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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

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 Waimānalo Gulch
Sanitary Landfill, Waimānalo Gulch,
O'ahu, Hawai'i, 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

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER**

EXHIBITS 1 & 2

CERTIFICATE OF SERVICE

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

17 JAN 27 P 4:00

RECEIVED

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.”

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION
AND MAILE SHIMABUKURO'S PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

Pursuant to Honolulu Planning Commission Rule § 2-74, Intervenors Ko Olina Community Association (the “**Association**”) and Maile Shimabukuro (together, “**KOCA**”) submit the attached proposed Findings of Fact, Conclusions of Law and Decision and Order.

The central issues this proceeding are directly related: when will Applicant Department of Environmental Services of the City and County of Honolulu (the “**ENV**” or “**City**”) close the Waimanalo Gulch Sanitary Landfill (the “**Landfill**” or “**WGSL**”) and open a new landfill. As the record shows, the City repeatedly agreed to close WGSL and repeatedly broke its promises. Instead of closing the Landfill, the City has doubled the size of WGSL.

As the record shows, WGSL burdens the community. Among other problems, WGSL has been cited for more violations of federal and state laws than any landfill in the State of Hawai'i. Those violations reflect operating practices that harm the nearby residents, local businesses and the environment. For example, in Janu-

ary 2011 the Landfill released vast amounts of municipal solid waste into coastal waters. The waste, including medical sharps, washed up on public beaches.

As the record shows, the Honolulu Planning Commission (the “**Commission**”) and the Hawai‘i Land Use Commission (“**LUC**”) have repeatedly ordered the City to open a new landfill. Most recently, beginning in 2010, the Commission ordered the City to develop a new landfill with “reasonable diligence.” More than six years later, the City has merely identified eleven “potential sites” for a landfill. To date, the City has not settled on a single site as the future location of the landfill.

Rather than work with reasonable diligence to identify a new landfill site, the City opposes a firm closure deadline for WGSF. The community has endured the Landfill for 28 years. It is time for another area to share in the burden that all O‘ahu residents and business share in creating.

As the record shows, a new landfill could be developed in less than seven years. To provide the City ample time to site and develop a new landfill and ensure that the parties do not have to appear before the Commission on a request for an extension, KOCA proposes a reasonable closure schedule. Specifically, the Landfill should (1) immediately close to all forms of MSW that may be disposed of through other means, subject to certain exceptions (consistent with the ENV’s prior proposed form of order); (2) close to most remaining forms of waste by March 1, 2024; and (3) and close completely by March 1, 2027. The evidence in this case, as set forth in the attached findings, supports these deadlines and the other conditions in KOCA’s proposed order.

To assist the Commission in reviewing the proposed orders, Exhibit 1 to the this submission is a table listing each element of KOCA's proposed form of order and comparing those elements with prior orders entered by the Commission and the LUC and with the form of order that the ENV proposed in 2012. A copy of ENV's prior proposed form of order is attached as Exhibit 2.

KOCA respectfully asks that the Commission enter its proposed Findings of Fact, Conclusions of Law and Decision and Order.

DATED: Honolulu, Hawai'i, January 27, 2017.

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A Limited Liability Law Partnership



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FILE NO. 2008/SUP-2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER**

EXHIBIT A

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER**

On December 3, 2008, Applicant Department of Environmental Services of the
City and County of Honolulu (the “ENV” or “City”) filed an application (the “2008

Application) for a new special use permit (“**SUP**”) for the Waimanalo Gulch Sanitary Landfill (the “**Landfill**” or “**WGSL**”) and for the withdrawal of the existing SUP for the Landfill. On June 28, 2011, the ENV filed an application to modify the SUP for the Landfill (the “**2011 Application**”). The Honolulu Planning Commission (the “**Planning Commission**”) consolidated the 2008 and 2011 Application proceedings.

Pursuant to Planning Commission Rule § 2-77(a) and the State of Hawai‘i Land Use Commission’s (the “**LUC**”) October 8, 2012 order, and based on the record in this consolidated matter, including the evidence and arguments presented at the contested case hearings; the credibility of the witnesses testifying at the hearings; the respective proposed findings of fact, conclusions of law and decisions and orders submitted by the parties; the parties’ respective responses thereto; and the other written submissions and arguments of the parties, the Planning Commission hereby makes the following consolidated findings of fact, conclusions of law and decision and order. These findings, conclusions, and decision and order shall completely supersede the Planning Commission’s August 4, 2009 Findings of Fact, Conclusions of Law and Decision and Order.

Where appropriate, findings of fact shall operate as conclusions of law and conclusions of law shall operate as findings of fact. Pursuant to Planning Commission Rule § 2-77(b), “[a]ny proposed findings of fact or conditions submitted by the petitioner or other parties that are not expressly ruled upon by the planning

commission, or rejected by clearly contrary findings of fact, are deemed to be denied.”

I. FINDINGS OF FACT

1. The Landfill is located at 92-460 Farrington Highway, Honouliuli, Ewa, O’ahu. 2008 Application at Part 1.

2. In 2003, the Landfill was expanded by 21 acres for a total of 107.5 acres. 2011 Application Proceeding (“**2011AP**”) Ex. K2 (LUC’s 2003 decision).

3. In this consolidated matter, the ENV seeks, among other things, to expand the permitted size of the Landfill by 92.5 acres for a total of approximately 200 acres. 2008 Application at 1-1.

A. Procedural History Regarding the 2008 Application

(a) The DPP Accepted an FEIS for the Landfill Expansion.

4. On November 23, 2006, the Office of Environmental Quality Control of the State of Hawai’i (the “**OEQC**”) published notice that the environmental impact statement (“**EIS**”) for the expansion of the WGSL was available for public review and comment. *See* 2008 Application Proceeding (“**2008AP**”) 5/1/09 Department of Planning and Permitting of the City and County of Honolulu (“**DPP**”) findings of fact, conclusions of law, and decision and recommendation (“**DPP’s 2009 Recommendation**”) at 6.

5. On October 13, 2008, a final environmental impact statement for the Landfill expansion (the “**2008 FEIS**”) was accepted by the DPP on behalf of the Honolulu Mayor. 2008AP DPP’s 2009 Recommendation at 6; 2008AP 8/11/09 ENV’s opp. to Intervenors’ motion to dismiss, Ex. 7.

6. On October 23, 2008, the OEQC published notice of the 2008 FEIS acceptance. 2008AP DPP's 2009 Recommendation at 6.

(b) The ENV Filed the 2008 Application.

7. On December 3, 2008, the ENV filed the 2008 Application to expand the 107.5-acre operating portion of the property by approximately 92.5 acres for a total of approximately 200 acres (the "**Project**"). 2008 Application at 1-1.

8. Of the approximately 92.5 acres in the expansion area, approximately 37 acres were to be utilized for landfill cells and related uses. 2008 Application at 1-2.

9. In addition, the expansion area was to include the development of landfill-associated support infrastructure, including drainage, access roadways, a landfill gas collection and monitoring system, leachate collection and monitoring systems, stockpile sites, a public drop-off center, a landfill gas-to-energy system and other related features. 2008 Application at Part 1.

10. In the 2008 Application, the ENV sought to withdraw its existing SUP for approximately 107.5 acres, Special Use Permit File No. 86/SUP-5, and the conditions imposed therein, if the request for the new SUP was granted. 2008AP DPP's 2009 Recommendation at 3.

11. The Planning Commission scheduled a public hearing to consider ENV's application for May 6, 2009.

12. On April 3, 2009, a notice of the hearing of the matter was published in the *Honolulu Star-Bulletin*.

(c) Ko Olina Community Association, Ms. Shimabukuro and Ms. Hanabusa Moved to Intervene.

13. On April 16, 2009, Ko Olina Community Association (the “**Association**”), the Honorable Maile Shimabukuro and the Honorable Colleen Hanabusa (collectively, “**Intervenors**”) filed a petition to intervene in the 2008 Application proceeding.

14. On April 24, 2009, the ENV filed a memorandum in opposition to Intervenors’ petition to intervene.

(d) The DPP Recommended Approval of the 2008 Application.

15. On May 1, 2009, the DPP transmitted its report and recommendation for approval of the 2008 Application to the Planning Commission.

(e) May 1, 2009 Site Visits.

16. On May 1, 2009, the Planning Commission conducted a site visit to the Landfill and the H-POWER facility.

(f) May 6, 2009 Hearing.

17. On May 6, 2009, the Planning Commission held a public hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai‘i, and heard public testimony.

(g) Mr. Apo Moved to Intervene.

18. On May 7, 2009, Todd K. Apo (“**Mr. Apo**”) filed a petition to intervene.

19. On May 18, 2009, the ENV filed a memorandum in opposition to Mr. Apo’s petition.

(h) Intervenors Filed a Motion to Recuse Commission Kaopua.

20. On May 19, 2009, Intervenors filed a motion to recuse Commissioner John Kaopua.

(i) May 20, 2009 Hearing.

21. On May 20, 2009, the Planning Commission resumed the public hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

22. The Planning Commission heard and granted Intervenors' petition to intervene.

23. Pursuant to Planning Commission Rules Subchapter 5, the matter was noted as a contested case.

24. The Planning Commission also heard argument on Mr. Apo's petition to intervene.

(j) The ENV Opposed Intervenors' Motion to Recuse.

25. On June 5, 2009, the ENV filed a memorandum in opposition to Intervenors' motion to recuse Commissioner Kaopua.

(k) June 10, 2009 Hearing.

26. On June 10, 2009, the hearing resumed at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

27. The Planning Commission heard and granted Intervenors' motion to recuse Commissioner Kaopua. 2008AP 6/10/09 Minutes at 9.

28. The Planning Commission denied Mr. Apo's petition to intervene on the grounds that it was untimely filed, that Mr. Apo's position regarding the 2008 Ap-

plication was substantially the same as the position of the Intervenors and that the proceeding would be inefficient and unmanageable if Mr. Apo were allowed to intervene. 2008AP 7/27/09 Planning Commission's findings of fact, conclusions of law, and order at 3.

29. The Planning Commission closed the public hearing on the 2008 Application.

(l) The Parties Filed Their Respective Witness Lists.

30. On June 15, 2009, Intervenors filed their list of witnesses naming 42 potential witnesses, including Mr. Apo. The ENV also filed its list of witnesses naming six potential witnesses.

(m) June 22, 2009 Hearing.

31. On June 22, 2009, the contested case hearing began at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai'i.

32. The ENV offered Exhibits A1 through A31, which were accepted into the record by the Planning Commission. 2008AP 6/22/09 Tr. at 29:2-13.

33. The ENV called to testify Brian Takeda, who was qualified as an expert in the field of urban and regional planning, and Hari Sharma, Ph. D., who was qualified as an expert in the field of geotechnical and geo-environmental engineering. 2008AP 6/22/09 Tr. at 33:5-8 (Takeda), 234:7-12 (Sharma).

34. Intervenors offered, and the Planning Commission received into the record, Exhibits B1 and B4. 2008AP 6/22/09 Tr. at 81:6-11; 226:14-15.

(n) June 24, 2009 Hearing.

35. On June 24, 2009, the Planning Commission resumed the contested case hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

36. The examination of Dr. Sharma was completed.

37. The ENV called to testify Joseph R. Whelan, who was the General Manager of Waste Management of Hawaii, Inc. ("**Waste Management**"), which operates the Landfill.

(o) Intervenors Moved to Dismiss the 2008 Application.

38. On June 29, 2009, Intervenors filed a motion to dismiss the 2008 Application, contending that the 2008 FEIS did not cover the entire 200-acre site and, therefore, the 2008 Application must be dismissed.

(p) July 1, 2009 Hearing.

39. On July 1, 2009, the Planning Commission resumed the contested case hearing at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai'i.

40. The examination of Mr. Whelan was completed.

41. The ENV called to testify Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, who at the time was the Chief of the Division of Refuse, City and County of Honolulu. 2008AP 7/1/09 Tr. at 93:2-8 (Von Pein); 176:4-9 (Doyle).

42. The ENV offered, and the Planning Commission accepted for the record, Exhibit A32. 2008AP 7/1/09 Tr. at 168:16-17.

(q) July 2, 2009 Hearing.

43. On July 2, 2009, the Planning Commission resumed the contested case hearing at the City Council Chambers, Third Floor, 530 South King Street, Honolulu, Hawai'i.

44. The ENV offered no further witnesses and concluded its case-in-chief. 2008AP 7/2/09 Tr. at 4:15–17.

45. Intervenors began their case-in-chief and presented testimony from Abbey Mayer, Josiah Hoohuli, William J. Aila, Jr., Daniel Banchiu, Cynthia Rezentes, Maeda Timson and Mr. Apo.

46. The ENV offered, and the Planning Commission received into the record, Exhibits A33 and A34. 2008AP 7/2/09 Tr. at 32:20–25, 240:7–13.

47. Intervenors offered, and the Planning Commission received into the record, Exhibit B5. 2008AP 7/2/09 Tr. at 185:21–23.

48. Other documents were referenced by the Planning Commission and the parties as Exhibits B2 and B3, but the documents were not received into evidence. 2008AP 7/2/09 Tr. at 9:4–6, 21:25.

49. Intervenors rested their case. 2008AP 7/2/09 Tr. at 279:15.

(r) The ENV Opposed Intervenors' Motion to Dismiss.

50. On July 6, 2009, the ENV filed a memorandum in opposition to Intervenors' motion to dismiss the 2008 Application.

(s) **July 8, 2009 Hearing.**

51. On July 8, 2009, the Planning Commission resumed the contested case hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

52. The ENV presented as a rebuttal witness David M. Shideler, who was qualified as an expert in archaeology and historical cultural resources. 2008AP 7/8/09 Tr. at 11:16–21.

53. The ENV offered, and the Planning Commission received into the record, Exhibits A35, A36 and A37. 2008AP 7/8/09 Tr. at 8:25–9:5, 65:14–22, 68:6–13.

54. Intervenors made their witness, Mr. Apo, available for additional questions by Commissioner Beadie Dawson.

55. The examination of Mr. Apo was completed.

56. The Planning Commission heard and denied Intervenors' motion to dismiss the 2008 Application.

(t) **Post-Hearing Submissions by the Parties.**

57. On July 17, 2009, the ENV filed its post-hearing brief and its proposed findings of fact, conclusions of law, and decision and order ("**proposed findings**"). Intervenors also filed their post-hearing brief and proposed findings.

58. On July 29, 2009, the ENV filed a response to Intervenors' post-hearing brief and exceptions to Intervenors' proposed findings. Intervenors filed a reply brief to the ENV's post-hearing brief and its proposed findings.

(u) The Commission's 2009 Decision

59. On August 4, 2009, the Planning Commission entered its findings of fact, conclusions of law, and decision and order granting the 2008 Application.

60. In its decision, the Planning Commission imposed several conditions, including the following:

1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on O'ahu. Upon the selection of a new landfill site or sites on O'ahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.

2. The Applicant 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.

3. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on O'ahu, the WGSL's operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order.

.....

5. WGSL shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24-hours a day.

6. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGSL with Hawaiian Electric Company, with

respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

7. The operations of the WGSL under 2008/SUP-2 shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.

8. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

9. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

10. The Applicant shall notify the Planning Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2.

2011AP Ex. K12 at 25–26 (2009 decision).

(v) The LUC's 2009 Decision.

61. The Planning Commission transferred the record and its decision in the 2008 Application proceeding to the LUC.

62. On September 10, 2009, Intervenors filed a motion to intervene before the LUC.

63. On September 17, 2009, the ENV filed a memorandum in opposition to Intervenors' motion to intervene.

64. On September 21, 2009, Intervenors filed a motion to deny the 2008 Application.

65. On September 23, 2009, the ENV filed a memorandum in opposition to Intervenors' motion to deny the 2008 Application.

66. On September 24, 2009, the LUC conducted a meeting on the 2008 Application in the Kaua'i Meeting Room, Sheraton Waikiki Hotel, Honolulu, Hawai'i. The LUC held a hearing and recognized the Association, Ms. Shimabukuro and Ms. Hanabusa as having intervenor status based their intervenor status before the Planning Commission.

67. The LUC also heard argument from the ENV and Intervenors regarding the 2008 Application.

68. Following discussion, a motion carried to grant the 2008 Application, subject to:

- (1) the withdrawal of County Special Use Permit File No. 86/SUP-5 and LUC Docket No. SP87-362, provided that the existing conditions therein shall be incorporated to the extent they are consistent with and applicable to this decision and are not duplicative of any additional conditions imposed hereafter;
- (2) the conditions as recommended by the Planning Commission in County Special Use Permit File No. 2008/SUP-2 (LUC Docket No. SP09-403) and modified as appropriate; and (3) . . . additional conditions

2011AP Ex. K15 at 4 (LUC's 2009 decision).

69. On October 22, 2009, the LUC filed its decision and imposed the following additional conditions:

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.

15. The Honolulu City Council through the City Administration shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City Council and the City Administration.

16. The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSL.

2011 AP Ex. K15 at 8–9 (LUC’s 2009 decision).

(w) The Parties Appealed the LUC’s 2009 Decision.

70. The ENV and Intervenors appealed the LUC’s 2009 decision.

a. The ENV’s Appeal to Circuit Court.

71. On November 19, 2009, the ENV filed a notice of appeal to the Circuit Court of the First Circuit, State of Hawai‘i, challenging the LUC’s Conditions 14, 15 and 16.

72. The ENV did not challenge any conditions imposed by the Planning Commission.

b. Intervenors’ Appeal to Circuit Court.

73. On November 19, 2009, Intervenors filed a notice of appeal challenging the LUC’s decision to permit the expansion of the Landfill and its continued operation.

c. The Circuit Court’s Decision in the Appeals.

74. On July 14, 2010, the circuit court held a hearing.

75. On September 21, 2010, the circuit court entered an order affirming the LUC’s 2009 decision with modifications. The circuit court affirmed Condition 14. With respect to Conditions 15 and 16, the circuit court deleted the references to the Honolulu City Council and the City administration and substituted the ENV as the responsible body. The circuit court affirmed the LUC’s decision in all other respects.

76. On October 19, 2010, the circuit court entered final judgment in both appeals.

d. The ENV Appealed the Circuit Court's Decision to Affirm Condition 14 to the ICA.

77. On November 12, 2010, the ENV filed its notice of appeal with the State of Hawai'i Intermediate Court of Appeals (the "ICA"). On appeal, the ENV only challenged Condition 14.

78. Intervenors did not appeal the circuit court's ruling.

79. On July 14, 2011, the ENV filed an application to transfer the case to the Hawai'i Supreme Court.

80. On August 1, 2011, the supreme court granted the application to transfer.

B. Procedural History Regarding the 2011 Application

(a) The ENV Filed an Application with the Department of Planning and Permitting.

81. While the ENV's appeal of Condition 14 was pending, on June 28, 2011, the ENV filed the 2011 Application to modify the SUP by deleting the LUC's Condition 14. 2011AP Ex. K161 at 1 (2011 Application).

82. The 2011 Application sought to "modify 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 [(the "LUC's 2009 Order")], by deleting the July 31, 2012, deadline to cease disposal of municipal solid waste at [the Waimanalo Gulch Sanitary Landfill], as set forth in Condition No. 14 of said Order." 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).

83. By requesting the deletion of Condition 14, the ENV "seeks to use the WGSL until it reaches its permitted capacity" 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).

84. According to the ENV, “[t]he basis for [the] Application is that the current permitted area of the Landfill, approximately 200 acres, has a useful life well beyond July 31, 2012.” 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).

85. The ENV further asserts that it is “in the public interest to use WGSL . . . to capacity.” 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).

86. On September 4, 2011, a notice of the Planning Commission’s public hearing to consider the 2011 Application set for October 5, 2011, was published in the Honolulu Star-Bulletin.

87. On September 9, 2011, the DPP Director sent the Planning Commission a report and recommendation for approval of the 2011 Application. 2011AP 9/9/11 Memorandum from David K. Tanoue to Chair Pingree and Members of the Planning Commission (“**DPP’s 2011 Recommendation**”). See Planning Commission Rules § 2-41(d).

(b) The Association, Ms. Shimabukuro and Schnitzer Moved to Intervene.

88. On September 16, 2011, the Association and Ms. Shimabukuro (together, “**KOCA**”) filed a motion to recognize them as parties or, alternatively, to intervene.

89. The same day, Schnitzer Steel Hawaii Corp. (“**Schnitzer**”) filed a motion to intervene.

90. On September 23, 2011, the ENV filed a memorandum in opposition to KOCA’s motion.

91. On September 30, 2011, KOCA filed a reply to the ENV’s memorandum in opposition.

92. On October 5, 2011, the Planning Commission held a public hearing on the 2011 Application at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai'i.

93. The Planning Commission heard testimony in favor of the 2011 Application from Raymond Young of DPP; Lee Mansfield of Hawaii American Water; Edwin Arellano of Hawaii Bio-Waste; Matt McKinney of 1-800-GotJunk; Kris Gourlay of Rolloffs Hawaii; and John Tsukada of Island Commodities. 2011AP 10/5/11 Tr. at 5:3, 19:6, 20:6, 25:13, 28:8, 31:17.

94. The Planning Commission heard testimony in opposition to the 2011 Application from Councilmember Tom Berg of the Honolulu City Council; Patty Teruya of Nanakuli-Maili Neighborhood Board No. 36; Celeste Lacuesto; and Evelyn Souza. 2011AP 10/5/11 Tr. at 15:4, 22:21, 29:4, 30:11.

95. The Planning Commission granted Schnitzer's petition to intervene, granted KOCA's motion to intervene and denied KOCA's alternative motion for continued recognition as party intervenors. 2011AP 10/5/11 Tr. at 35:5-23, 42:9-43:3.

96. Accordingly, pursuant to Planning Commission Rule § 2-56(c), the 2011 Application was "processed as a contested case."

(c) The Planning Commission Held a Prehearing Conference.

97. On October 14, 2011, the Planning Commission held a prehearing conference with the parties and the Chair of the Planning Commission.

(d) The Parties Filed Witness Lists.

98. On October 26, 2011, the ENV filed a list of witnesses naming five potential witnesses. KOCA filed a list of witnesses naming 31 potential witnesses. Schnitzer filed a list of witnesses naming one potential witness.

(e) The Planning Commission Entered an Order Regarding the Prehearing Conference.

99. On November 9, 2011, the Planning Commission entered an order regarding the prehearing conference. The order stated in relevant part that “[t]he deadline for filing and serving written direct testimony and exchanging exhibits shall be November 30, 2011” and that “[a]t the contested case hearing, all written direct testimony shall be preceded by an oral summary of no more than 10 minutes.” 11/9/11 order regarding prehearing conference at 2–3 (¶ 10).

(f) KOCA Moved to Dismiss the 2011 Application for Lack of Jurisdiction.

100. On November 7, 2011, KOCA moved to dismiss the 2011 Application for lack of jurisdiction. KOCA asserted that the Planning Commission did not have jurisdiction to decide the 2011 Application because (1) the LUC’s 2009 decision was on appeal to the Hawai‘i Supreme Court and (2) the LUC has original and exclusive jurisdiction to consider modifications of its own conditions.

101. On November 14, 2011, the ENV and Schnitzer filed memoranda in opposition to the motion.

(g) The Parties Stipulated to Amend the Briefing Schedule.

102. On November 29, 2011, the parties stipulated to amend the briefing schedule set forth in the order regarding the prehearing conference. The parties

agreed that “[t]he deadline for filing and serving written testimony and exchanging exhibits shall be December 13, 2011.”

(h) The Planning Commission Denied the Motion to Dismiss on December 7, 2011.

103. On December 7, 2011, the Planning Commission held a hearing on KOCA’s motion to dismiss at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawai‘i (“**Mission Memorial Hearings Room**”).

104. After hearing argument from the parties, the Planning Commission went into executive session.

105. Following the executive session, the Planning Commission denied the motion to dismiss.

106. Thereafter, the parties made opening statements.

(i) Written Direct Testimony.

107. On December 13, 2011, the parties filed written direct testimony.

108. The ENV filed the written direct testimony of ENV Director Timothy E. Steinberger (“**Director Steinberger**”) and State of Hawai‘i Department of Health (“**DOH**”) Solid and Hazardous Waste Branch Chief Steven Y.K. Chang (“**Branch Chief Chang**”).

109. Schnitzer attempted to file the written direct testimony of Schnitzer General Manager Larry Snodgrass. Because Mr. Snodgrass did not sign his written direct testimony, it is not admissible in the contested case hearing.

110. KOCA filed the written direct testimony of Ken Williams, General Manager of the Association; Ms. Shimabukuro; Beverly Munson, Ko Olina resident; Paul Duke Hospodar, Ko Olina Security Director, Resort Operations Director, resident and AOA board member; Cynthia K.L. Rezendes, Waianae resident, Nanakuli-Maili Neighborhood Board No. 36 member and 2003 Blue Ribbon Landfill Site Selection Committee member; Maeda Timson, Kapolei resident and Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 member; Shad Kane, Native Hawaiian cultural practitioner and 2003 Blue Ribbon Landfill Site Selection Committee member; and Dwight Miller, P.E.

(j) The Parties Filed Pre-Contested Case Hearing Statements.

111. On December 14, 2011, the ENV, Schnitzer, and KOCA filed pre-contested case hearing statements.

(k) The Planning Commission Issued a Subpoena to Waste Management.

112. At the request of KOCA, on January 6, 2012, the Planning Commission issued a subpoena duces tecum to Waste Management, which operates the Landfill. 2011AP Ex. K164 (subpoena duces tecum).

113. The subpoena directed the production of, among other things, "all documents containing or evidencing fabricated readings; all investigation reports related to the fabricated readings; all assessment documents related to the fabricated readings; . . . and all documents related to remedial actions taken to address the fabricated readings." 2011AP Ex. K164 (subpoena duces tecum at 2).

114. On January 20, 2012, Waste Management filed a response and objections to the subpoena.

115. On February 8, 2012, the Planning Commission heard argument on Waste Management's objections.

116. Waste Management did not produce any notes or other records of employee interviews, despite the fact that an internal investigation report prepared for Waste Management references interviews with employees and concludes, "Based on interviews conducted during the investigation, it appears that the failure to collect data and the fabrication of replacement data began in mid-2010 and continued until August 2011 when the failure was investigated and identified." 2011AP Ex. K160 at 1 (9/28/11 landfill gas report). Nevertheless, Waste Management represented that it had produced all responsive documents and that it had no additional documents to produce related to its internal investigation regarding fabricated gas wellhead readings or any other matter responsive to the subpoena. 2011AP 2/8/12 Tr. 9:17-13:21.

117. Based on these representations, the Planning Commission did not order a further production by Waste Management.

(1) January 11, 2012 Hearing.

118. On January 11, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

119. The ENV called Director Steinberger to testify.

120. The Planning Commission received into evidence without objection the October 5, 2011 transcript of proceedings and, over the partial objection of the ENV, KOCA's Exhibits K1-K162. 2011AP 1/11/12 Tr. at 15:12-17:23, 96:2-4.

(m) January 25, 2012 Hearing.

121. On January 25, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

122. The ENV called Branch Chief Chang to testify. Schnitzer called Mr. Snodgrass to testify.

123. The ENV rested, subject to its right to call rebuttal witnesses. Schnitzer rested without reserving the right to call rebuttal witnesses. 2011AP 1/25/12 Tr. at 71:17-72:1, 86:20.

124. The ENV indicated that it intended to call two rebuttal witnesses. 2011AP 1/25/12 Tr. at 87:12-16.

125. KOCA objected to ENV's intention to call these witnesses as rebuttal witnesses, rather than direct witnesses. 2011AP 1/25/12 Tr. at 87:17-24, 88:24-89:10. The Commission overruled KOCA's objection. 2011AP 1/25/12 Tr. at 89:16-17.

126. Without objection, the Planning Commission received into evidence the ENV's Exhibits A1-A33 and KOCA's Exhibits K163-K169. 2011AP 1/25/12 Tr. at 6:10-20; 37:14-20, 51:8-13, 55:12-16, 85:22-86:3.

(n) February 8, 2012 Hearing

127. On February 8, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

128. KOCA called Mr. Williams, Ms. Munson, Ms. Rezentes and Mr. Hospodar to testify.

129. Without objection, the Planning Commission received into evidence the ENV's Exhibits A34 and A35. 2011AP 2/8/12 Tr. at 29:25–30:2, 56:6–9.

(o) **March 7, 2012 Hearing**

130. On March 7, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

131. KOCA called Mr. Kane and Mr. Miller to testify.

132. Without objection, the Planning Commission admitted Mr. Miller as an expert witness in “solid waste management, including landfill siting and design and comprehensive solid waste management.” 2011AP 3/7/12 Tr. at 17:25–19:25.

133. Without objection, the Planning Commission received into evidence KOCA's Exhibits K170, K171, K173, K174, K175, K176, K178, and K179. 2011AP 3/7/12 Tr. at 152:19–155:5, 122:17–123:1.

134. At the conclusion of the March 7, 2012 hearing, the ENV renewed its right to call rebuttal witnesses. The ENV identified four rebuttal witnesses: Director Steinberger, Dr. Sharma and DOH Deputy Director Gary Gill (“**Deputy Director Gill**”). 2011AP 3/7/12 Tr. at 218:7–15.

135. KOCA renewed its objection to those rebuttal witnesses on the ground that Director Steinberger had already been called and that Dr. Sharma and Deputy Director Gill should have been direct witnesses. 2011AP 3/7/12 Tr. at 218:18–219:1.

136. The Planning Commission overruled KOCA's objection. 2011AP 3/7/12 Tr. at 219:6–7.

137. Schnitzer also announced that it would be calling an unnamed rebuttal witness on the "H-POWER issue." 3/7/12 at 219:8-13.

(p) April 4, 2012 Hearing.

138. On April 4, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

139. The parties agreed to take the remaining witnesses out of order due to scheduling difficulties. 2011AP 4/4/12 Tr. at 6:6-7-15.

140. Schnitzer called Tom Zalenka, vice president of environmental affairs for Schnitzer, as a rebuttal witness.

141. The ENV called Janice Marsters, current Landfill Site Selection Committee ("SSC") member, and Deputy Director Gill as rebuttal witnesses.

142. KOCA called Ms. Shimabukuro and Ms. Timson to testify.

143. KOCA rested subject to its right to call rebuttal witnesses. 2011AP 4/4/12 Tr. at 143:11-13.

144. Without objection, the Planning Commission received in evidence the ENV's Exhibit A36 and KOCA's Exhibits K191, K194, K208, K215, K217, K218, K222, K223, K226, and K227. 2011AP 4/4/12 Tr. at 15:18-22, 18:24-19:18, 24:4-16, 33:4-16, 83:14-19, 101:14-19, 122:20-123:3, 143:4-10, 168:22-169:11.

(q) April 11, 2012 Hearing.

145. On April 11, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

146. The ENV called Dr. Sharma and Director Steinberger as rebuttal witnesses.

147. Without objection, the Planning Commission qualified Dr. Sharma as an expert in landfill design and permitting. 2011AP 4/11/12 Tr. at 9:11–20.

148. The Planning Commission received into evidence the ENV's Exhibits A37–A50. 2011AP 4/11/12 Tr. at 13:1–9, 15:21–16:1, 25:1–7, 36:10–37:20, 43:11–44:13, 105:11–16, 138:1–5. KOCA objected to the admission of Exhibits A43–A46. The Planning Commission overruled KOCA's objections. 2011AP 4/4/12 Tr. at 36:15–17, 37:7–12.

149. Without objection, the Planning Commission also received into evidence KOCA's Exhibits K189, K190, K193, K195, K196, K198, K230, K247, and K251. 2011AP 4/11/12 Tr. at 191:19–21.

(r) April 23, 2012 Hearing.

150. On April 23, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.

151. KOCA called Mr. Miller and Eddie Belloumini of Ko Olina Resort Operations as rebuttal witnesses.

152. Without objection, the Planning Commission received into evidence Exhibits K192, K220, K255, K256, K257 and K258. 4/23/12 Tr. at 12:13–17, 15:16–21, 47:19–48:23.

153. Thereafter, the Planning Commission closed the evidentiary portion of the hearing. 2011AP 4/23/12 Tr. at 49:16–21.

154. The Planning Commission heard closing arguments from the parties. 2011AP 4/23/12 Tr. at 49:22–80:7.

155. The Planning Commission scheduled decision-making for the 2011 Application on May 25, 2012, at the Mission Memorial Hearings Room.

(s) KOCA's Motion to Reopen the Contested Case Hearing to Admit Limited Additional Documentary Evidence to Correct an Error that Was Discovered After the Hearing Closed.

156. At the April 23, 2012 contested case hearing the Planning Commission received into evidence without objection Exhibit K258, which included photographs of the landfill SSC's scores and a map of the ranked sites from the SSC meeting held on April 20, 2012. 2011AP 4/23/12 Tr. at 48:4-23.

157. On April 27, 2012, KOCA moved pursuant to Planning Commission Rule § 2-71(f) to reopen the contested case hearing for the limited purpose of admitting additional documentary evidence to correct an error in the SSC's scores that was discovered after the hearing closed.

158. The motion explained that on April 25, 2012, the SSC's prime consultant, R.M. Towill Corporation, and its subconsultant, SMS Research ("SMS"), disclosed that SMS had made an error in ranking the sites. Because of the error, SMS provided new scores for the sites, a new ranking list and a new map of the ranked sites. Based on the new list, the scores and map entered into evidence as Exhibit K258 were no longer accurate.

159. The motion attached proposed Exhibit K259, which explained the error, and proposed Exhibit K260, which was composed of the corrected list of sites and a new map of the sites to correct Exhibit K258.

160. On May 1, 2012, the ENV filed a memorandum in opposition to KOCA's motion.

(t) The Parties Filed Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders.

161. On May 2, 2012, the ENV, Schnitzer and KOCA filed their respective proposed findings of fact, conclusions of law, and decisions and orders (“**proposed findings**”).

162. On May 14, 2012, the ENV filed a response and Schnitzer filed exceptions to KOCA’s proposed findings. KOCA also filed responses to the ENV’s and Schnitzer’s proposed findings.

C. The Hawai‘i Supreme Court’s Decision on Condition 14 and the Subsequent Proceedings on the 2008 and 2011 Applications.

(a) The Hawai‘i Supreme Court’s Decision.

163. On May 4, 2012, the Hawai‘i Supreme Court decided the ENV’s appeal of the LUC’s 2009 decision.

164. The supreme court held that Condition 14 was “not supported by substantial evidence in the record,” and therefore, could not be affirmed. *Dep’t of Envtl. Servs. v. Land Use Comm’n*, 127 Hawai‘i 5, 17, 275 P.3d 809, 821 (2012).

165. The supreme court further concluded that, “[h]aving held that Condition 14 cannot stand because it is inconsistent with the evidence shown in the record and not supported by substantial evidence, the LUC’s approval of SUP-2 also cannot stand because Condition 14 was a material condition to the LUC’s approval.” *Id.* at 17–18, 275 P.2d at 821–22.

166. Accordingly, the supreme court vacated the circuit court’s judgment affirming the LUC Decision and remanded the case on the 2008 Application “to the

LUC for further hearings as the LUC deems appropriate.” *Id.* at 18, 275 P.2d at 822.

167. In remanding the 2008 Application proceeding, the supreme court acknowledged the 2011 Application proceeding pending before the Planning Commission and “encourage[d] the LUC to consider any new testimony developed before the Planning Commission in that case.” *Id.* at 19 n.16, 275 P.2d at 823 n.16.

(b) The ENV Filed a Notification or Motion to Stay in the 2008 Application Proceeding.

168. On May 15, 2012, the ENV filed a notification of the Hawai‘i Supreme Court’s decision on Condition 14 or, alternatively, a motion to stay proceedings on the 2011 Application during the pendency of the remand proceedings before the LUC.

169. On May 22, 2012, KOCA filed a memorandum in opposition to the motion.

(c) The LUC Urged the Planning Commission to Stay Proceedings on the 2011 Application.

170. On May 22, 2012, LUC Chair Normand R. Lezy sent a letter on behalf of the LUC to Planning Commission Chair Gayle Pingree urging the Planning Commission to stay its proceedings on the 2011 Application until the LUC remands the 2008 Application proceedings to the Planning Commission.

171. Based on the supreme court’s recommendation for the LUC to consider the new testimony in the 2011 Application proceeding, Chair Lezy explained that consolidation on remand of the 2008 and 2011 Application proceedings would serve the public interest and provide a more economical disposition of both matters.

172. Chair Lezy noted that, if the Planning Commission stayed the proceedings on the 2011 Application, the LUC would forward the record on remand for the 2008 Application proceeding to the Planning Commission.

(d) May 25, 2012 Hearing in the 2008 Application Proceeding.

173. On May 25, 2012, the Planning Commission held a hearing in the contested case at the Mission Memorial Hearings Room.

174. Chair Pingree confirmed that the hearing portion of the contested case hearing was not closed. 2011AP 5/25/12 Tr. at 11:5–7.

175. The Planning Commission entered a six-month stay of 2011 Application proceeding pending the decision of the LUC on the 2008 Application proceeding or any future request by the parties to the Planning Commission. 2011AP 5/25/12 Tr. at 11:14–13:2. Based on its disposition, the Planning Commission did not decide KOCA's motion to supplement or the ENV's motion to stay.

(e) The Planning Commission Advised the LUC of Its Decision to Stay the 2011 Application Proceeding.

176. On May 29, 2012, Chair Pingree sent a letter to Chair Lezy explaining that on May 25, 2012, the Planning Commission had decided that a six-month stay of its proceedings on the 2011 Application was warranted pending the LUC's decision on the 2008 Application proceeding after remand or a future request to the Planning Commission by any party.

177. Chair Pingree stated that it was unnecessary for the LUC to remand the 2008 Application proceeding to the Planning Commission.

178. Chair Pingree noted that, as an exception to the stay, the Planning Commission would transmit the record for the 2011 Application proceeding to the LUC for its consideration.

(f) The LUC Remanded the 2008 Application Proceeding to the Planning Commission for Consolidation with the 2011 Application Proceeding and Entry of a Consolidated Decision.

179. On July 5, 2012, the LUC met in Leiopapa A Kamehameha, Conference Room 204, Second Floor, 235 South Beretania Street, Honolulu, Hawai'i. The purpose of the meeting was to discuss and deliberate on the procedural issues arising from the remand from the supreme court.

180. At the meeting, the LUC heard public testimony from Ian Sandison, Esq. on behalf of Schnitzer.

181. Following public testimony, the LUC heard oral argument on the procedural options available to the LUC. The ENV orally moved for, and the LUC granted, an additional two weeks for the parties to file written briefs to more fully address the procedural issues.

182. On July 12, 2012, the LUC filed an order granting the ENV's request to submit additional briefing.

183. On July 18, 2012, Schnitzer filed a statement regarding procedural issues and next steps in light of the supreme court's decision.

184. On July 19, 2012, KOCA filed a brief in support of remand with instructions. The ENV filed a brief in support of the LUC retaining jurisdiction. Ms. Hanabusa filed a memorandum regarding procedural issues. The State of Hawai'i Office of Planning filed a brief on procedural issues.

185. On September 14, 2012, the LUC met at Ihilani Hotel, Lurline Room, 92-1001 Olani Street, Ko Olina, Hawai'i, to continue discussion and deliberation on procedural issues.

186. After receiving public testimony, the LUC heard argument from the parties on the procedural issues and options available to the LUC.

187. On October 8, 2012, the LUC entered an order remanding the 2008 Application proceeding to the Planning Commission "for the expressed purpose of consolidating it with the proceeding on the [2011 Application] in order that the Planning Commission may issue and transmit a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order on the matter to the LUC for further action pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR."

(g) December 19, 2012 Hearing Before the Planning Commission.

188. On December 19, 2012, the Planning Commission held a hearing at the Mission Memorial Hearings Room to discuss the 2008 and 2011 Applications and the remand order from the LUC.

189. At the hearing, the ENV asked the Planning Commission to continue the proceeding to allow the parties an opportunity to discuss the submission of joint findings and conclusions. KOCA joined in the request. Ms. Hanabusa and Schnitzer did not object.

190. The Planning Commission continued the hearing.

(h) KOCA Filed a Motion to Effect Consolidation of the 2008 and 2011 Application Proceedings.

191. On January 15, 2013, KOCA filed a motion to effect the consolidation of the 2008 and 2011 Application proceedings as ordered by the LUC.

192. On January 23, 2013, the ENV filed a memorandum in opposition to the motion.

(i) The Planning Commission Continued the Hearing.

193. The Planning Commission hearing resumed on February 20, 2013, at Mission Memorial Hearings Room.

194. The hearing concerned the LUC's October 8, 2012 remand order and KOCA's motion to effect consolidation.

195. The same day, the parties filed a stipulation to continue the hearing so that the parties could discuss a resolution of this matter.

196. The Planning Commission continued the hearing to April 17, 2013.

197. On April 10, 2013, the Commission continued the hearing to allow the parties to attempt to reach a stipulated order to be presented to the Commission for review and decision.

(j) The LUC's October 22, 2015 Hearing.

198. On October 22, 2015, the LUC held a hearing at the Airport Conference Center, 400 Rodgers Boulevard, Suite 700, Room #3.

199. The ENV and KOCA updated the LUC on the parties' negotiations.

(k) The LUC's May 18, 2016 Hearing.

200. On May 18, 2016, the LUC held a hearing at State Office Tower, Leiopapa A. Kamehameha Building, Conference Room 405.

201. The ENV updated the LUC on the parties' negotiations.

202. The LUC directed that a letter be written to the Planning Commission to inquire about the status of proceedings.

(l) The Planning Commission's May 25, 2016 Letter.

203. On May 25, 2016, the Planning Commission wrote a letter to the parties requesting a status report.

204. By letter dated June 3, 2016, the ENV advised that all parties, except for Ms. Hanabusa, had signed a stipulation to stay proceedings and that the ENV was preparing a motion to stay proceedings. The ENV submitted a copy of the stipulation, a copy of which is attached hereto as Exhibit A.

205. On June 13, 2016, the State Office of Planning submitted a status report to the Planning Commission.

(m) The ENV's June 22, 2016 Motion to Stay Proceedings.

206. On June 22, 2016, the ENV moved to stay proceedings to April 22, 2017 so that the parties could continue to explore a stipulated resolution of this matter.

207. KOCA filed a joinder in the motion, and Schnitzer filed a joinder in KOCA's joinder.

(n) The Planning Commission's August 17, 2016 Hearing on the LUC's Remand Order and KOCA's Motion to Effect Consolidation.

208. On August 17, 2016, the Planning Commission held a hearing at Mission Memorial Hearings Room.

209. The Planning Commission granted KOCA's motion to effect consolidation. 2011AP 8/17/16 Tr. at 32:21-33:16. The Planning Commission denied the ENV's motion to stay proceedings. 2011AP 8/17/16 Tr. at 33:19-34:2.

(o) The ENV's September 30, 2016 Motion to Reopen Evidence.

210. On September 30, 2016, the ENV moved to reopen the contested case hearing for the limited purpose of taking official notice of facts.

211. On October 6, 2016, Schnitzer filed a joinder in the motion.

212. On October 7, 2016, KOCA filed a response to the motion and Hanabusa filed a statement.

213. On September 22, 2016, Hanabusa filed a statement regarding KOCA's motion to reopen.

(p) The ENV's September 30, 2016 Motion to Reopen Evidence.

214. On October 5, 2016, the ENV moved for an extension of time for filing of proposed findings and for consideration of and decision making on all motions pending before the Planning Commission.

215. On October 6, 2016, KOCA filed a response to the motion.

(q) The Planning Commission's October 12, 2016 Hearing on KOCA's and the ENV's Motions to Reopen Evidence.

216. The Planning Commission held a hearing on October 12, 2016 in the Mission Memorial Hearings Room.

217. The Planning Commission denied KOCA's motion to reopen the contested case hearing filed April 27, 2012, denied the ENV's motion to reopen the contested case hearing filed September 30, 2016 and granted in part the ENV's motion for extension of time to the extent that the motion requested additional time for filing of proposed findings.

(r) The Parties Filed Proposed Findings of Fact, Conclusions of Law and Decisions and Orders.

218. On January 27, 2017, the parties filed proposed findings of fact, conclusions of law and decisions and orders.

219. On February 10, 2017, the parties filed responses to the other parties' proposed findings of fact, conclusions of law and decisions and orders.

(s) The Planning Commission's March 1, 2017 Hearing on the Proposed Findings of Fact, Conclusions of Law and Decisions and Orders.

220. On March 1, 2017, the Planning Commission held a hearing at Mission Memorial Hearings Room regarding the proposed findings of fact, conclusions of law and decisions and orders.

D. Substantive Findings

(a) History of the Landfill.

221. The Landfill is owned by the City and operated by Waste Management. *See* 2008AP 7/1/09 Tr. at 179:4–8 (Doyle).

222. The state land use district designation for the property is Agricultural District. 2011AP DPP's 2011 Recommendation at 1.

223. The existing City zoning district for the property is AG-2, General Agricultural District. 2011AP DPP's 2011 Recommendation at 1.

224. The Ewa Development Plan recognizes the Landfill. 2011AP DPP's 2011 Recommendation at 1.

225. Existing uses of the property are landfill and open space. 2011AP DPP's 2011 Recommendation at 1.

226. Elevations at the property range from a low of 70 feet above mean sea level (msl) to 940 feet (msl) in the northern portion. Except for areas of fill, the steep-sloped valley contains dryland grasses and an abundance of rock outcrops. 2008AP DPP's 2009 Recommendation at 8.

227. The soil found at the property consists primarily of Rock Land (rRK) with small amounts of Stony Steep Land (rSY). 2008 Application at 2-30.

228. According to the Agricultural Lands of Importance to the State of Hawai'i system, the property is not classified as Prime Agricultural Land, Unique Agricultural Land or Other Important Agricultural Lands. 2008AP Ex. A1 at 8-13 (2008 FEIS).

229. The University of Hawai'i Land Study Bureau overall master productivity rating for the property is "E," which indicates very poor crop productivity potential. 2008 Application at 2-31.

230. The Federal Emergency Management Agency Flood Insurance Rate Map identifies the Landfill property as within "Zone D," an area in which flood hazards are undetermined. 2008AP Ex. A1 at 5-31 to 5-32 (2008FEIS).

231. The property is not located within the Special Management Area. 2008AP Ex. A1 at 8-12, 8-14 (2008 FEIS).

(b) History of the Landfill Prior to the 2008 Application Proceeding.

232. Because the Landfill is located with the State Land Use Agricultural District, 2011AP Ex. K12 at 9 (§ 42) (8/4/09 Commission order), and a landfill is not a use expressly allowed under Hawai'i Revised Statutes chapter 205, 2011AP Ex. K155 at 17 (§ 7) (3/14/08 LUC order), the landfill operations require an SUP pursuant to HRS § 205-6.

233. Because the area is more than 15 acres, the Commission and the LUC have permitting responsibility and oversight for the Landfill. 2011AP 4/11/12 Tr. at 185:15-18 (Steinberger).

234. The Landfill received an SUP in 1987 to operate on 60.5 acres. 2011AP Ex. K69 (04/20/87 LUC Decision). In its decision approving the SUP, the LUC noted that the Landfill was proposed to "serve the Leeward Communities for disposing raw refuse and [was] projected to have an eight year life and a capacity of 6.65 million cubic yards." 2011AP Ex. K69 4 (§ 15) (4/20/87 LUC Decision). The "projected full-life" of the landfill was "approximately eight years." 2011AP Ex. K69 7 (§ 29) (4/20/87 LUC Decision).

235. The Landfill was permitted to accept municipal solid waste and sewage sludge.

236. "Municipal solid waste" or "MSW" is defined as "garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants," HRS § 342G-1; *see also* Hawai'i Administrative Rules ("HAR") § 11-58.1-03.

237. The Landfill began operations in 1989. 2011AP Ex. K93 at 2 (9/08 ENV status report).

238. That same year, the site was expanded by an additional 26 acres. 2011AP Ex. K70 at 5 (¶ 18), 9 (10/31/89 LUC order).

239. As the Landfill approached capacity, the ENV proposed that the site be expanded by 60 acres and extended "for another fifteen years." 2011AP Ex. K85 at 96:18-20 (3/27/03 Tr.: Doyle).

240. The community objected. In addition to citing health and safety concerns, the community identified a promise by Mayor Frank Fasi that the Landfill would

only be used until the original acreage was filled. 2011AP Rezentes Written Direct Testimony at 3–4 (¶¶ 8–10).

241. “After numerous lengthy meetings within the community, in June or July of 2002[,] [former acting ENV Director Frank Doyle (“**Director Doyle**”)] stated to the community that, if the community allowed some expansion of the Landfill, the ENV would commit to close the Waimanalo Gulch Sanitary Landfill in 2008.” 2011AP Rezentes Written Direct Testimony at 4 (¶ 12).

242. “In exchange, the community tended to back off, and the process went through the Planning Commission and the [LUC].” 2011AP Rezentes Written Direct Testimony at 4 (¶ 13); *see also* 2011AP 2/8/12 Tr. at 16:1–4 (Williams: “Based on those sincere promises[,] the community stood down in reliance that the City would hold to its word and close the landfill.”).

243. In the 2003 proceedings before the LUC, Director Doyle, who has served as the Chief of the Division of Refuse for 32 years, explained the compromise that the ENV had made with the community as follows: “[W]e had originally thought that we would have this landfill operate for another 15 years [to 2008]. And then as part of our discussions with the community and in trying to take a look at their concerns it was reduced to a five-year operation.” 2011AP Ex. K85 at 96:18–22 (3/27/03 Tr.: Doyle); *see also* 1/11/12 Tr. at 32:3–7 (Steinberger: “Q. So in fact, it was a compromise with the community that drove the five-year deadline and not the solid waste management permit; isn’t that right? A. By this testimony, I would assume that was correct at the time.”); 2011AP Ex. K85 at 117:11–13 (3/27/03 Tr.:

Todd Apo: “We do appreciate the city’s efforts in working with the community. They obviously were looking at 60 acres for 15 years, have reduced that to 15 acres for five years.”; 2011AP Ex. K220 at 177:1–9 (7/1/09 Tr.: Doyle).

244. In the 2003 proceedings, Director Doyle repeatedly expressed the ENV’s “commitment” to close the Landfill in 2008:

a. “COMMISSIONER COPA: Do you honestly think that we will have a site, another site picked for a landfill? **And if so do you think that you could commit that without a doubt that this landfill will close?** MR. DOYLE: **We have made that commitment, yes.**” 2011AP Ex. K85 at 125:7–11 (3/27/03 Tr.) (emphasis added).

b. “MR. DOYLE: Right. At the time that we made the selection, we selected Waimanalo Gulch to be expanded. Now, based on our commitment to be out of that area within five years there still are other alternatives.” 2011AP Ex. K85 at 128:2–5 (3/27/03 Tr.).

c. “MR. DOYLE: The City has committed and Planning Commission has certified that we will be out of that site, that’s a condition, we will be out of that site in five years. [¶] Everything that we are going to be doing over that time period, this time period before you is to be out of that site. That’s the city’s commitment.” 2011AP Ex. K85 at 145:21–146:2 (3/27/03 Tr.).

245. Consistent with the City’s agreement with the community, in the 2003 proceedings before the LUC the community made no request for intervention and no contested case hearing was held. *See* 2011AP Ex. K2 (6/9/03 LUC Order).

246. At the conclusion of the 2003 proceedings, the LUC directed the Honolulu City Council to select a new site by June 1, 2004 and to close the Landfill by May 1, 2008. 2011AP Ex. K2 at 7 (¶ 1), 9 (¶ 12), 10 (¶ 15) (6/9/03 LUC Order).

247. Businesses were started and homes were purchased in the area with the understanding that the Landfill would close in 2008. 2011AP Munson Written Direct Testimony at 3 (¶ 5), 9 (¶ 21); 2011AP 2/8/12 Tr. at 15:11–15 (Williams); 2011AP Williams Written Direct Testimony at 13 (¶ 29.j).

248. In 2003, the ENV convened a site selection committee, which identified several potential sites for a new landfill, none of which included the WGSL. 2011AP 1/11/12 Tr. at 50:17–21 (Steinberger); 2011AP Ex. K58 at 5 (12/1/03 SSC report).

249. This recommendation was consistent with the ENV's representations to the LUC that the committee would not be able to select the existing Landfill as the "new" landfill: "CHAIRPERSON ING: . . . This proposed Blue Ribbon committee, could the come out with a recommendation that this Waimanalo Gulch landfill be expanded? MR. DOYLE: No." 2011AP Ex. K85 at 177:22–25 (3/27/03 Tr.: Doyle).

250. The City Council received an extension of the June 1, 2004 deadline from the LUC to December 1, 2004. 2011AP Ex. A10 at 6 (5/10/04 LUC order).

251. In 2004, the City Council did not follow the committee's recommendation and instead passed a resolution to select the existing Waimanalo Gulch Sanitary Landfill as the "new" landfill. 2011AP 1/11/12 Tr. at 52:6–15 (Steinberger).

252. No new landfill was developed.

253. In 2007, the ENV filed an “application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Landfill from May 1, 2008, to May 1, 2010, to extend the closure deadline to May 1, 2010, or until the WGS� reaches its permitted capacity, whichever occurs first.” 2011AP Ex. K155 at 1–2 (3/14/08 LUC order).

254. On March 14, 2008, the LUC amended the condition to extend the closure deadline to November 1, 2009. 2011AP Ex. K155 at 18 (¶ 12) (3/14/08 LUC order: “The 200-acre Property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan by November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first.”).

255. The Landfill’s solid waste management permit issued by the DOH states that the Landfill “may accept MSW and ash for disposal until the date specified in the associate[d] Special Use Permit or until the landfill/monofill reaches the permitted capacity, whichever comes first.” 2011AP Ex. A4 (6/4/10 solid waste management permit).

(c) The 2008 Application and the Expansion Project.

256. On December 3, 2008, the ENV filed the 2008 Application for a new special use permit to utilize an additional 93 acres, for a total of 200 acres. 2011AP Ex. K12 at 2 (¶ 5) (8/4/09 Commission order).

257. In addition to completing an FEIS for the Project, *see supra* section I.A.(a), the ENV obtained a traffic impact report (“**TIR**”) for the Project. 2008AP Tr. 6/22/09

51:6–11 (Takeda); 2008AP Ex. A1, Appendix I (2008 FEIS). The TIR analyzed the existing traffic transiting Farrington Highway on both the eastbound and westbound approaches as well as the volume of traffic entering and exiting the Landfill. 2008AP Ex. A1, Appendix I (2008 FEIS).

258. The TIR concluded that even with the expansion of the Landfill, the volume of traffic would not be expected to increase dramatically. Traffic going in and out of the Landfill is less than approximately one percent of the total volume of traffic in the region. 2008AP Tr. 6/22/09, 51:18–24 (Takeda).

259. Also in connection with the Project, an Archaeological Inventory Survey, Waimanalo Gulch Landfill Expansion, 2008 (“AIS”) and a Cultural Impact Assessment (Draft), Waimanalo Gulch Landfill Expansion, 2008 (“Cultural Impact Assessment”) were prepared. 2008AP Ex. A1, Appendices G and H, respectively (2008 FEIS).

260. One historic property, State Inventory of Historic Properties (“SIHP”) #50-80-12-6903, was identified by the study. 2008AP Ex. A1, Appendix G at 45. SIHP# 50-80-12-6903 consists of three large upright boulders potentially utilized as trail or boundary markers. 2008AP Ex. A1, Appendix G at 45 (2008 FEIS).

261. The ENV proposed to address SIHP# 50-80-12-6903 within a mitigation/preservation plan to be reviewed and accepted by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawai‘i (“SHPD”). 2008AP 6/22/09 Tr. at 49:21–50:5 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD). Specifically, the ENV proposed to temporarily relocate the

upright stones to Battery Arizona and return the upright stones as close as possible to their current locations after the Landfill has been closed. 2008AP 6/22/09 Tr. at 49:5–20 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD).

262. SHPD reviewed the ENV's proposed mitigation and determined that there is no effect to historic properties, as stated in a letter from SHPD to the DPP April 2, 2009. 2008AP 6/22/09 Tr. at 49:20–51:1 (Takeda); 2008AP Ex. A4 (4/2/09 letter from SHPD to DPP).

263. The Cultural Impact Assessment found that “[t]he importation of landfill material over the past fifteen years has most likely eliminated any historic properties and plant resources related to Hawaiian cultural practices and beliefs that may have been present within the bounds of the landfill property.” 2008AP Ex. A1, Appendix H at 79 (2008 FEIS); see also 2008 Application at 2-98.

(d) The Leeward Community Has Opposed the Continued Operation of the Landfill.

264. The Landfill is located across the street from Ko Olina Resort. 2011AP 2/8/12 Tr. at 57:5–8 (Munson). The Resort is “a 642-acre resort master planned community with a combination of resort, residential, commercial, and recreational uses.” 2011AP Williams Written Direct Testimony at 2 (¶ 5).

265. Before the Landfill was permitted, the area where Ko Olina Resort sits was intended to be a resort. 2011AP Williams Written Direct Testimony at 2–3 (¶¶ 7–9); 2011AP Ex. K132 at 3, 7 (Ewa Development Plan: “[The area now known as Ko Olina] shall be developed as a resort destination area providing scenic, recrea-

tional and open space elements with an integration of residential and commercial uses into the overall design of the resort.”). O’ahu

266. By the time Ko Olina was developed, the Landfill was supposed to have been closed. 2011AP Williams Written Direct Testimony 9 (¶ 3); 2011AP Ex. K69 at 7 (¶ 28) (4/20/87 LUC order).

267. Ko Olina is home to thousands of residents and dozens of business. 2011AP 2/8/12 Tr. at 47:11–48:22 (Williams). Ko Olina includes hotels, timeshares, residential projects, commercial businesses, including retail centers and shops, a golf course, and a marina. These amenities cater to residents and to visitors from around the world and contribute to the tourist industry. 2/8/12 at 14:214–15:3, 47:15–22, 48:23–49:1 (Williams).

268. Ko Olina is an economic engine for the west side of O’ahu and the State of Hawai‘i. Ko Olina generates “\$520 million in direct spending annually, 2,800 jobs locally, indirect and induced benefits of \$280 million and 1,500 additional jobs, \$60.7 dollars in annual taxes to the City and State.” 2011AP 2/8/12 Tr. at 21:8–14 (Williams).

269. “At full build-out the economic benefits will balloon to \$1.4 billion in total economic activities, 8,000 jobs, \$138 million in taxes to the City and the State, plus a \$194 million onetime tax—in one-time taxes from construction period spending.” 2011AP 2/8/12 Tr. at 21:15–20 (Williams).

270. Construction period impacts will generate “\$3.7 billion in direct spending, two billion in indirect and induced economic benefits, and 26,700 jobs. This is a total

of a one-time economic benefit of \$5.7 billion, about equal to what we'd be spending on the rail." 2011AP 2/8/12 Tr. at 21:21–22:1 (Williams).

271. These benefits are jeopardized by the continued operation of the Landfill. 2011AP 2/8/12 Tr. at 15:15–17 (Williams); 2011AP Hospodar Written Direct Testimony at 11–12 (¶ 25) (explaining that Ko Olina's business reputation was likely harmed by the January 2011 release of waste from the Landfill).

272. Ko Olina's residents, workers and visitors have expressed concerns regarding the odors, noise, dust, blasting, visual blight, truck traffic and flying litter from the Landfill. 2011AP Williams Written Direct Testimony at 9 (¶ 29).

273. As Ms. Munson explained, the odor from the Landfill has at times been so bad that, if you walk outside, "your throat would actually clench up and your eyes would water." 2011AP 2/8/12 Tr. at 58:21–24 (Munson).

274. Ms. Munson also testified that her lanai is covered with dirt every day from the Landfill. 2011AP 2/8/12 Tr. at 59:19–60:8 (Munson).

275. Exhibit K128 is a petition signed by the property owners and residents of Ko Olina urging the "Honolulu decision[-]makers" to close the Landfill in July 2012 and to designate a new landfill to be located outside of District One.

276. Ms. Shimabukuro testified that her constituents and her fellow legislators, State Representative Jo Jordan and then-U.S. Representative Hanabusa, have consistently voiced their opposition to the Landfill. 2011AP 4/4/12 Tr. at 124:25–126:10 (Shimabukuro); 2011AP Ex. K44 (8/12/11 letter from Representative Jordan); 2011AP Ex. K46 (8/13/11 letter from Congresswoman Hanabusa).

277. Councilmember Tom Berg, who represented District 1, which includes the Waianae Coast, Kapolei, and Ewa, testified in opposition to the Landfill. 2011AP 10/5/11 Tr. at 15:11–22.

278. The Makakilo/Kapolei/Honokai Hale, Waianae Coast, and Nanakuli-Maili Neighborhood Boards have consistently voted to close the Landfill. 2011AP 10/5/11 Tr. at 23:6–7, 24:1–6, 24:23–25:2 (Patty Teruya, Chair of the Nanakuli-Maili Neighborhood Board); 2011AP 4/4/12 Tr. at 131:12–14 (Shimabukuro); 2011AP 3/7/12 Tr. at 134:22–135:1 (Timson); 2011AP Ex. K47 (8/17/11 letter from George S. Yamamoto, Chair of the Makakilo/Kapolei/Honokai Neighborhood Board).

279. The Leeward coast has a larger share of environmental burdens, including “the military bases, Kahe Power Plant, H-POWER, [and] Honouliuli Waste Treatment Plant.” 2011AP 3/7/12 Tr. at 127:9–20 (Shimabukuro).

280. No member of the Leeward community testified in support of the Landfill.

(e) The Landfill Has Posed a Danger to Health and Safety.

281. Branch Chief Chang testified that of the 13 landfills in the State, 9 to 11 of which accept MSW, the WGS� probably has more regulatory violations than any other landfill in the past five years. 2011AP 1/25/12 Tr. at 15:25–16:13, 39:24–40:3 (Chang).

282. Consistent with Branch Chief Chang’s conclusion, Mr. Miller testified that he has “not worked on a site that has had anywhere near violations of this size.” 2011AP 3/7/12 Tr. at 133:24–134:1 (Miller); *see also* 2011AP 3/7/12 Tr. at 20:10–21, 33:33–35:15.

283. Since 2006, the DOH has found the following violations at the Landfill:

a. On January 31, 2006, DOH issued a notice of violation (“NOV”) to Waste Management and the City, containing eighteen counts. 2011AP Ex. K59 (1/31/06 NOV). These counts included exceeding permitted fill grades, failure to maintain records and record location of asbestos disposal at the Landfill, and failure to submit annual surface water management plan.

b. On October 25, 2006, DOH sent a warning letter to Waste Management and the ENV, identifying five potential violations. 2011AP Ex. K101 (10/25/06 warning letter). These potential violations included exceeding permitted fill grades and failure to monitor leachate levels. 2011AP Ex. K101 at 2 (10/25/06 warning letter). Additionally, Waste Management was required to resubmit its storm water management system design to ensure compliance with applicable regulations and the SUP. 2011AP Ex. K101 at 2 (10/25/06 warning letter).

c. On May 3, 2007, DOH sent a warning letter to Waste Management and the ENV identifying three potential violations. 2011AP Ex. K125 (5/3/07 warning letter). These potential violations included exceeding permitted fill grades, failure to monitor leachate levels and inadequate soil cover. 2011AP Ex. K125 at 2 (5/3/07 warning letter).

d. On September 5, 2008, DOH sent a warning letter to Waste Management and the ENV identifying three potential violations. 2011AP Ex. K82 (9/5/08 warning letter). These potential violations included unauthorized storage of materials and the failure to submit written notification of the exceedance and veri-

fication of methane gas monitoring results. 2011AP Ex. K82 at 2 (9/5/08 warning letter).

e. On May 13, 2010, DOH issued an NOV to Waste Management and the City, containing three counts. 2011AP Ex. K66 (5/13/10 NOV); 2011AP 1/25/12 Tr. at 17:6–34:1 (Chang: discussing the NOVs and warning letters). These counts included the failure to construct the final cover and West Berm in accordance with design specifications, failure to notify the DOH of noncompliance, and failure to submit interim status reports on the construction. 2011AP Ex. K66 (5/13/10 NOV)

284. Since 2006, the DOH has assessed close to \$2 million in fines against the Landfill. 2011AP Ex. K59 (1/31/06 NOV); 2011AP Ex. K66 (5/13/10 NOV).

285. In 2011, the ENV disclosed that a Waste Management employee had falsified explosive gas readings from mid-2010 to August 2011. 2011AP Steinberger Written Direct Testimony at 27 (¶ 82). The failure to monitor gas readings was a threat to public health and safety. 2011AP 3/7/12 Tr. at 131:23–132:10 (Miller); 2011AP 1/11/12 Tr. at 91:1–92:3, 93:3–6 (Steinberger: affirming that “one of the reasons you monitor subsurface wellhead gas is because of a concern for subsurface fire”).

286. In addition to the foregoing, at the time of the hearing in 2011 the DOH had a pending enforcement case against the Landfill. 2011AP 4/4/12 Tr. at 156:20–22 (Gill: “There is a pending enforcement case which I can’t speak to in any detail regarding the handling of storm water runoff from the landfill.”); 2011AP 4/4/12 Tr.

at 157:10–12 (Gill: “There is . . . , to be clear, potential enforcement action regarding the events around the flood event at the landfill.”).

287. Since 2006, the United States Environmental Protection Agency (“EPA”) has issued the following NOV’s against the ENV and Waste Management:

a. On April 5, 2006, the EPA issued a NOV for violations of the Clean Air Act. 2011AP Ex. K60 (4/5/06 NOV).

b. On November 29, 2011, the EPA issued a NOV for violations of the Clean Water Act concerning the release of leachate and waste into the ocean in December 2010 and January 2011. 2011AP Ex. K123 (letter at 1; 11/29/11 NOV at 4–5).

288. Taken together, “[t]hese violations and deviations, as well as employee malfeasance with regards to landfill monitoring, have had great consequences and increased the risk of harm to health and safety, public health and safety.” 2011AP 3/7/12 Tr. at 28:12–16 (Miller).

289. The City and Waste Management have taken actions to remedy the violations. 2011AP 1/11/12 Tr. at 147:23–149:1 (Steinberger); 2011AP 1/25/12 Tr. at 59:10–22 (Chang); 2011AP Steinberger Written Direct Testimony at 26–27 (¶ 81).

(f) The December 2010 and January 2011 Floods from the Landfill.

290. In December 2010 and January 2011, the Landfill experienced heavy rains. 2011AP Ex. K97 at 3 (1/11/11 DOH inspection report). On December 23, 2010, the DOH Clean Water Branch documented the unauthorized pumping of leachate

from Cell E6 into State waters. 2011AP Ex. K52 (12/23/10 DOH investigation report).

291. According to the report, on December 19, 2010, after receiving heavy rains, there was a “failure in the Landfill’s [temporary] storm water bypass system,” such that the active “E6 cell was inundated with storm water.” 2011AP Ex. K52 at 1 (12/23/10 DOH investigation report).

292. On December 19 and 23, the Waste Management “intermittently pumped storm water which [had] accumulated in the Landfill’s E6 cell into the Landfill’s storm water drainage system.” 2011AP Ex. K52 at 1 (12/23/10 DOH investigation report).

293. “The Landfill’s storm water drainage system discharges to the Pacific Ocean at a shoreline outfall of the Ko Olina resort.” 2011AP Ex. K52 at 1 (12/23/10 DOH investigation report).

294. The storm water pumped out of active Cell E6 and into the ocean was “clearly in contact with and passed through solid waste” in the cell, rendering it “Landfill leachate.” 2011AP Ex. K52 at 2–3 (12/23/10 DOH investigation report); 2011AP Ex. K97 (1/11/11 DOH inspection report at 2).

295. Based on the December 19 and 23 leachate releases, the DOH ordered the ENV to issue a press release regarding the possible release of contaminated storm water and leachate into state waters.

296. The ENV refused to issue the press release on the ground that the storm water was not leachate. 2011AP Ex. K55 at 3 (1/12/11 Steinberger e-mail).

297. On January 12, 2011, the DOH “demanded” that the ENV post “signs warning of contaminated water discharges from WGSL, given the predicted rainfall.” 2011AP Ex. K55 at 4 (1/12/11 Steinberger e-mail).

298. Director Steinberger refused to post warning signs on the ground that signs were not required because the Landfill does not qualify as a “wastewater treatment, use or disposal system” as defined by Hawai‘i regulations. 2011AP Ex. K55 at 4–5 (1/12/11 Steinberger e-mail).

299. On January 12, 2012, the Landfill received heavy rains. 2011AP Ex. K56 at 1 (1/12/11 and 1/13/11 station summaries from Palehua Hawaii).

300. As a result of the heavy rains, the Landfill’s temporary drainage system failed again, which allowed storm water to flow “like a waterfall” into Cell E6. 2011AP Ex. K97 (1/11/11 DOH inspection report at 5).

301. The water dislodged unknown quantities of MSW, sewage sludge, leachate and medical solid waste from Cell E6 into coastal waters. 2011AP Williams Written Direct Testimony at 18 (¶ 43); 2011AP Ex. K52 at 2 (12/23/10 DOH investigation report: “Contents of the E6 cell include municipal solid waste such as general refuse, medical waste, as well as intermediate cover material.”).

302. The medical solid waste included sharps, chemotherapy wastes and pathological wastes. K73 at 2 (1/27/11 Honolulu Civil Beat article); 2011AP Williams Written Direct Testimony at 18 (¶ 43).

303. By the morning of January 13, 2011, significant quantities of medical waste and other Landfill debris were washing up in the Ko Olina lagoons. 2011AP Williams Written Direct Testimony at 18 (¶ 44).

304. The waste spread to beaches up the Leeward coast as far as Pokai bay, 2011AP Shimabukuro Written Direct Testimony at 7 (¶ 10.e), and east as far as Nimitz Beach, 2011AP Williams Written Direct Testimony at 18 (¶ 44).

305. No one from the ENV or Waste Management called Ko Olina's operations to warn them about the flood. 2011AP 2/8/12 Tr. at 94:12-19 (Hospodar).

306. For ten days, Ko Olina expended substantial time and resources to clean up the MSW that had washed up on Ko Olina's beaches. 2011AP Williams Written Direct Testimony at 22 (¶ 48); 2011AP Hospodar Written Direct Testimony at 7-11 (¶ 21); 2011AP 4/23/12 Tr. at 42:9-16 (Belluomini).

307. The ENV and Waste Management did not provide any assistance in cleaning up Ko Olina's lagoons. 2011AP 2/8/12 Tr. at 85:22-86:8, 94:24-95:2 (Hospodar); 2011AP 4/23/12 Tr. at 42:4-6 (Belluomini).

308. Neither the ENV nor Waste Management offered to reimburse Ko Olina for the more than \$20,000 in clean-up costs. 2011AP 2/8/12 Tr. at 95:19-96:5 (Hospodar).

309. Waste Management charged Ko Olina to redeposit the collected waste at the Landfill. 2011AP 2/8/12 Tr. at 88:24-89:1 (Hospodar); 2011AP 4/23/12 Tr. at 69:6-8 (Belluomini).

310. Waste Management sent a few temporary workers out for one day to clean one area by the outfall after giving them 30 minutes of hazardous waste training and puncture-resistant gloves. 2011AP Ex. K133a (1/14/11 KHON 2 video); 2011AP 4/23/12 Tr. at 41:13–15 (Belluomini).

311. After the one day, the workers never came back to assist with the cleanup, even though the waste continued to wash ashore in the area. 2011AP Ex. K133b (1/14/11 KHON 2 video); 2011AP 4/23/12 Tr. at 41:13–15 (Belluomini); 2011AP 2/8/12 Tr. at 94:24–95:2 (Hospodar).

312. According to Deputy Director Gill, “the reason that the flood took place is” the western diversion “channel had not been completed at the time that the big rains came.” 2011AP 4/4/12 Tr. Supp. at 8:7–13 (Gill); *see also* 2011AP 4/11/12 Tr. at 65:11–16, 67:1–4 (Sharma); 2011AP 3/7/12 Tr. at 29:1–6, 39:12–21 (Miller).

313. Deputy Director Gill publicly stated, “The Landfill has been expanded a number of times and the water diversion system has not kept up with expansions.” 2011AP Ex. K208 at 1 (1/22/11 article: Gill).

314. The industry standard is to have necessary drainage systems completed before filling cells at a landfill. 2011AP 3/7/12 Tr. at 39:25–40:4, 126:13–20, 128:14–129:13, 172:19–173:3 (Miller); 2011AP 4/11/12 Tr. at 31:24–32:10 (Sharma).

315. As Dr. Sharma explained, “[b]efore you place the waste, the diversion should be completed.” 2011AP 4/11/12 Tr. at 32:9–10 (Sharma).

316. The Landfill's design plans contemplated that the diversion channel would be in place before Cell E6 was filled. 2011AP 4/11/12 Tr. at 66:7-9, 66:15-17 (Sharma); 2011AP 4/11/12 Tr. at 74:10-15 (Steinberger).

317. However, the ENV stated that Waste Management had to begin filling Cell E6 before the western diversion channel was in place. 2011AP 4/11/12 Tr. at 33:12-21 (Sharma); 75:13-18 (Steinberger).

318. The ENV claimed that permitting and processing delays pushed the ENV and Waste Management into a situation where there was no safely useable space for the waste. 2011AP 4/11/12 Tr. at 145:6-12 (Steinberger); 2011AP 4/11/12 Tr. at 47:22-24, 67:5-9 (Sharma).

319. Director Steinberger identified two such delays. First, there was a challenge to the Environmental Impact Statement (EIS) for the Landfill. 2011AP 4/11/12 Tr. at 74:19-23, 145:16-19 (Steinberger).

320. Director Steinberger conceded that a challenge to the EIS was not unexpected. 2011AP 4/11/12 Tr. at 145:22-23 (Steinberger).

321. Second, intervenors opposed the expansion of the Landfill in 2009. 2011AP 4/11/12 Tr. at 74:23-25 (Steinberger).

322. However, the ENV knew it would have to go through the SUP approval process and, given the history of the Landfill and the prior proceedings, should have anticipated intervention in the approval proceedings. 2011AP 4/11/12 Tr. at 145:24-146:14, 149:3-5 (Steinberger); 2011AP Ex. K2 (6/5/03 LUC order); 2011AP Ex. K155

(3/14/08 LUC order); 2011AP Ex. K155 at 3 (¶¶ 5–8) (6/5/03 LUC order); 2011AP Ex. K85 at 125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.: Doyle).

323. No one from Waste Management appeared to testify.

324. Based on the record, it is apparent that inadequate planning by the ENV and Waste Management caused the Landfill to run out of safely useable space before the diversion channel had been completed. 2011AP 3/7/12 Tr. at 186:4–21 (Miller).

325. This inadequate planning forced the ENV and Waste Management to deviate from the Landfill's design plans and the industry standard and by filling Cell E6 before the diversion channel was in place. 2011AP 4/11/12 Tr. at 66:7–9 (Sharma: "And [the diversion channel] was intend to be [in place prior to the storm]."); 2011AP 4/11/12 Tr. at 66:15–17 (Sharma: "[W]e were going to construct them both sequentially, not place the waste before the diversion channel is completed."); 2011AP 3/7/12 Tr. at 129:25–130:4 (Miller: "Q. So if you had been advising the operator and the City, would you have said that it was reasonable to go forward with filling the cell before the diversion system had been completed? A. No, I would not.").

(g) The City's Current Waste Stream and Alternative Disposal Methods.

326. The MSW in the City's current waste stream includes putrescible waste, such as sewage sludge, biosolids, green waste and food waste. 2011AP 3/7/12 Tr. at 100:16–17; 102:9–12 (Miller).

327. Putrescible waste is of one of the greatest concerns because it decomposes and causes odors that burden the community. 2011AP 3/7/12 Tr. at 23:5-7 (Miller: noting that putrescible waste includes “the biosolids, the food waste, the green waste, [and] incidental green waste”); 2011AP 3/7/12 Tr. at 98:11-14 (Miller: discussing wastes that are “non-putrescible, and what I mean by that -- they don’t rot, they don’t break down and decompose and cause the odors that have been a problem at the landfill”); 2011AP 3/7/12 Tr. at 102:9-12 (Miller: “I would also say, again, the items of greatest concern are the food waste, are the -- the green waste, those items that decompose that cause the odors and so forth.”).

328. Currently, all putrescible waste that is not burned or recycled is taken to the Landfill. 2011AP 1/11/12 Tr. at 68:11-15 (Steinberger); 2011AP 4/11/12 Tr. at 114:9-14, 123:20-24 (Steinberger).

329. The ENV and private business engage in various efforts to divert MSW and certain other wastes from the Landfill. In 2010, the last year for which waste totals are available in the contested case proceeding, the ENV diverted 34.4% of the total MSW from the Landfill to H-POWER. 2011AP Ex. A27 (O’ahu MSW waste stream chart). In 2010, the ENV also diverted 36.9% of the total MSW from the Landfill through general material recycling. 2011AP Ex. A27 (O’ahu MSW waste stream chart). In May 2010, ENV accomplished island wide-expansion of its curbside green waste recycling program to 160,000 residences. 2011AP Steinberger Written Direct Testimony at 19 (¶ 56). The City has a program of community recy-

cling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. 2011AP Steinberger Written Direct Testimony at 20–21 (¶¶ 61–62).

330. Despite these efforts, in 2010 the Landfill still accepted 163,736 tons of MSW. 2011AP Ex. A27 (O‘ahu MSW waste stream table).

331. The continued volume of MSW at the Landfill is due in part to the fact that the City is behind other municipalities with respect to its recycling efforts. As Deputy Director Gill explained in an interview that was accepted into the record without objection, “[W]e’re doing about half as well as we need to [with respect to landfill diversion], and not only as a city, but as a state” 2011AP 4/4/12 Tr. Supp. at 12:5–6 (Gill).

332. Mr. Miller similarly testified that “the City’s current use of alternative disposal technologies is inconsistent with current state of the practice with respect to its recycling efforts, biosolids management and medical waste management, essentially not looking at these as a resource that they are, as opposed to as a waste product.” 2011AP 3/7/12 Tr. at 21:24–22:5 (Miller).

a. Sewage Sludge and Biosolids.

333. The record shows that particular areas for improvement are the sewage sludge and biosolids programs. 2011AP 1/11/12 Tr. at 68:13–15 (Steinberger); 2011AP 1/25/12 Tr. 54:3, 54:11-13 (Chang).

334. “Sewage sludge” refers to the raw sludge from wastewater prior to processing in a treatment system where the biosolids are extracted. 2011AP 4/11/12 Tr. at 77:19–22 (Steinberger).

335. As of 2011, “[a]bout 65 percent of the island’s generated sewage sludge goes to the [L]andfill.” 2011AP 1/11/12 Tr. at 68:13–15 (Steinberger). The ENV took “15,000 to 20,000 tons per year of sewage sludge” to the Landfill. 2011AP Steinberger Written Direct Testimony at 24 (¶ 74).

336. Branch Chief Chang acknowledged that sewage sludge can be burned and that other municipalities do burn sewage sludge. 2011AP 1/25/12 Tr. 54:3, 54:11-13 (Chang); *see also* 2011AP 1/11/12 Tr. 68:17 (Steinberger: “Sewage sludge can be incinerated.”). As of the close of evidence in this matter, the ENV did not burn sewage sludge. 2011Ap 1/11/12 Tr. at 68:12–15.

337. “Biosolids” are what can be extracted from the sludge and left after exiting a treatment system. 2011AP 4/11/12 Tr. at 77:22–24 (Steinberger). Class A biosolids may be used as a “growth enhancer,” similar to fertilizer. 2011AP 4/11/12 Tr. at 78:3–4, 79:12–16 (Steinberger). Class B biosolids have restricted uses, such as spreading over forage crops for cattle. 2011AP 4/11/12 Tr. at 78:4, 80:16–19 (Steinberger).

338. While other municipalities began biosolids programs in the 1970s and 1980s, the ENV did not establish a biosolids program for Honolulu until 2006. 2011AP Ex. K189 at 1 (Los Angeles biosolids webpage); 2011AP Ex. K190 at 2 (King County biosolids webpage); 2011AP Ex. K148 at 10 (Parametrix alternatives memorandum); 2011AP 3/7/12 Tr. at 139:11–140:4 (Miller). Approximately, thirty-five percent of the island’s sewage sludge was reused as biosolids. 1/11/12 Tr. at 68:13–15 (Steinberger).

339. The City's current alternative sewage sludge and biosolids management includes a digester or "egg" at the Synagro facility located at 1350 Sand Island Parkway, Honolulu, Hawai'i 96819 (the "**Synagro Facility**"). 2011AP 4/11/12 Tr. at 179:4-9 (Steinberger). This facility can only handle approximately 20,000 tons per year of sewage sludge. 2011AP Steinberger Written Direct Testimony at 23 (§ 71).

340. The ENV has conducted studies on sewage sludge management. Those studies recommended incineration at H-POWER and a second digester at the Synagro Facility. 2011AP 4/11/12 Tr. at 178:6-7, 178:20-179:3 (Steinberger). Director Steinberger testified that the Honolulu City Council did not consider funding for the second digester to be a priority. 2011AP 4/11/12 Tr. at 180:3-5 (Steinberger).

341. "About 65 percent of the island's generated sewage sludge goes to the [L]andfill." 2011AP 1/11/12 Tr. at 68:13-15 (Steinberger). Landfilling 65% of the sewage sludge is inconsistent with best practices and with the national standard. 2011AP 3/7/12 Tr. at 22:18-20, 96:4-7, 98:17-22, 139:11-140:4 (Miller).

b. Food Waste and Green Waste.

342. Another area for improvement is food waste recycling. At the close of evidence, the ENV had no food waste collection program. 2011AP Ex. K195 at 2, 4 (12/09 food waste article); 2011AP Ex. K148 at 4 (Parametrix alternatives memorandum). Although the ENV has entered into a contract for an In-Vessel Conversion Facility, which was expected be able to process green waste, food waste and biosolids, the facility was not expected to be operational until early 2013. 2011AP Steinberger Written Direct Testimony at 20 (§58).

343. Food waste can be disposed at H-POWER. 2011AP 1/11/12 Tr. at 71:7–10 (Steinberger); 2011AP 4/11/12 Tr. at 114:25-115:5, 123:23-24 (Steinberger).

344. Green waste that is not composted can be disposed of at H-POWER.

c. Medical Waste.

345. Another area for improvement is the disposal of medical waste. While the prevailing trend is to burn medical waste, 2011AP Ex. K247 at 613 (Sharma, Geoenvironmental Engineering), the ENV continues to take medical waste to the Landfill. In fact, the Landfill's operator, Waste Management, has a facility on the U.S. mainland that burns medical waste. 2011AP Ex. K192 (Waste Management medical waste webpage).

d. Comparison with Other Municipalities.

346. San Francisco is a national leader in landfill waste diversion with a rate of 78%. 2011AP 1/11/12 Tr. at 79:2–5, 142:12–17 (Steinberger); 4/11/12 Tr. at 164:1–4 (Steinberger).

347. The ENV has a waste diversion rate of 72% to 73%, with approximately 34% being diverted through H POWER. 4/11/12 Tr. at 192:22–25 (Steinberger); Ex. A26 (O'ahu waste stream table).

348. Unlike the City, San Francisco accomplishes its diversion rate without a waste-to-energy facility. 4/11/12 Tr. at 164:5–7 (Steinberger); 3/7/12 Tr. at 136:1–3 (Miller). San Francisco achieves its high diversion rate through recycling and reducing the waste stream. 3/7/12 Tr. at 136:5–8 (Miller); Ex. K196 (San Francisco waste management webpage).

349. If the ENV improved its recycling efforts to be in line with San Francisco's, and with the addition of the third H-POWER boiler, it could probably achieve a diversion rate in the upper ninetieth percentile. 3/7/12 Tr. at 136:19–137:2 (Miller).

(h) The City Is Adding Capacity at H-POWER.

350. The existing H-POWER facility requires pre-preparation of waste so that it can be accommodated in the burn unit. 2011AP 1/11/12 Tr. at 65:14–17 (Steinberger). All non-burnable materials need to be separated out. 2011AP 1/11/12 Tr. at 65:18–21 (Steinberger). The raw MSW comes through a tipping floor and goes through a processing unit that develops "RDF" or refuse-derived fuel. 2011AP 1/11/12 Tr. at 65:22–66:1 (Steinberger). The RDF goes into a holding barn and the material, the residue, and any recyclable material is separated. 2011AP 1/11/12 Tr. at 66:1–4 (Steinberger). This pre-preparation requires worker handling of the waste. 2011AP 1/11/12 Tr. at 66:18–22 (Steinberger).

351. Worker handling of the waste has been proffered as the reason the ENV and Covanta, the H-POWER operator, have hesitated to take sewage sludge and medical waste in the past. 2011AP 4/11/12 Tr. at 170:22–171:10 (Steinberger).

352. No one from Covanta testified in these proceedings.

353.

354. At the close of evidence, a third H-POWER boiler was expected to be operational by October or November 2012. 4/11/12 Tr. at 176:7–10, 211:12–15 (Steinberger).

355. The third boiler was anticipated to have the capacity to take 300,000 tons of MSW a year. 2011AP Steinberger Written Direct Testimony at 18 (¶¶ 47, 50); 2011AP 4/11/12 Tr. at 84:22–24 (Steinberger).

356. With the third boiler, the ENV has said it will achieve a Landfill diversion rate of 90%. 2011AP Ex. K251 at 1–2 (5/5/11 ENV press release).

357. In 2010, the last year for which waste totals are available, the Landfill accepted 163,736 tons of MSW. 2011AP Ex. A26 (O‘ahu waste stream table).

358. Therefore, the third boiler will add more capacity than is needed to dispose of all of O‘ahu’s remaining landfilled MSW.

359. The third boiler is known as a “mass burn unit.” 2011AP 1/11/12 Tr. at 65:9–10 (Steinberger). A mass burn unit can accept larger pieces of material and requires less pre-preparation of waste. 2011AP 1/11/12 Tr. at 66:8–10 (Steinberger). With less pre-preparation, there is less worker interaction with the waste. 2011AP 1/11/12 Tr. at 66:18–21 (Steinberger).

360. In particular, with the third boiler, the ENV will have the capacity to burn the 15,000 to 20,000 tons of sewage sludge presently disposed of at the Landfill. 2011AP Steinberger Written Direct Testimony at 23 (¶ 71).

361. Director Steinberger confirmed that the ENV had instituted a change order to be able to burn sewage sludge. 2011AP 4/11/12 Tr. at 90:9–10, 90:20–21 (Steinberger).

362. Director Steinberger also confirmed that, with the third boiler operational, the ENV could stop sending sewage sludge to the Landfill by fall 2012. 2011AP 4/11/12 Tr. at 90:3–20, 174:1–6, 203:25 (Steinberger).

363. The third boiler will also have the capacity to burn the 10,000 tons of medical waste that currently goes to the Landfill. 2011AP 1/11/12 Tr. at 75:13–18 (Steinberger); 2011AP 4/11/12 Tr. at 163:12–16 (Steinberger).

364. Director Steinberger confirmed that with the third boiler operational, the ENV could stop sending medical waste to the Landfill by fall 2012. 2011AP 1/11/12 Tr. 75:19–22 (Steinberger); 2011AP 4/11/12 Tr. 171:16–172:10, 196:20–24 (Steinberger); *cf.* 2011AP 3/7/12 Tr. at 209:12–25 (Miller).

365. With the added capacity provided by the third H-POWER boiler, the ENV will not need to landfill putrescible waste or any combustible MSW. 3/7/12 Tr. at 22:24–23:7 (Miller). As Mr. Miller explained, with alternative diversion there is no need to have a general-purpose MSW landfill on O‘ahu. *Id.*

366. Steinberger agreed: “If it’s just solely MSW, I would say [Mr. Miller is] probably correct.” 2011AP 4/11/12 Tr. at 106:12–22 (Steinberger).

367. The items remaining that will not be able to be accepted at H-POWER after the third boiler becomes operational are “probably a small percentage” of the MSW. 2011AP 1/11/12 Tr. at 77:7–13 (Steinberger).

368. Much of this small percentage “can go to . . . [the] PVT [C&D landfill],” including resins and chemical debris and petroleum contaminated soil. 2011AP

1/11/12 Tr. at 47:19–22, 145:4–146:1 (Steinberger); 2011AP 1/25/12 Tr. at 12:2–3, 44:12–14 (Chang).

369. After the third boiler is operational, but before a new landfill is operational, the only time sewage sludge and other putrescible waste or any combustible MSW would need to go the Landfill is (1) during times when H-POWER is down for maintenance and cannot accept waste or (2) when there are wastes reasonably related to a public emergency, such as disaster debris, that cannot be disposed of at H-POWER. 2011AP 4/11/12 Tr. at 118:9–15, 125:15–126:4, 189:13–17, 201:20–202:1 (Steinberger); 2011AP 3/7/12 Tr. at 24:23–23:7 (Miller).

370. The Landfill could be permitted by the DOH to accept waste for those specific contingencies. 1/25/12 at 54:20–24, 55:4–9 (Chang).

371. With respect to H-POWER downtime in particular, “[t]he bypass waste, which is what that is, the waste that cannot be processed because of down time and so forth, should be minimal.” 2011AP 3/7/12 Tr. at 100:10–12 (Miller).

372. H-POWER is generally burning twenty-four hours a day, seven days a week. 2011AP Ex. K220 at 220:23–223:1 (7/1/09 Tr.: Doyle); 2011AP 4/23/12 Tr. at 23:27 (Miller).

373. Only one H-POWER boiler is generally taken offline at a time and total shutdowns are typically not required. 2011AP Ex. K220 at 223:6–9 (7/1/09 Tr.: Doyle); *cf.* 2011AP 3/7/12 Tr. at 101:4–8 (Miller).

374. Unexpected shutdowns at waste-to-energy facilities are rare. 2011AP 3/7/12 Tr. at 101:12–14 (Miller).

375. H-POWER has to be reliable and predicable because, with the addition of the third boiler, it will be providing eight percent of O'ahu's power. 2011AP Ex. K251 at 1-2 (5/5/11 ENV press release).

376. Because putrescible waste decomposes, ending the acceptance of putrescible waste at the Landfill would likely eliminate more than 90% of the odor issues. 3/7/12 Tr. 206:6-10 (Miller: "If all of the putrescible waste no longer goes in there, so all that stuff that can decompose, if it's no longer in there, that would significantly -- I would say probably more than 90 percent remove the odor issues at the landfill.").

377. Because the third boiler will be operational in October or November 2012, the ENV will not need a general purpose MSW landfill beyond January 1, 2013. All sewage sludge and all other putrescible waste, such as food waste and green waste, all treated medical waste (except sharps), and all combustible general MSW can be burned or disposed of through alternative means.

(i) In Addition to the Third Boiler, the ENV Will Have Alternative Means of Diverting Sewage Sludge, Food Waste and Green Waste from the Landfill.

378. In addition to the third boiler at H-POWER, the ENV will have the ability to recycle green waste, food waste and biosolids through its In-Vessel Conversion Facility, which was scheduled to be operational in 2013. 2011AP 4/11/12 Tr. at 79:2-3, 87:25-88:2, 176:11-13 (Steinberger); 2011AP Steinberger Written Direct Testimony at 20 (¶ 58); 2011AP Ex. K148 at 4 (Parametrix alternatives memorandum).

379. The facility will be able to take 15,000 to 20,000 tons of sewage sludge annually. 2011AP 4/11/12 Tr. at 177:3-10 (Steinberger).

380. In addition to the In-Vessel Conversion Facility, the ENV is also seeking to construct a second “egg” digester at its Sand Island facility. 2011AP 4/11/12 Tr. at 179:10–11 (Steinberger).

381. The second digester would provide redundancy for the existing facility and “take the over-capacity off the current digester.” 2011AP 4/11/12 Tr. at 179:6–9 (Steinberger).

382. These facilities will provide alternatives to incineration that might allow the City to achieve a higher and better use of sewage sludge, green waste, and food waste through recycling or reuse. 2011AP 3/7/12 Tr. at 140:14–141:12, 176:22–177:1, 210:14–22 (Miller).

383. According to Director Steinberger, “ultimately, all of the biosolids that are produced on O‘ahu will go into some type of beneficial reuse as a class A biosolid.” 2011AP 4/11/12 Tr. at 79:3–6 (Steinberger). The “product will be distributed as a [plant] growth enhancer.” 2011AP 4/11/12 Tr. at 81:19–20 (Steinberger).

384. Until the ENV achieves that goal, burning at H-POWER sewage sludge, any biosolids that are not beneficially reused, green waste, and food waste is a better use of those resources than landfilling them. 2011AP 3/7/12 Tr. at 176:22-177:1 (Miller).

(j) The Time Required to Site and Develop a New Landfill.

385. It took the ENV “about two-and-a-half years” to identify, permit, and have the Landfill operational. 2011AP Ex. K220 at 244:16–19 (7/1/09 Tr.: Doyle).

386. On August 4, 2009, the Planning Commission ordered the ENV to find a new landfill site for MSW. 2011AP Ex. K12 at 25–26 (2009 decision).

387. The Planning Commission directed that “[o]n or before November 1, 2010, the [ENV] shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL.” 2011AP Ex. K12 at 25–26 (2009 decision).

388. The ENV was directed to proceed with “reasonable diligence.” 2011AP Ex. K12 at 25–26 (2009 decision).

389. Mr. Miller testified that it should take should take three to five years select and develop a new landfill. It should take 18 months to two years for design, design review and development of a landfill. 2011AP 3/7/12 Tr. at 199:24–200:1 (Miller). The EIS process should take a year to a year and a half. 2011AP 3/7/12 Tr. at 201:1–24 (Miller). Adding land acquisition to the process, it would probably take a total of three to five years. *See* 2011AP 3/7/12 Tr. at 202:14–203:6 (Miller).

390. Mr. Miller’s estimate is consistent with the timeline set out by Director Doyle. Director Doyle stated before the LUC: “We have asked for a five-year extension because that’s the time that we believe it’s going to take in order for us to establish a new landfill.” 2011AP Ex. K85 at 95:6–8 (3/27/03 Tr.: Doyle). Director Doyle added: “We think the time that is necessary for us to get us there is at least three, probably four years just to get ourselves up and operational on that landfill site.” K85 at 100:23–25 (Doyle) (emphasis added).

391. The ENV did not offer any testimony by a witness qualified as an expert in landfill site selection.

392. The ENV did not offer testimony by a witness who had been responsible for successfully siting a landfill.

393. The ENV did offer testimony from Director Steinberger, Ms. Marsters, and Dr. Sharma.

394. Director Steinberger stated that to develop a new site would take “at best seven years” from site identification to operations. 2011AP 4/11/12 Tr. at 122:25 (Steinberger).

395. Director Steinberger was not offered or qualified as an expert in site selection. The ENV provided no evidence that Director Steinberger ever successfully sited a new landfill.

396. Ms. Marsters testified that she believes that to develop a landfill it would take “somewhere in excess of five to seven years” from site selection to the functioning landfill. 2011AP 4/4/12 Tr. at 56:17–18 (Marsters).

397. Assuming that Ms. Marsters meant that the entire process could take five years, the low end of her estimate is consistent with Mr. Miller’s estimate. In any event, Ms. Marsters was not offered as an expert in landfill siting or development, and she has never sited or developed a landfill. 4/4/12 Tr. at 61:16–25 (Marsters).

398. Although Dr. Sharma testified that “after mid ‘90s and in 2000 and onward, it has been a long, drawn process” based on new regulations enacted in 1993, 2011AP 4/11/12 Tr. at 51:22–52: 12, he conceded that those regulations were in place when Director Doyle provided his 5-year estimate to the LUC on March 27, 2003, 2011AP 4/11/12 Tr. at 52:15–18 (Sharma).

399. Dr. Sharma also testified that “in ‘80s and ‘90s there were many new landfills were being sited, not the expansion of existing landfills, but completely new, and [Dr. Sharma] was involved in some of them.” 2011AP 4/11/12 Tr. at 41:17–20 (Sharma). Dr. Sharma further testified that “[t]hey took about seven to ten years, depending upon the complexity.” 2011AP 4/11/12 Tr. at 41:21–22 (Sharma).

400. Dr. Sharma’s expertise is in design. 2011AP 4/11/12 Tr. at 9:11–20 (Sharma).

401. He has never sited a landfill, and he testified that he was not qualified to give expert testimony on landfill siting. 2011AP 4/11/12 Tr. at 41:10–15, 5:22–23 (Sharma).

402. Based on the evidence, no more than five to seven years is needed to site and develop a landfill if the ENV proceeds with reasonable diligence.

(k) The City’s Current Site Selection Efforts.

403. The LUC’s 2009 Order directed the ENV to select and develop a “new” site that would either “replace or supplement” the existing Landfill. 2011AP Ex. K15 at 6 (¶ 4) (10/22/09 LUC order).

404. This directive removes the option of selecting WGS� as the “new” site. 2011AP 1/11/12 Tr. at 53:20–54:1 (Steinberger).

405. The site selection and development process was to begin on November 1, 2010. 2011AP Ex. K15 at 6 (¶ 4) (10/22/09 LUC order).

406. The current SSC did not start meeting until January 2011. 2011AP 4/4/12 Tr. at 54:14–16 (Marsters).

407. The SSC does not include anyone from Ko Olina or Kapolei—two communities heavily affected by the Landfill. 2011AP 2/8/12 Tr. at 23:14–20 (Williams); 2011AP 4/4/12 Tr. at 139:3–12 (Timson).

408. The site selection process has not followed the City’s Integrated Solid Waste Management Plan (“**Solid Waste Plan**”), which Director Steinberger referred to as the City’s “framework” for waste management. 2011AP 1/11/12 Tr. at 26:21–27:1 (Steinberger); *see also* 2011AP 3/7/12 Tr. at 25:2–20 (Miller); 2011AP 4/4/12 Tr. at 73:9–13 (Marsters).

409. For example, the SSC has not excluded sites west of Makakilo, even though the plan directs that the “site evaluations will preclude areas west of Makakilo” K144 at 11-4 (10/08 integrated solid waste management plan update); 2011AP 4/4/12 Tr. at 76:3–6, 76:16–18, 76:19–21, 77:21–24 (Marsters).

410. A number of the sites that the SSC may recommend are west of Makakilo. 2011AP Ex. K258 (4/20/12 SSC meeting photographs).

411. Further, the site selection process has not followed the detailed site selection procedures set out in the Solid Waste Plan. 2011AP Ex. K144 at 11-5 (10/08 Integrated Solid Waste Management Plan Update).

412. For instance, the ENV did not direct SCC to consider mitigation factors and obtain input from potentially affected neighborhoods before developing rankings. 2011AP 4/4/12 Tr. at 113:11–14, 116:10–21 (Marsters); 2011AP Ex. K144 at 11-5 (10/08 Integrated Solid Waste Management Plan Update); 2011AP Ex. K147 at 3 (Parametrix site selection memorandum).

413. Nor did the ENV direct SCC to consider mitigation factors and obtain input from potentially affected neighborhoods before developing rankings. 4/4/12 Tr. at 113:11–14, 116:10–21 (Marsters); 2011AP Ex. K144 at 11-5 (10/08 Integrated Solid Waste Management Plan Update); 2011AP Ex. K147 at 3 (Parametrix site selection memorandum).

414. As Mr. Miller explained, the site selection process has other errors, such as the use of deciles and failing to correct implicit weighting, which leads to double counting of criteria. 2011AP Ex. K147 at 3–4 (Parametrix site selection memorandum); 2011AP 3/7/12 Tr. at 94:9–12 (Miller).

415. More fundamentally, the site selection process did not move linearly from a broad consideration of sites to a narrow list of sites. 2011AP 3/7/12 Tr. at 23:8–13, 24:2–23 (Miller); 2011AP Ex. K147 at 4 (Parametrix site selection memorandum).

416. The consultant had the SSC start with the same list of approximately 40 sites, some of which were no longer viable options. 2011AP 4/4/12 Tr. at 39:13–20, 77:25–78:20 (Marsters).

417. The SSC was using those same sites through the sixth of seven scheduled meetings, which were supposed to be concluded by July 2011. 2011AP Ex. K26 at 2 (1/20/11 SSC description of service); 2011AP 4/4/12 Tr. at 66:25–67:2, 83:1–4, 84:17–20 (Marsters).

418. The SSC had to repeatedly “[r]emove screens that [it] had not either previously discussed or authorized.” 2011AP 4/4/12 Tr. at 104:24–105:4 (Marsters).

Specifically, the SSC broadened the search criteria or removed screens at the following four points in the process:

a. In the sixth meeting in July 2011, the SSC directed the consultant to include sites above or which cross the no-pass line and underground injection control (“UIC”) line. 2011AP Ex. K218 at 2 (7/19/11 SSC group memory); 2011AP 4/4/12 Tr. at 84:3–16 (Marsters); 2011AP 4/4/12 Tr. at 84:17–23 (Marsters); 2011AP Ex. K26 at 2 (1/20/11 SSC description of service).

b. In the seventh meeting in November 2011, the SSC’s consultant made a presentation regarding potential sites within the UIC and no-pass lines. 2011AP Ex. K152 at 1 (11/8/11 SSC group memory). However, the consultant applied a number of exclusionary criteria, meaning that sites with such criteria would not be considered. 2011AP 4/4/12 Tr. at 87:13–15 (Marsters); 2011AP Ex. K144 at 11-6 (10/08 integrated solid waste management plan update). After application of the criteria, only two sites above the UIC and no-pass line remained, both of which were non-sites that could not be used. 2011AP 4/4/12 Tr. at 88:1–17 (Marsters); 2011AP Ex. K152 at 2 (11/8/11 SSC group memory). One exclusionary criterion screened out lands owned by the State. 2011AP 4/4/12 Tr. at 89:6–10 (Marsters). The SSC had not previously directed the consultant exclude lands owned by the state and the SSC directed the consultant to include such lands. 2011AP 4/4/12 Tr. at 89:11–17, 90:9–12 (Marsters); 2011AP Ex. K152 at 2 (11/8/11 SSC group memory). In addition, the consultant had screened out parcels less than 100 acres,

and the SSC asked the consultant to include parcels between 90 and 100 acres. 2011AP Ex. K153 at 9 (11/8/11 SSC handout); 4/4/12 Tr. 90:17–21 (Marsters).

c. In the eighth meeting in February 2012, after dropping certain screens, the consultant identified a total of 464 sites. 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). But the consultant applied nine screening factors to the 464 sites. 2011AP 4/4/12 Tr. at 93:10–13 (Marsters); 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). After applying the screening factors, only six sites remained. 2011AP 4/4/12 Tr. at 93:18–21 (Marsters); 2011AP Ex. K170 at 3 (2/1/12 SSC group memory). The SSC eliminated four of those sites, so only two sites remained. 2011AP Ex. K170 at 3 (2/1/12 SSC group memory). One of the exclusionary criteria applied by the consultant screened out Class C agricultural lands. 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). The SSC had not previously directed the consultant to exclude Class C agricultural lands. The SSC asked the consultant to include Class C agricultural land. 2011AP 4/4/12 Tr. at 96:12–22 (Marsters); 2011AP Ex. K170 at 3, 5 (2/1/12 SSC group memory). Another exclusionary criterion applied by the consultant screened out any parcel that contained a structure as noted on aerial maps. 2011AP 4/4/12 Tr. at 96:23–97:3 (Marsters); 2011AP Ex. K170 at 3–4 (2/1/12 SSC group memory). The SSC had not previously asked the consultant to exclude parcels with a structure. The SCC directed the consultant to include parcels with structures. 2011AP 4/4/12 Tr. at 97:4–18 (Marsters); 2011AP Ex. K170 at 3, 5 (2/1/12 SSC group memory). Finally, in addition to dropping those exclusionary criteria, the SSC asked the consultant to reevaluate sites that were large enough so

that, even with those portions affected by accepted exclusionary factors, there still could be enough area to develop a landfill. 2011AP 4/4/12 Tr. at 98:7–99:21 (Marsters); 2011AP Ex. K170 at 5 (2/1/12 SSC group memory).

d. In the ninth meeting in March 2012, after dropping the exclusionary criteria for Class C agricultural land and structures, the consultant identified a total of seven sites. 2011AP Ex. A47 (3/16/12 SSC group memory at 2). However, the consultant added an exclusionary criterion for parcels up gradient of parcels in or planned for residential use. 2011AP 4/4/12 Tr. at 102:23–103:2 (Marsters); 2011AP Ex. A47 (3/16/12 SSC group memory at 2). The SSC had not previously directed the consultant to include the up gradient screen. The SSC directed the consultant to eliminate the screen. 2011AP 4/4/12 Tr. at 103:3–10 (Marsters); 2011AP Ex. A47 (3/16/12 SSC group memory at 3). The SSC also directed the consultant to add federal lands to the pool of potentially suitable sites. 2011AP Ex. A47 (3/16/12 SSC group memory at 4).

419. Ms. Marsters explained: “[W]e weren’t happy with the process that had happened. . . . We just wanted to get the process right.” 2011AP 4/4/12 Tr. at 104:20–23 (Marsters).

420. The SSC ranked sites in April 2012. 2011AP Ex. K258 (4/20/12 SSC meeting photographs).

421. The length of time that has passed and since the ENV was ordered to find a new site and the flaws in the process were not reasonable.

422. There is no evidence in the record that the landfill site selection process is finished or that the ENV has set a deadline to complete the process.

423. Based on the findings of fact set forth above, the Planning Commission finds that the ENV has not exercised reasonable diligence in siting and developing a new landfill.

(l) Closure of the Landfill.

424. One of the ENV's stated goals is "the elimination of landfilling materials other than ash in the near future." 2011AP Ex. K230 at 9 (3/12 sewage sludge report).

425. Under the Planning Commission's 2009 Order, the ENV had the option to select and develop a site that would either "replace or supplement" the Landfill. 2011AP Ex. K12 at 25-26 (2009 decision).

426. As Director Steinberger explained, "to develop a[n] [ash] monofill within an existing site is not that difficult of an accomplishment." 2011AP 1/11/12 Tr. at 61:22-24 (Steinberger).

427. To date, however, the ENV has directed the SSC to identify a site that could accept all forms of waste. 2011AP 4/4/12 Tr. at 72:13-24 (Marsters); 2011AP Ex. K27 at 2 (1/20/11 SSC group memory).

428. The directive to find one site introduced additional considerations and made the site selection process more difficult because the SSC had to evaluate the added capacity needed for the ash and residue and the location of potential sites relative to H-POWER. 2011AP 4/4/12 Tr. at 72:25-73:4, 111:17-25 (Marsters); 2011AP 1/11/12 Tr. at 61:13-18 (Steinberger).

429. Once the new site opens, the ENV will no longer need the Landfill.

430. It is in the best interest of the community and consistent with the standards set by HRS § 205-6 to close the WGS� to landfill operations as soon as practicable after the ENV develops a new landfill site.

431. It is in the best interest of mitigating the impacts of the WGS�, including but not limited to the impact on native Hawaiian traditional practices, 2011AP Ex. A48 (4/2/09 letter to David K. Tanoue from the State Historic Preservation Division), to close the WGS� to landfill operations as soon as practicable after the ENV develops a new landfill site.

II. CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction to hold public hearings and make recommendations on all proposals to approve special use permits for "unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified," in accordance with the Planning Commission Rules. HRS § 205-6(a); HAR § 15-15-95; Planning Commission Rule § 2-45.

2. The Landfill requires a special use permit for its operations.

3. HRS § 91-10(5) provides that "the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."

4. The ENV has the burden of proof to show by a preponderance of the evidence that its Applications meet the provisions of Planning Commission Rule § 2-45.

5. The ENV seeks a new SUP for the Landfill. Chapter 2, Subchapter 4 of the Planning Commission Rules sets forth the standards applicable to SUPs. Specifically, Planning Commission Rule § 2-45 of the provides as follows:

Test to be applied. Certain "unusual and reasonable" uses within agricultural districts other than those for which the district is classified may be permitted. The following guidelines are established as guidelines in determining an "unusual and reasonable" use:

- (a) Such use shall not be contrary to the objectives sought to be accomplished by the state land use law and regulations.
- (b) That the desired use would not adversely affect the surrounding property.
- (c) Such use would not unreasonably burden public agencies to provide public roads and streets, sewer, water, drainage and school improvements, and police and fire protection.
- (d) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.
- (e) That the land upon which the proposed use is sought is unsuited for uses permitted in the district.

6. Based on the findings set forth above, and specifically considering the mitigating effect of and subject to the conditions imposed below, the Planning Commission concludes as follows:

a. The continued operation of the Landfill for a specific period and the requested expansion Project are not contrary to the objectives sought to be accomplished by the state land use law and regulations.

b. The continued operation of the Landfill for a specific period and the requested expansion Project would not adversely affect surrounding property as long as (1) operated in accordance with the conditions imposed below and governmental approvals and requirements and (2) mitigation measures are implemented

in accordance with the ENV's representations as documented in the 2008 FEIS and as set forth below.

c. The continued operation of the Landfill for a specific period and the requested expansion Project would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements or police and fire protection.

d. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established that required the relocation of the City landfill for a specific period.

e. The land on which the WGSL is located is unsuited for agricultural purposes.

f. The foregoing findings continuing the SUP for WGSL depend upon the following:

i. From the date of this Order until March 1, 2024, MSW, including sewage sludge, may not be deposited at WGSL unless it cannot be disposed of within the City by any means other than landfilling; provided, however, that (1) during periods of H-POWER scheduled maintenance when the facility may shut down one or more of the boilers, MSW that would otherwise be processed at H-POWER or other facilities may be disposed of at WGSL, and (2) under emergency circumstances, as reasonably determined by the Director of the ENV, MSW that would other-

wise be processed at H-POWER or other facilities may be disposed of at the WGS�.

- ii. From March 2, 2024, until March 1, 2027, WGS� shall be closed to use and all waste except (1) ash and residue from H-POWER; and (2) automobile-shredder residue.
- iii. The Landfill shall stop accepting any form of waste and close on or before March 2, 2027.
- iv. The ENV shall file a notice of intent to close approved closure plan for WGS� with the Planning Commission one year prior to the closing of the Landfill on March 2, 2027.

7. Based on the findings set forth above and subject to the conditions imposed below, the ENV has met its burden of proof with respect to the provisions set forth in Planning Commission Rule § 2-45.

8. This Commission has the authority to impose conditions on the SUP, including a time limit for the duration of the particular use at issue. Planning Commission Rule § 2-46(e); HAR § 15-15-95(e).

9. Based on the findings of fact set forth above, the Planning Commission concludes that the conditions imposed below are necessary to protect public health, safety and welfare and are material to the approval of the Application.

III. DECISION AND ORDER

Pursuant to the foregoing findings of fact and conclusions of law, it is the decision and order of the Planning Commission to GRANT the consolidated Applications and APPROVE a new SUP in Special Use Permit File No. 2008/SUP-2

("2008/SUP-2") for the continued operation of the WGS� totaling approximately 200 acres, subject to the following conditions:

1. **General Conditions**

a. The Applicant shall continue its efforts to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. The Applicant's effort to identify and develop such site shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's efforts to select a new landfill site on O'ahu. Upon the selection of a new landfill site or sites on O'ahu, the Applicant shall provide written notice to the Planning Commission. Upon receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time. The Planning Commission shall make a recommendation to the LUC.

b. The Applicant 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. The Applicant shall use alternative technologies, to the extent reasonably practicable, to divert waste from the Landfill as set out in Exhibit A (proposed Stipulation to Continue Proceedings Until April 22, 2017).

c. The ENV shall provide semi-annual reports to the Planning Commission and the LUC regarding (1) the status of the efforts to identify and develop a new landfill site on O'ahu, including but not limited to an approximate date on which a new landfill will be operational as provided by this Order, (2) the WGSL's operations, including gas monitoring, (3) the ENV's compliance with the conditions imposed herein, (4) the Landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the Landfill, (5) the City's efforts to use alternative technologies, (6) the extent to which waste is being diverted from the Landfill and (7) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the Landfill.

d. The semi-annual reports shall be submitted to the Planning Commission, the LUC and the Association. Each report shall be posted on the ENV's website on the same day the report is submitted.

e. Within 30 days after each semi-annual report is submitted, the Association may request that the Planning Commission issue an order to show cause why the SUP should not be revoked if there is reason to believe that there has been a failure to perform according to the conditions imposed by this decision and order pursuant to Planning Commission Rule § 2-48. If so requested, the Planning Commission shall issue the order and schedule a hearing. The ENV shall provide the public with at least 14 days' notice of the hearing by posting the hearing date, time,

location and subject matter on the ENV's website. The ENV shall also provide at least 14 days' written notice of the hearing to all neighborhood boards on O'ahu and the Association.

f. The ENV shall report to the public every three months on the efforts of the City in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City. On the date each report is published, the ENV shall send a copy of the report to the Association.

g. The ENV shall present to the Planning Commission in a public hearing every six months on the status of the City's efforts to either reduce or continue the use of the WGSL. The ENV shall provide at least 14 days' written notice of each hearing to the Association of such hearings.

2. Operational Conditions

a. WGSL shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that H-POWER ash and residue may be accepted at the Landfill 24-hours a day.

b. As appropriate, the ENV shall coordinate construction of the Landfill cells and the operation of the WGSL with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

c. The operations of the Landfill shall be in compliance with the requirements of Revised Ordinances of Honolulu § 21-5.680, to the extent applicable, and all applicable statutes, rules and regulations of the State Department of

Health, the United States Environmental Protection Agency and any other federal or state agency and the Solid Waste Management Permit for the Landfill. A violation of any applicable statute, rule or regulation or any violation of a condition of the Solid Waste Management Permit for the Landfill shall be a violation of this Order.

d. The ENV shall obtain all necessary approvals from the United States Environmental Protection Agency, the State Department of Health, the State Department of Transportation, the State Commission on Water Resource Management, the City and County of Honolulu Board of Water Supply and any other federal, state or municipal agency prior to commencing any onsite or off-site improvements or activities.

e. In accordance with Chapter 11-60.1 of the Hawai'i Administrative Rules, entitled "Air Pollution Control," the ENV shall be responsible for ensuring that effective dust control measures during all phases of development, construction and operation of the Landfill are provided to prevent any visible dust emission from impacting surrounding areas. The dust control management plan for the Landfill, which must identify and address all activities that have a potential to generate fugitive dust, is incorporated and made a part of this Order.

f. The ENV shall prepare, implement and maintain a landscaping plan for the Landfill that (1) incorporates the features of the surrounding natural landscape and enables the Landfill to blend seamlessly into its environment and (2) reduces erosion and rivulets at the Landfill. Prior to the implementation of the

landscaping plan, the ENV shall submit the plan to the Association for review and comment.

g. The ENV shall prepare, implement and maintain a schedule pursuant to which City and commercial waste collection and transportation vehicles enter the Landfill without waiting or queuing on Farrington Highway for a period of more than five minutes.

h. The ENV shall prepare, implement and maintain a plan to minimize the emission of noise and odors from the Landfill. With respect to odors, the plan shall include the use of an odor-neutralizing mist system as contemplated by the FEIS.

i. The ENV shall prepare, implement and maintain a schedule for the weekly monitoring and removal of waste, including but not limited to trash and debris, in the area surrounding the Landfill.

j. The ENV shall monitor whether City and commercial vehicles entering the Landfill have covered and secured their loads to prevent the spilling or scattering of the contents and shall enforce violations.

3. Waste Acceptance Conditions

a. From the date of this Order until March 1, 2024, MSW, including sewage sludge, may not be deposited at WGSL unless it cannot be disposed of within the City by any means other than landfilling; provided, however, that (1) during periods of H-POWER scheduled maintenance when the facility may shut down one or more of the boilers, MSW that would otherwise be processed at H-POWER or

other facilities may be disposed of at WGS�, and (2) under emergency circumstances, as reasonably determined by the Director of the ENV, MSW that would otherwise be processed at H-POWER or other facilities may be disposed of at the WGS�.

b. From March 2, 2024, until March 1, 2027, WGS� shall be closed to use and all waste except (1) ash and residue from H-POWER; and (2) automobile-shredder residue.

c. The Landfill shall stop accepting any form of waste and close on or before March 2, 2027.

4. The ENV shall file with the Planning Commission an approved closure plan one year prior to closing to all forms of waste on March 2, 2027.

5. Public Health and Safety Conditions: If the Landfill releases waste or leachate, the ENV must immediately (1) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (2) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the Landfill's shoreline outfall to prevent waste from spreading into the ocean.

6. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

7. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Planning Commission Rules, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this decision and order.

8. The ENV shall notify the Planning Commission of termination of the use of the WGSJ property as a landfill for appropriate action or disposition of 2008/SUP-2.

Pursuant to the foregoing findings of fact and conclusions of law, it is also the decision and order of the Planning Commission to APPROVE the 2008 Application as provided herein to the extent it seeks to withdraw Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect, at which point all conditions previously placed on the Landfill under Special Use Permit File No. 86/SUP-5 shall be null and void.

DATED: Honolulu, Hawai'i, _____, 2017.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

By _____
DEAN I. HAZAMA, Chair

By _____
CORD D. ANDERSON, Vice Chair

By _____
ARTHUR B. TOLENTINO, Member

By _____
DANIEL S.M. YOUNG, Member

By _____
WILFRED A. CHANG, JR., Member

By _____
KAIULANI K. SODARO, Member

By _____
STEVEN S.C. LIM, Member

By _____
KEN K. HAYASHIDA, Member

By _____
THERESIA C. McMURDO, Member

In re Application of the Department of Environmental Services, City and County of Honolulu, File No. 2008/SUP-2: Findings of Fact, Conclusions of Law, Decision and Order

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Honolulu, Hawaii 96813
Telephone: 768-5168

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL	)	STIPULATION AND ORDER TO
SERVICES, CITY AND COUNTY OF	)	CONTINUE PROCEEDINGS TO APRIL 22,
HONOLULU	)	2017; CERTIFICATE OF SERVICE
)	
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'i, 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.")	

**STIPULATION AND ORDER TO
CONTINUE PROCEEDINGS UNTIL APRIL 22, 2017**

Applicant DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU ("ENV"), and Intervenors KO OLINA COMMUNITY ASSOCIATION and MAILE SHIMABUKURO, SCHNITZER STEEL HAWAII CORP., and COLLEEN HANABUSA request that the Commission continue the proceedings to April 22, 2017.

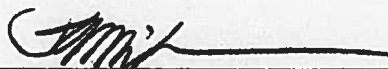
During the continuation, ENV will work to divert all waste from the landfill that can be disposed of by a method other than by landfilling, except if (1) H-POWER cannot accept the landfill waste or there is an emergency, and (2) there is no reasonably available alternative disposal method for the waste, by the following means:

1. Municipal Solid Waste, specifically:
 - (a) Residue: ENV will divert residue resulting from the H-POWER waste-to-energy process through H-POWER equipment improvements that will enable H-POWER to better filter residue to capture more of the burnable material and reduce the disposable waste. ENV will also continue to evaluate ways, including boiler optimization, to capture more of the residue at H-POWER.
 - (b) Bulky waste: As of July 2015, ENV has diverted all bulky waste previously used to dispose of sludge from the landfill.
 - (c) Unacceptable waste or waste rejected for disposal at H-POWER such as long wires, car parts, cables, and other oversized items: ENV will divert these wastes through H-POWER equipment improvements, such as the addition of a new waste shredder that will further process unacceptable waste so that these wastes may be incinerated at H-POWER. ENV is also investing in additional staff training at the Waimanalo Gulch Sanitary Landfill ("WGSL") to enhance inspections of incoming waste loads such that waste that could be burned at H-POWER will be identified and screened out in the future.
2. Ash (residue from H-POWER waste-to-energy process): ENV will follow the progress of facilities in Pasco County, Florida, and York County, Pennsylvania, that are pioneering ash reuse and will seek the Department of Health's approval of ash reuse projects modeled after these programs.

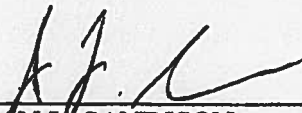
3. **Automotive Shredder Waste ("ASR")**, which comprises the majority of the **Miscellaneous Special Waste** category: The Department of Health has approved a pilot project for the City to evaluate the constituents of ASR to ensure it is compatible with the H-POWER system and/or determine what is needed to enable H-POWER processing.
4. **Wastewater Treatment Plant Waste**: ENV has diverted all sewage sludge produced by the City and County of Honolulu from the landfill as of July 2015. For sewage sludge from the private wastewater treatment plant, ENV will determine if adding water to the sludge or combining it with loads at the City's wastewater treatment plants will enable processing at H-POWER. For bar screening waste, ENV will institute enhanced odor control protocol or equipment to enable processing at H-POWER.
5. **Homeowner Waste**: ENV will continue efforts to establish a new refuse convenience center in the Campbell Industrial Park so there is an alternative depository for homeowner waste loads currently going to the landfill.
6. **Outdated Food Waste**: ENV will evaluate the constituents to determine compatibility with the H-POWER system to enable burning.
7. **Treated Medical Waste**: As of the end of December 2015, ENV has diverted all treated medical waste except for treated medical sharps.
8. **Rendering Waste**: Currently, only approximately 1,700 tons of rendering waste is disposed of at the landfill each year, and a single company is responsible for producing this waste stream. ENV intends to work with this company to further evaluate the rendering waste to determine whether it can be diverted from the landfill to H-POWER. In the interim, ENV will require this company to implement enhanced odor control measures for disposal at the landfill.
9. **Animal Waste**: ENV cannot divert large animal carcasses from the landfill because H-POWER does not have the ability to incinerate these large masses. However, ENV will work with the Department of Health to further characterize this waste, in particular the smaller animal carcasses, with the intent to burn this waste at H-POWER.
10. **Petroleum Contaminated Soils and Asbestos-Containing Materials**: These waste streams are already going to the PVT landfill instead of WGSF.

ENV shall file three reports with the Commission to update the status of the above-referenced objectives. These reports shall be submitted on June 22, 2016, September 22, 2016, and March 22, 2017.

DATED: Honolulu, Hawaii, _____.



KAMILLA C. K. CHAN
Deputy Corporation Counsel
Attorney for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU



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and MAILE SHIMABUKURO

RICHARD D. WURDEMAN
Attorney for Intervenor
COLLEEN HANABUSA

APPROVED AND SO ORDERED:

Authorized Representative of the
Honolulu Planning Commission

**FILE NO. 2008/SUP-2, In the Matter of the Application of DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU - Stipulation and
Order to Continue Proceedings to April 22, 2017**

09-01760/483350

Proposed Condition	Comment and Comparison
<p>1.a. The Applicant shall continue its efforts to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. The Applicant's effort to identify and develop such site shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's efforts to select a new landfill site on O'ahu. Upon the selection of a new landfill site or sites on O'ahu, the Applicant shall provide written notice to the Planning Commission. Upon receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time. The Planning Commission shall make a recommendation to the Land Use Commission.</p>	<p>Condition 1.a (identification of a new landfill) is substantively identical to Planning Commission ("PC") Condition 1 (8/4/09) and Land Use Commission ("LUC") Condition 4 (10/22/09).</p> <p>PC Condition 1: "On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time."</p> <p>LUC Condition 4: "On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. The Applicant's effort to identify and develop such site shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/5UP-2 (SP09403) and shall determine whether modification or revocation of 2008/SUP-2 (SP09-403) is appropriate at that time. The Planning Commission shall make a recommendation to the Land Use Commission."</p>

Proposed Condition	Comment and Comparison
<p>1.b. The Applicant 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. The Applicant shall use alternative technologies, to the extent reasonably practicable, to divert waste from the Landfill as set out in Exhibit A (proposed Stipulation to Continue Proceedings Until April 22, 2017).</p>	<p>Condition 1.b (use of alternative technologies) is similar to PC Condition 2 and LUC Condition 5.</p> <p>PC Condition 2: “The Applicant 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.”</p> <p>LUC Condition 5: “The Applicant 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.”</p>

Proposed Condition	Comment and Comparison
<p>1.c. The ENV shall provide semi-annual reports to the Planning Commission and the LUC regarding (1) the status of the efforts to identify and develop a new landfill site on O'ahu, including but not limited to an approximate date on which a new landfill will be operational as provided by this Order, (2) the WGS�'s operations, including gas monitoring, (3) the ENV's compliance with the conditions imposed herein, (4) the Landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the Landfill, (5) the City's efforts to use alternative technologies, (6) the extent to which waste is being diverted from the Landfill and (7) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the Landfill.</p> <p>1.d. The semi-annual reports shall be submitted to the Planning Commission, the LUC and the Association. Each report shall be posted on the ENV's website on the same day the report is submitted.</p>	<p>Conditions 1.c and 1.d (semi-annual reporting) are similar to PC Condition 3 (annual reporting) and LUC Condition 6 (annual reporting).</p> <p>PC Condition 3: "The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGS�'s operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order."</p> <p>LUC Condition 6: "The Applicant shall provide, without any prior notice, annual reports to the Planning Commission and the Land Use Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGS�'s operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission and Land Use Commission on June 1 of each year subsequent to the date of this Decision and Order."</p>

Proposed Condition	Comment and Comparison
<p>1.e. Within 30 days after each semi-annual report is submitted, the Association may request that the Planning Commission issue an order to show cause why the SUP should not be revoked if there is reason to believe that there has been a failure to perform according to the conditions imposed by this decision and order pursuant to Planning Commission Rules § 2-48. If so requested, the Planning Commission shall issue the order and schedule a hearing. The ENV shall provide the public with at least 14 days' notice of the hearing by posting the hearing date, time, location and subject matter on the ENV's website. The ENV shall also provide at least 14 days' written notice of the hearing to all neighborhood boards on O'ahu and the Association.</p>	<p>This condition is new and intended ensure compliance with the SUP.</p>
<p>1.f. The ENV shall report to the public every three months on the efforts of the City in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City. On the date each report is published, the ENV shall send a copy of the report to the Association.</p>	<p>Condition 1.f (reporting to the public) is similar to LUC Condition 15 (as amended by the circuit court).</p> <p>LUC Condition 15 (as amended by the circuit court): "The [ENV] through the City Administration shall report to the public every three months on the efforts of the [ENV] in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the [ENV]."</p>

Proposed Condition	Comment and Comparison
<p>1.g. The ENV shall present to the Planning Commission in a public hearing every six months on the status of the City's efforts to either reduce or continue the use of the WGS�. The ENV shall provide at least 14 days' written notice of each hearing to the Association of such hearings.</p>	<p>Condition 1.g (ENV's public hearing) is similar to LUC Condition 16 (as amended by the circuit court).</p> <p>LUC Condition 16 (as amended by the circuit court): "The [ENV] shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGS�."</p>
<p>2.a. WGS� shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that H-POWER ash and residue may be accepted at the Landfill 24-hours a day.</p>	<p>Condition 2.a (hours of operation) is substantively identical to PC Condition 5 and LUC Condition 8.</p> <p>PC Condition 5: "WGS� shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24-hours a day."</p> <p>LUC Condition 8: "WGS� shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24 hours a day."</p>

Proposed Condition	Comment and Comparison
<p>2.b. As appropriate, the ENV shall coordinate construction of the Landfill cells and the operation of the WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.</p>	<p>Condition 2.b (construction of cells) is substantively identical to PC Condition 6 and LUC Condition 9.</p> <p>PC Condition 6: "The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines."</p> <p>LUC Condition 9: "The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines."</p>
<p>2.c. The operations of the Landfill shall be in compliance with the requirements of Revised Ordinances of Honolulu § 21-5.680, to the extent applicable, and all applicable statutes, rules and regulations of the State Department of Health, the United States Environmental Protection Agency and any other federal or state agency and the Solid Waste Management Permit for the Landfill. A violation of any applicable statute, rule or regulation or any violation of a condition of the Solid Waste Management Permit for the Landfill shall be a violation of this Order.</p>	<p>Condition 2.c (compliance with law) is similar to PC Condition 7 and LUC Condition 10.</p> <p>PC Condition 7: "The operations of the WGS� under 2008/SUP-2 shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health."</p> <p>LUC Condition 10: "The operations of the WGS� under 2008/SUP-2 (SP09-403) shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health."</p>

Proposed Condition	Comment and Comparison
<p>2.d. The ENV shall obtain all necessary approvals from the United States Environmental Protection Agency, the State Department of Health, the State Department of Transportation, the State Commission on Water Resource Management, the City and County of Honolulu Board of Water Supply and any other federal, state or municipal agency prior to commencing any onsite or off-site improvements or activities.</p>	<p>Condition 2.d (necessary approvals) is substantively identical to LUC Condition 1.</p> <p>LUC Condition 1: “The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all onsite and offsite improvements involving access, storm drainage, leachate control water, well construction, and wastewater disposal.”</p>
<p>2.e. In accordance with Chapter 11-60.1 of the Hawai'i Administrative Rules, entitled “Air Pollution Control,” the ENV shall be responsible for ensuring that effective dust control measures during all phases of development, construction and operation of the Landfill are provided to prevent any visible dust emission from impacting surrounding areas. The dust control management plan for the Landfill, which must identify and address all activities that have a potential to generate fugitive dust, is incorporated and made a part of this Order.</p>	<p>Condition 2.e (dust control) is similar to LUC Condition 2.</p> <p>LUC Condition 2: “In accordance with Chapter 11-60.1 ‘Air Pollution Control,’ Hawai'i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.”</p>

Proposed Condition	Comment and Comparison
<p>2.f. The ENV shall prepare, implement and maintain a landscaping plan for the Landfill that (1) incorporates the features of the surrounding natural landscape and enables the Landfill to blend seamlessly into its environment and (2) reduces erosion and rivulets at the Landfill. Prior to the implementation of the landscaping plan, the ENV shall submit the plan to the Association for review and comment.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>
<p>2.g. The ENV shall prepare, implement and maintain a schedule pursuant to which City and commercial waste collection and transportation vehicles enter the Landfill without waiting or queuing on Farrington Highway for a period of more than five minutes.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>
<p>2.h. The ENV shall prepare, implement and maintain a plan to minimize the emission of noise and odors from the Landfill. With respect to odors, the plan shall include the use of an odor-neutralizing mist system as contemplated by the FEIS.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>
<p>2.i. The ENV shall prepare, implement and maintain a schedule for the weekly monitoring and removal of waste, including but not limited to trash and debris, in the area surrounding the Landfill.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>

Proposed Condition	Comment and Comparison
<p>2. j. The ENV shall monitor whether City and commercial vehicles entering the Landfill have covered and secured their loads to prevent the spilling or scattering of the contents and shall enforce violations.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>
<p>3.a. From the date of this Order until March 1, 2024, MSW, including sewage sludge, may not be deposited at WGSL unless it cannot be disposed of within the City by any means other than landfilling; provided, however, that (1) during periods of H-POWER scheduled maintenance when the facility may shut down one or more of the boilers, MSW that would otherwise be processed at H-POWER or other facilities may be disposed of at WGSL and (2) under emergency circumstances, as reasonably determined by the Director of the ENV, MSW that would otherwise be processed at H-POWER or other facilities may be disposed of at the WGSL.</p>	<p>Condition 3.a is similar to ENV's Conditions 1-3 in its proposed Decision and Order (5/2/12).</p> <p>ENV's Conditions:</p> <p>"1. MSW, including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGSL up to January 1, 2014, provided HPOWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City."</p> <p>"2. During periods of HPOWER scheduled maintenance when the facility may shut down one or more of its boilers, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL."</p> <p>"3. Under emergency circumstances, as reasonably determined by the Director of the Department of Environmental Services, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL."</p>
<p>3. b. From March 2, 2024, until March 1, 2027, WGSL be closed to all waste except (1) ash and residue from H-POWER; and (2) automobile-shredder residue.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill. The timing of the closure is intended to coincide with the opening of a new landfill.</p>

Proposed Condition	Comment and Comparison
<p>3. c. The Landfill shall stop accepting any form of waste on or before March 2, 2027.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill. The timing of the closure is intended to coincide with the opening of a new landfill.</p>
<p>4. The ENV shall file with the Planning Commission an approved closure plan one year prior to closing to all forms of waste on March 2, 2027.</p>	<p>This condition is new and intended to ensure timely closure of the Landfill.</p>
<p>5. Public Health and Safety Conditions: If the Landfill releases waste or leachate, the ENV must immediately (1) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (2) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the Landfill's shoreline outfall to prevent waste from spreading into the ocean.</p>	<p>This condition is new and intended to mitigate the adverse effects of the Landfill.</p>

Proposed Condition	Comment and Comparison
<p>6. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.</p>	<p>Condition 6 (additional conditions) is substantively identical to PC Condition 8 and LUC Condition 11.</p> <p>PC Condition 8: "The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate."</p> <p>LUC Condition 11: "The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate."</p>
<p>7. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this decision and order.</p>	<p>Condition 7 (enforcement of conditions) is substantively identical to PC Condition 9 and LUC Condition 12.</p> <p>PC Condition 9: "Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order."</p> <p>LUC Condition 12: "Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 (SP09-403) shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 (SP09-403) should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order."</p>

Proposed Condition	Comment and Comparison
<p>8. The ENV shall notify the Planning Commission of termination of the use of the WGSL property as a landfill for appropriate action or disposition of 2008/SUP-2.</p>	<p>Condition 8 (notification of termination) is substantively identical to PC Condition 10 and LUC Condition 13.</p> <p>PC Condition 10: "The Applicant shall notify the Planning Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2."</p> <p>LUC Condition 13: "The Applicant shall notify the Planning Commission and Land Use Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2 (SP09-403)."</p>

RECEIVED

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DEPT. OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU	)	DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER; CERTIFICATE OF SERVICE
)	
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 WGSJ up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSJ after July 31, 2012.")	

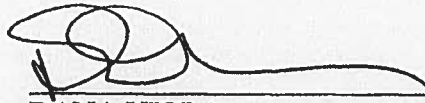
**DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

COMES NOW DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (hereinafter, "Applicant," "ENV," or "City"), by and through its attorneys, DANA VIOLA and ROBERT BRIAN BLACK, Deputies Corporation Counsel, and

respectfully submits this Proposed Findings of Fact, Conclusions of Law, and Decision and Order, pursuant to the Rules of the Planning Commission, City and County of Honolulu § 2-74.

DATED: Honolulu, Hawaii, May 2, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dana Viola', is written over a horizontal line.

DANA VIOLA
ROBERT BRIAN BLACK
Deputies Corporation Counsel
Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL	)	DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF	)	SERVICES, CITY AND COUNTY OF
HONOLULU	)	HONOLULU'S PROPOSED FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW, AND
To delete Condition No. 14 of Special Use	)	DECISION AND ORDER
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 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.")	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

This matter came on for a contested case hearing before the Planning Commission, City and County of Honolulu (the "Planning Commission"), on December 7, 2011, January 11, 2012, January 25, 2012, February 8, 2012, March 7, 2012, April 4, 2012, April 11, 2012, and April 23, 2012. Based on the record in this matter, including the evidence adduced at the contested case hearing, the credibility of the witnesses testifying at the hearing, and the proposed findings of fact, conclusions of law, and decisions and orders submitted by the parties and their respective responses thereto, the Planning Commission hereby makes the following findings of fact, conclusions of law, and decision and order:

zoning ordinances, and to approve special use permits use permits for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified in accordance with the RPC. Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2000 Edition); Hawaii Revised Statutes Section 205-6(a).

2. Hawaii Revised Statutes Section 91-19(5) provides that:

[T]he party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

The Applicant has the burden of proof to show by a preponderance of the evidence that the Application meets the provisions of Section 2-45 of the RPC.

3. The Applicant has met the provisions of Section 2-45 of the RPC in obtaining SUP No. 2008/SUP-2 and now applies anew for a modification of SUP No. 2008/SUP-2 pursuant to Sections 2-18 and 2-49 of the RPC and the Rules of the State of Hawaii, Land Use Commission, Section 15-15-70.

4. Based on the findings set forth above, the Planning Commission concludes that Applicant has shown good cause to amend SUP No. 2008/SUP-2.

DECISION AND ORDER

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, subject to the following conditions:

1. MSW, including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGSL up to January 1, 2014, provided HPOWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City.
2. During periods of HPOWER scheduled maintenance when the facility may shut down one or more of its boilers, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.
3. Under emergency circumstances, as reasonably determined by the Director of the Department of Environmental Services, MSW, including sewage sludge, that would otherwise be processed at HPOWER or other facilities may be disposed of at WGSL.

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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
Supersede Existing Special Use Permit
to Allow A 92.5-Acre Expansion and
Time Extension for Waimānalo Gulch
Sanitary Landfill, Waimānalo Gulch,
O‘ahu, Hawai‘i, Tax Map Key: 9-2-03: 72
And 73

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

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

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

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Attorney for Intervenor
COLLEEN HANABUSA

DATED: Honolulu, Hawai'i, January 27, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
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KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO