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LAND USE COMMISSION  
STATE OF HAWAII

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June 13, 2016

Planning Commission  
City and County of Honolulu  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Re: A Request for Follow-Up Status Report or Extension on State Special Use Permit to Supersede Existing Special Use Permit to Allow a 92.5-Acre Expansion and Time Expansion for Waimanalo Gulch Sanitary Landfill, Waimanalo Gulch, Oahu, Hawaii; Tax Map Key: 9-2-03: 72 and 73

Dear Commissioners:

At the request of the Planning Commission, the Office of Planning (“OP”) submits this status report. We are appreciative of the Planning Commission’s efforts to ensure that this matter is completed on a timely basis. At the outset, however, we note that OP is not a party or participant at the Planning Commission level. Accordingly, the information available to us primarily relates to the matters that have occurred at the Land Use Commission (“LUC”). Where relevant, we have related our limited understanding of actions at the Planning Commission as reported by one of the parties to the LUC.

In 2009, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order (the “2009 Decision and Order”) granting a Special Use Permit for the Waimanalo Gulch Sanitary Landfill, with a termination date of July 31, 2012. The applicant was the Department of Environmental Services, City and County of Honolulu (“ENV”). Senator Hanabusa, Representative Shimabukuro, and the Ko Olina Community Association (“KOCA”) were Intervenor. The 2009 Decision and Order was appealed to the Circuit Court, and then to the Hawaii Supreme Court. On May 4, 2012, the Hawaii Supreme Court reversed the 2009 Decision and Order, finding that the LUC did not have sufficient facts in the record to justify a termination date of July 31, 2012. The Hawaii Supreme Court, however, also found that the imposition of a termination date appeared to be a material condition of the LUC approval. The LUC, therefore, might not have approved the Special Use Permit in the absence of that termination date. Accordingly, rather than simply strike

down the termination date, the Hawaii Supreme Court remanded the entire case back to the LUC for appropriate proceedings which could include an enlargement of the record. In fact, the Hawaii Supreme Court encouraged the LUC to consider the testimony before the Planning Commission in the proceeding described below.

On June 28, 2011, during the pendency of the judicial appeals, ENV filed a motion with the Planning Commission to delete the termination date of July 31, 2012 from the Special Use Permit. OP understands that the Schnitzer Steel Hawaii Corp. ("Schnitzer Steel") was added as an Intervenor to this motion, and that the Planning Commission held several days of hearing on the motion to delete the termination date. After the Hawaii Supreme Court remanded the Special Use Permit to the LUC, ENV then asked the Planning Commission for permission to withdraw its motion to delete the termination date. OP further understands that the Planning Commission decided to stay those proceedings rather than dismiss it.

On October 8, 2012, the LUC remanded the matter to the Planning Commission to consolidate the two proceedings, update the record, make a decision as to the appropriate conditions to be imposed, and then send its decision and the updated record back to the LUC.

On May 16, 2014, the LUC held a hearing to find out the status of the proceedings before the Planning Commission. The City reported that it was in settlement discussions with some, but not all, of the parties. The LUC ordered ENV to file written status reports every two months beginning in July 2014.

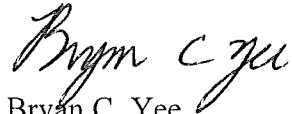
On May 18, 2016, the LUC held another status hearing to find out the status of the proceedings before the Planning Commission. ENV reported that they had reached an agreement to continue the Planning Commission proceedings to April 22, 2017 with all parties, except for Senator Hanabusa. ENV intends to file a motion to continue if an agreement amongst all parties is not reached. At this time, OP takes no position on matters currently before the Planning Commission. Settlement discussions were ongoing with some, but not all, of the parties.

Special Use Permit No. 2008/SUP-2, therefore, is pending before the Planning Commission. The motion to amend has been pending since June 28, 2011. The remanded Special Use Permit has been pending since October 8, 2012. Some but not all of the parties have been engaged in settlement discussions. After the Planning Commission completes its processes and issues a decision, it will then forward the entire consolidated record and decision to the LUC for consideration and possible approval pursuant to section 205-6(d),

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Hawaii Revised Statutes (assuming the Planning Commission again grants the Special Use Permit).

Very truly yours,



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