

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 Modify SUP No. 2008/SUP-2 by  
Modifying the State 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

FILE NO. 2008/SUP-2  
LUC DOCKET NO. SP09-403

INTERVENOR SCHNITZER STEEL  
HAWAII CORP.'S **PRE-HEARING  
CONFERENCE STATEMENT;  
CERTIFICATE OF SERVICE**

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

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INTERVENOR **SCHNITZER STEEL HAWAII CORP.'S PRE-HEARING  
CONFERENCE STATEMENT**

Intervenor SCHNITZER STEEL HAWAII CORP. ("Schnitzer"), by and through its  
attorneys, Carlsmith Ball LLP, hereby submits its Pre-Hearing Conference Statement pursuant to  
the Rules of the Planning Commission ("RPC") § 2-66.

**I. INTRODUCTION**

The subject matter of this case is State Special Use Permit ("SUP") File No. 2008/SUP-2,  
issued to the Waimanalo Gulch Sanitary Landfill ("WGSL"), located in Ewa, Oahu. On June 28,  
2011, the Department of Environmental Services, City and County of Honolulu ("ENV") filed an  
application for modification of SUP File No. 2008/SUP-2. Specifically, ENV seeks to delete  
Condition No. 14 of SUP File No. 2008/SUP-2, which relates to continued use of the WGSL.  
Condition No. 14, as set forth in the State Land Use Commission Order Adopting the City and  
County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision  
and Order with Modifications, dated October 22, 2009 (the "2009 LUC Order"), provides 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.

WGS� is the only landfill currently permitted by the Department of Health, State of Hawaii (“DOH”) to accept municipal solid waste on Oahu. Though there are ongoing efforts to locate and develop an alternative landfill site, such efforts are not anticipated to be complete by the July 31, 2012 deadline provided in Condition No. 14.

Schnitzer, as a recycling facility whose operation is also regulated by the DOH, has an interest in the continued use and viability of WGS� beyond July 31, 2012. Schnitzer’s Solid Waste Management Permit (“SWMP”) specifically requires that Schnitzer must deposit its recycling residue in a DOH-permitted landfill, or in other words, WGS�. If WGS� cannot accept municipal solid waste after July 31, 2012, and an alternative landfill site is not developed on Oahu before then, Schnitzer will have no other place to dispose of its recycling residue. It will no longer be able to comply with the terms of its SWMP. This will have a significant impact on Schnitzer’s recycling operation on Oahu. Schnitzer, therefore, supports ENV’s pending application.

## **II. STATEMENT OF FACTS**

### **A. DESCRIPTION OF THE APPLICATION**

ENV filed the present application with the Department of Planning and Permitting, City and County of Honolulu (“DPP”) on June 28, 2011.

The Notice of Publication for the hearing on the application appeared in the Honolulu Star-Advertiser on September 4, 2011. The hearing was set for October 5, 2011.

On September 9, 2011, the Director of DPP recommended approval of the application. In recommending the approval, the Director essentially made the following findings and conclusions:

- Volumes of municipal solid waste delivered to WGS� has steadily decreased (with adjustment for Oahu’s population growth) due to waste diversion programs involving recycling.
- There are no other alternative sites or methods to dispose of municipal solid waste that cannot be recycled or disposed of under current programs.
- The pending application is not subject to the environmental disclosure requirements of Chapter 343, Hawaii Revised Statutes (“HRS”).
- Under a Solid Waste Operating Permit, issued by DOH on June 4, 2010, DES is allowed continued disposal at WGS� until design grades are met or until restricted by any limits of the SUP, whichever occurs first.
- There is adequate capacity to continue operation of the WGS� for another 15 years based on current disposal rates.
- The development of an alternate landfill as required in Condition No. 4 of the 2009 LUC Decision, is projected to take seven years, well beyond the deadline of Condition No. 14.
- Deletion of Condition No. 14 will not have any increased social impacts.
- Denial of the application may have significant adverse impacts upon the health, safety, and welfare of the general public, as well as local businesses.
- The application is in compliance with State and City policies and no infrastructure impacts are anticipated.

On September 16, 2011, Schnitzer filed a Petition to Intervene in the proceedings relating to the application. Also, on September 16, 2011, Ko Olina Association and Maile Shimabukuro filed a Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties or in the alternative Motion to Intervene with DPP.

On October 5, 2011, the Honolulu City and County Planning Commission (“Planning Commission”) granted Schnitzer’s Petition to Intervene. The Planning Commission also denied

the Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties, but granted the Motion to Intervene as joint parties.

The matter has now converted to a contested case proceeding pursuant to RPC § 2-56(c).

#### B. HISTORY OF THE PROJECT

As indicated in the present application, use of WGS� has been reviewed and approved by the Planning Commission and the State Land Use Commission (“LUC”) on several occasions.

These approvals are summarized as follows:

- On February 4, 1989, the Planning Commission approved the SUP establishing WGS� within the agricultural district (SUP File No. 86/SUP-5). The LUC approved the SUP on April 20, 1987.
- On July 26, 1989, the Planning Commission approved an amendment to the SUP, which expanded WGS� by 26 acres. The LUC approved the amendment on October 31, 1989.
- On March 13, 2003, the Planning Commission approved an amendment to the SUP, which expanded WGS� by an additional 21 acres. In approving the amendment, the Planning Commission set a deadline of May 1, 2008 to close WGS�. The LUC approved the amendment on June 9, 2003. The LUC also adopted the Planning Commission’s condition for a deadline for closing WGS�.
- On December 3, 2008, ENV filed an application for a new SUP to supersede SUP File No. 86/SUP-5. The Planning Commission conducted a contested case hearing on this application. The opponents in that contested case hearing were Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa. On July 31, 2009, the Planning Commission recommended approval of the new SUP subject to 10 conditions. The Planning Commission specifically stated that it did not want to condition its approval of the SUP on a deadline for accepting waste at WGS�. On October 22, 2009, the LUC approved the application for a new SUP. Notwithstanding the Planning Commission’s decision, the LUC proceeded to condition its approval of the SUP on the July 31, 2012 deadline. ENV thereafter filed an appeal against the LUC, Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa in the Circuit Court of the First Circuit. That appeal is still ongoing.

#### C. SCHNITZER’S INTEREST IN THE APPLICATION

Schnitzer is a major recycler in the State. Formerly known as Flynn Learner and Hawaii Metal Recycling, its recycling operation has been serving Hawaii since 1949. Schnitzer's

operations on Oahu employ approximately 40 people, and include equipment and processes to recycle ferrous and non-ferrous scrap metal. Its state-of-the-art metal shredder can reduce a full-size automobile into fist-sized pieces of shredded steel scrap in approximately 30 seconds. For each ton of scrap metal received by Schnitzer, its recycling operation reduces the volume by 80%. Much of this material would otherwise take up significant space in WGS�, or be simply abandoned on Oahu's streets and vacant lots.

Recycling operations produce some residual waste. Schnitzer shreds approximately 120,000 tons of scrap metal every year. In so doing, it generates approximately 20,000 tons of recycling residue. That residue consists primarily of plastics, glass, carpet and other nonmetallic automobile and appliance components.

Schnitzer's recycling operations are permitted by the DOH through issuance of a SWMP. One of the conditions of the SWMP is that Schnitzer's recycling residue must be deposited in a DOH-permitted solid waste disposal facility. WGS� is the only DOH-permitted solid waste disposal facility on Oahu where Schnitzer can dispose of its recycling residue.

If WGS� is limited to ash and residue from H-POWER after July 31, 2012, then Schnitzer will have no other place to dispose of its recycling residue. It will no longer be able to comply with the terms of its SWMP. This will have a significant impact on Schnitzer's recycling operation on Oahu. Without question, Schnitzer will suffer substantial harm to its business interests. Schnitzer has an interest in protecting those business interests.

### **III. THE ISSUE TO BE CONSIDERED AND SCHNITZER'S STATEMENT OF POSITION**

The sole issue for consideration in this contested case is whether Condition No. 14 should be deleted. This is an issue properly before this Commission. RPC section 2-49 states that a modification or deletion of a condition shall be processed in the same manner as the original

petition for a special use permit. Section 205-6, HRS, allows the county planning commission to permit certain “unusual and reasonable” uses within the agricultural district other than those for which the district is classified.

In determining whether an “unusual and reasonable” use within an agricultural district should be permitted, RPC § 2-45 sets out a five-part test to be applied. This test is similar to that found in the LUC Rules, HAR §15-15-95(b).

The analysis and subsequent conclusion that WGS� meets the five-part test set out in RPC § 2-45 and HAR §15-15-95(b) has already been completed by this Commission and the LUC when the original SUP in File No. 2008/SUP-2 (LUC Docket No. SP09-403) was granted on October 22, 2009. The present application does not affect the prior analysis and conclusion. The application does not seek to make changes to the physical condition, use, or location of WGS�. The application only seeks to delete the deadline set.

It is Schnitzer’s position that unless and until an alternative landfill site has been located and developed, WGS� must continue to accept municipal solid waste. Otherwise, Schnitzer and other recycling facilities, who are regulated by the DOH, will have no means of complying with their DOH permits. Recycling services may no longer be viable under such circumstances. Condition No. 14 must be deleted in order to avoid these detrimental effects.

#### **IV. PROPOSED CASE MANAGEMENT AND SCHEDULE**

As outlined above, the issues raised in ENV’s application are not new. In addition, Intervenor Ko Olin Community Association and Maile Shimabukuro are also not new to the issues involved in this matter. These parties participated in the contested case proceedings relating to issuance of SUP File No. 2008/SUP-2. Under these circumstances, discovery is unnecessary; it would add nothing, and would merely prolong this process needlessly. Of

course, the parties should have the right to subpoena witnesses and documents for the contested case hearing.

In addition, Schnitzer proposes that the testimony heard at the public hearing for SUP File No. 2008/SUP-2, held on October 5, 2011, be affirmatively made a part of the administrative record for the contested case hearing. Schnitzer also proposes that all exhibits submitted by the parties be affirmatively made a part of the administrative record. This will ensure that all available information is considered by the presiding officer in the decision-making process.

Schnitzer further proposes that all parties present their cases-in-chief through written direct testimony, submitted in advance of the hearing as described below, with cross-examination and re-direct to occur through live testimony at the hearing. Cross-examination should be limited to issues raised in direct testimony, while re-direct should be limited to issues raised on cross-examination. This is the predominant practice in administrative proceedings like this contested case. It will render the hearing in this matter immeasurably more manageable and efficient; by any reasonable estimate, conducted in this manner, the hearing should be concluded within three days.

In light of the history described above and the fact that the issues have been fully framed, Schnitzer proposes the following schedule for pre-hearing submissions and the contested case hearing:

- Each party to file and serve a Witness List and Exhibit List no later than October 19, 2011.

- Each party to file and serve Witness Statements (setting forth the direct testimony of each witness that it intends to call at the hearing held in this matter) and Exhibits no later than October 26, 2011.
- Each party to file and serve a Pre-Hearing Statement in lieu of a brief no later than November 2, 2011.
- Any motions and requests for subpoenas are to be filed no later than November 9, 2011.
- Responses to motions, if any, are to be filed no later than November 16, 2011.
- Hearings on motions, if necessary, are to be held no later than November 23, 2011.
- Contested case hearing to be conducted from November 28 to November 30, 2011.

DATED: Honolulu, Hawaii, October 12, 2011.



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IAN L. SANDISON  
DEAN H. ROBB  
TIM LUI-KWAN

Attorneys for Petitioner  
SCHNITZER STEEL HAWAII CORP.



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CERTIFICATE OF SERVICE

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I hereby certify that a true and correct copy of the foregoing document was duly served  
upon the parties identified below by hand delivery on the date set forth below:


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DATED: Honolulu, Hawaii, October 12, 2011.



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