

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, O'ahu, Hawai'i, Tax Map  
Key No. (1) 9-2-03: 72 and 73.

FILE NO. 2008/SUP-2

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

CERTIFICATE OF SERVICE

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

To delete Condition No. 14 of Special Use  
Permit No. 2008/SUP-2 (also referred to as  
Land Use Commission Docket No. SP09-403)  
which states as follows:

“14. Municipal solid waste shall be allowed at  
the WGS� up to July 31, 2012, provided that  
only ash and residue from H-POWER shall be  
allowed at the WGS� after July 31, 2012.”

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

This matter is a consolidation of two contested case hearings before the Planning Commission, City and County of Honolulu (the “Planning Commission”). The first proceeding involves the Department of Environmental Services, City and County of Honolulu’s

PC11

("Applicant" or "ENV") application for a new special use permit ("SUP"), the expansion of the Waimanalo Gulch Sanitary Landfill ("WGSL" or the "landfill") and the withdrawal of County Special Use Permit No. 86/SUP-5. The second proceeding involves ENV's application to modify the Land Use Commission ("LUC") Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009 ("2009 LUC Order") for County Special Use Permit No. 2008/SUP-2 for the sole purpose of deleting the July 31, 2012 deadline for the landfill to accept municipal solid waste ("MSW").

Based on the record in this consolidated matter, including the evidence adduced at the contested case hearings, the credibility of the witnesses testifying at the hearings, and the respective proposed findings of fact, conclusions of law, and decisions and orders submitted by the parties and their respective responses thereto, the Planning Commission hereby makes the following findings of fact, conclusions of law, and decision and order:

### **FINDINGS OF FACT**

#### **I. PROCEDURAL MATTERS**

1. The WGSL is located at 92-460 Farrington Highway, Honouliuli, Ewa, Oahu. See 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, included in 2011 Contested Case Hearing Exhibit ("2011 Exhibit") "Exhibit A2."

A. 2011 APPLICATION

2. On June 28, 2011, Applicant filed an Application to Modify the Special Use Permit No. 2008/SUP-2 by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009 ("2011 Application"), with DPP pursuant to RPC Sections 2-18 and 2-49, and the Rules of the State of Hawaii, Land Use Commission, Section 15-15-70. See 2011 Application. The 2011 Application specifically seeks the deletion of Condition No. 14 from the 2009 LUC Order. Condition No. 14 of the 2009 LUC Order provided that "Municipal solid waste shall be allowed at the WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012." Id. ENV sought to amend SUP Permit No. 2008/SUP-2 because there was no assurance that the Supreme Court would render a decision on the appeal of the 2009 LUC Order prior to the July 2012 deadline and it needed to ensure the continued operation of the landfill.

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

4. On September 9, 2011, DPP transmitted its report to the Planning Commission, recommending approval of the 2011 Application. See 2011 DPP Recommendation.

5. On September 16, 2011, Ko Olina Community Association and Maile Shimabukuro (collectively, "Intervenor KOCA") filed a Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as parties. On September 23, 2011, Applicant filed a Memorandum in Opposition to Intervenor's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties. On September 30, 2011, Intervenor's filed a

Reply Memorandum to Applicant's Memorandum in Opposition to Intervenor's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as parties.

6. On September 16, 2011, Schnitzer Steel Hawaii Corp. ("Intervenor Schnitzer") filed a Petition to Intervene.

7. At the public hearing on October 5, 2011, at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawaii, the Planning Commission heard public testimony. The Planning Commission heard and granted Intervenor Schnitzer's Petition to Intervene. The Planning Commission heard and denied Intervenor KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties but granted Intervenor KOCA's Motion to Intervene as joint intervenors. See Tr. 10/5/11, 35:5-23, 42:9-43:3. Thereafter, the Planning Commission closed the public hearing on the application.

8. On October 26, 2011, Applicant filed its List of Witnesses, consisting of five potential witnesses. Intervenor KOCA filed its List of Witnesses, consisting of 31 potential witnesses. Intervenor Schnitzer filed its List of Witnesses, consisting of one potential witness.

9. On November 7, 2011, Intervenor KOCA filed a Motion to Dismiss.

10. On November 9, 2011, the Planning Commission filed its Order Regarding Prehearing Conference.

11. On November 14, 2011, Applicant filed its Memorandum in Opposition to Intervenor KOCA's Motion to Dismiss. Intervenor Schnitzer also filed its Memorandum in Opposition to Intervenor KOCA's Motion to Dismiss.

12. On November 29, 2011, the parties filed their Stipulation to Amend Briefing Schedule as Provided in the Planning Commission of the City and County of Honolulu's Order Regarding Prehearing Conference Dated November 9, 2011.

13. On December 7, 2011, the Planning Commission conducted a hearing at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii, on Intervenor KOCA's Motion to Dismiss. The Planning Commission heard and denied Intervenor KOCA's Motion to Dismiss. Thereafter, the Planning Commission commenced the contested case hearing on the 2011 Application and the parties presented their opening statements. On December 13, 2011, the parties filed written direct testimony.

14. On January 11, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The Applicant began its case-in-chief and presented its first witness: Timothy Steinberger, Director of the Department of Environmental Services. See Tr. 01/11/12, 11:10-11. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits "K1" to "K162." Id. at 15:12-14; 17:22-23; 96:2-13. Intervenor Schnitzer moved to admit the court reporter's transcript of the October 5, 2011 public hearing so as to allow the public testimony to be made a part of the record. Id. at 15:18-22. The Planning Commission granted Intervenor Schnitzer's request. Id. at 15:23.

15. On January 25, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Applicant offered, and the Planning Commission received into the record, Exhibits "A1 to A33." Tr. 1/25/12, 6:13-20. The Applicant presented its second and final witness in its case-in-chief, Steven Y.K. Chang, Branch Chief, State of Hawaii, Department of Health, Solid and Hazardous Waste Branch. Id. at 6:21. Applicant offered no further witnesses and concluded its case-in-chief, but reserved the right to call rebuttal witnesses. Intervenor Schnitzer presented its first and only witness, Larry

Snodgrass, and concluded its case-in-chief. Id. at 72:4-5, 86:20. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibit “K163.” Id. at 6:10-12. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits “K164” through “K169.” Id. at 38:14-19, 61:8-13; 55:11-15; 85:22–86:3.

16. On February 8, 2012, the Planning Commission resumed the contested case hearing on the 2011 Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Intervenor KOCA began its case-in-chief and presented the following four witnesses: Ken Williams; Beverly Munson; Cynthia Rezentes; and Paul Duke Hospodar. Tr. 02/08/12, 14:4-5, 56:13-14, 72:18-19, 82:15-16. ENV offered, and the Planning Commission received into the record, Exhibits “A34” and “A35.” Id. at 29:25-30:2, 56:6-8.

17. On March 7, 2012, the Planning Commission resumed the contested case hearing on the 2011 Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Intervenor KOCA presented its fifth and sixth witnesses: Shad Kane and Dwight Miller. The Planning Commission accepted Mr. Miller as an expert in solid waste management. Tr. 03/07/12, 5:20-21, 17:22-23, 19:19-25. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits “K170,” “K171,” “K173” to “K176,” “K178” and “K179.” Id. at 122:19-23; 152:20–153:4, 153:13, 155:4-5.

18. On April 4, 2012, the Planning Commission resumed the contested case hearing on the 2011 Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The parties agreed to take the remaining witnesses out of order due to scheduling difficulties. Intervenor Schnitzer first presented Tom Zelenka as a

rebuttal witness. Tr. 04/04/12, 7:19-20. Applicant then presented Janice Marsters as its first rebuttal witness. Id. at 30:4-5. Applicant offered, and the Planning Commission received into the record, Exhibit “A36.” Id. at 33:4-16. Intervenor KOCA presented its seventh and eighth witnesses: Maile Shimabukuro and Maeda Timson. Intervenor KOCA then rested its case. Id. at 123:18-19, 133:5-6. Applicant presented its second rebuttal witness, Gary Gill, Deputy Director, State of Hawaii, Department of Health, Environmental Management Division. Id. at 143:17. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits “K191,” “K194,” “K208,” “K215,” “K217,” “K218,” “K222,” “K223,” “K226,” and “K227.” Id. at 15:8-22, 18:24–19:3, 19:5-18, 24:4-16, 83:14-19, 101:15-19, 122:20-24, 143:4-10, 168:22–169:11.

19. On April 11, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Applicant presented its third and fourth rebuttal witnesses: Hari Sharma, who was qualified as an expert in landfill design and permitting, and Timothy Steinberger. See Tr. 04/11/12, 6:14-15, 69:4-5. Applicant offered, and the Planning Commission received into the record, Exhibits “A37” to “A50.” Id. at 13:1-9, 15:21-25, 16:1, 25:1-7, 36:10–37:20, 43:25–44:2, 105:11-15, and 138:1-5. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits “K189,” “K190,” “K193,” “K195,” “K196,” “K198,” “K230,” “K247,” and “K251.” Id. at 188:25–189:5. Applicant rested its case. Id. at 212:17-22.

20. On April 23, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Intervenor KOCA presented two rebuttal witnesses:

Dwight Miller and Eddie Belluomini. Intervenor KOCA then rested its case. See Tr. 04/23/12, 7:7-11, 36:6-10, 48:24. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits “K255,” “K257,” “K192,” “K220,” “K256,” and “K258.” Id. at 12:13-17, 15:16-21, 47:18-25, 48:1-23. The parties presented their closing arguments.

21. The Planning Commission scheduled decision-making for the 2011 Application on May 25, 2012, at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. On April 24, 2012, Intervenor KOCA filed its Eighth Amended Exhibit List.

22. On April 27, 2012, Intervenor KOCA filed an *Ex Parte* Motion to Reopen the Contested Case Hearing to Admit Limited Additional Documentary Evidence After the Hearing Closed (“Motion to Reopen the Contested Case Hearing”). Intervenor KOCA sought to admit Exhibits “K259” and “K260” into the record.

23. On May 1, 2012, Applicant filed a Memorandum in Opposition to Intervenor KOCA’s Motion to Reopen the Contested Case Hearing.

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

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

26. ENV offered, and the Planning Commission received into the record of the 2011 Application proceeding, Exhibits “A1” to “A42,” without objection, “A43” to “A46,” over objection of the Intervenor, and “A47” to “A50,” without objection.



27. Intervenor Schnitzer offered, and the Planning Commission received into the record, Exhibits "S1" to "S4." Intervenor Schnitzer also requested to admit the court reporter's transcript of the October 5, 2011 public hearing so that the public testimony would be made a part of the record. See Tr. 01/11/12, 15:18-22. The Planning Commission granted Intervenor Schnitzer's request. Id. at 15:23.

28. Intervenor KOCA offered, and the Planning Commission received into the record, Exhibits "K1" to "K169," over objection, "K170," "K171," "K173" to "K176," "K178," "K179," "K189" to "K196," "K198," "K208," "K215," "K217," "K218," "K220," "K222," "K223," "K226," "K227," "K230," "K247," "K251," "K255" to "K258," without objection.

**B. HAWAII SUPREME COURT DECISION AND LUC REMAND OF THE 2008 APPLICATION TO THE PLANNING COMMISSION FOR CONSOLIDATION WITH THE 2011 APPLICATION**

29. On May 4, 2012, the Hawaii Supreme Court ruled in favor of ENV and struck Condition No. 14. The Supreme Court ruled that the MSW deadline imposed by the LUC is inconsistent with the evidence in the record and not supported by substantial evidence. The Supreme Court also determined that because Condition No. 14 appeared to be material to the LUC's approval of the SUP, the approval could not stand without further consideration. Accordingly, the Supreme Court remanded the matter to the LUC for further hearings as the LUC deems appropriate to determine whether the LUC would have reached the same conclusion without the imposition of Condition No. 14. Dep't of Env'tl. Servs. v. Land Use Comm'n, 127 Haw. 5, 17-19 (2012).

30. By Order adopted October 8, 2012, the LUC remanded the 2008 Application to the Planning Commission for the expressed purpose of consolidating it with the proceeding on the 2011 Application, so that the Planning Commission may issue and transmit a single,

consolidated Findings of Fact, Conclusions of Law, and Decision and Order on the Matter to the LUC. See Order Remanding County Special Use Permit File No. 2008/SUP-2 to the City and County of Honolulu Planning Commission, dated October 8, 2012.

**C. CONSOLIDATION OF PROCEEDINGS AND OTHER PROCEDURAL MATTERS**

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31. On January 15, 2013, Intervenor KOCA filed a Motion to Effect the Consolidation of the Separate Proceedings in 2008 SUP-2 as Ordered by the State Land Use Commission on October 8, 2012.

32. On January 23, 2013, ENV filed its Memorandum in Opposition to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Effect the Consolidation of the Separate Proceedings in 2008 SUP-2 as Ordered by the State Land Use Commission.

33. On February 19, 2013, the Planning Commission approved the stipulation and order to continue the hearing on the LUC's October 8, 2012, Order Remanding County Special Use Permit File No. 2008/SUP-2 to the City and County of Honolulu Planning Commission and Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Effect the Consolidation of the Separate Proceedings in 2008 SUP-2, as Ordered by the State Land Use Commission on October 8, 2012. A hearing on the two above-described matters was scheduled for February 20, 2013, but continued to April 17, 2013. See Stipulation and Order to Continue the February 20, 2013 Hearing to April 17, 2013.

34. No further action was taken by the Planning Commission until August 17, 2016. On that date, the Planning Commission convened a hearing at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii, and considered Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Effect the Consolidation of the Separate Proceedings in 2008/SUP-2, as Ordered by the State Land Use

Commission on October 8, 2012, and the Department of Environmental Services, City and County of Honolulu's Motion to Stay Proceedings to April 22, 2017. The Planning Commission ordered the consolidation of County Special Use Permit File No. 2008/SUP-2 and the proceedings on ENV's 2011 Application so that it may issue and transmit a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order to the LUC, and denied the City's Motion to Stay.

35. On September 30, 2016, ENV filed a Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts. ENV sought to have the Planning Commission take official notice of the Sixth Annual Report of the Status of Actions Taken to Comply With the State Land Use Commission's Order Dated October 2, 2009 and Status of Operations of the Waimanalo Gulch Sanitary Landfill, which was submitted to the Planning Commission in compliance with Condition No. 6 of the 2009 LUC Order.

36. On October 5, 2016, ENV filed a Motion for Extension of Time to April 21, 2017, so that the parties may have adequate time to discuss a proposed deadline for the acceptance of MSW and draft a joint proposed findings of fact, conclusions of law, and decision and order. On October 6, 2016, Intervenor Schnitzer joined in the Motion for Extension of Time. On the same date, Intervenor KOCA joined in the request, subject to certain clarifications.

37. On October 7, 2016, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Statement Re: (1) Submission of Proposed Findings of Fact and Conclusions of Law and Decision and Order; (2) Various Parties' Submissions of Requests for Extensions of Time to Submit Proposed Findings of Fact, Conclusions of Law, and Decision and Order; (3) Department of Environmental Services, City and County of Honolulu's Motion to Reopen the Contested

Case Hearing for the Limited Purpose of Taking Official Notice of Facts, Filed on September 30, 2016.

38. On October 12, 2016, the Planning Commission heard ENV's Motion for Extension of Time, Intervenor KOCA's Motion to Reopen the Contested Case Hearing, and ENV's Motion to Reopen the Contested Case Hearing. During the hearing, ENV amended its request for an extension of time by requesting a shorter 90-day extension, which was granted. The Planning Commission denied the motions to reopen the contested case hearing.

39. On January 27, 2017, ENV filed the Department of Environmental Services, City and County of Honolulu's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

40. On January 27, 2017, Intervenor KOCA filed Intervenors Ko Olina Community Association and Maile Shimabukuro's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Findings of Fact, Conclusions of Law, and Decision and Order, and Exhibits 1 and 2.

41. On January 27, 2017, Intervenor Schnitzer filed Intervenor Schnitzer Steel Hawaii Corp.'s Proposed Findings of Fact, Conclusions of Law and Decision and Order.

42. On February 10, 2017, ENV filed the Department of Environmental Services, City and County of Honolulu's Response to Intervenors Ko Olina Community Association and Maile Shimabukuro's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

43. On February 10, 2017, Intervenor KOCA filed Intervenors Ko Olina Community Association and Maile Shimabukuro's Response to Intervenor Schnitzer Steel Hawaii Corp.'s January 27, 2017 Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and Exhibits 1 – 2.

44. On February 10, 2017, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro's Response to Department of Environmental Service [sic], City and County of Honolulu's January 27, 2017 Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and Exhibits 1 – 2.

45. On February 10, 2017, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's: (1) Renewal of Submission of Proposed Findings of Fact and Conclusions [sic] of Law, and (2) Objections and Rebuttals, Declaration of Counsel, and Exhibits "1" – "2".

46. On February 17, 2017, ENV filed the Department of Environmental Services, City and County of Honolulu's Motion to Strike Intervenor Colleen Hanabusa's (1) Renewal of Submission of Proposed Findings of Fact and Conclusions of Law, Memorandum in Support of Motion to Strike, Declaration of Kamilla C. K. Chan, and Exhibits "1" – "2".

47. On February 23, 2017, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Memorandum in Opposition to Department of Environmental Services, City and County of Honolulu's Motion to Strike Intervenor Colleen Hanabusa's (1) Renewal of Submission of Proposed Findings of Fact and Conclusions of Law, Filed on February 17, 2017.

48. The Planning Commission convened a hearing on March 1, 2017 and considered ENV's Motion to Strike Intervenor Hanabusa's Renewal of Submission of Proposed Findings of Fact and Conclusions of Law. The Planning Commission granted ENV's motion to strike.

49. Also on March 1, 2017, the Planning Commission considered the adoption of Findings of Fact, Conclusions of Law, and Decision and Order. During the hearing, Planning Commission Chair Dean I. Hazama and members Ken K. Hayashida, Wilfred A. Chang, Daniel S. M. Young, and Cord D. Anderson, each confirmed that they reviewed all evidence and the entire record from the 2008 and 2011 proceedings. The Planning Commission adopted ENV's

Proposed Findings of Fact, except findings of fact before 2011, and ENV's Conclusions of Law, and modified the LUC's order dated October 22, 2009 by deleting Condition No. 14 and adding several conditions. The Planning Commission set forth this approval in its Findings of Fact, Conclusions of Law, and Decision and Order, dated April 28, 2017 ("2017 Planning Commission Decision").

50. In its 2017 Planning Commission Decision, the Planning Commission added the following conditions:

- The Applicant shall provide semi-annual reports to the Planning Commission and LUC regarding (a) the status of the efforts to identify and develop a new landfill site on Oahu, (b) the WGSL's operations, including gas monitoring, (c) ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.
- Public health and safety conditions: If the landfill releases waste or leachate, the ENV must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the landfill's shoreline outfall to prevent waste from spreading into the ocean.
- The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity.
- The foregoing additional conditions shall supersede any inconsistent conditions in the 2009 LUC Order and shall otherwise supplement any and all existing conditions in the said 2009 LUC Order.

51. On May 1, 2017, the LUC received Planning Commission File No. 2008/SUP-2 Findings of Fact, Conclusions of Law and Decision and Order dated May 1, 2017.

52. On May 3, 2017, the LUC received the Consolidated Record from the Planning Commission, an index of the record and original and copies of the 2008 proceedings.

53. On May 12, 2017, the LUC received Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand, Declaration of Christopher [sic] T. Goodin, and Exhibits A through D, and Intervenor Ko Olina Community Association and Maile Shimabukuro's Alternate Motion to Deny the Applications Unless Additional Conditions are Imposed, Declaration of Christopher T. Goodin, and Exhibits 1 through 5.

54. On May 19, 2017, the LUC received the Department of Environmental Services, City and County of Honolulu's Response to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand, Declaration of Dana Viola, and Exhibit 1 and the Department of Environmental Services, City and County of Honolulu's Memorandum in Opposition to Intervenor Ko Olina Community Association and Maile Shimabukuro's Alternate Motion to Deny the Application Unless Additional Conditions are Imposed, Declaration of Kamilla C. K. Chan, and Exhibit 1.

55. On May 22, 2017, the LUC received the State Office of Planning's public testimony statement recommending approval of ENV's special permit application.

56. On May 22, 2017, the LUC received Intervenor Colleen Hanabusa's Joinder to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand.

57. On May 22, 2017, the LUC received ENV's Amended Certificates of Service to: Department of Environmental Services, City and County of Honolulu's Response to Intervenor KOCA's Motion to Deny and Remand, and Department of Environmental Services, City and

County of Honolulu's Memorandum in Opposition to Intervenor KOCA's Alternate Motion to Deny the Application Unless Additional Conditions are Imposed.

58. On May 23, 2017, the LUC received correspondence from Intervenor KOCA and Shimabukuro regarding a Request to Settle the Proposed Form of Order Granting in Part Intervenor's Motion to Deny and Remand, and correspondence from Intervenor Schnitzer regarding its Statement of Position on Intervenor KOCA and Shimabukuro's Motion to Deny and Remand.

59. On May 24, 2017, the LUC considered Intervenor KOCA's Motion to Deny and Remand. The LUC ordered that the motion be granted in part and denied in part. Pursuant to HAR §15-15-96(a), the record in the 2008 Application and 2011 Application were remanded to the Planning Commission for further proceedings to:

- Clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order.
- Clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the subsequent commencement of operations at the alternative landfill site.
- Clarify whether the record needs to include updated information on the operation of the WGSL, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu.
- Assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order.
- Clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.



60. On June 20, 2017, Intervenor KOCA filed with the Planning Commission Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion for Recusal or Disqualification of Chair Dean Hazama, Memorandum in Support of Motion, Declaration of Christopher T. Goodin, and Exhibits A – E.

61. On June 26, 2017, ENV filed Department of Environmental Services, City and County of Honolulu's Response to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion for Recusal or Disqualification of Chair Dean Hazama.

62. On June 26, 2017, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Renewal of Objections to Chair Dean Hazama's Participation and Votes in the Instant Case and Joinder to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion for Recusal or Disqualification of Chair Dean Hazama, Filed on June 20, 2017.

63. On August 16, 2017, the Planning Commission heard Intervenor KOCA's Motion for Recusal or Disqualification of Chair Dean Hazama and Intervenor Hanabusa's Renewal of Objections and Joinder to Intervenor KOCA's Motion for Recusal or Disqualification of Chair Dean Hazama. At the hearing, Chair Hazama explained that he shared his inclinations about this matter after reviewing all evidence in this proceeding and stated that he could remain open and impartial. Accordingly, Chair Hazama declined to recuse himself.

64. Pursuant to Rules of the Planning Commission § 2-75, the Planning Commission provided the parties with its Proposed Findings of Fact, Conclusions of Law, Decision and Order on DATE.

65. On DATE, the parties submitted their respective Exemptions to the Proposed Findings of Fact, Conclusions of Law, Decision and Order filed on DATE.

66. On DATE, the Planning Commission heard the parties' oral argument in support of their respective Exemptions.

## II. PROPOSAL FOR SPECIAL USE PERMIT

### A. LANDFILL SITING

67. Condition No. 1 of the 2009 Planning Commission Decision (Condition No. 4 of the 2009 LUC Order) requires the City, on or before November 1, 2010, to begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. See 2011 Exhibit "A18" at 25; 2011 Exhibit "A19" at 6. As part of preparing the updated Integrated Solid Waste Management Plan ("ISWMP"), the City allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on Oahu in satisfaction of Condition No. 1. Thus, the Mayor's Landfill Site Selection Committee ("Site Selection Committee") was formed. See Written Direct Testimony of Timothy E. Steinberger dated December 13, 2011 ("Steinberger Written Testimony") at 11; Tr. 01/11/12, 54:24–55:6.

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

69. The Mayor tasked the Site Selection Committee to provide the City with advisory recommendations concerning the selection of a future site for a landfill to replace or supplement WGSL by accepting MSW, ash and residue from facilities such as HPOWER, and construction and demolition debris waste (C&D) for the Island of Oahu. Id. at 12; Tr. 04/04/12, 35:1-8.

70. The Committee would not select one site, but would rank numerous sites according to criteria that it determines most appropriate for landfill sites to accommodate all three waste streams (MSW, ash and residue, and C&D debris). Steinberger Written Testimony at 12.

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

72. The Landfill Advisory Committee met on January 20, February 10, March 10 and 31, May 12, July 19, 2011, March 16, 2012, and April 20, 2012. See 2011 Exhibits “A31,” “A47,” and “K258.”

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

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

Steinberger Written Testimony at 12-13, see also 2011 Exhibit “A31.”

74. The Committee began by working with potential landfill sites identified by the City in previous studies. However, at the sixth meeting, the Committee requested that RMTC research and provide information on and analyses of additional sites to ensure a thorough vetting of appropriate sites on Oahu. Specifically, they tasked RMTC to research and include for consideration sites that are above or cross the no-pass or underground injection control (“UIC”) line. The City previously did not consider these sites because of its policy not to site landfills above the no-pass or UIC line to protect the island’s drinking water sources. The Committee also asked RMTC to review the Board of Water Supply capture zone maps and identify if there were any 100-acre or larger parcels that could be included on the list of potential landfill sites, even if the sites were above the no-pass or UIC line. Steinberger Written Testimony at 13-14, see also Tr. 04/04/12, 40:1–41:14.

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

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

Steinberger Written Testimony at 14, see also Tr. 04/04/12, 42:1–45:23.

76. Upon applying the above exclusionary criteria, RMTC presented the Committee with two additional sites for consideration: (1) the Kahe Point Power Generating Station owned by Hawaiian Electric Company; and (2) the Makaiwa Hills subdivision owned by the James

Campbell Trust Estate, which is part of a much larger parcel of land already under development. In addition, the second site was found to border the USFWS-designated critical habitat of the *Isodendron pyrifolium* (critically imperiled Hawaiian shrub). RMTC noted that both sites should be considered as “non-sites” due to either existing or pending land uses. Steinberger Written Testimony at 14.

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

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

Id. at 14-15, see also 2011 Exhibit “A31.”

78. The Committee reasoned that it is important that RMTC conduct this additional review because the Committee sought to understand the availability of sites only slightly smaller than 100 acres. Certain Committee members also expressed that this further consideration will provide for more comprehensive review of potential sites. This additional request delayed final application of the criteria and its recommendations. Steinberger Written Testimony at 15.

79. At the time of the contested case hearing on the 2011 Application, the Committee’s meetings were still ongoing. Id.

80. The City’s effort to identify and develop one or more landfill sites has been performed with reasonable diligence.

81. Even after the City selects a new landfill site or sites, it will take ENV more than seven years to complete the tasks necessary to start operations at a new site(s). These tasks include, but are not limited to: (1) the preparation and processing of an EIS in full compliance

with HRS Chapter 343 and related administrative rules for Oahu's next landfill site or sites (e.g., conducting site surveys or investigations, analyzing alternatives including alternative sites and technologies, obtaining public participation and comments); (2) the acquisition of landfill sites, which may require an appraisal of the land value, a determination by the City regarding the funding source for the acquisition, and approval for the expenditure of public funds by the Honolulu City Council; and (3) detailed engineering studies, construction and bid documents, and other approvals. Id. at 15-16.

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

**B. WASTE DIVERSION**

83. Condition No. 2 of the 2009 Planning Commission Order (Condition No. 5 of the LUC Order) requires ENV to continue its efforts to use alternative technologies to provide a comprehensive waste stream management program. See 2011 Exhibits “A18” at 25, and “A19” at 6.

84. In 2010, the last year for which waste totals were available during the contested case hearings in this matter, ENV diverted 34.4% of the total MSW from the landfill to H-POWER. See 2011 Exhibit “A27.” In 2010, the ENV also diverted 36.9% of the total MSW from the landfill through general material recycling. Id. As of May 2010, ENV accomplished island wide-expansion of its curb-side green waste recycling program to over 150,000 residences. See Steinberger Written Testimony at 19. The City has a program of community recycling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. Id. at 20–21.

85. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the landfill received only 163,736 tons of MSW and 179,946 tons of ash and residue from HPOWER. The amount of MSW deposited at WGSL reflects a steady decrease from 2009. In FY09 the landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the landfill of 71.7%. See 2011 Exhibit “A27,” see also 2011 Exhibit “A29.”

86. As the decreasing MSW tonnage to WGSL shows, ENV is continuing its effort to significantly reduce solid waste disposal at the WGSL by expanding HPOWER, the waste to materials recycling programs, and developing alternative disposal options for materials presently being landfilled. Collectively, these actions have and will divert significant amounts of waste

away from WGSL. In addition, new technology solutions continue to be evaluated. However, there still are no new technologies with proven reliability and performance that would completely eliminate the need for a landfill. Steinberger Written Testimony at 17.

87. The HPOWER facility began operations in 1990 and as of 2011, it successfully diverts approximately 600,000 tons per year of MSW from the WGSL. HPOWER reduces our dependence on fossil fuels. One ton of trash produces saleable energy the equivalent of one barrel of oil. Moreover, the facility converts more than 1,600 tons of waste per day into electricity sufficient to power more than 60,000 homes. As of December 2011, on an island-wide basis, HPOWER produced approximately 7% of Oahu's electricity. Id. at 18.

88. In addition, as of December 2011, almost 100% of the ferrous and non-ferrous metal in the MSW processed at HPOWER was recovered for recycling. At that time, approximately 18,000 tons of ferrous metals (e.g., tin cans) and 2,500 tons of non-ferrous metals (e.g., aluminum cans) are recycled annually. Id.

89. In December 2011, it was reported that the City would be adding a third boiler at HPOWER, which will increase the capacity of the facility to 900,000 tons per year. Id. at 18; Tr. 4/11/12, 84:22–24. The amount of waste diverted from the landfill and recycled to energy will increase substantially. The third boiler was scheduled to begin operations in January 2013. Steinberger Written Testimony at 18.

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



91. As of 2010, material recycling programs account for a 29.7% landfill diversion rate, which means that approximately 448,000 tons per year is diverted out of the total waste stream of 1.5 million tons per year. The City is continuing to increase the 29.7% diversion rate by expanding and improving programs. See 2011 Exhibit “A30,” see also 2011 Exhibit “A28.”

92. The City’s bulky item collection service is designed to provide residents with once-a-month pickup service of old appliances, furniture, etc. Recyclable items such as white goods, Freon containing appliances, tires, and used auto batteries and propane tanks are segregated and delivered to the respective recycling facilities. The remainder of bulky item collection is disposed of at the landfill. Steinberger Written Testimony at 19.

93. Residents also may self-haul their bulky items to City disposal sites, including three transfer stations and six convenience centers. Recyclable materials are segregated in separate bins or storage areas for delivery to recycling facilities. Materials that cannot be recycled is hauled to the landfill. Id.

94. The anticipated HPOWER expansion is a mass burn boiler that will accept and convert much of the bulky waste such as furniture, mattresses and carpet that presently go to the landfill, to energy and recycled metals. See Tr. 1/11/12, 65:9–10, 66:8-17. As of December 2011, the mass burn boiler was expected to be in operation by January 2013. Steinberger Written Testimony at 18.

95. As of November 2011, the City provides Green Waste Recycling to approximately 100,000 residences as part of the island-wide automated curbside recycling program. At that time, Oahu’s capture rate for green waste was 77% which indicates a high level of participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. (Capture rates are measured by the proportional amount of recyclable material collected

relative to the total amount available in the specific waste stream. Capture rates do not denote the participation rate.) It is unlikely that this capture rate can get any higher. The City believes that the automated collection has encouraged more participation, further diverting materials from the landfill. Residents may self-haul green waste to City convenience centers or directly to the composting facility. All of the green waste is delivered to a private vendor that is contracted by the City to produce mulch and other products from the waste. Id. at 19-20.

96. All but incidental food waste and green waste is diverted from the WGSL. Tr. 04/11/12, 114:1-14.

97. From a sustainability standpoint, green waste is one of the few recyclable materials that is all reused here on this Island. Most other recyclable materials are shipped to the mainland or to Asia. Steinberger Written Testimony at 20.

98. Curbside Recycling for Residential Mixed Recyclables continues to increase with island wide expansion – 160,000 residences – as of May 2010. Id.

99. During fiscal year 2011, the curbside collection system recovered 18,000 tons of mixed recyclables and 53,000 tons of green waste for a total of 71,000 tons recycled. This contributes to a full 6% to the overall reduction of MSW going to the landfill. Id.

100. The City continues to promote condominium recycling through a program that reimburses condominium properties for costs associated with the start-up of a recycling program. Id. at 21.

101. Most multi-family dwellings contract with private hauling companies to collect their refuse and would likewise need to establish their own recycling programs. Multi-family recycling is voluntary. Id.

102. Commercial recycling is taking place at commercial businesses through private recyclers. Id.

103. The City enacted ordinances that support this recycling effort:

- Cardboard. Commercial and government generators are partially banned from landfill disposal. Only 10% of a truckload can be composed of cardboard.
- Green waste. Commercial and government generators are partially banned from landfill disposal. Only 10% of a truckload can be composed of green waste.
- Tires, auto batteries, white goods and scrap metals. Banned from all disposal sites.
- Glass containers. Glass recycling is required for bars and restaurants.
- Paper Recycling. All office buildings of a certain size must conduct recycling of paper goods.
- Food Waste Recycling. All hotels, restaurants, grocery stores, food courts, food manufacturer processors and hospitals meeting a certain size are required to recycle food waste.
- City agencies are required to purchase recycled paper products and to recycle newspaper, cardboard, office paper, aluminum, glass, and plastics.

Id. at 21-22.

104. ENV coordinates numerous events year-round to educate the public about waste management and recycling. Public Education and Outreach Programs include (a) the City's [www.opala.org](http://www.opala.org) website, which provides comprehensive and up-to-date information about the City's refuse and recycling programs and services; and (b) tours of City facilities and recycling businesses, whereby the public has an opportunity to get an up-close look at waste processing and recycling operations and go behind the scenes at businesses that have instituted model recycling programs. Id. at 22.

105. The residual solids and semi-solids separated during the treatment of wastewater at wastewater treatment plants ("WWTPs") are commonly referred to as sewage sludge or bio-solids. These materials have been landfilled, but ENV has been working to divert much of this waste stream from WGS. As of December 2011, the Synagro facility at the Sand Island

WWTP digested, dewatered, and heat-dried approximately 20,000 tons per year of sewage sludge. The end product is a pellet that can be used as a fertilizer or soil amendment material. Furthermore, as of December 2011, ENV was working with the operator of HPOWER, Covanta, to be able to burn sewage sludge for energy as part of the third boiler that was expected to be operational by January 2013. Id. at 22-23.

106. ENV completed a report, “Alternative Technologies for the Treatment and Minimization of Sewage Sludge,” that identifies potential sludge processing technologies that could be implemented to provide waste mitigation or improve operational performance at the City’s WWTPs. See 2011 Exhibit “A33.” The report discusses a wide range of technologies for different stages in the sludge treatment process and thus technologies cannot be directly compared outside their specific treatment and processing function. Accordingly, the report is a list of appropriate technologies for further consideration as part of the ongoing island-wide solids planning effort; it is not a decision-making document that recommends a best solution.

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

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

Steinberger Written Testimony at 23-24.

107. The report points out that the technology and process selection for implementation at any of the WWTPs will need to be evaluated from an island-wide perspective

due to the issues of combining/transporting solids between WWTPs as well as the identified end-user needs and beneficial use limitations. Other key elements that should be considered in evaluating these technologies and processes for the Island-wide Master Plan include eligibility and redundancy planning in the event that a WWTP treatment unit (i.e., centrifuge or digester) or solids outlet (i.e., landfill or composting facility) is temporarily out of service. Id. at 24.

108. Despite the City's successes in diverting sewage sludge from the landfill, it was reported in December 2011 that 15,000 to 20,000 tons per year of sewage sludge was still landfilled, and as of July 31, 2011, there was nowhere else to dispose of sewage sludge. Id.

### **C. LANDFILL DESIGN AND OPERATIONS**

109. In landfill design and permit reports, the important elements that must be outlined are the boundaries for the waste, the height of the waste, and the containment system for the waste (i.e., the kind of landfill lining system). The designation in the design drawings of the different cells that will contain the waste are not distinctly outlined but are identified by geographical location, much like streets are identified. See Tr. 04/11/12, 18:1–19:21. Therefore, the numbering does not dictate the sequence of construction. The actual site conditions and location determine the sequence of construction. Id. at 23:7–24:19.

110. For effective design and permitting, the sequence of construction of the cells in the landfill is not outlined because the need for certain cells depends on variable factors like waste stream, how much waste is generated, and the type of waste received. Therefore, while the boundary, height and containment system are prescribed in landfill design and permitting documents, how the cell is built, the size of the cell, and the order of the construction of the cells are not constrained. On the contrary, if these latter aspects are prescribed, it may result in harm

to human health and the environment because the landfill designer and operator would not have the flexibility to ensure the proper location for waste disposal. Id. at 18:5–19:21.

111. This flexibility in constructing the cells of a landfill is not unique to WGSL but is common practice in landfill design. Id. at 21:4-20.

112. The construction of cells E-5 and E-6 was not a digression from what was contained in the engineering report and FEIS because the size, sequence, and actual construction (whole or in parts) was not dictated by these reports. Id. at 25:3–26:24.

113. The size and sequence of construction of cells E-5 and E-6 did not increase the risk of public health hazards and did not contribute to the release of MSW that resulted from the December 2010 and January 2011 rain storms. On the contrary, the size and sequence of construction of cells E-5 and E-6 were more protective of public health because by building only a portion of the cell, the portion that is to be used, the liner is protected from long term exposure to the elements, rain and sun, and the integrity of the liner is maintained. Id.

114. In December 2010 and January 2011, WGSL was hit by a series of heavy rains that resulted in the flooding of areas within WGSL, including the active cell where MSW was being disposed. Steinberger Written Testimony at 26.

115. At that time, WMH was in the process of completing construction of the Western Surface Water Drainage System that was intended to divert stormwater around the landfill. The DOH Solid and Hazardous Waste Management permit for WGSL allowed the simultaneous construction and use of the cell and the Western Surface Water Drainage System. Id.

116. Because the heavy rains in December 2010 and January 2011 occurred before the Western Surface Drainage System was completed, the active cell that had been accepting waste at the WGSL was inundated with storm water, and the force and quantity of storm water

breached the cell, causing a release of MSW, including treated medical waste, into the storm water and into the ocean. Id.

117. The City has been cooperating with Federal and State investigations concerning the release of MSW. WMH and the City worked with the U.S. Environmental Protection Agency (“EPA”) and the DOH in the aftermath of the storms, entering into an Administrative Order on Consent with EPA that outlined the remedial actions needed to address the MSW release and steps needed to reopen the landfill. The EPA issued a NOV on November 29, 2011, concerning the release of MSW into the storm water and into the ocean. EPA did not impose any penalties as part of the NOV and continues to monitor the WGS� operations closely. Id. at 26-27.

118. In September 2011, WMH notified the City, EPA, and DOH that it identified significant irregularities with landfill gas data that had purportedly been collected and recorded by its landfill gas technician at WGS�. Further investigation by WMH revealed that a rogue WMH employee had fabricated some wellhead gas parameter measurements instead of collecting the data through verifiable measurements. The employee failed to collect actual data from mid-2010 until August 2011. Id. at 27.

119. As a result of WMH’s initial investigation, WMH hired an environmental consultant to perform a detailed assessment of (1) the current status of the wellfield and gas collection and control system to determine whether the fabricated data had concealed adverse changes in the wellfield, and (2) the past status of the wellfield based on verifiable data. Based upon the detailed assessment, WMH concluded that the wellfield and gas collection control system is performing within the expected range of monitored parameters at the facility and that

there is no evidence that the wellfield has undergone any adverse changes in the last two years.

Id.

120. Despite these events, the DOH, Solid and Hazardous Waste Branch, the branch that regulates the solid waste operations at WGS�, is not intending to take enforcement action relating to the operations at the WGS�. The DOH, Solid and Hazardous Waste Branch is satisfied with the operations at WGS�. See Tr. 01/25/12, 59:19–61:12. The DOH, Solid and Hazardous Waste Branch expressed concern about the imposition of the July 31, 2012 deadline for MSW at the point in time when there were not disposal options for certain types of waste which may potentially threaten human health or the environment. See id. at 12:15-19.

121. Despite pending enforcement and alleged EPA violations, in April 2012, Gary Gill, the Deputy Director of the DOH, Environmental Management Division, the individual heading the agency responsible for regulating WGS�, still insisted that Oahu needs a landfill, that WGS� is the only landfill for MSW and ash, and that shutting down the landfill before other options are available will endanger public health. See Tr. 04/04/12, 149:2–151:4.

### **III. PURPOSE AND NEED**

122. WGS� is the only permitted public MSW facility on the island of Oahu. Thus, the WGS� is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by HPOWER. See Tr. 01/25/12, 58:22-25, 59:1-9.

123. WGS� is a critical portion of the City’s overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled or burned for energy. See Steinberger Written Testimony at 2, 4.



124. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the landfill received only 163,736 tons of MSW and 179,946 tons of ash and residue from HPOWER. The amount of MSW deposited at the WGSL reflects a steady decrease from 2009. In FY09 the landfill received approximately 178,512 tons of MSW and in FY10 some 233,065 tons of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the landfill of 71.7%. See 2011 Exhibit “A27.”

125. Other items that cannot be recycled or burned at HPOWER are deposited at the WGSL. At the time of the contested case hearing on the 2011 Application, items such as screenings and sludge from sewage treatment plants, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, medical sharps, auto shredder residue, and contaminated soil that is below certain toxicity levels were landfilled at the WGSL. See Tr. 01/25/12, 10:6–12:14; TR. 04/11/12, 118:16–119:23.

126. The City is actively reducing waste volumes that are directed to the landfill. H-POWER capacity will increase with its expansion so that it can receive an additional 300,000 tons per year of MSW by 2013. See Steinberger Written Testimony at 18. The expanded HPOWER facility will be able to burn items that the current facility cannot, and which therefore have been sent to the landfill. See Steinberger Written Testimony at 19.

127. The City continues to increase its recycling efforts and has accomplished expansion of island-wide curbside recycling – 160,000 residences – as of May 2010. Steinberger Written Testimony at 20.

128. The City has a facility at the Sand Island Wastewater Treatment Plant that digests, dewateres, and heat-dries approximately 20,000 tons per year of sewage sludge and turns the

biosolids that might otherwise be sent to a landfill into pellets that can be used as a fertilizer or soil amendment material. Steinberger Written Testimony at 23.

129. Despite progress made to divert waste from the landfill via recycling, burning waste for energy, and reuse, a landfill is still needed on Oahu. See Tr. 01/25/12, 12:7-14; 03/07/12, 99:22–100:1; 04/11/12, 117:5–121:5.

130. The continued availability of WGSL to dispose of MSW is needed because WGSL is required as a permit condition to operate H-POWER. Steinberger Written Testimony at 29.

131. The continued availability of WGSL to dispose of MSW is needed for cleanup in the event of a natural disaster. See Tr. 01/25/12, 12:8-14; Tr. 04/04/12, 150:10-15.

132. The continued availability of WGSL to dispose of MSW is needed because there will always be material that cannot be combusted, recycled, reused or shipped. See Tr. 04/11/12, 117–122:5; 2011 Exhibit “A18.”

133. It will take at least seven years from site selection for a new landfill site to be operational. See Tr. 04/04/12, 56:1–58:17; Tr. 4/11/12, 41:2–42:6; Tr. 04/11/12, 73:19–74:5; 122:6–123:12.

134. Therefore, the WGSL 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 Tr. 01/25/12, 12:15-19, 65:14-20; 04/04/12, 149:24–150:25.

135. Closing the WGSL to MSW without alternative disposal options will endanger public health. See Tr. 01/25/12, 12:15-19; 04/04/12, 149:2–151:4.

### **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 unreasonable 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. In the Special Use Permit No. 2008/SUP-2 application, the Applicant sought 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 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 roads and streets, sewers, 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 the uses permitted within the district.

4. Based on the findings set forth in its August 4, 2009 Findings of Fact, Conclusions of Law, and Decision and Order and on the findings set forth above, the Planning Commission concludes that the Applicant’s 2008 application for a new State Special Use Permit and the Applicant’s 2011 Application to Modify (a) are 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 the 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.

6. The Planning Commission concludes that it denied the parties' motions to re-open the case to supplement the record after closing the evidentiary portion of the contest case hearing on April 23, 2012 because it had sufficient evidence to render its decision. Therefore, any and all evidence that the parties attempted to enter into the record after April 23, 2012 is not part of the record, specifically post-April 23, 2012 operations of the WGSL, post-April 23, 2012 landfill site selection processes, and post-April 23, 2012 waste diversion efforts by the Applicant.

7. The subject of the remand from the Supreme Court of the State of Hawaii was the deadline for the disposal of municipal solid waste imposed by Condition No. 14 of the 2009 LUC Order. The Planning Commission never imposed such a deadline for the disposal of municipal solid waste at the WGSL at any point of the proceedings in these consolidated cases. Therefore, the Planning Commission concludes that Condition No. 14 of the 2009 LUC Order, which imposed the July 31, 2012 deadline for municipal solid waste disposal at the WGSL, was not material to its conclusions above relating to the Applicant's 2008 Application.

### **DECISION AND ORDER**

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE Applicant's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and

Decision and Order with Modifications dated October 22, 2009, by deleting Condition Nos. 4 and 14, and adding the following conditions:

1. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity at a future date. This identification shall have no impact on the closure date for the Waimanalo Gulch Sanitary Landfill because the Waimanalo Gulch Sanitary Landfill shall continue to operate until it reaches capacity. This identification does not require the alternative landfill to be operational on December 31, 2022 but is intended to require the Applicant to commit to the identification of an alternative landfill site that may replace Waimanalo Gulch Sanitary Landfill when it reaches capacity at a future date. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the status of the efforts to identify and develop a new landfill site on O'ahu, (b) the WGSL's operations, including gas monitoring, (c) the ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.

3. Public health and safety conditions: If the landfill releases waste or leachate, the ENV must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Mailii Neighborhood Boards,

Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the landfill's shoreline outfall to prevent waste from spreading into the ocean.

The Planning Commission further orders that pursuant to its consolidation of County Special Use Permit File No. 2008/SUP-2 and the proceedings on Applicant's 2011 Application, the 2009 LUC Order is incorporated by reference herein in order to issue this single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order. The foregoing Findings of Fact, Conclusions of Law, and additional conditions shall supersede any inconsistent finding, conclusion, or condition in the 2009 LUC Order and shall otherwise supplement any and all existing findings, conclusions and conditions in said 2009 LUC Order.

Dated at Honolulu, Hawaii, this 6 day of December, 2017.

PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU

By (Recused)  
KA'IULANI K. SODARO, Chair

By   
THERESIA C. McMURDO, Vice Chair

By   
CORD D. ANDERSON, Member

By (Recused)  
ARTHUR B. TOLENTINO, Member

By (Recused)  
STEVEN S. C. LIM, Member

By   
KEN K. HAYASHIDA, Member

By   
WILFRED A. CHANG, JR., Member

By   
GIFFORD K. F. CHANG, Member

By (Recused)  
Arthur D. Challacombe, Member



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, O'ahu, Hawai'i, Tax Map  
Key No. (1) 9-2-03: 72 and 73.

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

To delete Condition No. 14 of Special Use  
Permit No. 2008/SUP-2 (also referred to as  
Land Use Commission Docket No. SP09-403)  
which states as follows:

“14. Municipal solid waste shall be allowed at  
the WGS� up to July 31, 2012, provided that  
only ash and residue from H-POWER shall be  
allowed at the WGS� after July 31, 2012.”

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Planning Commission, City and County of  
Honolulu, Proposed Findings of Fact, Conclusions of Law, and Decision and Order was duly

served by either hand-delivery or certified mail, return receipt requested, to the following on the date below, addressed as follows:

	<u>Certified Mail</u>	<u>Hand-Delivery</u>
DEPARTMENT OF PLANNING AND PERMITTING City and County of Honolulu 650 South King Street, 7 <sup>th</sup> Floor Honolulu, Hawaii 96813		X
DONNA Y. L. LEONG Corporation Counsel KAMILLA C. K. CHAN Deputy Corporation Counsel City and County of Honolulu 530 South King Street, Room 110 Honolulu, Hawaii 96813		X
Attorneys for Applicant DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU		
IAN L. SANDISON, ESQ. ARSIMA A. MULLER, ESQ. AVERY C. MATRO, ESQ. Carlsmith Ball LLP 1001 Bishop Street, Suite 2200 Honolulu, Hawaii 96813	X	
Attorneys for Intervenor SCHNITZER STEEL HAWAII CORP.		
CALVERT G. CHIPCHASE, ESQ. CHRISTOPER T. GOODIN, ESQ. Cades Schutte LLP 1000 Bishop Street, Suite 1200 Honolulu, Hawaii 969813	X	
Attorneys for Invervenors KO OLINA COMMUNITY ASSOCIATION and MAILE SHIMABUKURO		

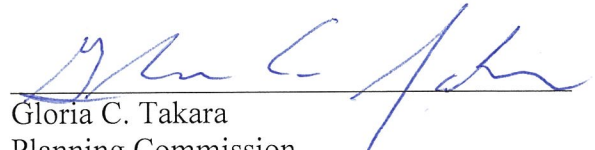
Certified Mail      Hand-Delivery

RICHARD N. WURDEMAN, ESQ.  
1003 Bishop Street, Suite 720  
Honolulu, Hawaii 96813-6419

X

Attorney for Intervenor  
COLLEEN HANABUSA

DATED: Honolulu, Hawaii, December 6, 2017

  
Gloria C. Takara  
Planning Commission  
Secretary-Hearings Reporter