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

In the Matter of the Application of)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
For a New Special Use Permit to supersede)
Existing Special Use Permit to allow a)
92.5-acre Expansion and Time Extension)
For Waimanalo Gulch Sanitary Landfill,)
Tax Map Key Nos. (1) 9-2-003:072 and 073)

FILE NO. 2011/GEN-8 (RY) AND PERMITTING
2008/SUP-2 (RY) and 86/SUP-5
DEPT OF PLANNING
CITY & COUNTY OF HONOLULU

**KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S
REPLY MEMORANDUM TO DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF HONOLULU'S MEMORANDUM IN
OPPOSITION TO KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S MOTION TO RECOGNIZE KO OLINA
COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO AS PARTIES**

EXHIBITS "1" - "3"

AND

CERTIFICATE OF SERVICE

KO OLINA COMMUNITY ASSOCIATION
c/o Mr. Kenneth Williams, Agent
92-1480 Aliinui Drive
Kapolei, Hawai'i 96707

MAILE SHIMABUKURO
86-024 Glenmonger Street
Waianae, Hawai'i 96792

Intervenors

KOCA 2

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of)	FILE NO. 2011/GEN-8 (RY),
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COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO AS PARTIES**

Come now, Intervenor KO OLINA COMMUNITY ASSOCIATION ("KOCA") and MAILE SHIMABUKURO ("Shimabukuro"), and hereby respectfully submits its Reply Memorandum to the Department of Environmental Services ("ENV"), City and County of Honolulu's Memorandum in Opposition to Ko Olina Community Association and Maile Shimabukuro's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties ("Memo in Opp.") filed on September 16, 2011.

I. BACKGROUND

On September 16, 2011, Intervenor KOCA and Shimabukuro timely filed its Motion to be recognized as parties to the SUP 2008/SUP-2 Amendment or in the alternative to grant them leave to intervene.

On September 23, 2011, ENV filed its Memo in Opp.

Intervenors KOCA and Shimabukuro herby files its Reply Memorandum in this matter.

II. ARGUMENT

A. KOCA and Shimabukuro Are Parties to Current ENV Application

This is not a new case. ENV filed its Special Use Permit No. 2008/SUP-2; State Land Use Commission Docket No. SP09-403; In re Department of Environmental Services City and County of Honolulu; Application to Modify SUP No. 2008/SUP 2 by Modifying the LUC's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modification dated October 22, 2009 (SUP 2008/SUP-2 Amendment"). The SUP 2008/SUP-2 Amendment involves the same exact permit, the same property, the same August 4, 2009, Planning Commission's FINDINGS OF FACT, CONSLCUSIONS OF LAW, AND DECISION AND ORDER ("D&O") which was derived from a contested case hearing in which KOCA and Shimabukuro were admitted as Parties.

ENV is now trying to amend a D&O which was the result of the contested case hearing in which KOCA and Shimabukuro participated. ENV now clams that it should be allowed to modify the D&O without the same Parties that were admitted in the prior proceedings. Allowing ENV to proceed in this SUP 2008/SUP-2 Amendment without Intervenors KOCA and Shimabukuro as a party would result in extreme prejudice on Intervenors KOCA and Shimabukuro in that it would be denying their right and opportunity to adequately protect their interests in this matter. Furthermore, it would be a complete waste of judicial economy and time for the Planning Commission and parties involved to require Intervenors KOCA and Shimabukuro to re-argue its right to intervene in this matter when Intervenors' rights as parties to this matter have already been established for this SUP.

ENV's argument that this is a new action in which Intervenor KOCA and Shimabukuro are not parties because "[t]he LUC Order is a final order that has been accepted for appellate review by the Intermediate Court of Appeals and Supreme Court" begs the question as to whether this Planning Commission has jurisdiction to hear this matter while the same issue regarding the same Condition 14 is being adjudicated before the Appellate Courts at this time as readily admitted by ENV.

Based on the facts set forth above and in the Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties, it is clear that Intervenor KOCA and Shimabukuro have already been admitted and participated as Parties to the prior Application for SUP 2008/SUP-2 contested case proceedings by the Planning Commission and that for purposes of further proceedings related to the SUP 2008/SUP-2 Amendment application, Intervenor KOCA and Shimabukuro should be recognized as parties.

B. Intervention Should Be Granted

As stated in its prior filings, Intervenor KOCA and Shimabukuro believe that they are already parties to the current SUP 2008/SUP-2 Amendment application but provide further clarification on its right to intervene.

ENV argues on page 6 of its Memo in Opp., "[i]ntervenors' argument begs the question: Without an interest in the petition area or having property abutting the petition area, what is Intervenor's interest in the special use permit application aside from general concerns as a member of the public, which might be presented in the public hearing?"

It is unfortunate and disappointing that ENV has forgotten the impacts Waimanalo Gulch has had on Intervenor and raised this argument with the Planning Commission. Just this past year, heavy rains during January 2011, caused garbage, medical waste and leachate – a

percolating, highly –toxic mixture of chemicals, decomposing organic matter, suspended solids, live microorganisms and rain water to wash out of Waimanalo Gulch landfill over a four day period causing a real and extremely destructive impact on Intervenor's properties. (See Exhibit "1", KOCA and Shimabukuro Report On Impacts to LUC). In fact the damage caused by ENV's failure to prevent the flooding from Waimanalo Gulch Landfill was so real and severe that the Land Use Commission ("LUC") ordered ENV to appear before the LUC at their next hearing to address the **"recent discharges of municipal solid waste into the ocean from the Waimanalo Gulch Sanitary Landfill."** (emphasis added) (See Exhibit "2", letter dated 01/21/11). Intervenor's KOCA and Shimabukuro interests in this application are clearly real and justified.

Commission Rule §2-55(c) specifies that intervention shall be freely granted with only two basis upon which the Commission may deny intervention.

§2-55 Hearing on petition to intervene.

(c) **Leave to intervene shall be freely granted**, provided that the commission may deny petition to intervene when in the commission's discretion it appears that:

- (1) The position of the party requesting intervention concerning the proposed action is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable. [Eff. Jan. 16, 1995] (Auth: RCH §HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

(emphasis added).

As of now there are no other parties who have requested intervention in this matter and furthermore, no other intervenors but Intervenor's KOCA and Shimabukuro would be able to adequately address the bona fide concerns resulting from this SUP 2008/SUP-2 Amendment

including, but not limited to the leachate, municipal solid waste and medical waste that spilled over and caused severe damage to but Intervenor KOCA and Shimabukuro properties.

Intervenor is unlike other residents, owners or community associations, since Intervenor represents the resort in general and its guests. Therefore, the resort is uniquely and adversely affected by the Waimanalo Gulch Sanitary Landfill facility and activities surrounding its dumping operations. As stated the Planning Commission has already heard and granted Intervenor KOCA and Shimabukuro's Petition to Intervene on this same SUP for this same Waimanalo Gulch Landfill. (See Exhibit "3" D&O).

For ENV to state that Intervenor KOCA and Shimabukuro's argument "begs the question" that because Intervenor KOCA and Shimabukuro may not have an interest in the petition area or have property abutting the petition area and wonders what interest they have in this application completely defies reality and disregards the actual damage caused by the garbage, medical waste, leachate, soil and rain water that washed out of Waimanalo Gulch landfill on to Intervenor's properties as if nothing happened. If any intervenor has a real interest in this application, Intervenor KOCA and Shimabukuro have an interest. If any question is "begged" it would be whether ENV is required to complete a Supplemental Environmental Impact Statement to address Waimanalo Gulch's failure to adequately address storm drainage and adequate mitigation measures to address emergency releases of hazardous materials "where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with". See HAR §11-200-27.

Intervenor KOCA and Shimabukuro's right to intervene should be granted as the Planning Commission Rules clearly state that "intervention shall be freely granted" and Intervenor has clearly demonstrated its interest in this 2008/SUP-2 Amendment application.

III. CONCLUSION

For the above stated reasons, Petitioners KOCA and Shimabukuro respectfully request that the Planning Commission continue to recognize KOCA and Shimabukuro as Party Intervenor, or in the alternative grant them leave to intervene into this 2008/SUP-2 Amendment application.

Dated: Honolulu, Hawai'i, September 30, 2011.



Kenneth Williams, Agent
KO OLINA COMMUNITY ASSOCIATION
Intervenor



MAILE SHIMABUKURO
Intervenor

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	
HONOLULU)	
)	
For A New Special Use Permit to)	
Supersede Existing Special Use Permit To)	
Allow A 92.5-Acre Expansion And Time)	
Extension For Waimanalo Gulch Sanitary)	
Landfill, Waimanalo Gulch, O'ahu,)	
Hawaii, Tax Map Key: 9-2-03: 72 and 73)	
_____)	

KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S REPORT ON THE IMPACTS REGARDING THE
DISCHARGES FROM WAIMANALO GULCH SANITARY LANDFILL

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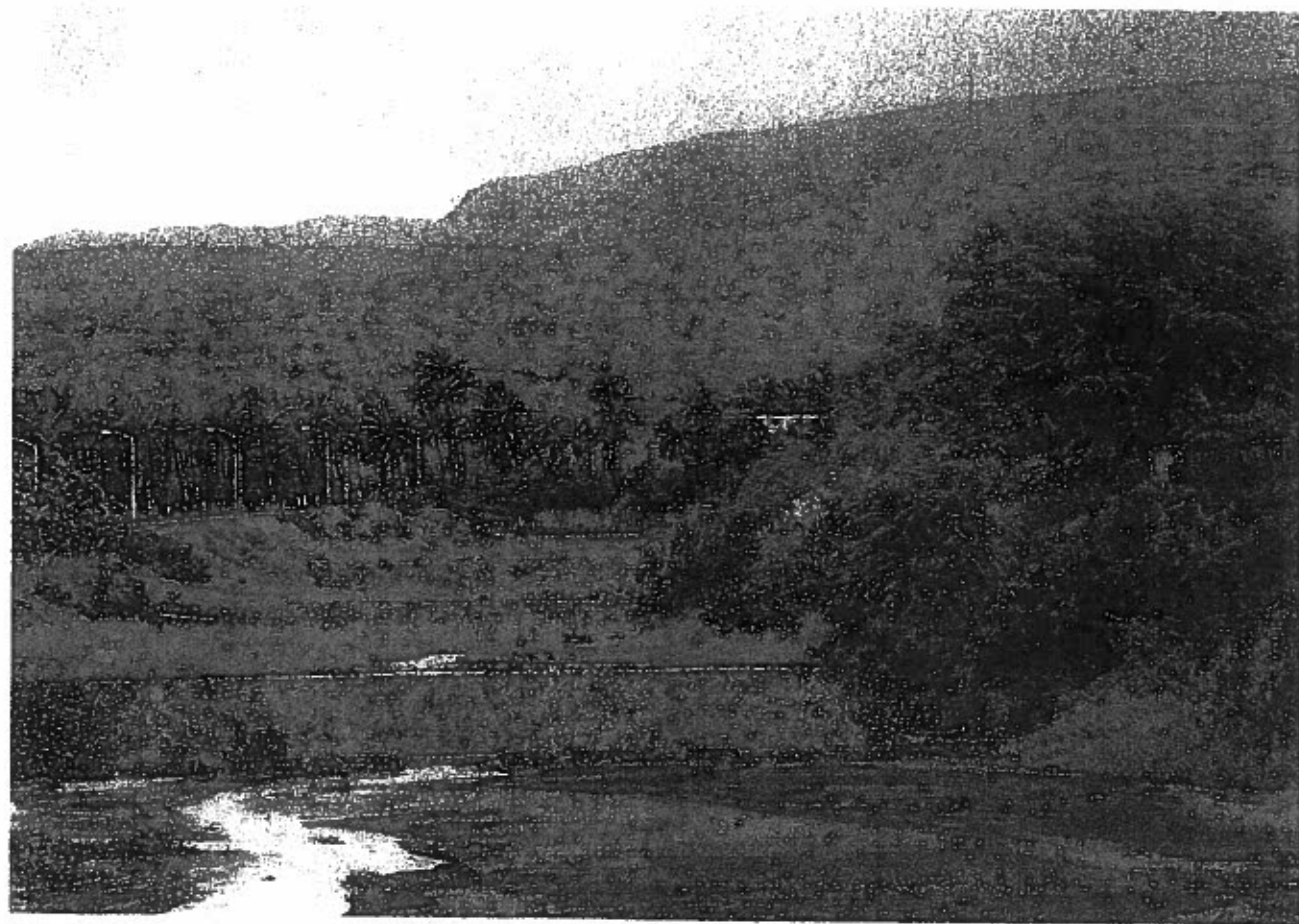
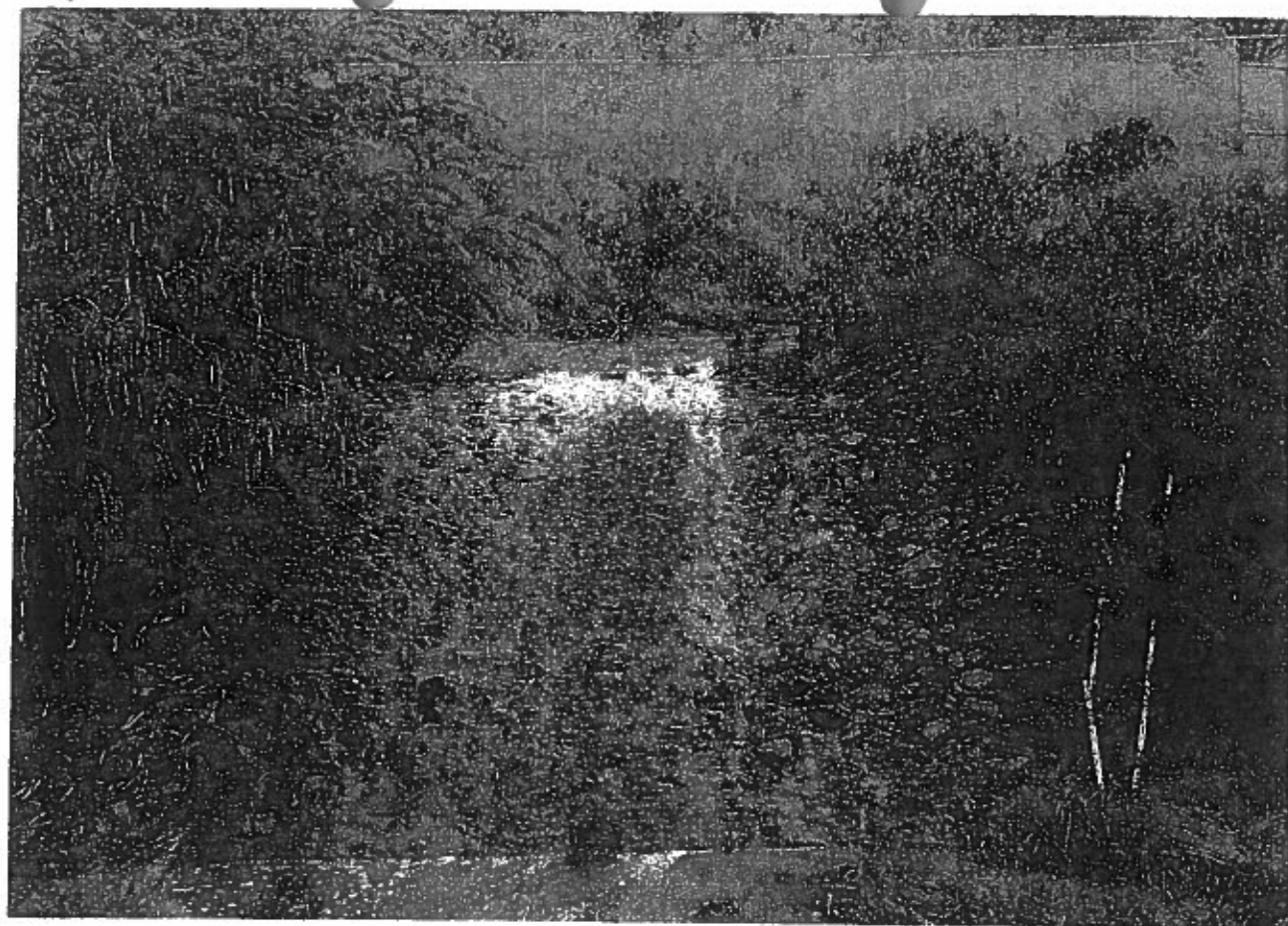
Attorneys for Intervenor
KO OLINA COMMUNITY
ASSOCIATION and MAILE
SHIMABUKURO

EXHIBIT 

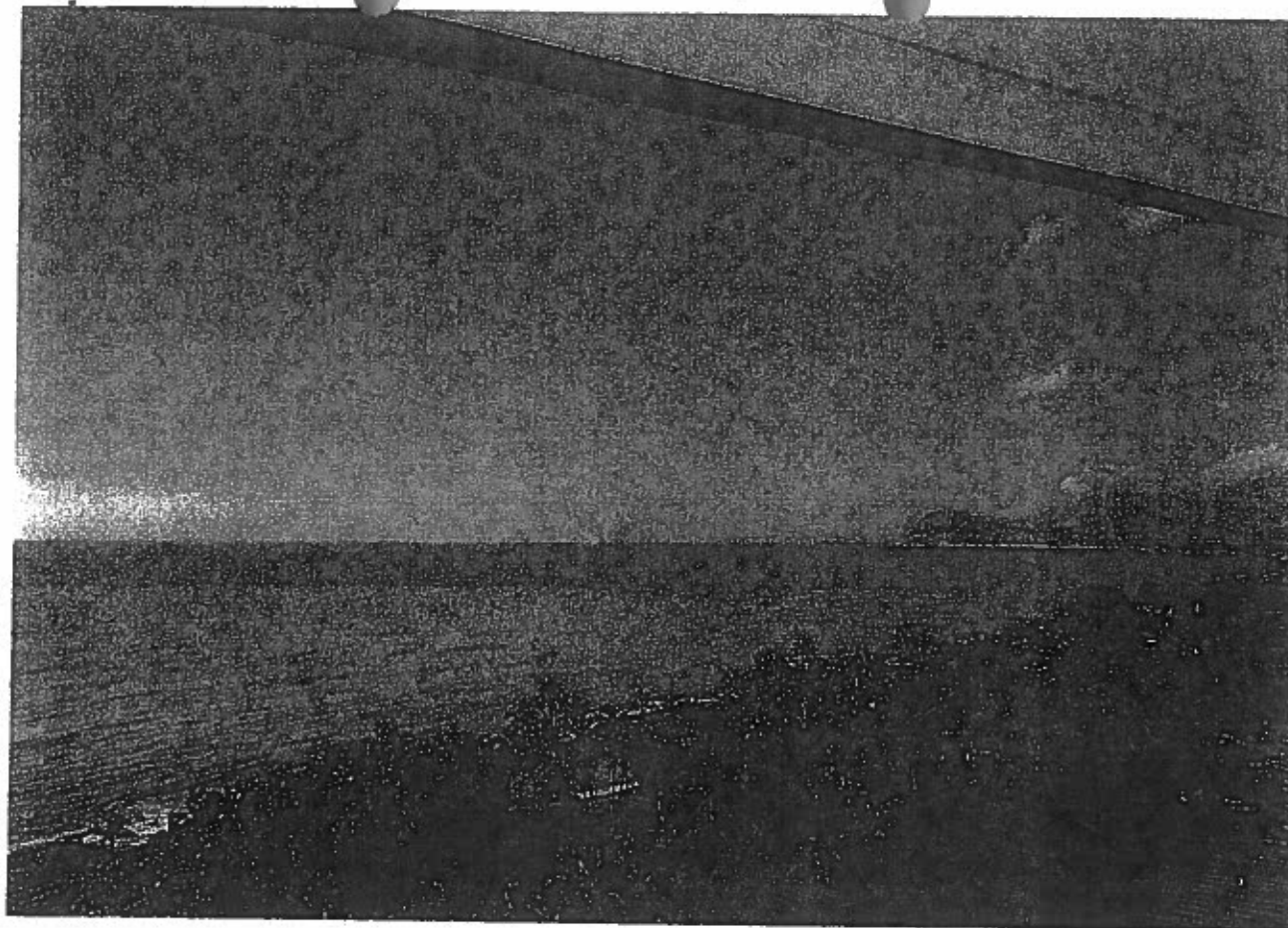
Index To Submittals

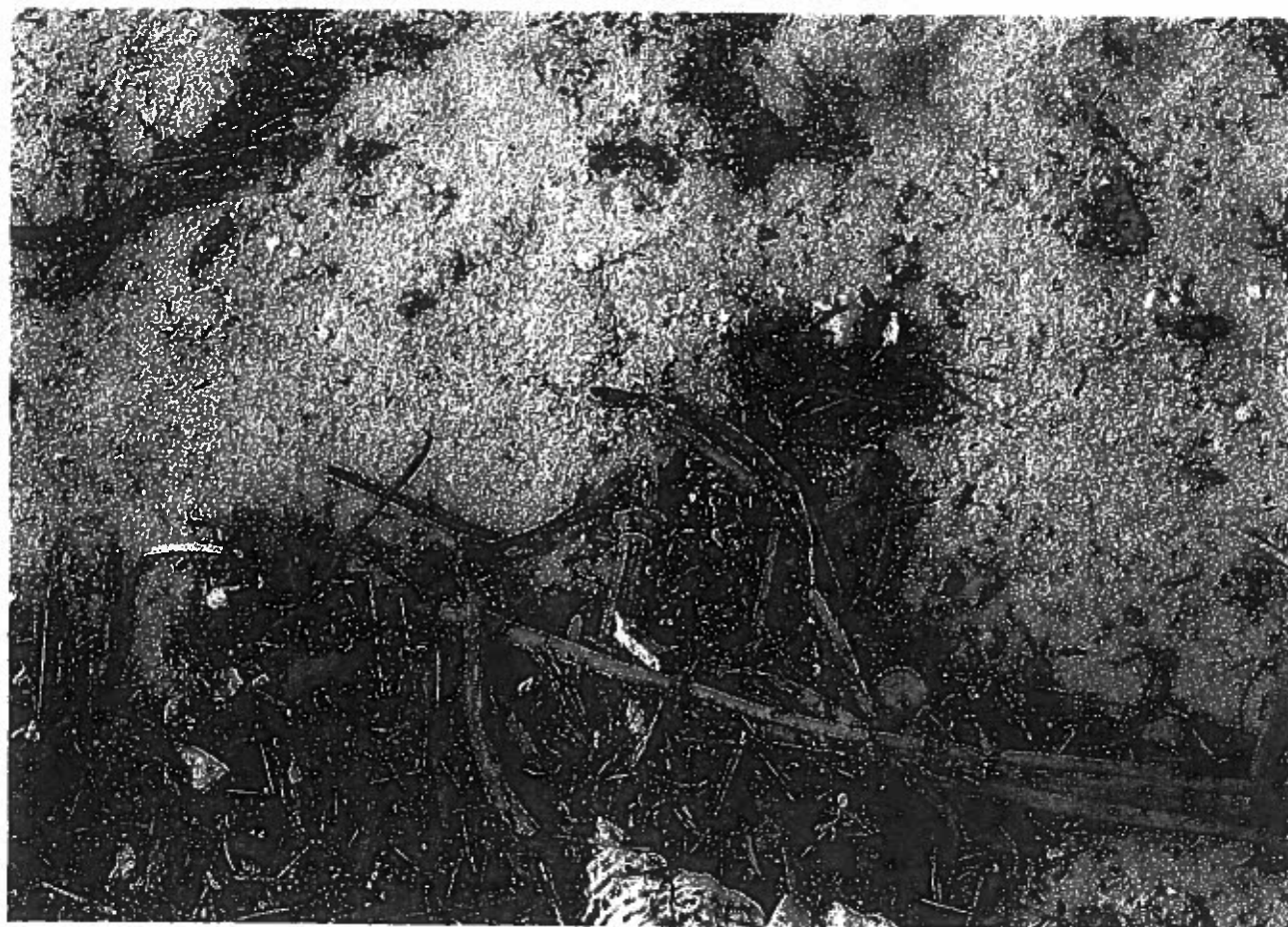
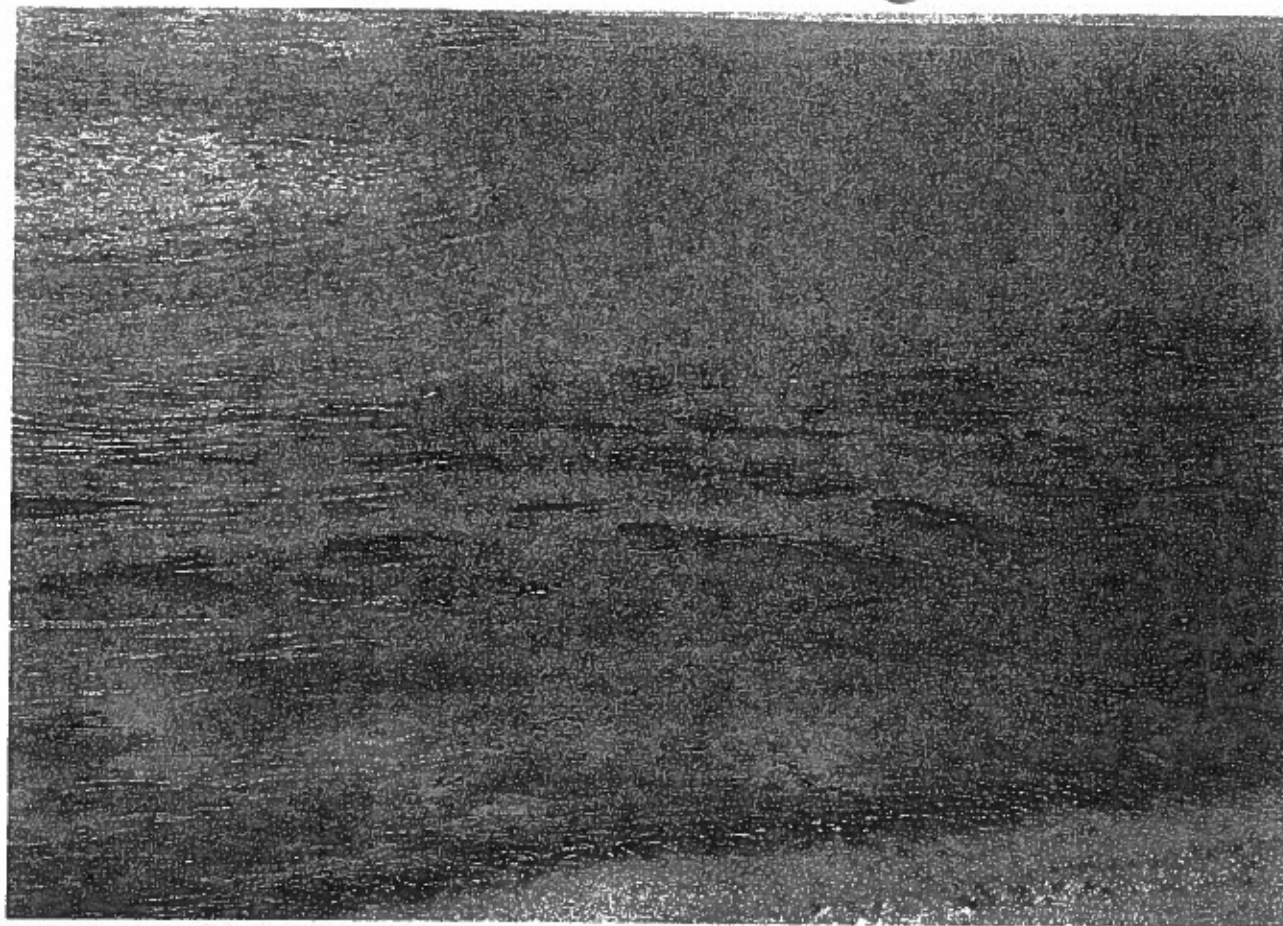
1. Waste Spill Assorted Photographs
2. National News Coverage, Various, on Waste Spill
3. Waimanalo Gulch Landfill Coverage; Local Coverage Report – Print, Online, TV; Revised 1/28/2011
4. Fiscal & Economic Benefits Analysis; Ko Olina Resort & Marina (CB Richard Ellis, January 2011)
5. Investigation Report; Department of Health; Clean Water Branch (ID#: PA0991, 12/23/2010) -- concluding violations of Hawaii Water Pollution rules and regulations.

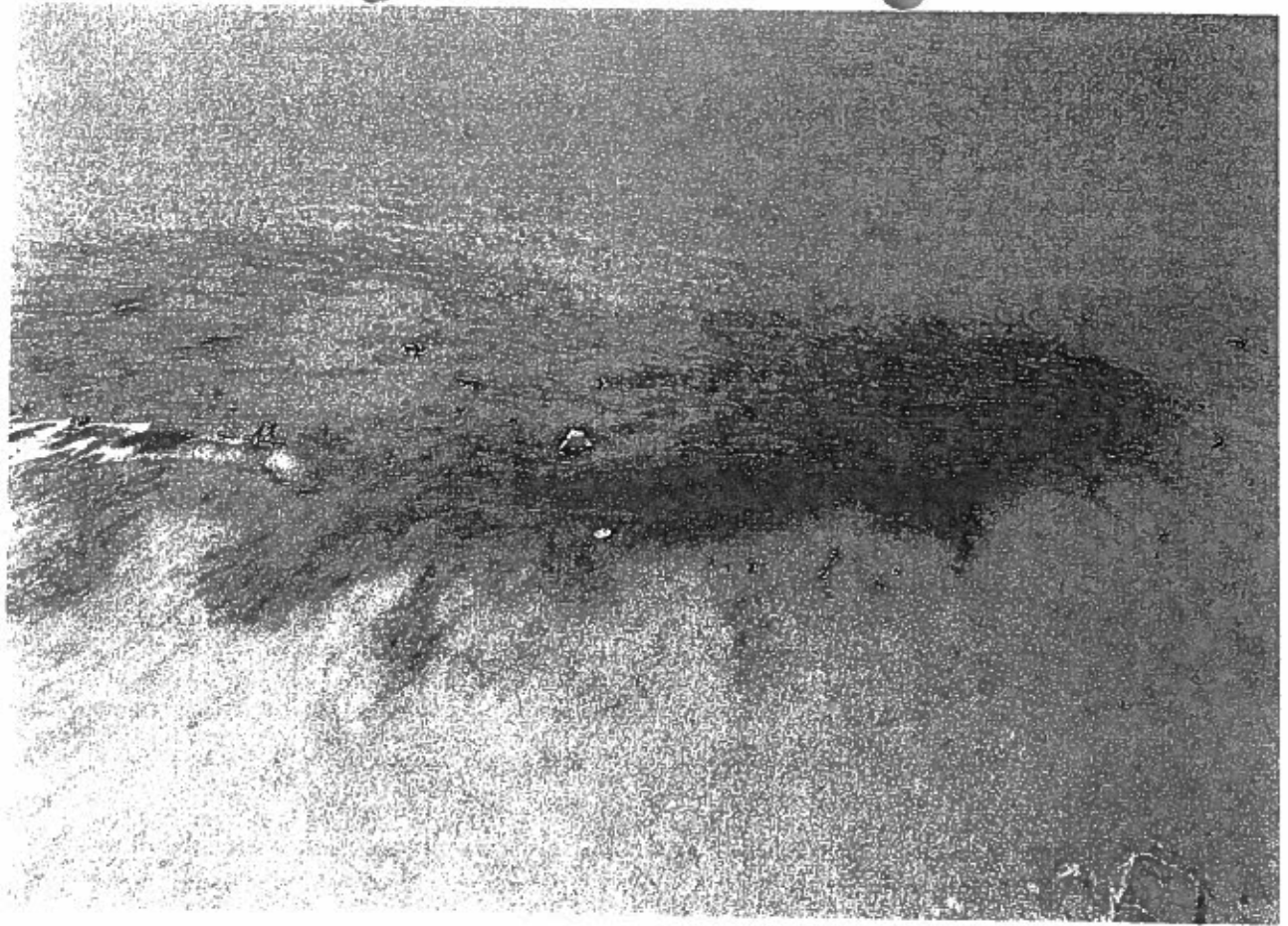
Attachment 1
Waste Spill Assorted Photographs

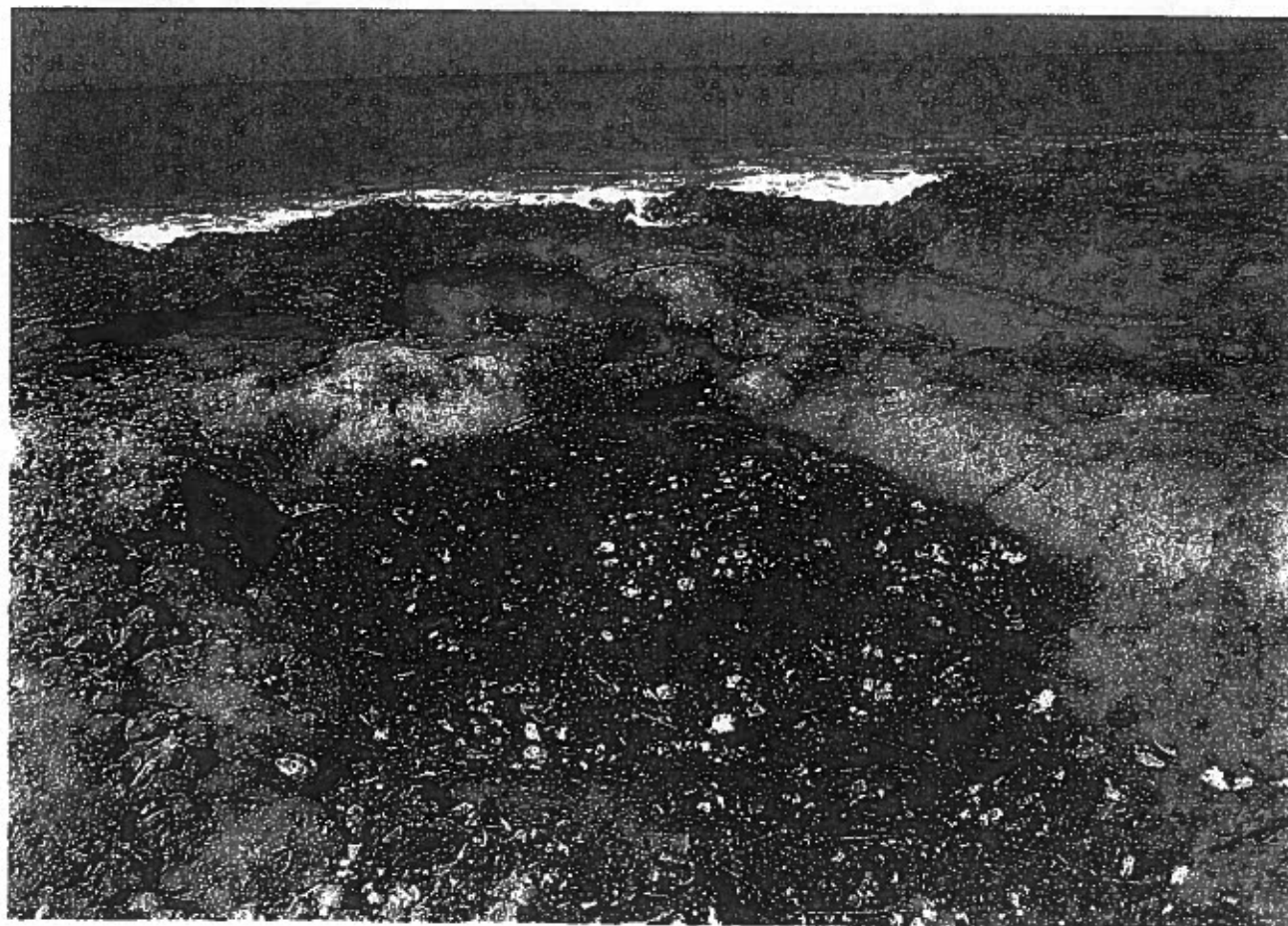
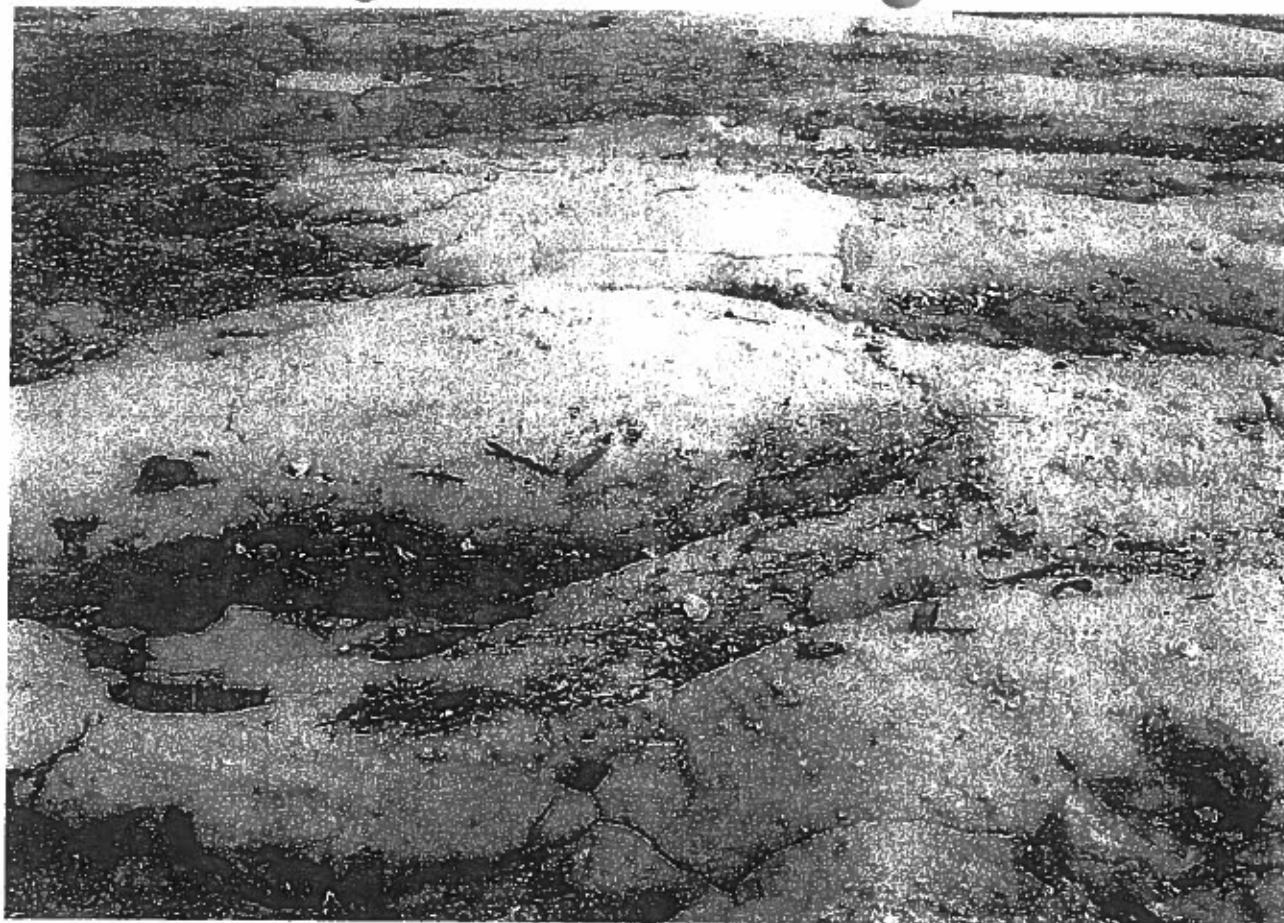


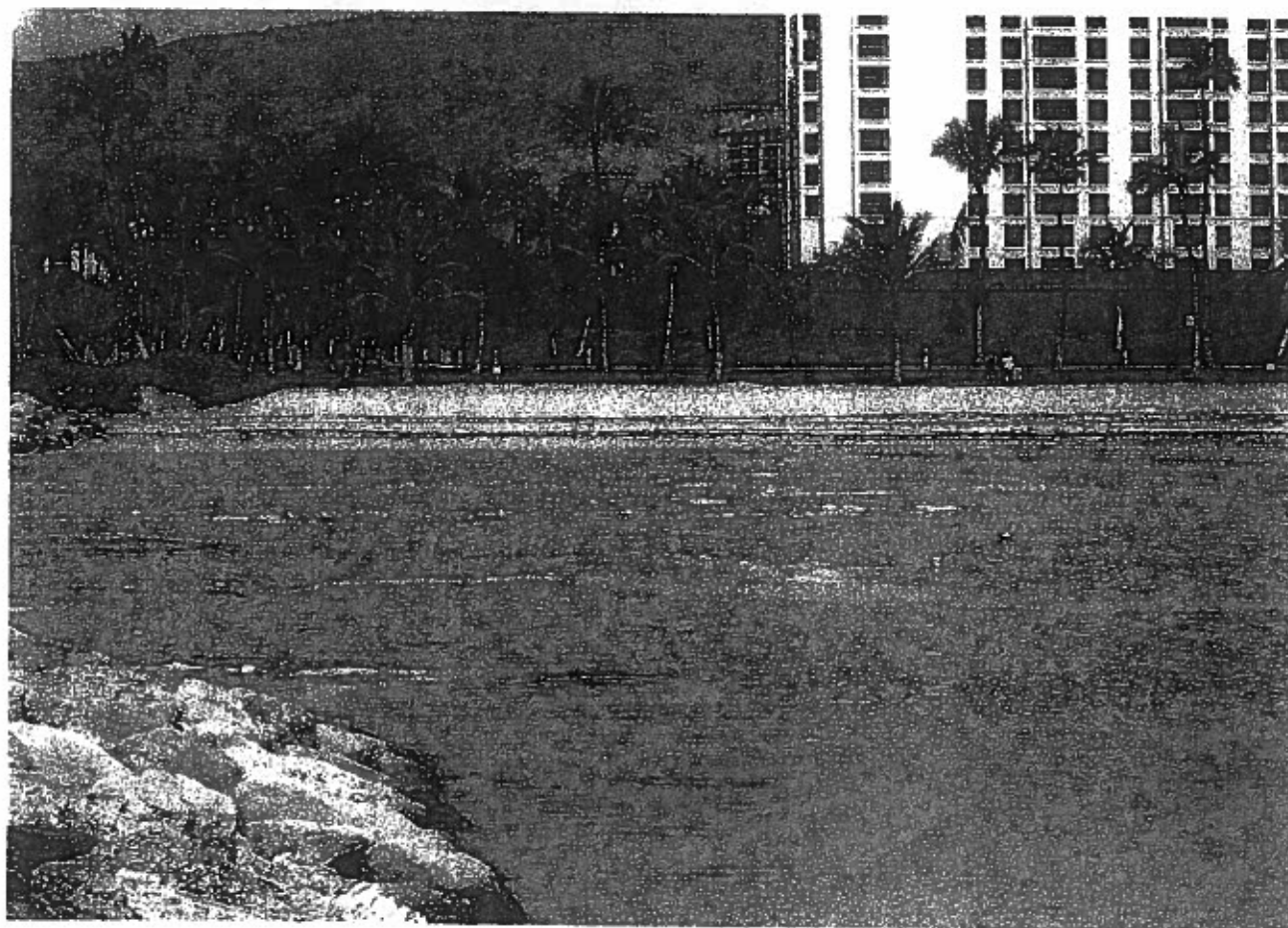
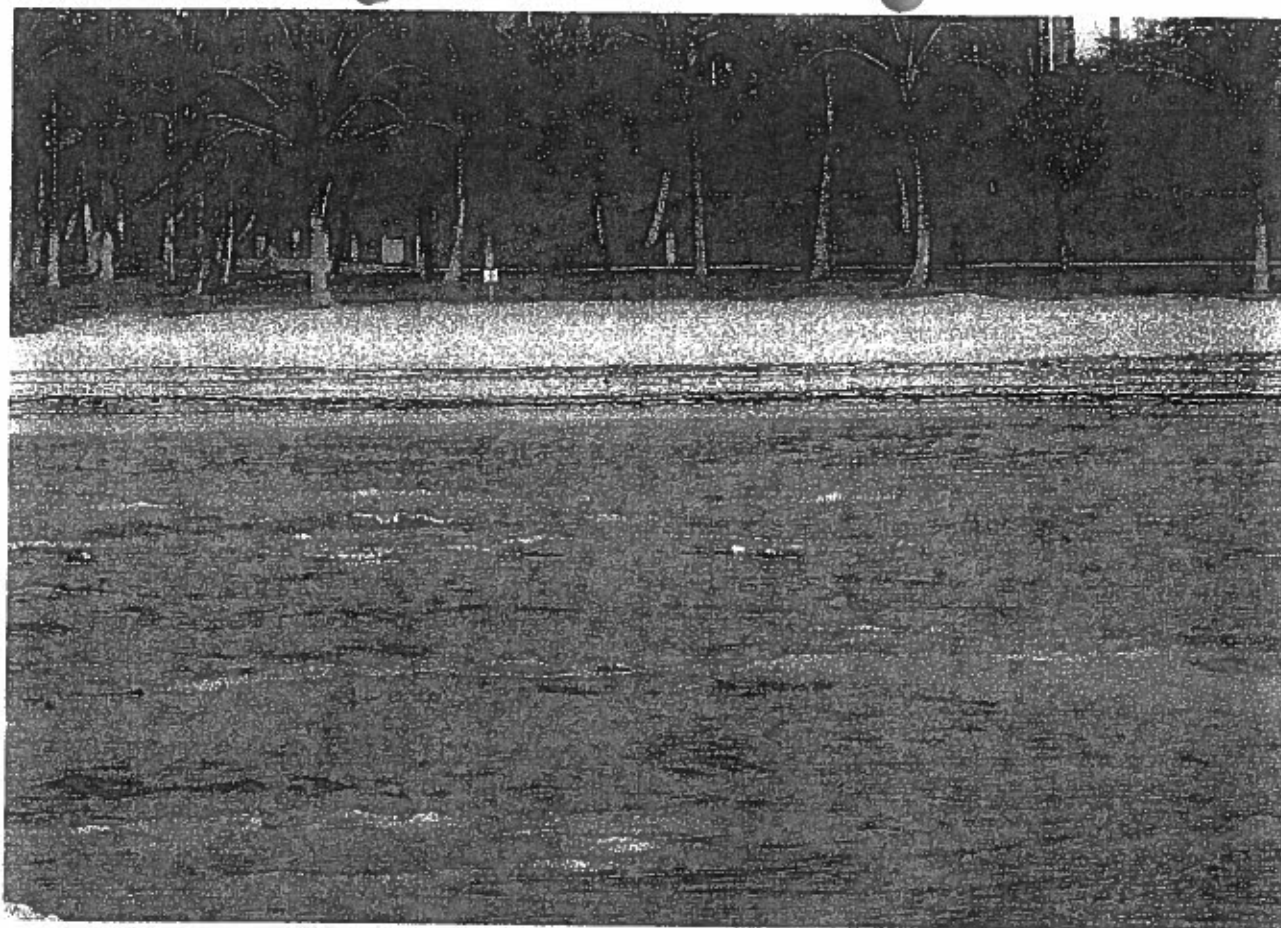




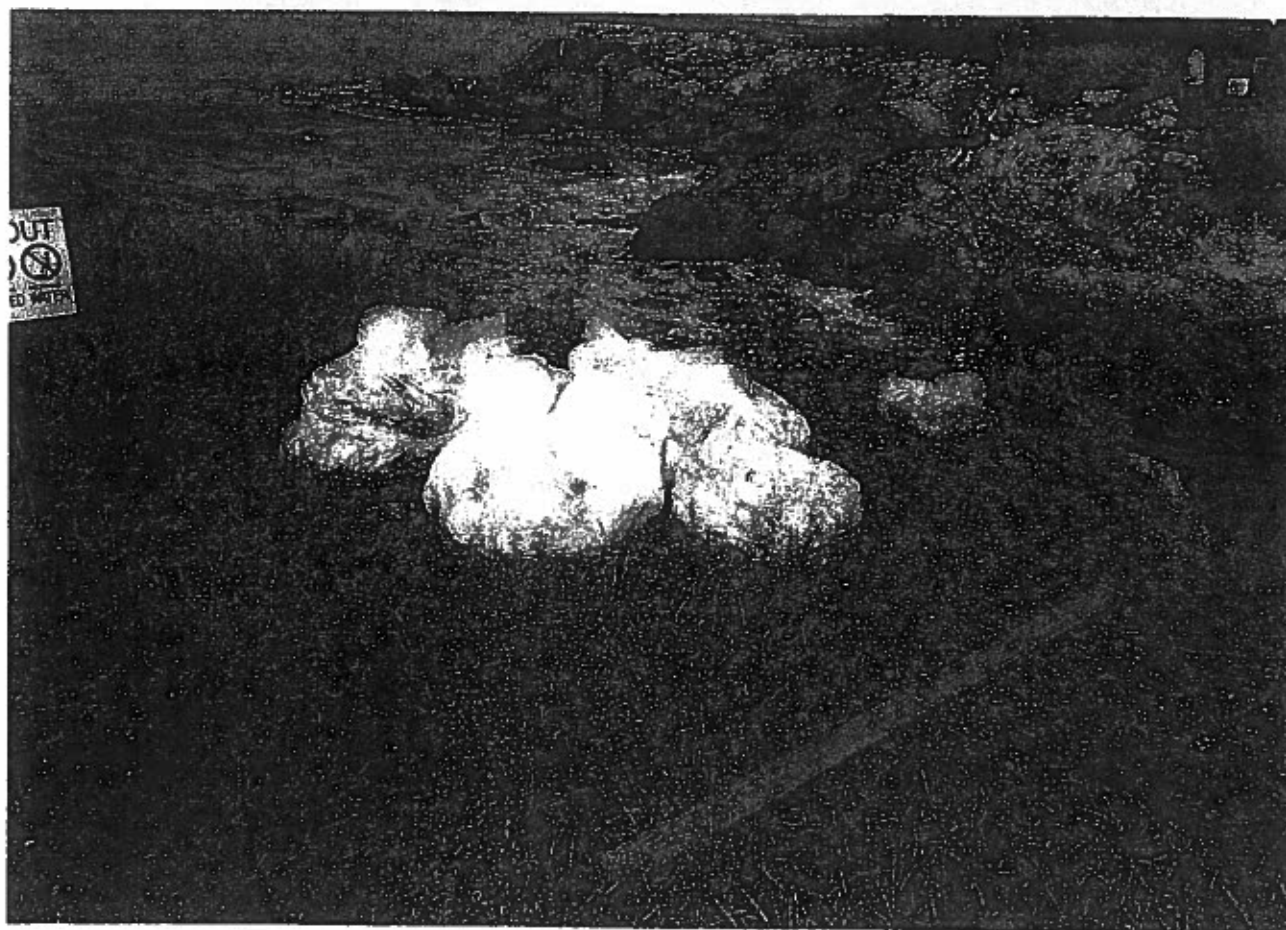


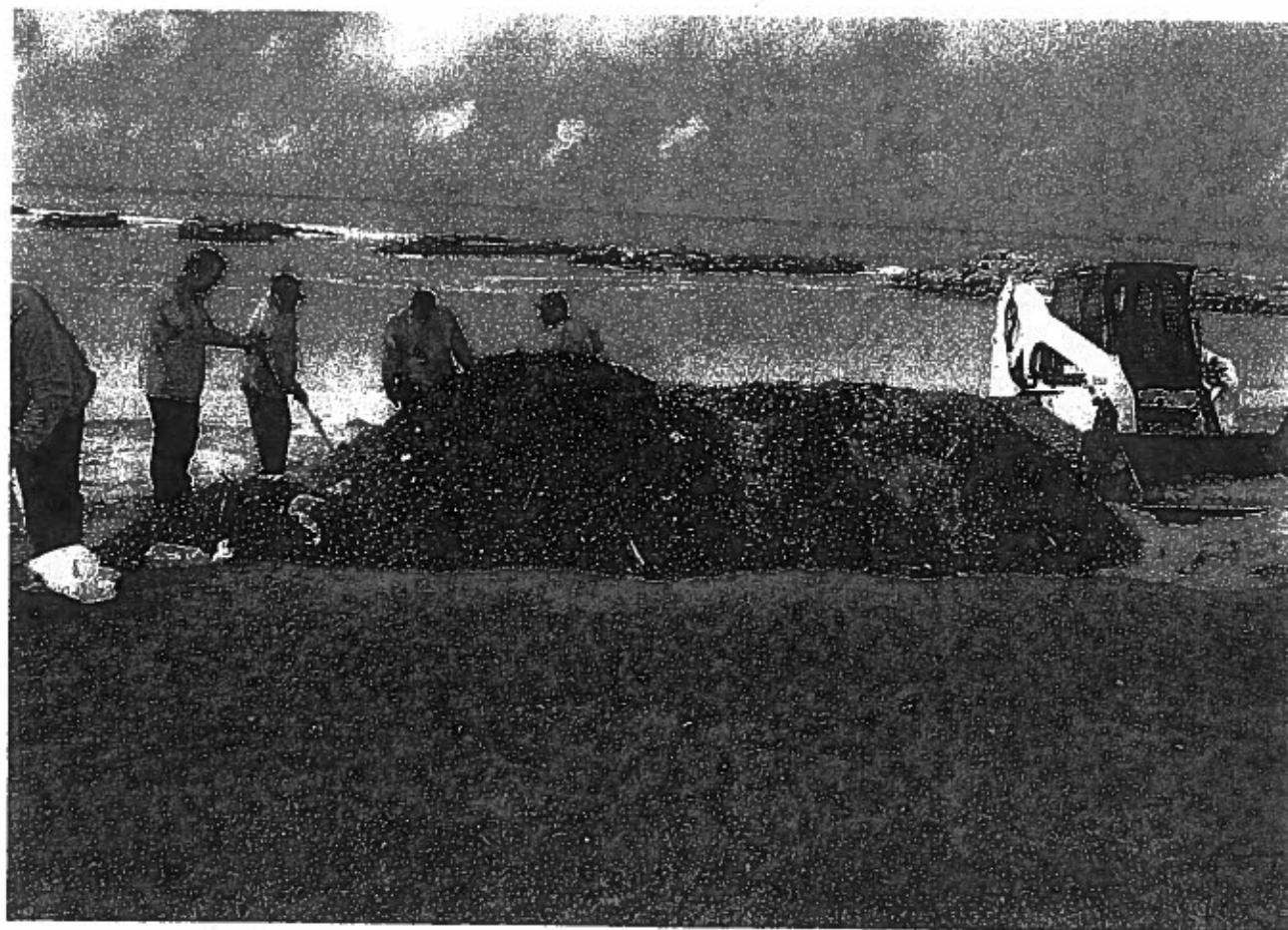














Attachment 2

National News Coverage, Various On Waste Spill

POTENTIAL TO BECOME THE GREATEST PR CRISIS IN HAWAII'S HISTORY AS A TOURIST DESTINATION

Oahu health and safety threatened by medical waste catastrophe



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By Scott Foster Jan 16, 2011
Who you gonna call?

With back-to-back headline stories in the Honolulu Star-Advertiser reading, "Wastewater discharge from Waimanalo Gulch landfill continues" (January 14), "Medical waste spreads down Leeward Coast" (January 15), and "Rain dislodges medical waste" (January 18) - it's anybody's guess how the Hawai'i Tourism Authority will deal with what is quickly becoming perhaps the greatest PR crisis in Hawai'i's history as a tourist destination.

A "wall" of heavily-contaminated water, garbage, and mud containing a veritable witch's brew of heavy metals and chemicals such as chlordane, fecal matter (processed then dumped as "sludge" from Honolulu County's wastewater treatment plants), and medical waste containing full vials of blood and syringes all came roaring down after a heavy rain caused a "cell" to burst in the controversial Waimanalo Gulch Sanitary Landfill high above Oahu's elite Ko Olina Resort hotel and their exclusive gated condo development. Also impacted is the Disney Company's not-yet-opened Aulani Resort & Spa, "a place celebrating Hawaiian history, culture, and artwork." Little comment has

emanated from the two mega-million destination resorts on what is now being mislabeled by one Honolulu City & County officials as a "catastrophic weather event."

The fact of the matter is, the "25-year design" of the Waimanalo Gulch Sanitary Landfill failed; none of the "protective" systems now in place worked. The so-called "25-year design" specs are based upon both State and City-County regulations, which say that the design should anticipate having a heavy storm at least once every 25 years, and the system must be designed to handle a 7.5 rain during a 24-hour period." O'ahu is, after all, a tropical island prone to such rains. One of the first questions one might ask is, "where is rainfall measured for such a design?" and I'll leave those particularly-interesting details for another day.

Sadly, seemingly rather than immediate action, several recently-appointed State and City & County officials instead all rushed to "spin" the disaster with such comments as, don't worry because "it's all been sanitized." This was taking place at the very moment that community organizations and volunteers were organizing and mobilizing to begin the massive cleanup effort. Immediately following the disaster, few if any State or City & County employees had been deployed to assist. One local blogger asked, "Why wasn't the Hawai'i State National Guard not mobilized the day this happened?" Unfortunately, the mess is just that bad.

In addition to impacting the recent and wealthier enclaves in Oahu's once-local Ewa area, and Hawai'i's endangered Monk Seal and turtle populations, our once-pristine beaches, surfing, fishing, crabbing, and all the rest - the disaster is greatly impacting poorer nearby "local" residents, many who have lived there for generations; perhaps the real story here.

Meanwhile, Ko Olina Resort's private lagoons, and the public beaches all along Oahu's Leeward Coast will remain closed "until further notice" - as will Honolulu's largest dump - the Waimanalo Gulch Sanitary Landfill with trash collection already backing up around the entire island. Officials from the contracted landfill operator, Waste Management, said the dump could be reopened "very soon" - if the liner under the enormous waste cell has not been punctured. If the plastic membrane needs to be replaced, it's anybody's guess.

What is not being much reported is the fact that on January 10, 2011, Hawai'i State Department of Health officials had been warned about just such a catastrophe by respected radio talk show host and long-time environmental advocate, Carroll Cox. View Cox' first-hand story, "Needles and Other Nonsense: Medical Waste Pollutes Ocean By Ko Olina Resort" and the related photos at <http://carrollcox.com/WaimanaloGulchSpill.htm>.

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Associated Press

Ko Olina beaches still closed after waste release

By AUDREY McAVOY, 11/19/11 10:57 AM EST

HONOLULU --

Ko Olina Resort's beaches were still closed Tuesday after flooding at the city's only landfill led to medical waste and other debris pouring into the ocean last week.

The beaches front Oahu's biggest resort area outside Waikiki. The 387-room JW Marriott Ihilani Resort & Spa, a massive Disney hotel under construction that's due to open in August, and a time-share condominium complex all overlook a series of man-made beaches and lagoons.

The state ordered the shorelines closed after heavy rains led the nearby Waimanalo Gulch Landfill to release contaminated storm water and municipal solid waste into the Pacific Ocean next to the resort area.

The state Department of Health was still testing the water on Tuesday. The first lab results from water sampling taken Thursday indicated "very high" bacteria levels consistent with polluted runoff from a storm.

The city has posted warning signs saying "Warning: Contaminated Water - No Swimming, No Boating, No Fishing" at a Nanakuli surf spot known as Tracks and down the coast to the harbor and marina entrance past Ko Olina.

The U.S. Environmental Protection Agency sent three people to Oahu - an on-scene coordinator and two engineers - to monitor the response and offer advice.

They were focused on making sure the landfill has a functioning storm water retention area and would be able to prevent a similar situation if there's more heavy rain, EPA spokesman Dean Higuchi said.

Asked if the agency would be investigating the city, which owns the landfill, for the debris spill, Higuchi said he couldn't say either way.

"It's way too soon to start looking at enforcement. At this point, the focus is on cleanup. The focus is also to ensure the integrity of the landfill's stormwater system," Higuchi said.

"If we focused on enforcement now and forgot about the rest, it would happen again."

The landfill, which is operated by contractor Waste Management Inc., is due to close in 2012. The city had wanted to keep it open for another 15 years, but the state Land Use Commission rejected that plan.

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Economist Nouriel Roubini on
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Ko Olina beaches still closed after waste release

Ko Olina beaches still closed after medical waste, other debris released into ocean

AP Associated Press

by Jeffrey M. Levay, Associated Press, On Wednesday, January 19, 2011, 10:51 am EST

HONOLULU (AP) -- Ko Olina Resort's beaches were still closed Tuesday after flooding at the city's only landfill led to medical waste and other debris pouring into the ocean last week.

The beaches front Oahu's biggest resort area outside Waikiki. The 387-room JW Marriott Ihilani Resort & Spa, a massive Disney hotel under construction that's due to open in August, and a time-share condominium complex all overlook a series of man-made beaches and lagoons.

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Attachment 3

**Waimanalo Gulch Landfill Coverage,
Local Coverage Report – Print, Online,
TV; Revised 1/28/2011**

SDA

Ko Olina Resort & Marina Waimanalo Gulch Landfill Coverage Coverage Report – Print, Online, TV Revised: 1/28/11

Thursday, January 13, 2011

- **Honolulu Star-Advertiser** – “Landfill waste washing up between Ko Olina and Kahe Power Plant” <http://www.staradvertiser.com/news/breaking/113554814.html>

Friday, January 14, 2011

- **Hawaii News Now** – “Landfill succumbs to rain, spills trash into ocean at Ko Olina” <http://www.hawaiinewsnow.com/Global/story.asp?S=13847843>
- **Honolulu Star-Advertiser** – “Wastewater discharge from Waimanalo landfill continues” <http://www.staradvertiser.com/news/breaking/113618079.html>
- **Honolulu Star-Advertiser** – “Storm smacks Maui, moves on to Big Island” http://www.staradvertiser.com/news/hawaiinews/20110114_Storm_smacks_Maui_moves_on_to_Big_Island.html
- **KHON2** – “Landfill waste discharged into ocean, includes medical waste” <http://www.khon2.com/news/local/story/Landfill-waste-discharged-into-ocean-includes/OnBjaGRzoUyIYrhxy6Lduw.cspix>
- **KHON2** – “Needles and Blood Filled Vials” <http://www.khon2.com/news/local/story/Needles-And-Blood-Filled-Vials/eM8ZUmmtE2gToK4wDrcbg.cspix>
- **KITV** – “Landfill Flooding Contaminates Ocean, Beaches; Medical Waste Washes Ashore at Ko Olina” <http://www.kitv.com/news/26490893/detail.html>

Saturday, January 15, 2011

- **Honolulu Star-Advertiser** – “Rain Dislodges Medical Waste” front page story with waste, water and sewer images http://www.staradvertiser.com/news/hawaiinews/20110115_rain_dislodges_medical_waste.html
- **KHON2** – “Medical waste discharge leaves Nanakuli residents concerned about water safety” <http://www.khon2.com/news/local/story/Medical-waste-discharge-leaves-Nanakuli-residents/B5CeGAjAXEueJIaAG3-ZMw.cspix>
- **KHON2** – “More Medical Waste Keeps Washing Ashore Near Ko Olina Resort” <http://www.khon2.com/content/news/developingstories/story/More-Medical-Waste-Keeps-Washing-Ashore-Near-Ko/vS3sTAoBDkSN3NBKZBIqBQ.cspix?rss=2433>
- **KITV** – “Piles Of Medical Waste Continue to Wash Onshore” <http://www.kitv.com/health/26507228/detail.html>

Sunday, January 16, 2011

- **Honolulu Star-Advertiser** – “Medical waste continues to wash up at West Oahu beaches” <http://www.staradvertiser.com/news/breaking/113857779.html>
- **Honolulu Star-Advertiser** – “More medical waste at ocean’s edge” http://www.staradvertiser.com/news/hawaiinews/20110116_More_medical_waste_at_oceans_edge.html
- **KHON2** – “Councilwoman concerned over medical waste on beach” http://www.khon2.com/mostpopular/story/Councilwoman-concerned-over-medical-waste-on-beach/z_0BF8OYXUSN9Ie1ehIGRg.cspix

- **Hawaii Free Press** – "Ko Olina beaches still closed after waste release"
<http://www.hawaiifreepress.com/main/DesktopModules/DnnForge-NewsArticles/Print.aspx?tabid=65&tabmoduleid=107&articleId=3562&moduleId=400&PortalID=0>
- **Honolulu Star-Advertiser** – "Ko Olina beaches still closed after waste release"
<http://www.staradvertiser.com/news/breaking/114203744.html>
- **Honolulu Star-Advertiser** – "Landfill operator collecting debris"
http://www.staradvertiser.com/news/hawaii/news/20110117_Landfill_operator_collecting_debris.html
- **Honolulu Star-Advertiser** – "Letters to the Editor"
http://www.staradvertiser.com/editorials/letters/20110119_Letters_to_the_Editor.html
- **KHON2** – "Landfill Reopening Depends On Plastic Liners"
<http://www.khon2.com/news/local/story/Landfill-Reopening-Depends-On-Plastic-Liners/ausuOrKUCkC9vd6qJjMBJw.csp>
- **KPUA-AM** – "Ko Olina beaches still closed after waste release Hilo"
<http://www.kpuu.net/news.php?id=22114>
- **Product Design & Development** – "Ko Olina beaches still closed after waste release"
<http://www.pddnet.com/news-ap-ko-olina-beaches-still-closed-after-waste-release-011911/>
- **ToowoombaNews.com (Australia)** – "Ko Olina beaches still closed after waste release"
<http://www.australianews.com.au/australia/queensland/darlingdowns/toowoomba/story?ciTyid=9901bdf5-f527-4b68-852d-149172949fd4&storyid=53206706-7f5c-4b51-aa78-661f5502c524>
- **Topix** – "Ko Olina beaches still closed after waste release"
<http://www.topix.com/business/waste-management>
- **Watchdog.org** – "Medical waste washes onto Oahu shores, city guarantees it will not happen again"
<http://watchdog.org/7977/medical-waste-washes-onto-oahu-shores-city-guarantees-it-will-not-happen-again/>
- **Yahoo Finance** – "Ko Olina beaches still closed after waste release"
<http://finance.yahoo.com/news/Ko-Olina-beaches-still-closed-apf-3125126095.html?x=0&v=1>

Friday, January 21, 2011

- **Hawaii News Now** – "Landfill remains closed, residents must hold on to bulky trash"
<http://www.hawaiinewsnow.com/Global/story.asp?S=13888296>
- **Hawaii News Now** – "Waimanalo Gulch only landfill option for years"
<http://www.hawaiinewsnow.com/Global/story.asp?S=13888500>
- **Honolulu Star-Advertiser** – "Dirty beaches mar Ko Olina"
http://www.staradvertiser.com/business/20110121_Dirty_beaches_mar_Ko_Olina.html
- **Honolulu Star-Advertiser** – "Landfill will remain closed into next week"
<http://www.staradvertiser.com/news/breaking/114395664.html>
- **KHON2** – "Landfill closed till next Thursday"
<http://www.khon2.com/news/local/story/Landfill-closed-till-next-Thursday/X6oaUG53Ck6-H5CR7NKfG.csp>
- **KITV** – "Signs Remain Posted Along Resort Beaches"
<http://www.kitv.com/news/26578263/detail.html>

Saturday, January 22, 2011

- **Honolulu Star-Advertiser** – "City resists dump deadline"
http://www.staradvertiser.com/news/20110122_City_resists_dump_deadline.html
- **KITV** – "Leeward Oahu Beach Still Closed Over Weekend"
<http://www.kitv.com/video/26582427/detail.html>

Sunday, January 23, 2011

- **Hawaii News Now** – "Contaminated Water' signs taken down on Leeward Oahu beaches"
<http://www.hawaiinewsnow.com/Global/story.asp?S=13893278>

- **Water Online** – "U.S. EPA Orders Immediate Cleanup And Needed Controls At Waimanalo Gulch Landfill"
<http://www.wateronline.com/article.mvc/US-EPA-Orders-Immediate-Cleanup-And-0001>

Friday, January 28, 2011

- **Environmental Leader** – "Environmental Enforcement: EPA Issues Cleanup Order to Honolulu Landfill Operator"
<http://www.environmentalleader.com/2011/01/28/environmental-enforcement-epa-issues-cleanup-order-to-honolulu-landfill-operator/>
- **Honolulu Civil Beat** – "Stormwater Released Into Ocean to Avoid Larger Landfill Catastrophe"
<http://www.civilbeat.com/articles/2011/01/28/8471-stormwater-released-into-ocean-to-avoid-larger-landfill-catastrophe/>
- **Honolulu Star-Advertiser** – "Time to rev up landfill response"
http://www.staradvertiser.com/editorials/20110128_Time_to_rev_up_landfill_response.html
- **Pacific Business News** – "State's lack of timing bombs on the big stage"
<http://www.bizjournals.com/pacific/print-edition/2011/01/28/states-lack-of-timing-bombs-on-the.html>

Attachment 4

**Fiscal & Economic Benefits Analysis;
Ko Olina Resort & Marina
(CB Richard Ellis, January 2011)**

Attachment 5

Investigation Report; Department of
Health; Clean Water Branch
(ID #: PA0991, 12/23/2010)
Concluding Violations of Hawaii Water
Pollution Rules and Regulations

Investigation Report

Department of Health

Clean Water Branch

ID #: PA0991

Date of investigation: 12/23/2010

Page 1 of 3

Permit/File/WQC No: R50A533

Island: Oahu

Facility: City and County of Honolulu

Complaint/Background Description:

On December 23, 2010, the Department of Health (DOH), Clean Water Branch (CWB), conducted an inspection of the City and County of Honolulu (CCH) Waimanalo Gulch municipal solid waste landfill (Landfill) which is located at 92-460 Farrington Highway, Kapolei, Hawaii. The inspection was conducted in response to a notification that the Landfill was discharging storm water contaminated with leachate through the Landfill's detention basin to the Pacific Ocean. Matthew Kurano, Jamie Tanimoto, and Michael Tsuji of the DOH-CWB conducted the inspection. Mr. Justin Lottig, Market Area Environmental Protection Manager for Waste Management was present during the inspection. Waste Management operates the Landfill.

Permit History

The CCH, Refuse Division, owns the Landfill and has National Pollutant Discharge Elimination System (NPDES) permit coverage through a general permit authorizing the discharge of storm water associated with industrial activities from the Landfill to State waters. The Landfill's Notice of General Permit Coverage (NGPC), File No. HI R50A533, only authorizes the discharge of storm water which has come into contact with landfill activities. Discharges of effluent, leachate, or other wastewater discharges are not permitted by the issued NGPC.

The NGPC, File No. HI R50A533, was effective as of August 30, 2010, and expires on October 21, 2012.

Findings Description:

The weather was mostly cloudy throughout the inspection. Heavy rains preceded the inspection. The following findings were either observed or noted before, during or after the inspection:

- 1) On December 23, 2010, the DOH-CWB was notified by the DOH, Solid and Hazardous Waste Branch (SHWB) that the Landfill was discharging leachate to State waters. The notification to the DOH-CWB was made by the DOH-SHWB after storm water contaminated with leachate was observed being pumped from the Landfill by the DOH-SHWB representatives earlier that day. In response to the notification of discharge by the Landfill, DOH-CWB representatives conducted an investigation into the reported discharges.
- 2) At approximately 3:30 p.m. on December 23, 2010, M. Kurano, J. Tanimoto, and M. Tsuji met with J. Lottig of Waste Management at the Landfill (Image 1). J. Lottig stated that on Sunday, December 19, 2010, the Landfill experienced a heavy rain event. J. Lottig stated that as a result of the rain event and a failure in the Landfill's storm water bypass system, the E6 cell was inundated with storm water. J. Lottig stated that between Sunday afternoon on December 19, 2010, and December 23, 2010, the Landfill intermittently pumped storm water which accumulated in the Landfill's E6 cell into the Landfill's storm water drainage system. The Landfill's storm water drainage system discharges to the Pacific Ocean at a shoreline outfall of the Ko Olina resort. J. Lottig indicated that storm water that was pumped may have contacted solid waste.
- 3) By definition in Hawaii Administrative Rules, Section 11-58.1-03, "Leachate" means water or other liquid that has percolated or passed through or emerged from solid waste and contains dissolved, soluble, suspended, or miscible materials removed from the waste or due to contact with solid waste or gases therefrom. Storm water is defined in Hawaii Administrative Rules, Section 11-55-01 as, "...storm water runoff, snow melt runoff, and surface runoff and drainage." The Landfill is authorized to discharge storm water from the Landfill's storm water drainage system. The Landfill is not authorized to discharge leachate to State waters. Effluent from the Landfill's leachate collection system is transported to a wastewater treatment plant for proper treatment and disposal.

Investigation Report

Department of Health

Clean Water Branch

ID #: PA0991

Date of Investigation: 12/23/2010

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- 4) J. Lottig stated that the E6 cell was last in operation on Saturday, December 18, 2010, and that a 12" layer of intermediate "cover" had been placed on the municipal solid waste at the end of the business day. J. Lottig stated that the E6 cell contains solid waste and a leachate collection system. J. Lottig stated that the E6 cell has approximately 40 vertical feet of constructed cells within it. Contents of the E6 cell include municipal solid waste such as general refuse, medical waste, as well as intermediate cover material. J. Lottig stated that the E6 cell has a leachate collection system that has a leachate sump which collects leachate from the E6 cell. A solid waste filled earthen berm bisects the bottom of the E6 cell.
- 5) J. Lottig stated that the E6 cell is lower than the surrounding grade which effectively makes it a bowl-like structure. J. Lottig stated that there is a single 36" pipe which runs under the E6 cell which was designed to act as a storm water bypass system for the E6 cell. The pipe is designed to transport storm water from the watershed and gulch above the Landfill to the Landfill's storm water drainage system. J. Lottig indicated that the single subsurface pipe was designed so that the storm water running down Waimanalo Gulch would bypass the active cells including the E6 cell and not come into contact with municipal solid waste before ultimately discharging into the Pacific ocean. J. Lottig indicated that the subsurface drainage pipe was designed to prevent storm water from flowing into the E6 cell, and contacting active work areas. J. Lottig stated that the storm water that normally collects in the E6 cell flows through the cell into the leachate collection system where it would be collected and transported to the Waianae Wastewater Treatment Plant for treatment as industrial wastewater.
- 6) J. Lottig stated that on Sunday, December 19, 2010, the subsurface drainage pipe that conveyed storm water under the E6 cell had become plugged and that the storm water flowing down Waimanalo Gulch had run into the E6 cell from the North. Due to the grade and shape of the E6 cell, the E6 cell retained the storm water. J. Lottig stated that until the subsurface storm water bypass pipe was cleared on Sunday afternoon, December 19, 2010, storm water collected in the E6 cell, ultimately filling the E6 cell. J. Lottig estimated that the depth of storm water that filled the E6 cell was approximately 38 feet.
- 7) J. Lottig stated that at no time on December 19, 2010 did the storm water that collected within the E6 cell flow out of the Landfill except when it was actively pumped by Goodfellows Brothers. J. Lottig stated that following the clearing of the subsurface drainage pipe, Waste Management personnel including himself, Joseph Whelan, General Manager for Waste Management, and Matt Healke from Goodfellow Brothers., met to discuss the implications of not pumping the storm water from the E6 cell to the Landfill's storm water drainage system. J. Lottig stated that it was decided to pump the ponded water from the E6 cell into the storm water drainage system. J. Lottig stated that he did not order the pumping of the potentially contaminated storm water into the Landfill's storm water drainage system but that the order to pump could have been made by J. Whelan.
- 8) J. Lottig stated that between Sunday, December 19, 2010 and Thursday, December 23, 2010, the Landfill's contractor operated a pump to reduce the level of potentially contaminated storm water that had accumulated in the E6 cell. J. Lottig stated that he could not approximate the volume of water pumped into the Landfill's storm water drainage system at the time of inspection.
- 9) The Landfill's E6 cell (Photograph 1) was observed during the inspection. Ponding water was observed within the E6 cell. The E6 cell appeared to have been inundated by storm water as evidenced by high water marks observed on the sides of the cell. Significant amounts of exposed waste were not observed within the area upstream of the berm that bisects the E6 cell at the time of inspection. It appeared that the standing water saturated the E6 cell, and may have penetrated the leachate collection system while exposing solid waste which was buried in the cell.
- 10) In the North side of the E6 cell, an overturned porta-potty and a submerged piece of Landfill equipment was observed. The South side of the E6 cell, downstream of the berm (Photograph 2) was observed at the time of inspection. Significant amounts of exposed solid waste and refuse were observed within the area downstream of the berm in the E6 cell. The earthen berm which separated the E6 cell was damaged at the time of inspection. The DOH-CWB representatives observed a section of the intermediate cover had washed away,

Investigation Report

Department of Health

Clean Water Branch

ID #: PA0991

Date of investigation: 12/23/2010

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exposing solid waste from within the berm. The Landfill's contractor appeared nearly finished with covering the berm's exposed solid waste with new ground cover at the time of the inspection.

11) Where the ponding water was observed percolating through the solid waste downstream area of the E6 cell, a strong odor was detected by DOH-CWB representatives. The downstream area of the cell appeared significantly polluted with a mixture of solid waste and storm water.

12) The storm water observed within the E6 cell was clearly in contact with and passed through solid waste. As such, the liquid observed within the E6 cell was Landfill leachate.

13) No windblown litter was observed in the upper E6 cell area or in the area surrounding the E6 cell. The nearby litter fences (Photograph 4) were clean at the time of inspection. The solid waste observed within the downstream area of the E6 cell did not appear to have blown in. The solid waste appeared to originate from the E6 cell.

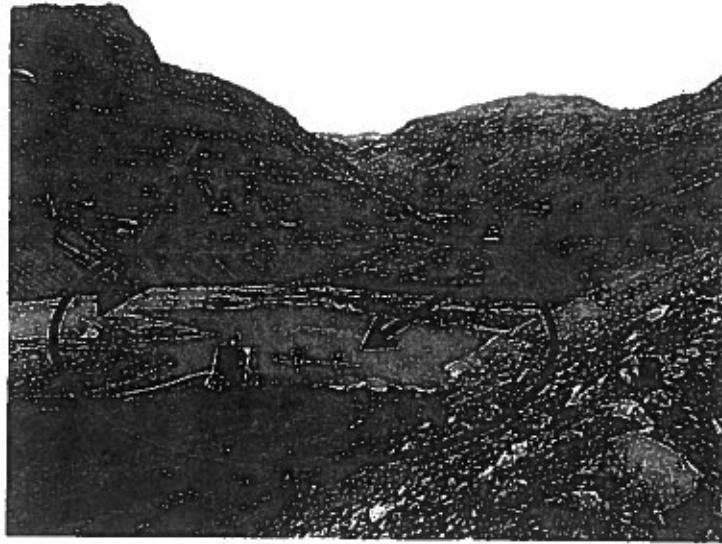
14) Statements by J. Lottig as well as the hoses and pumping apparatus observed in the E6 cell was clear evidence that leachate was purposefully discharged into the Landfill's storm water drainage system. The Landfill's storm water drainage system discharges into State waters at a shoreline outfall in the Pacific Ocean West of the Landfill. The Landfill is not authorized to discharge leachate to State waters. Since the subsurface drainage pipe that is designed to divert storm water from the upper watershed was cleared prior to the initiation of pumping activities, it appears that the unauthorized discharges were preventable. J. Lottig stated that the DOH was not contacted prior to the Landfill's initiation of pumping activities which resulted in the discharge of leachate to State waters. It is a violation of Hawaii Revised Statute 342D-50 to discharge a water pollutant to State waters without authorization.

In conclusion, it appears that the Landfill owners and operators, including the CCH and Waste Management violated Hawaii Water Pollution rules and regulations by discharging water pollutants to State waters without authorization. Further enforcement actions may be required to insure remediation of the violation.

At this time, the DOH-CWB will be pursuing enforcement action in the form of a Notice of Apparent Violation, and Request For Information. Further escalating enforcement actions may also be forthcoming as updated information regarding this case is received.

Name: Matthew Kurano
Signature: [Signature]
Title: EHS
Date: 1/4/11

Name: Jamie Tanimoto
Signature: [Signature]
Title: EHS
Date: 1/4/11



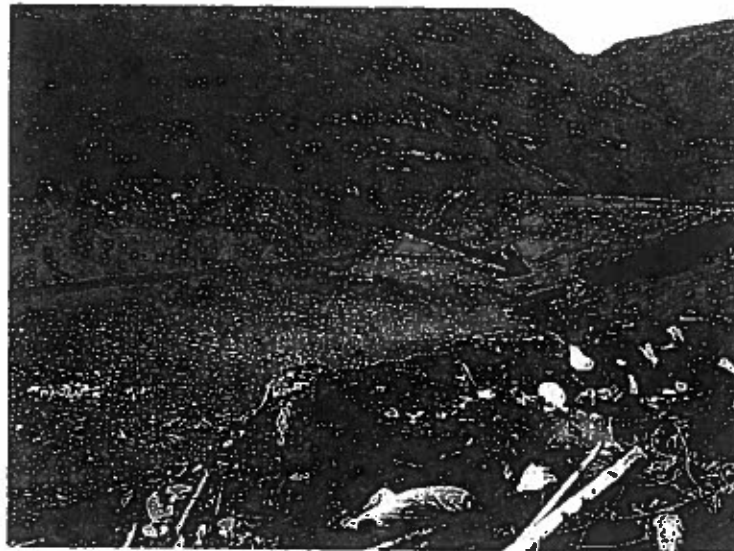
Photograph # 1

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: North facing view of the E6 cell upstream of the berm. Ponding water (Red Circle), an overturned porta-pottie (Red Arrow) and a submerged piece of equipment (Blue Arrow) was observed in the cell at the time of inspection.



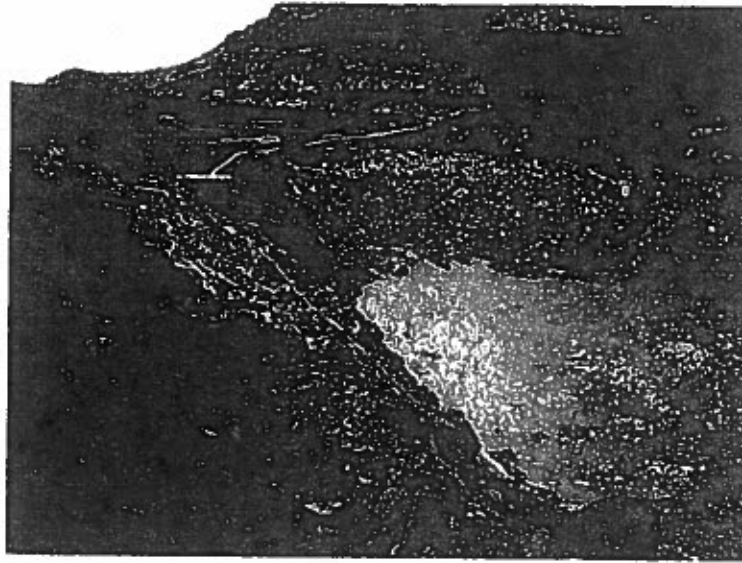
Photograph # 2

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View facing North of the E6 cell downstream of the berm. The berm (Red Arrow) bisecting the E6 cell appeared to have ruptured and exposed solid waste was observed throughout the downstream side of the E6 cell. Goodfellow Brothers. was covering the exposed solid waste with soil in an apparent attempt to repair the berm damage at the time of inspection.



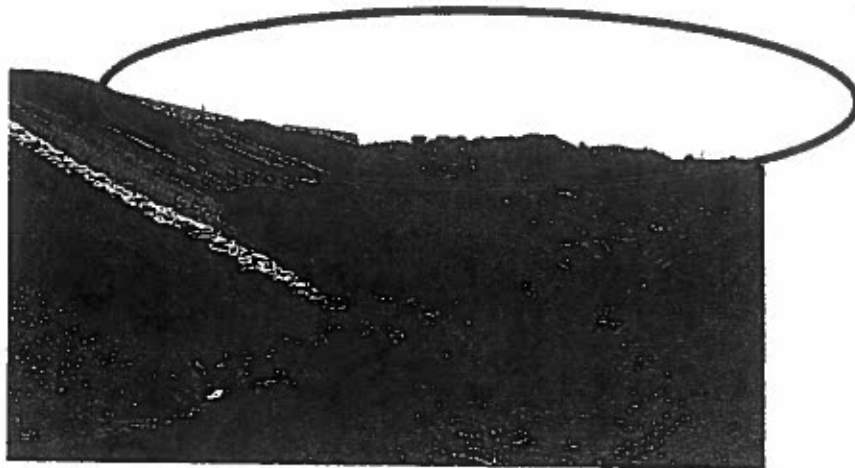
Photograph # 3

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of the E6 cell facing South. Solid waste was observed throughout the downstream side of the E6 cell. Pumping apparatus (Red Arrow) and hoses were observed connecting the E6 cell to the storm drainage system.



Photograph # 4

Date: December 23, 2010

Observers: Matthew Kurano, Jamie Tanimoto, Michael Tsuji

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of a litter fence (Red Circle) above the E6 cell. No windblown litter was observed accumulated in the litter fence at the time of inspection.

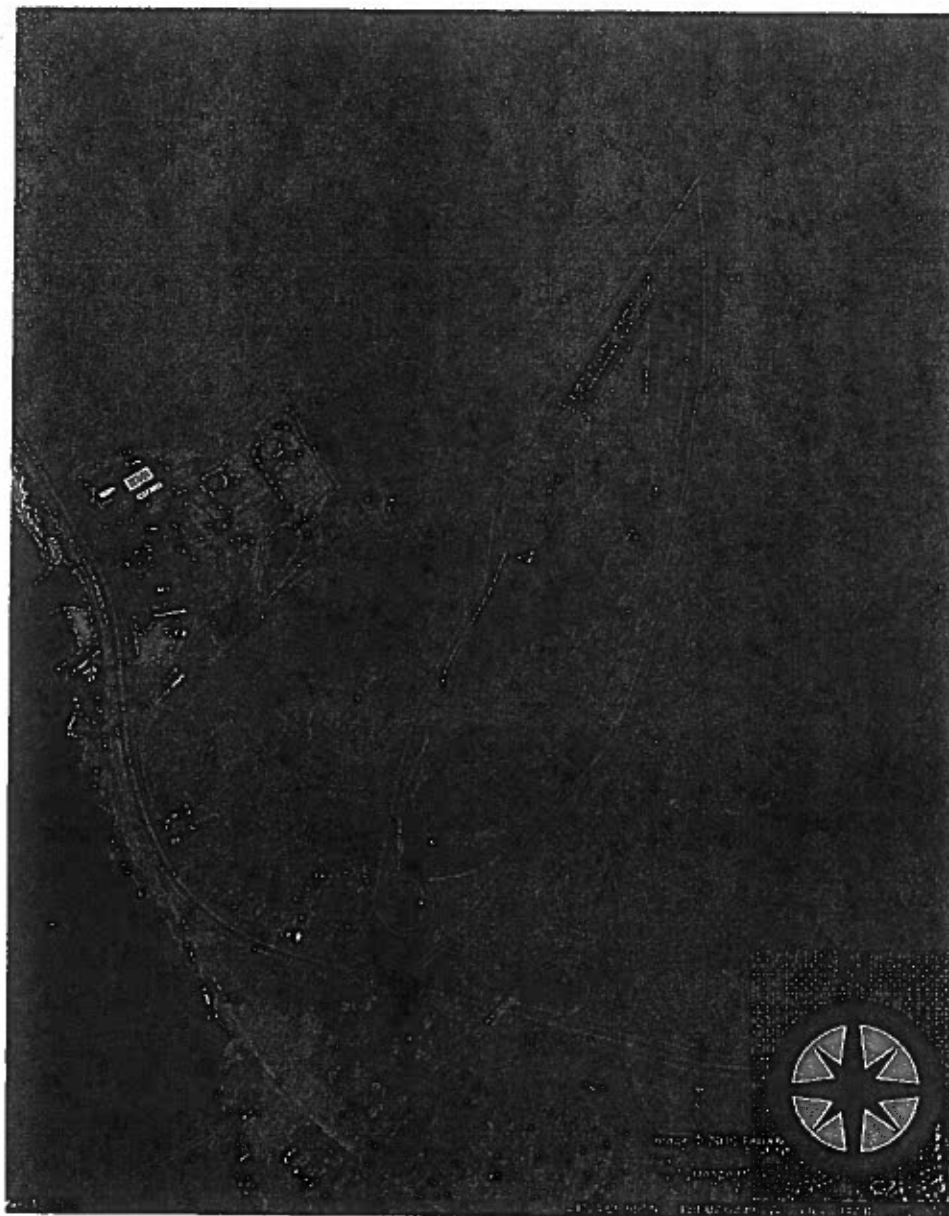


Image 1

Location: 92-460 Farrington Highway, Kapolei, Hawaii

Description: View of the Landfill (Red Outline). The E6 cell (Black Outline) was observed at the time of inspection. An earthen berm traversed the E6 cell. Discharges from the Landfill's storm water detention basin (Red Circle) enter into the Pacific Ocean at a shoreline outfall (Red Arrow) north of Ko Olina.

I certify that the four (4) attached photos described above were taken by the undersigned and are a true, accurate, and unaltered representation of what was observed on December 23, 2010 at the Waimanalo Gulch Sanitary Landfill, 92-460 Farrington Highway, Kapolei, Hawaii.



Matthew R. Kurano



Date

NEIL ABERCROMBIE
Governor



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

ORLANOO "DAN" DAVIDSON
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BERT K. SARUWATARI
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FRED A. TALON
Drafting Technician

RILEY A. HAKODA
Chief Clerk

January 21, 2011

Mr. Timothy E. Steinberger, P.E., Director
Department of Environmental Services
City and County of Honolulu
1000 Ulu'ōhi'a Street, Suite 308
Kapolei, HI 96707

Gary Takeuchi, Esq.
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, HI 96813

Dear Messrs Steinberger and Takeuchi:

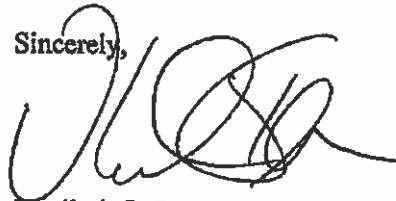
Re: Docket No. SP09-403 Department of Environmental Services (Waimānalo Gulch Sanitary Landfill)

In light of the recent discharges of municipal solid waste into the ocean from the Waimānalo Gulch Sanitary Landfill, the Commission requests that the Department of Environmental Services appear before the Commission at its February 2, 2011 meeting at 1:30 p.m. to provide a status report. Please present a written report at the meeting regarding the circumstances surrounding the recent discharges and what steps are being taken to prevent any reoccurrence. The Commission also requests that you provide an update regarding the status of the City's efforts to identify and develop alternative sites to replace or supplement Waimānalo Gulch Sanitary Landfill as required by Condition 4 of the Commission's October 22, 2009 Decision and Order in this matter. In addition, the Commission asks that you take this opportunity to update the Department of Environmental Services July 28, 2010 Report regarding compliance with the 16 Conditions contained in the Commission's Decision and Order.

Messrs. Steinberger and Takeuchi
January 21, 2011
Page 2

The location of the February 2, 2011 meeting is Conference Room 405 in the State Office Tower. An Agenda will be provided to you prior to the meeting. Please contact the Commission's Executive Officer, Orlando Davidson at 587-3822, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'V. Devens', written over a horizontal line.

Vladimir P. Devens
Chairperson and Commissioner

cc. the parties in SP09-403

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of)	FILE NOS. 2008/SUP-2 (RY) AND 86/SUP-5
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	FINDINGS OF FACT, CONCLUSIONS OF
HONOLULU)	LAW, AND DECISION AND ORDER
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, Oahu, Hawaii,)	
Tax Map Key Nos. (1) 9-2-003:072 and 073.)	

**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 June 22, 2009, June 24, 2009, July 1, 2009, July 2, 2009 and July 8, 2009. Based on the record in this matter, including the evidence presented 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, and the written arguments of the parties, the Planning Commission hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Waimanalo Gulch Sanitary Landfill ("WGSL" or the "landfill") is located at 92-460 Farrington Highway, Honouliuli, Ewa, Oahu. See Planning Division Master Application Form included within the Special Use Permit Application filed on December 3, 2008.

2. On November 23, 2006, the Office of Environmental Quality Control, State of Hawaii ("OEQC"), published notice in *The Environmental Notice* that the Environmental Impact Statement ("EIS") Preparation Notice for the expansion of WGSL was available for public review and comment. See Letter from David Tanoue, Director of the Department of Planning and Permitting, to Karin Holma, Chair of the Planning Commission, dated May 1, 2009 ("DPP Recommendation") at 6.

3. On October 13, 2008, the *Final Environmental Impact Statement, Waimanalo Gulch Sanitary Landfill Lateral Expansion, Waimanalo Gulch, Oahu, Hawaii, TMKs: (1) 9-2-003: 072 and 073*, dated October 2008 ("2008 FEIS"), for the expansion of WGSL, was accepted on behalf of the Mayor by the Department of Planning and Permitting ("DPP"). Id.; Exhibit "7" to the Department of Environmental Services, City and County of Honolulu's July 6, 2009 Memorandum in Opposition to Intervenor's Motion to Dismiss the Application.

4. On October 23, 2008, OEQC published notice of the 2008 FEIS Acceptance in *The Environmental Notice*, in accordance with the Hawaii Environmental Policy Act ("HEPA"), Hawaii Revised Statutes ("HRS") Chapter 343. See DPP Recommendation at 6.

5. On December 3, 2008, the Department of Environmental Services, City and County of Honolulu ("Applicant" or "ENV"), filed a State Special Use Permit Application ("Application"), with DPP pursuant to HRS Section 205-6, and Rules of the Planning Commission, City and County of Honolulu ("RPC"), Subchapter 4, Rules Applicable to State Special Use Permits. See Application. The Application, designated as Special Use Permit Application File No. 2008/SUP-2, is for a new Special Use Permit ("SUP") for the use of the approximately 200.622-acre property (the "Property"), identified by Tax Map Key ("TMK")

Nos. (1) 9-2-003: 072 and 073, in Waimanalo Gulch, Oahu, Hawaii. See Application at Figure 1-1 and Planning Division Master Application Form. The Application seeks to expand the current operating portion of the Property, approximately 107.5 acres, by approximately 92.5 acres (the "Project"). See Application at Planning Division Master Application Form and p. 1-2.

6. The Applicant concurrently seeks to withdraw its existing SUP permit for approximately 107.5 acres, Special Use Permit File No. 86/SUP-5, and the conditions imposed therein, if the Application for the new SUP permit is granted. See April 2, 2009 memorandum from Applicant to DPP; Transcript ("Tr.") 7/2/09, 20:4-10; DPP Recommendation at 3, 24.

7. The Applicant has also filed a petition with the Land Use Commission, State of Hawaii, for a district boundary amendment to reclassify the Property from the State Agricultural District to the Urban District, which may be withdrawn if the Application is granted. See Application at p. 2-2, fn.1.

8. The Planning Commission's public hearing to consider ENV's application was scheduled for May 6, 2009. On April 3, 2009, a notice of the hearing of the matter was published in the *Honolulu Star-Bulletin*.

9. On April 16, 2009, Ko Olina Community Association ("KOCA"), Colleen Hanabusa, and Maile Shimabukuro (collectively, "Intervenors") filed a Petition to Intervene in this matter. On April 24, 2009, Applicant filed a Memorandum in Opposition to Intervenors' Petition to Intervene.

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

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

12. At the public hearing on May 6, 2009, at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii, the Planning Commission heard public testimony. The Planning Commission was also scheduled to hear argument regarding Intervenor's Petition to Intervene. At Intervenor's request, however, the Planning Commission continued the public hearing and consideration of Intervenor's Petition to Intervene to May 20, 2009.

13. On May 7, 2009, Todd K. Apo ("Apo") filed a Petition to Intervene in this matter. On May 18, 2009, Applicant filed a Memorandum in Opposition to Apo's Petition to Intervene.

14. On May 19, 2009, Intervenor's filed a Motion to Recuse Commissioner John Kaopua.

15. On May 20, 2009, the public hearing was continued at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. At the continued public hearing, the Planning Commission heard and granted Intervenor's Petition to Intervene. Pursuant to RPC Subchapter 5, the matter was noted as a contested case. The Planning Commission also began hearing argument regarding Apo's Petition to Intervene and continued that matter to June 10, 2009.

16. On June 5, 2009, Applicant filed a Memorandum in Opposition to Intervenor's Motion to Recuse Commissioner John Kaopua.

17. On June 10, 2009, the hearing was continued at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. The Planning Commission heard and granted Intervenor's Motion to Recuse Commissioner John Kaopua. The Planning Commission denied Apo's Petition to Intervene on the grounds that it was untimely filed, that Apo's position regarding that Application was substantially the same as the position of

the Intervenor, and that the proceeding will be inefficient and unmanageable if Apo was allowed to intervene. See Findings of Fact, Conclusions of Law, and Order issued on July 27, 2009. Thereafter, the Planning Commission closed the public hearing on the Application.

18. On June 15, 2009, Intervenor filed their List of Witnesses, listing 42 potential witnesses including Apo. Applicant also filed its List of Witnesses, listing six potential witnesses.

19. On June 22, 2009, the contested case hearing began on the Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The Applicant submitted Exhibits "A1" through "A31," which were accepted into the record by the Planning Commission. See Tr. 6/22/09, 29:2-13. The Applicant presented its first two witnesses: Brian Takeda, who was qualified as an expert in the field of urban and regional planning, and Hari Sharma ("Sharma"), who was qualified as an expert in the field of geotechnical and geo-environmental engineering. Id. at 33:5-8; 234:7-12. Intervenor offered, and the Planning Commission received into the record, Exhibits "B1" and "B4." Id. at 81:6-11; 226:14-15.

20. On June 24, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. The examination of Sharma was completed. The Applicant presented its third witness Joseph R. Whelan ("Whelan").

21. On June 29, 2009, Intervenor filed a Motion to Dismiss the Application, contending that the 2008 FEIS did not cover the entire 200.622-acre site and therefore, ENV's Application had to be dismissed.

22. On July 1, 2009, the Planning Commission resumed the contested case hearing on the Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The examination of

Whelan was completed. The Applicant presented its fourth and fifth witnesses: Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, Chief of the Division of Refuse, City and County of Honolulu. See Tr. 7/1/09, 93:2-8; 176:4-9. Applicant offered, and the Planning Commission accepted for the record, Exhibit "A32." Id. at 168:16-17.

23. On July 2, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Chambers, Third Floor, 530 South King Street, Honolulu, Hawaii. The Applicant offered no further witnesses and concluded its case-in-chief. See Tr. 7/2/09, 4:15-17. Intervenors began their case-in-chief and presented the following seven witnesses: Abbey Mayer; Josiah Hoohuli; William J. Aila, Jr.; Daniel Banchiu; Cynthia Rezendes; Maeda Timson; and Apo. The Applicant offered, and the Planning Commission received into the record, Exhibits "A33" and "A34." Id. at 32:20-25; 240:7-13. Intervenor offered, and the Planning Commission received into the record, Exhibit "B5." Id. at 185:21-23. Other documents were referenced by the Planning Commission and the parties as Exhibits "B2" through "B3." Intervenors rested their case. Id. at 279:15.

24. On July 6, 2009, Applicants filed a Memorandum in Opposition to Intervenors' Motion to Dismiss the Application.

25. On July 8, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. Applicant presented David M. Shideler as a rebuttal witness, who was qualified as an expert in archaeology and historical cultural resources. See Tr. 7/8/09, 11:15-21. Applicant offered, and the Planning Commission received into the record, Exhibits "A35," "A36," and "A37." Id. at 8:25-9:5, 65:14-22, 68:6-13. Intervenors made their witness, Apo,

available for additional questions by Commissioner Beadie Dawson. The examination of Apo was completed.

26. On July 8, 2009, the Planning Commission also heard and denied Intervenor's Motion to Dismiss the Application on the grounds that the Planning Commission does not have jurisdiction to consider the sufficiency of the 2008 FEIS and that Intervenor Hanabusa had previously filed the appropriate matter contesting the sufficiency in State circuit court. The Planning Commission scheduled decision-making for the Application on July 31, 2009, at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. Id. at 110:15-25; 111:1-5, 20-21.

EXHIBITS AND WITNESSES

27. The Applicant offered, and the Planning Commission received into the record, Exhibits "A1" to "A37," without objection.

28. Intervenor's offered, and the Planning Commission received into the record, Exhibits "B1," "B4," and "B5," without objection.

29. The Applicant called the following witnesses: Brian Takeda, who was qualified as an expert in the field of urban and regional planning; Hari Sharma, who was qualified as an expert in the field of geotechnical and geo-environmental engineering; Joseph R. Whelan; Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering; Frank Doyle; and David M. Shideler, who was qualified as an expert in the field of archaeology and historical cultural resources.

30. Dr. Sharma prepared a report entitled "Engineering Report for Landfill Expansion; Waimanalo Gulch Sanitary Landfill," dated March 12, 2008, which is Exhibit "A29." See Tr. 6/22/09, 235:4-25.

31. Intervenor called the following witnesses: Abbey Mayer; Josiah Hoohuli; William Aila, Jr.; Daniel Banchiu; Cynthia Rezentes; Maeda Timson; and Todd Apo.

Intervenor did not move to qualify any of these persons as expert witnesses.

32. Intervenor Ko Olina Community Association, Colleen Hanabusa, and Maile Shimabukuro did not testify and did not submit any written testimony during the contested case hearing.

33. Mr. Doyle testified that the Applicant will begin in 2010 efforts to identify and develop a new landfill site to supplement WGSL. See Tr. 7/1/09, 251:18-24.

34. Mr. Doyle also testified that it would take more than seven years to identify and develop a new landfill site. *Id.* at 260:16-22; 261:3-22.

POST-HEARING SUBMISSIONS BY THE PARTIES

35. On July 17, 2009, Applicant filed the Department of Environmental Services, City and County of Honolulu's Post-Hearing Brief and the Department of Environmental Services, City and County of Honolulu's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Certificate of Service.

36. On July 17, 2009, Intervenor filed the Post Hearing Brief of Intervenor, Certificate of Service and Intervenor's Ko Olina Community Association, Colleen Hanabusa and Maile Shimabukuro Proposed Findings of Fact and Conclusions of law and Decision and Order, and Certificate of Service.

37. On July 29, 2009, Applicant filed that certain Department of Environmental Services, City and County of Honolulu's (1) Response to Post-Hearing Brief of Intervenor and (2) Exceptions to Intervenor's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Gary Y. Takeuchi; Exhibits "1" – "3"; and Certificate of Service.

38. On July 29, 2009, Intervenor filed that certain Reply Brief of Intervenor, Certificate of Service.

PROPOSAL FOR SPECIAL USE PERMIT

39. A special use permit is being sought for the continued use of the Property as a landfill. See Application at 1-1. The 107.5-acre portion of the Property currently used as a landfill is proposed to be expanded by the remaining approximately 92.5 acres. Id. Of the approximately 92.5 acres in the expansion area, approximately 37 acres will be utilized for landfill cells. See Exhibit "A1" at 3-1, 4-4, 11-1. In addition, the expansion area will 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, and a landfill gas-to-energy system and other related features. Id.; see also Application at Part I.

40. The SUP will cover the entire Property. See Application at Part I.

DESCRIPTION OF THE PROPERTY

41. The Property is owned by the City and County of Honolulu ("City") and operated by Waste Management of Hawaii, Inc ("Waste Management"). See Tr. 7/1/09, 179:4-8.

42. The state land use district designation for the Property is Agricultural District. See DPP Recommendation at 1; Application at Planning Division Master Application Form.

43. The existing City zoning district for the Property is AG-2, General Agricultural District. See Application at Planning Division Master Application Form; DPP Recommendation at 1.

44. The Ewa Development Plan recognizes the existing landfill. See Exhibit "A5"; DPP Recommendation at 1.

45. Existing uses of the property are landfill and open space. See DPP Recommendation at 2.

46. 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. See DPP Recommendation at 8.

47. The area is fairly dry. According to an on-site rain gauge, located at the weather station, the average rainfall at WGSF is approximately 15 inches per year. See Application at 2-27; DPP Recommendation at 9.

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

49. According to the Agricultural Lands of Importance ("ALISH") to the State of Hawaii system, the Property is not classified as Prime Agricultural Land, Unique Agricultural Land or Important Agricultural Lands. See Figure 8-2 of Exhibit "A1."

50. The University of Hawaii Land Study Bureau overall master productivity rating for the Property is "E," which indicates very poor crop productivity potential. See Application at 2-31.

51. 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, but possible. See Figure 5-9 of Exhibit "A1."

52. The Property is not located within the Special Management Area. See Figure 8-3 of Exhibit "A1."

SURROUNDING USES

53. Surrounding uses to the Property include the Hawaiian Electric Company Kahe Power Plant to the west, single-family dwellings and the Ko Olina Resort to the south, and vacant lands to the north and east. See Figure 7-3 of Exhibit "A1."

54. Farrington Highway is located south of the Property. Id.

55. The region east of Property comprises the Makaiwa Hills development, which is scheduled for development. See Tr. 6/22/09, 64:6-8; Figure 7-3 of Exhibit "A1." WGSL has been in operation since 1989. See Tr. 7/1/09, 179:9-10. In 2008, the Makaiwa Hills parcel was rezoned for single family, mixed and apartment use by Ordinance 8-26, Bill 47 (2008). See Exhibit "A36."

56. The Makaiwa Hills developer's intention, according to its Final EIS dated October 2007 (the "Makaiwa Hills EIS"), is to proceed with development from makai (south) proceeding in a mauka (north) direction, as well as proceeding from east to west. See Tr. 6/22/09, 167:6-25. The Makaiwa Hills EIS indicates that construction of the western portion of its development closest to WGSL will not proceed until 2015. Id. at 167:25-168; Exhibit "A37" at p. 4-60.

57. WGSL plans to initiate closure of the existing landfill cells in the area nearest Makaiwa Hills' proposed residences prior to 2015. See Tr. 6/22/09, 168:1-8; 188:17-25, 189:1-14. In particular, cell E2 and portions of cells E1, E3, and several other MSW cells (labeled Closure Sequence "A" in Exhibit "A12") are anticipated to be covered, capped, and closed by 2012. See Exhibit "A12"; Tr. 6/24/09, 91:7-92:1.

58. There is a ridgeline between Makaiwa Hills and WGSL. See Tr. 6/22/09, 191:12-18. The area of Makaiwa Hills nearest to WGSL's landfill cells in the proposed

expansion area is identified as open space on the Makaiwa Hills property and will not be developed. Id. at 191:4-8; Exhibit "A11."

59. The current landfill access road proceeds up to the scalehouse, past the ash cells, veers due west to the west side of the Property, and travels up the western side of the Property and into the proposed expansion area. See Tr. 6/24/09, 89:5-16. This course takes the road away from the eastern boundary of the Property and away from Makaiwa Hills. Id.

60. Waste Management documents and responds to complaints received about the operations of WGSL. Id. at 100:9-101:3. Waste Management received and investigated six complaints in 2007, three complaints in 2008, and three complaints to date in 2009. Id. at 101:4-7.

61. Daniel Banchiu, general manager of JW Marriott, Ihilani ("Marriott"), testified for Intervenor at the July 2, 2009 hearing on the Application. See Tr. 7/2/09, 99:1-13. The Marriott operates a hotel at the Ko Olina resort. Id. at 99:21-24. He testified that he is aware of view and odor complaints from his guests but that the Marriott has not notified Waste Management about any complaints. Id. at 100:14-101:12; 110:1-10. He also testified that guests complained of views of a smokestack in the distance. On cross-examination, however, he admitted that he has never been to the landfill and that the smokestack could be located at some other facility--perhaps a facility with a smokestack. Id. at 106:1-25; 107:1-12. WGSL does not have a smokestack, but the Kahe Power Plant, which is adjacent to the Property, does. See Exhibit "A1" at p. 5-93.

STABILITY, CONTROLLED BLASTING AND BERMS

62. Pursuant to federal and state regulations governing landfills, a seismic hazard evaluation was performed to determine seismic slope stability of the landfill. See Tr. 6/22/09 at

238:21-239:5. Consistent with accepted industry practice, the Project was analyzed for a design earthquake of magnitude 7.0, with an acceleration of 0.25 G. Id. at 240:1-9.

63. Under the Resource Conservation and Recovery Act ("RCRA"), Subtitle D, Seismic Design Guidance document, the acceptable displacement of landfills due to a seismic event is 12 inches. Id. at 248:25-249:13. The seismic deformation analysis of the design for the expanded landfill showed that seismic deformations were six inches or less, meeting the seismic stability criteria. Id. at 249:14-23.

64. The use of controlled blasting at the Property, which is very common in many landfill excavations, will not affect the stability of WGSF because the imparted energy of controlled blasting is so small and significantly less than 0.1 G. Id. at 240:12-23; 250:3-16; 253:3-7. Monitoring probes installed by the Hawaiian Electric Company near the western Property boundary to measure vibrations from controlled blasting efforts at the currently permitted landfill did not detect any measurable readings. See Tr. 6/22/09, 252:1-15.

65. In order to alleviate community concerns about controlled blasting, a blast test program will be implemented at the Property, wherein distance, velocity, and frequencies transmitted by controlled blasting will be monitored. Id. at 251:7-16; 252:16-253:2. According to Dr. Hari Sharma, if the controlled blasting affects the landfill or any of the structures nearby, adjustments will be made. Id. at 251:7-16. There are no concerns regarding stability during the blast test program itself. Id. at 251:17-19.

66. A slope stability study was also prepared for the proposed Project. Id. at 244:2-4; 250:15-17. The proposed design meets the required factors of safety of 1.3 and 1.5 for short-term and long-term conditions, respectively. Id. at 245:18-246:11.

67. The impact of accumulated leachate on stability was also studied. According to Dr. Sharma and Richard Von Pein, even under extreme circumstances of leachate accumulation, using worst case scenarios that have never been experienced, the landfill would remain stable. See Tr. 6/24/09, 61:2-24; Tr. 7/1/09, 170:16-25, 171:1-15.

68. Whenever new cells are designed, a seismic deformation analysis and slope stability analysis must be performed to determine how the design impacts the existing cells. See Tr. 6/24/09, 9:19-23.

69. Berms are included in the design for several reasons, including for diversion of the surface water to make sure leachate is contained within the landfill and to create airspace while ensuring stability. See Tr. 6/22/09, 236:18-237:2; Tr. 6/24/09, 24:13-20; Tr. 7/1/09, 100:12-15.

70. A small Ash Toe Berm was a part of the original design for WGSL. See Tr. 7/1/09, 142:12-15; 142:21-143:3. The Ash Toe Berm was expanded in 2005 to address a small area where the factor of safety was less than 1.5. Id. at 142:17-20.

71. The E1 and West Berms were a part of the 2002 design for the 14.9-acre landfill expansion. Id. at 168:19-170:1; Exhibit "A32."

72. The West Berm will be extended further into the canyon under the proposed design for the expansion. See Tr. 6/22/09, 237:3-23; Tr. 6/24/09, 36:25-38:11.

STORM WATER AND LEACHATE

73. Leachate is rain water that falls on open landfill cells. See Tr. 7/1/09, 14:11. The bottom of the individual landfill cell is contoured to direct leachate to a low point ("sump") and has a multi-layered composite liner system. Id. at 15:4-13; 101:2-25; 102:1-4; Exhibit "A1" at Figure 4-3. Within the sump is a permanent riser that contains a pump, which pumps the

leachate in a hard pipe up to the surface, where it is then pumped into a tank for disposal at a wastewater treatment facility. Id. at 15:4-13, 17:12-15. The wastewater treatment facility accepts the leachate for treatment after determining it meets the requirements of the wastewater treatment facility's own permits and would not violate the Clean Water Act. Id. at 18:6-15; Tr. 6/22/09, 144:7-19, 147:2-5. Each of the leachate sumps is equipped with an automated pump that activates at a preset level below the compliance level. Id. at 105: 9-12. There is an alarm that lets Waste Management know if the pump is no longer functioning. Id. at 105:13-16. In addition, Waste Management physically monitors the sumps. Id. at 105:13-16; 16:23-17:2.

74. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the existing sedimentation basin if it originates onsite (surface run-off). Id. at 13:16-25; Tr. 6/22/09, 119:17-25. The sedimentation basin is designed to allow storm water to settle so that dissolved solids that come off the landfill can settle out in that basin. See Tr. 7/1/09, 77:21-24. The water is eventually discharged to the ocean subject to State of Hawaii Department of Health ("DOH") permitting requirements under the national pollution discharge elimination system ("NPDES"). Id. at 77:19-78:6. A third-party company takes samples to ensure compliance with certain discharge limits. Id. at 78:7-79:5. In addition, DOH inspects Waste Management's ditches and slopes. Id. at 78:7-15.

75. Leachate does not come into contact with storm water. Id. at 76:21-23. The storm water or surface water system is separate from the leachate collection system. Id. at 76:25-77: 8; 97:15-98:8.

76. Groundwater in the area of the Property is monitored for leachate contamination. Id. at 98:12-17.

GAS COLLECTION AND CONTROL SYSTEM AND EPA NOTICE OF VIOLATION

77. On April 4, 2006, the Environmental Protection Agency ("EPA") issued a Notice of Violation to WSGSL, which included the late installation of a landfill gas collection and control system (the "GCCS") and alleged violations of reporting requirements. Id. at 19:3-8; Appendix B, Volume II of III, of Exhibit "A1." Both issues were resolved by August 2005. Tr. 7/1/09, 19:3-8. There are currently 40 gas wells at the Property. Id. at 22:18-25.

78. The GCCS collects landfill gases that are formed from the decomposition of the waste material. The gas is burned off at the onsite flare pursuant to a DOH-issued air quality permit. Id. at 23:6-11.

79. In installing the GCCS, elevated temperatures above the EPA's standard operating temperature of 131° Fahrenheit were discovered at WGSLL. See Tr. 7/1/09, 112:7-10; 113:25-114:2. Waste Management has submitted a demonstration to the EPA establishing that WGSLL can be safely operated at higher than the standard operating temperatures. Id. at 112:11-15.

80. The EPA Notice of Violation is pending resolution of two outstanding issues that evolved from the Notice of Violation: the temperature issue and a monetary settlement. Id. at 106:2-13.

81. The EPA has not issued any notice of violation for the elevated temperatures at WGSLL. See Tr. 6/24/09, 21:18-22:1. There is no evidence that there has ever been, or that there is currently, a landfill fire at WGSLL. See Tr. 7/1/09, 108:8-14. If there was combustion at WGSLL, Waste Management would implement its contingency plan, including turning off the gas wells in the area of the fire, thereby depriving the combustion area of needed oxygen, which is standard procedure for handling landfill oxidation events. Id. at 107:8-25; 108:1-7.

TRAFFIC

82. A traffic impact report ("TIR") was prepared for the Project. See Tr. 6/22/09, 51:6-17; Appendix I of Exhibit "A1." The TIR analyzes the amount of existing traffic transiting Farrington Highway on both the eastbound and westbound approaches, as well as the volume of traffic entering and coming out of the Property. Id.

83. 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. See Tr. 6/22/09, 51:18-24.

ARCHAEOLOGICAL AND CULTURAL RESOURCES

84. An *Archaeological Inventory Survey, Waimānalo Gulch Landfill Expansion*, 2008 ("AIS") and a *Cultural Impact Assessment (Draft), Waimānalo Gulch Landfill Expansion*, 2008 ("CIA") were prepared for the Property. See Appendices G and H of Exhibit "A1," respectively.

85. One historic property, State Inventory of Historic Properties ("SIHP") # 50-80-12-6903, was identified by the study. See AIS (Appendix G of Exhibit "A1") at 45. SIHP# 50-80-12-6903 consists of three large upright boulders potentially utilized as trail or boundary markers. Id.

86. Applicant proposes 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 Hawaii ("SHPD"). See Tr. 6/22/09, 49:21-50:5; Exhibit "A3." Specifically, Applicant has 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. See Tr. 6/22/09 at 49:5-20; Exhibit "A3."

87. SHPD has reviewed Applicant's proposed mitigation and determined that there is no effect to historic properties, as stated in a letter from Nancy McMahon, Deputy State Historic Preservation Officer of SHPD, to David Tanoue, Director of DPP, dated April 2, 2009. See Tr. 6/22/09, 49-20-51:1; Exhibit "A4."

88. No native Hawaiian customary and traditional rights or practices at the Property were identified. See CIA (Appendix "H" of Exhibit "A1") at 79.

PURPOSE AND NEED

89. According to Joseph Whelan, as of March 16, 2009, there was approximately 12 month of landfill airspace capacity remaining in the municipal solid waste ("MSW") portion of the current SUP area, and approximately 24 months of landfill airspace capacity remaining in the ash portion of the current SUP area. See Tr. 6/24/09, 81:22-82:6; 83:1-14.

90. On December 1, 2004, the City Council adopted Resolution No. 04-349, CD1, FD1, which selected the Property as the site for the City's landfill. See Exhibit "A20."

91. The proposed expansion of the landfill within the Property is needed because WGSL is a critical part of the City's overall integrated solid waste management efforts. See Tr. 7/1/09, 181:4-8.

92. Continued availability of WGSL is required as a permit condition to operate H-POWER and to engage in interim shipping of waste, for cleanup in the event of a natural disaster, and because there is material that cannot be combusted, recycled, reused, or shipped. Id. at 181:9-18; 182:2-4, 10-17; 197:2-22.

93. 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. See Application at 2-6.

94. WGS� is the only permitted public MSW facility on the island of Oahu and the only permitted repository for the ash produced by H-POWER. Id. at 181:20-183:4.

95. WGS� is a critical portion of the City's overall Integrated Solid Waste Management Plan ("ISWMP"), which looks at all of the factors that make up solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled or burned for energy. Id. at 178:10-18; 181: 7-18. The ISWMP is required by State law and approved by DOH after public comments. Id. at 182:18-183: 25. One theme of the ISWMP is to minimize landfill disposal. Id. at 184:1-3.

96. Currently, approximately 1.8 million tons of waste is produced on Oahu per year. This does not include material deposited at the PVT Landfill. Id. at 179:11-23. Approximately, 340,000 tons of MSW in 2006, and approximately 280,000 tons of MSW in 2008, were landfilled at WGS�. Id. at 179:16-17. These amounts fluctuate based on such things as recycling and the economy. Id. at 179:18-19. Approximately 170,000 to 180,000 tons of ash from the H-POWER facility is deposited at WGS� each year. Id. at 179:24-25; 180:1-4.

97. Other items that cannot be recycled or burned at H-POWER are deposited at WGS�, 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 180:10-21.

98. The WGS� Oversight Advisory Committee consists of citizens primarily from the leeward communities, who meet periodically to discuss concerns with Waste Management and the Applicant regarding WGS� operations. Id. at 184:9-18.

99. The Community Benefits Advisory Committee advises the City on the spending of money for grants and improvements throughout the Waianae Coast. In fiscal year 2008, there

was approximately \$2 million appropriated in the City budget, and for fiscal year 2009, approximately \$2.5 million, for this program. Id. at 184:19-25, 185:1-7.

100. The City is actively reducing waste volume that is directed to the landfill. The H-POWER plant is expanding and its capacity is expected to increase by an additional 300,000 tons of MSW per year by late 2011 or early 2012. Id. at 185:8-25. The expanded H-POWER facility will be able to burn items that the current facility cannot and which are therefore currently being sent to the landfill. Id. at 186: 17-25, 187: 1-12. The City is in the process of completing the full implementation of its island-wide, curbside recycling program by May 2010. Id. at 186:7-13. The City has a program of community recycling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. Id. at 187:13-18. The City is currently in the process of procuring a new green waste recycling facility that will accept food waste and sewage sludge. Id. at 188:22-25. The City has a facility at the Sand Island Wastewater Treatment Plant that turns bio-solids into fertilizer pellets, with the goal of reusing 100 percent of the material for such uses as golf course fertilizer. Id. at 189:5-18. The City is also requesting technology demonstration proposals to explore alternate technologies. Id. at 194:11-25. ENV has looked at these technologies, like plasma arc and gasification, and to date they are not ready in the size the City needs, and are only demonstration technologies. Id. at 192:8-25; 193:1-25; 194:1-10.

101. By 2012, when H-POWER's third boiler is expected to be operational, the City, through its various solid waste management programs, expects to divert eighty (80) percent of the waste stream, with the remaining twenty (20) percent being landfilled at WGSL. Id. at 201:9-16. Id. at 195: 4-8.

102. In order to ensure there will be no cessation of waste disposal at the Property, construction of a new cell in the expansion area to be used when the capacity of the currently permitted cells is exhausted would need to begin on or around November 1, 2009, due to the amount of time that it takes for cell construction, liner placement, forming, etc. See Tr. 6/24/09, 84:8-20. Before construction can begin, an operating permit is required from DOH. Because the DOH operating permit can only be processed after a SUP or boundary amendment is granted, and given the time it takes to process the operating permit, the SUP or boundary amendment must be granted in August or September of 2009 so that construction can be timely started. See Tr. 6/24/09, 99:11-23.

STATE AND COUNTY LAND USE LAW AND REGULATIONS

103. The Project complies with the guidelines as established by the Planning Commission. See Tr. 6/22/09, 68:3-13; Application at 2-1 through 2-28.

104. The Project is consistent with various provisions of the Hawaii State Plan. See Tr. 6/22/09, 69:4-6; Application at 2-2 through 2-8.

105. The Project is consistent with the energy functional plan. GSL is a generator of naturally occurring methane and other landfill gases, and these gases are planned to be recovered by the City for use in the generation of electricity through a landfill gas-to-energy system. See Exhibit "A1" at p. 8-9; Tr. 6/22/09, 70:1-12.

106. The Project is consistent with the recreational functional plan. The Property will be reclaimed for other purposes that include outdoor recreation; for example, Kakaako Waterfront Park once served as a landfill in Honolulu. See Exhibit "A1" at p. 8-10; Tr. 6/22/09, 70:13-71:2.

107. The Project is consistent with the City's general plan. WGS� is an important public facility that will provide a necessary facility to meet future population needs and accommodate growth in the region; WGS�'s eventual closure will allow the Property to be reclaimed for other public uses; and WGS� is needed in the event of a natural disaster. See Tr. 6/22/09, 71:8-25; 72:1-25; Exhibit "A1" at pp. 8-25 through 8-28.

108. The Project is consistent with the Ewa Development Plan because the facilities map contained therein designates the landfill with the appropriate symbol. See Tr. 6/22/09, 73:9-74:11; Exhibit "A1" at pp. 8-28 through 8-29.

109. The Project is consistent with City zoning because a landfill is considered a "public use" under the Land Use Ordinance, and "public uses and structures" are deemed permitted uses in every City zoning district, without the need for a permit. See Application at 2-28 through 2-29; Tr. 6/22/09, 75:5-22.

110. The parties stipulated that Commissioner Rodney Kim can participate via telephone in decision making for this contested case.

PROPOSED FINDINGS OF FACT OR CONDITIONS

Any proposed findings of fact or conditions submitted by the Applicant or Intervenors that are not expressly ruled upon by the Planning Commission by adoption herein, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

LABELING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

To the extent that any of the foregoing Findings of Fact are more properly deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the following Conclusions of Law be more properly deemed Findings of Fact, they are incorporated herein as Findings of Fact.

CONCLUSIONS OF LAW

The Planning Commission hereby concludes as follows:

1. The Planning Commission has jurisdiction to hold public hearings and make recommendations on all proposals to adopt or amend the general plan, development plans and zoning ordinances, and 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 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 91-10(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 seeks a new State Special Use Permit. Chapter 2, Subchapter 4 of the RPC sets forth the rules applicable to State Special Use Permits. Section 2-45 of the RPC 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.

4. Based on the findings set forth above, the Planning Commission concludes that the Applicant's request for a new State Special Use Permit (a) is not contrary to the objectives sought to be accomplished by the state land use law and regulations; (b) would not adversely affect surrounding property as long as operated in accordance with governmental approvals and requirements, and mitigation measures are implemented in accordance with the Applicant's representations as documented in the 2008 FEIS; and (c) would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection. The Planning Commission further concludes that the same unusual conditions, trends, and needs that existed at the time the original Special Use Permit was granted continue to exist and that the land on which WGSL is located continues to be unsuited for agricultural purposes.

5. The Planning Commission concludes that the Applicant has met its burden of proof with respect to the provisions set forth in Section 2-45 of the RPC.

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 DENY Intervenor's Motion to Dismiss Application. It is the further Decision and Order of the Planning Commission to APPROVE Applicant's Special Use Permit Application File No. 2008/SUP-2 ("2008/SUP-2"), for a new SUP for the existing and proposed expansion of WGSL, located at Tax Map Key Nos. 9-2-3: Parcels 72 and 73, totaling approximately 200.622 acres, until capacity as allowed by the State Department of Health is reached, subject to the following conditions:

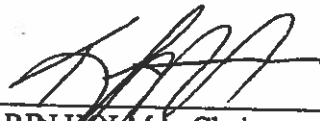
1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on 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.
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 Oahu, 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.


4. Closure Sequence "A" for the existing landfill cells at WGSL as shown on Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.
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.

IT IS ALSO the Decision and Order of the Planning Commission to APPROVE the withdrawal of Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect and that all conditions previously placed on the Property under Special Use Permit File No. 86/SUP-5 shall be null and void.

Dated at Honolulu, Hawaii, this 4th day of August, 2009.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU


By 
KARIN HOLMA, Chair

By 
RODNEY KIM, Vice Chair

By _____
BEADIE K. DAWSON, Member


By 
HAROLD J. DIAS, JR., Member

By _____
VICKI GAYNOR, Member

By 
ANDREW M. JAMILA, JR., Member

By (RECUSED)
JOHN S. KAOPUA, III, Member

By 
KERRY M. KOMATSUBARA, Member

By 
JAMES C. PACOPAC, Member

FILE NOS. 2008/SUP-2 (RY) AND 86/SUP-5, IN THE MATTER OF THE APPLICATION
OF DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF
HONOLULU - FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
ORDER

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 Waimanalo Gulch Sanitary Landfill,
Waimanalo Gulch, Oahu, Hawaii,
Tax Map Key Nos. (1) 9-2-003:072 and 073

) FILE NO. 2008/SUP-2 (RY) AND 86/SUP-5

) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the **FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER** was served upon the following by certified mail, return
receipt requested, postage prepaid, on August 4, 2009 :

COLLEEN HANABUSA
220 South King Street, Suite 1230
Honolulu, Hawaii 96813

Attorney for Intervenors
KO OLINA COMMUNITY ASSOCIATION,
COLLEEN HANABUSA, AND MAILE SHIMABUKURO

GARY Y. TAKEUCHI, ESQ.
JESSE K. SOUKI, ESQ.
Deputies Corporation Counsel
Department of the Corporation Counsel
530 South King Street
Honolulu, Hawai'i 96813

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

DATED: Honolulu, Hawai'i, August 4, 2009

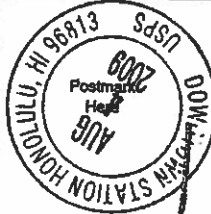
Patricia J. Kalapa
PATRICIA J. KALAPA
Secretary-Reporter
Planning Commission

Final Findings of
Fact Conclusions of
Law & Decision + Order

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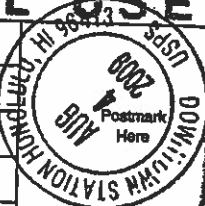


Sent To Colleen Hanabusa
Street, Apt. No.,
or PO Box No. 220 S. King St. Suite 1230
City, State, ZIP+4 Honolulu HI 96813
PS Form 3800, August 2006 See Reverse for Instructions

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Sent To Gary V. Takeuchi, Esq. + Jessie K.
Soult, Esq. Dep. Corp. Counsel
Dept. of the Corp. Counsel
Street, Apt. No.,
or PO Box No. 530 S. King St.
City, State, ZIP+4 Honolulu HI 96813
PS Form 3800, August 2006 See Reverse for Instructions

Final Foff
Conclusions of Law
+ Decision + Order

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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1. Article Addressed to: Colleen Hanabusa 220 S. King St., Suite 1230 Honolulu, Hawaii 96813		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	
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1. Article Addressed to: Gary Y. Takeuchi, Esq. Jesse K. Souki, Esq. Deputies Corp. Counsel Dept. of the Corporation Counsel 530 South King Street Honolulu, Hawaii 96813		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	
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Final Foff
Conclusions of Law
+ Decision + Order

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DEPARTMENT OF PLANNING AND PERMITTING
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

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

In the Matter of the Application of)	FILE NO. 2011/GEN-8 (RY),
)	2008/SUP-2 (RY) and 86/SUP-5
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	
HONOLULU)	
)	
For a New Special Use Permit to supersede)	
Existing Special Use Permit to allow a)	
92.5-acre Expansion and Time Extension)	
For Waimanalo Gulch Sanitary Landfill,)	
Tax Map Key Nos. (1) 9-2-003:072 and 073)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served upon the following parties listed below AS INDICATED BELOW at their respective addresses on September 30, 2011:

ROBERT CARSON GODBEY, ESQ.
Corporation Counsel
DANA VIOLA, ESQ.
ROBERT BRIAN BLACK, ESQ.
Deputies Corporation Counsel
Department of the Corporation Counsel
530 South King Street
Room 110, Honolulu Hale
Honolulu, Hawai`i 96813

(HAND DELIVERY)

TIMOTHY STEINBERGER, P.E., DIRECTOR
Department of Environmental Services
City & County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawai`i 96707

**(CERTIFIED MAIL, RETURN
RECEIPT REQUESTED)**

DAVID TANOUE, DIRECTOR
Planning Department
City & County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawai'i 96813

(HAND DELIVERY)

Dated: Honolulu, Hawai'i, September 30, 2011.



Kenneth Williams, Agent
KO OLINA COMMUNITY ASSOCIATION
Intervenor



MAILE SHIMABUKURO
Intervenor