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DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU



Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

Application to Modify SUP No.  
2008/SUP-2 (SP09-403) by Modifying (1)  
Condition No. 1 of the Planning  
Commission's Findings of Fact,  
Conclusions of Law, and Decision and  
Order, dated June 10, 2019, and (2)  
Condition No. 5 of the LUC's 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, certified on November 1, 2019

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S (1)  
MOTION TO RECOGNIZE THEM  
AS EXISTING PARTIES OR IN  
THE ALTERNATIVE (2) PETITION  
TO INTERVENE**

**DECLARATION OF  
CHRISTOPHER T. GOODIN**

**EXHIBITS 1-6**

**CERTIFICATE OF SERVICE**

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S (1) MOTION TO RECOGNIZE THEM AS EXISTING PARTIES OR IN THE ALTERNATIVE (2) PETITION TO INTERVENE**

## I. INTRODUCTION

This proceeding concerns the Special Use Permit (“SUP”) for the Waimanalo Gulch Sanitary Landfill (the “Landfill” or “WGSL”). The proceeding (“Proceeding”) is docketed as File No. 2008/SUP-2 before the Honolulu Planning Commission (the “Planning Commission” or “PC”) and as Docket No. SP09-403 before the State Land Use Commission (the “LUC”).

The SUP for the Landfill is set forth in the decision of the LUC dated November 1, 2019 (“LUC Decision”). Ex. 1 (LUC Decision). In approving the SUP, the LUC imposed the following two Conditions:

1. The WGSL shall close by no later than March 2, 2028. The WGSL shall not accept any form of waste after March 2, 2028.

....

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.

Ex. 1 (LUC Decision) at 103-04 (emphasis added).

In imposing Condition Nos. 1 and 5, the LUC declined to adopt an operation and site selection condition that had been proposed by the Planning Commission in its Condition No. 1, which stated in part: “1. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGSL reaching its capacity at a future date. This identification shall have no impact on the closure date for the WGSL because the WGSL shall continue to operate until it reaches capacity.” Ex. 2 (PC Decision) at 65. Condition No. 1 included the same selection

date of December 31, 2022, but the remaining text of the condition and its purpose are different.

As it has done with every other deadline related to closing the Landfill, ENV failed to meet the December 31, 2022 site selection deadline in the LUC's Condition No. 5. ENV filed the pending Application to Modify (the "**Application to Modify**") the LUC's Condition No. 5. The application also seeks to modify the Planning Commission's Condition No. 1, but that condition is not effective because it was not adopted by the LUC, *see* Ex. 1 (LUC Decision) at 104, and the LUC is the final decisionmaker for SUPs on lots of 15 acres or more, *see* Hawai'i Revised Statutes ("**HRS**") § 205-6(e); *cf.* PC Rules §§ 2-38, 2-46(b).

For the last fourteen years, Ko Olina Community Association and Senator Maile Shimabukuro ("**Senator Shimabukuro**") (together, "**KOCA**") have been intervenors in this Proceeding. In this filing, KOCA moves to confirm its party intervenor status. In the alternative and in an abundance of caution, KOCA petitions to intervene.

## II. MOTION TO CONFIRM PARTY INTERVENOR STATUS

In accordance with PC Rules § 2-67, KOCA moves to confirm its party intervenor status in this Proceeding. The prior Petition to Intervene was granted by the Planning Commission on May 20, 2009. Ex. 1 (LUC Decision) at 6 (explaining that on May 20, 2009, "The Planning Commission heard and granted the Petition to Intervene filed by KOCA, Shimabukuro, and Hanabusa."); Ex. 2 (PC Decision) at 5. KOCA was "recognized" by the LUC "as having intervenor status based on their intervenor status before the Planning Commission" during a hearing on September

24, 2009. Ex. 1 (LUC Decision) at 15. Thereafter, when ENV filed an application to modify in 2011, the Planning Commission again granted KOCA intervention on October 5, 2011. Ex. 1 (LUC Decision) at 19, 21; Ex. 2 (PC Decision) at 27.

Similar to the LUC, the Planning Commission should now grant this Motion and recognize KOCA as having party intervenor status in this Proceeding. Consistent with that status, the Commission has already served KOCA by certified mail with the notice of hearing (the “**Notice of Hearing**”) on the Application to Modify in accordance with the Rules of the Honolulu Planning Commission (“**PC Rules**”) § 2-57(b), which requires service of papers on “parties or their counsel of record.” Ex. 3 (Notice). KOCA is already a party to this Proceeding. Its Motion to Confirm should be granted.

### III. ALTERNATIVE PETITION TO INTERVENE

Before making this filing, we asked ENV whether it would stipulate that KOCA is a party intervenor in this Proceeding. Goodin Dec. ¶ 2. ENV declined but also stated that it would not oppose a Petition to Intervene by KOCA. *Id.*

A new petition to intervene is not necessary because KOCA is already a party. Nevertheless, in an abundance of caution, KOCA petitions to intervene in this Proceeding in accordance with PC Rules §§ 2-49,<sup>1</sup> 2-53, and 2-55. Its previously-

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<sup>1</sup> PC Rules § 2-49(a) (“A petitioner who desires a modification or deletion of a condition imposed by the commission shall make such a request to the commission in writing. This request shall be processed in the same manner as the original petition for a SUP.”). Although the Application to Modify is processed in the same manner as the original SUP application, it does not create a new proceeding. This is the same contested case Proceeding (File No. 2008/SUP-2).

granted Petitions to Intervene are attached hereto as Exhibits 4 and 5. Ex. 1 (LUC Decision) at 6; Ex. 2 (PC Decision) at 5.

Intervention is governed by PC Rules §§ 2-53 and 2-55. The first section includes timing and content requirements. Section A below shows that the Petition is timely under PC Rules § 2-53(a), and Section B provides the content required by PC Rules § 2-53(b). Section 2-55 states that intervention shall be freely granted unless two listed other considerations are present. Section C below demonstrates that those considerations are not applicable here.

**A. The Petition is Timely Under PC Rules § 2-53(a).**

This Petition to Intervene is timely under PC Rules § 2-53(a), which states that, “Any person or agency, requesting to intervene as a party shall file a petition with the commission within fourteen (14) days of the date of newspaper publication of the notice of a public hearing to be held by the planning commission on a petition for a special use permit.” The Notice of Hearing was published in the Honolulu Star-Advertiser on May 29, 2023. Ex. 3 (Notice). This Petition was filed within 14 days. It is therefore timely.

**B. The Petition Provides the Content Required by PC Rules § 2-53(b).**

The Petition to Intervene includes the five points required by PC Rules § 2-53(b), which states:

Contents of petition to intervene as a party. The petition shall include the following points:

- (1) The nature of petitioner’s statutory or other right to intervene as a party to the proceedings.

(2) The nature and extent of petitioner's interest in the proceedings, and if the petitioner is an abutting property owner, the tax map key description of the property.

(3) A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing.

(4) The effect of any decision in the proceeding on the petitioner's interest.

Each point is addressed in turn below.

1. **“The nature of petitioner’s statutory or other right to intervene as a party to the proceedings” and “The nature and extent of petitioner’s interest in the proceedings, and if the petitioner is an abutting property owner, the tax map key description of the property.”**

Ko Olina Community Association is the master association of the Ko Olina Resort and Marina (the “Resort”), which is located across the street from the Landfill. Ex. 1 (LUC Decision) at 64. Thus, the Association has a concrete interest in this proceeding. *See Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest); *County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership provides a basis for standing and collecting cases). The Resort is a 642-acre resort master planned community with a combination of resort, residential, commercial, and recreational uses. Ex. 6 (Williams Dec.) ¶ 3. The Resort covers the lots identified by Tax Map Key numbers set forth in the previously-granted Petitions to Intervene attached as Exhibits 4 and 5.

Ko Olina Community Association is tasked with ensuring that the livability, vibrance, and values of the Resort are maintained at the highest levels. Ex. 6

(Williams Dec.) ¶ 4. It represents all owners at the Resort, including hotel, timeshare, golf course, marina, and residential owners, and other members of the Association. *Id.* ¶ 6.

Senator Shimabukuro is the duly elected State Senator for the 21st Senatorial District. She represents the residents of the Leeward Coast and is a taxpayer.

KOCA has held party intervenor status in this Proceeding for the last fourteen years. Based on the evidence and testimony it provided, the LUC found in its 2019 Decision that KOCA and the broader Leeward community have been adversely affected by the Landfill. Over the years, Ko Olina's residents, workers, and visitors have expressed concerns regarding odors, noise, dust, blasting, visual blight, truck traffic and flying litter from the Landfill. Ex. 1 (LUC Decision) at 66. Indeed, in 2012, the Landfill released unknown quantities of municipal solid waste, sewage sludge, leachate, and medical solid waste into coastal waters. *Id.* at 70. The waste spread to beaches up the Leeward coast as far as Poka'i Bay and east as far as Nimitz Beach. *Id.* "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." *Id.* at 66.

The evidence and testimony of KOCA also provided the basis for the site selection and closure deadlines the LUC imposed in its 2019 Decision. *See* Ex. 1 (LUC Decision) at 87-89, 100, 103. KOCA has a clear interest in having ENV select and develop an alternative landfill as soon as possible and in having WGS� close as soon as possible.



**2. “A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing” and “The effect of any decision in the proceeding on the petitioner’s interest.”**

ENV has already missed the December 2022 site selection deadline in the LUC’s Condition No. 5. This is just the latest in a long history of missed deadlines associated with the closure and replacement of the Landfill. The Landfill should have been closed and a new landfill opened a long time ago. The Landfill was ordered by the LUC to close by 2008 and a new site selected by 2004. Ex. 1 (LUC Decision) at 54. Several sites were identified by a site selection committee. Instead of following the LUC’s directives and the committee’s recommendation, the City selected the existing Landfill as the “new” landfill. *Id.* at 54-55. The ENV was then ordered to begin the process of identifying and developing a new site by 2010 with reasonable diligence. *Id.* at 11, 83. Another site selection process followed, sites were identified, but no site was selected.

In response to the LUC’s most recent order to identify a new site by December 31, 2022, ENV formed a new site selection committee in 2021. Six sites were offered as the only alternatives. The committee held eight meetings between October 2021 and June 2022, during which time the committee determined that it could not recommend any of the sites. See Report at 6-4, available at [https://www.honolulu.gov/rep/site/env/envref/envref\\_docs/OLSS%20and%20LAC%20Final%20Report%2020220627\\_COMBINED%20r1.pdf](https://www.honolulu.gov/rep/site/env/envref/envref_docs/OLSS%20and%20LAC%20Final%20Report%2020220627_COMBINED%20r1.pdf).

ENV has asked for more time to address issues posed by Act 73. This law was enacted in 2020, a year before the site selection committee was convened. ENV now proposes to explore the use of federal lands and to work with the Hawai’i

Legislature on amendments to Act 73. These avenues should have been pursued prior to the initiation of the site selection committee process.

ENV's request for more time to select a new landfill should be viewed in this context of the long history of delays and harmful effects on the community. To ensure that a new landfill is selected as soon as possible and the closure deadline is met, the Honolulu Planning Commission should require ENV to report quarterly in person to the Commission on its efforts to select a new landfill. Meetings before the Commission will provide the public with a forum to participate in the process and offer public testimony. The Commissioners will be able to consider that public input to ask the right questions and hold ENV accountable. Oversight by the Commission will provide the community reassurance that the risks and benefits associated with the proposed designation of a new site are properly taken into consideration. This will serve to protect the interests of Ko Olina Community Association, Senator Shimabukuro, and the community in this Proceeding.

In short, the issues are: (1) how much additional time does ENV need for site selection; and (2) should ENV report quarterly to the Planning Commission in this Proceeding? KOCA's position is that (1) any additional time for site selection should be strictly confined so that ENV will meet the closure deadline on March 2, 2028; (2) ENV should be required to report quarterly to the Planning Commission to ensure that progress is being made.

**C. PC Rules § 2-55(c).**

PC Rules § 2-55(c) states:

Leave to intervene shall be freely granted, provided that the commission may deny petition to intervene when in the commission's discretion it appears that: (1) The position of the party requesting intervention concerning the proposed action is substantially the same as the position of a party already admitted to the proceeding; and (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

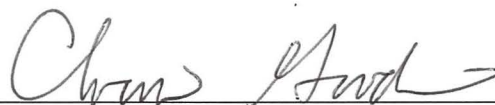
The two factors set forth in PC Rules § 2-55(c) are not applicable here. No other party has substantially the same position as KOCA. And the admission of KOCA will not render the proceedings inefficient or unmanageable. The evidence KOCA adduced in the prior hearings served as the foundation for the LUC's 2019 Decision. Accordingly, leave to intervene should be freely granted.

#### IV. CONCLUSION

KOCA has been a party to this Proceeding for the last 14 years. The Commission should recognize KOCA as such. A party cannot lose party status. To the extent a new petition to intervene is needed, KOCA asks to be admitted as a party intervenor in this Proceeding.

DATED: Honolulu, Hawai'i, June 9, 2023.

CADES SCHUTTE  
A Limited Liability Law Partnership



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STACEY F. GRAY  
KATHERINE E. BRUCE  
Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

FILE NO. 2008/SUP-2

**DECLARATION OF  
CHRISTOPHER T. GOODIN**

Application to Modify SUP No.  
2008/SUP-2 (SP09-403) by Modifying (1)  
Condition No. 1 of the Planning  
Commission's Findings of Fact,  
Conclusions of Law, and Decision and  
Order, dated June 10, 2019, and (2)  
Condition No. 5 of the LUC's 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, certified on November 1, 2019,

**DECLARATION OF CHRISTOPHER T. GOODIN**

I, Christopher T. Goodin, hereby declare:

1. I am one of the attorneys for Intervenors Ko Olina Community Association (“KOCA”) and Senator Maile Shimabukuro (“**Senator Shimabukuro**”) in this matter and make this declaration upon personal knowledge.

2. Before making this filing, we asked Honolulu Department of Environmental Services’ (“ENV”) counsel Jeffrey Hu whether ENV would stipulate that KOCA and Senator Shimabukuro were party intervenors in this Proceeding.

ENV declined but also stated that it would not oppose a Petition to Intervene by KOCA and Senator Shimabukuro.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the State of Hawai'i Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the Honolulu Planning Commission's Recommendation to Approve Special Use Permit certified November 1, 2019, in the proceeding before the LUC docketed as Docket No. SP09-403. I respectfully ask that the Honolulu Planning Commission take notice of this document pursuant to Rules of the Planning Commission ("**PC Rules**") § 2-69(i).

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Honolulu Planning Commission's Findings of Fact, Conclusions of law, and Decision and Order certified June 10, 2019, in this proceeding docketed as File No. 2008/SUP-2.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the Notice of Hearing for June 28, 2023, in this proceeding docketed as File No. 2008/SUP-2.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the Petition to Intervene filed April 16, 2009, in this proceeding.

7. Attached hereto as **Exhibit 5** is a true and correct copy of the Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties filed September 16, 2011, in this proceeding.

8. Attached hereto as **Exhibit 6** is a true and correct copy of Intervenors Ko Olina Community Association and Maile Shimabukuro's Written Direct Testimony of Ken Williams filed December 13, 2011, in this proceeding.

DATED: Honolulu, Hawai'i, June 9, 2023.

A handwritten signature in cursive script, appearing to read "Chris Goodin", written in black ink.

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CHRISTOPHER T. GOODIN

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAI'I

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE**

Application to Modify SUP No.  
2008/SUP-2 (SP09-403) by Modifying (1)  
Condition No. 1 of the Planning  
Commission's Findings of Fact,  
Conclusions of Law, and Decision and  
Order, dated June 10, 2019, and (2)  
Condition No. 5 of the LUC's 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, certified on November 1, 2019,

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day a copy of the foregoing document was  
duly served on the following persons:

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(Hand Delivery)

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DATED: Honolulu, Hawai'i, June 9, 2023.

CADES SCHUTTE  
A Limited Liability Law Partnership



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KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO



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 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."

) 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 by   
Date 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 1**



LAND USE COMMISSION  
STATE OF HAWAII

2010 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	)	FINDINGS OF FACT, CONCLUSIONS OF
HONOLULU	)	LAW, AND DECISION AND ORDER
For A New Special Use Permit To Supersede	)	APPROVING WITH MODIFICATIONS THE
Existing Special Use Permit To Allow A 92.5-Acre	)	CITY AND COUNTY OF HONOLULU
Expansion And Time Extension For Waimānalo	)	PLANNING COMMISSION'S
Gulch Sanitary Landfill, Waimānalo Gulch,	)	RECOMMENDATION TO APPROVE
O`ahu, Hawai`i, Tax Map Key: 9-2-003: 072 And	)	SPECIAL USE PERMIT; AND CERTIFICATE
073	)	OF SERVICE

-----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:	)	
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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

AND

CERTIFICATE OF SERVICE



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	)	FINDINGS OF FACT,
HONOLULU	)	CONCLUSIONS OF LAW, AND
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 WGSL 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 WGSL ("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 Intervenors 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 WGSL 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 WGSL 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, Intervenors 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. Intervenors 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 WGS, to testify.

36. On June 29, 2009, Intervenors 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"). Intervenors 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. Intervenors 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. Intervenors 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, Intervenors 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. Intervenors 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 WGSL. The Applicant’s effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant’s effort to select a new landfill site on O’ahu. Upon the selection of a new landfill site or sites on O’ahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.
2. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
3. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on O’ahu, the WGSL’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.

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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 Intervenors 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 Intervenors 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 Intervenors 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 WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012.
15. The Honolulu City Council through the City Administration shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGS�, including any funding arrangements that are being considered by the City Council and the City Administration.
16. The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGS�.

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

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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 WGSL 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. Intervenors 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 Application<sup>1</sup>

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

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<sup>1</sup> 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, Intervenors 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 Intervenors 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. Intervenors 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 Intervenors 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. Intervenors KOCA/Shimabukuro called Ms. Shimabukuro and Ms. Timson to testify.

145. Intervenors 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 Intervenors 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. Intervenors KOCA/Shimabukuro objected to the admission of Exhibits A43–A46. The Planning Commission overruled Intervenors 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 Intervenors 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. Intervenors 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 Intervenors 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, Intervenors 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 Intervenors KOCA/Shimabukuro's Exhibit K258 that was discovered after the hearing closed.

159. Intervenors KOCA/Shimabukuro's Motion to Reopen was based on the disclosure of the SSC's prime consultant, R.M. Towill Corporation ("RMTTC"), 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 Intervenors KOCA/Shimabukuro's Exhibit K258 were no longer accurate.

160. Intervenors 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 Intervenors KOCA/Shimabukuro's Motion to Reopen.

162. On May 2, 2012, the Applicant, Intervenor Schnitzer, and Intervenors 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 Intervenors 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, Intervenors 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 Intervenors 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, Intervenors 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 Intervenors 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 Intervenors 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 Intervenors 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. Intervenors KOCA/Shimabukuro filed a Joinder to the Applicant's Motion to Stay Proceedings, and Intervenor Schnitzer filed a Joinder to Intervenors 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, Intervenors 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 Intervenors 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 Intervenors KOCA/Shimabukuro's Motion to Deny and Remand.

229. On May 23, 2017, the LUC received correspondence from Intervenors 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 Intervenors 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 WGSF reaching its capacity and the implications it has on the closure date of the WGSF to use and the subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGSF, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

REMANDED PROCEEDINGS OF THE PLANNING COMMISSION

231. On June 20, 2017, Intervenors 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 Intervenors 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, Intervenors 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, Intervenors 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, Intervenors 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 Intervenors KOCA/Shimabukuro's Motion to Reopen the Contested Case Hearing; Declaration of Kamilla C. K. Chan; Exhibits "1" thorough "3"; and Certificate of Service.

239. On December 4, 2017, Intervenor Hanabusa filed a Joinder to Intervenors 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 Intervenors 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 Intervenors 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, Intervenors 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, Intervenors 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, Intervenors 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, Intervenors 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 WGSL 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 WGSL site is not located within the City's Special Management Area. 2008AP Ex. A1 at 8-12, 8-14 (2008 FEIS).

#### HISTORY OF THE WGSL

274. Because the WGSL 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 WGSL. 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 WGSL 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 WGSL 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 WGSL. There is potential for leachate from the WGSL entering brackish groundwater in the area of the WGSL. 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 WGSL 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 WGSL 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 WGSL, 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 WGSL, thereby decreasing this source of odorous waste from the WGSL. 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 WGSL are monitored in compliance with RCRA Subtitle D regulations, HAR chapter 11-58, and the WGSL'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 WGSL.

319. The WGSL 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 WGSL 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 WGSL 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 WGSL. 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 WGSL. 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 WGSL 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, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to clean up the waste and to keep the waste from spreading. *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 WGSL. 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 3/712 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 WGSL. 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 WGS� 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 Pōka ī 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 WGSL. 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 WGSL. 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 WGSL 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 WGSL 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 WGSL still accepted 163,736 tons of MSW. 2011AP Ex. A27 (O`ahu MSW waste stream table).

354. The continued volume of MSW at the WGSL 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 WGSL. 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 WGSL. 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 WGSL.

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

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 77



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 WGSL 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 WGSL 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 *Isodendrion pyriformium*

(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 WGSL 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, Intervenors 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, Intervenors 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, Intervenors 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.<sup>2</sup> Kamilla C.K. Chan, Esq.,

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<sup>2</sup> 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 Intervenors 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 Cleek<sup>3</sup> and Cynthia K. L. Rezentes.

450. Following presentations by the Applicant, Intervenor Schnitzer, Intervenors 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

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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.

<sup>3</sup> 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.<sup>4</sup> 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 WGSL 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.<sup>5</sup>

453. Thereafter, the LUC Chair requested that no later than October 18, 2019, the Applicant, Intervenors 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

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<sup>4</sup> There was no representative of the DPP appearing before the LUC at the continued meeting.

<sup>5</sup> 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 Intervenors 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 Joinder 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 WGSL, and APPROVES WITH MODIFICATIONS the Applications, subject to the following conditions:

1. The WGSL shall close by no later than March 2, 2028. The WGSL 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 WGSL as shown on Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.

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

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

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

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, Intervenors Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro

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

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 1st day of November, 2019, per motion on October 10, 2019.

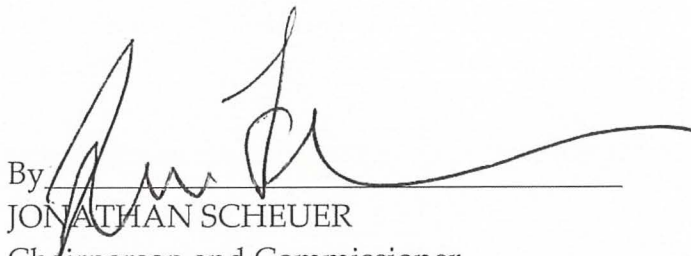
LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

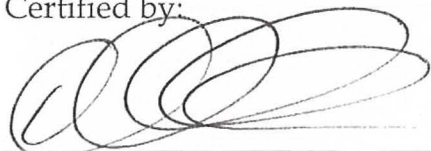


By  
JONATHAN SCHEUER  
Chairperson and Commissioner

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

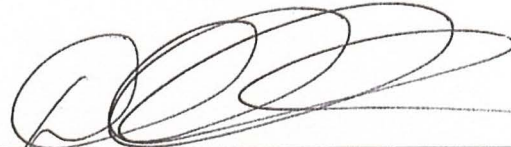


upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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Dated: November 1, 2019, Honolulu, Hawaii.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Daniel Orodener, Executive Officer

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

For a New Special Use Permit to Supersede  
Existing Special Use Permit to Allow a  
92.5-Acre Expansion and Time Extension for  
Waimanalo Gulch Sanitary Landfill,  
Waimanalo Gulch, O'ahu, Hawai'i, Tax Map  
Key No. (1) 9-2-03: 72 and 73.

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

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

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

FILE NO. 2008/SUP-2

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

CERTIFICATE OF SERVICE

I certify that this is a full, true and  
correct copy of the original document on  
file with the Department of Planning  
and Permitting/Planning Commission,  
City and County of Honolulu.



June 10, 2019

DATE

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

This matter is a consolidation of two contested case hearings before the Planning Commission, City and County of Honolulu (the "Planning Commission"). The first proceeding involves the Department of Environmental Services, City and County of Honolulu's ("Applicant" or "ENV") application for a new special use permit ("SUP"), the expansion of the

**EXHIBIT 2**

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

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

**FINDINGS OF FACT**

**I. PROCEDURAL MATTERS**

1. The WGSL is located at 92-460 Farrington Highway, Honouliuli, Ewa, Oahu. See Final Environmental Impact Statement, Waimanalo Gulch Sanitary Landfill Lateral Expansion, Waimanalo, Gulch, Oahu, Hawaii, TMKs: (1) 9-2-003:072 and 073, dated October 2008, included in 2011 Contested Case Hearing Exhibit (“2011 Exhibit”) “Exhibit A2.”

**A. 2008 APPLICATION**

2. On November 23, 2006, the Office of Environmental Quality Control, State of Hawaii (“OEQC”), published notice in The Environmental Notice that the Environmental Impact Statement (“EIS”) Preparation Notice for the expansion of WGSL was available for public review and comment. See Letter from David Tanoue, Director of the Department of Planning

and Permitting, to Karin Holma, Chair of the Planning Commission, dated May 1, 2009 ("DPP Recommendation") at 6.

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

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

5. On December 3, 2008, the Department of Environmental Services, City and County of Honolulu ("Applicant" or "ENV"), filed a State Special Use Permit Application ("Application"), with DPP pursuant to HRS Section 205-6, and Rules of the Planning Commission, City and County of Honolulu ("RPC"), Subchapter 4, Rules Applicable to State Special Use Permits. See Application. The Application, designated as Special Use Permit Application File No. 2008/SUP-2, is for a new Special Use Permit ("SUP") for the use of the approximately 200.622-acre property (the "Property"), identified by Tax Map Key ("TMK") Nos. (1) 9-2-003: 072 and 073, in Waimanalo Gulch, Oahu, Hawaii. See Application at Figure 1-1 and Planning Division Master Application Form. The Application seeks to expand the current operating portion of the Property, approximately 107.5 acres, by approximately 92.5 acres (the "Project"). See Application at Planning Division Master Application Form and p. 1-2.

6. The Applicant concurrently seeks to withdraw its existing SUP permit for approximately 107.5 acres, Special Use Permit File No. 86/SUP-5, and the conditions imposed therein, if the Application for the new SUP permit is granted. See April 2, 2009 memorandum from Applicant to DPP; Transcript ("Tr.") 7/2/09, 20:4-10; DPP Recommendation at 3, 24.

7. The Applicant has also filed a petition with the Land Use Commission, State of Hawaii, for a district boundary amendment to reclassify the Property from the State Agricultural District to the Urban District, which may be withdrawn if the Application is granted. See Application at p. 2-2, fn.1.

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

9. On April 16, 2009, Ko Olina Community Association ("KOCA"), Colleen Hanabusa, and Maile Shimabukuro (collectively, "Intervenors") filed a Petition to Intervene in this matter. On April 24, 2009, Applicant filed a Memorandum in Opposition to Intervenors' Petition to Intervene.

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

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

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

continued the public hearing and consideration of Intervenors' Petition to Intervene to May 20, 2009.

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

14. On May 19, 2009, Intervenors' filed a Motion to Recuse Commissioner John Kaopua.

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

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

17. On June 10, 2009, the hearing was continued at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. The Planning Commission heard and granted Intervenors' Motion to Recuse Commissioner John Kaopua. The Planning Commission denied Apo's Petition to Intervene on the grounds that it was untimely filed, that Apo's position regarding that Application was substantially the same as the position of the Intervenors, and that the proceeding will be inefficient and unmanageable if Apo was allowed to intervene. See Findings of Fact, Conclusions of Law, and Order issued on July 27, 2009. Thereafter, the Planning Commission closed the public hearing on the Application.

18. On June 15, 2009, Intervenors filed their List of Witnesses, listing 42 potential witnesses including Apo. Applicant also filed its List of Witnesses, listing six potential witnesses.

19. On June 22, 2009, the contested case hearing began on the Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The Applicant submitted Exhibits "A1" through "A31," which were accepted into the record by the Planning Commission. See Tr. 6/22/09, 29:2-13. The Applicant presented its first two witnesses: Brian Takeda, who was qualified as an expert in the field of urban and regional planning, and Hari Sharma ("Sharma"), who was qualified as an expert in the field of geotechnical and geo-environmental engineering. Id. at 33:5-8; 234:7-12. Intervenors offered, and the Planning Commission received into the record, Exhibits "B1" and "B4." Id. at 81:6-11; 226:14-15.

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

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

22. On July 1, 2009, the Planning Commission resumed the contested case hearing on the Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawaii. The examination of Whelan was completed. The Applicant presented its fourth and fifth witnesses: Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, Chief of the Division of Refuse, City and County of Honolulu. See Tr. 7/1/09,



93:2-8; 176:4-9. Applicant offered, and the Planning Commission accepted for the record, Exhibit "A32." Id. at 168:16-17.

23. On July 2, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Chambers, Third Floor, 530 South King Street, Honolulu, Hawaii. The Applicant offered no further witnesses and concluded its case-in-chief. See Tr. 7/2/09, 4:15-17. Intervenors began their case-in-chief and presented the following seven witnesses: Abbey Mayer; Josiah Hoohuli; William J. Aila, Jr.; Daniel Banchiu; Cynthia Rezentes; Maeda Timson; and Apo. The Applicant offered, and the Planning Commission received into the record, Exhibits "A33" and "A34." Id. at 32:20-25; 240:7-13. Intervenor offered, and the Planning Commission received into the record, Exhibit "B5." Id. at 185:21-23. Other documents were referenced by the Planning Commission and the parties as Exhibits "B2" through "B3." Intervenors rested their case. Id. at 279:15.

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

25. On July 8, 2009, the Planning Commission resumed the contested case hearing on the Application at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. Applicant presented David M. Shideler as a rebuttal witness, who was qualified as an expert in archaeology and historical cultural resources. See Tr. 7/8/09, 11:15-21. Applicant offered, and the Planning Commission received into the record, Exhibits "A35," "A36," and "A37." Id. at 8:25-9:5, 65:14-22, 68:6-13. Intervenors made their witness, Apo, available for additional questions by Commissioner Beadie Dawson. The examination of Apo was completed.

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

(1) **EXHIBITS AND WITNESSES**

27. The Applicant offered, and the Planning Commission received into the record, Exhibits "A1" to "A37," without objection.

28. Intervenors offered, and the Planning Commission received into the record, Exhibits "B1," "B4," and "B5," without objection.

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

30. Dr. Sharma prepared a report entitled "Engineering Report for Landfill Expansion; Waimanalo Gulch Sanitary Landfill," dated March 12, 2008, which is Exhibit "A29." See Tr. 6/22/09, 235:4-25.

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

32. Intervenors Ko Olina Community Association, Colleen Hanabusa, and Maile Shimabukuro did not testify and did not submit any written testimony during the contested case hearing.

33. Mr. Doyle testified that the Applicant will begin in 2010 efforts to identify and develop a new landfill site to supplement WGSL. See Tr. 7/1/09, 251:18-24.

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

(2) **POST-HEARING SUBMISSIONS BY THE PARTIES**

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

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

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

38. On July 29, 2009, Intervenors filed that certain Reply Brief of Intervenors, Certificate of Service.

**B. THE PLANNING COMMISSION'S 2009 DECISION**

39. On August 4, 2009, the Planning Commission entered its findings of fact, conclusions of law, and decision and order granting the 2008 Application ("2009 Planning Commission Decision").

**(1) 2009 FINDINGS OF FACTS ("2009 FOF")**

**a. 2009 FOF: PROPOSAL FOR SPECIAL USE PERMIT**

40. A special use permit is being sought for the continued use of the Property as a landfill. See Application at 1-1. The 107.5-acre portion of the Property currently used as a landfill is proposed to be expanded by the remaining approximately 92.5 acres. Id. Of the approximately 92.5 acres in the expansion area, approximately 37 acres will be utilized for landfill cells. See Exhibit "A1" at 3-1, 4-4, 11-1. In addition, the expansion area will 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, and a landfill gas-to-energy system and other related features. Id.; see also Application at Part I.

41. The SUP will cover the entire Property. See Application at Part I.

**b. 2009 FOF: DESCRIPTION OF THE PROPERTY**

42. The Property is owned by the City and County of Honolulu ("City") and operated by Waste Management of Hawaii, Inc. ("Waste Management"). See Tr. 7/1/09, 179:4-8.

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

44. The existing City zoning district for the Property is AG-2, General Agricultural District. See Application at Planning Division Master Application Form; DPP Recommendation at 1.

45. The Ewa Development Plan recognizes the existing landfill. See Exhibit "A5"; DPP Recommendation at 1.

c. **2009 FOF: SURROUNDING USES**

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

47. Farrington Highway is located south of the Property. Id:

48. The region east of Property comprises the Makaiwa Hills development, which is scheduled for development. See Tr. 6/22/09, 64:6-8; Figure 7-3 of Exhibit "A1." WGS� has been in operation since 1989. See Tr. 7/1/09, 179:9-10. In 2008, the Makaiwa Hills parcel was rezoned for single family, mixed and apartment use by Ordinance 8-26, Bill 47 (2008). See Exhibit "A36."

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

50. WGS� plans to initiate closure of the existing landfill cells in the area nearest Makaiwa Hills' proposed residences prior to 2015. See Tr. 6/22/09, 168:1-8; 188:17-25, 189:1-14. In particular, cell E2 and portions of cells E1, E3, and several other MSW cells (labeled

Closure Sequence "A" in Exhibit "A12") are anticipated to be covered, capped, and closed by 2012. See Exhibit "A12"; Tr. 6/24/09, 91:7-92:1.

51. There is a ridgeline between Makaiwa Hills and WGSL. See Tr. 6/22/09, 191:12-18. The area of Makaiwa Hills nearest to WGSL's landfill cells in the proposed expansion area is identified as open space on the Makaiwa Hills property and will not be developed. Id. at 191:4-8; Exhibit "A1 1."

52. The current landfill access road proceeds up to the scalehouse, past the ash cells, veers due west to the west side of the Property, and travels up the western side of the Property and into the proposed expansion area. See Tr. 6/24/09, 89:5-16. This course takes the road away from the eastern boundary of the Property and away from Makaiwa Hills. Id.

53. Waste Management documents and responds to complaints received about the operations of WGSL. Id. at 100:9-101:3. Waste Management received and investigated six complaints in 2007, three complaints in 2008, and three complaints to date in 2009. Id. at 101:4-7.

54. Daniel Banchiu, general manager of JW Marriott, Ihilani ("Marriott"), testified for Intervenor at the July 2, 2009 hearing on the Application. See Tr. 7/2/09, 99:1-13. The Marriott operates a hotel at the Ko Olina resort. Id. at 99:21-24. He testified that he is aware of view and odor complaints from his guests but that the Marriott has not notified Waste Management about any complaints. Id. at 100:14-101:12; 110:1-10. He also testified that guests complained of views of a smokestack in the distance. On cross-examination, however, he admitted that he has never been to the landfill and that the smokestack could be located at some other facility--perhaps a facility with a smokestack. Id. at 106:1-25; 107:1-12. WGSL does not have a smokestack, but the Kahe Power Plant, which is adjacent to the Property, does. See Exhibit "A1" at p. 5-93.

d. **2009 FOF: STABILITY, CONTROLLED BLASTING AND BERMS**

55. Pursuant to federal and state regulations governing landfills, a seismic hazard evaluation was performed to determine seismic slope stability of the landfill. See Tr. 6/22/09 at 238:21-239:5. Consistent with accepted industry practice, the Project was analyzed for a design earthquake of magnitude 7.0, with an acceleration of 0.25 G. Id. at 240:1-9.

56. Under the Resource Conservation and Recovery Act ("RCRA"), Subtitle D, Seismic Design Guidance document, the acceptable displacement of landfills due to a seismic event is 12 inches. Id. at 248:25-249:13. The seismic deformation analysis of the design for the expanded landfill showed that seismic deformations were six inches or less, meeting the seismic stability criteria. Id. at 249:14-23.

57. The use of controlled blasting at the Property, which is very common in many landfill excavations, will not affect the stability of WGS� because the imparted energy of controlled blasting is so small and significantly less than 0.1 G. M. at 240:12-23; 250:3-16; 253:3-7. Monitoring probes installed by the Hawaiian Electric Company near the western Property boundary to measure vibrations from controlled blasting efforts at the currently permitted landfill did not detect any measurable readings. See Tr. 6/22/09, 252:1-15.

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

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

60. The impact of accumulated leachate on stability was also studied. According to Dr. Sharma and Richard Von Pein, even under extreme circumstances of leachate accumulation, using worst case scenarios that have never been experienced, the landfill would remain stable. See Tr. 6/24/09, 61:2-24; Tr. 7/1/09, 170:16-25, 171:1-15.

61. Whenever new cells are designed, a seismic deformation analysis and slope stability analysis must be performed to determine how the design impacts the existing cells. See Tr. 6/24/09, 9:19-23.

62. Berms are included in the design for several reasons, including for diversion of the surface water to make sure leachate is contained within the landfill and to create airspace while ensuring stability. See Tr. 6/22/09, 236:18-237:2; Tr. 6/24/09, 24:13-20; Tr. 7/1/09, 100:12-15.

63. A small Ash Toe Berm was a part of the original design for WGSL. See Tr. 7/1/09, 142:12-15; 142:21-143:3. The Ash Toe Berm was expanded in 2005 to address a small area where the factor of safety was less than 1.5: Id. at 142:17-20.

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

65. The West Berm will be extended further into the canyon under the proposed design for the expansion. See Tr. 6/22/09, 237:3-23; Tr. 6/24/09, 36:25-38:11.



e. **2009 FOF: STORM WATER AND LEACHATE**

66. Leachate is rain water that falls on open landfill cells. See Tr. 7/1/09, 14:11. The bottom of the individual landfill cell is contoured to direct leachate to a low point ("sump") and has a multi-layered composite liner system. Id. at 15:4-13; 101:2-25; 102:1-4; Exhibit "A1" at Figure 4-3. Within the sump is a permanent riser that contains a pump, which pumps the leachate in a hard pipe up to the surface, where it is then pumped into a tank for disposal at a wastewater treatment facility. Id. at 15:4-13, 17:12-15. The wastewater treatment facility accepts the leachate for treatment after determining it meets the requirements of the wastewater treatment facility's own permits and would not violate the Clean Water Act. Id. at 18:6-15; Tr. 6/22/09, 144:7-19, 147:2-5. Each of the leachate sumps is equipped with an automated pump that activates at a preset level below the compliance level. Id. at 105: 9-12. There is an alarm that lets Waste Management know if the pump is no longer functioning. Id. at 105:13-16. In addition, Waste Management physically monitors the sumps. Id. at 105:13-16; 16:23-17:2.

67. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the existing sedimentation basin if it originates onsite (surface run-off). Id. at 13:16-25; Tr. 6/22/09, 119:17-25. The sedimentation basin is designed to allow storm water to settle so that dissolved solids that come off the landfill can settle out in that basin. See Tr. 7/1/09, 77:21-24. The water is eventually discharged to the ocean subject to State of Hawaii Department of Health ("DOH") permitting requirements under the national pollution discharge elimination system ("NPDES"). Id. at 77:19-78:6. A third-party company takes samples to ensure compliance with certain discharge limits. Id. at 78:7-79:5. In addition, DOH inspects Waste Management's ditches and slopes. Id. at 78:7-15.

68. Leachate does not come into contact with storm water. Id. at 76:21-23. The storm water or surface water system is separate from the leachate collection system. Id. at 76:25-77: 8; 97:15-98:8.

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

f. **2009 FOF: GAS COLLECTION AND CONTROL SYSTEM  
AND EPA NOTICE OF VIOLATION**

70. On April 4, 2006, the Environmental Protection Agency ("EPA") issued a Notice of Violation to WSGL, which included the late installation of a landfill gas collection and control system (the "GCCS") and alleged violations of reporting requirements. Id. at 19:3-8; Appendix B, Volume II of III, of Exhibit "A1." Both issues were resolved by August 2005. Tr. 7/1/09, 19:3-8. There are currently 40 gas wells at the Property. Id. at 22:18-25.

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

72. In installing the GCCS, elevated temperatures above the EPA's standard operating temperature of 131° Fahrenheit were discovered at WSGL. See Tr. 7/1/09, 112:7-10; 113:25-114:2. Waste Management has submitted a demonstration to the EPA establishing that WSGL can be safely operated at higher than the standard operating temperatures. Id. at 112:11-15.

73. The EPA Notice of Violation is pending resolution of two outstanding issues that evolved from the Notice of Violation: the temperature issue and a monetary settlement. Id. at 106:2-13.

74. The EPA has not issued any notice of violation for the elevated temperatures at WSGL. See Tr. 6/24/09, 21:18-22:1. There is no evidence that there has ever been, or that there

is currently, a landfill fire at WGS�. See Tr. 7/1/09, 108:8-14. If there was combustion at WGS�, Waste Management would implement its contingency plan, including turning off the gas wells in the area of the fire, thereby depriving the combustion area of needed oxygen, which is standard procedure for handling landfill oxidation events. Id. at 107:8-25; 108:1-7.

**g. 2009 FOF: TRAFFIC**

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

76. The TIR concluded that even with the expansion of the landfill, the volume of traffic would not be expected to increase dramatically. Traffic going in and out of the landfill is less than approximately one percent of the total volume of traffic in the region. See Tr. 6/22/09, 51:18-24.

**h. 2009 FOF: ARCHAEOLOGICAL AND CULTURAL RESOURCES**

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

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

79. Applicant proposes to address SIHP# 50-80-12-6903 within a mitigation/preservation plan to be reviewed and accepted by the State Historic Preservation

Division, Department of Land and Natural Resources, State of Hawaii ("SHPD"). See Tr. 6/22/09, 49:21-50:5; Exhibit "A3." Specifically, Applicant has proposed to temporarily relocate the upright stones to Battery Arizona, and return the upright stones as close as possible to their current locations after the landfill has been closed. See Tr. 6/22/09 at 49:5-20; Exhibit "A3."

80. SHPD has reviewed Applicant's proposed mitigation and determined that there is no effect to historic properties, as stated in a letter from Nancy McMahon, Deputy State Historic Preservation Officer of SHPD, to David Tanoue, Director of DPP, dated April 2, 2009. See Tr. 6/22/09, 49-20-51:1; Exhibit "A4."

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

i. **2009 FOF: PURPOSE AND NEED**

82. According to Joseph Whelan, as of March 16, 2009, there was approximately 12 month of landfill airspace capacity remaining in the municipal solid waste ("MSW") portion of the current SUP area, and approximately 24 months of landfill airspace capacity remaining in the ash portion of the current SUP area. See Tr. 6/24/09, 81:22-82:6; 83:1-14.

83. On December 1, 2004, the City Council adopted Resolution No. 04-349, CD1, FD1, which selected the Property as the site for the City's landfill. See Exhibit "A20."

84. The proposed expansion of the landfill within the Property is needed because WGSL is a critical part of the City's overall integrated solid waste management efforts. See Tr. 7/1/09, 181:4-8.

85. Continued availability of WGSL is required as a permit condition to operate H-POWER and to engage in interim shipping of waste, for cleanup in the event of a natural

disaster, and because there is material that cannot be combusted, recycled, reused, or shipped. Id. at 181:9-18; 182:2-4, 10-17; 197:2-22.

86. Therefore, a landfill is currently necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for the residents of Oahu. See Application at 2-6.

87. WGS� is the only permitted public MSW facility on the island of Oahu and the only permitted repository for the ash produced by H-POWER. Id. at 181:20-183:4.

88. WGS� is a critical portion of the City's overall Integrated Solid Waste Management Plan ("ISWMP"), which looks at all of the factors that make up solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled or burned for energy. Id. at 178:10-18; 181: 7-18. The ISWMP is required by State law and approved by DOH after public comments. Id. at 182:18-183: 25. One theme of the ISWMP is to minimize landfill disposal. Id. at 184:1-3.

89. Currently, approximately 1.8 million tons of waste is produced on Oahu per year. This does not include material deposited at the PVT Landfill. Id. at 179:11-23. Approximately, 340,000 tons of MSW in 2006, and approximately 280,000 tons of MSW in 2008, were landfilled at WGS�. Id. at 179:16-17. These amounts fluctuate based on such things as recycling and the economy. Id. at 179:18-19. Approximately 170,000 to 180,000 tons of ash from the H-POWER facility is deposited at WGS� each year. Id. at 179:24-25; 180:1-4.

90. Other items that cannot be recycled or burned at H-POWER are deposited at WGS�, such as screenings and sludge from sewage treatment plants, animal carcasses, tank bottom sludge, contaminated food waste that cannot be recycled, and contaminated soil that is below certain toxicity levels. Id. at 180:10-21.

91. The WGSL Oversight Advisory Committee consists of citizens primarily from the leeward communities, who meet periodically to discuss concerns with Waste Management and the Applicant regarding WGSL operations. Id. at 184:9-18.

92. The Community Benefits Advisory Committee advises the City on the spending of money for grants and improvements throughout the Waianae Coast. In fiscal year 2008, there was approximately \$2 million appropriated in the City budget, and for fiscal year 2009, approximately \$2.5 million, for this program. Id. at 184:19-25, 185:1-7.

93. The City is actively reducing waste volume that is directed to the landfill. The H-POWER plant is expanding and its capacity is expected to increase by an additional 300,000 tons of MSW per year by late 2011 or early 2012. Id. at 185:8-25. The expanded H-POWER facility will be able to burn items that the current facility cannot and which are therefore currently being sent to the landfill. Id. at 186: 17-25, 187: 1-12. The City is in the process of completing the full implementation of its island-wide, curbside recycling program by May 2010. Id. at 186:7-13. The City has a program of community recycling bins to encourage schools to recycle cardboard, as well as plastic bottles and cans. M. at 187:13-18. The City is currently in the process of procuring a new green waste recycling facility that will accept food waste and sewage sludge. Id. at 188:22-25. The City has a facility at the Sand Island Wastewater Treatment Plant that turns bio-solids into fertilizer pellets, with the goal of reusing 100 percent of the material for such uses as golf course fertilizer. Id. at 189:5-18. The City is also requesting technology demonstration proposals to explore alternate technologies. Id. at 194:11-25. ENV has looked at these technologies, like plasma arc and gasification, and to date they are not ready in the size the City needs, and are only demonstration technologies. Id. at 192:8-25; 193:1-25; 194:1-10.

94. By 2012, when H-POWER's third boiler is expected to be operational, the City, through its various solid waste management programs, expects to divert eighty (80) percent of the waste stream, with the remaining twenty (20) percent being landfilled at WGSL. Id. at 201:9-16. Id. at 195: 4-8.

95. In order to ensure there will be no cessation of waste disposal at the Property, construction of a new cell in the expansion area to be used when the capacity of the currently permitted cells is exhausted would need to begin on or around November 1, 2009, due to the amount of time that it takes for cell construction, liner placement, forming, etc. See Tr. 6/24/09, 84:8-20. Before construction can begin, an operating permit is required from DOH. Because the DOH operating permit can only be processed after a SUP or boundary amendment is granted, and given the time it takes to process the operating permit, the SUP or boundary amendment must be granted in August or September of 2009 so that construction can be timely started. See Tr. 6/24/09, 99:11-23.

j. **2009 FOF: STATE AND COUNTY LAND USE LAW AND REGULATIONS**

96. The Project complies with the guidelines as established by the Planning Commission. See Tr. 6/22/09, 68:3-13; Application at 2-1 through 2-28.

97. The Project is consistent with various provisions of the Hawaii State Plan. See Tr. 6/22/09, 69:4-6; Application at 2-2 through 2-8.

98. The Project is consistent with the energy functional plan. GSL is a generator of naturally occurring methane and other landfill gases, and these gases are planned to be recovered by the City for use in the generation of electricity through a landfill gas-to-energy system. See Exhibit "A1" at p. 8-9; Tr. 6/22/09, 70:1-12.

99. The Project is consistent with the recreational functional plan. The Property will be reclaimed for other purposes that include outdoor recreation; for example, Kakaako Waterfront Park once served as a landfill in Honolulu. See Exhibit "A1" at p. 8-10; Tr. 6/22/09, 70:13-71:2.

100. The Project is consistent with the City's general plan. WGSL is an important public facility that will provide a necessary facility to meet future population needs and accommodate growth in the region; WGSL's eventual closure will allow the Property to be reclaimed for other public uses; and WGSL is needed in the event of a natural disaster. See Tr. 6/22/09, 71:8-25; 72:1-25; Exhibit "A1" at pp. 8-25 through 8-28.

101. The Project is consistent with the Ewa Development Plan because the facilities map contained therein designates the landfill with the appropriate symbol. See Tr. 6/22/09, 73:9-74:11; Exhibit "A1" at pp. 8-28 through 8-29.

102. The Project is consistent with City zoning because a landfill is considered a "public use" under the Land Use Ordinance, and "public uses and structures" are deemed permitted uses in every City zoning district, without the need for a permit. See Application at 2-28 through 2-29; Tr. 6/22/09, 75:5-22.

(2) **2009 DECISION AND ORDER**

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

1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The



Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.

2. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
3. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGS�'s operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order.
4. Closure Sequence "A" for the existing landfill cells at WGS� as shown on Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.
5. WGS� shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24-hours a day.
6. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGS� with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.
7. The operations of the WGS� under 2008/SUP-2 shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.
8. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.
9. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

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

104. The Planning Commission also APPROVED the withdrawal of Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect and that all conditions previously placed on the Property under Special Use Permit File No. 86/SUP-5 shall be null and void. See the 2009 Planning Commission Decision.

**C. THE LUC'S 2009 DECISION**

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

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

See the LUC's 2009 Decision.

**D. THE PARTIES APPEALED THE LUC'S 2009 DECISION**

107. ENV and Intervenors appealed the LUC's 2009 Decision.

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

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

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

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

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

113. On November 12, 2010, ENV filed its notice of appeal with the State of Hawai'i Intermediate Court of Appeals (the "ICA"). On appeal, ENV only challenged condition 14.

114. Intervenors did not appeal the circuit court ruling.

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

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

**E. 2011 APPLICATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The Applicant shall provide semi-annual reports to the Planning Commission and LUC regarding (a) the status of the efforts to identify and develop a new landfill site on Oahu, (b) the WGSL's operations, including gas monitoring, (c) ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid and Hazardous Waste Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) any funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.
- Public health and safety conditions: If the landfill releases waste or leachate, the ENV must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, 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.
- The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity.
- The foregoing additional conditions shall supersede any inconsistent conditions in the 2009 LUC Order and shall otherwise supplement any and all existing conditions in the said 2009 LUC Order.

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

167. 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.

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

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

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

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

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



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

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

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

- Clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order.
- Clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the 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.
- 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.
- Assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order.
- Clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

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

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

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

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

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

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

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

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

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

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

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

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

187. On February 16, 2018, Intervenor KOCA filed Intervenor Ko Olina Community Association and Maile Shimabukuro's Response to Schnitzer Steel Hawaii Corp.'s February 5, 2018 Proposed Findings of Fact, Conclusions of Law and Decision and Order.

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

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

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

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

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

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

194. On February 8, 2019, Intervenor Schnitzer filed its Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

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

196. On February 13, 2019, the parties filed a Stipulation Allowing an Extra Day to File Intervenor's KOCA's Exceptions to Planning Commission's January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order. On February 8, 2019, Intervenor KOCA served on the other parties in this matter KOCA's Exceptions, however, Intervenor KOCA inadvertently filed its Exceptions with the Public Utilities Commission rather than the Planning Commission. Intervenor KOCA filed its Exceptions with the Planning Commission on February 11, 2019.

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

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

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

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

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

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

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

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

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

206. On April 11, 2019, the Planning Commission heard oral arguments on recent motions and continued discussion on the adoption of the January 2019 Proposed Order. At the

same hearing, the Planning Commission denied ENV's Motion for Leave to File Supplemental Brief and Memorandum in Support of Motion. See Tr. 4/11/19, 12:1-19.

207. Also on April 11, 2019, the Planning Commission voted to adopt the January 2019 Proposed Order including the exceptions provided in (1) ENV's Exceptions to Honolulu Planning Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed on February 8, 2019 and, (2) Intervenor Schnitzer's Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order filed on February 8, 2019 and, (3) including paragraphs #89 through #102 of the 2009 Planning Commission Decision attached to Intervenor Schnitzer's Exceptions as Exhibit "1". See Tr. 4/11/19, 30:14-31:17.

## **II. PROPOSAL FOR SPECIAL USE PERMIT**

### **A. LANDFILL SITING**

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

209. The Mayor chose 12 members to serve on the Landfill Advisory Committee based upon numerous criteria including technical expertise and experience, community involvement,

and availability to serve. The members were: David Arakawa, Thomas Arizumi, John Goody, Joe Lapilio, Tesha H. Malama, Janice Marsters, Richard Poirier, Chuck Prentiss, and George West (Bruce Anderson, David Cooper, and John DeSoto were originally appointed but have stepped down). Steinberger Written Testimony at 11-12.

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

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

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

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

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

- Location relative to identified disamenities
- Location relative to HPOWER
- Effect of precipitation on landfill operations
- Landfill development operation and closure costs
- Displacement costs
- Precipitation



- Ground water contamination
- Design issues
- Access issues
- Proximity to other land uses (residences, institutions, etc.)
- Traffic impacts on residential neighborhoods
- Infrastructure availability
- “Those criteria impacting people that live here 365 days a year”
- Feasibility and cost issues
- Infrastructure, engineering and sustainability issues
- Wind direction issues related to closeness to other activities
- Impact on agricultural lands

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

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

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

- State Land Use Districts (Conservation, Agricultural, and Urban); there are no Rural Districts on Oahu;
- Groundwater Resources (Board of Water Supply and Others);
- Land Ownership (Federal, State, City, and Private);
- U.S. Fish & Wildlife Services (USFWS) Critical Habitats;

- State Natural Area Reserve System (NARS);
- Impaired Water Bodies (per Department of Health and U. S. Environmental Protection Agency);
- Agricultural Land Ratings (Land Study Bureau (LSB) and Agricultural Lands of Importance to the State of Hawaii (ALISH));
- Commission on Water Resource Management (CWRM) Well Data; and
- Criteria protecting airports and airfields with a 10,000 linear foot buffer.

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

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

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

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

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

219. The Committee reasoned that it is important that RMTC conduct this additional review because the Committee sought to understand the availability of sites only slightly smaller than 100 acres. Certain Committee members also expressed that this further consideration will

provide for more comprehensive review of potential sites. This additional request delayed final application of the criteria and its recommendations. Steinberger Written Testimony at 15.

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

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

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

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

nearby property owners and utilities. The length of time required for the completion of detailed engineering studies, construction drawings and bid documents, and the processing of procurements for the design and construction contractors (which could include the selection of a qualified landfill operator), as well as the acquisition of building permits, land use approvals such as SUP or district boundary amendment, depending on where the site(s) is located, and other necessary approvals, is estimated to be between one and three years. That is before the City even breaks ground on a new site. *Id.* at 16.

**B. WASTE DIVERSION**

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

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

226. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the landfill received only 163,736 tons of MSW and 179,946 tons of ash and residue from HPOWER. The amount of MSW deposited at WGS� reflects a steady

decrease from 2009. In FY09 the landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. In comparison, ash and residue has remained fairly constant. The 2010 disposal rate represents a total diversion of MSW from the landfill of 71.7%. See 2011 Exhibit "A27," see also 2011 Exhibit "A29."

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

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

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

230. In December 2011, it was reported that the City would be adding a third boiler at HPOWER, which will increase the capacity of the facility to 900,000 tons per year. Id. at 18;

Tr. 4/11/12, 84:22–24. The amount of waste diverted from the landfill and recycled to energy will increase substantially. The third boiler was scheduled to begin operations in January 2013. Steinberger Written Testimony at 18.

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

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

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

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

235. The anticipated HPOWER expansion is a mass burn boiler that will accept and convert much of the bulky waste such as furniture, mattresses and carpet that presently go to the landfill, to energy and recycled metals. See Tr. 1/11/12, 65:9–10, 66:8-17. As of December

2011, the mass burn boiler was expected to be in operation by January 2013. Steinberger Written Testimony at 18.

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

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

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

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

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

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

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

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

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

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

Id. at 21-22.

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



and recycling operations and go behind the scenes at businesses that have instituted model recycling programs. Id. at 22.

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

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

- An assessment of a particular alternative technology specific to the WWTP(s) with respect to the facilities already existing there.
- Capital and operation and maintenance costs specific to the WWTP(s) under consideration.

- Implementation timeline for planning, design, permitting, procurement, construction and startup.
- Compatibility of technology with overall Island-wide Solids Master Plan.
- New development and increased future capacity needs.
- Planned upgrades at the existing WWTPs (i.e., upgrade to secondary treatment)

Steinberger Written Testimony at 23-24.

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

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

**C. LANDFILL DESIGN AND OPERATIONS**

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

251. For effective design and permitting, the sequence of construction of the cells in the landfill is not outlined because the need for certain cells depends on variable factors like waste stream, how much waste is generated, and the type of waste received. Therefore, while the boundary, height and containment system are prescribed in landfill design and permitting documents, how the cell is built, the size of the cell, and the order of the construction of the cells are not constrained. On the contrary, if these latter aspects are prescribed, it may result in harm to human health and the environment because the landfill designer and operator would not have the flexibility to ensure the proper location for waste disposal. *Id.* at 18:5–19:21.

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

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

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

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

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

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

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

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

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

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

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

### III. PURPOSE AND NEED

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

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

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

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

267. The City is actively reducing waste volumes that are directed to the landfill. H-POWER capacity will increase with its expansion so that it can receive an additional 300,000

tons per year of MSW by 2013. See Steinberger Written Testimony at 18. The expanded HPOWER facility will be able to burn items that the current facility cannot, and which therefore have been sent to the landfill. See Steinberger Written Testimony at 19.

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

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

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

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

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

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

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

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

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

### **PROPOSED FINDINGS OF FACT OR CONDITIONS**

Any proposed findings of fact or conditions submitted by the Applicant or Intervenors that are not expressly ruled upon by the Planning Commission by adoption herein, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

### **LABELING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

To the extent that any of the foregoing Findings of Fact are more properly deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the following Conclusions of Law be more properly deemed Findings of Fact, they are incorporated herein as Findings of Fact.

### **CONCLUSIONS OF LAW**

The Planning Commission hereby concludes as follows:

1. The Planning Commission has jurisdiction to hold public hearings and make recommendations on all proposals to adopt or amend the general plan, development plans and zoning ordinances, and to approve special use permits for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified in accordance



with the RPC. Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2017 Edition); HRS Section 205-6(a).

2. HRS Section 91-10(5) provides that:

[T]he party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

The Applicant has the burden of proof to show by a preponderance of the evidence that the Application meets the provisions of Section 2-45 of the RPC.

3. In the Special Use Permit No. 2008/SUP-2 application, the Applicant sought a new State SUP. Chapter 2, Subchapter 4 of the RPC, sets forth the rules applicable to State SUPs. Section 2-45 of the RPC provides as follows:

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

(a) Such use shall not be contrary to the objectives sought to be accomplished by the state land use law and regulations.

(b) That the desired use would not adversely affect the surrounding property.

(c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

4. Based on the findings set forth in its August 4, 2009 Findings of Fact, Conclusions of Law, and Decision and Order and on the findings set forth above, the Planning Commission concludes that the Applicant's 2008 application for a new State SUP and the Applicant's 2011 Application to Modify (a) are not contrary to the objectives sought to be accomplished by the state land use law and regulations; (b) would not adversely affect

surrounding property as long as operated in accordance with governmental approvals and requirements, and mitigation measures are implemented in accordance with the Applicant's representations as documented in the 2008 FEIS; and (c) would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection. The Planning Commission further concludes that the same unusual conditions, trends and needs that existed at the time the original SUP was granted continue to exist and that the land on which the WGSL is located continues to be unsuited for agricultural purposes.

5. The Planning Commission concludes that the Applicant has met its burden of proof with respect to the provisions set forth in Section 2-45 of the RPC.

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

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

## DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE Applicant's Application to Modify the Special Use Permit No. 2008/SUP-2, by Modifying the Land Use Commission's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, by deleting Condition Nos. 4 and 14, and adding the following conditions:

1. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGS� reaching its capacity at a future date. This identification shall have no impact on the closure date for the WGS� because the WGS� shall continue to operate until it reaches capacity. This identification does not require the alternative landfill to be operational on December 31, 2022 but is intended to require the Applicant to commit to the identification of an alternative landfill site that may replace WGS� when it reaches capacity at a future date. The identification of an alternative landfill site by December 31, 2022 is based on the evidence presented and that, as the Planning Commission discussed in 2017, a five year timeframe was sufficient time for the Applicant to identify an alternative landfill site before the WGS� nears capacity. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the status of the efforts to identify and develop a new landfill site on O'ahu, (b) the WGS�'s operations, including gas monitoring, (c) the ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid Waste Management

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

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

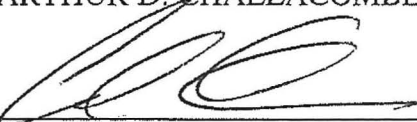
The Planning Commission further orders that pursuant to its consolidation of County Special Use Permit File No. 2008/SUP-2 and the proceedings on Applicant's 2011 Application, the 2009 LUC Order is incorporated by reference herein in order to issue this single, consolidated Findings of Fact, Conclusions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

The effective date is the date of this Decision and Order below.

Dated at Honolulu, Hawaii, this 10<sup>th</sup> day of June, 2019.

PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU

By \_\_\_\_\_ (Recused) \_\_\_\_\_  
ARTHUR D. CHALLACOMBE, Chair

By  \_\_\_\_\_  
CORD D. ANDERSON, Vice Chair

By \_\_\_\_\_ (Recused) \_\_\_\_\_  
ARTHUR B. TOLENTINO, Member

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

By  \_\_\_\_\_  
THERESIA C. McMURDO, Member

By \_\_\_\_\_ (Recused) \_\_\_\_\_  
WILFRED A. CHANG, JR., Member

By  \_\_\_\_\_  
KEN K. HAYASHIDA, Member

By  \_\_\_\_\_  
GIFFORD K. F. CHANG, Member

By  \_\_\_\_\_  
DONALD W. Y. GOO, Temporary Appointee

By \_\_\_\_\_  
9th member - Vacant

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

For a New Special Use Permit to Supersede  
Existing Special Use Permit to Allow a  
92.5-Acre Expansion and Time Extension for  
Waimanalo Gulch Sanitary Landfill,  
Waimanalo Gulch, O'ahu, Hawai'i, Tax Map  
Key No. (1) 9-2-03: 72 and 73.

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

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

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

CERTIFICATE OF SERVICE

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

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

	<u>Certified Mail</u>	<u>Hand Delivery</u>
PAUL S. AOKI Acting Corporation Counsel KAMILLA C. K. CHAN Deputy Corporation Counsel City and County of Honolulu 530 South King Street, Room 110 Honolulu, Hawaii 96813  Attorneys for Applicant DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU		X
IAN L. SANDISON, ESQ. JOYCE W.Y. TAM-SUGIYAMA, ESQ. Watanabe Ing LLP First Hawaiian Center 999 Bishop Street, Suite 1250 Honolulu, Hawaii 96813  Attorneys for Intervenor SCHNITZER STEEL HAWAII CORP.	X	
CALVERT G. CHIPCHASE, ESQ. CHRISTOPER T. GOODIN, ESQ. Cades Schutte LLP 1000 Bishop Street, Suite 1200 Honolulu, Hawaii 96813  Attorneys for Intervenors KO OLINA COMMUNITY ASSOCIATION and MAILE SHIMABUKURO	X	

Certified Mail

Hand-Delivery

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

X

Attorney for Intervenor  
COLLEEN HANABUSA

DATED: Honolulu, Hawaii, June 10, 2019



Gloria C. Takara  
Planning Commission  
Secretary-Hearings Reporter



CITY AND COUNTY OF HONOLULU  
PLANNING COMMISSION

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Planning Commission of the City and County of Honolulu:

PLACE: In-person and Remote Meeting at Mission Memorial Auditorium, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii  
DATE: Wednesday, June 28, 2023  
TIME: 1:30 p.m.

*The meeting of the Honolulu Planning Commission will be conducted as follows:*

- *Remotely by interactive conference technology and in-person meetings, with Planning Commissioners, Planning Department staff, parties to agenda items and resource individuals may appear via WebEx remote technology (details below)*
- *A recording of the meeting will also be posted at a later date*
- *If any major and insurmountable technical difficulties are encountered during the meeting, the Planning Commission will automatically recess for up to thirty (30) minutes to restore communication. The meeting will reconvene when either audiovisual or audio-only communication is established with the same WebEx link below. If it is not possible to reconvene the meeting as provided within thirty (30) minutes after an interruption to communication, the Planning Commission will continue all matters and reconvene at the next scheduled Planning Commission meeting*

PUBLIC HEARING

Public hearing notice published in the Honolulu Star-Advertiser on Monday, May 29, 2023. The Commission will take action on each item after public hearing is closed.

WAIANAE – STATE SPECIAL USE PERMIT – 2008/SUP-2 (FK)  
WAIMANALO GULCH SANITARY LANDFILL

Petitioner: City and County of Honolulu, Department of Environmental Services  
Landowner: City and County  
Location: 92-460 Farrington Highway, Waianae  
Tax Map Keys: 9-2-050: 005 and 006  
Existing Use: Municipal Solid Waste Landfill  
Existing Zoning: AG-2 General Agricultural District  
Land Area: Approximately 200.622 acres  
Request: The request is to modify the date in Condition No. 1 of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019 for Special Use Permit No. 2008/SUP-2 from December 31, 2022 to December 31, 2024. This is the date when the Applicant is required to identify an alternative landfill site.

The SUP application can be downloaded from: [www.honolulu.gov/dpp/public-input.html](http://www.honolulu.gov/dpp/public-input.html)

**EXHIBIT 3**

This hearing is to be held under the provisions of Chapters 46, 92, and 205, Hawaii Revised Statutes, as amended, Articles VI and XIII, Revised Charter of the City and County of Honolulu, 1973, as amended, Sections 2-40, 2-43 and 2-44 of the Rules of the Planning Commission, City and County of Honolulu, and Chapter 15-15 of the Hawaii Administrative Rules.

The particular sections of statutes and rules involved include 205-2 and 205-4.5(7) of the Hawaii Revised Statutes, as amended, and Subchapter 4 of Chapter 2 and Section 2-45 of the Rules of the Planning Commission. The issue involved relates to whether to grant a Special Use Permit pursuant to Section 205-6, Hawaii Revised Statutes, to modify an existing condition to the State Special Use Permit (SUP) to extend the deadline to December 31, 2023 for identifying an alternative landfill site. The request is not to expand the existing facility or intensify the use or operations associated with the existing SUP.

Any party may retain counsel if the party so desires, and an individual may appear on his own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

Any person or agency wishing to intervene as a party in the proceeding shall file a petition with the Commission within fourteen (14) days after this notice is published in the Honolulu Star-Advertiser. The petition must conform to the requirements of Subchapter 5 of the Rules of the Planning Commission, which are available at the Department of Planning and Permitting. A contested case hearing may be held on the matter pursuant to action by the Planning Commission to grant the petition.

### **PUBLIC PARTICIPATION AND TESTIMONY**

The public may join the public hearing and offer testimony from a computer, smartphone, telephone, or in person as follows:

- **Join the public hearing from a computer: (Please mute your devices except to testify)**  
<https://globalpage-prod.webex.com/join>  
Meeting Number: 2484 130 7799  
Meeting Password: dpp1
- **Join the public hearing from the WebEx smartphone app: (Please mute your devices except to testify)**  
Meeting Number: 2484 130 7799  
Meeting Password: dpp1
- **Join the public hearing from a telephone (audio only): (Please mute your devices except to testify. Press \*6 to unmute and remote)**  
408-418-9388 (USA Toll)  
Access code: 2484 130 7799  
Numeric meeting password: 3771

- **Oral testimony via phone or Webex:** To provide oral testimony during the online meeting via phone or Webex, we suggest you register in advance by 4:30 p.m. on Tuesday, June 27, 2023, by emailing your name, phone number, and include in the subject line “register to testify” to [dpp@honolulu.gov](mailto:dpp@honolulu.gov)
- **In-person attendance.**

Attendance at the public hearing is not necessary to submit written testimony. Written testimony may be submitted by one of the following options: 1) Email: [dpp@honolulu.gov](mailto:dpp@honolulu.gov), 2) Fax: (808) 768-6743, or 3) Mail: Planning Commission, 650 South King Street, 7<sup>th</sup> Floor, Honolulu, Hawaii 96813. Written testimony should be received by Wednesday, June 28, 2023 or the close of the public hearing.

### **MATERIALS AVAILABLE FOR INSPECTION**

Meeting materials (“*board packet*” under HRS Section 92-7.5) are available for public inspection at the office of the Department of Planning and Permitting, 7<sup>th</sup> Floor, Frank Fasi Municipal Building, 650 South King Street, Honolulu, Hawaii 96813; contacting the Planning Commission, telephone (808) 768-8007; or on the DPP [www.honolulu.gov/dpp/dpp-calendar](http://www.honolulu.gov/dpp/dpp-calendar)

Note: If you need an auxiliary aid and/or service or other accommodation due to a disability to participate in this event (i.e., sign language interpreter; interpreter for language other than English, or wheelchair accessibility), please call (808) 768-8000, or email your detailed request to [dpp@honolulu.gov](mailto:dpp@honolulu.gov), at least five (5) business days prior to the meeting. Requests made as early as possible will allow adequate time to fulfill your request.

PLANNING COMMISSION  
PANE MEATOGA, III, Chair  
by Dawn Takeuchi Apuna, Director  
Department of Planning and Permitting

(Honolulu Star-Advertiser: Monday, May 29, 2023)

**CERTIFIED MAIL®**

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 7TH FLOOR  
HONOLULU, HAWAII 96813



7020 3160 0000 6412 9681



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96813

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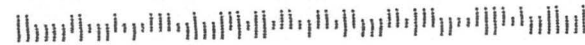
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Calvert G. Chipchase, Esq.  
Christopher T. Goodin, Esq.  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813

RETURN RECEIPT  
REQUESTED

2023 MAY 30 P 12:09  
CADES SCHUTTE LLP

9681384298 CC32



BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of )	FILE NO. 2008/SUP-2 (RY) and 86/SUP-5
)	
)	
DEPARTMENT OF ENVIRONMENTAL )	
SERVICES, CITY AND COUNTY OF )	
HONOLULU )	
)	
For a New Special Use Permit to supersede )	
Existing Special Use Permit to allow a )	
92.5-acre Expansion and Time Extension )	
For Waimanalo Gulch Sanitary Landfill. )	
Tax Map Key Nos. (1) 9-2-003:072 and 073 )	
)	

2009 AUG 16 PM 1:10  
 LAND USE COMMISSION  
 STATE OF HAWAII

PETITION TO INTERVENE;

MEMORANDUM IN SUPPORT OF PETITION;

VERIFICATION;

EXHIBIT "A";

CERTIFICATE OF SERVICE

2009 AUG 11 P 1:28  
 LAND USE COMMISSION  
 STATE OF HAWAII

COLLEEN HANABUSA  
A Limited Liability Law Company

COLLEEN HANABUSA 2105-0  
220 So. King St., Suite 1230  
Honolulu, Hawaii 96813  
Telephone: (808) 523-5777

Attorney for Petitioners  
KO OLINA COMMUNITY ASSOCIATION, COLLEEN  
HANABUSA and MAILE SHIMABUKURO

ORIGINAL

0965

EXHIBIT 4

EXHIBIT 13

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2008/SUP-2 (RY) and 86/SUP-5  
)  
)  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_ )


PETITION TO INTERVENE

Come now Petitioners KO OLINA COMMUNITY ASSOCIATION  
("KOCA"), COLLEEN HANABUSA ("Hanabusa") and MAILE SHIMABUKURO  
("Shimabukuro") collectively "Intervenors," by and through their attorney, Colleen Hanabusa  
and hereby respectfully request that this Planning Commission ("Commission") grant them leave  
to intervene as parties in the matter of a new State Special Use Permit ("SUP") to supersede the  
existing SUP to allow a 92.5 acre expansion and time extension of land presently classified as  
agricultural at Waimanalo Gulch, Hono'uli'uli, 'Ewa, O'ahu, Hawai'i. Tax Map Key Nos. (1) 9-  
2-003:072 and 073, for Waimanalo Gulch Sanitary Landfill ("WGSL") for a total land area of  
200.622 acres.

The Notice of Publication appeared on April 3, 2009 in the Honolulu Star  
Bulletin.

This petition is brought pursuant to the Rules of the Planning Commission ("Commission Rules") §§ 2-15, 2-52 (c), 2-53, 2-55 and 2-56 and HRS § 205-6 and is based upon the attached Memorandum in Support of Petition and the records and files of this case.

DATED: Honolulu, Hawai'i, April 16, 2009.



---

COLLEEN HANABUSA  
Attorney for Petitioners KOCA, Hanabusa  
and Shimabukuro

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2008/SUP-2 (RY) and 86/SUP-5  
)  
)  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_ )

MEMORANDUM IN SUPPORT OF PETITION

Come now Petitioners KOCA, Hanabusa and Shimabukuro, and hereby respectfully submit their Memorandum in support of their Petition to Intervene.

**I. FACTS**

The following are relevant facts.

1. The issue of the Waimanalo Gulch Sanitary Landfill ("WGSL") has been before this Commission as "86/SUP-5(RY);" and there are presently at least three (3) Decision and Orders (D&O) entered under said application number.

2. The most recent decision by the Commission was dated January 18, 2008.



3. KOCA (Ko Olina Community Association) is a non profit corporation organized and existing under the laws of the State of Hawai'i. It represents various resort and residential owners throughout the Ko Olina Resort. List of Tax Map Key Number are attached as Exhibit "A".

4. Ko Olina is located directly across Farrington Highway from WGSL.

5. KOCA oversees and regulates the use and enjoyment of the common areas of the property referred to as the "Resort" and is also responsible for the exclusive management and control of areas of common responsibility as well as the maintenance and upkeep of such areas. Petitioner and the owners it represents have grave financial, property and business interests at stake that could be detrimentally affected by the outcome of this proceeding.

6. Hanabusa is a resident of the Leeward Coast of the City and County of Honolulu, as well as a duly elected Senator for the 21<sup>st</sup> Senatorial District in which WGSL is located. Hanabusa is also a resident and owner of a home located in Ko Olina and a taxpayer.

7. Shimabukuro is a resident of the Leeward Coast of the City and County of Honolulu, as well as a duly elected Representative for House District 45. Shimabukuro and her constituents must pass the WGSL in order to get in and out of Wai'anae. Shimabukuro is also a mother of an infant child, lives and works in Wai'anae and a taxpayer. With the recent birth of her child, Shimabukuro has a heightened concern over the health and welfare of her child and constituents which prompts her desire to have full intervenor/party status in these proceedings.

8. This Commission did grant KOCA and Hanabusa intevenor/party status on November 14, 2007 in 86/SUP-5 (RY) in the matter of the application which sought a modification of condition 10 of the SUP (Special Use Permit) file No. 86/SUP-5. It is this contested case hearing which resulted with the D&O referenced in paragraph 2 above.

9. In accordance with HRS §205-6, the Land Use Commission ("LUC") did recognize KOCA and Hanabusa as Intervenor in Docket No. SP87-362 on March 6, 2008 based upon their intervenor status before the Planning Commission of the City and County of Honolulu.

10. Sometime in December 2008, the Department of Environmental Services (“ENV”) of the City and County of Honolulu filed an Application for the SUP identified in this proceeding with the Department of Planning and Permitting, City and County of Honolulu (“DPP”). The purpose of the SUP is identified as:

[t]he construction and use of approximately 92.5 acres within the City’s Waimanalo Gulch Sanitary Landfill property for continued landfilling purposes. In addition to the expansion of the area of landfilling, the proposed project will involve the development of landfill associated support infrastructure (e.g. drainage, access roadways, landfill gas & leachate collection and monitoring systems, stockpile sites and other related features, a public drop-off center, and a landfill gas to energy (LFGTE) system. The Special Use Permit will cover the entire 200.622 acre Property.

11. The project name is identified as “Waimanalo Gulch Sanitary Landfill Lateral Expansion.”

12. On December 2, 2008, Eric S. Takamura, then Director of Environmental Services of the City and County of Honolulu (“ENV”) filed the Petition for Land Use District Boundary Amendment, Verification and Exhibits “1”-“32” with the LUC (“Petition”).

13. The LUC Petition identifies Mr. Takamura and the Office of the Corporation Counsel as the duly authorized representatives of the Petitioner ENV. The reason for the filing is the expansion of the WGSL.

14. WGSL is ordered, by the LUC, by its D&O of March 14, 2009, to not accept any trash as of November 1, 2009, or until it reaches capacity whichever occurs first.

15. The Commission caused to be published on April 3, 2009 the Notice of Hearing on ENV’s Application for a new SUP which will seek both the expansion and time extension for the operation of WGSL.

16. This Petition for Intervention is timely under Commission Rule §2-53.

## II. RELEVANT PROVISIONS OF LAW AND RULES

HRS §205-6 Special permit. (a) Subject to this section, 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. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.

(b) The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

(e) A copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered.

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning

commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(f) Land uses substantially involving or supporting educational ecotourism, related to the preservation of native Hawaiian endangered, threatened, proposed, and candidate species, that are allowed in an approved habitat conservation plan under section 195D-21 or safe harbor agreement under section 195D-22, which are not identified as permissible uses within the agricultural district under sections 205-2 and 205-4.5, may be permitted in the agricultural district by special permit under this section, on lands with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U.

#### RELEVANT COMMISSION RULES

##### §2-52 Purpose.

...

(c) Persons may petition the commission to intervene in all proceedings before the commission for special use permits, subject to the requirements of this subchapter. [Eff. Jan. 16, 1995] (Auth: RCH§4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

§2-53 Petition to intervene. (a) Petition to intervene as a party. Any person or agency, requesting to intervene as a party shall file a petition with the commission within fourteen (14) days of the date of newspaper publication of the notice of a public hearing to be held by the planning commission on a petition for a special use permit. The petitioner, the planning department and the department of land utilization may in every case appear as parties and make recommendations relative to the proposed action.

(b) Contents of petition to intervene as a party. The petition shall include the following points:

(1) The nature and extent of petitioner's interest in right to intervene as a party to the proceedings.

(2) The nature and extent of petitioner's interest in the proceedings, and if the petitioner is an abutting property owner, the tax map key description of the property.

(3) A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing.

(4) The effect of any decision in the proceeding on the petitioner's interest.

(c) Filing requirements. The original and fifteen (15) copies of the petition to intervene and a certificate of service on all parties prepared in conformance with section 2-15 of these rules shall be filed with the commission in a timely manner.

...  
§2-55 Hearing on petition to intervene.  
...

(c) Leave to intervene shall be freely granted, provided that the commission may deny petition to intervene when in the commission's discretion it appears that:

- (1) The position of the party requesting intervention concerning the proposed action is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable. [Eff. Jan 16, 1995] (Auth: RCH §HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

### III. ARGUMENT

#### A. Intervention Should Be Granted.

When interpreting statutes and administrative rules, it is a well established that:

The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

Cases relied upon are: *International Bhd. Of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.*, 68 Haw. 316, 323, 713 P.2d 943, 950 (1986); *Allstate Ins. Co. v. Ponce*, 105 Hawai'i 145, 454, 99 P.3d 96, 105 (2004).

Commission Rules §§2-53 and 2-55(c) provide for the contents of a petition and specifies that intervention shall be freely granted with only two basis upon which the Commission may deny intervention. The provisions are similar to that found in the LUC Rules § 15-15-52(d) and Hawai'i Rules of Civil Procedure 24 (b). The provisions of Hawai'i Rules of Civil Procedure are discussed in *State v. Campbell*, 106 Haw. 453, 458-462 (2005) and *Hoopai v Civil Service Comm'n*, 106. Haw. 205, 216 (2004).

KOCA, Hanabusa and Shimabukuro can demonstrate that they should be permitted intervention under these provisions of this Commission's Rules.

B. The Requirements of § 2-53(b) are addressed as follows.

Under the referenced Commission Rule, this Petition for Intervention shall make reference to the following:

(1) Nature of Petitioners' statutory or other right.

KOCA. Petitioner KOCA represents numerous resort and residential owners of property located at the Ko Olina resort & Marina ("Resort"), which is situated directly across of Farrington Highway from the Waimanalo Gulch Sanitary Landfill facility. Under the KOCA Declaration, Petitioner oversees and regulates the use and enjoyment of the common areas of the Resort and is responsible for the exclusive management and control of areas of common responsibility as well as the maintenance and upkeep of such areas. Petitioner and the owners it

represents have grave financial, propriety, and business interests at stake that could be detrimentally affected by the outcome of this proceeding. Although other property owners may petition for intervention in this proceeding, Petitioner is unlike other residents, owners or community associations, since Petitioner represents the Resort in general and its guests.

Hence, the Resort is uniquely and adversely affected by the Waimanalo Gulch Sanitary Landfill facility and activities surrounding its dumping operations. Petitioner's right to protect its unique interests and those of the owners it represents by ensuring compliance with previous SUP conditions and procedural requirements in this matter is established under Chapter 205 Hawaii Revised States and the Commission's Rules. Among other things, HRS§ 205-6 clearly contemplated that all persons "that my have an interest in the subject matter" are to be given consideration in the hearing and action on petition for special permit. Petitioner is such a person with a special interest in the subject matter that is not duplicated by other persons, including other residents, owners or homeowners associations in the region.

HANABUSA and SHIMABUKURO. Petitioner Hanabusa is a resident of the Leeward Coast in the City and County of Honolulu, as well as a duly elected State Senator for the 21<sup>st</sup> Senatorial District representing residents of the Leeward Coast.

Petitioner Hanabusa is a resident of and owner in a home located in Ko Olina which is located across Farrington Highway from Waimanalo Gulch.

Petitioner Hanabusa is a tax payer in the State of Hawai'i and the City and County of Honolulu.

Petitioner Shimabukuro is the duly elected Representative of the 45<sup>th</sup> Honolulu District located on the Wai'anae Coast and a taxpayer.

Petitioners Hanabusa and Shimabukuro also add the recent Hawai'i Supreme Court case, *The Sierra Club, et al. v. The Department of Transportation of the State of Hawaii, et al.*, 115 Hawaii 299 (2007), makes clear that the issue of procedural errors is deemed to be injury for standing purposes. It is contended that the process followed by ENV in its Application is laden with such errors.

The rights of elected officials to participate as full party intervenors have been granted in matter before the Public Utilities Commission. *In the Matter of the Application of Hawaiian Electric*, 81 Haw. 459, 918 P.2d 561 (1996). Hanabusa and Shimabukuro should also be allowed to rely upon this authority.

In addition, the cases of *Malama Maha'ulepu v. Land Use Commission*, 71 Haw. 332 (1990) and *Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission*, 64 Haw. 265 (1982) did permit intervention. Clearly these authorities would support the rights of Petitioners to intervene in that their interests are not any less important than those raised in the cases cited above. A major element of justice being served is to ensure that the members of the public and those who have been aggrieved should have representation in these proceedings.

(2) Nature of the Petitioner's interest, and if abutting property owner, the TMKs.

The interest of KOCA and Hanabusa have been discussed above. The tax map key numbers have been provided as Exhibit "A".

Shimabukuro is not and does not claim an interest as an abutting property owner



(3) Specific Issues to be raised or contested.

The specific issues to be raised are related to the opposition to this Application. Specific areas will include but not be limited to:

- (a) Promise made of closure.
- (b) Stability of the landfill.
- (c) The culturally significant outcropping as best stated by OHA as follows:

OHA has made a field visit to the project site and we noted three significant cultural features that were still intact in the project area. We are also aware of the probable existence of others yet to be discovered in the project area. OHA is further saddened that the larger setting that this project sits in is one that has been highly developed and degraded. Therefore, what TCPs [Traditional Cultural Properties] that remain must be protected.

The Department of Planning and Permitting, as a county agency, is mandated by Hawai'i Const. Article XII, section 7, "to preserve and protect customary and traditional practices of Native Hawaiians." Ka Pa'akai O Ka'Aina v. Land Use Comm'n, 94 Haw. 31, 45 (2000). . . . OHA urges that nothing more be done with this project until full cultural assessment has been made of the project area.

- (d) Violations of management, including the Notice of Violations and Order imposed by the State Department of Health.
- (e) Blasting to create the landfill.
- (f) Health, safety and water quality concerns.
- (g) Procedural matters such as the filing of a boundary amendment and SUP which creates a burden upon any interested party to the WGSJ expansion and extension issues.

(4) Effect of any decision.

Clearly, if the decision is to grant the SUP, the effect will be substantial on Petitioners.

As revealed in the Final Supplemental Environmental Impact Statement ("FSEIS"), to the health

concerns was a subject of the Notice of Violations (“NOV”) and accompanying Order of the Department of Health (“DOH”). The concerns of the cultural findings and the impact of the need to blast on a regular basis to create the necessary air space for the expansion of the WGSJ augment concerns as to effect of the decision will have upon the health, safety and stability of the landfill.

It is also evident from prior testimony received by the Commission, that there have been constructed three structural berms to ensure slope stability at WGSJ. Add to this blasting along with other existing problems would detrimentally affect all who are concerned about the effect of any permit which allows the landfill operations to continue.

C. Intervention Should Be Freely Granted.

Under §2-55 (c), a petition for leave to intervene shall be freely granted except that discretion is given to this Commission to deny in two situations. Those situations are if the applicants’ positions are similar to someone already in the proceeding; and the granting of the application would render the proceeding inefficient and unmanageable.

Neither situation applies to the Petitioners for the following reasons:

1. The Petitioners position is not substantially similar to a party.

The parties to this proceeding are the City and County of Honolulu through its representatives who are the Applicants and the City and County of Honolulu’s Department of Planning and Permitting (“DPP”) Petitioners are unaware of any other party admitted to these proceeding.

It is clearly evident that these parties do not have positions similar to that of KOCA and/or Hanabusa and/or Shimabukuro.

2. Admission will not render proceedings inefficient and unmanageable.

As evidenced by the SUP proceeding in which this Commission permitted the intervention of KOCA and Hanabusa in November 2007, their participation did not render the proceeding inefficient and unmanageable. Neither did their intervention in the LUC proceedings render that proceeding inefficient and unmanageable.

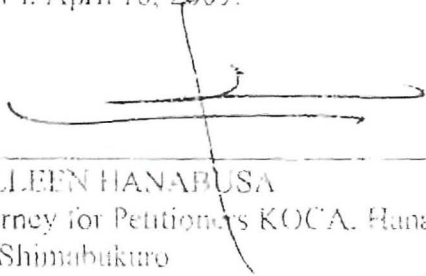
In that Shimabukuro will also be represented by Hanabusa, she will not be an added burden to the proceeding.

The criteria is one written to freely grant intervention unless it can be found that the applicants would run afoul of the two points. No such finding can be made as to KOCA, Hanabusa and Shimabukuro.

III. CONCLUSION

For the above stated reasons, Petitioners KOCA, Hanabusa and Shimabukuro respectfully request that the Planning Commission grant them leave to intervene into 2008/SUP-2.

DATED: Honolulu, Hawai'i, April 16, 2009.

  
\_\_\_\_\_  
COLLEEN HANABUSA  
Attorney for Petitioners KOCA, Hanabusa  
and Shimabukuro

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2008/SUP-2 (RY) and  
) 86/SUP-5  
)  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_)


VERIFICATION

Petitioners KOCA, Hanabusa and Shimabukuro verify the contents of this Petition

For the record, KOCA's address is 92-1480 Aliinui Drive, Kapolei, HI 96707  
(phone number is (808) 671-2512) and KOCA has authority to represent its  
membership. Relevant TMK nos. are attached on Exhibit "A". Colleen Hanabusa's  
residence address is 92-109J Koio Drive, Kapolei HI 96707 (phone number is (808) 679-  
0200) TMK: 1-9-1-56-5-10; State Capitol Room 409 (phone number is (808) 586-7793).  
Maile Shimabukuro's residence address is 86-024 Glenmonger St., Waianne, HI 96792  
(phone number is (808)349-3075); State Capitol Room 406 (phone is (808)586-8460).


Petitioners note that their signature maybe provided in counter parts and ask that they be accepted as a complete filing.

Dated: Honolulu, Hawaii, April 16, 2009.




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COLLEEN HANABUSA  
Attorney for Petitioners KOCA, Hanabusa and  
Shimabukuro



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COLLEEN HANABUSA  
Petitioner Hanabusa



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KEN WILLIAMS  
Petitioner KOCA

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MAILE SHIMABUKURO  
Petitioner Shimabukuro

Petitioners note that their signature may be provided in counter parts and ask that they be accepted as a complete filing.

Dated: Honolulu, Hawaii, April 16, 2009.

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COLLEEN HANABUSA  
Attorney for Petitioners KOCA, Hanabusa and  
Shimabukuro

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COLLEEN HANABUSA  
Petitioner Hanabusa

---

KEN WILLIAMS  
Petitioner KOCA



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MAILE SHIMABUKURO  
Petitioner Shimabukuro

# EXHIBIT A

Partial List of Tax Map Keys  
(see following pages)





BEACH VILLAS AT KO OLINA- OCEAN TOWER

1-9-1-57-9-1	1-9-1-57-9-41	1-9-1-57-9-81	1-9-1-57-9-121
1-9-1-57-9-2	1-9-1-57-9-42	1-9-1-57-9-82	1-9-1-57-9-122
1-9-1-57-9-3	1-9-1-57-9-43	1-9-1-57-9-83	1-9-1-57-9-123
1-9-1-57-9-4	1-9-1-57-9-44	1-9-1-57-9-84	1-9-1-57-9-124
1-9-1-57-9-5	1-9-1-57-9-45	1-9-1-57-9-85	1-9-1-57-9-125
1-9-1-57-9-6	1-9-1-57-9-46	1-9-1-57-9-86	1-9-1-57-9-126
1-9-1-57-9-7	1-9-1-57-9-47	1-9-1-57-9-87	1-9-1-57-9-127
1-9-1-57-9-8	1-9-1-57-9-48	1-9-1-57-9-88	1-9-1-57-9-128
1-9-1-57-9-9	1-9-1-57-9-49	1-9-1-57-9-89	1-9-1-57-9-129
1-9-1-57-9-10	1-9-1-57-9-50	1-9-1-57-9-90	1-9-1-57-9-130
1-9-1-57-9-11	1-9-1-57-9-51	1-9-1-57-9-91	1-9-1-57-9-131
1-9-1-57-9-12	1-9-1-57-9-52	1-9-1-57-9-92	1-9-1-57-9-132
1-9-1-57-9-13	1-9-1-57-9-53	1-9-1-57-9-93	1-9-1-57-9-133
1-9-1-57-9-14	1-9-1-57-9-54	1-9-1-57-9-94	1-9-1-57-9-134
1-9-1-57-9-15	1-9-1-57-9-55	1-9-1-57-9-95	1-9-1-57-9-135
1-9-1-57-9-16	1-9-1-57-9-56	1-9-1-57-9-96	1-9-1-57-9-136
1-9-1-57-9-17	1-9-1-57-9-57	1-9-1-57-9-97	1-9-1-57-9-137
1-9-1-57-9-18	1-9-1-57-9-58	1-9-1-57-9-98	1-9-1-57-9-138
1-9-1-57-9-19	1-9-1-57-9-59	1-9-1-57-9-99	1-9-1-57-9-139
1-9-1-57-9-20	1-9-1-57-9-60	1-9-1-57-9-100	1-9-1-57-9-140
1-9-1-57-9-21	1-9-1-57-9-61	1-9-1-57-9-101	1-9-1-57-9-141
1-9-1-57-9-22	1-9-1-57-9-62	1-9-1-57-9-102	1-9-1-57-9-142
1-9-1-57-9-23	1-9-1-57-9-63	1-9-1-57-9-103	1-9-1-57-9-143
1-9-1-57-9-24	1-9-1-57-9-64	1-9-1-57-9-104	1-9-1-57-9-144
1-9-1-57-9-25	1-9-1-57-9-65	1-9-1-57-9-105	1-9-1-57-9-145
1-9-1-57-9-26	1-9-1-57-9-66	1-9-1-57-9-106	1-9-1-57-9-146
1-9-1-57-9-27	1-9-1-57-9-67	1-9-1-57-9-107	1-9-1-57-9-147
1-9-1-57-9-28	1-9-1-57-9-68	1-9-1-57-9-108	1-9-1-57-9-148
1-9-1-57-9-29	1-9-1-57-9-69	1-9-1-57-9-109	1-9-1-57-9-149
1-9-1-57-9-30	1-9-1-57-9-70	1-9-1-57-9-110	1-9-1-57-9-150
1-9-1-57-9-31	1-9-1-57-9-71	1-9-1-57-9-111	1-9-1-57-9-151
1-9-1-57-9-32	1-9-1-57-9-72	1-9-1-57-9-112	1-9-1-57-9-152
1-9-1-57-9-33	1-9-1-57-9-73	1-9-1-57-9-113	1-9-1-57-9-153
1-9-1-57-9-34	1-9-1-57-9-74	1-9-1-57-9-114	1-9-1-57-9-154
1-9-1-57-9-35	1-9-1-57-9-75	1-9-1-57-9-115	1-9-1-57-9-155
1-9-1-57-9-36	1-9-1-57-9-76	1-9-1-57-9-116	1-9-1-57-9-156
1-9-1-57-9-37	1-9-1-57-9-77	1-9-1-57-9-117	1-9-1-57-9-157
1-9-1-57-9-38	1-9-1-57-9-78	1-9-1-57-9-118	1-9-1-57-9-158
1-9-1-57-9-39	1-9-1-57-9-79	1-9-1-57-9-119	1-9-1-57-9-159
1-9-1-57-9-40	1-9-1-57-9-80	1-9-1-57-9-120	

BEACH VILLAS AT KO OLINA - BEACH TOWER

1-9-1-57-32-1	1-9-1-57-32-25	1-9-1-57-32-49	1-9-1-57-32-73
1-9-1-57-32-2	1-9-1-57-32-26	1-9-1-57-32-50	1-9-1-57-32-74
1-9-1-57-32-3	1-9-1-57-32-27	1-9-1-57-32-51	1-9-1-57-32-75
1-9-1-57-32-4	1-9-1-57-32-28	1-9-1-57-32-52	1-9-1-57-32-76
1-9-1-57-32-5	1-9-1-57-32-29	1-9-1-57-32-53	1-9-1-57-32-77
1-9-1-57-32-6	1-9-1-57-32-30	1-9-1-57-32-54	1-9-1-57-32-78
1-9-1-57-32-7	1-9-1-57-32-31	1-9-1-57-32-55	1-9-1-57-32-79
1-9-1-57-32-8	1-9-1-57-32-32	1-9-1-57-32-56	1-9-1-57-32-80
1-9-1-57-32-9	1-9-1-57-32-33	1-9-1-57-32-57	1-9-1-57-32-81
1-9-1-57-32-10	1-9-1-57-32-34	1-9-1-57-32-58	1-9-1-57-32-82
1-9-1-57-32-11	1-9-1-57-32-35	1-9-1-57-32-59	1-9-1-57-32-83
1-9-1-57-32-12	1-9-1-57-32-36	1-9-1-57-32-60	1-9-1-57-32-84
1-9-1-57-32-13	1-9-1-57-32-37	1-9-1-57-32-61	1-9-1-57-32-85
1-9-1-57-32-14	1-9-1-57-32-38	1-9-1-57-32-62	1-9-1-57-32-86
1-9-1-57-32-15	1-9-1-57-32-39	1-9-1-57-32-63	1-9-1-57-32-87
1-9-1-57-32-16	1-9-1-57-32-40	1-9-1-57-32-64	1-9-1-57-32-88
1-9-1-57-32-17	1-9-1-57-32-41	1-9-1-57-32-65	1-9-1-57-32-89
1-9-1-57-32-18	1-9-1-57-32-42	1-9-1-57-32-66	1-9-1-57-32-90
1-9-1-57-32-19	1-9-1-57-32-43	1-9-1-57-32-67	1-9-1-57-32-91
1-9-1-57-32-20	1-9-1-57-32-44	1-9-1-57-32-68	1-9-1-57-32-92
1-9-1-57-32-21	1-9-1-57-32-45	1-9-1-57-32-69	1-9-1-57-32-93
1-9-1-57-32-22	1-9-1-57-32-46	1-9-1-57-32-70	1-9-1-57-32-94
1-9-1-57-32-23	1-9-1-57-32-47	1-9-1-57-32-71	1-9-1-57-32-95
1-9-1-57-32-24	1-9-1-57-32-48	1-9-1-57-32-72	

KAI LANI

1-9-1-56-2-1	1-9-1-56-2-30	1-9-1-56-2-59	1-9-1-56-2-88
1-9-1-56-2-2	1-9-1-56-2-31	1-9-1-56-2-60	1-9-1-56-2-89
1-9-1-56-2-3	1-9-1-56-2-32	1-9-1-56-2-61	1-9-1-56-2-90
1-9-1-56-2-4	1-9-1-56-2-33	1-9-1-56-2-62	1-9-1-56-2-91
1-9-1-56-2-5	1-9-1-56-2-34	1-9-1-56-2-63	1-9-1-56-2-92
1-9-1-56-2-6	1-9-1-56-2-35	1-9-1-56-2-64	1-9-1-56-2-93
1-9-1-56-2-7	1-9-1-56-2-36	1-9-1-56-2-65	1-9-1-56-2-94
1-9-1-56-2-8	1-9-1-56-2-37	1-9-1-56-2-66	1-9-1-56-2-95
1-9-1-56-2-9	1-9-1-56-2-38	1-9-1-56-2-67	1-9-1-56-2-96
1-9-1-56-2-10	1-9-1-56-2-39	1-9-1-56-2-68	1-9-1-56-2-97
1-9-1-56-2-11	1-9-1-56-2-40	1-9-1-56-2-69	1-9-1-56-2-98
1-9-1-56-2-12	1-9-1-56-2-41	1-9-1-56-2-70	1-9-1-56-2-99
1-9-1-56-2-13	1-9-1-56-2-42	1-9-1-56-2-71	1-9-1-56-2-100
1-9-1-56-2-14	1-9-1-56-2-43	1-9-1-56-2-72	1-9-1-56-2-101
1-9-1-56-2-15	1-9-1-56-2-44	1-9-1-56-2-73	1-9-1-56-2-102
1-9-1-56-2-16	1-9-1-56-2-45	1-9-1-56-2-74	1-9-1-56-2-103
1-9-1-56-2-17	1-9-1-56-2-46	1-9-1-56-2-75	1-9-1-56-2-104
1-9-1-56-2-18	1-9-1-56-2-47	1-9-1-56-2-76	1-9-1-56-2-105
1-9-1-56-2-19	1-9-1-56-2-48	1-9-1-56-2-77	1-9-1-56-2-106
1-9-1-56-2-20	1-9-1-56-2-49	1-9-1-56-2-78	1-9-1-56-2-107
1-9-1-56-2-21	1-9-1-56-2-50	1-9-1-56-2-79	1-9-1-56-2-108
1-9-1-56-2-22	1-9-1-56-2-51	1-9-1-56-2-80	1-9-1-56-2-109
1-9-1-56-2-23	1-9-1-56-2-52	1-9-1-56-2-81	1-9-1-56-2-110
1-9-1-56-2-24	1-9-1-56-2-53	1-9-1-56-2-82	1-9-1-56-2-111
1-9-1-56-2-25	1-9-1-56-2-54	1-9-1-56-2-83	1-9-1-56-2-112
1-9-1-56-2-26	1-9-1-56-2-55	1-9-1-56-2-84	1-9-1-56-2-113
1-9-1-56-2-27	1-9-1-56-2-56	1-9-1-56-2-85	1-9-1-56-2-114
1-9-1-56-2-28	1-9-1-56-2-57	1-9-1-56-2-86	1-9-1-56-2-115
1-9-1-56-2-29	1-9-1-56-2-58	1-9-1-56-2-87	1-9-1-56-2-116



KO OLINA HILLSIDE VILLAS

1-9-1-56-13-1	1-9-1-56-13-45	1-9-1-56-13-89	1-9-1-56-13-132
1-9-1-56-13-2	1-9-1-56-13-46	1-9-1-56-13-90	1-9-1-56-13-133
1-9-1-56-13-3	1-9-1-56-13-47	1-9-1-56-13-91	1-9-1-56-13-134
1-9-1-56-13-4	1-9-1-56-13-48	1-9-1-56-13-92	1-9-1-56-13-135
1-9-1-56-13-5	1-9-1-56-13-49	1-9-1-56-13-93	1-9-1-56-13-136
1-9-1-56-13-6	1-9-1-56-13-50	1-9-1-56-13-94	1-9-1-56-13-137
1-9-1-56-13-7	1-9-1-56-13-51	1-9-1-56-13-95	1-9-1-56-13-138
1-9-1-56-13-8	1-9-1-56-13-52	1-9-1-56-13-96	1-9-1-56-13-139
1-9-1-56-13-9	1-9-1-56-13-53	1-9-1-56-13-97	1-9-1-56-13-140
1-9-1-56-13-10	1-9-1-56-13-54	1-9-1-56-13-98	1-9-1-56-13-141
1-9-1-56-13-11	1-9-1-56-13-55	1-9-1-56-13-99	1-9-1-56-13-142
1-9-1-56-13-12	1-9-1-56-13-56	1-9-1-56-13-100	1-9-1-56-13-143
1-9-1-56-13-13	1-9-1-56-13-57	1-9-1-56-13-101	1-9-1-56-13-144
1-9-1-56-13-14	1-9-1-56-13-58	1-9-1-56-13-102	1-9-1-56-13-145
1-9-1-56-13-15	1-9-1-56-13-59	1-9-1-56-13-103	1-9-1-56-13-146
1-9-1-56-13-16	1-9-1-56-13-60	1-9-1-56-13-104	1-9-1-56-13-147
1-9-1-56-13-17	1-9-1-56-13-61	1-9-1-56-13-105	1-9-1-56-13-148
1-9-1-56-13-18	1-9-1-56-13-62	1-9-1-56-13-106	1-9-1-56-13-149
1-9-1-56-13-19	1-9-1-56-13-63	1-9-1-56-13-107	1-9-1-56-13-150
1-9-1-56-13-20	1-9-1-56-13-64	1-9-1-56-13-108	1-9-1-56-13-151
1-9-1-56-13-21	1-9-1-56-13-65	1-9-1-56-13-109	1-9-1-56-13-152
1-9-1-56-13-22	1-9-1-56-13-66	1-9-1-56-13-110	1-9-1-56-13-153
1-9-1-56-13-23	1-9-1-56-13-67	1-9-1-56-13-111	1-9-1-56-13-154
1-9-1-56-13-24	1-9-1-56-13-68	1-9-1-56-13-112	1-9-1-56-13-155
1-9-1-56-13-25	1-9-1-56-13-69	1-9-1-56-13-113	1-9-1-56-13-156
1-9-1-56-13-26	1-9-1-56-13-70	1-9-1-56-13-114	1-9-1-56-13-157
1-9-1-56-13-27	1-9-1-56-13-71	1-9-1-56-13-115	1-9-1-56-13-158
1-9-1-56-13-28	1-9-1-56-13-72	1-9-1-56-13-116	1-9-1-56-13-159
1-9-1-56-13-29	1-9-1-56-13-73	1-9-1-56-13-117	1-9-1-56-13-160
1-9-1-56-13-30	1-9-1-56-13-74	1-9-1-56-13-118	1-9-1-56-13-161
1-9-1-56-13-31	1-9-1-56-13-75	1-9-1-56-13-119	1-9-1-56-13-162
1-9-1-56-13-32	1-9-1-56-13-76	1-9-1-56-13-120	1-9-1-56-13-163
1-9-1-56-13-33	1-9-1-56-13-77	1-9-1-56-13-121	1-9-1-56-13-164
1-9-1-56-13-34	1-9-1-56-13-78	1-9-1-56-13-122	1-9-1-56-13-165
1-9-1-56-13-35	1-9-1-56-13-79	1-9-1-56-13-123	1-9-1-56-13-166
1-9-1-56-13-36	1-9-1-56-13-80	1-9-1-56-13-124	1-9-1-56-13-167
1-9-1-56-13-37	1-9-1-56-13-81	1-9-1-56-13-125	1-9-1-56-13-168
1-9-1-56-13-38	1-9-1-56-13-82	1-9-1-56-13-126	1-9-1-56-13-169
1-9-1-56-13-39	1-9-1-56-13-83	1-9-1-56-13-127	1-9-1-56-13-170
1-9-1-56-13-40	1-9-1-56-13-84	1-9-1-56-13-128	1-9-1-56-13-171
1-9-1-56-13-41	1-9-1-56-13-85	1-9-1-56-13-129	1-9-1-56-13-172
1-9-1-56-13-42	1-9-1-56-13-86	1-9-1-56-13-130	1-9-1-56-13-173
1-9-1-56-13-43	1-9-1-56-13-87	1-9-1-56-13-131	1-9-1-56-13-174
1-9-1-56-13-44	1-9-1-56-13-88		

KŪ OLINA KAI - GOLF ESTATES

1-9-1-56-5-1	1-9-1-56-5-16	1-9-1-56-5-31	1-9-1-56-5-46
1-9-1-56-5-2	1-9-1-56-5-17	1-9-1-56-5-32	1-9-1-56-5-47
1-9-1-56-5-3	1-9-1-56-5-18	1-9-1-56-5-33	1-9-1-56-5-48
1-9-1-56-5-4	1-9-1-56-5-19	1-9-1-56-5-34	1-9-1-56-5-49
1-9-1-56-5-5	1-9-1-56-5-20	1-9-1-56-5-35	1-9-1-56-5-50
1-9-1-56-5-6	1-9-1-56-5-21	1-9-1-56-5-36	1-9-1-56-5-51
1-9-1-56-5-7	1-9-1-56-5-22	1-9-1-56-5-37	1-9-1-56-5-52
1-9-1-56-5-8	1-9-1-56-5-23	1-9-1-56-5-38	1-9-1-56-5-53
1-9-1-56-5-9	1-9-1-56-5-24	1-9-1-56-5-39	1-9-1-56-5-54
1-9-1-56-5-10	1-9-1-56-5-25	1-9-1-56-5-40	1-9-1-56-5-55
1-9-1-56-5-11	1-9-1-56-5-26	1-9-1-56-5-41	1-9-1-56-5-56
1-9-1-56-5-12	1-9-1-56-5-27	1-9-1-56-5-42	1-9-1-56-5-57
1-9-1-56-5-13	1-9-1-56-5-28	1-9-1-56-5-43	1-9-1-56-5-58
1-9-1-56-5-14	1-9-1-56-5-29	1-9-1-56-5-44	1-9-1-56-5-59
1-9-1-56-5-15	1-9-1-56-5-30	1-9-1-56-5-45	1-9-1-56-5-60









OTHER PROPERTIES

9-1-056-003	9-1-057-026	9-1-057-005	9-1-056-009
9-1-056-008	9-1-056-017	9-1-057-006	9-1-057-023
9-1-056-025	9-1-057-001	9-1-057-007	9-1-057-033
9-1-056-023	9-1-057-030	9-1-056-007	9-1-056-024
9-1-056-020	9-1-057-034	9-1-057-013	9-1-057-010
9-1-056-015	9-1-057-035	9-1-057-014	9-1-057-031
9-1-056-016	9-1-057-036	9-1-057-015	9-1-057-011
9-1-056-028	9-1-057-037	9-1-057-020	9-1-057-022
9-1-055-001	9-1-056-006	9-1-056-022	9-1-057-021

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2008/SUP-2 (RY) and 86/SUP-5  
)  
)  
)  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a copy of the foregoing will be duly served upon the following parties at their respective addresses by the manner indicated thereto:

	<u>Mail</u>	<u>Delivery</u>
CARRIE K.S. OKINAGA, ESQ. GARY Y. TAKEUCHI, ESQ. Corporation Counsel City & County of Honolulu 530 South King Street, Room 110 Honolulu, Hawai'i 96813		x
TIMOTHY STEINBERGER, P.E., DIRECTOR Department of Environmental Services City & County of Honolulu 1000 Uluohia Street, Suite 308 Kapolei, HI 96707	x	

DAVID TANOUE, DIRECTOR  
Planning Department  
City & County of Honolulu  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawai'i 96813

X

DATED: Honolulu, Hawai'i, April 16, 2009



---

COLLEEN HANABUSA  
Attorney for Petitioners KOCA, Hanabusa  
And Shimabukuro

rec'd 9/19

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of )  
 ) FILE NO. 2011/GEN-8 (RY),  
 ) 2008/SUP-2 (RY) and 86/SUP-5  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
 )  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_ )

MOTION TO RECOGNIZE KO OLINA COMMUNITY  
ASSOCIATION AND MAILE SHIMABUKURO AS PARTIES

MEMORANDUM IN SUPPORT OF MOTION

VERIFICATION

EXHIBIT "A"

AND

CERTIFICATE OF SERVICE

KO OLINA COMMUNITY ASSOCIATION  
c/o Mr. Kenneth Williams, Agent  
92-1480 Aliinui Drive  
Kapolei, Hawaii 96707

MAILE SHIMABUKURO  
415 South Beretania Street  
Hawaii State Capitol, Room 223  
Honolulu, Hawaii 96813

Intervenors

**EXHIBIT 5**

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

11 SEP 16 P2:38

RECEIVED

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2011/GEN-8 (RY),
	)	2008/SUP-2 (RY) and 86/SUP-5
DEPARTMENT OF ENVIRONMENTAL	)	
SERVICES, CITY AND COUNTY OF	)	
HONOLULU	)	
	)	
For a New Special Use Permit to supersede	)	
Existing Special Use Permit to allow a	)	
92.5-acre Expansion and Time Extension	)	
For Waimanalo Gulch Sanitary Landfill,	)	
Tax Map Key Nos. (1) 9-2-003:072 and 073	)	
_____	)	

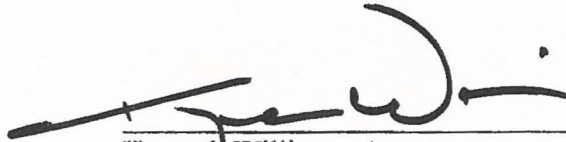
MOTION TO RECOGNIZE KO OLINA COMMUNITY  
ASSOCIATION AND MAILE SHIMABUKURO AS PARTIES

Come now, Intervenors KO OLINA COMMUNITY ASSOCIATION (“KOCA”) and MAILE SHIMABUKURO (“Shimabukuro”), and hereby respectfully request that this Planning Commission continue to recognize KOCA and Shimabukuro as Party Intervenors in this matter, or in the alternative grant them leave to intervene as parties in the matter of the Department of Environmental Services (“ENV”), City and County of Honolulu’s Special Use Permit (“SUP”) No. 2008/SUP-2; State Land Use Commission (“LUC”) Docket No. SP09-403; In re Department of Environmental Services City and County of Honolulu; Application to Modify SUP No. 2008/SUP 2 by Modifying 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 Modification dated October 22, 2009.

The Notice of Publication appeared on September 4, 2011 in the Honolulu Star-Advertiser.

This Petition is brought pursuant to the Rules of the Planning Commission ("Commission Rules") §§ 1-5(j), 2-15, 2-52 (c), 2-53, 2-55, 2-56 and 2-67 and HRS Chapter 91 and §205-6 and is based upon the attached Memorandum in Support of Petition and the records and files of this case.

Dated: Honolulu, Hawai'i, SEP 16 2011



Kenneth Williams, Agent  
KO OLINA COMMUNITY ASSOCIATION  
Intervenor



MAILE SHIMABUKURO  
Intervenor

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of	)	FILE NO. 2011/GEN-8 (RY),
	)	2008/SUP-2 (RY) and 86/SUP-5
DEPARTMENT OF ENVIRONMENTAL	)	
SERVICES, CITY AND COUNTY OF	)	
HONOLULU	)	
	)	
For a New Special Use Permit to supersede	)	
Existing Special Use Permit to allow a	)	
92.5-acre Expansion and Time Extension	)	
For Waimanalo Gulch Sanitary Landfill,	)	
Tax Map Key Nos. (1) 9-2-003:072 and 073	)	
_____	)	

MEMORANDUM IN SUPPORT OF PETITION

Come now, Intervenor KO OLINA COMMUNITY ASSOCIATION (“KOCA”) and MAILE SHIMABUKURO (“Shimabukuro”) (collectively “Intervenors”), and hereby respectfully request that this Planning Commission continue to recognize KOCA and Shimabukuro as Party Intervenors, or in the alternative grant them leave to intervene as parties.

**I. Facts Establishing KOCA And Shimabukuro As Parties To Current Application**

The Planning Commission must recognize KOCA and Shimabukuro as Parties in this matter based upon KOCA and Shimabukuro’s prior acceptance by the Planning Commission as Intervenors in the same matter.

The following are relevant facts.

1. On December 3, 2008, the Department of Environmental Services, City and County of Honolulu (“ENV”), filed a State Special Use Permit Application (“Application”), with the Department of Planning and Permitting, City and County of Honolulu (“DPP”). The

Application was designated as Special Use Permit Application File No. 2008/SUP-2 (“SUP 2008/SUP-2”).

2. SUP 2008/SUP-2 was an Application for a new Special Use Permit (“SUP”) for the use of approximately 200.622-acre property (the “Property”), identified by Tax Map Key (“TMK”) Nos. (1) 9-2-003: 072 and 073, in Waimanalo Gulch, Oahu, Hawai`i.

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

4. On April 16, 2009, Intervenors KOCA and Shimabukuro filed a Petition to Intervene in this matter.

5. On April 24, 2009, ENV filed a Memorandum in Opposition to Intervenors’ KOCA and Shimabukuro’s Petition to Intervene.

6. On May 20, 2009, a public hearing was continued at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai`i. At the continued public hearing, the Planning Commission heard and granted Intervenor KOCA and Shimabukuro’s Petition to Intervene. Pursuant to Rules of the Planning Commission (“RPC”) Subchapter 5, the matter was noted as a contested case.

7. On June 22, 2009, the contested case hearing began on the Application at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai`i. The Planning Commission accepted exhibits from both parties to the matter, the Applicant and Intervenors KOCA and Shimabukuro into the record.



8. The Planning Commission contested case hearings continued on June 24, July 1, July 2 and July 8<sup>th</sup> and a scheduled decision-making for the Application was set for July 31, 2009.

9. On July 17, 2009, the parties ENV and Intervenor KOCA and Shimabukuro Applicant filed their respective Post-Hearing Briefs and Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Certificate of Service.

10. On July 29, 2009, the parties ENV and Intervenor KOCA and Shimbukuro filed their Reply Briefs.

11. On August 4, 2009, the Planning Commission set forth its FINDINGS OF FACT, CONSLCUSIONS OF LAW, AND DECISION AND ORDER dated August 4, 2009 ("D&O"). The D&O also contained a certificate of service that the D&O was served by certified mail, return receipt requested, postage prepaid to Intervenor KOCA and Shimabukuro as required under RPC §2-57 and HRS §91-9.5 as Intervenor KOCA and Shimabukuro are parties to the SUP 2008/SUP-2 Planning Commission hearings.

12. On June 28, 2011 ENV filed its Special Use Permit No. 2008/SUP-2; State Land Use Commission Docket No. SP09-403; In re Department of Environmental Services City and County of Honolulu; Application to Modify SUP No. 2008/SUP 2 by Modifying 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 Modification dated October 22, 2009 (SUP 2008/SUP-2 Amendment").

13. Intervenor KOCA and Shimabukuro herby files its Motion to be recognized as parties to the SUP 2008/SUP-2 Amendment.

## II. KOCA and Shimabukuro Are Parties to Current ENV Application:

Rules of the Planning Commission §1-5(j) **Definitions**, states in relevant part, “Party means any person or agency named or admitted as a party...” As the facts note above, ENV filed its Application for SUP 2008/SUP-2 on December 3, 2008. Intervenors KOCA and Shimabukuro timely filed its Petition to Intervene. ENV filed its Motions in Opposition to Intervenors’ Petition to Intervene. On May 20, 2009, the Planning Commission heard arguments, from both sides and granted Intervenor KOCA and Shimabukuro’s Petition to Intervene.

Denying Intervenor KOCA and Shimabukuro its right to continue to be a party to the current SUP 2008/SUP-2 Amendment application would result in prejudice to Intervenor KOCA and Shimabukuro as it would require them time and costs to re-argue their rights to participate as intervenors in this matter. Furthermore, it would be a complete waste of judicial economy and time for the Planning Commission and parties involved to require Intervenor KOCA and Shimabukuro to re-argue its right to intervene in this matter when Intervenors’ rights as parties to this matter have already been established.

Based on the facts set forth above, it is clear that Intervenors KOCA and Shimabukuro have already been admitted to the prior Application for SUP 2008/SUP-2 proceedings by the Planning Commission and that for purposes of further proceedings related to the SUP 2008/SUP-2 Amendment application, Intervenor KOCA and Shimabukuro should also be parties.

## III. Facts For Petition to Intervene:

1. Intervenors KOCA and Shimabukuro believes that they are already parties to the current SUP 2008/SUP-2 Amendment application but provides its Petition to Intervene in an abundance of caution.

2. KOCA is a non-profit corporation organized and existing under the laws of the State of Hawai'i. It represents various resort and residential owners throughout the Ko Olina Resort. A List of Tax Map Key Numbers are attached as Exhibit "A".

3. Ko Olina is located directly across Farrington Highway from Waimanalo Gulch Sanitary Landfill ("WGSL").

4. KOCA oversees and regulates the use and enjoyment of the common areas of the property referred to as the "Resort" and is also responsible for the exclusive management and control of areas of common responsibility as well as the maintenance and upkeep of such areas. Petitioner and the owners it represents have grave financial, property and business interests at stake that could be detrimentally affected by the outcome of this proceeding.

5. Shimabukuro is a resident of the Leeward Coast of the City and County of Honolulu, as well as a duly elected Senator for State District 21. Shimabukuro and her constituents must pass the WGSL in order to get in and out of Wai'anae. Shimabukuro is also a mother of an infant child, lives and works in Wai'anae and a taxpayer. With the birth of her child, Shimabukuro has a heightened concern over the health and welfare of her child and constituents which prompts her desire to have full intervenor/party status in these proceedings.

6. This Commission did grant KOCA status on November 14, 2007 in 86/SUP-5 (RY) in the matter of the application which sought a modification of condition 10 of the SUP (Special Use Permit) file No. 86/SUP-S.

7. In accordance with HRS §205-6, the Land Use Commission ("LUC") did recognize KOCA as Intervenors in Docket No. SP87-362 on March 6, 2008 based upon its intervenor status before the Planning Commission of the City and County of Honolulu.

8. In December 2008, ENV filed Application SUP 2008/SUP-2.

9. As noted above, May 20, 2009, the Planning Commission heard and granted Intervenor KOCA and Shimabukuro's Petition to Intervene.

10. On September 24, 2009, the LUC recognized KOCA and Shimabukuro as intervenors in the LUC proceedings based upon their intervenor status before the Planning Commission.

11. On June 28, 2011 ENV filed its SUP 2008/SUP-2 Amend application with the request 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:

"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."

12. This Petition for Intervention is timely under Commission Rule §2-53.

#### **IV. Relevant Provisions Of Law And Rules**

HRS §205-6 Special permit. (a) Subject to this section, 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. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.

(b) The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when

the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

(e) A copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(f) Land uses substantially involving or supporting educational ecotourism, related to the preservation of native Hawaiian endangered, threatened, proposed, and candidate species, that are allowed in an approved habitat conservation plan under section 195D-21 or safe harbor agreement under section 195D-22, which are not identified as permissible uses within the agricultural district under sections 205-2 and 205-4.5, may be permitted in the agricultural district by special permit under this section, on lands with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U.

## **RELEVANT COMMISSION RULES**

### **§2-52 Purpose.**

\* \* \*

(c) Persons may petition the commission to intervene in all proceedings before the commission for special use permits, subject to the requirements of this subchapter. [Eff. Jan. 16, 1995] (Auth: RCH§4-105.4; HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

**§2-53 Petition to intervene.** (a) Petition to intervene as a party. Any person or agency, requesting to intervene as a party shall file a petition with the commission within fourteen (14) days of the date of newspaper publication of the notice of a public hearing to be held by the planning commission on a petition for

a special use permit. The petitioner, the planning department and the department of land utilization may in every case appear as parties and make recommendations relative to the proposed action.

(b) Contents of petition to intervene as a party. The petition shall include the following points:

(1) The nature and extent of petitioner's interest in right to intervene as a party to the proceedings.

(2) The nature and extent of petitioner's interest in the proceedings, and if the petitioner is an abutting property owner, the tax map key description of the property.

(3) A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing.

(4) The effect of any decision in the proceeding on the petitioner's interest.

(c) Filing requirements. The original and fifteen (15) copies of the petition to intervene and a certificate of service on all parties prepared in conformance with section 2-15 of these rules shall be filed with the commission in a timely manner.

\* \* \*

**§2-55 Hearing on petition to intervene.**

(c) Leave to intervene shall be freely granted, provided that the commission may deny petition to intervene when in the commission's discretion it appears that:

(1) The position of the party requesting intervention concerning the proposed action is substantially the same as the position of a party already admitted to the proceeding; and

(2) The admission of additional parties will render the proceedings inefficient and unmanageable. [Eff. Jan. 16, 1995] (Auth: RCH §HRS §9-9) (Imp: RCH §4-105.4; HRS §9-9)

V. ARGUMENT

A. Intervention Should Be Granted.

When interpreting statutes and administrative rules, it is a well established that:

The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

Cases relied upon are: *International Bhd. Of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.*, 68 Haw. 316, 323, 713 P.2d 943, 950 (1986); *Allstate Ins. Co. v. Ponce, 105 Hawai'i*, 445, 454, 99 P. 3d 96 105 (2004).

Commission Rules §§2-53 and 2-55(c) provide for the contents of a petition and specifies that intervention shall be freely granted with only two basis upon which the Commission may deny intervention. The provisions are similar to that found in the LUC Rules §15-15-52(d) and *Hawai'i Rules of Civil Procedure* 24 (b). The provisions of *Hawai'i Rules of Civil Procedure* are discussed in *State v. Campbell*, 106 Haw. 453, 458-462 (2005) and *Hoopai v Civil Service Comm'n*, 106, Haw. 205, 216 (2004).

KOCA and Shimabukuro can demonstrate that they should be permitted intervention under these provisions of this Commission's Rules.

B. The Requirements Of §2-53(b) Are Addressed As Follows.

Under the referenced Commission Rule, this Petition for Intervention shall make reference to the following:

(1) Nature Of Petitioners' Statutory Or Other Right.

KOCA. Petitioner KOCA represents numerous resort and residential owners of properly located at the Ko Olina resort & Marina ("Resort"), which is situated directly across of

Farrington Highway from the Waimanalo Gulch Sanitary Landfill facility. Under the KOCA Declaration, Petitioner oversees and regulates the use and enjoyment of the common areas of the Resort and is responsible for the exclusive management and control of areas of common responsibility as well as the maintenance and upkeep of such areas. Petitioner and the owners it represents have grave financial, propriety, and business interests at stake that could be detrimentally affected by the outcome of this proceeding. Although other property owners may petition for intervention in this proceeding, Petitioner is unlike other residents, owners or community associations, since Petitioner represents the Resort in general and its guests.

Therefore, the Resort is uniquely and adversely affected by the Waimanalo Gulch Sanitary Landfill facility and activities surrounding its dumping operations. Petitioner's right to protect its unique interests and those of the owners it represents by ensuring compliance with previous SUP conditions and procedural requirements in this matter is established under Chapter 205, Hawai'i Revised Statutes and the Commission's Rules. Among other things, HRS §205-6 clearly contemplated that all persons "that may have an interest in the subject matter" are to be given consideration in the hearing and action on petition for special permit. Petitioner is such a person with a special interest in the subject matter that is not duplicated by other persons, including other residents, owners or homeowners associations in the region.

SHIMABUKURO. Petitioner Shimabukuro is the duly elected Senator of the 21<sup>st</sup> Honolulu District located on the Wai'anae Coast and a taxpayer.

Petitioner Shimabukuro also add the recent Hawai'i Supreme Court case, *The Sierra Club, et al. v. The Department of Transportation of the State of Hawaii, et al.*, 115 Hawaii 299 (2007), makes clear that the issue of procedural errors in deemed to be injury for



standing purposes. It is contended that the process followed by ENV in its Application is laden with such errors.

The rights of elected officials to participate as full party intervenors have been granted in matter before the Public Utilities Commission. *In the Matter of the Application of Hawaiian Electric*, 81 Haw. 459, 918 P.2d 561 (1996). Shimabukuro should also be allowed to rely upon this authority.

In addition, the cases of *Malama Maha'ulepu v. Land Use Commission*, 71 Haw. 332 (1990) and *Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission*, 64 Haw. 265 (1982) did permit intervention. Clearly these authorities would support the rights of Petitioners to intervene in that their interests are not any less important than those raised in the cases cited above. A major element of justice being served is to ensure that the members of the public and those who have been aggrieved should have representation in these proceedings.

(2) Nature Of The Petitioner's Interest, And If Abutting Property Owner, The TMKs

The interest of KOCA and Shimabukuro have been discussed above. The tax map key numbers have been provided as Exhibit "A".

Shimabukuro is not and does not claim an interest as an abutting property owner.

(3) Specific Issues To Be Raised Or Contested

The specific issues to be raised are related to the opposition to this Application.

Specific areas will include but not be limited to:

- (a) Jurisdiction;
- (b) Promise made of closure;
- (c) Stability of the landfill.

- (d) The culturally significant outcropping as best stated by OHA as follows:

OHA has made a field visit to the project site and we noted three significant cultural features that were still intact in the project area. We are also aware of the probable existence of others yet to be discovered in the project area. OHA is further saddened that the larger setting that this project sits in is one that has been highly developed and degraded. Therefore, what TCPs [Traditional Cultural Properties] that remain must be protected.

The Department of Planning and Permitting, as a county agency, is mandated by Hawai`i Const. Article XII, section 7, "to preserve and protect customary and traditional practices of Native Hawaiians." Ka Pa`akai O Ka`Aina v. Land Use Comm'n, 94 Haw. 31, 45 (2000). . . . OHA urges that nothing more be done with this project until full cultural assessment has been made of the project area.

- (e) Violations of management, including the Notice of Violations and Order imposed by the State Department of Health.
- (f) Blasting to create the landfill.
- (g) Health, safety and water quality concerns.
- (h) Procedural matters such as the filing of a boundary amendment and SUP which creates a burden upon any interested party to the WGSJ expansion and extension issues.
- (i) KOCA and Shimabukuro reserves their rights to set forth further claims or issues as they are discovered.

(4) Effect Of A Decision

Clearly, if the decision is to grant the SUP, the effect will be substantial on Petitioners. As revealed in the Final Supplemental Environmental Impact Statement ("FSEIS"), to the health concerns was a subject of the Notice of Violations ("NOV") and accompanying Order of the Department of Health ("DOH"). The concerns of the cultural findings and the impact of the need to blast on a regular basis to create the necessary air space for the expansion of the WGSJ

augment concerns as to effect of the decision will have upon the health, safety and stability of the landfill.

It is also evident from prior testimony received by the Commission, that there have been constructed three structural berms to ensure slope stability at WGSL. Add to this blasting along with other existing problems would detrimentally affect all who are concerned about the effect of any permit which allows the landfill operations to continue.

C. Intervention Should Be Freely Granted

Under §2-55 (c), a petition for leave to intervene shall be freely granted except that discretion is given to this Commission to deny in two situations. Those situations are if the applicants' positions are similar to someone all ready in the proceeding; and the granting of the application would render the proceeding inefficient and unmanageable.

Neither situation applies to the Petitioners for the following reasons:

1. The Petitioners position is not substantially similar to a party.

The parties to this proceeding are the City and County of Honolulu through its representatives who are the Applicants and the City and County of Honolulu's Department of Planning and Permitting ("DPP"). Petitioners are unaware of any other party admitted to these proceeding.

It is clearly evident that these parties do not have positions similar to that of KOCA and/or Shimabukuro.

2. Admission will not render proceedings inefficient and unmanageable.

As evidenced by the SUP proceeding in which this Commission permitted the intervention of KOCA and Hanabusa in November 2007, their participation did not render the

proceeding inefficient and unmanageable. Neither did their intervention in the LUC proceedings render that proceeding inefficient and unmanageable.

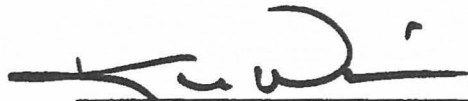
In that Shimabukuro will also be represented by Hanabusa, she will not be an added burden to the proceeding.

The criteria is one written to freely grant intervention unless it can be found that the applicants would run afoul of the two points. No such finding can be made as to KOCA, Hanabusa and Shimabukuro.

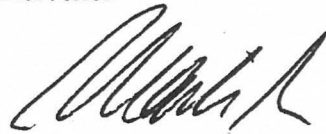
**VI. CONCLUSION**

For the above stated reasons, Petitioners KOCA and Shimabukuro respectfully request that the Planning Commission continue to recognize KOCA and Shimabukuro as Party Intervenors, or in the alternative grant them leave to intervene into this 2008/SUP-2 Amendment application.

Dated: Honolulu, Hawai'i, SEP 16 2011



\_\_\_\_\_  
Kenneth Williams, Agent  
KO OLINA COMMUNITY ASSOCIATION  
Intervenor



\_\_\_\_\_  
MAILE SHIMABUKURO  
Intervenor

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2011/GEN-8 (RY),  
) 2008/SUP-2 (RY) and 86/SUP-5  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_)

VERIFICATION

Petitioners KO OLINA COMMUNITY ASSOCIATION (“KOCA”) and MAILE SHIMABUKURO (“Shimabukuro”) verify the contents of this Petition.

For the record, KOCA’s address is 92-1480 Aliinui Drive, Kapolei, Hawai`i 96707 (phone number is (808) 671-2512) and KOCA has authority to represent its membership. Relevant TMK Nos. are attached on Exhibit “A”. Maile Shimabukuro’s residence address is 86-024 Glenmonger Street, Waianae, Hawai`i 96792 (phone number is (808) 349-3075); State Capitol Room 406 (phone is (808)586-8460).

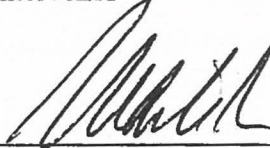
Petitioners note that their signature maybe provided in counter parts and ask that they be accepted as a complete filing.

SEP 16 2011

Dated: Honolulu, Hawai'i, \_\_\_\_\_



\_\_\_\_\_  
Kenneth Williams, Agent  
KO OLINA COMMUNITY ASSOCIATION  
Intervenor



\_\_\_\_\_  
MAILE SHIMABUKURO  
Intervenor

# **EXHIBIT A**

Partial List of Tax Map Keys  
(see following pages)

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BEACH VILLAS AT KO OLINA- OCEAN TOWER

1-9-1-57-9-1	1-9-1-57-9-41	1-9-1-57-9-81	1-9-1-57-9-121
1-9-1-57-9-2	1-9-1-57-9-42	1-9-1-57-9-82	1-9-1-57-9-122
1-9-1-57-9-3	1-9-1-57-9-43	1-9-1-57-9-83	1-9-1-57-9-123
1-9-1-57-9-4	1-9-1-57-9-44	1-9-1-57-9-84	1-9-1-57-9-124
1-9-1-57-9-5	1-9-1-57-9-45	1-9-1-57-9-85	1-9-1-57-9-125
1-9-1-57-9-6	1-9-1-57-9-46	1-9-1-57-9-86	1-9-1-57-9-126
1-9-1-57-9-7	1-9-1-57-9-47	1-9-1-57-9-87	1-9-1-57-9-127
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1-9-1-57-9-9	1-9-1-57-9-49	1-9-1-57-9-89	1-9-1-57-9-129
1-9-1-57-9-10	1-9-1-57-9-50	1-9-1-57-9-90	1-9-1-57-9-130
1-9-1-57-9-11	1-9-1-57-9-51	1-9-1-57-9-91	1-9-1-57-9-131
1-9-1-57-9-12	1-9-1-57-9-52	1-9-1-57-9-92	1-9-1-57-9-132
1-9-1-57-9-13	1-9-1-57-9-53	1-9-1-57-9-93	1-9-1-57-9-133
1-9-1-57-9-14	1-9-1-57-9-54	1-9-1-57-9-94	1-9-1-57-9-134
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1-9-1-57-9-17	1-9-1-57-9-57	1-9-1-57-9-97	1-9-1-57-9-137
1-9-1-57-9-18	1-9-1-57-9-58	1-9-1-57-9-98	1-9-1-57-9-138
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1-9-1-57-9-39	1-9-1-57-9-79	1-9-1-57-9-119	1-9-1-57-9-159
1-9-1-57-9-40	1-9-1-57-9-80	1-9-1-57-9-120	

BEACH VILLAS AT KO OLINA - BEACH TOWER

1-9-1-57-32-1	1-9-1-57-32-25	1-9-1-57-32-49	1-9-1-57-32-73
1-9-1-57-32-2	1-9-1-57-32-26	1-9-1-57-32-50	1-9-1-57-32-74
1-9-1-57-32-3	1-9-1-57-32-27	1-9-1-57-32-51	1-9-1-57-32-75
1-9-1-57-32-4	1-9-1-57-32-28	1-9-1-57-32-52	1-9-1-57-32-76
1-9-1-57-32-5	1-9-1-57-32-29	1-9-1-57-32-53	1-9-1-57-32-77
1-9-1-57-32-6	1-9-1-57-32-30	1-9-1-57-32-54	1-9-1-57-32-78
1-9-1-57-32-7	1-9-1-57-32-31	1-9-1-57-32-55	1-9-1-57-32-79
1-9-1-57-32-8	1-9-1-57-32-32	1-9-1-57-32-56	1-9-1-57-32-80
1-9-1-57-32-9	1-9-1-57-32-33	1-9-1-57-32-57	1-9-1-57-32-81
1-9-1-57-32-10	1-9-1-57-32-34	1-9-1-57-32-58	1-9-1-57-32-82
1-9-1-57-32-11	1-9-1-57-32-35	1-9-1-57-32-59	1-9-1-57-32-83
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1-9-1-57-32-13	1-9-1-57-32-37	1-9-1-57-32-61	1-9-1-57-32-85
1-9-1-57-32-14	1-9-1-57-32-38	1-9-1-57-32-62	1-9-1-57-32-86
1-9-1-57-32-15	1-9-1-57-32-39	1-9-1-57-32-63	1-9-1-57-32-87
1-9-1-57-32-16	1-9-1-57-32-40	1-9-1-57-32-64	1-9-1-57-32-88
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1-9-1-57-32-18	1-9-1-57-32-42	1-9-1-57-32-66	1-9-1-57-32-90
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1-9-1-57-32-21	1-9-1-57-32-45	1-9-1-57-32-69	1-9-1-57-32-93
1-9-1-57-32-22	1-9-1-57-32-46	1-9-1-57-32-70	1-9-1-57-32-94
1-9-1-57-32-23	1-9-1-57-32-47	1-9-1-57-32-71	1-9-1-57-32-95
1-9-1-57-32-24	1-9-1-57-32-48	1-9-1-57-32-72	

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KAILANI

1-9-1-56-2-1	1-9-1-56-2-30	1-9-1-56-2-59	1-9-1-56-2-88
1-9-1-56-2-2	1-9-1-56-2-31	1-9-1-56-2-60	1-9-1-56-2-89
1-9-1-56-2-3	1-9-1-56-2-32	1-9-1-56-2-61	1-9-1-56-2-90
1-9-1-56-2-4	1-9-1-56-2-33	1-9-1-56-2-62	1-9-1-56-2-91
1-9-1-56-2-5	1-9-1-56-2-34	1-9-1-56-2-63	1-9-1-56-2-92
1-9-1-56-2-6	1-9-1-56-2-35	1-9-1-56-2-64	1-9-1-56-2-93
1-9-1-56-2-7	1-9-1-56-2-36	1-9-1-56-2-65	1-9-1-56-2-94
1-9-1-56-2-8	1-9-1-56-2-37	1-9-1-56-2-66	1-9-1-56-2-95
1-9-1-56-2-9	1-9-1-56-2-38	1-9-1-56-2-67	1-9-1-56-2-96
1-9-1-56-2-10	1-9-1-56-2-39	1-9-1-56-2-68	1-9-1-56-2-97
1-9-1-56-2-11	1-9-1-56-2-40	1-9-1-56-2-69	1-9-1-56-2-98
1-9-1-56-2-12	1-9-1-56-2-41	1-9-1-56-2-70	1-9-1-56-2-99
1-9-1-56-2-13	1-9-1-56-2-42	1-9-1-56-2-71	1-9-1-56-2-100
1-9-1-56-2-14	1-9-1-56-2-43	1-9-1-56-2-72	1-9-1-56-2-101
1-9-1-56-2-15	1-9-1-56-2-44	1-9-1-56-2-73	1-9-1-56-2-102
1-9-1-56-2-16	1-9-1-56-2-45	1-9-1-56-2-74	1-9-1-56-2-103
1-9-1-56-2-17	1-9-1-56-2-46	1-9-1-56-2-75	1-9-1-56-2-104
1-9-1-56-2-18	1-9-1-56-2-47	1-9-1-56-2-76	1-9-1-56-2-105
1-9-1-56-2-19	1-9-1-56-2-48	1-9-1-56-2-77	1-9-1-56-2-106
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1-9-1-56-2-23	1-9-1-56-2-52	1-9-1-56-2-81	1-9-1-56-2-110
1-9-1-56-2-24	1-9-1-56-2-53	1-9-1-56-2-82	1-9-1-56-2-111
1-9-1-56-2-25	1-9-1-56-2-54	1-9-1-56-2-83	1-9-1-56-2-112
1-9-1-56-2-26	1-9-1-56-2-55	1-9-1-56-2-84	1-9-1-56-2-113
1-9-1-56-2-27	1-9-1-56-2-56	1-9-1-56-2-85	1-9-1-56-2-114
1-9-1-56-2-28	1-9-1-56-2-57	1-9-1-56-2-86	1-9-1-56-2-115
1-9-1-56-2-29	1-9-1-56-2-58	1-9-1-56-2-87	1-9-1-56-2-116

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KO OLINA HILLSIDE VILLAS

1-9-1-56-13-1	1-9-1-56-13-45	1-9-1-56-13-89	1-9-1-56-13-132
1-9-1-56-13-2	1-9-1-56-13-46	1-9-1-56-13-90	1-9-1-56-13-133
1-9-1-56-13-3	1-9-1-56-13-47	1-9-1-56-13-91	1-9-1-56-13-134
1-9-1-56-13-4	1-9-1-56-13-48	1-9-1-56-13-92	1-9-1-56-13-135
1-9-1-56-13-5	1-9-1-56-13-49	1-9-1-56-13-93	1-9-1-56-13-136
1-9-1-56-13-6	1-9-1-56-13-50	1-9-1-56-13-94	1-9-1-56-13-137
1-9-1-56-13-7	1-9-1-56-13-51	1-9-1-56-13-95	1-9-1-56-13-138
1-9-1-56-13-8	1-9-1-56-13-52	1-9-1-56-13-96	1-9-1-56-13-139
1-9-1-56-13-9	1-9-1-56-13-53	1-9-1-56-13-97	1-9-1-56-13-140
1-9-1-56-13-10	1-9-1-56-13-54	1-9-1-56-13-98	1-9-1-56-13-141
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1-9-1-56-13-20	1-9-1-56-13-64	1-9-1-56-13-108	1-9-1-56-13-151
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1-9-1-56-13-22	1-9-1-56-13-66	1-9-1-56-13-110	1-9-1-56-13-153
1-9-1-56-13-23	1-9-1-56-13-67	1-9-1-56-13-111	1-9-1-56-13-154
1-9-1-56-13-24	1-9-1-56-13-68	1-9-1-56-13-112	1-9-1-56-13-155
1-9-1-56-13-25	1-9-1-56-13-69	1-9-1-56-13-113	1-9-1-56-13-156
1-9-1-56-13-26	1-9-1-56-13-70	1-9-1-56-13-114	1-9-1-56-13-157
1-9-1-56-13-27	1-9-1-56-13-71	1-9-1-56-13-115	1-9-1-56-13-158
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1-9-1-56-13-31	1-9-1-56-13-75	1-9-1-56-13-119	1-9-1-56-13-162
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1-9-1-56-13-41	1-9-1-56-13-85	1-9-1-56-13-129	1-9-1-56-13-172
1-9-1-56-13-42	1-9-1-56-13-86	1-9-1-56-13-130	1-9-1-56-13-173
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1-9-1-56-13-44	1-9-1-56-13-88		

KO OLINA KAI - GOLF ESTATES

1-9-1-56-5-1	1-9-1-56-5-16	1-9-1-56-5-31	1-9-1-56-5-46
1-9-1-56-5-2	1-9-1-56-5-17	1-9-1-56-5-32	1-9-1-56-5-47
1-9-1-56-5-3	1-9-1-56-5-18	1-9-1-56-5-33	1-9-1-56-5-48
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1-9-1-56-5-5	1-9-1-56-5-20	1-9-1-56-5-35	1-9-1-56-5-50
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1-9-1-56-5-14	1-9-1-56-5-29	1-9-1-56-5-44	1-9-1-56-5-59
1-9-1-56-5-15	1-9-1-56-5-30	1-9-1-56-5-45	1-9-1-56-5-60

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OTHER PROPERTIES

9-1-056-003	9-1-057-026	9-1-057-005	9-1-056-009
9-1-056-008	9-1-058-017	9-1-057-006	9-1-057-023
9-1-056-025	9-1-057-001	9-1-057-007	9-1-057-033
9-1-056-023	9-1-057-030	9-1-056-007	9-1-056-024
9-1-056-020	9-1-057-034	9-1-057-013	9-1-057-010
9-1-056-015	9-1-057-035	9-1-057-014	9-1-057-031
9-1-056-016	9-1-057-036	9-1-057-015	9-1-057-011
9-1-056-028	9-1-057-037	9-1-057-020	9-1-057-022
9-1-056-001	9-1-056-006	9-1-056-022	9-1-057-021

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of ) FILE NO. 2011/GEN-8 (RY),  
) 2008/SUP-2 (RY) and 86/SUP-5  
DEPARTMENT OF ENVIRONMENTAL )  
SERVICES, CITY AND COUNTY OF )  
HONOLULU )  
)  
For a New Special Use Permit to supersede )  
Existing Special Use Permit to allow a )  
92.5-acre Expansion and Time Extension )  
For Waimanalo Gulch Sanitary Landfill, )  
Tax Map Key Nos. (1) 9-2-003:072 and 073 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served upon the following parties listed below VIA U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED at their respective addresses on September 16, 2011:

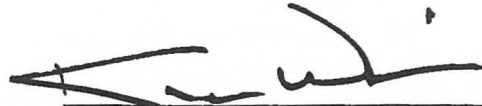
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City & County of Honolulu  
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DAVID TANOUE, DIRECTOR  
Planning Department  
City & County of Honolulu  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawai'i 96813

SEP 16 2011

Dated: Honolulu, Hawai'i, \_\_\_\_\_.



\_\_\_\_\_  
Kenneth Williams, Agent  
KO OLINA COMMUNITY ASSOCIATION  
Intervenor



\_\_\_\_\_  
MAILE SHIMABUKURO  
Intervenor

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SEP 16 2011

TIMOTHY STEINBERGER, P.E., DIRECTOR  
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PS Form 3800, August 2006

See Reverse for Instructions

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SEP 16 2011

DAVID TANOUE, DIRECTOR  
 Planning Department  
 City & County of Honolulu  
 650 South King Street, 7<sup>th</sup> Floor  
 Honolulu, Hawai'i 96813

PS Form 3800, August 2006

See Reverse for Instructions

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Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

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

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

RECEIVED

'11 DEC 13 P 3:42

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

FILE NO. 2008/SUP-2

INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S  
WRITTEN DIRECT TESTIMONY  
OF KEN WILLIAMS

DECLARATION OF KEN  
WILLIAMS

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

**EXHIBIT 6**

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S WRITTEN DIRECT TESTIMONY OF  
KEN WILLIAMS**

---

Pursuant to the Stipulation to Amend Briefing Schedule as Provided in the Planning Commission of the City and County of Honolulu's Order Regarding Prehearing Conference dated November 29, 2011, Intervenors Ko Olina Community Association and Maile Shimabukuro submit written direct testimony through the attached declaration of Ken Williams.

DATED: Honolulu, Hawai'i, December 13, 2011.

CADES SCHUTTE  
A Limited Liability Law Partnership



---

CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN

Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAI'I

In the Matter of the Application of  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

FILE NO. 2008/SUP-2

**DECLARATION OF KEN  
WILLIAMS**

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

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

**DECLARATION OF KEN WILLIAMS**

I, Ken Williams, hereby declare as follows:

1. I am the Executive Vice President of Ko Olina Community Association (“KOCA”) and make this declaration based on personal knowledge in opposition to the Honolulu Department of Environmental Services’ (“ENV”) Application to Modify Special Use Permit No. 2008/SUP-2 by deleting Condition 14 in the Hawai’i Land Use Commission’s Order Adopting the Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009.

2. I oppose the Application because Waimanalo Gulch Sanitary Landfill (the "Landfill") is a danger to public health and safety, as evidenced by its long track record of citations punctuated by the recent spill in January 2011; because the ENV has promised to close the Landfill and the ENV should be held to its word; and because the Landfill poses a grave risk of harm to public welfare, as it jeopardizes all of the economic benefits that Ko Olina provides to the surrounding community, the City and County of Honolulu (the "City"), and the State of Hawai'i (the "State").

#### **BACKGROUND**

3. KOCA is the master association for the Ko Olina Resort and Marina (the "Ko Olina" or "Resort"), which is a 642-acre resort master planned community with a combination of resort, residential, commercial, and recreational uses.

4. KOCA is tasked with ensuring that the livability, vibrance, and values of the Resort are maintained at the highest levels.

5. Ko Olina Resort is located across the street from the Landfill.

6. As KOCA's Executive Vice President, this testimony is submitted on behalf of all owners at the Resort, including hotel, timeshare, golf course, marina, and residential owners, and other members of KOCA.

#### **KO OLINA WAS ALWAYS INTENDED TO BE A RESORT AREA, AND THE LANDFILL WAS SUPPOSED TO BE CLOSED YEARS AGO**

7. In the early 1980s, when the City started the siting of the Landfill, the Ko Olina Resort area was called West Beach and was underdeveloped. However, even



at that time, the West Beach area was planned to be developed as a resort. See Exhibit K132, true and correct copies of excerpts of the Ewa Development Plan from 1981 and 1983, at 3 (1981: “[West Beach] shall be developed as a resort destination area providing scenic, recreational and open space elements with an integration of residential and commercial uses into the overall design of the resort.”), 7 (1983: “[West beach] shall be a water-oriented residential and resort community . . . . Development shall be designed in accordance with the following principles and standards: . . . . A secondary resort destination area containing up to 4,000 visitor units shall be established . . . .” (underscoring omitted)); Exhibit K100, a true and correct copy of the Leeward District Sanitary Landfill Revised Environmental Impact Statement at Waimanalo Gulch Site and Ohikilolo Site dated May 7, 1984, at 3, 12–13 (¶ D.2) (noting that the “Site is highly visible to the public . . . from the proposed West Beach development.”).

8. Indeed, the Land Use Commission’s 1987 decision approving the first special use permit for the Landfill acknowledges that the Landfill is located “mauka of the proposed Ko Olina Resort (formerly known as the West Beach Resort).” Exhibit K69, a true and correct copy of the Land Use Commission’s Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 2 (¶ 4).

9. By around the time Ko Olina Resort was developed, the Landfill was planned to have reached capacity. Exhibit K69, a true and correct copy of the Land

Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 7 (¶ 28).

10. In accord with the long-range planning, Jeffrey Stone and The Resort Group revitalized Ko Olina as a resort destination by attracting and creating building opportunities for Walt Disney Resorts, JW Marriott, Marriot Vacation Club, Brookfield Homes, Centex Homes, Armstrong Builders and others to build at Ko Olina. Exhibit K22, a true and correct copy of the Fiscal & Economic Benefits Analysis Ko Olina Resort & Marina, Honolulu, HI by CBRE Strategic Consulting dated January 2011, at 10.

11. Also in accord with the long-range plan for the area, the Landfill has repeatedly been scheduled to close. When the Landfill was first permitted in 1987, it consisted of 60.5 acres and had a "projected full-life of approximately 8 years." Ex. K69, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 2 (¶ 5), 7 (¶ 28).

12. The Landfill began its operations in 1989. Exhibit K2, a true and correct copy of the Land Use Commission's Decision and Order Approving Amendment to Special Use Permit dated June 5, 2003, at 5 (point xxii). That year, the Landfill was expanded by 26 acres. Exhibit K70, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated October 31, 1989, at 5 (¶ 18), 9.

13. By 2003, the Ko Olina Resort had been established. Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 2 (§ 5) ("Across Farrington Highway from the site is the Ko Olina Resort, which contains resort and residential units, a golf course and marina.").

14. At the same time, the Landfill was "quickly approaching its maximum capacity." Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 4-5 (§ 3); *see also* Exhibit K2, a true and correct copy of the Land Use Commission's Decision and order Approving Amendment to Special Use Permit dated June 5, 2003, at 5-6 (points xxiii and xxvi).

15. Rather than close the Landfill, as had been long planned, the ENV instead "propose[d] a 21-acre, 5-year capacity expansion to the existing 86.5-acre landfill." Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 1.

16. According to Frank Doyle, then Acting Director of Environmental Services: "[W]e had originally thought that we could have this landfill operate for another 15 years. And then as part of our discussions with the community and in trying to take a look at their concerns it was reduced to a five-year operation." Exhibit K85, a true and correct copy of the Land Use Commission's Hearing Transcript dated March 27, 2003, at 96:18-22.

17. At the 2003 hearing before the Land Use Commission, the ENV repeatedly expressed its “commitment” to close the Landfill within five years. Exhibit K85, a true and correct copy of the Land Use Commission’s Hearing Transcript dated March 27, 2003.

18. For example, Commissioner Coppa stated, “I’m trying to see what it’s going to look like, whether it’s two years from now or five years from now. [¶] Do you honestly think that we will have a site, another site picked for a landfill? And if so do you think that you could commit that without a doubt that this landfill will close?” *Id.* at 125:4–10.

19. Director Doyle answered, “We have made the commitment, yes.” Director Doyle again acknowledged “our commitment to be out of that area within five years.” *Id.* at 125:11; *see also id.* at 128:31 (Director Doyle: acknowledging the “our commitment to be out of that area within five years”).

20. Similarly, Chairperson Ing asked, “This proposed Blue Ribbon committee, could they come out with a recommendation that this Waimanalo Gulch landfill be expanded?” *Id.* at 177:22–24.

21. Director Doyle responded, “No.” *Id.* at 177:25. Chairperson Ing asked, “Thank you. You answered ‘no’.” *Id.* at 178:1. Director Doyle again responded, “No.” *Id.* at 178:2.

22. Similarly, Eric Crispin, Director of the Department of Planning and Permitting, stated, “The Administration’s will and resolve is to achieve this within

the timeframe that's been already reduced from 15 years to five years. And the schedule reflects the finding of that alternate solution, alternate site within that five-year period and having it up and running so we can close down Waimanalo Gulch." *Id.* at 168:19–24.

23. Based on the City's proposal and representations, the Planning Commission and the Land Use Commission approved the 21-acre expansion on the condition that the Landfill close by May 1, 2008. Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 5 (¶ 10); Exhibit K2, a true and correct copy of the Land Use Commission's Decision and Order Approving Amendment to Special Use Permit dated June 5, 2003, at 9 (¶ 12).

24. Contrary to its proposal and representations in 2003, the ENV asked to extend the closure date to May 1, 2010, and expand the Landfill. The Planning Commission granted the request, but the Land Use Commission only gave the City until November 1, 2009, to close the Landfill. Exhibit K155, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order Adopting with Modifications, the City and County of Honolulu Planning Commission's Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008, at 18 (¶ 1).

25. Again contrary to its proposal and representations in 2003, on December 3, 2008, the ENV filed an application for a new special use permit to

utilize an additional 93 acres, for a total of 200 acres. The Planning Commission approved the application for “a new SUP for the existing and proposed expansion of WGSL . . . until capacity as allowed by the State Department of Health is reached.” Exhibit K12, a true and correct copy of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order dated August 4, 2009, at 24.

26. However, the Land Use Commission approved the permit on the condition that “[m]unicipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012.” Exhibit K15, a true and correct copy of the Land Use Commission’s Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, at 8 (¶ 14).

27. Thus, the Landfill was supposed to close

- a. in 1997, eight years after it began operations;
- b. in 2003, when it reached capacity;
- c. in 2008, when it was promised to be closed and had been directed to be closed; and
- d. in 2009, when it was directed to be closed.

28. The ENV has been kicking the can down the road for over a decade, and the community surrounding the Landfill has suffered for it.

## THE LANDFILL IS HARMFUL AND UNSAFE

29. The Landfill causes substantial adverse impacts to the Resort and the surrounding area, including noise, odors, windblown litter, heavy truck traffic, blasting tremors, and blighted views from a premier resort area. Members of KOCA have submitted the following written comments on these issues in opposition to the Application to Modify:

a. Letter from Mario Beekes, a Ko Olina resident, to David K. Tanoue dated August 11, 2011: "We have a home directly behind the major drainage area on the 12th fairway of Ko Olina Golf Course and have been visiting since our purchase date of 2003. We have seen a notable increase in the amount of water during rain periods and at the end of last year the flood waters came within 2 feet of breaching the embankment protecting the Coconut Plantation development we live in. I have absolutely no doubt that the scarification of the Dump's hillsides have resulted in this increased water flow. The water flows last winter had a distinct 'dump' odor. Mr. Joe Whalen [sic] of Waste Management informed me that it was perhaps the sludge that was being dumped that day which we smelled! I don't think so. . . . You must reverse the path that your government officials have taken in the path related to promises made to close the dump, continuous infractions involving Waste Management and a general 'kick the can down the road' and then at the last minute conclude that you have no options but to continue to expand the dump." Exhibit K37 is a true and correct copy of the Letter.

b. Letter from Alan Nakamura of Ko Olina Golf Course to David Tanoue dated August 11, 2011: "For years I have observed rubbish trucks pass the resort with an abundant amount of trash and debris flying from their trucks that litter Farrington Hwy and the resort. We are continuously picking up the debris on a daily basis and found that it is a never ending task to control." Exhibit K42 is a true and correct copy of the Letter.

c. Letter from William Barnes and Sara Barnes, Ko Olina residents, to David K. Tanoue dated July 20, 2011: "We have already seen the previous deadline deleted even after we and many of our neighbors urged that it not be. Since then, we have watched the landfill get bigger and bigger. The communities on the Leeward side have experienced more and more environmental degradation (smells, dust, dirt, blowing trash bags), recent environmental hazards (contamination from medical waste resulting in beach closings) and economic loss (devaluation of real estate directly related to the landfill's presence). [¶] We have watched as the City and County have done little and then asked for extension after extension." Exhibit K117 is a true and correct copy of the Letter.

d. Letter from James Handsel, resident of Ko Olina, to David K. Tanoue dated August 12, 2011: "When the Landfill was scheduled to close seven years ago, we were told there was no time to find an alternative because it takes seven years to develop a site. The extension was allowed but no action was taken to start the process of developing an alternative. [¶] Here we are again. Same lack of



options, same shortness of time, same old story. While in the mean time, we have been subjected to the stifling foul odors & hazardous medical waste run off.” Exhibit K119 is a true and correct copy of the Letter.

e. Letter from S.B. Teramoto of the Association of Apartment Owners of The Coconut Plantation in Ko Olina Resort to David K. Tanoue dated July 25, 2011: “The most recent incident was the discharge of medical waste into the ocean; consequently, our lagoons were closed for use until the Health Department declared they were safe to use. Our daily lives are impacted by its close proximity. . . . Our residents have experienced tremors from blasts to expand the landfill, noise of the trucks, loose trash littering Farrington Highway and HI that fly out of the garbage trucks, and dust from the landfill.” Exhibit K36 is a true and correct copy of the Letter.

f. Letter from Ralph F. Harris of Ko Olina Fairways – Association of Apartment Owners to David K. Tanoue dated August 10, 2011: “It appears that the City, again without a plan or alternative site, has decided to seek yet another angle to extend the life of the dump. [¶] The City continues to pursue this site for over eleven (11) years, without a plan, without alternative sites, without alternative methods, and without alternative technologies to integrate into a comprehensive waste management plan for the Island of Oahu. The Waimanalo facility has already contaminated the shoreline including the delivery of medical waste on beach goes from Ko Olina to Waianae. The location and condition of the facility is a disaster

looming for more taxpayers' dollars to clean up future overflows." Exhibit K41 is a true and correct copy of the Letter.

g. E-mail from Greg Nichols of Ko Olina Golf Club to David K. Tanoue dated August 12, 2011: "The adverse effects of the landfill to our community and to the well-being of our residents and guests have been well documented. These adverse effects continue to get worse, not better. The dump is a visual blight growing steadily larger on the mountainside above our otherwise pristine resort community. Worse yet, the dump poses real and potential health threats to humans, animals and sea life that are completely unacceptable. [¶] This winter's terribly sad and disruptive overflow of medical waste had been forewarned as a threat and was completely avoidable, if the appropriate closure of the dump had taken place when it was originally scheduled." Exhibit K120 is a true and correct copy of the E-mail.

h. Letter from Chuck Krause of Ko Olina Marina to David K. Tanoue dated August 12, 2011: "I have seen first hand the 'bad' side of the landfill. Every day I see the plastic bags blowing from the garbage trucks going to the landfill, which because of our trade winds on this side of the island[,] inevitably end up in our once pristine waters off Ko Olina. I have seen first hand the results of last year's floods and the carnage thrown into our ocean because of poor management." Exhibit K121 is a true and correct copy of the Letter.

i. Letter from Masaki Nagamine of Watabe Wedding Corporation at Ko Olina to David K. Tanoue dated August 13, 2011: "We have continued to

contribute to enhance the tourism market by serving thousands of Japanese wedding couples, celebrating their once in a life time memories here at the Ko Olina Resort. Ambiance is very essential and to see debris, such as disposed medical needles, garbage bags coming in from the landfill and the whiff of the sour smell of the landfill across the street is just not one of the impressions we would like to deliver to our clients. They especially chose this location as their wedding site to experience bright sun reflecting to the blueness of the ocean and smell free environment. [¶] With the removal of the deadline, future wedding couples will continue to suffer from the adverse impacts of landfill operations, including heavy truck traffic, noise, odors, windblown litter and scarred views from the ocean.” Exhibit K45 is a true and correct copy of the Letter. Exhibit K114 is a true and correct copy of a photograph taken by the Ko Olina Aloha Team on January 16, 2011, at Ko Olina Resort of a wedding party near the beach following the spill.

j. Letter from Joseph Yamaoka of Resort Management Company at Ko Olina to David K. Tanoue dated August 12, 2011: “We are very concerned that the application once again ignores our outcries against repeated extensions of landfill operations over the last 15 years. Our property was built relying on the promised pending closure of the landfill. With the removal of the deadline, we will have to continue to suffer from the adverse impacts of that operation, including heavy truck traffic, noise, odors, windblown litter and scarred views from the resort. The Department of Environmental Services’ application ignores the State Land Use

Commission's efforts to close the landfill and force the City to find an alternate site to serve the City's long term needs. . . . Enduring the adverse impacts of the landfill as well as health concerns any longer is not acceptable to us. We implore you to deny the application." Exhibit K44 is a true and correct copy of the Letter.

k. Letter from Pieter and Claire van Wingerden dated August 11, 2004: "The Waimanalo Gulch Landfill poses a hazard to the health and well-being of the residents of the Waianae Coast and of Ko Olina and jeopardizes the significant economic contributions of the Ko Olina Resort. . . . The Waimanalo Gulch Landfill is a threat to the significant economic contribution that the Ko Olina Resort makes to the City and County of Honolulu and to the state of Hawaii . . . . [discussing financial figures from the CB Richard Ellis study, Exhibit K22] A single disastrous spill or series of spills could significantly change these figures, bringing to a halt future construction and driving tourists and homeowners from Ko Olina at alarming rates. [¶] On a personal note, we would like to say that we experienced the January 2011 spill. It was not a pretty sight. Quantities of medical waste and other landfill debris were seen in the water and on the beaches of Ko Olina and along the Waianae Coast. The water and beaches were closed to the public. The beaches of the hotels and time shares were empty, and business slowed at the Ko Olina marina, restaurants, hotels and timeshare. We wondered at the lost revenue, not only for the hotel and restaurant owners, but also in terms of the trickle-down effect on resort workers and community businesses. [¶] Finally, we want to note that the

time for action by the City and County is long overdue. We are aware that it takes several years to locate and construct a new landfill. However, we also realize that the city and County have been aware of this timeframe for some time and have failed to make substantial progress to identify a new landfill or to find other ways of dealing with the waste. The increased incineration of medical waste and increased recycling are steps in the right direction, and we urge the construction of a third burner at HPOWER and expanded recycling. We also urge the city to consider new technologies used in other cities and countries. We happen to have spent considerable time in both Japan and the Netherlands and are aware of the countries' use of innovative technologies which minimize landfill usage. There is no reason that Hawaii cannot be equally forward-looking in its waste management." Exhibit K122 is a true and correct copy of the Letter.

30. As these letters from Ko Olina Community Association members demonstrate, the Leeward community's health, safety, and welfare are seriously jeopardized by the Landfill's continued operation. Other businesses that operate in the area have taken the same view. Exhibit K40, a true and correct copy a Letter from Mona Abidar of Honu Group Communications, LLC to David K. Tanoue dated August 10, 2011 ("As evidenced by the wastewater catastrophe in January of this year, continued use of WGS� presents calamitous environmental, social, economic, health and safety risks to all of West Oahu. . . . If the landfill is allowed to remain open, the surrounding environment, ocean, beaches and marine life, and the

community's health and welfare are not safe and vulnerable to severe harm. . . . The City and State cannot afford to have another landfill disaster on its hands."); Exhibit K118, a true and correct copy of a Letter from Harriet Bloom of Commercial Contracting Hawaii to David K. Tanoue dated August 1, 2011 ("It's absurd to hear the city say they need an additional 15 years while alternative technologies are developed. Why does the west side of the island have to continue to endure the burden of the entire islands [sic] trash? . . . At the very least, we need an alternative location, if not several to eliminate some of the truck traffic, blowing rubbish, and sometimes foul smells, that are all too often noticeable everywhere around the Waimanalo Gulch Landfill.").

31. Over the years, I have made numerous complaints to the operator of the Landfill, Waste Management of Hawaii ("**Waste Management**"). True and correct copies of a selection of KOCA's complaint letters to Waste Management are submitted as Exhibits K134.

32. The Landfill is technically referred to as a "canyon fill." Waimanalo Gulch is a natural drainage-way where a stream would ephemerally run, draining an entire watershed above it. Canyon fills rely on multiple berms to hold the man-made mountain of opala in place. When there is a failure in construction or operation, this type of "fill" is inherently much more dangerous than a typical landfill where the opala is placed in a hole in the ground. Failure of the berms or of

the drainage systems can be catastrophic—as evidenced by what occurred in December 2010 and January 2011.

33. The operations at the Landfill have a long history of violating environmental regulations and resulting fines. There have been more than 20 violations cited by Environmental Protection Agency (“EPA”) and the Hawai‘i Department of Health, and close to \$3 million in fines assessed since 2005. Exhibit K59, a true and correct copy of a Letter from Laurence K. Lau of the Department of Health to Paul Burns of Waste Management and Eric Takamura of the ENV dated January 31, 2006, with enclosures; Exhibit K60, a true and correct copy of a Letter from Deborah Jordan of the EPA to Paul Burns of Waste Management and Eric S. Takamura of the ENV dated April 5, 2006, with enclosures; Exhibit K166, a true and correct copy of a Letter from Laurence K. Lau of the Department of Health to Joe Whelan of Waste Management and Timothy Steinberger dated May 13, 2010, with enclosures.

34. These violations have included extremely dangerous failures to properly construct or operate the cells, liners, leachate system, and gas collection system. The long history of negligent conduct exponentially increases the risks and dangers associated with a “canyon fill.”

35. In 2010, after the Department of Health issued more violations for improper construction of landfill berms, Waste Management constructed a new cell

(Cell E6) and entered it into operation. Operation and filling of Cell E6 occurred **before** the necessary drainage infrastructure was complete.

### **THE DISASTERS IN DECEMBER AND JANUARY**

36. On December 23, 2010, the Department of Health Clean Water Branch documented the unauthorized pumping of leachate from Cell E6 into State waters in its Investigation Report. See Exhibit K52, a true and correct copy of an Investigation Report by Matthew Kurano and Jamie Tanimoto of the Department of Health Clean Water Branch signed January 4, 2011.

37. This activity was completely inconsistent with and in contravention of, among other things, the Planning Commission's and Land Use Commission's findings regarding the Landfill's storm water diversion system:

74. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the exiting sedimentation basin if it originates onsite (surface run-off). . . . The water is eventually discharged to the ocean subject to the State Department of Health ("DOH") permitting requirements under the national pollution discharge elimination system ("NPDES"). . . .

75. Leachate does not come into contact with storm water. The storm water or surface water system is separate from the leachate collection system.

Exhibit K12, a true and correct copy of the Findings of Fact, Conclusions of Law, and Decision and Order by the Planning Commission dated August 4, 2009, at 15 (transcript citations omitted); Exhibit K15, a true and correct copy of the Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications by the Land Use



Commission dated October 22, 2009, at 5. The ENV was required to comply with these findings, but failed to do so. *See Exhibit 77*, a true and correct copy of the Transcript of Proceedings before the Land Use Commission dated February 2, 2011, at 152:25–153:5, 179:13–17 (Land Use Commission Chairman Devens, affirming that the ENV is required to comply with the Commissions' Findings of Fact and questioning whether there was a violation of Finding of Fact 74).

38. As a result of the December 2010 discharge, the City was ordered to issue a press release regarding the possible release of contaminated stormwater and leachate into state waters, but the City refused to issue the press release, claiming that the storm water was not leachate. Exhibit K55, a true and correct copy of an E-mail with attachment from Timothy Steinberger to Gary Gill, Steven Chang, and Joanna Seto of the Hawai'i Department of Health dated January 12, 2011.

39. On January 12, 2011, the Department of Health contacted the ENV and “demanded the posting of signs warning of contaminated water discharges from WGSL, given the predicted rainfall.” *Id.*

40. In an e-mail sent January 12, 2011, the ENV's Director, Timothy Steinberger, steadfastly refused to post signs, making a technical argument that signs were not required because the Landfill does not qualify as a “wastewater treatment, use or disposal system” as defined by a Hawai'i regulation. *Id.*

41. The e-mail was sent at 9:45 p.m. *Id.*

42. At that very moment, the rain was pouring at the Landfill. Between 9:00 p.m. and 10:00 p.m., the Landfill received close to three inches of rain. Exhibit K56 at 1, a true and correct copy of Station Summaries from Palehua Hawaii on January 12 and 13, 2011.

43. The heavy rains dislodged unknown quantities of municipal solid waste, sewage sludge, leachate, and medical solid waste from the Landfill into coastal waters. Medical solid waste includes sharps, chemotherapy wastes, and pathological wastes.

44. By the morning of January 13, 2011, significant quantities of medical waste and other Landfill debris were washing up in the Ko Olina Lagoons. Quickly this waste spread to beaches up the Leeward Coast and east as far as Nimitz Beach. See Exhibit K80, a true and correct copy of an Article, Medical Waste Clean-up Efforts Underway: More Medical Waste Wash Up On West Shores 5 Days After Landfill Spill, dated January 17, 2011 (“Robert and Barbara Billand showed off what they found after combing White Plains and Nimitz Beaches. [¶] Two plastic bags of used syringes, scissors and used vials that appeared to have blood inside.”).

a. Exhibit K105 is a set of true and correct copies of photographs at Ko Olina Resort of municipal solid waste and debris from the Landfill following the January spill.

b. Exhibit K108 is a set of true and correct copies of photographs at Ko Olina Resort of medical solid waste from the Landfill following the January spill.

Exhibit K154 is a set of true and correct copies of photographs of medical waste found at or around Ko Olina following the January spill taken by the Department of Health Clean Water Branch.

c. Exhibit K109 is a set of true and correct copies of photographs of the muddy waters filled with debris off the shores of Ko Olina Resort following the January spill.

45. Upon learning of the spill, Ko Olina Resort immediately closed the Lagoons. Exhibit K106 is a set of pictures at Ko Olina of the empty Lagoons during the beach closure. Exhibit K113 is a true and correct copy of a "Keep Out" sign posted at one of the Ko Olina Lagoon following the January spill.

46. Based on the December and January spills, the EPA found that the City and Waste Management had violated the Clean Water Act by failing to prevent runoff of surface water that had contacted waste; failing to control erosion to prevent loss of cover or washout of refuse slopes; failing to properly manage leachate; and failing to adequately retain and remove silt from surface water before it was discharged from the Landfill. Exhibit K123, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

47. The ENV and Waste Management were slow to clean up the municipal solid waste. Consequently, Ko Olina's workers had to assist in the cleanup, as explained by the testimony of Duke Hospodar. Exhibit K103 is a set of true and correct copies of photographs of the Ko Olina Aloha Team's efforts to clean up the

waste at the Resort from the Landfill. Exhibit K104 is a set of true and correct photographs of before and after photographs of the clean-up efforts following the January spill. Exhibit K110 is a set of true and correct copies of videos of the Ko Olina Aloha Team's efforts to clean up the waste at the Resort from the Landfill.

48. Ko Olina Resort spent substantial time, effort, and money to clean up the municipal solid waste and medical waste that washed up on Ko Olina's beaches. The clean-up costs were not less than \$19,629.18. See Exhibit K139, a true and correct copy of an invoice for the clean-up work associated with the January 2011 spill.

49. In addition, Ko Olina's reputation as a premiere resort destination was tarnished and undermined by the news reports that the Ko Olina Lagoons were covered with medical waste from the Landfill. See Exhibit K99, a set of true and correct copies of news articles covering the January spill and its effects on Ko Olina; Exhibit K133 is a set of true and correct copies of local news videos covering the January spill and its effects on Ko Olina.

50. It is amazing how far-reaching the bad news of the January spill has spread. Ko Olina Resort and Marina had a booth at a boat show in Seattle after the spill. The Ko Olina representative in the booth, Charles Leonard, General Manager of Ko Olina Marina, was asked repeatedly whether the Ko Olina beaches were contaminated with medical waste. See Exhibit K77, a true and correct copy of a

Transcript of Proceedings Before the Land Use Commission dated February 2, 2011, at 252:10-18 (testimony of Charles Leonard).

51. The spill would not have happened if the Landfill had been closed as scheduled in 1997, in 2003, in 2008, or again in 2009.

**THE LANDFILL THREATENS ALL OF ONGOING AND FUTURE  
ECONOMIC BENEFITS PROVIDED TO THE COMMUNITY BY  
KO OLINA RESORT**

52. Ko Olina provides substantial economic benefits to the surrounding community, the City, and the State.

53. An independent economic analysis was conducted by CB Richard Ellis in January 2011 entitled Fiscal & Economic Benefits Analysis, Ko Olina Resort & Marina, Honolulu, HI. A true and correct copy of the report is marked as Exhibit K22.

54. Current operations of Ko Olina Resort generate \$520 million in direct spending annually and provide 2,800 jobs locally. Additionally, this generates indirect and induced benefits of \$280 million and 1,500 additional jobs locally and statewide.

55. Future developments at Ko Olina will almost double the benefits generated by the existing Ko Olina Resort, providing \$1.4 billion in total annual economic activity (\$925 million directly and \$501 million indirect and induced) and supporting 8,000 jobs (5,200 directly and 2,800 indirect and induced).

56. Construction period impacts for future proposed developments at Ko Olina will include over \$3.7 billion in direct spending, creating 26,700 jobs. Indirect and

induced economic impacts of this same spending will include an additional \$2 billion and 16,900 jobs. At a total of \$5.7 billion and 43,000 jobs, the economic impact of Ko Olina is approximately equal to Honolulu's rail project.

57. Existing development at Ko Olina generates \$20.3 million in tax revenue to the City and \$40.4 million to the State of Hawai'i, annually.

58. At full build-out, Ko Olina will generate \$55.5 million in annual tax revenues to the City and \$71.5 million to the State. This revenue does not include the construction period tax revenues which will generate an additional \$193 million in one-time revenues to the City and State combined.

59. The Landfill threatens all of these ongoing and future economic benefits. A landfill would not be approved to be built today across the street from substantial residential and tourist destination that which provides such substantial benefits to the community, the City, and the State. One of the "General Policies" in the proposed Ewa Development Plan states: "Do not develop the Makaiwa Gulch area identified by the Mayor's Advisory Committee in December 2003 as a landfill. It is in an area planned for residential use and is adjacent to the Ko Olina Resort, which plays an important role in job creation for Ewa." Exhibit K24, a true and correct copy of an excerpt of the Proposed Ewa Development Plan. If the Landfill would not be approved to be built at this point in time, it should not be approved for extension.

**THE ENV HAS NOT MADE REASONABLY DILIGENT EFFORTS TO FIND  
ALTERNATIVES TO THE LANDFILL**

60. The only reason the Landfill has not closed is that the ENV has failed to make reasonably diligent efforts to find alternatives to the Landfill. In 2003, the ENV promised that it would find an alternate site and have it operational within five years. In fact, after saying it would find a new site and being directed to do so by the Land Use Commission, the City decided to choose the existing Landfill as a "new" landfill site in 2004.

61. In 2008, when the ENV was supposed to have identified and developed a new landfill site, the ENV was instead in the process of requesting an extension of the Landfill. A new site had not been selected or developed. Thus, after saying it would find and develop a new site in five years and after having obtained a five-year extension to do so based on that representation to the Land Use Commission, the ENV was no closer to selecting and developing a new site in 2008 than it was in 2003.

62. In 2009, the ENV was given a two-year extension to accept municipal solid waste. The Planning Commission and the Land Use Commission directed the ENV to exercise reasonable diligence in locating and developing a new site. The Land Use Commission issued its order in October 2009. The ENV planned to wait for a full year to begin landfill site selection committee meetings in October 2010. See Exhibit K21, a true and correct copy of the ENV's Status Report on Reducing and/or Continuing the Use of Waimanalo Gulch Sanitary Landfill (WGSL) Public

Hearing dated October 19, 2010, at 9. But even that plan apparently fell through, as the start date was moved to November 2010, *see id.*, and then to January 2011.

63. The committee was set to provide its recommendation to the Mayor by August 2011, but that date was pushed back to October 2011. Exhibit K91, a true and correct copy the ENV's First Annual Report, Status of Actions Taken to Satisfy the State Land Use Commission's Order dated October 2, 2009, and Status of Operations, Waimanalo Gulch Sanitary Landfill dated July 2010, at 2; Exhibit K92, a true and correct copy of the ENV's Second Annual Report, Status of Actions Taken to Comply with the State Land Use Commission's Order dated October 2, 2009, and Status of Operations, Waimanalo Gulch Sanitary Landfill dated June 1, 2011, at 2.

64. It is now December, and the committee has still not made its recommendation. That fact is unfortunately not surprising based the flaws in the committee's methodology, as identified by Dwight Miller in his testimony.

65. When the ENV obtained the extension in 2003, it claimed to be working towards utilizing alternative technologies that would address the components of the waste stream that could not be taken to H-POWER through "demonstration" technologies. Eight years later, the ENV has not been successful in "demonstrating" any of these technologies. The ENV is no closer to utilizing these types of new technologies today than it was in 2003.

66. Instead of exercising reasonable diligence in developing new landfill sites and new technologies, for the last eight years the ENV has continued to kick the



proverbial can down the road. While the City has done next to nothing to alleviate the problem, it has earned tens of millions of dollars in tipping fees for inaction and neglect.

67. It is hard to believe that the City is really trying to find a new site. The site selection committee is supposedly looking for one. Meanwhile, the ENV is asking for an indefinite extension of the life of the Landfill. Something does not fit.

### CONCLUSION

68. The adverse effects of the Landfill continue to get worse, not better. The Landfill is growing steadily larger on the mountainside above our otherwise pristine community. The Landfill poses health and safety risks to the Leeward community in general and the Ko Olina Resort in particular.

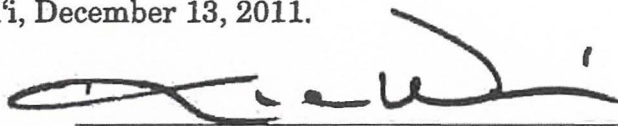
69. The Ko Olina Resort's operations generate millions of dollars for the economy, thousands of jobs for local workers, and millions of dollars in tax revenues. All of those benefits to the surrounding community, the City, and the State are cast in doubt by the Landfill's shadow.

70. This Landfill is no longer viable. It is time for the Landfill to stop accepting municipal solid waste and for the ENV to find a new site and new technologies. The ENV must be held accountable for its promises and obligations to the community.

71. The Application to Modify should be denied.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: Honolulu, Hawai'i, December 13, 2011.

A handwritten signature in black ink, appearing to read 'Ken Williams', written over a horizontal line.

KEN WILLIAMS

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

In the Matter of the Application of  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE**

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

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day a copy of the foregoing document was  
duly served on the following persons:

ROBERT CARSON GODBEY, ESQ.  
Corporation Counsel  
DANA VIOLA, ESQ.  
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Attorneys for Intervenor  
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DATED: Honolulu, Hawai'i, December 13, 2011.

CADES SCHUTTE  
A Limited Liability Law Partnership



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CHRISTOPHER T. GOODIN

Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAI'I

In the Matter of the Application of  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE**

Application to Modify SUP No.  
2008/SUP-2 (SP09-403) by Modifying (1)  
Condition No. 1 of the Planning  
Commission's Findings of Fact,  
Conclusions of Law, and Decision and  
Order, dated June 10, 2019, and (2)  
Condition No. 5 of the LUC's 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, certified on November 1, 2019,

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day a copy of the foregoing document was  
duly served on the following persons:

DANA M.O. VIOLA, ESQ.

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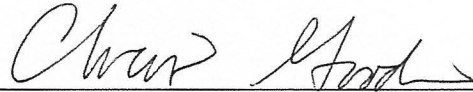
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Attorneys for  
OFFICE OF PLANNING, STATE OF HAWAII

DATED: Honolulu, Hawai'i, June 9, 2023.

CADES SCHUTTE  
A Limited Liability Law Partnership



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KO OLINA COMMUNITY ASSOCIATION  
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