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DEPT OF PLANNING
AND PERMITS
CITY & COUNTY OF HONOLULU

Attorneys for Petitioner
SCHNITZER STEEL HAWAII CORP.

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

**INTERVENOR SCHNITZER STEEL HAWAII CORP.'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

Intervenor Schnitzer Steel Hawaii Corp. ("Schnitzer") submits these proposed findings of fact, conclusions of law and decision and order pursuant to the oral order of the Planning Commission, City and County of Honolulu (the "Planning Commission") on April 23, 2012.

FINDINGS OF FACT

I. DESCRIPTION OF THE PROPERTY

1. The Waimanalo Gulch Sanitary Landfill (“WGSL” or the “Landfill”) is located at 92-460 Farrington Highway, Honolulu, Ewa, Oahu. *See* Letter from David K. Tanoue, Director of the Department of Planning and Permitting, to Gayle Pingree, Chair of the Planning Commission, dated September 9, 2011 (“DPP Recommendation”), at 1.

2. WGSL is owned by the City and County of Honolulu (the “City”) and managed by Waste Management of Hawaii, Inc. *See* Tr. 04/11/12, 162:22-24, 170:8-9.

3. The state land use district designation for the Property is Agricultural District. *See* DPP Recommendation, at 1.

4. The existing City zoning district for the Property is AG-2, General Agricultural District. *See* DPP Recommendation, at 1.

5. The Ewa Development Plan recognizes the existing landfill. *See* Ex. A35, §4.5.

6. Surrounding land uses include the Hawaiian Electric Company Kahe Power Plant to the west, single-family dwellings and Ko Olina Resort to the south, and vacant lands to the north and east. *DPP Recommendation*, at 2.

7. WGSL is the only licensed or permitted municipal solid waste (“MSW”) landfill on the island of Oahu. *See* DPP Recommendation, at 2; Tr. 01/25/12, 59:6-9.

II. PRIOR PROCEEDINGS

8. WGSL received a State Special Use Permit (“SUP”) in 1987. *See* Ex. K69, at 9-10. The SUP covered 60.5 acres of land. *See id.*

9. WGS� began its operations in 1989. *See* Ex. A15, at 5. That same year, the site was expanded by an additional 26 acres to enable the construction of the administration building, weighing station, drainage structures, and access roads. *See* Ex. A6, at 9-10.

10. On March 13, 2003, the Planning Commission granted the Department of Environmental Services' ("ENV") application to expand the Landfill by 21 acres. *See* Ex. A7, at 5-6. At that time, based on the WGS�'s then-existing capacity, the City anticipated that the Landfill would close in five years, so the Planning Commission recommended on March 13, 2003, that ENV submit an alternative landfill site, or sites to the City Council by December 31, 2001, and close WGS� no later than May 1, 2008. *See id.*

11. On June 9, 2003, the State Land Use Commission ("LUC") issued a decision which also required the City Council to select a new site for a landfill, with the assistance of the Blue Ribbon Site Selection Committee, by June 1, 2004. *See* Ex. A8, at 7.

12. The City Council received an extension of the June 1, 2004 deadline set by the LUC, and on December 1, 2004, selected the Waimanalo Gulch site as the City's future landfill site. *See* Ex. A11, at 1. The City Council determined that the Waimanalo Gulch site would satisfy Oahu's need for a landfill to manage multiple solid waste for the foreseeable future. The City Council concluded that:

- (1) Waimanalo Gulch site had at least 15 years of capacity left;
- (2) Waimanalo Gulch site is the most economical site for which all costs and revenues are known factors;
- (3) Other sites would require large amounts of money to acquire land and develop the site and infrastructure;
- (4) An operating contract is already in existence; and
- (5) The Landfill operator is committed to addressing community concerns.

See id. at 2.

13. Only July 6, 2007, ENV filed an application to amend the 2003 Planning Commission decision by extending the deadline to accept waste at WGS� from May 1, 2008 to May 1, 2010, or until WGS� reached its permitted capacity, whichever occurred first. *See* A14, *passim*. ENV’s request was deemed to be necessary in order to accommodate and implement the City Council’s selection of WGS� as the City’s future landfill site. The Planning Commission granted ENV’s application on January 16, 2008. *See* Ex. A15, 7-8.

14. ENV needed to complete a Final Environmental Impact Statement (“FEIS”) for the further expansion of WGS� by approximately 92.5 acres, to the full acreage of the site at approximately 200 acres, before applying for a new SUP to cover the entire WGS� property. *See* Ex. A14, at 2; *see also* Ex. A16, at 10.

15. The LUC adopted the Planning Commission’s recommendation, but shortened the waste acceptance cutoff from May 1, 2010 to November 1, 2009, and required ENV to report to the LUC every six months on the actions taken to mitigate further use of WGS�. *See* Ex. A16, at 18.

16. On December 23, 2008, ENV filed an application for a new SUP to supersede the existing SUP (State Special Use Permit No. 86/SUP-5) that would authorize ENV to use an additional 92.5 acres of the site and operate WGS� to capacity. *See* Ex. A18, at 2-3.

17. 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. Schnitzer was not a party to those contested case proceedings. *See* A18, at 3.

18. On July 31, 2009, the Planning Commission approved the application subject to ten conditions and further recommended that all conditions previously placed on WGSL under SUP File No. 86/SUP-5 would be null and void. *See id.*, at 24-27.

19. In its 2009 decision, the Planning Commission made the following findings:

- It would take more than seven years to identify and develop a new landfill site (other than WGSL).
- On December 1, 2004, the City Council adopted Resolution No. 04-349, CD1, FD1, which selected the Waimanalo Gulch site as the site for the City's landfill.
- The proposed expansion of WGSL within the Waimanalo Gulch site was needed because WGSL is a critical part of the City's overall integrated solid waste management efforts.
- Continued availability of WGSL is required as a permit condition to operate HPOWER, for cleanup in the event of a natural disaster, and because there is material that cannot be combusted, recycled, reused, or shipped.
- 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.
- WGSL is the only permitted public MSW facility on the island of Oahu and the only permitted repository for the ash produced by HPOWER.
- WGSL is a critical portion of the City's overall ISWMP, which looks at all of the factors that make up solid waste management, including reuse and recycling, the HPOWER facility, and landfilling for material that cannot be recycled or burned for energy.
- Other items that cannot be recycled or burned at HPOWER are deposited at WGSL, 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.

See id. at 8, 18-19.

20. The Planning Commission also concluded as follows:

[T]he Applicant's request for a new State Special Use Permit (a) is 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 Special Use Permit was granted continue to exist and that the land on which the WGSL is located continues to be unsuited for agricultural purposes.

See id. at 24.

21. In its 2009 decision, the Planning Commission did not impose an expiration date for the SUP or any deadline for the acceptance of waste at WGSL. Instead, the Planning Commission concluded that “[t]he term or the length of the new SUP shall be until the Waimanalo Gulch reaches its capacity as compared to a definite time period of ‘X’ number of years.” *See Ex. A17*, at 2.

22. The Planning Commission, however, did impose several conditions to monitor the City's progress toward finding a new landfill site. Certain of those conditions are:

- On or before November 1, 2010, begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL.
- Continue efforts to use alternative technologies to provide a comprehensive waste stream management program that includes HPOWER, plasma arc, plasma gasification, and recycling technologies, as appropriate, and shall continue efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
- Provide annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGSL's operations, and Applicant's compliance with conditions imposed herein.
- Notify the Planning Commission of termination of the use of the Property as a landfill.

See Ex. A18 at 25-26.

23. 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 with Modifications (“2009 LUC Decision”). *See* Ex. A19. Despite adopting the Planning Commission’s findings, including that it would take more than seven years to identify and develop a new landfill site, the LUC issued the SUP subject to the following condition:

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.

See id. at pgs 4, 8-9.

24. On November 19, 2009, ENV filed an appeal against the LUC, Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa in the Circuit Court of the First Circuit. *See* Ex. 21. Among the issues appealed was the LUC’s imposition of Condition No. 14. *See id.* at 2.

25. On September 21, 2010, the Circuit Court affirmed Condition No. 14 of the LUC decision. *See id.*

26. On November 12, 2010, ENV filed a Notice of Appeal to the Hawaii Intermediate Court of Appeals. *See* DPP Recommendation, Attachment B, at 10.

27. On July 14, 2011, ENV moved to transfer the appeal to the Hawaii Supreme Court, which was granted by the Supreme Court on August 1, 2011. *See* ENV’s Memo. in Opp. to Mot. to Dismiss, at 5. That appeal is still ongoing. *See id.*

III. CURRENT APPLICATION

28. On June 28, 2011, ENV filed a SUP Application (the “Application”) with DPP pursuant to HRS Section 205-6, Title 15-15 of the Hawaii Administrative Rules (Rules of the Land Use Commission), and Section 2-49 of the Rules of the Planning Commission (“RPC”). DPP Recommendation, at 7; *see also id.*, Attachment B, *passim*.

29. The Application requests deletion of Condition No. 14 of the 2009 LUC Decision. No other changes were proposed in the Application. DPP Recommendation, at 2.

30. The following City agencies were requested to evaluate the Application: Board of Water Supply; Department of Emergency Management; Department of Design and Construction; Department of Facility Maintenance; Honolulu Fire Department; Honolulu Police Department; and Department of Transportation Services. DPP Recommendation, at 5-6.

31. The following State agencies were requested to evaluate the Application: Department of Agriculture; Department of Land and Natural Resources; Department of Business, Economic Development and Tourism, Land Use Commission; Department of Business, Economic Development and Tourism, Office of Planning; Department of Land and Natural Resources, State Historic Preservation Division; Department of Health; and Department of Transportation. DPP Recommendation, at 6.

32. The following federal agencies were requested to evaluate the Application: Army Engineer District, Honolulu; and Department of the Interior, Fish and Wildlife Service. DPP Recommendation, at 6.

33. No objections were raised by the public agencies requested to evaluate the Application. DPP Recommendation, at 6.

34. Copies of the Application were transmitted to the Honokai Hale/Makakilo/Kapolei Neighborhood Board No. 34 and the Nanakuli Neighborhood Board No. 36. DPP Recommendation, at 6.

35. In a letter dated August 17, 2011, the Honokai Hale/Makakilo/Kapolei Neighborhood Board No. 34 stated that they voted to oppose the Application. DPP Recommendation, at 6.

36. DPP had received 15 letters (via postal delivery or email) opposing the Application. DPP Recommendation, at 6.

37. The Planning Commission's public hearing to consider the Application was scheduled for October 5, 2011. On September 4, 2011, notice of the hearing of the matter was published in the Honolulu Star-Advertiser.

38. On September 9, 2011, DPP recommended approval of the Application. DPP Recommendation, at 9.

39. On September 16, 2011, Schnitzer filed a Petition to Intervene in the proceedings relating to the Application.

40. Also on September 16, 2011, Intervenors Ko Olina Community Association and Maile Shimabukuro (collectively, "KOCA") filed a Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties or in the Alternative Motion to Intervene.

41. On October 5, 2011, the Planning Commission granted Schnitzer's Petition to Intervene. The Planning Commission also denied KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Parties, but granted KOCA's Motion to Intervene as joint intervenors.

42. On October 12, 2011, the parties each filed their pre-hearing conference statements.

43. On October 26, 2011, the parties each filed their list of witnesses. ENV named five potential witnesses, Schnitzer named one potential witness, and KOCA named 24 potential witnesses.

44. On November 7, 2011, KOCA filed a Motion to Dismiss the proceedings, claiming that the Planning Commission did not have jurisdiction to hear the Application.

45. On November 14, 2011, ENV and Schnitzer each filed Memorandums in Opposition to KOCA's Motion to Dismiss.

46. On December 7, 2011, the Planning Commission held a hearing on KOCA's Motion to Dismiss at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The Planning Commission heard and denied the Motion to Dismiss. Tr. 12/07/11, 22: 20 - 24:4. After the Motion to Dismiss was denied, the contested case hearing on the Application commenced. The parties presented their opening arguments.

47. On January 6, 2012, KOCA filed a Subpoena Duces Tecum to the Custodian of Records of Waste Management of Hawaii, Inc. ("Waste Management").

48. On January 11, 2012, the contested case hearing resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. ENV presented its first witness in its case in chief: Timothy Steinberger. See Tr. 01/11/12, 11:10-11. KOCA offered, and the Planning Commission received into the record, Exhibits "K1" to "K161". See *id.* at 15:12 - 17:23. 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. See *id.* at 15:18-22. The Planning Commission granted Schnitzer's request. See *id.*, at 15:23.

49. On January 20, 2012, Waste Management filed its Response and Objection to the Subpoena Duces Tecum.

50. On January 25, 2012, the contested case resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. KOCA offered, and the Planning Commission received into the record, Exhibit "K163". See Tr. 01/25/12, 6:10-12. ENV also offered, and the Planning Commission received into the record,

Exhibits “A1” to “A33”. *See id.*, at 6:13-20. ENV presented its second and final witness in its case in chief: Steven Chang. *See id.* at 6:21. Schnitzer then presented its first and only witness in its case in chief: Larry Snodgrass. *See id.* at 72: 4-5. KOCA offered, and the Planning Commission received into the record, Exhibits “K164,” “K165,” and “K168.” *See id.* at 38:14-19, 55:11-15.

51. On February 8, 2012, the contested case resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The issue of the Subpoena Duces Tecum served on Waste Management was considered by the Planning Commission. KOCA then presented four witnesses in its case in chief: Ken Williams, Beverly Munson, Cynthia Rezentes, and Paul Duke Hospodar. *See Tr.* 02/08/11, 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”. *See id.* at 29:25 - 30:2, 56:6-8.

52. On March 7, 2012, the contested case resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. KOCA presented its fifth and sixth witnesses: Shad Kane and Dwight Miller, who was qualified as an expert in solid waste management. *See Tr.* 03/07/12, 5:20-21, 17:22-23, 18:8 –19. KOCA offered, and the Planning Commission received into the record, Exhibits “K170,” “K171,” and “K173” to “K179.” *See id.* at 152:20 – 153:4, 153:13, 155:4-5, 122:19-23.

53. On April 4, 2012, the contested case resumed at the Mission Memorial Conference 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. Schnitzer first presented its rebuttal witness, Tom Zelenka. *See Tr.* 04/04/12, 7:19-20. ENV presented two rebuttal witnesses: Janice Marsters and Gary Gill. *See id.* at 30:4-5, 143:17.

KOCA then presented its seventh and eighth witnesses in its case in chief: Maile Shimabukuro and Maeda Timson. *See id.* at 123:18-19, 133:5-6. KOCA offered, and the Planning Commission received into the record, Exhibits “K215,” “K217,” “K218” and “K223” *Id.* at 101:15-19, 83:14-19, 143:4-10.

54. On April 11, 2012, the contested case resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. ENV presented its third and fourth rebuttal witnesses: Hari Sharma, who was qualified as an expert in landfill design and permitting, and Mr. Steinberger. *See* Tr. 04/11/12, 6:14 - 9:10, 69:4-5. ENV offered, and the Planning Commission received into the record, Exhibits “A37” to “A50.” *See id.* at 13:1-9, 15:21 - 16:1, 25:1-7, 36:10 – 37:20, 105:11-15, 138:1-5. KOCA offered, and the Planning Commission received into the record, Exhibits “K189,” “K190,” “K193,” “K195,” “K196,” “K198,” “K230,” “K247” and “K251.” *See id.* at 191:19-24.

55. On April 23, 2012, the contested case resumed at the Mission Memorial Conference Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. KOCA presented its rebuttal witnesses, Mr. Miller and Eddie Belluomini. *See* Tr. 04/23/12, 5:25 - 7:13, 35:15. KOCA offered, and the Planning Commission received into the record, Exhibits “K255,” “K257,” “K192,” “K220,” “K256” and “K258.” *See id.* at 12:13-17, 15:16-21, 47:17 - 48:23. The parties rested, and closing arguments were then made.

56. On April 27, 2012, 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”). KOCA seeks to offer Exhibits “K259” and “K260” into the record.

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

IV. EXHIBITS AND WITNESSES

58. ENV offered, and the Planning Commission received into the record, Exhibits "A1" to Exhibit "A50". "A43" to "A46" were received into the record over objection.

59. Schnitzer requested that 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. *See* Tr. 01/11/12, 15:18-22. The Planning Commission granted Schnitzer's request. *See id.*, at 15:23. The Planning Commission also received into the record, Exhibits "S1" to "S4."

60. KOCA offered, and the Planning Commission received into the record, Exhibits "K1" to "K171," "K173" to "K176," "K178," "K179," "K189," to "K196," "K198," "K208," "K215," "K217," "K218," "K220," "K222," "K223," "K226," "K227," "K230," "K247," "K251," "K255," "K256," "K257" and "K258." "K1" to "K169" were received into the record over objection.

61. In its Motion to Reopen the Contested Case Hearing, KOCA has also offered Exhibits "K259" and "K260" into the record. These exhibits have not been received into the record by the Planning Commission.

62. ENV called the following witnesses: Timothy Steinberger, Steven Chang, Janice Marsters, Gary Gill, and Hari Sharma, who was qualified as an expert in the fields of landfill design and permitting.

63. Schnitzer called the following witnesses: Larry Snodgrass and Tom Zelenka.

64. KOCA called the following witnesses: Ken Williams, Beverly Munson, Cynthia Rezendes, Paul Duke Hospodar, Beverly Munson, Cynthia Rezendes, Paul Duke Hospodar, Shad

Kane, Maile Shimabakuro, Maeda Timson, Eddie Bellumini, and Dwight Miller, who was qualified as an expert in the field of solid waste management.

65. Mr. Miller oversaw and approved the preparation of three reports: 1) Operations Report; 2) Siting Report; and 3) the Alternatives Report. *See* Exs. K146 - K148.

V. INTERVENORS' INTERESTS IN PROCEEDINGS

A. Schnitzer Steel Hawaii Corp.

66. Schnitzer is a scrap metal recycling company that has been operating on Oahu since 1949. *See* Tr. 01/25/12, 73:1-4.

67. Schnitzer is the largest scrap metal recycler in the State. *See id.* at 73:5-6. It also organizes the Aloha 'Aina recycling events on Oahu. *See* Tr. 04/04/12, 13:15-17; Ex. K227. At these events, various vendors and companies gather to accept different recyclable products from the public. *See* Tr. 04/04/12 13:21-24; 20-25.

68. Schnitzer processes metal products at the end of their life, from automobiles to washers, dryers, refrigerators, freezers, demolition debris, and other scrap metals. *See* Tr. 01/25/12, 73:6-11.

69. On average, Schnitzer recycles about 800 tons of scrap metal a day or about 120,000 tons a year. *See id.* at 73:15-16, 74:3-4.

70. At its Oahu facility, Schnitzer has a 4,000 horsepower shredder that can reduce a full-sized automobile to fist sized pieces in 30 seconds. *See id.* at 73:19-21.

71. As a consequence of its recycling operation, Schnitzer generates about 20,000 tons of residual waste a year. *See id.* at 75:4-6. The residue is composed of plastics, glass, carpeting, and insulation. *See id.* at 75:23-25. This residue cannot be recycled. *See* Tr. 03/07/12, 98:6-10.

72. At the time that this contested case commenced, Schnitzer's then-current solid waste management permit required that it dispose of its residual waste at a DOH-permitted solid waste management facility. *See* Ex. S2.

73. Schnitzer was subsequently issued a new solid waste management permit, which now requires that it dispose of its residual waste at a DOH-permitted solid waste management facility or at an out-of-state disposal facility. *See* Ex. S5.

74. The only solid waste management facility on Oahu that can accept Schnitzer's residual waste is WGS. *See* Tr. 01/25/12, 75:19-20.

75. PVT Landfill cannot accept the shredder residue. *See id.* at 76:8-11, 80:6-8.

76. It would not be economical or otherwise feasible for Schnitzer to ship the shredder residue to the mainland. *See id.*, 75:14-15, 85:8-16.

77. Schnitzer was also informed by Honua Power, a proposed waste-to-energy gasification facility in Kapolei, that it would not be able to accept Schnitzer's residue. *See* Written Testimony of Larry Snodgrass, at 5.

78. While DOH does not preclude H-POWER from disposing of shredder residue, H-POWER has expressed concerns about processing this waste because it tends to burn at a very high temperature due to its composition, which would in turn cause problems for the equipment at H-POWER. *See* Tr. 01/25/12, 11:2-8. Specifically, H-POWER is concerned that Schnitzer's shredder residue might clog the in-feed equipment; that left-over glass from automobiles in the shredder residue might melt and damage the refractory in H-POWER's boilers; and that the emissions associated with burning plastics that make the bulk of Schnitzer's recycling waste might cause exceedances of H-POWER's air emissions limitations. *See* Written Testimony of

Larry Snodgrass, at 4. H-POWER will not accept Schnitzer's shredder residue, even with the third boiler in operation. *See* Tr. 04/04/12, 12:16 – 13:1.

79. No waste-to-energy facility in the United States currently burns auto shredder residue. *See* Tr. 04/04/12, 22:6 – 23:24.

80. In other states, shredder residue has been used as alternative daily cover ("ADC") at landfills. *See* Tr. 01/25/12, 75:6-12; Tr. 03/07/12, 106:21-25; Tr. 04/04/12, 16:17 – 17:19. This allows the landfills to use alternatives to virgin materials, like dirt. *See id.* at 17:5-14. DOH does not currently allow Schnitzer to use shredder residue as ADC. *See* Tr. 04/04/12, 27:4-6.

81. Schnitzer has supported a bill in the State legislature, which would allow shredder residue to be used as ADC. *See* Tr. 04/04/12, 17:20-24; Ex. K222. The bill did not move out of the State Senate. *See* Tr. 04/04/12, 29:13-20.

82. Schnitzer supports the Application. *See* Tr. 12/07/12, 34:2-5.

B. Ko Olina Community Association and Maile Shimabukuro

83. Ko Olina Community Association represents Ko Olina Resort property owners, hotels, time shares, residential projects and commercial business, including retail centers and shops, the golf course and marina. *See* Tr. 02/08/12, 14:24 – 15:3.

84. Ko Olina Community Association opposes the Application. *See id.* at 15:4.

85. The bases for Ko Olina Community Association's opposition to the Application are as follows: 1) the Landfill is a danger to public health and safety; 2) operational deficiencies in the Landfill's long track record of violations, punctuated by the December 2010 and January 2011 contaminated run-off catastrophes; 3) promises not kept; and 4) the Landfill jeopardizes Ko Olina's economic benefits to the community, the City and the State. *See id.* at 15:5-17.

86. Senator Shimabukuro has been a long-time resident of the Waianae coast. *See* Tr. 04/04/12, 124:13-14.

87. Senator Shimabukuro has also been a long-time legislator representing the Waianae coast. *See id.* at 124:17-19.

88. Senator Shimabukuro opposes the Application. *See id.* at 132:17-20.

89. KOCA has requested that Condition No. 14 be modified to allow MSW up to January 1, 2013, when the third boiler at H-POWER is expected to be online. *See* Tr. 04/23/12, 78:6-10. As part of this request, KOCA asks that all medical waste, sewage sludge, and other putrescible waste be banned from WGS� except in emergencies and in H-POWER down time. *See id.* at 78:10-12. It also asks that non-putrescible waste, including, but not limited to, auto shredder residue, ash and residue from H-POWER and construction and demolition debris, can continue to go to WGS� beyond January 1, 2013. *See id.* at 78:14-17.

90. KOCA has also requested that the City must have a new landfill site developed by November 1, 2017. *See id.* at 78:22-23.

91. KOCA's final request is for the City to report to the Planning Commission every six months starting in September 1, 2012 until there is a new landfill. *See id.* at 79:4-7.

VI. CITY'S WASTE DIVERSION EFFORTS

92. Condition No. 2 of the 2009 Planning Commission Order (Condition No. 5 of the 2009 LUC decision) states:

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 continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.

See Ex. A18.

93. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on Oahu. Of the 1,214,904 tons, the Landfill received 163,736 tons of MSW and 179,946 tons of ash and residue from H-POWER. This amount reflects a decrease since 2009. In FY09 the landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. *See Ex. A27.*

94. The 2010 disposal rate represents a total diversion of MSW from the Landfill of 71.7%. *See id.* This rate puts Hawaii in the top 10 states in the nation with regards to landfill diversion. *See Ex. A29.*

95. The City has now implemented curbside recycling for residential mixed recyclables on an island-wide basis. *See Written Testimony of Timothy E. Steinberger, at 20; Tr. 01/11/12, 126:10-17.*

96. Currently, all of the green waste that is deposited in green bins, which are 94-gallon bins, are composted. *See Tr. 04/11/12, 114:11-18.* Food wastes in smaller amounts are sent to H-POWER to be used as refuse-derived fuel. *See id.* at 114:21-115:5.

97. 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 six (6) percent to the overall reduction of MSW going to the Landfill. *See Written Testimony of Timothy E. Steinberger, at 20.*

98. Currently, the City does not accept scrap metal at either WGSL or at H-POWER. *See Tr. 01/11/12, 12:6-9.* Almost 100% of the ferrous and nonferrous metal in the MSW processed at H-POWER is recovered for recycling. *See Testimony of Timothy E. Steinberger, at 18.* These materials are recycled by private vendors like Schnitzer. *See Tr. 04/11/12, 38: 10-14, 169:18-23.*

99. Currently, some treated medical wastes go to the H-POWER facility. *See id.* at 146:16-18. However, medical sharps cannot be accepted at H-POWER because of worker safety issues. *See id.* at 146:1-8; Tr. 01/25/12, 11:22-24.

100. Currently, businesses and governments are banned from disposing of e-waste at WGS. *See* Tr. 01/25/12, 45:11-15.

101. Currently, the largest sewage treatment plant on Oahu is Sand Island treatment plant. *See* Tr. 04/11/12, 78:10-11. That treatment facility treats biosolids into a Class A pellet used as a growth enhancer. *See id.*, 78:11-14. Ninety-two (92) percent of this is distributed for beneficial re-use at nurseries and some for fodder for cattle. *See id.*, 78:15-17.

102. Currently, H-POWER processes over 600,000 tons of MSW per year. *See* Tr. 04/11/12, 170:21-22.

103. The City is in the process of adding a third boiler at H-POWER. The third boiler will be a mass burner, which does not require as much pre-preparation as the existing boilers. *See* Tr. 01/11/12, 66:8-9. The third boiler will accommodate an additional 300,000 tons of combustible MSW. *See id.* at 126:18-21.

104. With the third boiler in operation, the City anticipates that eighty (80) percent of the island's waste stream will be diverted from landfill operation. *See id.* at 80:11-13. The remaining twenty (20) percent of waste are what are called "special waste," which will still need to be landfilled until other disposal methods are available. *See id.* at 67:9-18. This includes: materials separated from water, such as from car and equipment washes; off-specification and outdated products; underground storage tanks; resins; petroleum contaminated soil; diesel fuel debris; used oil debris; gasoline and jet fuel debris; sandblast grit; baghouse dust; dried paint

waste; inorganic filter cake; treated utility poles; and empty containers. *See id.* at 76:9-16; Tr. 04/11/12, 121:1-21.

105. The third boiler is scheduled to be fully operational in January 2013. *See* Tr. 01/11/12, 33:18-21.

106. The City had also issued four Request for Proposals (“RFP”). *See id.* at 126:22. The first RFP was for the green waste, sludge and food waste composting or reuse; the second was for re-use of bottom ash and fly ash from the H-POWER facility; the third was re-use of residue from H-POWER; and the fourth was for demonstration of other alternative technologies for dealing with MSW. *See id.* at 126:22 – 127:6.

107. The City did not receive any responses to the latter three RFPs, even though they had extended the submittal date. *See id.* at 9-11.

108. The City did receive a response for the first RFP, and it has now issued the contract. *See id.* at 127:8-9, 14.

109. The contract is for a Green Waste, Food Waste and Wastewater Bio-Solids, In-Vessel Conversion Facility to process some 100,000 tons per year of these wastes to beneficial use such as biofuels, energy or compost materials. This facility would handle the remaining sewage sludge that is not currently being diverted, except for the sewage sludge coming out of Waianae and Hawaii Kai. *See id.* at 71:14-18; Tr. 04/11/12, 79:3-6. The sludge from the Waianae treatment plant cannot be accepted at the facility because its salt content is so high and would be detrimental to being used in compost. *See* Tr. 01/11/12, 70:20-23. The Hawaii Kai treatment plant is a privately-owned facility and is not a party to the contract. *See id.* at 71:18-20, 199:6-11; Tr. 04/11/12, 89:21-24. The Hawaii Kai treatment plant takes all of its bio-solids to the Landfill. *See* Tr. 01/11/12, 71:19-20; Tr. 04/11/12, 89:3-5.

110. The in-vessel conversion facility is anticipated to be fully operational by 2013. *See id.* at 72:9-22.

111. The City is also looking into using the third boiler at H-POWER as a backup means for incinerating and converting bio-solids into energy. *See id.* at 73:4-11.

112. The screenings from the sewage treatment plants will still have to go to the Landfill because they cannot be combusted. *See* Tr. 04/11/12, 81:24 – 82:6. H-POWER, as currently permitted, is a waste-to-energy facility, not just an incineration facility. *See id.*, at 198:3-7. This means that whatever is combusted by H-POWER should be producing energy. *See id.*

113. The City had also looked into shipping the waste to other states. *See* Tr. 01/11/12, 194:13 – 196:13. This option did not succeed. *See id.* at 197:23 – 198:5.

114. A plasma arc facility was also built by Hawaii Biowaste Group. *See* Tr. 04/11/12, 97:12-17. That facility eventually closed. *See id.* at 98:6-7. A plasma arc facility would not be needed once H-POWER has the ability to burn medical waste. *See* Tr. 04/11/12, 197:13-17.

115. Even with the City's diversion efforts, there are still wastes that have no value as far as energy generation or as being able to be composted or re-used. *See* Tr. 01/11/12, 67:13-18, 141:5-8.

116. The process of recycling also creates a residual that cannot be recycled. *See id.* at 137:19-21, 141:8-11; Tr. 04/11/12, 201:18-19.

VII. ALTERNATIVE SITE SELECTION EFFORTS

117. Condition No. 1 of the 2009 Planning Commission Order (Condition No. 4 of the 2009 LUC decision) states:

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.

See Ex. A18, at 25.

118. By March 2010, ENV had appropriated the funds to start the process of identifying an alternative landfill site. *See* Tr. 01/11/12, 54:24 – 55:6. ENV also drafted the scope of services and framework that would be required for the Site Selection Committee. *See id.* at 55:12-15.

119. The role of the Site Selection Committee is to come up with a list of sites that could be used as a landfill to replace WGSL, and to rank those sites according to the criteria that the Committee decides is most important to them as a group. *See* Tr. 04/04/12, 35:1-8.

120. The Site Selection Committee held its first meeting on January 20, 2011. *See* Ex. K27.

121. The Site Selection Committee began with an initial set of sites that were considered by the 2003 Blue Ribbon Committee. *See* Tr. 04/04/12, 52:13-16; 78:1-3.

122. The Site Selection Committee initially started with the screening criteria used by the 2003 Blue Ribbon Committee, and came up with its own criteria. *See* Tr. 04/04/12, 40:25 - 41:23, 89:17-21. The screening criteria was used to reduce the number of sites from thousands to a more workable number. *See id.* at 41:18-21.

123. At its fourth meeting, the Site Selection Committee members were asked if they would like to recommend any additional potential landfill sites to the existing list. *See id.* at 79:24 – 80:3; Ex. 31, at 3. One suggestion was received, the windward side of the Waianae mountains, west of Kunia. *See* Tr. 04/04/12, 80:4-8; Ex. 31, at 3.

124. At its fifth meeting, held on May 12, 2011, the Site Selection Committee rejected the additional proposed site west of Kunia, and was back to the original number of sites. *See id.* at 81:12 – 83:5; Ex. K33, at 1.

125. At its sixth meeting, held in July 2011, the Site Selection Committee expanded the list of sites to include those above the underground injection control (“UIC”) line and no-pass line. *See* Tr. 04/04/12 84:3-16; Ex. K218, at 22.

126. At the seventh meeting of the Site Selection Committee, held on November 8, 2011, two sites were added as a result of the broadened search. *See* Tr. 04/04/12, 87:16 – 88:5; *see also* Ex. K152, at 2. At that meeting, the Site Selection Committee asked the consultant to look into lands owned by the State. *See* Tr. 04/04/12, 89:25 – 90:12. The Site Selection Committee also asked the consultant to look into sites at least 90 acres in size. *See id.* at 90:13-21.

127. At the eighth meeting of the Site Selection Committee, held on February 1, 2012, two more sites were added. *See id.* at 92:23 – 95:20; Ex. K170, 3-4. At that meeting, the Site Selection Committee also asked the consultant to drop the screening for lands that were rated Class C agricultural lands, for lands with structures on them, and for lands that were only partly conservation lands. *See id.* at 96:17-22, 98:3-18.

128. At its ninth meeting, held on March 16, 2012, the Site Selection Committee met to weight the community criteria. *See id.* at 100:19-23; 105:14-16.

129. As its tenth meeting on April 20, 2012, the Site Selection Committee came up with a list of recommended alternative sites. *See* Tr. 04/23/12, 53:13-15.

130. Once the City selects a site or sites, it will take more than seven years to acquire to acquire, permit, design and construct the new landfill site or sites. *See* Tr. 01/11/12, 38: 8-12; Testimony of Timothy E. Steinberger, at 15-16; *see also*, Ex. A18, at 8.

VIII. LANDFILL OPERATIONS

131. By law, the Landfill's stormwater management system is supposed to be designed and constructed to manage runoff from a 25-year, 24-hour storm. *See* Tr. 01/11/12, 99:9-15; Tr. 03/07/12, 38:13-15; Tr. 04/11/12, 31:17-18.

132. In 2006, Waste Management had prepared a design for a diversion channel to capture the flow off the west side of the Landfill, including for cells E6 and E5. *See* Tr. 01/11/12, 150:3-5; Tr. 04/11/12, 32:13-15. This design was approved by DOH: *See* Tr. 04/11/12, 32:17-18. Waste Management then applied for a SUP to cover construction of this diversion channel. This SUP got delayed because of archaeological issues, and Waste Management was not allowed to commence construction of the diversion channel. *See id.* at 32: 18-25. In the meantime, the Landfill was running out of capacity in its permitted cells. *See id.* at 33:1-14; Tr. 04/23/12, 75:6-12.

133. DOH issued a permit in which it allowed Waste Management to construct a new cell, cell E6, concurrently with the construction of the diversion ditch. *See* Tr. 01/11/12, 112:18 – 113:3, 151:8-13; Tr. 04/04/12, 157:24 – 158:15.

134. Waste Management designed an inlet above the working face of the E6 cell where trash was being put. Waste Management had a berm built with a 36-inch drain pipe, the purpose of which was to divert rain into the drain pipe to pass under the cell and in turn pass into the drainage canal or the drainage ditch. *See* Tr. 01/25/12, 70:8-16.

135. In December 2010 and January 2011, Oahu was hit by a series of heavy rains. The rains were equivalent to a 100-year storm. *See* Tr. 04/11/12, 33:24 – 34:4.

136. In the course of the storm, boulders and other debris from the mauka properties blocked the inlet to the drain pipe. When the heavy rains came in, they overflowed the berms, entering into the E6 cell. *See* Tr. 01/25/12, 70:17-22. This caused contaminated stormwater to be discharged into the Pacific Ocean. *See* Tr. 01/11/12, 105:23 – 106:6.

137. This caused the lagoons at the Ko Olina Resort area to be closed for about ten (10) days. *See* Tr. 02/20/12, 49:20-22, 94:22-23.

138. The December 2010 and January 2011 storm events were catastrophic beyond the 25-year, 24-hour storm the landfill was engineered to withstand. *See* Tr. 03/07/12, 170:18-22.

139. Waste Management contends that flooding of the E6 cell and the resultant release of MSW was not due to any operational error on the part of Waste Management but was due to the sheer force and magnitude of the storms. Waste Management asserts that at all times it was acting in compliance with the WGS� permit, which allowed for simultaneous construction of the cell and the drainage system. Waste Management asserts that it exercised best management practices in responding to the storms because it believes its actions avoided the flooding of the neighboring Kahe Power Plant owned by Hawaiian Electric Company. Written Testimony of Timonth E. Steinberger, at 26.

140. Waste Management and the City worked with the U.S. Environmental Protection Agency (“EPA”) and the State of Hawaii, Department of Health (“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 recently issued a Notice of Violation (“NOV”) concerning the MSW release. EPA did not

impose any penalties as part of the NOV and continues to monitor the WGS� operations closely. *See id.*, at pgs. 26-27.

141. In September 2011, Waste Management notified the City, EPA, and DOH that it identified significant irregularities with the 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 Waste Management employee had fabricated some wellhead gas parameter measurements instead of collecting the data through verifiable measurements. The employee failed to collect actual data from mid-2010 until August 2011. *See id.* at 27.

142. As a result of Waste Management's initial investigation, Waste Management 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 has concealed adverse changes in the wellfield, and (2) the past status of the wellfield based on verifiable data. Based upon the detailed assessment, Waste Management 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. *See id.*

143. Despite these events, the DOH, Solid and Hazardous Waste Branch, the branch that regulates the solid waste operations at WGS�, is not intending to take enforcement action relating to operations at the WGS�. The DOH, Solid and Hazardous Waste Branch is currently satisfied with the operations at WGS�. *See Tr.* 1/25/12, 59:19-25, 60:1-25, 61:1-12. The DOH, Solid and Hazardous Waste Branch is concerned about the imposition of the July 31, 2012 deadline for MSW because there are no disposal options for certain types of waste, which may potentially threaten human health or the environment. *See id.* at 12:15-19. DOH's Solid and

Hazardous Waste Branch did not seek any enforcement actions based on the storm events in December 2010 and January 2011. *See id.* at 01/25/12, 64:24 – 65:3.

IX. PURPOSE AND NEED

144. WGS� is the only permitted public MSW facility on the island of Oahu. *See* Tr. 01/25/12, 59:6-9.

145. Continued availability of WGS� is necessary because an alternative landfill site will not be available on July 31, 2012, the deadline set by Condition No. 14. *See* Application at 3; Tr. 01/25/12, 62:19-23.

146. Continued availability of WGS� is necessary because there is no shipping option that will be available to the City on July 31, 2012, the deadline set by Condition No. 14. *See* Tr. 04/11/12, 110:17-19.

147. Continued availability of WGS� is required as a permitting requirement for H-POWER. *See id.* at 125:1-6.

148. Continued availability of WGS� is required because there is material that cannot be combusted, recycled, reused or shipped. *See* Tr. 01/25/12, 12:5-7. Even recycled products themselves create a residual that cannot be recycled. *See* Tr. 01/11/12, 137:19-21, 141:8-11. The shredder residue produced at Schnitzer’s scrap metal recycling facility is one of the materials that cannot be combusted, recycled, reused, or shipped. *See id.* at 141:8-11.

149. Continued availability of WGS� is also necessary as a backup in the event of natural disasters and emergencies. *See* Tr. 01/11/12, 141:14-17; Tr. 01/25/12, 63:16-20.

150. Therefore, a permitted 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 3; Tr. 01/25/12, 65:14-20; Tr. 04/04/12, 149:24 – 150:5.

151. 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. *See* Ex. K144. One theme of the ISWMP is to minimize landfill disposal. *See id.*

152. In Calendar Year 2010, the Landfill received 163,736 tons of MSW. This amount reflects a decrease since 2009. In FY09 the landfill received approximately 233,065 tons of MSW and in FY10 some 178,512 tons of MSW. *See* Ex. A27.

153. Other items that cannot be recycled or burned at H-POWER are deposited at WGS�, including: materials separated from water, such as from car and equipment washes; off-specification and outdated products; underground storage tanks; resins; petroleum contaminated soil; diesel fuel debris; used oil debris; gasoline and jet fuel debris; sandblast grit; baghouse dust; dried paint waste; inorganic filter cake; treated utility poles; and empty containers. *See* Tr. 01/11/12, 76:9-16; Tr. 04/11/12, 121:1-21.

154. The City is actively reducing waste volume that is directed to the landfill. By January 2013, 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 to be landfilled at WGS�. *See* Tr. 01/11/12, 33:18-21, 34:8-25, 64:21 – 65:2, 67:9-18.

155. The City has also engaged the Site Selection Committee to come up with recommendations on an alternative landfill site. *See* Tr. 01/11/12, 54:24 – 55:6, 55:12-15.

156. The Site Selection Committee held its first meeting on January 20, 2011. *See* Ex. K27.

157. At its meeting on April 20, 2012, the Site Selection Committee came up with a list of recommended alternative sites. *See* Ex. K260.

158. Once the City selects a site or sites, it will take more than seven years to acquire to acquire, design, construct and permit the new landfill site or sites. *See* Tr. 01/11/12, 38: 8-12; Written Testimony of Timothy E. Steinberger, pgs. 15-16; *see also* Ex. A18.

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 authority 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. *See* Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2000 Edition); *see also* Hawaii Revised Statutes Section 205-6(a).

2. Hawaii Revised Statutes 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.

ENV 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. ENV has met the provisions of Section 2-45 of the RPC in obtaining SUP No. 2008/SUP-2 and now applies anew for a modification of SUP No. 2008/SUP-2 pursuant to Sections 2-18 and 2-29 of the RPC and Section 15-15-70 of the Hawaii Administrative Rules (Rules of the Land Use Commission).

4. As the Application does not change the operations of the Landfill, the Planning Commission concludes that the same unusual conditions, trends, and needs that existed at the time SUP No. 2008/SUP-2 was granted continue to exist.

5. Based on the findings set forth above, the Planning Commission concludes that ENV has shown good cause to amend SUP No. 2008/SUP-2.

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 DENY Intervenors' Ko Olina Community Association and Maile Shimabukuro's Motion to Dismiss. It is the further Decision and Order of the Planning Commission to APPROVE the Application and delete Condition No. 14 of Special Use Permit Application File No. 2008/SUP -2, to allow for the continued use 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, subject to the following conditions:

1. ENV shall continue to identify and develop one or more landfill sites that shall either replace or supplement the WGSL. ENV's efforts to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the ENV's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the ENV 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. ENV shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER and recycling technologies, as appropriate. ENV shall continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge. ENV is also encouraged to explore the use of auto shredder residue as alternative daily cover at its landfill site.

3. MSW, including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGSL up to January 1, 2014, provided H-POWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City.

4. During periods of H-POWER scheduled maintenance when the facility may shut down one or more of its boilers, MSW, including sewage sludge, that would otherwise be processed at H-POWER or other facilities may be disposed of at WGSL.

5. Under emergency circumstances, as reasonably determined by the Director of the Department of Environmental Services, MSW, including sewage sludge, that would otherwise be processed at H-POWER or other facilities may be disposed of at WGSL.

6. ENV shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGSL's operations, and ENV's compliance with the conditions imposed herein. The annual reports shall also address the ENV's efforts to seek beneficial re-use of stabilized, dewatered sewage sludge, to utilize auto shredder residue as alternative daily cover, and to use other

alternative technologies, as appropriate. The annual reports shall be submitted to the Planning Commission on June 31 of each year subsequent to the date of this Decision and Order.

7. 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.


8. The operations of 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.

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

10. Enforcement of the conditions of 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.

11. ENV 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.

DATED: Honolulu, Hawaii, May 2, 2012.



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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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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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