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 DEPARTMENT OF ENVIRONMENTAL SERVICES,
 CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
 OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

DEPT OF PLANNING
 AND PERMITTING
 CITY & COUNTY OF HONOLULU

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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 PRE-CONTESTED CASE
)	HEARING STATEMENT; CERTIFICATE
To delete Condition No. 14 of Special Use)	OF SERVICE
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.")	
)	

**DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY
 OF HONOLULU'S PRE-CONTESTED CASE HEARING STATEMENT**

The people of O'ahu need a landfill to dispose of municipal solid waste ("MSW") that cannot be burned, recycled, reused, or shipped. Waimanalo Gulch Sanitary Landfill ("WGSL")

or “Landfill”) is the only site on the island authorized to accept MSW. On July 31, 2012, however, WGSL’s authorization to accept MSW will end, and O’ahu will have no other disposal option for wastes such as sewage sludge. Although the Department of Environmental Services, City and County of Honolulu (“Applicant” or “ENV”) has diligently pursued alternatives to a landfill, 100% waste diversion is not technically feasible at this time, and an alternative landfill to WGSL will take many more years to develop, as this Commission acknowledged in 2009.

The Planning Commission acted reasonably in 2009 when it recommended to the State Land Use Commission (“LUC”) that WGSL be authorized to accept MSW to capacity without a deadline. If the LUC had followed this Commission’s recommendation, the State Department of Health would not now be “concerned that imposition of the July 31, 2011 deadline, when there are no disposal options for certain types of wastes, may threaten human health and the environment.” See Testimony of Steven Y.K. Chang, pg. 4, ¶ 11. ENV respectfully requests that the Planning Commission again recommend to the LUC that WGSL be authorized to accept MSW to capacity by deleting the July 31, 2012, deadline in Special Use Permit No. 2008/SUP-2.

I. ROLE OF WAIMANALO GULCH SANITARY LANDFILL

WGSL is a fundamental component in the City’s program to manage solid waste. WGSL is the only municipal sanitary landfill on the island of O’ahu, accepting MSW from all eight districts of O’ahu, including ‘Ewa, Wai’anae, Koolaupoko, Ko’olaupoko, the Primary Urban Center, East Honolulu, Central O’ahu, and the North Shore. The Landfill also accepts overflow refuse from other island landfills (private and military) and rubbish that exceeds the Honolulu Program of Waste Energy Recovery (“HPOWER”) facility’s capacity. See Testimony of Timothy E. Steinberger, pg. 2, ¶¶ 5, 7.

II. HISTORY OF WGSL

WGSL began operating in 1987. In 1989, WGSL was expanded by 26 acres to enable the construction of the administration building, weighing station, drainage structures, and access roads.

1. **2003 Planning Commission Decision: City Council Selects WGSL as the City's Future Landfill Site.**

On March 13, 2003, the Planning Commission granted the Department of Environmental Services' application to expand the landfill by 21 acres. At that time, based on WGSL's then-existing capacity, the City anticipated that the Landfill would close in five years, so the Planning Commission recommended that ENV submit an alternative landfill site, or sites, to the City Council by December 31, 2003, and close WGSL no later than May 1, 2008. See Exhibit "A7."

On June 9, 2003, the LUC issued the 2003 LUC Decision, which also required the City Council to select a new site for a landfill, with the assistance of the Blue Ribbon Site Selection Committee, by June 1, 2004. See Exhibit "A8."

The City Council received an extension of the June 1, 2004 deadline from the LUC, and on December 1, 2004, selected the Waimanalo Gulch site as the City's future landfill site. The City Council determined that the Waimanalo Gulch site would satisfy O'ahu's need for a landfill to manage its solid waste for the foreseeable future. The City Council concluded that:

- (1) Waimanalo Gulch site has at least 15 years of capacity left,
- (2) Waimanalo Gulch site is the most economical site for which all costs and revenues are known factors,
- (3) Other sites would require large amounts of money to acquire land and develop the site and infrastructure,
- (4) An operating contract is already in existence, and
- (5) The Landfill operator is committed to addressing community concerns.

See Resolution No. 04-348, CD1, FD1 (December 1, 2004), City Council, City and County of Honolulu ("WGSL Resolution"), Exhibit "A11."

2. 2008 Planning Commission Decision: Extension of Waste Acceptance Deadline at WGSL.

On July 6, 2007, ENV filed—and on January 16, 2008, the Planning Commission granted—an application to amend the 2003 Planning Commission Decision, by extending the deadline to accept waste at WGSL from May 1, 2008, to May 1, 2010, or until WGSL reached its permitted capacity, whichever occurred first. This timeline extension was necessary to accommodate and implement the City Council’s selection of WGSL as the City’s future landfill site. See Exhibit “A14.” ENV needed to complete a Final Environmental Impact Statement (“FEIS”) for the further expansion of WGSL by approximately 92.5 acres, to the full acreage of the site at approximately 200 acres, before applying for a new SUP that would cover the entire WGSL property. See Exhibit “A15.” The LUC adopted the Planning Commission’s recommendation, but shortened the waste acceptance deadline from May 1, 2010, to November 1, 2009, and required ENV to report to the LUC every six months on the actions taken to mitigate further use of WGSL. See Exhibit “A16.”

3. 2009 Planning Commission Decision: “[W]e need a landfill on this island for us to move forward.”

On December 3, 2008, ENV filed an application for a new SUP (the “Application”) to supersede the existing SUP (State Special Use Permit No. 86/SUP-5), that would authorize ENV to use an additional 92.5 acres of the site and operate WGSL to capacity. See Exhibit “A18.”

The Planning Commission held a contested case hearing on the Application over five days—June 22 and 24 and July 1, 2, and 8, 2009. On July 31, 2009, the Planning Commission recommended approval of the Application subject to ten conditions and further recommended that all conditions previously placed on the Property under SUP File No. 86/SUP-5 would be null and void. The Planning Commission issued its 2009 Decision after careful consideration of all

the evidence presented at the contested case hearing; the credibility of the witnesses testifying at the hearing; the proposed findings of fact, conclusions of law, and decisions and orders submitted by the parties and their respective responses thereto; and the written arguments of the parties. Id., at pg. 1.

The Planning Commission found:

- It would take more than seven years to identify and develop a new landfill site (other than WGSL).
- On December 1, 2004, the City Council adopted Resolution No. 04-349, CD1, FD1, which selected the Waimanalo Gulch site as the site for the City's landfill.
- The proposed expansion of WGSL within the Waimanalo Gulch site was needed because WGSL is a critical part of the City's overall integrated solid waste management efforts.
- Continued availability of WGSL is required as a permit condition to operate HPOWER, for cleanup in the event of a natural disaster, and because there is material that cannot be combusted, recycled, reused, or shipped.
- Therefore, a landfill is currently necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for the residents of Oahu.
- WGSL is the only permitted public MSW facility on the island of Oahu and the only permitted repository for the ash produced by HPOWER.
- WGSL is a critical portion of the City's overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the HPOWER facility, and landfilling for material that cannot be recycled or burned for energy.
- Other items that cannot be recycled or burned at HPOWER are deposited at WGSL, such as screenings and sludge from sewage treatment plants, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, and contaminated soil that is below certain toxicity levels.

Id., at pgs. 8, 18-19.

The 2009 Planning Commission did not impose an expiration date for the SUP or any deadline for the acceptance of waste at WGSL. Instead, the Planning Commission concluded that “[t]he term or the length of the new SUP shall be until the Waimanalo Gulch landfill reaches its capacity as compared to a definite time period of ‘X’ number of years.” See Exhibit “A17.”

Planning Commissioner Kerry Komatsubara noted that ENV had “demonstrated that **we [people of the City and County of Honolulu] need a landfill . . . we need a landfill on this island for us to move forward...it would not be in the community’s best interest if we were to close this landfill before we find another landfill.**” Id. (Emphasis added). Commissioner Komatsubara further explained as follows:

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

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

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

Id. (Emphasis added).

The Planning Commission, however, did impose several conditions to monitor the City's progress toward finding a new landfill site. Certain of those conditions, which the City has never contested, are:

- On or before November 1, 2010, begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�.
- Continue efforts to use alternative technologies to provide a comprehensive waste stream management program that includes HPOWER, plasma arc, plasma gasification and recycling technologies, as appropriate, and shall continue efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
- Provide 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 conditions imposed herein.
- Notify the Planning Commission of termination of the use of the Property as a landfill.

2009 Planning Commission Decision, pgs. 25-26. As explained below, the City has complied and continues to comply with not only the letter, but the spirit of the Planning Commission's conditions.

On October 22, 2009, the LUC issued its written Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications ("2009 LUC Decision"). See Exhibit "A19." Disregarding the Planning Commission's reasoned analysis and the underlying facts, the 2009 LUC Decision granted the Application subject to the added condition that is now at issue:

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.

Id., at pgs. 4, 8-9.

ENV timely appealed the LUC July 31, 2011 deadline for the Landfill to accept MSW, and that appeal is pending currently before the Hawaii Supreme Court.

III. THE CITY'S COMPLIANCE WITH THE 2009 PLANNING COMMISSION DECISION AND CURRENT SUP

ENV remains compliant with the terms set forth in the Planning Commission's 2009 Decision.

1. Alternative Landfill Site to Supplement or Replace WGS�.

Condition No. 1 of the 2009 Planning Commission Decision (Condition No. 4 of the LUC Decision) requires the City, on or before November 1, 2010, to **begin** to identify and develop one or more new landfill sites that shall either replace or supplement the WGS�. 2009 Planning Commission Decision, at pg. 25. As part of preparing the updated ISWMP, the City allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on O'ahu. Thus, the Mayor's Landfill Site Selection Committee ("Landfill Advisory Committee" or "Committee") was formed. See Testimony of Timothy E. Steinberger, pg. 11, ¶ 29.

The Mayor chose 12 members to serve on the Landfill Advisory Committee based upon numerous criteria including technical expertise and experience, community involvement, and availability to serve. The members are: David Arakawa, Thomas Arizumi, John Goody, Joe Lapilio, Tesha H. Malama, Janice Marsters, Richard Poirier, Chuck Prentiss, and George West (Bruce Anderson, David Cooper, and John DeSoto were originally appointed, but have stepped down). Id., pgs. 11-12, ¶ 30.

The Mayor tasked the Site Selection Committee to provide the City advisory recommendations concerning the selection of a future site for a landfill to replace or supplement WGS� by accepting MSW, ash and residue from facilities such as HPOWER, and construction and demolition debris waste (C&D) for the Island of O'ahu. The Committee will not select one

site, but will rank numerous sites according to criteria that it determines most appropriate for landfill sites to accommodate all three waste streams (MSW, ash and residue, and C&D debris).

The City contracted with R.M. Towill Corporation (RMTC) in June 2011 to assist the Committee with this process, specifically to research and provide the information required or requested by the Committee members.

To date, the Landfill Advisory Committee has held meetings on January 20, February 10, March 10 and 31, May 12, June 23, and July 21, 2011.

Over the course of multiple meetings, the Committee has discussed numerous criteria for a new landfill, including, but not limited to the following:

- Location relative to identified disamenities
- Location relative to HPOWER
- Effect of precipitation on landfill operations
- Landfill development operation and closure costs
- Displacement costs
- Precipitation
- Ground water contamination
- Design issues
- Access issues
- Proximity to other land uses (residences, institutions etc.)
- Traffic impacts on residential neighborhoods
- Infrastructure availability
- “Those criteria impacting people that live here 365 days a year”
- Feasibility and cost issues
- Infrastructure, engineering and sustainability issues
- Wind direction issues related to closeness to other activities
- Impact on agricultural lands

The anticipated schedule for the Committee’s work was to have seven meetings over the course of the year, with the submission of the Committee’s final recommendation by the end of 2011. Specifically, the meetings were anticipated to take place as follows:

- Meeting 1: Introduction and Description of the Committee’s objectives, ground rules; Administration and Description of the City’s Solid Waste Management System.

- Meeting 2: Site Visit to Waimānalo Gulch Sanitary Landfill, HPOWER, and other facilities; Relationship of facilities to the City's Solid Waste Management System.
- Meeting 3: Review landfill engineering necessary to the siting of a landfill; Present siting requirements from Federal, State, and City & County of Honolulu; Previous alternative landfill sites considered by the City; Request Committee's identification of additional sites for consideration and obtain Committee's preliminary siting criteria.
- Meeting 4: Request additional community-based siting criteria from Committee; Consultant's description of process for developing measurable criteria to score and rank landfill sites.
- Meeting 5: Review alternative landfill sites under consideration and apply Federal and State/City & County of Honolulu siting criteria. Provide results to Committee; Distribute Draft Landfill Siting Evaluation Sheets to Committee and review landfill evaluation process; Review how data is measured and scored in the data sheets; Revise as required based on Committee's input; Discuss and obtain Committee's weighting of the criteria.
- Meeting 6: Present results of the analysis; Reveal sites selected by the Committee and discuss; Discuss content of the Committee's Report to the Mayor; Consultant directed to prepare the Committee's Draft Report to the Mayor.
- Meeting 7: Discuss Draft Report to the Mayor with Committee. Revise as required and prepare Final Report; Submit the Committee's Report to the Mayor and conclude the Committee's role.

The Committee began by working with potential landfill sites identified by the City in previous studies. However, at the sixth meeting, the Committee requested that RMTC research and provide information on and analyses of additional sites to ensure a thorough vetting of appropriate sites on Oahu. Specifically, they tasked RMTC to research and include for consideration sites that are above or cross the no-pass or underground injection control (UIC) line. The City previously did not consider these sites because of its policy not to site landfills above the no-pass or UIC line to protect the island's drinking water sources. The Committee also asked RMTC to review the Board of Water Supply capture zone maps and identify if there were any 100 acre or larger parcels that could be included on the list of potential landfill sites, even if the sites were above the no-pass or UIC line.

The Committee also developed exclusionary criteria or factors for sites above the no-pass or UIC line based on the following information:

- State Land Use Districts (Conservation, Agricultural, and Urban; there are no Rural Districts on O‘ahu);
- Groundwater Resources (Board of Water Supply and Others);
- Land Ownership (Federal, State, City, and Private);
- U. S. Fish & Wildlife Service (USFWS) Critical Habitats;
- State Natural Area Reserve System (NARS);
- Impaired Water Bodies (per Department of Health and U. S. Environmental Protection Agency);
- Agricultural Land Ratings (Land Study Bureau (LSB) and Agricultural Lands of Importance to the State of Hawai‘i (ALISH));
- Commission on Water Resource Management (CWRM) Well Data; and
- Criteria protecting airports and airfields with a 10,000 linear foot buffer.

Upon applying the above exclusionary criteria, RMTC presented the Committee with two additional sites for consideration: (1) the Kahe Point Power Generating Station owned by Hawaiian Electric Company; and (2) the Makaiwa Hills subdivision owned by the James Campbell Trust Estate, which is part of a much larger parcel of land already under development. In addition, the second site was found to border the USFWS designated critical habitat of the *Isodendrion pyriformium* (critically imperiled Hawaiian shrub). RMTC noted that both sites should be considered as “non-sites” due to either existing or pending land uses.

After discussion of these results, the Committee asked RMTC to undertake another review of potential sites, including the following land areas:

- Parcels that are 90 acres or more, but less than 100 acres in size;
- Land that is owned by the State of Hawai‘i, including agricultural district land, conservation district land, and land that is within a critical habitat; and,
- Land that is outside of well capture zones and well buffer zones, but within the no-pass or UIC line.

The Committee reasoned that it is important that RMTC conduct this additional review because the Committee sought to understand the availability of sites only slightly smaller than 100 acres. Certain Committee members also expressed that this further consideration will

provide for more comprehensive review of potential sites. However, this additional request has delayed final application of the criteria and its recommendations. Nonetheless, the Committee has targeted January 15, 2012, as the new deadline for its final report. See Exhibit “A31.” Once the City selects a site or sites, as acknowledged in both the 2009 Planning Commission Decision and the 2009 LUC Decision, it will take more than seven years to acquire, permit, design and construct the new landfill site(s). See 2009 Planning Commission Decision, ¶¶ 33, 34; see also 2009 LUC Decision at pgs. 4-5.

Based on the foregoing, no new landfill site or sites intended to replace or supplement WGS� will be operational as of the July 31, 2012 deadline to cease accepting MSW at WGS�.

2. Waste Diversion.

Condition No. 2 of the Planning Commission (Condition No. 6 of the LUC Order) requires the City to continue its efforts to use alternative technologies to provide a comprehensive waste stream management program. ENV is complying with this condition as the figures show. See Testimony of Timothy E. Steinberger, pg. 17, ¶ 44.

In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on O‘ahu. Of the 1,214,904 tons, the Landfill received only 163,736 tons of MSW and 179,946 tons of ash and residue from HPOWER. The amount of MSW deposited at WGS� reflects a steady decrease from 2009. In FY09 the Landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the Landfill of 71.7%. See Exhibit “A27.” See also Exhibit “A29.”

As the decreasing MSW tonnage to WGS� shows, ENV is continuing its effort to significantly reduce solid waste disposal at WGS� by expanding HPOWER and our waste to

materials recycling programs and developing alternative disposal options for materials presently being landfilled. Collectively, these actions have and will divert significant amounts of waste away from WGSL. In addition, new technology solutions continue to be evaluated. However, there still are no new technologies with proven reliability and performance that would completely eliminate the need for a landfill. See Testimony of Timothy E. Steinberger, pg. 17, ¶ 46.

a. HPOWER

The existing HPOWER facility began operations in 1990 and successfully diverts approximately 600,000 tons per year of MSW from WGSL, recycling approximately 20,000 tons of metals and producing roughly 7% of O‘ahu’s electricity and other saleable energy. The City is adding a third boiler at HPOWER, scheduled to be fully operational in January 2013, which will increase the capacity of the facility to 900,000 tons per year. Id., pg. 18, ¶¶ 47-48.

The continued operation of the HPOWER facility, however, is dependent upon continued operation of the WGSL for disposal of ash and residue. Also, DOH requires as a condition of HPOWER’s permit that HPOWER have a disposal alternative—the landfill—as a contingency for routine maintenance, natural disasters, and emergencies. Id., pg. 18, ¶51.

b. Materials Recycling

As of 2010, material recycling programs account for a 29.7% landfill diversion rate, which means that approximately 448,000 tons per year is diverted out of the total waste stream of 1.5 million tons per year. The City is continuing to increase the 29.7% diversion rate by expanding and improving programs such as its Bulky Item Pickup Program, Self Haul Disposal Sites, Green Waste Recycling Program, Curbside Recycling for Residential Mixed Recyclables, Community Recycling Bin Program, Condo Recycling Program, Commercial Recycling

Program, as well as its current and on-going public education and outreach programs such as the City's Opala Website and its Tour De Trash. See Exhibits "A28" and "A30."

c. Sewage Sludge Alternatives

The residual solids and semi-solids separated during the treatment of wastewater at wastewater treatment plants ("WWTPs") are commonly referred to as sewage sludge or bio-solids. These materials have been landfilled, but the City has been working to divert much of this waste stream from WGS. The Synagro facility at the Sand Island WWTP digests, dewater, and heat-dries approximately 20,000 tons per year of sewage sludge. The end product is a pellet that can be used as a fertilizer or soil amendment material. The approximately 15,000 tons per year of biosolids from all other WWTPs on O'ahu that presently go to the WGS, hopefully will be diverted from the landfill to the anticipated In-vessel Conversion Facility to be completed in 2013 for processing with Green and Food Waste. Furthermore, ENV is working with the operator of HPOWER, Covanta, to be able to burn sewage sludge for energy as part of the anticipated third boiler to be completed in 2012. Id., pgs. 22-23, ¶ 71.

ENV also recently completed a report, "Alternative Technologies for the Treatment and Minimization of Sewage Sludge," that identifies potential sludge processing technologies that could be implemented to provide waste mitigation or improve operational performance at the City's WWTPs. See Exhibit "A33." The report discusses a wide range of technologies for different stages in the sludge treatment process and thus technologies cannot be directly compared outside their specific treatment and processing function. Accordingly, the report is a list of appropriate technologies for further consideration as part of the ongoing island-wide solids planning effort; it is not a decision making document that recommends a best solution.

Additional factors that will need to be considered as part of any evaluation and selection process include:

- An assessment of a particular alternative technology specific to the WWTP(s) with respect to the facilities already existing there.
- Capital and operation and maintenance costs specific to the WWTP(s) under consideration.
- Implementation timeline for planning, design, permitting, procurement, construction and startup.
- Compatibility of technology with overall Island-wide Solids Master Plan
- New development and increased future capacity needs
- Planned upgrades at the existing WWTPs (i.e., upgrade to secondary treatment)

The report points out that the technology and process selection for implementation at any of the WWTPs will need to be evaluated from an island-wide perspective due to the issues of combining/transporting solids between WWTPs as well as the identified end-user needs and beneficial use limitations. Other key elements that should be considered in evaluating these technologies and processes for the Island-wide Master Plan include reliability and redundancy planning in the event that a WWTP treatment unit (i.e., centrifuge or digester) or solids outlet (i.e., landfill or composting facility) is temporarily out of service.

Thus, despite the City's successes in diverting sewage sludge from the Landfill, 15,000 to 20,000 tons per year of sewage sludge is landfilled, and as of July 31, 2011, there is nowhere else to dispose of that sewage sludge. See Testimony of Timothy E. Steinberger, pg. 24, ¶ 74.

IV. WGS� IS NECESSARY FOR PROPER MANAGEMENT OF MUNICIPAL SOLID WASTE

The 2009 Planning Commission did not place an expiration date on 2008/SUP-2 or any deadline for the acceptance of waste at WGS� because it recognized the futility of setting unrealistic deadlines for closure. As Planning Commissioner Komatsubara stated, “[S]imply putting on a new closure date to this new SUP will not lead to the closure of the Waimanalo Gulch Sanitary Landfill. . . . [T]he focus should not be on picking a date. The focus should be on

how do we get the City to select a new site because you're not going to close this landfill until you find another site. I don't think it's in the interest of our community not to have a landfill. . . . So what this proposal does is, it says look, [Applicant] can keep [WGSL] open until your [sic] full, until you've reached the capacity, but you have an obligation starting from next year [2010] to start looking for a new site." Exhibit A17. And that is precisely what the City is doing. The Landfill Advisory Committee is thoroughly evaluating potential new landfill sites, and the City is continuing to focus on diverting more and more waste away from the Landfill.

Planning Commissioner Komatsubara was right. We need a landfill. We cannot shut down WGSL before another landfill or alternate disposal option/technology is available and even then, the reality is that the City will not be able to divert ALL waste from the Landfill. HPOWER's third boiler, which may eventually be able to take a number of wastes currently going to the Landfill, including sewage sludge, will not be operational by the deadline. The vendor that the City contracted with to recycle sewage sludge into compost also will not be prepared to process sewage sludge by the deadline.

Moreover, imposition of the ban on MSW is not going to shut down the Landfill. Ash and residue will still be disposed of at WGSL. It is unreasonable to put the health and safety of the people of O'ahu at risk by preventing the disposal of certain waste streams when the Landfill will continue operating even under Condition 14. Ash and residue from HPOWER are deposited at WGSL 24 hours a day, 7 days a week under WGSL's current permit and will continue to be deposited after July 31, 2012 on the same schedule as part of the City's waste diversion programs until the Landfill reaches capacity.

Furthermore, if there is a natural disaster – a hurricane, tsunami, or 100-year storm – that produces unmanageable debris for HPOWER or incapacitates the HPOWER facility, there will

be no expeditious disposal option. Such a stoppage will have an adverse, island-wide impact on all of the communities on O‘ahu because the City will no longer have the ability to dispose of certain wastes in a sanitary manner. Without the Landfill, the City also would technically no longer be permitted to operate HPOWER, as that facility must have a MSW landfill disposal option as required by its DOH solid waste permit. See 2009 Planning Commission Decision, ¶ 92, pg. 18. In other words, not only would there be no sanitary or secure means of disposing of special wastes and bulky wastes, HPOWER would no longer be permitted to accept any MSW, and there would be no facility to properly dispose of disaster debris. Forcing the Landfill to cease accepting MSW will result in major public health and safety concerns for the City, its residents and visitors, and the State of Hawai‘i. See 2009 Planning Commission Decision, ¶ 93, pg. 18, see also Testimony of Steven Y.K. Chang, pg. 4, ¶ 11.

The recent closure of WGSL from January 12 to January 28, 2011, due to unprecedented storms in December 2010 and in January 2011, illustrates the need for a landfill. During that seventeen-day closure period, there were delays in the disposal of HPOWER residue, bulky item waste, and wastewater sludge. All such wastes cannot be disposed of at HPOWER and must be disposed of in the Landfill. The closure of WGSL hampered HPOWER’s ability to accept MSW because of the backlog of residue that had accumulated at the facility. City refuse transfer stations that depend on HPOWER for waste disposal were adversely impacted and experienced heavy buildups of trash. City wastewater treatment facilities had to resort to temporary onsite storage of sewage sludge in limited-capacity holding areas to cope with the situation. Further, ENV had to cease collection of bulky item wastes resulting in unsightly and potentially dangerous piles of waste on sidewalks. See Testimony of Timothy E. Steinberger, pg. 29, ¶ 88.

By 2012, when HPOWER's third boiler is expected to be fully operational, the City anticipates that about eighty percent (80%) of the island's waste stream will be diverted from landfill disposal. See 2009 Planning Commission Decision, ¶ 101, pg. 20. Twenty percent (20%), however, of O'ahu's waste will still need to be landfilled at WGSL, as certain wastes cannot be recycled or combusted. Id., see also ¶¶ 92, 97, pgs. 18-19. Further, the expanded HPOWER facility will still require the continued availability of WGSL as a permit condition to operate, to ensure proper disposal of MSW that is diverted from HPOWER due to routine maintenance, unanticipated closures or if the amount of waste exceeds the capacity of the facility. See Testimony of Steven Y.K. Chang, pgs. 3-4, ¶ 10.

A landfill is currently necessary for proper solid waste management to avoid the potential health and safety issues for O'ahu's residents and visitors. Because WGSL is the only currently permitted landfill available to serve O'ahu's municipal solid waste needs, it is also the City's best and only viable option for disposal of certain wastes. Requiring the landfill to stop accepting MSW on July 31, 2012, will have immediate and dire consequences for all of O'ahu.

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CONCLUSION

Based on the foregoing, we respectfully request that the Planning Commission grant the City's application to delete the looming July 31, 2012 deadline for the acceptance of MSW at WGSL in Condition No. 14 of its present Special Use Permit, 2008/SUP-2 .

DATED: Honolulu, Hawaii, December 14, 2011.

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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) CERTIFICATE OF SERVICE
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
To delete Condition No. 14 of Special Use)
Permit No. 2008/SUP-2 (also referred to as)
Land Use Commission Docket No. SP09-403))
which states as follows:)
)
"14. Municipal solid waste shall be allowed at)
the WGSL up to July 31, 2012, provided that)
only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE **DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S PRE-CONTESTED CASE HEARING STATEMENT** was duly served by either hand-delivery or U. S. Mail, postage prepaid, to the following on the date below, addressed as follows:

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DATED: Honolulu, Hawai'i, December 14, 2011.



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DEPARTMENT OF ENVIRONMENTAL
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OF HONOLULU