



LAND USE COMMISSION
STATE OF HAWAII

2019 NOV - 1 A 8:21

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For A New Special Use Permit To Supersede
Existing Special Use Permit To Allow A 92.5-Acre
Expansion And Time Extension For Waimānalo
Gulch Sanitary Landfill, Waimānalo Gulch,
O`ahu, Hawai`i, Tax Map Key: 9-2-003: 072 And
073

-----In The
Matter Of The Application Of The
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 21, 2012, Provided That
Only Ash And Residue From H-POWER Shall Be
Allowed At The WGS� After July 31, 2012."

) DOCKET NO. SP09-403

)
)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW, AND DECISION AND ORDER
) APPROVING WITH MODIFICATIONS THE
) CITY AND COUNTY OF HONOLULU
) PLANNING COMMISSION'S
) RECOMMENDATION TO APPROVE
) SPECIAL USE PERMIT; AND CERTIFICATE
) OF SERVICE

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

11/01/19

Date

by

Executive Officer

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

AND

CERTIFICATE OF SERVICE

EXHIBIT "B"



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Existing Special Use Permit To Allow A 92.5-Acre) PLANNING COMMISSION'S
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER APPROVING WITH
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AND

CERTIFICATE OF SERVICE



LAND USE COMMISSION
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION
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In The Matter Of The Application Of The) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
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For A New Special Use Permit To) DECISION AND ORDER
Supersede Existing Special Use Permit To) APPROVING WITH
Allow A 92.5-Acre Expansion And Time) MODIFICATIONS THE CITY AND
Extension For Waimānalo Gulch Sanitary) COUNTY OF HONOLULU
Landfill, Waimānalo Gulch, O`ahu,) PLANNING COMMISSION'S
Hawai`i, Tax Map Key: 9-2-003: 072 And) RECOMMENDATION TO APPROVE
073) SPECIAL USE PERMIT

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In The Matter Of The Application Of The)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)

To Delete Condition No. 14 Of Special)
Use Permit No. 2008/SUP-2 (Also)
Referred To As Land Use Commission)
Docket No. SP09-403) Which States As)
Follows:)

"14. Municipal Solid Waste Shall Be)
Allowed At The WGSL Up To July 21,)
2012, Provided That Only Ash And)
Residue From H-POWER Shall Be)
Allowed At The WGSL After July 31,)
2012.")

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

The State of Hawai'i Land Use Commission ("LUC"), having examined the complete record of the City and County of Honolulu Planning Commission's ("Planning Commission") consolidated proceedings on the Department of Environmental Services, City and County of Honolulu's ("Applicant") application for a new special use permit to supersede the special use permit issued in LUC Docket No. SP87-362 (County Special Use Permit File No. 86/SUP-5) to allow a 92.5-acre expansion and time extension for the Waimānalo Gulch Sanitary Landfill ("WGSL") located at Waimānalo Gulch, 'Ewa, O'ahu, Hawai'i, identified as Tax Map Key ("TMK"): 9-2-003: 072 and 073, filed on December 3, 2008 (hereinafter "2008 Application"), and application to modify Land Use Commission's October 22, 2009 Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order With Modifications, filed on June 28, 2011 (hereinafter "2011 Application") (the 2008 Application and 2011 Application are collectively referred herein as, "Applications"), and upon consideration of the matters discussed therein, at its meetings on October 9 and 10, 2019, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

BACKGROUND OF THE APPLICATIONS

2008 Application

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

2. On October 13, 2008, the DPP accepted a final environmental impact statement for the expansion of the WGS� ("2008 FEIS") on behalf of the Mayor of the City and County of Honolulu. 2008AP DPP's 2009 Recommendation at 6; 2008AP 8/11/09 ENV's opp. to Intervenor's motion to dismiss, Ex. 7.

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

4. On December 3, 2008, the Applicant filed the 2008 Application to expand the 107.5-acre operating portion of the WGS� by approximately 92.5 acres for a total of approximately 200 acres. 2008 Application at 1-1.

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

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

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

8. The Planning Commission scheduled a public hearing to consider the Applicant's 2008 Application for May 6, 2009.

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

10. On April 16, 2009, the Ko Olina Community Association ("KOCA"), Maile Shimabukuro ("Shimabukuro"), and Colleen Hanabusa ("Hanabusa")

filed a Petition to Intervene; Memorandum in Support; Verification; Exhibit "A"; and Certificate of Service (collectively "Petition to Intervene").

11. On April 24, 2009, the Applicant filed a Memorandum in Opposition to the Petition to Intervene.

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

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

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

15. On May 7, 2009, Todd K. Apo filed a Petition to Intervene; Verification; and Certificate of Service.

16. On May 18, 2009, the Applicant filed a Memorandum in Opposition to Mr. Apo's Petition to Intervene; Exhibits "1" through "4"; and Certificate of Service.

17. On May 20, 2009, KOCA, Shimabukuro, and Hanabusa filed a Motion to Recuse Commissioner John Kaopua; Memorandum in Support of Motion; Exhibit "A" and "B"; Declaration of Colleen Hanabusa; and Certificate of Service (collectively "Motion to Recuse").

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

19. The Planning Commission heard and granted the Petition to Intervene filed by KOCA, Shimabukuro, and Hanabusa.

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

21. The Planning Commission also heard argument on Mr. Apo's Petition to Intervene.

22. On June 5, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Recuse and Certificate of Service.

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

24. The Planning Commission heard and granted the Motion to Recuse Commissioner Kaopua filed by Intervenors KOCA, Shimabukuro, and Hanabusa.
2008AP 6/10/09 Minutes at 9.

25. The Planning Commission denied Mr. Apo's Petition to Intervene on the grounds that it was untimely filed; that Mr. Apo's position regarding the 2008 Application was substantially the same as the position of Intervenors KOCA,

Shimabukuro, and Hanabusa; and that the proceeding would be inefficient and unmanageable if Mr. Apo were allowed to intervene. 2008AP 7/27/09 Planning Commission's findings of fact, conclusions of law, and order at 3.

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

27. On June 15, 2009, Intervenor KOCA, Shimabukuro, and Hanabusa filed their List of Witnesses naming 42 potential witnesses, including Mr. Apo. The Applicant also filed its List of Witnesses, naming six potential witnesses.

28. On June 22, 2009, the Planning Commission commenced the contested case hearing at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai'i.

29. The Applicant offered Exhibits A1 through A31, which were accepted into the record by the Planning Commission.

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

31. Intervenor KOCA, Shimabukuro, and Hanabusa offered, and the Planning Commission received into the record, Exhibits B1 and B4. 2008AP 6/22/09 Tr. at 81:6-11, 226:14-15.

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

33. On June 24, 2009, the Applicant filed List of Exhibits; Exhibits "A1"-"A31"; and Certificate of Service.

34. During the June 24, 2009, contested case hearing, the examination of Dr. Sharma was completed.

35. The Applicant called Joseph R. Whelan, who was the General Manager of Waste Management of Hawaii, Inc. ("WMH"), which operates the WGSL, to testify.

36. On June 29, 2009, Intervenor KOCA, Shimabukuro, and Hanabusa filed a Motion to Dismiss Application; Memorandum in Support of Motion to Dismiss; Declaration of Colleen Hanabusa; Exhibits "A"-"E"; and Certificate of Service (collectively "Motion to Dismiss"). Intervenor contended that the 2008 FEIS did not cover the entire 200-acre site, and therefore the 2008 Application must be dismissed.

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

38. During the July 1, 2009, contested case hearing, the examination of Mr. Whelan was completed.

39. The Applicant called 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, to testify. 2008AP 7/1/09 Tr. at 93:2-8 (Von Pein); 176:4-9 (Doyle).

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

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

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

43. Intervenor KOCA, Shimabukuro, and Hanabusa began their case-in-chief and presented testimony from Abbey Mayer; Josiah Ho'ohuli; William J. Aila, Jr.; Daniel Banchiu; Cynthia K. L. Rezentes; Maeda Timson; and Todd Apo.

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

45. Intervenor KOCA, Shimabukuro, and Hanabusa offered, and the Planning Commission received into the record, Exhibit B5. 2008AP 7/2/09 Tr. at 185:21-23.

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

47. At the conclusion of their case-in-chief, Intervenor KOCA, Shimabukuro, and Hanabusa rested their case. 2008AP 7/2/09 Tr. at 279:15.

48. On July 6, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Dismiss; Declaration of Gary Y. Takeuchi; Exhibits "1"-"8"; and Certificate of Service.

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

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

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

52. Intervenor KOCA, Shimabukuro, and Hanabusa made their witness, Mr. Apo, available for additional questions by Commissioner Beadie Dawson.

53. Upon the conclusion of questioning, the examination of Mr. Apo was completed.

54. The Planning Commission heard and denied the Motion to Dismiss filed by Intervenors KOCA, Shimabukuro, and Hanabusa.

55. On July 17, 2009, the Applicant filed its Post-Hearing Brief; Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Certificate of Service. Intervenors KOCA, Shimabukuro, and Hanabusa also filed their Post-Hearing Brief; Proposed Findings of Fact and Conclusions of Law and Decision and Order; and Certificate of Service.

56. On July 28, 2009, the Planning Commission filed its Findings of Fact, Conclusions of Law, and Order and Certificate of Service denying Mr. Apo's Petition to Intervene.

57. On July 29, 2009, the Applicant filed (1) Response to Post-Hearing Brief of Intervenors and (2) Exceptions to Intervenors' Proposed Findings of Facts, Conclusions of Law, and Decision and Order; Declaration of Gary Y. Takeuchi; Exhibits "1"- "3"; and Certificate of Service. Intervenors KOCA, Shimabukuro, and Hanabusa filed a Reply Brief.

58. On August 4, 2009, the Planning Commission entered its Findings of Fact, Conclusions of Law, and Decision and Order granting the 2008 Application ("Planning Commission's 2009 Decision").

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

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

to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order.

....

5. WGS� shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24-hours a day.
6. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.
7. The operations of the WGS� under 2008/SUP-2 shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.
8. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.
9. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.
10. The Applicant shall notify the Planning Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2.

2011AP Ex. K12 at 25-26 (Planning Commission's 2009 Decision).

60. The Planning Commission transmitted the record and its decision in the 2008 Application proceeding to the LUC.

61. On September 10, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Motion to Intervene; Memorandum in Support; and Certificate of Service (collectively "Motion to Intervene") before the LUC.

62. On September 17, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Intervene filed by Intervenors KOCA, Shimabukuro, and Hanabusa.

63. On September 21, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Motion to Deny the 2008 Application; Memorandum in Support of Motion; Declaration of Colleen Hanabusa; Exhibit "A," and Certificate of Service (collectively "Motion to Deny").

64. On September 22, 2009, the State of Hawai'i Office of Planning ("OP") filed testimony recommending that the 2008 Application be denied, that the request to withdraw 86/SUP-05 be denied, and that it instead be extended for three years, with additional expansion space of one cell for ash and two cells for municipal solid waste. OP further recommended that the Applicant be required to complete a public site selection process within 12 months of the date of the Decision and Order

followed by the City Council being required to select a site(s) based on the recommendations within an additional six months, with an automatic expiration of the permit if this condition is violated. In the alternative, OP recommended that the matter be remanded to the Planning Commission.

65. On September 23, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Deny filed by Intervenor KOCA, Shimabukuro, and Hanabusa.

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

67. At the meeting, the LUC heard argument from the Applicant and Intervenor KOCA, Shimabukuro, and Hanabusa regarding the 2008 Application.

68. Following discussion, the LUC granted the 2008 Application.

69. On October 22, 2009, the LUC filed its Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order With Modifications ("LUC's 2009 Order") and imposed 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 the City Administration.
16. The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSL.

2011AP Ex. K15 at 8-9 (LUC 10/22/09 Order)

70. The Applicant and Intervenors KOCA, Shimabukuro, and Hanabusa appealed the LUC's 2009 decision.

71. On October 29, 2009, the Applicant filed a Motion for Reconsideration; Memorandum in Support of Motion for Reconsideration; and Certificate of Service.

72. On November 12, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Memorandum in Opposition to Department of Environmental Services, City and County of Honolulu's Motion for Reconsideration.

73. On November 19, 2009, the Applicant filed a Notice of Appeal to Circuit Court; Exhibit "A," "B," and "C"; Statement of the Case; Designation of

Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu

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Findings of Fact, Conclusions of Law, and Decision and Order Approving With Modifications The City and County of Honolulu Planning Commission's Recommendation to Approve Special Use Permit

the Record on Appeal; Order for Certification and Transmission of Record; Request for Written Briefs and Oral Argument; and Certificate of Service, challenging the LUC's Condition Nos. 14, 15, and 16.

74. The Applicant did not challenge any conditions imposed by the Planning Commission.

75. On November 19, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Notice of Appeal to Circuit Court; Exhibit "A," "B," and "C"; Statement of the Case; Designation of the Record on Appeal; Order for Certification and Transmission of Record; Request for Written Briefs and Oral Argument; and Certificate of Service, challenging the LUC's decision to permit the expansion of the WGSJ and its continued operation.

76. On July 14, 2010, the Circuit Court held a hearing.

77. 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 Condition Nos. 15 and 16, the Circuit Court deleted the references to the Honolulu City Council and the City administration and substituted the Applicant as the responsible body. The Circuit Court affirmed the LUC's decision in all other respects.

78. On October 19, 2010, the Circuit Court entered final judgment in both appeals.

79. On November 12, 2010, the Applicant filed its Notice of Appeal with the State of Hawai'i Intermediate Court of Appeals ("ICA"). On appeal, the Applicant challenged only Condition No. 14.

80. Intervenor KOCA, Shimabukuro, and Hanabusa did not appeal the Circuit Court's ruling.

81. On July 14, 2011, the Applicant filed an application to transfer the case to the Hawai'i Supreme Court.

82. On August 1, 2011, the Hawai'i Supreme Court granted the application to transfer.

2011 Application¹

83. While the Applicant's appeal of Condition No. 14 was pending, on June 28, 2011, the Applicant filed the 2011 Application to modify the special use permit by deleting the LUC's Condition No. 14. 2011AP Ex. K161 at 1 (2011 Application)

84. The 2011 Application sought to "modify the LUC's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications, dated October 22, 2009, by deleting

¹ Hanabusa did not file a motion to intervene or otherwise seek to participate in the proceedings on the 2011 Application.

the July 31, 2012, deadline to cease disposal of municipal solid waste at [the Waimanalo Gulch Sanitary Landfill], as set forth in Condition No. 14 of said Order.” 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).

85. By requesting the deletion of Condition No. 14, the Applicant sought to use the WGSL until it reaches its permitted capacity. 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).

86. The basis for the 2011 Application was the Applicant’s belief that the currently permitted area of the WGSL, consisting of approximately 200 acres, had a useful life well beyond July 31, 2012. 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).

87. It was the Applicant’s belief that it was in the public interest to use the WGSL to its capacity. 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).

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

89. On September 9, 2011, the DPP Director sent the Planning Commission a report and recommendation for approval of the 2011 Application. *See* Planning Commission Rules § 2-41(d).

90. On September 16, 2011, KOCA/Shimabukuro filed a Motion to Recognize them as Parties or, Alternatively, to Intervene.

91. On September 16, 2011, Schnitzer Steel Hawai'i Corp. ("Schnitzer") filed a Motion to Intervene.

92. On September 23, 2011, the Applicant filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro's Motion to Recognize them as Parties or, Alternatively, to Intervene.

93. On September 30, 2011, KOCA/Shimabukuro filed a Reply to the Applicant's Memorandum in Opposition.

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

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

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

97. The Planning Commission granted Schnitzer's Petition to Intervene, granted KOCA/Shimabukuro's Motion to Intervene, and denied KOCA/Shimabukuro's Alternative Motion for Continued Recognition as Party Intervenors. 2011AP 10/5/11 Tr. at 35:5-23, 42:9-43:3.

98. Pursuant to Planning Commission Rule § 2-56(c), the 2011 Application was processed as a contested case.

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

100. On October 26, 2011, the Applicant filed a List of Witnesses naming five potential witnesses. Intervenors KOCA/Shimabukuro filed a List of Witnesses naming 31 potential witnesses. Intervenor Schnitzer filed a List of Witnesses naming one potential witness.

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

102. On November 7, 2011, Intervenors KOCA/Shimabukuro filed a Motion to Dismiss the 2011 Application for Lack of Jurisdiction (“Motion to Dismiss”). Intervenors KOCA/ Shimabukuro asserted that the Planning Commission did not have jurisdiction to decide the 2011 Application because (1) the LUC’s 2009 decision was on appeal to the Hawai’i Supreme Court; and (2) the LUC has original and exclusive jurisdiction to consider modifications of its own conditions.

103. On November 14, 2011, the Applicant and Intervenor Schnitzer filed Memoranda in Opposition to KOCA/Shimabukuro’s Motion to Dismiss.

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

105. On December 7, 2011, the Planning Commission held a hearing on Intervenors KOCA/Shimabukuro’s Motion to Dismiss at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawai’i (“Mission Memorial Hearings Room”).

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

107. Following the executive session, the Planning Commission denied Intervenor KOCA/Shimabukuro's Motion to Dismiss.

108. Thereafter, the parties made opening statements.

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

110. The Applicant filed the written direct testimony of its Director Timothy E. Steinberger and State of Hawai'i Department of Health ("DOH") Solid and Hazardous Waste Branch Chief Steven Y.K. Chang.

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

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

113. On December 14, 2011, the Applicant, Intervenor Schnitzer, and Intervenor KOCA/Shimabukuro filed Pre-Contested Case Hearing Statements.

114. On January 6, 2012 at the request of Intervenor KOCA/Shimabukuro, the Planning Commission issued a Subpoena Duces Tecum ("Subpoena") to WMH, which operates the WGSL. 2011AP Ex. K164 (subpoena duces tecum).

115. The Subpoena directed the production of, among other things, "all documents containing or evidencing fabricated readings; all investigation reports related to the fabricated readings; all assessment documents related to the fabricated readings; . . . and all documents related to remedial actions taken to address the fabricated readings." 2011 AP Ex. K164 (subpoena duces tecum at 2).

116. On January 20, 2012, WMH filed a Response and Objections to the Subpoena.

117. On February 8, 2012, the Planning Commission heard argument on WMH's objections.

118. WMH represented that it had produced all responsive documents, and that it had no additional documents to produce related to its internal investigation regarding fabricated gas wellhead readings or any other matter responsive to the Subpoena. 2011AP 2/8/12 Tr. 9:17-13:21.

119. Based on these representations, the Planning Commission did not order WMH to produce further documents.

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

121. The Applicant called Director Steinberger to testify.

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

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

124. The Applicant called Branch Chief Chang to testify. Intervenor Schnitzer called Mr. Snodgrass to testify.

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

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

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

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

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

130. Intervenors KOCA/Shimabukuro called Mr. Williams, Ms. Munson, Ms. Rezentes, and Mr. Hospodar to testify.

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

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

133. Intervenors KOCA/Shimabukuro called Mr. Kane and Mr. Miller to testify.

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

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

136. At the conclusion of the March 7, 2012, hearing, the Applicant renewed its right to call rebuttal witnesses. The Applicant identified four rebuttal witnesses: Director Steinberger, Dr. Sharma, and DOH Deputy Director Gary Gill. 2011AP 3/7/12 Tr. at 218:7-15.

137. Intervenor KOCA/Shimabukuro renewed their objection to those rebuttal witnesses on the grounds that Director Steinberger had already been called and that Dr. Sharma and Deputy Director Gill should have been direct witnesses. 2011AP 3/7/12 Tr. at 218:18-219:1.

138. The Planning Commission overruled Intervenor KOCA/Shimabukuro’s objection. 2011AP 3/7/12 Tr. at 219:6-7.

139. Intervenor Schnitzer also announced that it would be calling an unnamed rebuttal witness on the “H-POWER issue.” 2011AP 3/7/12 Tr. at 219:8-13.

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

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

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

143. The Applicant called Janice Marsters, current Landfill SSC member, and Deputy Director Gill as rebuttal witnesses.

144. Intervenor KOCA/Shimabukuro called Ms. Shimabukuro and Ms. Timson to testify.

145. Intervenor KOCA/Shimabukuro rested subject to their right to call rebuttal witnesses. 2011AP 4/4/12 Tr. at 143:11-13.

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

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

148. The Applicant called Dr. Sharma and Director Steinberger as rebuttal witnesses.

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

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

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

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

153. Intervenor KOCA/Shimabukuro called Mr. Miller and Eddie Belloumini of Ko Olina Resort Operations as rebuttal witnesses.

154. Without objection, the Planning Commission received into evidence Intervenor KOCA/Shimabukuro's Exhibits K192, K220, K255, K256, K257, and K258. 4/23/12 Tr. at 12:13-17, 15:16-21, 47:19-48:23.

155. The Planning Commission subsequently closed the evidentiary portion of the hearing. 2011AP 4/23/12 Tr. at 49:16-21.

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

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

158. On April 27, 2012, Intervenor KOCA/Shimabukuro filed a Motion to Reopen the Contested Case Hearing To Admit Limited Additional Documentary Evidence to Correct an Error that was Discovered After the Hearing Closed; Declaration of Calvert G. Chipchase; Exhibits A-B; and Certificate of Service (collectively "Motion to Reopen"), pursuant to Planning Commission Rule § 2-71(f), for the limited purpose of admitting additional documentary evidence to correct an error in the SSC's scores identified in Intervenor KOCA/Shimabukuro's Exhibit K258 that was discovered after the hearing closed.

159. Intervenor KOCA/Shimabukuro's Motion to Reopen was based on the disclosure of the SSC's prime consultant, R.M. Towill Corporation ("RMTC"), and its subconsultant, SMS Research ("SMS"), on April 25, 2012, that SMS had made an error in ranking the sites. Because of the error, SMS provided new scores for the sites, a new ranking list, and a new map of the ranked sites. Based on the new list, the scores

and map entered into evidence as Intervenor KOCA/Shimabukuro's Exhibit K258 were no longer accurate.

160. Intervenor KOCA/Shimabukuro attached proposed Exhibit K259, which explained the error, and proposed Exhibit K260, which was composed of the corrected list of sites and a new map of the sites, to correct their Exhibit K258.

161. On May 1, 2012, the Applicant filed a Memorandum in Opposition to Intervenor KOCA/Shimabukuro's Motion to Reopen.

162. On May 2, 2012, the Applicant, Intervenor Schnitzer, and Intervenor KOCA/Shimabukuro filed their respective proposed findings of fact, conclusions of law, and decisions and orders.

163. On May 14, 2012, the Applicant filed a response and Intervenor Schnitzer filed exceptions to Intervenor KOCA/Shimabukuro's proposed findings. Intervenor KOCA/Shimabukuro also filed responses to the Applicant's and Intervenor Schnitzer's proposed findings.

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

165. The Hawai'i Supreme Court held that Condition No. 14 was "not supported by substantial evidence in the record," and therefore could not be affirmed.

Department of Environmental Services. v. Land Use Commission, 127 Hawai'i 5, 17, 275 P.3d 809, 821 (2012).

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

167. The Hawai'i Supreme Court vacated the Circuit Court's judgment affirming the LUC decision and remanded the case on the 2008 Application "to the LUC for further hearings as the LUC deems appropriate." *Id.* at 18, 275 P.2d at 822.

168. In remanding the 2008 Application proceeding, the Hawai'i Supreme Court acknowledged the 2011 Application proceeding pending before the Planning Commission and "encourage[d] the LUC to consider any new testimony developed before the Planning Commission in that case." *Id.* at 19 n. 16, 275 P.2d at 823 n. 16.

169. On May 15, 2012, the Applicant filed a notification of the Hawai'i Supreme Court's decision on Condition No. 14 or, alternatively, a Motion to Stay Proceedings on the 2011 Application during the pendency of the remand proceedings before the LUC.

170. On May 22, 2012, Intervenor KOCA/Shimabukuro filed a Memorandum in Opposition to the Applicant's Motion to Stay Proceedings.

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

172. Based on the Hawai'i Supreme Court's recommendation for the LUC to consider the new testimony in the 2011 Application proceeding, Chair Lezy explained that consolidation on remand of the 2008 and 2011 Application proceedings would serve the public interest and provide a more economical disposition of both matters.

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

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

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

176. The Planning Commission entered a six-month stay of the 2011 Application proceeding pending the decision of the LUC on the 2008 Application proceeding or any future request by the parties to the Planning Commission. 2011AP 5/25/12 Tr. at 11:14-13:2. Based on its disposition, the Planning Commission did not decide Intervenor KOCA/ Shimabukuro's Motion to Reopen the Contested Case Hearing or the Applicant's Motion to Stay Proceedings.

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

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

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

180. On July 5, 2012, the LUC met in Leiopapa A Kamehameha, Conference Room 204, Second Floor, 235 South Beretania Street, Honolulu, Hawai'i.

The purpose of the meeting was to discuss and deliberate on the procedural issues arising from the remand from the Hawai'i Supreme Court.

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

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

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

184. On July 18, 2012, Intervenor Schnitzer filed a statement regarding procedural issues and next steps in light of the Hawai'i Supreme Court's decision.

185. On July 19, 2012, Intervenor KOCA/Shimabukuro filed a brief in support of remand with instructions. The Applicant filed a brief in support of the LUC retaining jurisdiction. Intervenor Hanabusa filed a memorandum regarding procedural issues. OP filed a brief on procedural issues.

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

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

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

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

190. At the hearing, the Applicant asked the Planning Commission to continue the proceeding to allow the parties an opportunity to discuss the submission of joint findings and conclusions. Intervenors KOCA/Shimabukuro joined in the request. Intervenors Hanabusa and Schnitzer did not object.

191. The Planning Commission continued the hearing.

192. On January 15, 2013, Intervenors KOCA/Shimabukuro 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; Exhibits 1-3; and Certificate of Service (collectively "Motion to Effect the Consolidation").

193. On January 23, 2013, the Applicant filed a Memorandum in Opposition to Intervenor KOCA/Shimabukuro's Motion to Effect the Consolidation.

194. On February 20, 2013, the Planning Commission resumed the hearing at the Mission Memorial Hearings Room.

195. The hearing concerned the LUC's October 8, 2012, remand order and Intervenor KOCA/Shimabukuro's Motion to Effect the Consolidation.

196. At the hearing, the parties filed a Stipulation to continue the hearing so that the parties could discuss a resolution of this matter.

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

198. On April 17, 2013, the Planning Commission continued the hearing to allow the parties to attempt to reach a stipulated order to be presented to the Planning Commission for review and decision.

199. On October 22, 2015, the LUC held a meeting at the Airport Conference Center, 400 Rodgers Boulevard, Suite 700, Room #3, Honolulu, Hawai'i, at which time the Applicant and Intervenor KOCA/Shimabukuro updated the LUC on the parties' negotiations.

200. On May 18, 2016, the LUC held a meeting at State Office Tower, Leiopapa A. Kamehameha Building, Conference Room 405, Honolulu, Hawai'i, at which time the Applicant updated the LUC on the parties' negotiations.

201. At the meeting, the LUC directed that a letter be written to the Planning Commission to inquire about the status of proceedings.

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

203. By letter dated June 3, 2016, the Applicant advised that all parties, except for Intervenor Hanabusa, had signed a stipulation to stay proceedings and that the Applicant was preparing a motion to stay proceedings.

204. On June 13, 2016, OP submitted a status report to the Planning Commission.

205. On June 22, 2016, the Applicant filed a Motion to Stay Proceedings to April 22, 2017; Memorandum in Support of Motion to Stay; Exhibit A; and Certificate of Service (collectively "Motion to Stay Proceedings"), so that the parties could continue to explore a stipulated resolution of the matter.

206. Intervenor KOCA/Shimabukuro filed a Joinder to the Applicant's Motion to Stay Proceedings, and Intervenor Schnitzer filed a Joinder to Intervenor KOCA/Shimabukuro's Joinder.

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

208. The Planning Commission granted Intervenors KOCA/Shimabukuro's Motion to Effect the Consolidation. 2011AP 8/17/16 Tr. at 32:21-33:16. The Planning Commission denied the Applicant's Motion to Stay Proceedings. 2011AP 8/17/16 Tr. at 33:19-34:2.

209. On September 22, 2016, Intervenor Hanabusa filed a statement regarding Intervenors KOCA/Shimabukuro's Motion to Reopen.

210. On September 30, 2016, the Applicant filed a Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts; Memorandum in Support of Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts; Attachment 1; and Certificate of Service (collectively "Motion to Reopen the Contested Case Hearing").

211. On October 5, 2016, the Applicant filed a Motion for Extension of Time; Memorandum in Support of Motion for Extension of Time; Declaration of Kamilla C. K. Chan; and Certificate of Service (collectively "Motion for Extension of Time") for the filing of proposed findings of fact, conclusions of law, and decision and order and consideration of and decision-making on all motions pending before the Planning Commission.

212. On October 6, 2016, Intervenor Schnitzer filed a Joinder to the Applicant's Motion to Reopen the Contested Case Hearing.

213. On October 6, 2016, Intervenor KOCA/Shimabukuro filed a response to the Applicant's Motion to Reopen the Contested Case Hearing.

214. On October 7, 2016, Intervenor KOCA/Shimabukuro filed a response to the Applicant's Motion to Reopen the Contested Case Hearing and Intervenor Hanabusa filed a statement.

215. On October 12, 2016, the Planning Commission held a hearing in the Mission Memorial Hearings Room.

216. The Planning Commission denied Intervenor KOCA/Shimabukuro's Motion to Reopen filed April 27, 2012; denied the Applicant's Motion to Reopen the Contested Case Hearing filed September 30, 2016; and granted in part the Applicant's Motion for Extension of Time to the extent that the motion requested additional time for the filing of proposed findings.

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

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

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

220. On February 17, 2017, the Applicant filed a Motion to Strike Intervenor Colleen Hanabusa's (1) Renewal of Submission of Proposed Findings of Fact and Conclusions of Law; Memorandum in Support of Motion to Strike; Declaration of Kamilla C. K. Chan; Exhibits "1" - "2"; and Certificate of Service (collectively "Motion to Strike").

221. On February 23, 2017, Intervenor Hanabusa filed a Memorandum in Opposition to the Applicant's Motion to Strike.

222. On March 1, 2017, the Planning Commission held a hearing at Mission Memorial Hearings Room. The Planning Commission granted the Applicant's Motion to Strike. The Planning Commission voted to adopt findings of fact, conclusions of law, and decision and order.

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

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

225. On May 12, 2017, Intervenor KOCA/Shimabukuro filed a Motion to Deny and Remand and an Alternate Motion to Deny the Applications Unless Additional Conditions are Imposed.

226. On May 19, 2017, the Applicant filed responses to Intervenor KOCA/Shimabukuro's motions.

227. On May 22, 2017, OP filed a written statement recommending approval of the Applicant's special use permit application with additional and amended conditions.

228. On May 22, 2017, Intervenor Hanabusa filed a Joinder to Intervenor KOCA/Shimabukuro's Motion to Deny and Remand.

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

230. On May 24, 2017, the LUC met in Honolulu, Hawai'i, to consider Intervenor KOCA/Shimabukuro's Motion to Deny and Remand. The LUC granted in part and denied in part the motion and remanded the record on the 2008 and 2011 Applications to the Planning Commission pursuant to Hawai'i Administration Rules ("HAR") § 15-15-96(a) for further proceedings to (1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGS� reaching its capacity and the implications it has on the closure date of the WGS� 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 WGS�, 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.

REMANDED PROCEEDINGS OF THE PLANNING COMMISSION

231. On June 20, 2017, Intervenor KOCA/Shimabukuro filed a Motion for Recusal or Disqualification of Chair Hazama; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits A-E; and Certificate of Service (collectively “Motion for Recusal or Disqualification”).

232. On June 26, 2017, the Applicant filed a Response to Intervenor KOCA/Shimabukuro’s Motion for Recusal or Disqualification and Certificate of Service.

233. On June 26, 2017, Intervenor Hanabusa filed a Renewal of Objections to Chair Dean Hazama’s Participation and Votes in the Instant Case and Joinder to Intervenor KOCA/Shimabukuro’s Motion for Recusal or Disqualification and Certificate of Service.

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

235. On October 23, 2017, Intervenor KOCA/Shimabukuro filed Objections to Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibit A; and Certificate of Service.

236. On November 22, 2017, Intervenor KOCA/Shimabukuro filed a Motion to Reopen the Contested Case Hearing; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits A-B; and Certificate of Service.

237. On November 30, 2017, Intervenor KOCA/Shimabukuro filed Objections to Agenda for December 6, 2017; Declaration of Christopher T. Gooden; Exhibits 1-2; and Certificate of Service.

238. On December 4, 2017, the Applicant filed a Memorandum in Opposition to Intervenor KOCA/Shimabukuro's Motion to Reopen the Contested Case Hearing; Declaration of Kamilla C. K. Chan; Exhibits "1" through "3"; and Certificate of Service.

239. On December 4, 2017, Intervenor Hanabusa filed a Joinder to Intervenor KOCA/Shimabukuro's Objections to Agenda for December 6, 2017, filed on November 30, 2017 and Certificate of Service.

240. On December 5, 2017, the Applicant filed a Response to Intervenor KOCA/Shimabukuro's Objections to Agenda for December 6, 2017; Declaration of Kamilla C. K. Chan; Exhibits "1" through "4"; and Certificate of Service.

241. On December 6, 2017, the Planning Commission held a hearing at the Mission Memorial Hearings Room. The Planning Commission voted to adopt Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

242. On or about December 6, 2017, the Planning Commission circulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

243. On February 5, 2018, the parties filed Exceptions to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order of the Planning Commission with Certificates of Service. Intervenor Schnitzer's submission included Proposed Findings of Fact, Conclusions of Law, and Decision and Order (Exhibit 1). Intervenor KOCA/ Shimabukuro's submission included the Declaration of Christopher T. Goodin; and Exhibits 1-5.

244. On February 13, 2018, Intervenor KOCA/Shimabukuro filed a Motion to Strike Schnitzer's February 2018 Proposed Findings; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits 1-4; and Certificate of Service (collectively "Motion to Strike").

245. On February 14, 2018, Intervenor Schnitzer filed a Memorandum in Opposition to Intervenor KOCA/Shimabukuro's Motion to Strike and Certificate of Service.

246. On February 16, 2018, Intervenor KOCA/Shimabukuro filed a Response to Schnitzer's February 5, 2018 Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibits 1-5; and Certificate of Service.

247. On March 7, 2018, the Planning Commission held a hearing in the Mission Memorial Hearings Room. The Planning Commission granted Intervenor KOCA/Shimabukuro's Motion to Strike and denied their Motion to Reopen the Contested Case Hearing. The Planning Commission also heard argument from the parties regarding the proposed decision.

248. On April 11, 2018, the Planning Commission advised the parties that the matter could not be scheduled for further hearing due to lack of quorum.

249. On January 7, 2019, Intervenor KOCA/Shimabukuro filed a Position Statement regarding the process for adoption of any decision and order.

250. On January 15, 2019, the Planning Commission circulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order to the parties.

251. On February 7, 2019, Intervenor Hanabusa filed Objections, Exceptions, and Positions Re: Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Counsel; Exhibit "1"; and Certificate of Service.

252. On February 8, 2019, the Applicant filed Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Served on January 15, 2019 and Certificate of Service. Intervenor Schnitzer also filed Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Exhibit A; and Certificate of Service.

253. On February 11, Intervenor KOCA/Shimabukuro filed Exceptions to Planning Commission's January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibits 1-5; and Certificate of Service.

254. On February 13, 2019, Intervenor KOCA/Shimabukuro filed a Stipulation Allowing an Extra Day to File Their Exceptions to Planning Commission's January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

255. On February 28, 2019, the Planning Commission held a hearing in the Mission Memorial Hearings Room. The Planning Commission approved the Stipulation. The Planning Commission heard argument regarding the proposed decision. The Planning Commission continued the hearing based on Commissioner Hayashida's request to review the record.

256. On March 18, 2019, the Applicant filed a Motion for Leave to File Supplemental Brief; Memorandum in Support of Motion; Declaration of Kamilla C. K. Chan; Exhibit "1"; and Certificate of Service (collectively "Motion for Leave").

257. On March 19, 2019, the Applicant filed a published report entitled *Assessment of Municipal Solid Waste Handling Requirements for the Island of O`ahu* ("March 19, 2019 Submission").

258. On March 25, 2019, Intervenor KOCA/Shimabukuro filed a Response to the Applicant's Motion for Leave to File Supplemental Brief Filed March 18, 2019 and Objection to the Department's March 19, 2019 Submission.

259. On April 10, 2019, Intervenor Schnitzer filed a Statement of Position on the Planning Commission's Proposed Condition Concerning Closure of the Waimānalo Gulch Sanitary Landfill and Certificate of Service.

260. Intervenor Schnitzer filed a Notice of Appearance and Request for Service of Notices and Papers and Certificate of Service.

261. On April 11, 2019, the Planning Commission held a hearing at the Mission Memorial Hearings Room in which it denied the Applicant's Motion for Leave. The Planning Commission also voted to adopt Findings of Fact, Conclusions of Law, and Decision and Order, including the exceptions provided by the Applicant and Intervenor Schnitzer and paragraphs 89 through 102 of the 2009 Planning Commission Findings of Fact, Conclusions of Law, and Decision and Order granting the 2008 Application.

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

DESCRIPTION OF THE WGS� SITE

263. The WGS� is owned by the City and operated by WMH. *See* 2008AP 7/1/09 Tr. at 179:4-8 (Doyle).

264. The WGS� site is designated within the State Land Use Agricultural District. 2011AP DPP's 2011 Recommendation at 1.

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

266. The `Ewa Development Plan recognizes the WGS� 2011AP DPP's 2011 Recommendation at 1.

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

268. Elevations at the site range from a low of approximately 70 feet above mean sea level ("msl") to approximately 940 feet above msl in the northern portion. Except for areas of fill, the steep-sloped valley contains dryland grasses and an abundance of rock outcrops. 2008AP DPP's 2009 Recommendation at 8.

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

270. The Agricultural Lands of Importance to the State of Hawai'i ("ALISH") system does not classify the site as Prime Agricultural Land, Unique

Agricultural Land, or Other Important Agricultural Lands. 2008AP Ex. A1 at 8-13 (2008 FEIS).

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

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

273. The WGS� site is not located within the City's Special Management Area. 2008AP Ex. A1 at 8-12, 8-14 (2008 FEIS).

HISTORY OF THE WGS�

274. Because the WGS� is located with the State Land Use Agricultural District, and a landfill is not a use expressly allowed under Hawai'i Revised Statutes ("HRS") chapter 205, the landfill operations require a special use permit pursuant to HRS § 205-6. 2011AP Ex. K155 at 17 (¶ 7) (LUC 3/14/08 Order).

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

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

277. The WGS� was permitted to accept MSW and sewage sludge.

278. MSW is defined as “garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants.” HRS § 342G-1; *See also* HAR § 11-58.1-03.

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

280. On October 31, 1989, the site was expanded by an additional 26 acres. 2011AP Ex. K70 at 5 (¶ 18), 9 (LUC 10/31/89 Order).

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

282. In addition to citing health and safety concerns, the community objected to the expansion and identified a promise by Mayor Frank Fasi that the WGS� would only be used until the original acreage was filled. 2011AP Rezentes Written Direct Testimony at 3-4 (¶¶ 8-10).

283. The Applicant represented to the community that it intended to close the landfill in 2008 if it were allowed to expand the WGS�. During the LUC’s 2003 proceedings to expand the WGS�, the Applicant expressed its “commitment” to close the WGS� in 2008. 2011AP Rezentes Written Direct Testimony at 4 (¶ 12); 2011AP Ex. K85 at 96:18-22, 125:7-11, 128:2-5, 145:21-146:2 (3/27/03 Tr.:Doyle), 117:11-13 (3/27/03 Tr.: Apo); *See also* 1/11/12 Tr. at 32:3-7 (Steinberger).

284. In the 2003 proceeding before the LUC, Mr. Doyle explained the compromise that the Applicant had made with the community regarding the operation of the WGS�. The original plan was to have the WGS� operate for another 15 years. After discussions with the community and hearing their concerns, the operating time

period for the WGS� was reduced to five years. 2011AP Ex. K85 at 96:18-22 (3/27/03 Tr.: Doyle); *see also* 1/11/12 Tr. at 32:3-7 (Steinberger); 2011AP Ex. K85 at 117:11-13 (3/27/03 Tr.: Apo); 2011AP Ex. K220 at 177:1-9 (7/1/09 Tr.: Doyle).

285. In the 2003 proceedings, Mr. Doyle repeatedly expressed the Applicant's "commitment" to close the WGS� in 2008. 2011AP Ex. K85 at 125:7-11, 128:2-5, 145:21-146:2 (3/27/03 Tr.).

286. On June 9, 2003, the LUC approved the expansion of the WGS� by an additional 21 acres. With this expansion, the WGS� consisted of approximately 107.5 acres. The LUC also required that within five years from the date of the approval or the date of the Solid Waste Management Permit approval for the expansion, whichever occurred first but not beyond May 1, 2008, the WGS� shall be restricted from accepting any additional waste material and be closed. The LUC further required the selection of a new landfill site by June 1, 2004, or the special use permit would immediately expire. 2011AP Ex. K2 at 7 (¶ 1), 9 (¶ 12), 10 (¶15) (LUC 6/9/03 Order).

287. In 2003, the Applicant convened the Landfill SSC, which identified several potential sites for a new landfill, none of which included the WGS�. This recommendation was consistent with the Applicant's representations to the LUC that the committee would not be able to select the existing WGS� as the "new" landfill.

2011AP 1/11/12 Tr. at 50:17-21 (Steinberger); 2011AP Ex. K58 at 5 (12/1/03 SSC report); 2011AP Ex. K85 at 177:22-25 (3/27/03 Tr.: Doyle).

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

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

290. In 2007, the Applicant filed an "application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Landfill from May 1, 2008, to May 1, 2010, to extend the closure deadline to May 1, 2010, or until the WGS� reaches its permitted capacity, whichever occurs first." 2011AP Ex. K155 at 1-2 (LUC 3/14/08 Order).

291. In its Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications, the City and County of Honolulu Planning Commission's Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008, the LUC amended the condition to extend the closure deadline of the WGS� to November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first. 2011AP Ex. K155 at 18 (¶ 12) (LUC 3/14/08 Order)

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

293. On December 3, 2008, the Applicant filed the 2008 Application for a new special use permit to expand the existing approximately 107.5-acre WGS� by an additional 92.5 acres for a total of approximately 200 acres. 2011AP Ex. K12 at 2 (§ 5) (LUC 8/4/09 Order).

IMPACTS UPON RESOURCES OF THE AREA FROM THE WGS� EXPANSION

Archaeological and Cultural Resources

294. In connection with the expansion of the WGS�, an Archaeological Inventory Survey, Waimānalo Gulch Landfill Expansion, 2008 (“AIS”), and a Cultural Impact Assessment (Draft), Waimānalo Gulch Landfill Expansion, 2008 (“Cultural Impact Assessment”) were prepared. 2008AP Ex. A1, Appendices G and H, respectively (2008 FEIS).

295. One historic property, State Inventory of Historic Properties (“SIHP”) #50-80-12-6903, was identified by the study. SIHP# 50-80-12-6903 consists of

three large upright boulders potentially utilized as trail or boundary markers. 2008AP Ex. A1, Appendix G at 45 (2008 FEIS).

296. The Applicant proposed to address SIHP# 50-80-12-6903 within a mitigation/preservation plan to be reviewed and accepted by the State of Hawai'i, Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"). 2008AP 6/22/09 Tr. at 49:21-50:5 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD). Specifically, the Applicant 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 WGS� has been closed. 2008AP 6/22/09 Tr. at 49:5-20 (Takeda); 2008AP Ex. A3 (3/4/09 letter from ENV to SHPD).

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

298. Based on the Cultural Impact Assessment, the LUC finds that the importation of landfill material over the past 15 years has most likely eliminated any historic properties and plant resources related to Hawaiian cultural practices and beliefs that may have been present within the bounds of the WGS� property. 2008AP Ex. A1, Appendix H at 79 (2008 FEIS); *See also* 2008 Application at 2-98.

Groundwater Resources

299. There are no drinking water groundwater resources that could be adversely affected by the expansion of the WGS. There is potential for leachate from the WGS entering brackish groundwater in the area of the WGS. Mitigation to address this issue is currently provided through the existing Leachate Collection and Removal System design. As required, this design will be modified to ensure against the potential for adverse effects to groundwater and hydrogeological resources of the site. 2008AP Application at 2-19.

Scenic Resources

300. Portions of the WGS are visible from various locations along Farrington Highway and the Ko Olina Resort. Mitigation for the proposed expansion involves the following: (1) the location of the planned area of expansion further mauka and within the Waimānalo 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 WGS expansion can be completely screen 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. 2008AP Application at 2-19.

ENVIRONMENTAL QUALITY

Noise

301. Mitigation of noise from the operation of engines and earthwork will involve compliance with the provisions of HAR chapter 11-43, Community Noise Control. All internal combustion powered vehicles and equipment will be equipped with mufflers or other noise attenuation devices. 2008AP Ex. A1 at 5-63.

302. Noise associated with construction activities and rock crushing are not anticipated to generate adverse impacts to the surrounding area because (1) the majority of work will be limited to the area of the lateral expansion; (2) the work required will be substantively similar to the existing work; (3) the location of the work will be within a relatively isolated portion of the WGS� that is distant from Farrington Highway. Portions of the work that may affect the adjoining Makaīwa Gulch and the planned Makaīwa Hills development will be buffered by a ridge separating the Makaīwa and Waimānalo gulches. 2008AP Ex. A1 at 5-62 through 5-66.

303. Controlled blasting at the WGS� is used for landfill excavations. A blast test program will be implemented at the WGS�, wherein distance, velocity, and frequencies transmitted by the controlled blasting will be monitored. If the controlled blasting affects the WGS� or any of the structures nearby, adjustments will be made. It is anticipated that controlled blasting will involve not more than one blast per day on

an infrequent basis consisting of approximately one to three days per week and occurring in the late afternoon. 2008AP Ex. A1 at 5-65 through 5-66.

Air Quality

304. To reduce and mitigate the potential for the release of fugitive dust from the site, preventive measures will be practiced by the operator in accordance with the provisions of HAR chapter 11-60.1-33, Fugitive Dust. These measures will include regular spraying of water to suppress dust and the use of dust screens. 2008AP Application at 2-16.

305. Exhaust emissions are mitigated by commercial and private vehicle operators' compliance with HAR chapter 60-1, Air Pollution Controls, 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. 2008AP Application at 2-17.

306. 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. Onsite 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. 2008AP Application at 2-17.

307. At the time of the 2008 Application, the solid sewage sludge from the Sand Island Wastewater Treatment Plant, which was previously disposed of at the WGS�, was already being treated in a waste digester installed at the plant. The system is fully operational and significantly decreased the amount of treated sludge solids that required landfilling at the WGS�, thereby decreasing this source of odorous waste from the WGS�. 2008AP Application at 2-17.

308. The generation of landfill gas is controlled by the use of a landfill gas collection and control system that was installed in 2005. The system is operating in accordance with requirements and no adverse effects from the performance of the system are anticipated. 2008AP Application at 2-18.

309. Landfill gases at the WGS� are monitored in compliance with RCRA Subtitle D regulations, HAR chapter 11-58, and the WGS�'s Solid Waste Permit. No adverse effects from landfill associated gases including methane, hydrogen, and other potential emissions are anticipated. 2008AP Application at 2-18.

Litter

310. 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 the

WGSL. The 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 WGSL to be secured by the use of a tarp, cover, or enclosure. 2008AP Application at 2-18.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway Facilities

311. In addition to completing an FEIS for the expansion of the WGSL, the Applicant obtained a traffic impact report ("TIR"). The TIR analyzed the existing traffic transiting Farrington Highway on both the eastbound and westbound approaches as well as the volume of traffic entering and exiting the WGSL. 2008AP Tr. 6/22/09 51:6-11 (Takeda); 2008AP Ex. A1, Appendix I (2008 FEIS).

312. Even with the expansion of the WGSL, the volume of traffic would not be expected to increase dramatically. Traffic going in and out of the WGSL is less than approximately 1 percent of the total volume of traffic in the region. 2008AP Tr. 6/22/09 51:18-24 (Takeda).

Wastewater Disposal

313. The WGSL is served by an existing onsite wastewater disposal system that handles domestic flows from the administrative and service buildings of the site. The continuing use of this existing system will be adequate for the expansion as

there are no major increases in wastewater flows or demands for use of the system anticipated. 2008AP Application at 2-20.

Water Supply

314. The WGS� expansion will be served by the existing 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 WGS�. 2008AP Application at 2-20.

Drainage

315. Expansion of the WGS� 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. 2008AP Application at 2-20; 2011AP Steinberger Written Direct Testimony at 16.

School and Park Facilities

316. Expansion of the WGS� will not affect the availability nor will it increase the demand for schools or parks located in the region. 2008AP Application at 2-20.

Police and Fire Protection

317. The current level of police and fire service provided to the WGS� is expected to be sufficient. The Applicant 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. 2008AP Application at 2-20.

Community Issues

318. The Leeward community has opposed the continued operation of the WGS�.

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

320. Before the WGS� was permitted, the area where Ko Olina Resort sits was intended to be a resort. 2011AP Williams Written Direct Testimony at 2-3 (¶¶ 7-9); 2011AP Ex. K132 at 3, 7 (Ewa Development Plan).

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

322. Ko Olina is home to thousands of residents and dozens of business. 2011AP 2/8/12 Tr. at 47:11-48:22 (Williams). Ko Olina includes hotels, timeshares, residential projects, commercial businesses, including retail centers and shops, a golf course, and a marina. These amenities cater to residents and to visitors from around the

world and contribute to the tourist industry. 2011AP 2/8/12 at 14:214-15:3, 47:15-22, 48:23-49:1 (Williams).

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

324. At full build-out, the economic benefits of Ko Olina are projected to reach approximately \$1.4 billion in total economic activities, 8,000 jobs, approximately \$138 million in taxes to the City and the State, and a \$194 million one-time tax from construction period spending. 2011AP 2/8/12 Tr. at 21:15-20 (Williams).

325. Construction period impacts will generate approximately \$3.7 billion in direct spending, approximately \$2 billion in indirect and induced economic benefits, and 26,700 jobs. 2011AP 2/8/12 Tr. at 21:21-22:1 (Williams).

326. These benefits could be jeopardized by the continued operation of the WGSL without the implementation of measures to mitigate potential impacts of the continued operation and expansion of the WGSL. 2011AP 2/8/12 Tr. at 15:15-17 (Williams); 2011AP Hospodar Written Direct Testimony at 11-12 (§ 25).

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

328. In addition to Ko Olina, the Makakilo/Kapolei/Honokai Hale, Wai`anae Coast, and Nānākuli-Mā`ili Neighborhood Boards have consistently voted to close the WGS. 2011AP 10/5/11 Tr. at 23:6-7, 24:1-6, 24:23-25:2 (Patty Teruya, Chair of the Nānākuli-Mā`ili Neighborhood Board); 2011AP 4/4/12 Tr. at 131:12-14 (Shimabukuro); 2011AP 3/7/12 Tr. at 134:22-135:1 (Timson); 2011AP Ex. K47 (8/17/11 letter from George S. Yamamoto, Chair of the Makaikilo/Kapolei/Honokai Neighborhood Board).

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

330. To address the concerns of the community, the Applicant is required to, among other things, continue to ensure that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas, and in the event the WGS releases waste or leachate, immediately (a) notify the surrounding community, including the

Makakilo/Kapolei/ Honokai Hale, Wai`anae Coast and Nānākuli-Mā`ili 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. *See* Condition Nos. 3 and 17.

VIOLATIONS AT THE WGSL

331. Since 2006, the DOH has found the following violations at the WGSL:

- a. On January 31, 2006, the DOH issued a notice of violation ("NOV") to WMH and the City, containing 18 counts. 2011AP Ex. K59 (1/31/06 NOV). These counts included exceeding permitted fill grades, failure to maintain records and record location of asbestos disposal at the WGSL, and failure to submit annual surface water management plan.
- b. On October 25, 2006, the DOH sent a warning letter to WMH and the Applicant, identifying five potential violations. 2011AP Ex. K101 (10/25/06 warning letter). These potential violations included exceeding permitted fill grades and failure to monitor leachate levels. 2011AP Ex. K101 at 2 (10/25/06 warning letter). Additionally, WMH was required to resubmit its storm water management system design to ensure compliance with applicable regulations and the special use permit. 2011AP Ex. K101 at 2 (10/25/06 warning letter).
- c. On May 3, 2007, the DOH sent a warning letter to WMH and the Applicant identifying three potential violations. 2011AP Ex. K125 (5/3/07 warning letter). These potential violations included exceeding permitted fill grades, failure to monitor leachate levels and inadequate soil cover. 2011AP Ex. K125 at 2 (5/3/07 warning letter).

- d. On September 5, 2008, the DOH sent a warning letter to WMH and the Applicant identifying three potential violations. 2011AP Ex. K82 (9/5/08 warning letter). These potential violations included unauthorized storage of materials and the failure to submit written notification of the exceedance and verification of methane gas monitoring results. 2011AP Ex. K82 at 2 (9/5/08 warning letter).
- e. On May 13, 2010, the DOH issued an NOV to WMH and the City, containing three counts. 2011AP Ex. K66 (5/13/10 NOV); 2011AP 1/25/12 Tr. at 17:6-34:1 (Chang). These counts included the failure to construct the final cover and West Berm in accordance with design specifications, failure to notify the DOH of noncompliance, and failure to submit interim status reports on the construction. 2011AP Ex. K66 (5/13/10 NOV).

332. Since 2006, the DOH has assessed close to \$2,000,000 in fines against the WGS. 2011AP Ex. K59 (1/31/06 NOV); 2011AP Ex. K66 (5/13/10 NOV).

333. In 2011, the Applicant disclosed that a WMH employee had falsified landfill gas readings from mid-2010 to August 2011. 2011AO Steinberger Written Direct Testimony at 27 (¶ 82). The failure to monitor gas readings was a threat to public health and safety. 2011AP 3/7/12 Tr. at 131:23-132:10 (Miller); 2011AP 1/11/12 Tr. at 91:1-92:3, 93:3-6 (Steinberger).

334. In addition to the foregoing, at the time of the hearing in 2011, the DOH had a pending enforcement case against the WGS. 2011AP 4/4/12 Tr. at 156:20-22, 157:10-12 (Gill).

335. Since 2006, the United States Environmental Protection Agency (“EPA”) has issued the following NOV’s against the Applicant and WMH:

- a. On April 5, 2006, the EPA issued a NOV for violations of the Clean Air Act. 2011AP Ex. K60 (4/5/06 NOV).
- b. On November 29, 2011, the EPA issued a NOV for violations of the Clean Water Act concerning the release of leachate and waste into the ocean in December 2010 and January 2011. 2011AP Ex. K123 (letter at 1; 11/29/11 NOV at 4-5).

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

337. In December 2010 and January 2011, the WGSL experienced heavy rains. 2011AP Ex. K97 at 3 (1/11/11 DOH inspection report). On December 23, 2010, the DOH, Clean Water Branch, documented the unauthorized pumping of leachate from Cell E6 into State waters on December 19 and 23, 2010, due to a failure in the WGSL’s storm water bypass system. 2011AP Ex. K52 (12/23/10 DOH investigation report).

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

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

340. The water dislodged unknown quantities of MSW, sewage sludge, leachate and medical solid waste from Cell E6 into coastal waters. 2011AP Williams Written Direct Testimony at 18 (¶ 43); 2011AP Ex. K52 at 2 (12/23/10 DOH investigation report).

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

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

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

344. The reason for the flood was that the western diversion channel had not been completed at the time of the rain events. 2011AP 4/4/12 Tr. Supp. at 8:7-13 (Gill); *See also* 2011AP 4/11/12 Tr. at 65:11-16, 67:1-4 (Sharma); 2011AP 3/7/12 Tr. at 29:1-6, 39:12-21 (Miller).

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

346. The WGSL's design plans contemplated that the diversion channel would be in place before Cell E6 was filled. 2011AP 4/11/12 Tr. at 66:7-9, 66:15-17 (Sharma); 2011AP 4/11/12 Tr. at 74:10-15 (Steinberger). However, the Applicant stated that WMH had to begin filling Cell E6 before the western diversion channel was in place. 2011AP 4/11/12 Tr. at 33:12-21 (Sharma); 75:13-18 (Steinberger).

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

348. Given the state and federal NOV's and pending enforcement actions, the Applicant is required to continue to obtain all necessary approvals from the DOH, State of Hawai'i Department of Transportation, State of Hawai'i Commission on Water Resource Management, and the City & County of Honolulu Board of Water Supply ("BWS") for all onsite and offsite improvements involving access, storm drainage, leachate control, water, well construction, and wastewater disposal. *See* Condition No. 2.

CURRENT WASTE STREAM

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

350. Putrescible waste is of one of the greatest concerns because it decomposes and causes odors that burden the community. 2011AP 3/7/12 Tr. at 23:5-7, 98:11-14, 102:9-12 (Miller).

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

352. The Applicant and private business engage in various efforts to divert MSW and certain other wastes from the WGS. In 2010, the last year for which waste totals are available in the contested case proceeding, the Applicant diverted 34.4 percent of the total MSW from the WGS to H-POWER. 2011AP Ex. A27 (O'ahu MSW waste stream chart). In 2010, the Applicant also diverted 36.9 percent of the total MSW from the WGS through general material recycling. 2011AP Ex. A27 (O'ahu MSW waste stream chart). In May 2010, the Applicant accomplished island wide-expansion of its curb-side green waste recycling program to 160,000 residences. 2011AP Steinberger Written Direct Testimony at 19 (¶ 56). The City has a program of

community recycling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. 2011AP Steinberger Written Direct Testimony at 20-21 (§§ 61-62).

353. Despite these efforts, in 2010 the WGS� still accepted 163,736 tons of MSW. 2011AP Ex. A27 (O`ahu MSW waste stream table).

354. The continued volume of MSW at the WGS� is due, in part, to the fact that the City is behind other municipalities with respect to its recycling efforts. 2011AP 4/4/12 Tr. Supp. at 12:5-6 (Gill).

Sewage Sludge and Biosolids

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

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

357. As of 2011, approximately 65 percent of the island's generated sewage sludge goes to the WGS�. 2011AP 1/11/12 Tr. at 68:13-15 (Steinberger). The Applicant took 15,000 to 20,000 tons per year of sewage sludge to the WGS�. 2011AP Steinberger Written Direct Testimony at 24 (§ 74).

358. Sewage sludge can be burned and that other municipalities do burn sewage sludge. As of the close of evidence in this matter, the Applicant did not burn

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sewage sludge. 2011AP 1/25/12 Tr. 54:3, 54:11-13 (Chang); *See also* 2011AP 1/11/12 Tr. 68:12-15, 17 (Steinberger).

359. Biosolids are what can be extracted from the sludge and left after exiting a treatment system. 2011AP 4/11/12 Tr. at 77:22-24 (Steinberger). Class A biosolids may be used as a “growth enhancer,” similar to fertilizer. 2011AP 4/11/12 Tr. at 78:3-4, 79:12-16 (Steinberger). Class B biosolids have restricted uses, such as spreading over forage crops for cattle. 2011AP 4/11/12 Tr. at 78.4, 80:16-19 (Steinberger).

360. While other municipalities began biosolids programs in the 1970s and 1980s, the Applicant did not establish a biosolids program for Honolulu until 2006. 2011AP Ex. K189 at 1 (Los Angeles biosolids webpage); 2011AP Ex. K190 at 2 (King County biosolids webpage); 2011AP Ex. K148 at 10 (Parametrix alternatives memorandum); 2011AP 3/7/12 Tr. at 139:11-140:4 (Miller). Approximately 35 percent of the island’s sewage sludge was reused as biosolids. 2011AP 1/11/12 Tr. at 68:13-15 (Steinberger).

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

362. The Applicant has conducted studies on sewage sludge management. Those studies recommended incineration at H-POWER and a second digester at the Synagro Facility. 2011AP 4/11/12 Tr. at 178:6-7, 178:20-179:3 (Steinberger).

363. Approximately 65 percent of the island's generated sewage sludge goes to the WGSL. This is inconsistent with best practices and with the national standard. 2011AP 1/11/12 Tr. at 68:13-15 (Steinberger); 2011AP 3/7/12 Tr. at 22; 18-20, 96:4-7, 98:17-22, 139:11-140:4 (Miller).

Food Waste and Green Waste

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

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

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

Medical Waste

367. Another area for improvement is the disposal of medical waste. 2011AP Ex. K247 at 613 (Sharma, Geoenvironmental Engineering). While the prevailing trend is to burn medical waste, the Applicant continues to take medical waste to the WGS.

ALTERNATIVE MEANS OF DIVERTING SEWAGE SLUDGE, FOOD WASTE, AND GREEN WASTE FROM THE WGS

368. The Applicant will have the ability to recycle green waste, food waste, and biosolids through its In-Vessel Conversion Facility, which is scheduled to be operational in 2013. 2011AP 4/11/12 Tr. at 79:2-3, 87:25-88:2, 176:11-13 (Steinberger); 2011AP Steinberger Written Direct Testimony at 20 (¶ 58); 2011AP Ex. K148 at 4 (Parametrix alternatives memorandum).

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

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

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

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

373. All of the biosolids that are produced on O`ahu will ultimately go into some type of beneficial reuse as a class A biosolid. The product will be distributed as a plant growth enhancer. 2011AP 4/11/12 Tr. 79:3-6, 81:19-20 (Steinberger).

374. Until the Applicant achieves that goal, burning sewage sludge, any biosolids that are not beneficially reused, green waste, and food waste at H-POWER is a better use of those resources than landfilling them. 2011AP 3/7/12 Tr. at 176:22-177:1 (Miller).

375. The Applicant is required to continue with 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 is also required to continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge. *See* Condition No. 6.

ADDITIONAL CAPACITY AT H-POWER

376. The existing H-POWER facility requires pre-preparation of waste so that it can be accommodated in the burn unit. 2011AP 1/11/12 Tr. at 65:14-17

(Steinberger). All non-burnable materials need to be separated out. 2011AP 1/11/12 Tr. Docket No. SP09-403 Department of Environmental Services, City and County of Honolulu

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at 65:18-21 (Steinberger). The raw MSW comes through a tipping floor and goes through a processing unit that develops "RDF," or refuse-derived fuel. 2011AP 1/11/12 Tr. at 65:22-66:1 (Steinberger). The RDF goes into a holding barn and the material, the residue, and any recyclable material are separated. 2011AP 1/11/12 Tr. at 66:1-4 (Steinberger). This pre-preparation requires worker handling of the waste. 2011AP 1/11/12 Tr. at 66:18-22 (Steinberger).

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

378. No one from Covanta testified in these proceedings.

379. At the close of evidence, a third H-POWER boiler was expected to be operational by October or November 2012. 2011AP 4/11/12 Tr. at 176:7-10, 211:12-15 (Steinberger).

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

381. With the third boiler, the Applicant represented that it will achieve a diversion rate of 90 percent. (2011AP Ex. K251 at 1-2 (5/5/11 ENV press release).

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

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

384. With the third boiler, the Applicant will have the capacity to burn the 15,000 to 20,000 tons of sewage sludge presently disposed of at the WGSL. 2011AP Steinberger Written Direct Testimony at 23 (¶ 71).

385. The Applicant had instituted a change order to be able to burn sewage sludge. 2011AP 4/11/12 Tr. at 90:9-10, 90:20-21 (Steinberger).

386. With the third boiler operational, the Applicant could stop sending sewage sludge to the WGSL by fall 2012. 2011AP 4/11/12 Tr. at 90:3-20, 174:1-6, 203:25 (Steinberger).

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

388. With the third boiler operational, the Applicant could stop sending medical waste to the WGS� by fall 2012. 2011AP 1/11/12 Tr. 75:19-22 (Steinberger); 2011AP 4/11/12 Tr. 171:16-172:10, 196:20-24 (Steinberger); *cf.* 2011AP 3/7/12 Tr. at 209:12-25 (Miller).

389. With the added capacity provided by the third H-POWER boiler, the Applicant will not need to landfill putrescible waste or any combustible MSW. 2011AP 3/7/12 Tr. at 22:24-23:7 (Miller).

390. The remaining items that will not be accepted at H-POWER after the third boiler becomes operational will consist primarily of materials that cannot be combusted. 2011AP 1/11/12 Tr. at 77:7-13 (Steinberger).

391. Some of these materials can go to the PVT C&D landfill, including resins and chemical debris and petroleum contaminated soil. 2011AP 1/11/12 Tr. at 47:19-22, 145:4-146:1 (Steinberger); 2011AP 1/25/12 Tr. at 12:2-3, 44:12-14 (Chang).

392. After the third boiler is operational, but before a new landfill is operational, the only time sewage sludge and other putrescible waste or any combustible MSW would need to go to the WGS� is (1) during times when H-POWER is down for maintenance and cannot accept waste or (2) when there are wastes reasonably related to a public emergency, such as disaster debris, that cannot be

disposed of at H-POWER. 2011AP 4/11/12 Tr. at 118:9-15, 125:15-126:4, 189:13-17, 201:20-202:1 (Steinberger); 20112AP 3/7/12 Tr. at 24:23-24:7 (Miller).

393. The WGS� could be permitted by the DOH to accept waste for those specific contingencies. 2011AP 1/25/12 at 54:20-24, 55:4-9 (Chang).

394. With respect to H-POWER downtime in particular, the bypass waste should be minimal. 2011AP 3/7/12 Tr. at 100:10-12 (Miller).

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

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

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

398. H-POWER has to be reliable and predictable because, with the addition of the third boiler, it will be providing 8 percent of O`ahu's power. 2011AP Ex. K251 at 1-2 (5/5/11 ENV press release).

399. Because putrescible waste decomposes, ending the acceptance of putrescible waste at the WGS� would likely eliminate more than 90 percent of the odor issues. 2011AP 3/76/12 Tr. 206:6-10 (Miller).

NEED FOR THE EXPANSION OF THE WGS�

400. The proposed expansion of the WGS� is needed because the WGS� remains a critical part of the City's overall integrated solid waste management efforts. 2011AP Steinberger Written Direct Testimony at 2, 4.

401. As of March 19, 2009, there was approximately 12 months of landfill airspace capacity remaining in the MSW portion of the current special use permit area and approximately 24 months of landfill airspace capacity remaining in the ash portion of the existing special use permit area of 107.5 acres. 2011AP 6/24/09 Tr. at 81:22-82:6, 83:1-14 (Whelan).

402. The WGS� is the only permitted public MSW facility on the island of O`ahu. Thus, the WGS� is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by H-POWER. 2011AP 7/1/09 Tr. at 181:20-183:4 (Doyle); 2011AP 1/25/12 Tr. at 58:22-25, 59:1-9 (Chang).

403. In addition to MSW and ash, 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. 2011AP 1/25/12 Tr. at 10:6-12:14 (Chang); 2011AP 4/11/12 Tr. at 118:16-119:23 (Steinberger).

THE CITY'S ADDITIONAL SITE SELECTION EFFORTS

404. Condition No. 1 of the Planning Commission's 2009 Decision required the City to begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGS on or before November 1, 2010. 2011AP Ex. K12 at 25 to 26 (Planning Commission Decision)

405. Condition No. 4 of the LUC's 2009 Order directed that, "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 WGS. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence...." 2011AP Ex. K15 at 6 (§ 4) (LUC 10/22/09 Order).

406. Thus, as of October 22, 2009, the Applicant knew or should have known that it needed to exert reasonable diligence in identifying and developing a new landfill site to replace or supplement the WGS.

407. As part of preparing the updated Integrated Solid Waste Management Plan, the City allotted funds in the Fiscal Year 2010 budget to conduct a

site selection study for a secondary landfill on O`ahu. The Landfill SSC was subsequently formed to carry out this process. 2011AP Steinberger Written Direct Testimony at 11; 2011AP 1/11/12 Tr. at 54:24-55:6 (Steinberger).

408. Twelve members served on the Landfill SSC. They were tasked with providing advisory recommendations concerning the selection of a future site for landfill to replace or supplement the WGSF by accepting MSW, ash and residue from facilities such as H-POWER, and C&D debris for the island of O`ahu. 2011AP Steinberger Written Direct Testimony at 11-12.

409. Under this process, the Landfill SSC would rank numerous sites according to criteria that it determined most appropriate for landfill sites to accommodate all three waste streams. 2011AP Steinberger Written Direct Testimony at 12.

410. The Applicant contracted with RMTC in June 2011 to assist the Landfill SSC with this process, specifically to research and provide the information required or requested by the members. Id.

411. The Landfill SSC met on January 20, 2011; February 10, 2011; March 10, 2011; March 31, 2011; May 12, 2011; July 19, 2011; March 16, 2012; and April 20, 2012. 2011AP Exs. A31, A47, and K258.

412. Over the course of multiple meetings, the Landfill SSC 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
- Groundwater contamination
- Design issues
- Access issues
- Proximity to other land uses (e.g., residences, institutions)
- 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

2011AP Steinberger Written Direct Testimony at 12-13; *See also* 2011AP Ex. A31.

413. The Landfill SSC began by working with potential landfill sites identified by the City in previous studies. However, at the sixth meeting, the Landfill SSC requested that RMTC research and provide information on and analyses of additional sites to ensure a thorough vetting of appropriate sites on O`ahu. 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 had not considered 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 Landfill SSC also asked RMTC to review the BWS 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. 2011AP Steinberger Written Direct Testimony at 13-14; *See also* 2011AP 4/4/12 Tr. at 40:1-41:14.

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

- State Land Use Districts
- Groundwater resources
- Land Ownership
- United States Fish & Wildlife Services Critical Habitat
- State Natural Area Reserve System
- Impaired Water Bodies
- Agricultural Land Ratings
- Commission on Water Resource Management Well Data
- Criteria protecting airports and airfields with a 10,000 linear foot buffer

2011AP Steinberger Written Direct Testimony at 14; *See also* 2011AP 4/4/12 Tr. at 42:1-45:23.

415. Upon applying the exclusionary criteria, RMTC presented the Landfill SSC with two additional sites for consideration: (1) the Kahe Point Power Generating Station owned by Hawaiian Electric Company; and (2) the Makaīwa Hills subdivision owned by the James Campbell Trust Estate. In addition, the second site was found to border the USFWS-designated critical habitat of the *Isodendron pyrifolium*

(critically imperiled Hawaiian shrub). RMTC noted that both sites should be considered as “non-sites” due to either existing or pending land uses. 2011AP Steinberger Written Direct Testimony at 14.

416. After discussion of these results, the Landfill SSC 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 Hawai‘i, 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

This additional request delayed final application of the criteria and its recommendations. 2011AP Steinberger Written Direct Testimony at 14-15; *See also* 2011AP Ex. A31.

417. At the time of the contested case hearing on the 2011 Application, the Landfill SSC’s meetings were still ongoing. 2011AP Steinberger Written Direct Testimony at 15.

THE TIME REQUIRED TO SITE AND DEVELOP A NEW LANDFILL

418. It took the Applicant approximately 2 1/2 years to identify, permit, and have the WGSF operational. 2011AP Ex. K220 at 244:16-19 (7/1/09 Tr.:Doyle).

419. There have been different estimates regarding the minimum time it will take to site and develop a new landfill, ranging between as little as three to five years, to as much as a minimum of seven years.

420. The three to five years estimate was proffered by Mr. Miller, who was admitted as an expert witness in solid waste management, including landfill siting and design and comprehensive solid waste management. According to Mr. Miller, it should take 18 months to two years for design, design review, and development of a landfill. The EIS process should take a year to a year and a half. The addition of land acquisition to the process would probably take a total of three to five years. 2011AP 3/7/12 Tr. at 17:25-19:25, 199:24-200:1, 201:1-24, 202:14-203:6 (Miller).

421. Mr. Miller's estimate was consistent with an estimate provided by Mr. Doyle. Mr. Doyle indicated that it would take "at least three, probably four years just to get ourselves up and operational on that landfill site." 2011AP Ex. K85 at 95:6-8, 100:23-25 (3/27/03 Tr.:Doyle)

422. The five to seven years estimate was proffered by Ms. Marsters, who stated that she believes it will take "somewhere in excess of five to seven years." 2011AP 4/4/12 Tr. at 56:17-18 (Marsters).

423. The minimum seven years estimate was proffered by Mr. Steinberger. This estimate was based on tasks necessary to start operation at a new site

which include, but are not limited to, compliance with HRS chapter 343, land acquisition, engineering studies, construction and bid documents, and other approvals. 2011AP 4/11/12 Tr. at 122:25 (Steinberger); Steinberger Written Direct Testimony at 15-16.

424. Based on the evidence, the LUC finds that a minimum of five to seven years is a reasonable time within which a landfill can be sited and developed if the Applicant proceeds with reasonable diligence.

425. The LUC finds that, as of the date of this Order, the March 2, 2028 closure date imposed below affords more than seven years to site and develop a new landfill and as such, constitutes a reasonable amount of time.

426. The LUC further finds that when calculated from October 22, 2009 (the most recent date upon which the Applicant knew or should have known that it needed to exert reasonable diligence in identifying and developing a new landfill site to replace or supplement the WGSL) to the March 2, 2028 closure date imposed below, the Applicant will have been afforded a minimum of 18 years to site and develop a new landfill.

CONFORMANCE WITH THE SPECIAL USE PERMIT GUIDELINES

427. HAR § 15-15-95(c) sets forth the special use permit guidelines in determining an “unusual and reasonable use” with the State Land Use Agricultural District 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.
2. The proposed use would not adversely affect surrounding property.
3. The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

428. Based on the evidence in the record and the findings set forth above, and subject to the conditions imposed below, the LUC finds that the expansion of the WGS� is not contrary to the objectives sought to be accomplished by HRS chapter 205 and the rules of the LUC.

429. Based on the evidence in the record and the findings set forth above, and subject to the conditions imposed below, the LUC finds that the expansion of the WGS� is not contrary to the to the applicable objectives, policies, and guidelines

of the Coastal Zone Management program under HRS chapter 205A. 2008AP Ex. A1 at 8-12 to 8-25 (2008 FEIS).

430. Based on the evidence in the record and the findings set forth above, the LUC finds that the expansion of the WGSL will not adversely affect surrounding properties as long as (1) it is operated in accordance with the conditions imposed below and government approvals and requirements; and (2) mitigation measures are implemented in accordance with the Applicant's representations in the 2008 FEIS.

431. Based on the evidence in the record and the findings set forth above, and subject to the conditions imposed below, the LUC finds that the expansion of the WGSL will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.

432. Based on the evidence in the record and the findings set forth above, unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established that requires the expansion of the WGSL.

433. Based on the evidence in the record and the findings set forth above, the land on which the expansion of the WGSL is proposed is unsuited for agricultural purposes.

LUC 2019 PROCEEDINGS

PROCEDURAL MATTERS

434. On September 11, 2019, the LUC received a portion of the record of the Planning Commission proceedings on remand regarding the Applicant's 2008 and 2011 Applications

435. On September 20, 2019, the LUC received the remaining portion of the record, thereby completing the record.

436. On September 17, 2019, Intervenor KOCA/Shimabukuro filed 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; Exhibits 1-7; and Certificate of Service.

437. On September 17, 2019, Intervenor KOCA/Shimabukuro filed a Summary of Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.

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

439. On September 24, 2019, Intervenor Hanabusa filed an Amended Certificate of Service.

440. On September 25, 2019, the Applicant filed a 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; Exhibits 1-7; and Certificate of Service.

441. On September 25, 2019, Intervenor Schnitzer filed 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; and Certificate of Service.

442. On October 1, 2019, OP filed a Memorandum recommending approval of the Special Permit Application, SP09-403, as approved by the Planning Commission, with additional and amended conditions.

443. On October 2, 2019, Intervenor KOCA/Shimabukuro filed a Reply in Support of Their Objections to Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.

444. On October 4, 2019, Intervenor Schnitzer filed 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; and Certificate of Service.

445. On October 7, 2019, Intervenor KOCA/Shimabukuro filed a Reply to the State Office of Planning's October 1, 2019 Letter Regarding the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; Declaration of Christopher T. Goodin; Exhibit 1; and Certificate of Service.

446. On October 7, 2019, the Applicant filed a letter providing comments on the recommendations in the Office of Planning's memorandum dated October 1, 2019.

447. On October 9, 2019, the LUC met at the Airport Conference Center, Room #IIT#3, Honolulu Hawai'i, to consider the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order relating to proceedings on remand regarding the Applicant's 2008 and 2011 Applications.² Kamilla C.K. Chan, Esq.,

² At the start of the meeting, Commissioner Okuda disclosed that he was familiar with Intervenor KOCA/Shimabukuro's counsel as a fellow attorney but did not socialize with him. Commissioner Okuda further disclosed that he represents the Tojo Revocable Trust in two actions involving the City and County of Honolulu Department of Planning and Permitting ("DPP"). He noted that his knowledge of Mr. Chipchase and these two cases would not affect his decision-making in this matter.

Commissioner Chang disclosed that she was part of a litigation trial team in the representation of a defendant in federal court involving the WGS�. She confirmed that this would not affect her ability to remain fair and impartial in this case.

Chair Scheuer disclosed that his wife worked at the Department of Environmental Services in the Recycling Division for three years from 1999 to 2002 but had no involvement with the WGS�. He
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appeared on behalf of the Applicant. Calvert G. Chipchase, Esq., and Christopher T. Goodin, Esq., appeared on behalf of Intervenor KOCA/Shimabukuro. Richard N. Wurdeman, Esq., appeared on behalf of Intervenor Hanabusa. Ian L. Sandison, Esq., appeared on behalf of Intervenor Schnitzer. Dina Wong appeared on behalf of the DPP. Bryan C. Yee, Esq.; Mary Alice Evans; and Aaron Setogawa appeared on behalf of OP.

448. At the October 9, 2019, meeting, OP filed a letter dated October 8, 2019, notifying the LUC that OP and the Applicant had jointly agreed to amended conditions to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order.

449. At the October 9, 2019, meeting, the LUC heard public testimony from Thomas-Ryan Cleek³ and Cynthia K. L. Rezentes.

450. Following presentations by the Applicant, Intervenor Schnitzer, Intervenor KOCA/Shimbakuro, Intervenor Hanabusa, and OP, the LUC recessed the matter to the following day, October 10, 2019.

451. On October 10, 2019, the LUC resumed consideration of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order

additionally disclosed that he went to 'Iolani with Intervenor Maile Shimabukuro. He believed that neither of these events would prevent him from being fair and impartial in this matter. The parties voiced no objections to the continued participation of Commissioners Okuda, Chang, and Scheuer in these proceedings.

³ Mr. Cleek filed written testimony with the LUC via e-mail on October 7, 2019.

relating to proceedings on remand regarding the Applicant's 2008 and 2011 Applications at the Airport Conference Center, Room #IIT#3, Honolulu Hawai'i, with the parties' same representatives in attendance.⁴ Upon resumption of the proceeding, each party was afforded an opportunity to provide rebuttal to the arguments of the other parties made during their respective presentations as well as to provide final comments.

452. Thereafter, the LUC entered into deliberations on the matter.

Following discussion, a motion was made and seconded to approve with modifications the Planning Commission's recommendation to approve the special use permit with a closure date of the WGSJ of March 2, 2028. After additional discussion, a vote was taken on this motion. There being a vote tally of 6 ayes and 2 nays, the motion passed.⁵

453. Thereafter, the LUC Chair requested that no later than October 18, 2019, the Applicant, Intervenor KOCA/Shimabukuro, Intervenor Schnitzer, Intervenor Hanabusa, and OP provide the LUC with proposed findings of fact and conclusions of law consistent with the LUC's decision on this matter.

454. On October 17, 2019, Intervenor Hanabusa filed Further Objections to the LUC's Approval With Modifications of Special Use Permit and Any Proposed

⁴ There was no representative of the DPP appearing before the LUC at the continued meeting.

⁵ There are currently eight sitting members on the LUC. The ninth seat is currently vacant.
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Findings of Fact, Conclusions of Law, and Decision and Order, and the Final Findings of Fact and Conclusions of Law, and Decision and Order to be Entered by the LUC.

455. On October 18, 2019, the Applicant and Intervenor KOCA/Shimabukuro each filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

456. On October 18, 2019, Intervenor Schnitzer filed a Jointer in the Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

457. On October 18, 2019, OP filed a letter stating that as it is not a party in this matter, it will not be filing a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

458. On October 31, 2019, the LUC held a meeting to adopt the form of the Order simultaneously by interactive conference technology, pursuant to HRS § 92-3.5. The meeting utilized the Video Conference Centers located at the Kalanimoku Building, State of Hawai'i Department of Land and Natural Resources Conference Room #132, Honolulu, Hawai'i; the Wailuku State Office Building, Wailuku, Hawai'i; the Hilo State Office Building, Hilo, Hawai'i; and the Līhu'e State Office Building, Līhu'e, Hawai'i. At the meeting, the LUC heard public testimony from Katherine Kamada and Lily Cabinatan. Thereafter, a motion was made and seconded to adopt the form of the Order with an amendment to Condition No. 16 to require that the Applicant

have a public hearing every three months in either Wai`anae, Mā`ili, or Nānākuli to report on the status of their efforts to either reduce or continue the use of the WGS�. After discussion, a vote was taken on this motion. There being a vote tally of 8 ayes and 0 nays, the motion passed.

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. Subject to HRS § 205-6, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. *See* HRS § 205-6(a).
2. The WGS� requires a special use permit for its operations.
3. Pursuant to HRS § 205-6(d), special permits for land the area of which is greater than fifteen acres shall be subject to approval by the LUC.

4. Pursuant to HAR § 15-15-95(b), special permits for areas greater than fifteen acres require approval of both the county planning commission and the LUC.

5. Because the Applications seek a special use permit for land the area of which is greater than fifteen acres, the LUC has jurisdiction over this matter pursuant to HRS § 205-6 and HAR § 15-15-95.

6. Pursuant to HAR § 15-15-95(c), the following guidelines have been established for purposes of determining whether a proposed use is “unusual and reasonable:”

- (a) 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.
- (b) The proposed use would not adversely affect surrounding property.
- (c) 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.
- (d) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
- (e) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

7. Based upon the record and files herein and the findings set forth above, and pursuant to HRS § 205-6 and HAR § 15-15-95, the LUC concludes that the

WGSL is an “unusual and reasonable use” within the State Land Use Agricultural District.

8. Within forty-five days after receipt of the complete record from the county planning commission, the LUC shall act to approve, approve with modification, or deny the petition. *See* HRS § 205-6(e).

9. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the Applicant. *See* HRS § 205-6(d).

10. The LUC is authorized to impose restrictive conditions in its approval of special use permits provided its decision to impose such a restriction is supported by substantial evidence in the record. *Dept. of Environmental Services v. Land Use Comm’n*, 127 Hawai`i at 13, 275 P.3d at 817.

11. Based upon the record and files herein and the findings set forth above, the LUC concludes that there is substantial evidence in the record to support the conditions imposed below, including but not limited to a March 2, 2028 closure date for the WGSL.

12. Based upon the record and files herein and the findings set forth above, the LUC further concludes that the conditions imposed below are necessary or

appropriate to protect public health, safety, and welfare, and are material to the LUC's approval.

13. Based upon the record and files herein and the findings set forth below, the LUC further concludes that the conditions imposed below are necessary or appropriate in granting the approval, including but not limited to, ensuring the adherence to representations made by the Applicant.

14. Article XI, section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i'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.

15. Article XI, section 3, of the Hawai'i 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.

16. Article XII, section 7, of the Hawai'i 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 ahupua'a tenants who are

descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

17. 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 Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

18. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

DECISION AND ORDER

Having duly considered the consolidated record of proceedings, the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated June 10, 2019, the oral arguments of the parties and the record and files herein, the LUC, through a motion having been duly made and seconded at a meeting conducted on October 10, 2019, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion, hereby adopts with modifications the Planning Commission's

recommendations to approve a special use permit for the WGS�, and APPROVES WITH MODIFICATIONS the Applications, subject to the following conditions:

1. The WGS� shall close by no later than March 2, 2028. The WGS� shall not accept any form of waste after March 2, 2028.
2. 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.
3. In accordance with Chapter 11-60.1 "Air Pollution Control," Hawai`i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from 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.
4. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai`i and all of its agencies and/or employees for any lawsuit or

legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the landfill.

5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

6. 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.

7. 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 O`ahu, (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.

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

9. WGSF 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.

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

11. The operations of the WGSF 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.

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

13. 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 reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

14. 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).

15. 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.

16. The Applicant shall have a public hearing every three months in either Wai'anae, Mā'ili, or Nānākuli to report on the status of their efforts to either reduce or continue the use of the WGSL.

17. If the landfill releases waste or leachate, the Applicant must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Wai'anae Coast and Nānākuli-Mā'ili 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 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, Hawai'i, this 1st, day of November, 2019, per motion on October 10, 2019.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 

JONATHAN SCHEUER
Chairperson and Commissioner

Filed and effective on:

11/1/19

Certified by:



DANIEL ORODENKER
Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

2019 NOV -1 A 8:21

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	CERTIFICATE OF SERVICE
HONOLULU)	
For A New Special Use Permit To Supersede)	
Existing Special Use Permit To Allow A 92.5-Acre)	
Expansion And Time Extension For Waimānalo)	
Gulch Sanitary Landfill, Waimānalo Gulch,)	
O'ahu, Hawai'i, Tax Map Key: 9-2-003: 072 And)	
073)	
-----In The)	
Matter Of The Application Of The)	
DEPARTMENT OF ENVIRONMENTAL)	
SERVICES, CITY AND COUNTY OF)	
HONOLULU)	
To Delete Condition No. 14 Of Special Use Permit)	
No. 2008/SUP-2 (Also Referred To As Land Use)	
Commission Docket No. SP09-403) Which States)	
As Follows:)	
"14. Municipal Solid Waste Shall Be Allowed At)	
The WGSL Up To July 21, 2012, Provided That)	
Only Ash And Residue From H-POWER Shall Be)	
Allowed At The WGSL After July 31, 2012.")	
_____)	

CERTIFICATE OF SERVICE

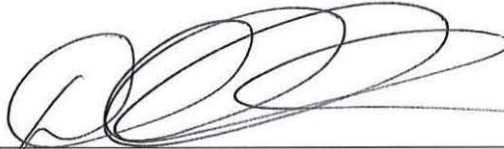
I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER APPROVING WITH MODIFICATIONS THE CITY AND COUNTY OF HONOLULU PLANNING COMMISSION'S RECOMMENDATION TO APPROVE SPECIAL USE PERMIT was served

upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL.	MARY ALICE EVANS, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359
DEL	BRYAN YEE, Esq. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawaii 96813
CERT.	KATHY SOKUGAWA, Acting Director Department of Planning and Permitting City and County of Honolulu 650 South King Street Honolulu, Hawaii 96813
CERT.	KAMILLA C.K. CHAN, Esq. Deputy Corporation Counsel City & County of Honolulu 530 South King Street Honolulu, Hawaii 96813
CERT.	IAN SANDISON, Esq. Watanabe Ing LLP First Hawaiian Center 999 Bishop Street, Suite 1250 Honolulu, HI 96813
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CERT. CADES SCHUTTE LLP
CHRISTOPHER G. CHIPCHASE
CHRISTOPHER T. GOODIN
1000 Bishop St. Suite 1200
Honolulu, HI 96813

Dated: November 1, 2019, Honolulu, Hawaii.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Daniel Orodener, Executive Officer