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DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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: 9-2-03: 72 and 73

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU

To delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (also referred to as

DOCKET NO. SP09-403

DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S RESPONSE TO INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S OBJECTIONS TO PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, DATED JUNE 10, 2019; DECLARATION OF KAMILLA C. K. CHAN; EXHIBITS 1 – 7; CERTIFICATE OF SERVICE

HEARING:

DATE: October 9, 2019
TIME: 9:00 a.m.

Land Use Commission Docket No. SP09-403) which states as follows:

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

DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S RESPONSE TO INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S OBJECTIONS TO PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, DATED JUNE 10, 2019

I. Introduction

This matter is a consolidated case relating to Land Use Commission ("LUC") Docket No. SP09-403, County Special Use Permit File No. 2008/SUP-2 ("2008 Application"), which the LUC remanded to the Honolulu Planning Commission ("Planning Commission" or "PC") for the expressed purpose of consolidation with the proceeding on Department of Environmental Services, City and County of Honolulu's ("ENV") application to modify the LUC's Order filed on October 22, 2009 by deleting the municipal solid waste deadline ("2011 Application").

The last time this matter was before the LUC, the LUC remanded the proceedings to the Planning Commission pursuant to Hawaii Administrative Rules ("HAR") § 15-15-96(a) for further proceedings to:

> (1) 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; (2) 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 [Waimanalo Gulch Sanitary Landfill ("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; (3) 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; (4) 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; and (5) 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.

(June 6, 2017 LUC Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro's (collectively, "Intervenor KOCA") Motion to Deny and Remand ("2017 LUC Order") at 5-6.)

Accordingly, the record on the 2008 and 2011 Applications was remanded to the Planning Commission for further proceedings.

II. Brief Summary of Relevant Procedural History and Facts

Following the LUC's remand of the record in the 2008 and 2011 Applications, at a hearing on August 16, 2017, the Planning Commission expressed its intent to issue a proposed revised decision and order in accordance with Planning Commission Rule § 2-75. (PC Tr. 8/16/17, 9:15-20.)

The Planning Commission scheduled a hearing on October 25, 2017 to adopt the proposed findings of fact, conclusions of law, and decision and order. (PC Agenda for 10/25/17, attached hereto as Exhibit "1.") The hearing was subsequently cancelled due to lack of quorum. (PC Cancellation Notice for 10/25/17, attached hereto as Exhibit "2.")

On December 6, 2017, the Planning Commission convened a hearing and adopted the proposed findings of fact, conclusions of law, and decision and order. (PC Tr. 12/6/17, 6:19-21.) On the same date, the Planning Commission set a deadline for the parties to file written objections and comments on the 2017 Planning Commission

Proposed Decision and scheduled the next hearing for March 7, 2018, for the presentation of oral argument to the commission members who are to render the final decision. (Id. at 10:11-11:11.)

On December 6, 2017, the Planning Commission served on the parties its proposed findings of fact, conclusions of law, and decision and order ("2017 Planning Commission Proposed Decision"). Consistent with the Planning Commission's prior decisions, the 2017 Planning Commission Proposed Decision did not impose a closure date for WGSL and permitted the use of WGSL until it reaches capacity.

On February 5, 2018, ENV and Intervenors Schnitzer, KOCA, and Hanabusa timely filed their respective exceptions to the 2017 Planning Commission Proposed Decision.

On March 7, 2018, the Planning Commission considered the adoption of findings of fact, conclusions of law, and decision and order. After hearing oral argument of the parties, the Planning Commission scheduled April 4, 2018, for decision-making on the adoption of the findings of fact, conclusions of law, and decision and order. (PC Tr. 3/7/18, 46:14-47:21; PC Agenda for 4/4/18, attached hereto as Exhibit "3.")

The hearing set for April 4, 2018 was cancelled because the Planning Commission lacked quorum to decide the case. (PC Cancellation Notice for 4/4/18, attached hereto as Exhibit "4," and Letter from PC to Department of the Corporation Counsel, et al., of Apr. 11, 2018, attached hereto as Exhibit "5.") ENV urged the Planning Commission to take appropriate action to urge the Mayor to make a temporary appointment to the commission, as authorized by Section 3-1.5 of the Revised

Ordinances of Honolulu ("ROH") (Letter from Deputy Corporation Counsel Kamilla C. K. Chan to PC of Apr. 26, 2018, attached hereto as Exhibit "6.")

On August 29, 2018, City and County of Honolulu Mayor Kirk Caldwell notified Honolulu City Council Chair Ernest Martin and councilmembers of the appointment of Donald Goo as a temporary member of the Planning Commission to assist in the completion of the contested case hearing. (Letter from Mayor to Council Chair of Aug. 29, 2018, attached hereto as Exhibit "7.") The Planning Commission notified the parties of the same on January 15, 2019.

On January 15, 2019, the Planning Commission served on the parties its proposed findings of fact, conclusions of law, and decision and order ("2019 Planning Commission Proposed Decision"). The 2019 Planning Commission Proposed Decision did not impose a closure deadline for WGSL and permitted use of WGSL until it reaches capacity.

On February 7, 2019, Intervenor Hanabusa filed exceptions to the 2019 Planning Commission Proposed Decision. ENV and Intervenor Schnitzer filed their respective exceptions on February 8, 2019. Intervenor KOCA filed its exceptions on February 11, 2019.

On February 28, 2019, the Planning Commission convened a hearing to consider the adoption of the proposed findings of fact, conclusions of law, and decision and order. At the outset, Vice Chair Cord Anderson and members Gifford Chang, Ken Hayashida, Donald Goo, and Theresia McMurdo each attested that he or she reviewed the transcripts of the proceedings and that he or she has studied, examined and understands the record of the hearings from the 2008 and 2011 Application proceedings. (PC Tr. 2/28/19, 6:19-7:11.) Each party presented oral argument to the commission members. (Id. at 9:20-

55:22.) Following a discussion among the commissioners, which is described in greater detail in Section III.B. herein, the Planning Commission continued the hearing to April 11, 2019. (Id. at 101:10-21.)

On April 11, 2019, the Planning Commission reconvened and discussed the adoption of its proposed findings of fact, conclusions of law, and decision and order, and the various exceptions filed by the parties. On the same date, the Planning Commission adopted its proposed findings of fact, conclusions of law, and decision and order, along with ENV's exceptions, Intervenor Schnitzer's exceptions, and paragraphs 89 through 102 of the 2009 Planning Commission Decision ("2019 Planning Commission Decision.") (PC Tr. 4/11/19, 25:17-26:7, 31:2-32:3.)

The Planning Commission served its 2019 Planning Commission Decision on June 10, 2019. The complete record of the consolidated proceedings before the Planning Commission was transmitted to the LUC. (Letters from PC's Cord D. Anderson to LUC's Daniel E. Orodenker of Sept. 11, 2019 and Sept. 20, 2019.)

III. ENV's Response to Arguments Raised in the Introduction to Intervenor KOCA's Objections

Intervenor KOCA's objections are without merit. As set forth herein, the 2019 Planning Commission Decision is supported by the testimony and evidence in the record and should be approved by the LUC.

A. Intervenor KOCA Mischaracterizes the Planning Commission's Discussion of Several Conditions Proposed by KOCA

At the hearing on February 28, 2019, the Planning Commission discussed, but was never prepared to adopt the conditions proposed by Intervenor KOCA. On that date, the Planning Commission met to consider the adoption of the proposed findings of fact,

conclusions of law, and decision and order. Commissioner Hayashida moved to adopt the January 15, 2019 proposed findings of fact, conclusions of law, and decision and order, with ENV's exceptions and Intervenor Schnitzer's exceptions, and with the addition of paragraphs 89 to 102 of the 2009 Planning Commission Decision. (PC Tr. 2/28/19, 87:4-22.) No one seconded the motion. Instead, Commissioner Theresia McMurdo suggested adopting Intervenor KOCA's landfill closure condition, and there was subsequent discussion among the commissioners about various conditions proposed by Intervenor KOCA. (Id. at 88:23-90:9, 92:2-94:25.) The commissioners were not even able to formulate a comprehensive motion for discussion, and instead opted to discuss several conditions proposed by Intervenor KOCA. (Id. at :13-95:2.) The Planning Commission continued the hearing to April 11, 2019, so that its members would have the opportunity to re-review the record. (Id. at 98:4-100:8; 4/11/19 13:20-24.) Based on the foregoing, the assertion that at the February 28, 2019 hearing the Planning Commission was prepared to adopt several conditions requested by Intervenor KOCA is a mischaracterization.

Intervenor KOCA refers to statements made by Vice Chair Anderson on April 11, 2019 to assert that there was a consensus to adopt KOCA's conditions. The discussion among the commissioners at the February 28, 2019 hearing included a discussion about the various conditions proposed by Intervenor KOCA, but there is no evidence to support the contention that there was a consensus. The discussion about the proposed conditions was focused on the commission's effort to formulate a comprehensive motion for discussion and consideration. (Id. at 86:17-100:18.) Moreover, the discussion at the April 11, 2019 hearing, as well as the outcome of the hearing, demonstrates that there

was a lack of support and desire to adopt Intervenor KOCA's proposed additional conditions. (PC Tr. 4/11/19, 12:20-32:3.)

B. The Conditions Proposed by Intervenor KOCA are not Supported by the Record in This Consolidated Proceeding and Adoption of the Proposed Conditions is Beyond the Scope of This Remanded Proceeding

There is good reason for the Planning Commission's decision to not adopt the conditions proposed by Intervenor KOCA. First, the record shows that the Planning Commission did not adopt Intervenor KOCA's proposed conditions because the commission did not have reliable, probative, and substantial evidence to support the conditions. In approving a SUP, the Planning Commission may impose protective restrictions. (Haw Rev. Stat. § 205-6(c).) A restriction must be supported by substantial evidence in the record. (Haw. Rev. Stat. § 91-14(g)(5).) ("Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are . . . [c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . . ").

At the April 11, 2019 hearing, Commissioner Hayashida reminded the members that they needed to have an evidentiary basis for the conditions. (PC Tr. 4/11/19, 19:4-5.) Following discussion, Commission Hayashida moved to adopt the findings of fact, conclusions of law, and decision and order with ENV's exceptions and Intervenor Schnitzer's exceptions, plus paragraphs 89 to 102 of the 2009 Planning Commission Decision. Commissioner Goo seconded the motion. (Id. at 25:17-25.) During discussion, Commissioner McMurdo asked, "Am I the only one that feels there should be

a time line?" Commissioner Hayashida responded by questioning whether the record supported the timeline for closure of the landfill and asking Commissioner McMurdo to state the time line that the record supports. (Id. at 26:8-14.) None of the commissioners cited evidence to support Intervenor KOCA's closure condition. In fact, while some commissioners expressed a belief that the record supported the closure condition, no commissioner cited to evidence to support the bald assertion.

In addition, the record indicates that Intervenor KOCA's proposed conditions were not adopted because the Planning Commission understood that the scope of this remanded proceeding is limited to addressing the five items stated in the 2017 LUC Order. (Id. at 31:11-17 ("Member McMurdo: I just want to state for the record that the Commissioners need to be reminded that the reason this has come back to us is that the LUC remanded it back to us, and we needed to answer [five] items, and I believe we did with our Decision and Order. So putting anything in addition to that I'm not sure that will help us going forward.") Accordingly, the record reflects the Planning Commission's reasons for not adopting Intervenor KOCA's proposed decisions were properly based upon the evidence and the procedural posture of the proceedings, and were not as mysterious as Intervenor KOCA claims.

C. The 2019 Planning Commission Decision Limits the Duration of WGSL Operations

Contrary to Intervenor KOCA's characterization, the 2019 Planning Commission Decision does not allow WGSL to operate indefinitely. It clearly contains a limit on the duration of the landfill's operation: Until capacity of the landfill as allowed by the State of Hawaii, Department of Health ("DOH"). (See 2019 Planning Commission Decision at 65-66; 2009 LUC Decision at 5; 2009 Planning Commission Decision at 24.)

In 2009, the Planning Commission determined that "[t]he term or length of the new SUP shall be until the Waimanalo Gulch landfill reaches its capacity as compared to a definite time period of 'X' number of years. (2011 Exhibit "A17" at 2.) Planning Commission member Kerry Komatsubara explained as follows:

> In my opinion, simply putting on a new closure date to this new SUP will not lead to the closure of the Waimanalo Gulch Sanitary Landfill. I believe that the focus should not be on picking a date. The focus should be on how do we get the City to select a new site because you're not going to close this landfill until you find another site. I don't think it's in the interest of our community not to have a landfill.
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> ***
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> So what this proposal does is, it says look, [Applicant] can keep [WGSL] open until your [*sic*] full, until you've reached the capacity, but you have an obligation starting from next year [2010] to start looking for a new site. Now whether you take it seriously or not, that's up to you because we have the power to call you in, and you have the obligation now to report every year on what you're doing to find a new landfill site whether it be a replacement site or supplemental site or both. We have the right to hold a hearing at any time we feel that you are not...the applicant is not in good faith moving forward with reasonable diligence to find a new site.
>
> ***
>
> ...I think going down the old path of just putting a [closure] date in there has not worked. We put it down three or four times before and every time we came to that date, it was extended further and further...I'd rather not say it's a certain date only to know that when we reach that date we're going to extend it further until we find the new site. I'd rather focus on an effort to find a new site and have [Applicant] come in every year and explain to us where you are in your effort to find a new site. That's what this [order] does.

(Id. at 4.)

Consistent with Commissioner Komatsubara's comments, the Planning Commission approved ENV's application "for a new SUP for the existing and proposed expansion of WGSL . . . totaling approximately 200.622 acres, **until capacity** as allowed

by the State Department of Health is reached," subject to certain conditions. (2009 Planning Commission Decision at 24 (emphasis added).)

In a subsequent proceeding eight years later, Commissioner Anderson[1] reiterated the intent to allow use of the property as a landfill until capacity is reached rather than setting a duration limited by a specific date. Commissioner Anderson echoed former Commissioner Komatsubara's comments in explaining his reasoning, as follows:

> I did have some reservations about identifying a specific date when the landfill should be closed primarily due to the fact that, I think that date is more contingent upon the capacity and filling the capacity. Not a specific date. Thus, I felt a little more comfortable identifying an alternate site at a specific date and that site will just be, in other words, I guess a stand-by site until the current landfill hits capacity.

(PC Tr. 3/1/17, 23:15-23.)

Additional Condition No. 1 of the 2019 Planning Commission Decision clearly reflects the intent that the duration of the use of the site as a landfill runs until the WGSL reaches capacity. (2019 Planning Commission Decision at 65.) To state that the 2019 Planning Commission Decision allows WGSL to operate without a time limit is simply not true; instead, the Commission deliberately chose the capacity of the landfill site as a more effective measure of the SUP's duration than a specific deadline.

D. The Duration of the SUP Does Not Need to be Measured by Time

The Planning Commission is not required to include a time limit on the duration of the proposed use. The LUC's rules provide that the Planning Commission shall establish "**if appropriate**, a time limit for the duration of the proposed use, which shall be a condition of the special permit . . . ." (HAR § 15-15-95(f).) Even if the Planning

[1] On March 1, 2017, Cord Anderson was a member of the Planning Commission. Anderson later became Vice Chair of the commission.

Commission believed that it would be appropriate to establish a limit on the duration of the proposed use, there is no requirement that the limit be measured by a number of years.

A limit on the use of the landfill measured solely by time, as suggested by Intervenor KOCA, is not appropriate. The capacity of the landfill, in terms of space and the rate at which ENV utilizes the available space, is a better method for measuring the duration of the use of the land at issue in this proceeding. The continued use of the property as a landfill allows for the conservation and maintenance of other, more agriculturally suitable lands which are capable of producing diversified agriculture that would increase Hawaii's agricultural self-sufficiency. (See ENV's State Special Use Permit Application dated December 2008.)

Finally, in arguing that a time limit is necessary, Intervenor KOCA relies on the LUC's statements from a prior proceeding, in which it explained that it imposed Condition No. 14 in the 2009 LUC Decision (which was later struck by the Hawaii Supreme Court because it was not supported by the evidence) because it wanted to avoid giving ENV an unfettered, indefinite use of a SUP. (See CV 09-1-2714 Tr. 7/14/10, 67:21-25.) This reasoning is flawed. As ENV pointed out, the requested use is not an unfettered, indefinite use of a SUP because it sought to use the remaining capacity of the landfill site. (Id. at 78:6-25.) The capacity of the landfill site is the measure of the duration of the SUP.

E. There are Restrictions on the Types of Waste Accepted at the WGSL

Intervenor KOCA mischaracterizes the operations at WGSL by stating that the 2019 Planning Commission Decision allows it to operate without restriction on the types

of wastes that may be accepted. There is abundant evidence in the record that establishes that there are restrictions on the types of waste that may be accepted at WGSL.

First, pursuant to DOH solid waste regulations, WGSL is prohibited from accepting the following categories of materials for disposal: bulk green waste, scrap vehicles, tires, and white goods. (Written Direct Testimony of Timothy E. Steinberger dated December 13, 2011 ("Steinberger Written Testimony") at 4, ¶12.)

Additionally, Waste Management of Hawaii ("WMH"), the operator of WGSL, has an Unacceptable Waste Exclusion Program that prevents the disposal of unacceptable wastes, including hazardous waste, polychlorinated biphenyl contaminated waste, pesticide containers, liquid waste, or improperly packaged asbestos waste. (Id.)

Therefore, there is no merit to Intervenor KOCA's contention that the Planning Commission is permitting the use of WGSL with no waste acceptance restrictions for an unlimited time.

F. The Honolulu City Council Selected WGSL as the Site for the City's Landfill

In a decision issued on June 9, 2003, the LUC required the City Council to select a new site for a landfill, with the assistance of the Blue Ribbon Site Selection Committee, by June 1, 2004. (Steinberger Written Testimony at 5, ¶17.)

The City Council received an extension of the June 1, 2004 deadline from the LUC, and on December 1, 2004, selected the Waimanalo Gulch site as the City's future landfill site. The City Council determined that the Waimanalo Gulch site would satisfy Oahu's need for a landfill to manage its solid waste for the foreseeable future. The City Council concluded that (1) the Waimanalo Gulch site has at least 15 years of capacity left, (2) the Waimanalo Gulch site is the most economical site for which all costs and

revenues are known factors, (3) other sites would require large amounts of money to acquire land and develop the site and infrastructure, (4) an operating contract is already in existence, and (5) the Landfill operator is committed to addressing community concerns. (Steinberger Written Testimony at 5-6, ¶18.)

Accordingly, Intervenor KOCA's contention that the continued use of WGSL as the City's landfill amounts to ENV "repeatedly disregard[ing] its promises and the orders imposed to close the Landfill" are simply not true. When the City Council selected WGSL as the City's future landfill site, this action satisfied a condition imposed by the LUC.

G. The Use of WGSL to Capacity does not Mean That it Cannot Move With Reasonable Diligence to Site and Develop a New Landfill

Allowing ENV to use WGSL to capacity does not preclude ENV from concurrently moving with reasonable diligence to site and develop a new landfill. These obligations are independent of one other. Contrary to Intervenor KOCA's unsupported claim, a new landfill is not necessary because WGSL must close. There is no such mandate that requires closure of WGSL.

H. There is no Evidence to Justify Closing WGSL Before it Reaches Capacity

There is nothing in the record to justify closing WGSL before it reaches capacity and incurring the otherwise avoidable costs of establishing a landfill elsewhere, along with the associated administrative, technical, regulatory, and environmental requirements. (See 2011 Exhibit "A11".) Moreover, the record negates the possibility that a landfill could be operational within the time frame proposed by Intervenor KOCA.

The record of the Planning Commission proceedings relating to the 2008 and 2011 Applications establishes that it will take more than seven years to identify and develop a landfill site. Therefore, if, beginning in 2024, the Planning Commission closes WGSL to all use and waste except ash and residue from HPOWER and ASR, the City will have no landfill available for the disposal of material that cannot be combusted, recycled, reused or shipped. This means that the City will not be able to dispose of wastes that cannot be recycled, reused or shipped. This means that the City will not be able to dispose of wastes that cannot be recycled or burned at HPOWER, such as wastewater screenings, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, and certain contaminated soil. There is no municipal solid waste ("MSW") facility on Oahu that is permitted to accept these wastes that must be landfilled. Moreover, the City will not have a landfill that can accept disaster debris that may be generated in a natural disaster.

An equally devastating consequence of the partial closure of WGSL is that without the continued availability of WGSL, the City will be forced to become noncompliant with its HPOWER operating permit. The evidence establishes that the City is required to have a permitted site available to receive wastes diverted from HPOWER and that the WGSL is the only permitted site available to serve as a back-up for HPOWER. Waste is diverted from HPOWER to WGSL when the facility undergoes scheduled maintenance, which may take as long as two weeks. Waste is diverted to WGSL in emergency circumstances.

Further, the WGSL is necessary for proper solid waste management. Closing the WGSL without alternative disposal options for all the wastes that cannot be combusted,

recycled, reused or shipped will endanger public health and create serious health and safety issues for the residents of Oahu.

Finally, the evidence establishes that it will take at least seven years from site selection for a new landfill site to be operational. Therefore, a condition that partially closes the landfill within five years and completely closes the landfill within eight years is inconsistent with the evidence in the record.

I. The Closure Deadline Proposed by Intervenor KOCA is Unreasonable and Jeopardizes City Operations and the Health and Safety of the People of the City and County of Honolulu

There is abundant evidence in the record to establish that the City needs a landfill for all of the wastes that cannot be disposed of at HPOWER or by recycling or other alternative processes.

A landfill is needed for disposal of ash and residue from HPOWER, debris from natural disasters such as hurricanes, tsunamis, or 100-year storms, which may be unmanageable debris for HPOWER or could incapacitate the HPOWER facility. (Steinberger Written Testimony at 28, ¶87.) A landfill is also needed when HPOWER undergoes scheduled maintenance, which requires the facility to shut down for up to two weeks. (PC Tr. 1/11/12, 136:17–137:15.)

The Solid and Hazardous Waste Branch expressed concern about a deadline at the point in time when there are no disposal options for certain types of waste which may potentially threaten human health or the environment. (PC Tr. 1/25/12, 12:4-19.) Further, Gary Gill, Deputy Director of the DOH Environmental Health programs, testified that there has been a lot of progress made in improving recycling and waste minimization, but the need for a landfill still exists on Oahu and virtually in every

community in the United States. (PC Tr. 4/4/12, 149:10-23.) Deputy Director Gill further stated:

> Even with the increased capacity of the H-POWER facility which will be coming on in the near future, there are times when the H-POWER facility cannot accommodate all the waste in the waste stream. There are kinds of waste that the H-POWER facility cannot accommodate, and there could be instances, for example, dealing with disaster debris or emergency situations where the landfill would need to be called into service to manage those kinds of emergencies.

(Id. at 150:6-15.)

Intervenor KOCA's proposed Condition No. 3, which is characterized as a "staged approach" to closure of WGSL, is unreasonable, as it does not account for the wastes that cannot be processed by a means other than landfilling. The evidence in this proceeding establishes that DOH is working with the City to determine alternative disposal options, but there are in fact wastes that cannot be burned, recycled, reused or shipped; in particular sewage sludge. Because these wastes currently must be disposed of via landfilling and because contingencies such as HPOWER's planned maintenance shut-downs or emergencies created by natural disasters require alternative disposal options so as to efficiently respond to unanticipated contingencies, there is in fact still a need for a landfill. (PC Tr. 1/25/12, 12:4-19.) Steven Chang, Chief of the DOH Solid and Hazardous Waste Branch stated that his branch is concerned about the imposition of the July 31, 2012 deadline at the point in time when there are no disposal options for certain types of waste which may potentially threaten human health or the environment. (Ibid.) Intervenor KOCA's proposed Condition No. 3 would require closure of WGSL when the City still needs WGSL for disposal of the wastes outlined above and under the circumstances described.

IV. ENV's Response to Intervenor KOCA's Objections to the Planning Commission's Findings of Fact

Findings of Fact 46 to 54. Intervenor KOCA claims that these findings were erroneous because they reveal the failure to apply the setback requirements provided for in the City's Land Use Ordinances. This representation, not the findings, is clearly erroneous because both the Planning Commission and the LUC resolved this matter in the 2008 Application by relying on the Department of Planning and Permitting's ("DPP") determination that the setback requirements are not applicable to the WGSL. (LUC Tr. 9/24/09, 193:2-195:17; See also DPP Report and Recommendation to Karin Holma, Chairperson and Members of the Planning Commission, dated May 1, 2009.) Further, Intervenor KOCA fails to point to any additional evidence in the 2011 Application proceeding that would bring into question or reopen consideration of the Planning Commission's and LUC's determination as to the setback requirements.

Finding of Fact 53. Intervenor KOCA's characterization that Finding of Fact 53 is clearly erroneous is incorrect because the finding was an accurate statement of fact at the time. Further, Intervenor KOCA's claim that the evidence in the 2011 Application proceeding showed that waste and leachate was released from the landfill in January 2011 is not supported by the evidence. In making this claim, Intervenor KOCA cites to testimony of Ken Williams, but his statements are not supported by the evidence. Mr. Williams did not conduct or point to any testing of the stormwater to prove that sewage sludge and leachate had been released into the ocean. Therefore, Dwight Miller's statements are pure supposition. As evidenced by the investigative report, DOH was careful not to state that sewage sludge and leachate had been released into the ocean without proof. (2011 Exhibit "K52" at 2.)

Finding of Fact 68. Intervenor KOCA erroneously asserts that Finding of Fact 68 is no longer accurate. This characterization is incorrect because the finding is an accurate statement of fact at the time. In addition, in making this assertion Intervenor KOCA refers to its own proposed findings of fact, which were not adopted by the Planning Commission. Further, we note that paragraphs 290 – 295 and 300 of KOCA's proposed findings of fact refer to a DOH investigation that was ongoing and had not concluded at the time the evidence was closed. Thus, the statements were not substantiated by DOH and cannot stand as independent findings of fact and in turn, cannot be used to deem Finding of Fact 68 inaccurate.

Finding of Fact 70 to 74. Intervenor KOCA claims that these findings are erroneous. Intervenor KOCA's characterization is incorrect because the findings are accurate statements of fact at the time of the 2008 Application proceeding. In addition, contrary to Intervenor KOCA's inference, facts relating to the discovery that a rogue WMH employee fabricated some wellhead gas parameter measurements instead of collecting data through verifiable measurements is addressed in the 2019 Planning Commission Decision at Findings of Fact 259 and 260.

In its objections, Intervenor KOCA refers to Mr. Miller's conclusion that the failure to monitor gas readings was a threat to public health and safety. However, this conclusion is not supported by facts in the record. Nowhere in the record is there evidence, other than this unfounded statement, of an actual threat to public health and safety.

On the contrary, with regard to the gas readings, ENV Director Timothy Steinberger ("Director Steinberger") testified that WMH "performed a detailed

assessment of (1) the current status of the wellfield and gas collection and control system to determine whether the fabricated data has 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." (Steinberger Written Testimony at 27, ¶ 83.) Mr. Miller did not perform a detailed assessment to prove the existence of a threat to public health and safety and fails to point to any evidence to contradict Director Steinberger's testimony.

Intervenor KOCA also cites to Director Steinberger's statement that "one of the reasons you monitor subsurface wellhead gas is because of a concern for subsurface fire." However, nowhere in the record is there evidence of a subsurface fire, and pursuant to WMH's detailed assessment referenced above, there appears to continue to be no actual subsurface fire.

Steven Chang of the DOH, Solid and Hazardous Waste Branch, the agency that is "responsible for ensuring that the Waimanalo Gulch Sanitary Landfill complies with all laws applicable to municipal solid waste landfills so as to protect human health and the environment," directly disputed Mr. Miller's conclusion when he stated that the past enforcement actions were resolved to his satisfaction, that he was "satisfied with the operations at Waimanalo Gulch Sanitary Landfill at the present," and there are no current enforcement actions against WGSL. (PC Tr. 1/25/12, 8:22-25, 9:1-3, 61:4-12.)

Finding of Fact 83. Intervenor KOCA erroneously claims that because a City Council resolution is "not binding on the City," the finding that the Council's action

designating the WGSL as the City's landfill is false. The legal nature of the resolution has no bearing on the fact that the Council took non-legislative action and selected WGSL as the City's landfill site. KOCA's assertion is false on its face. (See Revised Charter of the City and County of Honolulu, Section 3-201 – Non-legislative acts of the council may be by resolution – but do not have the force and effect of law.)

Findings of Fact 84 to 88. There is substantial evidence to support the fact that the WGSL is the only permitted public MSW facility on the island of Oahu and thus, the WGSL is the only landfill option for disposal of MSW for the general public and the only permitted repository for ash produced by HPOWER. (PC Tr. 1/25/12, 58:22-25, 59:1-9.)

Further, there is substantial evidence to support the fact that the WGSL is a critical part of the City's overall integrated solid waste management efforts. The WGSL is a fundamental component in the City's solid waste management program. (Steinberger Written Testimony at 2, 4.) The objections raised by Intervenor KOCA are purely argument and do not make these findings of fact false or contrary to the evidence.

Finding of Fact 89. Contrary to Intervenor KOCA's claim, the use of the term "currently" in Finding of Fact 89 is not erroneous, misleading, or materially incomplete. It is clear that the Planning Commission is including a recitation of findings of fact from the 2009 Planning Commission Decision, beginning with paragraph 40 on page 10, and continuing through paragraph 102 on page 22 of its 2019 Decision. Further, Finding of Fact 89 was an accurate statement at the time.

Finding of Fact 90. Intervenor KOCA's objection to Finding of Fact 90 is without merit. It is true that other items that cannot be recycled or burned at HPOWER are deposited at WGSL, such as screenings and sludge from sewage treatment plants,

animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, and contaminated soil that is below certain toxicity levels. While Finding of Fact 90 is a recitation of a finding in the 2009 Planning Commission Decision, this fact remained true at the time of the contested case hearings in 2011. (See PC Tr. 4/11/12, 118:16-122:5 (After the third boiler is operational, certain wastes will still need to be landfilled, including asbestos, used motor oil, lead acid batteries, combustion ash, sewage sludge, agricultural waste, medical waste, scrap tires, auto shredder residue, and sandblast grit); 1/11/12, 137:19-20, 138:7-25 (All recyclers generate a residue, which must be landfilled)); See also PC Tr. 1/25/12, 12:4-14; Steinberger Written Testimony at 28-29, ¶87.) Moreover, even Dwight Miller testified that a landfill is needed for wastes that cannot otherwise be disposed of. (PC Tr. 3/7/12, 99:14-23.)

Finding of Fact 93. The objection to this finding of fact is without merit. The facts Intervenor KOCA cites in its objection to Finding of Fact 93 do not refute the fact that the City has a facility at the Sand Island Wastewater Treatment Plant that digests, dewaters, 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, ¶71.)

Finding of Fact 94. Intervenor KOCA incorrectly claims that this finding is contrary to the reliable, probative and substantial evidence in the record. Intervenor KOCA's claim is incorrect because the findings are accurate statements of the facts at the time they were made.

Findings of Fact 96 to 102. As stated in ENV's response to Findings of Fact 46 to 54, Intervenor KOCA's claim that WGSL does not comply with ROH § 21-5.680 is

clearly erroneous because both the Planning Commission and LUC resolved this matter in the 2008 Application proceeding by relying on DPP's determination that the setback requirements are not applicable to the WGSL. (LUC Tr. 9/24/09, 193:2-195:17; See also DPP Report and Recommendation to Karin Holma, Chairperson and Members of the Planning Commission, dated May 1, 2009.) Further, Intervenor KOCA does not point to any additional evidence in the 2011 Application proceeding to bring into question or reopen consideration of the Planning Commission's and LUC's determination as to the setback requirements.

In addition, in objecting to Findings of Fact 96 to 102, Intervenor KOCA purposely misconstrues the DOH, Branch Chief, Solid and Hazardous Waste Division, Steven Chang's testimony by making it appear that Mr. Chang singled out WGSL among the 13 landfills in the State of Hawaii as having received more regulatory violations. KOCA fails to point out that Mr. Chang clarified that the only landfill on Oahu that accepts MSW, other than the Kaneohe Marine Corps Air Station which only accepts waste from their naval facility, is WGSL. Therefore, it stands to reason that there would be more regulatory violations for WGSL because it is the only landfill accepting MSW for everyone on Oahu who is not at Kaneohe Marine Corps Air Base. (PC Tr. 1/25/12, 58:22-59:9.)

Further, Intervenor KOCA claims that findings that purport to summarize state regulations should mention the State Office of Planning's letter. There is no legal requirement for the findings to specifically reference this letter and nothing alleged to show that the Office of Planning's recommendations were not considered in final decision-making.

Finding of Fact 174. The objection to Finding of Fact 174 is without merit, as Conclusion of Law 6 answers the question about whether the record needs to include updated information about the operation of the landfill, the landfill site selection process, and the City's waste diversion efforts. Conclusion of Law 6 states:

> 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 contested 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.

(2019 Planning Commission Decision at 64.)

Further, WGSL is an operating landfill. Information relating to its ongoing operations, the site selection process, and ENV's waste diversion efforts is constantly evolving. It is not reasonable for the Planning Commission to reopen the proceedings to admit new evidence as the WGSL continues its operations. If the Planning Commission allowed this, the contested case proceeding would never achieve finality.

Finding of Fact 198. Finding of Fact 198 accurately states that on February 28, 2019, before the Planning Commission heard oral arguments and/or considered the adoption of the findings of fact, conclusions of law, and decision and order, the Planning Commission members each attested to the fact that he or she reviewed the transcript of the proceedings for the dates that the member was absent, and that the member has studied, examined and understood the record of the hearing. (2019 Planning Commission Decision at 43.) The Planning Commission's action complies with the Rules of the Planning Commission ("RPC"), which states:

> Any commissioners who were not present during the entire contested case hearing, shall before voting attest to the fact that they have reviewed the transcript of the proceedings for the date(s) they were absent and that they have studied, examined and understand the record of the hearings.

(RPC § 2-76(a).)

Intervenor KOCA misconstrues RPC § 2-76 in support of its argument that the attestation was required prior to adopting the *proposed* findings of fact, conclusions of law, and decision and order. On February 28, 2019, the Planning Commission complied with RPC § 2-76 when each member attested to the fact that he or she reviewed the transcript of the proceedings for the date or dates that the member was absent and that the member studied, examined and understands the record of the hearings. None of the cases cited by Intervenor KOCA supports its proposition that the attestation was required before the adoption of the proposed findings of fact, conclusions of law, and decision and order.

Findings of Fact 200 and 202. Intervenor KOCA's objections are without merit, because Findings of Fact 200 and 202 accurately reflect the proceedings at the Planning Commission.

Finding of Fact 208. Intervenor KOCA mischaracterizes this finding. Finding of Fact 208 demonstrates compliance with Condition No. 1 of the 2009 Planning Commission Decision (Condition No. 4 of the 2009 LUC Decision), which 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. (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. (Steinberger Written Testimony at 11, ¶29; PC Tr. 1/11/12, 54:4–55:6.) Intervenor KOCA fails to demonstrate how allotting funds to conduct the site selection study does not mark the beginning of the process to identify and develop a new landfill site.

Findings of Fact 209 to 221. Intervenor KOCA misconstrues and mischaracterizes the testimony of Janice Marsters, a member of the Mayor's Landfill Site Selection Committee ("SSC") and asserts without any basis that "ENV's consultant repeatedly applied screens to exclude potential sites that were not 'previously discussed or authorized'" by the SSC. Further, whether Ms. Marsters testified that the SSC was not happy with the process, as alleged by Intervenor KOCA, has no relevance to the objection that the findings of fact materially misstate the site selection efforts.

Finding of Fact 210. There is no evidence to support the premise that ENV directed the SSC to "find one site" and Intervenor KOCA fails to site any evidence in the record that would support this unfounded contention. Intervenor KOCA jumps to conclusions in inferring from the SSC's identifying a site that could accept all forms of waste as indicative of ENV limiting its options to one landfill site. This is simply not supported by the record and is pure supposition.

Finding of Fact 215. In making its objection to this finding of fact, Intervenor KOCA misstates the evidence. There is nothing in the record it cites that establishes that ENV's consultant directed the SSC to start with an old list of sites.

Finding of Fact 216. Intervenor KOCA fails to cite to any evidence to support its objection to this finding of fact and assertion that ENV's consultant developed the

exclusionary criteria or factors for sites above the no-pass or UIC line. There is substantial evidence to support Finding of Fact 216. (Steinberger Written Testimony at 14, ¶37; See also PC Tr. 4/4/12, 42:1-45:23.) Further, Intervenor KOCA takes Ms. Marsters testimony out-of-context to assert that the SSC was not happy with the process and in doing so, makes it sound like the SSC was not happy with the entire process. This is not true. Ms. Marsters testified that the SSC was not happy "with the process that had happened." (PC Tr. 4/4/12, 104:16-23.)

Finding of Fact 221. There is substantial evidence to support the finding of fact that the ENV's effort to identify and develop one or more landfill sites has been performed with reasonable diligence. (Steinberger Written Testimony at 11-16, ¶¶29-43.) In particular, ENV began the process to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL when it allotted funds in the Fiscal Year 2010 budget to conduct a site selection study for a secondary landfill on Oahu and formed the SSC. (Id. at 11.)

Intervenor KOCA contends that ENV's effort to identify and develop one or more new landfill sites has not been performed with reasonable diligence because the SSC does not include any members from Ko Olina or Kapolei. While it is not clear how this would result in the City performing its landfill site selection with less-than-reasonable diligence, we note that there is evidence in the record that establishes that the Mayor chose 12 qualified members to serve on the SSC. The Mayor's selection was based on numerous criteria, including technical expertise and experience, community involvement, and ability to serve. (Ibid.)

Findings of Fact 222 and 223. This finding is supported by the testimony of Ms. Marsters, Dr. Hari Sharma, and then-ENV Director Steinberger, which established that a minimum of seven years – more likely longer – is required to take a landfill from selection to operation. As an environmental engineer who has worked in Hawaii and the Pacific for over 20 years, mostly in the area of environmental planning and permitting for construction projects, Ms. Marsters is familiar with the permitting and environmental review process and is aware of how long it takes to develop a site. (PC Tr. 4/4/12, 55:10-25, 56:1-2; See also 2011 Exhibit "A36.") Ms. Marsters concluded that the permitting and environmental review process, land acquisition, and the landfill design itself, which is a very rigorous process because you have to design the liners and the leachate collection systems and the groundwater monitoring systems and so forth, would take five to seven years. Ms. Marsters further concluded that it would take additional time to build the infrastructure necessary for the landfill and to construct the landfill. (PC Tr. 4/4/12, 56:1-58:17.) Ms. Marsters further opined that three years to complete the development of a new landfill was not enough time and that especially in Hawaii, because we have a very inclusive environmental review process that allows for a lot of opportunity for public input, more time is needed for the development of a new landfill. (Id. at 4/4/12, 58:18-59:11.)

Dr. Sharma, who was qualified as an expert in landfill design and permitting, and who was the principal in charge of permitting and construction of the expansion cells in WGSL, observed the development of new landfills in the 1980s and 1990s and stated that it took about seven to ten years to complete development of new landfills at that time. Dr. Sharma further stated that in the 2000s and now, there are very few if any completely

new landfill sites being approved because most landfill work is in expansion of existing landfills. Therefore, he believes that development of a new landfill would take even longer than seven to ten years. (PC Tr. 4/11/12, 41:2-42:6.) Dr. Sharma also stated that for just the latest expansion of WGSL, it took 3-4 years, so it is not possible for a completely new landfill in Hawaii to be developed in 3-4 years. (Id. at 4/11/12, 42:7-19.)

Director Steinberger pointed out that even after the SSC makes its recommendation, ENV will need 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 and investigations, analyzing alternatives including alternative sites and technologies, obtaining public and governmental agency input, analyzing direct, secondary, and cumulative impacts, developing appropriate mitigation measures, and ensuring the opportunity for 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. (Steinberger Written Testimony at 15-16, ¶41.)

The detailed engineering studies are also 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 a 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.)

Based on the foregoing, and the fact that Ms. Marsters, Dr. Sharma, and Director Steinberger have direct experience with the land use process in relation to WGSL, a new landfill is more than likely to take more than seven years to develop. Consequently, taking seven or more years to develop a landfill is not only reasonably diligent but realistic.

Finding of Fact 226. Intervenor KOCA fails to cite any support for its contention that the total waste generated on Oahu in Calendar Year 2010 was 1,510,593 tons. Rather, the exhibit cited in its objection establishes that in Calendar Year 2010, approximately 1,214,904 tons of MSW was generated on Oahu. (2011 Exhibit "A27".)

Finding of Fact 227. Contrary to Intervenor KOCA's claim, the statement that "there are still no new technologies with proven reliability and performance that would completely eliminate the need for a landfill" is supported by substantial evidence.

Despite the progress made to divert waste from the landfill via recycling, burning waste for energy, and reuse, a landfill is still needed on Oahu. (PC Tr. 1/25/12, 12:7-14; 3/7/12, 99:22-100:1; 4/11/12, 117:5-121:5.) 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. (PC Tr. 1/25/12, 10:6-12:14; 4/11/12, 118:16-119:23.) It was established that 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. (PC Tr. 4/11/12, 117-122:5; 2011 Exhibit "A18".) Moreover, the continued availability of WGSL to dispose of MSW is needed because WGSL is required as a permit condition to operate HPOWER. (Steinberger Written Testimony at 29, ¶87; See also PC Tr. 1/11/12, 136:5-12, 136:23-24; 4/11/12, 124:14-125:6.) Further, the continued availability of WGSL to dispose of MSW is needed for cleanup in the event of a natural disaster. (PC Tr. 1/25/12, 12:8-14; 4/4/12, 150:10-15.)

Finding of Fact 230. Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but "whether or not they run into delays on this, you know, is anybody's guess." (PC Tr. 4/11/12, 90:9-13.) Director Steinberger also stated that HPOWER's operator, Covanta, "recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it's a target." (PC Tr. 1/11/12, 80:15-18.) Thus, Intervenor KOCA misconstrues the testimony.

Finding of Fact 231. The evidence establishes that the HPOWER solid waste management permit, which is issued by DOH, requires HPOWER to have a MSW landfill disposal option. (2009 Planning Commission Decision at 18, ¶ 92.) The closure of WGSL from January 12 to January 28, 2011, due to unprecedented storms in December 2010 and January 2011, illustrates the need for a landfill. During that seventeen-day closure period, there were delays in the disposal of HPOWER residue, bulky item waste, and wastewater sludge. All such wastes cannot be disposed of at HPOWER and must be disposed of in the landfill. The closure of WGSL hampered HPOWER's ability to accept MSW because of the backlog of residue that had accumulated at the facility. City refuse transfer stations that depend on HPOWER for waste disposal were adversely impacted and experienced heavy buildups of trash. City wastewater treatment facilities had to resort to temporary onsite storage of sewage sludge in limited-capacity holding areas to cope with the situation. Further, ENV had to cease collection of bulky item wastes resulting in unsightly and potentially dangerous piles of waste on sidewalks. (Steinberger Written Testimony at 29, ¶88.)

Finding of Fact 235. Finding of Fact 235 accurately reflects the testimony of Director Steinberger in December 2011, which stated that at that time the mass burn boiler was expected to be fully operational in January 2013. (Steinberger Written Testimony at 18, ¶50.) In objecting to this finding of fact, Intervenor KOCA misconstrues the testimony regarding the date the third boiler would be operational. Contrary to Intervenor KOCA's claim, Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but "whether or not they run into delays on this, you

know, is anybody's guess." (PC Tr. 4/11/12, 90:9-13.) Director Steinberger also stated that HPOWER's operator, Covanta, "recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it's a target." (PC Tr. 1/11/12, 80:15-18.)

Finding of Fact 236. Contrary to Intervenor KOCA's assertion, all but incidental green waste is prohibited from the landfill. (PC Tr. 4/11/12, 114:11-20.) Applicant provided substantial evidence that the majority of green waste is recycled. For fiscal year 2011, the green waste capture rate was 77%, which indicates high participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. (Steinberger Written Testimony at 19, ¶56; See also 2011 Exhibit "A30" at 8.) All green waste is delivered to a private vendor contracted by the City to produce mulch and other products from the waste. (Steinberger Written Testimony at 20, ¶56.) Further, State law requires the diversion of green waste from HPOWER and the landfill. (HAR § 11-58.1-65; See also HRS §§ 342G-3, 342G-13.) ENV's green waste recycling program supports its efforts to ensure compliance with this requirement.

Finding of Fact 237. Intervenor KOCA misstates the facts. All but incidental food waste is diverted from the WGSL. (PC Tr. 4/11/12, 114:1-14.) Residential food waste is sent to HPOWER and becomes refuse derived fuel. (Id. at 114:21-25, 115:1-5.) Food waste from restaurants are sent to local recyclers and is not sent to the landfill. (Id. at 115:6-15, 116:13-20.) Food waste is sent to the landfill only when HPOWER is shut down or at daily capacity. (Id. at 123:21-25.) There is no evidence in the record to support Intervenor KOCA's allegation that this finding is false.

Finding of Fact 238. As stated above, Applicant provided substantial evidence that the majority of green waste is recycled. For fiscal year 2011, the green waste capture rate was 77%, which indicates high participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. (Steinberger Written Testimony at 19, ¶56; See also 2011 Exhibit "A30" at 8.) All green waste is delivered to a private vendor contracted by the City to produce mulch and other products from the waste. (Steinberger Written Testimony at 20, ¶56.)

Finding of Fact 249. The objection to Finding of Fact 249 is without merit, as Intervenor KOCA admits that it is true it was reported in December 2011 that 15,000 to 20,000 tons per year of sewage sludge was still landfilled. (KOCA's Objections at 30-31.) The fact that HPOWER's third boiler would eventually be able to accept sewage sludge does not render the former statement misleading.

Finding of Fact 256. The facts that Intervenor KOCA cites in its objection do not refute the finding that at the time of the December 2010 and January 2011 heavy rains, WMH was in the process of completing construction of the Western Surface Water Drainage System. Instead, Intervenor KOCA raises other arguments, but none establish that this finding is misleading, materially incomplete and contrary to the evidence, as it alleges.

Dr. Sharma testified that the regulatory standard for surface water drainage systems for landfills is that the system must be able to handle a 24-hour, 25-year storm. (PC Tr. 4/11/12, 33:15-21.) At the time that WMH was simultaneously constructing cell E6 and the diversion channel, WMH had already constructed a temporary surface water drainage system that could handle a 24-hour, 25-year storm. (Id. at 33:15-21.) The

planned diversion system that could handle a 100-year, 24-hour storm was beyond what was required by the law to construct. (Id. at 31:16-22.) Because WMH and ENV were compliant with the regulatory standard, were dealing with limited landfill space, and had obtained the approval of DOH to simultaneously construct the diversion channel and cell E6, ENV and WMH had appropriately planned for and responded to the relevant circumstances and were still constructing the expansion consistent with the engineering report and design plans. (Id. at 31:7-25, 32:1-8)

In addition, contrary to Intervenor KOCA's assertion in its objection to Finding of Fact 256, Director Steinberger testified that despite ENV's best estimates and not because of inadequate planning, the SUP process took longer than expected. Further, the LUC in its March 14, 2008 Order recognized the lengthy and time consuming steps needed for the expansion of WGSL when it recognized the following: (1) as a result of the City Council's selection of WGSL as the municipal landfill to serve the needs of Oahu, ENV had been preparing an application to amend the existing SUP to expand the WGSL by an additional 92.5 acres of land, (2) an EIS was being prepared for this expansion, (3) due to the discovery of stone uprights in the proposed expansion area, the completion of the EIS had been delayed pending resolution of the matter with the State Historic Preservation Division, and (4) concerns that the expansion could not be completed by May 1, 2008, prompted ENV to file the application for an extension of the deadline. (See 2011 Exhibit "A16.")

Further still, DOH recognized the delay in WMH's ability to start construction, so it allowed for the concurrent construction of cell E6 and the diversion channel by

referencing such construction in the WGSL solid waste management permit. (PC Tr. 1/11/12, 151:8-13 (Steinberger), 4/4/12, 158:7-25 (Gill); See also 2011 Exhibit "A4.")

Finding of Fact 258. Intervenor KOCA's objection to this finding of fact is without merit. WMH and the City worked with EPA and DOH in the aftermath of the 2010 and 2011 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. (Steinberger Written Testimony at 26, ¶81.)

Finding of Fact 259. Contrary to Intervenor KOCA's claim, Finding of Fact 259 is not materially incomplete. Intervenor KOCA's objection refers to Mr. Miller's conclusion that the failure to monitor gas readings was a threat to public health and safety. However, this conclusion is not supported by facts in the record. Nowhere in the record is there any evidence, other than this unfounded statement, of an actual threat to public health and safety.

Finding of Fact 261 and 262. Intervenor KOCA's objection to Findings of Fact 261 and 262 is without merit. First, the evidence established that on April 4, 2011, the DOH Solid and Hazardous Waste Branch was not currently engaged in any enforcement action relating to the WGSL's solid waste management permit. (See PC Tr. 4/4/12, 156:15-157:16.) Second, the allegations raised in the objection to Finding of Fact 262 do not negate the fact that in April 2012, Gary Gill, the Deputy Director of the DOH Environmental Management Division, who was the individual heading the agency responsible for regulating WGSL, still insisted that Oahu needs a landfill, that WGSL is the only landfill for MSW and ash, and that shutting down the landfill before other

options are available will endanger public health. (Id. at 149:2-151:4.) Finally, there is no evidence to support closing WGSL once a new landfill site is identified.

Findings of Fact 263 and 264. There is substantial evidence to support the fact that the WGSL is the only permitted public MSW facility on the island of Oahu and thus, the WGSL is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by HPOWER. (PC Tr. 1/25/12, 58:22-25, 59:1-9.)

Further, there is substantial evidence to support the fact that WGSL is a critical portion of the City's overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the HPOWER facility, and landfilling for material that cannot be recycled or burned for energy. (Steinberger Written Testimony at 2, 4.) The objections raised by Intervenor KOCA are purely argument and do not make these findings of fact false or contrary to the evidence.

Finding of Fact 265. Intervenor KOCA fails to cite any support for its contention that the total waste generated on Oahu in Calendar Year 2010 was 1,510,593 tons. Rather, the exhibit cited in its objection establishes that in Calendar Year 2010, approximately 1,214,904 tons of MSW was generated on Oahu. (2011 Exhibit "A27".)

Finding of Fact 266. Intervenor KOCA's assertions in its objection to Finding of Fact 266 are misleading. Finding of Fact 266 states as follows:

> 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.

(2019 Planning Commission Decision at 60 (emphasis added).) Accordingly, it is clear that the period of time to which the finding of fact applies is at the time of the contested case proceeding on the 2011 Application.

Additionally, Intervenor KOCA misconstrues the testimony regarding the date the third boiler would be operational. Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but "whether or not they run into delays on this, you know, is anybody's guess." (PC Tr. 04/11/12, 90:9-13.) Director Steinberger also stated that HPOWER's operator, Covanta, "recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it's a target." (PC Tr. 1/11/12, 80:15-18.) Thus, there is no substantial evidence to support Intervenor KOCA's claim that the third boiler would be operational in October or November 2012.

Finding of Fact 267. As stated above, Intervenor KOCA misconstrues the testimony regarding the date the third boiler would be operational. Director Steinberger was not definitive as to the date the third boiler would be operational. He stated that the third boiler would be able to burn biosolids by late fall of 2012 but "whether or not they run into delays on this, you know, is anybody's guess." (PC Tr. 4/11/12, 90:9-13.) Director Steinberger also stated that HPOWER's operator, Covanta, "recently came in and asked for an extension of time to 2013. Originally, it was targeted for 2012. Again, it's a target." (PC Tr. 1/11/12, 80:15-18.)

Finding of Fact 269. The objection to this finding of fact is without merit. The facts Intervenor KOCA cites in its objection to Finding of Fact 269 do not refute the fact that the City has a facility at the Sand Island Wastewater Treatment Plant that digests,

dewaters, 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; ¶71.)

Finding of Fact 270. Intervenor KOCA's objection lacks merit and misstates this finding. Finding of Fact 270 does not admit that further progress in waste diversion is needed. Rather, it states as follows: "Despite the progress made to divert waste from the landfill via recycling, burning waste for energy, and reuse, a landfill is still needed on Oahu."

Findings of Fact 271 to 273. Intervenor KOCA's objections to Findings of Fact 271 to 273 are without merit. At the time of the contested case hearing on the 2011 Application, these statements were true. Moreover, the testimony cited in Findings of Fact 271 to 273 is part of the record relating to the 2011 Application, prior to its consolidation with the 2008 Application. The sole purpose of the 2011 Application was to delete the July 31, 2012 deadline for the landfill to accept MSW. In light of the amount of time needed to identify, site and develop a new landfill, at the time of the contested case hearing in early 2012, the only available landfill for disposal of Oahu's MSW was the WGSL. If the landfill closed on July 31, 2012, there would have been a potential health hazard because there would have been no place to dispose of MSW. (PC Tr. 1/25/12, 12:15-19.)

Finding of Fact 274. Intervenor KOCA objects to the statement that it will take at least seven years from site selection for a new landfill to be operational. But, this finding of fact is supported by substantial evidence. As explained in response to KOCA's objections to Findings of Fact 222-223, Ms. Marsters, Dr. Sharma, and Director

Steinberger established, a minimum of seven years is required and more likely longer to take a landfill from selection to operation. (PC Tr. 4/4/12, 55:10-59:11; 4/11/12, 41:2-42:19; Steinberger Written Testimony at 15-16, ¶41; See also 2011 Exhibit "A36.") The fact that Ms. Marsters, Dr. Sharma, and Director Steinberger have direct experience with the land use process in relation to WGSL, a new landfill is more than likely to take more than seven years to develop. Consequently, taking seven or more years to develop a landfill is not only reasonably diligent but realistic.

Findings of Fact 275 and 276. In its objection to Findings of Fact 275 and 276, Intervenor KOCA misstates the requirement. ENV is required to identify an alternative landfill site, not develop a new landfill. (2019 Planning Commission Decision at 65.) Further, there is nothing in the record to justify closing WGSL before it reaches capacity. Moreover, the record in the contested case proceedings negates the possibility that a landfill could be operational within the time frame proposed by Intervenor KOCA.

V. Responses to Objections to the Planning Commission's Conclusions of Law

As set forth above, ENV disputes the objections raised by Intervenor KOCA to numerous findings of fact. Consequently, ENV disputes Intervenor KOCA's objections to the Planning Commission's conclusions of law.

Conclusion of Law 4. Intervenor KOCA's objection to Conclusion of Law 4 lacks merit. In particular, contrary to Intervenor KOCA's contention, the use of the landfill property until it reaches capacity is consistent with the State's policy of conserving and protecting agricultural lands. As explained in ENV's application, a portion of the WGSL property has been used for landfilling since 1989. The continued use of the remaining available space will allow for the conservation and maintenance of

other, more agriculturally suitable lands. (See State Special Use Permit Application dated December 2008 at 2-2.) Maximizing the capacity of the landfill site demonstrates the City's effort to conserve the limited land resources on Oahu.

Further, Intervenor KOCA's objections to Conclusion of Law 4 are not supported by the record. There is substantial evidence that the 2008 and 2011 Applications (1) are not contrary to the objective sought to be accomplished by the state land use law and regulations; (2) 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 Final Environmental Impact Statement; and (3) would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection.

Conclusion of Law 5. Contrary to Intervenor KOCA's claim, the Planning Commission properly determined that the use of the landfill property is an "unusual and reasonable use" within the agricultural district because (1) such use is not contrary to the objectives sought to be accomplished by the state land use law and regulations; (2) the desired use will not adversely affect surrounding property; (3) such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection; (4) unusual conditions, trends and needs have arisen since the district boundaries and regulations were established; and (5) that the land upon which the proposed use is sought is unsuited for the uses permitted within the district. (See RPC § 2-45.) Further, Intervenor KOCA's claim that the WGSL has posed serious health problems is not supported by facts in the record.

Conclusion of Law 6. Intervenor KOCA's objection to Conclusion of Law 6 lacks merit and is simply a complaint that the Planning Commission did not grant its motion to reopen the contested case hearing. Intervenor KOCA's motion to reopen was properly denied because the evidentiary record is complete, the information Intervenor KOCA seeks to add is not relevant, and the unwarranted reopening of the contested case hearing would unduly delay the proceedings before the Planning Commission.

Conclusion of Law 7. Intervenor KOCA's objection to Conclusion of Law 7 is without merit. Condition No. 14 of the 2009 LUC Decision is not material to the 2009 Planning Commission Decision because the Planning Commission did not impose the condition. The LUC added Condition No. 14 to its decision. Further, as ENV explains in Section III.D. of this response, a temporal restriction is not required. While the duration is not measured by time, it is limited by the capacity of the WGSL. Therefore, it is not an unfettered or indefinite use of a SUP.

VI. Responses to Objections to the Planning Commission's Decision and Order

Intervenor KOCA claims, without merit, that the conditions imposed by the Planning Commission are inadequate to protect the community's health, safety and welfare. The Planning Commission fully discussed and considered the additional conditions proposed by Intervenor KOCA. (See PC Tr. 2/28/19, 88:16-102:8; 4/11/19, 12:18-32:16.) In fact, the Planning Commission continued its February 28, 2019 hearing to a later date so that the commissioners could carefully re-review the record before it adopted the findings of fact, conclusions of law, and decision and order. (Id. at 98:7-100:8.) Ultimately, at the hearing on April 11, 2019, the Planning Commission did not adopt any of the additional conditions proposed by Intervenor KOCA. As discussed in

Section III.B. of this response, the record shows that the Planning Commission did not adopt KOCA's proposed conditions because the commission did not have reliable, probative, and substantial evidence to support the conditions. In addition, the record indicates that the Planning Commission did not adopt Intervenor KOCA's proposed conditions because the Planning Commission understood that the scope of this remanded proceeding is limited to addressing the five items stated in the 2017 LUC Order. (PC Tr. 4/11/19, 31:11-17.)

As the record establishes and ENV's responses to KOCA's objections indicate, the decision and order adopted by the Planning Commission is supported by the evidence. Therefore, ENV objects to the additional conditions proposed by Intervenor KOCA.

VII. Conclusion

For the foregoing reasons, ENV contends that Intervenor KOCA's objections are without merit and that its additional proposed conditions should not be adopted. ENV requests that the LUC approve the 2008 and 2011 applications with the conditions imposed by the Planning Commission.

DATED: Honolulu, Hawaii, September 25, 2019.

Respectfully submitted,

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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: 9-2-03: 72 and 73 In the Matter of the Application of DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU To delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as follows: "14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012."	DOCKET NO. SP09-403 DECLARATION OF KAMILLA C. K. CHAN EXHIBITS 1 - 7

DECLARATION OF KAMILLA C. K. CHAN

I, Kamilla C. K. Chan, hereby declare as follows:

1. I am the attorney for the Department of Environmental Services, City and County of Honolulu in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit "1" is a true and correct copy of the Honolulu Planning Commission agenda for October 25, 2017.

3. Attached hereto as Exhibit "2" is a true and correct copy of the Planning Commission Cancellation Notice for October 25, 2017.

4. Attached hereto as Exhibit "3" is a true and correct copy of the Honolulu Planning Commission agenda for April 4, 2018.

5. Attached hereto as Exhibit "4" is a true and correct copy of the Planning Commission Cancellation Notice for April 4, 2018.

6. Attached hereto as Exhibit "5" is a true and correct copy of a letter dated April 11, 2018 from the Planning Commission to all parties.

7. Attached hereto as Exhibit "6" is a true and correct copy of a letter dated April 26, 2018 from Deputy Corporation Counsel Kamilla C. K. Chan to the Planning Commission.

8. Attached hereto as Exhibit "7" is a true and correct copy of a letter dated August 29, 2018 from Mayor Kirk Caldwell to the Honorable Ernest Y. Martin, Chair and Presiding Officer and Members, Honolulu City Council.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, September 25, 2019.

KAMILLA C. K. CHAN

CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

Meeting of the Planning Commission

DATE: Wednesday, October 25, 2017
TIME: 1:30 p.m.
PLACE: Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii

AGENDA

APPROVAL OF MINUTES: The minutes of the August 30, 2017 and September 27, 2017 meetings, as previously circulated, to be approved by the Commission.

PUBLIC HEARING:
Public hearing notice published in the Honolulu Star-Advertiser on October 13, 2017.

HALAWA AREA TRANSIT-ORIENTED DEVELOPMENT (TOD) PLAN (FK)
Request: Recommendation to adopt a community-based plan that focuses on the area surrounding the future Aloha Stadium rail transit station in Halawa.

CONTINUED - CONTESTED CASE HEARING:

EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

Applicant:	Department of Environmental Services, City and County of Honolulu
Landowner:	City and County of Honolulu
Location:	92-460 Farrington Highway, Honouliuli, Ewa, Oahu
Tax Map Key:	9-2-3: 72 & 73
Existing Use:	Landfill and open space
State Land Use:	Agricultural District
Existing Zoning:	AG-2 General Agricultural District
Land Area:	200.622 Acres
REQUEST:	1) 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
	2) To delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as follows:
	"14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012."

EXHIBIT 1

FOR ACTION

1. Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order

EXECUTIVE SESSION
To consult with the Commission's attorney on the authority, duties, privileges and immunities pertaining to Section 205-6 of the Hawaii Revised Statutes, as amended, and Chapter 2, Subchapters 4 and 5 of the Rules of the Planning Commission, in accordance with HRS 92-5(a)(4).

ADJOURNMENT

If you require special assistance, auxiliary aid and/or service to participate in this event (i.e., sign language interpreter, interpreter for language other than English, or wheelchair accessibility), please call 768-8000, or email your request to info@honoluludpp.org at least three business days prior to the event.

CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

WGSL CONTINUED CONTESTED CASE HEARING IS CANCELLED FOR LACK OF QUORUM AND WILL BE RESCHEDULED AT A LATER DATE

Meeting of the Planning Commission

DATE: Wednesday, October 25, 2017
TIME: 1:30 p.m.
PLACE: Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii

AGENDA

APPROVAL OF MINUTES: The minutes of the August 30, 2017 and September 27, 2017 meetings, as previously circulated, to be approved by the Commission.

PUBLIC HEARING:
Public hearing notice published in the Honolulu Star-Advertiser on October 13, 2017.

HALAWA AREA TRANSIT-ORIENTED DEVELOPMENT (TOD) PLAN (FK)
Request: Recommendation to adopt a community-based plan that focuses on the area surrounding the future Aloha Stadium rail transit station in Halawa.

CONTINUED - CONTESTED CASE HEARING: *** **CANCELLED** ***

EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

Applicant:	Department of Environmental Services, City and County of Honolulu
Landowner:	City and County of Honolulu
Location:	92-460 Farrington Highway, Honouliuli, Ewa, Oahu
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	"14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012."

EXHIBIT 2

FOR ACTION

1. Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order

EXECUTIVE SESSION
To consult with the Commission's attorney on the authority, duties, privileges and immunities pertaining to Section 205-6 of the Hawaii Revised Statutes, as amended, and Chapter 2, Subchapters 4 and 5 of the Rules of the Planning Commission, in accordance with HRS 92-5(a)(4).

ADJOURNMENT

If you require special assistance, auxiliary aid and/or service to participate in this event (i.e., sign language interpreter, interpreter for language other than English, or wheelchair accessibility), please call 768-8000, or email your request to info@honoluludpp.org at least three business days prior to the event.

CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

Meeting of the Planning Commission

DATE: Wednesday, April 4, 2018
TIME: 1:30 p.m.
PLACE: Mission Memorial Conference Room, Mission Memorial Building,
550 South King Street, Honolulu, Hawaii

AGENDA

APPROVAL OF MINUTES: The minutes of the March 7, 2018 meeting, as previously circulated, to be approved by the Commission.

CONTINUED - CONTESTED CASE HEARING:

EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

Applicant:	Department of Environmental Services, City and County of Honolulu
Landowner:	City and County of Honolulu
Location:	92-460 Farrington Highway, Honouliuli, Ewa, Oahu
Tax Map Key:	9-2-3: 72 & 73
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DECISION MAKING ONLY (Parties have concluded their arguments)

1. Intervenors Ko Olina Community Association and Maile Shimabukuro's Motion to Reopen the Contested Case Hearing, continued

2. Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order

EXHIBIT 3

PUBLIC HEARINGS

APPROVAL OF MINUTES: The minutes of the February 7, 2018 and February 21, 2018 meetings, as previously circulated, to be approved by the Commission.

Public hearing notice published in the Honolulu Star-Advertiser on March 5, 2018.

NORTH SHORE, HALEIWA, OAHU – STATE SPECIAL USE PERMIT – 2017/SUP-3, GIRL SCOUTS OF HAWAII

Applicant:	Girl Scouts of Hawaii
Owner:	Girl Scouts Council of the Pacific, Inc.
Location:	58-370 Kamehameha Highway, Haleiwa, Oahu
Tax Map Keys:	5-9-006: Portion of 012
Existing Use:	Overnight camp also known as Camp Paumalu
Existing Zoning:	AG-2 General Agricultural District
Land Area:	Approximately 13.12 acres (Petition Area)
Request:	Girl Scouts of Hawaii (Petitioner) proposes to obtain a Special Use Permit (SUP) to reconstruct an existing nonconforming overnight camp.

Public hearing notice published in the Honolulu Star-Advertiser on March 23, 2018.

1. A REQUEST FOR AMENDMENTS TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU (ROH) 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO THE HALEIWA SPECIAL DISTRICT

   The City Council initiated a proposal to amend the Land Use Ordinance (LUO), relating to Haleiwa Special District.

   Resolution No. 17-79, Relating to the Haleiwa Special District, amends LUO Section 21-9.90 to ensure that the District regulations continue to fulfill their purpose of guiding development and protecting and enhancing the physical and visual aspects of the Haleiwa Special District.

   The Department of Planning and Permitting concurs with the general intent of Resolution 17-79, but recommends amending only certain portions of the Special District Regulations. Of significant note is the deletion of the amendments pertaining to mobile food establishments.

2. A REQUEST FOR AMENDMENTS TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (THE LAND USE ORDINANCE), RELATING TO MOBILE COMMERCIAL ESTABLISHMENTS

   The Department of Planning and Permitting (DPP) is proposing to revise Chapter 21, to create new regulations for mobile commercial establishments. The proposed amendment is to establish mobile commercial establishments as a permitted use in all apartment mixed use, resort, business, and industrial zoning district, to encourage innovation and entrepreneurship via mobile commercial establishments, and to establish land use standards for those mobile commercial establishments.

ADJOURNMENT

If you require special assistance, auxiliary aid and/or service to participate in this event (i.e., sign language interpreter, interpreter for language other than English, or wheelchair accessibility), please call 768-8000, or email your request to info@honoluludpp.org at least three business days prior to the event.

WGSL CONTINUED CONTESTED CASE HEARING IS CANCELLED FOR LACK OF QUORUM AND WILL BE RESCHEDULED AT A LATER DATE

CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

Meeting of the Planning Commission

DATE: Wednesday, April 4, 2018
TIME: 1:30 p.m.
PLACE: Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii

AGENDA

APPROVAL OF MINUTES: The minutes of the March 7, 2018 meeting, as previously circulated, to be approved by the Commission.

CONTINUED - CONTESTED CASE HEARING: *** **CANCELLED*****

EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

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DECISION MAKING ONLY (Parties have concluded their arguments)

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2. Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order

EXHIBIT 4

PUBLIC HEARINGS

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ADJOURNMENT

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PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8007 • FAX: (808) 768-6743
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

April 11, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 2140 0000 1626 8266

Donna Y. L. Leong, Esq.
Corporation Counsel
Kamilla C. K. Chan, Esq.
Deputy Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, HI 96813

Attorneys for Applicant
Department of Environmental Services, City and County of Honolulu

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 2140 0000 1626 8273

Calvert G. Chipchase, Esq.
Christopher T. Goodin, Esq.
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Attorneys for Intervenors
Ko Olina Community Association
and Maile Shimabukuro

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 2140 0000 1626 8280

Richard D. Wurdeman, Esq.
1003 Bishop Street, Suite 720
Honolulu, HI 96813

Attorney for Intervenor
Colleen Hanabusa

EXHIBIT 5

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 2140 0000 1626 8297

Ian L. Sandison, Esq.
Arsima A. Muller, Esq.
Avery C. Matro, Esq.
Carlsmith Ball LLP
American Savings Bank Tower
1001 Bishop Street, Suite 2200
Honolulu, HI 96813

Attorneys for Intervenor
Schnitzer Steel Hawaii Corp.

RE: Planning Commission Continued Contested Case Hearing,
Ewa - State Special Use Permit Amendment Application – 2008/SUP-2,
Waimanalo Gulch Sanitary Landfill (WGSL)

The Planning Commission's Waimanalo Gulch Sanitary Landfill continued contested case hearing has no quorum. We are unable to provide a date for the next hearing at this time.

If you have any questions, please contact the Planning Commission at 768-8007.

Sincerely,

for Theresia C. McMurdo, Vice Chair
Planning Commission

TCM:gct

cc: Kathy K. Sokugawa, Acting Director, Department of Planning and Permitting
Duane W. H. Pang, Deputy Corporation Counsel, COR
Rozelle A. Agag, Deputy Corporation Counsel, COR
Brian C. Yee, Esq., Deputy Attorney General
Leo Asuncion, Acting Director, Office of Planning
Bert K. Saruwatari, Land Use Commission

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 • FAX: (808) 768-5105 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR

DONNA Y. L. LEONG
CORPORATION COUNSEL

PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

April 26, 2018

Theresia C. McMurdo, Vice Chair
Planning Commission
c/o Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Vice Chair Theresia C. McMurdo:

Re: Planning Commission Contested Case Hearing
Ewa State Special Use Permit Amendment Application – 2008/SUP-2,
Waimanalo Gulch Sanitary Landfill

The parties were recently informed that the Planning Commission lacks a quorum to adjudicate the above-referenced contested case because of the recusal of a fifth member of the commission.

By this letter, Applicant City and County of Honolulu, Department of Environmental Services, respectfully requests that the Planning Commission take appropriate action to urge the Mayor to make a temporary appointment to the commission, as authorized by Section 3-1.5 of the Revised Ordinances of Honolulu. The appointment of a temporary appointee will allow the commission to attain quorum so that it may address the five clarifications requested by the Land Use Commission in its June 6, 2017 order, without further delay.

Sincerely,

KAMILLA C. K. CHAN
Deputy Corporation Counsel

KCC:di
cc: Calvert G. Chipchase, Esq., Attorney for Intervenors Ko Olina Community Association and Maile Shimabukuro
Ian L. Sandison, Esq., Attorney for Intervenor Schnitzer Steel Hawaii Corp.
Richard N. Wurdeman, Esq., Attorney for Intervenor Colleen Hanabusa
Kathy K. Sokugawa, Acting Director, Department of Planning and Permitting
Bryan C. Yee, Esq., Deputy Attorney General
Leo Asuncion, Director, Office of Planning
Bert K. Saruwatari, Land Use Commission
16-09965/646733

EXHIBIT 6

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813
PHONE: (808) 768-4141 • FAX: (808) 768-4242 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

August 29, 2018

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

On May 3, 2018, the Acting Chair of the Planning Commission ("Commission"), Theresia C. McMurdo informed me that the Commission is currently adjudicating a matter entitled Ewa State Special Use Permit Amendment Application-2008/SUP-2, Waimanalo Gulch Sanitary Landfill. Acting Chair McMurdo further informed me that during the course of these hearings, five of the nine members which make up the Commission, have disclosed conflicts of interest and can no longer participate in the proceedings. As a result, the Commission is unable to obtain a quorum to further hear or consider this matter.

This is to inform you that pursuant to Section 3-1.5 of the Revised Ordinances of Honolulu 1990, as amended, I have appointed Donald Goo, as a temporary member of the Planning Commission to assist in the completion of this contested case proceeding.

Should you have any inquiries relating to this matter, please contact my executive assistant Jamie Go at 768-6608.

Sincerely,

Kirk Caldwell
Mayor

Enclosure

cc: Mr. Donald Goo
Planning Commission
Department of Planning and Permitting

EXHIBIT 7

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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: 9-2-03: 72 and 73 In the Matter of the Application of DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU To delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as follows: "14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012."	DOCKET NO. SP09-403 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF the **DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S RESPONSE TO INTERVENORS KO OLINA COMMUNITY ASSOCIATION**

AND MAILE SHIMABUKURO'S OBJECTIONS TO PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, DATED JUNE 10, 2019 was duly served by hand-delivery to the following on the date below, addressed as follows:

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DATED: Honolulu, Hawai'i, September 25, 2019.

KAMILLA C. K. CHAN
Deputy Corporation Counsel

17-03069.001/825138