPODAR: Good afternoon, distinguished members of this committee. I consider it a privilege to be here to speak before you. My name --

MR. CHIPCHASE: She has to swear you in first.

CHAIRWOMAN PINGREE: Pardon me. I apologize. I didn't swear you in. I'm very sorry. If you'd raise your right hand.
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 AOAO 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
the event when we found the needles from the breach
of the Waimanalo Gulch, so that's what I'll keep
before me instead of the bullet points.

As a resident, you know, it's not hard to
find other residents indignant with the whole
process. We don't want to say that the political
process is being perverted by considering the
removal of condition 14, but when we look at this
condition to be modified, altered or removed,
condition 14, to a resident and to the community, is
almost the heart of this whole agreement. Without
it, the rest of the conditions really mean nothing
to us. That was our light at the end of the tunnel,
to say it in short words. It gave us some reason to
believe that eventually the impact would be shared
throughout other communities.

In 1999, when I first became aware of the
gulch, the landfill, I didn't think too much of it.
I said, you know, it's probably pretty good
planning. I mean, we live on an island. This is an
unnecessary impact. It's prehistoric technology,
but we each need to bear the burden of these kind of
impacts. So I said, you know, good planning on
behalf of the City.

2003, as an extension was given, I said by
the time Waimanalo Gulch will be moving on, our
resort would be building out, so it gave -- it did
give us some sense of relief and to say, Okay, hey,
listen, we bore our part of the burden, Kailua
did, other places have shared in landfills. It's
our time, so we accepted that.

By removal of condition 14, it really --
it almost seems that these processes are
pre-determined sequences of events and outcomes. It
really feels that the words and the commitments made
inside these provisions have any weight (sic). And
that's on the resident side.

It's just -- it's hard to see after 20
plus years that there's no place to put a landfill.
I mean, we're in the outer edges of space and we
can't figure out how to build a landfill somewhere
else. And that's just -- you know, sometimes it's
concerning.

As a resort director, my main focus is
with these pictures, and I don't want to say myopic
-- maybe a lack of proper planning on an emergency
response action plan. To be at the front lines of
this clean-up and hear -- I believe it was Ken
Williams who called me one day and said he heard on
the news that the calvary was coming, that, you
know, the people who were responsible for this
breach were gonna send help. For ten days we got no
help. My managers did report that there was some, I
guess you could say, temporary help type of
individuals sent to the breach site, but other than
that, for ten days we were left alone, hoping that
someone would come down and at least give us some
assistance.

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

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

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

So from that I'll just segue into the
pictures, because, like I said, the pictures says it
all. When I got the original pictures that I have
in front of me via my phone, I immediately called
for a shutdown of the lagoons. All I had to do was
see one needle; never mind the stacks of needles
that my guys were sending me via email.
By 8:00, 8:10, 8:15, I was down on site.

When I seen the massive amounts of debris, it was, to me, my Exxon Valdez. I said, My God, I said, this is incredible, how can this happen in this day and time. So I immediately called our construction team just to remove six inches of sand. One needle was one too many. Hundreds of needles, bladders, vials, bags full of medical waste was just beyond comprehension. I just said, Just remove the sand, let's not take any risk here, we can always find new sand and replace it.

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

In my testimony, I noticed lasted night when I was going through it, I had mentioned we had four 20-foot containers. They were actually 40-foot containers. That's one of my employees, Kimo, standing on top of that trash. We filled four of those with debris. Kind of an ironic thing is that when we had to dump it, Waimanalo Gulch actually
charged us for dumping the waste. I've got those receipts in here. So that was kind of an insult to pain -- or pain to insult, but --

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

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

I live on property. I've got four kids. My kids play on these beaches. I have a picture in
here -- I had a representative from one of the hotels come and say, Would you let your kids play on this beach? I actually brought my dog and my cherished son down there just to run the beaches and say, you know, I'm confident in my efforts to clean up. But, you know, beyond that, I don't know what else the ocean can bring in to us.

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

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

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

And again, you know, I go back to the condition 14 authorization, modification, removal -- it's the heart of this document. It's what we believed in. It's what we felt that was going to
carry us through these years of, you know, real
estate downfall, and hopefully, you know, that being
re-established --

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

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

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

I was just talking to a gal outside about
the Pro Bowl. I seen Waste Management had a great
plug there during the Pro Bowl. I said, Hey, you
know, plug us with some beautification, put up some
sound walls, put those monies that a million dollar
commercial cost you into the community, I said, and
maybe you'll be fighting for a landfill in the
future. Who knows?

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

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

MS. VIOLA: No questions. Thank you.

MR. SANDISON: No questions.

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

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

CHAIRWOMAN PINGREE: Excuse me.

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

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

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

CHAIRWOMAN PINGREE: Thank you, Dana.

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

MR. CHIPCHASE: It is.

CHAIRWOMAN PINGREE: And I'm going to go back and review the pre-planning conference minutes
and we'll take it up on March 7th when we meet again.

MS. VIOLA: Thank you.

EXAMINATION

BY MR. CHIPCHASE:

Q. Duke, I just wanted to understand, when did you first become aware that trash had washed out of the landfill?

A. That would have been approximately 6:30 on the 13th.

Q. Did anyone from the City tell you that trash had washed out of the landfill? In other words, was Ko Olina notified by the City?

A. I can't speak for Ko Olina. I know my department or myself was not contacted by anybody from the City or -- we actually ran into people from the Department of Health and the EPA. We all met up at the breach site that led to the ocean.

Q. Just so it was clear -- you oversaw the clean-up for Ko Olina?

A. For the ten days of complete clean up, I oversaw it, correct.

Q. Other than the reference you made to noticing some temporary workers, did you receive any
help in that clean-up effort from the City?

A. Zero help.

MR. CHIPCHASE: Thank you.

CHAIRWOMAN PINGREE: Is that it?

MR. CHIPCHASE: That's it.

CHAIRWOMAN PINGREE: Any questions, commissioners?

MS. DAWSON: I have one question.

MR. HOSPODAR: Yes, ma'am.

EXAMINATION

BY MS. DAWSON:

Q. Has any summary been made of the cost in labor and materials and so forth to clean up this whole mess?

A. Yes, ma'am. We did submit a complete inventory of our staff, our hours and our equipment to Ko Olina Community Association.

Q. What was the overall cost?

A. I'm going to guess. I was thinking it was around -- on our side, about $28,000, about 28,000 for the ten days.

Q. Does that include the sand?

A. That doesn't include the replenishing of the sand. The replenishing of the sand, because
we're waiting on a Corps of Engineers permit, we
couldn't do that at that time. So we're waiting on
that permit to get the sand back in.

Q. So it's not complete yet?
A. No. It's not complete, ma'am, no.

CHAIRWOMAN PINGREE: Any other questions?
I have just something for the record.

MR. HOSPODAR: Yes, ma'am.

CHAIRWOMAN PINGREE: My notes say that
when you introduced yourself you introduced yourself
as Paul.

MR. HOSPODAR: Yes.

CHAIRWOMAN PINGREE: However, your
declaration states Duke.

MR. CHIPCHASE: Paul Duke.

CHAIRWOMAN PINGREE: Okay. It's Paul
Duke?

MR. HOSPODAR: Yes. Everyone -- they'll
say Paul. I'll say, Paul who?

CHAIRWOMAN PINGREE: One and the same
then?

MR. HOSPODAR: Yes, ma'am.

CHAIRWOMAN PINGREE: Thank you very much.

MR. HOSPODAR: Thank you. Thank you for
your time.
CHAIRWOMAN PINGREE: That's the last witness for today. For housekeeping duties, our next meeting is March 7th, and that March 7th meeting is going to run from 9:00 to 4:30. Typically, we'll end at about 4:15 so that the next party can come in for a 4:30 meeting. I need to know, please, from counsel how much more time we need after the 7th.

MR. CHIPCHASE: I believe our next hearing date, Chair, after the 7th is the 8th, and that's a half day. Is that right?

CHAIRWOMAN PINGREE: No. The last one is March 7th that we had agreed upon.

MR. CHIPCHASE: I'm sorry. I thought we had also agreed on March 8th. My mistake.

CHAIRWOMAN PINGREE: That's fine.

MR. CHIPCHASE: I wouldn't think more than a half a day.

CHAIRWOMAN PINGREE: All right. I'd like to propose March 14th. I'm going to pencil for all day.

MS. VIOLA: Thank you.

CHAIRWOMAN PINGREE: That will be from nine to four.

MS. VIOLA: Nine to 4:00.
CHAIRWOMAN PINGREE: So we're scheduled for March 7th and for March 14th if at all possible. I know that our counsel, of course, will confirm that with you.

MR. YOUNG: What about the 21st?

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

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

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

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

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

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

CHAIRWOMAN PINGREE: I believe I did.

MS. VIOLA: She was?

MR. CHIPCHASE: She was.

CHAIRWOMAN PINGREE: Thank you for asking.

MR. TOLENTINO: Motion to adjourn.

MR. YOUNG: Second.

CHAIRWOMAN PINGREE: Thank you. The
meeting is adjourned. Thank you very much.

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

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