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LAND USE COMMISSION
STATE OF HAWAII

2019 OCT 18 P 2:42

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

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
Waimanalo Gulch Sanitary Landfill,
Waimanalo Gulch, O`ahu, Hawai`i, Tax Map
Key: (1) 9-2-03: 72 and 73,

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

DOCKET NO. SP09-403

APPLICANT'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER
APPROVING THE
RECOMMENDATION OF THE CITY
AND COUNTY OF HONOLULU
PLANNING COMMISSION TO
APPROVE THE STATE SPECIAL USE
PERMIT APPLICATION WITH
MODIFICATIONS, AS MODIFIED BY
THE LAND USE COMMISSION ON
OCTOBER 10, 2019; CERTIFICATE OF
SERVICE


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.”

APPLICANT’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER APPROVING THE RECOMMENDATION OF THE
CITY AND COUNTY OF HONOLULU PLANNING COMMISSION TO APPROVE
THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICATIONS,
AS MODIFIED BY THE LAND USE COMMISSION ON OCTOBER 10, 2019

Applicant Department of Environmental Services, City and County of Honolulu,
respectfully submits the following Proposed Findings of Fact, Conclusions of Law, and Decision
and Order Approving the Recommendation of the City and County of Honolulu Planning
Commission to Approve the State Special Use Permit Application with Modifications, and as
modified by the Land Use Commission on October 10, 2019.

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


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

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

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APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER APPROVING THE RECOMMENDATION OF THE
CITY AND COUNTY OF HONOLULU PLANNING COMMISSION TO APPROVE
THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICATIONS,
AS MODIFIED BY THE LAND USE COMMISSION ON OCTOBER 10, 2019

The State of Hawaii Land Use Commission ("LUC"), having examined the complete record of the City and County of Honolulu Planning Commission ("Planning Commission") proceedings on the State Special Use Permit ("SUP") applications filed by the City and County of Honolulu, Department of Environmental Services ("Applicant" or "ENV"), for (1) an application for a new special use permit ("SUP"), the expansion of the WGSL and the withdrawal of County Special Use Permit No. 86/SUP-5 ("2008 Application"), and (2) an application to modify the LUC Order Adopting the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009 ("2009 LUC Order") for County Special Use Permit No. 2008/SUP-2 for the sole purpose of deleting the July 31, 2012 deadline for the landfill to accept municipal solid waste ("MSW") ("2011 Application), and upon consideration of the matters discussed herein at its meeting on October 9 and 10, 2019, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

I. PROCEDURAL MATTERS

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

A. 2008 APPLICATION

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

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

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

5. On December 3, 2008, ENV filed a State Special Use Permit Application, with DPP pursuant to HRS Section 205-6, and Rules of the Planning Commission, City and County of Honolulu (“RPC”), subchapter 4, Rules Applicable to State Special Use Permits (“2008 Application”). See 2008 Application. The 2008 Application, designated as Special Use Permit Application File No. 2008/SUP-2, is for a new SUP for the use of

the approximately 200.622-acre property, identified by Tax Map Key (“TMK”) Nos. (1) 9-2-003: 072 and 073, in Waimanalo Gulch, Oahu, Hawaii (the “Property”). See 2008 Application at Planning Division Master Application Form at 1-2.

6. In the 2008 Application, ENV concurrently 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 2008 Application for the new SUP was granted. See April 2, 2009 memorandum from Applicant to DPP; Planning Commission Transcript (“PC Tr.”) 07/02/09, 20:4-10; 2009 DPP Recommendation at 3, 24.

7. The Applicant also filed a petition with the LUC for a district boundary amendment to reclassify the Property from the State Agricultural District to the Urban District, which may be withdrawn if the 2008 Application was granted. See 2008 Application at 2-2, fn.1.

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

9. On April 16, 2009, Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa (collectively, “Intervenors”) filed a Petition to Intervene in the 2008 Application proceeding. On April 24, 2009, Applicant filed a Memorandum in Opposition to Intervenors’ Petition to Intervene.

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

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

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

13. On May 7, 2009, Todd K. Apo ("Apo") filed a Petition to Intervene in the 2008 Application proceeding. On May 18, 2009, Applicant filed a Memorandum in Opposition to Apo's Petition to Intervene.

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

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

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

17. On June 10, 2009, the hearing was continued at the City Council Committee Hearing Room, Second Floor, 530 South King Street, Honolulu, Hawaii. The

Planning Commission heard and granted Intervenors' Motion to Recuse Commissioner Kaopua. The Planning Commission denied Apo's Petition to Intervene on the grounds that it was untimely filed, that 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 Apo were allowed to intervene. See Findings of Fact, Conclusions of Law, and Order issued on July 27, 2009. Thereafter, the Planning Commission closed the public hearing on the 2008 Application.

18. On June 15, 2009, Intervenors filed their List of Witnesses, consisting of forty-two (42) potential witnesses including Apo. Applicant also filed its List of Witnesses, consisting of six (6) potential witnesses.

19. On June 22, 2009, the contested case hearing began on the 2008 Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The Applicant submitted 2009 Contested Case Hearing Exhibits ("2009 Exhibits") "A1" through "A31," which were accepted into the record by the Planning Commission. See PC Tr. 06/22/09, 29:2-13. The Applicant presented its first two witnesses: Brian Takeda, who was qualified as an expert in the field of urban and regional planning, and Hari Sharma ("Dr. Sharma"), who was qualified as an expert in the field of geotechnical and geo-environmental engineering. Id. at 33:5-8, 234:7-12. Dr. Sharma prepared a report entitled, "Engineering Report for Landfill Expansion; Waimanalo Gulch Sanitary Landfill," dated March 12, 2008, which is 2009 Exhibit "A29." See PC Tr. 06/22/09, 235:4-25. Intervenors offered, and the Planning Commission received into the record, 2009 Exhibits "B1" and "B4." Id. at 81:6-11, 226:14-15.

20. On June 24, 2009, the Planning Commission resumed the contested case hearing on the 2008 Application at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. The examination of Dr. Sharma was completed. The Applicant presented its third witness Joseph R. Whelan (“Whelan”).

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

22. On July 1, 2009, the Planning Commission resumed the contested case hearing on the 2008 Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The examination of Whelan was completed. The Applicant presented its fourth and fifth witnesses: Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, who at the time was the Chief of the Division of Refuse, City and County of Honolulu. See PC Tr. 07/01/09, 93:2-8, 176:4-9. Applicant offered, and the Planning Commission accepted for the record, 2009 Exhibit “A32.” Id. at 168:16-17.

23. On July 2, 2009, the Planning Commission resumed the contested case hearing on the 2008 Application at the City Council Chambers, Third Floor, 530 South King Street, Honolulu, Hawaii. The Applicant offered no further witnesses and concluded its case-in-chief. See PC Tr. 07/02/09, 4:15-17. Intervenor began their case-in-chief and presented the following witnesses: Abbey Mayer, Josiah Hoohuli, William J. Aila, Jr., Daniel Banchiu, Cynthia Rezentes, Maeda Timson, and Apo. The Applicant offered, and the Planning Commission received into the record, 2009 Exhibits “A33” and “A34.” Id. at 32:20-25, 240:7-13. Intervenor offered, and the Planning

Commission received into the record, 2009 Exhibit "B5." Id. at 185:21-23. Other documents were referenced by the Planning Commission and the parties as 2009 Exhibits "B2" and "B3." Intervenors rested their case. Id. at 279:15. Intervenors did not testify and did not submit any written testimony during the 2009 contested case hearing.

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

25. On July 8, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. Applicant presented David M. Shideler as a rebuttal witness, who was qualified as an expert in archaeology and historical cultural resources. See PC Tr. 07/08/09, 11:15-21. Petitioner offered and the Planning Commission received into the record, 2009 Exhibits "A35," "A36," and "A37." Id. at 8:25-9:5, 65:14-22, 68:6-13. Intervenors made their witness, Apo, available for additional questions by Commissioner Beadie Dawson. The examination of Apo was completed.

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

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

28. On July 17, 2009, Intervenors filed the Post-Hearing Brief of Intervenors, Certificate of Service and Intervenors' Ko Olina Community Association, Colleen Hanabusa and Maile Shimabukuro Proposed Findings of Fact and Conclusions of Law and Decision and Order, and Certificate of Service.

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

30. On July 29, 2009, Intervenors filed its Reply Brief of Intervenors and Certificate of Service.

31. On July 31, 2009, the Planning Commission recommended approval of ENV's application subject to ten conditions and set forth this approval in its Findings of Fact, Conclusions of Law, and Decision and Order, dated August 4, 2009 ("2009 Planning Commission Decision"). See 2011 Contested Case Hearing Exhibit ("2011 Exhibit") "A17." The Planning Commission issued its 2009 Planning Commission Decision after careful consideration of all the evidence presented at the contested case hearing, the credibility of witnesses testifying at the hearing, the proposed findings of

fact, conclusions of law, and decisions and orders submitted by the parties and their respective responses thereto, and the written arguments of the parties. 2011 Exhibit "A18" at 1.

32. The 2009 Planning Commission Decision approved Applicant's Special Use Permit Application File No. 2008/SUP-2 ("2008/SUP-2"), for a new SUP for the existing and proposed expansion of WGSL, located at Tax Map Key Nos. 9-2-3: Parcels 72 and 73, totaling approximately 200.622 acres, until capacity as allowed by the State Department of Health is reached, subject to the following conditions:

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

of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order.

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

33. The Planning Commission also approved the withdrawal of Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect and that all conditions

previously placed on the Property under Special Use Permit File No. 86/SUP-5 shall be null and void. See 2009 Planning Commission Decision.

34. The Planning Commission transferred the record and its 2009 Planning Commission Decision in the 2008 Application proceeding to the LUC.

35. The LUC considered the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, the oral arguments of the parties and record and files in the matter relating to the 2008 Application. On October 22, 2009, the LUC issued its written Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order as its own Findings of Fact, Conclusions of Law, and Decision and Order, subject to an additional six conditions ("2009 LUC Decision"). The 2009 LUC Decision included the following additional conditions:

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.
 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 WGSL, including any funding arrangements that are being considered by the City Council and 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 WGSL.
36. ENV and Intervenors appealed the LUC's 2009 Decision.

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

38. ENV did not challenge any conditions imposed by the Planning Commission. On November 19, 2009, Intervenors filed a notice of appeal challenging the LUC's Decision to permit the expansion of the Landfill and its continued operation.

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

40. On September 21, 2010, the circuit court entered an order affirming the LUC's 2009 Decision with modifications. The circuit court affirmed Condition No. 14. With respect to Conditions Nos. 15 and 16, the circuit court deleted the references to the Honolulu City Council and the City Administration and substituted ENV as the responsible body. The circuit court affirmed the LUC's decision in all other respects.

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

42. On November 12, 2010, ENV filed its notice of appeal with the State of Hawaii, Intermediate Court of Appeals (the "ICA"). On appeal, ENV only challenged Condition No. 14.

43. Intervenors did not appeal the circuit court ruling.

44. On July 14, 2011, ENV filed an application to transfer the case to the Hawaii Supreme Court.

45. On August 1, 2011, the Hawaii Supreme Court granted the application to transfer.

46. Oral arguments were heard by the Hawaii Supreme Court in February 2012.

B. EXHIBITS AND WITNESSES – 2008 APPLICATION PROCEEDING

47. In the 2008 Application proceeding, the Applicant offered, and the Planning Commission received into the record, 2009 Exhibits “A1 to A37,” without objection.

48. Intervenors Hanabusa and KOCA offered, and the Planning Commission received into the record, 2009 Exhibits “B1,” “B4,” and “B5,” without objection.

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

50. Dr. Sharma prepared a report entitled “Engineering Report for Landfill Expansion; Waimanalo Gulch Sanitary Landfill, dated March 12, 2008, which is 2009 Exhibit “A29.” See PC Tr. 06/22/09, 235:4-25.

51. Intervenors Hanabusa and KOCA called the following witnesses: Abbey Mayer; Josiah Hoohuli; William Aila, Jr.; Daniel Banchiu; Cynthia Rezentes; Maeda Timson; and Todd Apo. Intervenors Hanabusa and KOCA did not move to qualify any of these persons as expert witnesses.

52. Intervenors Hanabusa and KOCA did not testify and did not submit any written testimony during the contested case hearing.

53. In the 2008 Application proceedings, Doyle testified that the Applicant will begin in 2010 efforts to identify and develop a new landfill site to supplement WGSL. See PC Tr. 07/01/09, 251:18-24.

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

C. 2011 APPLICATION

55. On June 28, 2011, out of concern that the Supreme Court would not rule on the appeal before the July 31, 2012 deadline, ENV filed the 2011 Application, which sought to delete Condition No. 14. The 2011 Application was filed with DPP pursuant to RPC Sections 2-18 and 2-49, and the Rules of the State of Hawaii, Land Use Commission (“Hawaii Administrative Rules” or “HAR”), Section 15-15-70. See 2011 Application. The 2011 Application specifically seeks the deletion of Condition No. 14. Id. ENV sought to amend SUP Permit No. 2008/SUP-2 because there was no assurance that the Supreme Court would render a decision on the appeal prior to the July 2012 deadline and it needed to ensure the continued operation of the landfill.

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

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

58. On September 16, 2011, Ko Olina Community Association and Maile Shimabukuro (collectively, “Intervenor KOCA”) filed a Motion to Recognize Ko Olina

Community Association and Maile Shimabukuro as parties. On September 23, 2011, Applicant filed a Memorandum in Opposition to Intervenors' Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties. On September 30, 2011, Intervenors filed a Reply Memorandum to Applicant's Memorandum in Opposition to Intervenors' Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties.

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

60. At the public hearing on October 5, 2011, at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawaii, the Planning Commission heard public testimony. The Planning Commission heard and granted Intervenor Schnitzer's Petition to Intervene. The Planning Commission heard and denied Intervenor KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties but granted Intervenor KOCA's Motion to Intervene as joint intervenors. See PC Tr. 10/05/11, 35:5-23, 42:9-43:3. Thereafter, the Planning Commission closed the public hearing on the application.

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

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

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

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

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

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

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

68. On January 25, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Applicant offered, and the Planning Commission received into the record, 2011 Exhibits "A1 to A33." PC Tr. 01/25/12, 6:13-20. The Applicant presented its second and final witness in its case-in-chief, Steven Y.K. Chang, Branch Chief, State of Hawaii, Department of Health, Solid and Hazardous Waste Branch. Id. at 6:21. Applicant offered no further witnesses and concluded its case-in-chief, but reserved the right to call rebuttal witnesses. Intervenor Schnitzer presented its first and only witness, Larry Snodgrass, and concluded its case-in-chief. Id. at 72:4-5, 86:20. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibit "K163." Id. at 6:10-12. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits "K164" through "K169." Id. at 38:14-19, 61:8-13; 55:11-15; 85:22-86:3.

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

70. On March 7, 2012, the Planning Commission resumed the contested case hearing on the 2011 Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Intervenor KOCA

presented its fifth and sixth witnesses: Shad Kane and Dwight Miller. The Planning Commission accepted Miller as an expert in solid waste management. PC Tr. 03/07/12, 5:20-21, 17:22-23, 19:19-25. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits “K170,” “K171,” “K173” to “K176,” “K178” and “K179.” Id. at 122:19-23; 152:20–153:4, 153:13, 155:4-5.

71. On April 4, 2012, the Planning Commission resumed the contested case hearing on the 2011 Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The parties agreed to take the remaining witnesses out of order due to scheduling difficulties. Intervenor Schnitzer first presented Tom Zelenka as a rebuttal witness. PC Tr. 04/04/12, 7:19-20. Applicant then presented Janice Marsters as its first rebuttal witness. Id. at 30:4-5. Applicant offered, and the Planning Commission received into the record, 2011 Exhibit “A36.” Id. at 33:4-16. Intervenor KOCA presented its seventh and eighth witnesses: Maile Shimabukuro and Maeda Timson. Intervenor KOCA then rested its case. Id. at 123:18-19, 133:5-6. Applicant presented its second rebuttal witness, Gary Gill, Deputy Director, State of Hawaii, Department of Health, Environmental Management Division. Id. at 143:17. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits “K191,” “K194,” “K208,” “K215,” “K217,” “K218,” “K222,” “K223,” “K226,” and “K227.” Id. at 15:8-22, 18:24–19:3, 19:5-18, 24:4-16, 83:14-19, 101:15-19, 122:20-24, 143:4-10, 168:22–169:11.

72. On April 11, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Applicant presented its third and

fourth rebuttal witnesses: Dr. Sharma, who was qualified as an expert in landfill design and permitting, and Timothy Steinberger. See PC Tr. 04/11/12, 6:14-15, 69:4-5.

Applicant offered, and the Planning Commission received into the record, 2011 Exhibits “A37” to “A50.” Id. at 13:1-9, 15:21-25, 16:1, 25:1-7, 36:10-37:20, 43:25-44:2, 105:11-15, and 138:1-5. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits “K189,” “K190,” “K193,” “K195,” “K196,” “K198,” “K230,” “K247,” and “K251.” Id. at 188:25-189:5. Applicant rested its case. Id. at 212:17-22.

73. On April 23, 2012, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. Intervenor KOCA presented two rebuttal witnesses: Dwight Miller and Eddie Belluomini. Intervenor KOCA then rested its case. See PC Tr. 04/23/12, 7:7-11, 36:6-10, 48:24. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits “K255,” “K257,” “K192,” “K220,” “K256,” and “K258.” Id. at 12:13-17, 15:16-21, 47:18-25, 48:1-23. The parties presented their closing arguments.

74. The Planning Commission scheduled decision-making for the 2011 Application on May 25, 2012, at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The evidence was closed on April 23, 2012 and the ENV application was fully briefed.

75. On April 27, 2012, Intervenor KOCA filed an *Ex Parte* Motion to Reopen the Contested Case Hearing to Admit Limited Additional Documentary Evidence After the Hearing Closed (“Motion to Reopen the Contested Case Hearing”). Intervenor KOCA sought to admit 2011 Exhibits “K259” and “K260” into the record.

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

77. On May 2, 2012, ENV, Intervenors Schnitzer and KOCA filed their respective proposed findings of fact, conclusions, of law, and decisions and orders ("Proposed Findings").

78. On May 14, 2012, ENV filed a response, and Intervenor Schnitzer filed exceptions to Intervenor KOCA's Proposed Findings. Intervenor KOCA also filed responses to ENV's and Schnitzer's Proposed Findings.

D. EXHIBITS AND WITNESSES – 2011 APPLICATION PROCEEDING

79. ENV offered, and the Planning Commission received into the record of the 2011 Application proceeding, 2011 Exhibits "A1" to "A42," without objection, 2011 Exhibits "A43" to "A46," over objection of the Intervenors, and 2011 Exhibits "A47" to "A50," without objection.

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

81. Intervenor KOCA offered, and the Planning Commission received into the record, 2011 Exhibits "K1" to "K169," over objection, "K170," "K171," "K173" to "K176," "K178," "K179," "K189" to "K196," "K198," "K208," "K215," "K217," "K218," "K220," "K222," "K223," "K226," "K227," "K230," "K247," "K251," "K255" to "K258," without objection.

E. SUPREME COURT DECISION ON APPEAL OF 2009 LUC DECISION

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

83. By Order adopted October 8, 2012, the LUC remanded the 2008 Application to the Planning Commission for the expressed purpose of consolidating it with the proceeding on the 2011 Application, so that the Planning Commission may issue and transmit a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order on the Matter to the LUC. See Order Remanding County Special Use Permit File No. 2008/SUP-2 to the City and County of Honolulu Planning Commission, dated October 8, 2012.

F. CONSOLIDATION OF 2008 AND 2011 APPLICATIONS

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

85. On January 23, 2013, ENV filed its Memorandum in Opposition to Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to

Effect the Consolidation of the Separate Proceedings in 2008 SUP-2 as Ordered by the State Land Use Commission.

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

87. No further action was taken by the Planning Commission until August 17, 2016. On that date, the Planning Commission convened a hearing at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii, and considered Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Effect the Consolidation of the Separate Proceedings in 2008/SUP-2, as Ordered by the State Land Use Commission on October 8, 2012, and the Department of Environmental Services, City and County of Honolulu's Motion to Stay Proceedings to April 22, 2017. The Planning Commission ordered the consolidation of County Special Use Permit File No. 2008/SUP-2 and the proceedings on ENV's 2011 Application so that it may issue and transmit a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order to the LUC, and denied the City's Motion to Stay.

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

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

90. On October 7, 2016, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Statement Re: (1) Submission of Proposed Findings of Fact and Conclusions of Law and Decision and Order; (2) Various Parties' Submissions of Requests for Extensions of Time to Submit Proposed Findings of Fact, Conclusions of Law, and Decision and Order; (3) Department of Environmental Services, City and County of Honolulu's Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts, Filed on September 30, 2016.

91. On October 12, 2016, the Planning Commission heard ENV's Motion for Extension of Time, Intervenor KOCA's Motion to Reopen the Contested Case Hearing, and ENV's Motion to Reopen the Contested Case Hearing. During the hearing, ENV

amended its request for an extension of time by requesting a shorter 90-day extension, which was granted. The Planning Commission denied the motions to reopen the contested case hearing. See PC Tr. 10/12/16, 13:9-14:17, 18:10-19:14, 19:16-21:22.

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

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

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

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

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

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

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

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

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

101. The Planning Commission convened a hearing on March 1, 2017 and considered ENV's Motion to Strike Intervenor Hanabusa's Renewal of Submission of Proposed Findings of Fact and Conclusions of Law. The Planning Commission granted ENV's motion to strike. See PC Tr. 03/01/17, 12:1–13:1.

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

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

103. In its 2017 Planning Commission Decision, the Planning Commission approved ENV's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition No. 14, and adding the following conditions:

1. 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 Oahu, (b) the WGSL's operations, including gas monitoring, (c) the ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.
2. 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.

3. The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity.
4. The foregoing additional conditions shall supersede any inconsistent conditions in the 2009 LUC Order and shall otherwise supplement any and all existing conditions in the said 2009 LUC Order.

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

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

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

107. On May 19, 2017, the LUC received the Department of Environmental Services, City and County of Honolulu's Response to Intervenors Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand, Declaration of Dana Viola, and Exhibit 1 and the Department of Environmental Services, City and County of Honolulu's Memorandum in Opposition to Intervenors Ko Olina Community Association

and Maile Shimabukuro's Alternate Motion to Deny the Application Unless Additional Conditions are Imposed, Declaration of Kamilla C. K. Chan, and Exhibit 1.

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

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

110. On May 22, 2017, the LUC received ENV's Amended Certificates of Service to: Department of Environmental Services, City and County of Honolulu's Response to Intervenor KOCA's Motion to Deny and Remand, and Department of Environmental Services, City and County of Honolulu's Memorandum in Opposition to Intervenor KOCA's Alternate Motion to Deny the Application Unless Additional Conditions are Imposed.

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

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

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 WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the subsequent commencement of operations at the alternative landfill site;
3. Clarify whether the record needs to include updated information on the operation of the WGSL, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu;
4. Assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and
5. Clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

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

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

115. On June 26, 2017, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Renewal of Objections to Chair Dean Hazama's Participation and Votes in the Instant Case and Joinder to Intervenor Ko Olina Community Association and Maile

Shimabukuro's Motion for Recusal or Disqualification of Chair Dean Hazama, Filed on June 20, 2017.

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

117. On December 6, 2017, the Planning Commission adopted the proposed Findings of Fact, Conclusions of Law, and Decision and Order ("2017 Proposed Decision") and set February 5, 2018 as the deadline for the parties to file written objections and comments. The Planning Commission scheduled the next hearing for March 7, 2018. See PC Tr. 12/06/17, 10:11-11:11.

118. Also on December 6, 2017, the Planning Commission served on the parties its proposed Findings of Fact, Conclusions of Law, and Decision and Order dated December 6, 2017.

119. On February 5, 2018, ENV filed the Department of Environmental Services, City and County of Honolulu's Exceptions to Honolulu Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Dated December 6, 2017.

120. On February 5, 2018, Intervenor Schnitzer filed Intervenor Schnitzer Steel Hawaii Corp.'s Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order, and Exhibit 1.

121. On February 5, 2018, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro's Exceptions to Planning Commission's December 6, 2017 Proposed [sic] Findings of Fact, Conclusions of Law, and Decision and Order, Declaration of Christopher T. Goodin, and Exhibits 1-5.

122. On February 5, 2018, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Objections and Exceptions to Findings of Fact, Conclusions of Law, and Decision and Order, Dated December 6, 2017.

123. On February 13, 2018, Intervenor KOCA filed with the Planning Commission Intervenor Ko Olina Community Association and Maile Shimabukuro's Motion to Strike Schnitzer's February 2018 Proposed Findings, Memorandum in Support of Motion, Declaration of Christopher T. Goodin, and Exhibits 1-4.

124. On February 14, 2018, Intervenor Schnitzer filed Intervenor Schnitzer Steel Hawaii Corp.'s Memorandum in Opposition to Ko Olina Community Association and Maile Shimabukuro's Motion to Strike Schnitzer's February 2018 Proposed Findings.

125. On February 16, 2018, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro's Response to Schnitzer Steel Hawaii Corp.'s February 6, 2018 Proposed Findings of Fact, Conclusions of Law and Decision and Order.

126. The Planning Commission convened a hearing on March 7, 2018 and considered Intervenor KOCA's Motion to Strike Schnitzer's February 2018 Proposed Findings. The motion to strike was granted.

127. Also on March 7, 2018, the Planning Commission considered Intervenor KOCA's Motion to Reopen the Contested Case Hearing and the adoption of Findings of Fact, Conclusions of Law, and Decision and Order. After hearing oral argument of the parties, the Planning Commission scheduled April 4, 2018, for decision-making on the motion to reopen and the adoption of the findings of fact, conclusions of law, and decision and order.

128. The hearing set for April 4, 2018, was subsequently cancelled because the Planning Commission lacked quorum to decide the case.

129. Pursuant to the RPC § 2-75, on January 15, 2019, the Planning Commission served on the parties its Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("January 2019 Proposed Order"). The Planning Commission gave each party the opportunity to file written responses, exceptions, comments and objections to the January 2019 Proposed Order within twelve (12) days of service.

130. On February 7, 2019, Intervenor Hanabusa filed her Objections, Exceptions and Positions Re: Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

131. On February 8, 2019, ENV filed its Exceptions to Honolulu Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order served on January 15, 2019.

132. On February 8, 2019, Intervenor Schnitzer filed its Exceptions to the Planning Commissions Proposed Findings of Fact, Conclusions of Law and Decision and Order.

133. On February 11, 2019, Intervenor KOCA filed its Exceptions to Planning Commission's January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

134. On February 13, 2019, the parties filed a Stipulation Allowing an Extra Day to File Intervenor's KOCA's Exceptions to Planning Commission's January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order. On February 18, 2019, Intervenor KOCA served on the other parties in this matter KOCA's Exceptions, however, Intervenor KOCA inadvertently filed its Exceptions with the Public Utilities Commission rather than the Planning Commission. Intervenor KOCA filed its Exceptions with the Planning Commission on February 11, 2019.

135. On February 28, 2019, the Planning Commission held the Continued Contested Case Hearing in the instant matter that was continued from March 7, 2018 and rescheduled from April 4, 2018 at the Mission Memorial Conference Room.

136. On February 28, 2019, before the Planning Commission heard oral arguments and/or considered the adoption of Findings of Fact, Conclusions of Law, and Decision and Order, Planning Commission Vice-Chair Cord D. Anderson and members Theresia C. McMurdo, Ken K. Hayashida, Gifford K. F. Chang, and Donald W. Y. Goo (Temporary Appointee), each attested to the fact that he or she reviewed the transcript of the proceedings for the date(s) that he or she was absent, and that he or she has studied, examined an understood the record of the hearings.

137. On February 28, 2019, the Planning Commission heard the parties' oral arguments in support of their respective Exceptions and their position on Intervenor KOCA's Motion to Reopen the Contested Case Hearing that was also continued from the March 7, 2018 hearing.

138. On February 28, 2019, the Planning Commission denied Intervenor KOCA's Motion to Reopen the Contested Case Hearing.

139. On February 28, 2019, at the conclusion of the parties' arguments regarding their respective Exceptions, the Planning Commission questioned the parties and discussed the adoption of the parties' exceptions, comments and suggestions to the January 2019 Proposed Order. The Planning Commission continued the discussion of the adoption of the January 2019 Proposed Order to April 11, 2019 at 1:30 p.m.

140. Based on the discussion at the February 28, 2019 hearing, ENV submitted to the Planning Commission on March 19, 2019, a published report entitled Assessment of Municipal Solid Waste Handling Requirements for the Island of Oahu ("Landfill Report").

141. On March 18, 2019, ENV filed its Motion for Leave to File Supplemental Brief. ENV's Supplemental Brief was attached as Exhibit "1" to its Motion for Leave.

142. On March 25, 2019, Intervenor KOCA filed its Response to ENV's Motion for Leave to File Supplemental Brief filed March 18, 2019 and Objection to the Department's March 19, 2019 Submission.

143. On March 29, 2019, Intervenor KOCA filed its Submission of Materials Presented at the February 28, 2019 Planning Commission Hearing.

144. On April 11, 2019, the Planning Commission heard oral arguments on recent motions and continued discussion on the adoption of the January 2019 Proposed Order. At the same hearing, the Planning Commission denied ENV's Motion for Leave to File Supplemental Brief and Memorandum in Support of Motion. See PC Tr. 04/11/19, 12:1-19.

145. Also on April 11, 2019, the Planning Commission voted to adopt the January 2019 Proposed Order including the exceptions provided in (1) ENV's Exceptions to Honolulu Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed on February 8, 2019 and, (2) Intervenor Schnitzer's Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order filed on February 8, 2019 and, (3) including paragraphs #89 through #102 of the 2009 Planning Commission Decision attached to Intervenor Schnitzer's Exceptions as Exhibit "1". See PC Tr. 04/11/19, 30:14-31:17.

146. In its 2019 Planning Commission Decision, the Planning Commission approved ENV's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition Nos. 4 and 14, and adding the following conditions:

1. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGS� reaching its capacity at a future date. This identification shall have no impact on the closure date for the WGS� because the WGS� shall continue to operate until it reaches capacity. This identification does not require the alternative landfill to be operational on December 31, 2022 but is intended to require the Applicant to commit to the identification of an alternative

landfill site that may replace WGS� when it reaches capacity at a future date. The identification of an alternative landfill site by December 31, 2022 is based on the evidence presented and that, as the Planning Commission discussed in 2017, a five year timeframe was sufficient time for the Applicant to identify an alternative landfill site before the WGS� nears capacity. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the status of the efforts to identify and develop a new landfill site on Oahu, (b) the WGS�'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 regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.
3. Public health and safety conditions: If the landfill releases waste or leachate, the ENV must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, Intervenor 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 not be limited to, placing debris barriers and booms at the landfill's shoreline outfall to prevent waste from spreading into the ocean.

147. The Planning Commission further ordered that pursuant to its consolidation of County Special Use Permit File No. 2008/SUP-2 and the proceedings on Applicant's 2011 Application, the 2009 LUC Order is incorporated by reference in the 2019 Planning Commission Decision in order to issue a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order. In addition, the 2019 Planning

Commission Decision states that the Findings of Fact, Conclusions of Law, and additional conditions in the decision shall supersede any inconsistent finding, conclusion, or condition in the 2009 LUC Order and shall otherwise supplement any and all existing findings, conclusions and conditions in said 2009 LUC Order.

148. On September 11, 2019, the Planning Commission transmitted to the LUC the record in the consolidated proceedings.

149. On September 11, 2019, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro's Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019, Declaration of Christopher T. Goodin, and Exhibits 1-7.

150. On September 20, 2019, the Planning Commission transmitted to the LUC File No. 2008/SUP-2 Findings of Fact, Conclusions of Law, and Decision and Order, Certificate of Service dated January 15, 2019 of the Planning Commission.

151. On September 24, 2019, Intervenor Hanabusa filed Intervenor Colleen Hanabusa's Position Statement and Objections to the Planning Commission's Findings of Fact and Conclusions of Law, and Decision and Order, Dated June 10, 2019.

152. On September 25, 2019, Intervenor Schnitzer filed Intervenor Schnitzer Steel Hawaii Corp.'s Comments to Intervenor Ko Olina Community Association and Maile Shimabukuro's Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019.

153. On September 25, 2019, ENV filed the Department of Environmental Services, City and County of Honolulu's Response to Intervenor Ko Olina Community Association and Maile Shimabukuro's Objections to Planning Commission's Findings of

Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019, Declaration of Kamilla C. K. Chan, and Exhibits 1-7.

154. On October 1, 2019, the State of Hawaii Office of Planning (“OP”) filed a memorandum recommending approval of the application, as approved by the Planning Commission. OP also recommended additional and amended conditions as described in its memorandum to ensure that a replacement landfill site is operational before the WGS� reaches capacity.

155. On October 2, 2019, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro’s Reply in Support of Their Objections to Planning Commission’s Findings of Fact, Conclusions of Law and Decision and Order, Dated June 10, 2019.

156. On October 7, 2019, Intervenor Schnitzer filed Intervenor Schnitzer Steel Hawaii Corp.’s Comments to Intervenor Colleen Hanabusa’s Position Statement and Objections to the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019, Filed herein September 24, 2019.

157. On October 7, 2019, ENV filed its comments on the recommendations in OP’s Memorandum dated October 1, 2019.

158. On October 8, 2019, OP filed a letter notifying the LUC that OP and ENV jointly agreed to amended conditions to the 2019 Planning Commission Decision.

159. On October 9 and 10, 2019, the LUC met in Honolulu, Hawaii, to consider the 2008 and 2011 Applications. Kamilla C. K. Chan appeared on behalf of ENV. Ian Sandison appeared on behalf of Intervenor Schnitzer. Calvert G. Chipchase and Christopher T. Goodin appeared on behalf of Intervenor KOCA. Richard N. Wurdeman

appeared on behalf of Intervenor Hanabusa. Brian Yee appeared on behalf of OP. The Applicant, each Intervenor, and OP made presentations and answered questions from the LUC, then discussion ensued. A motion was made to deny the 2008 and 2011 Applications. The motion was seconded but failed with a vote tally of 4 ayes and 4 nays. Subsequently, several motions were made and seconded, but failed. Then, a motion was made and seconded to approve the Applications with a modification that requires the WGSL to close on March 2, 2027. There being a vote tally of 4 ayes and 4 nays, the motion failed. Finally, a motion was made and seconded to approve the Applications with modifications, which requires the WGSL to close on March 2, 2028. There being a vote tally of 6 ayes and 2 nays, the motion passed.

II. PROPOSAL FOR SPECIAL USE PERMIT

160. In this consolidated proceeding, ENV seeks a SUP for the expansion and continued use of the approximately 200.622-acre property identified by TMK Nos. (1) 9-2-003: 072 and 073, in Waimanalo Gulch, Oahu, Hawaii, as a landfill. See 2008 Application at 1-1. At the time the 2008 Application was filed, a 107.5-acre portion of the Property was used as a landfill, and ENV proposed to expand the landfill by the remaining 92.5 acres. Of the approximately 92.5 acres in the expansion area, approximately 37 acres would be utilized for landfill cells. See 2008 Application at 1-2. In addition, the expansion area included the development of landfill-associated support infrastructure, including drainage, access roadways, a landfill gas collection and monitoring system, leachate collection and monitoring systems, stockpile sites, a public drop-off center, and a landfill gas-to-energy system and other related features. Id.; see also 2008 Application at Part I.

161. The SUP will cover the entire Property.

A. DESCRIPTION OF THE PROPERTY

162. The Property is owned by the City and County of Honolulu and operated by Waste Management of Hawaii, Inc. (“WMH”). See PC Tr. 07/01/09, 179:4-8.

163. The state land use district designation for the Property is Agricultural District. See 2009 DPP Recommendation at 1; Application at Planning Division Master Application Form; 2011 DPP Recommendation at 1.

164. The existing City zoning district for the Property is AG-2, General Agricultural District. See 2008 Application at Part I; 2009 DPP Recommendation at 1; 2011 DPP Recommendation at 1.

165. The Ewa Development Plan recognizes the existing landfill. See 2009 Exhibit “A5”; 2009 DPP Recommendation at 1; 2011 DPP Recommendation at 1.

166. Existing uses of the property are landfill and open space. See 2009 DPP Recommendation at 2; 2011 DPP Recommendation at 1.

167. Elevations at the Property range from a low of 70 feet above mean sea level (msl) to 940 feet msl in the northern portion. Except for areas of fill, the steep-sloped valley contains dryland grasses and an abundance of rock outcrops. See 2009 DPP Recommendation at 8.

168. The area is fairly dry. According to an on-site rain gauge located at the weather station, the average rainfall at WGSL is approximately 15 inches per year. See 2008 Application at 2-28; 2009 DPP Recommendation at 9.

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

170. According to the Agricultural Lands of Importance to the State of Hawaii (“ALISH”) system, the Property is not classified as one of three types of agricultural land: Prime Agricultural Land, Unique Agricultural Land and Other Important Agricultural Lands. See Figure 8-2 of 2009 Exhibit “A1.”

171. The University of Hawaii Land Study Bureau overall master productivity rating for the Property is “E,” which indicates very poor crop productivity potential. See 2008 Application at 2-31.

172. The Federal Emergency Management Agency, Flood Insurance Rate Map, identifies the landfill property as within “Zone D,” an area in which flood hazards are undetermined, but possible. See Figure 5-9 of 2009 Exhibit “A1.”

173. The Property is not located within the Special Management Area. See Figure 8-3 of 2009 Exhibit “A1.”

B. SURROUNDING USES

174. Surrounding uses to the Property include the Hawaiian Electric Company Kahe Power Plant to the west, single-family dwellings and the Ko Olina Resort to the south, and vacant lands to the north and east. See Figure 7-3 of 2009 Exhibit “A1.”

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

176. The region east of the Property comprises the Makaiwa Hills development, which is slated for development. See PC Tr. 06/22/09, 64:6-8; Figure 7-3 of 2009 Exhibit “A1.” WGS� has been in operation since 1989. See PC Tr. 07/01/09, 179:9-10. Subsequently, in 2008, the Makaiwa Hills parcel was rezoned for single family, mixed and apartment use by Ordinance 8-26, Bill 47 (2008). See 2009 Exhibit “A36.”

177. The Makaiwa Hills developer's intention, according to its Final EIS dated October 2007 (the "Makaiwa Hills EIS"), is to proceed with development from makai (south) proceeding in a mauka (north) direction, as well as proceeding from east to west. See PC Tr. 06/22/09, 167:6-25. The Makaiwa Hills EIS indicates that construction of the western portion of its development closest to WGS� will not proceed until 2015. Id. at 167:25-168:3; 2009 Exhibit "A37" at p.4-60.

178. WGS� plans to initiate closure of the existing landfill cells in the area nearest Makaiwa Hills' proposed residences prior to 2015. See PC Tr. 06/22/09, 168:1-8; 188:17-25, 189:1-14. In particular, cell E2 and portions of cells E1, E3, and several other MSW cells (labeled Closure Sequence "A" in 2009 Exhibit "A12") are anticipated to be covered, capped and closed by 2012. See 2009 Exhibit "A12"; PC Tr. 06/24/09, 91:7-92:1.

179. There is a ridgeline between Makaiwa Hills and WGS�. See PC Tr. 06/22/09, 191:12-18. The elevation of the landfill will be much lower than Makaiwa Hills. Id. at 170:2-4. The area of Makaiwa Hills nearest to WGS�'s landfill cells in the proposed expansion area is identified as open space on the Makaiwa Hills property and will not be developed. Id. at 191:4-8; 2009 Exhibit "A11."

180. The landfill access road proceeds up to the scalehouse, past the ash cells, veers due west to the west side of the Property, and travels up the western side of the Property and into the proposed expansion area. See PC Tr. 06/24/09, 89:5-16. This course takes the road away from the eastern boundary of the Property and away from Makaiwa Hills. Id.

181. WMH documents and responds to complaints received about the operations of WGSL. Id. at 100:9–101:3. WMH received six complaints in 2007, three in 2008, and three in 2009. Id. at 101:4-7.

182. Daniel Banchiu, general manager of JW Marriott, Ihilani (“Marriott”) as of 2009, testified for Intervenors at the July 2, 2009 hearing on the 2008 Application. See PC Tr. 07/02/09, 99:16-25. As of 2009, the Marriott operated a hotel at the Ko Olina resort. Id. at 99:4-8. He testified that he is aware of view and odor complaints from his guests, but that as of 2009, the Marriott has not notified WMH about any complaints. Id. at 100:14–101:12; 110:2-10. He further testified that guests complained of views of a smokestack in the distance. On cross-examination, however, he admitted that he has never been to the landfill and that the smokestack could be located at some other facility – perhaps a facility with a smokestack. Id. at 106:1-107:12. WGSL does not have a smokestack but the Kahe Power Plant, which is adjacent to the Property, does. See 2009 Exhibit “A1” at p. 5-93.

C. STABILITY, CONTROLLED BLASTING AND BERMS

183. Pursuant to federal and state regulations governing landfills, a seismic hazard evaluation was performed to determine seismic slope stability of the landfill. See PC Tr. 06/22/09 at 238:21–239:5. Consistent with accepted industry practice, the project was analyzed for a design earthquake of magnitude 7.0, with an acceleration of 0.25 G, which is a quarter of gravity force. Id. at 240:1-9.

184. Under the Resource Conservation and Recovery Act (“RCRA”), Subtitle D, Seismic Design Guidance document, the acceptable displacement of landfills due to a seismic event is twelve inches. Id. at 248:25–249:13. The seismic deformation analysis

of the design for the expanded landfill showed that seismic deformations were six inches or less, meeting the seismic stability criteria. Id. at 249:14-23.

185. The use of controlled blasting at the Property, which is very common in many landfill excavations, will not affect the stability of WGSL because the imparted energy of controlled blasting is so small and significantly less than 0.1 G. Id. at 240:12-23; 250:3-16; 253:3-7. Monitoring probes installed by the Hawaiian Electric Company near the western Property boundary to measure vibrations from controlled blasting efforts at the landfill as permitted prior to the 2008 Application did not detect any measurable readings. Id. at 252:1-15.

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

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

188. The impact of accumulated leachate on stability was also studied. According to Dr. Sharma and Richard Von Pein, even under extreme circumstances of leachate accumulation, using worst case scenarios that have never been experienced, the landfill would remain stable. See PC Tr. 06/24/09, 61:2-24; PC Tr. 07/01/09, 170:16-171:15.

189. Whenever new cells are designed, a seismic deformation analysis and slope stability analysis must be performed to determine how the design impacts the existing cells. See PC Tr. 06/24/09, 9:19-23.

190. Berms are included in the design for several reasons, including for diversion of the surface water to make sure leachate is contained within the landfill and to create airspace while ensuring stability. See PC Tr. 06/22/09, 236:18-237:2; PC Tr. 06/24/09, 24:13-20; PC Tr. 07/01/09, 100:12-15.

191. A small Ash Toe Berm was part of the original design for WGS. See PC Tr. 07/01/09, 142:12-15; 142:21-143:3. The Ash Toe Berm was expanded in 2005 to address a small area where the factor of safety was less than 1.5. Id. at 142:17-20.

192. The E1 and West Berms were a part of the 2002 design for the 14.9-acre landfill expansion. Id. at 168:19-170:1; 2009 Exhibit "A32."

193. The West Berm will be extended further into the canyon under the proposed design for the expansion. See PC Tr. 06/22/09, 237:3-23; PC Tr. 06/24/09, 36:25-38:11.

D. STORM WATER AND LEACHATE

194. Leachate is rain water that falls on open landfill cells. PC Tr. 07/01/09, 14:11. The bottom of the individual landfill cells is contoured to direct leachate to a low point ("sump") and has a multi-layered composite liner system. See id. at 15:4-13; 101:2-25; 102:1-4; 2009 Exhibit "A1" at Figure 4-3. Within the sump is a permanent riser that contains a pump, which then pumps the leachate in a hard pipe up to the surface, where it is then pumped into a tank for disposal at a wastewater treatment

facility. See PC Tr. 07/01/09, 15:4-13, 17:12-15. The wastewater treatment facility accepts the leachate for treatment after determining it meets the requirements of the wastewater treatment facility's own permits and would not violate the Clean Water Act. Id. at 18:6-15; PC Tr. 06/22/09, 144:7-19, 147:2-5. Each of the leachate sumps is equipped with an automated pump that activates at a preset level below the compliance level. PC Tr. 07/01/09, 105:9-12. There is an alarm that lets WMH know if the pump is no longer functioning. Id. at 105:13-16. In addition, WMH physically monitors the sumps. Id. at 105:13-20.

195. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the existing sedimentation basin if it originates onsite (surface run-off). Id. at 13:16-25; PC Tr. 06/22/09, 119:17-25. The sedimentation basin is designed to allow storm water to settle so that dissolved solids that come off of the landfill can settle out in that basin. See PC Tr. 07/01/09, 77:21-24. The water is eventually discharged to the ocean subject to Department of Health, State of Hawaii ("DOH") permitting requirements under the national pollution discharge elimination system. Id. at 77:25-78:6. A third-party company takes samples to ensure compliance with certain discharge limits. Id. at 78:7-79:5. In addition, DOH inspects WMH's ditches and slopes. Id. at 78:13-15.

196. The storm water and surface water system is completely separate from the leachate collection system, so leachate does not come into contact with stormwater. Id. at 76:21-77:8; 97:15-98:8.

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

E. GAS COLLECTION AND CONTROL SYSTEM, EPA NOTICE OF VIOLATION AND DISCOVERY OF FABRICATED DATA

198. On April 4, 2006, the U.S. Environmental Protection Agency (“EPA”) issued a Notice of Violation (“NOV”) to WGSL, which included the late installation of a landfill gas collection and control system (the “GCCS”) and alleged violations of reporting requirements. See PC Tr. 07/01/09, 19:3-8; Appendix B of 2009 Exhibit “A1.” Both issues were resolved by August 2005. PC Tr. 07/01/09, 19:8. As of 2009, there were 40 gas wells at the Property. Id. at 22:18-25.

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

200. In installing the GCCS, elevated temperatures above the EPA’s standard operating temperature of 131° Fahrenheit were discovered at WGSL. Id. at 112:7-10, 113:25–114:2. WMH has submitted a demonstration to the EPA establishing that WGSL can be safely operated at higher than the standard operating temperatures. Id. at 112:11-15.

201. As of 2009, the EPA NOV is pending resolution of two outstanding issues that evolved from the NOV: the temperature issue and a monetary settlement. Id. at 106:2-13.

202. As of July 2009, EPA has not issued any NOV specifically for the elevated temperatures at WGSL. See PC Tr. 07/01/09, 21:18–22:1. There is no evidence that there has ever been, or that there is currently, a landfill fire at WGSL. Id. at 108:8-14. If there was combustion at WGSL, WMH would implement its contingency plan, including turning off the gas wells in the area of the fire, thereby depriving the

combustion area of needed oxygen, which is standard procedure for handling landfill oxidation events. Id. at 107:8-25; 108:1-7.

203. In September 2011, WMH notified the City, EPA, and DOH that it identified significant irregularities with landfill gas data that had purportedly been collected and recorded by its landfill gas technician at WGSL. Further investigation by WMH revealed that a rogue WMH employee had fabricated some wellhead gas parameter measurements instead of collecting the data through verifiable measurements. The employee failed to collect actual data from mid-2010 until August 2011. See Written Direct Testimony of Timothy E. Steinberger dated December 13, 2011 (“Steinberger Written Testimony”) at 27.

204. As a result of WMH’s initial investigation, WMH hired an environmental consultant to perform a detailed assessment of (1) the current status of the wellfield gas collection and control system to determine whether the fabricated data had concealed adverse changes in the wellfield, and (2) the past status of the wellfield based on verifiable data. Based upon the detailed assessment, WMH concluded that the wellfield and gas collection control system is performing within the expected range of monitored parameters at the facility and that there is no evidence that the wellfield has undergone any adverse changes in the last two years. Id.

F. TRAFFIC

205. A traffic impact report (“TIR”) was prepared for the project. See PC Tr. 06/22/09, 51:6-17; Appendix I of 2009 Exhibit “A1.” The TIR analyzes the amount of existing traffic transiting Farrington Highway on both the eastbound and westbound approaches, as well as the volume of traffic entering and coming out of the Property. Id.

206. The TIR concluded that even with the expansion of the landfill, the volume of traffic would not be expected to increase dramatically. Traffic going in and out of the landfill is less than approximately one percent of the total volume of traffic in the region. See PC Tr. 06/22/09, 51:18-24.

G. ARCHAEOLOGICAL AND CULTURAL RESOURCES

207. An *Archaeological Inventory Survey, Waimanalo Gulch Landfill Expansion*, 2008 (“AIS”) and a *Cultural Impact Assessment (Draft), Waimanalo Gulch Landfill Expansion*, 2008 were prepared for the Property. See Appendices G and H of 2009 Exhibit “A1,” respectively.

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

209. Applicant proposes to address SIHP # 50-80-12-6903 within a mitigation/preservation plan to be reviewed and accepted by the SHPD. See PC Tr. 06/22/09, 49:21–50:5; 2009 Exhibit “A3.” Specifically, Applicant has proposed to temporarily relocate the upright stones to Battery Arizona, and return the upright stones as close as possible to their current locations after the landfill has been closed. See PC Tr. 06/22/09, 49:5-20; 2009 Exhibit “A3.”

210. SHPD has reviewed Applicant’s proposed mitigation and determined that there is no effect to historic properties, as stated in a letter from Nancy McMahon, Deputy State Historic Preservation Officer of SHPD to David Tanoue, Director of DPP, dated April 2, 2009. See PC Tr. 06/22/09, 49:20–51:1; 2009 Exhibit “A4.”

211. No native Hawaiian customary and traditional rights or practices at the Property were identified. See CIA (Appendix “H” of 2009 Exhibit “A1”) at 79.

H. LANDFILL SITING

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

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

214. The Mayor tasked the Site Selection Committee to provide the City with advisory recommendations concerning the selection of a future site for a landfill to replace or supplement WGS� by accepting MSW, ash and residue from facilities such as

H-POWER, and construction and demolition debris waste (C&D) for the Island of Oahu. Id. at 12; PC Tr. 04/04/12, 35:1-8.

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

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

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

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

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

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

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

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

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

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

221. Upon applying the above exclusionary criteria, RMTC presented the Committee with two additional sites for consideration: (1) the Kahe Point Power Generating Station owned by Hawaiian Electric Company; and (2) the Makaiwa Hills subdivision owned by the James Campbell Trust Estate, which is part of a much larger parcel of land already under development. In addition, the second site was found to border the USFWS-designated critical habitat of the *Isodendrion pyriformum* (critically imperiled Hawaiian shrub). RMTC noted that both sites should be considered as “non-sites” due to either existing or pending land uses. Steinberger Written Testimony at 14.

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

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

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

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

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

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

226. Even after the City selects a new landfill site or sites, it will take ENV more than seven years to complete the tasks necessary to start operations at a new site(s). These tasks include, but are not limited to: (1) the preparation and processing of an EIS in full compliance with HRS Chapter 343 and related administrative rules for Oahu's next landfill site or sites (e.g., conducting site surveys or investigations, analyzing alternatives including alternative sites and technologies, obtaining public participation and comments); (2) the acquisition of landfill sites, which may require an appraisal of the land value, a determination by the City regarding the funding source for the acquisition, and approval for the expenditure of public funds by the Honolulu City Council; and (3) detailed engineering studies, construction and bid documents, and other approvals. Id. at 15-16.

227. The detailed engineering studies are needed to support the landfill design. These studies will include, but are not limited to: land surveys; geotechnical soils and structural investigations; hydrology and hydrogeological investigations. The completion of these studies is required so that the landfill construction drawings can incorporate civil design requirements, such as the provision of drainage, access roadways, and infrastructure, to support the use of the site. Coordination with governmental agencies, utilities, and adjoining landowners, consistent with mitigation measures identified in the EIS, will also be required to minimize disturbance to nearby property owners and utilities. The length of time required for the completion of detailed engineering studies, construction drawings and bid documents, and the processing of procurements for the

design and construction contractors (which could include the selection of a qualified landfill operator), as well as the acquisition of building permits, land use approvals such as SUP or district boundary amendment, depending on where the site(s) is located, and other necessary approvals, is estimated to be between one and three years. That is before the City even breaks ground on a new site. Id. at 16.

I. WASTE DIVERSION

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

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

230. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the landfill received only 163,736 tons of MSW and 179,946 tons of ash and residue from H-POWER. The amount of MSW deposited at WGSL reflects a steady decrease from 2009. In fiscal year 2009, the landfill received approximately 233,065 tons of MSW and in fiscal year 2010 some 178,512 tons

of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the landfill of 71.7%. See 2011 Exhibit "A27," see also 2011 Exhibit "A29."

231. As the decreasing MSW tonnage to WGS� shows, ENV is continuing its effort to significantly reduce solid waste disposal at the WGS� by expanding H-POWER, the waste to materials recycling programs, and developing alternative disposal options for materials presently being landfilled. Collectively, these actions have and will divert significant amounts of waste away from WGS�. In addition, new technology solutions continue to be evaluated. However, there still are no new technologies with proven reliability and performance that would completely eliminate the need for a landfill. Steinberger Written Testimony at 17.

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

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

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

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

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

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

238. Residents also may self-haul their bulky items to City disposal sites, including three transfer stations and six convenience centers. Recyclable materials are

segregated in separate bins or storage areas for delivery to recycling facilities. Materials that cannot be recycled is hauled to the landfill. Id.

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

240. As of November 2011, the City provides Green Waste Recycling to approximately 100,000 residences as part of the island-wide automated curbside recycling program. At that time, Oahu's capture rate for green waste was 77% which indicates a high level of participation at a high recovery level, either 85% participation at 90% recovery level or vice versa. (Capture rates are measured by the proportional amount of recyclable material collected relative to the total amount available in the specific waste stream. Capture rates do not denote the participation rate.) It is unlikely that this capture rate can get any higher. The City believes that the automated collection has encouraged more participation, further diverting materials from the landfill. Residents may self-haul green waste to City convenience centers or directly to the composting facility. All of the green waste is delivered to a private vendor that is contracted by the City to produce mulch and other products from the waste. Id. at 19-20.

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

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

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

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

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

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

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

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

- Cardboard. Commercial and government generators are partially banned from landfill disposal. Only 10% of a truckload can be composed of cardboard.
- Green waste. Commercial and government generators are partially banned from landfill disposal. Only 10% of a truckload can be composed of green waste.
- Tires, auto batteries, white goods and scrap metals. Banned from all disposal sites.
- Glass containers. Glass recycling is required for bars and restaurants.

- Paper recycling. All office buildings of a certain size must conduct recycling of paper goods.
- Food waste recycling. All hotels, restaurants, grocery stores, food courts, food manufacturer processors and hospitals meeting a certain size are required to recycle food waste.
- City agencies are required to purchase recycled paper products and to recycle newspaper, cardboard, office paper, aluminum, glass, and plastics.

Id. at 21-22.

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

250. The residual solids and semi-solids separated during the treatment of wastewater at wastewater treatment plants ("WWTPs") are commonly referred to as sewage sludge or bio-solids. These materials have been landfilled, but ENV has been working to divert much of this waste stream from WGSL. As of December 2011, the Synagro facility at the Sand Island WWTP digested, dewatered, and heat-dried approximately 20,000 tons per year of sewage sludge. The end product is a pellet that can be used as a fertilizer or soil amendment material. Furthermore, as of December 2011, ENV was working with the operator of H-POWER, Covanta, to be able to burn sewage sludge for energy as part of the third boiler that was expected to be operational by January 2013. Id. at 22-23.

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

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

Steinberger Written Testimony at 23-24.

252. The report points out that the technology and process selection for implementation at any of the WWTPs will need to be evaluated from an island-wide perspective due to the issues of combining/transporting solids between WWTPs as well as the identified end-user needs and beneficial use limitations. Other key elements that should be considered in evaluating these technologies and processes for the Island-wide Master Plan include eligibility and redundancy planning in the event that a WWTP

treatment unit (i.e., centrifuge or digester) or solids outlet (i.e., landfill or composting facility) is temporarily out of service. Id. at 24.

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

J. LANDFILL DESIGN AND OPERATIONS

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

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

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

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

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

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

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

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

261. Because the heavy rains in December 2010 and January 2011 occurred before the Western Surface Drainage System was completed, the active cell that had been accepting waste at the WGSL was inundated with storm water, and the force and quantity of storm water breached the cell, causing a release of MSW, including treated medical waste, into the storm water and into the ocean. Id.

262. The City has been cooperating with Federal and State investigations concerning the release of MSW. WMH and the City worked with the EPA and DOH in the aftermath of the storms, entering into an Administrative Order on Consent with EPA that outlined the remedial actions needed to address the MSW release and steps needed to reopen the landfill. The EPA issued a NOV on November 29, 2011, concerning the release of MSW into the storm water and into the ocean. EPA did not impose any penalties as part of the NOV and, as of December 2011, continued to monitor the WGSL operations closely. Id. at 26-27.

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

264. Despite pending enforcement and alleged EPA violations, in April 2012, Gary Gill, the Deputy Director of the DOH, Environmental Management Division, the

individual heading the agency responsible for regulating WGSL, still insisted that Oahu needs a landfill, that WGSL is the only landfill for MSW and ash, and that shutting down the landfill before other options are available will endanger public health. See PC Tr. 04/04/12, 149:2-151:4.

III. PURPOSE AND NEED

265. WGSL is a fundamental component in the City's program to manage solid waste. Steinberger Written Testimony at 2.

266. On December 1, 2004, the City Council adopted Resolution No. 04-349, CD1, FD1, which selected the Property as the site for the City's landfill. See 2009 Exhibit "A20" and 2011 Exhibit "A11." This decision was the result of a comprehensive public process and evaluation. See 2009 DPP Recommendation at 17.

267. In Resolution No. 04-349, CD1, FD1, the City Council states that the Waimanalo Gulch site is selected as the site for the City's landfill because:

- (1) The site currently has over 15 years capacity left with further expansion, and this capacity can be further extended should the city be successful in reducing the amount of waste currently entering the landfill through recycling and the use of new technologies;
- (2) The city already owns the property and the infrastructure is already in place, making the site the most economical and least expensive to develop and maintain as a landfill;
- (3) Other sites will require a large capital outlay by the city to acquire the land through condemnation and to develop and construct the site and required supporting infrastructure;
- (4) A landfill management contract is already in place for 15 years;
- (5) This is the only site where the costs and revenues for a landfill are known factors; and
- (6) The current landfill operator is committed to implementing necessary improvements to landfill operations to address community concerns regarding visual impact, odors, airborne waste, litter and dust control.

2009 Exhibit "A20" at 2-3; 2011 Exhibit "A11" at 2-3.

268. As of March 16, 2009, there was approximately 12 months of landfill airspace capacity remaining in the MSW portion of the current SUP area, and approximately 24 months of landfill airspace capacity remaining in the ash portion of the existing SUP area of 107.5 acres. See PC Tr. 06/24/09, 81:22–82:6; 83:1-14.

269. As of April 22, 2011, the predicted life of the WGSL's 200.622 acre site was 29.4 years. See 2011 Exhibits "A2" and "A3." Accordingly, the WGSL was projected to reach capacity on or around August 2040.

270. The continued operation and proposed expansion of the landfill is needed because WGSL is a critical part of the City's overall integrated solid waste management efforts. See PC Tr. 07/01/09, 181:4-8.

271. WGSL is the only permitted public MSW facility on the island of Oahu. Thus, the WGSL is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by H-POWER. See PC Tr. 07/01/09, 181:20–183:4; PC Tr. 01/25/12, 58:22-25, 59:1-9.

272. WGSL is a critical portion of the City's overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled or burned for energy. See PC Tr. 07/01/09, 178:10-18, 181:7-18; see also Steinberger Written Testimony at 2, 4. The ISWMP is required by State law and approved by DOH after public comments. See PC Tr. 07/01/09, 182:18–183:25. One theme of the ISWMP is to minimize landfill disposal. Id. at 184:1-3.

273. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the landfill received only 163,736 tons of

MSW and 179,946 tons of ash and residue from H-POWER. The amount of MSW deposited at the WGS� reflects a steady decrease from 2009. In fiscal year 2009 the landfill received approximately 178,512 tons of MSW and in fiscal year 2010 some 233,065 tons of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the landfill of 71.7%. See 2011 Exhibit "A27."

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

275. The City is actively reducing waste volumes that are directed to the landfill. H-POWER capacity will increase with its expansion so that it can receive an additional 300,000 tons per year of MSW by 2013. See PC Tr. 07/01/09, 185:8-25; see also Steinberger Written Testimony at 18. The expanded H-POWER facility will be able to burn items that the current facility cannot, and which therefore have been sent to the landfill. See PC Tr. 07/01/09, 186:17-187:12; see also Steinberger Written Testimony at 19.

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

277. The City has a facility at the Sand Island Wastewater Treatment Plant that digests, dewateres, and heat-dries approximately 20,000 tons per year of sewage sludge and turns the biosolids that might otherwise be sent to a landfill into pellets that can be used as a fertilizer or soil amendment material. Steinberger Written Testimony at 23.

278. By 2012, when H-POWER's third boiler is expected to be operational, the City through its various solid waste management programs expects to divert eighty percent of the waste stream, with the remaining twenty percent being landfilled at WGSL. See 07/01/09 at 201:9-16. There will be few cities that can match that rate of landfill diversion. Id. at 195:4-8.

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

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

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

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

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

284. Therefore, the WGSL is currently necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for the residents of Oahu. See PC Tr. 01/25/12, 12:15-19, 65:14-20; 04/04/12, 149:24–150:25.

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

IV. STATE AND COUNTY LAND USE LAW AND REGULATIONS

286. The continued operation of the landfill and the requested expansion project are consistent with various provisions of the Hawaii State Plan. See PC Tr. 06/22/09, 69:4-6; 2008 Application at 2-2 through 2-8.

287. The continued operation of the landfill and the requested expansion project are consistent with the energy functional plan. The WGSL is a generator of naturally occurring methane and other landfill gases, and these gases are planned to be recovered by the City for use in the generation of electricity through a landfill gas-to-energy system. See 2009 Exhibit “A1” at 8-9; PC Tr. 06/22/09, 70:1-12.

288. The continued operation of the landfill and the requested expansion project are consistent with the recreational functional plan. The Property can be reclaimed for other purposes that include outdoor recreation; for example, Kakaako Waterfront Park once served as a landfill in Honolulu. See 2009 Exhibit “A1” at 8-10; PC Tr. 06/22/09, 70:13–71:2.

289. The continued operation of the landfill and the requested expansion project are consistent with the City's General Plan. The WGS� is an important public facility that will provide a necessary facility to meet future population needs and accommodate growth in the region; WGS�'s eventual closure will allow the Property to be reclaimed for other public uses; and the WGS� is needed in the event of a natural disaster. See PC Tr. 06/22/09, 71:8-72:25; 2009 Exhibit "A1" at 8-25 through 8-28.

290. The continued operation of the landfill and the requested expansion project are consistent with the Ewa Development Plan because the facilities map contained therein designates the landfill with the appropriate symbol. See PC Tr. 06/22/09, 73:9-74:12; 2009 Exhibit "A1" at 8-28 through 8-29.

291. The continued operation of the landfill and the requested expansion project are consistent with City zoning because a landfill is considered a "public use" under the Land Use Ordinance, and "public uses and structures" are deemed permitted uses in every City zoning district, without the need for a permit. See 2008 Application at 2-28 through 2-29; PC Tr. 06/22/09, 75:5-22.

292. The continued operation of the landfill and the requested expansion project comply with the guidelines as established by the Planning Commission and the LUC. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-1 through 2-28.

V. CONFORMANCE WITH THE SUP GUIDELINES

293. The Applicant's 2008 Application for a new State SUP and 2011 Application to Modify generally meets the SUP guidelines provided in HAR § 15-15-95(c) as follows:

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 LUC.

The Property is classified within the State Agricultural District, but it is not classified by the Agricultural Lands of Importance to the State of Hawaii ("ALISH") system. The University of Hawaii Land Study Bureau's Detailed Classification has classified the productivity of the Property as "E." This classification system rates lands on a scale of "A" to "E," reflecting land productivity characteristics. Lands designated "A" are considered to be of highest productivity, with "E" rated lands ranking the lowest. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-1 through 2-2.

Since 1989, a portion of the Property has been used for landfilling. Continued use of the Property as a landfill allows for the conservation and maintenance of other, more agriculturally suitable lands which are capable of producing diversified agriculture that would increase Hawaii's agricultural self-sufficiency. Consequently, continuing to allow landfilling on the Property would not be contrary to the State's policy of conserving and protecting agricultural lands. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-2.

Further, the Property has not been identified as "important agricultural lands" within the meaning of Part III of HRS Chapter 205. The Property is not capable of producing sustained high agricultural yields, does not contribute to the State's economic base by producing agricultural commodities, and is not needed to promote the expansion of agricultural activities. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-2.

The proposed use does not fall under those uses enumerated in HRS §§ 205-2(d) or 205-4.5 but the Property is the appropriate subject of a SUP, a permit that allows certain unusual and reasonable uses within the Agricultural District other than those for which the district is classified. See HRS § 205-6(a). The WGSL and other landfills have been permitted in the Agricultural District with a SUP. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-2.

In addition, the proposed use of the Property is consistent with HRS Chapter 205A. The proposed facility is not

located on the coastline or shoreline and does not involve the use of coastal resources. The site is not in a location suitable for the development of new shoreline recreational opportunities or to dedicable shoreline areas with recreational value. It is anticipated however, that with the eventual exhaustion of space within the WGS� that future recreational park opportunities may one day become available through the reclamation of the site. Although not shoreline dependent, the relative location of the site mauka and above coastal Waianaē, would allow open space recreational uses to complement and enhance the existing public beach and park facilities of the area. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-8 through 2-9.

Finally, the LUC's Rules delineate a process for obtaining a SUP to allow "certain unusual and reasonable uses" within the Agricultural District other than those for which the district is classified, in conformance with HRS § 205-6. Thus, the proposed use is not contrary to the objectives of the LUC's Rules. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-16.

2. The proposed use would not adversely affect surrounding property.

Potential impacts to surrounding property and mitigating measures from the WGS� Lateral Expansion project to nearby properties include the following:

- A. Potential impacts for generation of dust and noise, and migration of fugitive dust, associated with the use of a rock crusher that will be used on site, from construction of the proposed expansion areas, from Landfill operations including earthwork, and from vehicles entering and leaving WGS�.

To reduce and mitigate the potential for the release of fugitive dust from the site, preventative measures will be practiced by the operator in accordance with the provisions of HAR, Chapter 11-60.1-33, Fugitive Dust. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-16.

- B. Potential for odors associated with operations of the Landfill including vehicular odor, odors from the hauling of waste to the Landfill, and odors as a result of landfill gas emissions.

Vehicular Odors and Exhausts – Exhaust emissions are mitigated by commercial and private vehicle operators' compliance with HAR Chapter 60-1, Air Pollution Control, Subpart 1.34, Motor Vehicles. The site operator will also ensure that all vehicles and equipment associated with landfill operations are properly muffled and maintained in good operating condition. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-17.

Odors from Waste Hauling – Potential sources of odor include the delivery of refuse vehicles containing putrescible waste, sewage solids that cannot be further processed by wastewater treatment plants, and other types of waste. On site odor management will involve: (1) refuse vehicle processing and control, (2) limiting the size of the daily disposal area; and (3) use of an odor neutralizing system. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-17.

At the time of the 2008 Application, the solid sewage sludge from the Sand Island Waste Water Treatment Plant ("SIWWTP"), which was previously disposed of at WGS�, was already being treated in a waste digester installed at SIWWTP. The system is fully operational and significantly decreased the amount of treated sludge solids that required landfilling at WGS�, thereby decreasing this source of odorous waste from the Landfill. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-17.

In addition, stabilized, dewatered sludge is landfilled at WGS�. The City is in the process of seeking beneficial uses for the stabilized, dewatered sludge. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-17.

Landfill Gas Associated Odor – The generation of landfill gas is controlled by use of a landfill gas collection and control system (GCCS) that was installed in 2005. The system is operating in accordance with requirements and no adverse effects from the performance of the system to address landfill gas associated odor are anticipated. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-18.

Landfill Associated Gases – Landfill gases at WGS� are monitored in compliance with RCRA Subtitle D regulations, HAR Chapter 11-58, and the Landfill's Solid

Waste Permit. No adverse effects from landfill associated gases including methane, hydrogen, and other potential emissions are anticipated. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-18.

- C. Potential for windblown litter to become airborne and associated litter to be deposited along the highway by improperly secured loads from refuse delivery trucks.

Measures to mitigate the potential for windblown litter include the use of permanent, temporary, and portable litter fences. Waste is and will continue to be processed and covered with cover material as soon as practicable. In addition, on-call or standby work crews are deployed concurrent with the acceptance of refuse at WGSL. Applicant will enforce existing rules, regulations and procedural practices to reduce the incidence of windblown litter. WMH also enforces the rule requiring all loads entering the Landfill to be secured by the use of a tarp, cover or enclosure. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-18.

- D. Potential traffic impacts associated with the transit of vehicles entering and leaving WGSL.

The proposed expansion of the Landfill is not, in itself, expected to generate additional vehicle trips. Increased development islandwide may result in an increase in site-generated trips to the Landfill since additional refuse vehicles may be required to service these areas, but the implementation of the H-POWER expansion and other recycling program may result in a decrease in vehicular traffic to the Landfill. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-18

- E. Potential for tracking of mud and sediments onto Farrington Highway from vehicles existing the Landfill.

During wet weather, measures are implemented at WGSL to minimize the tracking of mud onto public roads. Wet weather tipping areas are constructed out of rock or asphalt and concrete rubble to minimize the exposure of customer vehicles to excessively muddy conditions. As vehicles exit the WGSL, they cross a "rumble strip" which vibrates mud

from wheels and tires before exiting the site onto Farrington Highway. Operations personnel will maintain these features and provide clean up, if required. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-18 through 2-19.

- F. Potential impact associated with the possible release or entry of leachate entering brackish groundwater.

There are no drinking/potable groundwater resources that could be adversely affected by the Landfill. There is potential for leachate from the Landfill entering brackish groundwater in the area of the Landfill. Mitigation to address this issue is currently provided through the existing Leachate Collection and Removal System (“LCRS”) design. As required, the LCRS system design will be modified to ensure against the potential for adverse effects to groundwater and hydrogeological resources of the site. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-19.

- G. Potential visual impacts associated with the modification or loss of mauka view planes toward WGSJ.

Portions of the existing area of work are visible from various locations along Farrington Highway and the Ko Olina Resort. Mitigation involves: (1) the location of the planned area of expansion further mauka and within the Waimanalo Gulch to minimize views into active areas of landfilling; and (2) the use of landscaping with trees and vegetative cover. While not all elements of the proposed project can be totally screened from view, the location of work and the careful placement of landscaping elements are expected to significantly reduce the potential for viewplane and aesthetic impacts. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-19.

- I. Potential impacts associated with floods, hurricanes, earthquakes and tsunamis.

The potential for impacts associated with floods, hurricanes, earthquakes, and tsunamis have been considered in the design and operating practices applied to the site. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-19.

- J. Potential for impacts to property values.

The potential for impacts to property values based on the proximity to the Landfill to residential properties has been studied. The analysis showed there was no empirical support for the proposition that the Landfill results in lower residential property values. Specifically, increased distance from the Landfill was not associated with higher property values. Rather, the greater the distance from the Landfill, the lower the price. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-19.

The Ko Olina Resort & Marina (“Ko Olina Resort”) is a 642 acre mixed use resort area located to the south of the Landfill. An independent economic analysis conducted by CB Richard Ellis in January 2011 entitled Fiscal & Economic Benefits Analysis, Ko Olina Resort & Marina, Honolulu, HI, touted the following economic benefits:

- The current operations of Ko Olina Resort generates \$520 million in direct spending annually and provides 2,800 jobs locally. Additionally, this generates indirect and induced benefits of \$280 million and 1,500 additional jobs locally and statewide.
- Future developments at Ko Olina will almost double the benefits generated by the existing Ko Olina Resort, providing \$1.4 billion in total annual economic activity (\$925 million directly and \$501 million indirect and induced) and supporting 8,000 jobs (5,200 directly and 2,800 indirect and induced).
- Construction period impacts for future proposed developments at Ko Olina will include over \$3.7 billion in direct spending, creating 26,700 jobs. Indirect and induced economic impacts of this same spending will include an additional \$2 billion and 16,900 jobs. At a total of \$5.7 billion and 43,000 jobs, the economic impact of Ko Olina is approximately equal to Honolulu’s rail project.
- Existing development at Ko Olina generates \$20.3 million in tax revenue to the City and \$40.4 million to the State of Hawaii, annually.
- At full build-out, Ko Olina will generate \$55.5 million in annual tax revenues to the City and \$71.5 million to the State. This revenue does not include the construction period tax revenues which will generate an additional \$193 million in one-time revenues to the City and State combined.

See Written Direct Testimony of Ken Williams at 23-24;
See also 2011 Exhibit "K22."

The independent economic analysis shows that there is no support for the proposition that the Landfill lowers the property values in the Ko Olina Resort area.

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.

The proposed project will not unreasonably impact transportation, wastewater, water, drainage infrastructure, nor school, fire and police services. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

The Traffic Impact Report performed for the project shows that WGSL is not expected to itself generate new major transportation demands along Farrington Highway. The demand for use of the area roadways would most likely be from increasing development in the area. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

The WGSL is served by an existing on-site wastewater disposal system which handles domestic flows from the administrative and service buildings of the site. The continuation of use of this existing system will be adequate for the proposed project based on no major increases in waste water flows or demands for use of the system. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

The proposed project will be served by the existing Board of Water Supply ("BWS") main along Farrington Highway. No major new construction involving the use of new water supply will be required for the lateral expansion of the Landfill. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

Expansion of the Landfill will involve a review of the existing drainage system and its capacity to handle the planned area of expansion. Design, engineering and construction will be reviewed by regulatory agencies. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20. See also Steinberger Written Testimony at 16.

Expansion of the Landfill will not affect the availability, nor will it increase the demand for schools or parks located in the region. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

The current level of police and fire service provided to WGSL is expected to be sufficient. ENV and WMH will maintain fire apparatus access throughout the site to ensure that fire fighting vehicles and equipment are capable of mobilizing to all locations. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-20.

4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.

In approving the SUP for the Landfill in 1987, the LUC recognized the need for a landfill, and noted that the applicant has found this project area most feasible to provide this service. Since 1987, the need for a landfill has continued and is still present. While landfilling can be reduced, through waste diversion efforts including recycling and waste-to-energy initiatives, the need for a landfill will never be completely eliminated. There will always be waste that cannot be shipped, combusted, recycled or re-used, and therefore, a landfill will always be a necessary component in any waste management program. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-21.

Since the facility first began operating in 1989, the Ewa region has experienced significant residential and commercial growth. Despite the proximity to residential, resort, industrial and commercial properties, the Property was chosen as the best possible location for a landfill as further described in the 2008 Application 2-21 through 2-27. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-21.

The difficult decision to continue to use the Property for landfilling was the result of a comprehensive public policy process. Unusual conditions, as well as the unavailability of other alternative methods that would completely eliminate the need for a landfill, have arisen since the Property was placed within the Agricultural District Boundary. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-27.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The Property's mostly rocky soil, dry climate and steep terrain are not suitable for agricultural uses. The majority of soils at the project site consists of Rock Land (rRK) with small amounts of Stony Steep Land (rSY). See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-27.

Although located within the State Agricultural District, the site is not classified by the ALISH system. The University of Hawaii Land Study Bureau's Detailed Classification has classified the productivity of the land underlying the proposed project as "E," which is considered to be the lowest productivity rating. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-28.

The Waimanalo Gulch has a relative dry climate and receives approximately 20 to 30 inches of rainfall annually. According to an on-site rain gauge, located at the weather station, the average rainfall at the WGSL is approximately 15 inches per year. These conditions are harsh and not suitable for agricultural uses. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-28.

In addition, the Property is located in a relatively narrow gulch with a steeply sloping valley floor and sides. At the mouth of the gulch, the elevation of the valley floor is approximately 50 feet msl and rises to 450 feet msl over a distance of 4,800 feet. Relative elevations between the valley floor and the tops of the adjacent ridges range from about 60 feet to 240 feet. Waimanalo Gulch is approximately 1,000 feet wide from ridge to ridge at its widest point, and is about 500 feet wide at its narrowest point (near the confluence of the upstream tributaries). Site elevations of the Property vary from a low of about 50 to 70 msl in the southeast corner to a high of about 990 feet msl in the northern portion. Site topography of the Property is shown on Figure 2-14 of the 2008 Application. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-28.

Thus, the Property is unsuited for the uses permitted within the Agricultural District. See PC Tr. 06/22/09, 68:3-13; 2008 Application 2-28.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any party not already ruled upon by the LUC by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. The LUC has jurisdiction over this matter pursuant to HRS §205-6 and HAR §15-15-95 *et seq.*
2. Based upon the record of the proceedings before the Planning Commission, and pursuant to HRS §205-6 and HAR §15-15-95 *et seq.*, the LUC finds that the recommendation of the Planning Commission to approve a State SUP for the Petition Area, consisting of approximately 200.622 acres of land in the State Land Use Agricultural District at Ewa, Oahu, Hawaii, identified as TMKs (1) 9-2-003: 072 and 073, generally meets the guidelines for determining an “unusual and reasonable use” within the State Land Use Agricultural District.
3. While the City has an interest in maximizing use of its existing landfill, which is expected to reach capacity on or around August 2040, thereby avoiding the large capital outlay needed to acquire land for a new landfill site and the expense associated with the development and construction of a new landfill and the required supporting infrastructure, the LUC exercises its authority pursuant to HRS § 205-6(d) to impose

additional restrictions and hereby requires the WGSL to stop accepting all waste on or before March 2, 2028.

3. Article XI, section 1, of the Hawaii State Constitution requires the State to conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

4. Article XI, section 3, of the Hawaii State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. The Property is not classified as an Important Agricultural Land under Part III of HRS Chapter 205.

5. Article XII, section 7, of the Hawaii State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaa tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Island prior to 1778, subject to the right of the State to regulate such rights. No native Hawaiian customary or traditional rights or practice at the Property were identified.

6. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Hawaii 425, 903, P.2d 1246, cert. denied, 517 U.S. 1163, 116 S. Ct. 1559, 134 L.Ed.2d 660 (1996).

7. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31, 7 P.3d 1068 (2000).

DECISION AND ORDER

Having duly considered the complete record in this consolidated contested case, including remand proceedings on the 2008 and 2011 Applications, and the oral arguments presented by the Applicant and Intervenors in this proceeding, the LUC, through a motion having been duly made and seconded at a meeting conducted on October 10, 2019, in Honolulu, Hawaii, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the recommendation of the Planning Commission to approve Applicant's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, subject to the following conditions, as stated in the Planning Commission's Decision dated June 10, 2019, and as modified by the LUC on October 10, 2019:

1. 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.

2. In accordance with Chapter 11-60.1 “Air Pollution Control,” Hawaii 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 or minimize or prevent any visible dust emission from impacting 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.

3. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawaii 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.

4. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. The identification of an alternative landfill site by December 31, 2022 is based on the evidence presented and that, as the Planning Commission discussed in 2017, a five year timeframe was sufficient time for the Applicant to identify an alternative landfill site before the WGSL nears capacity. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

5. That 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.

6. The Applicant shall provide semi-annual reports to the Planning Commission and the Land Use Commission regarding (a) the status of the efforts to identify and develop a new landfill site on Oahu, (b) the WGSL's operations, including gas monitoring, (c) the Applicant'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 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.

7. Closure Sequence "A" for the existing landfill cells at WGSL as shown on 2009 Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.

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

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

10. The operations of the WGSL 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.

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

12. 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 2008/SUP-2 (SP09-403) should not be revoked if the Planning Commission has no reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

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

14. The Applicant 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 WGSL, including any funding arrangements that are being considered by the City Council and the City Administration.

15. The Applicant 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 WGSL.

16. Public health and safety conditions: If the landfill releases waste or leachate, the Applicant must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Mailii Neighborhood Boards, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to

clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the landfill's shoreline outfall to prevent waste from spreading into the ocean.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawaii, this ____ day of October, 2019, per motion on October 10, 2019.

STATE OF HAWAII
LAND USE COMMISSION

By _____
Jonathan Likeke Scheuer
Chairperson and Commissioner

APPROVED AS TO FORM

Deputy Attorney General

Filed and effective on:

Certified by:

DANIEL E. ORODENKER
Executive Officer

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application of) DOCKET NO. SP09-403
)
DEPARTMENT OF ENVIRONMENTAL) CERTIFICATE OF SERVICE
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
For A New Special Use Permit To Supersede)
Existing Special Use Permit To Allow A)
92.5-Acre Expansion And Time Extension For)
Waimanalo Gulch Sanitary Landfill,)
Waimanalo Gulch, O`ahu, Hawai`i, Tax Map)
Key: (1) 9-2-03: 72 and 73,)
)
)
In the Matter of the Application of)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
To delete Condition No. 14 of Special Use)
Permit No. 2008/SUP-2 (also referred to as)
Land Use Commission Docket No. SP09-403))
which states as follows:)
)
"14. Municipal solid waste shall be allowed at)
the WGS� up to July 31, 2012, provided that)
only ash and residue from H-POWER shall be)
allowed at the WGS� after July 31, 2012.")
)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF the **APPLICANT'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
APPROVING THE RECOMMENDATION FO THE CITY AND COUNTY OF
HONOLULU PLANNING COMMISSION TO APPROVE THE STATE SPECIAL
USE PERMIT APPLICATION WITH MODIFICATIONS, AS MODIFIED BY**

THE LAND USE COMMISSION ON OCTOBER 10, 2019 was duly served by hand
delivery to the following on the date below, addressed as follows:

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



KAMILLA C. K. CHAN
Deputy Corporation Counsel

17-03069/832317