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WATANABE ING LLP
IAN L. SANDISON 5597
JOYCE W.Y. TAM-SUGIYAMA 10325
RIHUI YUAN 11535
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawaii 96813
Email: isandison@wik.com
jtam@wik.com
ryuan@wik.com

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CITY & COUNTY OF HONOLULU



Attorneys for Intervenor
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

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
LUC DOCKET NO. SP09-403

INTERVENOR SCHNITZER STEEL
HAWAII CORP.'S **[PROPOSED]**
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER;
CERTIFICATE OF SERVICE

HEARINGS:

Date: August 9, 2023
Time: 1:30 PM

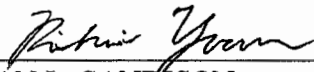
Date: October 18, 2023
Time: 9:00 AM

Date: November 1, 2023
Time: 1:00 PM

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

Comes now, Schnitzer Steel Hawaii Corp. (“Schnitzer”), by and through its attorneys, Watanabe Ing LLP, and hereby 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 on November 1, 2023 and the Rules of Planning Commission, City and County of Honolulu § 2-74.

DATED: Honolulu, Hawai‘i, December 22, 2023.



IAN L. SANDISON
JOYCE W.Y. TAM-SUGIYAMA
RIHUI YUAN
Attorneys for Intervenor
SCHNITZER STEEL HAWAII CORP.

WATANABE ING LLP
IAN L. SANDISON 5597
JOYCE W.Y. TAM-SUGIYAMA 10325
RIHUI YUAN 11535
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawaii 96813
Email: isandison@wik.com
jtam@wik.com
ryuan@wik.com

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

This matter relates to the Department of Environmental Services, City and County of
Honolulu's ("ENV") December 22, 2022 Application (the "2022 Application") to the Planning

Commission, City and County of Honolulu (the “Planning Commission”). The 2022 Application seeks to modify (1) Condition No. 1 of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019 (“2019 PC Decision”) and (2) Condition No. 5 of the Land Use Commission’s (“LUC”) 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 (“2019 LUC Decision”), such that the December 31, 2022 deadline for ENV to identify an alternative landfill site will be extended by two years to December 31, 2024.

The 2022 Application came on for contested case hearing before the Planning Commission on August 8, 2023, October 18, 2023, and November 11, 2023. Based on the record in this consolidated matter, including the evidence adduced at the contested case hearing, 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. Unless otherwise indicated herein, the following findings of fact, conclusions of law, and decision and order are intended to supplement the 2019 PC and LUC Decisions.

FINDINGS OF FACT

I. DESCRIPTION OF THE PROPERTY

1. Waimanalo Gulch Sanitary Landfill (“WGSL”) is located at 92-460 Farrington Highway, Honolulu, Kapolei, Hawaii (the “Property”). *See* Letter from Dawn T. Apuna, Director Designate of the Department of Planning and Permitting, to Pane Meatoga, Chair of the Planning Commission, dated December 22, 2023 (“DPP Recommendation”), at 2.

2. WGS� is currently a Class D municipal solid waste landfill that is comprised of an 80.6-acre landfill for municipal solid waste, and a 35.2-acre ash monofil. *See* Tr. 10/18/23, at 18:23-19:8; *see also* A-6.
3. WGS� is owned by the City and County of Honolulu (the “City”) and managed by Waste Management of Hawaii, Inc. (“Waste Management”). *See* A6, State of Hawaii, Department of Health (“DOH”) Solid Waste Management Permit No. LF-0041-14 (“SWMP”), WGS�, Kapolei, Oahu, Hawaii, TMK; 9-2-05-0006 and 0006, dated March 3, 2024, at 1 of 61.
4. WGS� is operated pursuant to SWMP No. LF-0041-14. *See* Tr. 10/18/23, at 18:14-15. WGS�’s most recent renewal of its solid waste permit has an effective date of March 3, 2023, and an expiration date of March 2, 2028. *See* Tr. 10/18/23, at 18:17-25.
5. The state land use district designation for the Property is Agricultural District. *See* DPP Recommendation, at 1.
6. The existing City zoning district for the Property is AG-2, General Agricultural District. *See* DPP Recommendation, at 1.
7. The Ewa Development Plan recognizes the existing landfill. *See* DPP Recommendation, at 1.
8. 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. *See* DPP Recommendation, at 2.

9. WGS� is the only permitted public municipal solid waste (“MSW”) landfill on the island of Oahu. *See* Tr. 10/18/23, 18:23 – 19:8; *see also* 2022 Application, at 3.
10. As of the October 18, 2023 contested case hearing, the most recent estimate provides that at current fill rates, WGS� will reach capacity in 2036.

II. PRIOR PROCEEDINGS

11. ENV first obtained a Special Use Permit (“SUP”) to operate WGS� in 1987. *See* DPP Recommendation, at 3. The SUP covered 60.5 acres of land. *Id.*
12. WGS� began its operations in 1989. *See* DPP Recommendation, at 2. That same year, the site was expanded by an additional 26 acres to facilitate accessory uses. *Id.*
13. On June 2003, the LUC approved a 21-acre expansion to the WGS� SUP area. *See* DPP Recommendation, at 3. This expansion was accompanied with a condition that provided that WGS� would close by May 1, 2008. *Id.*
14. On March 14, 2008, the LUC extended the landfill closure deadline to November 1, 2009. *See* DPP Recommendation, at 3.
15. On October 22, 2009, the LUC issued its 2009 SUP Decision and Order that approved an amendment to the WGS� SUP area that, *inter alia*, added 92.5 acres to the landfill, required the Applicant to develop a replacement landfill, and prohibited disposal of municipal solid waste at WGS� after July 1, 2012. *See* DPP Recommendation, at 3.
16. On June 10, 2019, after an appeal and remanded proceedings, the Planning Commission modified the 2009 SUP Decision and Order that, among other things, added a new Condition No. 1, which states:

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.

...

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.

See 2022 Application, at 4, *see also* DPP Recommendation, at 2-3.

17. On November 1, 2019, the LUC considered and adopted the Planning Commission’s June 10, 2019 Findings of Fact, Conclusions of Law, and Decision and Order. *See* DPP Recommendation, at 3.

18. The LUC’s Order included Condition Nos. 1 and 5, which state:

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

* * *

5. By no later than December 21, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGS�. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

See 2022 Application, at 5, *see also* DPP Recommendation, at 2.

19. On March 3, 2023, the State of Hawaii, Department of Health renewed the SWMP for WGS�. *See* A-6. The SWMP will expire on March 2, 2028, the landfill closure deadline set by the LUC’s Order. *See* A-6, at 1; *see also* Tr. 10/18/23, 43:2-6.

III. 2022 APPLICATION

A. PROCEDURAL MATTERS

20. On December 22, 2022, ENV filed the 2022 Application with DPP pursuant to RPC Sections 2-38, 2-40, 2-46, 2-47, 2-49, LUC Rules Section 15-15-96.1, and HRS § 205-6(a). *See* 2022 Application, at 1-2.
21. The 2022 Application specifically requests modification of Condition No. 1 of the 2019 PC Decision and Condition No. 5 of the 2019 LUC Decision by extending ENV's deadline to identify an alternative landfill site from December 31, 2022 to December 31, 2024. *See* 2022 Application, at 2, and 21.
22. The following City agencies were requested to evaluate the 2022 Application: Board of Water Supply; Budget and Fiscal Services; Corporation Counsel; Office of the City Clerk; Office of Climate Change, Sustainability, and Resiliency; Office of Council Services; Department of Customer Services; Department of Emergency Management; Department of Facility Maintenance; Department of Transportation Services; Honolulu Emergency Services Department; Honolulu Fire Department; Honolulu Police Department; Managing Director; Mayor's Office; and Neighborhood Commission. *See* DPP Recommendation, at 6-7.
23. The following State agencies were requested to evaluate the 2022 Application: Department of Business, Economic Development and Tourism, Office of Planning and Sustainable Development; Department of Business, Economic Development and Tourism, Land Use Commission; Department of Land and Natural Resources; Department of Land and Natural Resources, State Historic Preservation Division; Department of Health; Department of Transportation; Office of Hawaiian Affairs; and Oahu Metropolitan Planning Organization. *See* DPP Recommendation, at 7.

24. The following federal agencies were requested to evaluate the 2022 Application: 14th Coast Guard District, Honolulu; Department of the Interior, Fish and Wildlife Service; Natural Resources Conservation Service. *See* DPP Recommendation, at 7.
25. No objections were raised by the public agencies that were requested to evaluate the 2022 Application. *See* DPP Recommendation, at 7; *see also* DPP Recommendation, Attachment A.
26. Copies of the 2022 Application were transmitted to the Waianae Coast Neighborhood Board No. 24, the Kapolei/Makakilo/Honokai Hale Neighborhood Board No. 34, and the Nanakuli-Mailii Neighborhood Board No. 36. *See* DPP Recommendation, at 7.
27. At their May 16, 2023 meeting, the Nanakuli-Mailii Neighborhood Board No. 36, unanimously voted to not support the two-year extension request. *See* DPP Recommendation, at 7.
28. DPP received one letter via email supporting the 2022 Application. *See* DPP Recommendation, at 8.
29. Over the May 12-13, 2023 weekend, the Planning Commission received 57 emails from residents, including the Ko Olina Community Association, criticizing the extension request. *See* DPP Recommendation, at 8.
30. On May 25, 2023, DPP recommended approval of the 2022 Application. *See* DPP Recommendation, at 11. This recommendation was transmitted to the Planning Commission. *See* DPP Recommendation, at 1.

31. The Planning Commission's public hearing to consider the 2022 Application was scheduled for June 28, 2023. On May 29, 2023, notice of the hearing on the matter ("Notice") was published in the Honolulu Star-Advertiser.
32. On June 8, 2023, Intervenors Ko Olina Community Association and Maile Shimabukuro (collectively, "KOCA") filed an Objection to Notice of Hearing.
33. On June 9, 2023, KOCA filed a Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Existing Parties or in the Alternative Motion to Intervene.
34. On June 13, 2023, Intervenor Schnitzer Steel Hawaii Corp. ("Schnitzer") filed a Petition to Intervene in the proceedings relating to the 2022 Application.
35. Also on June 13, 2023, Schnitzer filed a Motion for Enlargement of Time.
36. On June 19, 2023, ENV filed a response to Schnitzer's Motion for Enlargement of Time and Petition to Intervene. ENV stated that it took no position on either the motion or petition.
37. Also on June 19, 2023, ENV filed a response to KOCA's Objection to Notice of Hearing. ENV's response contended that the Notice was proper and provided notice that a contested case hearing may be held if a person or agency's petition to intervene is granted. ENV's response requested that the Planning Commission proceed with the public hearing on June 28, 2023, pursuant to the Notice.
38. Lastly, on June 19, 2023, ENV filed a response to KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Existing Parties or in the

Alternative Motion to Intervene. ENV requested that the Planning Commission deny KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Existing Parties. ENV took no position on KOCA's Petition to Intervene.

39. At the public hearing on June 28, 2023, at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawaii, the Planning Commission received public testimony from Ian Sandison, counsel for Schnitzer, and Cynthia Rezendes, a community advocate, on the 2022 Application. No other members of the public asked to provide public testimony on the 2022 Application.
40. Following the public testimony, the Planning Commission moved to continue the hearing on the 2022 Application until August 9, 2023 with the public hearing proceeding to be kept open.
41. On July 6, 2023, the Planning Commission issued an Amended Notice of Contested Case Hearing ("Amended Notice"), providing that the contested case hearing on the 2022 Application would occur on August 9, 2023. The Amended Notice set a July 27, 2023 deadline for ENV, KOCA, and Schnitzer (collectively, the "Parties") to exchange exhibit and witness lists.
42. On July 27, 2023, the Parties each filed their respective exhibit and witness lists. ENV named one potential witness, Schnitzer named two potential witnesses, and KOCA named 26 potential individual witnesses and 8 distinct categories of potential witnesses.
43. On July 28, 2023, KOCA filed its First Amended Exhibit List.

44. On July 31, 2023, KOCA filed its Second Amended Exhibit List.
45. On August 7, 2023, Schnitzer filed its Second Amended Exhibit List.
46. At the continued public hearing on August 9, 2023, at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai'i, the Planning Commission received no further public testimony on the 2022 Application. *See* Tr. 08/09/23, 6:19-7:5.
47. At the continued public hearing on August 9, 2023, the Planning Commission proceeded to hear and consider the following motions: (1) KOCA's Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Existing Parties or in the Alternative Motion to Intervene; (2) KOCA's Objection to Notice of Hearing; (3) Schnitzer's Petition to Intervene; (4) Schnitzer's Motion for Enlargement of Time. *See* Tr. 08/09/23, 7:8-14:5.
48. At the continued public hearing on August 9, 2023, the Planning Commission heard and confirmed KOCA's status as party intervenor and granted KOCA's Motion to Intervene. *See* Tr. 08/09/23, 7:15-9:23. KOCA withdrew its Objection to Notice of Hearing, and the Planning Commission accepted the withdrawal. *See* Tr. 08/09/23, 9:24-10:24.
49. At the continued public hearing on August 9, 2023, the Planning Commission heard and granted Schnitzer's Petition to Intervene. *See* Tr. 08/09/23, 10:25-13:11. Schnitzer withdrew its Motion for Enlargement of Time, and the Planning Commission accepted the withdrawal. *See* Tr. 08/09/23, 13:12-14:5.
50. At the continued public hearing on August 9, 2023, the Planning Commission began the presentation of evidence in the contested case hearing. *See* Tr. 08/09/23, 14:18-34:11.

The Parties presented their opening statements. *See* ENV's Opening Statements (Tr. 08/09/23, 18:19-22:12); Schnitzer's Opening Statements (Tr. 08/09/23, 22:16-24:14); KOCA's Opening Statements (Tr. 08/09/23, 24:16-29:18).

51. On September 21, 2023, KOCA filed its First Amended Witness List.
52. On September 28, 2023, Schnitzer filed its Second Amended Exhibit List.
53. On October 3, 2023, Schnitzer filed its Stipulation to Admit Intervenor Schnitzer's Additional Exhibits into Evidence.
54. On October 18, 2023, the contested case hearing resumed at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai'i. ENV presented its witness: Roger Babcock, Jr., Ph.D., P.E., City and County of Honolulu, Department of Environmental Services Director. *See* Tr. 10/18/23, 11:1-41:14. ENV offered no further witnesses and concluded its case-in-chief. Schnitzer presented its two witnesses: Nicholas J. Garofolo, General Manager of Schnitzer Steel Hawaii Corp. and Scott B. Sloan, Vice President Environmental and National Environmental Director of Schnitzer Steel Industries, Inc. (the parent company of Schnitzer Steel Hawaii Corp) *See* Garofolo Testimony (Tr. 10/18/23, 68:6-82:11); Sloan Testimony (Tr. 10/18/23, 85:18-97:21). Schnitzer concluded its case-in-chief following the presentation of its two witnesses. KOCA recalled Roger Babcock as its first witness. *See* Tr. 10/18/23, 101:17-102:25).
55. On November 1, 2023, the contested case hearing resumed at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai'i. KOCA presented two witnesses: Ken Williams, General Manager of the Ko Olina Community Association, and Dwight

Miller, P.E., Parametrix, Inc., who was qualified as an expert in solid waste management. *See* Williams Testimony (Tr. 11/01/23, 11:8-30:10); Miller Testimony (Tr. 11/01/23, 30:12-46:11). The Parties then presented their closing statements. *See* ENV Closing Statements (Tr. 11/01/23, 49:9-51:18); Schnitzer Closing Statements (Tr. 11/01/23, 51:20-54:25); KOCA Closing Statements (Tr. 11/01/23, 55:2-61:10). Following the Parties closing statements, the Planning Commission closed the contested case hearing on the 2022 Application. *See* Tr. 11/01/23, 61:17-62:3.

B. EXHIBITS AND WITNESSES

56. At the continued public hearing and contested case hearing on August 9, 2023, the Parties stipulated to the acceptance of all of the exhibits submitted to the Planning Commission into evidence. *See* Tr. 08/09/23, 30:20-32:16.

57. On October 18, 2023, at the continued contested case hearing, the Planning Commission accepted Schnitzer's Stipulation to Admit Intervenor Schnitzer's Additional Exhibits and admitted Exhibits S-9 to S-19 into evidence. *See* Tr. 10/18/23, 9:14-10:3.

58. ENV called the following witness: Roger Babcock. *See* Tr. 10/18/23, 11:1-41:14.

59. Schnitzer called the following witnesses: Nicholas J. Garofolo and Scott B. Sloan. *See* Garofolo Testimony (Tr. 10/18/23, 68:6-82:11); Sloan Testimony (Tr. 10/18/23, 85:18-97:21).

60. KOCA called the following witnesses: Roger Babcock, Ken Williams, and Dwight Miller, who was qualified as an expert in the field of solid waste management. *See*

Babcock Recalled Testimony, (Tr. 10/18/23, 101:17-102:25); Williams Testimony (Tr. 11/01/23, 11:8-30:10); Miller Testimony (Tr. 11/01/23, 30:12-46:11).

C. INTERVENOR'S INTERESTS IN PROCEEDINGS

i. Schnitzer Steel Hawaii Corp.

61. Schnitzer operates the largest metal recycling facility in Hawai'i that processes scrap metal from a variety of sources. *See* Tr. 10/18/2023, 22:19-21; 69:22-70:2. The City, which operates H-Power, is Schnitzer's largest supplier of scrap metal. *See* Tr. 10/18/2023, 70:6-15. Other sources include demolition debris and waste generated by the construction industry. *See* Tr. 10/18/2023, 70:6-17.
62. As part of its recycling operation, Schnitzer pays for the scrap metal from these sources and processes it into a smaller product before selling the final product to a mill that then creates new steel. *See* Tr. 10/18/2023, 69:18-70:2. Schnitzer's recycling operations also serve to reduce illegal waste disposal practices. *See* Tr. 10/18/2023, 74:7-19; *see also* S-2.
63. On average, Schnitzer processes 150,000 tons or 7,000 – 10,000 truckloads of scrap metal a year. *See* Tr. 10/18/2023, 70:18-23. 100,000 – 120,000 tons of that scrap metal can be processed and recycled for the production of new steel. *See* Tr. 10/18/2023, 71:7-71:12. Accordingly, 70 – 80 percent of all scrap metal processed by Schnitzer is diverted from WGSL. *See* Tr. 10/18/2023, 71:7-71:16.
64. The residual waste product, automobile shredder residue ("ASR"), is composed primarily of plastic, rubber, and assorted non-metallic materials that cannot be recycled. *See* Tr. 10/18/2023, 71:22-72:4.

65. Schnitzer generates approximately 30,000 tons of ASR annually. *See* Tr. 10/18/2023, 72:5-7; *see also* S-3.
66. Schnitzer's SWMP requires Schnitzer to dispose of its ASR at a DOH-permitted solid waste disposal facility. *See* Tr. 10/18/2023, 72:25-73:5, 80:15-21; *see also* S-2.
67. The only DOH-permitted solid waste management facility on Oahu that accepts Schnitzer's ASR is WGS�. *See* Tr. 10/18/2023, 80:15-21; *see also* S-2.
68. It would not be economically or environmentally feasible for Schnitzer to ship its scrap metal to the mainland for processing. *See* Tr. 10/18/2023, 75:1-15; *see also* S-2.
69. It would be similarly unfeasible for Schnitzer to ship its ASR to the mainland for disposal. *See* Tr. 10/18/2023, 75:16-76:5; *see also* S-2. Shipping ASR for disposal off-island runs the risk of safety concerns such as combustion and agricultural contamination. *See* Tr. 10/18/2023, 75:22-76:5. Moreover, the prohibitive cost of shipping ASR for disposal off-island would alter Schnitzer's business model such that it would have to charge money to accept scrap metal. *See* Tr. 10/18/2023, 76:12-16. Schnitzer currently pays users, including the City, for their scrap metal. *See* Tr. 10/18/2023, 69:18-70:2, and 70:6-15. This business model incentivizes private entities to bring their scrap to Schnitzer and deters illegal dumping. *See* Tr. 10/18/2023, 70:3-71:3, 74:7-19.
70. If WGS� were to close before an alternative landfill is operational, Schnitzer's operations would cease. *See* Tr. 10/18/2023, 78:13-81:10. Pursuant to Schnitzer's SWMP, Schnitzer is permitted to store at most 200 tons of ASR at its Kapolei facility. *See* Tr. 10/18/2023, 79:2-13, *see also* S-1. This 200-ton ASR storage limit is in place for safety

reasons. *See* Tr. 10/18/2023, 79:25-80:6, *see also* S-1. Under Schnitzer's current operations, it would take less than a week to reach the 200-ton ASR storage limit. *See* Tr. 10/18/2023, 79:21-24.

71. Notwithstanding the foregoing, even if the DOH were to waive the 200-ton storage requirement due to the unavailability of a permitted disposal source, Schnitzer's facility does not have the capacity to store more than two weeks' worth of ASR. *See* Tr. 10/18/2023, 80:6-14. Accordingly, if an alternative landfill were not in place before WGS� were shut down, Schnitzer would have to stop accepting material after two weeks and cease operations. *See* Tr. 10/18/2023, 81:2-10.
72. A cessation of Schnitzer's operations would negatively affect the public. *See* Tr. 10/18/2023, 81:13-82:4. In the early 2000's, the closure of Maui's only scrap yard facility at the time resulted in the spread of dump sites with derelict cars, appliances, and other miscellaneous metal items all over the island. *See* Tr. 10/18/2023, 81:18-82:4.
73. Schnitzer has made efforts to identify alternatives for ASR disposal since the prior contested case proceedings. *See* Tr. 10/18/2023, 87:15-23. These efforts include a current initiative with a foreign automobile manufacturer to convert ASR into an alternative fuel source, and exploration of gasification and pyrolysis. *See* Tr. 10/18/2023, 88:1-19, and 96:9-97:4; *see also* S-5.
74. Schnitzer has also examined disposal of ASR in municipal waste to energy facilities throughout the United States, with a close focus on opportunities to do so in Hawaii. *See* Tr. 10/18/2023, 88:20-24.

75. From 2013 to 2015, Schnitzer worked with Covanta, the operator of H-Power, to identify a method of ASR disposal at the H-Power facility. *See* Tr. 10/18/2023, 89:2-12; *see also* S-9. As part of these efforts, Schnitzer educated Covanta about its efforts to keep hazardous materials, such as polychlorinated biphenyl's ("PCBs"), out of its ASR. *See* Tr. 10/18/2023, 89:13-16; *see also* S-10, S-11, S-12. Schnitzer and Covanta also retained counsel to seek guidance from the EPA regarding the disposal of ASR in municipal waste to energy facilities. *See* Tr. 10/18/2023, 92:7-93:7; *see also* S-13, S-14. After obtaining approval from the EPA, Schnitzer and Covanta worked with the DOH Solid Waste and Clean Air branches to perform ASR burn test runs at H-Power. *See* Tr. 10/18/2023, 89:16-18, and 93:8- 95:22; *see also* S-14, S-15, S-16, S-17, S-19, S-19. Ultimately, Covanta expressed that it had experienced some operational issues during ASR burn test runs, and Covanta and Schnitzer did not continue to pursue incineration of ASR at H-Power. *See* Tr. 10/18/2023, 89:18-21, and 95:23-96:8.

76. Schnitzer supports the 2022 Application. *See* Tr. 08/09/2023, 22:16-18.

ii. Ko Olina Community Association and Maile Shimabukuro

77. Ko Olina Community Association ("KOCA") is a master association for Ko Olina Resort, a master plan resort community comprised of residential resort, commercial, and recreational users. *See* Tr. 11/01/23, 8:19-24. KOCA's members include full-time residents, the owners of various hotel and commercial lots, and owners in Ko Olina's timeshare system. *See* Tr. 11/01/23, 8:25-9:12.

78. KOCA does not oppose the 2022 Application. *See* Tr. 11/01/23, 27:17-28:4, 61:3-6. However, KOCA has indicated its displeasure with the 2022 Application. *See* Tr.

11/01/23, 11:8-30:10; *see also* DPP Recommendation, at 8. This displeasure is rooted in: 1) WGSL's effect on public health and safety; 2) past violations arising out of operational deficiencies at WGSL; 3) and continuous delays in the siting process. *See* Tr. 11/01/23, 9:24-10:9, and 11:8-30:10; *see also* K266 – K281, and K283 to K355.

79. KOCA has participated in prior proceedings regarding WGSL on the same bases. *See* Tr. 11/01/23, 9:24-10:9, 10:19-11:1, and *See* Tr. 11/01/23, 24:14-23.

80. Senator Maile Shimabukuro has also intervened in previous proceedings on the same bases as KOCA. *See* Tr. 11/01/23, 11:5-10.

81. KOCA, and its residents, have previously requested that the Planning Commission tighten oversight on the alternative landfill siting process. *See* Tr. 11/01/23, 12:2-13:9, and 24:14-23; *see also* K282.

82. KOCA, and its residents, have made several complaints to the City regarding the continued operations of WGSL and the impact on KOCA, including an incident in 2011 in which waste from WGSL spilled into the surrounding areas after a significant rain event. *See* Tr. 11/01/23, 19:7-24:3; *see also* K105, K108, K109, K266 – K281, K283 to K355.

83. Mr. Miller, KOCA's expert in solid waste management, testified that siting a landfill is a lengthy process that requires consideration of multiple variables. *See* Tr. 11/01/23, 33:1-38:3, and 41:11-14. Those considerations include Act 73 and the Board of Water Supply ("BWS") No-Pass Zone. *See* Tr. 11/01/23, 34:16-38:3.

84. In discussing the BWS No-Pass Zone, Mr. Miller provided that while previous iterations of Landfill Advisory Committee had not strictly adhered to the No-Pass Zone in siting an alternative landfill, the latest Landfill Advisory Committee opted to strictly adhere to the No-Pass Zone and reject all alternative sites that fell within the No-Pass Zone. *See* Tr. 11/01/23, 35:23-36:11, 36:23-37:5, and 37:23-38:3; *see also* K264.

85. Mr. Miller testified about the different paths that the City could pursue to site a landfill before the requested 2024 deadline. *See* Tr. 11/01/23, 39:15-24.

86. KOCA requests that the Planning Commission require ENV to provide quarterly, in-person updates on the status of its efforts to site and develop a new landfill. *See* Tr. 11/01/23, 24:14-23, 27:6-12, 59:18-23.

IV. COMPLIANCE WITH PLANNING COMMISSION CONDITIONS

A. ALTERNATIVE SITE SELECTION EFFORTS

87. Condition No. 1 of the 2019 PC Decision (Condition No. 5 of the 2019 LUC Decision)

states:

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.

...

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.

See 2022 Application, at 4, *see also* DPP Recommendation, at 2.

88. ENV asserts that there were several developments after the 2019 PC Decision that had a significant impact on ENV's efforts to identify an alternative landfill site.

89. In September 2020, under the current SUP, Governor David Y. Ige signed into law Act 73, which amended State law to prohibit “waste or disposal facilities” (*e.g.*, landfills) in conservation districts; and, (2) prohibit the construction of “waste or disposal facilities” within one-half mile from residential, school, or hospital property lines. *See* Tr. 10/18/23, 14:11-15, A-14; *see also* 2022 Application, at 5, and DPP Recommendation, at 3.
90. The restrictions imposed by Act 73 prohibited ENV from siting a landfill in a significant portion of the island of Oahu. *See* Tr. 10/18/23, 14:11-15, 27:5-28:15, A-14, A-15; *see also* 2022 Application, at 5, and DPP Recommendation, at 3 and 4.
91. At the time of the 2019 PC Decision and LUC Decisions adding the December 31, 2022 deadline to identify an alternative landfill site, the PC and the LUC could not have known that ENV’s existing list of proposed landfill sites would be eliminated as a result of Act 73. *See* DPP Recommendation, at 4.
92. Accordingly, ENV evaluated all remaining land areas on the island that were available after factoring in the restrictions imposed by Act 73, and identified six proposed landfill sites. *See* Tr. 10/18/23, 14:15- 15:4, 26:3-22, 28:1-29:17, A7-A13, A-18; *see also* 2022 Application, at 5-7, and DPP Recommendation, at 5.
93. All of the six sites provided to the LAC were within the BWS No Pass Zone. *See* Tr. 10/18/23, 15:9-16; *see also* 2022 Application, at 8-9, and DPP Recommendation, at 4-5. The BWS No Pass Zone is a boundary-line delineating the areas directly above the groundwater aquifer with no cap rock from those areas where there is caprock. *See* Tr. 10/18/23, Tr. 34:19-35:1; *see also* 2022 Application, at 9. In a 2012 Report of the

Mayor's Advisory Committee on Landfill Site Selection (the "2012 MACLSS Report") providing guidance to the City in its evaluation of alternative sites, the committee had "decided it would be more encompassing to include for assessment potential landfill sites located within the [Underground Injection Control] line and No Pass line." Ex. K264 at 1-3.

94. In 2021, Mayor Rick Blangiardi formed a new landfill advisory committee ("LAC"). *See* Tr. 10/18/23, 14:23- 15:4, 29:25-30:7, A-13; *see also* 2022 Application, at 8, and DPP Recommendation, at 5. The LAC was provided with the six proposed landfill sites that the City had identified as complying with Act 73. *See* Tr. 10/18/23, 15:2-4, 29:1-30:12, A-18; *see also* 2022 Application, at 7 and 13, and DPP Recommendation, at 5. The LAC was to further evaluate and rank these six sites. *Id.*

95. The LAC met a total of eight times between October 2021 and June 2022 with the objective to identify, select, and make a recommendation for a new landfill site. *See* Tr. 10/18/23, 14:23- 15:4, 29:1-30:12; *see also* 2022 Application, at 5-9, and DPP Recommendation, at 5.

96. In late November 2021, while the LAC was evaluating the proposed landfill sites, a petroleum release from the Red Hill Bulk Fuel Storage Facility contaminated the Red Hill drinking water well. *See* Tr. 10/18/2023, 14:23-15:8; *see also* 2022 Application, at 2. The Red Hill facility's close proximity to Oahu's main drinking water aquifer caused widespread public health and environmental concerns about the contamination of the island's drinking water. *See* Tr. 10/18/2023, 14:23-15:8, Tr. 11/1/2023, 50:20-22, 2022 Application, at 2.

97. During the LAC's December 14, 2021 meeting, while the Red Hill emergency response was still ongoing, representatives from BWS presented their concerns about siting a new landfill above the groundwater aquifer and highlighted the dangers of landfill leachate leaking into the aquifer. *See* Tr. 10/18/23, 15:4-13; *see also* 2022 Application, at 9 and Exhibit D of the 2022 Application, and DPP Recommendation, at 5.
98. BWS asserted that no landfill should be sited "above (or mauka) the BWS No Pass Zone and over Oahu's drinking water aquifer system." *See* 2022 Application, at 7 and 9; *see also* DPP Recommendation, at 6, and Tr. 10/18/23, 15:9-16. BWS also encouraged the LAC not to recommend any of six proposed sites. *See* Tr. 10/18/23, 15:13-16; *see also* 2022 Application, at 9.
99. When the BWS No Pass Zone and Act 73 are applied as restrictions, there were zero potential alternative landfill sites on Oahu. *See* 2022 Application, at 8.
100. The LAC subsequently voted not to recommend any of the six proposed sites due to each site's location in the BWS No Pass Zone. *See* Tr. 10/18/23, 15:13-18; *see also* 2022 Application, at 9.
101. The LAC's Final Report, issued June 2022, ranked all of the six sites and recommended that none of them be used. *See* Tr. 10/18/23, 15:13-18, 31:2-33:7; *see also* 2022 Application, at 9-10. The LAC Final Report further recommended that ENV look for sites that fall outside of the No Pass Zone and to consider evaluating military or federal sites, amending or repealing Act 73, or employing eminent domain. *See* Tr. 10/18/23, 15:17-25, 32:23-34:2, A-16, A-18; *see also* 2022 Application, at 9-10.

102. On October 24, 2022, ENV, along with Mayor Blangiardi and other members of his administration, briefed the BWS about the landfill selection status, the urgency of ENV's need to identify an alternative landfill site by December 31, 2022, and the LAC's reservations relating to the six proposed sites because of their location within the BWS No Pass Zone. *See* Tr. 10/18/23, 35:17-36:10, A-13. At this meeting, ENV posed questions to the BWS, requested clarity on the BWS' legal authority over landfill siting in the No Pass Zone, and inquired as to whether that authority was being properly exercised. *Id.*
103. On November 3, 2022, via letter, the ENV formally requested BWS' official position on the six potential sites evaluated by the LAC. *See* Tr. 10/18/23, 37:3-10; *see also* 2022 Application, at 10 and Exhibit F of the 2022 Application, and DPP Recommendation, at 6.
104. On November 16, 2022, BWS responded to the ENV's inquiry and provided that, the BWS stated its position that it "does not approve any of the six proposed landfill sites that are located above (or mauka) the No Pass Zone and over Oahu's drinking water aquifer system." *See* Tr. 10/18/23, 37:3-19; *see also* 2022 Application, at 10, and Exhibit C of the 2022 Application, and DPP Recommendation, at 6. BWS' response cited to the contamination of Hawai'i's drinking water caused by the Red Hill Fuel Leak as a primary consideration for its decision. *See* Tr. 10/18/23, 37:20-38:6; *see also* 2022 Application, at 11, and Exhibit C of the 2022 Application, and DPP Recommendation, at 6.
105. Following the LAC's Final Report and subsequent attempts to get BWS to reconsider, the City did not have adequate time to perform additional evaluations and

identify an alternative site before the December 2022 deadline. *See* Tr. 10/18/23, 16:1-5. Accordingly, the City proceeded to prepare the 2022 Application for a two-year extension of the deadline to name a site. *See* Tr. 10/18/23, 38:10-14.

106. If the City's requested extension is granted, it intends to use the remaining time to further evaluate and pursue other options for siting an alternative landfill outside of the No Pass Zone. *See* DPP Recommendation, at 6. As recommended by the LAC's Final Report, the City will: (1) seek a repeal or amendment to Act 73; (2) continue discussions with the U.S. military regarding the acquisition of a site outside the No Pass Zone; and (3) evaluate the feasibility of acquiring (by eminent domain if necessary) residential properties adjacent to potential landfill sites to create sites that would comply with the one-half mile buffer required by Act 73. *See* Tr. 10/18/23, 15:17-25; *see also* DPP Recommendation, at 6.

107. The City is currently actively engaging in the recommendations identified by the LAC. *See* Tr. 10/18/23, 39:3-40:19. The City has made contact with federal governmental agencies about the potential to use their parcels and is evaluating the possibility of eminent domain to create a buffer area that complies with Act 73. *See* Tr. 10/18/23, 39:7-25. The City has also looked into the potential of modifying the restrictions of Act 73 to examine what sites may become available if Act 73 is amended. *See* Tr. 10/18/23, 40:1-9. However, the City is pursuing the other options first. *See* Tr. 10/18/23, 40:10-11, 49:21-50:1.

B. CONTINUED WASTE DIVERSION EFFORTS AND LANDFILL OPERATIONS

108. The City has continued its efforts to use alternative technologies to provide a comprehensive waste stream management program, consistent with the 2019 LUC Decision. *See* 2022 Application, at 11. Over the years, the City has been able to divert more and more waste from the WGS� to H-Power. *See* 2022 Application, at 11.
109. Honolulu Program of Waste Energy Recovery (“H-Power”) is a waste-to-energy facility constructed in 1990 that takes all municipal solid waste and reduces its volume by 90% in order to reduce the amount of volume and space need for landfilling. *See* Tr. 10/18/23, at 16:9-13. H-Power also serves to generate close to 10% of the energy needs of Oahu. *See* Tr. 10/18/23, at 16:14-16. However, H-Power’s main function is volume reduction. *See* Tr. 10/18/23, at 16:16-18.
110. In the Calendar Year 2020, approximately 1,210,281 tons of waste was generated on Oahu. Of that amount, WGS� received 56,114 tons of MSW and 182,112 tons of ash and residue from H-Power. The landfill diversion rate for 2020 was 82.2%. *See* 2022 Application, at 12.
111. In the Calendar Year 2021, approximately 1,215,467 tons of waste was generated on Oahu. Of that amount, WGS� received 106,723 tons of MSW and 157,531 tons of ash and residue from H-Power. The landfill diversion rate for 2021 was 80%. *See* 2022 Application, at 12.
112. Based upon data collected as of the date of the 2022 Application, the City projects that the MSW diversion rate for 2022 will be approximately 83%. *See* 2022 Application, at 12.

113. In 2012, H-Power's capacity increased to 900,000 tons per year following the addition of a third boiler. The third boiler is a mass burn unit, which can process waste streams that previously required landfilling, including sewage sludge, bulky waste, and treated medical waste (except medical sharps). *See* 2022 Application, at 12.
114. In total, H-Power's refuse derived fuel boilers and mass burn unit process waste to reduce its volume by 90 percent, and as of 2021, approximately 750,000 tons per year of MSW and sludge are diverted from the WGS�. *See* 2022 Application, at 12.
115. H-Power has also begun to investigate the combustion of process residue and pursuing ash recycling in efforts to further decrease the amount of waste that must be landfilled. *See* 2022 Recommendation, at 13. With respect to ash recycling, the City has executed a contract for the processing and beneficial reuse of ash and is currently proceeding with the first phase of the project. *See* Recommendation, at 13. This ash recycling project may eventually come to encompass ASR processing. *Id.*
116. Notwithstanding the foregoing, there is still waste that H-Power cannot accept or byproduct that H-Power cannot dispose of. *See* Tr. 10/18/23, at 16:25-17:21. For instance, H-Power produces ash and ash residue that must be disposed of in a landfill. *See* Tr. 10/18/23, at 17:2-6, 17:25-18:7. Certain materials containing asbestos, ASR, and medical sharps, are also not permitted to be combusted at H-Power. *See* Tr. 10/18/23, at 17:6-12. Those materials must be disposed of at WGS�, as the only other landfill is a construction and demolition waste landfill which is not permitted to accept anything other than construction and demolition waste. *See* Tr. 10/18/23, at 17:6-24.

117. Accordingly, WGS� is critical and necessary to the operations of H-Power and the health and safety of the entire Oahu community. *See* Tr. 10/18/23, at 18:5-20, and 23:18-25.

V. PURPOSE AND NEED

118. WGS� is the only permitted public MSW facility on the island of Oahu. *See* Tr. 10/18/23, 18:23 – 19:8, and 23:23 - 25; *see also* 2022 Application, at 3.

119. An extension of two years is necessary because an alternative landfill site was not available on December 31, 2022, the deadline set by Condition No. 1 of the PC Decision and Condition No. 5 of the LUC Decision. *See* Tr. 08/09/23, 18:10 – 19:4; *see also* 2022 Application, at 1-2.

120. Continued availability of WGS� is required as a permitting requirement for H-POWER. *See* Tr. 10/18/2023, 17:25 – 18:11; *see also* 2022 Application, at 14.

121. Continued availability of WGS� is required because there is material that cannot be combusted, recycled, reused, or shipped. *See* Tr. 10/18/2023, 17:25 – 18:11; *see also* 2022 Application, at 14. Even recycled products themselves create a residual waste product that cannot be recycled. *See* Tr. 10/18/2023, 16:25 – 17:24. The residual waste product, including ASR produced at Schnitzer’s scrap metal recycling facility, is one of the materials that cannot be combusted, recycled, reused, or shipped. *See* Tr. 10/18/2023, 17:2-24, and 72:25 – 73:5.

122. 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* Tr. 10/18/2023, 23:18 – 22.

123. WGS� is a critical portion of the City’s overall Integrated Solid Waste Management Plan, which looks at all of the factors that make up the solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled and burned for energy. *See* 2022 Application, at 16.
124. In addition to actively reducing waste volume that is directed to the Landfill, the City is currently actively engaging in the recommendations identified by the LAC. The City has made contact with federal governmental agencies about the potential to use their parcels and is evaluating the possibility of eminent domain to create a buffer area that complies with Act 73. *See* Tr. 10/18/23, 39:7-25.
125. Schnitzer, the largest private user of WGS�, is actively engaged in finding alternatives for ASR disposal. *See* Tr. 10/18/2023, 87:15-23, 88:1-19, and 96:9-97:4. Those efforts remain ongoing. *See* Tr. 10/18/2023, 88:1-19, and 96:9-97:4. Until a feasible alternative is identified and implemented, Schnitzer’s only practical means to dispose of its ASR waste is as WGS�. *See* Tr. 10/18/2023, 72:25-73:5, 80:15-21; *see also* S-2.
126. Once the City selects a site or sites, it will take around seven years to site and develop a new landfill. *See* Tr. 10/18/23, 57:11-16; Tr. 11/01/23, 33:1-10; *see also* 2019 PC and LUC Decision.

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

In addition to the Conclusions of Law relating to the 2008 and 2011 Applications set out in the 2019 PC Decision, 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 RPD. *See* Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973; see also HRS § 205-6(a).

2. HRS § 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 evidence that the 2022 Application meets the provisions of RPC § 2-45.

3. ENV has met the provisions of RPC § 2-45 in obtaining SUP No. 2008/SUP-2 and now applies for a modification of SUP No. 2008/SUP-2 pursuant to RPC §§ 2-18 and 2-29 and HAR § 15-15-70.
4. None of the Parties oppose the modification of Condition No. 1 of the 2019 PC Decision and Condition No. 5 of the 2019 LUC Decision, such that the December 21, 2022 deadline

for ENV to identify an alternative landfill site memorialized therein will be extended by two years to December 31, 2024.

5. The Planning Commission concludes that the request for modification is necessary and in the best interest of all Oahu communities given the confluence of factors regarding Act 73 and opposition by BWS that could not have been predicted at the time of issuance of the 2019 PC and LUC Decisions.
6. The Planning Commission concludes that the evidence adduced shows that ENV has been diligent in its attempts to identify alternative sites for a new landfill, but those efforts have been hindered by circumstances beyond ENV's control.
7. Act 73, which was signed into law after the 2019 PC and LUC Decisions, placed additional legal restrictions on potential landfill sites. Adverse impacts suffered by local communities from occurrences such as the 2011 KOCA incident underscore the policy considerations of Act 73. The application of Act 73 to the shortlist of proposed alternative sites identified by ENV left ENV with just six sites that were all located above the No Pass Zone identified by BWS.
8. The 2012 MACLSS Report instructed ENV to include sites within the No Pass line in its evaluation of alternative sites. ENV relied on that guidance in good faith in proposing the six sites that were within the BWS No Pass Zone.
9. However, following the November 2021 Red Hill fuel leak, the BWS refused to support the siting of a landfill within the BWS No Pass Zone. At a December 21, 2021 meeting between BWS and the LAC, the BWS recommended that the LAC decline to recommend any of the proposed alternative sites. The LAC adopted the BWS' recommendation in the LAC's June 2022 Final Report.

10. While Mr. Miller criticizes the City for not trying to change BWS' mind, the evidence shows that City, including the Mayor himself, did just that. On October 24, 2022, ENV along with Mayor Blangiardi and members of his administration, followed up with BWS to convey to BWS the urgency and significance of the landfill siting process. Between November 3, 2022, and November 16, 2022, ENV and the BWS corresponded regarding the BOWS' official position on the six proposed alternative sites evaluated by the LAC. BWS reiterated their position from the December 21, 2021 meeting and made clear that BWS would not approve of any of the six proposed landfill sites that are located above the BWS No Pass Zone. Therefore, the Planning Commission concludes that contrary to Mr. Miller's assertions, ENV performed its due diligence and made a concerted effort to site a landfill in accordance with the limitations imposed by Act 73, and work with the BWS with respect to the No Pass Zone.
11. The grant of an extension is also necessary so that an alternative landfill site may be sited and developed before WGSL's current permit expires on March 2, 2028.
12. An operational MSW landfill is crucial to the operations of Schnitzer Steel and H-Power, two services and businesses that substantially reduce the volume of MSW that is landfilled at WGSL.
13. Schnitzer provides the additional benefit of preventing illegal waste dumping and decreasing the number of derelict cars on Oahu.
14. H-Power provides the additional service of converting MSW into nearly 10 percent of Oahu's energy needs.
15. Both Schnitzer and H-Power produce a non-recyclable residual waste product that must be disposed of at a MSW landfill, pursuant to their respective operating permits. Schnitzer

and H-Power have also made efforts to find MSW landfill alternatives and decrease their reliance on WGSL. These efforts include a multi-year partnership between Schnitzer and H-Power to evaluate the feasibility of burning ASR at H-Power, Schnitzer's current partnership with a foreign automobile manufacturer to convert ASR into an alternative fuel source, and Schnitzer's exploration of gasification and pyrolysis. H-Power is also independently investigating ash recycling and combustion of process residue. These new technologies are currently under investigation and their efficacy is unknown.

Accordingly, it is crucial that an alternative landfill is sited and developed before WGSL's current March 2, 2028 closure date such that there is no break in service, and Schnitzer and H-Power continue to have a permitted disposal source for their non-recyclable residual waste product.

16. The Planning Commission concludes that this request is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations to preserve and protect lands for its best use and to encourage uses for which lands are best suited.
17. The Planning Commission concludes that the extension of the desired use would not adversely affect surrounding property. The use has already been established and approved with conditions, in part, addressing impacts on surrounding property. The current request merely extends the deadline to identify an alternative landfill site, and does not extend the life of the WGSL.
18. The Planning Commission concludes that the extension would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and schools improvements and police and fire protection. During the public comment period, agencies providing such services offered no objections to the proposal to extend the siting deadline.

19. The Planning Commission concludes that approval is warranted because the delay was caused by circumstances beyond ENV's control that arose after this Commission's 2019 Order. Unforeseen circumstances and extraordinary conditions resulting from the passage of Act 73 in 2020 and the 2021 Red Hill Fuel Leak have severely restricted the areas to site a potential new landfill. Accordingly, the Planning Commission concludes that providing ENV with more time to pursue an alternative site is consistent with the public policy to provide basic government services and to protect the public health.
20. Approval is further warranted because no parties have adduced any evidence or testimony that extension should not be granted.
21. The requested two-year extension does not alter previous findings that the WGSF is consistent with the Hawaii State Plan, the Oahu General Plan, and Ewa Development Plan. Therefore, the requested extension to December 31, 2024 to identify an alternative landfill site is consistent with State and local plans, programs, and local zoning requirements.
22. The Planning Commission further concludes that the City does not object to providing quarterly in-person updates until it has identified new alternative landfill sites, as requested by KOCA.
23. 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 APPROVE the 2022 Application to Modify (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 Land Use Commission'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, as follows:

1. Condition 1 of the 2019 PC Decision shall be amended to read as follows:

On December 31, 2024, 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, 2024 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, 2024 is based on the evidence presented. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. The Planning Commission also recommends that Condition No. 5 of the 2019 LUC Condition be amended to correspond with the foregoing proposed amendment to Condition No. 1 of the 2019 PC Condition. It is recommended that Condition No. 5 of 2019 LUC Decision be amended as follows:

By no later than December 31, 2024, the Applicant shall identify an alternative landfill site that may be used upon closure of WGS�. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

3. Condition 2 of the 2019 PC Decision shall be amended to read as follows:

The Applicant shall provide quarterly, in-person reports to the Planning Commission on the status of the efforts to identify and develop a new landfill site on O'ahu, The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the WGS�'s operations, including gas monitoring, (b) the ENV's compliance with the conditions imposed herein, (c) 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, (d) the City's efforts to use alternative technologies, (e) the extent to which waste is being diverted from the landfill and (f) 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.

4. The Planning Commission also recommends that Condition No. 7 of the 2019 LUC Condition be amended to correspond with the foregoing proposed amendment to Condition No. 2 of the 2019 PC Condition. It is recommended that Condition No. 7 of 2019 LUC Decision be amended as follows:

The Applicant shall provide quarterly, in-person reports to the Planning Commission on the status of the efforts to identify and develop a new landfill site on O'ahu. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the WGSLS's operations, including gas monitoring, (b) the ENV's compliance with the conditions imposed herein, (c) 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, (d) the City's efforts to use alternative technologies, (e) the extent to which waste is being diverted from the landfill and (f) 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.

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

DATED: Honolulu, Hawai'i, _____, 2024.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

By _____
PANE MEATOGA III, Chair

By _____
RYAN KAMO, Vice Chair

By _____
HILARIE ALOMAR, Member

By _____
KAI NANI KRAUT, Member

By _____
MELISSA MAY, Member

By _____
KEN HAYASHIDA, Member

By _____
NATHANIEL KINNEY, Member

By _____
JOY KIMURA, Member

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
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 on the date set forth below:

DEPARTMENT OF ENVIRONMENTAL SERVICES (via Certified Mail)
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707

DEPARTMENT OF PLANNING AND PERMITTING (Hand Delivery)
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

DANA M.O. VIOLA, , ESQ.
Corporation Counsel
KAMILLA C. K. CHAN, ESQ.
JEFFREY HU, ESQ.
Deputy Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

(Hand Delivery)

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

(Hand Delivery)

Attorney for Intervenors
KO OLINA COMMUNITY ASSOCIATION and
MAILE SHIMABUKURO

RICHARD NAIWIEHA WURDEMAN, ESQ.
Attorney at Law, A Law Corporation
Pauahi Tower, Suite 720
1003 Bishop Street
Honolulu, HI 96813

(Hand Delivery)

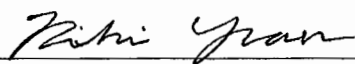
Attorney for Intervenor
COLLEEN HANABUSA

ANNE E. LOPEZ, ESQ.
Attorney General
BRYAN C. YEE, ESQ.
Department of the Attorney General
425 Queen Street
Honolulu,. HI 96813

(Hand Delivery)

Attorney for Intervenor
OFFICE OF PLANNING, STATE OF HAWAII

DATED: Honolulu, Hawai'i, December 22, 2023.



IAN L. SANDISON
JOYCE W.Y. TAM-SUGIYAMA
RIHUI YUAN
Attorneys for Intervenor
SCHNITZER STEEL HAWAII CORP.