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 DEPARTMENT OF ENVIRONMENTAL  
 SERVICES, CITY AND COUNTY OF  
 HONOLULU

BEFORE THE LAND USE COMMISSION  
 OF THE STATE OF HAWAII

In the Matter of the Application of	)	DOCKET NO. SP09-403
	)	
DEPARTMENT OF ENVIRONMENTAL	)	DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF	)	SERVICES, CITY AND COUNTY OF
HONOLULU	)	HONOLULU'S MEMORANDUM IN
	)	OPPOSITION TO INTERVENORS
For A New Special Use Permit To	)	KO OLINA COMMUNITY ASSOCIATION
Supersede Existing Special Use Permit To	)	AND MAILE SHIMABUKURO'S
Allow A 92.5-Acre Expansion And Time	)	ALTERNATIVE MOTION TO DENY THE
Extension For Waimanalo Gulch Sani-	)	APPLICATIONS UNLESS ADDITIONAL
tary Landfill, Waimanalo Gulch, O'ahu,	)	CONDITIONS ARE IMPOSED
Hawai'i, Tax Map Key: 9-2-03: 72 And 73	)	
	)	DECLARATION OF KAMILLA C. K.
	)	CHAN
In the Matter of the Application of	)	
	)	EXHIBIT 1
DEPARTMENT OF ENVIRONMENTAL	)	
SERVICES, CITY AND COUNTY OF	)	CERTIFICATE OF SERVICE
HONOLULU	)	
	)	
To delete Condition No. 14 of Special Use	)	
Permit No. 2008/SUP-2 (also referred to as	)	
Land Use Commission Docket No. SP09-403)	)	
which states as follows:	)	

2009 MAY 19 P 4:04  
 LAND USE COMMISSION  
 STATE OF HAWAII

)  
"14. Municipal solid waste shall be allowed at )  
the WGSL up to July 31, 2012, provided that )  
only ash and residue from H-POWER shall be )  
allowed at the WGSL after July 31, 2012." )  
)

**DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF  
HONOLULU'S MEMORANDUM IN OPPOSITION TO INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY  
THE APPLICATIONS UNLESS ADDITIONAL CONDITIONS ARE IMPOSED**

COMES NOW DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND  
COUNTY OF HONOLULU (hereinafter, "Applicant" or "ENV"), by and through its attorneys,  
KAMILLA C. K. CHAN and DANA VIOLA, Deputies Corporation Counsel, and hereby  
respectfully requests that the Land Use Commission, State of Hawaii (the "Commission" or  
"LUC") deny Intervenor Ko Olina Community Association and Maile Shimabukuro's (together,  
"Intervenor KOCA") Alternative Motion to Deny the Applications Unless Additional Conditions  
are Imposed ("Motion"). This Memorandum in Opposition is brought pursuant to Hawaii  
Administrative Rules ("HAR") § 15-15-70(e).

Intervenor's Motion is without basis and should be denied. The Motion seeks to deny  
ENV's consolidated Application filed December 3, 2008 and Application filed June 28, 2011  
(together, the "Consolidated Application") unless additional conditions are imposed. As set forth  
herein, the Honolulu Planning Commission's (the "Planning Commission") Findings of Fact,  
Conclusions of Law, and Decision and Order dated April 28, 2017 ("2017 Planning Commission  
Decision") supported by the testimony and evidence in the record.

## **I. Brief Summary of Procedural History and Relevant Facts**

This matter is a consolidated case relating to the LUC Docket No. SP09-403, County Special Use Permit File No. 2008/SUP-2 (“2008 Application”), which the LUC remanded to the Honolulu Planning Commission (“Planning Commission”) for the expressed purpose of consolidation with the proceeding on ENV’s application to modify the LUC’s Order filed on October 22, 2009 by deleting the municipal solid waste deadline (“2011 Application”).

On August 17, 2016, the Planning Commission ordered the consolidation of the proceedings so that it may issue a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order to the LUC. The Planning Commission stated that the parties’ proposed findings of fact, conclusions of law, and decision and order were to be submitted no later than October 14, 2016, and responses thereto were to be submitted no later than October 21, 2016. The Planning Commission continued the contested case hearing to October 26, 2016, at 1:30 p.m. in the Mission Memorial Conference Room, at which time it would render its decision and order.

On October 5, 2016, ENV filed a Motion for Extension of Time to April 21, 2017, so that the parties may have adequate time to discuss a proposed deadline for the acceptance of municipal solid waste at WGSL and draft a joint proposed findings of fact, conclusions of law, and decision and order. On October 6, 2016, Intervenor Schnitzer Steel Hawaii Corp. (“Intervenor Schnitzer”) joined in the Motion for Extension of Time. On the same date, Intervenor KOCA joined in the request, subject to certain clarifications.

On October 12, 2016, the Planning Commission met at Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii, and heard ENV’s Motion for Extension of Time, along with other motions related to this matter. During the

hearing, ENV amended its request for an extension of time by requesting a shorter 90-day extension. The Planning Commission granted the motion and set deadlines for the submission of the parties' proposed findings of fact, conclusions of law, and decision and order and responses. The Planning Commission also scheduled a hearing to issue its decision and order on March 1, 2017.

On January 25, 2017, ENV and Intervenors KOCA and Schnitzer filed their respective proposed findings of fact, conclusions of law, and decision and order.

On February 10, 2017, ENV filed its response to Intervenor KOCA's proposed findings of fact, conclusions of law, and decision and order. On that same date, Intervenor KOCA filed its responses to ENV's proposed findings of fact, conclusions of law, and decision and order, as well as Intervenor Schnitzer's proposed findings of fact, conclusions of law, and decision and order.

Also on February 10, 2017, Intervenor Colleen Hanabusa ("Intervenor Hanabusa") filed a document titled Intervenor Colleen Hanabusa's: (1) Renewal of Submission of Proposed Findings of Fact and Conclusions of Law; and (2) Objections and Rebuttals. On February 17, 2017, ENV filed a Motion to Strike Intervenor Colleen Hanabusa's Renewal of Submission of Proposed Findings of Fact and Conclusions of Law.

On March 1, 2017, the Planning Commission convened a meeting at Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The Planning Commission granted ENV's Motion to Strike Intervenor Hanabusa's Renewal of Submission of Proposed Findings of Fact and Conclusions of Law. See Draft Transcript ("Tr.") 03/01/17, 12:1-25, 13:1, attached hereto as Exhibit "1". In taking this action, the Planning

Commission clarified that Intervenor Hanabusa's Proposed Findings of Fact and Conclusions of Law, filed on July 17, 2009, is still part of the record and not stricken. Id. at 12:15-17.

At the March 1, 2017 meeting, the Planning Commission considered the adoption of findings of fact, conclusions of law, and decision and order. See Draft Tr. 03/01/17.

On April 28, 2017, the Planning Commission issued the 2017 Planning Commission Decision. The Decision and Order states:

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE Applicant's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition No. 14, and adding the following conditions ...

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4. The foregoing additional conditions shall supersede any inconsistent conditions in the 2009 LUC Order and shall otherwise supplement any and all existing conditions in said 2009 LUC Order.

See 2017 Planning Commission Decision at 30-31. See also 2009 Planning Commission Decision at 24 (providing that the term of the SUP is "to capacity").

**II. ENV's Opposition to Arguments Raised in the Introduction to Intervenor KOCA's Memorandum in Support of Motion**

**A. The 2017 Planning Commission Decision Limits the Duration of WGSL's Operations and There Are Restrictions on the Municipal Solid Waste That is Accepted at WGSL**

**1. Limit on the Duration of the WGSL's Operations**

Contrary to Intervenor KOCA's characterization, the 2017 Planning Commission Decision does not allow WGSL to operate indefinitely. It clearly contains a limit on the duration

of the landfill's operation – the capacity of the landfill as allowed by the State Department of Health. See 2017 Planning Commission Decision at 30-32.

The 2009 Planning Commission determined that “[t]he term or length of the new SUP shall be until the Waimanalo Gulch landfill reaches its capacity as compared to a definite time period of ‘X’ number of years. 2011 Exhibit “A17” at 2. Planning Commission member Kerry Komatsubara explained as follows:

In my opinion, simply putting on a new closure date to this new SUP will not lead to the closure of the Waimanalo Gulch Sanitary Landfill. I believe that the focus should not be on picking a date. The focus should be on how do we get the City to select a new site because you're not going to close this landfill until you find another site. I don't think it's in the interest of our community not to have a landfill.

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So what this proposal does is, it says look, [Applicant] can keep [WGSL] open until your [*sic*] full, until you've reached the capacity, but you have an obligation starting from next year [2010] to start looking for a new site. Now whether you take it seriously or not, that's up to you because we have the power to call you in, and you have the obligation now to report every year on what you're doing to find a new landfill site whether it be a replacement site or supplemental site or both. We have the right to hold a hearing at any time we feel that you are not...the applicant is not in good faith moving forward with reasonable diligence to find a new site.

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...I think going down the old path of just putting a [closure] date in there has not worked. We put it down three or four times before and every time we came to that date, it was extended further and further...I'd rather not say it's a certain date only to know that when we reach that date we're going to extend it further until we find the new site. I'd rather focus on an effort to find a new site and have [Applicant] come in every year and explain to us where you are in your effort to find a new site. That's what this [order] does.

Id. at 4.

Consistent with Commissioner Komatsubara's comments, the Planning Commission approved ENV's application “for a new SUP for the existing and proposed expansion of WGSL

... totaling approximately 200.622 acres, until capacity as allowed by the State Department of Health is reached,” subject to certain conditions. 2009 Planning Commission Decision at 24.

In its 2017 Planning Commission Decision, the Planning Commission approved ENV’s Application to Modify SUP No. 2008/SUP-2, by Modifying the LUC’s Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition No. 14, and adding several conditions. Notably, one of the conditions states that “[t]he foregoing additional conditions shall supersede any inconsistent conditions in the 2009 LUC Order and shall otherwise supplement any and all existing conditions in said 2009 LUC Order.” See 2017 Planning Commission Decision at 32. In other words, the action taken by the 2017 Planning Commission **modifies** the 2009 LUC Decision and Order by deleting Condition No. 14, which was stricken by the Hawaii Supreme Court, and adds four additional conditions. Accordingly, the deadline for the SUP is **to capacity** of WGSL.

Planning Commission Member Cord Anderson recommended the action that ultimately adopted by the Planning Commission (subject to an amendment by Planning Commission Member Ken Hayashida). See Draft Tr. 03/01/17 at 14:5-23, 29:14 – 35:1. In explaining the conditions included in his recommendation, Commissioner Anderson echoed the comments made in 2009 by then-Commissioner Komatsubara by stating:

I did have some reservations about identifying a specific date when the landfill should be closed primarily due to the fact that, I think that date is more contingent upon the capacity and filling the capacity. Not a specific date. Thus, I felt a little more comfortable identifying an alternate site at a specific date and that site will just be, in other words, I guess a stand-by site until the current landfill hits capacity. That’s a justification behind my three conditions I added to the motion.

Id. at 23:15-24.



Moreover, the Planning Commission is not required to include a time limit on the duration of the proposed use. The LUC's rules provide that the Planning Commission shall establish "if appropriate, a time limit for the duration of the proposed use, which shall be a condition of the special permit ..." See HAR § 15-15-95(f). Even if a time limit should be imposed, there is no requirement that the limit be measured by a number of years. Based on the evidence and testimony in the record, the limit imposed by the Planning Commission – the amount of space in the landfill – is appropriate.

A limit on the use of the landfill measured solely by time, as suggested by Intervenor KOCA, is not appropriate. The capacity of the landfill, in terms of space and the rate at which ENV utilizes the available space, is a better method for measuring the duration of the use of the land at issue in this proceeding.

**2. There Are Restrictions on the Types of Waste That May Be Accepted at the Landfill**

Intervenor KOCA mischaracterizes the operations at WGS� by stating that the 2017 Planning Commission Decision allows it to operate without restriction on the types of wastes that may be accepted. There is abundant testimony in the record that establishes that there are restrictions on the types of waste that may be accepted at WGS�.

First, pursuant to State Department of Health solid waste regulations, WGS� is prohibited from accepting the following categories of materials for disposal: bulk green waste, scrap vehicles, tires, and white goods. See Written Direct Testimony of Timothy E. Steinberger dated December 13, 2011 ("Steinberger Written Testimony") at 4.

Additionally, Waste Management of Hawaii ("WMH"), the operator of WGS�, has an Unacceptable Waste Exclusion Program that prevents the disposal of unacceptable wastes,



including hazardous waste, polychlorinated biphenyl (“PCB”) contaminated waste, pesticide containers, liquid waste, or improperly packaged asbestos waste. Id.

Accordingly, there is no merit to Intervenor KOCA’s contention that the Planning Commission is permitting the use of WGS� with no waste acceptance restrictions for an unlimited time.

**B. The Honolulu City Council Selected WGS� as the Site for the City’s Landfill**

In a decision issued by the Land Use Commission on June 9, 2003, the LUC issued the 2003 LUC Decision, which required the City Council to select a new site for a landfill, with the assistance of the Blue Ribbon Site Selection Committee, by June 1, 2004. Steinberger Written Testimony at 5.

The City Council received an extension of the June 1, 2004 deadline from the LUC, and on December 1, 2004, selected the Waimanalo Gulch site as the City’s future landfill site. The City Council determined that the Waimanalo Gulch site would satisfy Oahu’s need for a landfill to manage its solid waste for the foreseeable future. The City Council concluded that (1) the Waimanalo Gulch site has at least 15 years of capacity left, (2) the Waimanalo Gulch site is the most economical site for which all costs and revenues are known factors, (3) other sites would require large amounts of money to acquire land and develop the site and infrastructure, (4) an operating contract is already in existence, and (5) the Landfill operator is committed to addressing community concerns. Steinberger Written Testimony at 5-6.

Accordingly, Intervenor KOCA’s contention that the continued use of WGS� as the City’s landfill amounts to ENV “repeatedly disregard[ing] its promises and the orders imposed to close the Landfill” are simply not true. When the City Council selected WGS� as the City’s future landfill site, this action satisfied a condition imposed by the LUC.

**C. The Lack of a Closure Deadline Measured by a Duration of Time is Not Contrary to the Condition that the Applicant “Identify and Develop” a New Landfill With “Reasonable Diligence”**

As set forth above, the 2009 Planning Commission determined that the “[t]erm or length of the new SUP shall be until Waimanalo Gulch landfill reaches its capacity as compared to a definite time period of ‘X’ number of years. 2011 Exhibit “A17” at 2. Similarly, in explaining the conditions he recommended (and which were ultimately adopted by the 2017 Planning Commission), Commissioner Anderson stated that the closure date “is more contingent upon the capacity and filling the capacity” and “not a specific date.” See Draft Tr. 03/01/17, 23:15-24.

The fact that ENV is allowed to use WGS� to capacity does not mean that it cannot move with reasonable diligence to site and develop a new landfill. These obligations are independent of one other. Contrary to Intervenor KOCA’s unsupported claim, a new landfill is not necessary because WGS� must close. There is no such mandate that requires closure of WGS�.

**D. The Closure Deadline Proposed by Intervenor KOCA is Unreasonable and Jeopardizes City Operations and the Health and Safety of the People of the City and County of Honolulu**

There is abundant evidence in the record to establish that the City needs a landfill for all of the wastes that cannot be disposed of at H-POWER, recycling, or other alternative processes. A landfill is needed for disposal of ash and residue from HPOWER, debris from natural disasters such as hurricanes, tsunamis, or 100-year storms, which may be unmanageable debris for HPOWER or could incapacitate the HPOWER facility. Steinberger Written Testimony at 28. A landfill is also needed when HPOWER undergoes scheduled maintenance, which requires the facility to shut down for up to two weeks. Tr. 01/11/12, 136:17–137:15.

The Solid and Hazardous Waste Branch expressed concern about a deadline at the point in time when there are no disposal options for certain types of waste which may potentially

threaten human health or the environment. Tr. 01/25/12, 12:4-19 (Steven Chang: “My branch is concerned about the imposition of the July 31, 2012 deadline at the point in time when there are no disposal options for certain types of waste which may potentially threaten human health or the environment.”) Further, Gary Gill, Deputy Director of the DOH Environmental Health programs, testified that there has been a lot of progress made in improving recycling and waste minimization, but the need for a landfill still exists on Oahu and virtually in every community in the United States. Tr. 04/04/12, 149:10-23. Deputy Director Gill further stated:

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

Id. at 150:6-15.

Intervenor KOCA’s proposed Condition No. 3, which is characterizes as a “staged approach” to closure of WGS�, is unreasonable, as it does not account for the wastes that cannot be processed by a means other than landfilling. The evidence in this proceeding establishes that DOH is working with the City to determine alternative disposal options, but there are in fact wastes that cannot be burned recycled, reused or shipped; in particular sewage sludge. Because these wastes currently must be disposed of via landfilling and because contingencies such as HPOWER’s planned maintenance shut-downs or emergencies created by natural disasters require alternative disposal options so as to efficiently respond to unanticipated contingencies, there is in fact still a need for a landfill. Tr. 01/25/12, 12:4-19. Steven Chang, Chief of the DOH Solid and Hazardous Waste Branch stated that his branch is concerned about the imposition of the July 31, 2012 deadline at the point in time when there are no disposal options for certain

types of waste which may potentially threaten human health or the environment. Intervenor KOCA's proposed Condition No. 3 would require closure of WGS� when the City still needs WGS� for disposal of the wastes outlined above and under the circumstances described.

### **III. Responses to Objections to The Planning Commission's Findings of Fact**

**Finding of Fact 38.** Intervenor KOCA mischaracterizes this finding. Finding of Fact 38 demonstrates compliance with Condition No. 1 of the Planning Commission Decision (Condition No. 4 of the 2009 LUC Decision), which requires the City, on or before November 1, 2010, to begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. See 2011 Exhibit "A18" at 25; 2011 Exhibit "A19" at 6. As part of preparing the updated Integrated Solid Waste Management Plan ("ISWMP"), the City allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on Oahu in satisfaction of Condition No. 1. Thus, the Mayor's Landfill Site Selection Committee ("Site Selection Committee") was formed. See Steinberger Written Testimony at 11; Tr. 01/11/12, 54:4-55:6. Intervenor KOCA fails to demonstrate how allotting funds to conduct the site selection study does not mark the beginning of the process to identify and develop a new landfill site.

**Findings of Fact 39 to 51.** Intervenor KOCA misconstrues and mischaracterizes the testimony of Janice Marsters, a member of the Mayor's Landfill Site Selection Committee ("SSC") and asserts without any basis that "ENV's consultant repeatedly applied screens to exclude potential sites that were not 'previously discussed or authorized'" by the landfill site selection committee. Further, whether Ms. Marsters testified that the SSC was not happy with the process, as alleged by Intervenor KOCA, has no relevance to the objection that the findings of fact materially misstate the site selection efforts.

**Finding of Fact 40.** There is no evidence to support the premise that ENV directed the SSC to “find one site” and Intervenor KOCA fails to site any evidence in the record that would support this unfounded contention. Intervenor KOCA jumps to conclusions in inferring from the SSC’s identifying a site that could accept all forms of waste as indicative of ENV limiting its options to one landfill site. This is simply not supported by the record and is pure supposition.

**Finding of Fact 45.** In making its objection to this finding of fact, Intervenor KOCA misstates the evidence. There is nothing in the record it cites that establishes that ENV’s consultant directed the SSC to start with an old list of sites.

**Finding of Fact 46.** Intervenor KOCA fails to cite to any evidence to support its objection to this finding of fact and assertion that ENV’s consultant developed the exclusionary criteria or factors for sites above the no-pass or UIC line. There is substantial evidence to support Finding of Fact 46. See Steinberger Written Testimony at 14, see also Tr. 04/04/12, 42:1– 5:23. Further, Intervenor KOCA takes Ms. Marsters testimony out-of-context to assert that the SSC was not happy with the process and in doing so, makes it sound like the SSC was not happy with the entire process. This is not true. Ms. Marsters testified that the SSC was not happy “with the process that had happened.” Tr. 04/04/12, 104:16-23.

**Finding of Fact 51.** There is substantial evidence to support the finding of fact that the ENV’s effort to identify and develop one or more landfill sites has been performed with reasonable diligence. Steinberger Written Testimony at 11-16. In particular, ENV began the process to identify and develop one or more new landfill sites that shall either replace or supplement the WGSF when it allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on Oahu and formed the SSC. Id. at 11.

Intervenor KOCA contends that ENV's effort to identify and develop one or more new landfill sites has not been performed with reasonable diligence because the SSC does not include any members from Ko Olina or Kapolei. While it is not clear how this would result in the City performing its landfill site selection with less-than-reasonable diligence, we note that there is evidence in the record that establishes that the Mayor chose 12 qualified members to serve on the SSC. The Mayor's selection was based on numerous criteria, including technical expertise and experience, community involvement, and ability to serve. Id. at 11.

**Finding of Fact 52.** This finding is supported by the testimony of Ms. Marsters, Dr. Hari Sharma, and then-ENV Director Timothy E. Steinberger, which established that a minimum of seven years is required and more likely longer to take a landfill from selection to operation. As an environmental engineer who has worked in Hawaii and the Pacific for over 20 years, mostly in the area of environmental planning and permitting for construction projects, Ms. Marsters is familiar with the permitting and environmental review process and is aware of how long it takes to develop a site. Tr. 04/04/12, 55:10-25, 56:1-2, see also 2011 Exhibit "A36." Ms. Marsters concluded that the permitting and environmental review process, land acquisition, and the landfill design itself, which is a very rigorous process because you have to design the liners and the leachate collection systems and the groundwater monitoring systems and so forth, would take five to seven years. Ms. Marsters further concluded that it would take additional time to build the infrastructure necessary for the landfill and to construct the landfill. Tr. 04/04/12, 56:1-25, 57:1-25, 58:1-17. Ms. Marsters further opined that three years to complete the development of a new landfill was not enough time and that especially in Hawaii, because we have a very inclusive environmental review process that allows for a lot of opportunity for public input, more time is needed for the development of a new landfill. Tr. 04/04/12, 58:18-25, 59:1-11.

Dr. Sharma, who was qualified as an expert in landfill design and permitting, and who was the principal in charge of permitting and construction of the expansion cells in WGSL, observed the development of new landfills in the 80's and 90's and stated that it took about seven to ten years to complete development of new landfills at that time. Dr. Sharma further stated that in the 2000s and now, there are very few if any completely new landfill sites being approved because most landfill work is in expansion of existing landfills. Therefore, he believes that development of a new landfill would take even longer than seven to ten years. Tr. 04/11/12, 41:2-25, 42:1-6. Dr. Sharma also stated that for just the latest expansion of WGSL, it took 3-4 years, so it is not possible for a completely new landfill in Hawaii to be developed in 3-4 years. Tr. 04/11/12, 42:7-19.

Director Steinberger pointed out that even after the SSC makes its recommendation, ENV will need more than seven years to complete the tasks necessary to start operations at a new site(s). These tasks include, but are not limited to: (1) the preparation and processing of an EIS in full compliance with HRS Chapter 343 and related administrative rules for Oahu's next landfill site or sites (*e.g.*, conducting site surveys and investigations, analyzing alternatives including alternative sites and technologies, obtaining public and governmental agency input, analyzing direct, secondary, and cumulative impacts, developing appropriate mitigation measures, and ensuring the opportunity for public participation and comments); (2) the acquisition of landfill sites, which may require an appraisal of the land value, a determination by the City regarding the funding source for the acquisition, and approval for the expenditure of public funds by the Honolulu City Council; and (3) detailed engineering studies, construction and bid documents, and other approvals. Steinberger Written Testimony at pgs. 15-16.



The detailed engineering studies are also needed to support the landfill design. These studies will include, but are not limited to: land surveys; geotechnical soils and structural investigations; hydrology and hydrogeological investigations. The completion of these studies is required so that the landfill construction drawings can incorporate civil design requirements, such as the provision of drainage, access roadways, and infrastructure, to support the use of the site. Coordination with governmental agencies, utilities, and adjoining landowners, consistent with mitigation measures identified in the EIS, will also be required to minimize disturbance to nearby property owners and utilities. The length of time required for the completion of detailed engineering studies, construction drawings and bid documents, and the processing of procurements for the design and construction contractors (which could include the selection of a qualified landfill operator), as well as the acquisition of building permits, land use approvals such as a SUP or district boundary amendment, depending on where the site(s) is located, and other necessary approvals, is estimated to be between one and three years. That is before the City even breaks ground on a new site. Id. at 16.

Based on the foregoing, and the fact that Ms. Marsters, Dr. Sharma, and Director Steinberger have direct experience with the land use process in relation to WGSL, a new landfill is more than likely to take more than seven years to develop. Consequently, taking seven or more years to develop a landfill is not only reasonably diligent but realistic.

**Finding of Fact 56.** Intervenor KOCA fails to cite any support for its contention that the total waste generated on Oahu in Calendar Year 2010 was 1,510,593 tons. Rather, the exhibit cited in its objection establishes that in Calendar Year 2010, approximately 1,214,904 tons of MSW was generated on Oahu. See 2011 Exhibit "A27".

**Finding of Fact 57.** Contrary to Intervenor KOCA's claim, the statement that "there are still no new technologies with proven reliability and performance that would completely eliminate the need for a landfill" is supported by substantial evidence. Despite the progress made to divert waste from the landfill via recycling, burning waste for energy, and reuse, a landfill is still needed on Oahu. See Tr. 01/25/12, 12:7-14; 03/07/12, 99:22-100;1; 04/11/12, 117;5-121;5. At the time of the contested case hearing on the 2011 Application, items such as screenings and sludge from sewage treatment plants, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, medical sharps, auto shredder residue, and contaminated soil that is below certain toxicity levels were landfilled at the WGS. See Tr. 01/25/12, 10:6-12:14; Tr. 04/11/12, 118:16-119:23. It was established that the continued availability of WGS to dispose of MSW is needed because there will always be material that cannot be combusted, recycled, reused or shipped. See Tr. 04/11/12, 117-122:5; 2011 Exhibit "A18". Moreover, the continued availability of WGS to dispose of MSW is needed because WGS is required as a permit condition to operate HPOWER. Steinberger Written Testimony at 29. Further, the continued availability of WGS to dispose of MSW is needed for cleanup in the event of a natural disaster. See Tr. 01/25/12, 12:8-14; Tr. 04/04/12, 150:10-15.

**Finding of Fact 60.** Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but "whether or not they run into delays on this, you know, is anybody's guess." Tr. 04/11/12, 90:9-13. Director Steinberger also stated that HPOWER's operator, Covanta, "recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it's a target." Tr. 01/11/12, 80;15-18. Thus, Intervenor KOCA misconstrues the testimony.

**Finding of Fact 61.** The evidence establishes that the HPOWER solid waste management permit, which is issued by DOH, requires HPOWER to have a MSW landfill disposal option. See 2009 Planning Commission Decision, ¶ 92, pg. 18. The closure of WGSL from January 12 to January 28, 2011, due to unprecedented storms in December 2010 and January 2011, illustrates the need for a landfill. During that seventeen-day closure period, there were delays in the disposal of HPOWER residue, bulky item waste, and wastewater sludge. All such wastes cannot be disposed of at HPOWER and must be disposed of in the Landfill. The closure of WGSL hampered HPOWER's ability to accept MSW because of the backlog of residue that had accumulated at the facility. City refuse transfer stations that depend on HPOWER for waste disposal were adversely impacted and experienced heavy buildups of trash. City wastewater treatment facilities had to resort to temporary onsite storage of sewage sludge in limited-capacity holding areas to cope with the situation. Further, ENV had to cease collection of bulky item wastes resulting in unsightly and potentially dangerous piles of waste on sidewalks. Steinberger Written Testimony at 29.

**Finding of Fact 66.** Contrary to Intervenor KOCA's assertion, all but incidental green waste is prohibited from the landfill. Tr. 04/11/12, 114:11-20. Applicant provided substantial evidence that the majority of green waste is recycled. For fiscal year 2011, the green waste capture rate was 77%, which indicates high participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. Steinberger Written Testimony at p. 19; see also 2011 Exhibit "A30" at 8. All green waste is delivered to a private vendor contracted by the City to produce mulch and other products from the waste. Id. at 20. Further, State law requires the diversion of green waste from HPOWER and the landfill. (HAR § 11-58.1-65; see also HRS

§§ 342G-3, 342G-13.) ENV's green waste recycling program supports its efforts to ensure compliance with this requirement.

**Finding of Fact 67.** Intervenor KOCA misstates the facts. All but incidental food waste is diverted from the WGSL. Tr. 04/11/12, 114:1-14. Residential food waste is sent to HPOWER and becomes refuse derived fuel. Tr. 04/11/12, 114:21-25, 115:1-5. Food waste from restaurants are sent to local recyclers and is not sent to the landfill. Id. at 115:6-15, 116:13-20. Food waste is sent to the landfill only when HPOWER is shut down or at daily capacity. Id. at 123:21-25. There is no evidence in the record to support Intervenor KOCA's allegation that this finding is false.

**Finding of Fact 68.** As stated above, Applicant provided substantial evidence that the majority of green waste is recycled. For fiscal year 2011, the green waste capture rate was 77%, which indicates high participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. Steinberger Written Testimony at p. 19; see also 2011 Exhibit "A30" at 8. All green waste is delivered to a private vendor contracted by the City to produce mulch and other products from the waste. Id. at 20.

**Finding of Fact 79.** The objection to Finding of Fact 79 is without merit, as Intervenor KOCA admits that it is true it was reported in December 2011 that 15,000 to 20,000 tons per year of sewage sludge was still landfilled. See KOCA's Motion at 17-18. The fact that HPOWER's third boiler would eventually be able to accept sewage sludge does not render the former statement misleading.

**Finding of Fact 86.** The facts that Intervenor KOCA cites in its objection do not refute the finding that at the time of the December 2010 and January 2011 heavy rains, WMH was in the process of completing construction of the Western Surface Water Drainage System. Instead,

Intervenor KOCA raises other arguments, but none establish that this finding is misleading, materially incomplete and contrary to the evidence, as it alleges.

At the time that WMH was simultaneously constructing cell E6 and the diversion channel, WMH had already constructed a temporary surface water drainage system that could handle a 24-hour, 25-year storm. Tr. 04/11/12, 33:15-21. The planned diversion system that could handle a 100-year, 24-hour storm was beyond what was required by the law to construct. Id. at 31:16-22. Because WMH and ENV were compliant with the regulatory standard, were dealing with limited landfill space, and had obtained the approval of DOH to simultaneously construct the diversion channel and cell E6, ENV and WMH had appropriately planned for and responded to the relevant circumstances and were still constructing the expansion consistent with the engineering report and design plans. Id. at 31:7-25, 32:1-8

**Finding of Fact 88.** Intervenor KOCA's objection to this Finding of Fact is without merit. Director Steinberger testified that WMH and the City worked with EPA and DOH in the aftermath of the 2010 and 2011 storms, entering into an Administrative Order on Consent with EPA that outlined the remedial actions needed to address the MSW release and steps needed to reopen the landfill. Steinberger Written Testimony at 27.

**Finding of Fact 92.** The objection to this Finding of Fact is without merit. The allegations raised in this objection do not negate the fact that in April 2012, Gary Gill, the Deputy Director of the DOH Environmental Management Division, who was the individual heading the agency responsible for regulating WGS�, still insisted that Oahu needs a landfill, that WGS� is the only landfill for MSW and ash, and that shutting down the landfill before other options are available will endanger public health. Tr. 04/04/12, 149:2-151:4.

**Finding of Fact 93 to 94.** There is substantial evidence to support the fact that the WGS� is the only permitted public MSW facility on the island of Oahu and thus, the WGS� is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by HPOWER. See Tr. 01/25/12, 58:22-25, 59:1-9.

Further, there is substantial evidence to support the fact that WGS� is a critical portion of the City's overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the HPOWER facility, and landfilling for material that cannot be recycled or burned for energy. See Steinberger Written Testimony at 2, 4. The objections raised by Intervenor KOCA are purely argument and do not make these findings of fact false or contrary to the evidence.

**Finding of Fact 95.** Intervenor KOCA fails to cite any support for its contention that the total waste generated on Oahu in Calendar Year 2010 was 1,510,593 tons. Rather, the exhibit cited in its objection establishes that in Calendar Year 2010, approximately 1,214,904 tons of MSW was generated on Oahu. See 2011 Exhibit "A27".

**Finding of Fact 96.** Intervenor KOCA's assertions in its objection to Finding of Fact 96 are misleading. Finding of Fact 96 states as follows:

Other items that cannot be recycled or burned at HPOWER are deposited at the WGS�. At the time of the contested case hearing on the 2011 Application, items such as screenings and sludge from sewage treatment plants, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, medical sharps, auto shredder residue, and contaminated soil that is below certain toxicity levels were landfilled at the WGS�.

2017 Planning Commission Decision at 27.

Accordingly, it is clear that the period of time to which the finding of fact applies is at the time of the contested case proceeding on the 2011 Application.

Additionally, Intervenor KOCA misconstrues the testimony regarding the date the third boiler would be operational. Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but “whether or not they run into delays on this, you know, is anybody’s guess.” Tr. 04/11/12, 90:9-13. Director Steinberger also stated that HPOWER’s operator, Covanta, “recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it’s a target.” Tr. 01/11/12, 80:15-18. Thus, there is no substantial evidence to support Intervenor KOCA’s claim that the third boiler would be operational in October or November 2012.

**Finding of Fact 97.** As stated above, Intervenor KOCA misconstrues the testimony regarding the date the third boiler would be operational. Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but “whether or not they run into delays on this, you know, is anybody’s guess.” Tr. 04/11/12, 90:9-13. Director Steinberger also stated that HPOWER’s operator, Covanta, “recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it’s a target.” Tr. 01/11/12, 80:15-18.

**Finding of Fact 99.** The objection to this finding of fact is without merit. The facts Intervenor KOCA cites in its objection to Finding of Fact 99 do not refute the fact that the City has a facility at the Sand Island Wastewater Treatment Plant that digests, dewater, and heat-dries approximately 20,000 tons per year of sewage sludge and turns the biosolids that might otherwise be sent to a landfill into pellets that can be used as a fertilizer or soil amendment material. Steinberger Written Testimony at 23.



**Finding of Fact 100.** Intervenor KOCA's objection lacks merit and misstates this finding. Finding of Fact 100 does not admit that further progress in waste diversion is needed. Rather, it states as follows: "Despite the progress made to divert waste from the landfill via recycling, burning waste for energy, and reuse, a landfill is still needed on Oahu."

**Finding of Fact 104.** Intervenor KOCA objects to the statement that it will take at least seven years from site selection for a new landfill to be operational. But, this finding of fact is supported by substantial evidence. As Ms. Marsters, Dr. Sharma, and Director Steinberger established, a minimum of seven years is required and more likely longer to take a landfill from selection to operation.

As an environmental engineer who has worked in Hawaii and the Pacific for over 20 years, mostly in the area of environmental planning and permitting for construction projects, Ms. Marsters is familiar with the permitting and environmental review process and is aware of how long it takes to develop a site. Tr. 04/04/12, 55:10-25, 56:1-2, see also 2011 Exhibit "A36." Ms. Marsters concluded that the permitting and environmental review process, land acquisition, and the landfill design itself, which is a very rigorous process because you have to design the liners and the leachate collection systems and the groundwater monitoring systems and so forth, would take five to seven years. Ms. Marsters further concluded that it would take additional time to build the infrastructure necessary for the landfill and to construct the landfill. Id. at 56:1-25, 57:1-25, 58:1-17. Ms. Marsters further opined that three years to complete the development of a new landfill was not enough time and that especially in Hawaii, because we have a very inclusive environmental review process that allows for a lot of opportunity for public input, more time is needed for the development of a new landfill. Id. at 58:18-25, 59:1-11.

Dr. Sharma, who was qualified as an expert in landfill design and permitting, and who was the principal in charge of permitting and construction of the expansion cells in WGS�, observed the development of new landfills in the 80's and 90's and stated that it took about seven to ten years to complete development of new landfills at that time. Dr. Sharma further stated that in the 2000s and now, there are very few if any completely new landfill sites being approved because most landfill work is in expansion of existing landfills. Therefore, he believes that development of a new landfill would take even longer than seven to ten years. Tr. 04/11/12, 41:2-25, 42:1-6. Dr. Sharma also stated that for just the latest expansion of WGS�, it took 3-4 years, so it is not possible for a completely new landfill in Hawaii to be developed in 3-4 years. Id. at 42:7-19.

Director Steinberger pointed out that even after the Site Selection Committee ("SSC") makes its recommendation, ENV will need more than seven years to complete the tasks necessary to start operations at a new site(s). These tasks include, but are not limited to: (1) the preparation and processing of an EIS in full compliance with HRS Chapter 343 and related administrative rules for Oahu's next landfill site or sites (*e.g.*, conducting site surveys and investigations, analyzing alternatives including alternative sites and technologies, obtaining public and governmental agency input, analyzing direct, secondary, and cumulative impacts, developing appropriate mitigation measures, and ensuring the opportunity for public participation and comments); (2) the acquisition of landfill sites, which may require an appraisal of the land value, a determination by the City regarding the funding source for the acquisition, and approval for the expenditure of public funds by the Honolulu City Council; and (3) detailed engineering studies, construction and bid documents, and other approvals. Steinberger Written Testimony at pgs. 15-16.

The detailed engineering studies are also needed to support the landfill design. These studies will include, but are not limited to: land surveys; geotechnical soils and structural investigations; hydrology and hydrogeological investigations. The completion of these studies is required so that the landfill construction drawings can incorporate civil design requirements, such as the provision of drainage, access roadways, and infrastructure, to support the use of the site. Coordination with governmental agencies, utilities, and adjoining landowners, consistent with mitigation measures identified in the EIS, will also be required to minimize disturbance to nearby property owners and utilities. The length of time required for the completion of detailed engineering studies, construction drawings and bid documents, and the processing of procurements for the design and construction contractors (which could include the selection of a qualified landfill operator), as well as the acquisition of building permits, land use approvals such as a SUP or district boundary amendment, depending on where the site(s) is located, and other necessary approvals, is estimated to be between one and three years. That is before the City even breaks ground on a new site. Id. at 16.

Based on the foregoing, and the fact that Ms. Marsters, Dr. Sharma, and Director Steinberger have direct experience with the land use process in relation to WGSL, a new landfill is more than likely to take more than seven years to develop. Consequently, taking seven or more years to develop a landfill is not only reasonably diligent but realistic.

#### **IV. Responses to Objections to the Planning Commission's Conclusions of Law**

As set forth above and in ENV's other filings, including Intervenor KOCA's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, dated February 10, 2017, ENV disputes the objections raised by Intervenor KOCA to numerous findings of fact. Consequently, ENV disputes Intervenor KOCA's objections to the Planning Commission's conclusions of law.

**V. Responses to Objections to the Planning Commission's Decision and Order**

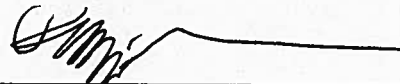
The additional conditions proposed by Intervenor KOCA are not necessary, not appropriate, and not supported by the evidence and testimony in the record. As set forth above and ENV's Response to Intervenor KOCA's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, dated February 10, 2017, ENV disputes the objections raised by Intervenor KOCA to numerous findings of fact and consequently, responds by objecting to the additional conditions proposed by Intervenor KOCA.

**VI. Conclusion**

For the foregoing reasons, the ENV requests that the LUC to approve the consolidated application for a SUP for the existing and proposed expansion of WGSL and for continued operation of WGSL with the conditions imposed by the Planning Commission, and deny KOCA's motion.

DATED: Honolulu, Hawaii, May 19, 2017.

Respectfully submitted,



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KAMILLA C. K. CHAN  
DANA VIOLA  
Deputies Corporation Counsel  
Attorneys for Applicant  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Application of )  
 )  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
 )  
For A New Special Use Permit To )  
Supersede Existing Special Use Permit To )  
Allow A 92.5-Acre Expansion And Time )  
Extension For Waimanalo Gulch Sani- )  
tary Landfill, Waimanalo Gulch, O`ahu, )  
Hawai`i, Tax Map Key: 9-2-03: 72 And 73 )  
 )  
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\_\_\_\_\_)  
In the Matter of the Application of )  
 )  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
 )  
 )  
To delete Condition No. 14 of Special Use )  
Permit No. 2008/SUP-2 (also referred to as )  
Land Use Commission Docket No. SP09-403) )  
which states as follows: )  
 )  
 )  
"14. Municipal solid waste shall be allowed at )  
the WGSL up to July 31, 2012, provided that )  
only ash and residue from H-POWER shall be )  
allowed at the WGSL after July 31, 2012." )  
 )  
\_\_\_\_\_)

DECLARATION OF KAMILLA C. K. CHAN

I, Kamilla C. K. Chan, hereby declare as follows:

1. I am one of the attorneys for the Department of Environmental Services, City and County of Honolulu in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit "1" is a true and correct copy of a draft of the transcript of proceedings in this action before the Honolulu Planning Commission on March 1, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 19, 2017.

  
KAMILLA C. K. CHAN





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

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

CONTINUED - CONTESTED CASE HEARING

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

Taken at Mission Memorial Conference Room, Mission  
Memorial Building, 550 South King Street, Honolulu, Hawaii,  
96813, commencing at 1:30 p.m. on March 1, 2017, pursuant to  
Notice.

1 APPEARANCES:

2

3 Planning Commissioners present:

4

Dean I. Hazama, Chair

5

Cord D. Anderson

6

Daniel S. M. Young

7

Ken K. Hayashida

8

Wilfred A. Chang, Jr.

9

10 Planning Commissioners excused:

11

Arthur B. Tolentino

12

Kaiulani K. Sodaro [recused,  
prior notice given]

13

14

Steven S. C. Lim [recused,  
prior notice given]

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16

Theresa c. McMurdo, Vice Chair  
[prior notice given]

17

18

19 Deputy Corporation Counsel:

20

Jennifer D. Waihee-Polk

21

(Advisory to the Commission)

22

23 Planning Commission staff:

24

Gloria Takara,

25

Secretary-Hearings Reporter

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

3 Kamilla C. K. Chan, Esq.  
4 Deputy Corporation Counsel  
5 City and County of Honolulu  
6 530 South King Street, Room 110  
7 Honolulu, Hawaii 96813  
8

9 For intervenor Ko Olina Community Association and Senator  
10 Maile Shimabukuro:

11 Calvert G. Chipchase, Esq.  
12 Christopher T. Goodin, Esq.  
13 Cades Schutte LLP  
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16

17 For intervenor Schnitzer Steel Hawaii Corp.:

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For intervenor Colleen Hanabusa:

Richard N. Wurdeman, Esq.  
1003 Bishop Street, Suite 720  
Honolulu, Hawaii 96813

## P R O C E E D I N G S

1  
2  
3 Chairman: Good afternoon. Welcome to the Planning  
4 Commission meeting for Wednesday, March 1st, 2017. Call  
5 this meeting to order. [bangs gavel] First item on our  
6 agenda is approval of our January 4th and January 18th, 2017  
7 meeting minutes. Commissioners, do you have any questions,  
8 corrections or concerns regarding both meeting minutes for  
9 January 4th and January 18th. [no response] Okay. Seeing  
10 none, any objections to adopting the minutes? [no response]  
11 Any abstentions? [no response] Okay. The minutes have been  
12 adopted.

13 Moving on to continued contested case hearing, Ewa  
14 State Special Use Permit, amendment application 2008/SUP-2,  
15 Waimanalo Gulch Sanitary Landfill, WGSL.

16 Okay. Moving on for action. First item for  
17 action is Department of Environmental Services, City and  
18 County of Honolulu, Motion to Strike Intervenor Colleen  
19 Hanabusa's (1) Renewal of Submission of Proposed Findings of  
20 Fact and Conclusions of Law. Department. Okay. For the  
21 record.

22 Ms. Chan: Kamilla Chan for the City and County of  
23 Honolulu.

24 Mr. Wurdeman: Richard N. Wurdeman for intervenor  
25 Colleen Hanabusa.

1 Chairman: Okay. Ms. Chan.

2 Ms. Chan: Thank you, Chair. The City request that  
3 the Planning Commission grant its motion to strike  
4 intervenor Hanabusa's Proposed Findings of Fact and  
5 Conclusions of Law on the basis that they were submitted  
6 late. The deadlines were set by the Planning Commission  
7 back in October and no objections were raised during the  
8 four months that lapsed between then and the actual  
9 deadline. Objections to the deadline could've been raised  
10 before the deadline reached under the Planning Commission's  
11 rules, yet objections were raised for the first time and the  
12 Proposed Findings of Fact were filed two weeks after the  
13 deadline. Bottom line is they are late. The Planning  
14 Commission didn't set further extended deadlines for the  
15 parties to respond to that submission. In the event that  
16 the Planning Commission is intending to consider intervenor  
17 Hanabusa's filings, the City would request additional time  
18 to supplement its 2009 response.

19 I know intervenor Hanabusa argues that she refers  
20 to those filings or the resubmission of those filings in her  
21 October 7th, 2016 statement. However, it's not clear what  
22 was going to be filed. It does reference that modifications  
23 may be made into the pleading. There has been additional  
24 evidence since the time that the 2009 filing was initially  
25 filed with the Planning Commission and the City would be

1 supplementing its response.

2 Chairman: Okay. Mr. Wurdeman.

3 Mr. Wurdeman: Well, the reason why there's been  
4 evidence since 2009 is one, there was a separate proceeding  
5 in which Ms. Hanabusa did not participate. And over  
6 strenuous objections this Commission consolidated its two  
7 records, depriving her of her rights of due process to  
8 confront witnesses in those proceedings, to present her own  
9 evidence in those proceedings. And that's one point with  
10 respect to evidence subsequent to July 17th, 2009. She  
11 objects to again that record and that certainly not going to  
12 be something that she's incorporating in her proposed  
13 findings if she's objecting to it.

14 The second point is that Ms. Hanabusa has been the  
15 one consistent party since the remand to object to a number  
16 of continuances by the City, Environmental Services under  
17 the guise of they were in negotiations with Ko Olina  
18 Community Association. That went on for years. We were in  
19 front of the Land Use Commission, and they wanted status  
20 reports what's going on. The City kept--at one point gave  
21 them a presentation about the recycling program that was  
22 completely irrelevant to anything. And what has happened is  
23 since 2009, the City during that first contested case  
24 hearing. And this is another point that we continue to bring  
25 up is that the City during those proceedings represented to



1 both the Planning Commission and the Land Use Commission  
2 that it would be at least seven years in which to find an  
3 alternative site. And, we are here now on the 8th year and  
4 haven't done a darn thing to find an alternative site. And,  
5 I think this is really reflective of their gamesmanship in  
6 stalling in these proceedings. Because they didn't have,  
7 never had any intention whatsoever of looking for  
8 alternative sites. And, Ms. Hanabusa as a result relied  
9 consistently upon her July 17th, 2009 filing which is  
10 certainly timely, is filed as part of the record. She's  
11 relying on it. The City filed its objections at that time.  
12 In October 7th, 2016, she's indicated that she was going to  
13 rely on that again, although there may have been some  
14 changes to the names because two of the parties in that  
15 original findings have proceeded with other counsel and have  
16 submitted their own proposed findings. And those parties  
17 did participate in the second proceedings, contested case  
18 hearings. So, you know, given that this has been on file  
19 since July 17th, 2009. We indicated that we are relying on  
20 it. There is no surprise to the City, and we ask as a  
21 result that their motion be denied.

22 Chairman: Okay. Thank you. Commissioners, any  
23 questions of either party? [no response] So, Mr. Wurdeman,  
24 then your contention is, therefore, that your Findings of  
25 Fact, Conclusions of Law, Decision and Order, regarding your

1 2009 submission is what you have submitted before the  
2 Commission?

3 Mr. Wurdeman: Yes. That's what was submitted in  
4 2009, which is still pending before the Commission and upon  
5 which intervenor Hanabusa is still relying.

6 Chairman: Okay. Corporation Counsel, then  
7 therefore your motion to strike applies to Mr. Wurdeman's  
8 2017--I guess, that is where the confusion is coming in.  
9 His February 10th 2017 submission to the Planning Commission  
10 that is what you are motioning to strike?

11 Mr. Chan: Yes. We're seeking to strike that.

12 Chairman: So, your motion is not to strike  
13 intervenor's 2009 submission to the Land Use Commission?

14 Mr. Chan: No. And our position is that was  
15 previously decided by the Planning Commission. They  
16 considered--

17 Chairman: You mean the deadline? What was  
18 decided previously--

19 Ms Chan: No. That 2009 filing was submitted when  
20 the application was first brought before the Planning  
21 Commission. That was the case that eventually went up to  
22 LUC, to supreme court. The deadline was struck, and it came  
23 back down to the Planning Commission.

24 Chairman: Right. However---

25 Ms. Chan: So, that's already been considered by

1 the Planning Commission.

2 Chairman: Correct. However, based on the October  
3 meeting, that all parties were allowed to submit amendments  
4 to the original filings, Decision and Order. So, I'm of the  
5 belief that the 2009 filing stands. I mean, you're not  
6 trying to strike his 2017?

7 Ms. Chan: We're striking, I guess the style, the  
8 resubmittal of the 2009 filing.

9 Chairman: Okay. So, for clarification, Mr.  
10 Wurdeman, now mainly perhaps the title of your filing is  
11 misleading in the sense--

12 Mr. Wurdeman: Yes. If that's the case, then I  
13 apologize for that, but we certainly just wanted to make it  
14 a point that she continue to rely on her 2009 filing and  
15 that was the only intent for that Part 1.

16 Chairman: Okay. So for clarification purpose, you  
17 have not submitted any amendment of Findings of Fact,  
18 Conclusions of Law, and Decision and Order, after your 2009  
19 filing?

20 Mr. Wurdeman: Correct.

21 Chairman: Okay. Commissioners, any questions at  
22 this time? [no response] Okay. We have to take action on  
23 the motion before us in regards to Environmental Services  
24 motion to strike intervenor Colleen Hanabusa's February  
25 10th, 2017 document. Do we have a motion? You can ask

1 questions.

2 Member Hayashida: So, it's irrelevant, right?

3 I mean--

4 Chairman: The motion--

5 [colloquy between DCC Jennifer Waihee-Polk and  
6 Chairman Hazama]

7 Member Anderson: Make a motion to move into  
8 executive session, please.

9 Chairman: Okay. So moved.

10 Member Hayashida: Second.

11 Chairman: Moved and seconded. Any objections?

12 [no response] Any abstentions? [no response] Okay. The  
13 Commission will move into executive session to consult with  
14 Corporation Counsel on authority, duties, privileges,  
15 immunities pertaining to Section 205-6 of the Hawaii Revised  
16 Statutes as amended in Chapter 2, Subchapters 4 and 5 of the  
17 Rules of the Planning Commission and in accordance with HRS  
18 92-5. Okay. We're in executive session.

19 [EXECUTIVE SESSION MINUTES]

20 Out: 1:43 p.m.

21 In: 2:11 p.m.

22 Chairman: Okay. Thank you for your patience. I  
23 call this meeting back to order. [bangs gavel] At this time  
24 we are still in regards to the Environmental Services motion  
25 to strike. Do we have a motion before the Commission?

1 Member Anderson: Sure. I'll make a motion to  
2 strike intervenor Colleen Hanabusa's renewal of submission  
3 of Proposed Findings of Fact and Conclusions of Law.

4 Chairman: Okay. So moved. Do we have a second?

5 Member Hayashida: Second.

6 Chairman: Okay. All those in favor, say aye.

7 All Commissioners: Aye.

8 Chairman: I'm sorry. Do we have any discussion on  
9 the matter regarding this issue? [no response] I don't  
10 see--

11 Mr. Wurdeman: Could I ask for a clarification? So,  
12 you're striking--I'm sorry, what was--

13 Chairman: We're striking your February 10th,  
14 2017--

15 Mr. Wurdeman: Okay. So, the July 2009 though is  
16 still part of the record, that can't be stricken.

17 Member Anderson: Yes.

18 Mr. Wurdeman: Okay.

19 Chairman: I don't see any objections,  
20 Mr. Wurdeman, or any of the parties, so like I said I don't  
21 have a problem supporting the City's position on this issue.  
22 Any further discussion, Commissioners? [no response] If  
23 not, all those in favor, say aye.

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response] Any

1 abstentions? [no response] Okay. The motion is granted.

2 Okay. Moving on to the second item of the agenda,  
3 Adoption of Findings of Fact, Conclusions of Law, and  
4 Decision and Order. At this time I call all parties up.

5 Okay. For the record, appearances, please.

6 Mr. Wurdeman: Richard N. Wurdeman for intervenor  
7 Colleen Hanabusa.

8 Ms. Chan: Kamilla Chan for the City and County of  
9 Honolulu.

10 Ms. Muller: Arsima Muller for intervenor Schnitzer  
11 Steel Hawaii Corp.

12 Mr. Chipchase: And Cal Chipchase and Chris Goodin  
13 for Ko Olina Community Association and Senator Maile  
14 Shimabukuro. With us in the hearing room is Ken Williams,  
15 who's the general manager for the association, association's  
16 designated representative and was a witness in these  
17 proceedings.

18 Chairman: Okay. Thank you. So for the record,  
19 Commissioners, the Planning Commission is in receipt of, I  
20 guess, submission of Findings of Fact, Conclusions and Law,  
21 Decision and Order for the parties with the exception of  
22 Mr. Wurdeman. So, we have your records as well as your  
23 rebuttals regarding each others decision and orders.

24 Okay. Commissioners. Also for the record I'd  
25 like to confirm that the evidentiary portion of the

1 contested case hearing is closed. So before us now, I  
2 guess, is Commission's action.

3 [colloquy between DCC Waihee-Polk and Commissioner  
4 Anderson]

5 Member Anderson: Chair, I'd like to make a  
6 motion, please.

7 Chairman: Okay.

8 Member Anderson: Motion to adopt the 2011 ENV  
9 application Findings of Fact, Conclusions of Law, and  
10 Decision and Order with the following conditions. I would  
11 like to add from page 82 of intervenor Ko Olina Community  
12 Association and Maile Shimabukuro's Proposed of Findings of  
13 Fact, Conclusions of Law, and Decision and Order. Again,  
14 page 82, Item C, that deals with ENV providing semi-annual  
15 reports to the Planning Commission and LUC. The second  
16 added condition will be on the same document, page 86, Item  
17 No. 5, which deals with public health and safety conditions,  
18 and the third condition would be that the City, ENV in  
19 particular, ID an alternate site by December 31st, 2022,  
20 that will be used upon Waimanalo Gulch Sanitary Landfills  
21 reaching its capacity.

22 Chairman: Okay. Do we have a second?

23 Member Hayashida: Second.

24 Chairman: Okay. It's moved and seconded. Okay.

25 Commissioners, we are now in discussion. Any further



1 discussion?

2 Mr. Chipchase: Commissioners, I'm sorry to  
3 interrupt. It's always been customary in presentations that  
4 I've done in findings to be able to present the findings to  
5 the Commission before they adopt them and ask for that  
6 opportunity, particularly, as majority of the Commission  
7 didn't have an opportunity to sit through the proceedings.

8 Chairman: Okay. However, we have the record.  
9 So, we have all evidentiary records and have reviewed them.

10 So, that's each Commissioner's responsibility, and we also  
11 have your submittal. So, we have everything.

12 Mr. Chipchase: No. I understand that you have  
13 the record, Commissioners, and I appreciate that. But it  
14 has always been customary in my experience to have an  
15 opportunity to present those findings, and we certainly did  
16 in the 2012, conclusion of 2012 proceedings, had an  
17 opportunity to present those to the Commission. But there's  
18 a dialog and discussion about why we're requesting certain  
19 conditions before the Commission actually adopts a proposed  
20 form of order. And I ask for that before the Commission  
21 votes on the motion.

22 [colloquy between DCC Waihee-Polk and Chairman  
23 Hazama and Member Anderson]

24 Member Anderson: I make a motion for executive  
25 session.



1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Basically the  
3 Commission has made a motion to go into executive session to  
4 consult with the Commissioner's attorney on the authority,  
5 duties, privileges and immunities pertaining to Section  
6 205-5 of the Hawaii Revised Statutes as amended in Chapter  
7 2, Subchapters 4 and 5 of the Rules of the Planning  
8 Commission in accordance with HRS 92-5. Okay.

9 Mr. Wurdeman: Mr. Chairman, may I be heard please  
10 before you go into executive session. The City's last  
11 motion was for a Part 1 of the February 10th filing and not  
12 Part 2. And not it only was it our findings timely filed on  
13 July 17th, 2009, but we reiterated our reliance on October  
14 12, 2016, and two separate times, not only was it filed  
15 timely but it was reiterated that it be relied upon timely  
16 in October well before any other parties submitted anything,  
17 one. Two, is in the second part that wasn't the subject of  
18 the City's motion is my objections to this Chair presiding  
19 over this matter because of this Chair's apparent  
20 pre-determination of the facts and conclusions in the  
21 attached newspaper article in the Honolulu Star Advertiser  
22 that it was dated August 19th, 2016, in which is part of my  
23 February 10, 2016 [sic] submission. And that is  
24 respectfully challenging you, Mr. Chairman, in presiding  
25 over these matters when you've already pre-determined this

1 case.

2 And, I have some familiarity with this issue  
3 because the cited decision, Mauna Kea Anaina Hou, is a case  
4 that I argued before the Hawaii Supreme Court on.  
5 Pre-determining matters before the parties have been allowed  
6 and meaningful opportunity be heard. And given our timely  
7 filings, it makes me wonder--And I have to call into  
8 question, the last Board's ruling on intervenor Hanabusa's  
9 decision. Because that was done without taking it into  
10 consideration the Part 2 of my pleading, which was my  
11 objections respectfully to you, presiding over this because  
12 of your pre-determination on this matter. So, I'd like that  
13 to be decided on before we move any further and talk about  
14 anything further in these matters because obviously the  
15 Chair does have a lot of influence on the other Commission  
16 members. And, if the Chair has already decided on this  
17 matter before all the proper submissions were made; and it's  
18 obvious in the quotes back in August that was done by this  
19 Chair. "We have to have an operating landfill. I think it's  
20 unreasonable to expect the City to just close it down,"  
21 Hazama said. Another quote is, "that's my hope that we can  
22 move this along so that at least the City will have a valid  
23 permit that will allow it to operate it," Hazama said. This  
24 was all in the August news article that I reference. You  
25 were quoted in that, Mr. Chair. And, intervenor Hanabusa

1 takes exception to given that that's your stated position  
2 publicly that you are now in these proceeding precluding her  
3 from submitting proposals that are contrary to your opinion  
4 way back in August before all of these submissions were  
5 made. So, I would like that objection to be made. I would  
6 respectfully ask you to recuse yourself from these  
7 proceedings because of your pre-determination of the issues.

8 And, finally, I would like to also ask that there  
9 be a confirmation, because the law requires that especially  
10 in light of, I believe, that--and if not all of the  
11 Commissioners were present in both proceedings, I believe at  
12 least most of the Commissioners were present. And the law  
13 requires a review of all records, evidence going through  
14 transcript, going through exhibits, of all those  
15 proceedings, by each and every Commissioner before a vote  
16 can be had, and I'd like that to be confirmed as well. With  
17 all of the Commissioners, since none of them had, as far as  
18 I know, sat through both of the proceedings. So, that would  
19 also be my second request. But my first is I respectfully  
20 ask yourself to recuse yourself because of your comments  
21 that were made publicly back in August. Thank you.

22 Chairman: So, you had your say? So, the motion on  
23 the floor is for executive session. Seconded it. Any  
24 objections? [no response] Any abstentions? [no response]  
25 Okay. At this time, we will move into executive session.

## 1 [EXECUTIVE SESSION MINUTES]

2 Out: 2:26 p.m.

3 In: 2:44 p.m.

4 Chairman: Okay. Thank you. I call this meeting  
5 back to order. [bangs gavel]6 Okay. For the record, Commissioners, I need  
7 confirmation from you that you have reviewed all evidence  
8 and the entire record from the 2008 and 2011 SUP  
9 proceedings. Commissioners.

10 Member Hayashida: I reviewed the records.

11 Chairman: Okay. Commissioner Chang.

12 Member Chang: I have as well.

13 Chairman: Okay. Commissioner Young.

14 Member Young: So have I.

15 Chairman: Okay.

16 Member Anderson: Yes. I have reviewed all of the  
17 records presented to us. Thank you.18 Chairman: Okay. And, likewise, I have as well.  
19 In regards to, for the record, Mr. Wurdeman, your  
20 presumption on my influence over the entire Commission, I  
21 think is incorrect. So, I'm one Commissioner that has one  
22 vote equal to the weight of any other Commissioner on this  
23 body.24 In regards to your request regarding Part 2.  
25 Because we received, the Commission has received it, so it

1 is part of the record. We have not stricken it from the  
2 record. Just for your clarification.

3 And in regards to your comments about my  
4 objectivity in this matter, I believe that your citing, my  
5 personal opinions taken out of context in regards to the  
6 news article. So, I don't have any influence in regards  
7 to--execution of my duties as Chair.

8 In regards to Mr. Chipchase's request, because  
9 as--

10 Mr. Wurdeman: Excuse me, if I may, what does that  
11 mean, Mr. Chair? Those are direct--I'd like a clarification  
12 on how it was taken out of context because--

13 Chairman: I'm not going to clarify because I  
14 didn't write the article. So, in regards to Mr. Chipchase's  
15 request--

16 Mr. Wurdeman: Mr. Pang is here. I'd like to call  
17 him as a witness then.

18 Chairman: Denied. In regards to Mr. Chipchase's  
19 request, because the Commissioners have reviewed all  
20 evidence, entire record that is on file, at this time we are  
21 not going to be allowing any presentations.

22 Mr. Chipchase: Very well, Chair. Then for the  
23 record allow me just to state my objection to that.

24 Chairman: That's fine.

25 Mr. Chipchase: The motion made by Commissioner

1 Anderson was made without public discussion. The decision or  
2 the motion to adopt particular parties, Findings of Fact,  
3 Conclusions of Law, is then made not in a public setting.  
4 The genesis for it is not identified in any public  
5 proceeding that I am aware of. The selection of particular  
6 conditions from our proposed Findings of Fact, Conclusions  
7 of Law, and Decision and Order that would amend the ENV's  
8 proposed findings. I'm not aware that there was any public  
9 deliberation or public discussion as to why those were to be  
10 included in the motion. And, so it seems to me that the  
11 decisions in this matter were not made open and publicly and  
12 certainly were not made following the opportunity of the  
13 parties to present their evidence in this case, in the form  
14 of discussion and argument regarding the Findings of Fact,  
15 Conclusions of Law, Decision and Order. It would then allow  
16 the Commission to ask the parties questions and to fair it  
17 out why particular conditions were included and why  
18 particular conditions were not. I would note that as part  
19 of that a number of the conditions that are existing in the  
20 orders today from both this body and the LUC were not  
21 included in the City's proposed submission. Yet, this  
22 Commission would adopt those providing less protection,  
23 providing less notice, providing less then its currently  
24 imposed through prior orders.

25 I don't believe that those kinds of decision

1 should have been made in private or without an opportunity  
2 for the parties to present the record. And, so I make an  
3 objection to that process. I make an objection to the  
4 refusal to allow argument on the motions and the  
5 presentation today. And, I join in Mr. Wurdeman's motions,  
6 both recusal and his objections to this process.

7 Mr. Wurdeman: And, I'd like to also join with  
8 Mr. Chipchase's objections as well.

9 Chairman: Okay. Your objection is noted. Okay.  
10 Moving on to the motion--So, I'll put the motion back on the  
11 floor, been seconded. So we are in discussion regarding the  
12 motion. Any discussions, Commissioners, at this time?

13 Member Hayashida: The only thing that I have is  
14 the Findings of Fact before 2011, ENV's 2011 application do  
15 not need to be included for the record.

16 Chairman: Are you making a motion to include the  
17 changes?

18 Member Hayashida: I'll make the motion to include  
19 the changes, to not include the Findings of Fact before  
20 ENV's 2011 application.

21 Chairman: Okay. Any objections to accepting the  
22 motion?

23 Member Anderson: No.

24 Chairman: Okay. Commissioners--

25 Member Anderson: Just to clarify. He--There was



1 an additional condition added upon my motion?

2 Chairman: Yes.

3 Member Anderson: Okay. Yeah, I have no objection  
4 there.

5 Chairman: Okay. Is there a second to his motion?

6 Member Anderson: I'll second it.

7 Chairman: Now, do you have any objections?

8 Member Anderson: No objections. But I do have just  
9 some general discussion points why I included, I guess, the  
10 two conditions from KOCA and the timing of the  
11 identification of an alternate site. Mr. Chipchase, I do  
12 appreciate the thoroughness of your Findings of Fact,  
13 Conclusions of Law, Decision and Order. Looking through the  
14 numerous conditions in there, I did pick out these two  
15 items, I think should be added to ENV's--Also with the--I  
16 did have some reservations about identifying a specific date  
17 when the landfill should be closed primarily due to the fact  
18 that, I think that date is more contingent upon the capacity  
19 and filling the capacity. Not a specific date. Thus, I felt  
20 a little more comfortable identifying an alternate site at a  
21 specific date and that site will just be, in other words, I  
22 guess a stand-by site until the current landfill hits  
23 capacity. That's a justification behind my three conditions  
24 I added to the motion.

25 Chairman: Okay. Any further discussions? [no



1 response] I understand, I guess, and I appreciate the  
2 parties positions. There are extensive submissions that you  
3 gave us. We as Commissioners have to review and study all of  
4 that and understand your position. So, you know, I  
5 appreciate all the hard work you guys put into this.  
6 However, I agree with Commissioner Anderson the fact that  
7 putting dates necessarily on particular, this particular  
8 subject matter and with the lack of another landfill or any  
9 other option that is affordable to the residents of this  
10 county, we have really no other choice in my opinion but we  
11 have to have an operating landfill. I mean whether your  
12 positions are that we don't or not, but I can appreciate  
13 that. But in reality of the matter is that we need a  
14 landfill.

15 Now, the City has two technology. I believe the  
16 City has stated, you know, their increase and the capability  
17 of reducing the amount of landfill, the amount of material  
18 that's going into the landfill. And, I further have a  
19 problem then with setting a date. I also think it's a more  
20 function of capacity rather than just coming and trying for  
21 any body whether it's this body or the LUC to try and set a  
22 potential date when that landfill will be closed in the  
23 absence of a working landfill or another existing landfill.  
24 Whether you agree with me or not, you know, we need a  
25 landfill. We just can't put it in somebody's backyard,

1 can't dump it in the ocean. We have to comply with whatever  
2 EPA standards and Department of Health standards that are  
3 required.

4           So, having said that, I concur with Commissioner  
5 Anderson's assessment that we do--It should really be a  
6 function of capacity. Having said that, however, personally  
7 I believe the City had an obligation and have an obligation  
8 to start working in identifying another landfill once this  
9 once hits whatever capacity. I'm not so sure from reading  
10 the submissions and the record that has been--That we're  
11 actually up to a point where we need to be as far as finding  
12 that. And, therefore--or I might not agree with the  
13 motion's date, as far as the deadline. I think that it's  
14 perfectly fine to set a deadline for the City to at least  
15 identify their next landfill. I think that's an obligation  
16 the City owes the people as well. And, I can appreciate  
17 that. Any other discussion?

18           Member Anderson: I could echo some of your  
19 comments, sir. One, in specific just to go on record, that  
20 it is disheartening. I believe I've been part of this  
21 Commission for several years now. I would say in 2012, the  
22 City made some progress and, I think we had a presentation  
23 identifying certain sites for replacement landfills. And so  
24 it's disheartening. I'm not sure if the ball was dropped  
25 there or what progress has been made to that effect in the

1 time being. And the 2022 date of identifying was 5.5 years  
2 from today. That's debatable whether that's enough time or  
3 not. It could be done in two years, it could be 10 years.  
4 I'm not sure. I just picked 5 years.

5 Chairman: That's fine. So, to clarify your point  
6 is for identification of a landfill, correct? Or a new  
7 landfill?

8 Member Anderson: Yes.

9 Chairman: So, it's not necessarily--

10 Member Anderson: And I acknowledge that's going to  
11 be a difficult decision by anyone. It's not that easy.

12 Chairman: Okay.

13 Ms. Chan: Chair, may I respond to the  
14 concerns--the one concern that was raised of the siting of  
15 the landfill and the City's work on that.

16 Chairman: Is it on the record already or--

17 Ms. Chan: No. My comment is just that the record  
18 in this proceeding for all intents and purposes was closed  
19 in 2012. So, there was no opportunity for the City to  
20 supplement that record, to add in any additional  
21 information, and that would be the reason that it appears  
22 that nothing had occurred since that time.

23 Chairman: That may be true, however, the City's  
24 requirement to submit your annual report has always been a  
25 condition on the record.

1 Ms. Chan: And the City has continued to comply  
2 with that as we reported in our annual report.

3 Chairman: Well, I guess my comment to that would  
4 be that, yes, the City has complied with submission of the  
5 record and even contentiousness to how far you've progressed  
6 in regards to actually identifying the next landfill site.  
7 So, that's not our fault.

8 Ms. Chan: No. I understand the concern. I just  
9 wanted to clarify why some of that is not currently in the  
10 record.

11 Chairman: Okay. Thank you.

12 Member Anderson: I appreciate it, and I think  
13 some of my concern might have been even though I've reviewed  
14 all of the material, I can't represent it verbatim, but I  
15 believe that in 2012 thereabouts when we were given a  
16 presentation on the alterate sites. I believe that might've  
17 been triggered in 2008, and there were discussion about why  
18 it has taken so long just to get to that point.

19 So, hopefully there has been progress since 2012. That's  
20 all.

21 Chairman: Okay. Any further discussion,  
22 Commissioners, at this time?

23 [colloquy between DCC Waihee-Polk and all  
24 Commissioners]

25 Member Anderson: Chair, make a motion for

1 executive session, please.

2 Member Hayashida: Second.

3 Chairman: Moved and seconded. Any objections?

4 [no response] Any abstentions? [no response] Okay. At  
5 this time the Commissioners move into executive session to  
6 consult with the Commission's attorney on the authority,  
7 duties, privileges and immunities pertaining to Section  
8 205-6 of the Hawaii Revised Statutes as amended in Chapter  
9 2, Subchapters 4 and 5 of the rules of the Planning  
10 Commission in accordance with HRS 92-5.

11 Mr. Chipchase: Chair, I have to object going into  
12 executive session while the motion to adopt an order is  
13 pending. And, I believe that counsel stated reasons for the  
14 executive session were to clarify the motion, which I  
15 believe should be done publicly and not in executive  
16 session.

17 Mr. Wurdeman: I join in with that assertion.

18 Counsel Waihee-Polk: I guess, further advice which  
19 I don't want to say in open meeting. So, I'm just going to  
20 say, I was trying--It's not something I want to discuss in  
21 open meeting. It's a legal advice I want to provide to my  
22 client, and it's not exactly that. That's partially what I  
23 started to say, and then I realized as I spoke on, I was  
24 actually starting to actually give advice openly in open  
25 meeting, and that's not something I should be doing. So,

1 I've requested that, and we can hold that just so that I can  
2 give one word of advice and you go back for discussion.

3 Chairman: Okay.

4 [EXECUTIVE SESSION MINUTES]

5 In: 3:00 pm.

6 Out: 3:18 p.m

7 Chairman: Okay. I'll call this meeting back into  
8 order. [bangs gavel] We have a motion, seconded. We're on  
9 discussion regarding Commissioner Hayashida's motion to  
10 remove all items from 2011, well from prior to 2011  
11 proceedings.

12 Okay. Commissioners, any further discussion on the  
13 matter?

14 Member Anderson: Chair, I'd like to discuss a  
15 little more openly just so I'm clear on couple things. I'm  
16 fairly certain that my motion perhaps isn't overly clear at  
17 the moment with the rest of the Commissioners. Try not to  
18 lose sight of the fact that in front of us right now is the  
19 LUC approved 2008/SUP-2. In my motion I reference that 2011  
20 ENV application and include the D&O. I think I prefer  
21 withdrawing my motion and clarifying and restating it. Just  
22 looking at the LUC approved 2008/SUP-2. Removing Condition  
23 14 and adding the three conditions I'd previously stated.  
24 Does that help clarify things?

25 Member Hayashida: So, you're removing the ENV's

1 Decision and Order, Item--

2 Member Anderson: Yes. I'm removing Condition 14.

3 Member Hayashida: This the document--

4 Member Anderson: Yes.

5 Chairman: Well, let me ask you this question  
6 then. The motion that you accepted was to strike from ENV's  
7 submission anything prior to 2011, correct?

8 Member Anderson: Commissioner Hayashida's.

9 Chairman: Yes.

10 Member Anderson: Correct.

11 Chairman: So, then for clarification purposes  
12 anything in the document prior to the 2011 proceedings then  
13 would be stricken anyway, correct?

14 Member Anderson: Yes.

15 Chairman: Okay. Any other discussion there? I  
16 mean, that's my understanding what his motion was.

17 Member Anderson: Yes. Technically, I just  
18 mentioned I'd like to withdraw my motion and just restate it  
19 to add some clarity. Is that okay with you, Chair? How  
20 should we address that open motion on the table?

21 Chairman: Well, the problem with withdrawing is  
22 he already--I guess--

23 Member Hayashida: You want me to withdraw my  
24 motion?

25 Chairman: You need a motion too. So--I mean, I



1 think for clarification purposes--Oh, may be not. I  
2 was thinking if he can restate the motion again, but he  
3 already made a motion that you accepted. So we're still in  
4 discussion on his motion. So, I guess that's fine. I mean,  
5 if you want, if that's what you--

6 Member Anderson: I would prefer, yeah. I mean,  
7 my intent is to just clarify the situation right now. It  
8 seems like there is some indecision on all of our parts,  
9 mine included, whether it's my motion and Commissioner  
10 Hayashida's. I would almost prefer just to start a clean  
11 slate and restate it clearly all at one time.

12 Chairman: Okay. So, then you need to withdraw  
13 your motion.

14 Member Hayashida: Withdraw my motion.

15 Chairman: Motion to withdraw. Do we have a  
16 second?

17 Member Anderson: Second.

18 Chairman: Moved and seconded. Any discussion on  
19 the motion to withdraw? [no response] Seeing none, any  
20 objections or any abstentions? [no response] Okay. Seeing  
21 none, then Commissioner Hayashida's motion has been  
22 withdrawn. Now you can go and withdraw yours.

23 Member Anderson: Okay. I would like to withdraw  
24 my original motion due to lack of clarity, I believe.

25 Chairman: Okay. So moved.



1 Member Hayashida: Second.

2 Chairman: Moved and seconded. Any discussion?  
3 [no response] Okay. Seeing none, any objections or any  
4 abstentions? [no response] Okay. Seeing none, then  
5 Commissioner Anderson's original motion--

6 Member Anderson: So, the motion I'd like to make,  
7 Chair, is look at the LUC approved 2008/SUP-2 to strike  
8 Condition 14 and add the three conditions that I'd  
9 previously mentioned from the KOCA D&O, page 82, Section C;  
10 page 86, No. 5; and the identification of an alternate site  
11 by December 31st, 2022.

12 Chairman: Okay. Clarification purposes, then the  
13 ENV submission you are still accepting the Findings of  
14 Fact--

15 Member Anderson: Conclusions of Law; correct.

16 Chairman: However, regarding the Decision and  
17 Order, you're just adding the three conditions?

18 Member Anderson: Correct.

19 Chairman: Okay. And what was--

20 Mr. Chipchase: I'm sorry, that's not how I  
21 understood the motion. If I could have clarity of that.  
22 I thought Commissioner Anderson you were adopting these  
23 Findings and Conclusions, but proposing to amend the  
24 Decision and Order to be the LUC's approved Decision and  
25 Order with deletion of Condition 14 and the addition of the

1 three conditions you mentioned earlier?

2 Member Anderson: Correct. That's my  
3 understanding.

4 Chairman: Okay.

5 Member Anderson: I believe, Chair, we're saying  
6 the same thing, although you may have left out removing, the  
7 deletion of Condition 14.

8 Chairman: Oh, okay. Correct, correct.

9 Okay. So, adding on the deletion of Condition 14, you're  
10 still accepting ENV's Findings of Fact, Conclusions of Law  
11 and adding your three additional conditions.

12 Member Anderson: Yes, while removing Condition  
13 14.

14 Chairman: Okay.

15 Member Anderson: Does that clarify things a little  
16 bit?

17 Member Hayashida: Yes.

18 Member Anderson: Okay.

19 Chairman: In regards to the Findings of Fact and  
20 Conclusions of Law; in regards to striking anything prior to  
21 2011?

22 Member Anderson: Yes. Sorry. It goes without  
23 saying picking up on what Commissioner Hayashida earlier  
24 said that anything in there prior to 2011 would be removed.

25 Chairman: Okay. It's been moved. Do we have a

1 second?

2 Member Hayashida: Second.

3 Chairman: Okay. Moved and seconded. We are in  
4 discussion on the motion basically for, I guess, my  
5 clarification purposes, the D&O portion from the 2008/SUP-2  
6 that was ruled on already by the LUC is what stands and then  
7 you're just adding the three additional conditions today to  
8 that?

9 Member Anderson: Yes, and removing 14.

10 Chairman: And removing 14.

11 Member Anderson: Yes.

12 Chairman: And 14 was the date restriction.

13 Member Anderson: Yes. Page 14 is basically solid  
14 waste shall be allowed at WGSJ up to July 31st, 2012,  
15 provided that only ash and residue from HPOWER shall be  
16 allowed at the WGSJ after July 31st, 2012.

17 Chairman: That's basically your clarification  
18 because my understanding is that the court have already  
19 struck down Condition 14.

20 Member Anderson: Yes.

21 Chairman: Okay. All right. Any further  
22 discussion, Commissioners? [no response] Okay. Seeing none,  
23 the motion on the floor. All those in favor, say aye.

24 All Commissioners: Aye.

25 Chairman: Any opposed? [no response]

1 Any abstentions? [no response] Okay. The motion is passed.

2 You have anything else, Commissioners? Okay.

3 Seeing none, do you have a motion to adjourn?

4 Member Hayashida: Motion to adjourn.

5 Chairman: It's been moved.

6 Member Young: Second.

7 Chairman: Moved and seconded. Any objections? [no  
8 response] Any abstentions? [no response] Okay. Thank you  
9 very much, Commissioners. This meeting is adjourned.

10 [bangs gavel].

11 ADJOURNMENT:

12 There being no further business before the  
13 Planning Commission, the meeting was adjourned by Chair  
14 Hazama at approximately 3:28 p.m.

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1 I certify that the foregoing is  
2 a true and correct transcription  
3 of the proceedings, prepared to  
4 the best of my ability, of the  
5 meeting held on Wednesday,  
6 March 1, 2017.

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10 Gloria Takara

11 Secretary-Hearings Reporter

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14 ADOPTED ON: \_\_\_\_\_

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BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Application of )  
 )  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
 )  
For A New Special Use Permit To )  
Supersede Existing Special Use Permit To )  
Allow A 92.5-Acre Expansion And Time )  
Extension For Waimanalo Gulch Sanitary )  
Landfill, Waimanalo Gulch, O`ahu, )  
Hawaii, Tax Map Key: 9-2-03: 72 And 73 )  
 )  
 )  
In the Matter of the Application of )  
 )  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
 )  
 )  
To delete Condition No. 14 of Special Use )  
Permit No. 2008/SUP-2 (also referred to as )  
Land Use Commission Docket No. SP09-403) )  
which states as follows: )  
 )  
 )  
"14. Municipal solid waste shall be allowed at )  
the WGSL up to July 31, 2012, provided that )  
only ash and residue from H-POWER shall be )  
allowed at the WGSL after July 31, 2012." )  
 )  
 )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF the **DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S MEMORANDUM IN OPPOSITION TO INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S ALTERNATIVE MOTION TO DENY THE APPLICATIONS UNLESS**

**ADDITIONAL CONDITIONS ARE IMPOSED** was duly served by hand-delivery to  
the following on the date below, addressed as follows:

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City and County of Honolulu  
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DATED: Honolulu, Hawai'i, May 19, 2017.



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KAMILLA C. K. CHAN  
DANA VIOLA  
Deputies Corporation Counsel

17-03069/571998