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 9:05 a.m., on April 4, 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
JAMES C. PACOPAC, Member

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CONTESTED CASE HEARING

CHAIRWOMAN PINGREE: Good morning. Call the meeting to order. Today is day six of the contested case hearing Ewa-State Special Use Permit Amendment Application - 2008/SUP-2, Waimanalo Gulch Sanitary Landfill.

Identification of counsel for the record, please?

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

MR. SANDISON: Good morning. Ian Sandison, and with me is Arsima Muller on behalf of Schnitzer Steel Hawaii Corporation.

MR. CHIPCHASE: Cal Chipchase and Chris Goodin for the Ko Olina Community Association and Maile Shimabukuro, and with us today is Ken Williams for the association.

CHAIRWOMAN PINGREE: Thank you very much. As I recall, we left off with KOCA.

MR. CHIPCHASE: That's right, Chair. At this point, Chair, the counsel have discussed the order of witnesses, because the City and Schnitzer were allowed to do rebuttal witnesses and my next-in-order witnesses are not available until this afternoon. We've agreed, with your leave, to move
on to the City's rebuttal case -- actually,
Schnitzer's rebuttal case first, then the City's
rebuttal case, and then I'll call my remaining
witnesses this afternoon.

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: I just wanted to clarify in
terms of timing. The City was going to call first
-- there are some scheduling difficulties with the
witnesses' availability.

MS. DAWSON: I can't hear. Bring your
microphone closer.

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: -- some difficulties with
scheduling in terms of witness availability on
behalf of the City. Janice Marsters will not be
able to be here by 9:30. She can get here, I think,
at the earliest by 9:30. She's coming from another
meeting. So if that becomes an issue, we might have
to take a break for Janice to get here. Gary Gill
is also coming in between commitments, so he will
either be here, depending on how long Ms. Marsters
testifies, either at 11:00 or possibly 3:30 if we
need to have him come in the afternoon.

CHAIRWOMAN PINGREE: Excuse me? 11:00
or --
MS. VIOLA: 11:00 or 3:30.
And Mr. Steinberger, the director, has a
commitment to testify before Council this afternoon.
He was scheduled to appear this afternoon. He's
attempting to get someone to fill in for him this
afternoon, but if he's not able to do that, he will
have to testify next week, on the 11th. But we're
trying to get another individual to testify -- to
appear before Council on his behalf so he can make
the afternoon session.

CHAIRWOMAN PINGREE: Are there any
objections?

MR. CHIPCHASE: None.

MR. SANDISON: None.

CHAIRWOMAN PINGREE: All right.

MR. SANDISON: Schnitzer is ready to

proceed.

CHAIRWOMAN PINGREE: Thank you.

MR. SANDISON: We'd like to call one
rebuttal witness, Tom Zelenka.

CHAIRWOMAN PINGREE: Before I swear in the
witness, I just want to keep the scope of the
testimony narrow, so to speak.

What was the purpose of this rebuttal
witness?
MR. SANDISON: This is a rebuttal witness. The purpose of this witness is to rebut the testimony of Ko Olina's expert, Dwight Miller, on March 7th, and specifically his statement that a facility like H-POWER can take automobile shredder residue.

CHAIRWOMAN PINGREE: Thank very much. Would you kindly raise your right hand?

TOM ZELENKA, 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:

EXAMINATION

BY MR. SANDISON:

Q. Could you please begin by stating your name for the record?


Q. What is your occupation, Mr. Zelenka?

A. I'm the vice president of environmental affairs for Schnitzer Steel Industries, Inc., the corporate level.

Q. How long have you been in that position?
A. 24 years.

Q. During that time, have you been in charge of environmental affairs the entire time?

A. Yes.

Q. Could you briefly describe what your work entails?

A. Sure. Just at the corporate level, overseeing the entire corporate environmental policy for the company. We have three business divisions and I'm overseeing all of those, including the scrap metal recycling division, so that includes overseeing the compliance, the permitting, if we're engaged in studies and the like -- virtually all aspects of dealing with environmental matters for the company.

Q. Could you briefly describe Schnitzer's operations?

A. Sure. In terms of the scrap metal division, which I think is the one of interest here, we currently have 56 facilities, scrap metal recycling and processing facilities, in about 14 states, both east coast, west coast, Alaska, Hawaii, Puerto Rico, as well as two Canadian provinces.

   Included in that is the full array of processing recycling type of facilities, including
nine shredders, seven of which are on or adjacent to marine terminals associated with export, for example, like the one in Hawaii.

Q. So the Hawaii operation is one of those shredders; right?

A. Correct.

Q. How much shredder residue does Schnitzer generate in the aggregate on a nationwide basis?

A. The last couple of years, volumes have gone up and down, but I would say on a normalized basis we're looking at about a million tons of shredder residue annually across the country, in terms of all the facilities. For the Hawaiian operation, I believe we're about 20,000 tons.

MEMBER DAWSON: Is that per month?

THE WITNESS: No. That's annually.

BY MR. SANDISON:

Q. Are you the corporate officer who is responsible for evaluating disposal or reuse options for shredder residue?

A. Yes, I am. Obviously, it's a very complex issue. It involves many parties, not only the environmental team, but also legal, finance, logistics, operations, and our R and D folks. So it's a team approach, but definitely in terms of the
environmental portion, I am the lead person on the
environment.

Q. In the course of that evaluation, have you
evaluated the possibility of disposing of shredder
residue at municipal waste-to-energy facilities
throughout the United States?

A. Yes, I have.

Q. What has been your experience with that
evaluation generally on municipal waste-to-energy
facilities and their acceptance of shredder residue?

A. There are a variety of -- the short answer
is there are a variety of technical and regulatory
issues that have precluded us from being able to
utilize shredder residue at waste-to-energy
facilities to date.

Q. Are you aware of any waste-to-energy
facility in the United States that accepts shredder
residue as a feedstock?

A. There are none that are at a pilot or
commercial basis. I think if you look in the
literature, there are many technologies, there are
many different types of vendors who are proposing
things in a bench scale basis. Those have gone
through a variety of generations of review as
technology improves. You know, one part doesn't
work, you go back and you do it again. But again, there are a variety of technical and regulatory issues that have precluded it moving forward to a commercial basis.

Q. Based on your personal investigation of waste-to-energy facilities throughout the United States, is it fair to say that you are not -- there are none that accept shredder residue?

A. Correct.

Q. Have you had specific conversations with Covanta, the company that operates the H-POWER facility, regarding shredder residue?

A. Yes, I have.

Q. Could you briefly relate those conversations?

A. We've had a series of conversations going back in time, but most recently, several weeks ago, I -- we touched base with the local Covanta people, and again they confirmed their view that for technical and regulatory reasons, they would not be able to accept our material as a feedstock.

Q. So just to be clear, you, on behalf of Schnitzer, have confirmed with the operator of H-POWER that it will not accept shredder residue even with the third boiler in operation?
A. Correct.

MR. SANDISON: I have no further questions.

MS. VIOLA: No questions.

EXAMINATION

BY MR. GOODIN:

Q. Good morning, Mr. Zelenka. My name is Chris Goodin and I represent Ko Olina Community Association and Senator Maile Shimabukuro.

You mentioned that you are in charge of environmental affairs with Schnitzer; is that correct?

A. Correct.

Q. Are you aware that Schnitzer organizes Aloha Aina Recycling events?

A. Yes, I am.

Q. At these events various types of e-waste are accepted free of charge to the public; is that correct?

A. Over time they have continued to expand on the variety of materials that have been available for recycling and recovery, and that is based upon the availability of additional vendors coming in, providing services to the community to do that.
Q. I'd like to show you a new exhibit that's been marked K227. I'm handing you a copy. I've handed you a document. This is Exhibit K227. This document is entitled Aloha Aina Recycling 2012 Schedule, and it lists various dates for this particular event, and at the bottom left-hand corner it says Schnitzer Steel Hawaii Corporation, and if you turn to the second page, there's a number of logos identifying sponsors, and about midway down it reads: Examples of items accepted free of charge at Aloha Aina Recycling events, and it lists a number of types of items that are accepted free of charge.

Just to maybe go over a few, there's cell phones, printer cartridges in the first column. Then in the second column we have batteries, all kinds, computers, printers, scanners, and then one TV per car load.

So these are the types of e-waste that Schnitzer accepts at this Aloha Aina event?

A. Let's make a correction there. This is not what Schnitzer accepts, all those materials. Our portion of it relates to the scrap metal. There are a variety of other vendors and companies here that are involved in taking the various other commodities.
MR. SANDISON: At this point, we'd like to make an objection. Counsel is going beyond the scope of his direct testimony on cross and we'd like to ask for an offer of proof as to where this will lead.

CHAIRWOMAN PINGREE: That's fine.

MR. GOODIN: I believe during his direct testimony Mr. Zelenka testified that he is the head of environmental affairs, and this is definitely one facet of that role and he was very familiar with it upon asking. I believe that this issue is generally relevant to the types of means of disposal of e-waste in this proceeding, and I believe to this point we've been very liberal in the examination of witnesses, and the examination isn't going to go any further than this.

CHAIRWOMAN PINGREE: That's fine.

MR. GOODIN: Thank you. At this time, I'd like to offer into evidence Exhibit K227.

CHAIRWOMAN PINGREE: Any objections?

MR. SANDISON: No objection.

MS. VIOLA: No objection.

MR. GOODIN: Thank you.

MR. SANDISON: Can we be permitted a brief redirect?
MR. CHIPCHASE: I don't think he's done.

MR. SANDISON: Oh. We're not done with
cross yet?

MR. GOODIN: Sorry. My examination as to
the Aloha Aina event ends here.

BY MR. GOODIN:

Q. Changing subjects, as I understand it,
Schnitzer's operation generates auto shredder
residue and disposes of the residue at the landfill,
the Waimanalo Gulch Sanitary Landfill. Is that
right?

A. Correct.

Q. If I may, I'd like to examine a few
disposal options. Are you familiar with alternative
daily cover in the landfill context?

A. Yes.

Q. Could you tell me your understanding of
alternative daily cover?

A. If the committee wants to get into a
bigger discussion of landfills, I'm prepared to do
that. The landfill has, obviously, requirements
associated with what it's taking in daily in terms
of municipal solid waste. There are a variety of
regulations, health and otherwise, where landfill
operators are required to cover material daily as
well as an interim -- and that's a day-by-day event
-- and then there's an interim cover which is a more
extended period. And then there is a closure, a
post-closure period, where there's even a more
expansive surface. Across the country, a number of
states utilize a variety of materials for daily
cover. In a lot of cases, such as at Waimanalo,
they had to use dirt, just virgin dirt. They mine
it and cover over. In other locations, they have
used materials that are recycling waste, like
shredder residue, as an alternative daily cover so
that you're not utilizing virgin materials, you're
not taking up limited landfill space with the virgin
dirt.

We have worked with agencies across the
country relative to examining the use of shredder
residue as alternative daily cover and it is used,
beneficially used in a number of states around the
country as a daily cover.

Q. And in fact, Schnitzer is currently
supporting a bill in the Hawaii legislature that
would allow auto shredder residue to be used as
alternative daily cover, isn't it?

A. We are supporting that.

Q. I'd like to hand you a copy of the bill.
This is House Bill 2249, and it's been marked as
Exhibit K191. There's a copy for you, Mr. Zelenka.

A. Thank you.

Q. So Mr. Zelenka, I've handed you a copy of
Exhibit K191, and this is House Bill 2249, a bill
for an act relating to landfills.

So if you look about midway down, it says,
Section 342H, Alternative daily cover; reporting.
And then below that, it's sub (b), it says: The
following types of material may be used as
alternative daily cover, and then sub (2), treated
auto shredder waste. Do you see that?

A. I see that.

Q. Thank you. So I think you've already
tested that it's not a novel or radical idea to
use auto shredder residue as alternative daily
cover. Is it?

A. It is used in a number of states around
the country.

Q. In fact, Schnitzer's auto shredder residue
is being used in a number of states around the
country?

A. Correct.

MR. GOODIN: Thank you. At this time,
Chair, I'd like to move Exhibit K191 into evidence.
CHAIRWOMAN PINGREE: Any objection?

MR. SANDISON: No objection.

MS. VIOLA: No objection.

CHAIRWOMAN PINGREE: Thanks.

MR. GOODIN: Thank you. Chair, I'd also like to move into evidence another exhibit on the same subject, Exhibit No. K222, and I'll circulate a copy right now. This is a copy of Schnitzer's testimony in support of the house bill.

CHAIRWOMAN PINGREE: You're moving this into evidence?

MR. GOODIN: Yes. I'd like to move this into evidence. This is the testimony of Ian Sandison on behalf of Schnitzer Steel, and this is specifically on the house bill we just discussed.

MS. VIOLA: No objection.

CHAIRWOMAN PINGREE: Any objection?

MR. SANDISON: No objection.

MR. GOODIN: Thank you.

BY MR. GOODIN:

Q. Moving on -- Mr. Zelenka, Schnitzer's solid waste management permit doesn't prohibit it from disposing auto shredder residue at H-POWER, does it?

A. No.
Q. And the Department of Health doesn't prohibit H-POWER from accepting auto shredder residue, does it?
A. I think that's a more complex issue and we probably would need to look at their permits before you get a clear answer on that.
Q. Do you know who Steven Chang is from the Department of Health?
A. I know the name. I don't know the person directly.
Q. I can tell you he's the Solid and Hazardous Waste Branch chief, and he testified in this proceeding on January 25th, 2012, and I'd like to show you a copy of the transcript, if I may. Specifically, if I could have you turn to page 41 of the transcript -- are you there?
A. I am.
Q. About midway down the page there's a question: So for shredder waste, you're talking about the plastics and other things that are left over after recycler takes the metal; is that right?
Do you see that?
A. I see that.
Q. And this is Mr. Chang, Branch Chief Chang's response: Well, in the case of most of the
material they handle, automobile carcasses are run through a shredder. The metals are removed and then you have residue, which is the plastic, the seats, and the dashboards and stuff that contain both ferrous and non-ferrous metals, and the facility tries to remove that either by magnet or dielectric currents, and then the residuals of the stuff basically is the material that's sent to the landfill for disposal.

If we just turn to the next page, page 42 -- Question: So your division does not prohibit H-POWER from burning that residual, does it?
Answer: That's correct.
Do you see that?
A. I see that.
Q. Thank you. So I think you've testified that the issue here is that the operator of H-POWER, Covanta, declines to accept auto shredder residue. Is that right?
A. That's what I stated.
Q. Do you know why a representative from Covanta hasn't been called to testify as to why Covanta doesn't accept auto shredder residue?
A. I have no knowledge of that.
Q. Are you aware that the International Solid
Waste Association has published an article concluding that it is suitable to burn auto shredder residue at waste-to-energy facilities if it is mixed in small quantities with conventional municipal solid waste?

A. I think you need to step back and look at the issue more broadly than you're framing the question. Shredder residue as a part of a feedstock in a waste-to-energy or in a plastic-to-fuel facility has been studied for well over 20 years and it continues to be studied, and it is not an easy issue and it is not a yes/no issue, and in terms of the United States, the answer is definitely no.

Where you look at issues of -- and there are a variety of studies related to looking at and examining how can we utilize materials that currently are going to landfills, getting additional beneficial use out of them. One of those is waste-to-energy. One of those is plastic-to-fuel.

Europe and Asia both have a variety of bench scale and pilot projects looking at can we utilize shredder residue as one of the feedstocks. They have gone through numerous iterations, numerous generations of bench scale testing. For the most part, they are not there yet. There are a few
facilities in Europe that have kind of an
in-between-the-pilot and a commercial level, but
they're not there yet, and they have a number of
pieces that are still excluded from what can go into
that system.

So it's a very complex issue and I think
the simple answer is: There are many studies that
say shredder residue could be burned, could be
recovered and turned into syngas or some other
thing, and from a study basis, that's true. The
American Chemistry Society has got a number of
studies. Folks in the Scandinavian countries have a
variety of studies. The solid waste industry has
evolved and changed dramatically over the last ten
to fifteen years in terms of the technology and the
ability to look at how can we get added value out of
these materials. It still, in general, is not there
yet.

If you look at a variety of studies and a
variety of facilities, they're in that smaller
scale, but the regulatory framework they're
operating in in Europe or Asia are totally different
than what we're operating in within the United
States. You do not have that capability here.
studies that you mentioned. I'd like to hand you a copy of this new exhibit, K194, which is a copy of the article that I referenced.

So this document, Exhibit K194, at the top reads Waste Management and Research, and then about midway down it states, On behalf of ISWA, International Solid Waste Association. If we turn to the second page, the title of the article reads, Co-combustion of Shredder Residues and Municipal Solid Waste Incinerator.

MR. GOODIN: At this time, Chair, I'd like to move this article into evidence.

CHAIRWOMAN PINGREE: Any objection?

MR. SANDISON: No objection.

MS. VIOLA: No objection.

MR. GOODIN: Thank you. No further questions at this time.

MR. SANDISON: A couple of brief redirect questions.

EXAMINATION

BY MR. SANDISON:

Q. Mr. Zelenka, is it your understanding that the e-waste that is recycled at the Aloha Aina
events is recycled by businesses other than Schnitzer and that those businesses simply participate in the Aloha Aina event?
A. That's correct.
Q. Mr. Zelenka, is it your understanding that the H-POWER facility has two permits from the Department of Health?
A. Yes.
Q. Is one of those permits a solid waste management permit that is issued by Mr. Chang's division?
A. Yes.
Q. Is the other permit an air permit issued by the Clean Air Branch of the Department of Health?
A. Correct.
Q. To your knowledge, is there any kind of prohibition in the air permit regarding the acceptance of --
A. It will not -- yes.
Q. To your knowledge, is there any kind of prohibition in the air permit restricting the acceptance of shredder residue at H-POWER?
A. Yes. That's my understanding.
Q. Thank you. Briefly, I'd like to call your attention to Exhibit K194 that was just introduced

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by Ko Olina.

Would you read the date on that exhibit, on the first page?

A. Which -- I didn't see the numbers. This one, the waste management one?

Q. Yes.


Q. And this exhibit refers to a study that was, I believe, first received in September 1999. Is that what you see on page 518?

A. Yes.

Q. And since 1999 or 2001, are you aware of any municipal solid waste waste-to-energy generators that have accepted shredder residue in the United States, in part or in whole?

A. No.

MR. SANDISON: Thank you. No further questions.

MS. VIOLA: I have a few questions.

EXAMINATION

BY MS. VIOLA:

Q. Mr. Zelenka, are you aware of whether or not DOH will allow Schnitzer to use alternative daily cover -- I mean, use ASR as alternative daily
cover?

A. We have a study under way right now that was referenced.

Q. So currently, will DOH, Department of Health, allow Schnitzer to use ASR as daily cover?

A. No.

Q. Even if the Department of Health allowed the Solid and Hazardous Waste Branch -- there was no prohibition to burn ASR as a feedstock at H-POWER, will Schnitzer still be prevented from disposing of ASR at H-POWER if H-POWER were allowed to accept ASR?

A. I don't believe so.

Q. So in your discussions with Covanta, the company that operates H-POWER, they have told you directly that they will not accept ASR?

A. Correct.

Q. Regarding Mr. Chang's testimony that Mr. Goodin related to you, Mr. Chang's testimony apparently was that the DOH does not preclude ASR from being burned at H-POWER. Mr. Chang, as the head of the Solid and Hazardous Waste Branch, as Mr. Goodin represented, would he be aware of the air permit requirements?

A. I have no knowledge. I would doubt --
it's not his responsibility.

Q. So as far as your understanding, Mr. Chang was not speaking to the air permit requirements?

MR. CHIPCHASE: Calls for speculation. How does he know?

CHAIRWOMAN PINGREE: Would you repeat that, Dana?

BY MS. VIOLA:

Q. Mr. Chang's testimony, as Mr. Goodin related, did not speak to the air permit requirement; is that correct?

A. Correct.

MS. VIOLA: That's all.

CHAIRWOMAN PINGREE: Thank you. Commissioners, any questions for Mr. Zelenka?

MS. DAWSON: I do.

CHAIRWOMAN PINGREE: Please.

EXAMINATION

BY MS. DAWSON:

Q. What is the proportion of the shredded waste that you're talking about that is intended or is in use at the landfill?

A. We generate annually about 20,000 tons of
shredder residue at our facilities here.

Q. No. My question is: What proportion is used of that waste -- is used at the landfill as a cover?

A. At this point, none.

MS. DAWSON: None. Thank you.

CHAIRWOMAN PINGREE: Any others?

EXAMINATION

BY MR. PACOPAC:

Q. House Bill 2249, do you know what the status is of that bill?

A. I believe it has passed out of the one house and is awaiting action on the other side.

Q. It moved out of the house and into the senate?

A. Correct.

Q. You don't know if it came out of the senate?

A. I believe it's still there.

CHAIRWOMAN PINGREE: Any other questions?

MR. PACOPAC: It's dead.

CHAIRWOMAN PINGREE: Any other questions?

Thank you very much.

Dana, I believe you mentioned you would
have a witness arriving by about 9:30.

MS. VIOLA: She's actually here, so we can proceed.

The City would like to call Janice Marsters.

CHAIRWOMAN PINGREE: Dana, what is the purpose of this witness's testimony?

MS. VIOLA: Ms. Marsters is here to rebut the testimony of Dwight Miller regarding the landfill site selection committee criticism, including but not limited to his testimony that it's alleged that the process failed to move from a broader approach, looking at many sites, to narrowed sites; that the process has not been robust or rigorous; and that there have been measuring flaws, weighting flaws; and that the committee has not been supported by -- sufficiently supported by the consultant; also to rebut the fact that the committee found that they were only left with two sites after initial review of the site options; and that they have not been following the correct procedure in terms of site selection; that the process has been too long and that the committee is made up of non-professional lay people.

MR. CHIPCHASE: Chair, this is just really
an objection for the record. It's a partial but in places significant misstatement of Mr. Miller's testimony. There was some misstatement in Ian's summary of Mr. Miller's testimony regarding ASR. I don't mean to limit what Ms. Viola intends to go into, just to simply state that I don't agree with either her summary or Mr. Sandison's summary of Mr. Miller's testimony.

CHAIRWOMAN PINGREE: So noted on the record.

MS. VIOLA: If I could address that --

MR. SANDISON: If we could respond -- with respect to Mr. Miller's testimony, I quoted directly Mr. Miller's response to questions as to whether shredder residue could be taken at H-POWER. He said, and I quote from page 88 of the transcript:

My understanding is that a facility like H-POWER can take auto shredder waste. And that was exactly what --

MS. VIOLA: And likewise, I can point to quotations in the record. I have page numbers for every assertion that I just made, and if you want me to go through that, I will.

CHAIRWOMAN PINGREE: No.

MS. VIOLA: I would object to the
mischaracterization that the statements were inaccurate.

CHAIRWOMAN PINGREE: I'm going to ask counsel if you could kindly speak up, because I'm having a hard time hearing.

(Discussion off the record.)

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: Ms. Marsters, can you state your full name for the record?

THE WITNESS: Janice Christine Marsters.

CHAIRWOMAN PINGREE: Thank you. I'm going to swear you in before any testimony is given. Would you kindly raise your right hand?

JANICE MARSTERS, 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:

EXAMINATION

BY MS. VIOLA:

Q. Ms. Marsters, could you state your profession?

A. I'm an environmental engineer.

Q. How long have you been an environmental
engineer?

A. I've worked in Hawaii in that profession for 20 years.

MS. VIOLA: Just for purposes of expediency, I'm going to pass out what is going to be a -- I'm going to enter it as -- or move to enter it as City Exhibit, I believe, A-35 -- or A36. Excuse me. A36. This would be a copy of Ms. Marsters' resume.

CHAIRPERSON PINGREE: Dana, you mentioned that is A36?

MS. VIOLA: A36.

CHAIRWOMAN PINGREE: Any objections by counsel?

MR. CHIPCHASE: No. No objection.

CHAIRWOMAN PINGREE: Thank you.

BY MS. VIOLA:

Q. Ms. Marsters, could you briefly describe, based on your resume, essentially your professional summary?

A. Yes. I work in the -- mostly in the area of environmental planning and permitting for construction projects. Our firm mostly works for municipal and federal governments, state governments, although we do also do some private
work. I do quite a bit of work for the National Park Service, the Navy, and contractors constructing projects, helping them with their environmental planning and permitting. I also do quite a bit of work in the area of storm water, helping companies and entities -- agencies meet their storm water permitting requirements and also helping them identify ways that they can improve storm water quality emanating from their site.

Q. Correct me if I'm wrong, but you are a member of the landfill site selection committee?

A. I am.

Q. Have you been serving on the committee since it began?

A. I have.

Q. What is your capacity in serving on the committee?

A. I'm one of the -- one of the members of the committee. As you know, it was a group put together of the -- of community members, and I have to say that I've served on a number of similar task forces for various undertakings by the state or the county, so I was also asked to serve on this.

Q. What do you understand your role or the role of the committee is?
A. I understand that the role of the committee or the purpose of the committee is to come up with a list of sites that could be used as a landfill to replace Waimanalo Gulch, and we are to rank those sites according to the criteria that the committee decides is most important to them as a group and then provide a list of those sites at the completion of it.

Q. Are you aware of the criticism that has been leveled against the committee, or more accurately, leveled against the site selection process?

A. I am familiar. I've reviewed the record.

Q. So you reviewed the record. What did you review in particular?

A. I reviewed a document that was -- two documents that were prepared that I was provided. One was a Site Selection Evaluation Technical Memorandum that was prepared by Parametrix, and then some testimony that contained much of the same information that was provided before this Planning Commission. I can give you the file number if you need that.

Q. Could you state who authored the declaration that you reviewed?
A. Yes. The site selection evaluation technical memorandum was prepared by Parametrix, and it was prepared by David Mattern, who's the certified environmental planner, and checked by Dwight Miller, PE, of Parametrix, and then the testimony record was file number 2008/SUP-2.

Q. And that was the declaration of who?

A. That was the declaration of Dwight Miller.

CHAIRWOMAN PINGREE: Dana, I apologize. We're going to have to take a five-minute break. We've been asked to perform a duty by the City which requires us to take this break. I do apologize for interrupting.

We'll resume at 10:00. That gives us ten minutes.

(Break taken.)

CHAIRWOMAN PINGREE: Thank you. We're back on the record.

BY MS. VIOLA:

Q. Ms. Marsters, just to summarize essentially what you testified to earlier, you are a member of the landfill site selection committee presently; is that correct?

A. That's correct.

Q. Could you again refer to the two documents
that you reviewed in preparing for testimony today?

A. Yes. It's a document entitled Site Selection Evaluation Technical Memorandum that was prepared by Parametrix, signed by David Mattern, certified environmental planner, and checked by Dwight Miller, both of Parametrix, is my understanding, and then the -- what I believe is the record of this commission, file number 2008, slash, SUP-2, declaration of Dwight Miller.

Q. Do you agree generally with Mr. Miller's criticisms that are contained in that declaration as well as the report?

MR. CHIPCHASE: Vague. I mean, I just think it's a vague question.

CHAIRWOMAN PINGREE: Could you repeat the question?

BY MS. VIOLA:

Q. Do you generally agree with the criticisms that were expressed in Mr. Miller's declaration as well as in the report, criticisms specifically relating to the site selection committee?

A. I -- when I read the report, I felt that there are many of his comments that are his opinion as to how things should be done.

I found many conflict -- in many places,
he refers back to the Solid Waste Management Plan
that was prepared by Beck, R.W. Beck, which -- and
their description of the landfill site selection
process is based on the site selection process that
the City used in the past. So there were many
places that I found conflicts between, you know,
what he states should be done or the way things
should be done. In some cases, he's saying that it
should follow the Solid Waste Management Plan
process or the procedure that's laid out there.

    In some places, he makes his own
recommendations that are counter to what is in the
SWMP and what was done previously.

    So I found it a little disorganized,
frankly, and, you know, he certainly has a number of
opinions about how things should be done, but they
are his opinions and --

Q. I guess in that vein, Ms. Marsters, do you
agree with his opinions in the context of the site
selection committee criticisms?

A. In some cases I believe he's misunderstood
the process that the committee has been undertaking
and perhaps his review of the records -- he didn't
understand the situation in some cases and then in
other cases I do disagree with him.
Q. Let me be more specific. Mr. Miller claims that the committee failed to move from a broader approach to the funnel approach that he -- I'll read you a description of -- moving from a broader consideration of many sites to a narrowing to fewer sites. Do you agree with that criticism?

A. No, I do not.

Q. Why not?

A. Well, of course, you know, it depends on when you looked at the process or stepped into the process, and initially -- and this happened with the previous selection committee, as well. They were -- you know, there was a group of sites that's been bandied around as potential landfill sites for a long time, and that was the initial sites that we were given -- or the initial set of sites we were given. It was about 40. And then there were two additional sites that the City, I understand -- since that previous site selection committee had been looking at, that we were asked to look at.

I believe that Mr. Miller commented that we were only starting with two sites, which wasn't correct. These were two additional sites that we were looking at.

In addition to that, you know, once we had
those sites, the sites that were previously looked at, these additional two sites that were under consideration, the committee asked the consultant to widen the search of potential sites based on a number of criteria, and those were -- the initial set of sites did not include any sites above the UIC line, the underground injection control line. And we had -- the consultant had a meeting with the Board of Water Supply and with the Department of Health and were told that -- and the decision to not go above the UIC line was based on, I believe, a council resolution or an administration guidance in the past, at the time that the previous site selection committee operated.

So it is true that we had an initial set of sites and we widened it. And the intent was so that -- you know, the committee felt that they did not want, at the end of all this, for someone to say, Well, why didn't you look at sites above the UIC line, if that was a possibility, and in consultation with DOH and Board of Water Supply, it seemed that that would be a possibility, as long as the site wasn't within a well capture zone and so forth. So that's how the widening occurred.

We initially started with somewhere
between 40 and 50 sites, and I don't recall the
exact number, and then sent the consultant back to
look for additional sites above the UIC line, and
then certain, you know, couldn't be -- not
conservation land, had to be over 100 acres, and so
that's how that widening occurred.

Now, you know, that came up with a list.
I mean, when you look at that list, it's thousands
of sites, and then the consultant screened those
given the criteria and -- the initial screening
criteria and came down to a smaller set, and that's
-- that's the step we are now. So we're definitely
funneling, but we were not content to start with the
sites we were handed.

Q. So the screening -- I guess the screening
criteria, was that determined by the committee?
A. It was.

Q. That was to screen from the thousands of
sites to get down to a more workable number; is that
correct?
A. That's correct. And it, you know, follows
the screening criteria that the previous -- the 2003
site selection committee used.

Q. Could you give me, I guess, examples of
some of the screening criteria that was used?
A. Okay. So they screened for sites larger than a certain area. We used 100 acres.

Q. And generally, why was that?

A. Well, for two reasons. You need -- it was felt that that's a reasonable size of land to develop a landfill -- on which to develop a landfill, and also just to keep the number of sites to a manageable number. That's it.

Q. So other than size, though, were there other screening criteria?

A. Yes. So they excluded properties that were conservation land.

Q. But they no longer excluded properties above the underground injection control line?

A. That's correct.

Q. So that screening criteria was taken out?

A. That's correct. We felt it would be evaluated in the EIS.

Now, they did -- well, let me qualify. They did not -- their effort to accommodate that concept of being above the UIC line, therefore a potential for drinking water source, was accommodated by not -- by making sure the sites were outside well capture zones.

Q. So the initial screening criteria of
limiting to below the UIC line was to protect potential drinking water sources?

A. That's correct.

Q. And the reason that the committee felt they could consider sites above the UIC is because they added the additional consideration of the -- what did you say -- the well capture?

A. That's correct. Well capture zones, yes.

Q. So it would still be a protection for drinking water sources?

A. Yes.

Q. There's been some criticism issued from Mr. Miller's testimony that the process has not been rigorous. Do you agree with that characterization?

A. I think that, you know, we're following the procedure that was set out and I think that the committee has put in a lot of time and effort. If you attend a committee meeting, you will find that they ask very rigorous and detailed questions. It's not been -- in fact, the reason that we've gone longer than was planned is not because we all don't have better things to do, but it's because we want to make -- do the best we can to have it be a rigorous process.

Q. You're saying that you were following a
procedure that was set essentially by the consultant; is that correct?

A. It was -- it basically follows the concept of site selection that was set out in the management plan.

Q. The Integrated Solid Waste Management Plan?

A. That's correct. And it's a reasonable process. You start with a big group of sites, bring them down, weight criteria according to the will of the group as far as what their priorities are and come up with a handful of sites.

Q. So you're saying that the procedure that the site selection committee is following in selecting the sites has followed the concept that was articulated in the Integrated Solid Waste Management Plan?

A. Yes.

Q. And that would be moving from -- again, to restate your testimony -- from a large number or broader consideration to a narrow or more limited sites?

A. That's correct.

Q. What do you feel -- I mean, in terms of the site selection, specific site selection in
general, why would it be necessary to do this
initial screening process? This is essentially
before the actual criteria for the landfill is
considered. Why did you have to go through the
initial screening process?

A. Well, I think you just don't want to apply
all those criteria to sites that you just absolutely
are not going to consider and you want it to be a
manageable number of sites.

Q. And manageable -- when you say manageable,
what do you mean by that?

A. Well, the -- you know, there's quite a bit
of work that the consultant has to do to weight --
to apply the weighting and the criteria to the
selected number of sites. But I think principally
it's because you -- you know, why continue to look
at a site that you're definitely not going to
consider because of technical issues. It's -- you
know, the weighting criteria and the siting criteria
are based on -- are community-based criteria, and if
there's a technical criteria that would remove a
site from consideration, those are the things that
we screened for up front.

Q. Okay. So let me get back to -- you said
that essentially you were following the procedure
that's set out in the Integrated Solid Waste Management Plan.

There was some testimony that the committee is not being serviced well by the consultant. Do you agree with that criticism?

A. I'm not sure what that particularly referenced. I would say that the committee has pushed the consultant in a few cases to consider sites that they had removed.

For example, when we first did the screening above the UIC line, the consultant came back and they had excluded any property that had -- that contained buildings, and I think that this was based on the original site -- the first site selection committee had excluded anything that was developed as a criteria. I think that that's what the basis was. And we came back and said, Well, if you're going to buy the land from somebody, who would care whether there was a building on it or not; that that should not be a screening criteria.

So there are situations where the consultant has come forward and said, Well, we screened because of this or we screened because of this and the committee has disagreed with them and said, We want you to take that screen out. But I
would say, you know, other than situations like that, the committee -- the consultant has been very helpful in guiding us through this process and has done a really good job.

Because you have a very wide, you know, diverse group of community members with differing viewpoints and constituencies, and they managed to get us through this process in a very cohesive way. There's been, you know, almost no dissent among the group, and it's been an arduous process. But I think they've done a good job in managing that, and they certainly have been open to the will of the committee.

Q. One criticism that has been issued in this regard is that the City and the consultant have done a disfavor to the committee by not taking their desires and their considerations for the criteria and applying them in such a manner that allows for a rigorous evaluation of sites.

Do you agree with that statement?

A. I don't understand that statement. I don't know what he's referring to. I don't agree with that statement.

Q. Do you think that the consultant has not been open to the desires of the committee?
A. No.

Q. So you feel that they have --

A. I feel that they have been open to the desires. They've changed their -- as I said, they've changed what they've recommended several times.

Q. In terms of applying, I guess, the -- the criteria for the site selection hasn't been applied to the sites yet; is that correct?

A. That's what's happening now.

Q. But the committee has determined -- has ranked the criteria or determined the criteria rank?

A. That's correct.

Q. But the City has applied additional screening criteria to narrow the sites?

A. That's correct.

Q. Do you consider the -- I guess the initial screening, that's the only criteria that's been applied thus far.

Do you feel that the screening criteria has been applied in the manner that the committee has, I guess, favored?

A. Absolutely.

Q. And the consultant has been open to the committee's concerns?
A. Absolutely.

Q. There's also criticism, again in that vein, that the process -- the site selection process overall has not necessarily been applied properly by the consultant and the City. Would you agree with that statement?

A. Again, that's such a broad statement, you know, I don't know how to respond to that. He has a number of assertions about things that he disagrees with, and as I said, some of those, I think, are based on a misunderstanding of what the committee has been doing and what sites they looked at and how the screening criteria applied, and some of them are more technical issues that it's his opinion that things should be done in a different way, but it is his opinion.

Q. I guess in terms of his opinion, your statement regarding his opinions, things being done a different way -- he criticizes that the way the criteria was measured -- I'm assuming that's the criteria that is going to be applied to the sites, the actual sites that are chosen. He claims that the criteria was flawed and it was incomplete or there was illogical scoring and the deciles, I guess, the use of deciles was inappropriate.
Would you consider those criticisms to be the opinions that you're talking about?

A. Yes.

Q. Do you think that essentially based on that opinion, that the criteria as the committee has determined has essentially been flawed or --

A. No. I wouldn't agree with that. And again, it's -- you know, he talks about, you know, we're evaluating things on a scale from one to ten, and first he says that shouldn't be called a decile. Well, okay.

But the previous site committee -- site selection committee basically scored things one through three. We're going to score it one through ten. You know, it's whatever process the committee chooses to rank -- to score sites, it's the process. It's up to the committee, and I don't think that there's any difference -- actually, I think one through ten is probably better, because it gives people a wider gradation to think about -- it might be easier to wrap your mind around the gradations of impact from one to ten rather than one to three. And then -- so that's my comment about the decile. And I have to be frank; I'm not a statistical expert. But, you know, we're not applying a
statistical analysis to this.

And the criteria that were selected, he also makes some comments about, for example, you know, the committee looks at wetlands and endangered species and they're close and shouldn't we have combined those. So he makes a number of comments like that. I will say that we worked quite hard to combine criteria and we're down to 19 criteria. The previous site selection committee had 31, and they did have, you know, wetlands and endangered species as separate criteria. They also had a number of criteria that may have been able to be combined, maybe not to be combined.

I think the point is that they're community criteria and it's a community committee, and that -- those are the criteria that the committee considered to be most important. And in some cases -- we did go through a lot of effort to combine them where the committee felt it was appropriate.

So those are the two examples that -- two examples that I can make.

Q. Another criticism that was -- well, let me get back to you. You're stating that you think that some of his opinions may be based on, I guess, a
mistaken perception about what the committee did?

A. Yes.

Q. And in that context, you cite the fact that he references that the committee after applying the initial screening criteria came up with only two sites.

A. Yes.

Q. He said that actually repeatedly during his testimony when he did testify.

A. Yes.

Q. Is that actually what happened, that the committee only came up with two sites?

A. No. As I said, we started out with this initial set of sites that the City -- that were considered the last -- during the last site selection process, and then the two sites -- we did add two sites at that -- at that point, basically our first meeting, that the City had been in -- had some interaction or had been considering two additional sites in Waimanalo. And one was owned by the State and one was owned by the military, and at that point they sent letters to the owners to find out if they could be considered and we were going to add them to the larger list. Then, of course, the list was expanded further to look at sites above the
Q. Again, because the committee members felt like they wanted to consider more sites and therefore show a more rigorous process; is that correct?

A. That's correct.

Q. Another criticism that was issued is that the commission -- he recognized that the commission essentially did broaden the search but that the process that followed was so piecemeal and the committee is not taking into effect the weighting and ranking of the criteria.

Do you understand what he meant by that criticism?

A. I don't, because it's -- you know, it's a multiple-step process. So we have to get to whatever our list of sites is before you can apply the weighting and ranking criteria.

It's true that there has been a lot of effort go into that part of -- you know, certainly if we just at the first said, Okay, we're going to take these 45 sites and then two more and those are all the sites we're going to look at, we would have been done by now, but --

Q. Essentially, you're saying that the focus
of the committee thus far has been to consider a
multitude of sites and that's the reason for, I
guess, the lengthiness of the process.

A. That's correct.

Now, I would say that during that time we
were doing other things. There's still -- you know,
there's a lot of work that goes into selecting the
community criteria. As I said, we combined some of
them and deleted some of them. So during that
period where the consultant was widening the search
for sites, we were also working on those things,
selecting our ranking -- you know, selecting our
ranking criteria and so forth, so --

Q. I'm sorry. When was the first meeting for
the committee?

A. It was in January 2011.

Q. 2011. So do you feel like any of the time
has been wasted during this process? It's now April
2012. Do you feel like the process has been
prolonged because of any kind of unnecessary delays?

A. Well, again, I think we would all like to
be done. But I think that the timeline has
reflected the committee's sincere desire to be as
inclusive as -- of sites that we could be so that it
is a rigorous process.
You know, if you start with the same sites that the site selection committee started with the last time, how are you to say you're going to end up with anything different than the recommendations they had the last time, with the exception, of course, that Waimanalo Gulch, we were told, was off the table, which was considered the last time. But we wanted to make sure that we were looking at all the possible sites we could.

Q. In your experience as an environmental engineer, have you observed the landfill process?

A. Yes.

(Interruption in proceeding.)

MS. VIOLA: Can I take a short break? This is for my witness. I need to confirm his availability.

(Discussion off the record.)

CHAIRWOMAN PINGREE: We're back on the record.

BY MS. VIOLA:

Q. Thank you. My question was: In your experience as an environmental engineer, have you observed the landfill process in Hawaii?

A. Yes.

Q. Have you observed how long it takes to
develop a site?

A. Certainly.

Q. Based on these observations, how long would you believe it would take to get a working landfill from site selection to the functioning landfill?

A. Well, you know, there's a lot of variability, particularly associated with the permitting and the environmental review process, so, you know, I think that's where the greatest variable is, is doing the EIS and whether you have court challenges to that. And then, you know, whatever the time would be for land acquisition, of course, also may be difficult. So certainly I would say many years.

Q. And "many years," could you quantify that?

A. I would think somewhere in excess of five to seven years.

Q. The process, as you understand it -- and this is in the context of your profession -- you're saying that it would take -- I'm sorry. Specifically, you would --

A. Land acquisition.

Q. Land acquisition would take a long time, essentially, to go through the environmental review
process?

A. Well, yes. You know, of course, you have to determine if you're going to acquire the land or condemn the land or however the City acquires land. Then you have the environmental process.

Q. The EIS?

A. EIS. There are permits, such as the State solid waste permit and storm water -- you know, there's a strict NPDES permitting requirement for landfills, and the design has to be done, and that's -- you know, all the design information has to be included in these permit applications. So there's the design for all of the systems, and landfill design is not a -- is a very rigorous process, because you have to design the liners and the leachate collection systems and the groundwater monitoring systems and so forth and so on. And that design pretty much has to be completed before you can even get a -- you know, it has to be completed before you get a permit.

Q. And it would also involve the necessary -- building of the necessary infrastructure; is that correct?

A. Yes. I'm talking about what happens before you even get to construct.
Q. When you're talking about what happens before you construct, is that the five to seven years, or is it construction of -- the actual construction and the building of the infrastructure? Is that included in the five- to seven-year time span?

A. I would say to -- yeah, I would say five to seven years just to get to the bidding.

Q. So the building of the actual facility as well as the infrastructure would be on top of the five to seven years?

A. Sure. And again, it depends on how much time it takes you to acquire the land and how much time the environmental review process takes, but an EIS for a landfill, I would say you're not going to get that done in under two years, and it could be longer.

Q. If you were to hear that someone opined that it would take a total of three years from site selection to the actual working landfill, would you consider that opinion to be reliable?

A. I would consider that they haven't -- I would assume they haven't done much work in Hawaii of that nature.

And I think -- you know, it may be
possible -- I don't even think you could do that on
the mainland somewhere, get something from beginning
to end in three years, because -- but particularly
in Hawaii, we have a very inclusive environmental
review process that allows a lot of opportunity for
public input, and the State -- not only the EIS
process, but even the State's solid waste permit has
a public notice period. So there are several
opportunities for the public to interject and --

Q. That means more time?
A. It means more time.

MS. VIOLA: Nothing further. Thank you.
MR. CHIPCHASE: Do you have anything?
MR. SANDISON: No questions.

EXAMINATION

BY MR. CHIPCHASE:

Q. Ms. Marsters, my name is Cal Chipchase. I
represent Ko Olina Community Association and Senator
Maile Shimabukuro. My goal in our discussion today
is really to understand the process that you talked
about. You said there was some misunderstanding of
the process, and I really just want to lay that out
and understand what the process has been. So if I
make a mistake in how I describe it, jump all over
me and let's make sure we understand it. Okay?

A. All right.

Q. I'll start with trying to understand what you looked at in preparing for today. You mentioned that you read the site selection technical memorandum and the written declaration from Dwight Miller. Do I have that right?

A. That's correct. I will have to say that I briefly perused through it. I'm very busy.

Q. I understand completely. Okay. So you briefly perused those two documents.

Did you read the transcript of the Planning Commission hearing at which Mr. Miller testified?

A. I did very quickly go through the transcript.

Q. Did you look at any of the exhibits other than the technical committee report that has been submitted to the Planning Commission in this proceeding?

A. I honestly don't recall.

Q. Do you recall whether you looked at any of the sources and documents that Mr. Miller referenced in the technical memorandum and his declaration?

A. I would say that the document that I ---
that he references quite a bit was the City Solid Waste Management Plan, and I was already familiar with that document, and then in response to some of his comments, I went back and looked at it more closely.

Q. Any other documents that he had referenced -- did you go back and look at any of those?
A. I don't recall.
Q. Fair enough.
A. I may have at the time, but I looked at it about, I don't know, a month and a half ago.
Q. Why did you look at it a month and a half ago?
A. Was it a month and a half ago? It was a few weeks -- it was at least several weeks ago.
Q. Okay. Got it. In your experience, how many landfill site selection committees have you served on before this one?
A. I have never served on a landfill site selection committee prior to this.
Q. Prior to serving on this committee, how many landfills have you sited?
A. I have never sited a landfill.
Q. How many landfills have you designed?
A. I do not do landfill design.
Q. I understand you didn't serve on the prior landfill site selection committee for the City. But do you generally understand how that committee came into being and the process it followed?

A. I understand it based on the description in the Solid Waste Management Plan.

Q. Were you aware that in 2003, the City had represented the Waimanalo Gulch Sanitary Landfill would close by 2008?

A. I'm aware that that -- as reported in the Solid Waste Management Plan, that timeline that was laid out and so forth, yes.

Q. Were you aware that the landfill was, in fact, ordered by the Land Use Commission to close by 2008?

A. Honestly, I had not tracked all of the dates and orders and implications surrounding the current landfill. I really haven't paid that much attention.

Q. Fair enough. Let's just take a look at it, just so we have a starting point for where you come in the process. Would you look at Exhibit K2?

Ms. Marstens, I've handed you a copy of Exhibit K2, a decision and order approving amendment Special Use Permit from the Land Use Commission, and
you see on the front page it's dated June 9th, 2003?
   A. Yes.
Q. I really only have a couple of questions
with this, Ms. Marstens. I just want to get us on
the same page. Would you take a look for me at
paragraph 12 of the order?
   A. How do I find paragraph 12?
   Q. If you would flip through it, they start
to number.
   A. There are no paragraphs numbered. Okay.
   I see it. All right.
   Q. So paragraph 12 -- and I'll read just the
first part of it for you -- within five years from
the date of this Special Use Permit amendment
approval or date of this solid waste management
permit approval for this expansion, whichever occurs
later, but not beyond May 1, 2008, the 200-acre
property shall be restricted from accepting any
additional waste material and be closed in
accordance with an approved closure plan.
   Do you see that paragraph?
   A. I do see that.
   Q. Now, if you would just turn back for me to
paragraph one -- I'm sorry. Let me help you.
   A. Order item one, is that what you mean?
Q. Yes.
A. Yes. Uh-huh.

Q. So as part of that direction to close we see here in paragraph one, the Land Use Commission created or directed that this blue ribbon site selection committee shall make its recommendation for a new landfill site to the City Council by December 1, 2003. Do you see that?
A. Yes.

Q. Then it says the City Council shall select a new site by June 1, 2004, and then it continues: If the new site is not selected by June 1, 2004, this Special Use Permit shall immediately expire. Do you see that?
A. Yes.

Q. Are you aware that at the time that the City was going through this process, the City represented to the Land Use Commission that Waimanalo would not be one of the sites selected by this committee?
A. I was not aware of that.

Q. Have you looked at the LUC's current order regarding the closure of Waimanalo and the development of a new site?
A. I really have not, because our committee
was told from the start that we were not to consider
Waimanalo Gulch as a possible site and that -- you
know, our job was very narrowly defined; look at
sites, come up with a list of sites, rank them. So
I have really not gotten into any of the issues
surrounding Waimanalo Gulch.

Q. Let's just take a quick look at that
order, then, at Exhibit K15. Ms. Marsters, I've
given you a copy of Exhibit K15, which is a copy of
the Land Use Commission's order adopting the City
and County of Honolulu Planning Commission's
findings of fact, conclusions of law and decision
and order with modifications. Do you see that?

A. Yes.

Q. If you'd turn to page ten --

A. Yes.

Q. Do you see that it's dated October 22,
2009?

A. Yes.

Q. If I could just have you take a very brief
look at paragraph four, the first sentence there, if
you have it, is: On or before November 1, 2010, the
applicants shall begin to identify and develop one
or more new landfill sites that shall either replace
or supplement WGSL. Do you see that?
A. Yes.

Q. The landfill site selection committee of which you are a member got started in January 2011; is that right?

A. Our first meeting was in January 2011. Clearly, they hired the consultant and contacted us well in advance of that.

Q. Of course. I'm just trying to get a timeline here using this order as the base. So the order is dated October 2009. The committee has its first meeting in January 2011?

A. That's correct.

Q. Were you at that first meeting?

A. I was not at the first meeting.

Q. Ms. Marstens, I've handed you a copy of Exhibit K26.

A. Yes.

Q. Do you see that it's a copy of the materials for committee members from that January 20th, 2011 meeting you talked about?

A. That's correct.

Q. If you look at the second page, it talks about the timing of the site selection process, and is it right that as originally scheduled, the site selection process was supposed to take about seven
meetings and last about six months?

A. That's correct.

Q. We will talk about all of the additional meetings and the reasons that the process has been delayed. I just want to understand what was originally intended.

If that's right, then as originally conceived, the site selection process was going to wrap up about July 2011; is that right?

A. That would have been correct.

Q. It's now April 2012. Has the site selection committee made its final recommendation yet?

A. We have not.

Q. Thinking about the scope of what the committee was asked to do, it's driven by the generation of waste; right?

A. Yes.

Q. So there are a lot of different components to that waste stream; right?

A. Of course.

Q. Ash and residue from H-POWER are one component of that waste stream; right?

A. Correct.

Q. Do you understand that the LUC's current
order governing the operation of -- for at least the
use of the land for the Waimanalo Gulch landfill
would allow the landfill to continue accepting ash
and residue without any specific deadline?

A. That was my understanding.

Q. You also understand -- and we can take
another look at the order that I gave you -- but the
Land Use Commission's order allows the site -- the
City not only to replace Waimanalo, but to identify
a secondary or supplementary site for Waimanalo?

A. I'm sorry. Would you repeat that?

Q. It was a bad question. Let me try it
again and this time I'll take a crutch.

If you would look, again, at paragraph
four that we --

A. I'm sorry. What exhibit?

Q. Exhibit K15, I'm sorry, of the Land Use
Commission's order.

Paragraph four of Exhibit K15, that first
part that I looked at: On or before November 1,
2010, the applicant shall begin to identify and
develop one or more new landfill sites that shall
either replace or supplement WGSL. Do you see that?

A. Yes.

Q. So the site selection process didn't
necessarily need to be a replacement of the site; it could have been a supplement to the site. Right?

A. Yes.

Q. Talking, again, about the waste stream -- construction and demolition waste, or C and D waste, is another element of the waste stream; right?

A. Yes.

Q. Are you aware that there's an existing C and D landfill on Oahu?

A. I'm aware.

Q. But the committee is looking at a landfill site that will both accept ash and C and D waste; right?

A. We did not limit what would go into the landfill.

Q. I understand. In fact, part of your consideration was having a landfill that had sufficient capacity to accept ash and C and D waste?

A. Again, we did not limit what would go into the landfill.

Q. Ms. Marsters, I've handed you a copy of Exhibit K27. If you'd look at the first page of that document --

A. The first page?

Q. Yes. I think you'll see it's a group
memory --

A. Yes.

Q. -- from the landfill site selection committee.

A. Yes.

Q. What was the date on that?

A. January 20th, 2011.

Q. Okay. So that's your first meeting?

A. That's correct.

Q. Would you look now quickly at the second page?

A. Yes.

CHAIRWOMAN PINGREE: What exhibit number is that?

MR. CHIPCHASE: I'm sorry. K27.

CHAIRWOMAN PINGREE: K27?

MR. CHIPCHASE: Yes, K27. It's the group memory number one from the landfill site selection committee meeting.

BY MR. CHIPCHASE:

Q. If we look down at the -- by the way, what are the group memories?

A. They are a -- basically minutes of the meeting.

Q. So if we look down at these minutes, do
you see the paragraph that reads: After presentation, the committee asked questions and began to develop preliminary issues for discussion?

A. Yes.

Q. If we look down at the first question -- would the questions be questions from the committee members --

A. Yes.

Q. -- to the consultant?

A. That's correct.

Q. So the consultant, I believe, is R.M. Towill.

A. That's correct.

Q. So the answers, the As, would be R.M. Towill's answers?

A. That's correct.

Q. So if we look down at the first question there, we see it says: Are we talking about the identification of just one site or is there a potential to look at multiple sites depending on the waste stream?

A. That's correct.

Q. And then the answer is: The committee can make comments on appropriate sites for waste streams. However, the committee's task is to rank
the sites from the best to the least satisfactory
and not to pick one. The further charge to the
committee at this point is to rank sites that can
accommodate all waste streams, including municipal
solid waste, ash and residue and construction and
demolition debris.

Do you see that?

A. Yes.

Q. It goes on: In part because of economies
and scale and costs associated with multiple EISs
and operators, et cetera?

A. Yes.

Q. So early on in the discussion, the
committee asked, Can we look at multiple sites, are
we looking at sites that don't have to accept all
waste streams, and the consultant, R.M. Towill,
said, No, look at a site that can select -- or can
accommodate all waste streams; right?

A. That's correct.

Q. So including ash and residue and C and D
waste creates additional considerations for the
committee; right? One is, for ash and residue,
hauling distance from H-POWER?

A. Yes.

Q. And because of the volume associated with
this additional waste, both the ash and residue and
the C and D waste, capacity is another consideration
for the committee?
A. Yes.

Q. You mentioned earlier that you were
familiar with the City's 2008 Solid Waste Management
Plan. I'm sorry. You have to say yes or no.
A. I'm not an expert, but I have perused it.
Q. I understand. Not being an expert but
having perused it, do you understand that the Solid
Waste Management Plan provides the City's framework
for waste management?
A. I do.

Q. Did you know that the plan talks about
landfill siting?
A. Yes.

Q. I'd just like to look at a part of that
now. It's Exhibit K144. Ms. Marsters, I've handed
you an excerpt from the Integrated Solid Waste
see that?
A. Yes.

Q. It's Exhibit K144. If you'd just turn to
the first page that we have in this excerpt, titled
Section 11, Facility Siting Strategy -- do you see
that?

A. Yes.

Q. And it goes through various topics, and we don't need to cover them all. One, at 11.2, is landfill siting activities. Do you see that?

A. Yes.

Q. 11.3 is siting principles. Do you see that?

A. Yes.

Q. Then 11.4 is site selection process. Do you see that?

A. Yes.

Q. If we turn the next page of that, there's a flow chart. Do you see that?

A. Yes, I do.

Q. Did the consultant present this flow chart to the site selection committee?

A. I don't recall if I saw it in a prior review of the SWMP or if they provided it. I'm sorry.

Q. Fair enough. Do you recall -- and it may be hard, because I know you've looked at it in other contexts -- do you recall whether the consultant said, This is the process you will follow for the site selection?
A. I don't recall if they specifically referred to the process laid out in the SWMP or if the process was -- or if this process was simply described to us as the process we would follow.

Q. Let's flip back a couple of pages to 11.3. I just want to get an understanding of what parts of this you may have been shown, and if you can't differentiate, I understand. Do you see that 11.3 sitting principles section?

A. Yes.

Q. If we look at the first few sentences, Flexibility is critical to the siting process -- do you see that?

A. Yes.

Q. Then it goes on: While affording this latitude, the following principles will be the basis for applying the process moving forward in the future. Do you see that?

A. Yes.

Q. If we look on the very next page, there's a series of bullet points. The very first bullet point says: The site evaluations will preclude areas west of Makakilo based upon an administrative policy that no new municipal landfills will be located on the leeward coast of Oahu.
Do you see that?

A. I do see that.

Q. Were you given this as a principle for the site selection process? And when I say you, I mean the committee.

A. To my recollection, we were not.

Q. If we could go to the very last page in this excerpt that I've given you, item 11.6, item summary -- do you see that?

A. Yes.

Q. I'd just like you to look at the second sentence there. I'll read it for you. It says: The siting of a new MSW landfill will avoid areas situated west of Makakilo as stated in subsection 11.3.

I gather, based on your earlier testimony, you weren't presented with this principle either.

A. That's correct.

Q. And, in fact, the committee has evaluated sites west of Makakilo?

A. That's correct. Well, we have not precluded them. As of now, our sites are unknown to us.

Q. Ms. Marsters, I've handed you a copy of a document marked Exhibit K217. Do you see that?
A. Yes.

Q. The title is Mayor's Advisory Committee on Landfill Site Selection, City and County of Honolulu, Alternative Landfill Sites, Island of Oahu.

Do you see that?

A. That's correct.

Q. You talked earlier about an initial list of sites --

A. Yes.

Q. -- 40 or 45, I think you mentioned, that the City had previously considered.

A. Right.

Q. Is this that list?

A. It is.

Q. If you would look down at items 32 and 33 on this list --

A. Yes.

Q. Do you see Nanakuli A and Nanakuli B?

A. Yes.

Q. Do you see that? So on the initial list, there were areas west of Makakilo that the City gave you for consideration?

A. Yes.

Q. To make sure I understand this list --
this is the same list the City has previously
considered for landfill site selection?

A. That's my understanding.

Q. But right off the bat, because this is an
old list that has been kicking around for some time,
right off the bat there were some sites that were no
longer viable landfill sites; right?

A. I presume so. I believe there's been some
development of some of these sites and so forth.

Q. In fact, I think we can see that on the
list. If you look down at item six and seven, for
example, do you see the notation next to them --

A. Yes.

Q. -- Ewa No. 1 developed, Ewa No. 2
developed?

A. Yes.

Q. So initially, starting with the old list,
even some of those sites weren't going to work for a
new landfill?

A. Yes.

Q. But the committee was asked to identify
any additional sites that it might want to consider;
right?

A. That's correct.

Q. Did R. M. Towill give the committee any
guidance on how to identify these additional sites it might want to consider?

A. So we looked at how sites would have been screened out in the past, which would have been predominantly that they were above the UIC line, and that formed the main basis of our widening the search.

Q. Before you widened it to include sites that were crossing or within the UIC and no-pass lines, another site had been proposed by a committee member. Do you remember that?

A. I don't remember that.

Q. Ms. Marsters, I'm handing you a copy of Exhibit K31. I think you'll see on the front that it's a group memory for meeting number four. Do you see that?

A. Yes.

MS. VIOLA: What was the exhibit number?

MR. CHIPCHASE: K31.

BY MR. CHIPCHASE:

Q. If I could get you to turn to the third page of the document --

A. Yes.

Q. Down there at the first full paragraph, it says: The committee was then asked if they would
like to recommend any additional potential landfill sites. Do you see that?
A. Yes.
Q. One suggestion was received, the windward side of the Waianae mountains, west of Kunia. Mr. Goody drew on the Oahu map the area that he suggested. Do you see that?
A. Yes.
Q. Other than this one additional site proposed by Mr. Goody, before you expanded to consider sites on or within the UIC and no-pass, do you remember any additional sites being added by the committee?
A. I don't recall.
Q. Fair enough. Do you recall that this site Mr. Goody had proposed pretty quickly proved not to be a viable site?
A. I actually don't recall a discussion of this site, and mostly because, if you notice, I wasn't present at this meeting.
Q. I do notice.
A. Now, I would say that in our discussion of, you know, looking at more sites, expanding our list of sites beyond this 40ish number that had been previously considered, when we first started talking
about how that -- you know, how to do that, the
reason that that came about was just because of this
situation, that people knew of sites that they
thought might be viable and in the discussion of
those sites, you know, the reason, in this case, I
believe, would be that it's above the UIC line and
that's when the decision, you know, to expand the
list occurred.

Q. Okay. So let's just try to unpack that.

That was a lot of information and I want to make
sure that I got it all right.

Ms. Marsters, I've handed you a copy of
Exhibit K33. You'll see that it's a copy of meeting
number five group memory?

A. Yes.

Q. Were you at this meeting?

A. I was.

Q. If we could look down to the second bullet
point under the first paragraph -- do you see that?

A. I see that, yes.

Q. The consultant presented information on
the Kunia area and its suitability for a landfill
site. Do you see that?

A. I do.

Q. Here you're considering that landfill site
that Mr. Goody had proposed; right?

A. The consultant provided the information, yes.

Q. Fair enough. And then down there at the bottom it says -- the second sentence from the bottom says: The area is also located in the State and City's underground injection control and ground water protection zones. The next sentence: The committee briefly discussed the information presented and no further action to consider this area was deemed necessary. Do you see that?

A. I see that.

Q. So you rejected that site for those reasons?

A. We rejected the site, I believe, because it -- well, yes. At the time, we were -- it was before we had asked the consultant to go back and look at sites above the UIC line.

Q. In addition, I believe, this site had --

A. Ag land.

Q. -- high quality ag lands.

A. Yes.

Q. So there were two reasons even at the time to reject it?

A. That's correct.
Q. So then with that site rejected, you're back to the original 40 plus sites, less what had already been developed, as of meeting number five?

A. Yes.

Q. Meeting number five was May 12, 2011. Ms. Marsters, I've handed you a copy of a document that's marked Exhibit K218. It's titled Meeting Number Six Group Memory. Do you see that?

A. Yes.

Q. This is another one of the meeting minutes and this one is from the sixth meeting of the committee?

A. That's correct.

MR. CHIPCHASE: Chair, at this time, I'd move in both this document, Exhibit K218, and the prior document we looked at, 217.

CHAIRWOMAN PINGREE: Any objection?

MS. VIOLA: No objection.

MR. SANDISON: No objection.

MS. VIOLA: I'd just note for the record that all of the meeting minute agendas and documents that are available on line, including the exhibits that counsel is referring to, they were all provided to the Planning Commission members pursuant to, I believe, Commissioner Dawson's request early on. I
believe that was in December.

BY MR. CHIPCHASE:

Q. Ms. Marsters, earlier when you were discussing with Dana the expansion of the committee's consideration from that original 40 plus or minus sites --

A. Yes.

Q. -- to include sites that were at or above the UIC and no-pass lines --

A. Yes.

Q. -- that happened at this meeting number six; right?

A. Yes.

Q. So meeting number six occurred in July 2011; right?

A. That's correct.

Q. Under the original schedule, July 2011 was supposed to be the end of the site selection process.

A. That's correct.

Q. But instead, the committee expanded the consideration to include additional sites?

A. That's correct.

Q. So if we looked back to our baseline for our timeline to the LUC's October 2009 order, we're
about 21 months later, the committee is expanding
the list of sites to consider?

A. I'm sorry. Would you repeat that?

Q. Sure. If we take the Land Use
Commission's 2009, October 2009 order as a baseline,
because that's where the City was ordered to find a
new site --

A. Yes.

Q. -- and we just measure forward to where we
are here at meeting number six, in July, it's about
21 months later.

A. Okay.

Q. Is that wrong?

A. I'm sorry. I don't have all the dates in
front of me.

Q. Okay. Well, let's go back to --

A. Can you tell me what exhibit you're
referring to?

Q. I'd be glad to. It's Exhibit K15.

A. Okay.

Q. And just to help you out, if you'd look to
page ten for me --

A. Uh-huh.

Q. -- you'll see it's dated October 22, 2009.

A. I do.
Q. Okay. So now it's July 19, 2011.
A. All right.
Q. That's just the timeline I'm trying to understand.
   So because the committee expanded the list, or list for consideration, at least, the consultant had to report back with the expanded search at the seventh meeting; correct?
A. That's correct.
Q. Ms. Marsters, I've handed you a copy of Exhibit K152. You'll see on the first page it's a copy of meeting number seven group memory.
A. Yes.
Q. If we look down at the bottom of this first page --
   MS. DAWSON: Counsel, could you wait until we have a copy of that?
   MR. CHIPCHASE: I'm sorry. Absolutely, Commissioner.
   MS. DAWSON: Thanks.
   BY MR. CHIPCHASE:
   Q. If we look down at the bottom of this first page, we see the consultants next provided a brief presentation on the results of the GIS research requested by the committee to ascertain if
there were potential landfill sites within the UIC and no-pass line.

A. Yes.

Q. Do you see that? On the next page it continues: -- based on the application of some of the criteria the committee had previously developed.

A. Yes.

Q. So in this presentation, the consultant, R.M. Towill, is sharing its results of its broadened search to sites at or above the UIC and no-pass lines?

A. Yes.

Q. But it also applied various screening criteria to the sites that it found; right?

A. That's correct.

Q. So if we look down to the middle of that page, the second full paragraph -- second page, second full paragraph -- the sentence reads: After the application of the criteria or factors, two sites emerged.

Do you see that?

A. Yes.

Q. So with the application of the screening factors, you ended up with two sites based on your -- let me rephrase and strike that.
After expanding the search to include sites above the UIC and no-pass lines, but the application of additional screening factors, you ended up with two sites?

A. Yes.

Q. I want to make sure that I have my terminology correct. When we say an exclusionary factor or an exclusionary criteria or screening, that means the site won't be considered if it hits on that factor or criteria?

A. We are -- we would be excluding them from further -- from applying the criteria and ranking.

Q. So you'd be screening them out and they wouldn't even make it to the criteria and ranking process?

A. That's correct.

Q. Got it. And these two sites that were returned based on these screens were essentially non-sites, because they couldn't be used as a landfill; right?

A. That's what the consultant reported, yes.

Q. And the committee didn't disagree with them?

A. I don't recall if we agreed with them or didn't agree with them.
Q. If you did, would it be noted in these minutes?

A. One would hope, but --

Q. I've got you. Not everything is perfect. Okay.

Talking about these screenings or these exclusionary criteria, one of them that the consultant had applied was lands owned by the State of Hawaii; right?

A. Yes.

Q. Was that a screen that the committee had asked R.M. Towill to apply?

A. Not to my recollection, but we did have a discussion about land ownership and what impact the site being owned by the federal or state government would have on the length of time that it would take to acquire the land. Later -- and I believe that the earlier site selection group, the 2003 group, included that as a criteria. Later, we went back and asked the consultant -- not in this meeting, but in a subsequent meeting -- to include those sites.

Q. To include the federal lands?

A. I believe we asked for federal and state. I'd have to look at the record.

Q. In fact, I believe, Ms. Marsters, in this
meeting, which is November 8, 2011, you asked the consultant to go back and look at lands owned by the State of Hawaii.

If you look down at page two, under the title Consultant Homework --

A. Yes.

Q. -- the second bullet -- do you see that?

A. I do.

Q. So these are lands that had been screened out and you say to the consultant, No, go back and include these state-owned lands?

A. That's correct.

Q. Another screen that had been applied is the exclusion of sites that were less than a hundred acres.

A. That's correct.

Q. But again, in this meeting, this November 2011 meeting, you asked the consultant to go back and look at sites that were at least 90 acres in size?

A. Yes. That is what the committee did.

Q. When we're thinking about a parcel being at least 90 acres in size, does it have to be a single parcel or will the committee consider parcel assembling, so that you can assemble multiple
parcels?

A. We discussed that as to whether, for example -- let's say we're looking at 100 acres or whatever the case may be -- whether you could have two sites that were 45 acres and contiguous, next to each other, or whether you could have four sites that were 25 acres and would provide -- but again, there were two issues. One issue is that then you have to negotiate with more landowners, thereby likely delaying the land acquisition process, and by including those small sites, you would have -- we were already looking -- when we asked the consultant to expand the sites, they were already looking at thousands of sites. I don't know -- you get down to 25 acres, maybe you're looking at 20,000 sites. It just becomes an overwhelming amount of information, so --

Q. So if I understand what you're saying, thinking of a site in terms of being able to assemble it from two or more parcels may expand the universe of potential sites, but could also complicate the process?

A. Correct.

Q. So in your judgment -- or the committee's judgment decided to include only parcels that in a
single parcel was at least 90 acres?
   A. That's correct.
   Q. So now that you've asked the consultant to
go back -- and I think this is to go back a second
time now and expand the search --
   A. Yes.
   Q. -- you needed an eighth meeting --
   A. Yes.
   Q. -- so that the consultant could report
back to you?
   A. Yes.
   Q. Ms. Marsters, I've handed you a copy of
Exhibit K170. It's titled Meeting Number Eight
Group Memory. Do you see that?
   A. I do.
   Q. So this meeting happened, if the dates are
right, on February 1st, 2012?
   A. Yes.
   Q. So now we're about six months or a little
more than six months beyond what the original
scheduled ending date was?
   A. Yes.
   Q. So it's at this meeting the consultant is
reporting back to the committee on the results of
its search after dropping those two screening
factors, the state-owned land and reducing the size of the parcel to 90 acres; right?
   A. Yes.
   Q. Now, when the consultant comes back, the report is shown on page two of the meeting minutes, and the consultant reports that the research resulted in the identification of 464 potential sites. Do you see that?
   A. Yes.
   Q. But the consultant applied a number of screening factors to those 464 potential sites; right?
   A. Yes.
   Q. Those screening factors are listed down on the bottom of page two and then on the top of page three; right?
   A. Yes.
   Q. So after applying these screening factors, that 464 sites was reduced to a total possibility of six sites; right?
   A. Yes.
   Q. But at this meeting, the committee went through these sites and concluded that only two of those six sites warranted further consideration; right?
A. Well, at that meeting, when we -- when the consultant presented their screening factors that you've shown -- that are listed here under items one through nine, we had a discussion about whether -- for example, if you're going to exclude a site because it's in a conservation district. Let's say your site is 600 acres. If two acres on one corner is conservation land, could the rest of the site reasonably be considered for siting a landfill?

The consultant had not done that kind of analysis, and so that's one example. Clearly, the Board of Water -- basically, we asked them to look at -- go back and look at, again, trying to make sure that sites were not being excluded that should continue to be considered.

Q. I understand. And you've been living this too long, so you're actually jumping ahead of my timeline here. If I could just get you to go back to page three for just a second and we'll talk about the expansion.

A. Yes.

Q. If we look at the top of page three, it says: The consultants next distributed a list of parcels passing all nine screening factors. Do you see that?
A. Yes.

Q. And it lists a total of six sites, in those four bullets right below that paragraph?

A. Yes. I think the list was larger, but they identified -- they highlighted the ones that they felt that met these criteria.

Q. Fair enough. So then if we look at what the committee did with those six sites that the consultant had felt met the criteria, the discussion is in the very next paragraph and it talks about various reasons that some of those sites were disqualified; right?

A. Uh-huh.

Q. I'm sorry. You have to answer.

A. Yes.

Q. If we look down at the very last sentence in the second paragraph, it says: The committee's review resulted in a list of only two sites for further consideration. Do you see that?

A. Yes.

Q. Now, earlier, before I made you rewind, you started talking about considerations that the consultant had not engaged in that the committee asked the consultant to go back and try again. One of the screens that the consultant applied was for
class C agricultural land. Do you remember that?
A. Basically, they applied all ag land --
   they applied a screen for all ag land.
Q. Well, if we look at item eight --
A. Oh, yes. Uh-huh.
Q. -- on page two. Do you see that?
A. Yes.
Q. This is screening criteria number eight,
   valued agricultural land, item B, Land Study Bureau
   A, B or C land.
A. Right.
Q. Had the committee asked the consultant to
   exclude lands that were only rated C, meaning
   subprime lands?
A. They had not differentiated, I believe,
   between the categories of ag land.
Q. Fair enough. So now in this time, in this
   meeting number eight, in February 2012, the
   committee asked the consultant to go back and now
   drop the screening for lands that were rated class
   C?
A. That's correct.
Q. One of the other screens was for any
   parcel that had a structure on it.
A. Yes.
Q. And that was determined just based on aerial maps; right?
A. I believe so.
Q. Had the committee asked the consultant to exclude any parcel that had any type of structure on it?
A. We had not. I believe I previously noted that I felt that the consultant may have done that because the previous site selection committee excluded anything that had -- they used the word development. So when we heard from the consultant that they had done that, it was our committee's desire that that not be used as a screening criteria.
Q. Right. So in fact, in this group meeting number eight, in February 2012, you asked the consultant to go back and drop that screen?
A. Exactly.
Q. -- so it would include more sites?
A. Yes.
Q. And then finally -- and this is the one you --
A. Potentially.
Q. Potentially. Fair enough.
A. -- that had not been screened by other
areas. But we did not want that to be the only exclusionary criteria.

Q. That a parcel wouldn't even be considered based on other factors simply because it had any structure on it?

A. That's correct.

Q. Right. And one more area that you wanted the consultant to go back and try again was with respect to acreage. And you talked about that at the beginning of our little colloquy on this, where if only two acres in a site happened to be conservation but the rest of it was suitable, shouldn't we also consider that possible site.

A. Yes. We asked them if they looked at that or if the sites were -- and maybe, you know, just automatically dropped because some portion of them -- and they didn't know what portion -- would be screened out by the screening criteria.

Q. Then initially through this meeting eight, those sites had, in fact, been dropped if any portion of them met any of the exclusionary criteria?

A. That was my understanding.

Q. So if I could have you look at page 15 of Exhibit K170, it's a list of some of the sites that
the consultant's search returned.

A. Yes. Uh-huh.

Q. So just picking one, if we look at the second site on this list, parcel identifier number 231 -- do you see that?

A. Yes.

Q. It's reported to be 720 acres in size.

A. Yes.

Q. But initially through this meeting it had been screened out because it had some portion of it that was conservation, some portion that was critical habitat and some portion that was valued agricultural lands, but the committee didn't know how much of that 720 acres fell in any one of those categories; correct?

A. That's correct.

Q. So now you wanted the consultant to go back and look at that parcel again and see if some portion of the 720 acres might be suitable for a 90-acre landfill?

A. That's correct.

Q. So because you asked the consultant to go back again, you needed a ninth meeting so that the consultant could report the results?

A. That's correct.
Q. Ms. Marsters, I've handed you a copy of Exhibit K215. It's an agenda for the site selection committee for its ninth meeting, on Friday, March 16th, 2012. Do you see that?

A. Yes.

Q. Did you attend that meeting?

A. I did.

Q. To your knowledge, have the meeting minutes or the group memory for that meeting been published?

A. I don't recall. I don't believe so.

Q. It's my understanding that at this meeting the consultant reported back on the sites that passed the reduced number of screens.

A. Yes.

Q. And at this time, the number of screens that had passed the -- the number of sites that had passed the remaining screens was seven.

A. I don't recall. The focus of this meeting was to rank the community criteria and so the meeting was set up kind of in a workshop format for that to happen and that took several hours, and that, as I said, was the focus of the meeting.

Q. I understand. And that's an important part of the process and we'll definitely get to it.
But before you can apply the criteria, you need sites; right?

A. Yes.

CHAIRWOMAN PINGREE: I think I'm going to go ahead and take a short break.

MR. CHIPCHASE: Of course.

CHAIRWOMAN PINGREE: Why don't we take -- we'll keep it short -- let's try five minutes.

(Discussion off the record.)

(Break taken.)

CHAIRWOMAN PINGREE: We're back on the record. Thank you. By the way, we are able to have the room, so we'll try to go through 12:30. Okay?

MR. CHIPCHASE: Yes. Chair, as we get started, I would move Exhibit K215, the agenda for the advisory committee, into evidence.

MS. VIOLA: No objection.

MR. SANDISON: No objection.

CHAIRPERSON PINGREE: Thank you.

BY MR. CHIPCHASE:

Q. Ms. Marsters, we were talking a little bit about the sites returned by the consultant in this ninth meeting. I don't have meeting minutes. Unfortunately, I think you're right; they haven't been prepared yet. I have a couple of newspaper
accounts of it. We can see if it more or less comports with your memory. Okay?
   A. All right.
   Q. Ms. Marsters, I've handed you a copy of a document marked as Exhibit 226. It's an article from Civil Beat. Do you see that?
   A. Yes.
   Q. In the article, it's reported that the consultant returned, after dropping those prior screening factors, with seven potential sites. Is that more or less consistent with your memory?
   A. Honestly, I don't recall how many sites there were.
   Q. Fair enough. But as part of the return of those sites, the consultant had also applied a new additional screening factor to its search. Do you remember that?
   A. I recall that they applied -- yes, they did. They applied some screening criteria -- and again, this has happened in the past, for example, when they applied the screening criteria to exclude anything that had buildings on it, so, again --
   Q. Yeah. That's right. It had happened in the past, and this time the exclusionary criteria was for potential sites that were upgradient of
parcels in or planned for residential use; right?
   A. That's correct.
   Q. Is that a screen that the committee had
asked the consultant to apply?
   A. It is not.
   Q. So then at this meeting, the committee
asked the consultant to go back and take another
look at sites that had been screened out because of
that criteria?
   A. That's correct.
   Q. As a result of dropping that screen and
also directing the consultant to go back and take
another look at the federal lands, the potential
sites that the committee will consider expanded from
seven, or whatever that initial number was, to
someplace between 13 and 22; right?
   A. I'm not sure of the number.
   Q. I understand. Let's just take a look at
what was reported, and if it jogs your memory,
that's fine. I believe it's the fourth paragraph
down in the Civil Beat article, Exhibit K226. I'll
read it for you. The panel's rationale for removing
the screening focus and reinstating potential sites,
expanding the list from seven to somewhere between
13 and 22, was that the criteria weighting process
and the ultimate decision-making process by Mayor Peter Carlisle and the Council will effectively consider the concerns about ownership, run-off and other issues.

Do you see that?

A. I see that.

Q. So the screen for federal lands and the screens for upgradient parcels, the committee felt could be more appropriately addressed not as screens but through the ranking and alternate selection process?

A. Well, through the ranking, and then some issues are probably more appropriately addressed at the EIS level.

Q. Fair enough. Like the upgradient issue?

A. Yes. I think it's important to note that we have not been focused on how many sites there were, like in each of these iterations, did it end up with seven sites, did they end up with two sites, because we weren't happy with the process that had happened. So it wasn't like we were getting to two sites and then saying, No, go back and expand to 13. We just wanted to get the process right.

Q. I understand. You wanted to have the best process you could. And to do that, it took
expanding the sites and having the consultant go back and remove screens?

A. Remove screens that we had not either previously discussed or authorized, yes.

Q. I understand. So with that out of the way, the sort or site screening process out of the way, you did get to weighting at this meeting?

A. We did not get to weighting. We ranked the criteria.

Q. I'm sorry. You got to ranking the criteria, the 19 criteria you'd previously identified?

A. That's correct.

I'm sorry. Weighting the criteria would be more specific -- would be more correct. We weighted the criteria.

Q. That's what I had written throughout my outline, so I'm glad we agree on the term.

A. But we did not rank the sites.

Q. You didn't rank the sites.

A. Yes.

Q. You just weighted the criteria?

A. That's correct.

Q. Can you tell me a little bit about how the weighting of the criteria occurred? Tell me about
that process and how it was done.
A. Yes. It was very similar to what was done
by the previous landfill selection committee, in
that each member of the committee was -- this is one
way to do it. Each member of the committee was
given a number of criteria that they could identify
as being the most important to them. So each
committee member did that and then the consultant
facilitator gathered that information and identified
which of the criteria basically received the most
votes.
Q. Let me just make sure I understand. So
there's 19 criteria?
A. Yes.
Q. A committee member can't vote to consider
all 19 as the most important?
A. That's correct.
Q. Some fewer votes each committee member
had?
A. Yes.
Q. However many votes each committee member
applied to a particular criteria, that criteria was
weighted accordingly?
A. No. So you could only apply one vote per
one criteria. So let's say that you are most
concerned with endangered species and you had seven votes, you cannot apply all seven votes to endangered species.

Q. I see.
A. Okay? So you could choose which of the seven criteria are most important to you if you had seven votes.

Q. And you can vote one vote per criteria?
A. That's correct.

Q. But whichever criteria gets the most votes from all of the committee members --
A. Yes.
Q. -- that is considered the most important or the heaviest weighted criteria?
A. That's correct.

Q. Do you recall which criteria received the most votes?
A. I believe it was proximity to residential communities.

Q. So let me make sure I understand that criteria. Does that mean that the closer to a residential community it is, the more disfavored the site is?
A. That would be correct.

Q. So a site that is across the street from a
residential community would be disfavored?

   A. Yes. I'd have to look at exactly how the criteria is described, but it would be proximity.

   Q. I understand. Do you recall which criteria received the next most votes?

   A. I believe there were -- I don't recall. There were a number of criteria that were kind of similar in assignment, let's say, of votes, and -- but I don't recall what they are -- what they were.

   Q. Without getting into specifically what they were, it's your recollection that at least several or a few criteria received the same number of votes?

   A. Yes.

   Q. How did the committee resolve that tie among criteria?

   A. There was some considerable discussion as to whether, A, you needed to resolve, and what the implication of that was. What the committee decided to do was to leave the number the same but provide a gradation within that scale. I think that it was more the committee's intent or desire to express that even within the classification of things that -- you know, let's say five people selected this thing as the most important -- again, I think it's
important to note that it's not like each committee ranked their priority. That's not how this happened. So there was some concern that -- from some committee members that -- let's say five people selected distance from H-POWER. And I don't recall what the five -- what they were.

Q. Fair enough.

A. But let's say five people selected distance from H-POWER and five people selected proximity to visitor attractions or endangered species or whatever the case is, that within that, even though five people had selected that, that if as a committee we look at that, we would probably -- if we just looked at those criteria that were ranked by five people, there's probably a gradation in that. So the committee took just those numbers and went back and voted again, using the same procedure, to provide a gradation for those items. Is that clear?

Q. I think I understand. Do you recall after applying that gradation within those other categories that received -- the same criteria that received the same vote, what the order of importance was?

A. I don't recall. I'm sorry.
Q. Fair enough. Because we don't have group meeting minutes yet, the only thing I have is a photograph of the tear-off sheet that you guys used to rank the sites.

A. Okay.

Q. And so if you could turn to page three of Exhibit K226, the Civil Beat article --

A. Yes.

Q. It's not the best photograph, and I don't mean to spend a lot of time on it because of that.

A. Right.

Q. But if we could look at the item number three on the left-hand side of that closest to us tear-off sheet. Do you see that?

A. Right.

Q. It looks to me like it says: Location, res. Do you see that?

A. Yes.

Q. And it has six votes?

A. Yes.

Q. So if I scan the other items, I don't see anything else that got six votes.

A. That's correct.

Q. And if I look on the other side of it, the location relative to H-POWER, number 11 -- do you
see that?

A. Yes.

Q. It got five votes.

A. Yes.

Q. And it looks to me like there's several other criteria that got five votes.

A. Yes.

Q. Do you see that? So at least on this initial pass, location relative to H-POWER along with the other items that got five votes was the second highest weighted criteria.

A. It was -- it was one of the criteria that received five votes.

Q. And only one criteria received six, so far as I can tell.

A. That's correct.

Q. Location relative to H-POWER is relevant because of the cost of hauling the ash and residue from H-POWER; is that right?

A. Yes. I understand that is the concern.

Q. So if the committee didn't need to consider ash or residue because it's currently allowed at Waimanalo, that wouldn't have been one of the criteria you looked at in selecting a landfill?

A. I would say that would be correct.
Q. So after telling the consultant to go back again in the ninth meeting and remove a screen and then weighting the criteria, you're scheduled to hold a tenth meeting?

A. That's correct.

Q. Do you know when the tenth meeting is scheduled?

A. I believe they're trying to schedule it now.

Q. I see.

A. I had an email this morning asking about availability of dates.

Q. I see. So to your knowledge, no meeting date has been set and they haven't posted an agenda?

A. That's correct. I think they're trying to find a date that is most available to the committee members.

Q. I know that's hard. Does the committee anticipate that at this tenth meeting it will apply the criteria to the final list of sites?

A. I sure hope so.

Q. Do you anticipate that at this next meeting, at the tenth meeting, the committee will make its recommendation of sites to the mayor?

A. I believe that's the plan.
Q. Is the committee going to publish a report on the process and on its recommendation?
A. Yes.

Q. Do you know whether the report will be published in conjunction with this tenth meeting or will come later?
A. I believe it will come later, because we've been given portions of it to review and comment upon in draft form, and we haven't seen all of it, so --

Q. After this tenth meeting and the publication of the report, is that the end of the role of the committee in the site selection process?
A. As I understand it.

Q. Could we, if I could, have you look back at Exhibit K144, which was the excerpt from the Integrated Solid Waste Management Plan update dated October 2008?
A. Yes.

Q. If I could have you turn to page 11-5. It's that flow chart we looked at earlier. Do you see that?
A. Yes.

Q. I want to understand where the process is in relation to this process set out here.
A. Yes.

Q. If I look at it, it looks to me like at meeting number nine you determined the weight of each criteria.

A. Yes.

Q. Then at meeting number ten, you're going to assign the impact rating to each site.

A. I would say.

Q. Then your role ends, as far as you understand it?

A. As far as we understand it.

Now, if I -- we have been asked if we would like to make recommendations on community benefits type of accommodations that would be made for communities that may host a landfill.

Q. Could you explain to me what that means?

A. I'm not sure if this was done in the last -- I believe it was done in the 2003 report, but I'm not entirely sure. But it's often done for communities where you have an impact for whatever a potential adverse siting would be, whether it's a landfill or an industrial facility or whatever it might be that it could provide impact to the community. There is often, sometimes, some sort of a community benefits package put together for that.
Q. I see. So you'll assign the impact ranking to each site. The committee will make its recommendation and individual members of the committee may stay on to --

A. No. We've -- I believe that it would be part of the report.

Q. I see.

A. And so -- and I'm not sure if the plan is for us to meet to finalize the report. That really hasn't been discussed. Once we provide the sites and we -- you know, we'll be providing a report. But I don't -- I'm not -- you know, portions of the report have been provided to us and I presume that after this -- after our next meeting, the consultant would be able to finalize the report.

With respect to a community benefits package, I believe what they provided to us was what was done for the -- I'd have to go back and look at the record, but I believe that what was provided to us was what was previously done for the 2003 committee, and we were asked if we wanted to include this or something like it.

Q. I see. So the recommendation will be made in the report and that is the end of the line for the committee?
A. That's my understanding.
Q. The report may or may not include a recommendation on a community benefits package?
A. That's correct.
Q. Okay. So then if we go back to the flow chart on 11-5, you're making -- the committee, rather, is making its recommendation at the assigned impact ranking to each site phase?
A. Yes.
Q. Is the committee considering mitigation factors before it makes its recommendation?
A. No.
Q. Is the committee -- if we then look down further on the flow chart, is the committee doing the neighborhood notification and public meetings before it makes its recommendation?
A. Of course not.
Q. So that this last sort of loop and a half of the process outlined here is not something the committee will be engaged in?
A. That's correct.

MR. CHIPCHASE: Okay. Your witness.
MS. VIOLA: I have no questions.
MR. SANDISON: No questions.
CHAIRWOMAN PINGREE: Commissioners,
questions?

EXAMINATION

BY MS. DAwSON:

Q. I'd like to thank the witness. We've waited a long time to hear from the selection committee.

Are you the chair of that committee?

A. There really is no chair.

Q. There is no chair?

A. There is no chair.

Q. That's very instructive, there's no chair. Are the members of that committee -- I see your qualifications, which I think are excellent, but are all of the other members equally considered professionals in terms of their contributions or are some of them simply community members? What is the breakdown?

A. I think I would say that most of them are community members, as am I. But I think that the intent was to get, you know, a broad range, and I would say that certainly I was not selected based on my experience designing landfills or anything, because that's not what I do. But based on my engineering experience and my involvement in the
community as an environmental advocate -- I'm on the board of the Sierra Club, for example. So I think my -- I consider myself a community member who happens to have some expertise in environmental matters.

Q. I'm looking at the breakdown of who the committee members are --
A. Yes.

Q. -- simply because as a practical matter, almost anyone if asked would say, No, I don't want a landfill near me.
A. Certainly.

Q. So your task seems to be handicapped from the beginning. Nobody is going to want to have a landfill in their backyard or next to them or near them. So has the committee ever discussed this in terms of how they feel about where a new landfill might be?
A. Well, of course, we have members of the committee from the leeward coast and I think, you know, there's been a lot of public expression from that area of not wanting to have another landfill in that area.

What we've tried to do is evaluate the sites on their technical basis so that our selection
is not clouded by the location in -- by community. There are certainly location factors above the UIC line, below the UIC line, proximity to residential, proximity to the other criteria, but we don't know in which communities those sites are situated. They're ranked without that information. So for all we know, we're looking at sites in Kahala.

Q. Interesting. I don't think that's likely, however.

I'm wondering if the committee itself has any -- in your discussion, have you any projections about whether or not there should be one new landfill site or multiple new landfill sites? Has that ever come up for discussion?

A. Yes. We have talked about it, because we talked about whether, for example, if you could have different sites to take different waste streams, does it impact your decision. And it may. I think that, again, it gets you into -- it expands the scope so much that it may have just become an unmanageable task. So the decision was made to limit it to one site under consideration.

Now, that being said, we're looking at -- we're not just going to say, Here's our one site. The sites that we're ranking will be provided as a
list of sites. Of course, then once you look at those sites with respect to the -- you know, once they start going through environmental review, then maybe your top-ranked site falls out for some reason. But that's -- the ranking will be done according to the community criteria of this committee and the screening process that this committee applied. As I said, you might get to -- you know, whatever the site was that was ranked number one may fall out because -- may become not the priority site based on the environmental review process.

Q. Are your activities and discussions at all coordinated with the planning department?
A. They are not.

Q. The planning department continues to consider new housing developments in almost any area of this heavily populated island, so I notice that a couple of these sites do have developments that have come up. I don't know if that's Ho'opili or not, but it could be others. But it's not at all coordinated, so conceivably there are other developments that could be approved and even permitted for any of the sites you choose?
A. Conceivably.
Q. That's not very encouraging. But you believe that you are going to have your final report at your next meeting?

A. I believe we will rank the sites at our next meeting.

Q. Was there a reason for this -- your committee being purely advisory, as opposed to having Council give it some authority?

A. I'm not sure of the genesis of that decision, I'm afraid.

Q. Because conceivably, when it goes to the next step, which will be the Land Use Commission, if their decision is, say, diametrically opposed to yours, where would it go after that?

A. I'm sorry. Are you asking if the Council was opposed to our decision?

Q. Yes. I mean, where does the Council come in?

A. I'm not sure.

MS. DAWSON: Okay. I think that's all I have.

CHAIRWOMAN PINGREE: Thank you, Janice. I had a question.
EXAMINATION

BY CHAIRWOMAN PINGREE:

Q. It's my understanding that the sites that have been narrowed, narrowed down to so many sites, of course, are unknown locations.

A. That's correct. Now, of course, we saw the original map. Those sites are all very well documented. Right. Then the sites that we've added -- that we've gone back and requested to be added in are not, yes.

Q. So could it be that the final site selection -- could those include leeward sites?

A. They could, according to how we did the process.

CHAIRWOMAN PINGREE: That's all I have.

MR. PACOPAC: I won't ask about the volcano.

CHAIRWOMAN PINGREE: Thank you so much. We appreciate you coming in.

MR. CHIPCHASE: Chair, before we recess, I forgot to move in Exhibit 226.

MS. VIOLA: I don't have an objection, but I would note that it's an article and it's not essentially the official minutes of the meeting.

CHAIRWOMAN PINGREE: It's my understanding
that we're going to reconvene at 3:00 today and I
need to have an understanding of who we're going to
see at three and thereafter, for clarity purposes.

MR. CHIPCHASE: At 3:00, I will call Maeda
Timson and Senator Maile Shimabukuro.

CHAIRWOMAN PINGREE: All right.

MS. VIOLA: And at 3:30 or thereafter, I
will call Gary Gill. And then I have two remaining
witnesses for next week to testify, which will be
Tim Steinberger and Dr. Hari Sharma.

CHAIRWOMAN PINGREE: Thank you. We have
another hearing at 1:30, so we'll see you back at
three.

(Break taken.)

CHAIRWOMAN PINGREE: We are back on the
record. Mr. Chipchase?

MR. CHIPCHASE: Chair, I believe we're
toddling back to my case, and at this point I would
call Senator Maile Shimabukuro.

SENATOR SHIMABUKURO: Do I need to be
sworn in?

CHAIRWOMAN PINGREE: I will swear you in.

Would you kindly raise your right hand?
SENATOR MAILE SHIMABUKURO,
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:

CHAIRWOMAN PINGREE: Thank you.

SENATOR SHIMABUKURO: Good afternoon,
everyone. Hopefully, you have a copy of the
declaration that was filed December 13, 2011. I'm
kind of going to be basing my statement off of the
declaration. There's extra copies there.

Basically, I've lived on the Waianae coast
since about the age of three. My mother also grew
grew up in Waianae. I'm an attorney by trade,
working at the Legal Aid Society of Hawaii's Waianae
office. I've been there since 1992. I've been a
legislator for the past ten years now, starting as a
representative, and been senator since 2010.

I've been involved in various
environmental community activities. We've done --
I'm part of this flood task force and we've also
done various community cleans-ups. It seems like I
do two, at least, a year, if not more.

And over the course of time that I've been
a legislator, I've gotten several different complaints from constituents and several of them are attached as exhibits to my declaration. For example, I know one of them, Exhibit A, is Richard Medeiros' February 1st, 2011. Quote: I read the Hawaii News Now story about the landfill, a committee being form to recommend a new site. I'm often ashamed that Waianae is always looked down upon by the rest of the island and state. We've always been a dumping ground for everything people don't want. I'm ashamed that the community I grew up in has never taken a strong enough stand to say enough is enough. Please represent us properly and make it known that we do not want to continue to be the dumping ground for the state. I'm sorry. It's Exhibit K143.

And then there's several -- there's another one, Jojan Barrett, January 14, 2011, similar kind of thing. Many of these people were very incensed about the medical waste that came streaming out of the landfill after the big rains. That's why a lot of them are from early 2011.

Katherine Kamada's, another exhibit, similar email, very upset, wanting me to do something about it.
I'm not the only -- other area legislators have also taken similar positions. Representative Jo Jordan, the State House Representative for District 45, took my place, and she has also publicly made it known that she is opposed to Waimanalo Gulch continuing on further. That's Exhibit K43. Obviously, making note that Senator Hanabusa is one of the plaintiffs in this case -- former Senator Hanabusa.

And you know, I think what's already been talked about in this case -- part of what makes the community so upset about this landfill is the violations it's had, and from what I've seen, there's been close to three million dollars in fines levied against Waimanalo Gulch, showing that they aren't complying with the regulations they're supposed to. I'm on page five of my testimony. Starting from page five, I detail some of the violations that I'm aware of that have come down, even from the EPA; not only our own DOH, but EPA as well, the feds.

Going into page six, going to more -- 2010, there were violations, DOH, all the way to 2011; talking about the medical waste issue.
November 29, 2011, when the EPA found that the City and Waste Management violated the Clean Water Act. So there's just so many examples of how the landfill just hasn't complied and really the public trust feels shattered in that.

Then in my testimony, I talk about how -- some of what the constituents have stated in their exhibits is the frustration of feeling like we're the dumping ground. Waimanalo Gulch isn't the only thing we have on the Wai'anae coast. We have the military bases, Kahe Power Plant, H-POWER, Honouliuli Waste Treatment Plant, the sewer. We have the military operations that dump chemical weapons off our coastline that was revealed by the news; huge radio towers, the red and white towers that the Navy has in Lualualei Valley that many fear has been the cause of why so many people die so young of so many diseases on our coastline. And just a feeling that our coastline seems to get more than its share of environmental injustice.

On page eight, when I talk about the City's scare tactics, what I'm talking about here is that right around the time that the City decided they were going to ask for this 15-year extension, it really divided the community, and as a result, it
was very dramatic because our neighborhood boards
actually split up over this, where the Nanakuli-
Maili Neighborhood Board went in one direction and
Waianae-Makaha went another. And many people felt
like it was this divide and conquer, because the
rumor that was going around that many believe that
it came from the City was that if we shut down
Waimanalo Gulch, then they're going to put the
landfill in Nanakuli, like Nanakuli B or one of
those sites by Maili Elementary School perhaps. So
the people in Nanakuli-Maili then were in favor of
having Waimanalo Gulch be extended, while the rest
of the community was opposed.

And it really -- I thought it was terrible
that -- why should we be having this a'ama crab
syndrome in our community where it's like, you know,
either way we're being pegged against each other,
and now there's like in-fighting going on. I
thought that was very unfortunate and it really is
terribly unfair and that's why I really, really
think that if the blue ribbon panel is going to
select another site for this landfill, you know, I
just can't imagine how they could put it on the
Waianae coast again, after all we've been through.

And then, at the bottom of page eight, I
just talk about, you know, the reason that people
are so upset about this is that every time a
candidate has run for mayor, they come to our
community and campaign and tell us that they're
going to close the landfill. Mayor Harris, Mayor
Hanneman -- this is what we were led to believe, at
least. But over the decades, it never fails that
instead of that happening, instead extensions are
requested, and so many of us do feel like enough is
enough.

Then on page nine, you know, what we
really do believe is that we really want to take the
City for its word and that what they've always said
is they can close it, because they just need time to
find alternatives. We really do believe that
they've had ample time.

H-POWER is going to be expanded, funds
have been appropriated. It's in the works. From
what I understand, that should be able to take care
of most everything, or a lot of the waste.

There's all kinds of things that have
happened. I know that there was, at one point, talk
of shipping it, and unfortunately, that got botched
in other -- in various ways. But there are other
municipalities across the nation and in other
countries that don't landfill. I really, really believe that our state should follow suit. It's really not a healthy way to go at all.

On page ten, talking about Ko Olina Resort, which you probably heard about from Ken Williams. You know, as we know, Ko Olina has so much hope in it, with Disney coming. We really hope it's going to help stimulate our economy, help drive up our tourist industry, bring jobs to the leeward side of the island, and to put a landfill across a tourist destination like that, I think, is something that never would have been contemplated, you know, had that preexisted. So I really hope that won't happen.

At the end of this, I talk about how the reason we're here today is that we went through -- we've been in this battle for years. On number 35, LUC had put a July 2012 deadline and they really -- they tried to find a compromise, you know, where they heard the concerns of the community and in response decided to close it at an earlier date. We're really -- we really believe that that was fair and that they really tried to weigh both sides and gave enough time to the City to find alternatives.

Some other things that I wanted to draw
your attention to are the sustainable community plan. Exhibit K223, at page six, at the bottom paragraph it talks about how, you know, the future of Oahu's solid waste was a major public and political issue back in 2004. When the decision came before the City Council, they voted to expand it and the other sites considered were all on the Waianae coast, Maili, Nanakuli, Makaiwa Gulch. Waianae residents were adamant that we didn't want to have to carry the burden of housing another landfill and most did not support expanding Waimanalo Gulch. So I know that the Waianae Neighborhood Board, I believe, did take a vote against it. So people were very vocal in being -- talking about how frustrated they were and they wanted to fight that.

There is also an article here K80, medical waste cleanups under way. This came from KITV news and talking about how four miles off of Pokai Bay lifeguards -- I'm sorry -- four miles away, at Pokai Bay, so four miles away from the gulch now, medical waste came upon our shorelines.

And Pokai Bay, if any of you have ever been there -- I mean, it's a very, very popular beach for children and families. I mean, you see
tons of people there, kids playing, hundreds of
people there on the weekends. So all along our
cost, you know, it's just unbelievable that this
waste had gotten there and had reached our shores.
And really, from what I hear, that the landfill --
it shouldn't have happened. They were in the
process of trying to correct the problem.
Unfortunately, the rain came when it did.

So that's the basis -- basics of my
testimony. You know, I just really appreciate all
the time that you folks have spent considering this
issue. I know it's a very difficult job that you
have, but I really hope that you will, you know,
look at what other municipalities have done. I
always hear, over and over again, We have to have a
landfill, we have to have a landfill, and I really
don't believe that's true. I think we can really
downsiz significantly this landfill if we use
H-POWER significantly and not have something that
has to keep expanding and expanding. Thank you.

MR. CHIPCHASE: Thank you.

MS. DAWSON: Thank you.

CHAIRWOMAN PINGREE: Counsel?

MS. VIOLA: No questions.

MR. SANDISON: No questions.
THE WITNESS: Thank you very much.

CHAIRWOMAN PINGREE: Excuse me one moment.

Commissioners, any questions?

Thank you.

MR. CHIPCHASE: Intervenors call Maeda Timson.

CHAIRWOMAN PINGREE: Before I swear Maeda in, I'd just like this to be on record. Maeda and I work for the same employer and the ethics department has been notified of such, and I've been cleared of any ethics violation -- or potential ethics violation.

Maeda, would you kindly raise your right hand.

MAEDA TIMSON,
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:

CHAIRWOMAN PINGREE: Thank you.

MS. TIMSON: Good afternoon. Aloha, everyone. My name is Maeda Timson, of Kapolei. I, like many others on the west side, oppose the
expansion of the Waimanalo Gulch.

I have been a Makakilo resident for more than 40 years and I've been active in community projects, which include the residents who participated in building of the City of Kapolei. I was the neighborhood board chair for 15 years, served on HCDA, representing Kalaeloa for seven years; past president, current board member of Seagull Schools, which three of our schools are on the west side. I'm a member of the community committees for Salvation Army KROC Center and University of Hawaii West Oahu.

I mention just a few of these because I want to set the framework of my testimony, because I feel my constant interaction with the residents of the west side really gives me a pulse of the community sentiments.

You have, also, before you my written testimony that I did, my declaration, but I want to summarize some of these things that I think are very important.

First of all, the neighborhood board. During my 15-year tenure, there were several occasions where the board consistently voted to close or stop the Waimanalo Gulch landfill. We
never wavered. It was always close it, and you see
that on Exhibit K47.

For years, the residents of Honokai Hale
and Ko Olina they often complained to the board
about the trash that was littered on the highway,
flies, foul odors, and all these odors were coming
from the landfill. To put it in perspective, the Ko
Olina community and the Honokai Hale community, if
you don't know, is across the street from this
landfill.

Years ago, when this landfill was created,
I was part of a group that -- we tried to move it
down, because it was really within the community.
So unfortunately for Ko Olina, it was knocked down,
you know, across the street from them. But it was
the landfill that we did not want in our community,
and the rebels that we were at that time made some
kind of a dent to get the City to move it. We were
too late, because those little stinkers named it
Waimanalo Landfill and we thought it was in
Waimanalo. How would I know Waimanalo Landfill
would be in my backyard? So by the time we got
involved, it was like, Oh, gosh, it's in our
backyard.

And I've smelled these odors myself while
I'm at Ko Olina or on the beach. If Ken or any of these people are at work, they call me if they see me at the beach or in the restaurant, Come, we want you to smell this. I don't need to smell the crap. I can smell it any other time. But, you know, I have smelled it.

And we have copies that was sent to our neighborhood board, over two inches thick of correspondence relating to all of these incidents. Numerous attempts, especially since 2006, I made to Waste Management, asking them to come before the community, you need to be accountable, what is it that you're doing. They didn't come. They make excuses, Oh, well, it's in litigation, we're going to get fined, so we have to wait until after the fine. Whatever. That's just -- just to be more irritating to us.

And when we would -- you know, our questions to the City -- I'm on the phone. What are you guys doing. And they're saying, Oh, we don't know what's going on. You know, we're working with Waste Management and they're going to get some deodorizers and they're gonna make it smell like roses and -- it's so totally ridiculous. But they knew all along. They -- you never get a follow-up
from them. You don't get an update unless as the
nagging board chair I'm after their back saying, You
need to come before us.

Then we have the best, the broken
promises. Back in the '80s, when this landfill
first was about, that was when Fasi -- he was the
one, and he said the landfill was going to be built
and closed in 15 years. Mayor Harris, he was the
environmentalist. He assured us he knew how toxic a
landfill in our community was and plans were ongoing
to relocate it. Former Mayor Hanneman made a
campaign promise to our neighborhood board and
community that he would close the landfill.
Instead, when he was elected, he created a benefits
package for the leeward community to offset the
landfill nuisance. You see that in Exhibit K126.

But every time we talk to the City, We're
working on it. You know how many years that is?
You know, Gayle and I said we work for the same
employer. If I went to work every day for the last
15 or so years and I didn't do my job, I would be
fired. Well, that person, Wilma, still works there.
She's still looking for a landfill site. Somebody
better help her. But again, I would be fired if I
did not produce and do my job. So it's really
obvious -- it's obvious to all of us that the City really doesn't care.

Politicians, they say whatever they need -- sorry, Maile -- they say whatever they need to keep their popularity, and that is why so often as a community we have really little faith in government. It's like government never has a consequence. They don't have accountability, but I do. How come?

You know, I may -- I don't blame the current administration. I want to give them a chance to make it right, but if they don't, I will blame them too and I will be here again. Again, government's not responsible, they're not accountable. They expect us to do our part but they don't do theirs.

Then we have the blue ribbon committee. Oh, it's an absolute joke. You guys know it. They're only going through the process and they're just pretending there is a fair process. No. The original committee, they named four sites, none of which was Waimanalo Landfill. The Council came up with a resolution renaming Waimanalo Landfill as a site. Now, this resolution is non-binding and it doesn't supersede what the Land Use Commission or the Planning Commission, what their orders were to
close the landfill. So why are we now listening to a resolution? Because it's the same nonsense.

The current committee, they have no one on that committee from Ko Olina or Kapolei, no -- none of us. Because we weren't smart enough. We didn't have that experience, is what they said to me when I asked them several times why we not on that committee. Because I can tell you the history and you don't want me, because I'm the mouth, send somebody else. We are not represented. So how qualified can this committee be? They're not intimately affected by this? We are.

And I went to a couple of the meetings. I was like, This is a joke. I'm not even going to waste my time. They're ineffective, and I think they kinda know. They're frustrated themselves. So why did we do this? I don't know. Instead of blue ribbon committee, we should call them poho committee.

The January 2011 disaster -- we know what happened there, the shamefully slow response from the City and State. My friend Gary is in the audience. It was Ko Olina and the community who really took the quick action to remove the solid waste, the medical waste from our beautiful beaches.
And these are the beaches that we need to protect our families. We are the ones that -- we frequent the shores, the surf, and we fish daily. Look at my Exhibit K108. It was ridiculous. There's people that are there every day.

On the social injustice side -- the leeward side, again, we continue, as Maile said, we receive all the toxic ills of this Oahu community, sewage treatment plants, industrial parks, power plants, landfills. We know it. We're not dumb. A landfill is a gold mine for the City. $91 a ton for the stuff that they dump there. We, as a community, we hear that next to property taxes, the landfill is the number two generating landfill, over eight percent. So why would they get rid of that landfill? Tell me why. That's why they're not. We know it's all about money; revenue and the argument that it's too costly to relocate this landfill. So does that mean that our community, we have to be burdened with the landfill forever and ever and we're the sacrificial lamb for Oahu? Would you ask that of your community or any other community? What about our quality of life?

I'll tell you, it just breaks my heart that my family we have to hesitate and we plan
before we go down to the leeward coast beaches, to
make sure it's safe. For many years, my husband and
I, when we would take our own keiki down to the
beaches, we'd fish, we'd swim. Kind of like a
family history, family tradition. Now I take my
mo'opunas there and we do exact same thing and we
catch -- sometimes it's so small and we gotta throw
it back, but, you know, when we do and we cook it,
I'm afraid to eat it. I'm like, Oh, I don't know,
what if we glow in the dark or something. You know,
it's a family memory, and I am insulted and upset
that that is taken away from me, because we have so
little that we can leave this next generation of
just the old days. So if there's municipal and
medical waste on the beach and in the water --

But, you know, I really want to thank you
for the opportunity to let me speak, because I think
I really speak for many residents. But everyone is
so busy trying to make a living and raise their
families, they're not going to come here, they're
not going to come here and testify, and they're
almost afraid to.

But the leisure and time that families on
the west side and the leeward coast -- they spend it
at the beaches. For one, our ancestors spent it
there, so we have that connection. For two, the
leeward side, if you look at the families, they got
so many kids -- I don't have that many, but -- they
have so many kids; who the heck can afford to do
movies or all of these other things. Or if you want
to go to the zoo, you have to travel over an hour.

This is our backyard. These beaches and
the sand and the environment that you guys are
polluting and continue to punish us for living there
-- that is our life. That's our memories. We
deserve what everybody gets. We want to create our
own memories and our own traditions, and we really
want to play where our ancestors lived. So I ask
you, have the guts, close the landfill and say no.
It's not an easy thing to do, but sometimes being
right is not easy.

Thank you very much.

CHAIRWOMAN PINGREE: Thank you, Maeda.

MS. TIMSON: I bet nobody wants to ask me
questions.

CHAIRWOMAN PINGREE: You never know.

MS. TIMSON: Thanks much.

MS. VIOLA: No questions.

MR. SANDISON: No questions.

CHAIRWOMAN PINGREE: Commissioners? No
questions?

MS. DAWSON: Thank you for coming.

MR. CHIPCHASE: Thank you, Maeda.

Chair, at this point, intervenors would move in Exhibit K223. That was an excerpt from the Waianae Sustainable Communities Plan that Senator Shimabukuro talked about.

CHAIRWOMAN PINGREE: Any objections?

MS. VIOLA: No.

MR. SANDISON: No objection.

MR. CHIPCHASE: And intervenors would then rest, subject to our right to call rebuttal witnesses.

CHAIRWOMAN PINGREE: Thank you.

It's my understanding that we have another witness. Dana?

MS. VIOLA: The City calls Mr. Gary Gill.

MR. GILL: Aloha.

CHAIRWOMAN PINGREE: Aloha.

What is the scope?

MS. VIOLA: Deputy Director Gill will be rebutting the testimony of Dwight Miller regarding the role of DOH in the permitting process and the need for a landfill as of July 30, 2012.

CHAIRWOMAN PINGREE: Thank you. Would you
kindly raise your right hand, please?

GARY GILL,
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:

EXAMINATION

BY MS. VIOLA:

Q. Would you please state your name for the
record and your occupation?

A. My name is Gary Gill. I currently serve
as the Deputy Director for the Department of Health,
our environmental health programs. I have been in
this position now since January of last year. I
served in this position, as well, for four years
under the second term of Governor Ben Cayetano.

So in this capacity, overseeing the
environmental health administration, I oversee the
Environmental Protection Agency-delegated programs,
including clean air, clean water, safe drinking
water, solid hazardous waste and our wastewater
programs, as well as other functions in the health
department, including the state laboratory and
restaurant inspectors and sanitation workers, to
name a few.

Q. There's been some testimony that it is not DOH's duty to protect human health and the environment. Would you agree with that opinion?

MR. CHIPCHASE: Just for the record, I'll restate my objection to the characterization of Mr. Miller's testimony. You all have the transcript. It's part of the record. You can read it yourself. So I don't need to interject every time she says something, but I need to state on the record that I don't agree with the way she's characterizing the testimony.

MS. VIOLA: I'm referring to specific quotes from the transcript, so I have the page number at page 41. You can refer to his testimony on or about pages 40, 41 and 42.

CHAIRWOMAN PINGREE: What exhibit is this?

MS. VIOLA: This is the pages of the transcript of the last proceeding, so Mr. Miller's direct testimony.

BY MS. VIOLA:

Q. The question was: There's been some testimony questioning DOH's duty to protect human health and the environment.

Would you agree that that is not DOH's
responsibility?

A. Protecting human health and the environment is very clearly the responsibility of the Department of Health under state and federal law.

Q. Another statement was made that it is not the DOH's responsibility that the plans that are submitted pursuant to permits that are issued -- that the plans are done correctly. Do you agree or disagree with that statement?

A. Is this specifically regarding landfill plans and solid waste permits?

Q. Yes.

A. So in that case, our Solid and Hazardous Waste Branch, which is part of the Environmental Management Division, which is part of the Environmental Health Administration that I oversee, gives very close engineering scrutiny to every landfill application or solid waste management permit application that comes through. This includes an engineering review, specifically the type -- for example, the type of liner that may be applied, the height or breadth of design criteria of the landfill itself, what kind of daily cover that would be placed on the landfill is appropriate,
operational controls, storm water controls, all part of a permit application for any solid waste facility, including landfills, and they are given very close scrutiny prior to approval by my agency.

Q. Specifically, I'm quoting. This witness, Mr. Miller, stated that they, meaning the Department of Health, are simply giving it their stamp of approval. That would be an application, a solid waste application or permit. They're essentially saying that a qualified individual, a professional engineer is stamping this set of plans and that they -- they cannot necessarily review all aspects of that application.

Would you agree or disagree with that?

A. Well, I don't believe that statement is accurate.

Q. Why?

A. Because as I mentioned earlier, any application, particularly for a landfill, which there are landfills in each county statewide, but beyond just landfills, a solid waste permit could apply to a recycling center or anything that deals with some element of the waste stream. There are very specific controls. Just a simple example would be if you have a recycling facility and you're
placing recycled goods on something other than a concrete slab, that's a violation of our design criteria.

We not only will review your application to make sure that the controls or the management of the waste that you're dealing with is properly placed within your facility, but we have an enforcement program that goes and checks and enforces the provisions of your permit and the conditions of our rules.

Q. Would you have reason to question the expertise of someone who had stated this opinion?
A. I'm sorry. Could you state that again?
Q. Would you have reason to question the expertise of an individual who had this opinion, that DOH's capacity is just as --
A. Well, if someone were to categorize my program's function as being a rubber stamp for an application, that very clearly implies to me that person has never come through our department and is not familiar with our operations.

Q. The witness also states that the landfill can close to MSW, municipal solid waste, as of July 31st, 2012. Do you agree with that statement?
A. That the landfill can close?
Q. Uh-huh.
A. I suppose it's possible to close the landfill at that date or any other date. The question to me would be what that might do for the health and welfare of the public and the environment.

Q. What would your opinion be regarding what that would do, if it were to close as of July 31st, 2012?

A. I don't believe that the City & County of Honolulu has reached the ultimate goal of being a zero waste society. There is -- as much progress as we have made, and in my career, beginning with the City and County, I can attest to how much progress, good progress has been made in improving recycling, everything from green waste to bottles and cans and even sewage sludge and the like. We're doing a great deal more recycling and waste minimization than had been done a few decades ago. But the requirement -- or the necessity, I should say, for a landfill still exists on this island and I believe it exists virtually in every community in the United States.

Q. And if the landfill were to close to MSW as of July 31st, 2012, would that pose a potential
A. Well, I believe it would, in that I believe that there is not currently the capacity within the City and County to deal with it -- deal with all the waste in the municipal waste stream.

Even with the increased capacity of the H-POWER facility, which will be coming on in the near future, there are times when the H-POWER facility cannot accommodate all the waste in the waste stream. There are kinds of waste that the H-POWER facility cannot accommodate, and there could be instances, for example, dealing with disaster debris or emergency situations where the landfill would need to be called into service to manage those kinds of emergencies.

Q. So I guess could you explain to the commission what the potential health hazard would be if the landfill were to be closed to MSW on July 31st, 2012 and there isn't an alternative for waste disposal?

A. I guess the obvious worst case scenario is if you don't have a place to put municipal garbage, it's going to stack up somewhere else. It's going to stack up on the street or it's going to stack up in some place which is not permitted to handle it.
The City would be -- if the City were to be forced because of lack of access to the landfill to place its municipal solid waste somewhere else without a permit, they would be in violation of our law.

MS. VIOLA: Thank you. Nothing further.

MR. SANDISON: No questions.

MR. CHIPCHASE: I do, Chair. It will take me about ten minutes to set it up. There's a video component to it. If we could recess for ten minutes and we'll set it up and the examination is very quick.

MS. DAWSON: Are they finished questioning him?

MS. VIOLA: Before that's done, can I ask for an offer of proof for the video? I'd like to limit whatever is being questioned or presented to Mr. Gill to the scope of rebuttal, since I was required to do an offer of proof.

MR. CHIPCHASE: Mr. Gill talked about the role of the Department of Health in ensuring human health and safety. The video goes to that. And he talked about the progress toward recycling and alternative technology and the video goes to that.

MS. VIOLA: Specifically, the video goes to what aspect of the public health and safety? The
public health and safety was in the context of issuing a permit, not just overall public health and safety in the context that I've opened the door to any public health and safety issue. In the context of issuing the permit.

MR. CHIPCHASE: Well, I believe the testimony was actually not that limited. I think if you ask Mr. Gill, he would say --

I don't want to speak for you, so interject if I'm wrong.

-- that the Department of Health does have a role in protecting human health and safety generally. If that's off, then that's off. But more particularly, it does go to an activity that was permitted at the landfill by the Department of Health.

MS. VIOLA: An activity that was permitted at the landfill in the context of the questions that I asked? That was regarding permit writing and the role of the Department of Health in terms of protecting health in the context of permit application.

CHAIRWOMAN PINGREE: Dana, as I recall, I think your questions were rather broad, as well, insofar as public health, what was the impact on
public health, and Mr. Gill answered in a general manner, as well. So yes.

MR. CHIPCHASE: Thank you.

(Discussion off the record.)

CHAIRWOMAN PINGREE: We're back on the record.

EXAMINATION

BY MR. CHIPCHASE:

Q. Good afternoon, Mr. Gill.

A. Hello.

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

MS. VIOLA: Objection.

BY MR. CHIPCHASE:

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

A. Island Insights.

Q. Island Insights on PBS?

A. I do.

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

A. Yes, she was.
Q. I'd like to show you just a couple of clips from that appearance, if I could.

(Video presentation.)

BY MR. CHIPCHASE:

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

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

Q. Toward the end of that clip you talked about why the flood happened.

MR. CHIPCHASE: Can we play that last part of the clip again?

(Video presentation.)

BY MR. CHIPCHASE:

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

(Video presentation.)

BY MR. CHIPCHASE:

Q. You also talked about the failure to have the diversion system in place before the Senate Ways and Means Committee. Do you remember that?
A. I'm not remembering before the Senate Ways and Means Committee or what you might be referring to.

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

Mr. Gill, Exhibit 208 is a printout of an article that appeared in Civil Beat. If I could direct you down to the third and fourth paragraphs, and I'll read them. Quote: What happened should not have happened, health department Deputy Director Gary Gill told the Hawaii Senate Ways and Means Committee this week. Quote: The rains flooded the landfill. All of that water is supposed to be diverted around the landfill. The landfill has been expanded a number of times and the diversion system has not kept up with the expansions.

The next paragraph is permit conditions, and here's some of the things that you talked about with Ms. Viola.

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

A. I do see it.

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

A. Yes, I spoke about that.

MR. CHIPCHASE: Can we play the last clip?

(Video presentation.)

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

Your witness.

EXAMINATION

BY MS. VIOLA:

Q. Mr. Gill is the Department of Health, specifically the Solid and Hazardous Waste Branch, if you know, taking any enforcement action relating to the flooding that occurred in January 2011?

A. There is a pending enforcement case which I can't speak to in any detail regarding the handling of storm water runoff from the landfill.

Q. I'm speaking directly about the Solid and Hazardous Waste Branch. Are you aware that your branch chief, Steven Chang, already testified that
the Solid and Hazardous Waste Branch will not be
taking any enforcement action relating to this
event?

A. Specifically the Solid and Hazardous Waste
Branch?

Q. Yes.

A. Regarding their permit conditions?

Q. Yes.

A. -- are not currently engaged in an
enforcement action. There is, however, to be clear,
potential enforcement action regarding the events
around the flood event at the landfill.

Q. But not relating to Solid and Hazardous
Waste Branch's solid waste management permit?

A. Correct. Not relating to the solid and
hazardous waste permit directly.

Q. Now, is it your understanding that the
solid and hazardous waste permit for the Waimanalo
Gulch Sanitary Landfill that was in effect at the
time of the flooding had a provision that would
allow for the simultaneous construction of the
diversion channel as well as the active waste cell?

A. Can you restate that?

Q. The permit that was in effect at the time
that the flooding occurred, are you aware that there
was a provision in that permit that allowed for the
simultaneous construction of a diversion channel, as
well as the construction of the active cell that was
accepting waste at the time?

A. I believe that is correct.

Q. So at the time that the flooding occurred, the fact that the diversion channel was not completed was something that the permit had essentially accounted for?

A. That's correct. They -- the construction of the storm water diversion system was taking place at the same time that the landfill was in operation and the activities at the landfill were consistent with the permit that had been issued to them by the Department of Health.

Q. So the fact that the -- as you state in your video, that the cause of the flooding was the fact that the diversion channel was not yet completed, that was something that was envisioned in the permit, that it wouldn't be completed before the cell was already in operation?

A. That's correct. The cell -- it was known to the Department of Health that the cell would be in operation as the storm water diversion system was under construction.
MS. VIOLA: Thank you. Nothing further.
CHAIRWOMAN PINGREE: Schnitzer?
MR. SANDISON: No questions.
CHAIRWOMAN PINGREE: Commissioners?
Thank you, Mr. Gill.
MR. GILL: Aloha. Thank you very much.
CHAIRWOMAN PINGREE: It's my understanding
that we have no other witnesses.
MS. VIOLA: That's correct, for today.
CHAIRWOMAN PINGREE: For today. I think
what we need to do is talk a little bit about our
upcoming plan. We know we have April 11th reserved
from 9:00 to 4:30 here, and just from my notes, I
believe we are to hear Mr. Steinberger, and I
apologize I don't know the full name, but Hari --
MS. VIOLA: Yes. H-a-r-i, Sharma,
S-h-a-r-m-a.
CHAIRWOMAN PINGREE: Hari Sharma.
MS. VIOLA: Yes.
CHAIRWOMAN PINGREE: All right. Is that
it for April 11th?
MS. VIOLA: That's it for me.
CHAIRWOMAN PINGREE: Excuse us.
(Discussion off the record.)
CHAIRWOMAN PINGREE: We'll have Mr.
Steinberger and Hari Sharma on April 11th.

MR. SANDISON: We have no further rebuttal witnesses.

CHAIRWOMAN PINGREE: Okay. I know that you had mentioned, of course, you have the right to rebuttal witnesses. Who and what is the content of the testimony?

MR. CHIPCHASE: At this point, Chair, I don't see the need -- I don't have a need to call any rebuttal witnesses. There's nothing to rebut at this point. I won't know whether I will have to call someone until I hear the remaining witnesses that Ms. Viola intends to call.

CHAIRWOMAN PINGREE: With that in mind, I need to set a time -- because the time is very precious at this point, as I'm sure you know. So what I'd like to do is -- we won't be able to hear, of course, the testimony until April 11th. What I had hoped to do was to have you name your witnesses, if any, rebuttal witnesses by Monday the 9th, but that's obviously not -- I'm getting some advice from Counsel.

Would it help if we understand the content of Steinberger's and Hari's testimony?

MR. CHIPCHASE: That could help.
MS. VIOLA: For Dr. Sharma, he's going to rebut statements made by Dwight Miller regarding the design and operation of the landfill and statements by some of the other witnesses, including Beverly Munson, Ken Williams, Cynthia Rezentes and today's witnesses regarding the safety and stability of the landfill.

Dr. Sharma is a landfill design expert and he is going to testify regarding the -- to dispute any kind of stability or safety issues related to the nature of the landfill that was brought about by the testimony of the other witnesses, including Beverly Munson, Mr. Williams, Ms. Rezentes and today's witnesses.

He is also going to contest Mr. Miller's statements regarding that the design -- or the operation had deviated from the design and operations plan. He's also going to dispute the fact that the January and December spills show that the storm water facilities and the layout of the landfill cells were not consistent with design reports and construction sequencing assumptions supporting the 2008 FEIS and therefore a supplemental EIS would be required. He's going to contest those conclusions.
He's also going to contest the design had changed significantly enough from the design report, having a smaller cell or different orientation of the cell, and these changes complicated the construction as well as the protection of that cell.

He's also going to contest the fact that legal standards are minimum standards. Mr. Miller testified that legal standards are minimum standards. He's also going to contest that liner systems and the type of monitoring usually seek a higher standard than the legal standard.

He's going to essentially note for the record the documents that were not refuted by the expert, and also continued testimony regarding deviation from the plans.

Mr. Steinberger is going to rebut statements made by Mr. Miller regarding alternative disposal options, the operation of Waimanalo Gulch Sanitary Landfill, the engineering standards as followed by Dwight Miller and the archaeological and cultural concerns stated by Mr. Kane.

So specifically -- and this is more extensive -- medical waste, that the City and Waste Management did not respond in any regard to the medical waste; that there was a lack of reasonable
diligence in developing and executing the site selection process; that the burden is on the engineer for ensuring the design is adequate for the project; having good intentions to reuse ash but not following through; the use of ash in Europe and the implication that ash can be used in the United States; that the City should properly -- did not properly evaluate alternative options and that plasma arc was not properly evaluated.

He's also going to dispute the fact that he repeated -- Mr. Miller stated in his testimony repeatedly that there was no need for food waste and green waste to go into the landfill; that Honolulu -- that very rarely do waste-to-energy facilities shut down unexpectedly and that the City can process waste by July 31st via shipping and storage at H-POWER and that e-waste cannot go to the landfill and that the options regarding Sand Island expansion for conversion of biosolids into compost -- that San Francisco -- he's going to dispute some of the assertions made regarding San Francisco and the land-filling of biosolids as well as their maximum waste diversion program.

He's going to dispute the engineering standard of care as applied to Mr. Miller and he's
going to also dispute the fact that Mr. Miller saw
an eight- to ten-foot pipe draining into the basin.
He's going to dispute the delay that led to the
simultaneous construction and that it was resultant
from poor planning. He's also going to dispute that
for several years the City has not responded to site
selection questions and since -- he's going to
clarify that it has not been since 1987 that there
was a promise to close the landfill and also dispute
that it takes between 18 months to three years to
develop a new landfill.

CHAIRWOMAN PINGREE: That's it, Dana?

MS. VIOLA: Yes, specifically.

MR. CHIPCHASE: That's an awful lot like a
couple of direct witnesses to me, so I think more
likely than not there will be rebuttal.

MS. VIOLA: That is all testimony that --
I have page number quotations from Mr. Miller's
testimony as the basis for rebuttal, to contest
statements that the City would assert are not true,
and that that is the City's right to rebut.

CHAIRWOMAN PINGREE: Are you able to
identify by Monday --

MR. CHIPCHASE: I will do my best.

CHAIRWOMAN PINGREE: Please do your best.
MR. CHIPCHASE: I will.

CHAIRWOMAN PINGREE: And have those
witnesses present either the 11th or the 13th.

MS. VIOLA: I would note that the City
would object to any kind of rebuttal witnesses on
the part of the intervenors. This is an
administrative proceeding where we have the burden
of proof and therefore in this type of proceeding we
have the right to rebut. It is not an established
right of the intervenors to have that same right in
the --

They have also had an opportunity through
Mr. Miller to make those assertions and essentially
to cross my witnesses if necessary. I don't feel
that they're -- I would object to them bringing
rebuttal witnesses and prolonging this proceeding
further.

MR. SANDISON: Schnitzer joins in the
objection.

MR. CHIPCHASE: Chair, I would just
quickly point out -- I don't want to belabor this --
but Schnitzer is an intervenor and they brought in a
rebuttal witness. Plus I think the rule says any
party.

CHAIRWOMAN PINGREE: All right. Counsel,
you're correct. The word is "any." We know the ENV has the burden of proof. What we're trying not to do is to prolong the -- overly prolong the process. Consequently, that's a concern for us when we have rebuttal witnesses come in. Do you have any idea about how many witnesses?

MR. CHIPCHASE: Honestly, Chair, I do not. I will do my best to figure out and give at least an indication by Monday. I won't know for certain until the testimony closes on Wednesday. But I'll be in a position right then to tell you whether we intend to call rebuttal witnesses, and if so, about how many. I believe you mentioned the 13th. I'm sorry, Chair, but I'm in a separate contested case hearing on the 13th before the State hearings officers.

CHAIRWOMAN PINGREE: What about the 11th?

MR. CHIPCHASE: The 11th is fine. I don't know -- that was an awful lot of stuff and I'm sort of skeptical that we can even get through all of that unless it goes very, very quickly on the 11th.

I know that, for example, if I wanted Mr. Miller to call in by phone -- I understand that the commission has made that accommodation before and that might be one vehicle. Unfortunately, he's not
available on the 11th and so I couldn't do that.

Every other Wednesday in the month of April, if it's
convenient for the commission and the other parties,
I will make myself available.

CHAIRWOMAN PINGREE: Because time is of
the essence, we've got definite deadlines to meet,
we're not only looking at Wednesdays, and
consequently, we were relaying the 13th because I
can get a quorum on the 13th. It's so very, very --
as you know, very difficult for us.

MR. CHIPCHASE: I understand.

CHAIRWOMAN PINGREE: All of us have full-
time positions elsewhere, and it's just very
difficult to get five out of six people here. Well,
we're going to have to work with you and see what
comes out on the 11th. But I plead with all of you
that we need to move this along. We need to bring
this to closure.

MR. SANDISON: In the event that we did
complete on the 11th, could we ask that counsel be
prepared to do closing on the 11th?

CHAIRWOMAN PINGREE: Certainly.

Excuse us a minute.

(Discussion off the record.)

CHAIRWOMAN PINGREE: Monday the 16th?
MS. VIOLA: Would that be when the parties would close or --

MR. WONG: That's going to be the final --

CHAIRWOMAN PINGREE: The final --

MR. WONG: That's it. Wrap up.

MS. VIOLA: Final day, and so be prepared for closing on April 16th?

CHAIRWOMAN PINGREE: If not the 11th, and that would be a prayer.

MS. VIOLA: Well, I guess we'd know by the 9th if you have your wish.

MR. CHIPCHASE: Honestly, we're not going to know until the 11th, but for sure -- just so I'm clear, you want us, no matter what, prepared to close on the 11th; if not the 11th, to close on the 16th?

CHAIRWOMAN PINGREE: Correct.

16th, 9:00 -- I've got to check with Jeanne. She's going to check for us. Hold on. (Discussion off the record.)

CHAIRWOMAN PINGREE: On the record.

MR. CHIPCHASE: Chair, I'd like to move in Exhibit K226. That was the article I showed Mr. Gill.

CHAIRWOMAN PINGREE: K226?
MR. CHIPCHASE: I'm sorry.

MR. SANDISON: 208.

CHAIRWOMAN PINGREE: K208?

MR. CHIPCHASE: 208. Yes. Thank you, Ian.

And then I'd just state for the record that the full video of the clips we showed Mr. Gill are available at Exhibit K131.

CHAIRWOMAN PINGREE: Thank you. Any objection?

MS. VIOLA: No objection.

(Discussion off the record.)

CHAIRWOMAN PINGREE: So the next time we'll see you is on April 11th, 9:00. Thereafter, we'll see you on the 17th at 9:00, and hopefully that will be our last time together.

MS. VIOLA: Thank you.

CHAIRWOMAN PINGREE: Can I have a motion to adjourn, please?

MS. DAWSON: Motion to adjourn.

MR. PACOPAC: Second.

(Hearing adjourned at 4:20 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 April 4, 2012, at 9:00 a.m., the foregoing contested case hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

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

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

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

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

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