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LAND USE COMMISSION
STATE OF HAWAII

2019 OCT 18 P 4: 04

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special

DOCKET NO. SP09-403

PLANNING COMMISSION FILE NO.
2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
SUBMISSION OF PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER
ADOPTING WITH
MODIFICATIONS THE CITY AND
COUNTY OF HONOLULU
PLANNING COMMISSION'S
RECOMMENDATION TO
APPROVE SPECIAL USE PERMIT
APPLICATIONS**

**[PROPOSED] FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER
ADOPTING WITH
MODIFICATIONS THE CITY AND**

**COUNTY OF HONOLULU
PLANNING COMMISSION'S
RECOMMENDATION TO
APPROVE SPECIAL USE PERMIT
APPLICATIONS**

**DECLARATION OF
CHRISTOPHER T. GOODIN**

EXHIBIT 1

CERTIFICATE OF SERVICE

Hearing:

Date: October 9 and 10, 2019

Time: 9:00 a.m.

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

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

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S SUBMISSION OF PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER ADOPTING WITH
MODIFICATIONS THE CITY AND COUNTY OF HONOLULU PLANNING
COMMISSION'S RECOMMENDATION TO APPROVE
SPECIAL USE PERMIT APPLICATIONS**

Pursuant to the Land Use Commission's request during the October 10, 2019 hearing, Intervenor Ko Olina Community Association (the "Association") and Maile Shimabukuro (together, "KOCA") submit the attached proposed Findings of

Fact, Conclusions of Law and Decision and Order Adopting with Modifications the City and County of Honolulu Planning Commission’s (the “**Planning Commission**” or “**PC**”) Recommendation to Approve Special Use Permit Applications (the “**Proposed Decision**”).

1. Format of Proposed Decision. The format of the Proposed Decision is patterned after the State of Hawai‘i Land Use Commission’s (“**LUC**”) Findings of Fact, Conclusions of Law, and Decision and Order Adopting with Modifications, the City and County of Honolulu Planning Commission’s Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008 (the “**LUC’s 2008 Decision**”) in the prior proceeding for the Waimanalo Gulch Sanitary Landfill (“**WGSL**” or “**Landfill**”), LUC Docket No. SP87-362. A copy of the LUC’s 2008 Decision is attached as Exhibit 1.

2. Substance of Findings and Conclusions. The substance of the Findings of Fact and Conclusions of Law in the Proposed Decision is based on the record in this consolidated proceeding.

The Findings of Fact and Conclusions of Law in the current Proposed Decision support the condition adopted by the LUC at the October 10, 2019 hearing to terminate the special permit and close WGSL on or before March 2, 2028. That termination of the special permit and closure of the Landfill is consistent with the LUC’s authority to “specify or change the time period of the special permit.” Hawai‘i Administrative Rules (“**HAR**”) § 15-15-95(f); *see also* Hawai‘i Revised Statutes (“**HRS**”) § 205-6(e) (authorizing the LUC to “approve with modification . . . the [spe-

cial permit] petition”); HRS § 205-6(d) (authorizing the LUC to “impose additional restrictions as may be necessary or appropriate in granting the approval”). As set forth more fully below, the termination and closure are supported by the 15-year capacity estimate that the ENV provided in its 2011 Application, by the ENV’s prior promises and representations to close the Landfill, by the adverse impact the Landfill has had on the surrounding community, by the length of time the Landfill has already been in operation and by the time to site and develop a new landfill.

3. Decision and Order. The closure condition is Condition 3 in the Decision and Order. In accord with HRS § 205-6(d), the closure condition is in “addition[]” to the “protective restrictions as may be deemed necessary” under HRS § 205-6(c) and that were adopted by the Planning Commission in this matter. Those protective restrictions are set out in the Decision and Order and consist of the following:

- All of the conditions in the Planning Commission’s June 10, 2019 Findings of Fact, Conclusions of Law, and Decision and Order (the “**Planning Commission’s 2019 Decision**”).
- All conditions, with the exceptions of Condition 4 and 14, in the LUC’s October 22, 2009 Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications (the “**LUC’s 2009 Decision**”). These conditions from the LUC’s 2009 Decision were adopted by the Planning Commission in its 2019 Decision. See Planning Commission’s 2019 Decision at 66 (“The Planning Commission further orders that . . . the 2009 LUC Order is in-

incorporated by reference herein”); *see also id.* at 65 (“deleting Condition Nos. 4 and 14”).

The following table identifies the source of each condition in the Proposed Decision and any revisions.

Condition	Source for Condition	Revisions
1.a (identification of alternative landfill site)	PC’s 2019 Decision Condition 1	A portion of the first sentence and the entire second and third sentences were deleted because they contemplate that WGS� will be used to “capacity,” which is contrary to the LUC’s closure condition. The fourth sentence was deleted because it is not a condition, but rather an explanation.
1.b (semi-annual reports)	PC’s 2019 Decision Condition 2	None.
1.c (alternative technologies)	LUC’s 2009 Decision Condition 5, which was incorporated by PC’s 2019 Decision	None.
1.d (report to the public)	LUC’s 2009 Decision Condition 15, as modified by Circuit Court to change the reference from the City Council to the ENV. This condition was incorporated by PC’s 2019 Decision.	None.
1.e (public hearing)	LUC’s 2009 Decision Condition 15, as modified by Circuit Court to change	None.

	the reference from the City Council to the ENV. This condition was incorporated by PC's 2019 Decision.	
2.a (hours of operation)	LUC's 2009 Decision Condition 8, which was incorporated by PC's 2019 Decision	None.
2.b (coordination with Hawaiian Electric)	LUC's 2009 Decision Condition 9, which was incorporated by PC's 2019 Decision	None.
2.c (compliance with ordinance and DOH regulations)	LUC's 2009 Decision Condition 10, which was incorporated by PC's 2019 Decision	None.
2.d (approvals)	LUC's 2009 Decision Condition 1, which was incorporated by PC's 2019 Decision	None.
2.e (air pollution control)	LUC's 2009 Decision Condition 2, which was incorporated by PC's 2019 Decision	None.
2.f (indemnity)	LUC's 2009 Decision Condition 3, which was incorporated by PC's 2019 Decision	None.
3 (closure date)	LUC's 10/10/19 hearing	None.
4 (release of waste or leachate)	PC's 2019 Decision Condition 4	None.
5 (additional conditions)	LUC's 2009 Decision Condition 11, which was incorporated by PC's 2019	None.

	Decision	
6 (enforcement)	LUC's 2009 Decision Condition 12, which was incorporated by PC's 2019 Decision	None.
7 (notification of termination)	LUC's 2009 Decision Condition 13, which was incorporated by PC's 2019 Decision	None.

KOCA respectfully asks that the LUC enter the Proposed Decision.

DATED: Honolulu, Hawai'i, October 18, 2019.

CADES SCHUTTE
A Limited Liability Law Partnership



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BEFORE THE LAND USE COMMISSION

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In the Matter of the Application of the

DEPARTMENT OF ENVIRONMENTAL
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to Allow A 92.5-Acre Expansion and
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Sanitary Landfill, Waimānalo Gulch,
O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72
And 73

FILE NO. 2008/SUP-2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER
ADOPTING WITH
MODIFICATIONS THE CITY AND
COUNTY OF HONOLULU
PLANNING COMMISSION'S
RECOMMENDATION TO APPROVE
SPECIAL USE PERMIT
APPLICATIONS**

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.”

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
AND ORDER ADOPTING WITH MODIFICATIONS THE CITY
AND COUNTY OF HONOLULU PLANNING COMMISSION'S
RECOMMENDATION TO APPROVE SPECIAL
USE PERMIT APPLICATIONS**

On December 3, 2008, Applicant Department of Environmental Services of the City and County of Honolulu (the “ENV” or “City”) filed an application (the “**2008 Application**”) for a new special use permit (“SUP”) for the Waimanalo Gulch Sanitary Landfill (the “**Landfill**” or “**WGSL**”) and for the withdrawal of the existing SUP for the Landfill. On June 28, 2011, the ENV filed an application to modify the SUP for the Landfill (the “**2011 Application**”). The City and County of Honolulu Planning Commission (the “**Planning Commission**”) consolidated the 2008 and 2011 Application proceedings.

The State of Hawai‘i Land Use Commission (“LUC”), having examined the complete record of the proceedings on the 2008 and 2011 Applications (together, the “**Applications**”) and upon consideration of the matters discussed therein at the LUC’s meetings on October 9 and 10, 2019, in Honolulu, Hawai‘i, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order pursuant to Hawai‘i Revised Statutes (“HRS”) §§ 205-6 and 91-12.

I. FINDINGS OF FACT

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

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

3. In this consolidated matter, the ENV seeks, among other things, to expand the permitted size of the Landfill by 92.5 acres for a total of approximately 200 acres. 2008 Application at 1-1. In the 2011 Application, the ENV stated that, “[b]ased upon typical rates of disposal at WGS�, that remaining capacity is estimated to be approximately fifteen years.” Ex. K161 (6/28/11 letter from ENV Director Steinberger at 12). The ENV noted that “[t]he remaining capacity of WGS� is an estimate only as rates of disposal fluctuate based upon numerous factors, e.g., the economy, waste diversion programs such as the implementation of island-wide recycling, possible disaster events, etc.” *Id.* at 12 n.3

A. Procedural History Regarding the 2008 Application

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

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

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

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

(b) The ENV Filed the 2008 Application.

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

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

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

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

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

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

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

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

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

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

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

(e) May 1, 2009 Site Visits.

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

(f) May 6, 2009 Hearing.

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

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(g) Mr. Apo Moved to Intervene.

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

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

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

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

(i) May 20, 2009 Hearing.

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

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

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

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

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

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

(k) June 10, 2009 Hearing.

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

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

28. The Planning Commission denied Mr. Apo's petition to intervene on the grounds that it was untimely filed, that Mr. Apo's position regarding the 2008 Application was substantially the same as the position of the Intervenors and that the proceeding would be inefficient and unmanageable if Mr. Apo were allowed to intervene. 2008AP 7/27/09 Planning Commission's findings of fact, conclusions of law, and order at 3.

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

(l) The Parties Filed Their Respective Witness Lists.

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

(m) June 22, 2009 Hearing.

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

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

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

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

(n) June 24, 2009 Hearing.

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

36. The examination of Dr. Sharma was completed.

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

(o) Intervenors Moved to Dismiss the 2008 Application.

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

(p) July 1, 2009 Hearing.

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

40. The examination of Mr. Whelan was completed.

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

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

(q) July 2, 2009 Hearing.

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

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

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

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

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

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

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

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

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

(s) July 8, 2009 Hearing.

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

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

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

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

55. The examination of Mr. Apo was completed.

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

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

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

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

(u) **The Commission’s 2009 Decision**

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

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

1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant’s effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant’s effort to select a new landfill site on O’ahu. Upon the selection of a new landfill site or sites on O’ahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.
 2. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
 3. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing
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new landfill sites on O‘ahu, the WGS�’s operations, and Applicant’s compliance with the conditions imposed herein. The annual reports also shall address the Applicant’s efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order.

.....

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

6. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

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

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

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

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

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

(v) The LUC’s 2009 Decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The ENV's Appeal to Circuit Court.

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

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

b. Intervenor’s Appeal to Circuit Court.

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

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

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

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

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

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

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

78. Intervenor’s did not appeal the circuit court’s ruling.

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

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

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B. Procedural History Regarding the 2011 Application

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

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

82. The 2011 Application sought to "modify the LUC's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications, dated October 22, 2009 [(the "LUC's 2009 Order")], by deleting the July 31, 2012, deadline to cease disposal of municipal solid waste at [the Waimanalo Gulch Sanitary Landfill], as set forth in Condition No. 14 of said Order." 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Planning Commission Held a Prehearing Conference.

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

(d) The Parties Filed Witness Lists.

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

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

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

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

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

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

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

102. On November 29, 2011, the parties stipulated to amend the briefing schedule set forth in the order regarding the prehearing conference. The parties agreed that “[t]he deadline for filing and serving written testimony and exchanging exhibits shall be December 13, 2011.”

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

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

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

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

106. Thereafter, the parties made opening statements.

(i) Written Direct Testimony.

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

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

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

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

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

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

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

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

113. The subpoena directed the production of, among other things, “all documents containing or evidencing fabricated readings; all investigation reports related Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu, Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications the City and County of Honolulu Planning Commission’s Recommendation to Approve Special Use Permit Applications

to the fabricated readings; all assessment documents related to the fabricated readings; . . . and all documents related to remedial actions taken to address the fabricated readings.” 2011AP Ex. K164 (subpoena duces tecum at 2).

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

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

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

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

(l) January 11, 2012 Hearing.

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

119. The ENV called Director Steinberger to testify.

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

(m) January 25, 2012 Hearing.

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

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

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

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

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

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

(n) February 8, 2012 Hearing

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

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

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

(o) March 7, 2012 Hearing

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

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

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

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

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

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

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

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

(p) April 4, 2012 Hearing.

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

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

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

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

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

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

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

(q) April 11, 2012 Hearing.

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

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

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

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

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

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(r) April 23, 2012 Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Hawai'i Supreme Court's Decision.

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

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

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

166. Accordingly, the supreme court vacated the circuit court's judgment affirming the LUC Decision and remanded the case on the 2008 Application "to the LUC for further hearings as the LUC deems appropriate." *Id.* at 18, 275 P.2d at 822.

167. In remanding the 2008 Application proceeding, the supreme court acknowledged the 2011 Application proceeding pending before the Planning Com-

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mission and “encourage[d] the LUC to consider any new testimony developed before the Planning Commission in that case.” *Id.* at 19 n.16, 275 P.2d at 823 n.16.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190. The Planning Commission continued the hearing.

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

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

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

(i) The Planning Commission Continued the Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

220. On February 10, 2017, Ms. Hanabusa filed her (1) renewal of submission of proposed findings of fact and conclusions of law, and (2) objections and rebuttals.

221. On February 17, 2017, the ENV a motion to strike Ms. Hanabusa's renewal of submission of proposed findings of fact and conclusions of law.

222. On February 23, 2017, Ms. Hanabusa filed a memorandum in opposition to the ENV's motion to strike.

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

223. On March 1, 2017, the Planning Commission held a hearing at Mission Memorial Hearings Room. The Planning Commission granted the ENV's Motion to Strike. The Commission voted to adopt Findings of Fact, Conclusions of Law, and Decision and Order.

224. On or about April 28, 2017, the Planning Commission filed Findings of Fact, Conclusions of Law, and Decision and Order. Among other things, the Planning Commission imposed the following condition: "3. The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity."

(t) The LUC remanded the Proceeding with Instructions.

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

226. On May 12, 2017, KOCA filed a motion to deny and remand and an alternate motion to deny the applications unless additional conditions are imposed.

227. On May 19, 2017, the ENV filed responses to KOCA's motions.

228. On May 22, 2017, the State Office of Planning filed its statement recommending approval of ENV's special permit application.

229. On May 22, 2017, Ms. Hanabusa filed a joinder in KOCA's motion to deny and remand.

230. On May 23, 2017, the LUC received correspondence from KOCA regarding a request to settle the proposed form of order granting in part Intervenor's motion to deny and remand, and correspondence from Intervenor Schnitzer regarding its statement of position on Intervenor KOCA and Shimabukuro's motion to deny and remand.

231. On May 24, 2017, the LUC considered Intervenor KOCA's Motion to Deny and Remand. The LUC ruled as follows:

[T]he Motion to Deny and Remand is granted in part and denied in part. Accordingly, the record on the 2008 Application and 2011 Application shall be REMANDED to the Planning Commission pursuant to [Hawai'i 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 WGSF reaching its capacity and the implications it has on the closure date of the WGSF 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 WGSF, 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.

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(u) KOCA's Motion to Disqualify Chair Hazama.

232. On June 20, 2017, KOCA filed a motion for recusal or disqualification of Planning Commission Chair Hazama.

233. On June 26, 2017, the ENV filed a response to the motion.

(v) The Planning Commission's August 16, 2017 Hearing.

234. On August 16, 2017, the Planning Commission held a hearing in Mission Memorial Hearings Room. Chair Hazama declined to recuse himself.

(w) KOCA's Objections to Adoption of Findings.

235. On October 23, 2017, KOCA filed objections to adoption of proposed findings of fact, conclusions of law, and decision and order.

(x) KOCA's Motion to Reopen and Objections to Agenda

236. On November 22, 2017, KOCA filed a motion to reopen contested case hearing.

237. On November 30, 2017, KOCA filed objections to the agenda for December 6, 2017.

238. On December 2, 2017, the ENV filed an opposition to KOCA's motion to reopen.

239. On December 2, 2017, Ms. Hanabusa filed a joinder in KOCA's objections to the agenda for December 6, 2017.

(y) The Planning Commission's December 6, 2017 Hearing.

240. On December 6, 2017, the Planning Commission held a hearing at Mission Memorial Hearings Room. The Commission voted to adopt proposed findings of fact, conclusions of law, and decision and order.

(z) Planning Commission's Proposed Decision, Exceptions, and KOCA's Motion to Strike.

241. On or about December 6, 2017, the Planning Commission circulated proposed findings of fact, conclusions of law, and decision and order.

242. On February 5, 2018, the parties filed exceptions to the proposed findings of fact, conclusions of law, and decision and order. Schnitzer's submission included proposed findings of fact, conclusions of law, and decision and order.

243. On February 13, 2018, KOCA filed a motion to strike Schnitzer's February 2018 proposed findings of fact, conclusions of law, and decision and order.

244. On February 14, 2018, Schnitzer filed a memorandum in opposition to the motion to strike.

245. On February 16, 2018, KOCA filed a response to Schnitzer's proposed findings of fact, conclusions of law, and decision and order.

(aa) Planning Commission's March 7, 2018 hearing.

246. On March 7, 2018, the Planning Commission held a hearing in Mission Memorial Hearings Room. The Commission granted KOCA's motion to strike Schnitzer's proposed findings of fact, conclusions of law, and decision and order. The

Commission denied KOCA's motion to reopen contested case hearing. The Commission also heard argument from the parties regarding the proposed decision.

(bb) Stayed continued for lack of quorum.

247. On April 11, 2018, the Planning Commission advised the parties that the matter could not be scheduled for further hearing based on lack of quorum.

(cc) KOCA's position statement, the Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order, and the Parties Exceptions.

248. On January 7, 2019, KOCA filed a position statement regarding the process for adoption of any decision and order.

249. On January 15, 2019, the Planning Commission circulated proposed findings of fact, conclusions of law, and decision and order.

250. On February 7, 2019, Ms. Hanabusa filed objections to the proposed findings of fact, conclusions of law, and decision and order.

251. On February 8, 2019, the ENV and Schnitzer filed exceptions to the proposed findings of fact, conclusions of law, and decision and order.

252. On February 11, KOCA filed exceptions to the proposed findings of fact, conclusions of law, and decision and order.

253. On February 13, 2019, KOCA filed a stipulation allowing KOCA an extra day to file its exceptions.

(dd) The Planning Commission's February 28, 2019 Hearing.

254. On February 28, 2019, the Planning Commission held a hearing in Mission Memorial Hearings Room. The Commission approved the stipulation. The Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu, Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications the City and County of Honolulu Planning Commission's Recommendation to Approve Special Use Permit Applications

Commission heard argument regarding the proposed decision. The Commission continued the hearing based on Commissioner Hayashida's request to review the record.

(ee) The ENV's Motion to File Supplemental Brief.

255. On March 18, 2019, the ENV filed a motion for leave to file supplemental brief.

256. On March 25, 2019, KOCA filed a response to ENV's motion for leave to file supplemental brief and objection to ENV's March 19, 2019 status report.

257. On April 10, 2019, Schnitzer filed a position statement on the Planning Commission's proposed condition concerning closure of the Landfill.

(ff) Planning Commission's April 11, 2019 Hearing.

258. On April 11, 2019, the Planning Commission held a hearing at Mission Memorial Hearings Room.

259. The Commission voted to adopt findings of fact, conclusions of law, and decision and order.

(gg) Planning Commission's June 10, 2019 Findings of Fact, Conclusions of Law, and Decision and Order.

260. On June 10, 2019, the Planning Commission filed its Findings of Fact, Conclusions of Law, and Decision and Order (the "**Planning Commission's 2019 Decision**").

(hh) Filings before the LUC.

261. By submissions dated September 11 and 20, 2019, the Planning Commission transmitted the record to the LUC.

262. On September 11, 2019, KOCA filed objections to the Planning Commission's 2019 Decision.

263. On September 24, 2019, Ms. Hanabusa filed objections to the Planning Commission's 2019 Decision.

264. On September 25, 2019, the ENV and Schnitzer filed responses to KOCA's objections.

265. On October 1, 2019, the Office of Planning filed a memorandum regarding the Planning Commission's 2019 Decision.

266. On October 2, 2019, KOCA filed its reply in support of its objections.

267. On October 4, 2019, Schnitzer filed a response to Ms. Hanabusa's objections.

268. On October 7, 2019, the ENV and KOCA filed responses to the Office of Planning's memorandum.

269. On October 9, 2019, the Office of Planning and KOCA filed a stipulation regarding conditions.

(ii) The LUC's October 9 and 10, 2019 Hearings.

270. On October 9 and 10, 2019, the LUC held hearings at the Airport Conference Center.

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271. During the October 9 hearing, the LUC heard argument from the parties.

272. During the October 10 hearing, the LUC continued hearing argument from the parties and thereafter deliberated. The ENV affirmed that the record in this matter is complete. A motion was made to approve the Applications as modified and subject to the condition that the Landfill close by March 2, 2028. By a vote tally of six ayes and two nays, the motion carried.

D. Substantive Findings

(a) History of the Landfill.

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

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

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

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

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

278. Elevations at the property range from a low of 70 feet above mean sea level (msl) to 940 feet (msl) in the northern portion. Except for areas of fill, the steep-

sloped valley contains dryland grasses and an abundance of rock outcrops. 2008AP DPP's 2009 Recommendation at 8.

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

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

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

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

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

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

284. Because the Landfill is located with the State Land Use Agricultural District, 2011AP Ex. K12 at 9 (¶ 42) (8/4/09 Commission order), and a landfill is not a use expressly allowed under Hawai'i Revised Statutes chapter 205, 2011AP

Ex. K155 at 17 (¶ 7) (3/14/08 LUC order), the landfill operations require an SUP pursuant to HRS § 205-6.

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

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

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

288. “Municipal solid waste” or “MSW” is defined as “garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sew-

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age or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants,” HRS § 342G-1; *see also* HAR § 11-58.1-03.

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

290. That same year, the site was expanded by an additional 26 acres pursuant to the LUC’s Findings of Fact, Conclusions of Law and Decision and Order dated October 31, 1989. 2011AP Ex. K70 at 5 (¶ 18), 9 (10/31/89 LUC order).

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

292. The community objected. In addition to citing health and safety concerns, the community identified a promise by Mayor Frank Fasi that the Landfill would only be used until the original acreage was filled. 2011AP Rezendes Written Direct Testimony at 3–4 (¶¶ 8–10).

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

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

295. In the 2003 proceedings before the LUC, Director Doyle, who has served as the Chief of the Division of Refuse for 32 years, explained the compromise that the ENV had made with the community as follows: “[W]e had originally thought that we would have this landfill operate for another 15 years. And then as part of our discussions with the community and in trying to take a look at their concerns it was reduced to a five-year operation.” 2011AP Ex. K85 at 96:18–22 (3/27/03 Tr.: Doyle); *see also* 1/11/12 Tr. at 32:3–7 (Steinberger: “Q. So in fact, it was a compromise with the community that drove the five-year deadline and not the solid waste management permit; isn’t that right? A. By this testimony, I would assume that was correct at the time.”); 2011AP Ex. K85 at 117:11–13 (3/27/03 Tr.: Todd Apo: “We do appreciate the city’s efforts in working with the community. They obviously were looking at 60 acres for 15 years, have reduced that to 15 acres for five years.”); 2011AP Ex. K220 at 177:1–9 (7/1/09 Tr.: Doyle).

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

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

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

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

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

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

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

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

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

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

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

304. No new landfill was developed.

305. In 2007, the ENV filed an "application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Landfill from

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May 1, 2008, to May 1, 2010, to extend the closure deadline to May 1, 2010, or until the WGS� reaches its permitted capacity, whichever occurs first.” 2011AP Ex. K155 at 1–2 (3/14/08 LUC order).

306. In its Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications, the City and County of Honolulu Planning Commission’s Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008, the LUC amended the condition to extend the closure deadline to November 1, 2009. 2011AP Ex. K155 at 18 (¶ 12) (3/14/08 LUC order: “The 200-acre Property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan by November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first.”).

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

(c) The 2008 Application and the Expansion Project.

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

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309. In addition to completing an FEIS for the Project, *see supra* section I.A.(a), the ENV obtained a traffic impact report (“TIR”) for the Project. 2008AP Tr. 6/22/09 51:6–11 (Takeda); 2008AP Ex. A1, Appendix I (2008 FEIS). The TIR analyzed the existing traffic transiting Farrington Highway on both the eastbound and westbound approaches as well as the volume of traffic entering and exiting the Landfill. 2008AP Ex. A1, Appendix I (2008 FEIS).

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

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

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

313. The ENV proposed to address SIHP# 50-80-12-6903 within a mitigation/preservation plan to be reviewed and accepted by the State Historic

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Preservation Division, Department of Land and Natural Resources, State of Hawai'i ("SHPD"). 2008AP 6/22/09 Tr. at 49:21–50:5 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD). Specifically, the ENV proposed to temporarily relocate the upright stones to Battery Arizona and return the upright stones as close as possible to their current locations after the Landfill has been closed. 2008AP 6/22/09 Tr. at 49:5–20 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD).

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

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

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

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

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317. Before the Landfill was permitted, the area where Ko Olina Resort sits was intended to be a resort. 2011AP Williams Written Direct Testimony at 2–3 (¶¶ 7–9); 2011AP Ex. K132 at 3, 7 (Ewa Development Plan: “[The area now known as Ko Olina] shall be developed as a resort destination area providing scenic, recreational and open space elements with an integration of residential and commercial uses into the overall design of the resort.”).

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

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

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

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

322. Construction period impacts will generate “\$3.7 billion in direct spending, two billion in indirect and induced economic benefits, and 26,700 jobs. This is a total of a one-time economic benefit of \$5.7 billion, about equal to what we'd be spending on the rail.” 2011AP 2/8/12 Tr. at 21:21–22:1 (Williams).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

storm water management system design to ensure compliance with applicable regulations and the SUP. 2011AP Ex. K101 at 2 (10/25/06 warning letter).

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

d. On September 5, 2008, DOH sent a warning letter to Waste Management and the ENV identifying three potential violations. 2011AP Ex. K82 (9/5/08 warning letter). These potential violations included unauthorized storage of materials and the failure to submit written notification of the exceedance and verification of methane gas monitoring results. 2011AP Ex. K82 at 2 (9/5/08 warning letter).

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

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

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

338. In addition to the foregoing, at the time of the hearing in 2011 the DOH had a pending enforcement case against the Landfill. 2011AP 4/4/12 Tr. at 156:20–22 (Gill: “There is a pending enforcement case which I can’t speak to in any detail regarding the handling of storm water runoff from the landfill.”); 2011AP 4/4/12 Tr. at 157:10–12 (Gill: “There is . . . , to be clear, potential enforcement action regarding the events around the flood event at the landfill.”).

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

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

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

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

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

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

342. In December 2010 and January 2011, the Landfill experienced heavy rains. 2011AP Ex. K97 at 3 (1/11/11 DOH inspection report). On December 23, 2010, the DOH Clean Water Branch documented the unauthorized pumping of leachate from Cell E6 into State waters. 2011AP Ex. K52 (12/23/10 DOH investigation report).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

358. For ten days, Ko Olina expended substantial time and resources to clean up the MSW that had wasted up on Ko Olina's beaches. 2011AP Williams Written

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Direct Testimony at 22 (¶ 48); 2011AP Hospodar Written Direct Testimony at 7–11 (¶ 21); 2011AP 4/23/12 Tr. at 42:9–16 (Belluomini).

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

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

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

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

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

364. According to Deputy Director Gill, “the reason that the flood took place is” the western diversion “channel had not been completed at the time that the big

rains came.” 2011AP 4/4/12 Tr. Supp. at 8:7–13 (Gill); *see also* 2011AP 4/11/12 Tr. at 65:11–16, 67:1–4 (Sharma); 2011AP 3/7/12 Tr. at 29:1–6, 39:12–21 (Miller).

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

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

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

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

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

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

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

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

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

374. However, the ENV knew it would have to go through the SUP approval process and, given the history of the Landfill and the prior proceedings, should have anticipated intervention in the approval proceedings. 2011AP 4/11/12 Tr. at 145:24–146:14, 149:3–5 (Steinberger); 2011AP Ex. K2 (6/5/03 LUC order); 2011AP Ex. K155 (3/14/08 LUC order); 2011AP Ex. K155 at 3 (¶¶ 5–8) (6/5/03 LUC order); 2011AP Ex. K85 at 125:7–11, 128:2–5, 145:21–146:2 (3/27/03 Tr.: Doyle).

375. No one from Waste Management appeared to testify.

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

377. This inadequate planning forced the ENV and Waste Management to deviate from the Landfill's design plans and the industry standard and by filling Cell E6 before the diversion channel was in place. 2011AP 4/11/12 Tr. at 66:7–9

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(Sharma: “And [the diversion channel] was intend to be [in place prior to the storm].”); 2011AP 4/11/12 Tr. at 66:15–17 (Sharma: “[W]e were going to construct them both sequentially, not place the waste before the diversion channel is completed.”); 2011AP 3/7/12 Tr. at 129:25–130:4 (Miller: “Q. So if you had been advising the operator and the City, would you have said that it was reasonable to go forward with filling the cell before the diversion system had been completed? A. No, I would not.”).

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

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

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

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

381. The ENV and private business engage in various efforts to divert MSW and certain other wastes from the Landfill. In 2010, the last year for which waste totals are available in the contested case proceeding, the ENV diverted 34.4% of the total MSW from the Landfill to H-POWER. 2011AP Ex. A27 (O'ahu MSW waste stream chart). In 2010, the ENV also diverted 36.9% of the total MSW from the Landfill through general material recycling. 2011AP Ex. A27 (O'ahu MSW waste stream chart). In May 2010, ENV accomplished island wide-expansion of its curbside green waste recycling program to 160,000 residences. 2011AP Steinberger Written Direct Testimony at 19 (¶ 56). The City has a program of community recycling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. 2011AP Steinberger Written Direct Testimony at 20–21 (¶¶ 61–62).

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

383. The continued volume of MSW at the Landfill is due in part to the fact that the City is behind other municipalities with respect to its recycling efforts. As Deputy Director Gill explained in an interview that was accepted into the record without objection, “[W]e’re doing about half as well as we need to [with respect to

landfill diversion], and not only as a city, but as a state” 2011AP 4/4/12 Tr. Supp. at 12:5–6 (Gill).

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

a. Sewage Sludge and Biosolids.

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

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

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

388. Branch Chief Chang acknowledged that sewage sludge can be burned and that other municipalities do burn sewage sludge. 2011AP 1/25/12 Tr. 54:3, 54:11-13 (Chang); *see also* 2011AP 1/11/12 Tr. 68:17 (Steinberger: “Sewage sludge can be

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incinerated.”). As of the close of evidence in this matter, the ENV did not burn sewage sludge. 2011Ap 1/11/12 Tr. at 68:12–15.

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

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

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

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

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

b. Food Waste and Green Waste.

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

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

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

c. Medical Waste.

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

d. Comparison with Other Municipalities.

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

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

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

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

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

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

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

404. No one from Covanta testified in these proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

429. In addition to the third boiler at H-POWER, the ENV will have the ability to recycle green waste, food waste and biosolids through its In-Vessel Conversion Facility, which was scheduled to be operational in 2013. 2011AP 4/11/12 Tr. at 79:2–

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3, 87:25–88:2, 176:11–13 (Steinberger); 2011AP Steinberger Written Direct Testimony at 20 (¶ 58); 2011AP Ex. K148 at 4 (Parametrix alternatives memorandum).

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

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

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

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

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

435. Until the ENV achieves that goal, burning at H-POWER sewage sludge, any biosolids that are not beneficially reused, green waste, and food waste is a bet-

ter use of those resources than landfilling them. 2011AP 3/7/12 Tr. at 176:22-177:1 (Miller).

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

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

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

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

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

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

441. Mr. Miller’s estimate is consistent with the timeline set out by Director Doyle. Director Doyle stated before the LUC: “We have asked for a five-year exten-

sion because that's the time that we believe it's going to take in order for us to establish a new landfill." 2011AP Ex. K85 at 95:6–8 (3/27/03 Tr.: Doyle). Director Doyle added: "We think the time that is necessary for us to get us there is at least three, probably four years just to get ourselves up and operational on that landfill site." K85 at 100:23–25 (Doyle) (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

454. The closure condition below, Condition 3, provides more than seven years to site and develop a landfill.

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

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

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

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

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

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

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

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

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

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

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

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

466. As Mr. Miller explained, the site selection process has other errors, such as the use of deciles and failing to correct implicit weighting, which leads to double

counting of criteria. 2011AP Ex. K147 at 3–4 (Parametrix site selection memorandum); 2011AP 3/7/12 Tr. at 94:9–12 (Miller).

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

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

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

470. The SSC had to repeatedly “[r]emove screens that [it] had not either previously discussed or authorized.” 2011AP 4/4/12 Tr. at 104:24–105:4 (Marsters). Specifically, the SSC broadened the search criteria or removed screens at the following four points in the process:

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

b. In the seventh meeting in November 2011, the SSC's consultant made a presentation regarding potential sites within the UIC and no-pass lines. 2011AP Ex. K152 at 1 (11/8/11 SSC group memory). However, the consultant applied a number of exclusionary criteria, meaning that sites with such criteria would not be considered. 2011AP 4/4/12 Tr. at 87:13–15 (Marsters); 2011AP Ex. K144 at 11-6 (10/08 integrated solid waste management plan update). After application of the criteria, only two sites above the UIC and no-pass line remained, both of which were non-sites that could not be used. 2011AP 4/4/12 Tr. at 88:1–17 (Marsters); 2011AP Ex. K152 at 2 (11/8/11 SSC group memory). One exclusionary criterion screened out lands owned by the State. 2011AP 4/4/12 Tr. at 89:6–10 (Marsters). The SSC had not previously directed the consultant exclude lands owned by the state and the SSC directed the consultant to include such lands. 2011AP 4/4/12 Tr. at 89:11–17, 90:9–12 (Marsters); 2011AP Ex. K152 at 2 (11/8/11 SSC group memory). In addition, the consultant had screened out parcels less than 100 acres, and the SSC asked the consultant to include parcels between 90 and 100 acres. 2011AP Ex. K153 at 9 (11/8/11 SSC handout); 4/4/12 Tr. 90:17–21 (Marsters).

c. In the eighth meeting in February 2012, after dropping certain screens, the consultant identified a total of 464 sites. 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). But the consultant applied nine screening factors to the 464 sites. 2011AP 4/4/12 Tr. at 93:10–13 (Marsters); 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). After applying the screening factors, only six sites remained.

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2011AP 4/4/12 Tr. at 93:18–21 (Marsters); 2011AP Ex. K170 at 3 (2/1/12 SSC group memory). The SSC eliminated four of those sites, so only two sites remained. 2011AP Ex. K170 at 3 (2/1/12 SSC group memory). One of the exclusionary criteria applied by the consultant screened out Class C agricultural lands. 2011AP Ex. K170 at 2 (2/1/12 SSC group memory). The SSC had not previously directed the consultant to exclude Class C agricultural lands. The SSC asked the consultant to include Class C agricultural land. 2011AP 4/4/12 Tr. at 96:12–22 (Marsters); 2011AP Ex. K170 at 3, 5 (2/1/12 SSC group memory). Another exclusionary criterion applied by the consultant screened out any parcel that contained a structure as noted on aerial maps. 2011AP 4/4/12 Tr. at 96:23–97:3 (Marsters); 2011AP Ex. K170 at 3–4 (2/1/12 SSC group memory). The SSC had not previously asked the consultant to exclude parcels with a structure. The SSC directed the consultant to include parcels with structures. 2011AP 4/4/12 Tr. at 97:4–18 (Marsters); 2011AP Ex. K170 at 3, 5 (2/1/12 SSC group memory). Finally, in addition to dropping those exclusionary criteria, the SSC asked the consultant to reevaluate sites that were large enough so that, even with those portions affected by accepted exclusionary factors, there still could be enough area to develop a landfill. 2011AP 4/4/12 Tr. at 98:7–99:21 (Marsters); 2011AP Ex. K170 at 5 (2/1/12 SSC group memory).

d. In the ninth meeting in March 2012, after dropping the exclusionary criteria for Class C agricultural land and structures, the consultant identified a total of seven sites. 2011AP Ex. A47 (3/16/12 SSC group memory at 2). However, the

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consultant added an exclusionary criterion for parcels up gradient of parcels in or planned for residential use. 2011AP 4/4/12 Tr. at 102:23–103:2 (Marsters); 2011AP Ex. A47 (3/16/12 SSC group memory at 2). The SSC had not previously directed the consultant to include the up gradient screen. The SSC directed the consultant to eliminate the screen. 2011AP 4/4/12 Tr. at 103:3–10 (Marsters); 2011AP Ex. A47 (3/16/12 SSC group memory at 3). The SSC also directed the consultant to add federal lands to the pool of potentially suitable sites. 2011AP Ex. A47 (3/16/12 SSC group memory at 4).

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

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

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

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

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

(I) Closure of the Landfill.

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

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

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

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

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

481. Condition 3 below specifies the time-period of the special permit and closure of the Landfill ending on March 2, 2028. Setting a specific time-period for the special permit is supported by the record, by the guidelines for special permits set

out in HRS § 206-5, by the authority of the LUC set out in HAR §§ 15-15-95 and 15-15-96 and by good cause, including but not limited to the following:

a. In 2011, ENV stated that the Landfill was estimated to reach capacity in 2026, *see supra* FOF ¶ 3;

b. At hearing, ENV was unable to identify any other specific end-date for the Landfill or a date on which the landfill was estimated to reach capacity in the record;

c. ENV represented to the community and the LUC that the Landfill would close in 2008; in accordance with HRS § 205-6(d) and HAR § 15-15-96(a), closure of the Landfill by 2028 adheres to ENV's representations to the extent reasonably practicable, *see supra* Section I.D.(b);

d. ENV has failed to act in accordance with prior conditions of the special permit for the Landfill, including failing to site and develop a new or supplementary landfill with reasonable diligence and failure to close the Landfill in accordance with the special permit, *see* FOF ¶¶ 60, 2011 AP Ex. K15 (LUC's 2009 decision);

e. The Landfill adversely effects the surrounding community, *see supra* Sections I.D.(d), (e), (f);

f. At the time of closure in 2028, the Landfill will have been in operation under successive special permits for nearly 40 years, which is a reasonable

maximum length for the use under the circumstances presented in this matter, *see supra* Section I.D.(b); and

g. An end date of March 2, 2028 provides sufficient time to site and develop a new landfill, *see supra* Section I.D.(j).

482. At hearing, ENV represented to the LUC that it believed the record was complete and a further remand was not necessary.

II. CONCLUSIONS OF LAW

1. The LUC has jurisdiction over the Applications pursuant to HRS § 205-6 and HAR §§ 15-15-95 and 15-15-96.

2. A special use permit is required for “unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified,” in accordance with HRS § 205-6(a). *See also* HAR § 15-15-95; Planning Commission Rule § 2-45.

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

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

5. The ENV has the burden of proof to show by a preponderance of the evidence that its Applications meet the provisions of HAR § 15-15-95.

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6. The ENV seeks a new SUP for the Landfill. HAR § 15-15-95(c) set forth the standards applicable to SUPs:

Certain “unusual and reasonable” uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an “unusual and reasonable use”:

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The proposed use would not adversely affect surrounding property;
- (3) The proposed 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 rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

HAR § 15-15-95(c).

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

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

b. The continued operation of the Landfill for a specific period and the requested expansion Project would not adversely affect surrounding property as long as (1) operated in accordance with the conditions imposed below and govern-

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mental approvals and requirements and (2) mitigation measures are implemented in accordance with the ENV's representations as documented in the 2008 FEIS and as set forth below.

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

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

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

f. The foregoing findings continuing the SUP for WGSL depend upon the conditions below.

8. Based on the findings set forth above and subject to the conditions imposed below, the ENV has met its burden of proof with respect to the provisions set forth in HAR § 15-15-95.

9. The LUC has the authority to impose conditions on the SUP, including a time limit for the duration of the particular use at issue. HAR §§ 15-15-95(f) ("The county 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; pro-

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vided, however, that the commission for good cause shown, may specify or change the time period of the special permit.”); *id.* § 15-15-96(a) (“The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the petitioner.”); HRS § 205-6(d) (“The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.”); *cf.* HRS § 205-6(e) (“[T]he land use commission shall act to approve, approve with modification, or deny the petition.”); *Neighborhood Bd. No. 24 (Waianae Coast) v. State Land Use Comm’n*, 64 Haw. 265, 272, 639 P.2d 1097, 1102–03 (1982) (“[U]nlimited use of the special permit to effectuate essentially what amounts to a boundary change would undermine the protection from piecemeal changes to the zoning scheme guaranteed landowners by the more extensive procedural protections of boundary amendment statutes.”).

10. Based on the findings of fact set forth above, the LUC concludes that the conditions imposed below are necessary or appropriate to protect public health, safety and welfare and are material to the approval of the Applications.

11. Any of the proposed findings of fact or conclusions of law submitted by any of the parties not already ruled on by the LUC by adoption or rejected by clearly contrary findings of fact or conclusions of law are hereby denied and rejected. Any conclusion of law that is or should be a finding of fact is to be taken as such notwithstanding its denomination as a conclusion of law; any finding of fact that is or

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should be a conclusion of law is to be taken as such notwithstanding its denomination as a finding of fact.

III. DECISION AND ORDER

Having duly considered the complete record in this matter, the oral arguments presented by the parties in this proceeding, the LUC through a motion having been duly made at a meeting conducted on October 9 and 10, 2019, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion, hereby ORDERS that the recommendation of the Planning Commission is ADOPTED WITH MODIFICATIONS and the Applications are APPROVED WITH MODIFICATIONS subject to the following conditions:

1. General Conditions

a. On December 31, 2022, the Applicant shall identify an alternative landfill site. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

b. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the status of the efforts to identify and develop a new landfill site on O'ahu, (b) the WGSL's operations, including gas monitoring, (c) the ENV's compliance with the conditions imposed herein, (d) the Landfill's compliance with its Solid Waste Management Permit issued by the Department of Health and all applicable federal and state statutes, rules and

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regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.

c. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.

d. The ENV shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGS�, including any funding arrangements that are being considered by the City Council and the City Administration.

e. The ENV shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGS�.

2. Operational Conditions

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

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b. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

c. The operations of the WGS� under 2008/SUP-2 (SP09-403) shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.

d. The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all onsite and offsite improvements involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.

e. In accordance with Chapter 11-60.1 "Air Pollution Control," Hawai'i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.

f. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai'i and all of its agencies and/or employees for any lawsuit or legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the Landfill.

3. This special permit shall expire on March 2, 2028 and The Landfill shall stop accepting any form of waste and close on or before March 2, 2028.

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

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

6. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 (SP09-403) shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 200B/SUP-2 (SP09-403) should not be revoked if the Planning Commission has reason to believe that there

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has been a failure to perform the conditions imposed herein by this Decision and Order.

7. The Applicant shall notify the Planning Commission and LUC of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2 (SP09-403).

Pursuant to the foregoing findings of fact and conclusions of law, it is also the decision and order of the LUC to APPROVE the 2008 Application as provided herein to the extent it seeks to withdraw Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect.

IV. ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ of _____, 2019. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at _____, Hawai'i, this _____ day of _____, 2019, per motion on _____, 2019.

APPROVED AS TO FORM:

LAND USE COMMISSION
STATE OF HAWAII

Deputy Attorney General

By _____
Jonathan Likeke Scheuer
Chairperson and Commissioner

Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu, Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications the City and County of Honolulu Planning Commission's Recommendation to Approve Special Use Permit Applications

By _____
Nancy Cabral
Vice Chairperson and Commissioner

By _____
Edmund Aczon
Commissioner

By _____
Dawn N.S. Chang
Commissioner

By _____
Dan Giovanni
Commissioner

By _____
Lee Ohigashi
Commissioner

Filed and effective on:

_____ By _____
Gary Y. Okuda
Commissioner

Certified by:

_____ By _____
Daniel Orodener
Executive Director
Arnold Wong
Commissioner

Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu, Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications the City and County of Honolulu Planning Commission's Recommendation to Approve Special Use Permit Applications

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

DOCKET NO. SP09-403

PLANNING COMMISSION FILE NO.
2008/SUP-2

**DECLARATION OF CHRISTOPHER
T. GOODIN**

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.”

DECLARATION OF CHRISTOPHER T. GOODIN

I, Christopher T. Goodin, hereby declare as follows:

1. I am one of the attorneys for Ko Olina Community Association and Senator Maile Shimabukuro (together, "KOCA") 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 State of Hawai'i Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications, the City and County of Honolulu Planning Commission's Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008.

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

DATED: Honolulu, Hawai'i, October 18, 2019.


CHRISTOPHER T. GOODIN

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) FINDINGS OF FACT, CONCLUSIONS
SERVICES, CITY AND COUNTY OF) OF LAW, AND DECISION AND ORDER
HONOLULU (fka DEPARTMENT OF) ADOPTING WITH MODIFICATIONS,
PUBLIC WORKS, CITY AND COUNTY) THE CITY AND COUNTY OF
OF HONOLULU)) HONOLULU PLANNING
) COMMISSION'S RECOMMENDATION
For An Amendment To The Special Use) TO APPROVE AMENDMENT TO
Permit Which Established A Sanitary) SPECIAL USE PERMIT
Landfill On Approximately 107.5 Acres)
Of Land Within The State Land Use)
Agricultural District At Waimānalo)
Gulch, Honouliuli, `Ewa, O`ahu,)
Hawai`i, Tax Map Key: 9-2-03: Portion 72)
And Portion 73 (fka Tax Map Key: 9-2-)
03: Portion 2 And Portion 13))
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ADOPTING WITH MODIFICATIONS, THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S RECOMMENDATION TO APPROVE AMENDMENT
TO SPECIAL USE PERMIT

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

MAR 14 2008

Date

by Rodney L. Mail
Interim Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) FINDINGS OF FACT, CONCLUSIONS
SERVICES, CITY AND COUNTY OF) OF LAW, AND DECISION AND ORDER
HONOLULU (fka DEPARTMENT OF) ADOPTING WITH MODIFICATIONS,
PUBLIC WORKS, CITY AND COUNTY) THE CITY AND COUNTY OF
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) COMMISSION'S RECOMMENDATION
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Permit Which Established A Sanitary) SPECIAL USE PERMIT
Landfill On Approximately 107.5 Acres)
Of Land Within The State Land Use)
Agricultural District At Waimānalo)
Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: Portion 72)
And Portion 73 (fka Tax Map Key: 9-2-)
03: Portion 2 And Portion 13))
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ADOPTING WITH MODIFICATIONS, THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S RECOMMENDATION TO APPROVE AMENDMENT
TO SPECIAL USE PERMIT

The Land Use Commission ("LUC"), having examined the complete record of the City and County of Honolulu Planning Commission's ("Planning Commission") proceedings on the City and County of Honolulu Department of Environmental Services' ("Applicant") application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Waimānalo Gulch

Sanitary Landfill ("WGSL") from May 1, 2008, to May 1, 2010, or until the WGSL reaches its permitted capacity, whichever occurs first ("Application")¹, and upon consideration of the matters discussed therein, at its meetings on February 21, 2008, March 6, 2008, and March 7, 2008, in Honolulu, Hawai'i, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On July 6, 2007, the Applicant filed the Application with the City and County of Honolulu Department of Planning and Permitting ("DPP"), DPP Docket 'Ewa – State Special Use Permit No. 86/SUP-5, pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").

2. The Applicant sought to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the WGSL from May 1, 2008, to May 1, 2010, or until the WGSL reached its permitted capacity, whichever occurred first. No other amendments were requested at that time.

3. On August 30, 2007, the DPP accepted the Application for processing as of August 30, 2007.

¹ The LUC adopted Condition Number 10 in its entirety as Condition Number 12 in its Decision and Order Approving Amendment ("D&O Approving Amendment") filed June 9, 2003.

4. On October 12, 2007, the Notice of the Planning Commission public hearing on the Application was published in the *Honolulu Star-Bulletin*.

5. On October 25, 2007, Colleen Hanabusa, Esq., filed a Petition to Intervene and Request for Contested Case.

6. On October 26, 2007, Ken Williams, General Manager and Vice President, filed a Petition to Intervene on behalf of the Ko Olina Community Association ("KOCA").²

7. On November 2, 2007, the Applicant filed its Memoranda in Opposition to Ms. Hanabusa's and KOCA's Petitions to Intervene.

8. On November 14, 2007, the Planning Commission considered the Application and the Petitions to Intervene at the Mission Memorial Auditorium, City Hall Annex, in Honolulu, Hawai'i. At the hearing, the Planning Commission heard public testimony from eight individuals primarily in opposition to the Application. The Planning Commission also received written testimony from numerous individuals in support and in opposition to the Application. After due deliberation, the Planning Commission granted the requests to intervene and consolidated said requests into one contested case proceeding. The Planning Commission subsequently closed the public hearing and scheduled the matter for a contested case hearing.

² KOCA is a community association which represents various resort and residential owners throughout the Ko Olina Resort. The resort is located makai of Farrington Highway and is situated across from the WGSF.

9. On November 30, 2007, the Planning Commission Chair held a prehearing conference with the parties in the contested case hearing.

10. On December 7, 2007, the Planning Commission conducted the contested case hearing on the Application at Kapolei Hale, Conference Rooms A and B, in Kapolei, Hawai'i. Following the presentation of the parties' respective cases-in chief, the Planning Commission closed the hearing.

11. On December 21, 2007, KOCA and Ms. Hanabusa filed a Proposed Findings of Fact and Conclusions of Law.

12. On December 21, 2007, KOCA and Ms. Hanabusa filed a Closing Argument.

13. On December 21, 2007, the Applicant filed a Closing Argument.

14. On December 21, 2007, the Applicant filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

15. On January 8, 2008, KOCA and Ms. Hanabusa filed a Response to the Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

16. On January 8, 2008, the Applicant filed a Rebuttal to Intervenors' Proposed Findings of Fact and Conclusions of Law and Intervenors' Closing Argument.

17. On January 16, 2008, the Planning Commission acted on the Application at the Mission Memorial Auditorium, City Hall Annex, in Honolulu,

Hawai'i. After due deliberation and consideration of the record in this matter, the Planning Commission recommended approval of the Application to the LUC and issued its Findings of Fact, Conclusions of Law, and Decision and Order.

18. On January 31, 2008, the LUC received the decision and the complete record of the Planning Commission's proceedings on the Application.

19. On February 15, 2008, Ms. Hanabusa filed the following pleadings: Petition for Declaratory Orders and Request for Hearing; Petition for Intervention; and Motion to Dismiss, on behalf of herself and KOCA.

20. On February 21, 2008, the Applicant filed its Memorandum in Opposition to Petition for Declaratory Orders and Request for Hearing; Memorandum in Opposition to Motion to Dismiss; and Request for Official Notice.³

21. On February 21, 2008, the LUC met in Conference Room 204, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i, to consider the Application. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the meeting. At the meeting, Commissioner Contrades disclosed that his daughter is employed by the Corporation Counsel, City and County of Honolulu, but that he did not discuss the

³ The Request for Official Notice requested the LUC to take official notice of true and correct copies of (i) *Honolulu Advertiser* and *Honolulu Star-Bulletin* articles dated December 12, 2007, regarding the settlement of the State Department of Health's ("DOH") Notice of Violation; (ii) the settlement agreement dated December 7, 2007, between the DOH, the City and County of Honolulu, and Waste Management Hawaii, Inc. ("WMH"); and (iii) Modification of Solid Waste Permit No. LF-0054-02 for the WGS� dated February 20, 2008.

Application with her. The Applicant, Ms. Hanabusa, and KOCA had no objections to the participation of Commissioner Contrades in the proceeding. Following the receipt of public testimony⁴, the LUC deferred the matter to its March 6, 2008, meeting in Honolulu, Hawai'i.

22. On February 26, 2008, Ms. Hanabusa filed: a Supplemental Petition for Declaratory Orders and Request for Hearing; a Second Supplemental Petition for Declaratory Orders; and a Motion to Strike Request for Official Notice on behalf of herself and KOCA.

23. On March 4, 2008, the Applicant filed its Memorandum in Opposition to Supplemental Petition for Declaratory Orders and Request for Hearing; a Memorandum in Opposition to Second Supplemental Petition for Declaratory Orders; and a Memorandum in Opposition to Motion to Strike Request for Official Notice.

24. On March 6, 2008, the LUC resumed its meeting on the Application and the pleadings filed by the Applicant and Ms. Hanabusa and KOCA in Conference Room 405, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the continued meeting. At the

⁴ Pursuant to section 92-3, HRS, T. George Paris, Ralph F. Harris, Ashley Fraser, Greg Nichols, Kimberly Carhart, Robert Weiss, Cynthia K.L. Rezendes, Edgar Gum and Mark Donnelly, Ken Williams, and Mary Lou Kobayashi provided written testimony on the Application. The LUC also heard testimony from Lincoln Naiwi.; Beverly Munson; Lee Munson; Mel Kahele; Ron Amemiya; James K. Manaku, Sr.; Cynthia K.L. Rezendes; Duke Hospodar; Kimo Keli'i; Patty Teruya; Mary Lou Kobayashi; and Councilmember Todd Apo.

meeting, the LUC recognized Ms. Hanabusa and KOCA as intervenors in the LUC's proceeding based on their intervenor status before the Planning Commission, and therefore by a vote tally of 8 ayes, 0 nays, and 1 absent, denied their Petition for Intervention on the grounds that it is rendered moot. Thereafter, a motion was made and seconded to take Ms. Hanabusa's Petition for Declaratory Orders and Request for Hearing and Supplemental Petitions filed thereafter under advisement. There being a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Following the receipt of public testimony⁵, and upon further discussion, a motion was made and seconded to deny the Applicant's Request for Official Notice on the grounds that the documents for which official notice was requested: (i) are not part of the Planning Commission record that is to be considered by the LUC pursuant to section 205-6, HRS, and (ii) did not meet the criteria cited in section 15-15-63(k), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Having denied the Applicant's Request for Official Notice, the Motion to Strike Request for Official Notice filed by Ms. Hanabusa was deemed moot. Thereafter, a motion to deny Ms. Hanabusa's Motion to Dismiss was made and seconded on the grounds that: (i) the Planning Commission's recommendation to approve the Application subject to the Applicant obtaining DOH approval of its grade modification request, was not a precondition based on the clear language of the

⁵ Pursuant to section 92-3, HRS, Ralph F. Harris, Edgar Gum and Mark Donnelly, Josiah Ho'ohuli, Nina Fisher, Cynthia K.L. Rezentes, Isireli Qalo, and Pele Toomata provided written testimony on the Application. The LUC also heard testimony from Ralph F. Harris, Mike Nelson, Isireli Qalo, Greg Nichols, Pele Toomata, and Russell Duong.

condition; and (ii) the LUC has the authority to modify its conditions based on past practice and its interpretation of section 15-15-95(e), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Following deliberation by the LUC, a motion was made and seconded to grant the Application. Upon discussion, the motion was amended and seconded to include the following two additional conditions: (i) the LUC will not accept any further amendments to this special use permit and will not grant any further time extensions; and (ii) within one year, the Applicant will submit to the LUC an approved closure plan for the WGSL. By a vote tally of 4 ayes, 4 nays, and 1 absent, the motion failed. Thereafter, a motion was made to grant the Application but to limit the time extension to one year. The motion was not seconded and therefore failed. Following further deliberation, a motion was made and seconded to deny the Application. By a vote tally of 3 ayes, 5 nays, and 1 absent, the motion failed. Following discussion, the LUC continued the meeting to March 7, 2008.

25. On March 7, 2008, the LUC resumed its meeting on the Application in Conference Room 405, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the continued meeting. At the meeting, a motion was made and seconded to adopt the recommendation of the Planning Commission with an amendment to the closure date of the WGSL from May 1, 2010, to November 1, 2009, and with the additional condition requiring the Applicant to

report to the LUC every six months on the actions taken to alleviate the further use of the WGS�. Following deliberation by the LUC, a vote was taken on the motion. There being a vote tally of 6 ayes, 2 nays, and 1 absent, the motion carried.

DESCRIPTION OF PROPERTY

26. The WGS� is located at 92-460 Farrington Highway, Honouliuli, `Ewa, O`ahu, and is situated on TMK: 9-2-03: por. 72 and por. 73 ("Property").

27. The Property is located within the State Land Use Agricultural District. The Property is owned by the City and County of Honolulu.

28. The WGS� currently consists of approximately 107.5 acres and is under the jurisdiction of the Applicant and operated under contract to WMH. It has been in operation since 1989 and is currently the only landfill permitted to receive municipal solid waste ("MSW") on O`ahu.

BACKGROUND OF THE WGS�

29. The WGS� was established pursuant to LUC Docket No. SP87-362. As approved, the WGS� consisted of approximately 60.5 acres of land and included highway and roadway improvements, an administrative building, a scale and scalehouse, a maintenance shed, a drainage system, a leachate collection system, leachate and gas monitoring wells, landscaping and irrigation, security fencing, and utilities.

30. By Findings of Fact, Conclusions of Law and Decision and Order filed October 31, 1989, the LUC approved the request of the Applicant's predecessor, the Department of Public Works, City and County of Honolulu, to expand the WGS� by 26 acres for a total land area of approximately 86.5 acres.

31. By D&O Approving Amendment filed June 9, 2003, the LUC approved the expansion of the WGS� by an additional 21 acres for a total land area of approximately 107.5 acres. A Final Supplemental Environmental Impact Statement ("FSEIS") dated December 2002 and accepted by the DPP on January 10, 2003, covers the currently permitted footprint of the WGS�. The FSEIS also addresses the current operations and impacts associated with the continued use of the WGS� beyond the May 1, 2008, deadline for accepting waste.

NEED FOR REQUEST

32. By Resolution No. 04-348, CD1, FD1, the City Council selected the WGS� as the municipal landfill to serve the needs of O'ahu for the foreseeable future. As a result of this selection, the Applicant has been preparing an application to amend the existing special use permit to expand the WGS� by an additional 92.5 acres of land. An Environmental Impact Statement ("EIS") is also being prepared for this expansion.

33. Due to the discovery of stone uprights in the proposed expansion area, the completion of the EIS has been delayed pending resolution of the matter with

the State Historic Preservation Division. Concerns that the expansion could not be completed by May 1, 2008, prompted the Applicant to file the Application.

34. The current permitted area of the landfill has a useful life of approximately two years beyond the May 1, 2008, deadline if the DOH approves the Applicant's request to modify Solid Waste Management Permit No. LF-0054-02 ("Permit"), which was renewed on May 15, 2003, and expires on April 30, 2008. The modification to the Permit would increase the heights of the cells within the ash monofill and MSW portions of the WGS�.

35. The additional useful life of the WGS� is the result of the Applicant's efforts to divert solid waste and improved landfill operating methods to optimize the WGS�'s capacity. The Applicant has diverted solid waste from the WGS� through the H-POWER waste-to-energy facility and through its reuse and recycling programs for MSW. In 2003, the Planning Commission and the LUC approved the May 1, 2008, deadline to close the WGS� based on a 5-year expectancy of the then proposed 21-acre expansion of the WGS�. It was not known at that time that the above measures would contribute to an increase in the life expectancy of the WGS�.

36. The Applicant expects additional diversion to occur through its efforts to expand its waste-to-energy program, biosolids reuse, and possibly off-island shipping of some MSW.

37. Despite the Applicant's efforts to divert solid waste from the WGSL, a landfill is currently necessary for proper solid waste management to avoid the potential health and safety issues for O`ahu's residents. There will always be material that cannot be combusted, recycled, reused, or shipped. A landfill is also needed to manage solid waste during natural disasters and other contingencies. Currently, technology has not advanced far enough to eliminate the need for a landfill on O`ahu.

38. The H-POWER facility requires periodic equipment shutdown for maintenance. During these periods, H-POWER does not accept or burn solid waste and the waste is diverted to the WGSL. In addition, if the WGSL were unable to accept H-POWER ash and residue, H-POWER might have to close in a matter of days inasmuch as there is no approved landfill for that material.

NOTICE OF VIOLATION

39. On January 31, 2006, the DOH issued a Notice of Violation ("NOV") to the Applicant and WMH which contained 18 violations associated with the management and operation of the WGSL.

40. WMH had already brought into compliance 16 of the 18 violations at the time the DOH issued the NOV.

41. The two areas in the DOH NOV for which the WGSL was not in compliance when the NOV was issued were the 4-B sump for leachate control and the

grade exceedences. On September 26, 2007, the DOH approved the replacement of the 4-B sump.

42. The remaining unresolved compliance issue in the NOV is the grade exceedences. There is presently a lack of permitted capacity in the ash monofill portion of the WGS�, and certain portions of the MSW section are over currently permitted grades. The Applicant has submitted a grade modification request to the DOH to correct these exceedences and allow for additional capacity in the ash monofill portion of the WGS�.

43. The DOH has completed its technical review of the grade modification request and issued a draft permit.

44. During design for the 14.9-acre expansion of the WGS� in 2001, WMH conducted a stability analysis for the entire landfill. Although the Property was stable, differences in the coarseness of the landfill liner used caused the factor of safety in some places of the WGS� to be lower than the standard 1.5 factor of safety required by the DOH.

45. WMH worked with the DOH to lower the permitted landfill height to increase the factor of safety, which resulted in some areas of the MSW portion and one area of the ash monofill portion of the WGS� to become out of compliance due to overfill.

46. The DOH was notified of the overfill in those areas. To address the issue, a toe berm was constructed at the front of the WGSL.

47. If the DOH approves the grade modification request, there would be approximately 4.7 years, as of March 2, 2007, of additional capacity in the ash monofill portion of the WGSL. The grade modification request does not change the MSW peak elevation of 510 feet as specified by the Permit. The Permit does not have a specific elevation for the ash monofill portion of the WGSL but references the grading plan submitted by the DOH together with the Permit application.

48. The Application does not affect the WGSL's footprint, its permitted landfill elevations, its daily tonnages of solid waste, or any of its operations.

49. If the WGSL closes by May 1, 2008, there will be no permitted landfill to serve the MSW needs on O'ahu.

CONCLUSIONS OF LAW

1. The LUC has jurisdiction over the Application pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, the LUC finds that an extension to the deadline to accept solid waste at the WGSL from May 1, 2008, to November 1, 2009, or until the WGSL reaches its permitted

capacity, whichever occurs first, meets the guidelines for determining an "unusual and reasonable" use within the State Land Use Agricultural District.

3. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC. Due to improved landfill operations and ongoing recycling efforts, the projected capacity of the WGS� has increased beyond its previous five-year life expectancy. Although alternative methods to address the municipal solid waste stream are currently implemented, a landfill is still necessary to accommodate the ash, residue, and waste that cannot be processed by H-POWER or alternative technologies. Closure of the WGS� by May 1, 2008, would be adverse to the public's health and safety.

4. Based upon the record of the proceedings before the Planning Commission, the desired use would not adversely affect surrounding property. The WGS� is already an established use at the Property and has been conditioned to avoid generating impacts upon the surrounding environment. Odor impacts from the WGS� are due to the disposal of sewage sludge and related wastewater residue. The immediate coverage of soil and the use of odor misters have been employed to mitigate these impacts. A portion of the sewage sludge is being processed into soil amendment instead of being disposed of at the WGS�. At the time landfill capacity is reached, the Applicant and the operator will be responsible for capping the entire facility and monitoring groundwater, methane gas, and leachates for 30 years. Additional measures

to reduce the impact of the WGSL after its closure include hydro-mulching and seeding exposed areas with vegetation similar to that which currently exists around the WGSL grounds. Faux rock outcrops will also be added to improve the visual appearance of the site.

5. Based upon the record of the proceedings before the Planning Commission, the use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection. Since the WGSL began operations in 1989, facilities and services continue to be adequate without requiring public agencies to provide additional infrastructure to support its operation.

6. Based upon the record of the proceedings before the Planning Commission, the preponderance of the evidence established that unusual conditions, trends, and needs had arisen since the district boundaries and rules were established. Pursuant to Resolution No. 04-348, CD1, FD1, the WGSL was chosen as the site for the City and County's landfill despite its omission from the Blue Ribbon Advisory Committee's list of recommended sites for a new landfill. Due to the advisory nature of the committee's final report and the violations of the State's sunshine law that voided the report, the City Council believed that it was not bound by the recommendations of the report. After reviewing potential landfill sites, the City Council determined that the current site of the WGSL was the best site given the amount of capacity projected,

economic considerations, an existing management contract, and the availability of cost and revenue data. The resolution also supports the Application for a time extension to the existing WGSL. If the WGSL were to close on May 1, 2008, existing alternative avenues and planned programs to address the MSW stream would not be sufficient nor would they be implemented in time to alleviate the need for the WGSL.

7. Based upon the record of the proceedings before the Planning Commission, the land upon which the proposed use is sought is unsuited for the uses permitted within the district. The Property contains extremely rocky soils and is not conducive to crop production. The steep terrain also limits use of the Property for pasture purposes. Due to the presence of the WGSL, agricultural uses at the Property are not feasible. However, upon the closure of the WGSL, there is the possibility that agricultural uses could occur, subject to the requirements of the DOH and other governmental agencies.

8. Any of the proposed findings of fact or conclusions of law submitted by any of the parties not already ruled on by the LUC by adoption or rejected by clearly contrary findings of fact or conclusions of law are hereby denied and rejected. Any conclusion of law that is or should be a finding of fact is to be taken as such notwithstanding its denomination as a conclusion of law; any finding of fact that is or should be a conclusion of law is to be taken as such notwithstanding its denomination as a finding of fact.

DECISION AND ORDER

Having duly considered the complete record in this matter, the oral arguments presented by the parties in this proceeding, the LUC, through a motion having been duly made at a meeting conducted on March 7, 2008, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, hereby ORDERS as follows:

1. The recommendation of the Planning Commission is ADOPTED WITH MODIFICATIONS, with Condition Number 12 of the LUC's D&O Approving Amendment filed June 9, 2003, amended to read as follows:

12. The 200-acre Property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan by November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first.

2. The amendment to Condition Number 12 is subject to the following condition:

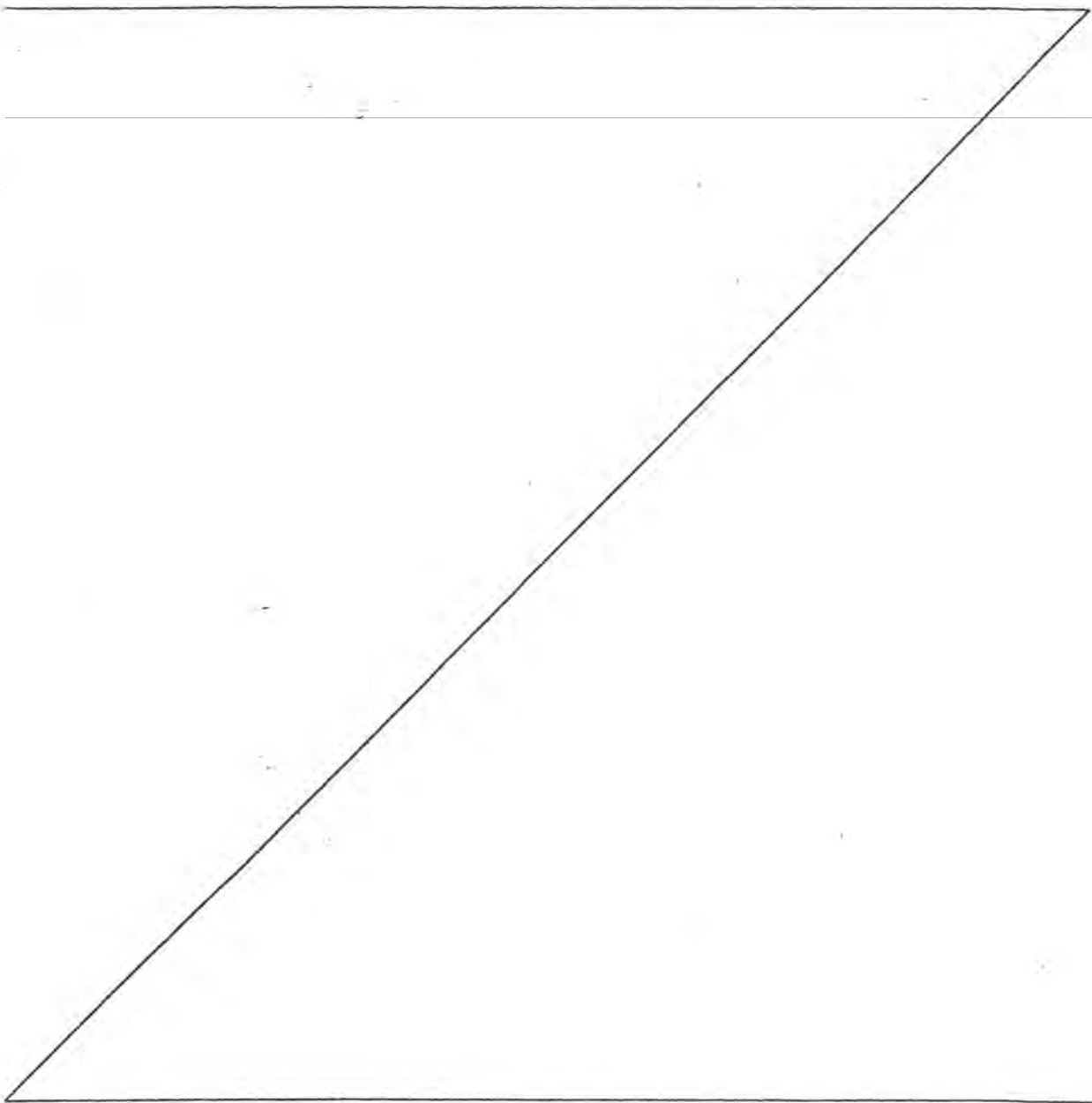
The Applicant must obtain approval of its pending grade modification request for the WGS� from the DOH.

IT IS FURTHER ORDERED that the following additional condition to the D&O Approving Amendment filed June 9, 2003, is imposed:

The Applicant shall report to the LUC every six months on the actions taken to alleviate the further use of the WGS�.

IT IS ALSO ORDERED that all other conditions to the LUC's D&O

Approving Amendment filed June 9, 2003, shall remain in full force and effect.⁶



⁶ Condition Number 1 was amended pursuant to the LUC's Order Granting in Part and Denying in Part Motion to Amend and/or Stay the Decision and Order Approving Amendment to Special Use Permit dated June 3, 2003 filed May 10, 2004.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 14th day of March, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 14th day of March, 2008, per motion on March 7, 2008.

APPROVED AS TO FORM

Diane Luckin
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Lisa M. Judge
LISA M. JUDGE
Chairperson and Commissioner

By _____
DUANE KANUHA
Vice-Chairperson and Commissioner

By (voted "NAY")
KYLE CHOCK
Commissioner

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ day of _____, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.


Done at _____, Hawai'i, this _____ day of _____, 2008, per motion on March 7, 2008.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

Deputy Attorney General

By _____
LISA M. JUDGE
Chairperson and Commissioner

By 
DUANE KANUHA
Vice-Chairperson and Commissioner

By _____ (voted "NAY")
KYLE CHOCK
Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By _____ (absent)
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY")
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:
MAR 14 2008

By _____
REUBEN S.F. WONG
Commissioner

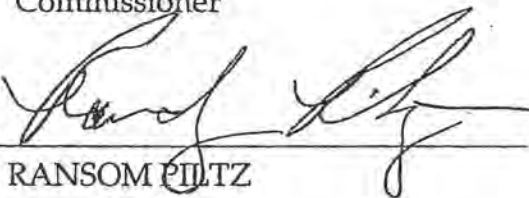
Certified by:

Rodney A. Maile
RODNEY A. MAILE
Interim Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent) _____
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY") _____
NORMAND LEZY
Commissioner

By  _____
RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

By _____
REUBEN S.F. WONG
Commissioner

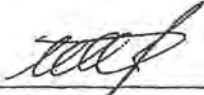
RODNEY A. MAILE
Interim Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent) _____
VLADIMIR PAUL DEVENS
Commissioner

By _____ (voted "NAY") _____
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By  _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

By _____
REUBEN S.F. WONG
Commissioner

RODNEY A. MAILE
Interim Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By _____ (absent)
VLADIMIR PAUL DEVENS
Commissioner

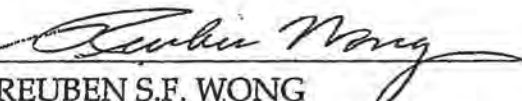
By _____ (voted "NAY")
NORMAND LEZY
Commissioner

By _____
RANSOM PILTZ
Commissioner

By _____
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

By 
REUBEN S.F. WONG
Commissioner

RODNEY A. MAILE
Interim Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) CERTIFICATE OF SERVICE
SERVICES, CITY AND COUNTY OF)
HONOLULU (fka DEPARTMENT OF)
PUBLIC WORKS, CITY AND COUNTY)
OF HONOLULU))
)
For An Amendment To The Special Use)
Permit Which Established A Sanitary)
Landfill On Approximately 107.5 Acres)
Of Land Within The State Land Use)
Agricultural District At Waimānalo)
Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: Portion 72)
And Portion 73 (fka Tax Map Key: 9-2-)
03: Portion 2 And Portion 13))
_____)

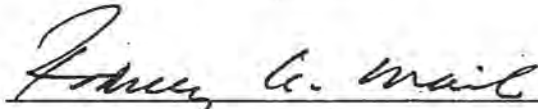
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law,
and Decision and Order Adopting with Modifications, the City and County of
Honolulu Planning Commission's Recommendation to Approve Amendment to Special
Use Permit was served upon the following by either hand delivery or depositing the
same in the U. S. Postal Service by regular or certified mail as noted:

CERT: CARRIE OKINAGA, Esq.
Corporation Counsel
City and County of Honolulu
530 South King Street
Honolulu, HI 96813

CERT. COLLEEN HANABUSA, Esq.
1100 Alakea Street, 12th Floor
Honolulu, Hawaii 96813

Dated: Honolulu, Hawai'i, MAR 14 2008



RODNEY A. MAILE
Interim Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

DOCKET NO. SP09-403

PLANNING COMMISSION FILE NO.
2008/SUP-2

CERTIFICATE OF SERVICE

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special

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

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

CERTIFICATE OF SERVICE

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

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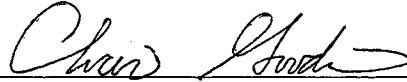
Attorney for Intervenor
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Attorneys for
OFFICE OF PLANNING, STATE OF HAWAII

DATED: Honolulu, Hawai'i, October 18, 2019.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO