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1	LAND USE COMMISSION	
2	STATE OF HAWAI'I	
3	HEARING AND ACTION	PAGE
4	A09-782 TROPIC LAND, LLC (O'ahu)	1
5	STATUS REPORT	
6	SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES (Waimanalo Gulch Sanitary Landfill)	140
7		
8		

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10 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public
13 Hearing at Conference Room 405, 4th Floor, Leiopapa A
14 Kamehameha, 235 S. Beretania Street, Honolulu,
15 Hawai'i, commencing at 8:30 a.m. on Wednesday,
16 February 2, 2011 pursuant to Notice.

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22 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
23 Certified Shorthand Reporter

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A P P E A R A N C E S

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COMMISSIONERS:

THOMAS CONTRADES

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VLADIMIR DEVENS (Chairman)

RONALD HELLER

5

CHARLES JENCKS

NORMAND LEZY

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NICHOLAS TEVES, JR.

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DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

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AUDIO TECHNICIAN: WALTER MENCHING

11

12

Docket No. A09-782 Tropic Land, LLC

13

For the Petitioner:

WILLIAM YUEN, ESQ.

ARICK YANAGIHARA, Proj.Mgr.

14

15

For the County:

DAWN TAKEUCHI-APUNA, ESQ.

Deputy Corporation Counsel

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MICHAEL WATKINS

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For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

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MARY ALICE EVANS, RUBY EDWARDS

Office of Planning

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1	I N D E X (A09-782)	
2	PUBLIC WITNESSES:	PAGE
3	MICHAEL KUMUKAUOHA LEE	8
4	Cross-Examination by Mr. Yee	14
5	CANDACE FUJIKANE	15
6	Cross-Examination by Mr. Yuen	22
7		
8	DOCKET WITNESSES:	
9	KAMAKI KANAHELE	
10	Direct Examination by Mr. Yuen	25
	Cross-Examination by Ms. Townsend	35
11	Redirect Examination by Mr. Yuen	44
	Cross-Examination by Mr. Yee	46
12	Recross-Examination by Ms. Townsend	47
13		
14	PANOS PREVEDOUROS	
15	Cross-Examination by Mr. Yuen	50
	Cross-Examination by Mr. Yee	57
16		
17	KEHAULANI SOUZA	
18	Cross-Examination by Mr. Yuen	63
	Examination by Ms. Townsend	69
19		
20	MIWA TAMANAHA	
21	Cross-Examination by Mr. Yuen	73
22	RANDALL OKANEKU	
23	Direct Examination by Mr. Yuen	80
	Cross-Examination by Mr. Yee	92

	lucfeb2-11.txt	
24	Cross-Examination by Ms. Townsend	94
25		
4		
1	I N D E X cont'd	
2	ARICK YANAGIHARA	
3	Direct Examination by Mr. Yuen	107
	Cross-Examination by Mr. Yee	114
4	Cross-Examination by Ms. Townsend	122
	Redirect Examination by Mr. Yuen	134
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
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20		
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1 CHAIRMAN DEVENS: This meeting is called
2 to order. Good morning to you all. Today is
3 February 2nd, 2011. This is a meeting of the state
4 Land Use Commission here in Honolulu. We will first
5 start of the adoption of the minutes. Are there any
6 corrections or changes? Hearing none, is there a
7 motion to adopt?

8 COMMISSIONER JENCKS: Move to approve.

9 CHAIRMAN DEVENS: Is there a second?

10 COMMISSIONER LEZY: Second.

11 CHAIRMAN DEVENS: Any discussion?

12 Hearing none, all those in favor say aye.

13 VOTING: Aye.

14 CHAIRMAN DEVENS: It's unanimous.
15 Minutes are adopted. Dan, you want to update us on
16 the schedule.

17 MR. DAVIDSON: Thanks, Chair. You have
18 the tentative meeting schedule. Maybe the only thing
19 to mention is we're anticipating a pretty extensive
20 legislative briefing to the Commission on
21 February 25th. There are a lot of land use bills this
22 year and we will provide a full briefing at that time.

23 Thanks.

24 CHAIRMAN DEVENS: Thank you very much,

25 Dan. Moving on. The next item on the agenda is a

6

1 continuation of the hearing in the Tropic Land matter.

2 This is a continued hearing on Docket No. A09-782

3 Tropic Land, LLC to amend the Agricultural Land Use

4 District Boundaries into the, Urban District for

5 approximately 96 acres in Lualualei, Wai'anae

6 District, O'ahu, Hawai'i, Tax Map Key No.

7 (1)8-7-09:02. Can we have the parties note their

8 appearances starting with Mr. Yuen.

9 MR. YUEN: Thank you, Mr. Chair. Good

10 morning Commissioners. My name is William Yuen on

11 behalf of Tropic Land, LLC. With me is Arick

12 Yanagihara the project manager.

13 CHAIRMAN DEVENS: Morning.

14 MS. TAKEUCHI-APUNA: Good morning.

15 Deputy Corporation Counsel Dawn Takeuchi-Apuna on

16 behalf of the Department of Planning and Permitting.

17 Here with me today is Mike Watkins.

18 CHAIRMAN DEVENS: Good morning.

19 MR. YEE: Good morning. Deputy Attorney

20 General Bryan Yee on behalf of the Office of Planning.

21 With me is Ruby Edwards from the Office of Planning.

22 MS. TOWNSEND: Good morning. Martha

23 Townsend on behalf of the Concerned Elders of
24 Wai'anae. With me is Alice Greenwood of the Concerned
25 Elders.

7

1 CHAIRMAN DEVENS: Good morning to you
2 all. I understand there are a couple of witnesses
3 that we have that want to give public testimony. Is
4 there anyone else that wishes to give public testimony
5 please sign up on our witness sheet and we'll allow
6 you to give your testimony.

7 Let me update the record. Since the las
8 hearing the Commission has received the following on
9 January 31, 2010: 1. Intervenor's Second Amended
10 Witness List, Third Amended Exhibit List, and
11 Intervenor's Exhibit 29.

12 Second item is Petitioner's Fourth
13 Revised Exhibit List, Third Revised Witness List and
14 Petitioners' Exhibit 82.

15 before we get into the public testimony
16 are there additional exhibits that Petitioner wishes
17 to offer into evidence?

18 MR. YUEN: I'd like to offer Exhibit 82
19 into evidence. It's Kamaki Kanahele's resumé.

20 CHAIRMAN DEVENS: Parties have any
21 objections to that offer?

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22 MR. YEE: No objections.

23 MS. TOWNSEND: No.

24 CHAIRMAN DEVENS: The city has no

25 objections as well. The exhibit will be admitted into

8

1 evidence.

2 MR. YUEN: Thank you.

3 CHAIRMAN DEVENS: County, did you have

4 any additional exhibits?

5 MS. TAKEUCHI-APUNA: No.

6 CHAIRMAN DEVENS: OP?

7 MR. YEE: No.

8 CHAIRMAN DEVENS: Ms. Townsend?

9 MS. TOWNSEND: Intervenor wishes Exhibit

10 No. 29. It's the resumè of Miwa Tamanaha substitute

11 for Dr. Stephanie Fried.

12 CHAIRMAN DEVENS: Any objections to that

13 offer?

14 MR. YUEN: No objection.

15 MS. TAKEUCHI-APUNA: No objections.

16 MR. YEE: No objections.

17 CHAIRMAN DEVENS: That exhibit will be

18 accepted into evidence. Dan, you want to call our

19 first public witness.

20 MR. DAVIDSON: We have two sign-ups.

21 First is Michael Kumukauoha Lee followed by Candace

22 Fujikane.

23 CHAIRMAN DEVENS: If we can first swear
24 you in first, sir.

25 MICHAEL KUMUKAUOHA LEE

9

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 CHAIRMAN DEVENS: Please state your name
5 and address.

6 THE WITNESS: My name is Michael
7 Kumukauoha Lee. My address is 91-1200 Keaunui Drive
8 Ewa Beach, Hawai'i.

9 CHAIRMAN DEVENS: Go ahead.

10 THE WITNESS: I'm a Native Hawaiian
11 practitioner recognized in First Circuit Court. My
12 practice is the medicine of the sea, lapa'au o ke kai
13 and lapa'au o ko'o limu.

14 I was taught by my grandfather and Aunt
15 Alice Holoka'i, George Holokai's mother, the master
16 hula chanter.

17 I was also taught by my grandfather,
18 Aunt Alice and Uncle George, my family genealogical
19 chant, the kumulipo.

20 I also do the -- I'm a papa kilo hoku.

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21 I know 3,000 Hawaiian stars, their names, 261 star
22 constellations and how they relate to the kumulipo.
23 And in each 2102 lines the six kaunas for each line of
24 the 2100 and two lines of the kumulipo.

10 25 In the area I have registered last year

1 as a lineal descendant and also a cultural descendant.
2 Captain John Meek is my fifth great-grandfather. He
3 had the Big Tree Ranch, 5,000 acres in Wai'anae Uka.
4 We also -- he was there in 1839 to 1875.

5 And on my Hawaiian side I'm an ancestor
6 of Kalolakumu'ukoa who was the daughter of
7 Kahekilinuiahumanu, the King of O'ahu and also for
8 Maui.

9 Her husband, one of her husbands was my
10 grandfather Ke'eaumokupapa'aheahe. Their daughter,
11 Kaleimakali'i is my 5th great-grandmother.

12 I also put in lineal for the Hina cave
13 because Hina's my 37th great-grandmother. Maui's my
14 36th great-grandfather. Papa and Waikea are my 60th
15 great-grandparents.

16 As for this area most people don't know
17 that it's actually inside of a caldera of a volcano.
18 And, as you know, volcanos send their lava, as we see
19 on the Big Island, through pahoehoe lava tubes. And
20 there is a pahoehoe lava tube that snakes its way

21 through all the major sites.

22 What people don't know is our

23 underground lava tubes are also heiaus.

24 It snakes down through the caldera

25 through Ulehawa and goes down to the ocean where 19

11

1 springs come out. The implication of 19 springs in
2 this area means that any kind of storage of any kind
3 of toxic materials or waste that leach into the ground
4 will go into the lava tube. The lava tube was used at
5 night for fishing. And the water flows beneath it.

6 It's also burial caves up there. And
7 it's a very significant area because -- most people
8 don't know this, but through my family lineage and my
9 cultural practice Kalanikauleleiaiwi and her half
10 brother are my eighth great-grandparents. Which means
11 I'm the nineteenth great-grandson of Pele, the volcano
12 goddess and her husband, who was born in Wai'anae
13 which is my nineteenth great-grandfather, Kamapua'a.

14 Most people don't know that Pele's iwi
15 is in Wai'anae. It's not on the Big Island. It's not
16 on Maui. It's in Wai'anae. It's in this area but I'm
17 not going to tell you where it is. But it's in this
18 area. My nineteenth great-grandmother is buried
19 there.

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20 So this is really significant, the first
21 time anybody in Hawai'i from the family line is coming
22 out to say this, that I'm getting chicken skin while
23 I'm saying this. But this is not something as a
24 practitioner who knows the kumulipo, the stars. I
25 actually do practice out there. I've taken groups to
12

1 do the star gazing in that area, most recently on
2 November 6th during a pokano night and also the 21st
3 to take them to the ocean to see where their cultural
4 practice begins.

5 And that's where the freshwater meets
6 the saltwater. That's where the magic begins. That's
7 where you're going to find all the invertebrates
8 living off the limu. And the limu is propelled by the
9 freshwater that comes down there. There's 19 springs
10 there and we videotaped all of this.

11 Also when my grandmother came out, which
12 is in our cultural practice, Hina Ike Ahi, when the
13 lunar eclipse came, that Hina Ike Ahi is the sacred
14 name for my grandmother, my 19th great-grandmother,
15 which is Pele. It's Pele in the Flames. She controls
16 the winds. She controls the oceans, the tides and she
17 controls the lava and the magma.

18 So we can tell when the steam vents come
19 through our family line because of how the sun pulls

20 in the morning on the gas vents that come up.

21 As far as cultural practice in the area,
22 it goes back. My grandfather Hina Guerrero helped my
23 cousin do a lesson on limu and he did a map of the
24 islands. And this is one of the particular areas that
25 he did.

13

1 In fact it was put in evidence for my
2 case at First Circuit Court Michael Lee vs. Haseko
3 'Ewa, Inc. for the Papipi Road drainage which I did
4 prevail in that case. He documented all the places
5 that he went and the dates that he picked limu in
6 1960. And this area was one of the places 50 years
7 ago.

8 In 2003, after I worked at Kamehameha
9 for a short time as a substitute teacher, I went to
10 pick limu there as part of the -- in 2003 in April, I
11 think about April 3rd, there was a presentation that I
12 did for the graduates of Kamehameha Schools on the
13 limu around the island.

14 As far as cultural practice, what I do,
15 I have done exorcisms, removing ku spirits. One of
16 particular note by He'eia for the person who runs the
17 Coconut Island. They had a ku stone and a particular
18 place in the house nobody could sleep over. They had

19 malevolent dreams. So I did my cultural practice --
20 in fact the entity that was placed there was one of
21 the relatives of mine so it wasn't hard moving them.

22 MR. DAVIDSON: Excuse me, sir. Normally
23 we have a 3-minute rule. If you could summarize.

24 THE WITNESS: Sorry. So basically the
25 bottom line here is that this is a very culturally

14

1 sensitive area. It's been overlooked for a long time
2 but has to be put in the record how important Wai'anae
3 is and how important it is to our cultural
4 practitioners. Thank you very much.

5 CHAIRMAN DEVENS: Parties have any
6 questions for this witness?

7 MR. YUEN: No questions.

8 CHAIRMAN DEVENS: Mr. Yee.

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q Thank you. Are you generally familiar
12 with the boundaries of the Petition Area in this case?

13 A Yes, I am.

14 Q You mentioned in your testimony that you
15 have ancestors whose iwi are in the area. And if you
16 don't want to answer I understand why you may not want
17 to. But could you tell us as to whether or not the
18 iwi are located within the Petition Area?

19 A Under Section 6E I respectfully continue
20 my right as a Native Hawaiian practitioner and a
21 family of the iwi kupuna to exercise Article XII
22 Section 7 of the State Constitution.

23 Q So you prefer not to reveal the
24 location.

25 A Yes.

15

1 MR. YEE: That's fine. That's all I
2 have. Thank you.

3 MS. TOWNSEND: No questions, thank you.

4 CHAIRMAN DEVENS: Commissioners, any
5 questions for this witness? Thank you very much for
6 coming and sharing your knowledge. Next witness.
7 Candace Fujikane who's the last signed up witness:

8 CANDACE FUJIKANE,
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: Yes.

12 CHAIRMAN DEVENS: Please state your name
13 and address.

14 THE WITNESS: My name is Candace
15 Fujikane. And my address is 1733 Donagho Road.
16 That's D-O-N-A-G-H-O Road in Honolulu. So I wanted to
17 voice my concerns about three things that have been

18 coming up in the hearings.

19 One is the proximity of the Petition
20 Area to the existing farms.

21 Second is the compatibility of
22 agricultural use with urban use -- incompatibility.

23 And, three, I wanted to just reiterate
24 the timeline 'cause I think there seems to be a little
25 bit of confusion about the timeline of events.

16

1 So I had prepared a PowerPoint and I
2 didn't realize there's no projector. So what I did
3 was I gave you a hard copy of the map that I had made
4 up. And the map is, illustrates where the farms are
5 in relations to the Petition Area.

6 I think at the last meeting there was a
7 question of whether the nearest farm was half a mile
8 away from the Petition Area. But the actual farms as
9 you see here are much closer. Leon Lapenia's Farm, he
10 raises chickens, is approximately -- I think it's
11 60 feet. Let me see.

12 MR. YUEN: Can we see the map the
13 witness is referring to?

14 THE WITNESS: I'm sorry. Are there any
15 extra copies?

16 CHAIRMAN DEVENS: Candace, what we'll do
17 is we'll have this marked appropriately and made part

18 of the record. The other parties want a copy of this
19 map?

20 MR. YEE: If you have one.

21 THE WITNESS: I have one other extra
22 black and white copy. Sorry about that. I had a real
23 nice PowerPoint. So I used another DPP Hollis map to
24 show the tax keys, tax map keys. And I also used
25 their measuring tool to measure the distance between

17

1 Leon Lapenia's farm and the Petition Area, which is
2 approximately 61 feet. And so it's 61 feet.

3 And then when you look at Ken's Pig Farm
4 and the Tavares Hog Farm, they are approximately
5 230 feet from the Petition Area.

6 So as you can see on the map there are a
7 number of farms that run approximately 230 feet away
8 from the Petition Area: The Tavares Hog Farm, Ken's
9 Pig Farm. The Cabungsugs also have a pig farm and
10 they raise goats, chickens. The Nakatas have a
11 tropical fruit farm. And the Oshiros, the Kaneshiros,
12 they raise green onions. There's the Nakahoto Nursery
13 there. So those are only the farms that are 230 feet
14 away. And there are many other farms in this area.

15 So I think that is important to keep in
16 mind. And partly because of this question of

17 incompatibility of agricultural use and urban use.
18 The land use ordinance designates that piggeries shall
19 be set back a minimum of 300 feet from residential
20 districts.

21 There's -- so I think that that's --
22 that in addition to the fact that the Hawai'i County
23 Code also stipulates that piggeries must be located no
24 closer than a thousand feet away from any other zoning
25 district. I know that the Hawai'i County Code does

18

1 not apply to the Honolulu County. But what that
2 indicates to me is that there is a concern about the
3 incompatibility of pig farms with urban use.

4 And the pig farms also have to be a
5 minimum of 3-acre lots, which really limits the
6 agricultural lots that can be used for pig farming.
7 So many of the pig farmers noted to me that you cannot
8 just pig farm any place on agricultural land. You
9 need at least a 3-acre lot. So, again, that becomes a
10 kind of restriction on pig farming.

11 I also have a very brief history about
12 the ways that development, development, urban creep
13 has resulted in the closure of the pig farms. So
14 Yukiko Kimura is the author "Ise, Japanese Immigrants
15 in Hawai'i". And she argues that urbanization was
16 responsible for the closure of most pig farms in

17 Hawai'i.

18 And she is -- she bases her authority on
19 this issue and her interviews with the U.S. Department
20 of Agricultural Statistics Service, the Hawai'i State
21 Department of Agricultural, the Planning Department of
22 City and County of Honolulu, Bishop Estate Management
23 Division and Kaiser Land Development Company, all of
24 who she writes were responsible for the removal and
25 closing of the most of the Okinawan piggeries. So in
19

1 1955 there were 222 commercial hog farms --

2 MR. DAVIDSON: Excuse me, if I could
3 interrupt you for one minute.

4 THE WITNESS: Yes.

5 MR. DAVIDSON: As indicated to the prior
6 witness we normally have a 3-minute time. We are
7 being liberal this morning but if you can make your
8 points.

9 THE WITNESS: I'm two-thirds of the way
10 through. So 1955, 226 commercial hog farmers on
11 O'ahu. The City and County of Honolulu Planning
12 Department ordered the removal of piggeries from
13 Kamehameha IV and Kalihi areas. Most moved to
14 Wai'anae and others moved to Koko Head.

15 From 1949 to 1959 Bishop Estate's Land

16 Management Division requires the removal of piggeries
17 in the Waialae and Kahala areas, and 110 farmers moved
18 to Koko Head.

19 In 1966 all the farmers in Koko Head
20 closed their piggeries because of the Hawai'i Kai
21 housing project developed by Kaiser Land Development
22 Company which leased the Koko Head blow hole area from
23 Bishop Estate.

24 Some of the pig farmers moved to
25 Wai'anae. If you look at the map there are -- many of

20

1 these farmers were displaced from Hawai'i Kai and the
2 Koko Head area and from that Kalama Valley area.

3 So, for example, Pearl Tavares, the
4 Tavares Hog Farm was forced to move by 1966, also the
5 Cabungsugs and there are other farmers as well who
6 have noted that displacement.

7 So in 1988 Wai'anae was the largest hog
8 raising area in O'ahu with 45 piggeries that raised
9 65 percent of the hogs in Hawai'i. And hogs are pigs
10 that are more than 120 pounds.

11 By 2008 there was a sharp decline in the
12 number of hogs that are raised. We went from 45
13 piggeries in Wai'anae in 1988 to 27. We have 27
14 piggeries in Wai'anae. The total number of hogs and
15 the sales have decreased from \$8 million down to \$5

16 million. This is all data from the National
17 Agricultural Statistics Service.

18 And I also wanted to go over very
19 quickly the timeline. Just a very quick discussion of
20 the timeline of events. I think there was a question
21 of why has the land lain fallow for such a long time.
22 But it actually has not. It is all a part of the
23 development process.

24 So from 1967 to 1978 Tadashi Araki
25 farmed that land for eleven years. And he raised

21

1 Wai'anae onions, sweet Wai'anae onions, green onions,
2 egg plants, bell peppers, tomatoes, lettuces,
3 cucumbers, papayas, watermelons and cantaloupe. They
4 also raised a few hundred goats for milk.

5 MS. ERICKSON: Can you slow down for the
6 reporter.

7 THE WITNESS: I'm sorry. I thought that
8 might not be as important but to give you a sense of
9 the range or produce that they had. 1978 the
10 McCandless Family increase the rent and wanted a 6
11 percent cut of the crop yield. So Mr. Araki had to
12 leave. From 1978 to 1988. So when Mr. Araki left
13 Mr. Higa moved in and farmed that land for 10 years.
14 And Roy A. Higa farmed green onions and manoa lettuce

15 which he sold to the Teruya brothers at Times
16 Supermarket.

17 So in 1988 that's when Kabushiki Kaisha
18 Oban purchased the area, the 234 areas of Lualualei
19 active farmland. So it was active at the time that it
20 was purchased for the golf course. And Mr. Higa
21 coined the phrase, "No can eat golf balls." That was
22 the famous phrase in 1988.

23 So between 1988 and 2005 it's been a
24 process of trying to get that land rezoned. But up
25 until 1988 there was continuous farming. And the only

22

1 reason that that farming stopped was because Oban
2 purchased the land to develop a golf course.

3 So anyway I just wanted to say there's
4 an agrarian revolution happening. In the newspapers
5 you see that there's these farmers developing very
6 innovative techniques based on Korean farming
7 techniques and other indigenous practices as well as
8 high tech kinds of understandings of microclimate.

9 And I think that we need to preserve the
10 land in order to promote that kind of revolution to
11 happen. We can't just keep importing 90 percent of
12 our food. Thank you very much.

13 CHAIRMAN DEVENS: Thank you. Any
14 questions for this witness?

15 CROSS-EXAMINATION

16 BY MR. YUEN:

17 Q You gave some statistics on pig farming.

18 A Yes.

19 Q Are you attributing the decline of pig
20 farming to the development of this property?

21 A No. But it is a trend in urban creep
22 that urbanization tends to push out pig farmers.

23 MR. YUEN: No further questions.

24 THE WITNESS: Thank you.

25 CHAIRMAN DEVENS: City?

23

1 MS. TAKEUCHI-APUNA: No questions.

2 CHAIRMAN DEVENS: Mr. Yee?

3 MR. YEE: No questions.

4 CHAIRMAN DEVENS: Ms. Townsend?

5 MS. TOWNSEND: No questions.

6 CHAIRMAN DEVENS: Commissioners? Thank
7 you very much for spending your time here. Before we
8 move into the witnesses I just want to confirm the
9 number of witnesses we have. Mr. Yuen, you have one
10 additional witness and two potential rebuttal?

11 MR. YUEN: Yes, that's correct.

12 CHAIRMAN DEVENS: City, do you have any
13 additional witnesses or evidence?

14 MS. TAKEUCHI-APUNA: No.

15 CHAIRMAN DEVENS: OP?

16 MR. YEE: No.

17 CHAIRMAN DEVENS: Ms. Townsend, you have
18 three additional witnesses.

19 MS. TOWNSEND: That's right, I have
20 three additional witnesses. We'd like to rest on
21 their written testimony. But they're here today
22 available for questioning. An our civil engineer,
23 Professor Prevedouros, needs to leave by 11:00.

24 CHAIRMAN DEVENS: I'm sorry, you're
25 going to rest on the written testimony?

24

1 MS. TOWNSEND: Yes. I would like to be
2 able to submit the written testimonies and don't do
3 oral.

4 CHAIRMAN DEVENS: So you're not going to
5 call the witnesses.

6 MS. TOWNSEND: Yeah. But they're here
7 today if any parties or the Commission have questions
8 in cross-examine just to save time.

9 CHAIRMAN DEVENS: Okay. Did the parties
10 work out an order as far as who you wanted to call
11 first?

12 MR. YUEN: I'm going to call
13 Mr. Kanahele. And I will call my rebuttal witnesses

14 following the Intervenor's case.

15 CHAIRMAN DEVENS: Very well.

16 Mr. Kanahele. Sir, if we can first swear you in.

17 KAMAKI KANAHELE,

18 being first duly sworn to tell the truth, was examined

19 and testified as follows:

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: Please state your name

22 and address.

23 THE WITNESS: Aloha kakahiaka kakou.

24 Good morning, everyone. I am Kamaki Kanahele. My

25 residence is 89-237 Kauhahi Avenue, Nanakuli

25

1 Homestead. The subject on the table are the areas that

2 are --

3 CHAIRMAN DEVENS: Mr. Yuen, are you

4 going to ask a question?

5 THE WITNESS: And then you'll ask --

6 MR. YUEN: I'm going to ask you

7 questions.

8 DIRECT EXAMINATION

9 BY MR. YUEN:

10 Q First, Mr. Kanahele, could you please

11 discuss your background and expertise in Native

12 Hawaiian culture in general and in particular the

13 Lualualei and Nanakuli areas?

14 A My cultural background is to my right.

15 May I begin by introducing my mother. This is Dr.

16 Agnes Kalanihoka'akou. Thank you, mom. Mom has been

17 designated the state's living treasure on culture and

18 the arts. She has been honored by Hongwanji as a

19 living m um ; by mhm Officm of Hmwmiimn Affmim ;m

20 under Mayor Fasi designated her the living treasure

21 when she chaired the Culture and Arts Council for the

22 city and county.

23 She has been honored by resolution from

24 both the House in the Senate for contributions to

25 Hawaiian cultural and the arts. And she was honored

26

1 with an honorary Ph.D. from the University of Hawai'i

2 in her contributions to culture and the arts.

3 Her knowledge is mine. In me she leaves

4 a legacy that I need to carry. From her comes her

5 grandmother and her great-grandmother. From Kipahulu,

6 Maui to Kohala our ancestry is a very simple one.

7 People always ask us through my mother's knowledge,

8 "Tell us about your family." And always they ask us,

9 "Are you related to Kamehameha the Great?" We always
10 tell him, "No, he's related to us."

11 The ancestry of my mother's birthright is

12 very clean and very pure. Her great-great-ancestry is

13 Ha'aeoama'i from the Kaelanuioma'i. May I make it
14 real quick? Give you an understanding of my mother's
15 ancestry.

16 The Kaelanuioma'i was a great chief of
17 Kohala who had two sons, Ha'aeoma'i and Alapa'i,
18 Alapa'i Nui. Alapa'i became King of Hawai'i. Ha'ae,
19 the youngest brother, married Mikeokalaninui. And by
20 the way, my brother, Mr. Lee, who spoke,
21 Kaelanuioma'i also married the great Queen
22 Kalaninuiaiwai.

23 And from that marriage of Haaeoma'i to
24 Kalanikauleleiaiwai came an interesting daughter:
25 Kekuiapoiwa II, mother of Kamehameha the Great. So my

27

1 mother's ancestry and royal blood lines are very, very
2 clear.

3 When I was in college I was challenged by
4 my college classmates when they had found out that I
5 could actually chant the entire 17 generations of my
6 family. I was taught it since I was a little boy,
7 memorized it and could actually go through, at that
8 time in college while the memory was still sharp,
9 almost 11 hours straight nonstop. My college mates
10 just simply fed me and I kept on going.

11 My knowledge of the area that is

12 specifically in question is because we were raised on
13 Ulehawa in Mikilua Valley on the street/stream. The
14 stream was only approximately 80 to a hundred yards
15 from our house.

16 The property was owned by my mother's
17 sister, Ms. Hoaliku Drake, purchased by the family
18 many generations ago. And my mother's great-great-
19 grandfather owned Ohi'ilolo Ranch (phonetic) at the
20 far end of Kaena on the Wai'anae side.

21 So my ancestral genealogy throughout the
22 entire side of that island was very clean. And
23 because I was little and knew the genealogy and knew
24 where everything was, the elders decided that me and
25 my brother should be taught everything from Honouli --

28

1 from the 'Ewa Plains all the way to Ka'ena. And
2 traveled it, we walked it, we lived it. The
3 difference here in the reading about some of the
4 testimonials is that we lived it.

5 My mother is an author of a book called
6 "Ka po'e kahiku o Wai'anae". Twenty-five to 26
7 kupunas were interviewed in that book about the entire
8 cultural history of the Wai'anae Coast. I knew every
9 one of those kupunas. I lived with them. I walked
10 with them up that valley, up through Lualualei, down
11 through Pohakea on the Kunia side. We auau in the

12 reservoir there and took a bath and did the hiking all
13 the way back. We knew it well.
14 We...knew...it...well, every foot, every step, every
15 mile.

16 When we crossed from our home across the
17 Ulehawa Stream and stepped onto the papa of the land
18 on that side, it is there that the land in question
19 that's on this table that's being discussed.

20 We knew the land very well. The land was
21 considered wasted land. And all we did was use it as
22 walk-through to get to Pohakea and Lualualei or a
23 walk-through to get down to the kai where we all went
24 fishing.

25 CHAIRMAN DEVENS: I'm sorry to
29

1 interrupt. I want to ask Mr. Yuen a question. I
2 don't think anyone's going to dispute Mr. Kanahale's
3 expertise or his CV. It's all part of the record.

4 MR. YUEN: I was going to ask that he be
5 qualified as an expert witness in Native Hawaiian
6 cultural practices.

7 CHAIRMAN DEVENS: Parties have objection
8 to that qualification? So qualified.

9 MR. YUEN: Thank you.

10 Q Mr. Kanahale, could you please describe

11 the relationship of Lualualei to the mo'olelo of Maui
12 and the significance of this area to Native Hawaiian
13 culture and to Native Hawaiians.

14 A We were trained with the history and the
15 culture of Maui, history and culture of Maui. That's
16 different from being told a story. In training we
17 actually had to walk the plain. And, by the way, this
18 is how we were taught: If it was an area that was
19 silent the elders would go (Witness placing hand over
20 mouth) as we walked. And everybody was quiet as we
21 passed by.

22 When it belonged to Maui the elders went
23 (Witness moving hand over top of head) and that was a
24 signal we were coming to a location where some of the
25 ancient chants and the legends of Maui were located.

30

1 When we started to grow we started to
2 memorize each of those locations from the Hina caves
3 to the marking the fish marker points on both sides of
4 the valley. And this specific area that is in
5 question was absolutely flatland, and to all of the
6 kupunas, including those in mama's book, was simply a
7 footpath and called wasted.

8 There was no -- by the way I am -- part
9 of my background is that I'm the director of the
10 Native Hawaiian Traditional Healing Center at the

11 Wai'anāe Coast Comprehensive Health Center and my
12 skill and knowledge is 164 healing herbs.

13 On that particular property there are no
14 healing herbs worth taking simply because of the
15 saltine flats that are there and the white coral area.
16 So the value of this property that is in question
17 during our time was wasted land and simply was a
18 passby through.

19 The sacred sites that can be on record
20 and discussed, we knew all of them simply because we
21 knew when to hamau and be silent when we passed them
22 and we knew where they were.

23 Iwi on the property in question: None.
24 Otherwise we would never have been able to even walk
25 on that papa or that earth mound. All of the area

31

1 told that Maui was on both the right side of the cliff
2 and the left side. I was interested in the comment
3 that was made regarding Maui, of a profile of the
4 mountain.

5 You got to excuse me but I burst out
6 laughing simply because anyone who knows our Hawaiian
7 culture would know better than to mark a mountain
8 about an akua or a god of ancient past. If that were
9 true out mountains would have the image of Kamehameha,

10 and Lono, Ku and Kane.

11 No way would we have been able to dare
12 say, "That is Maui and the spirit of Maui." That
13 would have been absolutely out of the question in
14 cultural spiritual practices. So I don't know where
15 that one came from. That was a new one to me.

16 You all need to know that part of my
17 cultural background is that when we were at
18 Nanaikapono Elementary School we kids were so good at
19 our cultural knowledge of the area and knew the
20 background -- I think the majority of you are too
21 young -- but we were brought from Wai'anae to Ulumau
22 Village in Ala Moana Park -- that's why I said many
23 of you don't remember that village -- because we were
24 the skilled people of the legends of Maui. They hired
25 us there as little children when I was in intermediate

32

1 school, drove every day at 4:00 for several years --

2 CHAIRMAN DEVENS: I apologize for
3 interrupting. Mr. Yuen, we need questions, otherwise
4 it's just a narration. And we've got other witnesses
5 that are on the clock here.

6 Q Okay. Mr. Kanahele, other witnesses
7 have testified about the significant relationship of
8 the Petition Area to the mo'olelo of Maui and the
9 necessity of maintaining its undeveloped state to

10 preserve the legends of Maui. Do you agree that
11 preserving a physical site is necessary to preserving
12 the mo'olelo of Maui?

13 A It depends on the site and it depends on
14 the location. The mo'olelo of Maui is very clear and
15 very distinct. There was none on this footpath area
16 that is in question. None. We simply used it as a
17 bypass.

18 If there was mo'olelo written in that
19 specific location, surely I would have sat here today
20 and said, "I'm sorry, this is kapu. The conversation
21 is end. Don't touch it."

22 Q Are you aware of night marchers
23 traveling over the Petition Area?

24 A No. Listen, I chant the chants of that
25 entire side of the island. I know exactly where the

33

1 night marchers are from the Campbell Estate side to
2 the Nanakuli side to the Ma'ili side. None walks
3 through that side of the valley, only because of the
4 Hina legends. And we'll talk about that one another
5 day.

6 Q Are you aware of any historic sites
7 within the Petition Area or within a hundred foot
8 radius of the Petition Area?

9 A None.

10 Q Can you explain the concept of wahi
11 pana?

12 A You know, wahi pana was a word that was
13 never raised with us. And I only heard it once by the
14 most senior of the elders, Papakamakaokalani. Only
15 person in my ear that used that word. And the reason
16 why you don't use the word is because it was the place
17 where identified, very distinct sites that were laid
18 out as spiritual and kapu.

19 So we were as children made aware of
20 every one of those sites along both sides of the
21 valley from Nanakuli to Ma'ili'ili. Wahi pana is a
22 word that I, when I first heard it, I thought, "Who
23 has the gall to even talk to me about a single magic
24 word like that?" But it seems to be thrown around as
25 a vocabulary that everybody throws these days. But we

34

1 were never allowed to use the word only because all it
2 did was identify those sacred sites.

3 Q The Concerned Elders of Wai'anae have
4 used the term wahi pana. And they believe that
5 development of this baseyard project would undermine
6 Native Hawaiians' cultural continuity of Wai'anae
7 because they feel that the access to cultural history
8 cannot be limited to property lines.

9 Do you agree with this contention? Or do
10 you believe that development of the Petition Area
11 would not have any adverse impact on the Native
12 Hawaiian culture and cultural practices?

13 A It would have no adverse impact. You
14 know, when you lay this one on me, "wahi pana," for me
15 that is so sacred that I don't even want to say the
16 word. We never said it only because we knew where the
17 areas were located that were kapu. Impossible to have
18 said it. You would have been hit by an elder to have
19 raised the word.

20 But in this area that's in question there
21 was nothing there. It was simply a footpath-through
22 area that we went from one end to the other end. None
23 of it was declared wahi pana. None of it was declared
24 sacred. And as little children we were the
25 practitioners while the kupuna were the master

35

1 teachers. We knew where kapu was and where kapu was
2 not. And this was nowhere near wahi pana or kapu.

3 MR. YUEN: Thank you. No further
4 questions.

5 CHAIRMAN DEVENS: County?

6 MS. TAKEUCHI-APUNA: No questions.

7 CHAIRMAN DEVENS: Office of Planning?

8 MR. YEE: No questions.

9 CHAIRMAN DEVENS: Ms. Townsend?

10 CROSS-EXAMINATION

11 BY MS. TOWNSEND:

12 Q Yes, I have a few. Aloha, Mr. Kanahele.

13 A Aloha nui.

14 Q Thank you very much for coming to
15 testify. Okay. So I want to focus on the Cultural
16 Impact Assessment that was submitted for the Tropic
17 Land. It's in the EIS Appendix G. Did you author the
18 Cultural Impact Assessment?

19 A Say again?

20 Q Did you author the Cultural Impact
21 Assessment?

22 A I contributed through questions that
23 were asked of me of that time of Hanalei Aipolani is
24 Momma and I's only contributions to this, to this
25 effort.

36

1 Q Okay. Thank you.

2 A Thank you.

3 Q In helping to develop this Cultural
4 Impact Assessment were you paid by Tropic Land?

5 A No. I'm a volunteer here today. I want
6 to make sure our culture is held strong and correct.

7 Q Thank you very much. In working to

8 develop this Cultural Impact Assessment do you know
9 what process the Mother Earth Foundation used to -- ?

10 A I have no idea.

11 Q I'm going to pass down to you, this is
12 State's Exhibit 22. And so that you can read from it.
13 But in the meantime as that's coming down you had
14 mentioned in your testimony that this area's a
15 footpath?

16 A Yes.

17 Q And did you include that information in
18 the CIA that was conducted?

19 A When the question was asked of me it was
20 just said, "I'm a Kamaki by Hanalei Aipolani. Tell me
21 about the area." Had I known it was going to be
22 specifically on a subject as delicate as this you can
23 bet we would have sat that young man down and walked
24 him through all of history and time.

25 The questions that you're asking

37

1 specifically now was never asked of us. So in our
2 contribution it was just the conversation that took
3 place. Not the teaching. And that's the difference
4 here. So if you use the conversation as credibility
5 than you're faltering. The discussion that I had,
6 that was simply generic. It was never meant to be

7 instructive and to go to the na'au, which means you
8 remember it always.

9 Q Thank you. So talking about the
10 questions that Mr. Aipoalani asked. So he asked five
11 questions?

12 A Go ahead.

13 Q He asked only five questions. Did he
14 ask any additional questions?

15 A Even if he asked -- listen -- even if --
16 you know, you don't -- when you're talking to a kupuna
17 you ask one question, we're going to give you a whole
18 genealogy of things. That's teaching.

19 Because if you -- let me just say -- in
20 the western side of it, if you ask a question that's
21 delicate, for we Hawaiians will come to a screeching
22 halt in what Hawaiians call, maha'oi and niele. In
23 other words, none of your damn business.

24 But when you're talking to a young opio
25 that talks to our kupuna, we usually say -- mom will

38

1 say, "Sit. Let me make sure -- what was your question
2 again?" And he would ask a simple number one
3 question. We would have to take him through all of
4 the history of that experience. Then begin of all
5 things with his own family. So identifying five
6 questions? Impossible for me to answer.

7 Q Okay. Thank you. I can tell from
8 reading the Cultural Impact Assessment that four
9 people were consulted. Do you know if any other
10 people in addition to these four were consulted?

11 A I have no idea.

12 Q I can also see a bibliography of
13 documents that Mr. Aipoalani referred to. Do you know
14 if there are any additional documents that he maybe
15 reviewed and forgot to list?

16 A Well, when you're talking to me I don't
17 talk document and paper. I talk oral translation of
18 ancient chants and knowledge. That's how I was taught
19 by the kupuna. "Documents", you're talking to the
20 wrong Hawaiian.

21 Q Thank you. Just for the record to help
22 clarify since there's been some discussion about the
23 guidelines --

24 A Yes.

25 Q -- for drafting Cultural Impact

39

1 Assessments. I was wondering if you could -- the
2 Post-It note on that exhibit it's Page 2 the fourth
3 paragraph, it starts with, "The most important
4 element," I was wondering if you could read that the
5 big yellow Post-It note.

6 A Oh, oh, okay. Page 2 and where are we?

7 Q The fourth paragraph that's underlined

8 and begins with, "The most important..."

9 A Okay. And your question is?

10 Q Can you just read it really quick?

11 A "The most important element of preparing

12 Cultural Impact Assessments is consulting with

13 community groups especially with experts and

14 responsible cultural practitioners within the

15 ahupua'a of the project site. Conducting the

16 appropriate documentary research should then follow

17 the interviews with the experts."

18 Q Thank you very much. So just to button

19 that up. It's your testimony that you're not aware of

20 the documentary research that was done for this

21 Cultural Impact Assessment?

22 A Right.

23 Q Okay. Thank you. The next large yellow

24 Post-It note?

25 A Yes.

40

1 Q It's Page 4, the fifth paragraph.

2 A Shall I read it?

3 Q Yes.

4 A "The types of cultural resources subject

5 to assessment may include traditional cultural

6 properties or other types of historic sites both
7 manmade and natural including submerged cultural
8 resources which support such cultural practices and
9 beliefs."

10 Q So just in your perspective as an expert
11 do you agree that culturally significant areas can be
12 both manmade and natural?

13 A It depends on the type. And it depends
14 on the knowledge of the location. May I go back to
15 that the last sentence?

16 Q Please do.

17 A "... which support such cultural
18 practices and beliefs." The area that you're
19 specifically talking about simply was an area that we
20 simply walked from one favorite location to another.
21 It was a walking path.

22 Q Okay.

23 A If there were cultural assessments,
24 practices and beliefs on this specific site, you would
25 have seen this discussion come to a complete halt and

41

1 say "Don't touch it."

2 Q Okay. And just to clarify do you know
3 if Mother Earth's Foundation or Mr. Aipoalani
4 contacted Office of Hawaiian Affairs or maybe Hui

5 Malama or the Hawaiian Railway Society in conducting
6 this Cultural Impact Assessment?

7 A I can only speak with regard to my
8 conversation with Mr. Aipolani.

9 MS. TOWNSEND: Okay. Thanks. Thank
10 you. We're done.

11 THE WITNESS: Thank you very much.

12 CHAIRMAN DEVENS: Commissioners, any
13 questions for this expert witness? Commissioner Lezy.

14 COMMISSIONER LEZY: Aloha, Mr. Kanahele.

15 THE WITNESS: Aloha nui.

16 COMMISSIONER LEZY: Thank you for your
17 testimony this morning. In the course of the hearings
18 on this Petition we have had some very heart-felt
19 testimony from other experts in cultural practices --

20 THE WITNESS: Yes.

21 COMMISSIONER LEZY: -- who have offered
22 opinions that they do believe that there is cultural
23 significance to this Petition Area. And I'm just
24 curious to know whether you can offer some insight to
25 us on how there can be such a wide divergence in

42

1 opinions.

2 THE WITNESS: I can only speak for
3 myself. On the site that everybody is specifically
4 speaking on, the difference between the opinions that

5 I read about and myself is that I lived it and I
6 walked it all of my childhood life with great masters
7 and heroes of culture and etiquette and genealogy.

8 They told me the site. They told me
9 everywhere that I walked. They knew what was sacred
10 and what was not. Today I'm a practicing kahu in the
11 traditional phrase.

12 I would know if this specific area would
13 have required the elements of kapu and sacred and
14 forbidden simply because I would have learned it when
15 I was a child. The area is not.

16 COMMISSIONER LEZY: Thank you very much.

17 CHAIRMAN DEVENS: Commissioner Jencks.

18 COMMISSIONER JENCKS: Aloha,
19 Mr. Kanahele.

20 THE WITNESS: Aloha nui.

21 COMMISSIONER JENCKS: Thank you for
22 being here.

23 THE WITNESS: Thank you for having me.

24 COMMISSIONER JENCKS: Thank you for your
25 testimony. Just a couple questions. Given your

43

1 history with the property, growing up in the area,
2 it's clear that you've had a lot of contact with the
3 land, understand the land.

4 THE WITNESS: Yes.

5 COMMISSIONER JENCKS: And you had
6 involvement with the Cultural Impact Assessment to
7 some degree on the Project.

8 THE WITNESS: To some degree, yes.

9 COMMISSIONER JENCKS: Did you read the
10 final report, the final Cultural Impact Assessment and
11 the final Archaeological Impact Survey that was done
12 for the Project?

13 THE WITNESS: I only read glimpses of it
14 simply because -- let me just say this -- simply
15 because when I heard about the location, you know, it
16 didn't bother me only because I thought oh, it's one
17 of the paths that we got one area -- no big deal. So
18 I never paid attention to actually the detail of that
19 assessment.

20 And I had --listen, if it was as
21 important a sacred site as everybody says it was,
22 these two individuals would have been the warriors up
23 in the front stopping everybody here. (Witness
24 indicating his mother and relative seated.)

25 That's how important our efforts are

44

1 when we appear to say. "Be careful what people are
2 saying about specific areas especially when we live it
3 and we walked it and we knew it well."

4 Those kinds of recommendations of being
5 kapu and sacred and wahi pana never existed in this
6 specific area because we were only -- our home was
7 only a hundred, couple hundred yards from it. And we
8 knew it. And all it was a passthrough. Never laid as
9 a kapu.

10 COMMISSIONER JENCKS: Thank you.

11 CHAIRMAN DEVENS: Any other questions
12 from the Commissioners? Mr. Yuen, any follow-up?

13 MR. YUEN: Just one follow-up.

14 REDIRECT EXAMINATION

15 BY MR. YUEN:

16 Q Are you aware of any lava tubes under
17 this property?

18 A That one was a shocker. I knew of
19 sinkholes because Nanakuli has sinkholes, Ma'ili, all
20 of us have sinkholes. And that's when the tubes
21 collapse. We slept in the sinkholes. The entire area
22 is blue rock and blue coral. So we knew that there
23 were hidden places for iwi and bones and feather and
24 birds of the old school days.

25 But an actual lava tube, none that I know

45

1 of, especially the Ulehawa Stream side. If there was
2 I would have been very surprised since Ulehawa Stream

3 legends go all way from mauka to makai and out to the
4 sea with an area that covets its fishing sites.

5 By the way, when you're looking at
6 Mikilua and Lualualei, Nanakuli, you have to also,
7 gentlemen and ladies, pay attention to looking at it
8 not from the land to the sea but also from the sea
9 backwards to the land. Because you need to recognize
10 that the whole was the cultural impact of the entire
11 area.

12 When you did your fishing markers and
13 when you did your fishing sites, one had to feed to
14 the other.

15 In order to survive in Wai'anae and
16 Nanakuli we had to read the mountain to know what's
17 growing out in the sea. When the yellow keawe beans
18 were yellow, wana was ripe in the sea.

19 When the lehua blossoms bloomed from the
20 cold mountainside or the hala white flower, then we
21 knew what fish was running. We could actually read
22 the mountain and know what season was in the sea.

23 So whenever you do an assessment like
24 this you need to look at it both ways. And that path
25 that we are still addressing had no influence in my

46

1 education, my upbringing and my knowledge.

2 MR. YUEN: Thank you. No further

3 questions.

4 CHAIRMAN DEVENS: Mr. Yee?

5 MR. YEE: Could I ask one quick.

6 CHAIRMAN DEVENS: Sure.

7 CROSS-EXAMINATION

8 BY MR. YEE:

9 Q You know, when you testified that the
10 Petition Area is simply a pathway from one sacred site
11 to another, I just need to --

12 A No. Not fishing areas.

13 Q I'm sorry. It's simply a pathway from
14 one site to another?

15 A Yes.

16 Q Is there any particular cultural
17 significance to that particular pathway or as long as
18 you get from A to be it's irrelevant how you get
19 there?

20 A In the traditional rule, if there was
21 significance in the pathway we would have to go around
22 it, and find another way.

23 Q So there is no cultural significance to
24 that particular path.

25 A No, no.

47

1 MR. YEE: Thank you.

2 MS. TOWNSEND: I actually had one
3 follow-up to Commissioner Lezy's question. I think it
4 will help clear it up.

5 CHAIRMAN DEVENS: All right.

6 RECROSS-EXAMINATION

7 BY MS. TOWNSEND:

8 Q Mr. Kanahale, would you mind educating
9 the Land Use Commission on the concept in Hawaiian
10 culture about how not all knowledge is kept in one
11 school?

12 A Absolutely.

13 Q Thank you.

14 A However, not all knowledge is kept in
15 one school, but everybody knew the school that it was
16 in. So the experts in that specific school, if they
17 were very, very good, everyone would pay attention to
18 the kumu or the teachers of that school. It's a hula
19 term. And, by the way, my mother is the last of the
20 great Lokalia Halau, the last student and I am Grandma
21 Lokalia's heir. Grandma Lokalia is one of the great
22 living or legendary hula masters.

23 The theme is this way: Not all knowledge
24 comes from one school or stays in one school. The
25 variety of experience from each of the kupunas in the

48

1 families can differ. But when you are a lineage of,

2 as Mr. Lee will tell you as he is, a lineage of a
3 kahuna line, there's very specific controls on the iki
4 or the knowledge that you have and far more respected
5 than the generic families who might have knowledge in
6 the areas that surround us.

7 So there's a very clear distinction that
8 has to be made there. The priesthood knowledge, the
9 maka'ainana, the common knowledge, and the ali'i
10 knowledge. So when you say all knowledge rests in one
11 school you cannot be as generic and open as that.
12 There are limitations and controls.

13 Q Okay. And so just to clarify. When you
14 have those different lines even within a family
15 secrets are kept in order to preserve the power of the
16 knowledge?

17 A The secrets are kept to preserve the
18 integrity of the site.

19 Q Thank you very much.

20 MS. TOWNSEND: No further questions.

21 CHAIRMAN DEVENS: Mr. Yuen, do you have
22 any follow up?

23 MR. YUEN: No questions.

24 CHAIRMAN DEVENS: Thank you very much
25 for sharing your knowledge. Why don't we take a short

1 break.

2 (Recess was held. 10:00)

3 CHAIRMAN DEVENS: All right. We're back
4 on the record. Mr. Yuen, I understand that you have
5 called your last witness in your case in chief and you
6 have two possible rebuttals.

7 MR. YUEN: That's correct.

8 CHAIRMAN DEVENS: I understand
9 Intervenor will make her witnesses available at this
10 time. I understand Professor Prevedouros has a --

11 MS. TOWNSEND: Eleven o'clock. He needs
12 to leave by 11:00.

13 CHAIRMAN DEVENS: Should we put him on
14 the stand first?

15 MS. TOWNSEND: Sure, if anyone has any
16 questions.

17 CHAIRMAN DEVENS: Mr. Yuen, did you have
18 any cross-examination --

19 MR. YUEN: I do.

20 CHAIRMAN DEVENS: -- or any of the
21 parties have cross-examination? All right. Why don't
22 we put the professor on the stand first.

23 MS. TOWNSEND: Intervenors call
24 Professor Prevedouros.

25 PANOS PREVEDOUROS

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 CHAIRMAN DEVENS: If you can state and
5 your name and address and also let me tell you
6 whatever testimony has been offered on your behalf
7 will be made -- or has been made part of the record.

8 THE WITNESS: Correct. Hello. Good
9 morning. My name is Panos D. Prevedouros. My address
10 is 2944 Pacific Heights Road.

11 CHAIRMAN DEVENS: Go ahead, Mr. Yuen.

12 MR. YUEN: Is she going to at least ask
13 him any preliminary questions, establish a foundation
14 or anything?

15 CHAIRMAN DEVENS: No, she's done. She's
16 standing on the written testimony. Is that correct,
17 Ms. Townsend?

18 MS. TOWNSEND: Yes.

19 CROSS-EXAMINATION

20 BY MR. YUEN:

21 Q Professor Prevedouros, first in your
22 written testimony you criticized our traffic
23 consultant, Mr. Okaneku's, use of the Institute of
24 Transportation Engineers or ITE trip generation
25 methodology in his report.

1 Do you teach your students to use the ITE
2 methodology in preparing their transportation
3 analysis?

4 A I do.

5 Q And is the ITE trip generation
6 methodology generally accepted by the State of Hawai'i
7 Department of Transportation and the City and County
8 of Honolulu Department of Transportation Services for
9 preparation of these kinds of traffic impact reports?

10 A Yes. It is the basic national standard.

11 Q And so what is the basis of your
12 criticism of our traffic engineer's use of this
13 methodology?

14 A My objection was not that he used the
15 ITE trip generation. My objection was that he, even
16 if he did not do any numerical adjustment, he didn't
17 even mention that fleet size in Hawai'i is
18 significantly different than the mainland average.
19 Therefore, the projected mostly truck numbers
20 generated by this industrial park are likely to be
21 larger in Hawai'i because of our smaller fleet size.

22 I did not offer him guidance on how to
23 adjust the numbers. But at a minimum the study should
24 have said that this is a possibility and as a result
25 what is indicated in the study is not necessarily

1 conservative. It is representative of the national
2 standard, not necessarily of Hawai'i.

3 Q Okay. In one of your second comments
4 you state that for the AM peak hour the number of
5 vehicles in the Honolulu-bound direction is expected
6 to triple from 315 vehicles per hour to 863 vehicles
7 per hour without the I'm sorry -- it's gonna triple
8 from 315 vehicles per hour without the Project to 863
9 vehicles per hour with the Project. And this would be
10 vehicles leaving Lualualei Access Road onto Farrington
11 Highway.

12 I showed you a number of pages from our
13 Exhibits 13A and 13B which represent corrections to
14 the traffic analysis that we have subsequently filed
15 with the Land Use Commission after we filed the EIS in
16 the original traffic report.

17 Have you had a chance to review these
18 pages?

19 A Yes, I just did, like, three minutes
20 ago. And I appreciate the correction. However, you
21 are correct, and I have here the pages you gave. And
22 you're correcting, if I'm not mistaken, page 11. Let
23 me just make sure of what you gave me. Yes. You're
24 correcting page 11. And that is not a critical page
25 in my calculations because probably the consultant had

1 made a copying mistake. That's why I identified his
2 AM/PM generation was identical, that it was a copy
3 mistake.

4 My numbers are derived from pages 14 and
5 15. And I do not believe that you gave me corrections
6 for those. So my estimates stand. For example, as
7 you see the original mistaken number was in the order
8 of 400+. And this number has been adjusted to roughly
9 100. That is consistent with pages 14 and 15.

10 So pages 14 and 15 bottom line they did
11 not contain an error. So my numbers come from two
12 pages that you did not amend.

13 Q Okay. What do you suggest is the
14 threshold to determine whether other intersections
15 should be included in a Traffic Impact Analysis
16 Report?

17 A I believe the city and county has a
18 threshold of Level of Service D, which is already
19 surpassed by anybody's account on Farrington Highway.
20 So there is a lot of congestion along Farrington
21 Highway in the AM and PM at the peak direction.

22 Q So the present condition of the
23 Lualualei Access Road/Farrington Highway intersection
24 is already operating at an unsatisfactory level. Is
25 that your testimony?

1 A This is actually your consultant's
2 testimony, yes, and I would agree with it.

3 Q Now, I think am I correctly stating that
4 your conclusion or your recommendation that the
5 Project should not be approved until a TIAR proposes a
6 traffic mitigation plan that maintains a Level of
7 Service of at least D at that intersection?

8 A Actually my objection is that not only
9 at that intersection, but if you visit the site, as I
10 did two times, there are at least six signalized
11 intersections downstream that they will receive the
12 entire input of that additional flow. That has not
13 even been, even remotely demonstrated in this study.

14 So if we had a regional approach to this
15 we would even go all the way to say what is the impact
16 of this new development on the H-1/H-2 merge, but this
17 may be a little too much. But these are six nearby
18 traffic signalized intersections. And we have no
19 idea. So we are fixing one. What happens to the
20 other five?

21 Q Are you aware that the state Department
22 of Transportation is proposing to construct southbound
23 left-turn storage lanes at two of those five
24 intersections?

55 25 A That is a possibility. It's been

1 discussed for many, many years, yes.

2 Q And to the extent that the traffic
3 mitigation measures proposed for this intersection
4 would improve the Level of Service from F or an
5 unsatisfactory level to a Level of Service C in the AM
6 peak hour and PM peak hour periods, wouldn't this
7 satisfy your objection with respect at least to the
8 Farrington Highway/Lualualei Naval Road intersection?

9 A Let me answer your question in two ways.
10 First of all, looking at Page 17 of Appendix E. The
11 current conditions for AM are E and F. That's the
12 Level of Service, it's a Level of Grade. A to D is
13 acceptable. E and F is unacceptable.

14 So the current time Level of Service is E
15 and F. And in the future with the corrections with
16 the Project these will be E and E, still unacceptable
17 by this TIAR. So it never comes to Level of Service
18 C. And I'm reading the main movements as you see
19 southbound through SBT. That's a critical movement.
20 Westbound left turn, F,F,E,E. There's no Level of
21 Service E.

22 Q That's without the improvements. I
23 think you're looking at the chart there saying without
24 the improvements they're F,F.

56 25 A Without improvements you're correct it's

1 F.F. I didn't circle that. With improvements it's
2 E,E. Without improvements it's F,F. for the PM. With
3 improvements it's E and E.

4 Q I see E and A for the AM and -- oh, I
5 see.

6 A Right. You have some movements that are
7 naturally very light. They are A in the existing
8 conditions. So, in fact, if you really want to be
9 picky about it, existing conditions for northbound
10 right turn is C. And with the Project becomes D. So
11 quite a few things.

12 Bottom line is that if you look with the
13 mitigations and the Project the resultant Level of
14 Service is, as I called it in my evaluation, is
15 marginal. And it's likely to get worse. So it's not
16 typical.

17 I wouldn't allow a student to pass a TIAR
18 in which he or she created mitigations at Level of
19 Service E because it is by default already
20 unacceptable.

21 MR. YUEN: No further questions.

22 CHAIRMAN DEVENS: City?

23 MS. TAKEUCHI-APUNA: No questions.

24

25 xx

57

1 CROSS-EXAMINATION

2 BY MR. YEE:

3 Q Dr. Prevedouros, you know you've been
4 qualified here as a traffic expert today, correct?

5 A Yes, but I'm court qualified in Hawai'i
6 as a traffic engineering expert since 1991.

7 Q And while I understand you've some
8 experience in a city issue involving land use, you
9 know you're not being introduced today as a land use
10 expert.

11 A No, I'm not.

12 Q Okay. So I guess my question is when
13 you conclude that the -- well, let me backtrack. So I
14 understand -- I want to be clear -- I understand you
15 have concerns about the adequacy of Petitioner's TIAR.
16 I'm not going to ask questions about that.

17 I do have a question, though, about your
18 conclusion that the TIAR should be -- I'm sorry, that
19 the Project should not be approved until an adequate
20 TIAR is completed. And the question involves the
21 timing in the land use process. Is that question, the
22 question of when in the land use process a TIAR should
23 be approved, is that more of a land use question?

24 A I believe it may be a process question.
25 We see the result all over O'ahu because the process
58

1 has failed us. The piecemealing and the timing of
2 things is not adequate, and we have congestion piling
3 on congestion because of perhaps expeditious steps
4 that they don't look what is going on. So we're
5 digging a deeper hole, but please go ahead.

6 Q My question, though, is from a land use
7 perspective -- or is it a land use question as to
8 whether the TIAR should be completed now before
9 zoning, before subdivision, before active
10 construction? That question of what point in the
11 process is more of a land use question than a traffic
12 engineering question, is that correct?

13 A Let me answer you in a very simple way.
14 That if we're considering any land use decision on a
15 road that's Level of Service F, we should not even
16 consider a land use decision.

17 Fix the road to something acceptable and
18 then consider some kind of change in the land use.
19 Obviously this road cannot take any more. So why are
20 we deliberating land use decisions?

21 Q And what part of your traffic
22 engineering expertise is that part of?

23 A The part that's called common sense.

24 (Audience Laughter)

25 Q That's fine. That's perfectly fine. Do

59

1 you know the difference between lay testimony and

2 expert testimony?

3 A That's right.

4 Q Okay. Would that be a lay opinion

5 rather than an expert opinion?

6 A Not exactly. I mean we are aware of --

7 quite significant trained in origin destination and

8 trip generation which is intimately covered and

9 related to land use.

10 In fact I cannot do my class that I teach

11 now if I don't teach land use and the IT trip

12 generation because every different land use generates

13 a completely different set of trips by quantity and by

14 time of day. So we actually know quite a lot of the

15 details of land use.

16 That's why I was also mentioning that

17 even traffic composition changes. A hotel will not

18 generate truck movements. An industrial park will

19 generate truck movements. So sensitivities like this

20 are very important to the network and the pavement and

21 everything.

22 Q Okay. In that case let me ask you some

23 questions about land use. Are you familiar with the
24 Land Use Commission and its processes?

25 A Not intimately.
60

1 Q Okay. Are you familiar with other cases
2 before this Land Use Commission -- or let me
3 backtrack. Have you ever presented testimony as an
4 expert before the Land Use Commission before?

5 A No. I have read testimony and I was
6 listed in another case but I was not called as a
7 witness.

8 Q Are you familiar with the level of study
9 that's generally required for a TIAR before the Land
10 Use Commission?

11 A Yes. It's actually a preliminary level.
12 That's exactly what my objection is. That at the
13 preliminary level it does not take at least a cursory
14 regional view.

15 Q So you're familiar with the level of
16 study that's generally required for the Land Use
17 Commission. Are you familiar with the likelihood of
18 DOT approval prior to the Land Use Commission
19 approval?

20 A I'm not sure I understand your question
21 so I don't want to jump into an answer.

22 Q Do you know how often the Department of
23 Transportation, State Department of Transportation,
24 will have completed and finally approved a TIAR before
25 the Land Use Commission makes a decision on a
61

1 Petition? Do you know how often that happens?

2 A Not sure.

3 Q Okay.

4 A I know that they review quite a few, but
5 I don't know at what stage and if it's uniform all the
6 time.

7 Q Okay. Do you know -- let me backtrack.
8 If the TIAR is approved prior to zoning, then the
9 traffic mitigations will be a requirement at the
10 county level, is that correct?

11 A I'm not sure that there's legal
12 precedent that that makes it an absolute.

13 Q If there's Land Use Commission to
14 require that, would you agree that would be a
15 condition?

16 A Perhaps.

17 Q From a traffic engineering perspective
18 as long as improvements are made prior to development
19 there should not be a significant traffic impact if
20 the TIAR's approved before development and the
21 mitigation efforts are made as part of that

22 development?

23 A Well, it depends what mitigations we're
24 talking about.

25 Q Well, let's assume the TIAR is approved
62

1 and approved correctly.

2 A As we said, Farrington Highway requires
3 mitigation as is. And it requires additional
4 mitigation if additional projects are attached to it.
5 Which part are we talking about? The existing
6 deficiency or the deficiency plus the added traffic?

7 Q Just referring -- well, let me
8 backtrack. I understand your question. That's a
9 sufficient answer. Thank you.

10 A Okay.

11 CHAIRMAN DEVENS: Ms. Townsend.

12 MS. TOWNSEND: No questions at this
13 time.

14 CHAIRMAN DEVENS: Commissioners?
15 Further questions? Parties have any questions? Thank
16 you very much.

17 THE WITNESS: Thank you.

18 MS. TOWNSEND: Intervenors have two
19 remaining witnesses available for questioning:
20 Kehaulani Souza, the anthropologist, and Miwa

21 Tamanaha, the economist.

22 CHAIRMAN DEVENS: Mr. Yuen do you have
23 cross-examination for either witness?

24 MR. YUEN: Yes.

25 CHAIRMAN DEVENS: Which one would you

63

1 like to start with?

2 MR. YUEN: Let's do Mr. Souza first.

3 MS. TOWNSEND: Intervenors call
4 Kehaulani Souza.

5 KEHAULANI SOUZA,
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do.

9 CHAIRMAN DEVENS: If you can state your
10 name and address.

11 THE WITNESS: Kehaulani Lilihoa Souza,
12 94-115 Pualani Loop, Mililani, 96789.

13 CHAIRMAN DEVENS: Mr. Yuen.

14 CROSS-EXAMINATION

15 BY MR. YUEN:

16 Q Ms. Souza, in your written testimony you
17 criticized the adequacy of the Cultural Impact
18 Assessment prepared by Tropic Land. In particular you
19 criticized Tropic Land for failing to cite the
20 Cultural Impact Assessment that you prepared for the

21 proposed Nanakuli Landfill.

22 Were you aware that prior to the
23 Concerned Elders filing this Cultural Assessment as
24 their exhibit that this document was not publicly
25 available?

64

1 A No, I wasn't.

2 Q Okay. How close is the Nanakuli
3 Landfill project on the assessment you worked on, how
4 close is this project to the Tropic Land Project?

5 A It's adjacent. It's actually the same
6 pu'u. It's Pu'uheleakala. So this is on the side of
7 it. My project was facing the ocean so it's mauka of
8 it -- I mean makai.

9 Q You in your written testimony for this
10 Project, you say that the ahupua'a of Lualualei should
11 be protected as a traditional, cultural property
12 because it consists of landscape features and
13 archaeological sites and is associated with stories
14 and legends that are significant.

15 And you also describe the concept of wahi
16 pana that makes Lualualei a place of continuing
17 cultural practices.

18 Did you discuss this concept of wahi pana
19 in the Cultural Assessment you prepared for the

20 Nanakuli B Landfill?

21 A I did. And the reason why I stated that
22 is because the kupuna that I interviewed for that
23 cultural impact assess had used that word. They
24 expressed that this was a very significant area of the
25 birthplace of Maui and Hina, who's his mother. And

65

1 that this area is not found anywhere else on O'ahu and
2 that this whole area is significant.

3 And another thing that I wanted to add is
4 that in the Cultural Impact Assessment guidelines it
5 says, No. 1, it says, "To identify and consult with
6 individuals, organizations with expertise of cultural
7 resources, practices and beliefs." It also says
8 "broad geographic area, for example, district or
9 ahupua'a." So it basically tells you.

10 Q So I'm going to show you the Cultural
11 Impact Assessment you prepared for the Nanakuli B
12 Landfill. Can you show me where in this assessment
13 you discuss the wahi pana concept?

14 (Pausing. Witness looking through
15 documents)

16 CHAIRMAN DEVENS: Mr. Yuen, is there a
17 specific page you want to direct her to to speed this
18 up?

19 MR. YUEN: I don't have the records. I
 Page 66

20 couldn't find it.

21 THE WITNESS: Page 71 says, "Wahi pana:
22 Story or sacred place. The concept of wahi pana a
23 place with a story, legend attached that is very
24 important in Hawaiian culture because it's a
25 connection to the past and therefore the ancestors.

66

1 "From the name of a place one can know
2 intimate details about the people who live there,
3 their environment, cultural practices and historical
4 events that took place.

5 "In Hawaiian culture if a particular
6 spot is given a name it is because of an event
7 occurred there that has meaning for the people of that
8 time because Hawaiian culture was based on oral
9 traditions, place names and their stories were an
10 important way of remembering these traditions and
11 ensuring stories." There's a section on wahi pana.

12 Q (Mr. Yuen) : Did you hear Kamaki
13 Kanahale's testimony today about that concept?

14 A Mm-hmm.

15 Q Do you disagree with his conclusions?

16 A No. Because in our culture --

17 CHAIRMAN DEVENS: Which conclusions are
18 you referring to? I mean he gave quite a bit of

19 testimony.

20 Q (Mr. Yuen) : Do you disagree with Kamaki
21 Kanahale's conclusion that the property in question
22 was merely a pathway from one site to another and has
23 no cultural significance?

24 A No, I don't agree with that. Because
25 the kupuna that I've interviewed had stated that this

67

1 area is, the sightlines, the whole Lualualei area
2 especially Pu'uheleakala where this property is
3 adjacent to, is the womb of Hina and the birthplace of
4 Maui. And there's been so many cultural impacts
5 already, Maui's rock for one. When they tried to
6 remove the pohaku they desecrated the rock. And it
7 actually cracked in half.

8 Another cultural impact is the viewline
9 from Maui's pohaku, Maui's rock. You cannot see --
10 from that area you cannot see his silhouette when the
11 sun is rising and when the moon is up on certain Hina
12 nights.

13 As well as the stream, Ulehawa Stream,
14 has also been impacted. And many kupuna have gathered
15 from there as well. So this area has seen many
16 cultural impacts. And I feel that four people have
17 been contacted for this cultural impact. It was 10
18 pages. And this was cultural impact. It's over a

19 hundred pages. And...

20 Q You did not consult --

21 CHAIRMAN DEVENS: Well, did you finish
22 your testimony? Did you finish your last sentence?

23 THE WITNESS: No.

24 CHAIRMAN DEVENS: Can we let her finish?

25 THE WITNESS: I just wanted to state

68

1 that four people I feel it doesn't really represent
2 the whole community. And another thing is that the
3 guidelines for conducting cultural impacts
4 specifically state that you conduct ethnographic
5 interviews and oral histories.

6 And the definition of ethnographic
7 interviews and oral histories is ethnography is the
8 study and systemic recording of human culture. So
9 oral history is tape recorded historical information.
10 So a lot of, you know -- basically when we do cultural
11 impacts we record, like, an oral history or
12 ethnography. I'm done.

13 Q (Mr. Yuen) : You did not consult
14 Mr. Kanahele as one of the kupuna in preparing your
15 study, did you?

16 A I tried. I actually called and didn't
17 get a response.

18 MR. YUEN: Okay. Thank you very much.

19 No further questions.

20 CHAIRMAN DEVENS: City, any questions?

21 MS. TAKEUCHI-APUNA: No questions.

22 CHAIRMAN DEVENS: Mr. Yee?

23 MR. YEE: No questions.

24 CHAIRMAN DEVENS: Ms. Townsend?

25 MS. TOWNSEND: I have one clarifying

69

1 question.

2 EXAMINATION

3 BY MS. TOWNSEND:

4 Q Ms. Souza, when you testified that the
5 desecration of Maui rock and how you cannot see the
6 sightlines now, can you just clarify why it is we
7 cannot see the sightline from Maui rock?

8 A Oh, yeah. Well, when they were building
9 that residential area it would have been good if they
10 spoke to the community. 'Cause right now from Maui's
11 rock there's houses and townhouses that is blocking
12 the sight view.

13 So just to see that you have to, I guess,
14 go somewhere else actually up on Hakimo Road. And as
15 well as it also is said that the blockage, the
16 sightline should never be blocked from the pohaku to
17 the ocean. And it is blocked. So...

18 Q To clarify for the Commission why are
19 you bringing this up as an example?

20 A Bringing it up because --

21 Q Why is this important?

22 A This is important because the whole
23 cultural landscape of Lualualei is a living -- it's
24 alive. Our culture is still alive. To take -- it's
25 important for the children also, for them to really

70

1 understand and feel the stories of this place. And
2 this place that it is special and it is sacred.
3 There's no other place like this on the island of
4 O'ahu.

5 From the Project actually you can see
6 Pohakea Pass. That's another association to Maui. So
7 viewing all of those sightlines and incorporating it
8 into this tapestry, each place in this area is just a
9 little thread to this tapestry that we try to create
10 and transfer to our keiki.

11 There's many cultural practices still
12 going on in the area. I was actually on a kupuna
13 tour, Hamakuaka'i which is a tour where we're on a bus
14 and we actually drive through the area. Actually
15 William Aila was basically telling them olelo about
16 this area.

17 And also another thing that I wanted to
18 note is that for Cultural Impact Assessments if you go
19 to the OEQC website it gives you the guidelines. And
20 it also gives you a list of each island of people to
21 contact. So Edward actually was the first one on that
22 list. I don't think he was contacted.

23 MS. TOWNSEND: Thank you. No further
24 questions.

25 CHAIRMAN DEVENS: Commissioners, any
71

1 questions? Commissioner Lezy.

2 COMMISSIONER LEZY: Thank you, Chair.
3 Aloha, Ms. Souza. Thank you for your testimony. I
4 think I'd like to ask you the same question that I
5 asked Mr. Kanahalele earlier. And I think, if I heard
6 your testimony correctly, that you're of the opinion
7 that the Petitioner's cultural assessment here was
8 insufficient. And I appreciate that.

9 But I'm still curious and I'm hoping
10 maybe you can offer some insight into how you can end
11 up with such widely divergent opinions of the cultural
12 significance of an area like this, given what
13 Mr. Kanahalele testified to earlier and given what you
14 just testified to.

15 THE WITNESS: I think that in your
16 family and, say, in your family there's many

17 traditions even if you come from, say, we're all
18 Hawaiian -- there's many different lines that are
19 passed on to certain families. There's the wai ohana.
20 They have different traditions. You have taro
21 farmers. You have the kahuna line.

22 You have -- you have different aspects
23 to our culture and everything is not shared within one
24 'ohana. So I think that no matter where you go you're
25 gonna find difference of opinions.

72

1 But it's just like in words. We have --
2 our poi pounders. We have poi pounders from O'ahu
3 that look different from Kaua'i. Kaua'i poi pounders
4 have a handle and they're both the same, used for the
5 same thing but they have different ways of using them,
6 different ways of making them, different traditions.

7 COMMISSIONER LEZY: Thank you.

8 CHAIRMAN DEVENS: Any other questions?

9 That's all. Thank you very much.

10 THE WITNESS: Mahalo.

11 CHAIRMAN DEVENS: Ms. Tamanaha will be
12 the last witness. Mr. Yuen, you have
13 cross-examination for her?

14 MR. YUEN: Yes.

15 CHAIRMAN DEVENS: Mr. Yuen, if I may ask

16 how much rebuttal time are you going to need for your
17 two witnesses?

18 MR. YUEN: Probably about no more than a
19 half an hour.

20 CHAIRMAN DEVENS: Okay. Shooting to
21 break at about 11:15 because something that I need to
22 attend. I wanted to try get this wrapped up before
23 lunch so you don't have to hold your witnesses over.

24 MR. YUEN: I'd like to be able to do
25 Randall Okaneku before lunch.

73

1 CHAIRMAN DEVENS: Sure. Ms. Tamanaha, if
2 we can swear you in.

3 MIWA TAMANAHA
4 being first duly sworn to tell the truth, was examined
5 and testified as follows:

6 THE WITNESS: I do.

7 CHAIRMAN DEVENS: If you can state your
8 name and address.

9 THE WITNESS: My name is Miwa Tamanaha.
10 And my address is 84-506 Makaha Valley Road, 96797.

11 CHAIRMAN DEVENS: Mr. Yuen.

12 CROSS-EXAMINATION

13 BY MR. YUEN:

14 Q Did you assist Stephanie Fried in
15 preparing her testimony?

16 A I did not.

17 Q So how are you going to answer any
18 questions about her testimony?

19 A I read through the testimony. And I
20 have a degree in economics. And I'm available to
21 answer questions to the best of my ability.

22 MR. YUEN: It was represented to me that
23 the witness assisted in the preparation of this
24 testimony. I was going to ask some questions
25 challenging the testimony. And I frankly don't think

74

1 I can ask them if she didn't assist.

2 CHAIRMAN DEVENS: I agree. So are you
3 done with the questioning?

4 MR. YUEN: I'm done with the questioning
5 and I guess I'm going to object to the introduction of
6 the exhibits for Stephanie Fried.

7 CHAIRMAN DEVENS: Do you have a response
8 for that, Ms. Townsend?

9 MS. TOWNSEND: Is it possible for
10 Mr. Yuen to ask the questions and see if Ms. Tamanaha
11 knows the answers?

12 CHAIRMAN DEVENS: I think he's already
13 represented the questions he wants to ask are not in
14 her knowledge. If you want to try, Mr. Yuen.

15 MR. YUEN: I was going to ask why she
16 didn't study something, but she obviously can't answer
17 that, what she considered.

18 CHAIRMAN DEVENS: What do you want to
19 do, Ms. Townsend? Is this a critical piece that you
20 need for your case?

21 MS. TOWNSEND: I'm deciding. Hang on.

22 CHAIRMAN DEVENS: Okay.

23 MS. TOWNSEND: Is it possible for the
24 Commission to accept our written testimony on face
25 value, you know, understanding the basis of the

75

1 foundation?

2 CHAIRMAN DEVENS: You know, I'm always
3 of the preference to accept as much evidence as
4 possible. The only thing that is a bit unfair is that
5 Mr. Yuen and the other parties don't have a chance to
6 cross-examine and test the testimony. That to me is a
7 critical part --

8 MR. YUEN: Nor does the Commission.

9 CHAIRMAN DEVENS: -- it's a critical
10 part to the fairness of the whole process. So while
11 I'm inclined to want to accept it so that we have that
12 information, I think in this case it would probably be
13 more unfair to the other parties in the case not to
14 have that opportunity. So I would probably move to

15 strike it at this point.

16 If you want to bring the witness on you
17 certainly would be given that opportunity, but we're
18 also trying to move this proceeding along. We do have
19 something this afternoon, another agenda item.

20 MS. TOWNSEND: Dr. Fried is in
21 (inaudible) so couldn't figure on this afternoon. I'm
22 curious what analogy could be drawn between the way
23 the Commission treated the Cultural Impact Assessment
24 and Mr. Kanahale as the foundation witness and the
25 economic analysis and Tamanaha as the foundation

76

1 witness.

2 CHAIRMAN DEVENS: I'm sorry, what's the
3 question?

4 MS. TOWNSEND: Because Mr. Kanahale did
5 not actually write the report for the Cultural Impact
6 Assessment but was still able to answer some
7 questions, although none of mine, challenging why
8 certain weren't considered, certain people weren't
9 asked.

10 I'm wondering if the similar kind of
11 leeway can be given for the economic analysis.
12 Otherwise I would like to move to strike the Cultural
13 Impact Assessment. Do you understand what I'm saying?

14 CHAIRMAN DEVENS: Well, I don't know if
15 I followed all the way.

16 MS. TOWNSEND: Sorry.

17 CHAIRMAN DEVENS: No. It may just be
18 me, but we had Mr. Kanahale on the stand and everyone
19 had a chance to cross examine him. And that's really
20 the sword to get to the truth of the evidence that
21 we're presented with.

22 And as it stands Mr. Yuen doesn't have
23 that same opportunity, you know, with that testimony.
24 Otherwise, we're going to be trying cases by just
25 submitting paper with no one having a chance to really

77

1 question the validity and credibility.

2 At the end of the day we have to give
3 the appropriate weight to whatever is presented to us
4 and we will to the evidence that's already been
5 admitted and accepted by the Commission.

6 MS. TOWNSEND: Okay. Thank you.

7 CHAIRMAN DEVENS: Commissioner Lezy.

8 COMMISSIONER LEZY: If I may just make a
9 suggestion. I think you raised a good point that
10 maybe this goes to weight. I'd ask Mr. Yuen to ask
11 his questions and let the witness respond. And we can
12 then judge whether or not -- first of all, whether the
13 expert testimony should be admitted, secondly what

14 weight to give it. Just a suggestion.

15 CHAIRMAN DEVENS: No, I agree.

16 Commissioners have any other thoughts on this piece of
17 evidence? I'm inclined to go along with what
18 Commissioner Lezy is suggesting.

19 Mr. Yuen, if you want to ask whatever
20 questions you do have about the offered testimony, if
21 you want to take a crack at it and we can decide from.

22 MR. YUEN: I was going to ask whether
23 the witness considered the availability of industrial
24 zoned land along the Wai'anae Coast in the preparation
25 of the testimony.

78

1 CHAIRMAN DEVENS: Ms. Tamanaha, can you
2 answer that question?

3 THE WITNESS: Yes. Actually Stephanie
4 speaks specifically to that in her written testimony
5 and the fact that that was not considered in your
6 analysis.

7 Q (Mr. Yuen) Did she, did Stephanie Fried
8 consider the availability of industrial zoned land in
9 her analysis?

10 A No. She just pointed out that it was
11 not considered in the analysis that was prepared by
12 Tropic Land's -- or consultants for Tropic Land.

13 Excuse me.

14 MR. YUEN: We're talking apples and
15 oranges here. And I really don't think I can ask the
16 witness to go any further in terms of what Stephanie
17 Fried's thought process was, frankly.

18 CHAIRMAN DEVENS: Well, do you want to
19 ask her and just see what her response may be? She
20 may have had some conversations or she may have some
21 other source.

22 Q (Mr. Yuen) : Are you aware how much
23 industrially zoned land is available on the Wai'anae
24 Coast?

25 A I am not. Stephanie's report refers to

79

1 anecdotal -- anecdotes, anecdotal evidence of unused
2 industrial space along Farrington Highway and notes
3 that that was not taken into account in the analysis
4 prepared by the consultant for Tropic Land.

5 Q I'm going to show the witness what we
6 have marked as Petitioner's Exhibit 75B. And ask you
7 if you can comment on the availability or just how
8 much land is zoned for industrial purposes along the
9 Wai'anae Coast.

10 A Um, not including those -- I'm assuming
11 N/A means not available? The data was not available
12 for three of these TMK's. Let's see, 25 plus 1.5 is

13 26.5 plus 3 is 29, 49, 51, about 60. There's no units
14 on here. So I don't -- 60 of some undescribed unit.

15 Q Do you consider that a sufficient supply
16 of industrial zoned land along the Wai'anae Coast?

17 A I don't -- I wouldn't consider myself
18 qualified to answer that question.

19 MR. YUEN: No further questions.

20 CHAIRMAN DEVENS: City, any questions?

21 MS. TAKEUCHI-APUNA: No questions.

22 CHAIRMAN DEVENS: Mr. Yee?

23 MR. YEE: No questions.

24 MS. TOWNSEND: No questions.

25 CHAIRMAN DEVENS: Commissioners? Okay.

80

1 Nothing further.

2 THE WITNESS: Thank you.

3 CHAIRMAN DEVENS: Ms. Townsend, that is
4 the end of the witnesses that you wanted to call?

5 MS. TOWNSEND: Intervenor rests their
6 case.

7 CHAIRMAN DEVENS: Mr. Yuen, you had a
8 rebuttal witness you wanted to start, Mr. Okaneku?

9 MR. YUEN: Yes, Mr. Okaneku.

10 CHAIRMAN DEVENS: Mr. Okaneku, if we can
11 swear you in.

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12 RANDALL OKANEKU,

13 being first duly sworn to tell the truth, was examined

14 and testified as follows:

15 THE WITNESS: Yes.

16 CHAIRMAN DEVENS: Your name and address.

17 THE WITNESS: My name is Randall

18 Okaneku. My address is 1188 Bishop Street, Honolulu,

19 Hawai'i.

20 CHAIRMAN DEVENS: Mr. Yuen.

21 DIRECT EXAMINATION

22 BY MR YUEN:

23 Q Mr. Okaneku, you've previously testified

24 as the traffic consultant for Tropic Land. In

25 connection with your work on this Project I've asked

81

1 you to review what has been marked as Exhibit 74 and

2 74A, which is the Draft Environmental Assessment

3 prepared for the DOT highway improvements to the

4 intersections of Farrington Highway and Haleakala

5 Avenue and Farrington Highway and Nanakuli Avenue, as

6 well as reviewing a transcript of Mr. Sniffen's

7 testimony before the Commission on December 10th,

8 2010.

9 Have you reviewed these exhibits and

10 Mr. Sniffen's testimony?

11 A Yes, I have.

12 Q I first wanted to ask you some questions
13 regarding Mr. Sniffen's testimony. Mr. Sniffen
14 testified that the Department of Transportation was
15 rescinding its prior approval of the Traffic Impact
16 Analysis Report that you prepared because the
17 Statewide Transportation Office had not consulted with
18 the Highway's Division prior to approving the report.

19 Can you explain to the Commission the
20 procedure that was followed in obtaining DOT's
21 approval of your TIAR?

22 A DOT's initial review of the Traffic
23 Impact Analysis Report was coordinated by Kimura
24 International who prepared the EIS. I had no formal
25 discussions with DOT until their preparation for these

82

1 Land Use Commission hearings.

2 Q Is it normal to submit the TIAR to both
3 the Statewide Transportation Planning Office as well
4 as the Highways Division for review?

5 A Official submittal to the Department of
6 Transportation is made to the director of
7 transportation. He will forward those reports to
8 various branch of the Highways Division, one of which
9 will coordinate the response for the department.

10 Q Mr. Sniffen expressed a concern that DOT

11 could not determine whether there are any regional
12 impacts to the west of Farrington Highway other than
13 the intersection with Lualualei Naval Road because you
14 did not study any other intersections. And I believe
15 Mr. Prevedouros made the same objection to your study.

16 Do you believe these criticisms are
17 legitimate?

18 A Well, in preparation of a Traffic Impact
19 Analysis Report I consult what is prepared by the
20 Institute of Transportation Engineers for the
21 preparation of such reports. The ITE presents
22 criteria for the establishing study areas for the
23 traffic study.

24 One of the criteria is that all traffic
25 signals -- signalized intersections within a 2-mile

83

1 radius of the Project should be included in the study
2 area. The Project site is located 2.3 miles away from
3 Farrington Highway.

4 Another criteria is that the Project's
5 traffic -- if the Project traffic increases the
6 facility's peak hour traffic by more than 5 percent,
7 then it should be included in the study area. In this
8 case -- well, my calculations estimate that the
9 Project's traffic will increase Farrington Highway
10 traffic by 3.4 percent in the morning in the

11 southbound direction and 4.4 percent in the afternoon
12 in the northbound direction. So according to the ITE
13 guidelines the study area for the Traffic Impact
14 Analysis Report was adequate.

15 Q Is the ITE methodology and guidelines
16 that you've noted in the TIAR generally accepted by
17 both State DOT and Honolulu DTS for Traffic Impact
18 Analysis Reports?

19 A Yes.

20 Q Now, I believe you testified that you
21 recommended construction of a southbound left-turn
22 storage lane on Farrington Highway at Lualualei Naval
23 Road, is this correct?

24 A Correct.

25 Q And is this the same kind of improvement

84

1 DOT is preparing to make on Farrington Highway at
2 Haleakala and Nanakuli Avenue?

3 A Yes.

4 Q Did you review the traffic study that
5 DOT commissioned for these two intersections?

6 A Yes, I did.

7 Q And did this traffic study that DOT had
8 performed, did it include a study of traffic
9 conditions at other intersections along the highway

10 then, the two?

11 A No, it did not.

12 Q Do you find it inconsistent that DOT
13 recommends that you study more than the intersection
14 in question when DOT did not do so for its traffic
15 study?

16 A Well, the scopes for the DOT study and
17 the study for the Nanakuli Community Baseyard are
18 different. DOT's traffic study is limited by their
19 budget as well as study area to the two intersections.

20 Whereas a Traffic Impact Analysis Report
21 study area is basically limited to the size of the
22 project itself.

23 Q How did you characterize traffic
24 conditions at the Farrington Highway/Lualualei Naval
25 Road intersection?

85

1 A During the morning peak hour the
2 intersection of Farrington Highway and Lualualei Naval
3 Road operated at an overall Level of Service D.
4 Southbound Farrington Highway operated at Level of
5 Service E, with the left-turn movement from Farrington
6 Highway to Lualualei Naval Road operated at Level of
7 Service F.

8 In the afternoon the intersection
9 operates at Level of Service C with the southbound

10 left-turn movement from -- excuse me, the left-turn
11 movement from Lualualei Naval Road to southbound
12 Farrington Highway was operating on Level of Service
13 D.

14 Q Do current traffic conditions warrant
15 construction of a southbound left-turn storage lane on
16 Farrington Highway at this intersection?

17 A Yes, it does. I think, as I previously
18 testified, the left-turn movement from the through
19 lane of Farrington Highway pretty much shuts down the
20 left lane of Farrington Highway in the townbound
21 direction, basically reducing Farrington Highway to
22 one lane going toward Honolulu.

23 Q How does the traffic conditions at the
24 Farrington Highway/Lualualei Naval Road intersection
25 compare with the conditions at the Farrington

86

1 Highway/Haleakala Avenue and Nanakuli Avenue
2 intersections?

3 A According to the DOT study the
4 Farrington Highway/Haleakala Avenue intersection
5 operated at Level of Service E during both peak hours,
6 AM and PM peak hours. Nanakuli Avenue intersection
7 operated at Level of Service C in the morning and F in
8 the afternoon.

9 Q Again, I want to compare your prediction
10 for the AM and PM peak hour traffic conditions at
11 Farrington Highway/Lualualei Naval Road intersection
12 in the year 2020 both with and without construction of
13 the baseyard.

14 First, what did you predict for these
15 intersections with and without the baseyard?

16 A Well, the intersection of Farrington
17 Highway and Lualualei Naval Road during the AM peak
18 hour it will operate at Level of Service F during both
19 with and without the Project.

20 In the afternoon the intersection's
21 expected to operate at Level of Service D without the
22 Project and Level of Service F with the Project.

23 Q And how does your projection compare
24 with DOT's projection for the Nanakuli Avenue and
25 Haleakala Avenue intersections without the Project?

87

1 A DOT's traffic study for the
2 intersections at Haleakala Avenue and at Nanakuli
3 Avenue predicted Level of Service F conditions without
4 any traffic improvements.

5 Q So the conditions are essentially the
6 same at the three intersections.

7 A Yes.

8 Q DOT also commented that it could not

9 determine whether an additional right-turn departure
10 lane would be necessary from Farrington Highway going
11 up Lualualei Naval Road, or whether the storage lane
12 distance of 350 feet is adequate because it did not
13 know what kind of vehicle information you used in this
14 study. Was this information provided?

15 A Let's see. The last question first, the
16 vehicle classification. I did not take any vehicle
17 classification counts on Farrington Highway. I used a
18 default truck factor of 2 percent on the highway to
19 estimate the background truck traffic on Farrington
20 Highway. I expect a more detailed analysis to occur
21 during the design phase of the intersection
22 improvements.

23 Q You assumed the trip distribution in the
24 year 2020 of 75 percent of Project traffic entering
25 from Farrington Highway in the northbound direction

88

1 and 25 entering from the southbound direction with a
2 reverse split occurring with traffic in the PM hour.
3 DOT questioned whether this 75/25 split
4 should be more evenly weighted. Can you comment on
5 the basis for your projected trip distribution?

6 A The basis for the traffic assignment is
7 explained on Page 10 of the TIAR. Basically it's

8 based upon the future population growth of Wai'anāe
9 Coast and the 'Ewa Plain, which was presented in the
10 O'ahu Transportation Regional Plan prepared by OIPO.

11 Q DOT believes that because traffic
12 increase at the Farrington Highway/Lualualei Road
13 intersection is the direct result of the Project,
14 Tropic Land should bear the entire cost of the
15 intersection improvements. Do you agree with this
16 conclusion?

17 A No, I don't.

18 Q Can you explain why you do not agree
19 with the conclusion?

20 A Well, the improvements as far as the
21 left-turn lane from Farrington Highway is currently
22 warranted under existing conditions.

23 Lualualei Naval Road provides access to a
24 number of users including the U.S. Navy, shopping
25 center, other industrial parks and some residences.

89

1 The Farrington Highway is a regional
2 highway that provides access to all the Wai'anāe
3 Coast. So clearly any improvements to this
4 intersection will benefit the people up in Wai'anāe
5 and Makaha.

6 On previous projects that I've been
7 involved with DOT has established what is called a

8 fair-share assessment, which is basically a project is
9 expected to pay for a particular portion of its share
10 of a regional improvement because you really can't --
11 if it was like a shopping center having an
12 intersection on a highway, a new intersection on a
13 highway, obviously all the costs are borne by the
14 shopping center.

15 Whereas, in this case you have an
16 existing roadway, existing users, and basically
17 Nanakuli community baseyard is another user on this
18 roadway. So what DOT has done in the past is to
19 establish a fair-share assessment where each project
20 is assessed its percentage of peak hour traffic.

21 Q Mr. Sniffen testified that DOT was
22 making the intersection improvements at Haleakala
23 Avenue and Nanakuli Avenue because of safety concerns
24 and not due to traffic considerations.

25 To your knowledge is highway safety the
90

1 primary concern that DOT addresses in prioritizing
2 traffic improvements?

3 A Traffic safety is generally the number
4 one concern.

5 MR. YEE: I'm going to object to the
6 ability of the witness to testify as to the purpose of

7 the Department of Transportation. He can testify
8 about technical issues. He can testify to his
9 experience. He cannot testify to the intent and
10 purpose of the Department of Transportation.

11 CHAIRMAN DEVENS: Unless you have some
12 understanding.

13 THE WITNESS: I have a general
14 understanding as far as --

15 CHAIRMAN DEVENS: Based on what?

16 THE WITNESS: My experience in my
17 dealings with the Department of Transportation.

18 CHAIRMAN DEVENS: So you're talking
19 about a general sense?

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: Okay. With that
22 understanding you're still objecting, Mr. Yee? I
23 understand the objection. It is -- I agree with it.
24 But he's going to give a general understanding based
25 on past experience.

91

1 MR. YEE: From my perspective that's an
2 insufficient -- it's such a general description of the
3 basis of his information there's no way one can
4 understand why, what the basis of it is.

5 He has a conversation he wants to relate
6 that's fine. DOT told him something, that's fine. If

7 there's something in writing, that's fine. But he's
8 not the Department of Transportation. He can't
9 justify what they're thinking.

10 CHAIRMAN DEVENS: I understand. We'll
11 let the question go. Go ahead and answer.

12 Q (Mr. Yuen) : Go ahead and answer.

13 A Okay. Well, from my experience again
14 traffic improvements that the traffic safety is the
15 number one concern, is the main concern of any traffic
16 improvement. But traffic operations also is another
17 concern that it ties into traffic safety. Basically
18 if you have a poorly operated intersection or highway,
19 then you risk traffic safety.

20 With regard to this particular study I
21 found it curious that if safety is the number one
22 concern, there is a, basically a half page letter from
23 Department of Transportation, the traffic safety
24 branch, regarding the accident experience at these
25 intersections. And no real detail, no real numbers

92

1 were provided in the report. Most of the report was
2 operations.

3 Q Finally, the Project's opponents have
4 testified that development of the Project will result
5 in 500 heavy trucks an hour traveling on Hakimo Road

6 and Lualualei Naval Road every day. Is this a true
7 characterization of your traffic projections?

8 A Well, my traffic projections are based
9 upon peak hour analysis. So basically a 60-minute
10 period in the morning and a 60-minute period in the
11 afternoon. This is how we study impacts to any kind
12 of facility because that's the worst case conditions
13 that it will occur during the day.

14 So in the morning and in the afternoon
15 the site is expected to generate primarily employee
16 traffic which will consist of private vehicles, small
17 pickup trucks.

18 MR. YUEN: I have no further questions.

19 CHAIRMAN DEVENS: City? Mr. Yee?

20 CROSS-EXAMINATION

21 BY MR. YEE:

22 Q Mr. Okaneku, you heard -- did you hear
23 or read of Mr. Sniffen's testimony?

24 A I looked over his testimony, yes, I did.

25 Q So you understand that he had asked

93

1 for -- that he had suggested that additional
2 information was needed for the TIAR.

3 A Yes.

4 Q And the information you gave us today is
5 part of that additional information he was asking for,

6 correct?

7 A Um, it was a response to his request for
8 additional information, not yet.

9 Q And have you communicated, been given a
10 letter to the Department of Transportation with this
11 information?

12 A No, I have not.

13 Q Have you had substantive communications
14 or the Petitioner or Petitioner's agents had
15 substantive communications with the Department of
16 Transportation on these issues?

17 A Only informally with staff.

18 Q Okay. So if this Project's approved
19 would this be part of the anticipated continuing
20 conversation with the Department of Transportation?

21 A My understanding that the traffic
22 mitigation is still in question with the Department of
23 Transportation.

24 Q Let me rephrase. If this Project is
25 approved do you anticipate having further

94

1 conversations with the Department of Transportation?

2 A Yes.

3 Q And you'll be having conversations and
4 you'll be talking about the kinds of things you talked

5 about today.

6 A Yes.

7 Q Do you anticipate the Department of
8 Transportation would then provide you feedback about
9 their thoughts about your responses?

10 A Yes.

11 Q And it's just part of an ongoing
12 continuing conversation or discussion between the
13 Petitioner and the Department of Transportation,
14 correct?

15 A Yes.

16 Q Okay. So these issues are likely to be,
17 if this Project's approved, are likely to be decided
18 at a later date.

19 A Yes.

20 MR. YEE: Okay. I have nothing further,
21 thank you.

22 CHAIRMAN DEVENS: Ms. Townsend?

23 MS. TOWNSEND: I have a few questions,
24 thank you.

25 CROSS-EXAMINATION

95

1 BY MS. TOWNSEND:

2 Q Aloha, Mr. Okaneku. Thank you very much
3 for testifying again.

4 A Aloha.

5 Q You testified that current use of
6 Farrington Highway necessitates traffic improvements
7 at the Lualualei Naval Access Road.

8 A Yes.

9 Q And I'm just curious are there other
10 intersections anywhere on O'ahu that have low levels
11 of service and may be in need of improvement?

12 A Yes, there are.

13 Q Okay. So it's possible that the
14 Department of Transportation might be taking into
15 consideration things other than just L-O-S when
16 determining whether to make traffic improvements?

17 A Yes.

18 Q Thank you. You also testified that the
19 conditions between the three intersections are exactly
20 the same. The three intersections being Haleakala,
21 Lualualei Naval Access Road and Nanakuli.

22 A Well, the traffic volumes are increasing
23 as you get further south. But, yes, that's all Level
24 of Service, they pretty much operate at the same
25 conditions.

96

1 Q Okay. But I want to be really specific
2 here. So you said the conditions at the three
3 intersections are the same.

4 A The Level of Service conditions, yes.

5 Q Level of Service conditions.

6 A Yes.

7 Q Upon what are you basing that opinion?

8 A My analysis for this Project at
9 Lualualei Naval Access Road as well as another traffic
10 study I prepared for Nanakuli Village, which is
11 located between the two intersections -- well, future
12 Nanakuli Village.

13 Q And have you visited the property? Have
14 you visited these intersections?

15 A Yes.

16 Q So you're aware that there are at least
17 three public schools between Nanakuli and Haleakala
18 Avenues?

19 A Yes.

20 Q Are there any public schools on
21 Lualualei Naval Access Road?

22 A No.

23 Q Okay. So in reality on the ground the
24 conditions actually aren't exactly the same. There
25 are -- is it fair to say that there are facilities and

97

1 institutions and homes that maybe change the
2 conditions between the three intersections, influence
3 the conditions between the three intersections?

4 A I believe the schools are located about
5 mid-block between Haleakala Avenue and Nanakuli. So
6 they're not really at the intersection itself. So
7 they don't really impact the intersection directly.
8 But I believe one of the schools -- there's no access
9 onto Farrington Highway from, I can't remember the
10 name of the school but the one on the mauka side of
11 the highway there's no access. Basically it's a gated
12 access and the access from inside the valley.

13 Q But it's fair to say that in order to
14 get to school kids and their parents would use that
15 intersection to drive up to the mid-block?

16 A Yes.

17 MS. TOWNSEND: Thank you. No further
18 questions.

19 CHAIRMAN DEVENS: Commissioners, any
20 questions for this witness? Commissioner Lezy.

21 COMMISSIONER LEZY: Thank you, Chair.
22 Good morning, Mr. Okaneku. Thank you for your
23 testimony. I just want to be clear about something.

24 Mr. Yuen asked you some questions
25 regarding the criticisms that were leveled by both DOT

98

1 and the Intervenor's expert regarding your TIAR and
2 the scope of it, in particular I think the absence of

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3 an analysis of the impact of the intersections in the
4 southbound direction.

5 And if I understood your testimony
6 correctly you testified that because you applied the
7 ITE standards and criteria that you were not required
8 to take into account the impact of those
9 intersections, is that correct?

10 THE WITNESS: Yes.

11 COMMISSIONER LEZY: Okay. And I think I
12 heard you say that under the ITE standards it requires
13 you to look at intersections within a 2-mile radius of
14 the Project site, correct?

15 THE WITNESS: Signalized intersections,
16 yes.

17 COMMISSIONER LEZY: Okay. And you
18 testified that in this instance the Project is --
19 proposed Project, pardon me, is 2.3 miles from the
20 nearest signalized intersection, correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER LEZY: Do the ITE standards
23 require you to apply them without any sort of
24 discretion?

25 THE WITNESS: No. The ITE

99

1 recommendations are guidelines. So they're basically
2 guidelines given to traffic engineers and departments

3 in both preparing and when reviewing Traffic Impact
4 Analysis Reports.

5 COMMISSIONER LEZY: Okay. So if you, in
6 your professional opinion, believed that there were
7 peculiarities in the particular area, it would be
8 within your discretion to include a broader analysis
9 than what the ITE standards and guidelines provide?

10 THE WITNESS: Yes.

11 COMMISSIONER LEZY: Let me ask you:
12 Knowing Farrington Highway -- I'll tell you that's one
13 of the most peculiar roadways that I'm aware of on the
14 island of O'ahu -- wouldn't you -- wouldn't it make
15 sense in order to properly evaluate the potential
16 impacts, given the peculiarities of Farrington Highway
17 to two lanes, very heavy traffic, lots of congestion,
18 many signalized intersections over a short span,
19 wouldn't it have made sense to take into account and
20 offer an opinion in your analysis regarding the impact
21 that the downstream, the south downstream
22 intersections would have?

23 THE WITNESS: Well, as I testified
24 earlier, one of the criteria that ITE presents is the
25 amount of traffic that a project will add to existing

100

1 traffic or projected traffic without the project.

2 In this case in the morning the
3 southbound direction the Project traffic is only
4 3.4 percent.

5 Basically it's going -- the peak flow of
6 traffic from the Project is going in the contraflow
7 direction of what normal commuter traffic is.
8 Basically they're going northbound in the morning and
9 southbound in the afternoon. That's one of the
10 reasons why I did not go beyond the connection to
11 Farrington Highway.

12 I view Farrington Highway from Wai'anae
13 all the way down to Kahe Point as a regional, regional
14 facility. And there are problems where left-turn
15 lanes don't exist. There are no medians and no
16 sidewalks, those kinds of things.

17 But that, from my perspective, is a
18 regional, a regional problem that should be addressed
19 by someone larger than Nanakuli or Tropic Land, for
20 that matter.

21 COMMISSIONER LEZY: So if I understand
22 your testimony, then, you're saying that you don't
23 believe the impact that this particular Project would
24 have would have any -- bear any significance of the
25 Level of Service on Farrington Highway.

101

1 THE WITNESS: Yes.
Page 102

2 COMMISSIONER LEZY: And Mr. Yuen asked
3 you a question about something that's been discussed
4 frequently. And that is the types of vehicles that
5 will be coming out of this Project and the number of
6 vehicles.

7 And in particular he asked you whether
8 there was any validity to the statement that it's
9 estimated there will be some 500 heavy-type trucks
10 coming out of this potential project during the course
11 of the day.

12 And your testimony was just looking at
13 the peak hours you really, you only saw small vehicle
14 traffic, mostly employee vehicles.

15 Did you ever come to any conclusion
16 about the likelihood of what the number of heavy truck
17 trips that will come out of, that will be generated by
18 this Project?

19 THE WITNESS: I can't make a further
20 analysis of that type of assessment without knowing
21 the tenants of the Nanakuli Community Baseyard. (sic)
22 They could be high tech type of, warehouse,
23 warehousing.

24 Whether it's trucking companies or large
25 vehicles I couldn't make that assessment at this point

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1 without knowing exactly who these people are and who's
2 going to come into this baseyard.

3 COMMISSIONER LEZY: Did the Petitioner
4 ever provide you or did you ever ask for any
5 information on that issue as far as tenants that
6 expressed interest in the Project, anything like that?

7 THE WITNESS: Well, my understanding is
8 that they can't make any commitments until all of
9 these approvals have been processed. So, it's....

10 COMMISSIONER LEZY: So at this juncture
11 we really don't know what the potential impact may be
12 based on the type of vehicles that are coming out
13 aside from the guidelines that ITE provides.

14 THE WITNESS: That's correct.

15 COMMISSIONER LEZY: Thank you.

16 CHAIRMAN DEVENS: Commissioner Heller.

17 COMMISSIONER HELLER: Thank you.

18 Actually I had some of the same questions that
19 Commissioner Lezy had, but I just want to kind of
20 extend it a little bit.

21 First, with respect to the ITE
22 guidelines, you talked about the 2-mile radius and the
23 5 percent threshold. How does that relate or does
24 that relate to the concept of regional mitigation and
25 coming up with fair-share estimates?

103

1 THE WITNESS: Well, anything less than
2 5 percent ITE considers as not a significant increase
3 in traffic based upon their studies. So, for example,
4 if increase in traffic at Nanakulu Avenue intersection
5 increases by 3 percent, the operations as far as the
6 motorists and just operation of the intersection won't
7 be significantly increased.

8 Whereas, if it's over 5 percent then you
9 have a significant increase. So they can impact on
10 operations. That's where you start drawing the study
11 area line where the impact of the project expands up
12 until that 5 percent threshold.

13 COMMISSIONER HELLER: Okay. And so the
14 reason that you didn't include those is because you
15 estimated less than a 5 percent increase.

16 THE WITNESS: That's correct.

17 COMMISSIONER HELLER: Now, is it
18 possible that some other traffic engineer doing a
19 similar study might have come up with a slightly
20 different estimate, maybe 4.6 or 4.7 instead of 3.4?

21 THE WITNESS: Sure.

22 COMMISSIONER HELLER: Maybe 5.2 instead
23 of 3.4?

24 THE WITNESS: Yes. Sure.

25 COMMISSIONER HELLER: So just because

1 your estimate came out where it did, you left out
2 those other intersections.

3 THE WITNESS: Yes.

4 COMMISSIONER HELLER: Whereas it's
5 possible that somebody else might have included those
6 other intersections depending on their particular
7 study and its conclusions.

8 THE WITNESS: Yes. Well, I mean the
9 traffic study is based upon accepted guidelines as far
10 as trip generation and trip distribution. So while
11 another traffic engineer may come up, if they have
12 different information, may come up with different
13 numbers.

14 COMMISSIONER HELLER: But there's a
15 certain amount of judgment applied in taking the raw
16 data and converting it into your conclusions.

17 THE WITNESS: No. The traffic -- the
18 trip generation rates are pretty explicit as far as
19 the types of uses and the independent variables used
20 in establishing trip generation.

21 Trip distribution is a little more of an
22 art, but, again, my basis is not a number I picked out
23 of the air. It's something that I based upon
24 population projection, basically an employee pool in
25 the region.

1 COMMISSIONER HELLER: But in terms of,
2 for example, the breakdown between cars and heavy
3 trucks, you said you couldn't do that without more
4 information.

5 THE WITNESS: Yes.

6 COMMISSIONER HELLER: And wouldn't that
7 breakdown affect to some degree the demand placed on
8 these intersections?

9 THE WITNESS: Sure.

10 COMMISSIONER HELLER: If, for example, a
11 big truck that's turning left takes longer to
12 accelerate and get out of the way?

13 THE WITNESS: Yes.

14 COMMISSIONER HELLER: And that's
15 something that at least given the data that you have
16 at this point you couldn't really get into any detail.

17 THE WITNESS: No, I couldn't. Like I
18 said we need to know who the users are, who the actual
19 tenants are going to be in the baseyard. Whether, is
20 it a trucking company or is it guys making circuit
21 boards? What kind of activity is involved? Because
22 I'm given a generic industrial park that's how I
23 analyze it.

24 COMMISSIONER HELLER: So going back to
25 my questions about regional mitigation. Can you

1 really conclude that there's no need to consider
2 regional mitigation for the downstream intersections?

3 THE WITNESS: Well, based upon the
4 information that I have to this point, yes.

5 COMMISSIONER HELLER: Okay. Thank you.

6 CHAIRMAN DEVENS: Any other questions?
7 Do the parties have any further questions for this
8 witness?

9 MR. YUEN: None.

10 CHAIRMAN DEVENS: Okay. Mr. Yuen, I
11 wanted to propose we take our break now. And if we
12 reconvene at 1:00 you can put Mr. Yanagihara on.
13 Would that work for you folks?

14 MR. YUEN: Yes.

15 CHAIRMAN DEVENS: How much time do you
16 think you'll need for Mr. Yanagihara?

17 MR. YUEN: I won't take more than 15
18 minutes.

19 CHAIRMAN DEVENS: Okay. Because we have
20 something starting at 1:30 so I think that will work.
21 Okay. Is that okay with the parties? Okay. So we'll
22 take our break at this point. Thank you.

23 (Recess was held. 11:10)

24 CHAIRMAN DEVENS: (1:00). We're back on
25 the record. Mr. Yuen, you had your last rebuttal

1 witness, Mr. Yanagihara, is that correct?

2 MR. YUEN: That's correct.

3 CHAIRMAN DEVENS: Mr. Yanagihara, if we
4 can swear you in.

5 ARICK YANAGIHARA,
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do.

9 CHAIRMAN DEVENS: State your name and
10 address.

11 THE WITNESS: Good afternoon. My name
12 is Arick Yanagihara. My address is 1001 Bishop
13 Street, Suite 2690, Honolulu, 96813.

14 CHAIRMAN DEVENS: Mr. Yuen.

15 DIRECT EXAMINATION

16 BY MR. YUEN:

17 Q Mr. Yanagihara, at the conclusion of the
18 December 3rd hearing the Chair instructed Tropic Land
19 to provide a letter stating that Tropic Land had
20 reached an agreement with the Navy for the use of
21 Lualualei Naval Road prior to the conclusion of the
22 hearing.

23 We've introduced in evidence Petitioner's
24 Exhibit No. 71, which is a letter from you to the

108 25 Nmvml Fmcilimim Enginm ing Com nd Hmwmi'i;m

1 Exhibit 72 which is a letter from you to Navy Region
2 Hmwmi'i dm d Dmcm bm 17, 2010; mnd Exhibim 73 whichm
3 is a letter from you to the Commission also dated
4 December 17th, 2010.

5 Can you please summarize for the
6 Commission Tropic Land's progress in obtaining a
7 long-term access easement to Lualualei Naval Road?

8 A Well, based on the dialogue and concern
9 that was expressed to us by the Commissioners at the
10 last hearing on December 3rd, it was our perception
11 that perhaps we or I did not do an adequate enough job
12 in conveying to the Commission the high priority and
13 importance we did place on securing a long-term
14 easement for Lualualei Access Road, along with the
15 fact that for the past three years we have been
16 diligently attempting to secure a long-term easement.

17 That's why we felt it appropriate to send
18 a letter to the Commission detailing and
19 chronologizing our efforts over the past three years
20 ever since the City told us that they were not going
21 to take title to the road.

22 At this point we feel that significant
23 progress has been made and we do have an agreement in
24 principle with the Navy for a long-term easement for

109 25 Lualualei Access Road.

1 Q So as part of the letters you sent as of
2 December 17th, 2010 did Tropic Land accept the Navy's
3 offer of a long-term easement?

4 A Yes, we have. In hindsight based on the
5 directions we were given by the Commission, that in
6 essence was a kick in the pants to us and was a
7 catalyst to accept the fact that we need to move on
8 with this. We therefore sent two letters to the Navy
9 accepting their 5-year license agreement and accepting
10 their offer of a long-term easement.

11 We did have a follow-up meeting with the
12 NAFAC people on January 4, 2011 wherein we discussed
13 finalizing the terms and conditions as proposed by the
14 Navy. And subsequent to that our attorney, Mr. Yuen,
15 and their attorney are having active suggestions on
16 the matter.

17 Q Have you discussed the length of the
18 easement term with the Navy?

19 A Yes, we did. We did express concern
20 that a 10-year term as initially put forth in the
21 Navy's letter was totally insufficient. The local
22 NAFAC personnel agrees with us and have, in fact,
23 asked us to help provide them with arguments that they

24 could put forth to the Pentagon in order to put forth
25 a request for a longer term easement.
110

1 Q In your experience how long of a term do
2 you believe is necessary for -- a minimum term that
3 you would find necessary to go forward with this
4 Project?

5 A Let me backtrack a little. Because when
6 we first started discussions with the Navy in terms of
7 securing a long-term easement, we were first told
8 originally that they do not grant such an easement nor
9 do they grant long-term interest in real estate.

10 However, when we did our further research
11 we found that they did, in fact, grant a 50-year
12 easement for the Waipio Point Access Road to the city
13 and county. We put forth this findings to the Navy.
14 And their response to us, "They're a government
15 entity, you're a private entity. We're not sure
16 you're going to be around for that long."

17 Based on our further research we found
18 that they granted a long-term lease to the McNaughton
19 Group for the leasing and operation of the Moanalua
20 Shopping Center. So based on that, that resulted in
21 our ongoing discussions with the Navy.

22 And I do have some background in this
23 because I used to head the Bank of Hawaii's commercial

24 real estate loan division. And for the past 10 years
25 I've been a commercial mortgage broker.
111

1 For a commercial project of this nature
2 the normal amortization term is 25 years. Normally
3 lenders want a little cushion above that. So the
4 target that we told the Navy as far as the term would
5 be 30 years to start with, with some renewable
6 options.

7 Q So you feel a 30-year lease term for an
8 easement would be sufficient for you to go forward
9 with this Project?

10 A Yeah, it should be sufficient, although
11 we have asked for a longer term.

12 Q Turning to another facet of that
13 agreement. Can you tell the Commission whether other
14 landowners who use Lualualei Naval Road are willing to
15 participate with Tropic Land in the proposed easement
16 agreement with the Navy?

17 A We have had active meetings with the
18 principals of PVT who also own the Leeward land
19 property which is located right next to us. We've
20 also had a meeting with Mr. Joaquin Silva of Pine
21 Ridge Farms. And we had a full discussion with a
22 representative of Pacific Malls.

23 All of them expressed very strong
24 interest in securing a longer-term easement for the
25 road and are very pleased that Tropic Land is taking
112

1 the lead in accomplishing this on behalf of a proposed
2 LLC that would own and manage the road on their
3 behalf.

4 Q How long do you think it will take to
5 negotiate and have an easement agreement signed by the
6 Navy?

7 A Well, in our January 4th meeting we
8 asked the Navy personnel: How long can we expect it
9 to take them to put forth to the Pentagon and we can
10 obtain a final working easement that we agree to in
11 principle? They said probably anywhere from six
12 months to a year.

13 Q Finally, I'd like to clarify a point
14 that was left in question when the Office of Planning
15 cross examined you. OP has suggested as a condition
16 of reclassification that Tropic Land execute an
17 agreement for the use and maintenance of Lualualei
18 Naval Road prior to filing an application for a zone
19 change with the City and County of Honolulu.

20 I believe you testified that Tropic Land
21 should not be precluded from filing a zone change
22 application before finalizing an access agreement, but

23 the Commission should require the easement agreement
24 be signed as a condition subsequent to zoning.

113 25 Can you please explain to the Commission

1 what Tropic Land's position in regard to the timing of
2 the access easement, when that should be in place by?

3 A I believe I just mentioned that based on
4 discussions with the Navy they mentioned it should
5 take approximately six months to a year to finalize
6 the long-term easement.

7 On a parallel basis the Honolulu Planning
8 Commission will be conducting its hearing on February
9 16th to review the most recent draft of the Wai'anae
10 Sustainable Communities Plan amendment.

11 It is possible that if we get to that
12 hearing and the WSCP is put forth to the City Council,
13 that they could approve the amendment of WSCP before
14 we are able to secure a long-term easement.

15 The OSP has recommend that we complete
16 the construction of the backbone infrastructure for
17 this Project within 10 years from the date of the
18 proposed LUC approval.

19 So we don't think it will be reasonable
20 to impose artificial delays that would require us to
21 obtain approvals in a particular sequence. However,

22 we could accept the condition that requires us to
23 obtain the easement either as a condition of the
24 unilateral agreement that Tropic must sign prior to
25 approval of the zoning ordinance, or prior the sale of
114

1 condominium lots within the Project.

2 Neither of these approvals should cause
3 any delays in satisfying the Commission's construction
4 condition.

5 MR. YUEN: No further questions.

6 CHAIRMAN DEVENS: County, do you have
7 any cross?

8 MS. TAKEUCHI-APUNA: None.

9 CHAIRMAN DEVENS: None. Mr. Yee?

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 Q Mr. Yanagihara, regarding Exhibit 71
13 this is your letter accepting a 5-year easement, is
14 that correct?

15 A Yes, it is.

16 Q The five --

17 A It's a 5-year license agreement.

18 Q I'm sorry, 5-year license. Thank you.

19 The 5-year license does not allow you to operate a
20 light industrial baseyard. It allows you to construct

21 m lighm indum iml bm ym d; im mhm com cm?m

22 A It does allow us to enter formal legal
23 access to use Lualualei Access Road.

24 Q But for the purpose of construction, not
25 for the purpose of operating an industrial baseyard.

115

1 A That is correct.

2 Q So the long-term easement letter
3 acceptance is Exhibit 72, is that correct?

4 A I believe so.

5 Q Now, I just want to be clear about what
6 you said and the letter says and make sure you're
7 meaning the same thing. In your letter, and I'll just
8 read to you. It says: "You acknowledge the
9 requirements described in your letter of July 26, 2010
10 and would like to proceed with the finalization of a
11 formal long-term access easement for the Lualualei
12 Naval Road."

13 What I want to be clear on is when you
14 say you acknowledge the requirements does that mean
15 you accept the requirements?

16 A We accept the proposal for a long-term
17 easement. However, based on the meeting we had we are
18 still working on finalizing some of the specific terms
19 and conditions contained in that original letter that
20 we received from the Navy, which the NAFAC personnel

21 did acknowledge.

22 Q One of the conditions is the length of
23 the easement, right?

24 A Correct.

116 25 Q Other than the length of the easement

1 what are the other conditions that are set forth in
2 the Navy's letter with which you are still in
3 discussions and have not yet reached agreement?

4 A For example, one of the conditions was
5 the fact that contained in their letter was that we
6 bring the road up to county and state standards. We
7 did some research -- which was ongoing on our part
8 since we got the letter -- that according to our
9 engineer there are no really formal state or county
10 standards for a road that applies to our Project.

11 There may be subdivision standards for a
12 particular subdivision for the improvements to the
13 road, but nothing that was applicable to situations
14 such as ours.

15 In the Navy's case the original --
16 according to their interpretation what the Pentagon
17 wanted it was a liability concern. That's why they
18 wanted to make sure that there's no liability imposed
19 on the Navy should they grant the easement to a
20 third-party such as Tropic Land and the other

21 landowners.

22 Q Anything else?

23 A I believe those were the two major
24 concerns. The other concern was perhaps, I'm going by
25 memory, the cost that they would charge us for the

117

1 granting of the easement. Our position is that right
2 now the Navy's actually paying for maintaining that
3 road.

4 And just for education on your part.
5 When we first talked to the Navy they get partial
6 reimbursement by way of the license agreements.
7 However, that money does not go into the local NAFAC's
8 pocket. It goes to the general fund. The local NAFAC
9 people actually have to pay out-of-pocket for cost
10 maintaining and managing the road.

11 So our premise is: We're going to take
12 that off your hands. Why is there an additional
13 charge for us to just use the road? Plus the fact
14 that we already have an easement along the majority of
15 the road that doesn't have any requirements for
16 standards or payments.

17 Q So I just want to be clear then. The
18 remaining conditions that have not yet been agreed
19 upon would include the time period of the easement,

20 correct?

21 A Yes.

22 Q The costs that would be paid?

23 A Yes.

24 Q The standard to which the road will be

25 built?

118

1 A Correct.

2 Q Now, there was one requirement that you
3 reach an agreement with the other major landowners
4 along the road. Do you remember that?

5 A Yes.

6 Q Now, you're in agreement with that,
7 correct?

8 A Well, we hope to accomplish that
9 agreement with the other landowners on a parallel
10 basis as we move towards finalizing the agreement with
11 the Navy.

12 Q But you haven't reached an agreement
13 with the other landowners.

14 A It's kind of like a chicken and egg
15 situation. Until we finalize the terms of the Navy we
16 can't reach formal final agreement with the other
17 landowners.

18 Q Is your discussion an equal sharing of
19 costs among other landowners?

119 A Among the discussion -- not necessarily
20 equal sharing, but we have to come up with a formula
21 partially based on length of the road that's being
22 used, traffic usage. That concept has been discussed
23 in principle. So far we are moving towards obtaining
24 an agreement among the parties.
25

1 Q How many parties are there? You and the
2 others.

3 A Right now active discussions have been
4 held with PVT and its principles which also owns, as I
5 mentioned, Leeward Land, Joaquin Silva of Pine Ridge
6 and we had just an initial discussion with a
7 representative of Pacific Malls.

8 Q Then with respect to the timing of the
9 easement do you need to receive the zoning approval --
10 or do you intend to receive the zoning approval before
11 you execute the easement? Not at the application but
12 the actual receipt of approval?

13 A Well, we hope to obtain the easement as
14 soon as possible. Whether or not we get that before
15 we obtain final zoning approval is anyone's guess at
16 this moment.

17 Q Let me just express an issue and I'd ask
18 you for your comment on it. The Office of Planning

19 has concern if there's development on property and
20 then a failure to meet a condition.

21 If you receive your zoning approval and
22 you begin development on the premise you're going to
23 get an easement in the future, won't that pose a
24 problem if you aren't able to successfully obtain that
25 easement?

120

1 A Well, I presume that -- the current
2 unilateral agreement for the golf course has a
3 condition that access and a permanent easement to
4 Lualualei Road be obtained before the golf course can
5 be started. I presume, or we presume that a similar
6 condition will be imposed upon us should we not have a
7 permanent easement for Lualualei Access Road by the
8 City Council.

9 Q But if you've already done the grading
10 and the improvements and the infrastructure and
11 whatever buildings you might be building on it, and
12 then fail to get the Lualualei Naval Access easement,
13 won't that pose a problem?

14 A I don't think it's practical for us to
15 actually start construction until when the zoning is
16 finalized. And the finalization of the zoning would
17 be predicated, I presume, on us getting the permanent
18 easement.

19 Q So as a condition of obtaining the
20 zoning approval you anticipate that you need to get --
21 to execute a long-term easement with the Navy.

22 A Can you repeat that question?

23 Q As a condition of receiving the zoning
24 approval you anticipate that you will need to have an
25 executed access easement from the Navy.

121

1 A Well, we project that hopefully we'll
2 get the zoning approval. But one of the conditions of
3 that approval would be for us to get a formal
4 long-term agreement for the use of Lualualei Road
5 finalized.

6 Q Is that a condition that has to occur
7 before or after the zoning approval?

8 A What -- can you define what "zoning
9 approval" means?

10 Q Before you get approval --

11 A You can get a unilateral agreement that
12 would be subject to our getting the access agreement.
13 Once that is done then I presume zoning approval is
14 finalized. Am I misinterpreting your...?

15 Q Before you get City Council, Commission
16 approval do you anticipate having an executed easement
17 agreement with the Navy?

18 A Anticipate? We hope to have.

19 Q That's all. Thank you.

20 CHAIRMAN DEVENS: Ms. Townsend.

21 CROSS-EXAMINATION

22 BY MS. TOWNSEND:

23 Q Aloha, Mr. Yanagihara.

24 A Aloha.

122 25 Q To follow up on Mr. Yee's question let

1 me try ask it a different way. If you -- if Tropic
2 Land's unable to obtain an executed easement with the
3 Navy for long-term use of the road, would Tropic Land
4 still pursue zoning and the additional permitting?

5 A Can you repeat that question and go a
6 little slower?

7 Q Sorry. If Tropic Land is unable to
8 obtain an executed long-term easement for the Navy
9 road, would Tropic Land continue to pursue permitting
10 for the industrial park zoning, et cetera?

11 A Well, it depends on what "unable" means
12 because right now we have an agreement in principle.
13 It's a matter of us coming to an agreement on
14 finalizing some of the specific terms and conditions
15 of that agreement in principle.

16 Q Okay. So from your perspective -- let
17 me say back what I hear you saying and confirm for me

18 if it's correct. From Tropic Land's perspective the
19 agreement that you have with the Navy so far is
20 sufficient to motivate Tropic Land to continue with
21 the permitting process for this --

22 A Coupled with the discussions we have had
23 with the Navy and are ongoing, yes.

24 Q Okay. I notice in your list of people
25 considered in the road management group, you listed

123

1 PVT, West O'ahu Aggregate.

2 A Pardon?

3 Q West O'ahu Aggregate, the Silvas.

4 A Pine Ridge Farms.

5 Q Pine Ridge Farms. Okay. Pacific Mall.

6 Did you mention them?

7 A Yes.

8 Q Did you mention Mr. Lapenia?

9 A Well, we asked the Navy who do they
10 consider as people we need to talk to. They told us
11 that people who currently have a legal access and a
12 license agreement in effect with the Navy, that's who
13 they asked us to talk to. And those were the three
14 parties they mentioned. Because conceivably every
15 party along Lualualei Naval Access Road has an
16 alternate legal access besides just using Lualualei

17 Access Road.

18 Q Okay. I don't know I'm willing to
19 assume that. But okay. Let's move on.

20 A That's what we were told by the Navy.

21 Q Okay. Do you have any documentation of
22 your discussions with Pine Ridge, PVT or the Pacific
23 Mall?

24 A Well, contained in the letter that I've
25 sent to the Navy there's some e-mails I traded with

124

1 Albert Shigemura, the president of PVT, confirming the
2 fact that we have had active discussions and meetings.

3 As far as Mr. Silva we don't have a
4 formal e-mail. I'm not sure he has e-mail. But we
5 have met with him. And I did call and talked to a
6 representative of Pine Ridge -- Pacific Mall and asked
7 them if they are interested to the extent we move
8 along further with obtaining a permanent easement, if
9 they're interested in becoming part of a user group
10 and finalizing terms and conditions of that user
11 group. The answer was affirmative.

12 Q Okay. In your discussions with the Navy
13 did you ask them whether they would consider a 50-year
14 lease term?

15 A Yes, we did.

16 Q And what did they say?

17 A They said -- well, the discussions we
18 have had, as I mentioned, is with the local NAFAC
19 people. They said the formal decision-making is not
20 up to them. It's up to Washington. And they are not
21 certain whether we can, in fact, get a 50-year
22 easement.

23 They did grant a 50-year easement to the
24 City but again they told us that the City is a
25 government entity. We're a private entity. So there
125

1 was a difference. But then we also pointed out the
2 fact that they did get a long-term lease -- they did
3 grant a long-term lease to the McNaughton Group for
4 the Moanalua Shopping Center which also represents an
5 interest in real estate.

6 Q How long is that lease?

7 A I'm not sure, specifically sure. I know
8 it's more than 25 years.

9 Q It's more than 25 years.

10 A Yeah.

11 Q Did the local Navy representatives that
12 you work with, did they express how long of a lease
13 term seemed plausible to expect?

14 A Well, they asked us what would we like
15 to see. We told them a minimum of 30 years. And as I

16 mentioned in my testimony they asked us for supporting
17 information, arguments that they can put forth to
18 Washington on our behalf.

19 Q The timeframe that you mentioned, six
20 months to a year, this includes -- this is the
21 executed agreement within a year?

22 A That's what they mentioned that they can
23 get a final approval from Washington. We didn't go
24 into detail about having a formal signed, executed
25 agreement within that timeframe.

126

1 MS. TOWNSEND: Okay. Thank you.

2 CHAIRMAN DEVENS: Commissioners, any
3 questions for this witness? Commissioner Jencks.

4 COMMISSIONER JENCKS: Thank you for your
5 testimony today. Appreciate it. And I appreciate
6 your coming back with some responses to our concerns
7 we had at our last meeting. Just a couple questions.

8 You mentioned you had agreement in
9 principle with the Navy. Do you have anything from
10 them like a Letter of Intent or anything that says
11 "Yes, we discussed this. And we agree on these parts
12 of the issues. We disagree..."? Do you have anything
13 at all from the Navy?

14 THE WITNESS: Well, it started with a
15 letter from the Navy dated sometime in July offering

16 the long-term easement on December 17. We sent a
17 letter back to them.

18 We did have a meeting on January 4, I
19 believe, I don't have it with me -- we do have an
20 email from M. Tanaka of NAFAC confirming the meeting
21 of January 4. I'll have to go back to my computer and
22 locate that e-mail.

23 COMMISSIONER JENCKS: It seems to me the
24 Commission asked you to come back with some kind of
25 commitment. I've read the letters you sent to the
127

1 Navy. That's fine. You're agreeing to their terms
2 and conditions. But it seems to me you'd want to
3 bring back something that says, "Okay, yes. We the
4 Navy agree and we will move forward on an agreement in
5 principle," but we have nothing.

6 THE WITNESS: Understood.

7 COMMISSIONER JENCKS: Okay. On the
8 requirement to improve the road you seem to have some
9 experience in development. What would be a reasonable
10 standard for your improvements to the road? You
11 talked about there is no, in your mind, any standard
12 with City and County. What would you be expected to
13 do?

14 THE WITNESS: Well, our personal opinion

15 is the Lualualei Naval Road is an overengineered road.

16 It's wide, it's made to withstand whatever it is the

17 Navy has been transporting on the road.

18 Who knows what they actually had back in

19 that naval base. We have seen huge convoys go up and

20 down the road, I mean huge trucks.

21 COMMISSIONER JENCKS: Have you estimated

22 the cost to improve the road to some reasonable

23 standard?

24 THE WITNESS: In terms of cost you're

25 talking about -- if you're talking about sidewalks,

128

1 streetlights, curbs, gutters, no, we have not done the

2 estimate.

3 COMMISSIONER JENCKS: Okay. With the

4 other owners that share the road that would be

5 expected to share cost, did you discuss any costs with

6 them?

7 THE WITNESS: Well, all the other owners

8 also agree with us that Lualualei Access Road in its

9 present state is adequate for our needs.

10 COMMISSIONER JENCKS: But do you have

11 anything from those other owners in writing that says,

12 "Yes, we agree to participate in (a) the improvements

13 and in (b) the maintenance of the road"?

14 THE WITNESS: No.

15 COMMISSIONER JENCKS: You don't.

16 THE WITNESS: No.

17 COMMISSIONER JENCKS: You have banking
18 experience.

19 THE WITNESS: Yes, I do.

20 COMMISSIONER JENCKS: In your opinion as
21 a banker, if someone came to you with a project and
22 said, "I have 25 acres of land that I want to build a
23 light industrial park on. The only problem is that I
24 don't have any secured access. But I want a loan, I
25 want to get a loan to construct a light industrial
129

1 park for \$20 million," what do you think the odds are
2 you're going to be able to get a loan to construct a
3 light industrial park with no long-term fixed access?

4 THE WITNESS: I believe it would be
5 subject to our securing that easement. By "securing"
6 meaning obtaining that easement, not necessarily
7 securing it, right?

8 COMMISSIONER JENCKS: So you're saying
9 the odds are you wouldn't be able to get a loan until
10 you secured the easement.

11 THE WITNESS: If we did not have that
12 agreement finalized and in hand. We could get a
13 letter of interest and intent from the bank saying

14 that a formal commitment would be subject to your
15 getting a formal easement that's acceptable.

16 COMMISSIONER JENCKS: So in reality if
17 we -- when was the last meeting, was December 3rd I
18 think we were here -- we're really not any different
19 today than we were on December 3rd. You've had some
20 discussions.

21 You have told the Navy that you would
22 agree to this. But we have nothing. We have nothing
23 as Commissioners that says, "We have an agreement in
24 principle. We have a letter of intent."

25 We have nothing in paper that tells us
130

1 with regard to this redesignation that we have any
2 secured long-term agreement in principle or interest
3 in this access.

4 THE WITNESS: Yeah. Based on what my
5 understanding is of what you're getting at no.

6 COMMISSIONER JENCKS: Okay. That's all
7 I have. Thank you.

8 CHAIRMAN DEVENS: Commissioner Lezy.

9 COMMISSIONER LEZY: Thank you, Chair.
10 Good afternoon, Mr. Yanagihara. Thank you for your
11 testimony. Just a couple of questions. My first
12 question to you is: When we last had this discussion
13 one of the points that was raised by Tropic Land

14 regarding the issue of the long-term easement, and in
15 particular the difficulties encountered in dealing
16 with the U.S. Navy, was that the personnel command
17 changed frequently. And essentially you would end
18 up --

19 THE WITNESS: The command of NAFAC has
20 changed, yes.

21 COMMISSIONER LEZY: Right. So you would
22 end up in a position where you would have discussions,
23 have discussions, have discussions, and then you have
24 someone new come in. And it would essentially put you
25 back in square one. Do you have an idea how long the

131

1 current commander is going to be in place?

2 THE WITNESS: Well, since -- we have not
3 met the current commander. But prior to that we did
4 get a letter back for the approval with Washington's
5 blessing to move forward with the easement which we
6 accepted.

7 But again, to be honest with you, I
8 don't know how much of an important active role the
9 current NAFAC commander has in this process based on
10 their rotation. I do know he has some influence but
11 I'm not sure what formal say he has in finalizing the
12 approval.

13 As I documented in my letter to
14 Commissioner Devens and the rest of the Chair (sic),
15 how we actually got this kick started was by seeking
16 assistance of then Congressman Abercrombie's office
17 which, based on their intervention to the process,
18 helped kick start the process for us again.

19 COMMISSIONER LEZY: And I think that
20 leads into my next question. I'm a little puzzled.
21 You testified that the points that were raised at the
22 last meeting, the concerns about the interplay of the
23 access and the importance of the access to this
24 Project, I think you used the term kind of "kicked you
25 folks in the butt" to do something.

132

1 And over the last 60 days there have at
2 the very least been some signif -- sounds like
3 significant discussions with the Navy and the adjacent
4 landowners as far as the group that will be
5 responsible or would be responsible for maintaining
6 the road.

7 But, you know, I look back at the
8 history of the correspondence. And we're literally
9 talking about a year-and-a-half of time that's passed.
10 And I'm just wondering why was it that Tropic Land
11 didn't identify this as a critical issue to this
12 district boundary amendment process?

13 And why Tropic Land didn't put the same
14 sort of effort into getting the things done now, that
15 it is attempting to get done 12 months ago?

16 THE WITNESS: Well, I believe we have,
17 as I mentioned, a high priority has been based on
18 that. We have been doing our darndest in trying to
19 obtain the formal easement, but being faced with the
20 bureaucracy of the NAFAC has this stretched process
21 out two, three years to where we are today.

22 I mean I believe the documentation that
23 we provided demonstrates the frustrations we've had in
24 trying to get them to grant us a long-term easement.

25 I mean I'm not sure what else I can respond to you in
133

1 that regard.

2 COMMISSIONER LEZY: But within the last
3 60 days there apparently has been some sort of turn
4 around.

5 THE WITNESS: Well, we did accept their
6 letter. We did have a follow up meeting. But even
7 prior to that we weren't sitting on our okoles. We
8 were conducting due diligence in terms of our
9 insurance requirements, looking at some of the issues
10 in terms of what is considered standard.

11 There was also a question of about how

12 much of an access easement we already had in place on
13 Lualualei Access Road which, we discovered that for
14 the whole front of our property we already have an
15 easement that doesn't have any conditions for payment,
16 that doesn't have any conditions for bringing it up to
17 a certain standard.

18 There was also an interpretation that
19 conceivably, conceivably we may have already had
20 access to Farrington Highway by virtue of the rest of
21 the road. But it was a legal opinion that perhaps at
22 this point in time we felt it was not appropriate to
23 pursue.

24 So therefore we felt, based on the
25 discussions we had in the last December 3rd meeting,

134

1 let's move forward. Let's accept the terms of the
2 Navy's letter, and let's finalize some of the
3 conditions contained therein that creates a problem
4 for us.

5 COMMISSIONER LEZY: And just my last
6 question. The last meeting, the admonition from the
7 Commission was before the close of Tropic Land's case
8 that you were to have a long-term easement in place.
9 And that obviously has not occurred, correct?

10 THE WITNESS: It has not occurred
11 unfortunately. And we've been trying.

12 COMMISSIONER LEZY: And I assume today
13 you will close your case.

14 THE WITNESS: Pardon?

15 COMMISSIONER LEZY: I assume today with
16 the end of your testimony your case will be closed.

17 THE WITNESS: I presume so. Correct,
18 Bill?

19 COMMISSIONER LEZY: Thank you.

20 CHAIRMAN DEVENS: Any other questions
21 from the Commissioners? Do you have any redirect,
22 Mr. Yuen?

23 REDIRECT EXAMINATION

24 BY MR. YUEN:

135 25 Q I want to just follow up on a couple of

1 areas. First, in response to Commissioner Lezy's
2 question you mentioned that Tropic Land does have an
3 easement to a portion of the road without any
4 conditions.

5 I want to refer you to Exhibit No. 33
6 which is Land Court Order No. 45711. Is this the
7 basis of your conclusion that Tropic Land presently
8 enjoys an easement to a portion of the road?

9 A Yes, it is.

10 Q In response to Commissioner Jencks'

11 questioning as to if you were to approach a bank and
12 say you wanted a loan for this Project, and you
13 presently have the agreement that you have from the
14 Navy but no formal access easement, would you grant a
15 loan or would you be able to obtain a loan.

16 In the same manner wouldn't you also need
17 approval from the Land Use Commission in order to get
18 that loan?

19 A Yes.

20 Q And approval for the change in zoning?

21 A Yes.

22 Q And also approval -- in order to get the
23 change in zoning you'd also need the Wai'anae
24 Community Plan approval, would you not?

25 A Correct.

136

1 Q And since you're going to do a
2 condominium sales would you also be required to have
3 obtained your preliminary public report from the Real
4 Estate Commission?

5 A Correct.

6 Q So there are a number of conditions that
7 you would have to satisfy as a part of any commitment
8 you received from the loan before you actually
9 received the money?

10 A Most definitely.

11 MR. YUEN: No further questions.

12 CHAIRMAN DEVENS: Any other questions
13 from the parties? Mr. Yee, you have more questions?

14 MR. YEE: No. But if I could.

15 Commissioner Lezy had asked the Office of Planning a
16 question at the last hearing as to the term that the
17 Office of Planning would consider to be a long-term
18 easement.

19 I just wanted to report that the Office
20 of Planning independently determined that 30 years
21 would be an appropriate time period both because it's
22 an issue of financing as well as actually an issue
23 that state lands are leased out for 30-year periods.

24 So you had asked us what we would
25 consider to be long term. Our conclusion is 30 years.

137

1 CHAIRMAN DEVENS: Thank you.

2 Commissioner Lezy, do you have any follow up on that?

3 COMMISSIONER LEZY: No, thank you.

4 CHAIRMAN DEVENS: Commissioners have
5 anything else you want to ask? Nothing. Thank you
6 very much, Mr. Yanagihara. Mr. Yuen, does that
7 conclude your presentation?

8 MR. YUEN: That concludes my case. I
9 want to just have the clerk verify that our Exhibits 1

10 through 82 have been introduced into evidence.

11 MR. HAKODA: (off mic) Yes, they have.

12 CHAIRMAN DEVENS: He does confirm that.

13 If the parties have all concluded their case, which I
14 understand is the case, then we will then close the
15 evidentiary portion at this time.

16 Whatever evidence has been accepted into
17 evidence or admitted into evidence is in evidence at
18 this point.

19 So given that the parties have rested we
20 will close the evidentiary portion of this case. What
21 I'd like to do is set some of the deadlines for
22 proposed findings of fact, conclusions of law and the
23 decision and order.

24 Why don't I start by giving you folks
25 the dates and we'll work backwards from there as far

138

1 as what we'd like to ask you to submit to us and the
2 other parties.

3 The first item will be February 24, 2011
4 for the parties to submit, file and serve your
5 proposed findings of fact, conclusions of law and
6 decision and order.

7 March 14 will be the deadline to submit
8 comments or objections to those proposed findings of
9 fact, et cetera.

10 And responses to the objections will be
11 due no later than March 21st. Any of you need me to
12 repeat those deadlines? So it's February 24th,
13 March 14th and March 21st. And we will schedule oral
14 arguments sometime after we receive the pleadings.

15 In drafting your proposed findings and
16 conclusions and decision and order we ask that you
17 make reference to the witness, date, page and line
18 from the transcript. And also make the appropriate
19 citation to any exhibits you may reference in your
20 proposed.

21 We also have standard conditions that we
22 ask you to consider to include in the proposed
23 findings of fact, et cetera. If you don't have them
24 you can get a copy from the Commission staff.

25 To the extent you want to stipulate to
139

1 any of these proposed findings we encourage you to do
2 so. Other than that, the parties have any questions
3 about the deadlines or the forms? Hearing none,
4 Commissioners want to add anything more? Any of the
5 parties have anything more they want to add for the
6 record? Hearing none --

7 MR. YUEN: Nothing, Mr. Chairman.

8 CHAIRMAN DEVENS: Okay. I think that

9 concludes where we're at right now. We do want to
10 thank the parties for their presentations that you
11 have made. We, as a Commission we believe that all of
12 the parties should be confident that their attorneys
13 have represented their interests very well and
14 excellent presentations by you all.

15 We appreciate you working with the staff
16 to streamline the process. And we'll await the
17 proposed and set the oral arguments from there. Thank
18 you very much.

19 MR. YUEN: Thank, Mr. Chairman.

20 CHAIRMAN DEVENS: Thank you. We'll go
21 in recess.

22 (Recess was held. 1:40-1:50)

23 xx

24 xx

25 xx

140

1 xx

2 A P P E A R A N C E S

3 Docket No. SP09-403 SUP Waimanalo Gulch Status Report

4

5 For the City and County
6 Department of Environmental Services:

7 DANA VIOLA, ESQ.
8 Deputy Corporation Counsel
SHARON BLANCHARD, ESQ.

lucfeb2-11.txt

Deputy Corporation Counsel
TIM STEINBERGER,
Director, ENVIS

9

10

11 Department of Planning and Permitting:

12

RAYMOND YOUNG

13 Intervenor Colleen Hanabusa: RICHARD N. WURDEMAN, ESQ.

14 Ko Olina Community Association

Senator Maile Shimabukuro: WYETH MATSUBARA, ESQ.

15

BENJAMIN MATSUBARA, ESQ.

16

17 Also Present: ABBEY MAYER, KOCA representative

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19

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141

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I N D E X

3

STATUS REPORT WITNESSES

PAGE

4

Joe Whelan

146

5

Tim Steinberger

212

6

7

PUBLIC WITNESSES

	lucfeb2-11.txt	
8	Chuck Krause	251
9	Edwin Arellano	253
10	Charles Leonard	255
11	Lee Mansfield	257
12	Cynthia Rezentes	258
13	Patricia Patterson	261
14	William and Sara Barnes	263
15	Clair and Peter Van Wingerden	266
16	Alice Greenwood	268
17		
18		
19		
20		
21		
22		
23		
24		
25		
142		
1		
2	SP09-403 Status Report	
3	CHAIRMAN DEVENS: All right. We're back	
4	on the record. Next item on the agenda is Docket No.	
5	SP09-403. This is a status report on a Special Use	
6	Permit allowing for the expansion and continued	
7	operation of the Waimanalo Gulch Sanitary Landfill, on	
	Page 144	

8 a limited basis and with conditions that was approved
9 by the Commission on October 22, 2009.

10 Before we get started can we have the
11 parties note their appearances please.

12 MS. VIOLA: Good afternoon. Deputy
13 Corporation Counsel Dana Viola. Also present is
14 Deputy Corporation Counsel Sharon Blanchard. And I
15 have the Director of the Environmental Services, Tim
16 Steinberger.

17 CHAIRMAN DEVENS: Good afternoon to you.

18 MR. YOUNG: Good afternoon, Chairman
19 Devens. This is Raymond Young from the Department of
20 Planning and Permitting.

21 CHAIRMAN DEVENS: Good afternoon to you.

22 MR. WURDEMAN: Good afternoon. Richard
23 N. Wurdeman with Intervenor Colleen Hanabusa who's
24 present.

25 CHAIRMAN DEVENS: Good afternoon.

143

1 MR. W. MATSUBARA: Good afternoon, Chair
2 Devens, Commissioners. Wyeth Matsubara, Ben Matsubara
3 on behalf of Ko Olina Community Association, Senator
4 Maile Shimabukuro. With me as representative of KOCA
5 is Abbey Mayer.

6 CHAIRMAN DEVENS: Good afternoon to you

7 all. I believe we did get the substitution of counsel
8 from your office, Mr. Matsubara. Mr. Wurdeman, I
9 understand that you are making an appearance for the
10 Intervenor in this case.

11 MR. WURDEMAN: Yes, that is correct.

12 CHAIRMAN DEVENS: I'd like to make a
13 disclosure if I may. I do know Mr. Wurdeman. He has
14 done some work with the union that I'm affiliated
15 which is SHOPO. Obviously SHOPO is not involved in
16 this matter in any way, but I make that disclosure and
17 ask the parties if they have any concerns or
18 objections they can raise them at this time. (pause)
19 Hearing none we'll proceed.

20 We asked for this status, informational
21 meeting for the following: In light of the recent
22 discharges of the municipal solid waste into the ocean
23 from the Waimanalo Gulch Sanitary Landfill, the
24 Commission requested the Department of Environmental
25 Services appear before the Commission to provide a

144

1 status report regarding the circumstances surrounding
2 the recent discharges and what steps are being taken
3 to prevent any reoccurrence.

4 The Commission also requested that the
5 Department provide an update regarding the status of
6 the City's efforts to identify and develop alternative

7 sites to replace or supplement Waimanalo Gulch
8 Sanitary Landfill as required by Condition 4 of the
9 Commission's October 22, 2009 Decision and Order in
10 this matter.

11 In addition, the Commission requested
12 that the Department take this opportunity to update
13 the Department of Environmental Services July 28, 2010
14 report regarding compliance with the 16 conditions
15 contained in the Commission's Decision and Order.

16 On January 31st, 2011 the Commission
17 received e-mail correspondence from Doug and Sherrill
18 Sleeter regarding the Waimanalo Landfill.

19 On February 1st, 2011 the Commission
20 received Notice and Appearance of Counsel advising
21 that Matsubara-Kotake would appear as counsel for
22 Intervenors Ko Olina Community Association and Maile
23 Shimabukuro.

24 On February 2nd, 2011 the Commission
25 received written correspondence via email from a

145

1 William and Sara Barnes. In addition, today the
2 Commission has received a letter dated February 2nd,
3 2011 from Director Steinberger which enclosed a status
4 report as requested. In addition, also filed today
5 was Ko Olina Community Association and Maile

6 Shimabukuro's report on the impacts regarding the
7 discharges from Waimanalo Gulch Sanitary Landfill.

8 Did the parties get a copy of the two
9 filings that were submitted today? Looks like
10 everyone -- sorry, you did not receive it?

11 MR. YOUNG: Was it handed out today or
12 was it delivered?

13 CHAIRMAN DEVENS: It was filed today.
14 We just got it a few minutes ago.

15 MR. YOUNG: We didn't.

16 CHAIRMAN DEVENS: We'll get a copy to
17 you. The procedure today will be to allow the
18 Department of Environmental Services to present its
19 status report, then allow the parties the opportunity
20 to offer brief comments and then allow for public
21 testimony on these matters.

22 At this point we'll have the
23 Environmental Services go first.

24 MR. STEINBERGER: Thank you. To answer
25 the first two points we've asked our contractor Waste

146

1 Management Hawaii. They are contracted by the City
2 and County of Honolulu to operate the landfill. And
3 then the second two issues, the City will respond to.
4 So if I may I'd like to let Waste Management, Mr. Joe
5 Whelan respond to those.

6 CHAIRMAN DEVENS: We're going to have to
7 swear you in first, sir.

8 JOE WHELAN,
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: State your name and
13 address, please.

14 THE WITNESS: My name is Joe Whelan, 44-
15 051 Kainui Place Kaneohe, Hawai'i.

16 CHAIRMAN DEVENS: Go ahead, sir.

17 THE WITNESS: My name is Joe Whelan.
18 I'm the general manager of Waste Management of Hawaii.
19 We operate three landfills in the state, one here,
20 one on the Big Island and one on the island of Kaua'i.
21 What I'd like to do initially is just briefly go over
22 the map behind me and show you the features of the
23 landfill. And then I'll explain what happened
24 throughout the various storms. Everybody hear me
25 okay?

147

1 This is the landfill itself, the older
2 portion. And of course the area up here is the area
3 that was just granted the expansion in 2009. When you
4 look at this map it's from 2008. So there's a fair

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5 amount of this gulch right here that now has a blue
6 tone to it because that's where the excavation is
7 ongoing.

8 By way of features on the map you'll see
9 here is the ash monofil. All of ash that's generated
10 from the H-Power plant goes to Waimanalo Gulch. It's
11 disposed of here in the monofil.

12 This area here is the existing or older
13 portion of the landfill that commenced operations I
14 believe around 1989.

15 The area right here is the expansion
16 from 2003 which are noted as the E cells. The
17 property boundary goes up here and then comes, follows
18 back down the ridgeline here.

19 CHAIRMAN DEVENS: Mr. Whelan, I
20 apologize for interrupting. We're familiar with the
21 background. We just want to know what happened. We
22 want to know how this thing happened.

23 THE WITNESS: Okay. The watershed that
24 feeds the Waimanalo Gulch Landfill is up in this area.
25 The long-term plan has always been to divert water

148

1 that comes from here through this gulch currently
2 through the landfill to around this landfill.

3 And how that diversion was going to take
4 place is that along here there's a diversion berm that

5 is under construction. It's about 14 or 16 feet high
6 and goes from one side of the canyon to the other.

7 What it is designed to do is divert
8 water across here to an open box culvert that runs
9 1500 feet or so. It will then dump into 7-foot
10 diameter Fiberglas piping which goes along the
11 ridgeline here and down into this existing concrete
12 channel diverting all of the stormwater around the
13 active portion of the landfill.

14 That construction period began in, I
15 believe, November of 2009 and is under construction as
16 we speak. Any other questions on the actual landfill
17 itself?

18 CHAIRMAN DEVENS: No. You know, we're
19 trying to get to find --

20 THE WITNESS: Right.

21 CHAIRMAN DEVENS: -- out -- what this
22 Commission knows is basically what we've heard in the
23 media. And I can tell now personally it's been very
24 disturbing to hear what happened. Of course we don't
25 have all the facts.

149

1 THE WITNESS: Right.

2 CHAIRMAN DEVENS: And we're just trying
3 to find out what happened and the extent of the spill.

4 THE WITNESS: The first storm occurred
5 on December 19th, according to the Palehua rain gauge.
6 We got around 7.9 inches of rain in about 13 hours.
7 Stormwater from that area flowed into the new
8 expansion area and inundated cell 6.

9 As I just mentioned the long-term
10 stormwater diversion channel at that time was several
11 weeks away from being functionally complete. Which
12 means that it wouldn't be complete from a contract
13 standpoint, but it would, in fact, have diverted the
14 majority of the water around the landfill and out into
15 our existing sedimentation basin.

16 At that time after the first storm,
17 because of the fact that water had ponded on top of
18 cell 6, we then created a dam, if you will, or a berm
19 on the south side of that cell 6 in order to keep that
20 water from becoming a catastrophic event and leaving
21 the site.

22 At that time we also brought in
23 additional pumps, fortified all of our ditches. We
24 reinforced the existing 36-inch diversion berm and
25 diversion piping that were installed to handle

150

1 stormwater that fell in the cell 6 area during the
2 time of construction of the long-term stormwater
3 diversion channel.

4 On December 27 we received another major
5 storm where we got just under 4 inches of rain in 4
6 hours. At that time we then, again the cell 6 area
7 filled again with water. We reinforced the temporary
8 berm that we constructed before, used the existing
9 pumps, reinforced all of our diversion structures
10 again.

11 The last storm, which was the major one,
12 happened on the evening of January 12th into
13 January 13 where we received 10.7 inches of rain in a
14 24-hour period which was 7 and-a-half inches of rain
15 in about 6 hours. The sheer volume of that amount of
16 water again went in and filled up the area of cell 6
17 and caused that water to then go through the
18 sedimentation basin and off site.

19 As far as our cleanup efforts: Once we
20 realized that the storm was that magnitude on the day
21 of the storm, the 13th, we and the City had a meeting,
22 teleconference meeting with the Department of Health,
23 explained the problems. At that time we then began
24 assembling a team to start performing sampling as well
25 as putting some warning out, warning signs at our

151

1 drainage outlet which ultimately turned into
2 additional signs going in a north and south direction

3 at the Ko Olina Resort.

4 We first discovered municipal solid
5 waste including some amounts of medical waste had
6 escaped the landfill later Thursday evening. At that
7 time then we began cleaning up that waste onsite at
8 the same time they were performing the initial
9 sampling event as well as noticing the beaches.

10 The following day, Friday, we then went
11 down to our outfall and cleaned up what we could at
12 the outfall. Since that day, which was the 13th-- or
13 14th, we dispatched cleanup crews every day through
14 Friday the 21st. Where as we were notified that there
15 was any type of waste that was found on a particular
16 beach, then we would send a crew out there to clean up
17 whatever we found on the beaches.

18 We did coordinate with other agencies,
19 with DOH. EPA arrived on the site on Saturday two
20 days after the storm and were there for approximately
21 five days. We worked well with the City Department of
22 Health. We've had multiple meetings over that time to
23 coordinate the cleanup effort.

24 The new stormwater diversion system that
25 would have prevented the majority of this water from

152

1 inundating the facility, as I mentioned, is about two
2 weeks away from being functionally complete. Had it

3 been completed it would have taken most of the waste
4 around, most of the stormwater around the landfill and
5 not through it.

6 This diversion system is an
7 approximately \$15 million project. So it's not
8 something that lends itself to be done in a very short
9 time. As I mentioned, we began construction
10 activities in November of 2009. And that project is
11 still underway. After completion of the entire
12 project obviously the system will be much better
13 suited to handle any future rainwater storms.

14 Currently we are in the process of
15 pumping out our sedimentation basin and cleaning it
16 out to put it back to the condition that it was prior
17 to the initial storm.

18 We've also evacuated all of the water
19 from the cell 6 area so that in the event that there's
20 a storm that occurs prior to completing this new
21 long-term diversion system, we'll at a minimum have
22 storage capacity that is intended to keep any
23 stormwater from again flowing off of the site. At
24 this time I'll take some questions.

25 CHAIRMAN DEVENS: Commissioners? I had
153

1 one question. You know, on the Planning Commission's

2 findings of fact and conclusions that we had approved,
3 finding of fact 74 addresses the drainage that was
4 required to have been in place. Was there a violation
5 of that condition in this case?

6 THE WITNESS: I don't believe there is.
7 The company and the City --

8 CHAIRMAN DEVENS: You have medical waste
9 washing out into the ocean as far as Nanakuli/
10 Wai'anae and there was no problems with the drainage?

11 THE WITNESS: The company began
12 constructing of the long-term drainage plan. Within
13 about 30 to 40 days of the time that we received our
14 approvals, our regulatory approvals to do so, we were
15 not allowed to begin construction of that long-term
16 system until we had the actual permitted approvals to
17 do so.

18 CHAIRMAN DEVENS: So as you're
19 constructing I mean what precautions were taken?
20 Obviously not enough because this happened.

21 THE WITNESS: The actual operating
22 permit that we have in there has provisions for this
23 type of a storm. And there was -- there was
24 definitely a risk during this construction period.
25 But we were not allowed to do any preconstruction of

154

1 the stormwater diversion berm until we had the

2 appropriate regulatory approvals.

3 CHAIRMAN DEVENS: So how much discharge
4 was there? I'm not clear on what the volume was. We
5 have photographs that have been submitted by Ko Olina
6 which shows quite a bit. But what was the actual
7 discharge volume? And what exactly was discharged
8 other than syringes and what we've seen on the news?

9 THE WITNESS: Most of what was
10 discharged was municipal solid waste, which is the
11 majority of what goes into the landfill. It did have
12 some sterilized medical waste mixed in with it.

13 As a function of our daily operations
14 medical waste and/or any other type of special waste
15 is mixed into the landfill, the residential waste that
16 comes in. And then every day that's covered.

17 In this particular case as the
18 stormwater washed through there, it washed some of
19 that cover off and took amount of municipal waste with
20 it that just happened to contain some sterilized
21 medical waste.

22 CHAIRMAN DEVENS: How much?

23 THE WITNESS: We don't have any way of
24 knowing how much waste actually left the site. The
25 main part of the storm occurred around 1 or so I

lucfeb2-11.txt

1 believe on the morning of the 13th. So by the time
2 our employees arrived at 4 or 5 there was quite a bit
3 of water already on the site.

4 CHAIRMAN DEVENS: I read somewhere where
5 someone had made the statement that this was like a
6 hundred year rain. I really found that hard to
7 believe because no one else was saying that. I
8 remember a few years ago when we had the 30 days and
9 30 nights of rain, that didn't even approach a 50-year
10 storm. Was there anything unusual about this rain
11 that contributed to this problem?

12 THE WITNESS: The idea of a hundred year
13 storm, it really depends on the intensity of the
14 storm. In that I believe in this case on the third
15 storm, which was the major one, there was 10 point
16 something inches in 24 hours, but 7.6 of that fell
17 within a six or seven hour period. So it's the
18 intensity of the storm that's the critical portion
19 that causes the amount of damage rather than the
20 actual amount of rainfall that could be over a longer
21 period.

22 CHAIRMAN DEVENS: So going back to my
23 prior question. Do you have an idea of what the total
24 volume of discharge was? I know you can't quantify
25 the medical waste. But how about the total volume?

156

1 How much actually went down to the ocean onto Ko
2 Olina's property and down to Nanakuli side?

3 THE WITNESS: We can't quantify that.
4 What we do know is that --

5 CHAIRMAN DEVENS: Did you know how much
6 was in that cell that busted open?

7 THE WITNESS: The amount -- the area
8 where the water came through washed off the top of a
9 part of a cell but we can't estimate how big that is.
10 Once the water left that spot, which was on the
11 northern or uphill end of the cell, it then flooded
12 out the rest of the cell.

13 One key thing to remember in this case
14 this was the third flooding of that particular cell.
15 And each time that happened, as I mentioned earlier,
16 the construction at this site, which is a canyon
17 construction, involves forming the sides of the canyon
18 which then creates a huge amount of rock and soil.
19 That rock is then processed and reused in the bottom
20 to form the areas where the liner goes.

21 So each time that we had a rainfall that
22 washed down through there, washed all of this material
23 off of the sides and the bottom and literally covered
24 up the top of the waste cell. So we know that the
25 entire cell wasn't affected by this storm because it

1 was already under 10 feet of water and had probably 10
2 or 15 feet of sedimentation and soil that had been
3 deposited on top of that cell by the first couple of
4 storms.

5 So only the area in the one section of
6 the cell that was actually in the higher area that was
7 above the waterline was actually affected. That's why
8 it's difficult for us to determine how much was
9 actually removed.

10 When you look at that part of the cell
11 what you see is there's some loose material at the top.
12 Certainly all the floatable material, plastic bags and
13 bottles and things like that, are the pieces that
14 would go first.

15 And in this case the same way with the
16 plastic, sterilized plastic syringes that were
17 predominantly what was found on the beach, those are
18 all fairly floatable so they would have been washed
19 out more quickly than another type of waste, say,
20 chairs or other things that would have been in the
21 cell at that time.

22 CHAIRMAN DEVENS: So when did the first
23 discharge occur?

24 THE WITNESS: The first discharge?

25 CHAIRMAN DEVENS: Yeah. When did it

1 first start flowing out of the --

2 THE WITNESS: Sometime during the night.
3 We don't know that.

4 CHAIRMAN DEVENS: On what day?

5 THE WITNESS: On the 13th. When the big
6 storm hit it happened during the night. We don't know
7 when it started. As soon as we saw the conditions at
8 the site at that time, our first concern is for the
9 safety of our employees because it was a pretty strong
10 event.

11 The contractor has been working around
12 the clock just to get back in there to redo the damage
13 from the first two storms and now this third one.

14 CHAIRMAN DEVENS: So on the 13th at
15 about what time did you first get notice that
16 something was going wrong?

17 THE WITNESS: Well, as soon as we
18 arrived at the site.

19 CHAIRMAN DEVENS: Which is about what
20 time?

21 THE WITNESS: Probably, I think my first
22 employees arrived there around 5:00 or so in the
23 morning. Then shortly after that management was there
24 probably by 6:30 or so. At that time we assessed the
25 upper portions of the canyon because we were concerned

1 about our employees as well as any catastrophic events
2 as far as -- if you'll recall I had mentioned that at
3 the time of the first storm we actually built a
4 temporary dam so that any water that was impounded in
5 the cell 6 area would not leave the site.

6 If it had left the site it would have
7 ran down the back side of the HECO power plant and
8 into the ocean which would have been an uncontrolled
9 discharge.

10 Once the company realized that our
11 equipment as well as our employees were safe, then at
12 that time we began taking evasive actions to keep any
13 uncontrolled discharges from occurring. And then at
14 some point after that is when we realized now we have
15 water that is actually -- and waste material that is
16 discharging.

17 CHAIRMAN DEVENS: At what time was that
18 determination made?

19 THE WITNESS: I would say it was
20 sometime in the afternoon. We did meet with --

21 CHAIRMAN DEVENS: At about what time?

22 THE WITNESS: I don't have an exact
23 time.

24 CHAIRMAN DEVENS: Once you realized that
25 medical discharge had escaped the dump, what, if any,

1 warning was given to the community, the folks at Ko
2 Olina, the folks down on the Leeward coast? What, if
3 any, warnings did your company take to at least warn
4 the people that we may have syringes out there, we may
5 have blood components floating around in the water?

6 THE WITNESS: We met with the Department
7 of Health at noon on the day --

8 CHAIRMAN DEVENS: I'm not talking about
9 the Department of Health. I'm talking about the
10 community at large. What efforts did your company
11 make to give at least some warning to the community
12 that there was this danger out there?

13 THE WITNESS: Once we decided -- or we
14 didn't -- once collectively the decision was made to
15 put warning signs up at the beach or at the outfall
16 area was our main concern because that's where
17 material would have left the site -- then we assembled
18 those signs from one of the departments at the City
19 and we put those up at around 4 or 5:00 that
20 afternoon.

21 We didn't realize or find out that there
22 was medical waste involved in it until around that
23 same time, 4:00 or 5:00 in the afternoon because we
24 were dealing with huge amount of water that was

161 25 leaving the site.

1 Once we realized that there was medical
2 waste in there we had already put up warning signs
3 saying that there's potentially contaminated material
4 that is leaving the site. We also started a sampling
5 program at that time.

6 Then the next day we had a crew down at
7 our outfall because by that time we realized that
8 there was some sterilized medical waste that had gone
9 off of the site. And we began cleaning that up.

10 The evening of the storm on the 12th we
11 also began a cleanup on own site at the same time they
12 were doing the sampling and putting the warning signs
13 up to make sure that whatever was on our site wouldn't
14 continue to go off site and further impact our
15 neighbors.

16 CHAIRMAN DEVENS: Okay. Commissioner
17 Lezy, you had a question?

18 COMMISSIONER LEZY: Thank you, Chair.
19 Good afternoon. Thank you for your testimony. I want
20 to see if I can understand kind of the chronology of
21 some of the events and the actions that were taken by
22 Waste Management in response to those events.

23 You've testified three storms.

24 Obviously the final storm of the three was the one

162 25 that apparently put the cell over the top as far as

1 the discharge was concerned. You were aware or your
2 company was aware by the time of the second discharge
3 that the cell was retaining water, correct? It was
4 flooding and retaining water.

5 THE WITNESS: Yes.

6 COMMISSIONER LEZY: When did that occur?
7 When were you aware as of the second storm that that
8 problem existed?

9 THE WITNESS: Once the first storm hit,
10 the cell was inundated with water. At that time is
11 when we built the additional berm. When the second
12 cell was -- I mean the second storm came it added more
13 water on top of what was already there. So at that
14 time we reinforced that berm so that it would hold
15 more water. Then prior --

16 COMMISSIONER LEZY: When was that?

17 THE WITNESS: Actually after the first
18 storm then --

19 COMMISSIONER LEZY: The second storm and
20 the reinforcement, when did that occur?

21 THE WITNESS: On the 27th.

22 COMMISSIONER LEZY: So that was
23 approximately two weeks prior to the event, the storm

24 event that caused the discharge, correct?

25 THE WITNESS: Yes.

163

1 COMMISSIONER LEZY: During that time
2 period what sort of evaluation, if any, was performed
3 by your company to determine the risk of: Well, if
4 there's a further storm, if we have a similar type of
5 a storm, is there a possibility that the cell, the
6 berm's been built could fail or the cell could end up
7 discharging waste?

8 THE WITNESS: Yes. That's why we built
9 the berm in the first place. At the time of the first
10 cell there was no berm there -- or the first storm.
11 And the water came up from probably a foot of
12 overtopping the existing containment area.

13 COMMISSIONER LEZY: I understand that.
14 But what I'm asking you is you have provided us with a
15 chronology of events. And it sounds like in each
16 instance it was kind of dodging a bullet. The first
17 time it flooded and fortunately there was no
18 discharge.

19 The second time it flooded and there had
20 been some sort of work done to build a berm to
21 strengthen the cell to avoid a discharge. I assume
22 that's the key, right?

23 THE WITNESS: Yes.

24 COMMISSIONER LEZY: You then get to the
25 third event. More rain, more water and there's an
164

1 actual discharge. So what I'm wondering is what sort
2 of an evaluation was done in order to quantify what
3 the risk was that there would be a discharge if there
4 was more rain and more water ended up in the cell?

5 THE WITNESS: Well, in the first place
6 we would have no, no forewarning that a storm of the
7 third magnitude would be coming. The requirements
8 that we go under are for 24-hour storms. And that's
9 what the site is designed for.

10 In this particular case the actual
11 long-term diversion, even though the requirements were
12 for 24-hour storm, it was actually -- the
13 specifications were for a hundred-year storm. The
14 problem was it just wasn't completed at that time.

15 COMMISSIONER LEZY: I'm talking about
16 the steps that you folks actually did take. You
17 actually undertook efforts --

18 THE WITNESS: Right.

19 COMMISSIONER LEZY: -- to avoid what
20 happened. What I'm trying to find out is how you
21 reached the decision to do what you did and why there
22 was an obvious shortcoming in what was done.

23 THE WITNESS: Just to back up a little.
24 Once -- I would say back in October prior to the rainy
25 season we doubled the shifts so that that long-term

165

1 diversion would be complete. It just wasn't.

2 COMMISSIONER LEZY: I understand. I'm
3 not particularly interested in the long-term diversion
4 project. What I'm interested in is the efforts that
5 you folks took once you had the first event.

6 THE WITNESS: Right.

7 COMMISSIONER LEZY: After you had the
8 second event and then you had the third event, what
9 was done in between the second and the third event to
10 evaluate: Jeez, we just dodged a big one here? What
11 do we need to do to make sure that if it rains more
12 since obviously the cell was retaining water at that
13 point --

14 THE WITNESS: Right.

15 COMMISSIONER LEZY: -- what do we need
16 to do to make sure that there is no potential for
17 discharge?

18 What was done to evaluate that and
19 address it?

20 THE WITNESS: There is a 36-inch drain
21 line that by design runs underneath this new cell
22 that's part of the expansion. During the first storm,

23 that overtopped and was silted in due to the amount of
24 material that came down.

166 25 After that we went out and evaluated why

1 that happened. And we cleared the area and built a
2 berm up above it to try to stop any water that would
3 be coming down.

4 At the same time we also built a --
5 right in front of it we built a very large structure
6 out of boulders that would act as a velocity changer,
7 if you will, where when the water came down the canyon
8 it would hit this pile of boulders and cause it to
9 divert around to where this inlet was.

10 At the same time then we also reinforced
11 at that area another berm that we had constructed in
12 the first storm to make sure that we had a little dam
13 behind that so that it would never get into the cell
14 in the first place.

15 All of that failed because of the
16 magnitude of that storm.

17 COMMISSIONER LEZY: So are you telling
18 me, then, that there could have been an evaluation
19 done based on the magnitude of the storm that actually
20 did occur, that would have allowed you to address
21 problems and to have avoided this event?

22 THE WITNESS: No. I'm not saying that.

23 I'm saying that after the first storm we took evasive

24 actions on the available 36-inch outlet that we had

25 that was designed to handle this water because it had
167

1 failed the first time. And we -- our contractor went

2 back in there and beefed up that area to keep that

3 from happening a second time.

4 COMMISSIONER LEZY: So do I understand

5 you to say, then, at least in your company's

6 estimation that this event was unavoidable?

7 THE WITNESS: Yes.

8 COMMISSIONER LEZY: With regard to this

9 permanent diversion project, as part of the planning

10 for that were any of the particular cells within the

11 landfill identified as being at risk for flooding in

12 this type of event?

13 THE WITNESS: It wasn't an actual

14 identification of the cells. However, our operating

15 permit contemplated that during the construction of

16 this long-term diversion system there could be periods

17 when there would be either no means to convey the

18 m om wm m ound mhm mxim ing lmndfill cmlm; om mhm

19 a storm could cause stormwater to overflow into the

20 cell 6 area, which it did in this case, which would

21 allow, then, that water to flow out from the active

22 area of the cell.

23 COMMISSIONER LEZY: So there was an
24 acknowledgment prior to any of these storms that cell
25 6 was particularly at risk for this type of an event?

168

1 THE WITNESS: There was an
2 acknowledgment in our permit that stated until this
3 long-term diversion is completed there could be some
4 risk, yes.

5 COMMISSIONER LEZY: Was there some
6 particular reason why then cell 6 didn't simply stop
7 accepting MSW during the time period that the
8 long-term diversion project was being finished?

9 THE WITNESS: Cell 6 is the only area of
10 the landfill that has capacity at this point. And
11 after the first storm no more waste went into the cell
12 6.

13 COMMISSIONER LEZY: It couldn't, right?
14 It was flooded with water.

15 THE WITNESS: Right, yes. But that was
16 after the first storm. So from a practical standpoint
17 there was no waste that could have gone into the cell
18 6 area.

19 COMMISSIONER LEZY: My last question to
20 you is: Do you have any understanding or personal

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21 knowledge as to why medical waste sterilized or
22 otherwise is it not incinerated?

23 THE WITNESS: I believe the rules for
24 incineration were changed several years ago. But
25 that's not my area of expertise. I know that at the

169

1 site we have -- medical waste is considered a special
2 waste where it has to be pre-characterized under
3 record of federal standards. And that's what we do.
4 That's our standard practice.

5 COMMISSIONER LEZY: And what does that
6 mean?

7 THE WITNESS: It means that a generator
8 of medical waste has to fill out characterization
9 forms and get that waste stream approved both by
10 federal regulations and by the terms of our permit.
11 And then they certify on each load that comes into the
12 site that it has, in fact, been rendered
13 noninfectious.

14 Most of the companies use autoclaving,
15 but I'm not sure whether that's the requirement or any
16 method that allows them to make that statement is
17 acceptable. All of the sterilization process is
18 overseen by the Department of Health.

19 COMMISSIONER LEZY: All right. Thank
20 you.

21 CHAIRMAN DEVENS: Any other questions
22 from the Commission? One thing you answered in
23 response to Commissioner Lezy was that this was
24 unavoidable. I have a real hard time believing that
25 this was unavoidable.

170

1 What it sounds like to me is that you
2 folks went ahead with this construction, did not take
3 any proper preventive measures and just hoped it
4 wasn't going to rain. And when it did you folks were
5 caught with your pants down. And this is what
6 happened. Isn't that really what happened in this
7 case?

8 THE WITNESS: No, I wouldn't
9 characterize it that way at all in that this --

10 CHAIRMAN DEVENS: I know you wouldn't
11 characterize it that way. Isn't that really what
12 happened, though, in this case? There were no
13 preventive measures in place while this construction
14 was going on. It rained. And it wasn't an unusual
15 rain by any standard. And we have this massive
16 discharge. And there was just a lack of urgency, in
17 my mind, with the public not knowing the extent of the
18 discharge and what was actually contained in that
19 discharge.

20 I was shocked when I heard that there
21 were needles on the beach at Ko Olina, down in
22 Nanakuli flowing down to Wai'anae. I was also shocked
23 to see that people were picking that up with their
24 bare hands and in slippers. And yet there were no
25 warnings out there to the community warning about
171

1 those dangers. What's the response to that?

2 THE WITNESS: I believe, as I mentioned,
3 whenever we had a call, which we did, from any beaches
4 along the western side of the Leeward Coast, we
5 dispatched a team to go out there. And we didn't just
6 pick up medical waste. We picked up any storm debris
7 that we saw except for tree limbs or wood or that kind
8 of thing. But everything else we picked up. And we
9 continued to go every day to those same beaches until
10 we no longer saw the waste material.

11 We established a hotline, I believe it
12 was on Sunday, that people could call in, which they
13 did. And as soon as we got a call on our hotline or
14 from any other source we would dispatch a team to go
15 out there and check it out.

16 We also talked to lifeguards at the
17 various beaches that had lifeguards. And we continued
18 doing that for several days after we last saw any type
19 of medical waste.

20 As far as the actual storm itself, this
21 long-term diversion plan was proposed over 10 years
22 ago. We're just in a position now, or as of 2009,
23 where we could actually go out and begin the
24 construction on it. We can't do that unless we have
25 the appropriate permits.

172

1 CHAIRMAN DEVENS: And I understand that.
2 But over the last 10 years couldn't you have thought
3 of what the preventive measures were going to be while
4 the construction was going on instead of leaving
5 everything open the way it was? I just can't believe
6 that no preventive measures could have been taken to
7 avoid this. I don't buy that this was unavoidable. I
8 hear what you're saying, but it doesn't make any sense
9 to me.

10 You know, this was a very tough decision
11 for this Commission to have extended the permit. The
12 parties were here. It was a difficult decision that
13 this Commission had to wrestle with. The very fears
14 that the community raised before this Commission were
15 realized by this spill. And then it comes back to us
16 as a Commission because we passed it.

17 And that's the reason why we wanted this
18 informational meeting because we need to know what

19 happened. There's conditions that we approved. I see
20 finding, Condition 74 it talks about drainage. And
21 this was a drainage problem from what you're
22 describing to us. And I still don't understand, you
23 know, why this wasn't prevented.

24 You know, I m Mm. Willim on TV; hm'm
25 obviously distressed. He didn't get the call from you
173

1 folks. He's worried about his community. He's
2 worried about his employees. They're out there
3 picking up the waste. Obviously there was a lack of
4 communication to at least warn people like him who was
5 here opposing this but expressed these very fears and
6 then look what happens. I mean what happened out
7 there?

8 THE WITNESS: That's what I've attempted
9 to explain to you.

10 CHAIRMAN DEVENS: I hear you, but it's
11 not making any sense to me.

12 THE WITNESS: We put warning signs up on
13 the day of the storm. As a matter of fact while we
14 putting the warning signs up the City had instructions
15 to, I believe, double or triple the amount of them.

16 So as we learned more about the extent
17 of any waste material, whether it's medical waste or
18 not, that left the site, we believe we took

19 appropriate actions to make sure that people knew,
20 first of all, what was going on.

21 Remember this was also at a time where
22 the entire island had an advisory notice put out each
23 day by the local weather stations warning people not
24 to go in the water because it was a major storm, not
25 just at the landfill but around the island itself.

174

1 CHAIRMAN DEVENS: Well, you know,
2 putting up warning signs and telling someone that
3 there may be needles sticking in the sand to me are
4 two different, radically different types of warnings
5 in my mind.

6 Let me ask the parties if they have any
7 questions for the witness since he was put under oath.
8 Ko Olina, you folks have any questions for this
9 witness?

10 MR. W. MATSUBARA: Chair, going to
11 Commissioner Lezy's concerns regarding the first what
12 they call a storm. I'm looking at the investigative
13 report by the Clean Water Branch. It was attached as
14 KOCA's exhibits. And it refers to an investigation
15 done in response to that first storm.

16 And Commissioner Lezy, with all due
17 respect, stated they were luckily fortunately

18 dodge-able, and there was no discharge. But I noticed
19 in this report, I know it's not final, but it does say
20 that there was a discharge of water. And that was
21 done in response to the accumulation of water in this
22 cell.

23 Now, I can understand maybe there may be
24 situations where rainfalls may come and you can do
25 only certain things. But what this report indicates
175

1 is that this was a response by your department, a
2 decision made by your department to remove water from
3 this cell, not stormwater, but remove water from a
4 cell and put that into the storm drain.

5 So my concern would be, you know, we're
6 talking about stormwater entering cells here. But now
7 there's actually a conscious decision made to remove
8 water, whether it may be infected or not I don't know.
9 And I'm sure there will be further investigation to
10 determine that.

11 But this is just from the first storm
12 that we had assumed was a dodge of the bullet. So the
13 concern would be what -- not only what methods or what
14 protocols are you establishing to prevent rainfall but
15 after the rainfall is in these cells what
16 accommodations or what are you doing to also ensure
17 that the removal of this water into the ocean in that

18 area was appropriate?

19 THE WITNESS: Just to back up a little
20 bit. No water from within the cells themselves was
21 discharged. What we're talking about is stormwater
22 that had accumulated on top of the cells, in this case
23 cell 6, one cell.

24 And as I mentioned as the first storm,
25 second and third storm progressed it deposited more
176

1 and more and silt on top of the cell which further
2 isolated it from the water sitting on top. We're not
3 talking about water that was actually in the cell
4 itself during cell operations.

5 Concerning the pumping or not, until the
6 report was filed we were cooperating with the
7 Department. However I'm not going to comment on that
8 because, as you mentioned, the Department has an
9 investigation that's ongoing.

10 MR. W. MATSUBARA: Are you aware of this
11 investigative report compiled by the Department of
12 Health Clean Water Branch?

13 THE WITNESS: I'm aware of it. I
14 haven't read the entire thing. But I know that it's
15 out there, yes.

16 MR. W. MATSUBARA: I'm not making

17 accusations. They are. They're making accusations
18 that the water that was discharged was leachate and it
19 did contain MSW.

20 THE WITNESS: We don't believe that.
21 That's, like I said, that's something that's under
22 investigation. And I can't really comment on what
23 their Department has planned or what the ultimate
24 outcome of that investigation is.

25 MR. W. MATSUBARA: Thank you.
177

1 CHAIRMAN DEVENS: Mr. Wurdeman, did you
2 have any questions of this witness?

3 MR. WURDEMAN: Yes, Mr. Chairman. You
4 know, this investigation that Mr. Matsubara is just
5 referring to, you're saying that none of this is true?
6 You're saying the Department of Health alleged were
7 clear violations of the conditions that were imposed
8 by this Commission by the City and County of Honolulu
9 and Wastewater Management (sic) are you denying all of
10 these allegations in the state of Hawai'i Health
11 Department report?

12 THE WITNESS: No, I'm not denying or
13 admitting them. I'm merely stating that because this
14 is an investigation that is ongoing I believe the
15 Department made that statement. It would not be
16 prudent for me to comment on it at all.

17 MR. WURDEMAN: And, Mr. Chair, I'm
18 referring to Exhibit 5 of Ko Olina's packet here. The
19 Chairman asked you earlier during the questioning
20 about Condition No. 74 and asked you point blank if
21 that had been violated. And you said, "No." But you
22 referenced the January rainfall and discharge,
23 correct?

24 THE WITNESS: I don't have a copy nor am
25 I familiar with Condition 74 is. So if you want me to
178

1 comment on that you'll have to read it to me.

2 CHAIRMAN DEVENS: I have it. Do you
3 want me to read it?

4 MR. WURDEMAN: If you could,
5 Mr. Chairman.

6 CHAIRMAN DEVENS: Sure.

7 MR. WURDEMAN: I'd appreciate it.

8 CHAIRMAN DEVENS: 74 reads as follows
9 "Drainage for the property is intended to capture
10 stormwater and divert it around the landfill if it
11 originates offsite, surface runoff or into the
12 existing sedimentation basin if it originates onsite
13 surface runoff. The sedimentation basin is designed
14 to allow stormwater to settle so that dissolved solids
15 that come off the landfill can settle out in that

16 basin.

17 "The water's eventually discharged to
18 the ocean subject to state of Hawai'i Department of
19 Health permitting requirements under the National
20 Pollution Discharge Elimination System. A third-party
21 company takes samples to ensure compliance with
22 certain discharge limits. In addition, DOH inspects
23 Waste Management's ditches and slopes."

24 THE WITNESS: And what is that from?

25 CHAIRMAN DEVENS: Yes?

179

1 MS. VIOLA: If I may point out
2 Condition No. 74 is a finding of fact.

3 CHAIRMAN DEVENS: Correct.

4 MS. VIOLA: It's not a conclusion of
5 law, so it's not necessarily a condition that was put
6 upon the parties in the compliance requirement. It's
7 a finding of fact, not necessarily a conclusion. So
8 I'm not sure -- I mean in terms of -- well, I have
9 some questions relating to this. But in terms of a
10 requirement it's a finding not a conclusion.

11 CHAIRMAN DEVENS: Right. You're
12 correct.

13 MR. WURDEMAN: So the finding of fact
14 was, Mr. Chair, what was adopted by this Commission
15 and what was required of them to comply with, correct?

16 CHAIRMAN DEVENS: That's my
17 understanding. That's correct.

18 MR. WURDEMAN: Also the paragraph 75
19 while we have the document out, if we could reference
20 that as well.

21 CHAIRMAN DEVENS: I don't have that one
22 with me, I'm sorry.

23 MR. WURDEMAN: Okay. It reads,
24 "Leachate does not come into contact with stormwater.
25 The stormwater, surface water system is separate from
180

1 the leachate collection system."

2 The January rainfall that the Chair had
3 asked you about previously, does that violate
4 paragraph 75 as I have just read? Was there any
5 leachate coming into contact with stormwater as
6 indicated in this paragraph?

7 THE WITNESS: I wouldn't want to
8 reference whether as indicated in the paragraph. But
9 it is our understanding that leachate, which is inside
10 of the cells, was not affected by this storm.

11 MR. WURDEMAN: Was that situation of
12 leachate and stormwater coming into contact with each
13 other present during the December rainfalls that were
14 the subject of the state of Hawai'i Health Department

15 investigation?

16 THE WITNESS: As I earlier testified I
17 haven't read the entire investigation. And it's still
18 ongoing. But my understanding is that at no time
19 through any of these storms did leachate that was in
20 the cells contact stormwater that was on top of the
21 cells.

22 We have a system in place which is an
23 automatic system that pumps out leachate from all of
24 the cells. And that leachate is taken to the
25 wastewater treatment plant for appropriate treatment

181

1 and disposal under their own permits.

2 So stormwater is discharged routinely
3 from the site under our NPDES Stormwater Discharge
4 Permit.

5 MR. WURDEMAN: How about this statement
6 in the Health Department investigation where it reads
7 that, "There's clear evidence that leachate was
8 purposefully discharged into the landfill's stormwater
9 drainage system"? Are you familiar with that
10 reference?

11 THE WITNESS: I'm not familiar with that
12 reference, no.

13 MR. WURDEMAN: Would you admit or deny
14 that allegation?

15 THE WITNESS: I would not because this
16 is still under investigation.

17 MR. WURDEMAN: Well, that's what the
18 investigators are alleging.

19 THE WITNESS: That may be true.

20 MR. WURDEMAN: You're aware of the
21 situation out at Waimanalo Gulch, correct?

22 THE WITNESS: I am aware of the
23 situation. And I've just testified that we do not
24 have leachate that is in our cells that is pumped off
25 as stormwater. We have a separate system for that.

182

1 MR. WURDEMAN: It also says in this
2 report by the Health Department, "In conclusion it
3 appears that the landfill owners and operators,
4 including the City and County of Honolulu and Waste
5 Management, violated Hawai'i water pollution rules and
6 regulations by discharging water pollutants to state
7 waters without authorization."

8 Are you familiar with that reference in
9 the Health Department report?

10 THE WITNESS: As I've stated before I
11 have not read the entire report, no.

12 MR. WURDEMAN: You're not familiar with
13 that reference having been made? That's a pretty

14 strong conclusion. As you sit here today you're not
15 familiar with that reference?

16 THE WITNESS: As I mentioned I haven't
17 completed a review of that report. And the contents
18 of that report, as I understand today, is still under
19 investigation.

20 MR. WURDEMAN: So you have no idea
21 whether the investigators ever came to that conclusion
22 as you sit here today?

23 THE WITNESS: I don't know what they
24 came to conclude because as I mentioned I haven't
25 finished my review of that report.

183

1 MR. WURDEMAN: Well, it's three pages.
2 I mean how long did it take you to review the report?
3 We're not talking about a hundred-page document.
4 We're talking about a 3-page investigative report.
5 What did you do, read the first page and stop after a
6 couple minutes? What are we talking about here?

7 THE WITNESS: I already testified that I
8 was aware of the report, but I have not completed my
9 review of it.

10 MR. WURDEMAN: Going back to paragraph
11 74 that the Chair read to you aloud. There was a
12 sentence in there: "A third-party company takes
13 samples to ensure compliance with certain discharge

14 limits."

15 A third-party company. Was a third
16 company party involved in taking samples to ensure
17 compliance in either December or in January of this
18 year?

19 THE WITNESS: There was a third-party
20 company who obtained samples on the day of the storm.

21 MR. WURDEMAN: Which storm are we
22 referring to?

23 THE WITNESS: The major storm on the
24 13th.

25 MR. WURDEMAN: What about in December,
184

1 was a third-party company involved?

2 THE WITNESS: I don't recall if there
3 was or not.

4 MR. WURDEMAN: You don't recall?

5 THE WITNESS: I don't recall, no. I
6 know that there was in this one because we had an
7 actual discharge.

8 MR. WURDEMAN: You have Health
9 Department investigators out there. They're coming to
10 these strong conclusions about intentional acts in
11 their report. And there's requirements of you to have
12 third-party companies take these samples to ensure

13 compliance. And you made no efforts to ensure whether
14 or not that was done in just, what, six weeks ago.
15 You don't even know whether or not that was done.

16 THE WITNESS: We have an NPDES discharge
17 permit with certain requirements that come along with
18 our operating permit. We comply with the terms of
19 those permits.

20 In the case of the larger storm, the
21 last one, because we had such a volume of water,
22 stormwater leaving the site, we on our own took an
23 additional set of samples.

24 MR. WURDEMAN: Okay. But you don't know
25 if a third-party company did, correct?

185

1 THE WITNESS: A third-party company took
2 those on our behalf, yes.

3 MR. WURDEMAN: What company was that?

4 THE WITNESS: I can't tell you that. It
5 was a third-party company.

6 MR. WURDEMAN: So that was for both
7 January and December that was done?

8 THE WITNESS: No. That's what I just
9 stated. We did that at the last storm but I don't
10 know if we did at the first two.

11 MR. WURDEMAN: So January it was done
12 but you don't recall the name of the company.

13 THE WITNESS: I recall the name of the
14 company. I'm just not willing to give that to you
15 because it's a contractor that works for us. We don't
16 routinely give out --

17 MR. WURDEMAN: What privilege are you
18 asserting to not provide that name?

19 THE WITNESS: I'm not an attorney so I'm
20 not gonna answer that question.

21 MR. WURDEMAN: Mr. Chair, I'd ask that
22 the witness be --

23 CHAIRMAN DEVENS: Sir, you're under oath
24 before this Commission. I don't hear you asserting
25 any type of privilege, and I'm not aware of any

186

1 privilege that would apply. If you want to consult
2 with the City attorneys we'll give you that time to do
3 so. Ms. Viola, do you want to take a short break and
4 allow him to consult? Why don't we take a 2-minute
5 break.

6 (Recess was held.)

7 CHAIRMAN DEVENS: We're back on the
8 record. Before we took a short break, Mr. Whelan, we
9 gave you an opportunity to consult with your
10 representatives. Do you have a response to
11 Mr. Wurdeman's last questions?

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12 THE WITNESS: I do. And thank you for
13 allowing us to have a few moments to clarify.

14 CHAIRMAN DEVENS: Sure.

15 THE WITNESS: On the advice of counsel I
16 will give you the name of the contractor. It was
17 AECOM, A-E-C-O-M.

18 MR. WURDEMAN: And that was in January,
19 correct?

20 THE WITNESS: Yes.

21 MR. WURDEMAN: December was AECOM under
22 contract with your company?

23 THE WITNESS: Were they under contract
24 with us?

25 MR. WURDEMAN: Yes.
187

1 THE WITNESS: Yes.

2 MR. WURDEMAN: Did they take samples?

3 THE WITNESS: I testified already I'm
4 not sure if they did or not.

5 MR. WURDEMAN: Who in your company would
6 know that?

7 THE WITNESS: Our environmental manager
8 would most likely know that.

9 MR. WURDEMAN: Who's that?

10 THE WITNESS: Justine Lodick. (phonetic
11 spelling)

12 MR. WURDEMAN: Now, you entered into an
13 agreement just recently with the EPA, correct? EPA
14 has been involved?

15 THE WITNESS: Yes.

16 MR. WURDEMAN: And you entered into --
17 your company entered into an agreement on or about
18 January 25th, 2011 with the EPA on what you should be
19 doing to resolve this issue?

20 THE WITNESS: Yes, we did.

21 MR. WURDEMAN: And do you recall if in
22 entering into that agreement if a Mr. Robert Longal
23 (phonetic spelling) -- who's Mr. Robert Longal?

24 THE WITNESS: He is, he's in management
25 at Waste Management out of our LA market group office.
188

1 MR. WURDEMAN: And he has authority to
2 enter into agreements on behalf of Waste Management
3 Hawaii?

4 THE WITNESS: He would.

5 MR. WURDEMAN: He would.

6 THE WITNESS: I don't recall his exact
7 title but, yes.

8 MR. WURDEMAN: Okay. And did you have a
9 chance to read that agreement that Mr. Longal entered
10 into with the EPA?

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11 THE WITNESS: I did.

12 MR. WURDEMAN: You did?

13 THE WITNESS: Yes.

14 MR. WURDEMAN: You're intimately
15 familiar with what's required of you in --

16 THE WITNESS: I'm familiar with what's
17 in there.

18 MR. WURDEMAN: And it's set forth in
19 this agreement, correct?

20 THE WITNESS: It is.

21 MR. WURDEMAN: I'm talking about the one
22 signed January 25th, 2011 signed by Mr. Longal and
23 also representative of the US EPA, correct?

24 THE WITNESS: That is correct, yes.

25 MR. WURDEMAN: And are you familiar with
189

1 a provision in that agreement in which it states, "The
2 conditions described in the findings of fact above
3 constitute an actual or threatened release of a
4 hazardous substance from the facility," and then they
5 reference varies provisions under CIRCLA, "and may
6 present an eminent and substantial endangerment to the
7 public health or welfare or the environment in
8 accordance with section 106A of CIRCLA 42 USC 9606A."
9 Are you familiar with that?

10 THE WITNESS: I am familiar with that.

11 And I believe the term "hazardous substances" refers
12 to municipal solid waste and/or medical waste.

13 MR. WURDEMAN: Okay. And you admitted
14 to that, correct?

15 THE WITNESS: I'm admitting that I know
16 what's in the order.

17 MR. WURDEMAN: Your company admitted to
18 that, what I just read, that provision.

19 THE WITNESS: We signed the order. We
20 did sign the order.

21 MR. WURDEMAN: I'm sorry I only have one
22 copy, Mr. Chairman. I could provide additional
23 copies, but if I could make a copy of this EPA
24 agreement as part of the record I'd appreciate it.

25 CHAIRMAN DEVENS: Sure. We'll have
190

1 Mr. Hakoda make the copies and have it attached.

2 MR. WURDEMAN: Now, there was some kind
3 of deadline -- and prior to today I was getting a lot
4 of my information from the media as well as was the
5 Commission apparently -- but was there some sort of
6 deadline as far as meeting certain regulations that
7 the EPA had set forth that was set forth yesterday? I
8 think that was referenced.

9 THE WITNESS: The intent of the

10 administrative order on consent, and the key word is
11 "on consent" is because when EPA arrived at the site
12 on Saturday, January the 15th, two days after the
13 storm we were already -- the City and Waste Management
14 were in the middle or the midst of our plan for both
15 containing and correcting anything that happened on
16 site as a result of the storm in addition to our
17 activities as far as cleaning up any material that had
18 left the site.

19 EPA, as I mentioned, arrived that
20 Saturday. They spent the rest of the day there. They
21 were there all day Sunday from probably 9 until 7:00
22 that night, and were back again Monday until probably
23 1 or 2:00.

24 The result of that was this order that
25 you're referring to. However, all of the terms that

191

1 were in the order were already being undertaken at the
2 time that the order was signed.

3 To answer your specific question, there
4 was a set of deliverables that were due yesterday and
5 those deliverables were, in fact, sent in to the
6 department yesterday.

7 MR. WURDEMAN: What do you mean by that?

8 THE WITNESS: You asked me if there were
9 deliverables that were due yesterday according to the

10 terms of the order. And my answer is yes they were
11 due and they were delivered.

12 MR. WURDEMAN: So what specifically was
13 delivered? That's my question.

14 THE WITNESS: There were five or six
15 work plans and reports, status reports that were in
16 there that were delivered. I probably can't recall
17 all of them. I know there was one that was a work
18 plan to restore the sedimentation basin to the level
19 or the efficiency status that it was before the first
20 storm.

21 There was one on the hydraulic head in
22 cell 6. I believe we were supposed to submit the
23 facility health and safety plan. I can't recall the
24 names of the other ones. I think there was a
25 documentation of what we had done for the beach

192

1 cleanup. There was several other statements in there,
2 but I don't recall exactly all of them. I believe
3 there were six or seven altogether.

4 MR. WURDEMAN: Let me go back to the
5 allegations of that State Health Department
6 investigation that you apparently didn't fully review
7 yet.

8 MS. VIOLA: Chairman?

9 CHAIRMAN DEVENS: Yes. Go ahead.

10 MS. VIOLA: I just wanted to note that
11 this is an investigation that's ongoing. And the
12 State actually -- the City has not received a copy of
13 this from the Department of Health yet. There's no
14 indication to us that they are in the process of
15 finalizing any kind of enforcement action.

16 So in deference to the Department of
17 Health who's not here to answer these questions, I
18 think it's premature for counsel to be asking
19 questions of the potential respondent if they do end
20 up doing an enforcement action.

21 At this point we don't have the final
22 report, the final document or final enforcement action
23 from the agency. So to ask him any questions in terms
24 of him interpreting a document that's not finalized I
25 think would be supposition at best.

193

1 And at this point he's correct in
2 stating that he doesn't -- to protect himself because
3 there may be potential litigation that he should not
4 be answering questions trying to predict what the
5 Department of Health is thinking in its report.

6 CHAIRMAN DEVENS: Yes, I certainly can
7 appreciate your statements. What I understood
8 Mr. Wurdeman to be asking was just generally whether

9 or not he agreed as to whether or not these
10 allegations are true or not. And if that's something
11 he doesn't know or doesn't have the answer to he can
12 answer that way.

13 MS. VIOLA: And I would object in the
14 sense that this may be potential enforcement action.
15 At this point for him to deny or admit is premature.
16 So I would object to any kind of admission or
17 acknowledgment in regards to anything that's in that
18 report that again the city has never seen before up to
19 this point.

20 CHAIRMAN DEVENS: And he can answer that
21 way if that's the way he wants to handle that
22 question. What I understood Mr. Wurdeman to do is
23 just trying to figure out if any of this information
24 or allegations contained in the report were true or
25 not based on whatever knowledge this witness may have.

194

1 But your points are well taken.

2 MS. HIRAHARA: Chair, if I may? My name
3 is Lisa Hirahara and I represent Waste Management.
4 And I have advised my client not to answer these
5 questions because it is an ongoing investigation. And
6 we haven't even gone through it yet.

7 So I would just like to -- it hasn't

8 been authenticated. DOH is not here to authenticate
9 the report. And my client has been instructed not to
10 answer.

11 CHAIRMAN DEVENS: What's the basis of
12 not answering?

13 MS. HIRAHARA: It's a pending
14 investigation.

15 CHAIRMAN DEVENS: Right. But we're also
16 looking into it right now as well as a Commission
17 because this matter did come before us. And we're
18 trying to seek answers.

19 MS. HIRAHARA: This particular matter
20 was not on your agenda.

21 CHAIRMAN DEVENS: It was to get
22 information and he was offered as a witness. And he's
23 given testimony under oath trying to explain what
24 happened. We're just trying to get to the bottom of
25 all this.

195

1 MS. HIRAHARA: That's fine, but I object
2 on the Waste Management's behalf.

3 CHAIRMAN DEVENS: Mr. Wurdeman.

4 MR. WURDEMAN: What makes you believe
5 that this is an ongoing investigation? Is there
6 something in the document that says this is a
7 preliminary report, not a final report?

8 THE WITNESS: I told you I hadn't
9 completed a review of the document.

10 MR. WURDEMAN: Would you like me to show
11 you a copy of the document? And you can show me
12 where --

13 THE WITNESS: Not necessarily. I still
14 wouldn't comment on it because, as both counsel has
15 already stated, it's something -- that document is
16 under investigation or the situation is under
17 investigation and that's a preliminary document. We
18 don't know what the Department of Health is doing in
19 their investigation.

20 MR. WURDEMAN: Well, it says
21 "Investigation report." It's three pages. It's
22 signed off by members of the Health Department on
23 January 4, 2011 for date of investigation
24 December 23rd, 2010. Is there anything that you
25 recall in your review, preliminary review of this

196

1 report, that this isn't their final report?

2 THE WITNESS: As I mentioned I haven't
3 reviewed the report. But I'm not gonna comment on it
4 because I do know from general -- the consensus if not
5 anywhere else but here that there is an ongoing
6 investigation.

7 MR. WURDEMAN: What leads you to believe
8 that this isn't a final -- I mean they signed off on
9 it. It doesn't say this was a preliminary draft.

10 THE WITNESS: I don't know what's in
11 there.

12 MR. WURDEMAN: Do they say that the
13 investigation is ongoing? What makes you think that
14 this isn't a final report from the Health Department
15 of violations in December of 2010?

16 THE WITNESS: I'm not going to comment
17 on what's in that or why I would think a certain way.
18 I haven't reviewed that. I've explained that to you
19 several times. I don't know what's in there. Why
20 would I comment on what's in there when --

21 MR. WURDEMAN: May I approach the
22 witness, Mr. Chair?

23 CHAIRMAN DEVENS: Yeah. Mr. Wurdeman,
24 if you don't mind me just asking the witness: What
25 would be the end result of this investigation? Would

197

1 it result in civil fines or something else?

2 THE WITNESS: I don't think we know that
3 at this time.

4 CHAIRMAN DEVENS: If it should be a
5 violation sustained the allegation --

6 THE WITNESS: If could be some --

7 CHAIRMAN DEVENS: Hold on, let me get
8 the question out because the court reporter's going to
9 get angry at us in a little while. What would be the
10 end result if the violations are sustained? Is it a
11 civil fine that you're looking at? Or is it something
12 else?

13 THE WITNESS: It be could be civil. It
14 could be other. I'm not an attorney so --

15 CHAIRMAN DEVENS: Does it involve any
16 criminal action?

17 THE WITNESS: I don't know that. I'm
18 not an attorney.

19 CHAIRMAN DEVENS: You don't have to be
20 an attorney to know if something's criminal or not.
21 Has anyone told you that there's criminal implications
22 from this investigation?

23 THE WITNESS: No one has told me that.

24 COMMISSIONER CONTRADES: Excuse me,
25 Mr. Chairman. The counsel has already told him not to

198

1 answer. I mean he said I don't how many times he's
2 not gonna answer. Why are we continuing this? I
3 don't get it. He said he's not going to answer.
4 She's told him not to answer. If she was my counsel
5 and told me not to answer I wouldn't answer. So why

6 are we continuing? He's not going to say anything!

7 It's ridiculous!

8 MR. WURDEMAN: With all due respect,

9 Mr. Contrades, usually if there's a reason not to
10 answer there must be some legal basis for asserting
11 that.

12 COMMISSIONER CONTRADES: I'm not a
13 judge. I'm not in court. Okay? I mean I have never
14 in my life, and I've been on this Commission six
15 years, ever had such a situation. This is not
16 someplace we're gonna hang somebody.

17 I'm terribly insulted by what you're
18 doing. I really am. Because I would never treat a
19 man like that. He said, "I cannot answer." She told
20 him not to. She told him not to. Why would he
21 answer? I wouldn't answer. If somebody tells me not
22 to, they're my representatives, I'm not going to stay
23 anything more.

24 And why don't you ask her, who is
25 representing him, why she doesn't want him to answer

199

1 if that's what you need? But the continuance of this
2 is wasting my time. That's how I feel. It's wasting
3 my time. And I'm insulted by the way you're treating
4 this man.

5 MR. WURDEMAN: You know what? With all
Page 202

6 due respect, Mr. Contrades, I think the community of
7 the Leeward Coast is insulted by what happened to
8 them.

9 COMMISSIONER CONTRADES: I'm sure they
10 are. I'm sure they are.

11 MR. WURDEMAN: And we have -- we have --
12 as Intervenors we have an obligation to get to the
13 root of this.

14 COMMISSIONER CONTRADES: But not to
15 continuously badger somebody. You don't have that
16 obligation.

17 MR. WURDEMAN: I have an obligation to
18 represent --

19 COMMISSIONER CONTRADES: He already
20 said, "I'm not going to answer." Why do you continue
21 asking him the same questions?

22 CHAIRMAN DEVENS: Tommy, let me just --
23 I was just trying to establish what the bases are. I
24 think we're ready to move on.

25 COMMISSIONER CONTRADES: Thank you.

200

1 MR. WURDEMAN: I'll defer to the Chair
2 on this matter. I'd like to make some concluding
3 remarks, however. I do believe that it is clear from
4 the investigative report of the State Health

5 Department as attached as Exhibit 5 as well as the EPA
6 report that they admitted to previously, that there
7 are clear violations of 74 and 75 that we discussed.

8 MS. VIOLA: (off mic) Excuse me. Is
9 this testimony?

10 MR. WURDEMAN: I'm just making a
11 concluding remark and I'll be done.

12 MS. VIOLA: It appears to be testimony
13 and conclusive.

14 CHAIRMAN DEVENS: If you can kind of
15 wrap it up, Mr. Wurdeman. I was going to give the
16 director if he had another person that you folks were
17 going to call to give further explanations. Is that
18 the plan?

19 MS. VIOLA: And I apologize but I would
20 like to ask a few questions of Mr. Whelan first.

21 CHAIRMAN DEVENS: Of course.

22 MR. WURDEMAN: I'll hold off on my
23 comments.

24 CHAIRMAN DEVENS: But there was also
25 going to be one more witness you were going to call?

201

1 MS. VIOLA: Yes.

2 CHAIRMAN DEVENS: Fine. Is that all the
3 questions you have, Mr. Wurdeman?

4 MR. WURDEMAN: At this time, yes.

5 CHAIRMAN DEVENS: Planning, did you want
6 to ask any questions, sir?

7 MR. YOUNG: No.

8 CHAIRMAN DEVENS: Ms. Viola, you want to
9 ask some follow-up questions?

10 MS. VIOLA: Thank you. Mr. Whelan,
11 could you tell the Committee what is the normal
12 rainfall for the entire year that Waimanalo Gulch
13 experiences?

14 THE WITNESS: Yes. We normally receive
15 19 inches or thereabouts of rain per year. This
16 particular set of three storms deposited 22 inches of
17 rain in just over three weeks.

18 MS. VIOLA: So would you characterize
19 that as an unprecedented storm in its intensity?

20 THE WITNESS: I would definitely say
21 it's unprecedented both in the volume and the short
22 amount of time. And I also mentioned in my earlier
23 testimony that the final storm, which was the larger
24 one, dropped 7.6 inches of rain in about six hours
25 time. So as I mentioned the intensity is the one that

202

1 causes the most amount of damage.

2 MS. VIOLA: So Chair Devens had asked
3 you to compare it to the 40 days -- I know a few years

4 ago we had 40 days of rain. How would you compare it
5 to that?

6 THE WITNESS: This would be much more
7 devastating because if you had a 40-day period where
8 it never stopped raining, but the intensity of the
9 rain was such that the existing infrastructure or
10 roadways or ditches or anywhere else on the island
11 would have been able to handle that.

12 In this particular case we had an area
13 that was closes to two miles square, I believe, in the
14 upper watershed dropping rain that came down through
15 the landfill which, again, this is a gulch which means
16 that it has very high sides on both sides.

17 So you had a very large watershed that
18 came through a very limited amount of spatial area in
19 a very, very short time. And that total amount of
20 rainwater was enough to overcome the design that was
21 approved for that location.

22 MS. VIOLA: And at all times during the
23 storms, all three storms, had the drainage that was in
24 place, was that as required by the permit or your
25 permit with DOH?

203

1 THE WITNESS: Yes. We are required to
2 maintain 24-hour, 5-year storm and that's what the
3 landfill is designed for.

4 MS. VIOLA: So at the time of the storms
5 and during the expansion you had the drainage that was
6 required by the permit.

7 THE WITNESS: Yes.

8 MS. VIOLA: Are you aware of any test
9 results from any of the tests of the stormwater that
10 was released?

11 THE WITNESS: Yes. I believe I
12 testified that the water was tested on the day of the
13 release.

14 MS. VIOLA: Right. Are you aware of the
15 results of those tests?

16 THE WITNESS: I am, yes.

17 MS. VIOLA: And what were the results?

18 THE WITNESS: The results came back. It
19 stated, and I believe they were in a press release
20 that was issued by the Department of Health at that
21 time, that stated that while the water results testing
22 that was done not only on site but in the area at our
23 offsite outlet that they were within the realm of what
24 you would expect to see during a major storm around
25 the island.

204

1 And as I testified earlier there was a
2 significant brownout around the island or a brown

3 advisory for several days after this storm.

4 MS. VIOLA: And Chair Devens also asked
5 you about an estimate of the total waste that was
6 discharged. And I heard that you said that you
7 couldn't quantify that. But could you tell the
8 Committee how many bags you did collect in your clean
9 up?

10 THE WITNESS: Yes. We collected during
11 the week-long process approximately 55 or so 40-gallon
12 trash bags full of waste. And out of that we probably
13 had a gallon to a gallon and-a-half or so of
14 sterilized medical waste. The majority obviously of
15 what we picked up at all of the beaches was material,
16 MSW storm material.

17 MS. VIOLA: Finally, in your dealings
18 with EPA throughout the negotiations that you
19 mentioned, did EPA indicate to you at any time their
20 impression of your cleanup efforts?

21 THE WITNESS: Yes they did actually.
22 During the course of their time with us both of their
23 inspectors as they were exiting the site made a point
24 of telling not only the City but Waste Management
25 representatives that we had done a good job in

205

1 assessing what needed to be done both with onsite
2 restoration of the site as well as our beach cleanup.

3 The intention -- and they further stated
4 that the intention of the administrative order was to
5 document what we had done and to formalize our plans
6 as we move forward to continue with our restoration
7 activities.

8 In addition to that I had an e-mail over
9 the weekend from a lady from EPA congratulating us on
10 the job that we had done during the cleanup
11 activities.

12 MS. VIOLA: No further questions.

13 CHAIRMAN DEVENS: Mr. Whelan, can I ask
14 you a quick question and we'll move on to the
15 Director's next witness. Are there preventative
16 measures that are being put into place now? I assume
17 the construction is still ongoing?

18 THE WITNESS: Yes. As far as the
19 diversion that we spoke of earlier, back in October we
20 had increased the number of shifts to try to get it
21 finished before the rainy season.

22 The contractor, though, was in the field
23 the day after the storm doing double shifts, again to
24 try to get this thing back in place as soon as
25 possible. And I believe that the current date is

206

1 about 10 days from now that it will be functionally

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2 complete, which would mean that in the event of
3 another storm of this magnitude the amount of water
4 from the watershed above us would go around the active
5 landfill and not through it.

6 CHAIRMAN DEVENS: Commissioners have any
7 further questions for this witness? Commissioner
8 Heller.

9 COMMISSIONER HELLER: Just wanted to
10 follow up on one point. In response to a question
11 from counsel, you indicated that you were in
12 compliance at all times during the whole period of the
13 three storms with the requirements of your permits.

14 THE WITNESS: Yes.

15 COMMISSIONER HELLER: Now, just want to
16 make sure I understand. With respect to that berm
17 that was under construction but not yet finished, are
18 you saying that you were in compliance while it was
19 in its unfinished state? Or that you would be in
20 compliance once it's finished?

21 THE WITNESS: We were in compliance
22 while it was being constructed per the terms of our
23 permit. And just a point of clarification. We're
24 speaking about the diversion drainage swale that will
25 take the water around the landfill.

207

1 The actual berm or dam that I referenced
Page 210

2 is only -- it's not in our permit -- it's only
3 something that we did as a preventive method after we
4 saw the results of the first storm and while it was
5 actually still raining. We were concerned that there
6 would be an uncontrolled release. So at that time
7 then we constructed a berm to keep that water on site.

8 COMMISSIONER HELLER: Okay. I apologize
9 if I got the terminology wrong. The swale that was
10 under construction --

11 THE WITNESS: Yes.

12 COMMISSIONER HELLER: -- you're saying
13 that while it was under construction but not yet
14 completed you were at that point in compliance with
15 your permits.

16 THE WITNESS: We were. That actual
17 language was written into the permit.

18 COMMISSIONER HELLER: So, in other
19 words, operating without the protection fully in place
20 is still in compliance with the permits.

21 THE WITNESS: Yes.

22 COMMISSIONER HELLER: Thank you.

23 CHAIRMAN DEVENS: Any other questions?

24 COMMISSIONER TEVES: I have a question.

25 CHAIRMAN DEVENS: Go ahead,

1 Commissioner Teves.

2 COMMISSIONER TEVES: Thank you,
3 Mr. Chairman. Mr. Whelan, how long has Waste
4 Management been operating the Waimanalo Landfill?

5 THE WITNESS: Since the beginning of the
6 site. I believe the landfill opened in 1989. And
7 we've been the contractor since then.

8 COMMISSIONER TEVES: Okay. And how
9 often does this medical waste wash down to the beach?

10 THE WITNESS: To my knowledge we've
11 never had a release of any solid waste from the site.
12 Certainly I don't believe there's been ever a case
13 where medical waste has gone off the site.

14 COMMISSIONER TEVES: So this would be
15 the first time.

16 THE WITNESS: Yes.

17 COMMISSIONER TEVES: Except for the
18 hundred year storm.

19 THE WITNESS: Yes.

20 COMMISSIONER TEVES: This is the first
21 time with medical waste.

22 THE WITNESS: Yes.

23 COMMISSIONER TEVES: And no other time?

24 THE WITNESS: Not to my knowledge no.

25 We did canvass employees internally to try to

1 determine that. And there was no evidence to show
2 that that ever happened before.

3 COMMISSIONER TEVES: Thank you.

4 THE WITNESS: You're welcome.

5 CHAIRMAN DEVENS: Commissioner
6 Contrades.

7 COMMISSIONER CONTRADES: I have finally
8 found this investigation report from the Department of
9 Health Clean Water Branch. I don't know who I'm
10 supposed to ask this question to because it doesn't
11 state who it was sent to or where it was supposed to
12 go to. But it is correct. It's only three pages
13 long.

14 And I just wanted to read for the
15 record. It says on Page 3 "In conclusion, it appears
16 that the landfill owners and operators including the
17 CCH and Wastewater Management violated Hawai'i water
18 pollution rules and regulations by discharging water
19 pollutants to state waters without authorization.

20 "Further enforcement actions may be
21 required to ensure remediation of the violation. At
22 this time the DOH/CWB will pursue enforcement action
23 in the form of a Notice of Apparent Violation and
24 requests for information. Further escalating the
25 enforcement action may also be forthcoming as updated

1 information regarding this case is received."

2 I'm not an attorney. But if somebody
3 read that to me I'd be very careful of what I said.

4 Another point I'd like to make to
5 everybody here: The reason we have this hearing is
6 because this Commission, upon reading all of that
7 stuff that went on in the newspapers and all the
8 accidents that happened, we were very concerned
9 because we were the ones that was involved in the
10 approval of giving them the opportunity to stay open
11 to 2012.

12 And we did this because we also are
13 concerned. But I'm also concerned in treating people
14 fairly. I don't know where this came from. I don't
15 know who it was addressed to. I don't know how
16 anybody got it. And I only received it today. But
17 this doesn't say anything to me as far as: Yes, they
18 did something wrong.

19 There is an ongoing investigation. I
20 would like to know what happened also. But I think we
21 should treat people fairly here. That's all I have to
22 say.

23 CHAIRMAN DEVENS: Any other questions?
24 Director, you want to move to your next witness?

25 MR. STEINBERGER: Yes.

1 CHAIRMAN DEVENS: Mr. Whelan, thank you
2 for coming down. We appreciate it.

3 THE WITNESS: Thank you for your
4 hospitality.

5 MR. STEINBERGER: Mr. Chair, we have a
6 short summary that we put on a PowerPoint because we
7 wanted to go over the 16 conditions. So for members
8 that are sitting here outside of the Commission so
9 they could actually see the wording of the 16
10 conditions.

11 We thought it would be prudent if we
12 were able to project that up on the wall so people
13 could see. If you can just bear with us for a couple
14 of minutes.

15 CHAIRMAN DEVENS: Of course.

16 MR. STEINBERGER: Or perhaps if you'd
17 like to take a short recess.

18 CHAIRMAN DEVENS: Yes, why don't we take
19 a short break and we'll reconvene when you're ready.

20 (Recess was held. 3:30)

21 CHAIRMAN DEVENS: We're going to go back
22 on the record. Director, if you're going to be
23 narrating I've been advised we still have to put you
24 under oath.

25 MR. STEINBERGER: Yes, that's fine.

1 xx

2 TIM STEINBERGER,
3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: I do.

6 CHAIRMAN DEVENS: And if you could just
7 state your name for the record.

8 THE WITNESS: For the record my name's
9 Tim Steinberger. I'm the director of the Department
10 of Environmental Services for the City and County of
11 Honolulu.

12 CHAIRMAN DEVENS: Thank you very much.

13 MR. STEINBERGER: First off I'd like to
14 thank the Commission for inviting us here today. As I
15 had discussion with Mr. Davidson shortly after the
16 event at the Waimanalo Gulch I felt it would be
17 appropriate that we come in and give an update to this
18 Commission. And then shortly after we received this
19 left from you.

20 Today I'm here to address the items that
21 have to deal with the movement towards selecting an
22 alternative to replace or supplement the Waimanalo
23 Gulch Sanitary Landfill which was from Condition 4 of
24 the 16 conditions. And then also just to go through
25 all of the 16 conditions to present to you the status.

1 You did receive from us a report. It's
2 an update of our annual report in which we did, we
3 have provided written in there as well.

4 So if I may, first off just very quickly
5 this is some information that this Commission probably
6 knows more than it really wants to know about.

7 But as you know the landfill began
8 operation in about 1989 and our operator is Waste
9 Management Hawaii. It does operate under a permit
10 issued by the Department of Health.

11 Primarily we receive MSW, the bulk of it
12 being bulky type trash, also ash and residue from
13 H-Power. Right now we're seeing about 400,000 tons
14 annually coming into the landfill.

15 This is just a quick breakdown of what
16 the landfill sees. Again, in MSW the number that we
17 are operating at now's about 163,000 tons annually.
18 This is a -- oh, incidentally, that FY06 is incorrect.
19 It should be fiscal year 10. This has been quite a
20 bit of a drop from the last data that you saw. I
21 believe it was more around 650 tons a day. As you can
22 the islandwide recycling has taken quite a bite out of
23 the amount of MSW that's going into the landfill.

24 So if I may go into where we are right

214 25 now as far as the selection process. We have gone

1 through, and this occurred back in, starting back
2 about, I'm going to say last summer 2010 -- we did
3 start identifying potential members to sit on the
4 committee which is going to be tasked with finding an
5 alternate or a supplemental site for Waimanalo Gulch.
6 That committee process went through an identification
7 utilizing the consultant that we had put on board
8 earlier. And also our staff provided input as well as
9 some other people from throughout the city.

10 That list went over to the Mayor's
11 office in about October of 2010. The approval of the
12 list came back to us. And at that time we sent out
13 letters of invitation to those people. So they had
14 not been contacted up until about December 20, 21st
15 timeframe, asking them if they could participate.

16 We were looking for a committee of about
17 12 people. And specifically when we were looking at
18 who would qualify for this type of a position we were
19 looking at two areas. First, we wanted individuals
20 that had a background in community involvement, and
21 they could bring to the table an understanding of
22 issues and concerns that would be important from a
23 community's point of view.

24 Second was to ensure that the majority

215 25 of the committee members could understand the

1 technical issues and the complexities involved in
2 siting a new landfill, including but not limited to
3 the environmental and legal issues.

4 The first committee that was established
5 back in, I believe it was 2003 was made up about 16
6 committee members. And many of those people did not
7 have a very good technical background. So in the end
8 they had to establish a technical advisory group
9 utilizing the consultant and other sub-consultants to
10 provide information to the members, which just added
11 sometime to the overall process.

12 So at this time we were looking more for
13 a diverse group of people that already had substantial
14 knowledge in various issues.

15 The present committee is designed to
16 balance the committee and technical needs again to
17 provide more meaningful discussion at the table before
18 any recommendation goes over to the mayor.

19 This is the list of Advisory Committee
20 members. As you can see there's quite a few notable
21 people in there that have a fairly strong background
22 in environmental issues, as well as people who are
23 known to be very active in the community. Bruce

216 24 Anderson, who served as the former director, actually
25 Deputy Director for Department of Health. Also David

1 Arakawa who's now an Executive Director with the Land
2 Use Research LURF. Thomas Arizumi, he recently
3 retired from the Department of Health. He was in the
4 Environmental Management Division.

5 David Cooper. He's with the Hana Group.
6 It's an infrastructure support services. He also has
7 knowledge of the Leeward area.

8 John DeSoto, former councilmember. He's
9 been very active in the Leeward community.

10 John Goody. He actually was with the
11 military for some years. He's now working with Belt
12 Collins as an environmental planner.

13 Joe Lapilio. Again he's an urban and
14 environmental planner. He's got a pretty good
15 knowledge of the Wai'anae Coast issues in the
16 community.

17 Tesha Malama. She's with HCDA. And
18 she's a Director with that Kalaeloa group that's doing
19 the development out on that side of the island.

20 Janice Marsters. At the time I believe
21 she was one of the directors of the local Sierra Club
22 I'm not sure if she still sits on that board or if
23 she's just at this time associated with them. But she

24 is also an environmental geologist with quite a bit of
25 background in dealing with these types of issues.
217

1 Richard Poirier. He used to be with
2 State Planning, knows Coastal Zone Management quite
3 well.

4 Chuck Prentiss. He used to be the
5 executive secretary for the Planning Commission for
6 the City and County.

7 And then George West. He's a retired
8 Ameron executive.

9 So these people were 12 people that were
10 selected out of the many people that were invited.
11 Not everybody could commit as much time that was
12 required. We were looking at seven meetings with this
13 committee. So it is quite a bit of dedication of time
14 and service.

15 And as was indicated at the opening
16 meeting if you're on a jury at least you get paid, but
17 for this group you do not get paid, but you're still
18 sitting in there just as much time as though you were
19 on a jury.

20 This is our advisory committee schedule.
21 We had our first meeting on January 20th. And this
22 was -- an overview was presented. Our next meeting is

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23 going to be on February 10th. And this is going to be
24 a tour of the island's waste facilities. This will be
25 both H-Power, Waimanalo Gulch, and we also requested a
218

1 tour of PVT. And I believe we did get authorization
2 from the PVT manager to bring the committee up there.

3 On March 10th we'll be looking at the
4 engineering report. This will be the first time that
5 the sites that have been identified, potential sites
6 have been identified, will be presented. So we have
7 not even seen those sites yet. That will come on the
8 10th of March from the consultant.

9 Also we'll be presenting the previous
10 landfill sites. And this committee does have the
11 ability and the authority to request additional
12 information. They also may suggest additional sites
13 to be considered and ask the consultant to go through
14 the process again when they went to put this list
15 together for them.

16 On March 31st again there will be
17 request for additional community criteria, consultant
18 description of the process.

19 May 12 review of alternative sites,
20 distribute evaluation sheets and they'll weigh the
21 criteria. This is what they call a double blind type
22 process. They're really looking at establishing a

23 criteria that they feel is important for the siting of
24 the landfill. And once that's established, then it
25 pretty much sets the stage as to what site is the best
219

1 suited.

2 June 23rd results of the analysis.
3 Reveal sites selected by the committee. And then they
4 will establish what the content of the report that's
5 going to up to the mayor will be.

6 And then on their last meeting,
7 July 21st discuss the draft report, revise for the
8 final and then submit to mayor.

9 Now, this schedule is, the schedule that
10 we've put together, it may be longer. So right now
11 we're looking at this report going in towards the end
12 of July. But given that some of the issues that may
13 occur or perhaps not every member of the committee may
14 be able to meet all the time, it may extend as late as
15 August or early September. So that's where we are on
16 this.

17 As far as the previous sites these were
18 the sites that were shown to the committee back in
19 2003, 2004 timeframe. So these are all of the old
20 sites. I don't know at this point which one of those
21 sites is still available. Some of the sites may have

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22 been taken off. I do not know at this time if any new
23 sites have been added on.

24 There was a bit of an issue about a
25 letter that went out -- or two letters that went out.

220

1 One went to the federal government and one went to the
2 state of Hawai'i, having to do with two sites over
3 towards Waimanalo and Bellows. Those two sites
4 actually appeared in the 2003/2004 timeframe. And
5 similar letters were sent out to the federal
6 government and the state asking if those sites could
7 be placed on the consideration list. At that time
8 both the federal government and the state replied
9 that, no, they could not be placed on there.

10 The reason we ask that permission is
11 because the county does not have the authority to
12 condemn federal or state land.

13 Now, just before I go into the
14 conditions. When the Order came out from the Land Use
15 Commission in 2009 as far as Condition 4, we had
16 already put money into the budget in the fiscal year
17 10 budget which went through approval in March, April,
18 May timeframe of 2009 to procure, so we could secure a
19 consultant to start doing the work, the preliminary
20 work that is needed before you can present something
21 to a committee.

22 So the motivation behind going forward
23 at that time was because of the County's Integrated
24 Solid Waste Management Plan had already identified the
25 need to start the process because the process is quite
221

1 long.

2 'Cause once you actually select the site
3 it's then going forward beyond that and getting the
4 site and getting the permits for the site and then
5 constructing the site. So we knew at that time that
6 it was going to be a timely process. So that's why in
7 2009 we already started the process.

8 And the condition under Condition 4 I
9 believe it said that we had to start the process in
10 November of 2010. We actually got a head start on it
11 by one year.

12 If I may, is there any questions on this
13 before I move on? Or you want me to --

14 CHAIRMAN DEVENS: You can finish your
15 presentation and we'll call for questions.

16 MR. STEINBERGER: Okay. As far as the
17 16 conditions: Condition 1 which is, "The Applicant
18 shall obtain all necessary approvals for the
19 Department of Health, Department of Transportation
20 Commission, Water Resource Management" --

21 MS. ERICKSON: Could you please slow
22 down.

23 THE WITNESS: I'm sorry.

24 CHAIRMAN DEVENS: Yes, we've got the
25 court reporter.

222

1 THE WITNESS: Slower? I'll start over.
2 "The Applicant shall obtain all necessary approvals
3 from the State Department of Health, Department of
4 Transportation, Commission on Water Resource
5 Management and Board of Water Supply for all onsite
6 and offsite improvements involving access, storm
7 drainage, leachate control, water, well construction
8 and wastewater disposal."

9 At this time all of those applicable
10 permits and approvals have been obtained.

11 CHAIRMAN DEVENS: If I can suggest
12 instead of having to read each condition, because we
13 have the conditions and they are part of the record --

14 MR. STEINBERGER: Yes, yes.

15 CHAIRMAN DEVENS: -- I think the record
16 will be clear enough if you just want to say this is
17 the condition. Just say Condition 2 and whatever the
18 status you want to report.

19 MR. STEINBERGER: That would be fine.

20 CHAIRMAN DEVENS: That works for you.

21 MR. STEINBERGER: That'd work for me
22 just fine. Thank you, Chair. Condition No. 2. This
23 has to do with dust control. The dust control
24 measures and management plan have been provided as
25 part of the solid waste management plan. And that was
223

1 issued by the Department of Health.

2 Condition No. 3, which has to do with
3 the indemnity, so noted.

4 Condition No. 4, I just went through so
5 I'll go straight to Condition No. 5.

6 Condition No. 5 again looking at
7 alternative technologies. I'll give you an update
8 where we are on this right now. We were able to
9 successfully move forward and award a contract for the
10 construction of the third boiler out at H-Power.

11 What this does is it provides us with an
12 additional 300,000 tons annually of processing
13 municipal solid waste. It also allows us to increase
14 our power generation by an additional 32 megawatts.
15 So at that time we'll be looking at putting somewhere
16 in the neighborhood of about 80 megawatts onto the
17 grid.

18 For sludge reuse, a contract has been
19 issued. The contract is not just sludge reuse. It

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20 also indicates, involves green waste and food waste
21 and sludge. So that contract is issued and the
22 contractor is now preparing an EIS. That is scheduled
23 to come online in 2012 as well.

24 For the materials recycling, we
25 completed the final phase of the curbside rollout. We

224

1 also came out with an RFP for looking at possibilities
2 of reusing the ash that's produced at H-Power as well
3 as the fly ash at H-Power. Unfortunately we did not
4 get any respondents to those RFPs.

5 We also had an RFP for looking at
6 dealing with the residue that is generated. This is
7 this kind of grainy material that comes out. And that
8 one too we did not have any respondents.

9 There was also an RFP out for a
10 demonstration project. We are looking for somebody
11 who we would provide the land to and they would build
12 their facility. And we would pay them so much per ton
13 to process MSW in what has been defined as an
14 alternative project for such things as plasma arc, or
15 pyrolysis or one of these.

16 We had a lot of people, contractors show
17 up at our meetings, but we didn't have anybody who --
18 an actual developer willing to step forward and build
19 one.

20 As far as the offisland shipping, we
21 awarded that contract. There was an environmental
22 assessment that was prepared by the USDA which would
23 allow it to be shipped to the Roosevelt landfill in
24 Washington. This was challenged by the Yakima Indian
25 Nation. And at a later date it was also challenged by
225

1 the Friends of the Columbia River. And as such the
2 contractor was unable to perform in his contract.
3 The end result was that the EA was
4 withdrawn as well as the permit was withdrawn from the
5 contractor. And to this date the various
6 non-government organizations continue to solidify in
7 closing the entire West Coast to shipping. So right
8 now Oregon and Washington is closed. But the last one
9 that we heard was that they were not -- they were
10 going to continue to pursue shutting down the whole
11 West Coast. And I haven't heard anything more in that
12 respect for probably six or seven months. So I don't
13 know if they're still actively pursuing it or not.

14 As you all know the facility was
15 severely damaged by fire as well as some of the
16 equipment. The facility itself has been deemed
17 unusable. They believe it to be a risk.

18 The last time I talked to Department of

19 Planning and Permitting, they said they were most
20 likely going to issue a condemnation on that
21 particular building because they felt it was unsafe.

22 So as it is now the HWS Hawaii Waste
23 Shipping was unable to ship any of the material out.
24 What we ended up doing with them, and this is mostly
25 'cause they came in and represented that they were

226

1 bankrupt and they had no more money, and the investors
2 would put no more money into the facility. We came to
3 an agreement that if they would take their bundles of
4 MSW, and there were some 20,000 tons at the time. And
5 it was well publicized. I think the news media did
6 such a good job of publicizing it I don't have to go
7 in to much detail on this.

8 But the agreement was that they would
9 break the bales apart. They would separate everything
10 that was combustible out and they would take it up to
11 H-Power. And that material that could not be burned
12 would then go to Waimanalo Gulch. The whole idea was
13 to stay in the spirit of the original contract award
14 which was to minimize the burden on the gulch from
15 MSW.

16 What was delivered to the shipping
17 company was mostly bulky trash that we pick up along
18 the curbside as well as convenience center waste,

19 which is material that homeowners bring in generally
20 on the weekends. So that was the nature of what they
21 were dealing with.

22 So they did manage to separate and
23 dispose of the bulk of it, some 13,000 tons. It's my
24 understanding they have about 7,000 tons still
25 remaining and they're unable to process at this time

227

1 because they do not have what the Department of Health
2 requires, which is an environmentally enclosed area.

3 So right now they're on hold. So nothing
4 has been processed. But hopefully they'll come to
5 some resolution with DOH and they'll get this cleared
6 up.

7 Condition No. 6. The subsequent reports
8 will be submitted on June 1st of each year.

9 Condition No. 7, which is the closure
10 sequence. The closure sequence "A" will be completed
11 and the final cover will be applied by December 31st,
12 2012.

13 Condition No. 8, which has to do with the
14 timeframe. The Solid Waste Management permit that's
15 been issued by the Department of Health requires that
16 the landfill operations be confined to 7:00 a.m. to
17 4:30 p.m. In the event that there is an extended

18 outage of H-Power and the need arises, we would
19 petition the Department of Health to extend those
20 hours during that period of time.

21 Condition No. 9, the coordination with
22 Hawaiian Electric will be done. Again, to ensure that
23 the landfill construction and the operations are
24 adequately separate from the overhead lines.

228 25 Condition No. 10. This is the Honolulu

1 Ordinance 21-5.680. We were advised by the Department
2 of Planning and Permitting that since the property is
3 property that's designated for public use that this
4 particular ordinance does not apply to Waimanalo
5 Gulch.

6 Condition No. 11 so noted.

7 And Condition No. 12 also so noted.

8 Condition No. 13. The respective
9 notifications will be made prior to determination of
10 the use of the property as a landfill.

11 Condition No. 14. This is the provision
12 that the municipal solid waste shall be allowed at
13 Waimanalo Gulch up to July 31st, 2012. The date
14 restriction on the acceptance of MSW at Waimanalo
15 Gulch was appealed to the Circuit Court of the First
16 Circuit. On August 3, 2010 the court denied ENV's
17 request to strike Condition 14.

18 ENV timely appealed to the Intermediate
19 Circuit Court of Appeals that portion of the decision
20 which affirmed the July 31st, 2012 date and for the
21 acceptance of MSW at the landfill. And this case is
22 still currently pending at ICA.

23 Condition No. 15. This is having to do
24 with the Honolulu City Council and the City
25 Administration reporting to the public every three
229

1 months. On August 3rd, 2010 the Circuit Court of the
2 First Circuit issued its order modifying this
3 condition by substituting the Department of
4 Environmental Services for the City Council and the
5 City Administration.

6 That order was not appealed. The status
7 of the efforts of the Environmental Services in regard
8 to the continued use of Waimanalo Gulch Sanitary
9 Landfill, including any funding arrangements that are
10 being considered by the City Council and the City
11 Administration, are reported to the public during
12 public hearings. And these are conducted every three
13 months.

14 Which leads us into Condition 16. For
15 Condition 16, again, I won't repeat what I just said
16 earlier, but the Circuit Court did take the City

17 Council out of it and designate Environmental
18 Services.

19 As of the date of this report we've had
20 four public hearings. And they have been held at
21 Kapolei Hale, the first one being on July 21st, 2010.
22 The second one April 21st, 2010. The third one
23 July 21st, 2010 and another one on October 19, 2010.
24 So these, again, they were all held out at Kapolei
25 Hale.

230

1 The first meeting, the one in
2 January 21st, was held about 2:00 in the afternoon.
3 It was determined that perhaps that was too early
4 because we had nobody show up for that meeting from
5 the public. So the time was changed to be later in
6 the afternoon so that it would allow people to get
7 home from work. And if they so wished to attend they
8 could.

9 It was also brought up that we should
10 probably be finding ways to encourage more people to
11 show up at these meetings. So what we did was we
12 shifted it to Honolulu Hale to make it a more central
13 location. And the reason we did that is because we
14 sent out a request to the Neighborhood Commission to
15 notify all the Neighborhood Boards of these meetings
16 that were coming up. So this way we could expand the

17 base of people that perhaps would show up at these
18 meetings.

19 At this meeting on January 18th we had
20 one person from the public again attend. So we've
21 been averaging about one person from the public per
22 meeting. And I do have to back up a little because on
23 the July 21st meeting the person who showed up was
24 actually a person who was marketing a product as
25 opposed to wanting to listen what was going on with

231

1 the landfill. And that's where we are at this point.
2 So I'm open to questions.

3 CHAIRMAN DEVENS: Thank you very much.
4 Also thank you for taking the time to be here, present
5 us to with that information. Commissioners, any for
6 Director Steinberger? Commissioner Contrades.

7 COMMISSIONER CONTRADES: This may sound
8 like a little bit of a crazy question considering
9 you're a professional and I'm not. But I have this
10 question that's been bothering me for a long time.
11 The boilers can handle how much municipal waste?

12 MR. STEINBERGER: Well, the current
13 facility right now at H-Power can handle a little over
14 600,000 tons a year. So right now we are pushing just
15 about between 600,000 to 610,000 tons a year through

16 that facility. The contract is more in the
17 neighborhood of about 560,000.

18 So that kind of boils down to we're
19 putting in about 2,000 to about 2500 tons daily
20 through the H-Power facility. We generate a little
21 over 50 megawatts. And I believe about 3 or 4
22 megawatts are used for internal running of the
23 facility and the rest goes on the grid.

24 COMMISSIONER CONTRADES: So when the new
25 boiler comes on how much more will it be taking?

232

1 MR. STEINBERGER: We will be putting an
2 additional 300,000 tons annually into -- so we'll be
3 at a total of 900,000 tons. That's if we continue
4 running the first two boilers at the 600,000 tons. So
5 we'll be up to about 900,000 tons at that point with
6 an additional generator set which gives us an
7 additional 32 megawatts. So at that time we'll
8 probably be putting out close to 80 megawatts on the
9 grid.

10 COMMISSIONER CONTRADES: And how much
11 municipal waste does the City and County have total?

12 MR. STEINBERGER: The total amount that
13 the -- actually it's been dropping and part of that is
14 because of the recycling program. But the City has
15 been generating about 3,000 tons a day in MSW.

16 COMMISSIONER CONTRADES: So isn't there
17 a way that you guys could do it so that all of the
18 municipal waste goes down to your boilers down here?

19 MR. STEINBERGER: You know, that would
20 be great if we could. The only problem is there's a
21 few things that we always have to deal with. Not
22 everything can be combusted and converted into power.
23 There's also several items out there that you cannot
24 take to the H-Power such as dead animals, for
25 instance. Those you can't run through.

233

1 Other items such as -- if you drive
2 around and you'll see what's on the street side,
3 toilets and bathtubs and old sinks and these type of
4 things, these just do not combust. So they would not
5 be going in there.

6 The other item that we end up is a lot
7 of material like shattered glass, little bits of glass
8 and sand and rocks and these type of things. So those
9 are, you know, a lot of the items that just cannot go
10 in there.

11 COMMISSIONER CONTRADES: So how much of
12 that is generated per year that you cannot burn and
13 you must bury?

14 MR. STEINBERGER: Well, right now based

15 off of what's coming through the current boiler you'll
16 notice we're seeing about 250 tons a day of residue,
17 of material that can't be burned that goes from
18 H-Power on up.

19 The total loading right now to Waimanalo
20 Gulch on an annual basis is about 163-, 164,000 tons
21 annually. So it's way down. It's about, like I said,
22 from what we showed on the graph it's about 400 to
23 about 450 tons a day coming into Waimanalo Gulch.
24 Years ago it used to be closer to 1300 tons a day.

25 COMMISSIONER CONTRADES: Thank you.

234

1 CHAIRMAN DEVENS: Commissioner Lezy.

2 COMMISSIONER LEZY: Thank you, Chair.

3 Good afternoon, Director Steinberger. Thanks for your
4 testimony. Just one follow-up question. On the site
5 selection committee, the Department of Environmental
6 Services at this point has no idea what the potential
7 sites are?

8 MR. STEINBERGER: Well, let's say that,
9 you know, we are overseeing the consultant contract.
10 I as a political appointee do not. We established a
11 fire wall between this committee and anybody on the --
12 as far as the mayor's office and such so as not to
13 influence the decision of this committee. The only
14 appearance I've had at the committee was that first

15 meeting to welcome everybody. And I believe the
16 Managing Director was also there. And then at that
17 time we left.

18 COMMISSIONER LEZY: All right. Thank
19 you. I'll pose the question that I posed to
20 Mr. Whelan to you. And that is: Why is it the
21 medical waste isn't incinerated at H-Power?

22 MR. STEINBERGER: At this time I'm going
23 to have to give you my best thought on that. And I
24 believe it's because Covanta, who's the operator of
25 the facility, does not want to take that type of

235

1 material in. But again I would have to verify that.

2 COMMISSIONER LEZY: Okay. Thank you.
3 Then the last question I have for you, and it's a
4 little bit of a sandbag, but I think that I read
5 recently in the newspaper that Mayor Carlisle
6 mentioned at some event that he attended that it's the
7 intent of the City and County to come back and request
8 for a further extension of the operating life of
9 Waimanalo Gulch. And I appreciate that Environmental
10 Services is appealing the Circuit Court's refusal to
11 strike Condition 14.

12 Can you tell us today, though, if, in
13 fact, you fail to prevail on that appeal if it is the

14 intent of the City and County to come back and ask for
15 the date restriction to be extended?

16 MR. STEINBERGER: Yes. I can affirm
17 that.

18 COMMISSIONER LEZY: Do you know when the
19 City and County intends to file its request to modify
20 that condition?

21 MR. STEINBERGER: Well, it was our
22 original intent to actually go to the Planning
23 Commission basically starting this process over again
24 in January of this year, the past month. However,
25 with the change in administration and several events

236

1 that have occurred that have been rather distracting,
2 we were not able to start that process.

3 So we're hoping to be back with the
4 Planning Commission February but certainly no later
5 than March of this year.

6 COMMISSIONER LEZY: All right. Thank
7 you very much.

8 CHAIRMAN DEVENS: Any other questions?
9 Commissioner Jencks.

10 COMMISSIONER JENCKS: Mr. Steinberger,
11 thank you for being here today. A couple questions on
12 the berm that Mr. Whelan talked about. It's on the
13 mauka side of the main facility. Do you know when the

14 permits were applied for to construct that berm?

15 MR. STEINBERGER: You're speaking of the
16 west berm, the stabilization berm?

17 COMMISSIONER JENCKS: Yes.

18 MR. STEINBERGER: No, I don't have that
19 information. That would be better requested of
20 Mr. Whelan.

21 COMMISSIONER JENCKS: But the permits
22 would have been processed by the City and County, the
23 grading permits and those permits?

24 MR. STEINBERGER: Well, those permits
25 would have been -- yes, they would have been processed
237

1 by the Department of Planning and Permitting, that's
2 correct.

3 COMMISSIONER JENCKS: Does anybody from
4 the City and County know when those permits were
5 applied for and how long it took to get those permits
6 issued?

7 MS. VIOLA: I don't have that
8 information right now but we could get that for you.

9 COMMISSIONER JENCKS: I'd like to know.
10 I'm just curious. It sounds to me as though if that
11 facility had been constructed, permitted and
12 constructed on a timely basis maybe we wouldn't be

13 sitting here today.

14 MR. STEINBERGER: Okay. If I may
15 clarify, you're asking about the west berm. Or I'm
16 believing what you're asking about is the west berm.
17 But I think what you're really asking about is the
18 water diversion ditch.

19 COMMISSIONER JENCKS: That's correct.

20 MR. STEINBERGER: That allows us to
21 collect the offsite water. And it's my understanding
22 that as soon as Waste Management received their permit
23 to move forward and be able to go back into that area
24 they at that point applied for those permits.

25 COMMISSIONER JENCKS: But we don't know

238

1 today what the permitting process time took to get
2 those permits.

3 MR. STEINBERGER: I would not be able to
4 answer that. Again, I think that perhaps Waste
5 Management would be the one who could best answer.

6 COMMISSIONER JENCKS: I'd like to know
7 what those dates were. Thank you.

8 CHAIRMAN DEVENS: Any other questions?
9 Director, I had a quick question if I may on the
10 written status report that you submitted to us today.
11 On Page 5 you make a reference or represent that only
12 "a small amount", and those are the words in the

13 report, "small amount of sterilized medical waste was
14 discharged."

15 Again, if I heard Mr. Whelan's testimony
16 correctly, and I hope I'm not misrepresenting what he
17 said, I thought he said they could not really
18 determining the amount or volume of waste that came
19 out of that cell that broke loose.

20 MR. STEINBERGER: And I heard the same
21 thing as far as the total volume of MSW. I think that
22 perhaps the better term in that report should be "The
23 medical waste that was recovered by Waste Management".

24 Again, I believe that when Waste
25 Management went out they had requested that everybody
239

1 who found medical waste to call them and they would
2 come pick it up. And I believe that came down to what
3 they actually recovered.

4 CHAIRMAN DEVENS: And on the same page
5 there's a statement referring to how much medical or
6 -- strike that -- "There was a recovery of two
7 syringes and a vial. And that was the most medical
8 waste that Waste Management found on any beach on any
9 day."

10 Is that any one day or is it over the
11 whole entire period up to now that is all that's been

12 recovered as far as syringes and vials?

13 The reason why I'm asking this is if I
14 look at the evidentiary photographs submitted by Ko
15 Olina, one photograph alone has more than a handful of
16 syringes in a bucket.

17 I'm just wondering how am I supposed to
18 be reading that or we as a Commission should be
19 interpreting this.

20 MR. STEINBERGER: Well, you know, I
21 think what they were indicating was by location as
22 opposed to not the total stretch of beach. But again
23 I think that it's best answered by Waste Management.

24 I can tell you what the City did from
25 this their side. The lifeguards were notified. The
240

1 Department of Parks was notified. There was sweeps
2 done at the beach. They actually came out with
3 prisoners also and did a walk through of the City
4 beaches looking for material. And that material was
5 to have been turned back over to Waste Management.

6 And I believe that one of the requests
7 from EPA was that Waste Management segregate all of
8 the medical waste from all the other material that
9 they had picked up. But again perhaps that's best
10 answered by Waste Management.

11 CHAIRMAN DEVENS: I appreciate that.

12 Let me see if the parties have any questions for you.

13 Mr. Matsubara.

14 MR. W. MATSUBARA: Just briefly, Chair

15 Devens. Thank you. Director Steinberger, thank you

16 very much for the update and the status report. I

17 just want to follow up. It was very comprehensive.

18 But Page 11 Condition No. 10 there's two

19 parts, you addressed the first part. And I just

20 wanted to confirm the second section of Condition 10.

21 I'm not alluding that you purposely did

22 it. I know you had a lot to cover in a short period

23 of time. But there is a second part to Condition No.

24 10. And that relates to "...any and all applicable

25 rules and regulations of the State Department of

241

1 Health that WGSL will be in compliance with the

2 requirements."

3 MR. STEINBERGER: Correct.

4 MR. W. MATSUBARA: I just wanted to

5 confirm. And today you were present when there were

6 certain comments made regarding possible Department of

7 Health investigations. Has your Department on its own

8 intending to ensure that the operation is complying

9 with the Department of Health?

10 MR. STEINBERGER: Well, the Department

11 receives copies of the permits that are issued to
12 Waste Management. And it is the -- we have a project
13 manager that oversees the contract. And as part of
14 their management, obviously they would request or
15 inquire with Waste Management as to the compliance.

16 We have not received or the Waste
17 Management has not received any type of violations
18 that were associated with this particular incident.
19 So at this time I would say that they have been
20 compliant.

21 MR. W. MATSUBARA: I understand that,
22 that you have not received anything. But based on
23 today's testimony there's some possibility that there
24 may be some allegations. Has your Department made a
25 determination going forward to do your own independent

242

1 looking into the matter? I'm not asking -- all I'm
2 asking is do you intend to do it or something? I'm
3 just asking.

4 MR. STEINBERGER: If I may just clarify.
5 You're asking if we are going to conduct our own
6 independent investigation on this?

7 MR. W. MATSUBARA: Correct. Regarding
8 compliance with the Department of Health regulations.

9 MR. STEINBERGER: Well, at this time
10 we're deferring to the Department of Health.

11 MR. W. MATSUBARA: Okay.

12 CHAIRMAN DEVENS: Is that all,

13 Mr. Matsubara?

14 MR. W. MATSUBARA: Yes.

15 CHAIRMAN DEVENS: Mr. Wurdeman, did you
16 have any questions for this witness?

17 MR. WURDEMAN: Yes, Mr. Chairman. Good
18 afternoon, sir. Could I ask who performed the EIS's
19 to date for the City and Waste Management out at
20 Waimanalo Gulch?

21 MR. STEINBERGER: The EIS I believe was
22 prepared by R.M. Towill Corporation.

23 MR. WURDEMAN: Okay. And I'm looking
24 at -- and they performed, what, at least a couple of
25 the last EIS's that were done?

243

1 MR. STEINBERGER: Well, that I cannot
2 answer for sure because I do not have that information
3 in front of me.

4 MR. WURDEMAN: Do you know if they
5 conducted the last EIS that was performed?

6 MR. STEINBERGER: I only know that they
7 conducted the EIS that was relevant to this latest
8 expansion.

9 MR. WURDEMAN: Okay. And I'm looking at

10 the status report that was prepared by your
11 department. On Page 2 it indicates, I guess on
12 June 25, this is current status, the first paragraph?

13 MR. STEINBERGER: Okay, yes.

14 MR. WURDEMAN: It says, "On June 25,
15 2010 the City contracted consultant R.M. Towill Corp.
16 to facilitate the landfill site selection process..."
17 Do you see that?

18 MR. STEINBERGER: Yes, I do.

19 MR. WURDEMAN: Do you see a conflict at
20 all between R.M. Towill serving as a facilitator in
21 the selection process of the landfill sites and being
22 the same entity or company that did this last relevant
23 EIS?

24 MR. STEINBERGER: Ah, no, I don't really
25 see a conflict on that. It's not unusual for when you

244

1 hire a consultant that when you're looking for a
2 facilitator to assist a committee, that that is part
3 of their contract.

4 MR. WURDEMAN: That's all I have for the
5 witness.

6 CHAIRMAN DEVENS: Dawn, did you have any
7 questions?

8 MS. TAKEUCHI-APUNA: No questions.

9 CHAIRMAN DEVENS: Anything else you want

10 to ask, Ms. Viola? Okay. Commissioners, anything
11 else of this witness? We appreciate it very much that
12 you took the time to prepare the report and give us
13 the update today.

14 MR. STEINBERGER: Thank you very much,
15 Chair.

16 CHAIRMAN DEVENS: Do the parties want to
17 add anything else, add any comments or anything else?
18 Otherwise we're going to move into public testimony.
19 If you want to add anything to the record you can do
20 it at this time. Mr. Matsubara, did you want to --

21 MR. W. MATSUBARA: Thank you for the
22 opportunity and the Chair and for the Commission for
23 coming forward and asking for a status.

24 CHAIRMAN DEVENS: Thank you for coming
25 today. Mr. Wurdeman, did you want to add anything?

245

1 MR. WURDEMAN: Yes. Thank you also to
2 the Chair and the Commission members. I know this is
3 a very sensitive topic for all, not only for you in
4 making your difficult decisions, but also for the
5 community that has to deal with what it had to deal
6 with this last month.

7 I would just respectfully -- I'm not
8 sure where the Commission intends to go with this

9 discussion today. But I would respectfully ask that
10 the Commission consider what appears to be some very
11 clear violations not only in January, that the Chair
12 and other Commission members had raised, but also
13 December.

14 And certainly if it's helpful for the
15 Commission to request further information from the
16 State Department of Health in its decision-making
17 process, that's certainly something that all of us
18 would respectfully request the Commission to consider
19 doing.

20 But it is a very serious concern and not
21 only -- I just recently learned that not only did all
22 this medical waste go out on the beaches of the
23 Leeward Coast as many in this room had learned, but
24 that there were these violations apparently that had
25 been ongoing even prior to that date. And this wasn't

246

1 just a one-time too much rain in a 24-hour period.
2 This seems to be a problem that had been ongoing from
3 December.

4 MS. VIOLA: Excuse me. I object to
5 that. That was not discussed, so I don't think it's
6 appropriate for him to draw conclusions from
7 violations that were not discussed in today's hearing.

8 CHAIRMAN DEVENS: I understand. He's

9 just making statements for the record. We're not
10 going to be making any kind of decision here today.
11 It was more for informational and to get the point of
12 view from the City and Waste Management, which we
13 sincerely appreciate. But I'm just asking for any
14 other comments that they want to make for the record.
15 You'll be able to respond if you need to.

16 MR. WURDEMAN: Thank you.

17 CHAIRMAN DEVENS: I'm sorry,
18 Mr. Wurdeman.

19 MR. WURDEMAN: And that's all I ask of
20 the Commission, to take into account all these
21 different issues that have arisen today, many of which
22 we're only learning about for the first time. And I'm
23 confident that you will take the appropriate action.

24 CHAIRMAN DEVENS: Let me reassure you
25 Mr. Wurdeman, that this Commission, we take our

247

1 obligation to the public very seriously. We have some
2 oversight responsibilities. And we were very
3 distressed as everyone else was when we found out what
4 happened. And that was the catalyst for asking what
5 happened.

6 And I think we have more information
7 today. I think there's still many questions that

8 aren't answered. But I do want to assure you and the
9 public that we definitely take this seriously. It's
10 very distressing to all of us on this Commission to
11 have heard and seen what we did in the media. We do
12 appreciate your being here today and we do appreciate
13 your comments.

14 MR. WURDEMAN: Thank you, sir.

15 CHAIRMAN DEVENS: Ms. Viola, do you want
16 to add anything more?

17 MS. VIOLA: Just briefly. I also want
18 to thank the Chair and the Commissioners for having
19 this hearing today. And I would just first of all
20 object to any characterization there's been any
21 establishment of clear violations here today for the
22 record.

23 The City's position is that this was an
24 unprecedented storm or a series of unprecedented
25 storms that severely impacted the landfill. And that,
248

1 as testified today, Waste Management at all times they
2 were compliant the drainage permit requirements as
3 dictated by the DOH. And that essentially this was
4 unavoidable. They were faced with a rainfall that
5 they couldn't anticipate or they couldn't prepare for.

6 If we were to require all landfills to
7 construct in anticipation of any possible occurrence,

8 any possible rainfall, flooding, any kind of
9 catastrophic event, then we'd never have any
10 construction. We wouldn't have working facilities.

11 So I think that's what happened in this
12 present case. It was unfortunates, of course, that
13 there was a release of medical waste, but it wasn't
14 due to any mismanagement on the part of Waste
15 Management of the City. Thank you.

16 CHAIRMAN DEVENS: Just to reassure you
17 we're definitely not making any such finding at least
18 as of this time. But I also want to emphasize that we
19 have a real concern for the Leeward community when
20 things happen out there. They have this dump in their
21 backyard. There was a lot of pretty strong feelings
22 expressed to this Commission about shutting it down
23 and we passed on it. It's still within our
24 jurisdiction.

25 So that was another primary reason why
249

1 we wanted to at least try and get more information so
2 the public knows that we are concerned about it. We
3 do worry about that community. 'Cause they always
4 seem to be getting the short end of the stick in my
5 opinion. That's my personal opinion.

6 But we do appreciate you coming, the

7 Director for taking the time. We know you have your
8 hands full. We do appreciate the steps that you're
9 taking to try and rectify the situation. We're just
10 hopeful that it does not happen again. I know no one
11 wanted it to happen. But just hoping that it does not
12 happen again and that we are taking the steps to avoid
13 that. I see Ken in the audience. Ken, if you want to
14 add anything?

15 MR. WILLIAMS: No, appreciate it,
16 Chair. Thank you.

17 MR. STEINBERGER: Chair?

18 CHAIRMAN DEVENS: Yes.

19 MR. STEINBERGER: We do have, if the
20 Committee is interested, if this Commission is
21 interested, we do have copies of the packet that was
22 handed out to the selection committee. So if you all
23 were interested we can provide the copies.

24 CHAIRMAN DEVENS: We would appreciate
25 that. Can we provide copies to the other parties as

250

1 well?

2 MR. STEINBERGER: Yes. Well, we have
3 enough --

4 CHAIRMAN DEVENS: We'll make them.

5 MR. STEINBERGER: We'll just leave it
6 with Riley, maybe?

7 CHAIRMAN DEVENS: We'll make sure the
8 parties also get a copy. Thank you very much. Holly,
9 you want to take a short break? We have public
10 witnesses. Okay.

11 (Recess was held. 4:20)

12 CHAIRMAN DEVENS: (4:30) We're going to
13 go back on the record and take public testimony at
14 this time. I believe we have about 10 witnesses that
15 have signed up. If there's anyone out there that
16 wants to give public testimony, please let us know.
17 Dan, you want to call the first witness.

18 MR. DAVIDSON: Sure. And let me inform
19 the testifiers due to the lateness of the hour and the
20 fact that the air conditioning has been turned off,
21 we're going to limit public testimony to 2 minutes
22 each.

23 This is a status report. And certainly
24 there will be other opportunities in the future. So I
25 appreciate everybody's understanding of that. First

251

1 testifier is Greg Nichols followed by Chuck Krause.

2 UNIDENTIFIED SPEAKER: I believe Greg
3 Nichols had to leave.

4 MR. DAVIDSON: Chuck Krause, go ahead.
5 Followed by Edwin Arellano. Sorry.

6 CHAIRMAN DEVENS: Chuck, can we swear
7 you in first?

8 CHUCK KRAUSE,
9 being first duly sworn to tell the truth testified as
10 follows:

11 THE WITNESS: Yes.

12 CHAIRMAN DEVENS: Your name and address,
13 please.

14 THE WITNESS: My name is Charles or
15 Chuck Krause, 92-1498 Ali'inui Drive in Kapolei.

16 CHAIRMAN DEVENS: Go ahead. You have
17 two minutes.

18 THE WITNESS: Okay. I'm here today
19 because I do have some concerns as not only a resident
20 but as a business operator on the West Shore. I'm the
21 general manager of Ko Olina Marina so I've seen some
22 of the repercussions of the out-spill, especially for
23 and, in particular, to my boat operators. So I'm here
24 to pose a couple questions and/or comments to the
25 Commission and to the general manager of the landfill.

252

1 One would be: Is Waste Management
2 preparing to establish any sort of a relief fund for
3 the businesses that have been financially affected
4 from this out-spill? Because I can tell you that two
5 of our major boat companies have lost thousands of

6 dollars as a result of this. And when an incident
7 like this happens, in most cases there's some sort of
8 relief fund for those who can prove that they do have
9 financial loss.

10 Also, I just returned from the 2011 Boat
11 Show in Seattle. And I was absolutely amazed. I had
12 a booth there for Ko Olina and for Ko Olina Marina. I
13 was amazed at how far-reaching this bad news has
14 spread. When you're spending 10, 12 hour days in a
15 booth representing one of the most beautiful places in
16 the world to have people continually coming up and
17 say, "Aren't your beaches contaminated with medical
18 waste? What was that all about?"

19 I would then ask again: Is Waste
20 Management prepared to participate in any public
21 relations effort to help us reestablish the reputation
22 that not only Ko Olina but the west side of O'ahu has
23 maintained for years and years and years as having
24 some of the nicest beaches in the world? If the
25 general manager --

253

1 MR. DAVIDSON: 30 seconds, sir.

2 THE WITNESS: Okay -- if the general
3 manager and the counsel have classified this out-spill
4 from the third storm as unavoidable, I don't know how

5 this Commission in good faith can permit the continued
6 use of the landfill at this particular site. If we
7 can't guarantee that this isn't going to happen, then
8 obviously another site has to be chosen to avoid
9 what's just happened to the West Coast of O'ahu.
10 Thank you.

11 CHAIRMAN DEVENS: Thank you for your
12 testimony. Parties have any questions for this
13 witness? Hearing none, Commissioners? None. Thank
14 you very much for taking the time to be here today.
15 Next witness.

16 MR. DAVIDSON: Edwin followed by Charles
17 Leonard.

18 EDWIN ARELLANO,
19 being first duly sworn to tell the truth testified as
20 follows:

21 THE WITNESS: Yes.

22 CHAIRMAN DEVENS: Name and address.

23 THE WITNESS: Edwin Arellano, 1084
24 Pu'uwai Street, Honolulu, Hawai'i 96819.

25 CHAIRMAN DEVENS: Go ahead.

254

1 THE WITNESS: I'm here on behalf of
2 Hawaii Biowaste. And I'm here to voice some concerns
3 about not having an open landfill. The reason is we
4 process about 4-tons of regulated medical waste and

5 foreign waste at our facility. If we do not have any
6 open landfill at this point we cannot receive any more
7 and process them. So it is a concern.

8 I can honestly say that in two days
9 without pickup at the hospitals and dialysis clinics
10 they were overflowed. So that is my main concern at
11 this point. There is no place for us to discharge any
12 treated waste.

13 CHAIRMAN DEVENS: Thank you very much.
14 Any questions for this witness? Hearing none,
15 Commissioners? Commissioner Lezy.

16 COMMISSIONER LEZY: I'm going to ask you
17 the same question, Mr. Arellano, I asked two other
18 witnesses today. And that is, do you know why medical
19 waste is not incinerated on this island?

20 THE WITNESS: That I'm not sure why it's
21 not accepted at H-Power. But I believe the concerns
22 are maybe needle sticks. As they go through conveyor
23 belts they tend to stick, any sharp material.

24 At our facility we process pathological
25 and chemo waste through high temperature process which
255

1 is similar to incineration, which is pyrolysis.
2 That's about 30 percent of the waste that we receive
3 from our facility it goes through that process. But

4 for H-Power I believe that's probably one of their
5 concern. I'm not sure. Because we did ask them
6 before but it's not, it's one of those waste they
7 don't accept at this point.

8 COMMISSIONER LEZY: Okay. Thank you.

9 CHAIRMAN DEVENS: Any other questions?
10 Hearing none, thank you for being here. Next witness.

11 MR. DAVIDSON: Charles Leonard followed
12 by Lee Mansfield.

13 CHARLES LEONARD,
14 being first duly sworn to tell the truth testified as
15 follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: Please state your name
18 and address.

19 THE WITNESS: My name is Charles
20 Leonard. I live at 1910 Ala Moana Boulevard unit 19C.
21 I'm president of Rolloffs Hawaii. Been in the
22 industry 30 years at the executive level of two major
23 corporations for 20 years overseeing landfills,
24 developed landfill projects, so I have a very clear
25 understanding of this issue.

256

1 But one thing I haven't seen is the kind
2 of impacts over the past three months with trucks
3 waiting in line because of the closure of not only

4 Waimanalo Gulch but H-Power and the timing of such
5 which created 3-hour waits at Waimanalo when H-Power
6 was closed and then we're still -- I was out there
7 yesterday -- we're still incurring 3-hour waits at
8 H-Power because of this issue. So the domino effect
9 is devastating.

10 As far as the rain impact, our disposal
11 bill in the month of December went up \$83,000 in one
12 month. Same volume, same number of container yards.
13 So it's water weight. So I can tell you there was
14 significant rainfall during that time.

15 Whether it was a devastating event for
16 them, I'm sure it was, but it's been tremendously
17 devastating to the entire industry. So I don't think
18 everybody realizes the kind of domino effect you're
19 talking about if you're considering even closing this
20 landfill without an option.

21 CHAIRMAN DEVENS: Any questions for this
22 witness? Hearing none, Commissioners? None. Thank
23 you very much.

24 THE WITNESS: Thank you.

25 MR. DAVIDSON: Lee Mansfield followed by

257

1 Cynthia Rezentes.

2 LEE MANSFIELD

3 being first duly sworn to tell the truth testified as
4 follows:

5 THE WITNESS: I do.

6 CHAIRMAN DEVENS: Give us your name and
7 address, please.

8 THE WITNESS: Lee A. Mansfield, 839
9 Kaipi'i Street, Kailua, Hawai'i. I'm manager of
10 Hawaii American Water. We own and operate the
11 treatment plant that serves the community of Hawai'i
12 Kai. We serve 35,000 residents.

13 I'm here just to stress the importance
14 to us of having an open landfill and a future landfill
15 for the disposal of the sewage sludge we generate at
16 our facility.

17 We generate about 5 to 6 tons of sludge
18 a day. Currently we have stockpiled that sludge in
19 our drying beds. And it's beginning to impact our
20 capacity to process the wastewater sludges. So I
21 appreciate the work the Commission's doing. And again
22 just want to emphasize the importance to us of having
23 a means of disposal. Thank you.

24 CHAIRMAN DEVENS: Any questions for the
25 witness? Hearing none, thank you very much.

258

1 MR. DAVIDSON: Cynthia Rezentes followed
2 by Patricia Patterson.

3 CYNTHIA REZENTES,
4 being first duly sworn to tell the truth testified as
5 follows:

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: You name and address.

8 THE WITNESS: Cynthia Rezentes, 87-149
9 Maipela Street, Wai'anae, 96792. Thank you for having
10 this hearing. I think it's very important that we all
11 had the opportunity to hear what was stated.

12 As you know I've been an opponent of
13 continuing this landfill. One of the things that I
14 would like to share with you is we've heard today that
15 mhim wm unmvoidmblm; nobody could fom mhm mhim
16 kind of storm event would happen in this area of the
17 island.

18 I would like to remind everybody that
19 this is not unprecedented along the Leeward Coast. In
20 1996 we had some massive rains in Makaha Valley that
21 had not been seen before to the point where we had a
22 landslide that ended up in the Towers, the first floor
23 of the Towers in that building.

24 As a child growing up in that area we
25 have had massive storms. So I don't believe that

259

1 there should have been -- there should not have been

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2 foresight that major storms do hit the Wai'anāe Coast,
3 whether it's 25-year storms or 100-year storms. And I
4 think that especially with the facility as important
5 as this is if it's going to stay open they need to
6 take the highest level of safety concerns under
7 advisement for the sake of the community.

8 We've been saying that all along. And
9 I'm going to continue saying that because this
10 community, our community was impacted severely by
11 this. Not just the brown water and that runoff and
12 whatever was in the bacteriological content, whether
13 it was enterococcal or choleriform counts that were
14 experienced along there, but the waste also that came
15 down.

16 There should not be, "Well, 25 year
17 storm is good enough." That is not good enough for
18 out there. I'm sorry. Not when you're dealing with
19 this kind of waste. Not when you're dealing with this
20 kind of facility that has the potential of being an
21 extremely... it can... if it's not managed properly we
22 can literally close off that coast if anything happens
23 and it affects that road.

24 There's nothing in my mind that is too
25 great from an engineering standpoint to be able to

260

1 take into account things which should have been

2 expected, because this is not the first time the
3 Wai'anae Coast has had a hundred-year storm or a
4 50-year storm within the last 10 years.

5 MR. DAVIDSON: Thirty seconds.

6 THE WITNESS: So I would ask, again I
7 really appreciate the fact that you've had this
8 hearing, that you've allowed us to bring some of this
9 information out. And I would encourage you to make
10 sure to help protect our coastline and our folks by
11 putting the conditions on to make sure that we are
12 protected. Thank you.

13 CHAIRMAN DEVENS: Any questions for the
14 witness? Hearing none, thank you for being here.

15 MR. WURDEMAN: Could I ask?

16 CHAIRMAN DEVENS: Yes, Mr. Wurdeman.

17 MR. WURDEMAN: Good afternoon,
18 Ms. Rezentes. You're an engineer, correct?

19 THE WITNESS: Yes, I am.

20 MR. WURDEMAN: You know, in fact I know
21 because I've studied the (inaudible) cause I represent
22 some victims on the North Shore in 2008 during a huge
23 flood. And I know that the Wai'anae Coast was also
24 impacted just two years ago by that same rainfall.
25 Undoubtedly that was a much bigger storm than what

1 happened a month or two ago is my understanding. But
2 thank you for your comment.

3 THE WITNESS: Thank you.

4 CHAIRMAN DEVENS: Thank you very much.

5 MR. DAVIDSON: Patricia Patterson
6 followed by William and Sara Barnes.

7 PATRICIA PATTERSON,
8 being first duly sworn to tell the truth, testified as
9 follows:

10 THE WITNESS: I do.

11 CHAIRMAN DEVENS: Your name and address,
12 please.

13 THE WITNESS: Patricia Patterson
14 otherwise known as Pat, 84-755 Ala Mahiku, Makaha. I
15 don't live at the Towers but the plantation just
16 below. And I'm glad the Towers was there or we would
17 have gotten all those rocks.

18 Several things that I noticed. You
19 know, this landfill was engineered in 1985 for 25-year
20 storm. Why not a hundred years at that time? And
21 nobody mentioned liners today. Some of 'em came out
22 of there. Liners do decompose eventually.

23 And they talk about cell 6 but they also
24 talk about cells within that cell 6. And that was
25 really confusing to me to read about that. And I

1 think that ought to be clarified and named something
2 other than "little cells" or "mini cells".

3 And I wonder how often the Department of
4 Health representatives go and inspect that landfill
5 and whether anyone's on site 24 hours a day. It
6 didn't sound like anyone was there from early in the
7 morning until 5:00 when they came to work. I think
8 that ought to be considered.

9 They talk about a hotline about we could
10 call if we saw something. I don't know how they
11 advertised that. I didn't see anything about a
12 hotline to call.

13 And mainly I want to say to the
14 Commission please don't extend that again, not the
15 limit or the time. But be fair. Have every community
16 in this state take care of their own opala. Don't let
17 that committee select one site. Have them find a site
18 for each of our communities at least on this island.
19 Thank you.

20 CHAIRMAN DEVENS: Any questions for this
21 witness? There are none. Thank you very much for
22 being here.

23 MR. DAVIDSON: William and Sara Barnes.
24 I don't know if each of you is going to speak.

25 MR. BARNES: I will speak for both of us.

1 CHAIRMAN DEVENS: I'll swear you in.

2 WILLIAM and SARA BARNES

3 being first duly sworn to tell the truth testified as
4 follows:

5 MR. BARNES: Yes.

6 MS. BARNES: Yes.

7 CHAIRMAN DEVENS: Please state your name
8 and address whoever's going to speak.

9 MR. BARNES: William and Sara Barnes,
10 92-1001 Ali'inui Drive at Ko Olina. Thanks very much
11 for having this hearing and for the opportunity to
12 speak before you. We are homeowners and residents of
13 Kaiulani which is the closest residential community to
14 the Waimanalo Landfill. It's directly across the
15 Farrington Highway and has suffered from the various
16 failures of the landfill over many years.

17 These include blowing dust and dirt on a
18 frequent basis, toxic runoff and closed beaches and
19 even loose trash in plastic wet bags that blow on
20 windy days.

21 Trucks entering and leaving the landfill
22 are also an additional source of heavy dirt and dust
23 on the property.

24 I've brought along a few photographs
25 just to show the proximity of the landfill to both

1 Kaiulani and the rest of Ko Olina including the new
2 Disney resort and I'll circulate those. The photos
3 demonstrate how close the excavation activities of the
4 landfill are to our homes and to the community.

5 While at once it may have made a great
6 deal of sense to have the landfill in this area 21 or
7 22 years ago when it was a sugarcane field and there
8 was no Kapolei, we have a very different situation
9 today, an opposite situation.

10 What was deemed acceptable 21 years ago
11 I think is not acceptable now. So planning needs to
12 start to think about how in the longer run O'ahu can
13 meet its landfill needs but not do so by putting the
14 landfill immediately adjacent to a sizeable community.

15 Ko Olina is now a multi-million dollar
16 resort as many of you know. And in short previous
17 testimony employment center bringing millions of tax
18 dollars to the city and the state and adding
19 substantially to O'ahu's tourists industry.

20 Next I'd like to just say it's been
21 difficult for us to watch today City representatives
22 defend energetically Waste Management, almost acting
23 as their legal counsel in defense. And at the same
24 time indicate that they do not see themselves as
25 having any responsibility for initiating any testing

1 to be in compliance with the various conditions that
2 this Commission has asked. And instead regarded as a
3 matter that should be handled by the Department of
4 Health at the state level.

5 Curiously enough I have a letter dated
6 January 28th from the governor who responded to a
7 letter that my wife and I wrote to him on the subject
8 of the Gulch in which he said, "As you may know it's
9 managed by the City and County of Honolulu.
10 Appreciate your concerns. However, all decisions
11 directly affecting the landfill or discharge of
12 medical waste are under the jurisdiction of the City
13 and County of Honolulu."

14 Presumably, therefore, we all ought to
15 be able to look to Mr. Steinberger and his colleagues
16 at the City to take proactive efforts to make sure
17 that plenty of testing and plenty of oversight and
18 energetic regulation of this landfill is taking place.

19 MR. DAVIDSON: Sir, 30 seconds.

20 THE WITNESS: Thank you very much. We
21 did not hear that today. But going forward we
22 understand the Mayor's Advisory Committee will base
23 its recommendations on pre-identified selection
24 criteria. Mr. Steinberger has shared some of those
25 criteria on Monday with the City Council. Much

1 depends on making sure the selection criteria defined
2 with sufficient precision, clarity and weighting so
3 that a new alternate or second landfill site can be
4 picked and we do not get a repeat of the situation of
5 some years ago where simply the Waimanalo Gulch was
6 reselected once again. Thank you very much for
7 listening to us today. Appreciate it.

8 CHAIRMAN DEVENS: Did you want to make
9 your pictures part of the record of this proceeding?

10 THE WITNESS: Yes. Could we?

11 CHAIRMAN DEVENS: We will do that, sure.

12 THE WITNESS: Thank you.

13 CHAIRMAN DEVENS: Any questions for this
14 witness? There are none. Thank you very much for
15 being here.

16 MR. DAVIDSON: Clair and Peter van
17 Wingerden.

18 CHAIRMAN DEVENS: If we can first swear
19 you in.

20 CLAIRE AND PETER VAN WINGERDEN
21 being first duly sworn to tell the truth testified as
22 follows:

23 MR. AND MRS. WINGERDEN: We do.

24 CHAIRMAN DEVENS: State your name and

25 address.
267

1 MS. VAN WINDGERDEN: Claire and Peter
2 Van Wingerden, 92-1001 Ali'inui Drive, Kailani in
3 Kapolei. We too are residents of Kailani at Ko Olina.
4 We live directly below the dump. We look at it every
5 day. And we live directly above the pipe that falls
6 into the water. So we have a very good viewpoint of
7 the spill and its effects. And we are very concerned
8 not just about the environmental impact which is, of
9 course, a major concern and the public health impact.

10 We are also concerned, as one of the
11 other witnesses has said, about the economic impact on
12 the resort and on the people who work there and who
13 live in the area.

14 We would strongly urge that the landfill
15 be closed in 2012 as at one point was planned. We
16 were very disappointed to hear that there would be a
17 plan to appeal that closure. We don't feel that the
18 continuation of the dump can be justified given the
19 proximity to both Ko Olina, which has greatly grown
20 since the landfill was placed there, but also to the
21 entire Wai'anae Coast. Thank you. And thank you very
22 much also for looking into this so deeply. Appreciate
23 it.

24 CHAIRMAN DEVENS: Thank you for being
Page 272

25 here. Any questions for these witnesses? There are
268

1 none, thank you very much. Our last witness.

2 MR. DAVIDSON: Alice Greenwood.

3 ALICE GREENWOOD,

4 being first duly sworn to tell the truth testified as
5 follows:

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: Your name and address.

8 THE WITNESS: I live at 87-576

9 Kula'auponi, Apartment C-102. I'm part of an
10 organization called Concerned Elders of Wai'anae. Pat
11 is our oldest. She's 8 years old. And I'm the
12 youngest. I'm 6. Sorry. (Laughter)

13 Anyway, our issues has always been about
14 the landfill, yes. We were concerned because of the
15 traffic, the dust, whatever was impacting our
16 community. And we considered Ko Olina as part of that
17 community 'cause it's in the range where we go home
18 to.

19 Anyway here I have a bunch of papers.

20 And I know the landfill started in 1989. And I'm
21 looking at these papers. And it's saying gee,
22 June 4th, 2010 61 pages, page 39 to 41 mentions all
23 about E6, the one we're talking about and we're

24 concerned about.

25 And it tells me that there's supposed to
269

1 be a berm. And this is by the Department, State of
2 Hawai'i Department of Health and got the names that
3 the people that had testified here on it.

4 And it says that there's going to be --
5 and remember we got a deadline June or July 2012 --
6 over here says, they talk about the west drainage
7 system cell E6.

8 And then the ending part says, "During
9 construction of surface water systems the permittee
10 shall ensure that existing stormwater collection and
11 conveyance are significant to manage 24 hours on
12 25-year storm events."

13 Now this is part of the closage (sic)
14 that they're supposed to be doing. And they got a
15 deadline, 2012. And then all of a sudden I hear about
16 that's June 4, 2010. Saturday December 18 in another
17 report says "E6 last operated 12-inches layer." And
18 that was the last operation of this day. It was
19 covered.

20 "Sunday December 19th heavy rain. The
21 landfill intermediate pump stormwater which
22 accumulated in the landfill E6 cell into the
23 landfill's stormwater drainage system." This is

24 mentioned on Tuesday December 23.

270 25 Now from June 4th, that's five months to

1 Saturday December 18th -- I mean one month later
2 December 19th. December 23rd we get the ones that you
3 guys read. We got that report.

4 Then December 28 this report says it's
5 already gone to the Pacific Ocean. That's
6 December 23rd. Tuesday December 28 we have another
7 storm. Okay? January 4 that's when this thing is
8 signed, January 4th, stating that "We have a problem
9 here guys." And I was shocked.

10 January 10th we get message that there
11 is medical waste which all was verified in here in
12 these documents. They already have the medical waste
13 in E6.

14 I don't blame us for being worried, not
15 Pat and I. We're only 8 and 6. Can you imagine our
16 children and our grandchildren that's using those
17 beaches? We're lucky we found 'em onshore. What
18 about out in that ocean?

19 You know, I'll put it this way. I was
20 homeless 2007 and '8. I didn't realize when some of
21 the children came up to me and told me they found
22 needles, I thought gee, these guys doing drug things

23 around here.

24 Could that have happened during that

25 timeframe and not let any of us know what was

271

1 happening? Like I said I'm not concerned about

2 myself. My time is limited. I am very concerned

3 about our children. Please, it's got to be more

4 management than what's going on. If it's too big

5 then, like Pat says, spread it around. Maybe that's

6 the problem. Thank you.

7 CHAIRMAN DEVENS: Alice, I know you've

8 sat through this whole agenda today. And we

9 appreciate your concerns and being involved in the

10 process. We really do.

11 Any questions for this witness? Hearing

12 noun I believe that is the last witness for the day.

13 Thank you very much. Parties want to add anything

14 else for the record before we wrap up? Commissioners?

15 Yes, go ahead.

16 MS. VIOLA: Can we get copies of

17 whatever was submitted?

18 CHAIRMAN DEVENS: Sure. Riley will give

19 you whatever you'll need.

20 MS. VIOLA: Thank you.

21 CHAIRMAN DEVENS: That's it. We'll

22 stand adjourned. Thank you very much for being here.

23

24 (The proceedings were adjourned at 5:00 p.m.)

25 --oo00oo--

272

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C E R T I F I C A T E

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4 I, HOLLY HACKETT, CSR, RPR, in and for the State

5 of Hmwmi'i, do hm by cm ify;m

6 That I was acting as court reporter in the

7 foregoing LUC matter on the 2nd day of February

8 2011

9 That the proceedings were taken down in

10 computerized machine shorthand by me and were

11 mhm fm m ducmd mo pminm by m ;m

12 That the foregoing represents, to the best

13 of my ability, a true and correct transcript of the

14 proceedings had in the foregoing matter.

15

16 DATED: This_____ day of_____2011

17

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21

HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

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