

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

<p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AUSTIN, TEXAS</p> <p>IN THE MATTER OF THE) SOAH DOCKET NO. APPLICATION OF BFI WASTE) 582-08-2178 SYSTEMS OF NORTH AMERICA, LLC) PROPOSED SOLID WASTE PERMIT) TCEQ DOCKET NO. AMENDMENT NO. 1447A) 2007-1774-MSW</p> <p style="text-align: center;">HEARING ON THE MERITS MONDAY, JANUARY 26, 2009</p> <p>BE IT REMEMBERED THAT AT approximately 9:04 a.m., on Monday, the 26th day of January 2009, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, 300 West 15th Street, Hearing Room 402, Austin, Texas, before WILLIAM NEWCHURCH, Administrative Law Judge; and the following proceedings were reported by Kim Pence, a Certified Shorthand Reporter of: Volume 5 Pages 1008 - 1228</p>	<p style="text-align: right;">Page 1010</p> <p>1 some snippets of cross-examination -- I mean from the 2 deposition, some snippets from a deposition being 3 offered or perhaps Mr. Bentley we'll sneak him in for 4 a short while Tuesday afternoon, one or the other. 5 JUDGE NEWCHURCH: Okay. 6 MR. GOSSELINK: And I think part of the 7 agreement with Ms. Cook is that we can put in the 8 deposition -- the deposition in total or in part. 9 We've yet to make that decision. 10 MR. BLACKBURN: That's correct. 11 JUDGE NEWCHURCH: Okay. Well, good. 12 Thanks for continuing on those kinds of things. It 13 will make the hearing go a little quicker. 14 Then we are ready to resume with 15 Mr. Mehevec. Am I pronouncing that correctly? 16 THE WITNESS: Mehevec. 17 JUDGE NEWCHURCH: Mehevec. I'll get it 18 right yet. 19 THE WITNESS: That's all right. 20 JUDGE NEWCHURCH: And, Mr. Mehevec, you 21 remain under oath. 22 THE WITNESS: Okay. 23 JUDGE NEWCHURCH: And as I recall, we're 24 ready for redirect. 25 MR. GOSSELINK: Right.</p>
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<p style="text-align: right;">Page 1009</p> <p>1 P R O C E E D I N G S 2 M O N D A Y , J A N U A R Y 2 6 , 2 0 0 9 3 (9:04 a.m.) 4 JUDGE NEWCHURCH: Okay. Let's come on 5 the record. It's about four minutes after 9 a.m. 6 It's January 26, 2009. This is the continuation of 7 the hearing in the BFI Case 582-08-2178. 8 Are there any preliminary matters this 9 morning? 10 MR. GOSSELINK: Yes, one minor 11 preliminary matter. Mr. Moore, who was scheduled to 12 take Mr. McInturff, is at a Court of Appeals hearing. 13 So we're going to pinch hit with Duncan Norton. I 14 just didn't want to surprise the Court with a new 15 face. So Mr. Norton will be here to do Mr. McInturff. 16 JUDGE NEWCHURCH: Okay. Anything else 17 before we resume the hearing? 18 MR. BLACKBURN: Your Honor, I think 19 that we have reached an arrangement with regard to 20 Marcy Cook's testimony, and we're still working on 21 Jeremiah Bentley's testimony, but I think the 22 agreement is that Ms. Cook's testimony can come in, if 23 I'm not mistaken, just as offered without the 24 necessity of her coming in or anything like that. And 25 we're trying to work something similar with perhaps</p>	<p style="text-align: right;">Page 1011</p> <p>1 JUDGE NEWCHURCH: And you may proceed, 2 Mr. Gosselink. 3 P R E S E N T A T I O N O N B E H A L F O F 4 B F I W A S T E S Y S T E M S O F N O R T H A M E R I C A , I N C . 5 (C O N T I N U E D) 6 A D A M W A D E M E H E V E C , 7 having been previously sworn, continued to testify as 8 follows: 9 R E D I R E C T E X A M I N A T I O N 10 B Y M R . G O S S E L I N K : 11 Q Welcome back, Mr. Mehevec. 12 A Thank you, Paul. 13 Q Now, the majority of the cross-examination of 14 you involved two issues when you last left off. Can 15 you remember what they were? 16 A I think primarily we talked about increases 17 in peak flow, volume and velocity from the landfill 18 expansion and also erosion and sediment control for 19 the project. 20 Q So two issues? 21 A Yes. 22 Q Peak flow, volume and velocity as one issue? 23 A Yes. 24 Q And erosion and sedimentation control as the 25 other?</p>
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1 A That's correct.
 2 Q Okay. And is there a basic regulatory
 3 concern that underlies both of these issues?
 4 A Yes.
 5 Q And can you tell me what you think that is?
 6 A For peak flow, the regulatory requirement is
 7 that you don't make a significant change in peak flow,
 8 velocity or volume from the existing condition to the
 9 proposed condition. For erosion control, it's kind of
 10 in two parts. The first part is during the
 11 construction of the landfill with daily and
 12 intermediate cover, the requirement there is that you
 13 limit erosion as possible and keep sediment from
 14 leaving the site and, any erosion that occurs you
 15 repair it and restore the site to the way it was
 16 before. For final cover, it's a little different. It
 17 actually is requiring you to minimize erosion on site.
 18 Q Okay. Both of these regulatory requirements
 19 are tied to the fact that the landfill protrudes out
 20 of the ground, rainfall falls on a big new land mass,
 21 and how to deal with that water and the effects of
 22 that water, that's what -- that's what this issue is
 23 about or both of these issues are about, isn't it?
 24 A That's correct.
 25 Q And are there regulations in the TCEQ's 330

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1 rules that deal with this?
 2 A Yes, there are.
 3 Q And does the City of Austin also regulate
 4 this?
 5 A Yes, they do.
 6 Q Okay. And what are the kinds of things that
 7 you as an engineer can do to try to implement controls
 8 to try and handle or minimize any of these effects?
 9 A On the runoff issue, the peak flow, volume
 10 and velocity, the primary things you can do is try to
 11 mimic the existing drainage areas as closely as
 12 possible so you're not shifting a lot of drainage area
 13 from one outfall to another. Also you can use
 14 facilities such as retention or detention ponds to
 15 actually capture flow and either retain it or release
 16 it at a much slower rate. You can also use diversion
 17 structures such as berms and downchutes to slow the
 18 water down as it comes down the landfill which will
 19 tend to decrease the predicted peak flow.
 20 For erosion and sedimentation control,
 21 there's a wide variety of things that can be employed,
 22 everything from silt fence, rock berms, vegetation is
 23 obviously a very effective one, one is erosion control
 24 matting and all the way up to structural controls such
 25 as ponds sediment traps, and then that's probably it.

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1 Q Okay. Did you include all of these design
 2 elements in your Sunset Farms Landfill design?
 3 A Yes, we did.
 4 Q Now, I'd like to now focus on the erosion and
 5 sedimentation control part of these regulations in
 6 your design. Okay?
 7 A Okay.
 8 Q And you answered a little bit with regard to
 9 the difference between the two and the philosophy
 10 there. I'd like you to explain that again because I
 11 think it's important. What is the difference between
 12 sedimentation control and erosion control, and when
 13 does each kick in in terms of the regulations?
 14 A The regulations really contemplate two phases
 15 of landfill construction and development, I'll say.
 16 One I'll call the construction phase, which is when
 17 daily or intermediate cover is in place. During this
 18 phase, the regs are very specific about how to restore
 19 erosion after it occurs, and the requirement is to
 20 limit sediment from leaving the site. I think the
 21 regs contemplate that -- given that you have a fairly
 22 large mound of earthen material, when it rains you're
 23 going to have erosion. Regardless of how much effort
 24 you put into it, there's going to be some erosion that
 25 occurs on the site. The primary requirement is to

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1 capture this erosion before it leaves the site and
 2 then restore these side slopes and top deck back to
 3 their design configuration.
 4 The other side is when final cover is in
 5 place and I'll say when the landfill is complete and
 6 it's been vegetated. At that point, the concern is
 7 about creating a stable mass that can withstand
 8 geologic timeframes. So there you want to actually
 9 limit erosion so you don't end up eroding the cover
 10 and exposing waste during some long time period after
 11 the landfill is closed.
 12 Q So if a landfill actually subjects -- is
 13 subjected to some erosion while it's under
 14 construction, that is not by itself a violation of any
 15 regulation, is it?
 16 A No, and I think, in fact, the regs
 17 contemplate it as being inevitable and that it's
 18 something that just needs to be handled and dealt
 19 with.
 20 Q Now, I asked you to look in the regulations.
 21 I don't expect you to have these memorized, but I
 22 asked you to look in the regulations and I'm going to
 23 ask you to refer to regulations right now, if you
 24 would.
 25 A Okay.

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1 Q And those are 330.56(f)(4)(A)(vi).
 2 A Okay.
 3 Q And I'm just going to ask you to read the
 4 relevant portions into the record and to the Judge,
 5 please.
 6 A Okay. Section (vi) says "A maintenance plan
 7 for ensuring the continued operation of the
 8 collection, drainage and/or storage facilities as
 9 designed along with the plan for restoration and
 10 repair in the event of a washout or failure."
 11 Q And so it's got an actual plan for
 12 restoration and repair contemplated in the regs?
 13 A That's correct.
 14 Q And I asked you to look again at 330.133(f),
 15 and would you do the same thing and read that into the
 16 record?
 17 A The title of this section is Erosion of
 18 Cover, and it states "Erosion of final or intermediate
 19 cover must be repaired within five days of detection
 20 by restoring the cover material, grading, compacting
 21 and seeding unless the Commission's regional office
 22 approves otherwise, based on the extent of the damage
 23 requiring more time to repair or the repairs are
 24 delayed because of weather conditions."
 25 Q So another example of where the regulations

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1 recognize the inevitability of erosion is they will
 2 tell you how to handle it. Is that right?
 3 A That's correct.
 4 Q Now, you testified that erosion control is a
 5 little different and the focus shifts. And again,
 6 when does the focus shift in the regulations?
 7 A Once final cover has been installed and
 8 vegetated.
 9 Q Okay. And again, what is final cover?
 10 A Final cover, after the landfill has reached
 11 final grade, a composite cover system is installed.
 12 At this site, that would consist of an 18-inch
 13 compacted clay layer, a 40 mil synthetic liner on top
 14 of that and 18 inches of soil above that. Twelve
 15 inches of it is what we call the erosion layer, and
 16 the top six inches would be topsoil to support the
 17 vegetation.
 18 Q And again, I asked you to look for the reg
 19 that deals with that, and I'll guide you. It's
 20 330.253(b)(3). You've got the book.
 21 A I've got the book.
 22 MR. HEAD: Paul, could you read that
 23 again, please?
 24 MR. GOSSELINK: 333.253(b)(3).
 25 A Okay. I have it.

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1 Q (BY MR. GOSSELINK) Would you read the
 2 relevant portions into the record?
 3 A Yes. It states "For all municipal solid
 4 waste landfill units, the erosion layer shall consist
 5 of a minimum of six inches of earthen material that is
 6 capable of sustaining native plant growth and shall be
 7 seed or sodded immediately following the application
 8 of the final cover in order to minimize erosion."
 9 Q So upon placement of the final cover, what
 10 does the operator have to do?
 11 A You have to immediately seed it.
 12 Q That's immediate?
 13 A Yes.
 14 Q And that has to be distinguished from how you
 15 have to handle seeding and sodding with regard to
 16 daily and intermediate cover. Is that right?
 17 A That's correct.
 18 Q And how much time do you have to do that?
 19 A The regs allow you 180 days.
 20 Q You're familiar with the Rule 11 Agreement
 21 that we have been discussing here in this hearing?
 22 A Yes, I am.
 23 Q Okay. And I wanted to ask you some big
 24 picture questions about that. All right?
 25 A Okay.

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1 Q Does the Rule 11 Agreement improve the
 2 erosion and sedimentation control practices at Sunset
 3 Farms?
 4 A Yes, I believe it does.
 5 Q And are the requirements of the Rule 11
 6 Agreement more stringent or as equally stringent as
 7 the TCEQ regs?
 8 A They're definitely as equal. I would say
 9 they're a little more stringent than the TCEQ regs.
 10 Q And in your opinion, is there any way that
 11 compliance with the Rule 11 Agreement can do anything
 12 except make erosion and sedimentation control
 13 practices better at the Sunset Farms Landfill?
 14 A No, I think all the requirements are
 15 positives, and I think they'll only serve to reduce
 16 erosion and sediment transport.
 17 Q Now, on a related document, I'd like to
 18 direct your attention to RS-43. Do you have that with
 19 you?
 20 A I'm getting it right now.
 21 MR. GOSSELINK: Judge, would you like a
 22 copy, or do you have a copy with you?
 23 JUDGE NEWCHURCH: I have it.
 24 A I have it.
 25 Q (BY MR. GOSSELINK) And could you identify

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1 what RS-43 is for the record again, Mr. Mehevec?
 2 A RS-43 is the proposed special permit
 3 conditions that would incorporate the Rule 11
 4 Agreement into the MSW permit.
 5 Q Okay. And are they entitled Special
 6 Settlement Provisions?
 7 A Yes, I believe they are.
 8 Q Have you recommended to FBI that they accept
 9 these special settlement conditions?
 10 A Yes, I have.
 11 Q And do you know if BFI is willing to accept
 12 them?
 13 A Yes, they have told me that they are.
 14 Q And are you authorized to testify that BFI
 15 request these special settlement provisions be
 16 included in any permit that's issued?
 17 A Yes, I am authorized and I do testify that
 18 BFI would like to have these provisions included in
 19 the permit.
 20 Q Let me ask you a couple of specific questions
 21 now --
 22 A Okay.
 23 Q -- with regard to the issues raised by
 24 Ms. Noelke and Mr. Head. What's your understanding of
 25 the term "disturbed area"?

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1 A My understanding of the term "disturbed area"
 2 is any area that's been disturbed due to waste
 3 placement activities. This could be the actual
 4 placement of waste, the placement of daily or
 5 intermediate cover, the movement of soil stockpiles
 6 for fire protection or any other activity that's
 7 directly related to placement of waste at the
 8 facility.
 9 Q Activities that are directly related to the
 10 business of the landfill in accepting and disposing
 11 and controlling the waste. Is that fair?
 12 A Yes, I believe that's fair.
 13 Q What wouldn't it cover?
 14 A I don't think it would cover minimal things.
 15 Mr. Head had some hypotheticals that he brought up
 16 where BFI would come up and till the soil or slightly
 17 adjust the soil in an area in order to avoid the
 18 requirements of the Rule 11 Agreement. I don't
 19 think -- it would not cover things like that. It
 20 would have to be things that are directly related to
 21 their day-to-day activities of placing waste at the
 22 site.
 23 Q Okay. Can you advise the Court of any other
 24 common sense or business related reasons why what
 25 Mr. Head suggested could be a manipulated activity

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1 really is not going to occur here?
 2 A Yeah, I think primarily the site life on this
 3 site is not very long. We're going to have
 4 approximately six years of site life left if this
 5 permit is granted, even less if not, and I believe we
 6 will be very inclined to establish vegetation, in fact
 7 to place final cover as quickly as possible so that we
 8 can kind of cover as we go and not end up with one
 9 huge landfill to deal with all in a single fiscal
 10 year. So I think BFI would love to spread that cost
 11 out and begin to spend money and place final cover and
 12 get it vegetated as quickly as possible.
 13 Q And a typical reason that a landfill operator
 14 would leave intermediate cover on is because of the
 15 possibility that it might later want to expand the
 16 landfill in that area and up and there's no point in
 17 having final cover. Is that a situation that can
 18 possibly exist here?
 19 A No. I think as we've stated many times, as
 20 the application reflects, we are going to stop
 21 accepting waste at this facility in November of 2015.
 22 We have no plans to do any further expansions at the
 23 facility.
 24 Q Now, I'd like to turn your attention to the
 25 other big issue that was brought up, and it's will the

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1 landfill significantly alter natural drainage
 2 conditions.
 3 A Okay.
 4 Q Are you ready?
 5 A Yeah.
 6 Q Mr. Blackburn had taken out AM Exhibits 32
 7 and 33 and focused on the Qs. By the way, what is a
 8 "Q" Mr. Mehevec?
 9 A A "Q" is a peak flow rate. It's cubic feet
 10 per second. It's a volume of wastewater per time, and
 11 it's used to evaluate how quickly water is flowing
 12 from the site.
 13 Q So he was focusing on Outfalls 4 and 5. Do
 14 you remember that?
 15 A Yes, I do.
 16 Q And he was comparing the Qs shown on Outfalls
 17 4 and 5 with the Qs shown on AM-17. Do you remember
 18 that?
 19 A Yes, I do.
 20 Q Okay. And AM-17 is the final proposed
 21 condition?
 22 A Yes, that's correct.
 23 Q Okay. And Mr. Blackburn was looking at 32
 24 and 33 as the existing permitted condition comparing
 25 one to the other. Do you remember that?

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1 A Yes, I do.
2 Q And he pointed out that Q in Outfall 4 in
3 AM-33 went from 26 cfs to 61.4 cfs, from 33 to 17.
4 And the Q in Outfall 5 went from 66 cfs to 171.1 cfs,
5 the 25-year storm in both cases in AM-17. Did he read
6 those numbers correctly?
7 A Yes, I believe he did.
8 Q Now, that comparison on its face sounds
9 pretty bad if the requirement is not to significantly
10 alter natural drainage patterns. It sounds like it's
11 more than a twofold increase, doesn't it?
12 A Yes, it does.
13 Q Okay. So my question is, is Mr. Blackburn
14 using the right existing permitted condition as his
15 starting point?
16 A No, he's not.
17 Q Okay. What problem does that create when
18 you're trying to compare the existing permitted
19 condition to the proposed condition and you don't have
20 the right starting point?
21 A Well, it's no longer a meaningful comparison.
22 It's not an apples-to-apples comparison. You're
23 comparing something that was done with different
24 methodologies and different information, and to
25 compare the two would be completely meaningless.

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1 Q So what should he be comparing AM-17 to?
2 A AM-16.
3 Q Is there anything else he could compare to
4 get a legitimate comparison between existing
5 conditions and proposed conditions?
6 A You could compare AM-34 to AM-35, which would
7 be the same comparison using the City of Austin
8 methodologies where AM-16 and 17 are using the TxDOT
9 methodologies.
10 Q Okay. So there's two different methodologies
11 that you could use in the comparison. Is one of the
12 methodologies more right than the other?
13 A I don't think so. I mean, I think they're
14 both correct. And as long as you use the same to make
15 the comparison, the comparison is valid either way.
16 The rules speak of using the TxDOT Hydraulic Manual,
17 which is why we made that as our primarily comparison.
18 The guidance documents also talk about using local
19 jurisdiction's methodologies if they're available. So
20 we included the city methodologies also.
21 Q Okay. So what is it that you know that
22 Mr. Blackburn didn't know when he was asking you the
23 questions that enables you to know how to match apples
24 to apples and he wasn't quite getting there yet?
25 A Well, a lot of things changed between 2002

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1 and today. There was regulatory changes. TxDOT made
2 some pretty significant changes to their hydraulic
3 manual. We also got some better topo data in some
4 areas that cleaned up some topography that we didn't
5 realize was incorrect in 2002. And we added the
6 buffers in around the west and the south side and a
7 portion of the north side where we had not analyzed
8 those areas in the 2002 MOD.
9 Q And without taking into account these three
10 important changes, the comparison doesn't make any
11 sense, does it?
12 A No, it doesn't.
13 Q This is sort of important to get the details
14 down. So let's start with the regulatory framework.
15 How do you know what the existing condition is in
16 terms of the TCEQ's regulatory requirements?
17 A The existing condition based on the regs and
18 the guidance document is the currently -- the
19 currently permitted geometry of the landfill. You
20 have to take what is currently permitted and compare
21 it to your proposed condition.
22 Q And did you do that in this case?
23 A Yes, we did.
24 Q And what did your evaluation demonstrate?
25 A It showed that there was no significant

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1 alteration in the drainage patterns between the
2 existing permitted condition and the proposed
3 condition.
4 Q And where is that demonstration contained in
5 the application?
6 A It's contained in Attachment 6. I believe I
7 could find the APP numbers real quick for you here.
8 It's summarized on APP949 through APP953. That's for
9 the TxDOT methodologies.
10 Q Okay. And where is it depicted again, sir,
11 on the figures in the application?
12 A Oh, and it's also shown on AM-16 and AM-17,
13 which are Figures 6-3 and 6-4 in Attachment 6.
14 Q And is the City of Austin's comparative
15 figures also -- comparative figures using the City of
16 Austin methodology also contained in the application?
17 A Yes, those are AM-34 and 35. And the summary
18 tables for those runs are included in Appendix 6D of
19 Attachment 6, and those APP numbers would be APP1118
20 and APP1123.
21 Q Okay. Have you compiled an overall
22 comparison chart of these existing to proposed
23 conditions comparisons in your prefiled testimony?
24 A Yes, I did. For the TxDOT methodology, I did
25 one comprehensive chart that included peak flow,

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1 volume and velocity for each of the six outfalls.
 2 Q I'm going to ask you to walk the Judge and
 3 the parties through that chart so that the record
 4 reflects what your conclusions are and why.
 5 MR. TERRILL: Paul, where does it start?
 6 MR. GOSSELINK: Page 28 of Mr. Mehevec's
 7 testimony.
 8 MR. BLACKBURN: Did you say 28?
 9 MR. GOSSELINK: Yes. Let's wait for
 10 everybody to get organized.
 11 (Brief pause)
 12 MR. GOSSELINK: Is everybody there?
 13 Okay.
 14 Q (BY MR. GOSSELINK) Mr. Mehevec, looking at
 15 the chart on Page 28, would you explain what the rows
 16 mean and what the columns mean, and then explain how
 17 you reached your conclusion that there's no
 18 significant alteration?
 19 A Okay. I'd be glad to. If you look at the
 20 rows, it's broken down by Outfalls 1 through 6, and
 21 then there's a value for the 25-year evaluation and
 22 also for the 100-year. The 25-year storm is what's
 23 required in the TCEQ regulations. We also looked at
 24 the 100-year just to make sure there was no impact at
 25 that design storm either.

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1 The rows -- the columns are -- you have
 2 the Outfall first, the Storm Return Event that I just
 3 discussed. The next column is comparing Peak Flowrate
 4 predevelopment, which is the existing permitted
 5 condition versus postdevelopment, which is the
 6 geometry shown in the application.
 7 The column after that is Run-off Volume,
 8 which is the actual volume of water that comes from
 9 the analysis. Again, you have a predevelopment
 10 condition and a postdevelopment condition. And the
 11 final column is the Discharge Velocity associated with
 12 the peak flow rate calculated in the third column.
 13 And once again, it's list there for both
 14 predevelopment and postdevelopment.
 15 Q Okay. And so if the requirement is to show
 16 no significant alteration, why is it you conclude that
 17 this chart displays that requirement as being met?
 18 A I think if we -- we can walk through them and
 19 I'll show you. I think if you start in Outfall 1, for
 20 the 25-year event, you see that the predevelopment
 21 flow rate is 1,045 cfs. The postdevelopment was
 22 calculated at 954 cfs. The reduction is primarily due
 23 to the fact we have a very large detention and water
 24 quality pond in that Outfall.
 25 For runoff volume, the predevelopment is

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1 236.4 acre-feet. The postdevelopment is slightly
 2 higher, but not very significantly. It's 242.9
 3 acre-feet. And then discharge velocity is the same
 4 for both, it's 1.4 feet per second.
 5 Q And if you went through the entire chart line
 6 by line, row by row and column by column, would you
 7 reach very similar conclusions? Is there any one that
 8 sort of sticks out as maybe not being on target or
 9 slightly below in the peak flow?
 10 A No, there's not. In fact, I think if you
 11 look at all the peak flow rates, they're being reduced
 12 as part of this application. All of the volumes,
 13 except for the one that I just discussed in Outfall 1,
 14 are also being reduced, and the velocities are either
 15 staying the same or going down slightly in each of the
 16 outfalls.
 17 Q Now, did you do the same thing for the City
 18 of Austin methodology? Did you make the same
 19 comparisons?
 20 A We did. I didn't make a summary chart like
 21 this. There's two charts in the application, though,
 22 that make these comparisons.
 23 Q Okay. And where could the parties and the
 24 Judge find those summary charts?
 25 A They're on APP1118 and APP1123.

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1 Q I'm going to ask you the same question. Is
 2 there anything in those summary charts which reflect
 3 anything other than the same or slightly reduced rate?
 4 A The results are very similar. There's kind
 5 of an interesting quirk in Outfall 4. And the TxDOT
 6 method actually went down one cfs. In the City of
 7 Austin method, it went up one cfs. Both are very
 8 insignificant either direction. It's due to the
 9 differences and how to calculate time of concentration
 10 for TxDOT versus the City of Austin.
 11 Q And time of concentration is what, sir?
 12 A Time of concentration is a measure of how
 13 long it takes for water in the watershed to accumulate
 14 at the bottom, and it's based on the longest path that
 15 a drop of water would have to take. So you look at
 16 the watershed and see what's the longest, most
 17 circuitous route that a drop of water would have to
 18 follow in order to get to the outfall, and that's your
 19 time of concentration.
 20 Q Okay. And you concluded that that one cfs,
 21 as it relates to the peak flow in Outfall 4, did you
 22 say --
 23 A Yes, sir.
 24 Q -- is not a significant alteration?
 25 A Right, specifically given that it's actually

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1 a reduction in the TxDOT methodology. So I think it
 2 probably is the same.
 3 Q And we had you specifically identify the fact
 4 that the volume went up from 236 to 242 in Outfall
 5 No. 1 under the TxDOT method. Do you consider that to
 6 be a significant alteration?
 7 A No, it's just a couple percent. I can't
 8 remember the exact number. I think it's somewhere
 9 between 2 and 3 percent. And that volume of water is
 10 being released at a much lower flow rate than what's
 11 going on in the existing condition.
 12 Q So I'm sure everybody wants to know: Is the
 13 City of Austin more right or TxDOT more right? Which
 14 is the better one to use?
 15 A I think they're both right. I think it's
 16 just two different ways of accomplishing the same
 17 goal. I wouldn't say either is better than the other.
 18 The regs speak towards TxDOT more than the City of
 19 Austin obviously. So we felt that the TxDOT analysis
 20 was the one to put forward as our primary analysis,
 21 but also felt the City of Austin analysis was
 22 important and included it in the application also.
 23 Q And when you're making your comparisons, is
 24 it appropriate to compare a TxDOT analysis to a City
 25 of Austin analysis?

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1 A No, there's no comparison whatsoever is.
 2 Q What do you need to do to get apples to
 3 apples?
 4 A You have to use the same methodologies, the
 5 same topography and the same conditions for an
 6 existing and a proposed analysis.
 7 Q Is it fair to say, Mr. Mehevec, that with the
 8 exception of the volume in Outfall 1 under the TxDOT
 9 methodology and the one cfs in either direction with
 10 regard to the peak flow in Outfall 4, that the
 11 proposed drainage conditions will actually result in
 12 an improvement at the Sunset Farms Landfill?
 13 A Yes, that's accurate.
 14 Q Do you know if the TCEQ agrees with your
 15 analysis and assessment here?
 16 A I believe they do. They issued a draft
 17 permit after reviewing the application, and I believe
 18 that Mr. Udenenwu's -- I hope I said that right,
 19 Matthew -- prefiled testimony reflects that also.
 20 Q Now, let's talk about these three differences
 21 and how they came about. Okay? We'll start with the
 22 most important change, the methodology. What changed
 23 with regard to the methodology?
 24 A Well, for the first time in 19 years, in 2004
 25 TxDOT revised their hydraulic manual. The previous

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1 version was a 1985 version that had been around for a
 2 long time. The biggest change for this particular
 3 project was that they completely redid the way that
 4 you calculate runoff coefficients in the rational
 5 method. The rational method is basically a three-part
 6 calculation. It's got a C, which is the runoff
 7 coefficient, that's a measure of how much rainfall
 8 runs off versus how much rainfall infiltrates in a
 9 given storm. It's got an I, which is intensity, and
 10 that's a measure of how hard it's raining, how many
 11 inches does it rain in a given time period usually in
 12 inches per hour. Then it has an A, which is the area,
 13 which is basically the area of the watershed that
 14 you're evaluating. So the C number in that equation
 15 changed significantly from the 1985 version to the
 16 2004 version, and that --
 17 Q How did it change?
 18 A In fact, it went up. When you use this
 19 particular project, it increased the flows 50 percent
 20 just because of that change at every outfall.
 21 Q Of the three changes we're going to discuss,
 22 is this the most significant one?
 23 A Yes, this is.
 24 Q Okay. And you talked about the rational
 25 method?

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1 A That's correct.
 2 Q Would you explain the rational method in
 3 laymen's term and compare it to the HEC method?
 4 A The rational method is a -- it's been around
 5 forever, and it's primarily used on smaller
 6 watersheds. The rules require it to be used on
 7 watersheds less than 200 acres. So we only used it on
 8 the watersheds that drain to Walnut Creek. That would
 9 be Outfalls 2, 3, 4 and 5 and 6. Outfall 1 is too
 10 large for this method, and so we used a computer-based
 11 model called HEC-HMS. But the rational method, as I
 12 went through, is basically a three-part formula. It's
 13 fairly simple. You calculate a C and an I and an A
 14 and you multiply them together, and it gives you the
 15 peak flow rate for that storm.
 16 Q So if we go back to AM-33 and we take a look
 17 at Outfall No. 5 and you see the Q there is 66?
 18 A That's correct.
 19 Q And now the Q on AM-16 is 171 -- is that
 20 right -- 175.4? Is that correct?
 21 A I believe that's correct.
 22 Q Okay. So we've got different numbers there.
 23 A Right.
 24 Q As a result of this change in the methodology
 25 that you have to use, does that mean that the amount

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1 of water flowing through this outfall has physically
2 changed on the ground?
3 A No, it doesn't. If you're standing there and
4 it's raining, the flow will be whatever it is. These
5 models and formulas are simply trying to predict the
6 flow for a given design form. By changing the
7 methodologies, you'll get different predictions, but
8 it doesn't affect what actually flows off the landfill
9 in any given rain event.
10 Q Okay. So whatever you do or any other
11 hydrologist does with their computer models back in
12 their office trying to utilize the formulas that
13 they're told to use doesn't actually affect what's
14 happening on the ground when you've standing next to
15 the outfall and looking at it. All that's happened is
16 the predicted flow has changed. Is that right?
17 A That's correct. If we were to get lucky
18 enough and get a rain shower tonight and you stood out
19 there, the rain wouldn't care if it was the 1985 TxDOT
20 version or the 2004 version. The flow would be the
21 same.
22 Q Okay. So the City of Austin analysis would
23 come up with a different number than 175. Is that
24 right?
25 A Right. It's actually fairly significantly

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1 different.
2 Q Okay. I can't remember what it is. Can you?
3 A I can look for you. For the existing
4 condition, it would be 113. So 62 cfs lower than
5 the 175 you stated. And for the proposed condition
6 it's 112.
7 Q Again, is it apples to apples to take a look
8 at the TxDOT analysis with the City of Austin analysis
9 to try to reach any conclusions utilizing those two
10 methodologies?
11 A No. And in fact, I think that points it out
12 fairly clearly that nothing changed between the 175
13 and the 112 other than the fact we used the city
14 methodology versus the TxDOT methodology. The
15 geometry is the same. The area is the same. It's
16 simply a different way of predicting it.
17 Q And would that observation of the impact of
18 using two different methodologies similarly apply to
19 if you use the -- I'll call it the 2002 TxDOT
20 methodology and the 2004 and post-2004 TxDOT
21 methodology, can you compare the 2002 to the 2004
22 methodology and have anything meaningful?
23 A No. And as I stated earlier, for this
24 project, you would see about a 50 percent increase in
25 flow between the previous TxDOT Hydraulic Manual and

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1 the 2004 version simply because of the way they
2 changed the runoff coefficient calculations.
3 Q You listed two other factors. Let's talk
4 about drainage areas next.
5 A Okay.
6 Q Now, if we look at AM-33 and at AM-16, it
7 appears that the drainage areas basically have all
8 changed. Is that correct?
9 A That's correct.
10 Q Okay. Why did that happen?
11 A The majority of the drainage areas, it was
12 simply the addition of the buffer zone into that
13 particular drainage area. The only one that that's
14 not the entire story is the drainage area that goes to
15 Outfall 5, which was Drainage Area No. 5
16 coincidentally.
17 In that area, in the northwest corner of
18 the landfill, we had aerial topography for the
19 landfill in 2002, and that topography showed a ridge
20 up close to the northwest corner, which would tend to
21 cause water to be diverted to the north and then east
22 around the corner of the landfill. So it appeared
23 from that data that water that hit the ground from
24 that ridge and northward would not run to Outfall 5.
25 It would instead drain to Outfall 1 eventually.

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1 We've looked at subsequent aerial
2 topography when we were preparing the amendment
3 application and noticed that the topography in this
4 particular area was different than when you looked at
5 different aerial topographies. And we got a little
6 concerned that it maybe wasn't picking up the existing
7 features correctly. So we sent a survey crew out to
8 actually survey this area on the ground to determine
9 what the flow is actually doing.
10 Q And an on-the-ground survey is a more precise
11 survey than a topographic survey from an aerial?
12 A Yes, much more precise. Our aerial
13 topographies, they're two-foot contours. So they're
14 usually accurate to about a foot. When you do a
15 ground survey, you could get as accurate as to within
16 a half a foot or a quarter of a foot.
17 Q Now, back in 2002 when you used the
18 aerially-based topography, was that the most current
19 and the best data that you had?
20 A Yes, it was at the time.
21 Q Was it reasonable for you to use it at the
22 time?
23 A Yes, I believe it was.
24 Q So in the meantime, you just continued to
25 review the annual aerial topos? Is that correct?

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1 A That's correct, uh-huh.
 2 Q And you discovered something that didn't look
 3 consistent in the northwest corner?
 4 A Right. As we were setting up drainage areas
 5 for the existing run for the amendment and we had --
 6 were utilizing newer aerial topo, we noticed that
 7 there was obviously a difference in the drainage areas
 8 we delineated. We started looking at the topo to see
 9 what was causing that difference and noticed that
 10 there was a discrepancy between the older topos and
 11 the newer topos. And it varied from topo to topo.
 12 That area was just being depicted differently,
 13 depending on which aerial you looked at.
 14 Q Okay. So what did you determine you had to
 15 do after -- I know you determined to take a ground
 16 survey.
 17 A Right.
 18 Q And the ground survey showed something a
 19 little different than the aerial survey. Is that
 20 right?
 21 A That's correct.
 22 Q Okay. So what did you decide you needed to
 23 do with regard to the documents that you were placing
 24 in this application?
 25 A That we needed to modify the existing

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1 condition to reflect the data that we now had that
 2 showed what was actually going on in Outfall 5.
 3 Q Now, the documents changed. Did the actual
 4 direction of the flow of the water change on the
 5 ground?
 6 A No, it didn't. That water was always flowing
 7 there. We just didn't have the topography information
 8 necessary to be able to determine that.
 9 Q Okay. So in other words, it was always going
 10 down to Outfall 5, but you had thought by virtue of
 11 the aerial topography that it was going over to
 12 Outfall 1?
 13 A That's correct.
 14 Q So you had to shift a certain amount of water
 15 from the Outfall 1 -- from the Outfall 1 drainage area
 16 over to the Outfall 5 drainage area?
 17 A That's correct.
 18 Q Was this a particularly significant factor as
 19 it related to Outfall 5 and all the other outfalls?
 20 A It obviously increased the flow at Outfall 5
 21 slightly for the existing condition. I don't think it
 22 was the most significant factor there. I think the
 23 TxDOT change was still far and away the most
 24 significant factor. At the other outfalls, it was a
 25 very minor change. When we added the buffer in, it

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1 added an acre or two acres in most of those drainage
 2 areas.
 3 Q Okay. So you've already alluded to the third
 4 change, and that is, you added the buffer zone?
 5 A Right.
 6 Q Okay. And why did you add the buffer zone?
 7 A Well, when we did the 2002 MOD, we modeled to
 8 the edge of the landfill because that's where we were
 9 making alterations. On the west, the south and a
 10 portion of the north side, the site has 50 feet or a
 11 little larger buffer, not a very significant area from
 12 a drainage analysis standpoint. We didn't include
 13 that area in the analysis at that time and then later
 14 decided we should have included it.
 15 Q Okay. So as to the first one, there's
 16 nothing you could do. TxDOT changed the rules.
 17 Right?
 18 A That's correct.
 19 Q And as to the second one, you were able to
 20 figure out that the actual on-the-ground information
 21 could be improved by virtue of the on-the-ground
 22 survey. Is that correct?
 23 A That's right.
 24 Q So you got to be -- you were more precise as
 25 a result of your efforts to determine that. Is that

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1 right?
 2 A That's right.
 3 Q But as to the third one, you could have
 4 included the buffer zone way back in 2002 on AM-33 if
 5 you had elected to do that?
 6 A Right, and that was as much an oversight on
 7 our part as anything else. The analysis was did was
 8 still accurate in 2002 because we didn't include those
 9 buffer areas for either run, existing or proposed.
 10 After re-evaluating that, I realized it would be a
 11 much more comprehensive analysis if we did include
 12 those buffer areas, and that's what we did for the
 13 amendment application.
 14 Q And again, by the inclusion of the buffer
 15 zone information in your predictive computer model,
 16 did that have any actual on-the-ground impact of what
 17 was actually happening?
 18 A No, it didn't. Those areas were contributing
 19 flow whether I included them or not, and we left them
 20 out in both conditions. And you can do the same thing
 21 now. You can remove the buffer from the existing and
 22 the proposed runs in the amendment, and you would
 23 still get the same comparison.
 24 Q So ultimately did you incorporate these three
 25 factors, the change in the TxDOT formula, the more

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1 accurate topographic information and the buffer zone
 2 into your analysis as depicted in AM-16?
 3 A Yes, we did.
 4 Q And as depicted in AM-17?
 5 A Yes, we did.
 6 Q So did you end up with an apples-to-apples
 7 comparison when you did that?
 8 A Yes, we believe we did.
 9 Q Okay. Again, is it, therefore, your
 10 testimony that comparisons depicted between AM-16,
 11 which is the existing permitted condition, and the
 12 flow depicted in AM-17 reflect no significant
 13 alteration in natural drainage patterns?
 14 A Yes, that's my testimony.
 15 Q Okay. I'm going to want to ask you a couple
 16 of specific questions about AM-33. Okay?
 17 A Okay.
 18 Q What was the purpose behind the modification
 19 depicted in AM-33?
 20 A We were removing 11 acres from the landfill
 21 in the northeast corner. This has somewhat come about
 22 due to concerns by neighbors, and we were trying to
 23 move the part of the landfill that was closest to the
 24 neighbors and actually remove it from the project. We
 25 felt like this was a benefit. We were in the midst of

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1 some negotiations with the county at the time and felt
 2 this might be a good gesture on our part. So we did a
 3 modification to remove this area.
 4 Q Mr. Mehevec, were you aware of the fact that
 5 the county was pressing BFI to reflect this 11 acres
 6 being removed from the landfill footprint at the time?
 7 A Yes, I was aware of that.
 8 Q So when you removed the 11 acres in the
 9 northeast corner, did it change any other part of the
 10 landfill?
 11 A No, it did not.
 12 Q Okay. What drainage areas and outfalls did
 13 this removal of the 11 acres impact?
 14 A It affected Drainage Areas 1 and 7, which are
 15 both going to Outfall 1.
 16 Q Okay. And how were they affected?
 17 A The 11 acres that we had previously shown as
 18 landfill was changed to reflect the existing
 19 topography that's there, which is a fairly flat,
 20 grassy area along with -- the gas-to-energy plant is
 21 in that area.
 22 Q Okay. And so what happened to the Qs at
 23 Outfall 1 as a result of that?
 24 A They went down slightly.
 25 Q Okay. And is Outfall 1 an area that involves

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1 utilization of the rational method or the HEC-HMS
 2 method? And "HEC" is H-E-C.
 3 A It utilizes HEC-HMS.
 4 Q And why is that?
 5 A Because its overall drainage area is much
 6 larger than 200 acres.
 7 Q And why is the overall drainage area much
 8 larger than 200 acres if the entire landfill is only
 9 351 acres and the other various drainage areas take up
 10 some percentage of the land mass?
 11 A Because we also have approximately 200 acres
 12 of off-site water that goes in Outfall 1. The farm
 13 fields on the north side of Blue Goose Road all drain
 14 towards the Sunset Farms site through three existing
 15 culverts under Blue Goose, and they alone are enough
 16 to make it where you have to use HEC-HMS for that
 17 outfall.
 18 Q Okay. And during certain periods of the
 19 year, are those farm fields being tilled?
 20 A Yes, obviously they are.
 21 Q So do I understand your testimony correctly
 22 that this change to the 11 acres did not impact any
 23 other drainage areas or outfalls on the landfill?
 24 A That's correct.
 25 Q Okay. So did you change anything else on

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1 AM-33 other than Outfall 1?
 2 A No, we did not.
 3 Q Okay. Now, AM-33 was created in 2006, and
 4 you earlier testified that the TxDOT manual changed in
 5 2004.
 6 A That's correct.
 7 Q So you knew about this change at the time you
 8 filed this modification. Right?
 9 A Yes, we did.
 10 Q Okay. Why didn't you show all these
 11 recomputed bigger numbers on the exterior of the AM-33
 12 drawing?
 13 A Well, we had -- we had informed the TCEQ that
 14 we were only making a change in this one area. The
 15 only purpose of the MOD was to remove the 11 acres and
 16 then to reconfigure the cell alignments based on that
 17 change. I did not feel it was appropriate at that
 18 time to go back and redo all the other drainage on the
 19 other drainage areas after we specifically said we
 20 weren't doing anything over there in some attempt to
 21 clean them up to the new methodology. So we left them
 22 as they were and only made the change in Outfall 1.
 23 Q And did the TCEQ agree with your rationale?
 24 A I believe they did. They approved the
 25 modification.

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1 Q Now, go back to the very beginning of this
2 section. Mr. Blackburn was seeking to compare AM-33,
3 which is this MOD which removed the 11 acres, to
4 AM-16 -- I'm sorry -- to AM-17, which is the proposed
5 conditions. Is that comparison a valid comparison?
6 A No, it's not. As I -- as all the reasons
7 we've listed up to this point, there is no comparison
8 between the flow rates shown on AM-33 and AM-17 due to
9 the regulatory changes that occurred, the new and
10 better topographic information that we acquired and
11 the fact that our study limits were larger in AM-17
12 than they are on AM-33 because of the inclusion of the
13 buffer zones.
14 Q Now I'd like to ask you a couple of specific
15 questions about AM-34 and 35.
16 A Okay.
17 Q And what are they again?
18 A Those are the existing conditions and
19 proposed conditions figures using the City of Austin
20 methodology.
21 Q Okay. And the Qs shown on AM-16 and 17 on
22 the one hand and AM-34 and 35 on the other hand are
23 different, aren't they?
24 A That's correct.
25 Q And what is the basis for that difference?

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1 A It is purely the difference in design storms
2 for the two methodologies, and one of the bigger
3 contributors is the way that time of concentration,
4 which we talked about earlier, is calculated. TxDOT
5 has a chart where you plug in slope and cover
6 condition and it comes up with a velocity, and that's
7 how you calculate time of concentration.
8 The city has two fairly complicated
9 formulas, one for sheet flow and one for shallow
10 concentrated flow where you plug in a variety of
11 factors. Slope and cover condition are some of those,
12 and it comes up with the velocity that you use for
13 time of concentration for it. They give completely
14 different results, especially on longer runs of time
15 of concentration.
16 Q Okay. But you're not here to say one is
17 better than the other?
18 A No.
19 Q They're just different?
20 A They're just different ways of doing the same
21 thing.
22 Q Okay. Comparing 34 to 35 you reach the same
23 conclusion, that there's no significant alteration in
24 natural drainage patterns?
25 A Yes, I do.

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1 Q Why did you submit two versions?
2 A A couple of reasons: One, the rules
3 specifically talk about TxDOT, so we felt like that
4 one had to be included. The guidance document,
5 though, mentions that if there is a local
6 jurisdictional methodology that is not less stringent
7 than the 330 rule requirements, that that could also
8 be evaluated. I didn't think there was any good way
9 to determine which one was more stringent or less
10 stringent. There are just two different ways of doing
11 it. So we included them both.
12 The other piece was that we anticipated
13 getting a permit from the City of Austin. We would
14 need City of Austin runs at that point and felt like
15 we might as well go ahead and develop them and include
16 them in the application.
17 Q I want to pick up just a few little issues
18 that were raised in cross-examination that didn't fall
19 within these two bigger categories. Okay?
20 A Okay.
21 Q You were asked some questions about the pond
22 in the northeast corner. Do you remember that?
23 A The existing pond?
24 Q Yes, the existing pond.
25 A Yes.

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1 Q Okay. Is that pond protected from potential
2 intrusion of silt, sir?
3 A Yes, it is.
4 Q Okay. And how is that -- how is that
5 protected?
6 A Well, there's a couple of things: I'll start
7 with prior to the Rule 11 Agreement we have silt fence
8 at the base of all of the landfill slopes until
9 vegetation is established. The water from those areas
10 also has to run through very long grassline swales
11 which tend to remove sediment, and we've maintained a
12 line of silt fence around that pond since, I believe,
13 2003 to present date.
14 Q Okay. Do you recall questions about the map
15 in the wetlands report which identifies a 3.5-acre
16 wetland?
17 A Yes, I do.
18 Q And that's in what I'll call the wetlands
19 report in the application and the maps on APP225. Do
20 you remember that?
21 A Yes, I do.
22 Q Okay. Did you author that report?
23 A No, I did not.
24 Q Who delineated that wetland?
25 A I believe Lee Sherrod delineated that

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1 wetland.
2 Q You testified that no recycling area
3 pollutants have flowed through this 3.5-acre wetland
4 in the past.
5 A I don't believe there were.
6 Q I'd like to know if any such pollutants will
7 flow into that area in the future?
8 A Definitely not in the future. That area has
9 already become a landfill cell. Cells 22 and 23 are
10 in the area. They have both already been constructed.
11 There's no recycling activities going on in that area.
12 Q Now, Mr. Head asked you some questions about
13 the capacity of the sedimentation ponds and
14 sedimentation basins. Do you remember those?
15 A Yes, I do.
16 Q Okay. And I believe you responded that the
17 ones on the west side were engineered to capture the
18 first half inch of runoff. Is that correct?
19 A That's correct.
20 Q And the ones on the south side, although you
21 inherited them, you did measure them and make a
22 calculation as to whether or not they could also
23 capture the one half inch of initial runoff. Is that
24 right?
25 A That's correct.

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1 Q Okay. Why is it significant that these ponds
2 be able to catch the first half inch?
3 A Well, since there's no TCEQ criteria for
4 sizing sedimentation ponds, we went with the local
5 jurisdictions criteria, which is the City of Austin.
6 Their criteria would require a half inch capture for a
7 site that has this level of impervious cover.
8 Q And what's the theory behind that?
9 A The theory behind that is that the first half
10 inch of runoff tends to carry the majority of
11 pollutants and other things that are going to be
12 picked up by the runoff with it. So you capture the
13 first half, and then the later portions of the storm
14 are a much cleaner runoff than the initial flow.
15 Q And will these sedimentation ponds -- in
16 fact, have these sedimentation ponds captured the
17 eroded sediment?
18 A They definitely have, yes.
19 Q Okay. And are there provisions to
20 periodically clean the ponds in the application?
21 A Yes, there are.
22 Q And in the Rule 11 Agreement?
23 A Yes, they are.
24 Q One more question, Mr. Mehevec.
25 A Okay.

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1 Q With regard to the pond in the north -- in
2 the northeast corner and Outfall 001 or 01, if eroded
3 sediment, TSS if you will, total suspended solids --
4 do you agree with that?
5 A Uh-huh.
6 Q Were actually to flow through Outfall 1 in
7 excess of 100 milligrams per liter -- have I got that
8 right?
9 A Yes, that's right.
10 Q Okay. Would that constitute a violation of
11 any permit or law?
12 A No. The 100 milligrams per liter is a
13 benchmark value that's part of the site's TPDES
14 permit. The benchmark is set up as a guide more than
15 anything else. It's an indicator to you. If you have
16 levels that exceed 100 parts per million, the
17 requirement of the permit is that you evaluate your
18 plans to make sure there's not something you can do to
19 enhance sediment capture on the site and try to get
20 that number under 100. There's some sites where that
21 just cannot be achieved because you have off-site
22 water or other conditions that are attributing to your
23 outfall and you have very little ability to control
24 some of that water.
25 Q Is that, in fact, the case here at Outfall 1

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1 at Sunset Farms?
2 A Yeah, we have approximately the same amount
3 of water coming from off site as we do on site at
4 Outfall 1, and we've tried to put some provisions in
5 to control sediment coming from off site. All of that
6 runoff goes into the large channel that we call
7 Ditch K. We've included some rock berm, some
8 permanent wetland-style pools and made the channel
9 very wide so that the flow is very slow and tends to
10 drop out sediment as it goes down the channel.
11 Q And has that Ditch K design been reviewed by
12 the City of Austin?
13 A Yes, it was.
14 Q And did you receive a permit for it from the
15 City of Austin?
16 A Yes, we did.
17 MR. GOSSELINK: Okay. No further
18 questions.
19 JUDGE NEWCHURCH: Who has further
20 cross-examination? Does anyone? Mr. Shepherd?
21 MR. SHEPHERD: ED has just a few
22 questions.
23 RE-CROSS-EXAMINATION
24 BY MR. SHEPHERD:
25 Q In discussing how the drainage from the MOD

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1 that was approved in 2002 and what is presented in --
 2 I believe it would be exhibit, oh, 33, we explained
 3 the difference. I believe some of the differences had
 4 to do with taking in some of the buffer area into that
 5 drainage calculation.
 6 A That's correct.
 7 Q Did you explain the differences between those
 8 two, the one in the proposed amendment application and
 9 the one from 2002 anywhere in this application?
 10 A No, I don't think we did.
 11 Q And then I want to clarify on BFI AM-33 which
 12 I believe is presented -- it had the attachment where
 13 it was the modification narrative along with the
 14 diagram attached to it.
 15 A Correct.
 16 Q Do you have that before you?
 17 A Yes, I do.
 18 Q I'm looking at the letter dated February 1,
 19 2006, which was the cover letter, and I understand
 20 that letter to be a notice of deficiency letter?
 21 A Yes, you're right; it is.
 22 Q Was this document also approved as the final
 23 approval?
 24 A Yes, it was.
 25 Q And do you have a copy of that?

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1 A I do in my office for sure. I don't think I
 2 have one here.
 3 Q Okay. But it's your understanding that that
 4 was finally approved?
 5 A Yes, it was.
 6 MR. SHEPHERD: Okay. Thank you very
 7 much.
 8 JUDGE NEWCHURCH: Anyone else?
 9 Mr. Head?
 10 RECROSS-EXAMINATION
 11 BY MR. HEAD:
 12 Q Good morning, Mr. Mehevec.
 13 A Good morning, Mr. Head. How are you?
 14 Q I'm good. You mentioned that you had rock
 15 berms in the bottom of the Ditch K channel.
 16 A That's correct.
 17 Q How high are those rock berms from the bottom
 18 of the channel?
 19 A They're probably somewhere between 12 inches
 20 to 18 inches off the bottom.
 21 Q And what's the relative height of those rock
 22 berms to the berms surrounding the channel?
 23 A Could you ask that one more time?
 24 Q Yes. You've got the -- you have the Ditch K
 25 channel.

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1 A Correct.
 2 Q Does the Ditch K channel, does it have berms
 3 around the channel?
 4 A On one side it does, yes.
 5 Q How high are those berms?
 6 A From the bottom of the channel or from the
 7 ground?
 8 Q From the ground.
 9 A From the ground on the other side of them?
 10 Q Yes, sir.
 11 A They are probably anywhere from six inches
 12 to 18 inches high.
 13 Q So what's the difference in height from the
 14 top of the rock berms to the top of the berms on one
 15 side of the channel?
 16 A I would say it's probably about 18 inches.
 17 Q About 18 inches. And if the water was to run
 18 over the rock berms, would it leave the channel?
 19 A No.
 20 Q Why not?
 21 A The calculated flow depth in the channel is
 22 something less than 2 feet. It's probably right
 23 around 18 inches. So even if the berm provided no
 24 contribution whatsoever, no water was able to
 25 infiltrate, in a hundred-year storm it can still hop

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1 the berm and stay within the channel.
 2 (Exhibit TJFA No. 23 marked)
 3 Q (BY MR. HEAD) Mr. Mehevec, I've handed you
 4 what's been marked as TJFA-23. I ask you if you're
 5 familiar with this document?
 6 A I am. In fact, this is the letter that
 7 Mr. Shepherd was just asking about a few minutes ago,
 8 I believe.
 9 Q Correct. So for the record, can you identify
 10 precisely what it is?
 11 A This is the approval letter for the -- what
 12 we've been calling the 2006 modification where we
 13 removed ten and a half, 11 acres from the landfill
 14 footprint.
 15 Q Okay. And this letter references -- this
 16 letter is dated March 10, 2006. Correct?
 17 A That's correct.
 18 Q And it references revisions dated March 3,
 19 2006, received March 6, 2006.
 20 Referring to AM-33, Figure 3 --
 21 A Okay.
 22 Q -- this was sealed by you 3/1/06, which was
 23 roughly nine days prior to the approval by the TCEQ of
 24 the 2006 MOD. Correct?
 25 A That's correct.

13 (Pages 1056 to 1059)

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1 Q Okay. Is this proposed drainage condition
2 the drainage condition that was included in the 2006
3 MOD?
4 A Right, this is the final version of this
5 figure for this modification.
6 Q Okay. And once again, we have for -- on the
7 western side, we have for Sedimentation Pond A, we've
8 got 66 cfs and 26 cfs. Correct?
9 A Right, that's the flow coming off those
10 drainage areas of the landfill.
11 Q Right. And your drawing was dated -- you
12 refer to the date of the drawing. It was sealed, once
13 again, March 1, '06. Correct?
14 A That is correct.
15 Q If you could refer to AM-35?
16 A Okay. I have it.
17 Q AM-35 was sealed what date?
18 A August 1, 2005.
19 Q Okay. And that has -- and the date of the
20 drawing was 7/25/2005. Correct?
21 A That's correct, yes.
22 Q And for Outfall 5, what is the Q25 number
23 there?
24 A 112.0.
25 Q And for Outfall 4, what's your Q25 number?

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1 A 41.8.
2 Q So is it not accurate that subsequent to the
3 submission of AM-35 where we had higher flow numbers
4 on the western outfalls, a sealed document was
5 submitted to the agency that had lower numbers on the
6 western outfalls?
7 A That's correct. As I testified earlier,
8 since the modification was only modifying things in
9 Outfall 1, we did not think it was appropriate to
10 reintroduce an entirely new drainage analysis for that
11 modification, especially given the fact we had already
12 produced this information and knew it was out there
13 and currently under review.
14 Q Does Mr. Holland work for ACE?
15 A Yes, he does.
16 Q And you work for ACE?
17 A Yes, I do.
18 Q So to be clear, ACE filed a document in 2006
19 with different numbers than a sealed document for the
20 same drainage they filed in 2005?
21 A That's correct.
22 MR. HEAD: Move to admit TJFA-23.
23 JUDGE NEWCHURCH: Any objection?
24 MR. GOSSELINK: No objection.
25 JUDGE NEWCHURCH: It's admitted.

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1 (Exhibit TJFA No. 23 admitted)
2 Q (BY MR. HEAD) In your prefiled, you had a
3 chart on Page 28 which compared predevelopment and
4 postdevelopment drainage conditions for the
5 hundred-year storm event. Correct?
6 A That is correct.
7 Q And for Outfall 1, we have a higher runoff
8 volume for the 25-year storm -- correct --
9 postdevelopment?
10 A Compared to?
11 Q Compared to predevelopment.
12 A I'm not seeing where you're --
13 Q Okay.
14 A Oh, runoff volume. I'm sorry.
15 Q Yes. I'm sorry.
16 A I'm looking at peak flows. Yes, there is a
17 higher runoff volume for postdevelopment compared to
18 predevelopment.
19 Q And for the -- also for Outfall 1, we have
20 the hundred-year flood, we have higher runoff volumes
21 for postdevelopment. Correct?
22 A Yes, that's correct.
23 Q Have you done any analysis whatsoever of the
24 impacts of the additional runoff volume on Decker
25 Creek?

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1 A How far down?
2 Q The question was, have you done any analysis
3 outside the boundaries of the landfill with regard to
4 any impacts from the increased runoff volume from the
5 expansion?
6 A We've looked at the area immediately
7 downstream of us, which runs through the Applied
8 Materials area and kind of the common areas of Harris
9 Branch.
10 Q Did you do any computations or analysis with
11 regard to any impacts on additional runoff volume?
12 A No, we simply did a site inspection to see if
13 we thought this very minor change in volume would have
14 any negative impact.
15 Q What was your conclusion?
16 A That it wouldn't on those areas.
17 Q And that was just a -- as I understand your
18 analysis -- correct me if I'm wrong -- you walked over
19 to Applied Materials and looked at their ponds. What
20 else was entailed in your analysis?
21 A That was it. We walked the area, looked to
22 see what was immediately downstream of us. There is a
23 very extensive drainage system and retention pond
24 system downstream of us, both on Applied Material's
25 property and Harris Branch's property. This small

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1 amount of volume wouldn't have any impact on the
2 size -- on those ponds.
3 Q Did you analyze downstream impacts of this
4 additional runoff volume on potential erosion
5 contribution?
6 A No. Since the peak flow rate is actually
7 going down and the velocities were staying the same,
8 the additional volume shouldn't cause any downstream
9 erosion issues.
10 Q In your analysis of potential impacts on the
11 immediate vicinity of Decker Creek, did you contact
12 Applied Materials to get the dimensions of their
13 sedimentation -- their ponds there and the historical
14 information on those ponds?
15 A We had some of that data in our office
16 because we had included analysis through their ponds
17 when we did the channel design. They had provided us
18 with cross-sections and storage information for their
19 ponds because they wanted us to route the channel
20 flows through their ponds to show that there was no
21 impact. So we had done it at that point.
22 Q Did you discuss with -- did you or anyone
23 affiliated with ACE or BFI discuss with Applied
24 Materials the fact that with this expansion there
25 would be additional runoff volume coming onto Applied

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1 Materials?
2 A I don't believe we did, no.
3 Q In a question from Mr. Gosselink going back
4 to the Rule 11, do you recall discussion on disturbed
5 areas?
6 A I do, yes.
7 Q And you gave your view on -- as I recall your
8 testimony, disturbed areas was based on the placement
9 of waste.
10 A Uh-huh.
11 Q Anywhere is that specific in the Rule 11?
12 A I don't believe it is, no.
13 Q There was also a discussion with
14 Mr. Gosselink with regard to -- I think it was the
15 final cover. Is there anything in the application
16 which specifically provides that the final cover
17 will be installed incrementally as opposed to after
18 all operations are conducted at one time?
19 A No, there's nothing in the application that
20 lists a sequencing of final cover installation.
21 Q So the application does not compel BFI to do
22 an incremental final cover?
23 A Right. I believe I was stating that I
24 thought from a business standpoint that that made more
25 sense for BFI as opposed to incurring all of that cost

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1 in a single year.
2 Q Now, you talked to Mr. Gosselink about your
3 erosion controls you put in the application. You
4 are aware that the site has a soil deficit of
5 almost 3 million cubic yards?
6 A I am, yes.
7 Q Okay. Have you --
8 MR. GOSSELINK: Objection, Your Honor.
9 I believe this exceeds the scope of redirect.
10 JUDGE NEWCHURCH: Mr. Head, I don't
11 quite understand where you're going. Can you help me
12 understand why it's within the scope of redirect?
13 MR. HEAD: Mr. Gosselink talked about
14 the Rule 11 as it applied to cover, and I'm getting
15 ready to -- and he also talked about erosion control.
16 Let me ask the question, and you can make the
17 determination whether you believe it exceeds.
18 JUDGE NEWCHURCH: Okay.
19 Q (BY MR. HEAD) The question is, in your
20 analysis of erosion control, have you taken into
21 account the importation of large quantities of soil
22 for covered material?
23 MR. GOSSELINK: I'm going to continue to
24 object about questions that relate to where they get
25 the dirt from. This was -- this was part of the

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1 closure and postclosure cost stipulation --
2 MR. HEAD: No.
3 MR. GOSSELINK: -- and we cut -- we
4 saved out of that the ability to talk about final
5 cover. And they can talk about final cover, but they
6 need to do that in the context of appropriate recross
7 after redirect. We didn't -- they didn't raise it in
8 cross, we didn't raise it in redirect, now he'd like
9 to raise it now. He's got Mr. Dugas left.
10 MR. HEAD: Paul, let me see if we can --
11 on recross --
12 JUDGE NEWCHURCH: I'm going to overrule
13 the objection. Go ahead.
14 MR. HEAD: Okay. And I'm in no way
15 trying to breach our stipulation. I'm just --
16 JUDGE NEWCHURCH: Those lines are so
17 finely drawn, I couldn't tell if you were or not.
18 Q (BY MR. HEAD) The simple question is, in
19 your erosion control plan, have you taken any measures
20 to address the potential for stockpiles of up to --
21 over 2 million cubic yards of soil on site and how
22 that would impact your erosion?
23 A I don't believe they would have
24 2 million yards stockpiled at one time. But in
25 the erosion control plan, we didn't address it any

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1 more than it is for the current stockpiles that are on
2 the site. The Rule 11 Agreement does have specific
3 requirements related to soil stockpiles that include
4 not only silt fence and vegetation but intermediate
5 silt fences and quite a few requirements.
6 Q Hypothetically, if there was 2 million cubic
7 yards of soil stockpiled on site, do you -- currently
8 does your current erosion control plan have protective
9 measures to ensure you're not going to have
10 sedimentation problems at the outfalls?
11 A Are you excluding --
12 MR. GOSSELINK: I'm going to object
13 again. I realize this is a hypothetical, but it is
14 contrary to the facts in the record and his prior
15 answer. He just said they're not going to have 2
16 million cubic yards.
17 JUDGE NEWCHURCH: Well, it's a
18 hypothetical. Maybe other evidence will show this.
19 So objection overruled.
20 A Is the Rule 11 being thrown -- Rule 11
21 Agreement being thrown out in this hypothetical also?
22 Q (BY MR. HEAD) Let's talk about under that
23 hypothetical under what's in the application as it was
24 filed.
25 A Okay. Do you mind if I refer to --

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1 Q No, please take your time.
2 A -- the appendix and the rule?
3 (Brief pause)
4 A Okay. I'm ready. On APP987 under facility
5 description, tool stockpiles are mentioned for the
6 first time under different types of activities that
7 could occur at the site and lead to potential erosion.
8 And then on APP991, Section 3.1, which is entitled
9 Soil Stockpiles, lists one, two, three, four -- five
10 potential ways to address erosion from these
11 stockpiles. I don't believe any of these mention a
12 stockpile of a 2 million cubic yard size, but I think
13 it would be applicable to all stockpiles, simply more
14 of it if it was a bigger pile.
15 Q (BY MR. HEAD) Did you design the grass
16 swales as water quality controls?
17 A I intended them to function that way, yes.
18 Q And with respect to your predevelopment and
19 postdevelopment drainage calculations on 28, you
20 testified Friday that the detention water quality
21 pond, as I recall your testimony, might not be
22 installed for a couple of years.
23 A I believe I testified that we will install it
24 as soon as that drainage area has been completed.
25 Q Okay. But prior to that drainage area being

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1 completed -- this table is based on that detention
2 pond/water quality pond being installed?
3 A Right, and it's also based on the entire
4 landfill being completed.
5 Q Right, okay.
6 MR. HEAD: Could we go off the record
7 for just a second?
8 JUDGE NEWCHURCH: Off the record.
9 (Discussion off the record)
10 MR. HEAD: Okay. Back on the record.
11 I'm sorry. Just a few more questions.
12 Q (BY MR. HEAD) In the 2006 MOD after
13 the 11 acres was removed from the landfill footprint,
14 what activities will be conducted on the 11 acres
15 removed from the footprint?
16 A I think as I mentioned, the gas-to-energy
17 plant is in this area. Other than that, I don't think
18 there are any activities that are planned or currently
19 being conducted. There's primarily -- there's some
20 screening berms in that area that screen the gas plant
21 from Giles Lane and Blue Goose Road. At one time, we
22 were stockpiling brush that we were going to grind and
23 use as mulch on the site in that area, but we've since
24 stopped recycling brush or reusing brush. So I don't
25 believe that activity is occurring anymore either.

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1 Q Is there impervious cover in the 11-acre area
2 that was pulled out of the footprint?
3 A Yes, the gas plant obviously is, and there's
4 a little bit of pavement around the gas plant where
5 the employees park.
6 MR. HEAD: I'll pass the witness.
7 JUDGE NEWCHURCH: Mr. Blackburn?
8 MR. HEAD: Thank you.
9 RECROSS-EXAMINATION
10 BY MR. BLACKBURN:
11 Q Again, I have to be reminded, is it Mehevec?
12 A Mehevec, uh-huh.
13 Q Good morning, Mr. Mehevec.
14 A Good morning, Mr. Blackburn. How are you?
15 Q We'll see.
16 A Okay.
17 (Laughter)
18 Q (BY MR. BLACKBURN) I'd just like to start
19 off talking with you conceptually.
20 A Okay.
21 Q The computational method that's used on the
22 smaller watersheds, I guess what, less than 100 acres
23 is --
24 A Less than 200?
25 Q Less than 200 is the rational method. Is

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1 that correct?
 2 A That is correct, yes.
 3 Q And the rational method is Q equals CIA.
 4 Right?
 5 A That is correct.
 6 Q So if you're looking to keep the flow Q
 7 constant between an existing condition and a proposed
 8 condition and if you change one of the variables in
 9 that little equation, then the way that you come out
 10 even is you reduce another one. Is that correct?
 11 A Potentially you could, yes.
 12 Q So if, for example, A went up, you might try
 13 to change I, if you could?
 14 A If you could.
 15 Q Now, when the original MOD was submitted --
 16 and that's NNC-1. And if you would get NNC-1, please,
 17 sir, I would appreciate it.
 18 MR. GOSSELINK: Jim, is that also 32 for
 19 us?
 20 A No.
 21 MR. GOSSELINK: No?
 22 A NNC-1 I believe is the original version.
 23 Q (BY MR. BLACKBURN) It is. But if you would
 24 like, you could use NNC-2 and 3, which are the -- no,
 25 I think you're going to need 1 as well, but 1, 2 and 3

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1 are all exhibits coming out of that original
 2 submission in 2002. Would you take a look at those,
 3 please?
 4 A I've got 2 and 3. I'm looking for 1.
 5 Q 1 is a thicker document.
 6 A Okay. I got it.
 7 Q Now, if you would look at Exhibit 2 --
 8 A Okay.
 9 Q -- that is what is, I believe, purported to
 10 be the existing condition when the original MOD was
 11 submitted. Do you agree with that?
 12 A That's right. This is the condition we took
 13 from the Subtitle D MOD, I believe.
 14 Q And that existing condition shows various
 15 drainage areas, and it also shows Qs coming off.
 16 Right?
 17 A That's correct.
 18 Q And if I'm -- I believe I'm correct. What is
 19 the Q -- the two Qs coming off the western perimeter
 20 in NNC-2, which would be the existing condition for
 21 the MOD?
 22 A The Q on the southern -- on Drainage Area 8
 23 would be 26 cfs.
 24 Q Okay.
 25 A And the Q for Drainage Area 9 would be

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1 66 cfs.
 2 Q And then on NNC-3, the proposed condition
 3 from the MOD, are the numbers exactly the same?
 4 A Yes, they are on these drawings.
 5 Q Okay. And so what actually happened in that
 6 modification? What was approved? Besides the
 7 relocation of the hundred-year floodplain, which I
 8 believe was part of that LOMR process, what else was
 9 agreed to?
 10 A We added two sedimentation ponds on the west
 11 side at what we've been calling Outfalls 4 and 5. We
 12 added diversion berms and downchutes to the landfill
 13 final cover, which it did not have before, to reduce
 14 flow lengths and try to help with erosion and to get
 15 water to the bottom. The height of the landfill was
 16 also increased by ten feet, and we added a detention
 17 pond to Outfall 1 in the somewhat northeast corner of
 18 the site.
 19 Q So that modification, among other things,
 20 increased the height of the landfill by ten feet from
 21 what was previously permitted. Correct?
 22 A At the maximum point, yes, it did.
 23 Q And it also put in a drainage system on the
 24 side of the landfill. Correct?
 25 A On the top and the side, yes.

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1 Q And that is the berms and the downchutes that
 2 we've come to talk about?
 3 A That's correct.
 4 Q Now, is it fair to say that the increase in
 5 height and the placement of berms and downchutes
 6 increased the time of concentration for runoff that
 7 occurred on the landfill?
 8 A I don't know that the increase in height had
 9 much effect on the time of concentration. The berms
 10 probably did tend to increase the time of
 11 concentration.
 12 Q In fact, it did increase the time of --
 13 A In fact, it did.
 14 Q Yeah, thank you. And that increase in the
 15 time of concentration is a function of the intensity
 16 item in the equation Q equals CIA. Correct?
 17 A Right. It's a parameter that you use to
 18 calculate the intensity.
 19 Q And if the time of concentration goes down,
 20 the intensity goes up -- correct --
 21 A Correct.
 22 Q -- because it's an inverse relationship?
 23 A That's correct. The predicted intensity
 24 would go up.
 25 Q Okay. And in order to keep the computation

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1 even, something has to change, or else you're going to
2 show an increase. Right?
3 A If you decrease the time of concentration?
4 Q Correct.
5 A Yes.
6 Q And, in fact, isn't it true that the area of
7 drainage was changed to keep the equation balanced?
8 A No. I think as I stated and as you stated,
9 we were increasing the time of concentration with the
10 addition of the berms, which would have resulted in a
11 lowering of the flow.
12 Q The time of concentration is inverse. So as
13 time of concentration goes down, doesn't that, in
14 fact, increase intensity?
15 A Right, but the addition of the berms increase
16 the time of concentration.
17 Q Would you check the computations on that,
18 please?
19 A Okay. I believe that's what you stated to
20 me, and I agreed with you, but I will check it.
21 (Brief pause)
22 A Would you like me to look at one particular
23 drainage area or all of them?
24 Q (BY MR. BLACKBURN) No, I'm particularly
25 interested in the two on the west.

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1 A So those would be Drainage Areas 4 and 5?
2 Q 4 and 5, yes, sir.
3 A Okay. Drainage Area 4, the existing time of
4 concentration was 27 minutes, 27.35 minutes, and the
5 proposed time of concentration for Drainage Area 4
6 was 16-1/2 minutes. So it did go down. And for
7 Drainage Area 5, the existing time of concentration
8 was 21 minutes, and the proposed time of concentration
9 was 17.82 minutes.
10 Q Okay. And didn't, in fact, the I factor go
11 from 5.58 to 6.89 or something like that?
12 A In Drainage Area 5 are you referring to,
13 or 4?
14 Q I'm referring to 5.
15 A For the 25-year storm, it went from 6.43
16 to 6.89.
17 Q And that was an increase. Correct?
18 A Yes, that's right.
19 Q And so wasn't that increase offset by a
20 decrease in the acreage of D-5?
21 A If we -- if the C factors were the same,
22 which I assume that they were -- let me just check
23 that real quick.
24 Q They were.
25 A Okay. Well, you confused me once. I've got

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1 to check it.
2 Q I understand. I'm sorry. I got my cheat
3 sheet out.
4 A Actually, the C factors went down in the
5 proposed condition versus the existing condition in
6 Drainage Area 5.
7 Q Oh, it was changed?
8 A It went from .39 to .35 probably because of
9 the averaging of -- we use multiple C factors for any
10 drainage area, and so you average the two together,
11 depending on how much area one is versus the other.
12 Q Ah. Well, that's interesting. Did the area
13 go up or go down?
14 A The area for Drainage Area 5 -- oh, can I --
15 can I take a step back?
16 Q Yes.
17 A It's not Drainage Area 5 in both existing and
18 proposed.
19 Q Right.
20 A I'm sorry. Drainage Area 5 is proposed. In
21 the existing run, it's Drainage Area 9.
22 Q Right. So it goes from D-9 to D-5.
23 A Okay. I'm sorry. Let me start that again,
24 and I'll go through them one at a time.
25 Q Okay.

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1 A For the 25-year storm in existing, which
2 would be Drainage Area 9, the intensity was 5.58.
3 Q Okay.
4 A For the 25-year storm in Drainage Area 5
5 proposed, it was 6.89.
6 Q Ah. Now we're on the same page.
7 A I'm sorry. And then the C factor stayed the
8 same.
9 Q Okay. And intensity went up, did it not?
10 A It did, yes, a little bit.
11 Q It went from what to what?
12 A It went from 5.6 to 6.9.
13 Q And the area went down. Correct?
14 A The area went down, yes, from 33.78 to 27.2.
15 Q And isn't that -- in fact, those changes in
16 area were necessary to make the runoff, the Q factor
17 leaving the site, stay the same?
18 A Those changes in area did allow the Q factor
19 to stay the same.
20 Q Okay. Now, that change in area basically
21 took off that top triangle that flows to the
22 northwest. Correct?
23 A That's correct.
24 Q And this is the same triangle that you said
25 that you went out and took more recent measurements

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1 of, more recent topography, and, in fact, it flows the
 2 other direction. Correct?
 3 A That's correct.
 4 Q Now, isn't it true that in terms of
 5 permitting, this site was permitted with a
 6 modification that pushed the water up and around and
 7 to the Drainage Area 6. Correct?
 8 A I didn't understand that question.
 9 Q Maybe it wasn't stated well. If you go to
 10 AM-33 --
 11 A Okay.
 12 Q -- which is the last -- I think the last
 13 approved change. Correct?
 14 A That's correct.
 15 Q If you look at Drainage Area 5, there is, in
 16 fact, a boundary right where Sedimentation Pond A is.
 17 That's the drainage area boundary. Correct?
 18 A That is correct, yes.
 19 Q And, in fact, the flow to the north of that
 20 boundary is part of DA-6. Correct?
 21 A Yes.
 22 Q Now, that is a permit condition. Correct?
 23 A Which aspect?
 24 Q The fact that the landfill will flow to the
 25 north and then around to the northwest and then to the

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1 east. That's a permit condition. Correct?
 2 A I don't know if I would call that a permit
 3 condition. It doesn't have anything to do with the --
 4 the fact that the berms are flowing that direction,
 5 the geometry of the landfill, that's a permit
 6 condition.
 7 Q And, in fact, the representation that the
 8 flow will go a certain direction is a proposed
 9 condition. So that's what you're proposing to build.
 10 Correct?
 11 A That's correct, yes.
 12 Q So that's what you were permitted to build.
 13 Correct?
 14 A Yes, that's correct.
 15 Q Okay. Now, I believe your testimony is you
 16 didn't build that. Correct?
 17 A No, that's not correct.
 18 Q Your testimony is it flows the other
 19 direction?
 20 A Right, but the portion that we're building is
 21 still the same. The change is on the ground that's
 22 outside the footprint of the landfill.
 23 Q But the permitted condition in No. AM-33 says
 24 you will build it to flow north and then back around
 25 to the east. Correct?

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1 A The geometry shown on AM-33 is what we
 2 constructed, and at the time based on the data we had,
 3 we believed that it would flow to the east.
 4 Q You say what you constructed. Did you build
 5 that?
 6 A Well, what we were showing to be constructed.
 7 Sorry.
 8 Q Is it built?
 9 A That portion of the landfill?
 10 Q Yes.
 11 A The landfill is, but the final cover,
 12 diversion berms and downchutes have not been installed
 13 yet.
 14 Q So you can build it to make it work however
 15 you want to, can't you?
 16 A I wouldn't agree we can make it work however
 17 we want to.
 18 Q I mean, isn't it true that you are an
 19 engineering firm?
 20 A Yes, that's true.
 21 Q You-all engineer things. Right?
 22 A We can within the laws of nature and physics,
 23 yes.
 24 Q And, in fact, you represented that this, when
 25 completed, would flow to the north and then back

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1 around to the east. That's what the modification
 2 permitted. Correct?
 3 A That's correct. That's what it represented.
 4 Q Now you're coming here today and saying "No,
 5 we can't engineer it that way." Is that what you're
 6 telling the Judge?
 7 A I haven't evaluated whether we could force
 8 the water around. You're asking if we could construct
 9 a channel that would somehow channel the water around
 10 to the other side?
 11 Q I'm saying can you build what was permitted?
 12 A The geometry of the landfill that's shown is
 13 what we're going to build.
 14 Q So you're going to build a Drainage Area 6 as
 15 shown on AM-33 that flows to the north and then back
 16 around to the east?
 17 A Drainage Area 6, yes, the majority of that
 18 flows to the north and back around to the east.
 19 Q And I'm asking are you going to build that as
 20 it's represented on the revision of March 1, 2006?
 21 A And what I'm saying is the things that we
 22 build, the things that are constructible as shown on
 23 this drawing, we're going to build as shown unless we
 24 get this permit amendment.
 25 Q And if you get the amendment, you're going to

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1 change it. Right?
2 A We're going to show -- we're going to build
3 it as it's shown in the amendment drawings, yes.
4 Q Right, which makes it being added back to the
5 area. It makes the flow from that triangle to be
6 added back to Drainage Area 5 rather than into
7 Drainage Area 6. Correct?
8 A Which is what it would do if we built this
9 landfill right now. If we completed the landfill as
10 currently permitted, that water would flow back to
11 Drainage Area 5.
12 Q Only if you violated the terms of what you
13 were authorized to build. Correct?
14 A No. It will flow there regardless of what we
15 do.
16 Q You have no ability to engineer what you
17 represented would be done?
18 A I haven't evaluated if there was -- if there
19 was some modification we could make to force the water
20 around that corner. What I'm stating is that based on
21 the ground surface that's in that buffer, the water
22 will flow from north to south towards Drainage Area 5.
23 Q But isn't it true that the area was changed
24 in the modification in order to make the drainage
25 calculations come out even between the existing and

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1 proposed in the modification? Isn't that your earlier
2 testimony?
3 A No. My testimony is that the drainage area
4 was changed because that's what we thought the water
5 was doing. What I testified was that changing the
6 area is one way that you can reduce the flow.
7 Q And, in fact, that's what happened in the
8 original modification in 2002. Right?
9 A That's correct.
10 Q So now you're adding area back to the south
11 so that you can then increase the intensity again.
12 Right?
13 A Where are we adding area back to the south?
14 Q When you take that tip and you --
15 A Oh, that piece?
16 Q In the application --
17 A Okay.
18 Q -- there's an existing condition. Right?
19 A Right.
20 Q You show the existing condition in the
21 application as having that triangle flow back to the
22 south. Correct?
23 A Right, just like the proposed condition.
24 Q No. The proposed condition -- oh, I'm sorry.
25 Okay. Right.

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1 A In the application.
2 Q In the application. Sorry. I misunderstood.
3 Right, I understand that, but that gives you
4 additional acreage to work with as you increase the
5 intensity factor between your existing in the
6 application and the proposed in the application.
7 Correct?
8 A We left that triangle the same in both.
9 Q The intensity goes up, does it not?
10 A In the application?
11 Q Yes.
12 A I can check for you.
13 Q Would you?
14 A Yes. And I'm assuming you're still primarily
15 interested in this one drainage area.
16 Q Those two on the west.
17 A Okay.
18 (Brief pause)
19 A The existing intensity for Drainage Area 7,
20 which would be the one that goes to Outfall 5, is
21 8.74, and the proposed intensity is 9.27.
22 Q (BY MR. BLACKBURN) And your area was changed
23 from what to what?
24 A The existing area was 35.93. The proposed
25 area is 31.86.

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1 Q So you reduced the area between existing and
2 proposed, among other things, to be able to keep your
3 flow the same or a little less between existing and
4 proposed in the application. Correct?
5 A That's correct.
6 Q So you went from a proposed MOD condition
7 that was a smaller area, you increased the area in
8 your existing application and then decreased it so you
9 could show an offset in the flow. Correct?
10 A But not in this triangle area we've been
11 talking about, but, yes, that is correct.
12 Q But the triangle area was included in the --
13 was not included in the area under the proposed in the
14 MOD. It was added in the existing in the application.
15 Correct?
16 A That's right. It's correctly depicted on the
17 existing in the application, and then we adjusted the
18 top deck -- the berms on the top deck of the landfill
19 to reduce the area that's going to Outfall 5.
20 Q Now, let me just be clear. When you go up
21 and when you put in these berms and everything, you're
22 really increasing the rate of flow of the drainage
23 coming down the side of the landfill. Correct?
24 A When you say "rate," do you mean velocity or
25 peak flow?

20 (Pages 1084 to 1087)

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1 Q Well, both.
2 A The velocity on the berm itself is probably
3 higher than it would have been was it flowing just on
4 sloped ground.
5 Q Right. And the time of concentration, you
6 mean the time it gets down to the bottom of the
7 landfill to the outfall also goes up in all cases when
8 you're going up. Correct?
9 A I don't know if that's true. I think in some
10 cases due to berm placement we ended up with a longer
11 path for the time of concentration. So even though
12 the velocity along that path was faster, we may have
13 increased the time of concentration when we went up
14 vertically. If you'd like me to check them, I will.
15 Q Would you?
16 A Okay. All of them, or just those two?
17 Q Those two.
18 A I think we already talked about those two.
19 So I think we know those two went up.
20 Q Those two went up. Right?
21 A Right, those two went up. Would you like me
22 to check the rest of them?
23 Q No, no. It's the west I'm most concerned
24 about.
25 A Okay.

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1 Q Now, I do have a question. Now, it's the
2 C factor that the TxDOT 2004 manual changed. Correct?
3 A That's correct.
4 Q And so the C factor goes from 0.35 up to
5 something in the .55.6 range. Is that correct?
6 A If you'll give me a minute, I will tell you
7 if I agree with that.
8 (Brief pause)
9 A Yeah, in Outfall 5, the C factor from the
10 1985 TxDOT manual was 0.35. That was an average of
11 0.3 for the top deck of the landfill and a 0.7 value
12 for the four-to-one slope. The C factor under the new
13 manual is 0.56, and that's, again, an average.
14 The new manual -- in the old manual,
15 there was a table and you picked C factors based on
16 what your conditions were. The closest thing to a
17 four-to-one landfill slope was a category called steep
18 grassed slopes, which I thought was pretty
19 appropriate. That was a 0.7. For the top deck, it
20 had soil conditions and then slope categories I think
21 going up to 7 percent, and so 0.3 was what
22 corresponded to our top deck slope.
23 In the new method, I think there's five
24 factors or maybe four factors, but you evaluate things
25 such as soil type, cover, slope, I think drainage

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1 condition as far as are there a lot of drainage
2 features or is it just kind of running overland flow.
3 You add all these factors together, and you get a
4 composite C number, which ended up being quite a bit
5 higher than when you averaged the two numbers in the
6 table in the previous method.
7 Q (BY MR. BLACKBURN) Now, this TxDOT change
8 came in 2004. Correct?
9 A That's when they published the manual, yes.
10 Q Right. Now, your revision AM-33 and your
11 revised document -- it's a revised map of the
12 modification dated -- at least your seal is March 1,
13 2006. Can you pull that up, please, sir?
14 A Yeah, I'm looking for it. Okay. I have it.
15 Q Now, this is a document that you sealed
16 in 2006. When you sealed this, you knew that TxDOT
17 had changed their manual. Correct?
18 A Yes, I was aware of that.
19 Q And so you knew that the flows, the Q equals
20 66 and the Q equals 25 or 26, whatever that is down at
21 the bottom, the two western outflows near
22 Sedimentation Ponds A and B, you knew that those were
23 not correct by the TxDOT methodology when you sealed
24 this document. Correct?
25 A I knew that if you reran these flows based on

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1 the new manual that you would get a different number
2 than what's shown on this drawing here.
3 Q Now, did you ever discuss with TCEQ all of
4 these changes that you made between the modification
5 as proposed and the existing conditions on the
6 application?
7 A I don't believe that we did, no. I think in
8 the application we provided an existing conditions map
9 based on the methodologies that were in place at the
10 time and the best information we had and then provided
11 a proposed conditions map that compared with that.
12 Q Did you ever point out to TCEQ that you had
13 changed the boundaries from the proposed conditions in
14 the modification to the existing conditions in the
15 application?
16 A Did I specifically tell them we had included
17 the buffer when we hadn't before?
18 Q I'm not talking about the buffer. I'm really
19 talking about the triangle, but either of those.
20 A I don't think I specifically mentioned that
21 to anyone, no.
22 MR. BLACKBURN: Pass the witness.
23 JUDGE NEWCHURCH: Further direct?
24
25

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1 FURTHER REDIRECT EXAMINATION
 2 BY MR. GOSSELINK:
 3 Q Mr. Mehevec --
 4 A Yes, sir.
 5 Q -- let's assume that all of Mr. Blackburn's
 6 concerns about what happened with regard to AM-33 are
 7 correct. Would that have changed in any way what you
 8 identified as the appropriate Qs in AM-16 and 17?
 9 A No, it wouldn't have.
 10 Q So you could have submitted a document in
 11 2006, which we call AM-33, which had a different Q on
 12 Outfalls 4 and 5. Whatever number Mr. Blackburn would
 13 like you to have submitted at that time, would that
 14 have changed in any way the analysis of whether or not
 15 this proposed application amendment would
 16 significantly alter natural drainage conditions?
 17 A No, it would not.
 18 MR. GOSSELINK: No further questions.
 19 JUDGE NEWCHURCH: Anything else?
 20 (No response)
 21 JUDGE NEWCHURCH: Thank you,
 22 Mr. Mehevec. You're excused.
 23 We'll take a morning break now, ten
 24 minutes.
 25 (Recess: 10:46 a.m. to 11:05 a.m.)

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1 JUDGE NEWCHURCH: Okay. Let's come back
 2 on the record. And is BFI ready to call its next
 3 witness?
 4 MR. NORTON: Yes, Your Honor.
 5 Duncan Norton here on behalf of the applicant, and I'm
 6 going to present this witness. Applicant calls
 7 Mike McInturff to the stand.
 8 JUDGE NEWCHURCH: If you'll take the
 9 oath, please?
 10 (Witness sworn)
 11 JUDGE NEWCHURCH: Thank you. Please
 12 have a seat.
 13 And, Mr. Norton, you may proceed.
 14 MR. NORTON: Thank you, Your Honor.
 15 MIKE McINTURFF,
 16 having been first duly sworn, testified as follows:
 17 DIRECT EXAMINATION
 18 BY MR. NORTON:
 19 Q Mr. McInturff, would you state your name and
 20 address for the record?
 21 A My name is John Michael McInturff. My
 22 business address is 504 Lavaca, Suite 1175, Austin,
 23 Texas 78701.
 24 Q And what's your current occupation,
 25 Mr. McInturff?

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1 A I'm the vice-president of HDR Engineering,
 2 Inc.
 3 Q In that capacity, what type of work do you
 4 do?
 5 A My work consists of marketing and project
 6 production and a variety of traffic and transportation
 7 engineering projects throughout the state.
 8 Q Mr. McInturff, what is your connection to the
 9 Sunset Farms Landfill application project?
 10 A I have served as the traffic and
 11 transportation engineer for the project and prepared
 12 the transmission study as part of the TCEQ review
 13 process.
 14 Q Could you identify for us what has been
 15 marked as Exhibit MM-1, Applicant's Exhibit MM-1?
 16 A Yes, sir, that's a copy of my prefiled
 17 testimony.
 18 Q And are you familiar with that testimony?
 19 A Yes, sir, I am.
 20 Q Are there any amendments you'd like to make
 21 today to that testimony?
 22 A Yes, sir, there's one change that I'd like to
 23 make on Page 24 of the prefiled testimony.
 24 Q Would you go ahead and make that change and
 25 talk us through it as you do it, please?

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1 A I believe the copy has been passed out to the
 2 group. I would like to change the answer to the
 3 question beginning on Line 5 to the following: "No,
 4 if you apply the 1 percent growth rate beginning in
 5 2008 and project out to 2015, the landfill traffic
 6 will be 30 percent less than that projected from the
 7 2004 traffic count." That's the change I would like
 8 to make, and I understand I need to make that change
 9 directly on the document.
 10 MR. NORTON: Your Honor, is that how
 11 you've been proceeding at this point?
 12 JUDGE NEWCHURCH: Yes, please.
 13 And let's go off the record.
 14 (Discussion off the record)
 15 JUDGE NEWCHURCH: Back on the record.
 16 Q (BY MR. NORTON) Mr. McInturff, just for the
 17 record, would you read that answer now again for us
 18 the way it should be, at least that first sentence?
 19 A Yes, sir. This is the answer to the question
 20 beginning on Line 5 on Page 24. The answer is "No, if
 21 you apply the 1 percent growth rate beginning in 2008
 22 and project out to 2015, the landfill traffic will be
 23 30 percent less than that projected from the 2004
 24 traffic count." The remainder of that answer remains
 25 the same.

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1 Q Okay. And as amended, is Exhibit MM-1 a true
 2 and accurate copy of your testimony in this matter?
 3 A Yes, sir, it is.
 4 Q Do you adopt it as your sworn testimony?
 5 A I do.
 6 Q Could you identify for us exhibit -- what's
 7 been marked as MM-2, please?
 8 A Exhibit MM-2 is a copy of my resume.
 9 Q Is it a true and accurate copy of your
 10 current resume?
 11 A Yes, sir, it is.
 12 Q Now, if you would, identify what's been
 13 marked as Exhibit MM-3, please?
 14 A MM-3 is a copy of the transmission study I
 15 prepared in 2007 for the application.
 16 Q And where in the application is that
 17 transportation study found?
 18 A I believe its location is actually Part II/E.
 19 Q Thank you. Could you identify what's been
 20 marked as Exhibit MM-4, please?
 21 A Yes, sir, MM-4 is a series of tables that
 22 are -- were produced as updates to the 2004 report
 23 based on traffic counts conducted in 2008.
 24 Q And is that explained more fully in your
 25 prefiled testimony?

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1 A Yes, sir, it is.
 2 Q All right. Thank you. Could you identify
 3 for us Exhibit MM-5, please?
 4 A MM-5 consists of two tables that are -- I've
 5 labeled as Revised Table II.E-11a and 15a. These were
 6 tables that were developed in a hypothetical case of
 7 looking at a 10 percent annual increase in landfill
 8 traffic volume.
 9 Q And do you have any changes or amendments to
 10 that exhibit that you'd like to make today?
 11 A Yes, sir, I'd like to amend Revised
 12 Table II.E-15a.
 13 Q Could you do that for us and talk us through
 14 it as you do it, please?
 15 A Yes, sir, these changes are resulting from
 16 the fact that in the original prefiled that table did
 17 not include in the peak-hour volume the actual
 18 landfill traffic trips for that peak hour. So it
 19 increased the peak-hour volume slightly, and the
 20 corresponding column labeled Percent of Access Road
 21 Capacity Used in each case. And then a couple of
 22 the -- in the column Landfill Vehicles Percent of Peak
 23 Hour Volume, there were a couple of changes in the
 24 percent. That represented no changes in a level of
 25 service. And I have I believe a copy of that

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1 distributed and would line through those. It changed
 2 each of the peak-hour volume entries for the five
 3 roadways listed there.
 4 Q Could you go ahead and do that --
 5 A Yes, sir.
 6 Q -- on the record copy and talk through the
 7 numbers as you do it, please?
 8 A Yes, sir. For U.S. 290, the number changes
 9 from "4183" to "4218."
 10 Q That's peak-hour volume?
 11 A Peak-hour volume. I think for ease on that
 12 I'll go down the Peak Hour Volume column. It may be
 13 more efficient. Giles Lane goes from "960" to "1068."
 14 Johnny Morris Road goes from "882" to "886." Blue
 15 Goose Road goes from "474" to "480," and Cameron Road
 16 goes from "380" to "386."
 17 Now, those changes will result in a
 18 change to the next column called Percent of Access
 19 Road Capacity Used. I'll go down that column in a
 20 similar manner. U.S. 290 goes from "29.1" to "29.3."
 21 Giles Lane goes from "12.6" to "14.0." Johnny Morris
 22 Road goes from "11.6" to "11.7." Blue Goose Road goes
 23 from "14.8" to "15.0," and Cameron Road goes from
 24 "11.9" to "12.1."
 25 And again, in the final column under

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1 Landfill Vehicles Percent of Peak Hour Volume, a
 2 couple of those changed. The Giles Lane percent
 3 changes from "11.3" to "10.1." The Blue Goose Road
 4 percent changes from "1.3" to "1.2." All other
 5 figures remain the same on that table.
 6 Q Do you have any other changes to Exhibit
 7 MM-5?
 8 A No, sir.
 9 Q Thank you. Could you identify for us the
 10 last exhibit as part of your testimony, MM-6?
 11 A MM-6 consists of a copy of schematics
 12 prepared by TxDOT and Central Texas Mobility --
 13 Regional Mobility Authority of the proposed tollway
 14 schematics on U.S. 290 between 183 and Parmer Lane.
 15 MR. NORTON: Thank you. Your Honor, I
 16 do have some colored examples of this exhibit, which
 17 is fairly unclear in the record. I don't intend to
 18 offer those, but if someone wants to look at them and
 19 use them for any cross-examination purpose, I have --
 20 I have them available.
 21 JUDGE NEWCHURCH: Okay. So with those
 22 changes, you're offering MM-1 through MM-6?
 23 MR. NORTON: Yes, Your Honor.
 24 JUDGE NEWCHURCH: And I assume that they
 25 reflect any prior rulings or agreements, and I don't

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1 recall if there are any for this witness.
 2 MR. NORTON: I believe that's correct,
 3 Your Honor.
 4 JUDGE NEWCHURCH: And is there any
 5 further objection to these exhibits?
 6 MR. BLACKBURN: None.
 7 JUDGE NEWCHURCH: Then MM-1 through MM-6
 8 are all admitted.
 9
 10 (Exhibit BFI Nos. MM-1 through MM-6
 11 admitted)
 12 Q (BY MR. NORTON) And, Mr. McInturff, do the
 13 two changes that we've identified and gone through
 14 change any of your opinions or conclusions expressed
 15 in your prefiled testimony?
 16 A No, sir, they do not.
 17 MR. NORTON: Then I pass the witness,
 18 Your Honor.
 19 JUDGE NEWCHURCH: Cross-examination?
 20 MR. TERRILL: No questions, Your Honor.
 21 JUDGE NEWCHURCH: Ms. Noelke?
 22 MS. NOELKE: No questions, Your Honor.
 23 JUDGE NEWCHURCH: Mr. Morse?
 24 MR. MORSE: No questions.
 25 JUDGE NEWCHURCH: Ms. Mann?

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1 CROSS-EXAMINATION
 2 BY MS. MANN:
 3 Q Good morning.
 4 A Good morning.
 5 Q I'm Christina Mann. I'm with the Public
 6 Interest Counsel. I just have a couple of questions
 7 about your traffic study.
 8 First, I know that -- I see you've
 9 projected out to 2015. Is that correct?
 10 A Yes, that's correct.
 11 Q And is it your understanding that 2015 is
 12 going to be any sort of projected peak for landfill
 13 traffic, or is that just the close of the -- the
 14 anticipated closure date?
 15 A That's, I've been advised, the anticipated
 16 closure date for the landfill, and I would expect that
 17 in actuality the volumes may decrease through that
 18 time. That is the projected date, so we've assumed
 19 that annual increase from today through 2015.
 20 Q Okay. So you didn't determine an actual --
 21 or a projected peak for landfill traffic between now
 22 and 2015 on a different year?
 23 A No, sir, I've assumed, again, that the
 24 volumes increase from today through 2015 at a rate
 25 of 1 percent per year.

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1 Q And when you're doing -- when you talk about
 2 percentages of vehicles, a landfill truck or a dump
 3 truck counts just as much as a car, a sedan. Is that
 4 correct? I mean, each vehicle is an independent --
 5 A In terms of the number of vehicles, yes,
 6 that's correct.
 7 Q Have you done any comparative -- have you
 8 compared this site to any other sites? For example,
 9 did you -- do you have any data or background
 10 information on sort of the concentrations of refuse
 11 vehicles in this traffic study compared to, say, a
 12 similar area of residential concentration that
 13 wouldn't have the two -- the landfill traffic?
 14 A I have not compared this site with any other,
 15 no, ma'am.
 16 Q Okay. And do you have any information about
 17 landfill vehicle percentages at, say, off-peak hours
 18 that -- evening hours specifically, like late night
 19 hours?
 20 A Included in the original study and the 2008
 21 updates, I've included in there the distribution of
 22 vehicles at the entrance point between 7 a.m. and
 23 5 p.m. Also we did counts at the entrance roadway
 24 for a full 24-hour period, but the analysis looks at
 25 the peak-hour conditions, and so we've not done any

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1 analysis of the evening trips, for instance, during
 2 the study.
 3 MS. MANN: I pass the witness.
 4 JUDGE NEWCHURCH: For the Executive
 5 Director?
 6 MR. SHEPHERD: No questions.
 7 JUDGE NEWCHURCH: Mr. Renbarger?
 8 MR. RENBARGER: Thank you.
 9 CROSS-EXAMINATION
 10 BY MR. RENBARGER:
 11 Q Good morning, Mr. McInturff. My name is
 12 Rob Renbarger. How are you today?
 13 A Just fine.
 14 Q Good. I was curious about your engagement
 15 for this particular project. I was also wondering are
 16 you aware that there is another landfill expansion
 17 application occurring at the Waste Management facility
 18 which neighbors the BFI facility?
 19 A The Austin Community Landfill?
 20 Q Yes, sir.
 21 A Yes, sir.
 22 Q Are you engaged to perform any duties or
 23 transportation studies with regard to that
 24 application?
 25 A Yes, sir.

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1 Q And what exactly are you doing for the Waste
2 Management application?
3 A I prepared a study in '04 for the application
4 and for that landfill site. And then similarly
5 updated that study's results with 2008 counts, which
6 were done at the same time as we counted for this --
7 for this site.
8 Q Have you been designated as a testifying
9 expert witness with regard to the Waste Management
10 pending application?
11 A I believe I have.
12 Q Do I understand your testimony correctly that
13 you incorporated the traffic numbers with respect to
14 Waste Management's application into the traffic or
15 transportation study for BFI. Is that correct?
16 A Yes, sir, those were included.
17 Q And that includes waste vehicle percentages
18 as well as just the general traffic flows on the
19 surrounding arteries and highways. Is that right?
20 A Yes, that's correct.
21 Q I note in your prefiled testimony that you
22 went and prepared some updated traffic counts on
23 September 23rd of this year. Is that right?
24 A Yes, sir, that's correct.
25 Q Why did you do that?

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1 A The counts that were done in the '04 study
2 that was part of the application were done in '03, and
3 we felt like it was appropriate to do updated counts
4 to reflect current conditions. So that's the reason
5 for the counts that were done in September of '08.
6 Q Were you directed to do that by anyone?
7 A Yes, I was.
8 Q Who was that?
9 A I was asked I guess actually by the attorneys
10 representing BFI, but worked in conjunction with BFI
11 itself in order to update those.
12 Q Are you aware that in May of '08 that BFI,
13 through its counsel, represented that that was the
14 final application that was going to be the subject of
15 this hearing?
16 A I was not aware of that.
17 Q Mr. McInturff, I note also that included in
18 your prefiled testimony is some information regarding
19 some reconstruction plans for U.S. 290. Do you recall
20 that?
21 A Yes, sir, that's correct.
22 Q And could you briefly just state what your
23 understanding of those transportation improvements, if
24 we'll call them that, are -- that are scheduled for
25 Highway 290?

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1 A The general plan is to reconstruct U.S. 290
2 to a controlled access facility, which will have six
3 mainlanes which will be toll facilities, and it will
4 have two sets of three-lane frontage roads that will
5 be "free." They will be nontoll facilities, and
6 that's a general description. There are interchanges
7 throughout the length of the project and so forth.
8 That's the basic design as proposed by TxDOT and
9 CTRMA.
10 Q What is your understanding of when these
11 transportation road improvements are going to
12 commence?
13 A It's my understanding they could commence as
14 early as next year.
15 Q In your experience as a transportation
16 engineer, do you generally find that construction
17 activities of the magnitude that are being planned for
18 U.S. 290 do create additional congestion in the
19 roadways?
20 A There is generally, as part of any
21 construction project, some delay during periods of the
22 day.
23 Q Was that analyzed in your transportation
24 study?
25 A No, sir, it's not.

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1 Q And I believe from your earlier testimony you
2 indicated you did understand that this landfill
3 expansion, if approved, is subject to a closure date
4 in the year 2015. Correct?
5 A Yes, sir.
6 Q Do I also understand from your prefiled
7 testimony that the road improvements scheduled for
8 U.S. 290 are currently scheduled to be completed in
9 the year 2013? Correct?
10 A That's correct.
11 Q So would it be fair to say then that during
12 the period of time between today and 2013 that there
13 will be some additional construction delays along
14 U.S. 290, assuming that project to commence as you
15 stated?
16 A There will be some construction delays
17 related to that construction, that's correct.
18 Q Can I direct you to Page 26 of your prefiled
19 testimony, please?
20 A Yes, sir.
21 Q I believe if you look down about Line 10 --
22 excuse me. Strike that -- Line 7, there's a
23 discussion there about BFI needing to import cover
24 soil for purposes of its landfill operations. Are you
25 aware of that?

25 (Pages 1104 to 1107)

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1 A Yes, sir, I was aware of that generally.
 2 Q And do I understand it that you've also
 3 incorporated some additional truck traffic into your
 4 transportation study to address that need?
 5 A Yes, sir, I have assessed that with a couple
 6 of documents that were provided as part of the
 7 prefiled.
 8 Q If you go down to Line 10 of Page 26 of your
 9 testimony, I believe it indicates there that in
 10 talking to Mr. Mehevec and Mr. Dugas you've been told
 11 as much as 2 million cubic yards of soil may need to
 12 be imported for that purpose prior to closure of the
 13 landfill. And your understanding is that there could
 14 be as many as 50 to 100 trucks on a given day devoted
 15 to the transportation of those soils. Is that
 16 accurate?
 17 A That's the general understanding I have in
 18 discussions with them. They would certainly need to
 19 respond to any particulars of that, but that's my
 20 understanding of the potential.
 21 Q Do you understand BFI to currently own or
 22 maintain 50 to 100 trucks for purposes of soil
 23 movement?
 24 A I don't know that.
 25 Q Has it been your experience whenever a

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1 project requires additional soil movement at the rate
 2 of 50 to 100 trucks per day that typically these are,
 3 for lack of a better term, I'll call it private
 4 contractor trucks?
 5 A I don't have knowledge of that.
 6 Q So you have no knowledge of how BFI intends
 7 to hire, or does it intend to hire for purposes of
 8 moving these soils onto the site? Is that right?
 9 A No, sir, I do not.
 10 Q As a traffic engineer, does the addition of
 11 50 to 100 trucks of moving soil into the landfill,
 12 does that pose any safety concerns?
 13 A No, sir, not in my opinion.
 14 Q Why is that?
 15 A The roadway system has -- I've evaluated the
 16 addition of -- in excess of 100 trucks to the traffic
 17 stream. The roadway capacity is adequate to support
 18 that. And again, assuming reasonable drivers of these
 19 other vehicles, I don't see that as a particular
 20 safety problem. There's adequate capacity to handle
 21 that increase in truck traffic.
 22 Q But I believe you testified a moment ago, did
 23 you not, that you haven't actually analyzed the
 24 construction conditions on 290 for this relevant time
 25 period? Correct?

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1 A That's correct.
 2 Q And assuming the landfill is to close in the
 3 year 2015, would it also be a correct assumption that
 4 that truck traffic would have to import those soils
 5 prior to full closure in 2015?
 6 A Yes, that would be right.
 7 MR. RENBARGER: Pass the witness.
 8 JUDGE NEWCHURCH: Mr. Blackburn?
 9 CROSS-EXAMINATION
 10 BY MR. BLACKBURN:
 11 Q Good morning, Mr. McInturff.
 12 A Good morning.
 13 Q Jim Blackburn. A couple of questions. I
 14 want to go back to what Mr. Renbarger was discussing
 15 with you about U.S. 290. And when is the construction
 16 to commence on 290? Is there a date set for that?
 17 A It's my understanding that that is most
 18 likely by 2010. I think there's some discussion about
 19 even possibly this year, but I think 2010 is the most
 20 likely expected date.
 21 Q And it is expected to end in 2013?
 22 A That's correct.
 23 Q So would it be fair to say that the
 24 construction of 290 will be ongoing for more than
 25 50 percent of the life of the expansion?

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1 A That's correct.
 2 Q So would not the expansion of 290 more
 3 appropriately be the proposed condition to be analyzed
 4 as opposed to the assumption that it would be a
 5 free-flowing U.S. 290?
 6 A In answer to your question, Mr. Blackburn,
 7 I'd like to expand on what "completion of
 8 construction" means. I think in order to do that it's
 9 recognized that the ultimate product will be a
 10 six-lane toll facility in the center where the
 11 existing roadway is today, more or less. The two sets
 12 of three-lane frontage roads will be outside the
 13 current roadway.
 14 The first thing that will be constructed
 15 will be those frontage roads outside the current
 16 alignment. When they are completed, the traffic will
 17 be traveling on six lanes of roadway where it's
 18 currently traveling on four today. Then construction
 19 will commence on the middle portion, which will be the
 20 toll facility.
 21 So well prior to the end of the project
 22 there will be a completed six-lane arterial for
 23 traffic to use that currently is a four-lane arterial
 24 today.
 25 Q But there will be a period of time when the

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1 lane capacity will be reduced. Is that correct?
 2 A No, sir, not other than a short period of
 3 time. The construction work will take place outside
 4 the current roadway in most cases. So there may be
 5 short periods, but there will not be an extended
 6 period of any time when there is less than the current
 7 four lanes of roadway because of the nature of this
 8 construction project.
 9 Q But there is always a reduction in the flow
 10 of vehicles when there's a construction project,
 11 whether the lanes are actually closed or not. You'd
 12 agree with that, wouldn't you?
 13 A There will be spot locations where there
 14 needs to be, say, evening hours when beams are laid or
 15 some temporary reduction, but by and large this type
 16 of construction allows the current four lanes of
 17 traffic to continue to flow during the construction
 18 period.
 19 Q Would that be comparable to what happened
 20 with the Katy Freeway in Houston?
 21 A It's probably more comparable to U.S. 183
 22 here in Austin. People have experienced that and seen
 23 how that was affected in terms of being able to
 24 utilize the full -- at that time four to six lanes of
 25 roadway. The Katy Freeway I think was a different

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1 type of example.
 2 Q The details -- I mean, your analysis, though,
 3 included no details of the impacts or the recitation
 4 of how that 290 expansion would, in fact, affect the
 5 flow of traffic. Is that correct?
 6 A No, sir, I did not look at any interim
 7 condition.
 8 Q Now, the other thing, have you reviewed any
 9 of the citizen testimony in this case?
 10 A I have looked over several of those.
 11 Q Are you aware that there has been complaints,
 12 concerns expressed about mud on the highway?
 13 A I recall reading some of that.
 14 Q Have you done any analysis of the occurrence
 15 or the issue of mud on the highway system?
 16 A No, sir, I have not.
 17 Q And so you have no opinion to offer about
 18 that one way or another?
 19 A I do not.
 20 Q Would you agree with me that if mud were
 21 occurring on the highway that that would be a problem?
 22 A Well, it's highly dependent upon the nature
 23 of the mud, the quantity of the mud and the location
 24 of the mud.
 25 Q So you wouldn't agree with me?

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1 A I would say that that agreement will be
 2 contingent upon several different factors when one
 3 evaluates mud on a roadway.
 4 Q Well, now, cannot mud lead to slippage of
 5 tires?
 6 A If the mud is still wet and I commonly refer
 7 to mud as a wet soil, if it were in that definition,
 8 it could conceivably provide a slipperier surface.
 9 Q And would you consider a slippery surface to
 10 be a positive or a negative?
 11 A That would be a negative.
 12 Q And have you evaluated any such conditions in
 13 your analysis?
 14 A I have not.
 15 MR. BLACKBURN: Pass the witness.
 16 JUDGE NEWCHURCH: Is there redirect?
 17 MR. NORTON: No, Your Honor.
 18 JUDGE NEWCHURCH: Then, Mr. McInturff,
 19 thank you for your testimony. You're excused.
 20 THE WITNESS: Thank you.
 21 JUDGE NEWCHURCH: Off the record.
 22 (Recess: 11:35 a.m. to 1:03 p.m.)
 23
 24
 25

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1 AFTERNOON SESSION
 2 MONDAY, JANUARY 26, 2009
 3 (1:03 p.m.)
 4 JUDGE NEWCHURCH: We'll be on the
 5 record. Are there any preliminary matters this
 6 afternoon?
 7 MR. CARLSON: No, Judge.
 8 JUDGE NEWCHURCH: So we will go to BFI's
 9 next witness. Mr. Carlson?
 10 MR. CARLSON: Applicant calls
 11 John Worrall.
 12 MR. WORRALL: Hi.
 13 JUDGE NEWCHURCH: Hi, Mr. Worrall. If
 14 you'll take the oath, please?
 15 (Witness sworn)
 16 JUDGE NEWCHURCH: Thank you. Please
 17 have a seat.
 18 PRESENTATION ON BEHALF OF
 19 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
 20 (CONTINUED)
 21 JOHN WORRALL,
 22 having been first duly sworn, testified as follows:
 23 DIRECT EXAMINATION
 24 BY MR. CARLSON:
 25 Q Please state your full name, Mr. Worrall.

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1 A My name is John A. Worrall. It's spelled
2 W-O-R-R-A-L-L.
3 Q What is your business address, Mr. Worrall?
4 A My business address is 500 Camino Barranca,
5 B-A-R-R-A-N-C-A, Round Mountain, Texas 78663.
6 Q What is your occupation, sir?
7 A I'm a planning consultant, a land use
8 consultant.
9 Q What was your role or your job in connection
10 with BFI's permit application for Sunset Farms?
11 A I prepared a land use analysis that was
12 included as a part of the application; I prepared
13 visual simulations of the landfill; I prepared -- the
14 proposed landfill I should say; directed the
15 preparation of landscape plans for the landfill; and
16 then I updated the -- more recently updated the land
17 use analysis that I prepared.
18 Can you hear me okay? I can't tell.
19 Q Yeah, yeah, we can, I believe.
20 A Okay.
21 Q Did you prepare prefiled testimony for this
22 hearing, sir?
23 A Yes, I did.
24 Q I believe there should be a binder in there
25 with your prefiled. Do you see that?

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1 A Yes. My direct testimony, yes.
2 Q Okay. It's been marked as exhibit --
3 Applicant's Exhibit JW-2 -- or excuse me -- JW-1.
4 A Yes, I see that.
5 Q Okay. Do you have any changes or revisions
6 that you'd like to make at this point in time?
7 A No, sir.
8 Q You're my first witness who has been able to
9 say that that way.
10 Is your resume attached as an exhibit to
11 your prefiled? If you'll look at exhibit --
12 Applicant's Exhibit JW-2?
13 A Yes.
14 Q Okay. And then you have a series of exhibits
15 that you've sponsored that have been labeled
16 exhibits -- Applicant's Exhibits JW-3 through JW-7.
17 Is that correct?
18 A Yes, sir, I see those.
19 Q Are there any portions of BFI's application
20 that your sponsoring in this hearing, sir?
21 A I'm sponsoring those portions related to the
22 land use aspects of the application.
23 Q If you'll turn to Page 8 of your prefiled, I
24 believe it has some Bates numbers that indicate the
25 pages that you're sponsoring. Would you read those

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1 out for the record, please?
2 A Page 8 -- that's on Line 10. Is that right?
3 Is that what you're asking?
4 Q It should be the Bates labels or Bates
5 numbers for the land use analysis report.
6 A Yes, Applicant's Exhibit JW-3 is labeled
7 APP145 through APP165.
8 Q Okay. And that's the land use analysis
9 report that you prepared that's been included in the
10 application. Is that correct?
11 A That's correct.
12 Q Okay. Do you adopt your prefiled testimony,
13 Mr. Worrall, as true and correct in the same manner as
14 if you were providing that testimony live here today?
15 A Yes, I do.
16 MR. CARLSON: At this point, Judge,
17 applicant offers Applicant's Exhibits JW-1 through
18 JW-7.
19 JUDGE NEWCHURCH: Any objections?
20 (No response)
21 JUDGE NEWCHURCH: They are all admitted.
22 (Exhibit BFI Nos. JW-1 through JW-7
23 admitted)
24 MR. CARLSON: I pass the witness.
25 JUDGE NEWCHURCH: Mr. Terrill?

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1 MR. TERRILL: No questions.
2 JUDGE NEWCHURCH: Ms. Noelke?
3 MS. NOELKE: No questions.
4 JUDGE NEWCHURCH: Mr. Morse?
5 MR. MORSE: No questions.
6 JUDGE NEWCHURCH: Ms. Mann?
7 CROSS-EXAMINATION
8 BY MS. MANN:
9 Q Good afternoon.
10 A Hi.
11 Q My name is Christina Mann. I'm with the
12 Public Interest Counsel with the TCEQ, and I just have
13 a couple of questions. Throughout your testimony or
14 your prefiled testimony you seem to put a lot of
15 weight on the fact that most of the development --
16 residential development in the area has been going on
17 at the same time as landfill operations. Would you
18 agree with that?
19 A I would agree with that, yes.
20 Q Do you know whether or not any of the -- in
21 your experience whether or not residential development
22 will proceed along these lines in areas that have
23 industrial impacts with the understanding that
24 eventually the industrial impacts are going to cease
25 and it's going to sort of roll over to more

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1 residential development in the long term, particularly
2 in cases of landfills? I mean, in the -- when
3 landfills are originally permitted, although they
4 don't tend to have end dates, they do tend to have
5 capacity dates where people can estimate dates.
6 Correct?
7 A Right, right.
8 Q So I'm wondering if you've -- in your
9 experience if you have noticed whether or not
10 residential development in areas will proceed with the
11 expectation that eventually these are no longer going
12 to be active industrial sites?
13 A I'm not sure that they -- that residential
14 development proceeds with that understanding. I think
15 that there's as many motivations and reasons and
16 causes of residential development as there are
17 developers and homeowners. So I'm not sure that
18 people are necessarily considering that very thing
19 that you're asking.
20 Q Okay. And your testimony focuses on the
21 regulatory requirements of the reports, so impacts
22 expected within a mile. Correct?
23 A That's correct, although part of the
24 regulatory requirements suggest that you should
25 discuss growth trends of the nearest community. So

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1 that's not necessarily within a mile. However, with
2 that exception, I would agree.
3 Q Did you -- when evaluating compatibility
4 specifically with the nearest homes and the element --
5 I'm sorry -- the day-care center, did you talk to any
6 of the residents or the day-care center about their
7 interactions with the landfill to get some more
8 considerations of compatibility issues?
9 A Not specifically, although I did talk with
10 the operators of the day-care center -- no, strike
11 that. That's not true. I talked with the elementary
12 school administration, but other than that I didn't
13 talk to any of the residents nearby specifically, no.
14 Q And did the communications with the
15 elementary school impact your analysis at all?
16 A I was asking their permission to take
17 photographs from the elementary school, and I didn't
18 want them to be disturbed because there's a
19 middle-aged man lurking around.
20 (Laughter)
21 A And so I just informed them as to what I was
22 doing, and that was --
23 Q (BY MS. MANN) So that was -- that was the
24 limit of your communication?
25 A Yes, that's correct.

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1 Q Okay. On Page 24 of your testimony at
2 Line 19, you state that the landfill will, in fact,
3 recede from the existing activities.
4 A That's correct.
5 Q And that's just lateral. Do you mean the
6 working face of the landfill will laterally recede?
7 A No. What I mean by virtue of this being a
8 vertical expansion only, it's not a lateral expansion.
9 What I mean is that all the landfilling activities
10 will recede from all the surrounding activities. So
11 if you think of it kind of in general terms the
12 permit -- the permit boundary is roughly 350 acres,
13 and the limit of fill is roughly 250 acres. So, you
14 know, the balance is buffers and other activities.
15 Well, this actual vertical expansion is
16 really going to be about 150 acres because it's going
17 to be occurring on top of and kind of in the middle
18 of, you might say, the existing permit boundary. So
19 that's one way it's receding in that it's, you know,
20 well within the existing permit boundary.
21 And then the other way it's receding is
22 that none of the slopes will exceed a four-to-one
23 slope. So what I would suggest, therefore, that that
24 means from my perspective is that for every vertical
25 foot of fill that we have, we're moving back four feet

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1 horizontally. So it's a smaller proposal by virtue of
2 being a vertical expansion, and then it recedes as the
3 construction or development occurs at a four-to-one
4 rate.
5 Q But visually are you able to see -- because
6 it's higher on the horizon or against the horizon, are
7 you able to see it from further away or not?
8 A Yes, you would, because, of course, as it
9 gets higher, you'd be able to see it further away.
10 Q And likewise talking about the distance away
11 from things, on Page 34 of your testimony at Line 20,
12 you state that the buffer is approximately 760 feet.
13 A At the most, that's correct.
14 Q At the most. Is that the distance between
15 waste deposition and -- what does that 760 feet
16 indicate or measure?
17 A That's the -- that whole sequence of answers
18 there says, first of all, that it meets or exceeds at
19 a minimum of 50 foot and it ranges up to 760 foot, and
20 that represents the distance from the edge of fill, to
21 my recollection, to the permit boundary in the
22 northeast portion of the landfill in particular.
23 Q Okay.
24 A Where you probably talked about it, but
25 there's been floodplain improvements up in that area,

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1 and that's what I'm talking about there.
2 Q Okay. And I was wondering if you could
3 elaborate a little bit more about BFI's screening
4 activities.
5 A I'd be happy to.
6 Q Okay. You state that BFI has adequately
7 screened the landfill, and how did they do that?
8 A Well, is there a particular thing you're
9 referring to, or would you like me just to hold forth
10 generally?
11 Q Broadly, because you're, quite frankly,
12 pretty specific about most other things in your
13 testimony, but maybe I skipped a page. But I didn't
14 see as much elaboration on BFI's screening. Does that
15 include the buffers and --
16 A Yes, it does.
17 Q Okay.
18 A And I had mentioned earlier that one of the
19 things that I've sponsored is the landscape
20 enhancement plans for the landfill, and what we've
21 tried to do there is provide screening, where
22 possible. It's not always possible. In other areas,
23 we're trying to create a better, cleaner edge of the
24 landfill, a more defined edge. One of the things I
25 remember talking about to BFI a long time ago was

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1 making sure we had a defined edge of this landfill so
2 that people would understand that, for instance, prior
3 to the floodplain improvements that we talked about
4 just a moment ago, I was concerned that neighbors or
5 others might think that the landfill was going to be
6 out there, you know. And I said I thought we should
7 make it clear that that wasn't the case.
8 So as a result of that, we defined and
9 built -- or we defined and they built a chain-link
10 fence at the permit boundary, as I recall, but a very
11 specific point, and then we landscaped along that to
12 try to create that clean edge.
13 And then the third thing we did was try
14 to create and clean up a front yard for the landfill,
15 you might say, and that's the frontage along Giles
16 Road to try to make sure that it looked like front
17 lawn, you might say. So over the years, BFI has
18 enacted or built a lot of these things, and the
19 improvement of the landfill is much superior, I think,
20 to what it used to be, and the screening is starting
21 to take place.
22 And one other thing I'd point out on the
23 screening is a lot of it is taking place as a result
24 of the landscape plans that are associated with that
25 wetland enhancement and floodplain improvement.

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1 There's considerably more, bigger trees out there as
2 well, and I think that that's going to -- it already
3 does help with the screening, and I think it will
4 continue to.
5 MS. MANN: Okay. I pass the witness.
6 JUDGE NEWCHURCH: Mr. Shepherd?
7 MR. SHEPHERD: No questions.
8 JUDGE NEWCHURCH: Mr. Head?
9 CROSS-EXAMINATION
10 BY MR. HEAD:
11 Q Good afternoon, Mr. Worrall.
12 A Hello, Mr. Head.
13 Q Referring to your Exhibit JW-2, that's your
14 resume.
15 A Yes, sir.
16 Q You list 23 MSW facilities for which you have
17 prepared land use analyses. Is this listing complete
18 with respect to every solid waste facility you've
19 worked on?
20 A No, sir, it's not. It's a representative
21 sampling, I'd say.
22 Q Approximately how many additional facilities
23 have you worked on MSW?
24 A You said that there's 23 listed. Is that --
25 Q By my count, yes.

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1 A Okay. I would estimate it's probably -- if I
2 looked at all the work I've done on all the MSW
3 projects, probably 30.
4 Q Okay. Thirty total?
5 A Yes, sir.
6 Q And have you ever testified as an expert in
7 opposition to land use compatibility of a solid waste
8 facility?
9 A No, sir, I have not.
10 Q And have you ever declined to represent or
11 testify on behalf of a solid waste facility on the
12 topic of land use compatibility?
13 A Yes, I have.
14 Q And what the basis -- on how many occasions
15 have you declined to either testify or prepare a land
16 use analysis?
17 A Three.
18 Q Okay. And what was -- without naming the
19 facilities, what was the basis for your declination of
20 those projects?
21 A I didn't feel that I could testify to the
22 compatibility. So I chose not to.
23 Q Okay. And of these 23 facilities listed on
24 JW-2, am I correct in my assumption that you prepared
25 a land use analysis with the conclusion that it was

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1 compatible land use?
 2 A That's not true for all of those, sir.
 3 You'll note kind of leading in -- the paragraph
 4 leading into that it says that I managed and provided
 5 services that included expert testimony, visual and
 6 aesthetic analyses, growth trends research, design of
 7 entries and screening features and other -- and
 8 phasing operation recommendations. So I would say no,
 9 I have not testified on all these.
 10 Q And would it also be correct that you have
 11 not prepared a land use analysis for all of them?
 12 A Yes, sir, that's correct.
 13 Q Okay. Were you involved in land use analysis
 14 for the Texas Disposal Systems Landfill around
 15 Creedmoor?
 16 A No, I was not specifically. The firm I
 17 worked for at the time, which is also referenced in
 18 this resume, was RVi Planning & Landscape
 19 Architecture.
 20 Q Is that Richardson Verdoorn?
 21 A It was at the time. It's subsequently been
 22 renamed to RVi.
 23 Q Yes, sir.
 24 A And I was a partner at RVi at the time that
 25 the firm was engaged with TDSL to do a land use

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1 analysis with their application. I, however, did not
 2 work on that.
 3 Q You had no involvement?
 4 A That's correct.
 5 Q Okay. And of the list of the 23 facilities,
 6 I see the Spring-Cypress Type IV Landfill in Harris
 7 County.
 8 A That -- I'm sorry.
 9 Q Did you provide expert testimony on land use
 10 analysis for that landfill?
 11 A I did as a rebuttal witness, yes.
 12 Q Okay. A rebuttal witness on behalf of the
 13 applicant?
 14 A That's correct.
 15 Q And did you testify as a rebuttal witness
 16 that the proposed facility would be a compatible land
 17 use?
 18 A Yes, I did.
 19 Q And isn't it true that the TCEQ or its
 20 predecessor agency denied that application for
 21 Spring-Cypress based on land use incompatibility?
 22 A Among other reasons, that's true.
 23 Q Okay. To your knowledge, did the
 24 Commission's decision on that denial -- was that ever
 25 overturned by a court of law?

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1 A No, I don't believe it was.
 2 Q Okay. Now, was the Spring-Cypress landfill,
 3 was that a proposal to locate a green field site?
 4 A It was green field in the sense that there
 5 wasn't a landfill there, but it was the site of a
 6 quarry, as I recall. It's hard to imagine a quarry
 7 being a green field site, but by these definitions it
 8 might be.
 9 Q And is it true that that quarry was located
 10 in close proximity to existing and proposed neighbors?
 11 A I don't know what you mean by "close
 12 proximity," I guess.
 13 Q Do you recall the proximity of the quarry to
 14 the existing neighbors?
 15 A No, I do not recall that.
 16 Q Have any other landfill projects referenced
 17 in Exhibit JW-2 been denied based on land use
 18 considerations?
 19 A Not to my knowledge, no.
 20 Q Now, Exhibit JW-3 is a land use report that's
 21 contained in the application. Correct? You can take
 22 your time.
 23 A I believe that's correct, yes.
 24 Q All right. And that would -- I think in
 25 response to a question from Mr. Carlson, that would

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1 be -- you referenced that on Page 8 of your prefiled,
 2 on Line 9 or 10, the APP Nos. 145 through 165?
 3 A Yes, sir.
 4 Q And Exhibit JW-4 is a -- it's another land
 5 use report updated to September 26, 2008. Correct?
 6 A That's correct.
 7 Q And for purposes of our discussion, since
 8 that's the most current, would it be fine with you if
 9 we addressed JW-4 as opposed to JW-3?
 10 A I would just as soon because it is more
 11 current.
 12 Q Okay. And the purpose -- it's more current.
 13 You updated the information that you had compiled
 14 roughly back in 2004?
 15 A That's correct.
 16 Q Okay. And the pertinent TCEQ rule applicable
 17 to land use is 330.53(b)(8). Does that sound
 18 accurate?
 19 A That's most of the right numbers, I'd say.
 20 Q And you've dealt with -- you've dealt with
 21 the land compatibility rule numerous times?
 22 A Yes, sir, I have.
 23 Q And this rule requires the applicant to
 24 provide certain information to assist the Executive
 25 Director in the evaluation of the impact. Correct?

31 (Pages 1128 to 1131)

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1 A That's correct.
2 Q All right. And those factors include zoning,
3 character of surrounding land use within one mile of
4 the facility, growth trends of the nearest community,
5 and we know in response to a question from the Public
6 Interest Counsel that can go beyond one mile. Right?
7 A Yes, sir.
8 Q Proximity to residences and other uses
9 and also a description of known water wells within
10 500 feet of the site. Is that a fair recitation of
11 that rule?
12 A Yes, sir.
13 Q Okay. And that rule provides that a primary
14 concern is that the use of any land for an MSW site
15 not adversely impact human health or the environment.
16 Right?
17 A Correct.
18 Q And the impact of the site upon a city,
19 community, group of property owners or individuals
20 shall be considered in terms of compatibility of land
21 use, zoning in the vicinity, community growth patterns
22 and other factors associated with the public interest.
23 Right?
24 A Correct.
25 Q In your opinion, is there some subjectivity

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1 with regard to a determination of land use
2 compatibility?
3 A I'm not sure what you mean by "subjectivity."
4 Q Stated another way, is there a -- does the
5 TCEQ have any hard and fast parameters with regard to
6 what constitutes a compatible land use with regard to
7 an MSW facility?
8 A Other than just what we've recited --
9 Q Right.
10 A -- what you recited and we discussed? No,
11 sir. That's it right there.
12 Q So there is no quarter-mile rule with regard
13 to proximity of residences? There's no specific
14 numerical parameters with regard to land use
15 compatibility?
16 A That's correct.
17 Q All right. I'd refer you to the Application
18 000323, if you can find that in the application, which
19 is going to be a different document.
20 A Okay. I'm not aware of what I've got up
21 here. Maybe you can help me out.
22 Q Mr. Worrall, it will be Volume 1 --
23 A Okay.
24 Q -- of 3.
25 A I've got that. Thank you.

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1 Q About in the middle.
2 A Okay.
3 Q And I know you've seen numerous landfill
4 applications. That will be the section that has the
5 communications with various governmental entities.
6 A Okay. So that's kind of the appendix you
7 might say here?
8 Q If you look at the Bates numbers --
9 A Okay.
10 Q -- on the bottom right-hand corner, it will
11 be APP000323.
12 A Okay. Thank you for helping me with that. I
13 believe I've got that. It looks like it's a
14 letterhead from CAPCO -- CAPCOG.
15 Q And let me ask, in your working for BFI, did
16 you have any involvement with presentations before the
17 Capital Area Council of Governments with regard to
18 land use compatibility?
19 A I attended a meeting, but I did not present
20 to the CAPCOG, no.
21 Q Did you prepare any information on behalf of
22 BFI that was presented to the Capital Area Council of
23 Governments?
24 A Not that I specifically know. It's certainly
25 possible that some of the information I prepared was

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1 presented to them, but I don't recall specifically
2 preparing information for them.
3 Q But you are -- you are familiar with the
4 CAPCOG?
5 A Yes, sir.
6 Q And you are familiar that they do weigh in on
7 compatibility of an MSW facility with their plan?
8 A Right. They're concerned about their
9 regional municipal solid waste plan --
10 Q Yes, sir.
11 A -- and how that might be implemented, yes.
12 Q And have you reviewed before today the letter
13 to Dr. Carmichael from the CAPCOG regarding
14 consistency with the CAPCOG plan?
15 A Yes; I've reviewed it before, yes.
16 Q And in your review before -- strike that.
17 Isn't it a fact the letter provided to
18 Dr. Carmichael indicates that the Solid Waste Advisory
19 Counsel to CAPCOG endorsed the comments made by Travis
20 County, and that the attached Travis County comments
21 pointed out the proposed expansion of the facility
22 will not conform with current and future land use in
23 that area?
24 MR. CARLSON: Objection. The document
25 speaks for itself.

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1 JUDGE NEWCHURCH: Do you have a
 2 response?
 3 MR. HEAD: I'm asking him if he
 4 agrees -- if he is aware of that statement in the
 5 letter, solely that.
 6 JUDGE NEWCHURCH: Which page? Are you
 7 talking about Page 324?
 8 MR. HEAD: 323.
 9 JUDGE NEWCHURCH: 323. I'm going to
 10 overrule the objection.
 11 THE WITNESS: I'm sorry, sir?
 12 JUDGE NEWCHURCH: Go ahead.
 13 THE WITNESS: Okay.
 14 JUDGE NEWCHURCH: Do you recall the
 15 question?
 16 THE WITNESS: If you'd repeat the
 17 question?
 18 JUDGE NEWCHURCH: Mr. Head?
 19 MR. BLACKBURN: J.D.?
 20 MR. HEAD: Yeah, I know.
 21 Q (BY MR. HEAD) Are you aware that the Solid
 22 Waste Advisory Counsel of CAPCOG in this letter adopts
 23 the comments of Travis County whereby Travis County
 24 makes a finding that, in their view, the facility will
 25 not conform with current and future land use in that

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1 area?
 2 A Well, as it says, it's the advisory committee
 3 that says that. And the thing that was more to the
 4 point, as far as I was concerned, is that the
 5 executive committee of CAPCOG said it will conform to
 6 their regional solid waste management plan, and that
 7 was the thing I found of most interest.
 8 Q But, sir, isn't it a fact that Travis County
 9 submitted comments that were adopted by CAPCOG, and
 10 the substance of those comments was that Travis County
 11 did not believe that this was a compatible land use?
 12 A Well, I'm reading the paragraph as to what it
 13 says, and it says that "Travis County comments also
 14 outline steps necessary to address their concerns."
 15 Q I understand that.
 16 A Okay.
 17 Q I understand that.
 18 A All right.
 19 Q But the letter does state that Travis County
 20 comments pointed out the proposed expansion of this
 21 facility will not conform with current and future land
 22 use in the area?
 23 A It does say that, that's correct.
 24 Q So you do believe it does conform with land
 25 use?

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1 A Yes, sir, I do.
 2 Q And Travis County, according to this, does
 3 not believe it conforms with current and future land
 4 use?
 5 A That's what this says, yes.
 6 Q Now, have you had the occasion to read the
 7 comments that were attached to this letter from Travis
 8 County? Have you ever seen those comments?
 9 A I've seen the letter before, yes.
 10 Q This letter which included the comments?
 11 A These comments, yes.
 12 Q I'm sorry. I'm probably confusing you, and
 13 this is probably a confusing question. If you look
 14 at -- if you'll turn to APP000324 --
 15 A Okay.
 16 Q -- the last line says "enclosure."
 17 A Okay.
 18 Q Okay? And this letter talks about attached
 19 Travis County comments.
 20 A Okay.
 21 Q Have you ever been privy to the comments of
 22 Travis County with regard to land use compatibility?
 23 A I probably have because, first of all, I'm
 24 not aware of the enclosure very specifically in answer
 25 to that question. And secondly, I have addressed the

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1 Travis County Commissioners with respect to this
 2 landfill in the past. So I'm sure at some point I was
 3 cognizant of their various concerns.
 4 Q Going to your report and your attachments, I
 5 think it's JW-4, the first issue you address -- and
 6 take your time. Do you have that in front of you now?
 7 A Yes, I do; JW-4, yes, sir.
 8 Q All right. Let me get it in front of myself.
 9 The first issue addressed is zoning.
 10 Correct?
 11 A That's correct.
 12 Q And according to your report, the vast
 13 majority of the land zoned by the City of Austin
 14 within one mile is zoned planned unit development.
 15 Right?
 16 A Well, the vast majority of the land within
 17 one mile of the facility is not zoned.
 18 Q Correct.
 19 A Okay.
 20 Q But the land that is zoned by the City of
 21 Austin within a mile, the vast majority of that is
 22 zoned PUD?
 23 A I suspect that's right, but I don't recall
 24 specifically saying that.
 25 Q Well, sir, you have maps and charts in here.

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1 If you could -- if you could refer --
 2 A Page 9.
 3 Q Page 9 of the report?
 4 A Yes, sir.
 5 Q Okay. On Page 9 of your report, that's
 6 Figure II.D-2 zoning. Correct?
 7 A Correct.
 8 Q And I'm assuming that the white areas within
 9 there are the zoned areas?
 10 A That's correct.
 11 Q All right. My simple question is, is the
 12 majority of the zoned area zoned PUD?
 13 A Yes, sir, it is.
 14 Q Okay. All right. And could you explain to
 15 the Judge what a "PUD zoning" means?
 16 A Your Honor, "PUD zoning" stands for planned
 17 unit development, and that's a flexible zoning
 18 district. It's used throughout the country. It means
 19 different things in different places, but generally
 20 speaking, it allows for uses within that zone to be
 21 flexible. So you might have -- a more conventional
 22 zoning would be R for residential or C for commercial.
 23 Every city has got its unique zoning districts.
 24 PUD in and of itself is a flexible
 25 zoning district that might allow residential or

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1 commercial or industrial or any number of uses to
 2 occur essentially through a negotiated mechanism with
 3 the approving body, in this case, the municipality.
 4 Q And are you familiar with what the growth
 5 trends are in the PUD zoned area on Page 9?
 6 A Not specifically within those PUD zoned
 7 areas, but I'm certainly familiar with the growth
 8 trends within a mile.
 9 Q Well, isn't it a fact that the PUD areas that
 10 have been developed to date have been primarily
 11 residential?
 12 A No, sir, that's not true. The PUD area
 13 that's the closest to Sunset Farms, for instance, to
 14 the -- let's just say to the east is Applied
 15 Materials, and that's all industrial, and that's part
 16 of the PUD.
 17 Q Right.
 18 A So again, because you asked me to clarify,
 19 PUD is a flexible zoning category, and it might allow
 20 industrial. In the case of Applied, it might allow
 21 residential. In the case of residential, it might
 22 allow commercial and other activities. So it's not
 23 the case specifically that it's all residential.
 24 Q Okay. Aside from the PUD to the direct east
 25 of the Sunset Farms Landfill, are you aware of any

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1 other PUD designations that are industrial as depicted
 2 on Page 9?
 3 A The PUD -- let's just talk -- are you
 4 familiar with the Harris Branch PUD specifically? I
 5 can --
 6 Q Go ahead, please. That's fine. You're not
 7 supposed to ask me questions --
 8 A Oh, okay.
 9 Q -- but we'll have a dialogue.
 10 (Laughter)
 11 JUDGE NEWCHURCH: Let's not do that.
 12 MR. HEAD: Okay.
 13 THE WITNESS: I withdraw the question.
 14 (Laughter)
 15 JUDGE NEWCHURCH: Thank you.
 16 MR. BLACKBURN: Mr. Worrall has been
 17 around.
 18 MR. HEAD: Mr. Worrall has been on the
 19 witness stand more than once, as you can tell.
 20 JUDGE NEWCHURCH: All right. Mr. Head,
 21 why don't you re-ask your last question or go to
 22 another one?
 23 MR. HEAD: I think I'm going to go to
 24 another one.
 25 JUDGE NEWCHURCH: Or do something.

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1 Q (BY MR. HEAD) Let me ask you this: A PUD
 2 zoning can be developed residential?
 3 A It can, that's correct.
 4 Q Okay. There we go. We got that.
 5 On JW-4 of your report after we go to
 6 zoning, you discuss the character of surrounding land
 7 uses. Right?
 8 A Yes, sir.
 9 Q And you state in your report that the
 10 character of land uses within one mile of the site is
 11 mixed and dynamic being on the fringe of a rapidly
 12 growing city. What did you mean by the term
 13 "dynamic"?
 14 A Changing.
 15 Q Okay. Changing in what regard?
 16 A The bulk of the land within a mile of the
 17 landfill, my recollection is, over 60 percent is
 18 currently undeveloped. However, what we're seeing is
 19 that a lot of that land is being developed and being
 20 converted to other uses, notably residential.
 21 Q Urban and suburban uses I think you state?
 22 A Yes, sir.
 23 Q All right. You indicate in JW-4 that there
 24 are an estimated 1,387 residential units built within
 25 one mile of the Sunset Farms Landfill.

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1 A That sounds like the correct number. Yes, I
2 do see that.
3 Q All right. And isn't it true that between
4 2004 and your update of 2008 Exhibit JW-4, the number
5 of residential units within one mile increased from
6 863 to 1,387 residential units?
7 A Yes, sir, more than 500 units in that time
8 period.
9 Q Do you consider that a significant increase
10 in residential units?
11 A Yes, sir, I do.
12 Q Okay. Going to your next section, which
13 would be Growth Trends, and that's Page 5 of your
14 report --
15 A Yes, sir.
16 Q -- with respect to growth trends, isn't it a
17 fact that your report acknowledges that Sunset Farms
18 is within Austin Planning Area 22?
19 A Yes, sir, that's correct.
20 Q And isn't it a fact that Austin Planning
21 Area 22 was the fastest growing of all the Austin
22 planning areas?
23 A Yes, sir, both in absolute terms and relative
24 terms.
25 Q And the percent change in population from

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1 1990 to 2000 was an increase of 133.2 percent.
2 Correct?
3 A That's correct.
4 Q All right. The next section you discuss
5 Proximity. With regard to proximity your updated
6 report JW-4 notes -- we've already discussed with
7 1,387 residential units within one mile of the Sunset
8 Farms, 44 businesses, one school, the one day-care
9 center and the Barr Mansion, which is a historic
10 mansion. Right?
11 A Forty-nine residents -- or business
12 establishments.
13 Q Okay. In your prefiled testimony at
14 Page 12 -- and I know we're skipping around. I
15 apologize -- but you refer to robust residential
16 growth, and that would be on Page 12, Line 14. You
17 summarize land use changes reflecting continued robust
18 residential growth at the expense of open land.
19 A Yes, sir.
20 Q And the area around Sunset Farms, as
21 indicated on Page 22 of your prefiled testimony, is in
22 the City of Austin's desired development zone?
23 A That's correct.
24 Q Now, as I understand, the desired development
25 zone is not mandatory. That's just guidance from the

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1 city?
2 A Yes, sir.
3 Q Okay.
4 (Exhibit TJFA No. 24 marked)
5 Q (BY MR. HEAD) Mr. Worrall, I've handed you
6 what's been marked as TJFA-24. Are you familiar with
7 this document?
8 A You're asking me if I'm familiar with it,
9 sir?
10 Q Yes.
11 A It looks to be a copy of what we were
12 discussing earlier, the letter from CAPCOG.
13 Q And this letter also includes the enclosure
14 of the CAPCOG letter, which includes the comments of
15 Travis County. Is that correct?
16 A There are additional pages here, and I guess
17 I'll take it on your word, if that's the right way to
18 say it, that these are the comments of Travis County.
19 Q Have you ever before seen the comments of
20 Travis County?
21 A As I testified before, I probably have. I'm
22 aware of their concerns at one point, but I can't say
23 specifically I've seen these pages you're referring
24 to, not that I recall.
25 Q Okay. This document, after the first two

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1 pages, includes seven pages of comments, and I'd refer
2 you to the second page of the comments, and that would
3 be No. 4.
4 A Okay.
5 Q The Travis County comments do provide the
6 application does not conform to the requirements
7 regarding compatibility of the proposed facility with
8 surrounding land use. That was the opinion of Travis
9 County, according to these comments. Correct?
10 A I'm sorry. I misunderstood. Are you reading
11 from this, sir?
12 Q I'm asking you if you would not mind
13 reviewing No. 4.
14 A Okay.
15 Q Take your time.
16 A Okay.
17 Q Does not this comment indicate that the land
18 use pattern that would prevail for the foreseeable
19 future is incompatible with ongoing waste disposal
20 operations?
21 A That's Travis County's opinion.
22 Q Right.
23 A I don't think it's premised entirely
24 correctly, though, I would say.
25 Q But it is Travis County's opinion?

35 (Pages 1144 to 1147)

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1 A I believe that's the source of this and,
2 therefore, that would be their stated opinion.
3 MR. CARLSON: Excuse me. What comment
4 are you talking about, Mr. Head?
5 MR. HEAD: Page 2, Comment 4, John.
6 MR. CARLSON: Thanks.
7 MR. HEAD: Yeah.
8 Q (BY MR. HEAD) And on Page 5 you have the
9 bullet point that states "Ensure that the use of a
10 site for a MSW facility does not adversely impact
11 human health or the environment by evaluating and
12 determining impact of the site upon cities, counties,
13 communities, property owners in terms of compatibility
14 of land use, zoning." That's the bullet point. I'd
15 like you to read under No. 1, the comments with regard
16 to that bullet point. Read it to yourself.
17 A Let me make sure I'm following you. You're
18 on Page 5, Bullet Point 8. Is that correct?
19 Q Page 3.
20 A Okay.
21 Q And at the top there's a No. 1.
22 A Okay.
23 Q And basically it's an inquiry into land use
24 compatibility again.
25 A Okay. And the bullet point below it is

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1 just --
2 Q The bullet point below that -- I just want to
3 ask is the determination that this land use pattern is
4 incompatible with ongoing waste disposal activity, is
5 the land use pattern being the desired future
6 development zone, all the homes, schools, the offices?
7 A Well, the very first sentence of the bullet
8 point says "The facility is within the community
9 preferred growth corridor known as the desired
10 development zone." We discussed that to be --
11 Q Yes, sir.
12 A "And is adjacent to numerous existing and
13 future homes." That is not true. It is not adjacent
14 to any homes. It is not adjacent to schools. It is
15 not adjacent to historic sites and other sensitive
16 receptors. I think that, therefore, calls into
17 questions many of their subsequent findings within
18 that.
19 Q So you disagree with the findings?
20 A I most definitely do.
21 Q None the less, the Solid Waste Advisory
22 Counsel of the CAPCOG endorsed those comments?
23 A That's correct. I understand that they did.
24 MR. HEAD: Move to admit TJFA-24.
25 JUDGE NEWCHURCH: Any objection?

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1 MR. CARLSON: No, Your Honor.
2 JUDGE NEWCHURCH: 24 is admitted.
3 (Exhibit TJFA No. 24 admitted)
4 Q (BY MR. HEAD) In your prefiled testimony,
5 Mr. Worrall, you discuss basically the landfill was
6 here first and growth and residential -- residential
7 growth has moved to the area of the landfill. Is that
8 a fair summarization of your testimony?
9 A Yes, sir.
10 Q Is it your philosophy with regard to land use
11 compatibility that if a landfill is first situated,
12 somehow that landfill obtains primacy with regard to
13 land use compatibility no matter what the -- no matter
14 what comes in after that with regard to growth?
15 A I wouldn't say it's my philosophy, but I do
16 believe that primacy, as you say, I think is an
17 important consideration in land use analysis, yes.
18 Q So can you envision a scenario whereby you
19 have an existing landfill and it became completely
20 encircled by residential development that that
21 landfill could be deemed an incompatible land use
22 under the TCEQ regulations?
23 MR. CARLSON: I assume this is a
24 hypothetical question.
25 MR. HEAD: Yes, it is; it is a

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1 hypothetical, John.
2 A I think that if the -- if that scenario --
3 that hypothetical scenario occurred, that at that
4 point compatibility issues would probably more
5 properly be addressed as is the landfill operating per
6 regulations and standards outlined under its site
7 operating plan or under its permit. So I think at
8 that point you'd start to look at its operational
9 characteristics.
10 Q (BY MR. HEAD) And that's exactly where I was
11 going.
12 A Oh, good.
13 Q Okay. Once again, we'll go hypothetical.
14 A Okay.
15 Q Hypothetically you have a landfill that had
16 the primacy, first in time, and a community grew
17 around it and you have residential homes, schools,
18 day-care centers, circling that landfill. Do you
19 factor in in your determination for an expansion the
20 compliance history of the facility when you make the
21 determination of land use compatibility?
22 A My determination of land use compatibility is
23 premised on the fact, I guess I'll say, that the
24 landfill -- or the presumption, if you will, in our
25 hypothetical case -- that the landfill is otherwise

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1 operating per its permit conditions.
 2 Q All right. Assuming hypothetically you're
 3 retained on a landfill lateral vertical expansion -- I
 4 don't care -- and it's been documented violations,
 5 rats running around, horrific odors, runoff of
 6 erosion, contaminated water running off, would you
 7 factor that into your consideration on land use
 8 compatibility?
 9 A Well, I think those conditions would all be
 10 determined a nuisance per the Texas Administrative
 11 Code. I think they specifically outline that. And
 12 it's hard for me to imagine that given those
 13 situations and a determination that very specifically
 14 a nuisance is occurring, that it's hard to imagine
 15 hypothetically if I could determine that that would be
 16 compatibility.
 17 MR. HEAD: Okay. Can we go off the
 18 record for just a second?
 19 JUDGE NEWCHURCH: Yes, sir. Off the
 20 record.
 21 (Discussion off the record)
 22 MR. HEAD: Surprise. Pass the witness.
 23 JUDGE NEWCHURCH: Back on the record.
 24 Mr. Blackburn?
 25 MR. BLACKBURN: Thank you, Your Honor.

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1 CROSS-EXAMINATION
 2 BY MR. BLACKBURN:
 3 Q Good afternoon, Mr. Worrall.
 4 A Good afternoon.
 5 Q I have a series of questions I'm trying to
 6 figure out the best way to go about. First of all,
 7 would you turn to the application, Page APP40?
 8 A Yes, sir, I got it.
 9 Q And that is a map that identifies, I guess,
 10 immediately adjacent landowners. Do you see that?
 11 A Yes, I do.
 12 Q And if you go immediately to the south, that
 13 indicates that Waste Management is that owner. Is
 14 that correct?
 15 A Yes, sir.
 16 Q Now, are you going to testify for Waste
 17 Management in their upcoming hearing?
 18 A There's a good chance I will, yes, sir.
 19 Q So you're a land use expert for Waste
 20 Management as well as for BFI?
 21 A Yes, sir.
 22 Q Okay. Now, in your analysis of
 23 compatibility, did you take into account there were
 24 two landfills here instead of one?
 25 A Well, as I believe is in my testimony, I

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1 noted certainly in my report, there's two active
 2 landfills here and there's a closed landfill as well,
 3 and that landfilling represents an important
 4 historical and geographical use here.
 5 Q So the answer is yes?
 6 A Yes.
 7 Q Okay. Is there any description of the Waste
 8 Management landfill land use compatibility in this
 9 application for BFI?
 10 A Not to my knowledge, no, sir.
 11 Q So you may have taken it into consideration,
 12 but you didn't specifically articulate it. Would that
 13 be fair to say?
 14 A Articulate what, sir?
 15 Q The land use impacts of both Waste Management
 16 and BFI.
 17 A No, this is focused on Sunset Farms very
 18 specifically, my analysis here.
 19 Q Right.
 20 A Yes.
 21 Q But from a land use compatibility standpoint,
 22 these people that are living in the neighborhood have
 23 two landfills within proximity to them. Correct?
 24 A Well, the Sunset Farms Landfill has 1,387
 25 residences within a mile as well as a landfill within

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1 a mile.
 2 Q Now, am I correct that you have assumed that
 3 the BFI facility will meet the regulations with regard
 4 to nuisance?
 5 A Yes, sir.
 6 Q If it does not meet the regulations with
 7 regard to nuisance, would it be your conclusion that
 8 it was not compatible from a land use standpoint?
 9 A I think it would bear investigation.
 10 Q So you're not willing to say that it would be
 11 incompatible simply if it violated the nuisance
 12 requirement?
 13 A That's correct. I'm not.
 14 Q So a nuisance land use could, in fact, be
 15 compatible. Is that your testimony?
 16 A No, sir. You asked me about nuisance, not
 17 nuisance land use. It seems to me that there could be
 18 nuisances that occur that are not land use related.
 19 Q Okay. Let's talk about nuisances. How about
 20 odor associated with the landfill, would you consider
 21 that to be a nuisance, classification wise?
 22 A What do you mean "classification wise"? I'm
 23 sorry.
 24 Q I wasn't trying to get you -- I wasn't trying
 25 to trick you into saying that this landfill smelled.

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1 A Oh, okay.
 2 Q I was just trying to get -- from a
 3 classification standpoint, would you classify "odor"
 4 as a type of nuisance that would, in fact, affect the
 5 land use compatibility?
 6 A I would regard it as a nuisance certainly as
 7 defined by the Texas Administrative Code, and I would
 8 regard it as a factor, yes.
 9 Q So if there was a landfill that recurrently
 10 smelled, would it be your opinion that it would be
 11 incompatible from a land use standpoint?
 12 A It would depend on a lot of other things, of
 13 course. It would depend on -- I presume we're talking
 14 hypothetically, but maybe we're not.
 15 Q I'm talking hypothetically at this time.
 16 A Okay. It would depend certainly on whether
 17 there were receptors there to be concerned with odor.
 18 Q Okay. And assume that there are receptors.
 19 A Okay. Okay.
 20 Q Would it then be an incompatible land use?
 21 A Could be.
 22 Q You say could be, but I'm trying to
 23 understand how you draw the line. I'm trying to
 24 understand when something is compatible and when it's
 25 not. And it is not, to your mind, sufficient that

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1 there be an odor emanating and that there be receptors
 2 nearby for it to be classified as incompatible. Is
 3 that correct?
 4 A Boy, I'm sorry. You lost me on the
 5 conditions there.
 6 Q Yeah, yeah, yeah, I got you. I withdraw that
 7 one, and I'll try it again.
 8 If you make the assumption that there is
 9 an odor coming from a landfill and if you make the
 10 assumption that there are receptors near by, what I'm
 11 trying to understand is under what circumstances would
 12 you find that that land use was still -- that the
 13 landfill was still compatible with those adjacent
 14 receptors?
 15 A Well, you know, one answer, I guess, would be
 16 it depends, and that's about as best I can do, I'm,
 17 afraid.
 18 Q Now, how about with regard to stormwater
 19 runoff, what if the amount of stormwater running off
 20 the site were increased hypothetically, would that
 21 affect its compatibility with the adjacent land uses?
 22 A Again, you'd probably have to talk about the
 23 receptors. I mean, that's the way I'm used to
 24 thinking about things is receptors. So let's say in
 25 your example that the stormwater value has

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1 increased --
 2 Q Increased across a receptor's property.
 3 A Okay. Thank you for that additional
 4 clarification.
 5 Q Sure.
 6 A I would think that that would certainly have
 7 an impact on that individual, that receptor, and would
 8 be a concern. It would probably be more a surface
 9 water issue and probably best dealt with there
 10 certainly because of the rigor with which that is
 11 dealt with, but if damaging flooding could occur or
 12 would occur hypothetically, I could see that that
 13 would be a land use factor.
 14 Q And I hear you that you see it could be a
 15 land use factor. My question is, would that affect
 16 compatibility of land use?
 17 A Again, it depends, I think, as to whether
 18 that receptor is affected by flooding. If it's a
 19 pastureland and there's no particular impact, I don't
 20 see why that would necessarily be a land use
 21 compatibility issue.
 22 Q So you think it's okay for a neighbor to
 23 increase flow across their neighbor as long as it's
 24 pastureland?
 25 A Well, again, I'm presuming this is

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1 operating -- maybe you're asking me not to make that
 2 assumption, though, that it's operating per the permit
 3 regulations.
 4 Q I'm not asking for that assumption. I
 5 specifically said it would be increased in flow.
 6 A Okay.
 7 Q And I am making the assumption that that
 8 would not be compatible with the regulations, although
 9 I may be wrong on that. I'm asking you to make the
 10 assumption that it increases flow significantly across
 11 an adjacent property. And my question to you is, does
 12 that affect your determination of land use
 13 compatibility, whether it be pastureland or a
 14 residential subdivision?
 15 A It would depend on what that activity is and
 16 what the nature of the -- I'm afraid your question is
 17 just too hypothetical for me to properly answer.
 18 Q Okay. Now, are you familiar with the concept
 19 of taking a property?
 20 A Generally, yes, sir.
 21 Q What is your understanding of what "taking a
 22 property" means?
 23 A I think of it as being eminent domain is my
 24 primary way of thinking, condemnation, if you will.
 25 Q And are you aware of a concept called an

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1 "inverse condemnation"?

2 A I know the term, I guess. I'm aware of the

3 term. I'm not sure I could define it very well.

4 Q Assume that someone owns a piece of property

5 and the amount of flow going across that property was

6 tripled by governmental action, basically causing more

7 area to be flooded than was previously the case, can

8 you make that assumption?

9 A Yes.

10 Q Now, if you owned that piece of property,

11 would that concern you?

12 A Yes, sir.

13 Q And would you not think that at the least

14 someone ought to pay you for that?

15 A Or address my concerns in some other fashion,

16 perhaps.

17 Q Either pay you or reduce the flow perhaps?

18 A There you go.

19 Q Yeah. One or the other?

20 A Okay.

21 Q Do you agree with that?

22 A I believe I do. This is all premised on

23 government action being --

24 Q That's government action, yes?

25 A Yes, sir.

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1 Q And if the Texas Commission on Environmental

2 Quality authorized an increase of flow across my

3 property, do you think I should be able to get a claim

4 against them for an increase and for a taking?

5 MR. CARLSON: Judge, he's starting to

6 get into legal opinions here. I object.

7 JUDGE NEWCHURCH: Mr. Blackburn?

8 MR. BLACKBURN: I'll withdraw.

9 JUDGE NEWCHURCH: All right.

10 Q (BY MR. BLACKBURN) Now, have you looked into

11 the ownership of the property to the west of the

12 landfill?

13 A Are you referring to the previous exhibit we

14 were talking about?

15 Q Yes, please. Go back to -- I think it's

16 Figure I.F, Page 40.

17 A APP40.

18 Q Yes, sir.

19 A And the property to the west, I see

20 "Roger Joseph Properties" on we're going to presume to

21 be the western boundary.

22 Q Right, and then there's one to the north as

23 well.

24 A To the north?

25 Q Of the Joseph property.

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1 A Okay. Immediately adjacent -- this says it's

2 also "Joseph Properties," but then further west it

3 says "Williams, LTD."

4 Q Have you spoken to any of those landowners?

5 A Not to my knowledge, no, sir, I have not, not

6 the ones we just talked about.

7 Q Right. I mean, like, for example, Williams,

8 Ltd. or Evan Williams?

9 A No, sir, I have not; no.

10 Q And there is another piece of property at the

11 top northwest corner, 94.5 acres, Williams, Ltd. Do

12 you see that?

13 A Yes, I do.

14 Q Now, these are part of your undeveloped

15 acreages, are they not?

16 A Yes, sir, I believe that's correct.

17 Q Do you know how long they have been

18 undeveloped?

19 A Well, for longer than I've been here.

20 Q Right. I mean, it's not like they were

21 converted from some prior land use to become an

22 undeveloped property?

23 A That's correct, they're -- that's correct.

24 That's my belief.

25 Q Now, to the north, do you see the Remmert

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1 property?

2 A Yes, I do.

3 Q Do you know who Evelyn Remmert is?

4 A No, I do not.

5 Q And I guess it's fair to say you haven't

6 talked with her. Is that correct?

7 A That's correct.

8 Q Okay. And do you know who John Wilkins is?

9 A No, I do not know.

10 Q Do you know if John Wilkins owns land within

11 your one-mile radius?

12 A No, I do not know that.

13 Q Now, have you reviewed BFI's nuisance record

14 during the period that you were undertaking your

15 survey of land use compatibility?

16 A BFI's nuisance record?

17 Q Right. In other words, did you assess

18 whether or not BFI posed a nuisance at any time during

19 the period that you were undertaking your analysis of

20 land use?

21 A The information that I reviewed in that

22 regard was provided by the protestants, I think, as a

23 part of this hearing. So I saw things that were filed

24 and complaints filed and pictures filed by the

25 protestants in this regard.

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1 Q Did I read in someone's prefile that you and
 2 I think Mr. Heimsath and perhaps Peter Brown and
 3 others have been working since 2000 on land use
 4 issues?
 5 A I can't speak for Mr. Heimsath, but I've been
 6 engaged in land use work since -- I would say at least
 7 2001 here. I don't know about 2000. It might be
 8 2000.
 9 Q And during that time, did you attempt to
 10 assess whether there were nuisance odor conditions
 11 emanating from the BFI landfill?
 12 A Well, I was able to ascertain that the TCEQ
 13 had compiled concerns. And then I was in here last --
 14 late last week and heard the testimony of Dr. Libicki
 15 in that regard as well.
 16 Q But I'm talking about as part of the work
 17 that you did. Did you specifically consider whether,
 18 in fact, the BFI site had been exhibiting nuisance
 19 conditions during the time period from 2000 to the
 20 present? During any part of that time period, did you
 21 assess that?
 22 A I'm aware of it.
 23 Q Did you include that in your analysis of land
 24 use compatibility?
 25 A Yes, I did.

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1 Q So you specifically included the fact that
 2 BFI had created nuisance conditions at some time
 3 post-2000. Correct?
 4 A I don't think that's quite a fair
 5 characterization, but I'm aware that the TCEQ had
 6 compiled those concerns, and I don't recall them being
 7 labeled as nuisances per se, but I might be wrong
 8 about that. They were notices of -- I can't remember
 9 the word. I don't remember it being called nuisances,
 10 though.
 11 Q Well, were there odor violations?
 12 A There was a notice of violation regarding
 13 odors, I think.
 14 Q Do you consider odors to be nuisance
 15 conditions?
 16 A They can be, yes.
 17 Q And I guess what I'm trying to understand is
 18 under your concept of compatibility, when does a
 19 landfill become not compatible? You know, I was
 20 trying to understand if odor conditions got you there,
 21 and it doesn't seem to be the case; I was trying to
 22 understand if the runoff conditions get you there, you
 23 know, you vacillated on that. I mean, am I correct
 24 that you have no hard and fast rule with regard to
 25 that?

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1 A Well, I don't think that I disagreed with any
 2 of your examples. I just felt that they were kind of
 3 vague, and I think they're presumptuous in the sense
 4 that you're presuming that -- I believe you're
 5 presuming that BFI is the source of the odors to begin
 6 with. I believe in your other examples that the
 7 landfill is the source of the flooding, and I'm not
 8 necessarily accepting your presumptions. So I don't
 9 think that it's fair to say that I don't care or
 10 consider those factors. I do, in fact, think that
 11 odor very specifically would be an issue to be
 12 considered and to be evaluated vis-a-vis land use
 13 compatibility.
 14 Q Did you testify on the Alvin landfill that
 15 Waste Management has?
 16 A I don't know it by that name. If you've got
 17 some other names, I might. I don't recall that name.
 18 Q And I can't remember any others, though. I
 19 guess we'll pass that one by.
 20 A Okay. All right.
 21 Q Are you aware that the permit that BFI has,
 22 if it is not renewed will essentially have a capacity
 23 limit that will be reached in the not too distant
 24 future?
 25 A I believe that's the case, yes.

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1 Q And are you aware of what the expected life
 2 is of the landfill if this application is not granted?
 3 A Well, I think it's as you just said, it will
 4 be sometime between -- well, reasonably near future.
 5 Q You know, if I represented a year and a half
 6 to you, would you have any basis for -- or any reason
 7 to disagree with that?
 8 A The only reason I might is that in my own
 9 analysis of the history of these landfills, I saw that
 10 in 1994 -- and I could refer to my notes -- but I
 11 think that this site life was estimated to run through
 12 2014 or 2016. So that would be the only reason I
 13 might disagree with your characterization.
 14 Q Right. And if I were to represent to you
 15 that there have been some discovery that was provided
 16 that represented about a year and a half being left,
 17 do you have any information to disagree with that?
 18 A No, sir, I do not.
 19 Q And in your analysis of the growth that has
 20 occurred in this area, did you have occasion to
 21 discuss or to meet with or talk with the developer,
 22 for example, of Harris Branch?
 23 A No, not as a result or -- not as a result of
 24 this application, I did not.
 25 Q Would it be fair to say that the residential

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1 growth that you identified, the bulk of that had
 2 occurred within Harris Branch?
 3 A Well, it's occurred prominently in three
 4 subdivisions, to my knowledge, within a mile, Harris
 5 Branch, Colonial Place and Pioneer Farms --
 6 Q And would --
 7 A -- Pioneer Crossing. Excuse me.
 8 Q And would it be fair to say that there was an
 9 expectation on the part of those developers that this
 10 permit would expire?
 11 MR. CARLSON: Objection; calls for
 12 speculation.
 13 JUDGE NEWCHURCH: Mr. Blackburn?
 14 MR. BLACKBURN: I'll rephrase.
 15 Q (BY MR. BLACKBURN) Do you believe that -- in
 16 your knowledge of land development, is it common for
 17 land developers to look at the terms and conditions of
 18 land uses in the surrounding area?
 19 A One would hope that that would be the case.
 20 I don't believe that's universally the case.
 21 Q But I mean, it's a reasonable expectation, is
 22 it not?
 23 A It's certainly a reasonable expectation, yes.
 24 Q And if someone were to check and to
 25 discover that there was a time limit on a permit

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1 application for a landfill, might that be the type of
 2 information a reasonable developer would take into
 3 consideration?
 4 A Yes.
 5 Q Now, is it your testimony that this landfill
 6 being permitted to 2015 is compatible with land
 7 development of Mr. Williams' property immediately to
 8 the west and northwest of the landfill?
 9 A It's my testimony that as proposed it's a
 10 compatible expansion proposal.
 11 Q So it's your testimony that if Evan Williams
 12 were to come in here and testify that nobody that he
 13 has talked to is interested in buying the land and
 14 developing it for residential property as long as
 15 there's a landfill there, would you be basically
 16 saying that he is a liar?
 17 A No, sir, I wouldn't be saying that.
 18 Q Do you have any doubt that people have told
 19 him that?
 20 A I have no reason to have belief one way or
 21 another in that regard. The property in question
 22 doesn't have adequate infrastructure it seems to me,
 23 is my understanding. The roads are poor. Visibility
 24 is poor. There's any number of reasons why that
 25 property may not be developed, although I can

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1 certainly believe that people would say one of the
 2 reasons is the adjoining landfill.
 3 Q And, you know, it's not annexed by the City
 4 of Austin at this point, is it?
 5 A That's my understanding. That's correct.
 6 Q And it's a funny annexation pattern around
 7 this landfill, isn't it?
 8 A It certainly is, isn't it?
 9 Q I think it's very strange.
 10 A I do, too.
 11 Q Do you have any explanation for that?
 12 A Well, I'm aware generally of the history of
 13 annexation out there, but the City of Austin policies
 14 are hard --
 15 Q How about --
 16 A -- to understand.
 17 Q -- unfathomable? How about that?
 18 MR. CARLSON: Can he answer the
 19 question?
 20 A I like the characterization as unfathomable.
 21 Q (BY MR. BLACKBURN) Well, I think we're in
 22 agreement on that.
 23 You say that this property, this area
 24 around the landfill -- and I'm talking here in the
 25 broad sense. And there's what, 62 percent undeveloped

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1 land within a mile. Is that correct?
 2 A That's my recollection, yes, sir. Yes, sir,
 3 that's right.
 4 Q And it's right off of U.S. 290. Correct?
 5 A It's close to 290, yes.
 6 Q And at least from a general accessibility
 7 standpoint, it's fairly accessible. Correct?
 8 A Yes, I think it is; yes.
 9 Q And that would always be one factor on land
 10 development. Correct?
 11 A Yes, I would think so; uh-huh.
 12 Q And it's a --
 13 A Including landfill development, I would
 14 think.
 15 Q Landfill development, any type of
 16 development?
 17 A Sure.
 18 Q I mean, the fact you can get cars, trucks,
 19 whatever, in and out is helpful?
 20 A I agree.
 21 Q And how far is this property from major
 22 employment centers in the City of Austin, this
 23 one-mile radius area?
 24 A Well, there's major employers within a mile.
 25 Of course we referenced a moment ago Applied

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<p>1 Materials, which is by any standard a major employer. 2 To the near northeast just beyond a mile, Samsung, 3 which is another high-tech employer, important 4 employer in Austin. So those are two major employers 5 within pretty close proximity. 6 Q Bicycling distance? 7 A I dare say. 8 Q And do you have any idea where the TCEQ is 9 located? 10 A They're on -- Interstate 35 is the facility 11 I'm aware of, and it's probably five to ten miles 12 away. 13 Q And downtown Austin is? 14 A Seven to eight miles away from this site, I 15 would say. 16 Q So by any description, this is an area that 17 is certainly proximate to employers. Correct? 18 A It certainly is, yes, sir. 19 Q And this is in the desired development area 20 of the City of Austin. Is that what it's called? 21 A I believe it's called the desired development 22 zone, yes, sir. 23 Q Okay. And this is the Planning Area 22 that 24 is the fastest growing planning area in the City of 25 Austin. Is that correct?</p>	<p>1 Q Or by the developer, either one. 2 A I don't -- I don't know. I just don't know. 3 Q You don't know? 4 A That's correct. 5 Q Now, I think you took issue with the Travis 6 County depiction that they were -- that it was 7 adjacent to numerous existing and future -- and I 8 wasn't sure if it was homes or schools or historic 9 sites that you took issue with. 10 A I take issue with all of those. 11 Q Okay. And when you -- are you interpreting 12 the word "adjacent" to mean immediately on the 13 boundary of? 14 A That's my definition, yes, sir. 15 Q As opposed to within the one-mile radius? 16 A Yes, sir, that's correct. 17 Q Okay. So you, one might say, have a strict 18 interpretation of the word "adjacent" in this context? 19 A I certainly do. 20 Q Okay. So there are over a thousand homes 21 within one mile. Correct? 22 A That's correct. 23 Q How many schools are there within one mile? 24 A There's one elementary school within one 25 mile.</p>
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<p>1 A It was from 1990 to 2000, that's correct. 2 Q Yet it will be Mr. Williams' testimony that 3 he can't find a buyer for his property for residential 4 development. 5 MR. CARLSON: Objection. 6 Q (BY MR. BLACKBURN) Do you have any basis to 7 disagree with that? 8 JUDGE NEWCHURCH: What's your objection? 9 MR. CARLSON: It's not in evidence right 10 now. 11 JUDGE NEWCHURCH: Mr. Blackburn? 12 Q (BY MR. BLACKBURN) Assume that Mr. Evan 13 Williams will testify that there is no buyer for his 14 property for residential development. Can you explain 15 why that is given all of these facts that point to 16 that this should be a prime development area? 17 A It could be the topo, topography. It could 18 be, as I mentioned before, the lack of infrastructure. 19 There are no city facilities here, to my knowledge. 20 And I think that that in and of itself would be a 21 severe impediment to the development of the property 22 if you lack sewer, water or proper roads. 23 Q And do you have any doubt that those could be 24 provided for a residential development? 25 A By the City of Austin?</p>	<p>1 Q And what is that? 2 A It's called Bluebonnet Elementary School. 3 Q How many historic sites are within one mile? 4 Do you know? 5 A There's one, I believe. 6 Q And what is that? 7 A It's a facility called the Barr Mansion. 8 Q Right. And do you know who the owners of 9 that historic site are? 10 A Not off the top of my head, no, sir. 11 Q If I were to represent to you it's Mark and 12 Melanie McAfee, would that ring a bell? 13 A It might. I believe I've heard them testify 14 at a public hearing. 15 Q I don't doubt that for a second. 16 MR. BLACKBURN: Pass the witness. 17 JUDGE NEWCHURCH: Is there redirect? 18 MR. CARLSON: A little bit, Your Honor. 19 REDIRECT EXAMINATION 20 BY MR. CARLSON: 21 Q Mr. Worrall, you were asked some questions by 22 OPIC's counsel about the landfill as receding concept. 23 Do you recall those? 24 A Yes, sir. 25 Q Would you pull in front of you Exhibit RS-5,</p>

42 (Pages 1172 to 1175)

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1 please?
 2 A RS-5?
 3 Q Yes, sir. Ray Shull 5.
 4 A I don't know where to look.
 5 (Discussion off the record)
 6 A I never would have found it, but I do have it
 7 in front of me now.
 8 Q (BY MR. CARLSON) Joe helps me do that all
 9 the time.
 10 What is RS-5?
 11 A RS-5 is a map or a plan prepared by
 12 Associated Consulting Engineers, and it's entitled
 13 Final Contour Map with Heights Above Currently
 14 Permitted Maximum Elevation.
 15 Q I trust you have a color version of that in
 16 front of you?
 17 A Yes, I do.
 18 Q Does RS-5 help you explain this landfill as
 19 receding concept?
 20 A I can see how it would help other people. I
 21 thought I explained it pretty well, frankly.
 22 (Laughter)
 23 Q (BY MR. CARLSON) Would you briefly describe
 24 in the context of RS-5 what you're talking when you're
 25 describing the landfill as receding?

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1 A Yes, sir. RS-5 very simply shows, I think,
 2 an important aspect of the vertical expansion proposal
 3 that's being considered here today. If you go to the
 4 upper right-hand portion of RS-5, you'll see it says
 5 "Total Site Area 350 Acres." I rounded that off to
 6 350. That's the permit boundary, as I recall.
 7 And then if you go to -- let's see if
 8 it's going to say it on here. Well, I happen to
 9 recall that the waste footprint is approximately
 10 250 acres. Oh, it says that up there, "Landfill
 11 Footprint," that same upper right-hand notation, 251
 12 acres -- 251.5. Again, I rounded that off to 250.
 13 And then if you go to all the colored
 14 areas of the map, including the very light yellow
 15 color, and you add those all up, you'll see that that
 16 equals 155.4 as I read it, which is the very bottom
 17 number totaled in that same area there.
 18 So I think that what I'm suggesting to
 19 the Court is that the whole site is -- permit boundary
 20 is 350 acres, in my rounding off. The landfill
 21 footprint is 250 acres, again rounding off. And
 22 finally, I'm suggesting that the total area of the
 23 landfill modified by this permit amendment, as it says
 24 here, is 155.4 acres that I rounded off to 155. So I
 25 don't know if that gets to what you're asking me,

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1 Mr. Carlson.
 2 Q In a nutshell. As we get closer and closer
 3 to the green in the middle, but looking at the yellow,
 4 red, orange, green, that's where the landfilling
 5 operations are going to happen if this vertical
 6 expansion is approved. Is that correct?
 7 A That's correct, and the different colors show
 8 different elevations.
 9 Q And that's farther away from the permit
 10 boundary as you go up the landfill. Right?
 11 A That's correct.
 12 Q And by definition that's further away from
 13 potential receptors, regardless of which direction?
 14 A That's correct, yes, sir.
 15 Q You were asked some questions about the
 16 CAPCOG plan I believe by Mr. Head. Do you recall
 17 that?
 18 A Yes.
 19 Q Will you turn to APP323 through 324 in the
 20 application?
 21 A Okay. Yes, sir, I'm there.
 22 Q Do you have that?
 23 A Yes.
 24 Q Okay. You were asked questions about some
 25 bits and pieces of this. What is this letter called?

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1 What's your understanding of what this letter would be
 2 called?
 3 A It's CAPCOG's position vis-a-vis this
 4 application.
 5 Q Have you heard of the phrase "conditional
 6 conformance letter"?
 7 A Conformance letter is probably more commonly
 8 what I would call it.
 9 Q All right. Could you turn to TJFA-24 that
 10 you were handed?
 11 A Yes, sir, I have that.
 12 Q And this appears to be a variation of APP323,
 13 but it has some attachments. Do you recall that?
 14 A Yes, sir.
 15 Q Would you turn to Page 6 of TJFA-24? Have
 16 you got that?
 17 A Yes, I do.
 18 Q There's a bullet point about two-thirds of
 19 the way down on Page 6. Do you see that that has
 20 large font and bold font?
 21 A Yes, I do.
 22 Q Could you read that?
 23 A Page 6 of this exhibit says "Notwithstanding
 24 the foregoing deficiencies, the application would
 25 conform if all waste handling, including both disposal

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<p>1 and operation of a transfer station, ends at BFI 2 Sunset Farms Landfill by November 1, 2015." 3 Q And now will you turn -- sorry to make you go 4 through this -- to Exhibit RS-33? 5 A APP351. Is that correct? 6 Q Yes, sir. 7 A Yes, I have that. 8 Q Okay. It's a letter to Ms. Betty Voights 9 from Mr. Brad Dugas. Is that correct? 10 A Correct. 11 Q Dated January 18, 2007. Correct? 12 A Yes, sir. 13 Q Okay. Would you turn to Page 2, please? 14 A Okay. 15 Q And will you read the first full paragraph 16 there for the record that starts with the words "BFI 17 hereby agrees"?" 18 A "BFI hereby agrees that it will comply with 19 all of the above-stated six conditions subject to its 20 understanding that based upon this agreement CAPCOG 21 will maintain its determination that the proposed 22 expansion of the Sunset Farms Landfill is in 23 conformance with the CAPCOG Regional Solid Waste 24 Management Plan. BFI's agreement is also subject to 25 the final issuance of the proposed permit expansion</p>	<p>1 Q Particularly I'd like to point you to 2 Subsection (86), which I believe is the definition -- 3 regulatory definition of "nuisance." 4 A Okay. I'm there. 5 Q Okay. Could you read that out, please? 6 A Paragraph (86) says "Nuisance," defined -- 7 it's a definition -- "Municipal solid waste that is 8 stored, processed or disposed of in a manner that 9 causes the pollution of the surrounding land, the 10 contamination of groundwater or surface water, the 11 breeding of insects or rodents, or the creation of 12 odors adverse to human health, safety, or welfare." 13 Q Mr. Head I believe asked you either a 14 hypothetical or a series of hypotheticals about 15 nuisance conditions. Do you recall those? 16 A Yes. 17 Q And I'm paraphrasing. I apologize if I'm not 18 completely correct on this, but my notes reflect that 19 his hypothetical included a landfill being surrounded 20 on all four sides by residential growth and that there 21 were rats and horrendous odors and whatnot. Do you 22 recall that hypothetical? 23 A Yes, I do. 24 Q Based on your research and work in this 25 particular case, do you believe that's a fair</p>
Page 1181	Page 1183
<p>1 amendment by the TCEQ. 2 Q Do you have an understanding that BFI 3 actually agreed to the provisions set forth in 4 CAPCOG's conditional conformance letter? 5 A It says it will comply with all these stated 6 six conditions, yes. 7 Q Including leaving -- or ceasing to accept 8 waste on or before November 1, 2015. Right? 9 A Yes. 10 Q And not using the facility for a transfer 11 station? 12 A That's my understanding, yes. 13 Q Is there a copy of the TCEQ MSW rules on the 14 desk there? 15 A I'm seeing Texas Administrative Code rules 16 here. 17 Q If you have the 330 rules in front of you -- 18 the 2006 330 rules should be in front of you, I 19 believe. If not -- 20 A The green book? 21 Q Yes, sir. 22 A I have that. 23 Q Okay. Could you turn to Rule 330.2, please? 24 It's the Definition section. 25 A 330.2?</p>	<p>1 hypothetical? Does that hypothetical represent what 2 we're actually seeing at Sunset Farms? 3 A No, sir, it's not. 4 MR. HEAD: Objection; a hypothetical is 5 a hypothetical. 6 JUDGE NEWCHURCH: Well -- 7 MR. HEAD: I wasn't talking about Sunset 8 Farms. 9 JUDGE NEWCHURCH: You asked two 10 questions: You asked is it a fair hypothetical, and 11 then you asked is it representative of what we're 12 seeing. 13 MR. CARLSON: All right. 14 JUDGE NEWCHURCH: So do you want to ask 15 one question? 16 MR. CARLSON: I do. 17 JUDGE NEWCHURCH: Okay. 18 Q (BY MR. CARLSON) Do you believe it's a fair 19 hypothetical, sir, with respect to Sunset Farms? 20 A No. 21 Q Okay. Why not? 22 A Well, because it's not displaying those 23 nuisances on the one hand, and it's not entirely 24 surrounded by development on the other. 25 Q All right. Would you turn to Exhibit SL-11,</p>

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1 please, sir?
 2 A With Joe Jimenez's help, I found it.
 3 Q All right. It reflects that it's an agreed
 4 order. Correct?
 5 A Let me see here. "Enclosed is a copy of an
 6 order issued by the Commission" is how it starts off.
 7 Q And it talks about BFI in the upper left-hand
 8 corner in that styling. Right?
 9 A That's correct, regarding BFI.
 10 Q And the upper right-hand corner has a date
 11 stamp. It reflects a July 2004 date. Right?
 12 A July 2, 2004.
 13 Q Okay. You indicated I believe in your
 14 testimony that you've looked into various complaints
 15 that have been filed and other materials related to
 16 the operation of Sunset Farms. Is that right?
 17 A That's correct.
 18 Q Are you aware of any enforcement action or
 19 NOV pertaining to Sunset Farms or its operation other
 20 than this 2004 operation, sir?
 21 A This is the only order that I'm aware of
 22 relating to the operation of Sunset Farms.
 23 Q Have you personally been out to the site over
 24 the years?
 25 A I've been there many times, yes, sir.

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1 Q When is the first time you went out to Sunset
 2 Farms?
 3 A It was certainly in the vicinity of in the
 4 mid '80s. The firm I worked for, RVI, helped to do
 5 the initial planning for the Harris Branch MUD
 6 actually.
 7 Q Okay. And then I assume that you went out
 8 there as the application was being prepared, you were
 9 doing your land use analysis report. Is that correct?
 10 A That's correct. That's correct.
 11 Q Okay. When is the last time you were
 12 physically present at Sunset Farms?
 13 A This morning.
 14 Q You drove out there today?
 15 A Yes, sir.
 16 Q On any of the visits that you've been out
 17 there, have you ever seen anything, smelled anything
 18 or otherwise personally observed anything that would
 19 alter your opinion that the landfill is compatible
 20 with surrounding land uses?
 21 A Nothing that's altered my opinion, no.
 22 Q Have you seen anything that would suggest,
 23 based on your visits, that the proposed vertical
 24 expansion will be incompatible with the surrounding
 25 properties and land uses?

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1 A No, sir, I don't believe that would occur.
 2 Q Okay. Just a couple more questions. I
 3 believe Mr. Blackburn asked you a couple of questions
 4 about the Evan Williams property on the west -- or
 5 properties on the west hand side.
 6 A Yes.
 7 Q And you were asked questions about potential
 8 development of that property.
 9 A Right.
 10 Q Have you seen any cell towers built out on
 11 that property?
 12 A I've seen towers built there. I'm not sure
 13 if it's on that property or that Joseph property right
 14 next to it, but right there, yes, sir, I have.
 15 Q Were cell towers out there when you first
 16 started visiting Sunset Farms?
 17 A No, sir, they were -- I saw them while they
 18 were under construction. So I'd say they were built
 19 18 months ago, just to pick a date.
 20 Q Okay. Would you consider the construction of
 21 cell phone towers on a property to be development?
 22 A In some limited way, I would.
 23 MR. CARLSON: Judge, can I just check my
 24 notes real quick?
 25 JUDGE NEWCHURCH: Yes, sir. Off the

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1 record.
 2 (Discussion off the record)
 3 JUDGE NEWCHURCH: Back the record.
 4 Q (BY MR. CARLSON) Mr. Worrall, is BFI asking
 5 for any sort of changes in the zoning designation at
 6 the facility in connection with this permit
 7 application?
 8 A Not that I'm aware of, no.
 9 MR. CARLSON: I'll pass the witness.
 10 JUDGE NEWCHURCH: Who has additional
 11 cross-examination, anyone?
 12 (No response)
 13 JUDGE NEWCHURCH: Okay. Thank you,
 14 Mr. Worrall. You're excused.
 15 THE WITNESS: Thank you.
 16 JUDGE NEWCHURCH: And we'll take an
 17 afternoon break now for ten minutes.
 18 (Recess: 2:40 p.m. to 2:55 p.m.)
 19 JUDGE NEWCHURCH: Back on the record.
 20 And is BFI ready to call its next witness?
 21 MR. CARLSON: Yes, Your Honor.
 22 Applicant calls Charles Heimsath.
 23 JUDGE NEWCHURCH: Mr. Heimsath, if you
 24 would take the oath, please?
 25 (Witness sworn)

45 (Pages 1184 to 1187)

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1 JUDGE NEWCHURCH: Thank you. Please
2 have a seat.
3 CHARLES HEIMSATH,
4 having been first duly sworn, testified as follows:
5 DIRECT EXAMINATION
6 BY MR. CARLSON:
7 Q Good afternoon, Mr. Heimsath. Could you
8 state your full name for the record, please, sir?
9 A It's Charles H. Heimsath.
10 Q What is your business address?
11 A 605 Brazos Street, Suite 300, Austin, Texas.
12 Q What is your occupation, sir?
13 A I'm a real estate consultant.
14 Q Did you perform a report in connection with
15 BFI's application?
16 A Yes, sir, I did.
17 Q Did you prepare any prefiled testimony in
18 connection with this evidentiary hearing?
19 A Yes, I did.
20 Q All right. Could you look in the binder,
21 please, sir, that's sitting in front of you that has
22 the testimony and look for Applicant's Exhibit CH-1?
23 A Oh, yes, I found it.
24 Q Okay. Is that a true and correct copy of
25 your prefiled testimony, sir?

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1 A Yes, it is.
2 Q Do you have any changes or clarifications or
3 revisions you'd like to make to that today, sir?
4 A No, I don't.
5 Q Your resume has been attached as an exhibit
6 to your prefiled. Is that correct? That's in a
7 different binder.
8 A Oh, okay.
9 Q I believe the court reporter might be able to
10 point you to that.
11 A Yes, sir, I found it.
12 Q Is that a true and correct copy of your
13 resume, sir?
14 A Yes, it is.
15 Q Is that a current copy of your resume, at
16 least more or less?
17 A Yes.
18 Q And you're the sponsor of several other
19 exhibits that have been marked as Exhibits CH-3
20 through CH-6, I believe.
21 A Okay.
22 Q And do you want to look in the binder just to
23 confirm that?
24 A Yes.
25 Q Do you adopt your prefiled testimony as true

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1 and correct in the same manner as if you were
2 providing that testimony live here today, sir?
3 A Yes, I do.
4 MR. CARLSON: At this point, Judge,
5 applicant offers Exhibits CH-1 through CH-6.
6 JUDGE NEWCHURCH: Any objections?
7 (No response)
8 JUDGE NEWCHURCH: They're all admitted.
9 (Exhibit BFI Nos. CH-1 through CH-6
10 admitted)
11 MR. CARLSON: Pass the witness.
12 JUDGE NEWCHURCH: Mr. Terrill?
13 MR. TERRILL: No questions, Your Honor.
14 JUDGE NEWCHURCH: Ms. Noelke?
15 MS. NOELKE: No questions, Your Honor.
16 JUDGE NEWCHURCH: Mr. Morse?
17 MR. MORSE: No questions, Your Honor.
18 JUDGE NEWCHURCH: Ms. Mann?
19 MS. MANN: Pass the witness.
20 JUDGE NEWCHURCH: Executive Director?
21 MR. SHEPHERD: No questions.
22 JUDGE NEWCHURCH: Mr. Renbarger?
23 MR. RENBARGER: Thank you.
24
25

Page 1191

1 CROSS-EXAMINATION
2 BY MR. RENBARGER:
3 Q Good afternoon, Mr. Heimsath.
4 A Good afternoon.
5 Q In your duties as a real estate consultant,
6 how many landfill compatibility studies have you
7 performed?
8 A This is the second one where I'm -- or I
9 guess it's the third. I prepared some exhibits
10 that -- for Mr. Worrall in a previous application for
11 Austin Community Landfill, and then I also did an
12 analysis for Texas Disposal Systems back in 1989.
13 Q And the Austin Community Landfill is the
14 facility operated by Waste Management immediately
15 adjacent to the Sunset Farms Landfill. Correct?
16 A Yes, sir.
17 Q What specifically did you do in regards to
18 the Austin Community Landfill project?
19 A I prepared an exhibit that looks very much
20 like the one that I did in this -- in this particular
21 filing.
22 Q And what exhibit are you referring to in this
23 particular filing?
24 A Well, the exhibits that are in my prefiled
25 testimony.

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1 Q Okay. Did you draw any conclusions in your
2 report or documents you prepared for the Austin
3 Community Landfill?
4 A No. I provided information that Mr. Worrall
5 will use in his analysis.
6 Q So you offered no expert opinions in regard
7 to the Austin Community Landfill matter. Is that
8 correct?
9 A No, sir.
10 Q Have you ever opined on landfill
11 compatibility with regards to a landfill facility?
12 A In the case of Texas Disposal Systems, yes,
13 sir.
14 Q Did you testify as an expert witness in that
15 proceeding?
16 A I believe I did. It's been quite some time.
17 Q No doubt your conclusion was that the TDS
18 facility was compatible with existing land uses.
19 Correct?
20 A Yes, sir.
21 Q In looking at your prefiled testimony on
22 Page 8, it appears that you were retained on June 5,
23 2008. Is that correct?
24 A Yes, sir.
25 Q Are you aware that the Sunset Farms expansion

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1 application was filed on August 1, 2005?
2 A I wasn't aware of that.
3 Q Are you aware that by the time you were hired
4 on June 5, 2008 that the matter had already been
5 referred to this body for a contested case hearing?
6 A No, sir, I'm not -- I wasn't aware of that.
7 Q Who hired you?
8 A BFI hired me.
9 Q Did BFI express to you for what purposes you
10 were being hired?
11 A To conduct an analysis of growth trends in
12 the vicinity of the proposed landfill expansion.
13 Q Did anyone ever communicate to you it was to
14 "beef up" Mr. Worrall's reports that have already been
15 discussed today?
16 A I don't remember any representation like
17 that, sir.
18 Q Was there any discussions that we needed to
19 have some additional analysis on growth trends in your
20 reporting?
21 A I was specifically hired to do an analysis of
22 growth trends in conjunction with the analysis that
23 Mr. Worrall did for land use compatibility.
24 Q Did anyone ever tell you why it was necessary
25 for you to perform an additional analysis on growth

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1 trends to supplement Mr. Worrall's work?
2 A I think that that's part of the requirements
3 in the language of the -- I'm sorry -- I don't know
4 all the technical terms, but land use compatibility
5 and growth trends are both addressed in the
6 requirements of the filing, I think.
7 Q But as you sit here today, you're not aware
8 of any deficiencies in Mr. Worrall's work that
9 prompted your hiring?
10 A No, sir.
11 Q I believe your testimony reflects that your
12 focus was on growth trends within five miles of the
13 Sunset Farms facility. Correct?
14 A Yes, sir.
15 Q As opposed to Mr. Worrall's which was more
16 focused on one mile from the facility. Correct?
17 A That's correct.
18 Q And you were present during Mr. Worrall's
19 testimony today. Correct?
20 A Yes, sir, I was.
21 Q I believe there was testimony elicited from
22 Mr. Worrell concerning an area referred to as Planning
23 Area 22. Do you recall that testimony?
24 A Yes, I do.
25 Q Do you concur with Mr. Worrall that Planning

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1 Area 22 is the fastest growing sector of the city from
2 the years 1990 through 2000?
3 A Yes, sir, that was his testimony.
4 Q Do you concur with that testimony?
5 A Yes, sir.
6 Q In your testimony, you also point out that
7 the City of Austin has another method for assessing
8 growth, and that's by use of a zip code survey.
9 Correct?
10 A Yes, sir.
11 Q And you've reviewed some of the City of
12 Austin's zip code surveys. Do I understand that
13 correctly?
14 A Right.
15 Q Is it your testimony that the Sunset Farms
16 Landfill is located within the zip code known as
17 78754?
18 A I believe that's correct. I don't have a map
19 here in front of me.
20 Q Okay. Could I refer you to Page 13 of your
21 testimony, sir? And I believe if you will look on
22 Page 13 of your testimony on Line 4, there is a
23 question and answer regarding zip code 78754. Do you
24 see that?
25 A Yes, sir.

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1 Q And I believe you conclude that zip code
 2 78754 had an annualized growth of approximately 11.9
 3 percent from the years 2000 through 2006. Correct?
 4 A Yes, sir.
 5 Q And you also concluded that's the highest
 6 rate for growth experienced among zip codes in Austin
 7 with more than 1,500 households. Correct?
 8 A Correct.
 9 Q Are you familiar with the Harris Branch
 10 subdivision?
 11 A Yes, sir, I am.
 12 Q In fact, you testified that in the year 2000,
 13 there were only 412 homes in Harris Branch, didn't
 14 you?
 15 A What page are you referring to?
 16 Q 17.
 17 A Yes, 412.
 18 Q I believe you also testified that there are
 19 currently some 1,152 homes situated in that
 20 subdivision. Correct?
 21 A Yes, sir.
 22 Q You further testified that there are
 23 approximately 750 more single-family homes that can be
 24 built in the Harris Branch subdivision. Right?
 25 A Yes, that's correct.

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1 Q Are you familiar with a subdivision referred
 2 to as Pioneer Crossing?
 3 A Yes, I am.
 4 Q And you're aware that it began development in
 5 the year 2002. Right?
 6 A Correct.
 7 Q It's located less than a mile from the Sunset
 8 Farms facility. Correct?
 9 A Right.
 10 Q And currently there are approximately 1,300
 11 homes at Pioneer Crossing. Right?
 12 A Yes, sir.
 13 Q I believe you also testified in 2004 there
 14 were only 300 homes in that subdivision. Right?
 15 A That's right.
 16 Q And if I understand your testimony correctly,
 17 approximately a thousand more homes could be built at
 18 Pioneer Crossing. Right?
 19 A Yes, sir, that's correct.
 20 Q Let's move on to Colonial Place. It began
 21 development in 2004. Correct?
 22 A Yes, sir.
 23 Q And it is pretty well sold out currently.
 24 Right?
 25 A Right, it's built out.

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1 Q And it's built out at approximately 205
 2 homes. Right?
 3 A Yes.
 4 Q I believe, Mr. Heimsath, you also testified
 5 that in addition to these existing subdivisions there
 6 are a number of plans for some fairly large
 7 residential developments coming up in the future.
 8 Right?
 9 A Yes, that's correct.
 10 Q One development known as the Eastwood
 11 development is planned for 1,915 lots. Correct?
 12 A What page are you on, sir?
 13 Q 21.
 14 A 21? Yes, that's right.
 15 Q And Fossil Creek development, 975 lots?
 16 A Yes.
 17 Q Gilleland Crossing, 1,683 lots?
 18 A Yes, sir.
 19 Q Manor Central Park 2,091 lots. Correct?
 20 A Right.
 21 Q Wouldn't you agree with me that not only the
 22 rapid growth in the last four years in the vicinity of
 23 the landfill but also the future planning for these
 24 other developments would reflect a very substantial
 25 growth in residential activity within the proximity of

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1 the landfill?
 2 A Yes, sir, that's correct.
 3 Q On Page 44 of your testimony, would you go
 4 there, please? Do you have that in front of you, sir?
 5 A Yes, sir, I do.
 6 Q I believe on Page 44 of your testimony
 7 beginning on Line 9, you express your opinion that the
 8 proposed Sunset Farms Landfill expansion is compatible
 9 with the City of Austin's growth trends. Correct?
 10 A Yes, it is.
 11 Q And I believe you state as the basis for that
 12 opinion that the mere fact that there has been such
 13 rampant growth experienced in the area shows that to
 14 be a compatible use. Correct?
 15 A Yes, that's my testimony.
 16 Q Could the opposite also be true,
 17 Mr. Heimsath, that a very rapid growth of residential
 18 development within close proximity of the landfill
 19 would also suggest an incompatible use, would it not?
 20 A I'm not sure that I would agree with that.
 21 What are you trying to get at?
 22 Q Just what I said. Just as one person can
 23 look at that and suggest, as you have opined, that the
 24 mere fact that there is rapid growth and development
 25 of residential properties in the vicinity of the

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1 landfill suggests that's a compatible land use,
 2 couldn't it also be the other way, that another person
 3 could look at that and say because of the massive
 4 growth of residential properties within close
 5 proximity that that would be an incompatible use?
 6 A I don't see how one could conclude that.
 7 Q Well, CAPCOG concluded that, didn't they?
 8 A Well, that's their opinion. That's not my
 9 opinion.
 10 Q I understand. Hypothetically, could you
 11 please describe for the Court what you would consider
 12 to be an incompatible land use vis-a-vis residential
 13 development?
 14 A I would suggest that locating under the
 15 flight path of an airport where the decibel levels are
 16 exceeding federal standards would be an incompatible
 17 land use for residential development.
 18 Q I'm referring to an incompatible use based on
 19 a landfill development in proximity to residential
 20 use. I believe you're talking about airports --
 21 A Yes.
 22 Q -- and residences.
 23 A I'm sorry. I didn't -- I was making a
 24 general statement. You asked a general question. I
 25 made a general response.

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1 Q Perhaps I didn't ask it very clearly. My
 2 intention was what kinds of landfill development uses
 3 in close proximity to residential development would
 4 you ever find to be incompatible?
 5 A Well, I think that Mr. Worrall spoke to
 6 that -- those issues in his testimony.
 7 Q Perhaps he did. I was wondering about your
 8 opinion.
 9 A Well, he talked about the nuisance
 10 regulations, nuisance laws and things of that nature,
 11 that if a landfill was operating persistently and
 12 persistently violating a nuisance regulation, that
 13 that might constitute an incompatible use.
 14 Q Do you have any other things that come to
 15 mind with regard to what might be another incompatible
 16 use vis-a-vis a landfill development?
 17 A No, sir.
 18 Q So as you sit here today, the only thing you
 19 can come up with is if a landfill were operating to
 20 create nuisance conditions, that would be an
 21 incompatible land use. Correct?
 22 A Yes, sir.
 23 MR. RENBARGER: Pass the witness.
 24 JUDGE NEWCHURCH: Mr. Blackburn?
 25

Page 1202

1 CROSS-EXAMINATION
 2 BY MR. BLACKBURN:
 3 Q Good afternoon, Mr. Heimsath.
 4 A Good afternoon, Mr. Blackburn.
 5 Q Did I read your prefiled testimony to
 6 indicate that there was no incompatibility problem
 7 with regard to the property of, say, Mr. Williams
 8 immediately adjacent to the landfill because it was
 9 not properly serviced with infrastructure to be ready
 10 for development?
 11 A Mr. Williams' property is just to the north
 12 and west of the landfill.
 13 Q One piece is northwest across the road, the
 14 other one is immediately adjacent to the -- or there's
 15 a small piece in between, but it's on the northwest
 16 side of the landfill.
 17 A Right.
 18 Q And I believe you have some testimony about
 19 the relative unavailability of infrastructure. Is
 20 that correct?
 21 A Could you point to that in my testimony, sir?
 22 Q Oh, it will take a minute, but, yes, sir, I
 23 could.
 24 MR. BLACKBURN: Could I go off the
 25 record for a second, Your Honor?

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1 JUDGE NEWCHURCH: Yes, sir. Off the
 2 record.
 3 (Discussion off the record)
 4 JUDGE NEWCHURCH: Back on the record.
 5 Q (BY MR. BLACKBURN) The testimony I'm
 6 referring to starts on Page 14 and I would say
 7 includes the testimony on Page 15, and it really
 8 reflects a question that's asked at the top of Page 16
 9 where it says under the Residential Development
 10 heading the question is asked by your counsel, "Okay,
 11 Mr. Heimsath, we've talked a little bit about how the
 12 unzoned land near the landfill is not ripe for
 13 development." Do you see that?
 14 A On page?
 15 Q That's on Page 16 under Section C, the first
 16 question starting on Line 3.
 17 A Yes, sir.
 18 Q It says "We've talked about how the unzoned
 19 land near the landfill is not ripe for development."
 20 Do you see that?
 21 A Yes, sir, I do.
 22 Q Did you interpret your testimony to -- your
 23 prior testimony, by that the testimony in the previous
 24 two pages -- to indicate that the land adjacent, the
 25 unzoned land near the landfill, is not ripe for

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1 development?
 2 A I think that's a fair assessment.
 3 Q Okay. What do you mean by "not ripe for
 4 development"?
 5 A Well, there are a number of conditions that
 6 need to exist for land to be "ripe for development,"
 7 to turn the phrase a little bit. One of the things
 8 that is necessary is that water and wastewater
 9 service -- and I'm assuming when we're talking about
 10 development, meaning, you know, a little bit higher
 11 density residential development, say four to five
 12 units.
 13 Q Sure, as opposed to one house --
 14 A Right.
 15 Q -- out in the middle of the pasture.
 16 A Exactly. So for a development like that to
 17 occur, you would need to have water and wastewater
 18 service to the tract. The road that runs -- I believe
 19 that's Blue Goose that runs either through the tract
 20 or adjacent to the tract is in -- well, I wouldn't
 21 say -- I'll just say it's not in great condition.
 22 It's a very narrow two-lane road without shoulders.
 23 And so you've got kind of an access issue. You have
 24 water and wastewater issues.
 25 I don't recall exactly the topography of

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1 the tract that you're referring to, but I do recall
 2 that in some parts of that area there's both flat
 3 field and then fairly steep topography, you know, that
 4 runs down into the creek. So topo could be an issue.
 5 And, you know, I think that those are -- those are
 6 substantial things to consider.
 7 Q Now, in the City of Austin, how are issues
 8 like water and sewer generally addressed?
 9 A Well, the city would agree to extend water
 10 and wastewater service to an area if the -- if the
 11 applicant was willing to pay for those extensions in
 12 most cases.
 13 Q So generally speaking, it would be a decision
 14 by the City of Austin whether to extend services or
 15 not?
 16 A Uh-huh, yes, sir.
 17 Q Yeah, and then that would be a precondition
 18 to development?
 19 A Well, there are other ways of getting
 20 services. You could form a MUD perhaps or, you
 21 know -- I mean, that is one way certainly and probably
 22 the most logical for that particular piece of land.
 23 Q Now, Harris Branch --
 24 A Yes, sir.
 25 Q -- are you familiar with the development of

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1 Harris Branch?
 2 A I am.
 3 Q How did Harris Branch get water and sewer?
 4 A Harris Branch was developed as actually an
 5 in-city MUD, municipal utility district, which was an
 6 unusual approach for developing, but -- and gosh, I
 7 don't remember when it was done, but a number of years
 8 ago, you know, 15 years ago. So the City of Austin
 9 allowed for the creation of a MUD within its
 10 boundaries, which is an unusual approach for a city to
 11 take.
 12 Q But there are ways to create infrastructure,
 13 are there not?
 14 A Yes.
 15 Q And, you know, one way would be the city
 16 would decide to expand. Another way might be the
 17 creation of an in-city MUD for those properties that
 18 are currently unserved. Correct?
 19 A Well, not any longer. The city doesn't do
 20 in-city MUDS anymore.
 21 Q So it's all up to the city?
 22 A Pretty much.
 23 Q This in the city's desired development zone.
 24 Right?
 25 A Yes, sir.

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1 Q This is in the pathway of the largest
 2 development in any zip code in town. Right?
 3 A There is a substantial amount of growth
 4 planned in this area, yes, sir.
 5 Q Right. And it's your testimony that this
 6 property will not develop because of the lack of
 7 infrastructure?
 8 A In the short run, yes, sir, that's my
 9 testimony.
 10 Q And no other factor has anything to do with
 11 the inability of that property to be developed?
 12 A Well, sir, I don't see it developing any time
 13 in the near future because the city is not -- it's not
 14 likely to extend services out into that area, and the
 15 county is not likely to spend substantial monies on
 16 the upgrading of that road. And without those
 17 necessary conditions, it's not likely to be developed
 18 in the near future.
 19 Q Now, was your testimony before or after --
 20 strike that.
 21 In terms of the city's willingness to
 22 provide services, was that before or after the Rule 11
 23 Agreement was passed?
 24 A The what?
 25 Q Are you aware of the Rule 11 Agreement that

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1 the city signed with the BFI?
2 A No, sir, I'm not. What is the Rule 11?
3 Q Well, if you're unaware of it, I presume it
4 doesn't affect your testimony.
5 A Okay.
6 Q Now, in your assessment of compatibility, did
7 you assume that there were no nuisance conditions
8 present?
9 A My -- the focus of my analysis really was on
10 growth trends in a much broader perspective than
11 Mr. Worrall's analysis. If you recall what I said at
12 the beginning of my testimony, I was really looking at
13 the growth within this area as a whole and not so
14 narrowly focused as you're suggesting.
15 Q But you did make a determination of
16 compatibility. Correct?
17 A I made a statement, yes, that it was.
18 Q Well, in what context are you offering an
19 opinion of compatibility? Are you saying that given
20 development in a five-mile circular area this landfill
21 is not going to interfere with that?
22 A That's what I -- I mean, that's --
23 Q I mean, I'm just --
24 A Yeah.
25 Q -- trying to understand the scope of your

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1 opinion.
2 A Well, the scope of my opinion is that growth
3 has occurred in both residential and commercial
4 development extensively over the last few years, and
5 is likely to continue irrespective of the presence of
6 the landfill or the expansion of the landfill.
7 Q And you're making that statement with regard
8 to a five-mile circular area or the one-mile area
9 around the landfill?
10 A The five-mile circular area.
11 MR. BLACKBURN: Thank you. No further
12 questions.
13 JUDGE NEWCHURCH: Mr. Carlson?
14 MR. CARLSON: No redirect.
15 JUDGE NEWCHURCH: Thank you,
16 Mr. Heimsath. You're excused.
17 THE WITNESS: Thank you.
18 JUDGE NEWCHURCH: And, Mr. Carlson --
19 MR. CARLSON: Yes.
20 JUDGE NEWCHURCH: -- call your next
21 witness.
22 MR. CARLSON: Applicant calls
23 Donna Carter.
24 JUDGE NEWCHURCH: Welcome, Ms. Carter.
25 Do take the oath.

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1 (Witness sworn)
2 JUDGE NEWCHURCH: Thank you. Please
3 have a seat.
4 DONNA CATER,
5 having been first duly sworn, testified as follows:
6 DIRECT EXAMINATION
7 BY MR. CARLSON:
8 Q Good afternoon, Mrs. -- is it Mrs. Carter or
9 Ms. Carter?
10 A Ms. Carter.
11 Q Could you state your full name for the
12 record, please?
13 A Donna D. Carter.
14 Q Do you own a business?
15 A Yes, I do.
16 Q What is your business called?
17 A Carter Design Associates.
18 Q What sort of work do you do at Carter Design?
19 A We're an architecture planning firm and
20 preservation firm.
21 Q What's your business address?
22 A 817 West 11th Street, Austin.
23 Q Did you work on any aspect of the proposed
24 vertical expansion of the Sunset land -- Sunset Farms
25 Landfill?

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1 A Yes, I did.
2 Q What did you do?
3 A We were providing aesthetic and design
4 consultation to the owner.
5 Q You worked on kind of the front end of the
6 process?
7 A The front end. I'm probably the one referred
8 to as starting in August of 2000.
9 Q Have you prepared prefiled testimony --
10 A Yes, I have.
11 Q -- in this case? Would you please look for
12 the binder that has the prefiled and find Applicant's
13 Exhibit DC-1?
14 A Yes.
15 Q Is that a true and correct copy of your
16 prefiled testimony, ma'am?
17 A Yes, it is, sir.
18 Q And if you'll also pull the binder that has
19 the prefiled exhibits, it's a separate binder.
20 A Yes.
21 Q Okay. And you are sponsoring a number of
22 exhibits with your testimony. Is that correct?
23 A That's correct.
24 Q DC-2 through DC-11 by my count.
25 A Yes.

51 (Pages 1208 to 1211)

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1 Q Exhibit DC-2, is that a true and correct copy
2 of your resume, Ms. Carter?
3 A Yes, it is.
4 Q Okay. Any changes to that?
5 A A few more talks, a few more papers, but
6 other than that, it's correct.
7 Q It's representative --
8 A Yes.
9 Q -- of your work history? Do you have any
10 changes at all that you'd like to make or offer to
11 either your prefiled testimony or your resume at this
12 point in time?
13 A No, sir.
14 Q Do you adopt your prefiled testimony as true
15 and correct as if you had given that testimony live
16 here today, Ms. Carter?
17 A Yes.
18 MR. CARLSON: At this point, Judge,
19 applicant offers Exhibits DC-1 through DC-11.
20 JUDGE NEWCHURCH: Any objection?
21 (No response)
22 JUDGE NEWCHURCH: Then they are all
23 admitted.
24 (Exhibit BFI Nos. DC-1 through DC-11
25 admitted)

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1 MR. CARLSON: I pass the witness.
2 JUDGE NEWCHURCH: Mr. Terrill?
3 MR. TERRILL: No questions, Your Honor.
4 JUDGE NEWCHURCH: Ms. Noelke?
5 MS. NOELKE: No questions.
6 JUDGE NEWCHURCH: Mr. Morse?
7 MR. MORSE: No questions, Your Honor.
8 JUDGE NEWCHURCH: Ms. Mann?
9 MS. MANN: No questions.
10 JUDGE NEWCHURCH: Mr. Shepherd?
11 MR. SHEPHERD: No questions.
12 JUDGE NEWCHURCH: Mr. Head?
13 MR. HEAD: Just a few questions.
14 CROSS-EXAMINATION
15 BY MR. HEAD:
16 Q Hello, Ms. Carter. My name is J.D. Head.
17 How are you this afternoon?
18 A Very well. Pleased to meet you.
19 Q Good, good. You've been involved since 2000
20 I understand.
21 A Yes.
22 Q And since 2000, how many times have you
23 visited the BFI Sunset Farms Landfill?
24 A I believe I've visited the landfill or the
25 area on Blue Goose Road right around four times.

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1 Q Okay. When was the first time you visited?
2 A I believe it would be August of 2000.
3 Q And when would be the second time you would
4 have visited?
5 A It would have been probably about a year
6 later.
7 Q Okay. In the year 2001?
8 A Right.
9 Q The next time?
10 A I'm really guessing on this one, but it was
11 probably about 2006 or '7.
12 Q Okay. And the last time you've been out
13 there?
14 A The last time was, oh, the last year about
15 April.
16 Q Okay. And have you reviewed prefiled
17 testimony of any other of the experts for BFI?
18 A No, sir, I haven't.
19 Q Okay. Are you aware that in the 2001-2003
20 timeframe BFI was issued an enforcement order
21 including, among other items, odor conditions?
22 A I am aware of that, but not personally
23 involved with that.
24 Q Okay. In your visit in 2000, did you
25 actually visit the landfill itself?

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1 A Yes, I did.
2 Q And the surrounding area as well?
3 A As well.
4 Q Did you detect any odor conditions?
5 A I really cannot recall.
6 Q Okay. How about in the 2001 visit?
7 A 2001, I did not.
8 Q Okay. 2006?
9 A No.
10 Q And in April, did you?
11 A No.
12 Q Okay. Now, are you familiar with the TCEQ
13 regulation with regard to land use compatibility?
14 A I am not -- certainly not an expert on that,
15 but I'm familiar with it.
16 Q And what does that regulation entail?
17 A It involves several aspects of the -- of the
18 landfill, but in terms of what we did, we were really
19 sort of made aware of those regulations, but then just
20 asked to look at the design of the landfill itself.
21 So that really did not come into effect in the work
22 that I did.
23 Q Okay. So as I understand, the subject matter
24 of your testimony is visual aesthetic design?
25 A That's correct.

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1 Q Okay. So your testimony does not include an
 2 analysis of zoning at the site in the vicinity?
 3 A No, it does not.
 4 Q And your testimony does not involve the
 5 character of surrounding land uses within one mile of
 6 the facility?
 7 A No.
 8 Q And your testimony does not include growth
 9 trends of the nearest community with directions of
 10 major developments?
 11 A No, it does not.
 12 Q And your testimony does not involve proximity
 13 to residents or other uses?
 14 A No.
 15 Q And last but not least, unless I really
 16 missed something, your testimony does not have any
 17 discussion of known wells within 500 feet of the
 18 proposed site?
 19 A No.
 20 Q So all you're talking about is visual
 21 aesthetics?
 22 A That's correct.
 23 Q All right. And turning to Page 9 of your
 24 prefiled testimony, Page 9, Line 21, you're asked the
 25 question how the design team had any impact in

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1 changing the look of the exterior landscaping around
 2 the site and mentioned the roadside drainage was
 3 reshaped. Explain your participation in the roadside
 4 drainage, how you designed that and the pre-imposed
 5 conditions. I know that's a compound question.
 6 A Yes, and I was part of a team. So I did not
 7 do the drainage work. I'm not a drainage engineer,
 8 did not do any of the design drawings for that work.
 9 Really I was part of the team that
 10 discussed what could we do in the interim to, first of
 11 all, address some issues along Blue Goose Road, just
 12 the looks again of the landfill and, quite frankly, as
 13 one of the ways that BFI could show that they were a
 14 good neighbor in sort of trying to make the whole
 15 complex look and operate better at that time.
 16 So I was really -- you know, we call it
 17 sort of working on chartette, working really as part
 18 of a team, and there were several of us that were sort
 19 of throwing out ideas about what could be done.
 20 Q I'm just curious with regard to the roadside
 21 drainage, was that on Blue Goose or Giles, if you
 22 recall?
 23 A It was Blue Goose.
 24 Q Okay. But as I understand your testimony,
 25 you like the fact that Blue Goose Road and Giles Road

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1 don't have a curb and a gutter because that has --
 2 A I don't think -- I don't think I said I liked
 3 it or not. It was really just a description of
 4 what --
 5 Q A more rural feel?
 6 A That was the description of what was there at
 7 the time, yes.
 8 Q Okay. And your testimony acknowledges that
 9 aesthetics is not a legal or regulatory requirement
 10 for a landfill project?
 11 A Correct.
 12 Q And in your testimony, you opine that you
 13 believe the proposed expansion is compatible with the
 14 land use of the surrounding area?
 15 A Yes.
 16 Q Is that based on the regulatory requirements
 17 for land use compatibility?
 18 A No. It is based on my view of -- with the
 19 sculpting and changing of the mass, even though it has
 20 additional height, by moving it away visually it has
 21 less impact on the -- on the closest areas around it.
 22 And by having less impact, it is, in fact, in my
 23 opinion, made more compatible than what would have
 24 come without that resculpting of the land mass.
 25 Q But it will be taller?

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1 A It will be taller, but again, because of
 2 perspective and the angles of perspective from the
 3 areas where we have most people looking at it, it
 4 will, in fact, not appear as tall.
 5 MR. HEAD: Pass the witness.
 6 JUDGE NEWCHURCH: Mr. Blackburn?
 7 MR. BLACKBURN: Thank you, Your Honor.
 8 CROSS-EXAMINATION
 9 BY MR. BLACKBURN:
 10 Q Ms. Carter, I'm Jim Blackburn, and I just
 11 have a few questions for you as well.
 12 A Good afternoon, Mr. Blackburn.
 13 Q You describe yourself in your prefiled
 14 testimony as a "maverick."
 15 A A little bit.
 16 MR. HEAD: He likes that.
 17 (Laughter)
 18 A It's a small "m," however.
 19 Q A small "m." In what kind -- in what sense
 20 are you a maverick?
 21 JUDGE NEWCHURCH: Off the record while
 22 we all laugh.
 23 (Laughter)
 24 JUDGE NEWCHURCH: Okay. Back on the
 25 record.

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1 A Back on the record. Mainly I like to look at
 2 things that may or may not have -- may be in favor at
 3 a particular time, either politically or just socially
 4 or where they go, but to look at everything critically
 5 and to ask for me some very basic questions about
 6 whether it is something that I feel is better for
 7 society as a whole, community as a whole, try to take
 8 a broader view of things.
 9 Q (BY MR. BLACKBURN) And I respect that. I
 10 appreciate that point of view.
 11 Did I understand you to be a
 12 preservation --
 13 A Architect, yes.
 14 Q Yeah. What is a preservation architect?
 15 A About a third of my practice involves the
 16 actual physical restoration and preservation of
 17 buildings or cultural resources, and that can be a
 18 landscape. I generally get other people to help me
 19 with those, but it could be a landscape, it could be a
 20 technological feature. I've worked on bridges that
 21 are historic. It could be a dog house or a corncrib.
 22 It could be something as substantial and beautiful as
 23 the Texas Pacific main waiting room up in Fort Worth.
 24 Q But it would be -- but it's in the context of
 25 historical preservation?

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1 A Yes, it is.
 2 Q And are you aware that there is a historical
 3 site within one mile of the landfill?
 4 A Yes, I am.
 5 Q And is it your understanding that that's the
 6 place called the Barr Mansion?
 7 A Yes, it is.
 8 Q Now, have you evaluated under the rules of
 9 the National Historic Preservation Act the potential
 10 impact of this landfill on the Barr Mansion?
 11 A That was not part of my charge.
 12 Q So the answer would be no?
 13 A No.
 14 Q Okay. And would you agree with me that
 15 visual interference with a historic site is, in fact,
 16 a potential impact under those regulations?
 17 A Yes.
 18 Q And your testimony is about visual impact, is
 19 it not?
 20 A That's correct.
 21 Q But you did not look at the impact on the
 22 Barr Mansion in the context of your analysis?
 23 A You asked whether I looked at it in terms of
 24 the way you would normally look at impact on a
 25 historic resource. That's actually a very particular

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1 type of exercise. It would be called -- it's part of
 2 an environmental impact statement, and it has to do
 3 with cultural resources, and there are very particular
 4 questions. An environmental impact statement was not
 5 a part of my charge.
 6 In my going around to the various --
 7 just, you know, my driving and going to various places
 8 that I could see the facility or not see the facility
 9 as the case would be, I did, in fact, go to the Barr
 10 Mansion and found that it did not have really any
 11 impact. The views are not there that you can say
 12 that's specifically what it is. There are trees
 13 around. I was in a wedding there this last August.
 14 Certainly it did not impact that wedding, nor was I
 15 really aware that it was there.
 16 Q The trees had leaves in August, did they not?
 17 A Yes, they did.
 18 Q Do you know if those were deciduous trees or
 19 not?
 20 A I really can't say.
 21 Q And if the trees didn't have leaves on them,
 22 might you have been able to see the landfill?
 23 A I really can't speculate on that.
 24 Q Ah, so you don't know?
 25 A Right.

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1 Q Now, you state in your testimony that BFI
 2 wanted to be a good neighbor?
 3 A Yes.
 4 Q How do you know that?
 5 A Because that's what they told me, and I can
 6 only go by what someone says, but they said "We're
 7 going to -- we're looking at the design of this, and
 8 we would like suggestions about how we can make this
 9 look better, and by looking better present ourselves
 10 better to our neighbors."
 11 Q So that's what BFI told you, that they wanted
 12 to be a good neighbor?
 13 A Yes.
 14 Q And did you talk to any of the neighbors?
 15 A Yes, I believe we did.
 16 Q Who did you speak with?
 17 A Now, you're looking back at some -- my age is
 18 going to get me on that, and I really don't know. And
 19 I'll be honest because that would have been in the
 20 August timeframe, and whether those were direct
 21 discussions with the neighbors or reports back from
 22 meetings that BFI had attended, I really can't recall
 23 at this point. But I know we did have the
 24 conversation about the various neighborhoods, and I
 25 actually went and then drove into those various

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1 neighborhoods.
2 Q Right, but you didn't like ask for a meeting
3 with the neighbors so you could present to them your
4 concepts?
5 A No, we did not have a formal meeting in that
6 way.
7 Q And so you didn't sit down and really go over
8 this with them?
9 A No.
10 Q Now, on Page 12 of your prefile testimony
11 down at the bottom, there is a question that asks "So
12 what kinds of things did you suggest could 'paint'
13 into or onto the resculpted land mass?" How did you
14 interpret the word "paint" there?
15 A Well, it was actually a word that we threw
16 out because we didn't have a vocabulary for what we
17 were doing. In the sense -- and if I could back up a
18 little bit. In looking at the mass of the landfill
19 and how it was going to be sculpted, we had first --
20 and I had come at it from really kind of outside of
21 the whole thing. I had looked at several thesies and
22 kind of dissertations about what you could do with a
23 closed landfill and not really look -- not really
24 thinking about this particular piece of land, but
25 thinking about landfills in general. You know, if

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1 they're such and such a size, can they be used for
2 recreation, how do you do that?
3 One of the things that came out of that
4 was the regulations for how they were closed, the
5 monitoring that was required, the types of liners, all
6 the kinds of technical things were -- you know, had
7 changed and were probably going to continue to change.
8 And so the idea of on such a small landfill that we
9 would have some sort of active use or have access to
10 it, also with the ownership issues, was not possible.
11 So I had to kind of redo my thinking,
12 and one of the things that we talked about was well,
13 if it could be a natural part of the landfill, we've
14 got creeks in this area, we have pastureland, then we
15 have -- and because of the creeks we have some changes
16 in elevation. So if we -- if you drive down a road
17 and see pastures, you drive down a road and see a
18 slight change where you suddenly see deciduous trees
19 along a creek, you'll notice that there are usually
20 some other objects, some other things that make you
21 think visually that it's a natural landscape. It
22 might be a rock, it might be the fact that there's a
23 clump of green in a pasture of brown.
24 And when you're on a road looking over
25 on something, if you're not allowed to go into that

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1 space, those things start to appear sort of flat.
2 They appear like a landscape. They appear like a
3 landscaped painting. And so it was those objects and
4 kind of the idea that if we make the form a natural
5 form, we would then also have the ability to sculpt,
6 you know, put the right kind of vegetation that
7 wouldn't go into the liners that would still allow for
8 monitoring, would still allow for all the technical
9 things to happen, but visually you'd start to have
10 these things, where there's a fence post, certain
11 types of vegetation, literally a boulder, and those
12 could be flat -- almost appear like -- you know,
13 they'd be three dimensional, but they'd look like flat
14 objects on that landscape, on that canvass.
15 Q And am I correct that you made a
16 compatibility assessment based on that type of end
17 result?
18 A Yes.
19 Q Now, would it be fair to say that your
20 compatibility assessment did not assess compatibility
21 during the time that the landfill was operated?
22 A Yes.
23 Q So you really didn't look into issues like
24 that. You're really talking about what it would be
25 like after closure and after your painting was

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1 realized, so to speak?
2 A Yes.
3 Q And would you agree with me that it would
4 become compatible much more quickly under your
5 scenario if your alternative were enacted in 2011 as
6 opposed to 2015?
7 A Well, I'm not sure my alternative could be
8 enacted early.
9 Q Well, if it were closed under the current
10 permit and --
11 A Well, we wouldn't have the opportunity to
12 reshape what we're dealing with.
13 Q You don't think that your painting could be
14 applied to the existing closure plan for the landfill?
15 A Well, I really have no opinion on that. I
16 wouldn't think it would be as nice, but that is just
17 my opinion.
18 MR. BLACKBURN: Pass the witness.
19 MR. CARLSON: No redirect, Judge.
20 JUDGE NEWCHURCH: Thank you, Ms. Carter.
21 You're excused.
22 THE WITNESS: Thank you.
23 JUDGE NEWCHURCH: Well, we've picked up
24 some speed. Mr. Carlson, were you planning to call
25 your next witness?

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1 MR. CARLSON: I don't have one today,
2 Judge.
3 JUDGE NEWCHURCH: Well, then I guess
4 you're not.
5 (Laughter)
6 MR. RENBARGER: Go ahead and do it
7 anyway.
8 JUDGE NEWCHURCH: So I guess we will
9 recess then until tomorrow. Let's go off the record
10 while we talk a bit about scheduling.
11 (Discussion off the record)
12 JUDGE NEWCHURCH: Back on the record
13 briefly. We're going to recess now and reconvene
14 tomorrow, and the parties should be prepared for
15 cross-examination of witnesses Southern, Dugas; the
16 Giles witnesses, what's the name, please?
17 MR. TERRILL: Steve Mobley.
18 JUDGE NEWCHURCH: Mobley; Bentley for
19 NNC, Chandler and Kier. And we will reconvene at
20 9 a.m. Thank you.
21 (Proceedings recessed at 3:50 p.m.)
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23
24
25

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