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DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

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

In The Matter Of The Application Of  
The

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

For A New Special Use Permit To Su-  
persede Existing Special Use Permit To  
Allow A 92.5-Acre Expansion And Time  
Extension For Waimānalo Gulch Sani-  
tary Landfill, Waimānalo Gulch, O'ahu,  
Hawai'i, Tax Map Key: 9-2-03: 72 And 73

FILE NO. 2008/SUP-2

**KO OLINA COMMUNITY  
ASSOCIATION AND MAILE  
SHIMABUKURO'S RESPONSE TO  
DEPARTMENT OF  
ENVIRONMENTAL SERVICES,  
CITY AND COUNTY OF  
HONOLULU'S MOTION TO  
REOPEN THE CONTESTED CASE  
HEARING FOR THE LIMITED  
PURPOSE OF TAKING OFFICIAL  
NOTICE OF FACTS**

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 re-  
ferred to as Land Use Commission  
Docket No. SP09-403) which states as

**CERTIFICATE OF SERVICE**

follows:

“14. Municipal solid waste shall be allowed at 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.”

**KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO’S  
RESPONSE TO DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY  
AND COUNTY OF HONOLULU’S MOTION TO REOPEN THE CONTESTED  
CASE HEARING FOR THE LIMITED PURPOSE OF  
TAKING OFFICIAL NOTICE OF FACTS**

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On September 30, 2016, Applicant Department of Environmental Services, City and County of Honolulu (“ENV”), filed a motion to reopen the contested case hearing for the limited purpose of taking official notice of certain facts (the “**Motion**”). Specifically, the Motion asks the Honolulu Planning Commission to admit into evidence as ENV Exhibit A51 ENV’s Sixth Annual Report dated June 15, 2016 (the “**Report**”) submitted to the Honolulu Planning Commission by ENV Director Lori M. K. Kahikina, P.E. (the “**Director**”). Intervenors Ko Olina Community Association and Maile Shimabukuro (together, “**KOCA**”) do not oppose admission of the Report on the condition that KOCA has the opportunity to “submit rebuttal” evidence pursuant to Planning Commission Rules § 2-71(f).

First, the Report states that the Landfill Advisory Committee issued its final report ranking 11 sites on September 25, 2012. The Report further states that ENV is having a consultant “further review and analyze sites based on the following technical and engineering considerations: capacity, cost, feasibility, land ownership (including cost and ability to acquire, capacity and infrastructure requirements,

logistics and transportation, development costs, and capacity projections for current landfills, WGS� and PVT), and a timetable for WGS�, new landfill development and construction.” Report at 2. The Report continues that “[b]ased on the remaining capacities of the existing landfills and the projected fill rates, it is prudent to analyze if any of the 11 identified sites could become more or less favorable based on this timetable.” *Id.* The report concludes “[i]t is anticipated that the project will be completed before the end of the year.” *Id.*

KOCA requests an opportunity to examine the Director regarding the foregoing statements and the process described in the Report. This testimony is relevant to whether ENV has exercised reasonable diligence in siting a new landfill to replace or supplement the WGS� as required by Condition 1 (“**Condition 1**”) of the Planning Commission’s August 4, 2009 Findings of Fact, Conclusions of Law, and Decision and Order (the “**2009 Order**”).

Second, the Report discusses H-POWER’s third boiler and the types of waste that it can accept as follows:

[The third boiler] now enables the facility to process and burn **bulky waste** that previously had to be disposed at the landfill. . . . The **sludge** receiving station at H-POWER commenced commercial operations in May 2015. The sludge processing system has the capacity to process 90 tons of sludge per day and is accepting dewatered sludge from Honouliuli, Waianae, and Kailua Wastewater Treatment Plants. The 20,000 tons per year of sludge currently produced by these plants is now being diverted from the landfill to H-POWER. In addition, a corresponding amount of bulky waste, which was required to bulk the sludge at the landfill, is now being disposed of at H-POWER. . . . The disposal of treated **medical waste** at H-POWER commenced on December 30, 2015. Due to safety concerns, however, medical sharps will not be accepted at H-POWER and will continue to be disposed of at the landfill. . . . The City is discussing **residue** reduction/reprocessing options with Covanta to reduce/eliminate residue disposal at the landfill. A plan

to capture more of the metal fraction in the process residue is being devised to allow the residue to be re-processed through the third boiler. . . . Approximately 23,000 tons per year of [auto shredder residue] is disposed at WGS. Covanta is currently devising test procedures to characterize the material for possible disposal at H-POWER.

Report at 11 (emphasis added).

KOCA requests an opportunity to examine the Director regarding the quantities of bulky waste, sludge, medical waste, residue and auto shredder residue that were landfilled or disposed at H-POWER in 2014, 2015 and 2016. Such evidence is relevant to the ENV's compliance with Condition 2 of the 2009 Order, which directs that ENV "shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge."

Third, the Report states, "To further reduce the amount of waste disposed of at the landfill, the City issued a RFP for demonstration waste-to-energy facilities in July 2009 and RFPs for recycling H-POWER residue, fly ash, and bottom ash in March 2010. The City did not receive any responses to these RFPs." KOCA requests an opportunity to examine the Director regarding whether any further efforts have been made to explore demonstration projects since March 2010. Such evidence is relevant to ENV's compliance with Condition 2 of the 2009 Order.

Fourth, the Report states that the Synagro facility processes sludge into fertilizer pellets. During the contested case hearing, ENV discussed the construction of a second digester at the Synagro facility and a new In-Vessel Conversion Facility that

would be able to process green waste, food waste and biosolids. ENV represented that the In-Vessel Conversion Facility was expected to be operational in early 2013. KOCA requests an opportunity to examine the Director regarding the status of the second digester and the In-Vessel Conversion Facility. Such evidence is relevant to the ENV's compliance with Condition 2 of the 2009 Order.

Fifth, ENV states that the Report "provides updated data relating to WGSL." Motion Mem. at 4. Since the evidence closed in April 2012, additional evidence has come to light regarding the landfill's violations of environmental laws. Specifically, in 2014, federal criminal charges were brought against the Landfill's operators following the Landfill's release of waste in 2012. And separately, in 2013, the operators and ENV entered into a consent decree with the U.S. Environmental Protection Agency regarding its gas monitoring system. As a condition of admission of the Report, this additional evidence should be admitted to provide complete "updated data relating to WGSL."

Finally, the Report states that "[t]he landfill will continue operations under the current SUP while the deadline for receipt of MSW is resolved by the Planning Commission and the LUC." Report at 5. In *Department of Environmental Services, City & County of Honolulu v. Land Use Comm'n, State of Hawaii*, 127 Hawai'i 5 (2012), the Hawai'i Supreme Court concluded that the record did not reflect the "substantial evidence" necessary to support the State Land Use Commission's ("LUC") Condition 14, which required the closure of the Landfill to municipal solid waste after July 31, 2012. *Id.* at 10, 17. As the court explained, however, Condi-

tion 14 was “a material condition to the LUC’s approval.” *Id.* at 17. Because a material condition of the order could not stand, the court held that “the LUC’s approval of SUP-2 also cannot stand . . . .” *Id.* Accordingly, the court vacated the order<sup>1</sup> and remanded the proceeding on SUP-2 to the LUC “for further hearings as the LUC deems appropriate.” *Id.* at 18. Given that the LUC’s approval was vacated by the Hawai’i Supreme Court, the last-approved or “current” SUP for the Landfill is Special Use Permit File No. 86/SUP-5 and LUC Docket No. SP87-362, which expressly required the Landfill to close on November 1, 2009. Ex. K155 at 18 (¶ 12) (3/14/08 LUC order).

Subject to the condition that KOCA is granted the foregoing requests for examination and submission of rebuttal evidence, KOCA does not oppose the admission of the Report into evidence.

DATED: Honolulu, Hawai’i, October 7, 2016.



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<sup>1</sup> “Vacate” means “[t]o nullify or cancel; make void; invalidate.” *Black’s Law Dictionary* (10th ed. 2014). Thus, “[w]hen used in a[] [court] opinion or dispositional order, . . . the phrase ‘vacate and remand’ indicates the litigation continues in the court or agency in accordance with the appellate court’s instruction.” Hawai’i Rule of Appellate Procedure 35(e).

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The undersigned certifies that on this day a copy of the foregoing document was duly served by hand delivery on the following persons:

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DATED: Honolulu, Hawai'i, October 7, 2016.

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CADES SCHUTTE  
A Limited Liability Law Partnership



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