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

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

CONTESTED CASE HEARING

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

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

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

APPEARANCES:

Planning Commission:

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

For the Planning Commission:

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

1 Appearances (continued):

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

4 DANA MIE OSHIRO VIOLA, ESQ.

5 ROBERT BRIAN BLACK, ESQ.

6 Deputies Corporation Counsel

7 City and County of Honolulu

8 530 South King Street, Room 110

9 Honolulu, Hawaii 96813

10

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

13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.

14 CHRISTOPHER T. GOODIN, ESQ.

15 Cades Schutte

16 1000 Bishop Street, Suite 1200

17 Honolulu, Hawaii 96813

18

19 For Schnitzer Steel Hawaii Corp.:

20 IAN L. SANDISON, ESQ.

21 ARSIMA A. MULLER, ESQ.

22 Carlsmith Ball LLP

23 ASB Tower, Suite 2200

24 1001 Bishop Street

25 Honolulu, Hawaii 96813

I N D E X

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WITNESS: TOM ZELENKA

Mr. Sandison 8, 24

Mr. Goodin 13

Ms. Viola 26

Member Dawson 28

Member Pacopac 29

WITNESS: JANICE MARSTERS

Ms. Viola 32

Mr. Chipchase 59

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WITNESS: MAILE SHIMABUKURO

Testimony 124

WITNESS: MAEDA TIMSON

Testimony 133

WITNESS: GARY GILL

Ms. Viola 144, 156

Mr. Chipchase 153

1 CONTESTED CASE HEARING

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

7 Identification of counsel for the record,
8 please?

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

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

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

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

20 MR. CHIPCHASE: That's right, Chair. At
21 this point, Chair, the counsel have discussed the
22 order of witnesses, because the City and Schnitzer
23 were allowed to do rebuttal witnesses and my next-
24 in-order witnesses are not available until this
25 afternoon. We've agreed, with your leave, to move

1 on to the City's rebuttal case -- actually,
2 Schnitzer's rebuttal case first, then the City's
3 rebuttal case, and then I'll call my remaining
4 witnesses this afternoon.

5 CHAIRWOMAN PINGREE: Thank you.

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

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

12 CHAIRWOMAN PINGREE: Thank you.

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

24 CHAIRWOMAN PINGREE: Excuse me? 11:00
25 or --

1 MS. VIOLA: 11:00 or 3:30.

2 And Mr. Steinberger, the director, has a
3 commitment to testify before Council this afternoon.
4 He was scheduled to appear this afternoon. He's
5 attempting to get someone to fill in for him this
6 afternoon, but if he's not able to do that, he will
7 have to testify next week, on the 11th. But we're
8 trying to get another individual to testify -- to
9 appear before Council on his behalf so he can make
10 the afternoon session.

11 CHAIRWOMAN PINGREE: Are there any
12 objections?

13 MR. CHIPCHASE: None.

14 MR. SANDISON: None.

15 CHAIRWOMAN PINGREE: All right.

16 MR. SANDISON: Schnitzer is ready to
17 proceed.

18 CHAIRWOMAN PINGREE: Thank you.

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

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

24 What was the purpose of this rebuttal
25 witness?

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

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

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

14
15 E X A M I N A T I O N

16 BY MR. SANDISON:

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

19 A. Sure. My name is Tom Zelenka. That's
20 Z-e-l-e-n-k-a.

21 Q. What is your occupation, Mr. Zelenka?

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

25 Q. How long have you been in that position?

1 A. 24 years.

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

4 A. Yes.

5 Q. Could you briefly describe what your work
6 entails?

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

16 Q. Could you briefly describe Schnitzer's
17 operations?

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

24 Included in that is the full array of
25 processing recycling type of facilities, including

1 nine shredders, seven of which are on or adjacent to
2 marine terminals associated with export, for
3 example, like the one in Hawaii.

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

6 A. Correct.

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

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

15 MEMBER DAWSON: Is that per month?

16 THE WITNESS: No. That's annually.

17 BY MR. SANDISON:

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

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

1 environmental portion, I am the lead person on the
2 environment.

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

7 A. Yes, I have.

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

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

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

19 A. There are none that are at a pilot or
20 commercial basis. I think if you look in the
21 literature, there are many technologies, there are
22 many different types of vendors who are proposing
23 things in a bench scale basis. Those have gone
24 through a variety of generations of review as
25 technology improves. You know, one part doesn't

1 work, you go back and you do it again. But again,
2 there are a variety of technical and regulatory
3 issues that have precluded it moving forward to a
4 commercial basis.

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

9 A. Correct.

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

13 A. Yes, I have.

14 Q. Could you briefly relate those
15 conversations?

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

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

1 A. Correct.

2 MR. SANDISON: I have no further
3 questions.

4 MS. VIOLA: No questions.

5

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

7 BY MR. GOODIN:

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

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

14 A. Correct.

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

17 A. Yes, I am.

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

21 A. Over time they have continued to expand on
22 the variety of materials that have been available
23 for recycling and recovery, and that is based upon
24 the availability of additional vendors coming in,
25 providing services to the community to do that.

1 Q. I'd like to show you a new exhibit that's
2 been marked K227. I'm handing you a copy. I've
3 handed you a document. This is Exhibit K227. This
4 document is entitled Aloha Aina Recycling 2012
5 Schedule, and it lists various dates for this
6 particular event, and at the bottom left-hand corner
7 it says Schnitzer Steel Hawaii Corporation, and if
8 you turn to the second page, there's a number of
9 logos identifying sponsors, and about midway down it
10 reads: Examples of items accepted free of charge at
11 Aloha Aina Recycling events, and it lists a number
12 of types of items that are accepted free of charge.

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

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

20 A. Let's make a correction there. This is
21 not what Schnitzer accepts, all those materials.
22 Our portion of it relates to the scrap metal. There
23 are a variety of other vendors and companies here
24 that are involved in taking the various other
25 commodities.

1 MR. SANDISON: At this point, we'd like to
2 make an objection. Counsel is going beyond the
3 scope of his direct testimony on cross and we'd like
4 to ask for an offer of proof as to where this will
5 lead.

6 CHAIRWOMAN PINGREE: That's fine.

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

17 CHAIRWOMAN PINGREE: That's fine.

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

20 CHAIRWOMAN PINGREE: Any objections?

21 MR. SANDISON: No objection.

22 MS. VIOLA: No objection.

23 MR. GOODIN: Thank you.

24 MR. SANDISON: Can we be permitted a brief
25 redirect?

1 MR. CHIPCHASE: I don't think he's done.

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

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

6 BY MR. GOODIN:

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

12 A. Correct.

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

16 A. Yes.

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

19 A. If the committee wants to get into a
20 bigger discussion of landfills, I'm prepared to do
21 that. The landfill has, obviously, requirements
22 associated with what it's taking in daily in terms
23 of municipal solid waste. There are a variety of
24 regulations, health and otherwise, where landfill
25 operators are required to cover material daily as

1 well as an interim -- and that's a day-by-day event
2 -- and then there's an interim cover which is a more
3 extended period. And then there is a closure, a
4 post-closure period, where there's even a more
5 expansive surface. Across the country, a number of
6 states utilize a variety of materials for daily
7 cover. In a lot of cases, such as at Waimanalo,
8 they had to use dirt, just virgin dirt. They mine
9 it and cover over. In other locations, they have
10 used materials that are recycling waste, like
11 shredder residue, as an alternative daily cover so
12 that you're not utilizing virgin materials, you're
13 not taking up limited landfill space with the virgin
14 dirt.

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

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

24 A. We are supporting that.

25 Q. I'd like to hand you a copy of the bill.

1 This is House Bill 2249, and it's been marked as
2 Exhibit K191. There's a copy for you, Mr. Zelenka.

3 A. Thank you.

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

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

13 A. I see that.

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

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

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

23 A. Correct.

24 MR. GOODIN: Thank you. At this time,
25 Chair, I'd like to move Exhibit K191 into evidence.

1 CHAIRWOMAN PINGREE: Any objection?

2 MR. SANDISON: No objection.

3 MS. VIOLA: No objection.

4 CHAIRWOMAN PINGREE: Thanks.

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

10 CHAIRWOMAN PINGREE: You're moving this
11 into evidence?

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

16 MS. VIOLA: No objection.

17 CHAIRWOMAN PINGREE: Any objection?

18 MR. SANDISON: No objection.

19 MR. GOODIN: Thank you.

20 BY MR. GOODIN:

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

25 A. No.

1 Q. And the Department of Health doesn't
2 prohibit H-POWER from accepting auto shredder
3 residue, does it?

4 A. I think that's a more complex issue and we
5 probably would need to look at their permits before
6 you get a clear answer on that.

7 Q. Do you know who Steven Chang is from the
8 Department of Health?

9 A. I know the name. I don't know the person
10 directly.

11 Q. I can tell you he's the Solid and
12 Hazardous Waste Branch chief, and he testified in
13 this proceeding on January 25th, 2012, and I'd like
14 to show you a copy of the transcript, if I may.
15 Specifically, if I could have you turn to page 41 of
16 the transcript -- are you there?

17 A. I am.

18 Q. About midway down the page there's a
19 question: So for shredder waste, you're talking
20 about the plastics and other things that are left
21 over after recycler takes the metal; is that right?
22 Do you see that?

23 A. I see that.

24 Q. And this is Mr. Chang, Branch Chief
25 Chang's response: Well, in the case of most of the

1 material they handle, automobile carcasses are run
2 through a shredder. The metals are removed and then
3 you have residue, which is the plastic, the seats,
4 and the dashboards and stuff that contain both
5 ferrous and non-ferrous metals, and the facility
6 tries to remove that either by magnet or dielectric
7 currents, and then the residuals of the stuff
8 basically is the material that's sent to the
9 landfill for disposal.

10 If we just turn to the next page, page 42

11 -- Question: So your division does not prohibit
12 H-POWER from burning that residual, does it?

13 Answer: That's correct.

14 Do you see that?

15 A. I see that.

16 Q. Thank you. So I think you've testified
17 that the issue here is that the operator of H-POWER,
18 Covanta, declines to accept auto shredder residue.
19 Is that right?

20 A. That's what I stated.

21 Q. Do you know why a representative from
22 Covanta hasn't been called to testify as to why
23 Covanta doesn't accept auto shredder residue?

24 A. I have no knowledge of that.

25 Q. Are you aware that the International Solid

1 Waste Association has published an article
2 concluding that it is suitable to burn auto shredder
3 residue at waste-to-energy facilities if it is mixed
4 in small quantities with conventional municipal
5 solid waste?

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

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

20 Europe and Asia both have a variety of
21 bench scale and pilot projects looking at can we
22 utilize shredder residue as one of the feedstocks.
23 They have gone through numerous iterations, numerous
24 generations of bench scale testing. For the most
25 part, they are not there yet. There are a few

1 facilities in Europe that have kind of an
2 in-between-the-pilot and a commercial level, but
3 they're not there yet, and they have a number of
4 pieces that are still excluded from what can go into
5 that system.

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

19 If you look at a variety of studies and a
20 variety of facilities, they're in that smaller
21 scale, but the regulatory framework they're
22 operating in in Europe or Asia are totally different
23 than what we're operating in within the United
24 States. You do not have that capability here.

25 Q. Let's just briefly look at one of those

1 studies that you mentioned. I'd like to hand you a
2 copy of this new exhibit, K194, which is a copy of
3 the article that I referenced.

4 So this document, Exhibit K194, at the top
5 reads Waste Management and Research, and then about
6 midway down it states, On behalf of ISWA,
7 International Solid Waste Association. If we turn
8 to the second page, the title of the article reads,
9 Co-combustion of Shredder Residues and Municipal
10 Solid Waste in a Swedish Municipal Solid Waste
11 Incinerator.

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

14 CHAIRWOMAN PINGREE: Any objection?

15 MR. SANDISON: No objection.

16 MS. VIOLA: No objection.

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

19 MR. SANDISON: A couple of brief redirect
20 questions.

21

22 EX A M I N A T I O N

23 BY MR. SANDISON:

24 Q. Mr. Zelenka, is it your understanding that
25 the e-waste that is recycled at the Aloha Aina

1 events is recycled by businesses other than
2 Schnitzer and that those businesses simply
3 participate in the Aloha Aina event?

4 A. That's correct.

5 Q. Mr. Zelenka, is it your understanding that
6 the H-POWER facility has two permits from the
7 Department of Health?

8 A. Yes.

9 Q. Is one of those permits a solid waste
10 management permit that is issued by Mr. Chang's
11 division?

12 A. Yes.

13 Q. Is the other permit an air permit issued
14 by the Clean Air Branch of the Department of Health?

15 A. Correct.

16 Q. To your knowledge, is there any kind of
17 prohibition in the air permit regarding the
18 acceptance of --

19 A. It will not -- yes.

20 Q. To your knowledge, is there any kind of
21 prohibition in the air permit restricting the
22 acceptance of shredder residue at H-POWER?

23 A. Yes. That's my understanding.

24 Q. Thank you. Briefly, I'd like to call your
25 attention to Exhibit K194 that was just introduced

1 by Ko Olina.

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

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

6 Q. Yes.

7 A. December 2001.

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

11 A. Yes.

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

16 A. No.

17 MR. SANDISON: Thank you. No further
18 questions.

19 MS. VIOLA: I have a few questions.

20

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

22 BY MS. VIOLA:

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

1 cover?

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

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

6 A. No.

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

13 A. I don't believe so.

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

17 A. Correct.

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

25 A. I have no knowledge. I would doubt --

1 it's not his responsibility.

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

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

6 CHAIRWOMAN PINGREE: Would you repeat
7 that, Dana?

8 BY MS. VIOLA:

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

12 A. Correct.

13 MS. VIOLA: That's all.

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

17 MS. DAWSON: I do.

18 CHAIRWOMAN PINGREE: Please.

19

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

21 BY MS. DAWSON:

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

25 A. We generate annually about 20,000 tons of

1 shredder residue at our facilities here.

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

5 A. At this point, none.

6 MS. DAWSON: None. Thank you.

7 CHAIRWOMAN PINGREE: Any others?
8

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

10 BY MR. PACOPAC:

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

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

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

17 A. Correct.

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

20 A. I believe it's still there.

21 CHAIRWOMAN PINGREE: Any other questions?

22 MR. PACOPAC: It's dead.

23 CHAIRWOMAN PINGREE: Any other questions?

24 Thank you very much.

25 Dana, I believe you mentioned you would

1 have a witness arriving by about 9:30.

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

4 The City would like to call Janice
5 Marsters.

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

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

25 MR. CHIPCHASE: Chair, this is just really

1 an objection for the record. It's a partial but in
2 places significant misstatement of Mr. Miller's
3 testimony. There was some misstatement in Ian's
4 summary of Mr. Miller's testimony regarding ASR. I
5 don't mean to limit what Ms. Viola intends to go
6 into, just to simply state that I don't agree with
7 either her summary or Mr. Sandison's summary of Mr.
8 Miller's testimony.

9 CHAIRWOMAN PINGREE: So noted on the
10 record.

11 MS. VIOLA: If I could address that --

12 MR. SANDISON: If we could respond -- with
13 respect to Mr. Miller's testimony, I quoted directly
14 Mr. Miller's response to questions as to whether
15 shredder residue could be taken at H-POWER. He
16 said, and I quote from page 88 of the transcript:
17 My understanding is that a facility like H-POWER can
18 take auto shredder waste. And that was exactly
19 what --

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

24 CHAIRWOMAN PINGREE: No.

25 MS. VIOLA: I would object to the

1 mischaracterization that the statements were
2 inaccurate.

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

6 (Discussion off the record.)

7 CHAIRWOMAN PINGREE: Thank you.

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

10 THE WITNESS: Janice Christine Marsters.

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

14

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

19

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

21 BY MS. VIOLA:

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

24 A. I'm an environmental engineer.

25 Q. How long have you been an environmental

1 engineer?

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

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

10 CHAIRPERSON PINGREE: Dana, you mentioned
11 that is A36?

12 MS. VIOLA: A36.

13 CHAIRWOMAN PINGREE: Any objections by
14 counsel?

15 MR. CHIPCHASE: No. No objection.

16 CHAIRWOMAN PINGREE: Thank you.

17 BY MS. VIOLA:

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

21 A. Yes. I work in the -- mostly in the area
22 of environmental planning and permitting for
23 construction projects. Our firm mostly works for
24 municipal and federal governments, state
25 governments, although we do also do some private

1 work. I do quite a bit of work for the National
2 Park Service, the Navy, and contractors constructing
3 projects, helping them with their environmental
4 planning and permitting. I also do quite a bit of
5 work in the area of storm water, helping companies
6 and entities -- agencies meet their storm water
7 permitting requirements and also helping them
8 identify ways that they can improve storm water
9 quality emanating from their site.

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

12 A. I am.

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

15 A. I have.

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

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

24 Q. What do you understand your role or the
25 role of the committee is?

1 A. I understand that the role of the
2 committee or the purpose of the committee is to come
3 up with a list of sites that could be used as a
4 landfill to replace Waimanalo Gulch, and we are to
5 rank those sites according to the criteria that the
6 committee decides is most important to them as a
7 group and then provide a list of those sites at the
8 completion of it.

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

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

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

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

24 Q. Could you state who authored the
25 declaration that you reviewed?

1 A. Yes. The site selection evaluation
2 technical memorandum was prepared by Parametrix, and
3 it was prepared by David Mattern, who's the
4 certified environmental planner, and checked by
5 Dwight Miller, PE, of Parametrix, and then the
6 testimony record was file number 2008/SUP-2.

7 Q. And that was the declaration of who?

8 A. That was the declaration of Dwight Miller.

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

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

16 (Break taken.)

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

19 BY MS. VIOLA:

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

24 A. That's correct.

25 Q. Could you again refer to the two documents

1 that you reviewed in preparing for testimony today?

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

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

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

15 CHAIRWOMAN PINGREE: Could you repeat the
16 question?

17 BY MS. VIOLA:

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

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

25 I found many conflict -- in many places,

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

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

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

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

21 A. In some cases I believe he's misunderstood
22 the process that the committee has been undertaking
23 and perhaps his review of the records -- he didn't
24 understand the situation in some cases and then in
25 other cases I do disagree with him.

1 Q. Let me be more specific. Mr. Miller
2 claims that the committee failed to move from a
3 broader approach to the funnel approach that he --
4 I'll read you a description of -- moving from a
5 broader consideration of many sites to a narrowing
6 to fewer sites. Do you agree with that criticism?

7 A. No, I do not.

8 Q. Why not?

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

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

25 In addition to that, you know, once we had

1 those sites, the sites that were previously looked
2 at, these additional two sites that were under
3 consideration, the committee asked the consultant to
4 widen the search of potential sites based on a
5 number of criteria, and those were -- the initial
6 set of sites did not include any sites above the UIC
7 line, the underground injection control line. And
8 we had -- the consultant had a meeting with the
9 Board of Water Supply and with the Department of
10 Health and were told that -- and the decision to not
11 go above the UIC line was based on, I believe, a
12 council resolution or an administration guidance in
13 the past, at the time that the previous site
14 selection committee operated.

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

25 We initially started with somewhere

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

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

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

17 A. It was.

18 Q. That was to screen from the thousands of
19 sites to get down to a more workable number; is that
20 correct?

21 A. That's correct. And it, you know, follows
22 the screening criteria that the previous -- the 2003
23 site selection committee used.

24 Q. Could you give me, I guess, examples of
25 some of the screening criteria that was used?

1 A. Okay. So they screened for sites larger
2 than a certain area. We used 100 acres.

3 Q. And generally, why was that?

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

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

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

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

15 A. That's correct.

16 Q. So that screening criteria was taken out?

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

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

25 Q. So the initial screening criteria of

1 limiting to below the UIC line was to protect
2 potential drinking water sources?

3 A. That's correct.

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

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

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

11 A. Yes.

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

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

25 Q. You're saying that you were following a

1 procedure that was set essentially by the
2 consultant; is that correct?

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

6 Q. The Integrated Solid Waste Management
7 Plan?

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

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

18 A. Yes.

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

23 A. That's correct.

24 Q. What do you feel -- I mean, in terms of
25 the site selection, specific site selection in

1 general, why would it be necessary to do this
2 initial screening process? This is essentially
3 before the actual criteria for the landfill is
4 considered. Why did you have to go through the
5 initial screening process?

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

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

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

24 Q. Okay. So let me get back to -- you said
25 that essentially you were following the procedure

1 that's set out in the Integrated Solid Waste
2 Management Plan.

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

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

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

21 So there are situations where the
22 consultant has come forward and said, Well, we
23 screened because of this or we screened because of
24 this and the committee has disagreed with them and
25 said, We want you to take that screen out. But I

1 would say, you know, other than situations like
2 that, the committee -- the consultant has been very
3 helpful in guiding us through this process and has
4 done a really good job.

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

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

20 Do you agree with that statement?

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

24 Q. Do you think that the consultant has not
25 been open to the desires of the committee?

1 A. No.

2 Q. So you feel that they have --

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

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

10 A. That's what's happening now.

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

13 A. That's correct.

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

16 A. That's correct.

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

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

23 A. Absolutely.

24 Q. And the consultant has been open to the
25 committee's concerns?

1 A. Absolutely.

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

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

17 Q. I guess in terms of his opinion, your
18 statement regarding his opinions, things being done
19 a different way -- he criticizes that the way the
20 criteria was measured -- I'm assuming that's the
21 criteria that is going to be applied to the sites,
22 the actual sites that are chosen. He claims that
23 the criteria was flawed and it was incomplete or
24 there was illogical scoring and the deciles, I
25 guess, the use of deciles was inappropriate.

1 Would you consider those criticisms to be
2 the opinions that you're talking about?

3 A. Yes.

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

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

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

1 statistical analysis to this.

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

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

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

23 Q. Another criticism that was -- well, let me
24 get back to you. You're stating that you think that
25 some of his opinions may be based on, I guess, a

1 mistaken perception about what the committee did?

2 A. Yes.

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

7 A. Yes.

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

10 A. Yes.

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

13 A. No. As I said, we started out with this
14 initial set of sites that the City -- that were
15 considered the last -- during the last site
16 selection process, and then the two sites -- we did
17 add two sites at that -- at that point, basically
18 our first meeting, that the City had been *in* -- had
19 some interaction or had been considering two
20 additional sites in Waimanalo. And one was owned by
21 the State and one was owned by the military, and at
22 that point they sent letters to the owners to find
23 out if they could be considered and we were going to
24 add them to the larger list. Then, of course, the
25 list was expanded further to look at sites above the

1 UIC line.

2 Q. Again, because the committee members felt
3 like they wanted to consider more sites and
4 therefore show a more rigorous process; is that
5 correct?

6 A. That's correct.

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

13 Do you understand what he meant by that
14 criticism?

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

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

25 Q. Essentially, you're saying that the focus

1 of the committee thus far has been to consider a
2 multitude of sites and that's the reason for, I
3 guess, the lengthiness of the process.

4 A. That's correct.

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

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

16 A. It was in January 2011.

17 Q. 2011. So do you feel like any of the time
18 has been wasted during this process? It's now April
19 2012. Do you feel like the process has been
20 prolonged because of any kind of unnecessary delays?

21 A. Well, again, I think we would all like to
22 be done. But I think that the timeline has
23 reflected the committee's sincere desire to be as
24 inclusive as -- of sites that we could be so that it
25 is a rigorous process.

1 You know, if you start with the same sites
2 that the site selection committee started with the
3 last time, how are you to say you're going to end up
4 with anything different than the recommendations
5 they had the last time, with the exception, of
6 course, that Waimanalo Gulch, we were told, was off
7 the table, which was considered the last time. But
8 we wanted to make sure that we were looking at all
9 the possible sites we could.

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

12 A. Yes.

13 (Interruption in proceeding.)

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

17 (Discussion off the record.)

18 CHAIRWOMAN PINGREE: We're back on the
19 record.

20 BY MS. VIOLA:

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

24 A. Yes.

25 Q. Have you observed how long it takes to

1 develop a site?

2 A. Certainly.

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

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

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

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

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

22 Specifically, you would --

23 A. Land acquisition.

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

1 process?

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

6 Q. The EIS?

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

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

24 A. Yes. I'm talking about what happens
25 before you even get to construct.

1 Q. When you're talking about what happens
2 before you construct, is that the five to seven
3 years, or is it construction of -- the actual
4 construction and the building of the infrastructure?
5 Is that included in the five- to seven-year time
6 span?

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

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

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

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

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

25 And I think -- you know, it may be

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

10 Q. That means more time?

11 A. It means more time.

12 MS. VIOLA: Nothing further. Thank you.

13 MR. CHIPCHASE: Do you have anything?

14 MR. SANDISON: No questions.

15

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

17 BY MR. CHIPCHASE:

18 Q. Ms. Marsters, my name is Cal Chipchase. I
19 represent Ko Olina Community Association and Senator
20 Maile Shimabukuro. My goal in our discussion today
21 is really to understand the process that you talked
22 about. You said there was some misunderstanding of
23 the process, and I really just want to lay that out
24 and understand what the process has been. So if I
25 make a mistake in how I describe it, jump all over

1 me and let's make sure we understand it. Okay?

2 A. All right.

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

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

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

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

15 A. I did very quickly go through the
16 transcript.

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

21 A. I honestly don't recall.

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

25 A. I would say that the document that I --

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

6 Q. Any other documents that he had referenced
7 -- did you go back and look at any of those?

8 A. I don't recall.

9 Q. Fair enough.

10 A. I may have at the time, but I looked at it
11 about, I don't know, a month and a half ago.

12 Q. Why did you look at it a month and a half
13 ago?

14 A. Was it a month and a half ago? It was a
15 few weeks -- it was at least several weeks ago.

16 Q. Okay. Got it. In your experience, how
17 many landfill site selection committees have you
18 served on before this one?

19 A. I have never served on a landfill site
20 selection committee prior to this.

21 Q. Prior to serving on this committee, how
22 many landfills have you sited?

23 A. I have never sited a landfill.

24 Q. How many landfills have you designed?

25 A. I do not do landfill design.

1 Q. I understand you didn't serve on the prior
2 landfill site selection committee for the City. But
3 do you generally understand how that committee came
4 into being and the process it followed?

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

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

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

13 Q. Were you aware that the landfill was, in
14 fact, ordered by the Land Use Commission to close by
15 2008?

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

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

23 Ms. Marstens, I've handed you a copy of
24 Exhibit K2, a decision and order approving amendment
25 Special Use Permit from the Land Use Commission, and

1 you see on the front page it's dated June 9th, 2003?

2 A. Yes.

3 Q. I really only have a couple of questions
4 with this, Ms. Marstens. I just want to get us on
5 the same page. Would you take a look for me at
6 paragraph 12 of the order?

7 A. How do I find paragraph 12?

8 Q. If you would flip through it, they start
9 to number.

10 A. There are no paragraphs numbered. Okay.
11 I see it. All right.

12 Q. So paragraph 12 -- and I'll read just the
13 first part of it for you -- within five years from
14 the date of this Special Use Permit amendment
15 approval or date of this solid waste management
16 permit approval for this expansion, whichever occurs
17 later, but not beyond May 1, 2008, the 200-acre
18 property shall be restricted from accepting any
19 additional waste material and be closed in
20 accordance with an approved closure plan.

21 Do you see that paragraph?

22 A. I do see that.

23 Q. Now, if you would just turn back for me to
24 paragraph one -- I'm sorry. Let me help you.

25 A. Order item one, is that what you mean?

1 Q. Yes.

2 A. Yes. Uh-huh.

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

9 A. Yes.

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

15 A. Yes.

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

21 A. I was not aware of that.

22 Q. Have you looked at the LUC's current order
23 regarding the closure of Waimanalo and the
24 development of a new site?

25 A. I really have not, because our committee

1 was told from the start that we were not to consider
2 Waimanalo Gulch as a possible site and that -- you
3 know, our job was very narrowly defined; look at
4 sites, come up with a list of sites, rank them. So
5 I have really not gotten into any of the issues
6 surrounding Waimanalo Gulch.

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

14 A. Yes.

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

16 A. Yes.

17 Q. Do you see that it's dated October 22,
18 2009?

19 A. Yes.

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

1 A. Yes.

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

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

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

12 A. That's correct.

13 Q. Were you at that first meeting?

14 A. I was not at the first meeting.

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

17 A. Yes.

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

21 A. That's correct.

22 Q. If you look at the second page, it talks
23 about the timing of the site selection process, and
24 is it right that as originally scheduled, the site
25 selection process was supposed to take about seven

1 meetings and last about six months?

2 A. That's correct.

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

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

10 A. That would have been correct.

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

14 A. We have not.

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

18 A. Yes.

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

21 A. Of course.

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

24 A. Correct.

25 Q. Do you understand that the LUC's current

1 order governing the operation of -- for at least the
2 use of the land for the Waimanalo Gulch landfill
3 would allow the landfill to continue accepting ash
4 and residue without any specific deadline?

5 A. That was my understanding.

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

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

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

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

16 A. I'm sorry. What exhibit?

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

19 Paragraph four of Exhibit K15, that first
20 part that I looked at: On or before November 1,
21 2010, the applicant shall begin to identify and
22 develop one or more new landfill sites that shall
23 either replace or supplement WGSL. Do you see that?

24 A. Yes.

25 Q. So the site selection process didn't

1 necessarily need to be a replacement of the site; it
2 could have been a supplement to the site. Right?

3 A. Yes.

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

7 A. Yes.

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

10 A. I'm aware.

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

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

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

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

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

24 A. The first page?

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

1 memory --

2 A. Yes.

3 Q. -- from the landfill site selection
4 committee.

5 A. Yes.

6 Q. What was the date on that?

7 A. January 20th, 2011.

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

9 A. That's correct.

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

12 A. Yes.

13 CHAIRWOMAN PINGREE: What exhibit number
14 is that?

15 MR. CHIPCHASE: I'm sorry. K27.

16 CHAIRWOMAN PINGREE: K27?

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

20 BY MR. CHIPCHASE:

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

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

25 Q. So if we look down at these minutes, do

1 you see the paragraph that reads: After
2 presentation, the committee asked questions and
3 began to develop preliminary issues for discussion?

4 A. Yes.

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

8 A. Yes.

9 Q. -- to the consultant?

10 A. That's correct.

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

13 A. That's correct.

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

16 A. That's correct.

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

22 A. That's correct.

23 Q. And then the answer is: The committee can
24 make comments on appropriate sites for waste
25 streams. However, the committee's task is to rank

1 the sites from the best to the least satisfactory
2 and not to pick one. The further charge to the
3 committee at this point is to rank sites that can
4 accommodate all waste streams, including municipal
5 solid waste, ash and residue and construction and
6 demolition debris.

7 Do you see that?

8 A. Yes.

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

12 A. Yes.

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

19 A. That's correct.

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

24 A. Yes.

25 Q. And because of the volume associated with

1 this additional waste, both the ash and residue and
2 the C and D waste, capacity is another consideration
3 for the committee?

4 A. Yes.

5 Q. You mentioned earlier that you were
6 familiar with the City's 2008 Solid Waste Management
7 Plan. I'm sorry. You have to say yes or no.

8 A. I'm not an expert, but I have perused it.

9 Q. I understand. Not being an expert but
10 having perused it, do you understand that the Solid
11 Waste Management Plan provides the City's framework
12 for waste management?

13 A. I do.

14 Q. Did you know that the plan talks about
15 landfill siting?

16 A. Yes.

17 Q. I'd just like to look at a part of that
18 now. It's Exhibit K144. Ms. Marsters, I've handed
19 you an excerpt from the Integrated Solid Waste
20 Management Plan update dated October 2008. Do you
21 see that?

22 A. Yes.

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

1 that?

2 A. Yes.

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

6 A. Yes.

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

9 A. Yes.

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

12 A. Yes.

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

15 A. Yes, I do.

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

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

21 Q. Fair enough. Do you recall -- and it may
22 be hard, because I know you've looked at it in other
23 contexts -- do you recall whether the consultant
24 said, This is the process you will follow for the
25 site selection?

1 A. I don't recall if they specifically
2 referred to the process laid out in the SWMP or if
3 the process was -- or if this process was simply
4 described to us as the process we would follow.

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

10 A. Yes.

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

14 A. Yes.

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

19 A. Yes.

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

1 Do you see that?

2 A. I do see that.

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

6 A. To my recollection, we were not.

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

10 A. Yes.

11 Q. I'd just like you to look at the second
12 sentence there. I'll read it for you. It says:
13 The siting of a new MSW landfill will avoid areas
14 situated west of Makakilo as stated in subsection
15 11.3.

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

18 A. That's correct.

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

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

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

1 A. Yes.

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

6 Do you see that?

7 A. That's correct.

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

10 A. Yes.

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

13 A. Right.

14 Q. Is this that list?

15 A. It is.

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

18 A. Yes.

19 Q. Do you see Nanakuli A and Nanakuli B?

20 A. Yes.

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

24 A. Yes.

25 Q. To make sure I understand this list --

1 this is the same list the City has previously
2 considered for landfill site selection?

3 A. That's my understanding.

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

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

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

13 A. Yes.

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

16 A. Yes.

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

20 A. Yes.

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

24 A. That's correct.

25 Q. Did R. M. Towill give the committee any

1 guidance on how to identify these additional sites
2 it might want to consider?

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

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

12 A. I don't remember that.

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

17 A. Yes.

18 MS. VIOLA: What was the exhibit number?

19 MR. CHIPCHASE: K31.

20 BY MR. CHIPCHASE:

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

23 A. Yes.

24 Q. Down there at the first full paragraph, it
25 says: The committee was then asked if they would

1 like to recommend any additional potential landfill
2 sites. Do you see that?

3 A. Yes.

4 Q. One suggestion was received, the windward
5 side of the Waianae mountains, west of Kunia. Mr.
6 Goody drew on the Oahu map the area that he
7 suggested. Do you see that?

8 A. Yes.

9 Q. Other than this one additional site
10 proposed by Mr. Goody, before you expanded to
11 consider sites on or within the UIC and no-pass, do
12 you remember any additional sites being added by the
13 committee?

14 A. I don't recall.

15 Q. Fair enough. Do you recall that this site
16 Mr. Goody had proposed pretty quickly proved not to
17 be a viable site?

18 A. I actually don't recall a discussion of
19 this site, and mostly because, if you notice, I
20 wasn't present at this meeting.

21 Q. I do notice.

22 A. Now, I would say that in our discussion
23 of, you know, looking at more sites, expanding our
24 list of sites beyond this 40ish number that had been
25 previously considered, when we first started talking

1 about how that -- you know, how to do that, the
2 reason that that came about was just because of this
3 situation, that people knew of sites that they
4 thought might be viable and in the discussion of
5 those sites, you know, the reason, in this case, I
6 believe, would be that it's above the UIC line and
7 that's when the decision, you know, to expand the
8 list occurred.

9 Q. Okay. So let's just try to unpack that.
10 That was a lot of information and I want to make
11 sure that I got it all right.

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

15 A. Yes.

16 Q. Were you at this meeting?

17 A. I was.

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

20 A. I see that, yes.

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

24 A. I do.

25 Q. Here you're considering that landfill site

1 that Mr. Goody had proposed; right?

2 A. The consultant provided the information,
3 yes.

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

12 A. I see that.

13 Q. So you rejected that site for those
14 reasons?

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

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

20 A. Ag land.

21 Q. -- high quality ag lands.

22 A. Yes.

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

25 A. That's correct.

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

4 A. Yes.

5 Q. Meeting number five was May 12, 2011.

6 Ms. Marsters, I've handed you a copy of a
7 document that's marked Exhibit K218. It's titled
8 Meeting Number Six Group Memory. Do you see that?

9 A. Yes.

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

13 A. That's correct.

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

17 CHAIRWOMAN PINGREE: Any objection?

18 MS. VIOLA: No objection.

19 MR. SANDISON: No objection.

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

1 believe that was in December.

2 BY MR. CHIPCHASE:

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

7 A. Yes.

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

10 A. Yes.

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

13 A. Yes.

14 Q. So meeting number six occurred in July
15 2011; right?

16 A. That's correct.

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

20 A. That's correct.

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

23 A. That's correct.

24 Q. So if we looked back to our baseline for
25 our timeline to the LUC's October 2009 order, we're

1 about 21 months later, the committee is expanding
2 the list of sites to consider?

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

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

8 A. Yes.

9 Q. -- and we just measure forward to where we
10 are here at meeting number six, in July, it's about
11 21 months later.

12 A. Okay.

13 Q. Is that wrong?

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

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

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

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

20 A. Okay.

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

23 A. Uh-huh.

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

25 A. I do.

1 Q. Okay. So now it's July 19, 2011.

2 A. All right.

3 Q. That's just the timeline I'm trying to
4 understand.

5 So because the committee expanded the
6 list, or list for consideration, at least, the
7 consultant had to report back with the expanded
8 search at the seventh meeting; correct?

9 A. That's correct.

10 Q. Ms. Marsters, I've handed you a copy of
11 Exhibit K152. You'll see on the first page it's a
12 copy of meeting number seven group memory.

13 A. Yes.

14 Q. If we look down at the bottom of this
15 first page --

16 MS. DAWSON: Counsel, could you wait until
17 we have a copy of that?

18 MR. CHIPCHASE: I'm sorry. Absolutely,
19 Commissioner.

20 MS. DAWSON: Thanks.

21 BY MR. CHIPCHASE:

22 Q. If we look down at the bottom of this
23 first page, we see the consultants next provided a
24 brief presentation on the results of the GIS
25 research requested by the committee to ascertain if

1 there were potential landfill sites within the UIC
2 and no-pass line.

3 A. Yes.

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

7 A. Yes.

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

12 A. Yes.

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

15 A. That's correct.

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

21 Do you see that?

22 A. Yes.

23 Q. So with the application of the screening
24 factors, you ended up with two sites based on your
25 -- let me rephrase and strike that.

1 After expanding the search to include
2 sites above the UIC and no-pass lines, but the
3 application of additional screening factors, you
4 ended up with two sites?

5 A. Yes.

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

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

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

16 A. That's correct.

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

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

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

24 A. I don't recall if we agreed with them or
25 didn't agree with them.

1 Q. If you did, would it be noted in these
2 minutes?

3 A. One would hope, but --

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

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

10 A. Yes.

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

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

22 Q. To include the federal lands?

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

25 Q. In fact, I believe, Ms. Marsters, in this

1 meeting, which is November 8, 2011, you asked the
2 consultant to go back and look at lands owned by the
3 State of Hawaii.

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

6 A. Yes.

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

8 A. I do.

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

12 A. That's correct.

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

16 A. That's correct.

17 Q. But again, in this meeting, this November
18 2011 meeting, you asked the consultant to go back
19 and look at sites that were at least 90 acres in
20 size?

21 A. Yes. That is what the committee did.

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

1 parcels?

2 A. We discussed that as to whether, for
3 example -- let's say we're looking at 100 acres or
4 whatever the case may be -- whether you could have
5 two sites that were 45 acres and contiguous, next to
6 each other, or whether you could have four sites
7 that were 25 acres and would provide -- but again,
8 there were two issues. One issue is that then you
9 have to negotiate with more landowners, thereby
10 likely delaying the land acquisition process, and by
11 including those small sites, you would have -- we
12 were already looking -- when we asked the consultant
13 to expand the sites, they were already looking at
14 thousands of sites. I don't know -- you get down to
15 25 acres, maybe you're looking at 20,000 sites. It
16 just becomes an overwhelming amount of information,
17 so --

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

23 A. Correct.

24 Q. So in your judgment -- or the committee's
25 judgment decided to include only parcels that in a

1 single parcel was at least 90 acres?

2 A. That's correct.

3 Q. So now that you've asked the consultant to
4 go back -- and I think this is to go back a second
5 time now and expand the search --

6 A. Yes.

7 Q. -- you needed an eighth meeting --

8 A. Yes.

9 Q. -- so that the consultant could report
10 back to you?

11 A. Yes.

12 Q. Ms. Marsters, I've handed you a copy of
13 Exhibit K170. It's titled Meeting Number Eight
14 Group Memory. Do you see that?

15 A. I do.

16 Q. So this meeting happened, if the dates are
17 right, on February 1st, 2012?

18 A. Yes.

19 Q. So now we're about six months or a little
20 more than six months beyond what the original
21 scheduled ending date was?

22 A. Yes.

23 Q. So it's at this meeting the consultant is
24 reporting back to the committee on the results of
25 its search after dropping those two screening

1 factors, the state-owned land and reducing the size
2 of the parcel to 90 acres; right?

3 A. Yes.

4 Q. Now, when the consultant comes back, the
5 report is shown on page two of the meeting minutes,
6 and the consultant reports that the research
7 resulted in the identification of 464 potential
8 sites. Do you see that?

9 A. Yes.

10 Q. But the consultant applied a number of
11 screening factors to those 464 potential sites;
12 right?

13 A. Yes.

14 Q. Those screening factors are listed down on
15 the bottom of page two and then on the top of page
16 three; right?

17 A. Yes.

18 Q. So after applying these screening factors,
19 that 464 sites was reduced to a total possibility of
20 six sites; right?

21 A. Yes.

22 Q. But at this meeting, the committee went
23 through these sites and concluded that only two of
24 those six sites warranted further consideration;
25 right?

1 A. Well, at that meeting, when we -- when the
2 consultant presented their screening factors that
3 you've shown -- that are listed here under items one
4 through nine, we had a discussion about whether --
5 for example, if you're going to exclude a site
6 because it's in a conservation district. Let's say
7 your site is 600 acres. If two acres on one corner
8 is conservation land, could the rest of the site
9 reasonably be considered for siting a landfill?
10 The consultant had not done that kind of analysis,
11 and so that's one example. Clearly, the Board of
12 Water -- basically, we asked them to look at -- go
13 back and look at, again, trying to make sure that
14 sites were not being excluded that should continue
15 to be considered.

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

21 A. Yes.

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

1 A. Yes.

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

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

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

13 A. Uh-huh.

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

15 A. Yes.

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

20 A. Yes.

21 Q. Now, earlier, before I made you rewind,
22 you started talking about considerations that the
23 consultant had not engaged in that the committee
24 asked the consultant to go back and try again. One
25 of the screens that the consultant applied was for

1 class C agricultural land. Do you remember that?

2 A. Basically, they applied all ag land --
3 they applied a screen for all ag land.

4 Q. Well, if we look at item eight --

5 A. Oh, yes. Uh-huh.

6 Q. -- on page two. Do you see that?

7 A. Yes.

8 Q. This is screening criteria number eight,
9 valued agricultural land, item B, Land Study Bureau
10 A, B or C land.

11 A. Right.

12 Q. Had the committee asked the consultant to
13 exclude lands that were only rated C, meaning
14 subprime lands?

15 A. They had not differentiated, I believe,
16 between the categories of ag land.

17 Q. Fair enough. So now in this time, in this
18 meeting number eight, in February 2012, the
19 committee asked the consultant to go back and now
20 drop the screening for lands that were rated class
21 C?

22 A. That's correct.

23 Q. One of the other screens was for any
24 parcel that had a structure on it.

25 A. Yes.

1 Q. And that was determined just based on
2 aerial maps; right?

3 A. I believe so.

4 Q. Had the committee asked the consultant to
5 exclude any parcel that had any type of structure on
6 it?

7 A. We had not. I believe I previously noted
8 that I felt that the consultant may have done that
9 because the previous site selection committee
10 excluded anything that had -- they used the word
11 development. So when we heard from the consultant
12 that they had done that, it was our committee's
13 desire that that not be used as a screening
14 criteria.

15 Q. Right. So in fact, in this group meeting
16 number eight, in February 2012, you asked the
17 consultant to go back and drop that screen?

18 A. Exactly.

19 Q. -- so it would include more sites?

20 A. Yes.

21 Q. And then finally -- and this is the one
22 you --

23 A. Potentially.

24 Q. Potentially. Fair enough.

25 A. -- that had not been screened by other

1 areas. But we did not want that to be the only
2 exclusionary criteria.

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

6 A. That's correct.

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

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

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

23 A. That was my understanding.

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

1 the consultant's search returned.

2 A. Yes. Uh-huh.

3 Q. So just picking one, if we look at the
4 second site on this list, parcel identifier number
5 231 -- do you see that?

6 A. Yes.

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

8 A. Yes.

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

16 A. That's correct.

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

21 A. That's correct.

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

25 A. That's correct.

1 Q. Ms. Marsters, I've handed you a copy of
2 Exhibit K215. It's an agenda for the site selection
3 committee for its ninth meeting, on Friday, March
4 16th, 2012. Do you see that?

5 A. Yes.

6 Q. Did you attend that meeting?

7 A. I did.

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

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

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

15 A. Yes.

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

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

24 Q. I understand. And that's an important
25 part of the process and we'll definitely get to it.

1 But before you can apply the criteria, you need
2 sites; right?

3 A. Yes.

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

6 MR. CHIPCHASE: Of course.

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

9 (Discussion off the record.)

10 (Break taken.)

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

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

17 MS. VIOLA: No objection.

18 MR. SANDISON: No objection.

19 CHAIRPERSON PINGREE: Thank you.

20 BY MR. CHIPCHASE:

21 Q. Ms. Marsters, we were talking a little bit
22 about the sites returned by the consultant in this
23 ninth meeting. I don't have meeting minutes.
24 Unfortunately, I think you're right; they haven't
25 been prepared yet. I have a couple of newspaper

1 accounts of it. We can see if it more or less
2 comports with your memory. Okay?

3 A. All right.

4 Q. Ms. Marsters, I've handed you a copy of a
5 document marked as Exhibit 226. It's an article
6 from Civil Beat. Do you see that?

7 A. Yes.

8 Q. In the article, it's reported that the
9 consultant returned, after dropping those prior
10 screening factors, with seven potential sites. Is
11 that more or less consistent with your memory?

12 A. Honestly, I don't recall how many sites
13 there were.

14 Q. Fair enough. But as part of the return of
15 those sites, the consultant had also applied a new
16 additional screening factor to its search. Do you
17 remember that?

18 A. I recall that they applied -- yes, they
19 did. They applied some screening criteria -- and
20 again, this has happened in the past, for example,
21 when they applied the screening criteria to exclude
22 anything that had buildings on it, so, again --

23 Q. Yeah. That's right. It had happened in
24 the past, and this time the exclusionary criteria
25 was for potential sites that were upgradient of

1 parcels in or planned for residential use; right?

2 A. That's correct.

3 Q. Is that a screen that the committee had
4 asked the consultant to apply?

5 A. It is not.

6 Q. So then at this meeting, the committee
7 asked the consultant to go back and take another
8 look at sites that had been screened out because of
9 that criteria?

10 A. That's correct.

11 Q. As a result of dropping that screen and
12 also directing the consultant to go back and take
13 another look at the federal lands, the potential
14 sites that the committee will consider expanded from
15 seven, or whatever that initial number was, to
16 somewhere between 13 and 22; right?

17 A. I'm not sure of the number.

18 Q. I understand. Let's just take a look at
19 what was reported, and if it jogs your memory,
20 that's fine. I believe it's the fourth paragraph
21 down in the Civil Beat article, Exhibit K226. I'll
22 read it for you. The panel's rationale for removing
23 the screening focus and reinstating potential sites,
24 expanding the list from seven to somewhere between
25 13 and 22, was that the criteria weighting process

1 and the ultimate decision-making process by Mayor
2 Peter Carlisle and the Council will effectively
3 consider the concerns about ownership, run-off and
4 other issues.

5 Do you see that?

6 A. I see that.

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

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

15 Q. Fair enough. Like the upgradient issue?

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

24 Q. I understand. You wanted to have the best
25 process you could. And to do that, it took

1 expanding the sites and having the consultant go
2 back and remove screens?

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

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

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

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

13 A. That's correct.

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

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

19 A. But we did not rank the sites.

20 Q. You didn't rank the sites.

21 A. Yes.

22 Q. You just weighted the criteria?

23 A. That's correct.

24 Q. Can you tell me a little bit about how the
25 weighting of the criteria occurred? Tell me about

1 that process and how it was done.

2 A. Yes. It was very similar to what was done
3 by the previous landfill selection committee, in
4 that each member of the committee was -- this is one
5 way to do it. Each member of the committee was
6 given a number of criteria that they could identify
7 as being the most important to them. So each
8 committee member did that and then the consultant
9 facilitator gathered that information and identified
10 which of the criteria basically received the most
11 votes.

12 Q. Let me just make sure I understand. So
13 there's 19 criteria?

14 A. Yes.

15 Q. A committee member can't vote to consider
16 all 19 as the most important?

17 A. That's correct.

18 Q. Some fewer votes each committee member
19 had?

20 A. Yes.

21 Q. However many votes each committee member
22 applied to a particular criteria, that criteria was
23 weighted accordingly?

24 A. No. So you could only apply one vote per
25 one criteria. So let's say that you are most

1 concerned with endangered species and you had seven
2 votes, you cannot apply all seven votes to
3 endangered species.

4 Q. I see.

5 A. Okay? So you could choose which of the
6 seven criteria are most important to you if you had
7 seven votes.

8 Q. And you can vote one vote per criteria?

9 A. That's correct.

10 Q. But whichever criteria gets the most votes
11 from all of the committee members --

12 A. Yes.

13 Q. -- that is considered the most important
14 or the heaviest weighted criteria?

15 A. That's correct.

16 Q. Do you recall which criteria received the
17 most votes?

18 A. I believe it was proximity to residential
19 communities.

20 Q. So let me make sure I understand that
21 criteria. Does that mean that the closer to a
22 residential community it is, the more disfavored the
23 site is?

24 A. That would be correct.

25 Q. So a site that is across the street from a

1 residential community would be disfavored?

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

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

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

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

14 A. Yes.

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

17 A. There was some considerable discussion as
18 to whether, A, you needed to resolve, and what the
19 implication of that was. What the committee decided
20 to do was to leave the number the same but provide a
21 gradation within that scale. I think that it was
22 more the committee's intent or desire to express
23 that even within the classification of things that
24 -- you know, let's say five people selected this
25 thing as the most important -- again, I think it's

1 important to note that it's not like each committee
2 ranked their priority. That's not how this
3 happened. So there was some concern that -- from
4 some committee members that -- let's say five people
5 selected distance from H-POWER. And I don't recall
6 what the five -- what they were.

7 Q. Fair enough.

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

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

25 A. I don't recall. I'm sorry.

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

5 A. Okay.

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

8 A. Yes.

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

11 A. Right.

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

15 A. Right.

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

18 A. Yes.

19 Q. And it has six votes?

20 A. Yes.

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

23 A. That's correct.

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

1 see that?

2 A. Yes.

3 Q. It got five votes.

4 A. Yes.

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

7 A. Yes.

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

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

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

16 A. That's correct.

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

20 A. Yes. I understand that is the concern.

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

25 A. I would say that would be correct.

1 Q. So after telling the consultant to go back
2 again in the ninth meeting and remove a screen and
3 then weighting the criteria, you're scheduled to
4 hold a tenth meeting?

5 A. That's correct.

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

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

10 Q. I see.

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

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

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

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

21 A. I sure hope so.

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

25 A. I believe that's the plan.

1 Q. Is the committee going to publish a report
2 on the process and on its recommendation?

3 A. Yes.

4 Q. Do you know whether the report will be
5 published in conjunction with this tenth meeting or
6 will come later?

7 A. I believe it will come later, because
8 we've been given portions of it to review and
9 comment upon in draft form, and we haven't seen all
10 of it, so --

11 Q. After this tenth meeting and the
12 publication of the report, is that the end of the
13 role of the committee in the site selection process?

14 A. As I understand it.

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

19 A. Yes.

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

23 A. Yes.

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

1 A. Yes.

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

5 A. Yes.

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

8 A. I would say.

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

11 A. As far as we understand it.

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

16 Q. Could you explain to me what that means?

17 A. I'm not sure if this was done in the last
18 -- I believe it was done in the 2003 report, but I'm
19 not entirely sure. But it's often done for
20 communities where you have an impact for whatever a
21 potential adverse siting would be, whether it's a
22 landfill or an industrial facility or whatever it
23 might be that it could provide impact to the
24 community. There is often, sometimes, some sort of
25 a community benefits package put together for that.

1 Q. I see. So you'll assign the impact
2 ranking to each site. The committee will make its
3 recommendation and individual members of the
4 committee may stay on to --

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

7 Q. I see.

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

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

23 Q. I see. So the recommendation will be made
24 in the report and that is the end of the line for
25 the committee?

1 A. That's my understanding.

2 Q. The report may or may not include a
3 recommendation on a community benefits package?

4 A. That's correct.

5 Q. Okay. So then if we go back to the flow
6 chart on 11-5, you're making -- the committee,
7 rather, is making its recommendation at the assigned
8 impact ranking to each site phase?

9 A. Yes.

10 Q. Is the committee considering mitigation
11 factors before it makes its recommendation?

12 A. No.

13 Q. Is the committee -- if we then look down
14 further on the flow chart, is the committee doing
15 the neighborhood notification and public meetings
16 before it makes its recommendation?

17 A. Of course not.

18 Q. So that this last sort of loop and a half
19 of the process outlined here is not something the
20 committee will be engaged in?

21 A. That's correct.

22 MR. CHIPCHASE: Okay. Your witness.

23 MS. VIOLA: I have no questions.

24 MR. SANDISON: No questions.

25 CHAIRWOMAN PINGREE: Commissioners,

1 questions?

2

3

E X A M I N A T I O N

4 BY MS. DAWSON:

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

8 Are you the chair of that committee?

9 A. There really is no chair.

10 Q. There is no chair?

11 A. There is no chair.

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

19 A. I think I would say that most of them are
20 community members, as am I. But I think that the
21 intent was to get, you know, a broad range, and I
22 would say that certainly I was not selected based on
23 my experience designing landfills or anything,
24 because that's not what I do. But based on my
25 engineering experience and my involvement in the

1 community as an environmental advocate -- I'm on the
2 board of the Sierra Club, for example. So I think
3 my -- I consider myself a community member who
4 happens to have some expertise in environmental
5 matters.

6 Q. I'm looking at the breakdown of who the
7 committee members are --

8 A. Yes.

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

12 A. Certainly.

13 Q. So your task seems to be handicapped from
14 the beginning. Nobody is going to want to have a
15 landfill in their backyard or next to them or near
16 them. So has the committee ever discussed this in
17 terms of how they feel about where a new landfill
18 might be?

19 A. Well, of course, we have members of the
20 committee from the leeward coast and I think, you
21 know, there's been a lot of public expression from
22 that area of not wanting to have another landfill in
23 that area.

24 What we've tried to do is evaluate the
25 sites on their technical basis so that our selection

1 is not clouded by the location in -- by community.
2 There are certainly location factors above the UIC
3 line, below the UIC line, proximity to residential,
4 proximity to the other criteria, but we don't know
5 in which communities those sites are situated.
6 They're ranked without that information. So for all
7 we know, we're looking at sites in Kahala.

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

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

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

23 Now, that being said, we're looking at --
24 we're not just going to say, Here's our one site.
25 The sites that we're ranking will be provided as a

1 list of sites. Of course, then once you look at
2 those sites with respect to the -- you know, once
3 they start going through environmental review, then
4 maybe your top- ranked site falls out for some
5 reason. But that's -- the ranking will be done
6 according to the community criteria of this
7 committee and the screening process that this
8 committee applied. As I said, you might get to --
9 you know, whatever the site was that was ranked
10 number one may fall out because -- may become not
11 the priority site based on the environmental review
12 process.

13 Q. Are your activities and discussions at all
14 coordinated with the planning department?

15 A. They are not.

16 Q. The planning department continues to
17 consider new housing developments in almost any area
18 of this heavily populated island, so I notice that a
19 couple of these sites do have developments that have
20 come up. I don't know if that's Ho'opili or not,
21 but it could be others. But it's not at all
22 coordinated, so conceivably there are other
23 developments that could be approved and even
24 permitted for any of the sites you choose?

25 A. Conceivably.

1 Q. That's not very encouraging. But you
2 believe that you are going to have your final report
3 at your next meeting?

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

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

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

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

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

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

19 A. I'm not sure.

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

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

24

25

E X A M I N A T I O N

1
2 BY CHAIRWOMAN PINGREE:

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

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

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

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

15 CHAIRWOMAN PINGREE: That's all I have.

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

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

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

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

25 CHAIRWOMAN PINGREE: It's my understanding

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

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

6 CHAIRWOMAN PINGREE: All right.

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

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

14 (Break taken.)

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

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

20 SENATOR SHIMABUKURO: Do I need to be
21 sworn in?

22 CHAIRWOMAN PINGREE: I will swear you in.
23 Would you kindly raise your right hand?

24

25

1 SENATOR MAILE SHIMABUKURO,
2 called as a witness, being first duly sworn to tell
3 the truth, the whole truth and nothing but the
4 truth, was examined and deposed as follows:

5

6 CHAIRWOMAN PINGREE: Thank you.

7

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

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

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

25 And over the course of time that I've been

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

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

23 Katherine Kamada's, another exhibit,
24 similar email, very upset, wanting me to do
25 something about it.

1 I'm not the only -- other area legislators
2 have also taken similar positions. Representative
3 Jo Jordan, the State House Representative for
4 District 45, took my place, and she has also
5 publicly made it known that she is opposed to
6 Waimanalo Gulch continuing on further. That's
7 Exhibit K43.

8 Obviously, making note that Senator
9 Hanabusa is one of the plaintiffs in this case --
10 former Senator Hanabusa.

11 And you know, I think what's already been
12 talked about in this case -- part of what makes the
13 community so upset about this landfill is the
14 violations it's had, and from what I've seen,
15 there's been close to three million dollars in fines
16 levied against Waimanalo Gulch, showing that they
17 aren't complying with the regulations they're
18 supposed to. I'm on page five of my testimony.

19 Starting from page five, I detail some of
20 the violations that I'm aware of that have come
21 down, even from the EPA; not only our own DOH, but
22 EPA as well, the feds.

23 Going into page six, going to more --
24 2010, there were violations, DOH, all the way to
25 2011; talking about the medical waste issue.

1 November 29, 2011, when the EPA found that the City
2 and Waste Management violated the Clean Water Act.
3 So there's just so many examples of how the landfill
4 just hasn't complied and really the public trust
5 feels shattered in that.

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

21 On page eight, when I talk about the
22 City's scare tactics, what I'm talking about here is
23 that right around the time that the City decided
24 they were going to ask for this 15-year extension,
25 it really divided the community, and as a result, it

1 was very dramatic because our neighborhood boards
2 actually split up over this, where the Nanakuli-
3 Maili Neighborhood Board went in one direction and
4 Waianae-Makaha went another. And many people felt
5 like it was this divide and conquer, because the
6 rumor that was going around that many believe that
7 it came from the City was that if we shut down
8 Waimanalo Gulch, then they're going to put the
9 landfill in Nanakuli, like Nanakuli B or one of
10 those sites by Maili Elementary School perhaps. So
11 the people in Nanakuli-Maili then were in favor of
12 having Waimanalo Gulch be extended, while the rest
13 of the community was opposed.

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

25 And then, at the bottom of page eight, I

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

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

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

21 There's all kinds of things that have
22 happened. I know that there was, at one point, talk
23 of shipping it, and unfortunately, that got botched
24 in other -- in various ways. But there are other
25 municipalities across the nation and in other

1 countries that don't landfill. I really, really
2 believe that our state should follow suit. It's
3 really not a healthy way to go at all.

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

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

25 Some other things that I wanted to draw

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

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

23 And Pokai Bay, if any of you have ever
24 been there -- I mean, it's a very, very popular
25 beach for children and families. I mean, you see

1 tons of people there, kids playing, hundreds of
2 people there on the weekends. So all along our
3 coast, you know, it's just unbelievable that this
4 waste had gotten there and had reached our shores.
5 And really, from what I hear, that the landfill --
6 it shouldn't have happened. They were in the
7 process of trying to correct the problem.
8 Unfortunately, the rain came when it did.

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

21 MR. CHIPCHASE: Thank you.

22 MS. DAWSON: Thank you.

23 CHAIRWOMAN PINGREE: Counsel?

24 MS. VIOLA: No questions.

25 MR. SANDISON: No questions.

1 THE WITNESS: Thank you very much.

2 CHAIRWOMAN PINGREE: Excuse me one moment.

3 Commissioners, any questions?

4 Thank you.

5 MR. CHIPCHASE: Intervenors call Maeda

6 Timson.

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

13 Maeda, would you kindly raise your right
14 hand.

15

16

MAEDA TIMSON,

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

20

21 CHAIRWOMAN PINGREE: Thank you.

22

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

1 expansion of the Waimanalo Gulch.

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

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

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

22 First of all, the neighborhood board.
23 During my 15-year tenure, there were several
24 occasions where the board consistently voted to
25 close or stop the Waimanalo Gulch landfill. We

1 never wavered. It was always close it, and you see
2 that on Exhibit K47.

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

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

25 And I've smelled these odors myself while

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

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

18 And when we would -- you know, our
19 questions to the City -- I'm on the phone. What are
20 you guys doing. And they're saying, Oh, we don't
21 know what's going on. You know, we're working with
22 Waste Management and they're going to get some
23 deodorizers and they're gonna make it smell like
24 roses and -- it's so totally ridiculous. But they
25 knew all along. They -- you never get a follow-up

1 from them. You don't get an update unless as the
2 nagging board chair I'm after their back saying, You
3 need to come before us.

4 Then we have the best, the broken
5 promises. Back in the '80s, when this landfill
6 first was about, that was when Fasi -- he was the
7 one, and he said the landfill was going to be built
8 and closed in 15 years. Mayor Harris, he was the
9 environmentalist. He assured us he knew how toxic a
10 landfill in our community was and plans were ongoing
11 to relocate it. Former Mayor Hanneman made a
12 campaign promise to our neighborhood board and
13 community that he would close the landfill.

14 Instead, when he was elected, he created a benefits
15 package for the leeward community to offset the
16 landfill nuisance. You see that in Exhibit K126.

17 But every time we talk to the City, We're
18 working on it. You know how many years that is?
19 You know, Gayle and I said we work for the same
20 employer. If I went to work every day for the last
21 15 or so years and I didn't do my job, I would be
22 fired. Well, that person, Wilma, still works there.
23 She's still looking for a landfill site. Somebody
24 better help her. But again, I would be fired if I
25 did not produce and do my job. So it's really

1 obvious -- it's obvious to all of us that the City
2 really doesn't care.

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

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

16 Then we have the blue ribbon committee.
17 Oh, it's an absolute joke. You guys know it.
18 They're only going through the process and they're
19 just pretending there is a fair process. No. The
20 original committee, they named four sites, none of
21 which was Waimanalo Landfill. The Council came up
22 with a resolution renaming Waimanalo Landfill as a
23 site. Now, this resolution is non-binding and it
24 doesn't supersede what the Land Use Commission or
25 the Planning Commission, what their orders were to

1 close the landfill. So why are we now listening to
2 a resolution? Because it's the same nonsense.

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

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

20 The January 2011 disaster -- we know what
21 happened there, the shamefully slow response from
22 the City and State. My friend Gary is in the
23 audience. It was Ko Olina and the community who
24 really took the quick action to remove the solid
25 waste, the medical waste from our beautiful beaches.

1 And these are the beaches that we need to protect
2 our families. We are the ones that -- we frequent
3 the shores, the surf, and we fish daily. Look at my
4 Exhibit K108. It was ridiculous. There's people
5 that are there every day.

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

24 I'll tell you, it just breaks my heart
25 that my family we have to hesitate and we plan

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

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

23 But the leisure and time that families on
24 the west side and the leeward coast -- they spend it
25 at the beaches. For one, our ancestors spent it

1 there, so we have that connection. For two, the
2 leeward side, if you look at the families, they got
3 so many kids -- I don't have that many, but -- they
4 have so many kids; who the heck can afford to do
5 movies or all of these other things. Or if you want
6 to go to the zoo, you have to travel over an hour.

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

17 Thank you very much.

18 CHAIRWOMAN PINGREE: Thank you, Maeda.

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

21 CHAIRWOMAN PINGREE: You never know.

22 MS. TIMSON: Thanks much.

23 MS. VIOLA: No questions.

24 MR. SANDISON: No questions.

25 CHAIRWOMAN PINGREE: Commissioners? No

1 questions?

2 MS. DAWSON: Thank you for coming.

3 MR. CHIPCHASE: Thank you, Maeda.

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

8 CHAIRWOMAN PINGREE: Any objections?

9 MS. VIOLA: No.

10 MR. SANDISON: No objection.

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

14 CHAIRWOMAN PINGREE: Thank you.

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

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

18 MR. GILL: Aloha.

19 CHAIRWOMAN PINGREE: Aloha.

20 What is the scope?

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

25 CHAIRWOMAN PINGREE: Thank you. Would you

1 kindly raise your right hand, please?

2

3

GARY GILL,

4 called as a witness, being first duly sworn to tell
5 the truth, the whole truth and nothing but the
6 truth, was examined and deposed as follows:

7

8

E X A M I N A T I O N

9

BY MS. VIOLA:

10

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

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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

1 name a few.

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

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

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

17 CHAIRWOMAN PINGREE: What exhibit is this?

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

21 BY MS. VIOLA:

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

25 Would you agree that that is not DOH's

1 responsibility?

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

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

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

13 Q. Yes.

14 A. So in that case, our Solid and Hazardous
15 Waste Branch, which is part of the Environmental
16 Management Division, which is part of the
17 Environmental Health Administration that I oversee,
18 gives very close engineering scrutiny to every
19 landfill application or solid waste management
20 permit application that comes through. This
21 includes an engineering review, specifically the
22 type -- for example, the type of liner that may be
23 applied, the height or breadth of design criteria of
24 the landfill itself, what kind of daily cover that
25 would be placed on the landfill is appropriate,

1 operational controls, storm water controls, all part
2 of a permit application for any solid waste
3 facility, including landfills, and they are given
4 very close scrutiny prior to approval by my agency.

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

14 Would you agree or disagree with that?

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

17 Q. Why?

18 A. Because as I mentioned earlier, any
19 application, particularly for a landfill, which
20 there are landfills in each county statewide, but
21 beyond just landfills, a solid waste permit could
22 apply to a recycling center or anything that deals
23 with some element of the waste stream. There are
24 very specific controls. Just a simple example would
25 be if you have a recycling facility and you're

1 placing recycled goods on something other than a
2 concrete slab, that's a violation of our design
3 criteria.

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

11 Q. Would you have reason to question the
12 expertise of someone who had stated this opinion?

13 A. I'm sorry. Could you state that again?

14 Q. Would you have reason to question the
15 expertise of an individual who had this opinion,
16 that DOH's capacity is just as --

17 A. Well, if someone were to categorize my
18 program's function as being a rubber stamp for an
19 application, that very clearly implies to me that
20 person has never come through our department and is
21 not familiar with our operations.

22 Q. The witness also states that the landfill
23 can close to MSW, municipal solid waste, as of July
24 31st, 2012. Do you agree with that statement?

25 A. That the landfill can close?

1 Q. Uh-huh.

2 A. I suppose it's possible to close the
3 landfill at that date or any other date. The
4 question to me would be what that might do for the
5 health and welfare of the public and the
6 environment.

7 Q. What would your opinion be regarding what
8 that would do, if it were to close as of July 31st,
9 2012?

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

24 Q. And if the landfill were to close to MSW
25 as of July 31st, 2012, would that pose a potential

1 health threat?

2 A. Well, I believe it would, in that I
3 believe that there is not currently the capacity
4 within the City and County to deal with it -- deal
5 with all the waste in the municipal waste stream.

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

16 Q. So I guess could you explain to the
17 commission what the potential health hazard would be
18 if the landfill were to be closed to MSW on July
19 31st, 2012 and there isn't an alternative for waste
20 disposal?

21 A. I guess the obvious worst case scenario is
22 if you don't have a place to put municipal garbage,
23 it's going to stack up somewhere else. It's going
24 to stack up on the street or it's going to stack up
25 in some place which is not permitted to handle it.

1 The City would be -- if the City were to be forced
2 because of lack of access to the landfill to place
3 its municipal solid waste somewhere else without a
4 permit, they would be in violation of our law.

5 MS. VIOLA: Thank you. Nothing further.

6 MR. SANDISON: No questions.

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

12 MS. DAWSON: Are they finished questioning
13 him?

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

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

24 MS. VIOLA: Specifically, the video goes
25 to what aspect of the public health and safety? The

1 public health and safety was in the context of
2 issuing a permit, not just overall public health and
3 safety in the context that I've opened the door to
4 any public health and safety issue. In the context
5 of issuing the permit.

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

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

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

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

23 CHAIRWOMAN PINGREE: Dana, as I recall, I
24 think your questions were rather broad, as well,
25 insofar as public health, what was the impact on

1 public health, and Mr. Gill answered in a general
2 manner, as well. So yes.

3 MR. CHIPCHASE: Thank you.

4 (Discussion off the record.)

5 CHAIRWOMAN PINGREE: We're back on the
6 record.

7

8 EXAMINATION

9 BY MR. CHIPCHASE:

10 Q. Good afternoon, Mr. Gill.

11 A. Hello.

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

16 MS. VIOLA: Objection.

17 BY MR. CHIPCHASE:

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

20 A. Island Insights.

21 Q. Island Insights on PBS?

22 A. I do.

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

25 A. Yes, she was.

1 Q. I'd like to show you just a couple of
2 clips from that appearance, if I could.

3 (Video presentation.)

4 BY MR. CHIPCHASE:

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

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

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

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

14 (Video presentation.)

15 BY MR. CHIPCHASE:

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

21 (Video presentation.)

22 BY MR. CHIPCHASE:

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

1 A. I'm not remembering before the Senate Ways
2 and Means Committee or what you might be referring
3 to.

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

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

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

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

1 Do you see that?

2 A. I do see it.

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

7 A. Yes, I spoke about that.

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

9 (Video presentation.)

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

12 Your witness.

13

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

15 BY MS. VIOLA:

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

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

23 Q. I'm speaking directly about the Solid and
24 Hazardous Waste Branch. Are you aware that your
25 branch chief, Steven Chang, already testified that

1 the Solid and Hazardous Waste Branch will not be
2 taking any enforcement action relating to this
3 event?

4 A. Specifically the Solid and Hazardous Waste
5 Branch?

6 Q. Yes.

7 A. Regarding their permit conditions?

8 Q. Yes.

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

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

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

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

23 A. Can you restate that?

24 Q. The permit that was in effect at the time
25 that the flooding occurred, are you aware that there

1 was a provision in that permit that allowed for the
2 simultaneous construction of a diversion channel, as
3 well as the construction of the active cell that was
4 accepting waste at the time?

5 A. I believe that is correct.

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

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

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

22 A. That's correct. The cell -- it was known
23 to the Department of Health that the cell would be
24 in operation as the storm water diversion system was
25 under construction.

1 MS. VIOLA: Thank you. Nothing further.

2 CHAIRWOMAN PINGREE: Schnitzer?

3 MR. SANDISON: No questions.

4 CHAIRWOMAN PINGREE: Commissioners?

5 Thank you, Mr. Gill.

6 MR. GILL: Aloha. Thank you very much.

7 CHAIRWOMAN PINGREE: It's my understanding
8 that we have no other witnesses.

9 MS. VIOLA: That's correct, for today.

10 CHAIRWOMAN PINGREE: For today. I think
11 what we need to do is talk a little bit about our
12 upcoming plan. We know we have April 11th reserved
13 from 9:00 to 4:30 here, and just from my notes, I
14 believe we are to hear Mr. Steinberger, and I
15 apologize I don't know the full name, but Hari --

16 MS. VIOLA: Yes. H-a-r-i, Sharma,
17 S-h-a-r-m-a.

18 CHAIRWOMAN PINGREE: Hari Sharma.

19 MS. VIOLA: Yes.

20 CHAIRWOMAN PINGREE: All right. Is that
21 it for April 11th?

22 MS. VIOLA: That's it for me.

23 CHAIRWOMAN PINGREE: Excuse us.

24 (Discussion off the record.)

25 CHAIRWOMAN PINGREE: We'll have Mr.

1 Steinberger and Hari Sharma on April 11th.

2 MR. SANDISON: We have no further rebuttal
3 witnesses.

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

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

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

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

25 MR. CHIPCHASE: That could help.

1 MS. VIOLA: For Dr. Sharma, he's going to
2 rebut statements made by Dwight Miller regarding the
3 design and operation of the landfill and statements
4 by some of the other witnesses, including Beverly
5 Munson, Ken Williams, Cynthia Rezentes and today's
6 witnesses regarding the safety and stability of the
7 landfill.

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

15 He is also going to contest Mr. Miller's
16 statements regarding that the design -- or the
17 operation had deviated from the design and
18 operations plan. He's also going to dispute the
19 fact that the January and December spills show that
20 the storm water facilities and the layout of the
21 landfill cells were not consistent with design
22 reports and construction sequencing assumptions
23 supporting the 2008 FEIS and therefore a
24 supplemental EIS would be required. He's going to
25 contest those conclusions.

1 He's also going to contest the design had
2 changed significantly enough from the design report,
3 having a smaller cell or different orientation of
4 the cell, and these changes complicated the
5 construction as well as the protection of that cell.

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

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

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

22 So specifically -- and this is more
23 extensive -- medical waste, that the City and Waste
24 Management did not respond in any regard to the
25 medical waste; that there was a lack of reasonable

1 diligence in developing and executing the site
2 selection process; that the burden is on the
3 engineer for ensuring the design is adequate for the
4 project; having good intentions to reuse ash but not
5 following through; the use of ash in Europe and the
6 implication that ash can be used in the United
7 States; that the City should proper -- did not
8 properly evaluate alternative options and that
9 plasma arc was not properly evaluated.

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

24 He's going to dispute the engineering
25 standard of care as applied to Mr. Miller and he's

1 going to also dispute the fact that Mr. Miller saw
2 an eight- to ten-foot pipe draining into the basin.
3 He's going to dispute the delay that led to the
4 simultaneous construction and that it was resultant
5 from poor planning. He's also going to dispute that
6 for several years the City has not responded to site
7 selection questions and since -- he's going to
8 clarify that it has not been since 1987 that there
9 was a promise to close the landfill and also dispute
10 that it takes between 18 months to three years to
11 develop a new landfill.

12 CHAIRWOMAN PINGREE: That's it, Dana?

13 MS. VIOLA: Yes, specifically.

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

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

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

24 MR. CHIPCHASE: I will do my best.

25 CHAIRWOMAN PINGREE: Please do your best.

1 MR. CHIPCHASE: I will.

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

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

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

18 MR. SANDISON: Schnitzer joins in the
19 objection.

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

25 CHAIRWOMAN PINGREE: All right. Counsel,

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

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

17 CHAIRWOMAN PINGREE: What about the 11th?

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

22 I know that, for example, if I wanted Mr.
23 Miller to call in by phone -- I understand that the
24 commission has made that accommodation before and
25 that might be one vehicle. Unfortunately, he's not

1 available on the 11th and so I couldn't do that.
2 Every other Wednesday in the month of April, if it's
3 convenient for the commission and the other parties,
4 I will make myself available.

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

11 MR. CHIPCHASE: I understand.

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

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

22 CHAIRWOMAN PINGREE: Certainly.

23 Excuse us a minute.

24 (Discussion off the record.)

25 CHAIRWOMAN PINGREE: Monday the 16th?

1 MS. VIOLA: Would that be when the parties
2 would close or --

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

4 CHAIRWOMAN PINGREE: The final --

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

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

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

10 MS. VIOLA: Well, I guess we'd know by the
11 9th if you have your wish.

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

17 CHAIRWOMAN PINGREE: Correct.

18 16th, 9:00 -- I've got to check with
19 Jeanne. She's going to check for us. Hold on.

20 (Discussion off the record.)

21 CHAIRWOMAN PINGREE: On the record.

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

25 CHAIRWOMAN PINGREE: K226?

1 MR. CHIPCHASE: I'm sorry.

2 MR. SANDISON: 208.

3 CHAIRWOMAN PINGREE: K208?

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

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

9 CHAIRWOMAN PINGREE: Thank you. Any
10 objection?

11 MS. VIOLA: No objection.

12 (Discussion off the record.)

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

17 MS. VIOLA: Thank you.

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

20 MS. DAWSON: Motion to adjourn.

21 MR. PACOPAC: Second.

22 (Hearing adjourned at 4:20 p.m.)

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C E R T I F I C A T E

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

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

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

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

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

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

Sue M. Flint

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

