

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 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 9:27 a.m., on
April 23, 2012, pursuant to Notice.

BEFORE: JESSICA R. PERRY, CSR NO. 404

APPEARANCES

1
2 Planning Commission:

3 GAYLE PINGREE, Chairwoman

4 CORD D. ANDERSEN, Member

5 DANIEL S.M. YOUNG, Member

6 JAMES C. PACOPAC, Member

7 ARTHUR TOLENTINO, Member

8
9 For the Planning Commission:

10 WINSTON K.Q. WONG, ESQ.

11 Deputy Corporation Counsel

12 Department of the Corporation Counsel

13 530 South King Street, Room 110

14 Honolulu, Hawaii 98613

15
16 For the City and County of Honolulu, Department of
17 Environmental Services:

18 DANA MIE OSHIRO VIOLA, ESQ.

19 ROBERT BRIAN BLACK, ESQ.

20 Deputies Corporation Counsel

21 City and County of Honolulu

22 530 South King Street, Room 110

23 Honolulu, Hawaii 96813

APPEARANCES (continued)

1
2 For the Ko Olina Community Association and Senator
3 Maile Shimabukuro:

4 CALVERT GRAHAM CHIPCHASE, IV, ESQ.

5 CHRISTOPHER T. GOODIN, ESQ.

6 Cades Schutte

7 1000 Bishop Street, Suite 1200

8 Honolulu, Hawaii 96813

9
10 For the Schnitzer Steel Hawaii Corp.:

11 IAN L. SANDISON, ESQ.

12 ARISMA A. MULLER, ESQ.

13 Carlsmith Ball LLP

14 1001 Bishop Street

15 ASB Tower, Suite 2200

16 Honolulu, Hawaii 96813

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WITNESS: DWIGHT MILLER

Mr. Chipchase 7, 34

Ms. Viola 28

Mr. Sandison 32

WITNESS: EDDIE BELLUOMINI

Mr. Chipchase 36

Commissioner Young 45

Commissioner Pacopac 46

1 CONTESTED CASE HEARING

2 CHAIRWOMAN PINGREE: We will call the
3 meeting to order. This is day eight of the contested
4 case hearing Ewa-State Special Use Permit Amendment
5 Application 2008/SUP-2, Waimanalo Gulch Sanitary
6 Landfill.

7 Identification of counsel for the record,
8 please.

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

11 MR. SANDISON: Good morning. Ian
12 Sandison on behalf of intervenor Schnitzer Steel
13 Hawaii Corp.

14 MR. CHIPCHASE: Good morning. Cal
15 Chipchase and Chris Goodin for Ko Olina Community
16 Association and Senator Maile Shimabukuro.

17 CHAIRWOMAN PINGREE: Thank you. Good
18 morning. As I recall, we are going to proceed with
19 KOCA's rebuttal witnesses.

20 MR. CHIPCHASE: Yes, Chair.

21 CHAIRWOMAN PINGREE: Thank you.

22 MR. CHIPCHASE: Chair, if we can take a
23 brief recess and test the phone connection.

24 CHAIRWOMAN PINGREE: Surely.

25 MR. CHIPCHASE: And then I'll call the

1 witness.

2 (Recess taken.)

3 CHAIRWOMAN PINGREE: Back on the record.

4 MS. VIOLA: I have just a clarification
5 regarding Ko Olina Community Association and Maile
6 Shimabukuro's first amended rebuttal witness list.
7 There was an identification of the scope of Dwight
8 Miller's testimony, and subsequent to that
9 Mr. Chipchase, and correct me if I'm wrong, Cal,
10 further limited that scope, and this is a -- I'm
11 reading an email that Mr. Chipchase sent to the
12 parties, given to Mr. Anderson and Mr. Wong, that he's
13 going to pare down the scope, and that Dwight will
14 only rebut testimony regarding multiple parcel
15 assemblage for landfill siting, the air permit for
16 H-POWER with respect to ASR, Parametrix's work in
17 Hawaii, permitting conditions, and landfill air space
18 calculations. That's a little bit different from
19 their last submittal. Is that your understanding?

20 MR. CHIPCHASE: That sounds correct.

21 CHAIRWOMAN PINGREE: Thank you.

22 Mr. Miller, this is Chair Gayle. Can you
23 hear me?

24 MR. MILLER: Hello. I can hear you. I
25 had a hard time hearing the prior conversation.

1 CHAIRWOMAN PINGREE: All right. Would
2 you kindly raise your right hand.

3 MR. MILLER: I will.

4 CHAIRWOMAN PINGREE: Thank you. Is your
5 right hand raised?

6 MR. MILLER: It's raised.

7 DWIGHT MILLER,
8 the witness hereinbefore named, being first duly
9 cautioned and sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified under oath
11 as follows:

12 CHAIRWOMAN PINGREE: Thank you,
13 Mr. Miller.

14 **EXAMINATION**

15 BY MR. CHIPCHASE:

16 Q. Good morning, Mr. Miller.

17 A. Good morning.

18 Q. We re-called you to cover a few very narrow
19 topics. And on the first of those, if you'll recall,
20 I asked you to review a portion of Janice Marsters'
21 transcript. Do you remember that?

22 A. I do.

23 Q. Specifically I'd asked you to review the
24 portion of Ms. Marsters' testimony on April 11th
25 related to multiple parcel assemblage. Do you

1 understand that?

2 A. Yes, I do.

3 Q. Did you have an opportunity review that
4 testimony?

5 A. I did, yes.

6 Q. Would you tell me what is multiple parcel
7 assemblage?

8 A. Multiple parcel assemblage is essentially
9 looking at multiple parcels, just as it sounds, like
10 multiple tax lots or divisions of property that are
11 contiguous, so they're next to one another and can
12 logically form a larger -- a larger piece of property.
13 And so oftentimes in siting efforts we're looking at
14 multiple parcels, not just single parcels, when we're
15 siting facilities so that we have enough space and
16 sometimes it's for access and other purposes as well.

17 Q. Do you have a copy of Ms. Marsters' testimony
18 handy?

19 A. I do.

20 Q. If I could get you to turn to page 90,
21 beginning on line 22.

22 A. Yeah, just a second. Let me pull that up real
23 quick. I seem to be missing that piece. What line
24 again?

25 Q. Beginning at line 22 on page 90. This is the

1 April 11th transcript.

2 A. Yes.

3 Q. You see there that we're talking about the
4 committee's decision to only consider parcels that
5 were at least 90 acres in size?

6 A. Yes.

7 Q. And there on page 91, Ms. Marsters testified
8 that the committee had considered whether to evaluate
9 multiple parcel assemblages but decided not to do so.
10 Do you see that?

11 A. I do, yeah.

12 Q. In your experience in landfill siting, is it
13 common practice to look at multiple parcels to
14 consolidate them or assemble them into the necessary
15 acreage for the landfill?

16 A. Yes, that's -- like I noted before, that's
17 typically what we're looking at, because oftentimes
18 you're not finding either enough sites or the best
19 site in just a single parcel and so you want to see
20 how you can maybe build a site out of multiples
21 parcels.

22 Q. So here, where we're looking at a 90-acre site
23 needed for the landfill, could the site selection
24 committee have looked at two or three parcels to
25 assemble to reach that necessary 90 acres in size?

1 A. Yes.

2 Q. In your prior landfill siting experience, have
3 you worked on multiple parcel assemblages?

4 A. Yes, we have.

5 Q. Mr. Miller, I had also asked you to look at
6 the April 4 transcript of the testimony of Schnitzer
7 employee Tom Zelenka. Did you have an opportunity to
8 do so?

9 A. I did, yes.

10 Q. Specifically I asked you to look at Mr.
11 Zelenka's discussion of the air power permit for
12 H-POWER. Did you have an opportunity to look at that?

13 A. I did.

14 Q. Do you have that portion of Mr. Zelenka's
15 testimony with you?

16 A. I do, yes.

17 Q. If you would turn to page 25, line 20, for me.

18 A. Uh-huh.

19 Q. Do you have that?

20 A. I do.

21 Q. You see there that the question is asked: "To
22 your knowledge, is there any kind of prohibition in
23 the air permit restricting the acceptance of shredder
24 residue at H-POWER?"

25 A. Yes, I see that.

1 Q. And the answer is given: "Yes, that's my
2 understanding." Do you see that?

3 A. I do.

4 Q. Did you have an opportunity review the air
5 permit for H-POWER?

6 A. Yes, I did.

7 Q. I have a copy here. I'd like you to pull out
8 your copy, Mr. Miller.

9 A. I have it.

10 Q. The permit, this is the permit dated December
11 23, 2009, it's marked as Exhibit K255. On the first
12 page of the permit it says the date of expiration is
13 February 27th, 2011.

14 A. Right.

15 Q. Is it your understanding that this remains the
16 operative permit?

17 A. Yes, that's my understanding from
18 conversations with Mike Matson at Department of
19 Health.

20 Q. And do you understand that the new permit is
21 currently under review by the EPA?

22 A. Yes.

23 Q. Looking at Exhibit K255, the current operative
24 permit, does it preclude H-POWER from accepting auto
25 shredder residue?

1 A. It does not. It specifically allows auto
2 shredder residue.

3 Q. Did you also have an opportunity to speak with
4 Mr. Mike Matson at the DOH Clean Air Branch about the
5 acceptance of auto shredder residue at H-POWER?

6 A. Yes, I did. I talked to him last week.

7 Q. What did Mr. Matson say?

8 A. So, essentially he confirmed what it says in
9 the permit, which is that auto shredder residue is
10 allowed at the H-POWER facility as long as it's
11 non-hazardous and that it has been tested as such, as
12 non-hazardous.

13 MR. CHIPCHASE: Chair, I'd offer Exhibit
14 K255 into evidence.

15 CHAIRWOMAN PINGREE: Thank you.

16 MS. VIOLA: No objections.

17 MR. SANDISON: No objections.

18 BY MR. CHIPCHASE:

19 Q. Mr. Miller, I also asked you to look at those
20 portions of Mr. Tim Steinberger's testimony on April
21 11th regarding Parametrix's work in Hawaii. Did you
22 have an opportunity to do so?

23 A. I did, yes.

24 Q. How long did Parametrix have an office in
25 Hawaii?

1 A. We had an office in Hawaii for about -- I'd
2 say about three years.

3 Q. When was that?

4 A. So from fall of '91 to '94.

5 Q. Why did Parametrix close its Hawaii office?

6 A. Well, it was pretty much a business decision.
7 It was a down market for engineering and environmental
8 consulting at the time, and so it was far from our
9 main offices here in the mainland and we just
10 determined that it was -- it was better to consolidate
11 our practice somewhat and that we can still provide
12 the level of service we were providing in specific
13 areas from our mainland offices.

14 Q. Did in fact Parametrix continue to perform
15 work in Hawaii after closing its Hawaii office?

16 A. Yes, we have maintained a fairly decent
17 practice of environmental engineering work, primarily
18 myself and a couple of other folks.

19 Q. I also asked you to look at the portion of
20 Mr. Steinberger's testimony regarding Parametrix's
21 work on the Central Maui Landfill. Did you have an
22 opportunity to look at that testimony?

23 A. I did, yes.

24 Q. I'm talking about beginning of page 130, line
25 14, if you would turn to that for me.

1 A. Yeah. Just a second. This is 4/11, right?

2 Q. Yes.

3 A. And what the page number of that again?

4 Q. 130.

5 A. Okay.

6 Q. Mr. Miller, did you personally do work on the
7 Central Maui Landfill expansion?

8 A. I did a small amount. We had another engineer
9 who was our project manager and project engineer on
10 that project, but I provided some senior engineering
11 support for it.

12 Q. How did Parametrix come to work on the Central
13 Maui Landfill expansion?

14 A. Well, we started our work at the site with the
15 contractor who was working for -- who had won the bid
16 to do the work for the project for the county. And
17 then after a time of working with the contractor to
18 come up with alternative design elements, we were
19 hired by the county itself to do work.

20 Q. Did Parametrix consult with anyone regarding
21 the expansion project?

22 A. We did. We actually, as is typical for
23 projects such as this, we had multiple sub consultants
24 that worked for us, including Greg Richardson &
25 Associates as a -- as a kind of a high-level

1 engineering design specialist in this type of work, as
2 well as a geotechnical engineer -- engineering firm,
3 AMEC & Associates.

4 Q. Would you tell me a little bit about Greg
5 Richardson's background.

6 A. Yeah. Greg is a Ph.D., professional engineer,
7 senior engineer. We've worked with him quite a lot
8 over the years because he's been one of the leading
9 engineering authorities both on the research as well
10 as practical application of bottom liner designs,
11 final cover designs, alternative designs and so forth,
12 and so we've really looked at him as a leading
13 engineering resource in this area and we've gone to
14 him. Particularly back in the '90s, we used him quite
15 a bit on projects.

16 MR. CHIPCHASE: Chair, I have here a copy
17 of Dr. Richardson's professional résumé. It's marked
18 as Exhibit K257. I'll pass it out and then would
19 offer it into evidence.

20 MS. VIOLA: No objection.

21 MR. SANDISON: No objection.

22 BY MR. CHIPCHASE:

23 Q. Mr. Miller, did Parametrix, in consultation
24 with Dr. Richardson, design the landfill's operations
25 layer to be 18 inches?

1 A. We did, yes.

2 Q. What is the industry standard for operations
3 layers?

4 A. Typically between 18 and 24 inches.

5 Q. Was that the standard at the time that
6 Parametrix and Dr. Richardson did the work on the Maui
7 landfill expansion?

8 A. Yes, that was standard engineering and the
9 landfill practice at that time.

10 Q. Did Parametrix -- strike that.

11 When Parametrix began its work on the
12 expansion, did the landfill have an existing surface
13 water control?

14 A. It did, yes.

15 Q. Did Parametrix have to design the expansion
16 work to be consistent with or compatible with the
17 existing surface water control system?

18 A. Yes, it did. And that was one of the -- one
19 of the elements of that design was to ensure that the
20 landfill would fit into the prior developed surface
21 water and storm water system.

22 Q. So as part of that effort, did Parametrix, in
23 consultation with Dr. Richardson, analyze the capacity
24 needed for the control system, including the leachate
25 control?

1 A. Yes, we did.

2 Q. Did Parametrix, in consultation with
3 Dr. Richardson, design the expansion and the control
4 system to meet that capacity?

5 A. Yes, we did.

6 Q. Was the expansion consistent with state and
7 federal law?

8 A. It was. We designed for the 25-year 24-hour
9 storm, which is the standard for design of storm water
10 systems.

11 Q. Was any NOV ever issued by the state
12 Department of Health or the EPA for the expansion?

13 A. Not that I recall during our time. I do not
14 recall that.

15 Q. And you understand that NOV, I mean notice of
16 violation?

17 A. Yes, yes.

18 Q. Mr. Steinberger had also talked about the berm
19 surrounding the boundary of phase 4 of the project.
20 Did Parametrix design the berm surrounding the
21 boundary?

22 A. We did not design it. It was -- it was within
23 the design that we provided, but it was designed by
24 AMEC & Associates.

25 Q. Was Parametrix responsible for the

1 construction quality assurance in the Maui landfill
2 expansion?

3 A. No, we weren't. The firm of URS Incorporated
4 was the -- was the quality assurance firm on this
5 project.

6 Q. Mr. Miller, I'd also asked you to review a
7 portion of the transcript of Hari Sharma's testimony
8 on April 11th. Did you have an opportunity to do so?

9 A. I did, yes.

10 Q. Specifically I asked you to look at the
11 portion of Dr. Sharma's testimony discussing air space
12 calculations. Did you look at that testimony?

13 A. Yes, I did.

14 Q. Do you happen to have that handy?

15 A. I do, yeah.

16 Q. If you would turn to page 38 for me.

17 A. Okay, I'm there.

18 Q. See at line 14, the question is asked:
19 Mr. Miller, quote, criticizes Waste Management's air
20 space calculation and he says that it's because it's
21 based on erroneous assumptions.

22 And the answer is given: Well, I don't know I
23 can comment on if they say erroneous assumptions kind
24 of statement without saying what assumptions were
25 made. If I knew the assumptions made, then we can

1 discuss about it.

2 Do you see that?

3 A. I do, yes.

4 Q. Were Waste Management's erroneous assumptions
5 detailed in the design and operations technical
6 memorandum?

7 A. Yes, they were. And actually we stated
8 incorrect assumptions, but, yes, they're listed under
9 air space on page 5 of our report.

10 Q. I'd like you to, if you have a copy of your
11 report available, it's Exhibit K146, I'd like you to
12 pull out the report.

13 A. I have it.

14 Q. If we turn to page 5 of the report under the
15 heading air space.

16 A. Uh-huh, I have it.

17 Q. Are the incorrect assumptions by Waste
18 Management listed here?

19 A. They are, yes.

20 Q. Mr. Miller, in this design and operations
21 review technical memorandum, Exhibit K146, are you
22 critical of Dr. Sharma's design work on the landfill?

23 A. Not really. For the most part we felt that
24 the design was fine, it was more the execution of the
25 design, both in construction as well as operations.

1 Q. If the design generally met standard -- or
2 generally met current state of practice or current
3 standards, does that explain the resources or the
4 sources you listed in your design and technical
5 memorandum?

6 A. Yes, as far as the calculations?

7 Q. Well I'm just trying to get handle on what you
8 reviewed and why.

9 A. Well, we reviewed quite a few different, you
10 know, reports that were prepared for the design
11 reports and the solid waste management plan and other
12 elements going into the design and then the final
13 design. And so it was not so much a case of the
14 design within the design report that we kind of
15 questioned, it was more along the lines of how those
16 were then executed into final design in the
17 construction, as well as the operations of the site,
18 and reporting information and so forth is noted here.

19 MS. VIOLA: Objection. At this point is
20 this related to landfill air space calculations or
21 something other than that?

22 MR. CHIPCHASE: That's the end of that
23 line of questioning.

24 MS. VIOLA: All right.

25 BY MR. CHIPCHASE:

1 Q. Mr. Miller, finally I asked you to look at the
2 portions of Mr. Steinberger's testimony on April 11th
3 discussing permitting conditions for the landfill's
4 operations. Did you have an opportunity to do so?

5 A. I did, yes.

6 Q. Specifically I'm referring to page 185, line
7 23, of Mr. Steinberger's transcript. Do you have that
8 handy?

9 A. I do.

10 Q. Have you reviewed the current and prior
11 Planning Commission and Land Use Commission decisions
12 regarding the Waimanalo Gulch Sanitary Landfill?

13 A. Yes, I have.

14 Q. Do those decisions impose conditions on the
15 operations of the landfill?

16 A. They do.

17 Q. I'd like to look at three of those orders if
18 we could. If you have Exhibit K2 available,
19 Mr. Miller, I'd ask you to pull it out.

20 A. Yes, I have it.

21 Q. Mr. Miller, Exhibit K2 is the decision and
22 order approving amendment to special use permit. The
23 date on the front is June 9, 2003. Do you see that?

24 A. Yes, I do.

25 Q. If you would turn to page 7 for me.

1 A. I'm there.

2 Q. You see on page 7 is the beginning of a list
3 of conditions?

4 A. Yes, I see that.

5 Q. I'd like you to look at condition number 3.
6 It states, quote, that an earth berm shall be
7 installed prior to the commencement of any waste
8 disposal operations.

9 Do you see that?

10 A. I do.

11 Q. Is that an operational condition?

12 A. Yes, it is. As I read it, it's to construct
13 an earth berm within the landfill area so as to
14 separate the landfill from the neighbors to the extent
15 possible to reduce noise, reduce, you know, visual
16 impacts and so forth.

17 Q. Reduce the impact of the landfill on the
18 surrounding community?

19 A. Exactly.

20 Q. If you would just stay on the same page for me
21 and then look down to condition number 5.

22 A. Yes.

23 Q. It states, quote, the facility shall be
24 operational between the hours of 7:00 a.m. and 4:30
25 p.m. daily.

1 Do you see that?

2 A. I do.

3 Q. Is that another operational condition?

4 A. Yes, it is. Fairly typical to have hours of
5 operation as one of your conditions of a land use
6 permit.

7 Q. Why would a land use permit regulate the hours
8 of operation?

9 A. Well, hours of operation is probably one of
10 the -- a fairly significant impact on the neighborhood
11 or can have an impact, and so to reduce the hours of
12 operation reduces noise and traffic impacts and other
13 potential impacts on public health and safety.

14 Q. So, again, reducing the impact of the landfill
15 on the community?

16 A. Yes.

17 Q. If we could now look at Exhibit K3, do you
18 have that handy?

19 A. Yes, I do.

20 Q. Exhibit K3 is the findings of fact,
21 conclusions of law and decision and order by the
22 Honolulu Planning Commission and the date on the front
23 of that is January 22, 2008. Do you see that?

24 A. I do.

25 Q. Would you turn to page 8 for me.

1 A. Okay. I'm there.

2 Q. You see there that the approval is subject to
3 a condition. Condition 1 reads, quote, the ENV must
4 obtain approval of its pending grade modification
5 request for WGS� from the state Department of Health.

6 Do you see that?

7 A. I do, yes.

8 Q. Is that another operational condition?

9 A. Yes, I would see that it would be. Grade
10 modifications are typically both design and
11 operational issues.

12 Q. Why would the planning commission require
13 approval of a grade modification request as a
14 condition of a land use permit?

15 A. Well, again, to protect human health and
16 environment and public health in particular, but also
17 just from kind of a standard approach to reducing
18 impacts on the local community.

19 Q. I'd like to look at one more order with you,
20 and that's Exhibit K15, if you would pull that out for
21 me.

22 A. Okay.

23 Q. Exhibit K15 is the order adopting the City and
24 County of Honolulu Planning Commission's finds of
25 facts, conclusions of law and decision and order with

1 modifications, and it's dated October 22, 2009. Do
2 you have that?

3 A. I do, yes.

4 Q. And you understand, of course, that this is
5 the current special use permit approval for the
6 landfill?

7 A. Yes.

8 Q. If you turn to page 5 for me.

9 A. Okay.

10 Q. I'd like you to look at condition 2. Do you
11 see it's subject to -- the approval is subject to a
12 number of conditions starting on page 5 and if you'd
13 look down at condition number 2, the last line. And
14 the very last sentence of condition 2 says, quote, The
15 applicant shall develop a dust control management plan
16 that identifies and addresses all activities that have
17 a potential to generate fugitive dust.

18 Do you see that?

19 A. I do, yes.

20 Q. What is fugitive dust?

21 A. Well, fugitive dust is dust that's generated
22 on one location and then it has the potential of going
23 to another neighboring property and, you know, so
24 leaving the area that -- at which it was generated.

25 Q. So leaving the area of the landfill in which

1 it was generated?

2 A. Yeah. So the landfill or the access road to
3 the landfill or essentially anywhere on the property.

4 Q. So is this condition 2 another operational
5 condition?

6 A. Very much so, yes.

7 Q. Why is a dust management plan important?

8 A. Well, dust -- dust, along with odors, are one
9 of the most significant issues impacting the
10 neighbors, typically, of a landfill. And so managing
11 the dust is very important to reducing those impacts
12 on the surrounding area.

13 Q. If you would turn now to condition 8, which is
14 on page 7.

15 A. Okay.

16 Q. It says: WGS� shall be operational only
17 between the hours of 7:00 and 4:30 p.m. daily, except
18 that ash and residue may be accepted at the property
19 24 hours a day.

20 Do you see that?

21 A. I do, yes.

22 Q. So again the Land Use Commission is regulating
23 the hours of operations, right?

24 A. It is, yes.

25 Q. Why would ash and residue be accepted 24 hours

1 a day?

2 A. Well, it's -- you know, my understanding with
3 H-POWER, H-POWER itself operates 24 hours a day. And
4 so this is to ensure that, you know, H-POWER does not
5 have an interrupted disposal of its ash and residue,
6 so it allows for a more predictable operation of the
7 H-POWER facility.

8 The other point is, is that by only accepting
9 ash residue, it's a reduced volume of a total waste
10 going in currently at the landfill, so traffic impacts
11 are much reduced, as well as the fact that ash and
12 non-combustible residue have minimal odor and so
13 there's not as much of an impact to the community
14 based upon that as well.

15 Q. Mr. Miller, is it your experience to see
16 operational conditions in landfill permitting?

17 A. Yes, definitely.

18 Q. If you would turn, lastly, here to condition
19 14, which is on page 8. Do you have that handy?

20 A. Yeah, let me find it here.

21 Okay, which number is it again?

22 Q. 14, condition 14 on page 8.

23 A. Yes.

24 Q. It states: Municipal solid waste shall be
25 allowed at the WGSL up to July 31, 2012 provided that

1 only ash and residue from H-POWER shall be allowed at
2 the WGSJ after July 31, 2012.

3 Do you see that?

4 A. I do, yes.

5 Q. This condition is regulating the kind of waste
6 that may be accepted at the gulch after a certain
7 date, isn't it?

8 A. It is, yes.

9 Q. Is this another operational condition?

10 A. It is, yes.

11 MR. CHIPCHASE: Mr. Miller, I have no
12 further questions.

13 MS. VIOLA: I'd ask the commission for
14 five minutes, just a short five-minute recess so I can
15 review my notes and determine whether or not I'm going
16 to be asking any further questions.

17 CHAIRWOMAN PINGREE: Fine.

18 (Recess taken.)

19 CHAIRWOMAN PINGREE: Back on the record.

20 **EXAMINATION**

21 BY MS. VIOLA:

22 Q. Hi, Mr. Miller. This a Dana Viola.

23 A. Hello.

24 Q. I just have a few questions for you.

25 A. Okay.

1 Q. Were you aware that Peter Fuller, a geologist
2 with the California Land Disposal Program wrote a
3 review of the Parametrix value engineering study?

4 A. I am aware of that news article, but otherwise
5 I was not aware of that.

6 Q. Were you aware that his criticism was that,
7 and I'm going to quote, Overall, the two reviewed
8 documents, including the Parametrix value engineering
9 study, did not provide useful information justifying
10 the design and do not show the kind of professional
11 competence that is necessary for a good landfill
12 design, and if these documents were submitted to the
13 State of California, they would be returned as
14 incomplete and inaccurate. The level of competence
15 shown by this design is below the minimum
16 qualifications for review by the State of California.

17 Were you aware of that criticism?

18 A. From that same news article, yes.

19 Q. Were you also aware that another consultant,
20 A-Mehr, and that's A, slash, M-E-H-R, Incorporated of
21 Laguna Hills, California, also reviewed the phase 4
22 design, phase 4A design, rather?

23 A. I do believe I saw that in that news article.

24 Q. And that the conclusion of A-Mehr was that the
25 operations layers that was built was a thick -- you

1 know, that the industry standard for this layer called
2 the operations layer is 36 inches and not 18 to -- I'm
3 sorry, you said 18 to 24, is that what your testimony
4 was?

5 A. 18 to 24 is my testimony.

6 Q. And that A-Mehr essentially stated that the
7 operations layer minimum standard is 36 inches and
8 that when Parametrix was redesigning the landfill, it
9 sought to increase the amount of usable volume in the
10 landfill by reducing the operations layer to 18
11 inches.

12 Are you aware of that criticism?

13 A. I did see that opinion.

14 Q. And is it correct to state that Parametrix's
15 design of the phase 4A expansion was not approved by
16 the Department of Health to operate?

17 A. I do not recall that one way or the other.

18 Q. Well, with your -- during your involvement
19 with the phase 4 design and construction, were you
20 aware that DOH was -- that DOH had permitted the
21 design and construction?

22 A. That they had -- could you repeat the
23 question?

24 Q. During your involvement with the phase 4A
25 construction or design and construction, were you --

1 did the DOH approve your design and construction?

2 A. I do not recall at this time.

3 Q. Do you recall that Parametrix eventually was
4 taken off the project in 2003?

5 A. I do.

6 Q. And were replaced by Masa Fujioka &
7 Associates?

8 A. That was my understanding at the time.

9 Q. So would it be your understanding that
10 Parametrix was replaced because the landfill expansion
11 probably was not permitted by the Department of
12 Health?

13 A. I do not know why we were removed.

14 MS. VIOLA: Okay. Thank you. That's
15 all.

16 I'm sorry, one more question.

17 BY MS. VIOLA:

18 Q. If in fact the expansion was not permitted and
19 that it was going through the process of approval from
20 the Department of Health, would there be any bases for
21 an NOV or notice of violation?

22 A. I do not have the information to state that
23 one way or the other.

24 Q. Well, if you're going through a design
25 process, would there be any authority by the

1 Department of Health to issue an enforcement action if
2 they haven't permitted you yet?

3 A. It all depends on where you're at in the
4 process of design, construction and operation.

5 Q. But if you're not permitted, what authority
6 would they have to enforce? Wouldn't their authority
7 at that point just be approving the plans?

8 A. I do not know exactly what their authority is
9 and exactly at what point in the process you're
10 referring to.

11 MS. VIOLA: Okay. No further questions.

12 **EXAMINATION**

13 BY MR. SANDISON:

14 Q. Good morning, Mr. Miller. This is Ian
15 Sandison, the attorney for Schnitzer Steel.

16 A. Yes, hello.

17 Q. Can I direct your attention back to the air
18 permit, and I believe that is marked as Exhibit K255,
19 and specifically at page 12.

20 A. Okay. Let me find it. Page 12?

21 Q. Yes. And what I'd like to talk about, it's
22 condition 12, alternate operating scenarios, and then
23 it's subsection 7, which says -- talks about
24 shredder -- shredded tires and automobile shredder
25 residue, and that sets forth the circumstances under

1 which those two wastes might be accepted at H-POWER.

2 A. Okay.

3 Q. Let me read to you the very last sentence in
4 that --

5 A. Hold on just a moment. I -- this is a really
6 hard document to track down page numbers on.

7 Q. It's -- at the bottom it says Exhibit K255 at
8 12 and then also at the top, which is the numbering of
9 the permit itself, it's page 9 of 35. Does that help?

10 A. Okay. Now I've got it.

11 Q. So what we're looking at is the sub condition
12 7, which talks about shredded tires and automobile
13 shredder residue and the circumstances under which
14 those might be accepted at H-POWER; is that correct?

15 A. Yes, I have it.

16 Q. Okay. I'd like to read to you the very last
17 sentence, which says: Automobile shredder residue
18 shall be blended with MSW prior to charging the MWC
19 boiler if the automobile shredder residue is
20 determined to be nonhazardous and acceptable for
21 processing.

22 Is that correct?

23 A. Yes, that's what I read as well.

24 Q. So there's two conditions there. One, it has
25 to be nonhazardous, and, two, there has to be a

1 determination that it's acceptable for processing; is
2 that correct?

3 A. That's true.

4 MR. SANDISON: No further questions.

5 **EXAMINATION**

6 BY MR. CHIPCHASE:

7 Q. Mr. Miller, this is Cal Chipchase again. I
8 really will only take up another 30 seconds of your
9 time.

10 When you were speaking with Ms. Viola, I heard
11 her mention a criticism by Peter Fuller and then a
12 criticism by A-Mehr and I thought you had said you
13 were familiar with those from reading the newspaper,
14 reading the online article that we had provided; is
15 that right?

16 A. Yes, that's correct.

17 Q. Were you aware of those or are you aware of
18 those criticisms outside of the context of that online
19 article?

20 A. No, I am not.

21 Q. So you've never seen any report or anything
22 from Peter Fuller or A-Mehr?

23 A. Not that I recall, no.

24 Q. As far as you know, has anything from Peter
25 Fuller or A-Mehr in the record before the Planning

1 Commission?

2 A. Not that I know of.

3 Q. So all we're looking at is an online article?

4 A. Correct.

5 MR. CHIPCHASE: No further questions.

6 CHAIRWOMAN PINGREE: Thank you.

7 Commissioners, are there any questions
8 for Mr. Miller?

9 There are no questions from the
10 commissioners, Mr. Miller.

11 MR. CHIPCHASE: Mr. Miller, I think that
12 means you're released.

13 CHAIRWOMAN PINGREE: Thank you.

14 MR. CHIPCHASE: Chair, intervenors have
15 only one remaining witness. Mr. Belluomini is here.
16 It will take us just about five minutes to set up for
17 him.

18 CHAIRWOMAN PINGREE: That's fine. Okay?

19 MS. VIOLA: That's fine.

20 (Recess taken.)

21 CHAIRWOMAN PINGREE: Back on the record.
22 Mr. Chipchase, would you kindly provide
23 the scope.

24 MR. CHIPCHASE: Yes, the scope is limited
25 to rebutting Mr. Steinberger's testimony regarding the

1 workers that Waste Management sent to assist with the
2 cleanup at Ko Olina.

3 CHAIRWOMAN PINGREE: Thank you very much.

4 Hi. I'm going to ask that you raise your
5 right hand, please.

6 EDDIE BELLUOMINI,
7 the witness hereinbefore named, being first duly
8 cautioned and sworn to testify the truth, the whole
9 truth, and nothing but the truth, testified under oath
10 as follows:

11 CHAIRWOMAN PINGREE: Thank you.

12 **EXAMINATION**

13 BY MR. CHIPCHASE:

14 Q. Mr. Belluomini, would you spell your last name
15 for the court reporter.

16 A. Sure. B, as in boy, E-L-L-U-O-M-I-N-I.

17 Q. Am I pronouncing it correctly?

18 A. Correct.

19 Q. Mr. Belluomini, where are you currently
20 employed?

21 A. Ko Olina Resort.

22 Q. What is your position?

23 A. I work as the operations manager for Ko Olina
24 operations and I'm also the resort emergency response
25 RN.

1 Q. RN, so you're --

2 A. A registered nurse.

3 Q. So you're a nurse by training?

4 A. Correct.

5 Q. In that position are you a member of the Ko
6 Olina Aloha Team?

7 A. Yes, I am.

8 Q. Do you work for Duke Hospodar?

9 A. Yes, I do. He's my direct boss.

10 Q. Were you employed with the Aloha Team in
11 January 2011?

12 A. Yes, I was.

13 Q. Do you recall a spill of waste from the
14 Waimanalo Gulch Sanitary Landfill in mid January 2011?

15 A. Yes, I do.

16 Q. Did you assist Ko Olina with the cleanup at
17 the resort?

18 A. Yes, I did.

19 Q. Mr. Belluomini, I had asked you to look at a
20 portion of the April 11th transcript from director Tim
21 Steinberger. I believe you have a copy in front of
22 you. If you would turn to page 99 for me.

23 A. Which page?

24 Q. 99.

25 A. Okay. Got it.

1 Q. If you look down beginning at line 4, do you
2 see the discussion of the crew brought out by Waste
3 Management?

4 A. Okay.

5 Q. Do you see the reference to the crew brought
6 out by Waste Management?

7 A. Yes.

8 Q. Do you recall that crew?

9 A. Yes, I do.

10 Q. I think we have a video of them. If I could
11 ask you to watch it with me. It's Exhibit K133.

12 (The following is a transcription of the
13 video:)

14 MR. MOORE: Coast residents are expressing
15 outrage after medical waste from Waimanalo Gulch
16 landfill was found scattered across the shoreline
17 yesterday. As Andrew Pereira reports, the waste
18 includes needles and vials of blood.

19 MR. PEREIRA: Joe, county and state officials
20 are trying to determine how far that medical waste may
21 have traveled.

22 Beach cleanups are nothing new. But this one
23 along the Leeward coast is like none other.

24 UNIDENTIFIED WORKERS: Blood vials and
25 needles.

1 Found a couple over there with that metal
2 piece so that you can inject yourself with 'em.

3 MR. PEREIRA: A crew contracted by the company
4 that runs Waimanalo Gulch landfill began cleaning the
5 shoreline behind Ko Oliña Resort Friday morning. They
6 were given a half-hour lecture on hazardous waste --

7 UNIDENTIFIED WORKER: Leftover blood look
8 like.

9 MR. PEREIRA: -- \$9 an hour and puncture proof
10 gloves.

11 UNIDENTIFIED WORKER: Needles with long tips
12 over there.

13 They say it's puncture resistant gloves, but I
14 don't think so.

15 MR. PEREIRA: The medical waste traveled
16 through large pipes that lead to Waimanalo Gulch after
17 the area received more than 11 inches of rain. City
18 officials insist it was a hundred year storm.

19 MR. STEINBERGER: We haven't had a rain like
20 this ever. This is the first time in reported
21 history. The ones in December broke all the records
22 from 1955.

23 MR. PEREIRA: Runoff from the storm collected
24 in a new cell of the expanded landfill that has been
25 receiving trash since October. The water eventually

1 overwhelmed the basin at the bottom of the landfill
2 designed to catch silt and other debris. Waste
3 Management says all medical waste is sterilized.

4 MR. WHELAN: And the process is if someone,
5 like a hospital, has that particular product, they
6 have to fill out a profile and have that pre-approved
7 with us.

8 MR. WILLIAMS: This does solidify our
9 long-standing assertion that the landfill is a health
10 risk to the community. .

11 MR. PEREIRA: A new head wall at the top of
12 the mountain, along with six-foot piping and another
13 drainage basin is designed to divert storm water away
14 from the landfill. The system is still three to four
15 months from being finished.

16 MR. GILL: Water should not have crossed the
17 top of the landfill, it should not have eroded a cell
18 full of waste that was placed in that landfill.

19 MR. PEREIRA: Warning signs about the possible
20 danger have been posted from Ko Olina Resort to the
21 Kahi power plant.

22 UNIDENTIFIED WORKER: This is choked with
23 trash. Trash all the way out there stuck in the reef,
24 all the way out in the ocean. I'm not swimming in
25 this water anymore.

1 MR. PEREIRA: Now the landfill is allowed to
2 discharge storm runoff as part of its permit. The
3 health department says results from water sampling
4 should be available in about a week. For now, stay
5 out of the water. Andrew Pereira, KHON2 News,
6 Hawaii's news leader.

7 (End of videotape transcription.)

8 BY MR. CHIPCHASE:

9 Q. Mr. Belluomini, in that clip we watched of
10 Exhibit K133, were those the workers that Waste
11 Management sent to help with the cleanup?

12 A. Yes, they were.

13 Q. How many times did those workers come to
14 assist with the cleanup at Ko Olina?

15 A. One day, just that day that they were shown.
16 That was the very next day.

17 Q. Where did those workers assist with the
18 cleanup?

19 A. Basically that area. That's the runoff area
20 that comes down from the gulch and they were actually
21 just on that side, which would be the Waianae side
22 of the drains.

23 Q. So that's the area where the drains from the
24 landfill actually empty into the ocean?

25 A. Correct. The left drain and the center drain.

1 Q. Did the City or Waste Management ever come to
2 any part of Ko Olina to assist with the cleanup?

3 A. No, not at all. Only that area.

4 Q. Did they ever assist with the cleanup at the
5 lagoons?

6 A. Never.

7 Q. Did the Aloha Team find any waste at the other
8 parts in Ko Olina?

9 A. Every lagoon. From the first day -- we
10 actually ended up cleaning for about seven to ten
11 days, the first seven days we probably took four
12 inches of sand off each beach every day. And then
13 probably the last three days it was just raking to
14 keep trying to find debris. Because debris basically
15 came up every day, lagoon 4 being the heaviest, then
16 3, then 2, then 1.

17 Q. How many days were the lagoons closed?

18 A. I'd like to say about 10 days, 10 to 12 days.
19 I'd have to double-check that.

20 Q. What about in the area where the Waste
21 Management workers that we saw had cleaned up that
22 day, did Ko Olina continue to find waste and debris in
23 that area?

24 A. For about a week. They did clean up a lot in
25 that area, though, you know, the first day, but stuff

1 still came every single day because as you could see
2 how the water is choppy, as the water goes out of the
3 drains, it gets pushed right back in onto the rocks,
4 so every day we were finding stuff.

5 Q. I think we have another clip of that waste.
6 I'd ask you to play the second clip. It is also from
7 Exhibit K133.

8 (The following is a transcription of the
9 video:)

10 MR. COX: This one, this was found within ten
11 yards.

12 REPORTER: An area scoured by clean-up crews
13 Friday is littered once again.

14 MR. COX: How can you quantify the problem
15 when you don't know how much washed down?

16 REPORTER: Medical waste is still visible on
17 the shoreline near Ko Olina Resorts, but the clean-up
18 crews are no where in sight.

19 MR. COX: No one is here picking up,
20 absolutely no one.

21 REPORTER: Crews were out here yesterday
22 filling bags full of syringes and blood vials, but
23 residents at Ko Olina want to know why no one is here
24 today when the medical waste keeps washing ashore.

25 MR. ISENHART: So they came out, cleaned up

1 for one day and left. That too is a disgrace.

2 REPORTER: Rob Isenhardt and his wife, Mary,
3 live at Ko Olina and say as long as waste keeps
4 washing ashore, someone should be here cleaning it up.

5 MR. ISENHART: Yeah, I think they should still
6 be out here cleaning. Of course.

7 MRS. ISENHART: We swim right here. We used
8 to. Now I can't for how long?

9 REPORTER: Waste Management Hawaii, the
10 Waimanalo Gulch landfill operator, tells KHON2 it
11 completed the cleanup of the storm water outfall area
12 yesterday and the area south of the sedimentation
13 basin today just above the outfall point.
14 Environmental watchdog Carroll Cox says the cleanup is
15 far from complete.

16 MR. COX: They should have been here
17 yesterday, the day before and today and -- and until
18 the week coming.

19 REPORTER: Department of Health officials came
20 to inspect the outfall area and weren't surprised by
21 what they saw.

22 MR. YAMADA: To be honest, I'm not sure what
23 will be surprising at this point, but, you know, I
24 think we're going to see it still for the coming days.

25 REPORTER: Yamada says the City needs to do

1 more to keep the shoreline clean.

2 MR. YAMADA: We're going to be in contact with
3 the City and asking them that they double their
4 efforts because they're going to have to step up
5 efforts to clean that shoreline.

6 (End of videotape transcription.)

7 BY MR. CHIPCHASE:

8 Q. Mr. Belluomini, on that clip there was a
9 statement from Waste Management saying that after one
10 day the cleanup had been complete. Was the cleanup
11 complete after that one day?

12 A. Not at all. Not at all.

13 Q. Did anyone from the City or Waste Management
14 ever come back to help?

15 A. Never. Only that one day that they came, the
16 day after. Aside from that, we've never seen them
17 again.

18 MR. CHIPCHASE: Thank you. No further
19 questions.

20 MS. VIOLA: No questions.

21 MR. SANDISON: No questions.

22 CHAIRWOMAN PINGREE: Commissioners, any
23 questions?

24 **EXAMINATION**

25 BY COMMISSIONER YOUNG:

1 Q. Did anybody get hurt or were there any
2 accidents with the debris?

3 A. Did anyone get hurt?

4 Q. Yeah, you know, with the needles and vials.

5 A. I'm trying to think back to that. I'd like to
6 say off the top of my head there was one person from
7 the Ko Olina Beach Club, I think, that got cut, but we
8 couldn't confirm what caused it, you know what I mean,
9 because that was -- I'm trying to think. We had a
10 guest from the Ko Olina Beach Club that came -- I'm
11 trying to think if it that day from like Michigan or
12 someplace and the guy basically got out of the hotel
13 and ran and dove right in the water. He didn't know
14 anything, you know what I mean, at that point. Some
15 people don't -- you know, you come from cold weather,
16 you just come and right to the beach.

17 Q. In the lagoon.

18 A. In the lagoon, in lagoon 3. But we couldn't
19 confirm what caused his cut.

20 Q. No workers were hurt or anything?

21 A. No workers. None of our workers were hurt.

22 CHAIRWOMAN PINGREE: You had a question?

23 **EXAMINATION**

24 BY COMMISSIONER PACOPAC:

25 Q. How long was the total cleanup? How long did

1 it take you guys to finally get it cleaned up?

2 A. I'd like to say probably a full ten days, sir.
3 I mean, the first seven days -- like I said, the first
4 day, I mean, we got a lot, the first five days we'll
5 just say, and then it diminished each day after that.
6 But every single day we have to go. Probably the
7 first five days, like I said, you could easily see the
8 stuff. The next five days you'd see little more,
9 little more, and then probably the last three days it
10 was just raking every day and then underneath the
11 sand, because you know how the water comes up every
12 day, we'd find debris. That was all.

13 COMMISSIONER PACOPAC: Thank you.

14 CHAIRWOMAN PINGREE: Thank you very much.

15 THE WITNESS: You're welcome.

16 MR. CHIPCHASE: You can be excused.

17 Chair, that's the end of Ko Olina's
18 witnesses. Before resting, I just needed to move a
19 couple of exhibits into evidence. One is Exhibit
20 K192, which was presented at the last commission
21 hearing. It was a printout from Waste Management's
22 Web site regarding burning medical waste.

23 The next is Exhibit K220, which was a
24 transcript of Mr. Doyle's testimony in a prior
25 proceeding. I believe that was addressed at the prior

1 proceeding as well.

2 And then Exhibit K256 is an agenda from
3 the site selection committee's most recent meeting.

4 Exhibit 258 are photographs of the site
5 selection committee's report of the landfill site
6 selection. And I would offer all of those into
7 evidence, and I believe Mr. Goodin will pass out the
8 exhibits that have not already been circulated.

9 MS. VIOLA: I'm sorry, 258 is a new
10 exhibit that you're going to enter now?

11 MR. CHIPCHASE: 258 is a photograph of
12 the site selection committee's list of alternative
13 sites.

14 MS. VIOLA: And that's the site selection
15 committee's decision that was made on April 20th,
16 2012?

17 MR. CHIPCHASE: Yes. Memory, of course,
18 not being available.

19 CHAIRWOMAN PINGREE: Are there any
20 objections?

21 MS. VIOLA: No objections.

22 MR. SANDISON: No objections.

23 CHAIRWOMAN PINGREE: Thank you.

24 MR. CHIPCHASE: We rest, Chair.

25 CHAIRWOMAN PINGREE: Thank you very much.

1 DMV?

2 MS. VIOLA: We've already rested. No
3 rebuttal.

4 CHAIRWOMAN PINGREE: There's no rebuttal?
5 I'm sorry, my notes had someone else.

6 MS. VIOLA: Actually, we had originally
7 elected to call another witness, but due to the
8 limited scope of the testimony -- of the rebuttal
9 testimony from Ko Olina Community Association and
10 Senator Maile Shimabukuro, we are -- we will not be
11 calling an additional witness.

12 CHAIRWOMAN PINGREE: So you rest as well?

13 MS. VIOLA: Yes.

14 MR. SANDISON: We rest as well.

15 CHAIRWOMAN PINGREE: Thank you.

16 I'd like to call for a motion to close
17 the evidence taking.

18 COMMISSIONER YOUNG: I'll make a motion.

19 COMMISSIONER TOLENTINO: I'll second.

20 CHAIRWOMAN PINGREE: All in favor?

21 ALL MEMBERS: Aye.

22 CHAIRWOMAN PINGREE: Are you ready for
23 closing?

24 MS. VIOLA: Yes.

25 CHAIRWOMAN PINGREE: And just as a

1 reminder, we've agreed upon a half an hour, ten
2 minutes and a half an hour.

3 MS. VIOLA: Thank you.

4 CHAIRWOMAN PINGREE: Thank you.

5 MS. VIOLA: You've heard a lot of
6 testimony over our eight days of taking testimony, but
7 the bottom line in this proceeding is that Oahu still
8 needs a landfill and that's something that all the
9 parties have agreed on. Department of Environmental
10 Services, Department of Health, and even Ko Olina
11 Community Association and Senator Maile Shimabukuro's
12 expert witness Dwight Miller, they all agree that Oahu
13 still needs a landfill. And the reason we still need
14 a landfill is because we need a landfill to properly
15 manage waste for the safety of the citizens of
16 Honolulu.

17 We still need a landfill because there's
18 still waste that has to go to the landfill. We still
19 have to take bulky waste to the landfill. We still
20 have to take sludge to the landfill. Auto shredded
21 waste has to go to the landfill, screenings and tank
22 bottom sludge, medical sharps and red bag waste and
23 sandblast, just to name a few.

24 Some of these wastes, the City plans to
25 divert from the landfill, but current technologies as

1 of July 31, 2012, the deadline that is currently
2 imposed for MSW, municipal solid waste, 2012 -- July
3 31, 2012, and on that date we won't be able to take
4 bulky waste, we won't be able to take sludge, we won't
5 be able to take a lot of the waste that third boiler
6 at H-POWER will eventually be able to take.

7 We also will not have our bioconversion
8 facility in place to also take sludge. We also will
9 not have a shipping option because as of currently
10 there are no compliance agreements that will allow the
11 shipment of municipal solid waste to the mainland.

12 Also, I've heard mention of a storage
13 option, but as you've heard from the deputy director
14 of the Department of Health, Gary Gill, this is not a
15 safe option and any kind of storage will probably
16 result in violations of Hawaii storage laws.

17 Now, we need the landfill because there's
18 waste that has -- still has to go to the landfill,
19 because alternative technologies are currently not
20 available to deal with some of these wastes. And also
21 because we need a failsafe option. We have to have a
22 landfill to be able to address contingencies that we
23 don't -- we can't anticipate and we can't have any
24 control over. We need a landfill if H-POWER goes
25 down. Even with the third boiler up and running, if

1 H-POWER is available to take over 900,000 tons of
2 waste per year, if something goes wrong and H-POWER
3 cannot function, we need a backup. That's the same
4 for the bioconversion facility, that's the same for
5 the Sand Island conversion. And we also need to be
6 able to respond to emergencies. For example,
7 Japanese -- the debris from the tsunami in Japan.
8 It's sound public policy to have this kind of backup,
9 to have this kind of assurance if we encounter
10 situations, emergency situations where disposal
11 options are not available, there will be -- there is
12 going to be an option of a landfill to properly
13 dispose of the waste for the safety of the people of
14 Honolulu.

15 And the City is not looking to Waimanalo
16 Gulch Solid Waste Sanitary Landfill as a dumping
17 ground, so to speak. They are not looking to dispose
18 of all waste there. And you've seen this based on the
19 amount of diversion that the City has already
20 accomplished. We have -- we're diverting
21 approximately 70 percent of waste from the landfill
22 and we're in the top ten cities for total landfill
23 diversion. We've also been very successful in
24 implementing island-wide recycling and we are
25 currently diverting all food waste and green waste

1 from the landfill. So the City has already made great
2 strides in diverting waste from the landfill. And the
3 City is continuing to divert, continuing to be
4 committed to this goal of landfill diversion. They
5 intend to divert all sewage sludge from the landfill,
6 and they want to get to as high as or above 80 percent
7 total diversion.

8 But even with maximum diversion, the City
9 still needs a landfill. We still need a landfill
10 because we still -- there's still going to be waste
11 that cannot be disposed of, and that's why we're
12 looking at another site, and that's why we've been
13 directed to look at another site. And as of April
14 20th, 2012, the site selection committee has come up
15 with recommendations. And as you've heard from Janice
16 Marsters who testified from the site selection
17 committee, the committee has taken great strides, has
18 made great strides and made great efforts to ensure
19 that there's a rigorous process, looked at all
20 objections and they've been very diligent in their
21 selection.

22 But until there is actually another
23 operational site, we still need to have landfill. And
24 as you've heard from testifiers who have knowledge of
25 Hawaii's siting process, it takes a long time, at

1 least seven years. So until there's actually another
2 landfill, we need Waimanalo Gulch Sanitary Landfill.
3 We need to take the waste that cannot be otherwise
4 disposed, we need it as a backup if H-POWER or the
5 bioconversion facility shuts down, and we need it to
6 address emergencies.

7 But I think then you ask, maybe, why no
8 deadline? And the answer to that is there is a
9 deadline. Planning Commission imposed a deadline in
10 the previous decision. The deadline is capacity.
11 Waimanalo Gulch, with the present expansion, is
12 expanded to its full extent. So once it reaches
13 capacity, that will be the end of the use of the
14 Waimanalo Gulch Sanitary Landfill.

15 The other -- the other part is that the
16 City needs the flexibility to properly manage disposal
17 of waste to protect human health and the environment.
18 By imposing what we have already observed as
19 unworkable, inflexible deadlines, this will inhibit
20 the city from properly managing waste. And despite
21 what the intervenors would have you believe, the City
22 is not looking to Waimanalo Gulch to dump all its
23 waste if it's permitted to use the gulch to capacity.
24 As you've seen by its effort in diversion, you know,
25 landfill diverse and its future efforts to divert, the

1 City is committed to reducing the use of the landfill.

2 And even if we deleted the deadline, even
3 if the Waimanalo Gulch is allowed to continue to
4 operate to capacity, the City can't just disregard its
5 current obligations. And those current obligations
6 are with contracts, it involves conversion facilities
7 to divert sludge -- to convert the sludge, and also
8 its continued expansion of H-POWER. So we already
9 have legal obligations which we're bound by which
10 would prove that the City is committed to diversion.

11 And moreover, over and above these other
12 considerations, the Planning Commission still -- you
13 still retain the authority to have -- to continue to
14 review, to continue to have oversight or authority to
15 track what the City doing, to keep tabs on ongoing
16 diversion efforts as well as site selection efforts.
17 And you have the ability, pursuant to your own order,
18 to enforce these conditions. You have the ability to
19 modify the SUP, you even have the ability to revoke
20 the SUP. So instead of imposing deadlines that have
21 proved to be unworkable, the Planning Commission
22 can -- does and still retains the authority to keep
23 the City in check, to make sure that it's complying
24 with its obligations and to make sure that it's
25 continuing to minimize the use of a landfill.

1 The City needs the flexibility to
2 properly manage waste. That's the bottom line. We
3 still need the landfill. We still need to use the
4 landfill. We still need to dispose of waste that
5 can't go anywhere else. And if the deadline is
6 imposed and if we are -- if other deadlines are
7 imposed that we cannot abide by, then the result will
8 be shutting down the landfill and possibly harming the
9 health of the citizens of Honolulu as well as the
10 environment.

11 So to beat a dead horse, we, Oahu, needs
12 a landfill. We need to continue to allow the City to
13 have the ability to properly manage waste without
14 restrictions that will -- that reinforce an obligation
15 that allow them to continue to operate in a reasonable
16 and productive manner.

17 So the recommendation from the City or
18 the request from the City is that you delete condition
19 14, you delete an unreasonable and unworkable
20 deadline, and that you continue to allow the City to
21 properly manage its waste for the protection of the
22 public. This is the reasoned decision, the reasoned
23 solution, and the reason -- the solution that is most
24 protective of the citizens of Honolulu.

25 Thank you.

1 CHAIRWOMAN PINGREE: Mr. Sandison.

2 MR. SANDISON: Thank you. First of all,
3 I'd like to thank all of you for spending as much time
4 as you have over the last many, many weeks in this
5 hearing. I'd also like to talk a little bit about
6 Schnitzer and why we're here and have invested the
7 time and effort to participate in this hearing.

8 As you've seen, this solid waste here on
9 Oahu is incredibly complicated. H-POWER handles some
10 of it, the City's new digesters will handle some of
11 it, Waimanalo Gulch handles some of it, and Schnitzer
12 also handles some of that. And as Larry Snodgrass
13 testified, Schnitzer processes about 120,000 tons of
14 scrap metal a year. We say that number a lot and we
15 try to visualize what it is. That's a pile that is
16 roughly the size of the building that we're in today,
17 only it's a mile and a half long. So that's a lot of
18 solid waste.

19 And some of you remember Kailua Auto
20 Wreckers, some of you remember the problems that
21 existed on Maui and other places where we have not had
22 the ability to deal with this solid waste. So
23 Schnitzer's niche in the solid waste operations for
24 this community is that it handles the vast majority of
25 scrap metal.

1 And the way that it does that is to run
2 quite a bit of it through an automobile shredder and
3 that separates the recyclable metal, the ferrous and
4 nonferrous, from the plastics and the dashboards, the
5 headliners, the seats, the bumpers, those pieces of an
6 automobile are, particularly automobiles, that are not
7 recyclable metal. And that's a waste. All recyclers
8 produce some residual waste. Of that 120,000, roughly
9 20,000 of that is shredder residue and that has gone
10 and continues to go to Waimanalo Gulch. If condition
11 14 stays in place, we'll have nowhere to put that
12 after July 31st of this year.

13 That's really a big problem. We,
14 Schnitzer, had a preview of how big a problem that was
15 when the landfill was shut down in the -- as a result
16 of the rains and the spills that happened last
17 January. We had a couple -- we had a few weeks where
18 we could not take shredder residue there. That was a
19 crisis. We went -- we explored every possible
20 alternative. We went to PVT, which is the landfill in
21 Nanakuli, it's a construction and demolition waste
22 landfill. They're not permitted to take our residues.
23 We really, really, really explored with H-POWER, could
24 we possibly burn this stuff. The answer came down no,
25 not with the existing two boilers and not with the

1 future boiler. They're not going to accept it. It
2 burns too hot. The glass in it adheres to the
3 refractory. They're concerned about what happens to
4 their air permits when stuff that they burn goes up
5 the stack and they don't have the appropriate
6 scrubbers. So that's not a viable option.

7 We looked at taking it to the mainland.
8 Part of the problem is we have the same problem that
9 the City does with shipping waste to the mainland. We
10 also looked at going to the outer islands. We've
11 looked at all of the alternatives.

12 This is a problem, as you heard Tom
13 Zelenka testify, that Schnitzer has dealt with because
14 they have so many of these operations on a nationwide
15 basis. They look at what's going on in Europe, which
16 is really the avant-garde of waste processing, and
17 those -- and in those specialized areas, the plasma
18 arc and things, they're really just pilot programs.
19 No one in the entire world has developed an
20 alternative for dealing with shredder residue that
21 operates on a commercial basis.

22 So there just isn't a viable alternative
23 for that, except for one that we've looked at, and I
24 think it was testified about it, Mr. Pacopac asked
25 about it, and that is as an alternative daily cover.

1 We've been really looking into it, not looking at it,
2 acting on it very hard. We are currently trying to
3 get that permitted through the Department of Health.
4 It's taking a long time. If they do permit it, it
5 will be well past July 31 of this year. We went into
6 the legislature to try to get a bill that would remove
7 some of the legal obstructions to getting that done so
8 we could get it to -- used as alternative daily cover,
9 as is done almost uniformly throughout the United
10 States.

11 So we've really, really tried to come up
12 with a solution. We've literally thrown everything
13 against the wall. My being here today is another
14 example. We're joining with the City. If condition
15 14 stays in place, we're in deep trouble, Schnitzer is
16 deep trouble, the citizens of Oahu are in deep
17 trouble, because we don't have another place to put
18 that stack of scrap metal that's as about big of this
19 building and a mile and a half long. It will sort of
20 uniformly distribute itself around our island.

21 And for those reasons we really ask that
22 you do what has been suggested, do what the city has
23 suggested, allow the landfill to stay open to those
24 wastes that don't have another home. These apply to
25 quite a few others, but Schnitzer is a very important

1 one and this is public health issue. It's an
2 important aspect for the entire community, and if this
3 condition goes -- condition 14 goes into effect on
4 July -- at the end of July this year, we will have
5 artificially created a crisis that we don't need to
6 have.

7 For all of those reasons, we ask that you
8 approve the City's request. Thank you.

9 MR. CHIPCHASE: Chair, it will take me
10 two minutes to set up my PowerPoint.

11 Chair, before I begin, I'm compelled by
12 procedure to renew my objection to the jurisdiction of
13 this commission. With that objection renewed, I'm
14 prepared to proceed with my closing.

15 CHAIRWOMAN PINGREE: Proceed.

16 MR. CHIPCHASE: Commissioners, we have
17 been meeting in this room since December, and in the
18 30 minutes that I have to talk to you this morning, I
19 can't possibly summarize all of the evidence that
20 you've received. We've had eight hearing days, we've
21 heard from something like 15 witnesses, and there are
22 more than 260 exhibits in evidence and on file with
23 the commission. We'll tell the full story in our
24 findings and conclusions that we'll submit to you.
25 Today I'd like to just focus on four points.

1 First, I'd like to take us back to the
2 beginning. Why are we here? What does the City want?
3 And what's the standard? Second, I'll discuss what
4 we've learned over these five months about the
5 landfill, about the waste strain and about the City's
6 efforts to find another site. Third, I'll address the
7 need for accountability. And finally, I'll bring us
8 to the bottom line, what is the order that we believe
9 the commission should enter in this case.

10 First the beginning. At the most basic
11 level, we're here because the Waimanalo Gulch Sanitary
12 Landfill sits on agricultural land. A landfill is
13 decidedly not an agricultural use and so the City
14 needs a Special Use Permit to operate the landfill,
15 and it's currently operating under the Special Use
16 Permit issued by the Land Use Commission in 2009.

17 That Special Use Permit imposes several
18 conditions on the operations at the landfill. One of
19 those conditions controls the kind of waste that may
20 be deposited at the landfill. Specifically under the
21 current Special Use Permit, municipal solid waste may
22 be deposited at the landfill up to July 31, 2012.
23 After that date, the landfill can only be used for ash
24 and residue. It will be an ash monofill under the
25 current conditions, and this is condition 14 of the

1 Special Use Permit. This condition does not mandate
2 closure of the landfill, it regulates the kind of
3 waste that may be accepted at the landfill after a
4 specific date.

5 The same Special Use Permit also directs
6 the City to find a new landfill site for municipal
7 solid waste, the waste that would be banned from the
8 landfill after July 31, 2012. Specifically at
9 condition 4, the LUC directed as follows, quote, On or
10 before November 1, 2010, the applicant shall begin to
11 identify and develop one or more new landfill sites
12 that shall either replace or supplement the WGS.

13 That same condition, condition 4, goes on
14 to state, quote, The applicant's effort to identify
15 and develop such site shall be performed with
16 reasonable diligence.

17 Conditions 4 and 14 operate together.
18 Close the landfill to MSW and find a new site for MSW,
19 something the LUC has been telling the commission --
20 rather telling the City to do for nine years. Instead
21 of doing what it had been directed for nine years, the
22 City is back filing an application to delete condition
23 14 entirely. In that application the City, quote,
24 moves the Planning Commission for an order modifying
25 the SUP. The City explains that the modification it

1 seeks is to delete condition 14, specifically, quote,
2 the July 31, 2012 deadline to cease disposal of
3 municipal solid waste at WGSL. That is the condition
4 the City wants deleted, and with that condition
5 deleted, the City tells us that it wants to, quote,
6 use the WGSL until it reaches its permitted capacity.

7 As the applicable, the City has the
8 burden of proof. Because the City is seeking to
9 modify a Land Use Commission condition, the standard
10 is good cause. In other words, the City's burden is
11 to show good cause for deleting condition 14 and
12 allowing the City to continue to use Waimanalo Gulch
13 until it reaches capacity. That means for another 15
14 or 20 years.

15 In making this request, the City seeks
16 also to strip condition 4 of any meaning. Condition 4
17 requires the development of a new site with reasonable
18 diligence. If we strip condition 14 completely out of
19 the order, the City would be developing a new landfill
20 site with reasonable diligence that it would not use
21 for a generation. There would be no new site until
22 Waimanalo closed. There would be no new site for
23 another 15 or 20 years, and that is not reasonably
24 diligent. Condition 4 would have no meaning. That
25 extraordinary request is why we're here.

1 This brings me my second point. What
2 have we learned over those eight hearings days from
3 those 15 witnesses and through those 260 exhibits?
4 The first thing we've learned is that the landfill is
5 a burden on the community. We heard from Ken
6 Williams, who is the president of the Ko Olina
7 Community Association, Mr. Williams told us that Ko
8 Olina is home to thousands of residents and dozens of
9 businesses. We know that Ko Olina generates
10 \$520,000,000 a year in direct spending, provides 2800
11 jobs locally and generates \$60.7 million in taxes.
12 This economic engine is directly across the street
13 from the landfill where its workers, residents and
14 visitors suffer from, quote, the odors, noise, dust,
15 blasting, visual blight, truck traffic, flying litter
16 from the landfill.

17 We heard from Bev Munson who lives at Ko
18 Olina. She told us that the stench from the landfill
19 has at times been so bad that if you walk outside,
20 quote, your throat would actually clench up and your
21 eyes would water. Her lanai is covered with dust and
22 dirt from the landfill every single day.

23 And then there is Maile Shimabukuro who
24 represents the Leeward community in the Hawaii State
25 Senate told us that her constituents and fellow

1 legislators have consistently voiced their opposition
2 to the landfill. The Waianae Neighborhood Board has
3 voted to close the landfill, and the Senator reminded
4 us that the Leeward coast has an unfair share of
5 environment burdens with the landfill, military bases,
6 Kahi power plant, H-POWER and a waste treatment plant.

7 We also heard from Maeda Timson who
8 chaired the Kapolei Neighborhood Board for 15 years.
9 Ms. Timson told us that the Kapolei Neighborhood Board
10 has consistently voted to close the landfill, that the
11 board has sent complaints to Waste Management and
12 asked Waste Management to appear and explain the
13 situation with the landfill, but never received anyone
14 from there, instead received only excuses. No one
15 from Waste Management came to talk to the Kapolei
16 Neighborhood Board and no one from Waste Management
17 came to talk to you today -- during these proceedings.

18 On the other side of the community
19 ledger, no one from the community testified in these
20 proceedings in favor of the landfill. No one told you
21 that the landfill is not that bad. No one told you
22 that the harm to the community is exaggerated. No one
23 told you that although the landfill has been operating
24 for 23 years, now four years beyond when it was
25 promised to be closed, that they would not mind

1 another 15 or 20 years of operation. Not even a
2 representative from Waste Management came to tell you
3 that the landfill is really a good neighbor or it's
4 really trying hard.

5 And through these proceedings we've come
6 to understand why the community is opposed to
7 continued operation of the landfill. Perhaps most
8 strikingly, we heard that the Waimanalo Gulch landfill
9 has racked up the worst regulatory record of any
10 landfill in the state of Hawaii. Solid and Hazard
11 Waste Branch chief Steven Chang testified that of the
12 13 landfills in the state, nine to eleven of which
13 accept MSW, the Waimanalo Gulch has more regulatory
14 violations than any other landfill in the last five
15 years.

16 Dwight Miller, who was qualified as an
17 expert in landfill siting and design concurred. He
18 stated that he has not worked on a landfill site that
19 has had anywhere near the violations of this size,
20 same size and scope as Waimanalo Gulch.

21 These regulatory violations have been
22 going on for years. The Department of Health has
23 found violations at the gulch. The EPA has found
24 violations at the gulch. We learned for nearly a year
25 that an employee at Waste Management had falsified

1 explosive gas head readings. We heard from Deputy
2 Director Gary Gill, deputy director of the Department
3 of Health, that the Department of Health is currently
4 investigating the landfill.

5 On this subject of regulatory violations,
6 we spent a lot of time discussing the causes and
7 consequences of the December 2010 and January 2011
8 floods from the landfill. We know unequivocally that
9 the floods occurred because Waste Management began
10 filling cells before the diversion channel was in
11 place. We know unequivocally that inadequate planning
12 by the City and Waste Management caused the landfill
13 to run out of safely usable space and forced them to
14 deviate from their plan and fill and build the
15 diversion channel at the same time. And we know
16 unequivocally that the temporary diversion system that
17 they put in place failed on multiple occasions in
18 December 2010 and January 2011 and released leachate
19 and waste into the ocean and into Ko Olina. We saw
20 pictures of some of the waste that washed from the
21 landfill and onto the beaches and into the ocean.

22 Duke Hospodar told us about Ko Olina's
23 efforts to clean up this waste. We learned from Duke
24 that no one from the City or Waste Management called
25 Ko Olina to warn them about the floods. We learned

1 from Duke that no one from the City or Waste
2 Management helped Ko Olina to clean the lagoons, which
3 remained closed for ten days. We know from Duke that
4 no one from the City or Waste Management offered to
5 reimburse Ko Olina for the cost to clean up those
6 lagoons. In fact, when Ko Olina took the trailers
7 full of trash back to the landfill, they were charged
8 for depositing it there.

9 Instead of helping Ko Olina, Waste
10 Management sent a few temporary workers to clean one
11 area of the beach after giving them 30 minutes of
12 hazardous waste training and puncture-resistant
13 gloves. We saw video of these workers and we heard
14 from Eddie Belluomini that these workers never came
15 back even to that area even though the waste continued
16 to pile up. We know that the EPA has cited Waste
17 Management and the City for those violations and we
18 know the Department of Health is currently
19 investigating the City.

20 We learned that despite the danger of the
21 landfill and the terrible regulatory record that it
22 has racked up, the City is still way behind other
23 municipalities in its recycling efforts. Deputy
24 Director Gary Gill summed it up on public television.
25 He didn't have an agenda, he wasn't trying to sell the

1 commission on anything when he made those statements,
2 he simply said, quote, We still have lots of parts of
3 the waste system stream which we are way behind. We
4 are doing about half as well as we need to, not only
5 as a city, but also as a state.

6 Half as well as we need to. That is
7 where we are. And the record supports Mr. Gill's
8 conclusions. As Mr. Miller put it, quote, the City's
9 current use of alternative disposal technologies is
10 inconsistent with current state of the practice with
11 respect to its recycling efforts, biosolids
12 management, and medical waste management.

13 But there is good news. And this brings
14 me to the fifth thing we've learned in these
15 proceedings. Very soon the City will not need a
16 general purpose municipal solid waste landfill. In
17 2010 the City took 163,736 tons of MSW to the
18 landfill. The third boiler at H-POWER will be
19 operational by October or November 2012. This third
20 boiler will have the capacity to take 300,000 tons of
21 MSW a year. This is more capacity than the City's own
22 numbers show it needs to get MSW out of Waimanalo
23 Gulch.

24 Importantly, with this third boiler, the
25 City will have the capacity to burn all sewage sludge.

1 The City could stop sending sewage sledge to Waimanalo
2 Gulch and we heard today from Ms. Viola that that is
3 their goal. With a third boiler, the City will have
4 the capacity to burn all medical waste. The City
5 could stop sending medical waste to Waimanalo Gulch.

6 Once the third boiler is up and running,
7 what's left going to the landfill? The answer is,
8 quote, not much. As Mr. Miller explained, with
9 alternative diversion, there's no need to have a
10 general purpose MSW landfill here on Oahu and
11 Mr. Steinberger agreed. When I went through the list
12 of waste with Mr. Steinberger and we took out
13 everything that couldn't be burned or otherwise
14 diverted, we were left with, quote, a small percentage
15 of waste and most of that small percentage can go to
16 PVT.

17 The only time putrescible or decomposable
18 waste has to go to a landfill is during H-POWER down
19 time and during emergencies. This putrescible waste
20 creates the most health problems and causes the most
21 concern for the community. When a third boiler is up
22 and running, we can get that waste out of the
23 landfill.

24 It's a question of will. And this brings
25 me to the final thing we've learned in these

1 proceedings. The City will take the path of least
2 resistance. The City will never voluntarily limit the
3 waste that goes into Waimanalo Gulch. As we heard
4 today, the City wants credit for diverting waste, but
5 the City doesn't want anyone holding it accountable
6 for actually diverting that waste. The City will
7 never close the gulch on its own until it reaches
8 capacity and the City will never open a new landfill
9 until the gulch closes. And that is what the City has
10 asked this commission to do, keep the gulch open until
11 it reaches capacity. Taking the easier road does not
12 make the City bad people, but it does mean that this
13 commission must keep the City's feet to the fire.
14 Director Steinberger asked you to do exactly that,
15 keep our feet to the fire. The City must hold the
16 commission accountable.

17 And this brings me to my third point,
18 accountability. We see the need for accountability in
19 three ways. First, as soon as possible we have to
20 stop taking putrescible waste to the landfill, the
21 sewage sludge, the medical waste, the other things
22 that we can burn. When the third boiler fires, sewage
23 sludge and medical waste should be out of the gulch.
24 There is no reason to take that waste to Waimanalo one
25 day longer than we have to.

1 Second, we have to keep the City on track
2 for siting and developing a new landfill. The City
3 was ordered again to find a new landfill in October
4 2009. The City was specifically directed to start the
5 process on November 1, 2010 and proceed reasonably
6 diligently. It is now April 23rd, 2012. We are 18
7 months into this process. Mr. Miller testified that
8 the entire site selection and development process
9 should take between three and five years. And he
10 broke it down for the commission. It should take 18
11 months to two years for design, design review and
12 development of a landfill. The EIS process should
13 take a year to a year and a half. Adding landfill
14 acquisition to the process would bring the total to
15 three to five years.

16 And Mr. Miller's estimate is consistent
17 with the time line set out by then acting deputy
18 director -- then Acting Director Doyle in 2003. In
19 2003 Mr. Doyle testified, quote, We have asked for a
20 five year extension because that's the time that we
21 believe it's going to take in order for us to
22 establish a new landfill.

23 He went on to explain that this estimate
24 was conservative. He added, quote, We think the time
25 that is necessary for us to get there is at least

1 three, probably four years, just to get ourselves up
2 and operational on that landfill site. Three to four
3 years. Five is conservative.

4 Against this evidence, the City offered
5 no one who is qualified as an expert in landfill
6 siting. Mr. Steinberger, he wasn't offered as an
7 expert. He couldn't be. He has never successfully
8 sited a landfill. Ms. Marsters, she wasn't offered as
9 an expert in landfill siting when she told us that she
10 had never sited or designed a landfill. Dr. Sharma,
11 his expertise is in design. He explained to us that
12 he has never sited a landfill and added that he was
13 not qualified to give expert testimony on landfill
14 siting.

15 It took the City two years to site and
16 develop Waimanalo Gulch. If the City is motivated to
17 act, it will take the City three to five years to find
18 a new site.

19 And this brings us to the current site
20 selection efforts. If a new site comes out of these
21 efforts, it won't be because the committee members
22 stood up and made it happen. We know that the site
23 selection process from the beginning didn't follow the
24 City's own solid waste management plan, the plan that
25 Director Steinberger told us was the City's framework

1 for solid waste management on the island of Oahu.
2 Astonishingly, the committee has not excluded sites
3 west of Makakilo, even though the solid waste
4 management plan expressly said to exclude sites west
5 of Makakilo.

6 More fundamentally than that, though, the
7 process has not followed the detailed flow chart set
8 out in the solid waste management plan, and because of
9 these and many, many other failings, the process did
10 not move linearly from broad to narrow as Mr. Miller
11 explained it should. Instead, the consultant had the
12 committee start the same old list of 40-something
13 sites, many of which were no longer viable due passage
14 of time and development. The committee was using the
15 same old list of 40-something sites, the same list
16 they've been kicking around for decades, through the
17 sixth of seven scheduled meetings. If the committee
18 members had not stood up and said we will not be a
19 rubber stamp for keeping Waimanalo open, we would have
20 ended up in the same place we've ended up before.
21 Fortunately, the committee told the consultant to drop
22 the exclusionary screens that it had unilateral
23 imposed and to broaden the search. By my count, this
24 committee had to broaden the search four times
25 throughout the process and extend the process by

1 another nine months.

2 The site selection process is littered
3 with other errors and questions, such as why no member
4 from Ko Olina or Kapolei on the committee even though
5 those are the communities most affected by the
6 landfill. With this experience of the site selection
7 committee, it's no surprise that as Ms. Marsters told
8 us, the committee was, quote, not happy with the
9 process and that the committee had to remove screens
10 that had not been previously discussed or authorized
11 by the committee.

12 Fortunately, finally, nine months after
13 the process was supposed to end, the City has made its
14 recommendations. There may be another meeting for the
15 committee to consider the report and we'll have to see
16 where the process goes from there, but the City is off
17 to a bad start.

18 The third and final area in which the
19 City must be held accountable is the closure of
20 Waimanalo Gulch. There is a disconnect between what
21 the City says and what the City does. The City says
22 it is committed to waste diversion, the City says it
23 is diligently working to find a new site to replace
24 Waimanalo. But even if we pretend that it will
25 actually take seven years to site and develop a new

1 landfill site, we are nearly two years into that
2 process. The City was ordered to begin it on November
3 1, 2010. Yet the City hasn't asked for an extension
4 until November 1, 2017, seven years after it was
5 ordered to begin the process, instead the City has
6 asked to use Waimanalo Gulch until it reaches
7 capacity. That is what the City wants and that is not
8 consistent with what the City promises and pledges
9 with respect to waste diversion and its diligent
10 efforts.

11 Cynthia Rezendes recognized the
12 inconsistency between the City's statements and its
13 actions. She's a former member of the Blue Ribbon
14 Site Selection Committee and she knows the history.
15 She remembers the City's pledge to only seek a
16 five-year extension and close the landfill in 2008.
17 That deadline is long gone and she sees the City
18 asking for another, this time unlimited, extension.
19 As Ms. Rezendes tells us, At some point in time we
20 have got to say enough is enough.

21 Shad Kane also served on the prior site
22 selection committee. In his view site selection
23 efforts are, quote, just done in an effort to kind of
24 color over things and make things look good from a
25 political perspective. This body can make sure that

1 the site selection process is more than political,
2 more than a cover. This body can tell the City that
3 it has finally had enough.

4 And this brings me to the bottom line.
5 What should the order contain? We believe that the
6 record compels four conclusions. First, condition 14
7 should be modified. General purpose municipal solid
8 waste should be allowed at Waimanalo Gulch up to
9 January 1, 2013. By then the third boiler will be on
10 line. There will be no reason to send medical waste,
11 sewage sludge and other putrescible waste to the
12 landfill except in emergencies and H-POWER down time.
13 Otherwise, those wastes must be banned.
14 Non-putrescible waste, including, but not limited to,
15 auto shredder residue, ash and residue from H-POWER
16 and construction and demolition debris can continue to
17 go to the landfill beyond January 1, 2013. Those
18 wastes, as Schnitzer said, frequently have no other
19 home. For the waste to have another home, as we've
20 heard, they have to end, they have to stop going to
21 Waimanalo.

22 Second, the City must have a new landfill
23 site developed and ready by November 1, 2017. By
24 November 1, 2017, the City will have had seven years,
25 not including its original six, to develop a new

1 landfill site. Under any estimate that is more than
2 enough time if the City is actually committed to doing
3 it.

4 Third, starting September 1, 2012, and
5 continuing six months -- every six months until there
6 is a new landfill, the City must report to this
7 commission in writing and in person. Those reports
8 must describe the City's progress toward opening a new
9 site and the City's compliance with the other
10 conditions of the order. And there must be notice to
11 the community when those reports are going to be made
12 so the community has a chance to evaluate them and to
13 hear what the City has to tell this body.

14 Finally, Waimanalo Gulch Sanitary
15 Landfill must close to all remaining waste, except ash
16 and residue -- I'm sorry, including ash and residue on
17 November 2, 2017. The City said that it wants to have
18 one landfill site. The City has directed the site
19 selection committee to look for a site that can take
20 ash and residue. Since the City wants one site, and
21 the City has to find a new site, it won't need the
22 landfill, the Waimanalo Gulch Sanitary Landfill any
23 more. That was the City's choice. It had an
24 opportunity to look at a supplemental site or a new
25 site, it chose to select a new site. That means we

1 close Waimanalo Gulch on November 2, 2017.

2 That will be nearly 30 years after
3 Waimanalo Gulch opened and ten years after the City
4 promised it would be shut. The deadlines are only
5 unworkable when the City is not committed to following
6 them. Enough is enough.

7 Thank you.

8 CHAIRWOMAN PINGREE: Thank you very much.
9 Thank you. We thank you as well, from the commission
10 standpoint, for your time and your hard work.

11 Why don't we go over the schedule for the
12 board. I know we had set one in our previous meeting.
13 What I'd like to do ideally is to keep the schedule in
14 tact as far as having your simultaneous submittals of
15 proposed findings of fact, conclusions of law,
16 decision and order by parties on May 2nd. So this is
17 the same that we had proposed previously. And then on
18 May 14, the simultaneous submittal of responses to
19 other parties proposed findings, conclusions of law,
20 decision and order by parties.

21 The only change that we are proposing
22 is -- or is our decision -- excuse me, our
23 deliberation and decision and that would be on May
24 25th. We'll be starting at 9:00 a.m. as far as
25 deliberation and I think it's fair to say noon. Give

1 us till noon. So we'll meet at noon. 12:00 noon.

2 MS. VIOLA: I'm sorry, so the parties
3 will be present?

4 CHAIRWOMAN PINGREE: Okay. Why don't we
5 start at 9:00, then. And it will be in the same room.

6 Are there any questions?

7 May I have a --

8 COMMISSIONER PACOPAC: Motion.

9 COMMISSIONER TOLENTINO: So moved to
10 adjourn.

11 CHAIRWOMAN PINGREE: All in favor, aye.

12 ALL MEMBERS: Aye.

13 CHAIRWOMAN PINGREE: Thank you.

14 (The proceedings adjourned at 11:33 a.m.)
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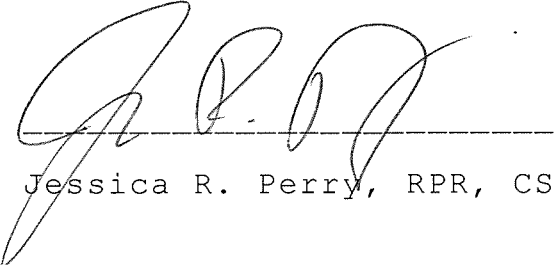
C E R T I F I C A T E

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I, Jessica R. Perry, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and right transcript of the proceedings had in the foregoing matter.

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

DATED this 26th day of April, 2012, in Honolulu, Hawaii.



Jessica R. Perry, RPR, CSR No. 404