

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



In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

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

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

On December 22, 2022, Applicant Department of Environmental Services of the City and County of Honolulu (“**ENV**” or the “**Applicant**”) filed an application for an Order modifying the State Special Use Permit (“**SUP**”) No. 2008/SUP-2 (SP09-403), which superseded State SUP No. 86/SUP-5, and approved the SUP for the Waimanalo Gulch Sanitary Landfill (“**WGSL**” or “**the landfill**”) subject to certain conditions. Specifically, the Applicant sought to modify the conditions that set a December 31, 2022 deadline for Applicant to identify an alternative landfill site.

Pursuant to Planning Commission Rule § 2-77(a), and based on the record in this proceeding, including the evidence and arguments presented at the contested case hearings; the credibility of the witnesses testifying at the hearings; the respective proposed findings of fact, conclusions of law and decisions and orders submitted by the parties; the parties' respective

responses thereto; and the other written submissions and arguments of the parties, the Planning Commission hereby makes the following findings of fact, conclusions of law and decision and order.

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. WGSL 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. WGSL 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”), WGSL, Kapolei, Oahu, Hawaii, TMK; 9-2-05-0006 and 0006, dated March 3, 2024, at 1 of 61.
4. WGSL is operated pursuant to SWMP No. LF-0041-14. *See* Tr. 10/18/23, at 18:14-15. On March 3, 2023, the State of Hawaii, Department of Health renewed the SWMP for WGSL. *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.

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.

II. Prior Proceedings

10. 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.*
11. 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.*
12. 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.*

13. On March 14, 2008, the LUC extended the landfill closure deadline to November 1, 2009. *See* DPP Recommendation, at 3.
14. 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.
15. 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.

III. 2022 Modification Application

a. The Modification Application

16. This proceeding concerns the modification of a condition to a SUP. The WGS� is a municipal solid waste landfill located on State agricultural land, and because a landfill is not a classified use within the agricultural district, it requires a SUP as an unusual and reasonable use. *See* Hawai‘i Revised Statutes (“**HRS**”) § 205-6.

17. The State of Hawai‘i Land Use Commission (“**LUC**”) then received and considered the 2019 Planning Commission Order and the record underlying it, and on November 11, 2019, the LUC issued its findings of fact, conclusions of law, and decision and order (“**2019 LUC Order**”) (the 2019 Planning Commission Order and 2019 LUC Order collectively, the “**2019 orders**”) adopting with modifications the Planning Commission’s recommendations to approve the SUP for the WGSL and imposing conditions, including Condition No. 5:

5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

18. The Applicant did not appeal the 2019 orders.

19. The Applicant did not meet Condition No. 5 because it did not identify an alternative landfill site by December 31, 2022.

20. Therefore, on December 22, 2022, nine days before the deadline, the Applicant filed an application to extend the deadline to site a new landfill by two years, from December 31, 2022 to December 31, 2024 (the “**Modification Application**”). Applicant filed its Modification Application prior to the December 31, 2022 deadline, and is following the applicable legal process to seek an extension of time in regards to that single condition.

21. Applicant filed the 2022 Modification 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.

22. The 2022 Modification 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.

b. Procedural History

23. 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.

24. 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.

25. On June 8, 2023, Intervenors Ko Olina Community Association and Maile Shimabukuro (collectively, "KOCA") filed an Objection to Notice of Hearing.

26. 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.

27. On June 13, 2023, Intervenor Schnitzer Steel Hawaii Corp. ("Schnitzer") filed a Petition to Intervene in the proceedings relating to the 2022 Application.

28. Also on June 13, 2023, Schnitzer filed a Motion for Enlargement of Time.

29. 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.
30. 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.
31. 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.
32. 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 Rezentes, a community advocate, on the 2022 Application. No other members of the public asked to provide public testimony on the 2022 Application.
33. 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.

34. 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.
35. 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.
36. On July 28, 2023, KOCA filed its First Amended Exhibit List.
37. On July 31, 2023, KOCA filed its Second Amended Exhibit List.
38. On August 7, 2023, Schnitzer filed its Second Amended Exhibit List.
39. 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.
40. 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.

41. 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.
42. 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.
43. 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).
44. On September 21, 2023, KOCA filed its First Amended Witness List.
45. On September 28, 2023, Schnitzer filed its Second Amended Exhibit List.
46. On October 3, 2023, Schnitzer filed its Stipulation to Admit Intervenor Schnitzer's Additional Exhibits into Evidence.
47. 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).

48. 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 Commission continued to recognize [Mr. Miller] as an expert in solid waste management including landfill siting and design. Tr 11/01/23 (Miller) at 32:12-16. 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.

c. Exhibits and Witnesses

49. 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.

50. 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.

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

52. 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).

53. 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).

IV. Schnitzer Steel Hawai'i Corp's Interest in Proceedings

54. 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.

55. Schnitzer's recycling operations also serve to reduce illegal waste disposal practices. *See* Tr. 10/18/2023, 74:7-19; *see also* S-2.

56. Accordingly, 70 – 80 percent of all scrap metal processed by Schnitzer is diverted from WGS�. *See* Tr. 10/18/2023, 71:7-71:16.
57. 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.
58. 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.
59. Currently, 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.
60. 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.
61. 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.
62. A cessation of Schnitzer’s operations would negatively affect the public. *See* Tr. 10/18/2023, 81:13-82:4
63. Schnitzer supports the 2022 Application. *See* Tr. 08/09/2023, 22:16-18.

V. WGS� History

64. The 2019 LUC Order details the history of the WGS� from initial permitting in 1987 to 2019. 2019 LUC Order at FOF 262, 274-293.

65. When the landfill was initially permitted, it was expected to close by 1997. 2019 LUC Order at FOF 276, Tr. 11/01/23 (Williams) at 14:13-19.
66. In 2003, a five-year extension was approved on the condition that the landfill close by May 8, 2008 and a new site be selected by June 1, 2044. 2019 LUC Order at FOF 286, Tr. 11/01/23 (Williams) at 16:1-3.
67. The City Council received an extension of the June 1, 2004, deadline from the LUC to December 1, 2004. 2019 LUC Order at FOF 288.
68. In 2004, the City Council did not follow the committee's recommendation and instead passed a resolution to select the existing WGS� as the "new" landfill. 2019 LUC Order at FOF 289.
69. In 2007, the Applicant filed "an application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Landfill from May 1, 2008, to May 1, 2010, to extend the closure deadline to May 1, 2020, or until the WGS� reaches its permitted capacity, whichever occurs first." 2019 LUC Order at FOF 290.
70. In 2008, Applicant asked for another extension and expansion. The 2008 application (which underlies the instant proceedings) was granted on the condition that the landfill stopped accepting municipal solid waste ("MSW") by July 31, 2012. 2019 LUC Order at FOF 69, 293, Tr. 11/01/23 (Williams) at 17:8-17.

71. The Applicant appealed and sought to modify that condition, the proceedings which led to the December 31, 2022 site selection deadline that the Applicant now seeks to modify in its 2022 Modification Application. *See generally* 2019 LUC Order.

72. Although there have been several prior site selection processes undertaken by the City, none of these processes have resulted in the identification of a new landfill site.

VI. No Pass Line, Act 73, & 2021 Alternative Site Selection Efforts

73. In 2003, the mayor convened a Blue Ribbon Landfill Site Selection Committee that evaluated and recommended four possible landfill sites. *See* Ex. K58.

74. In 2011, the City formed another Landfill Site Selection Committee, that generated a report in September 2012 ranking eleven possible landfill site locations. *See* Ex. K264.

75. The City then retained a consultant to review and analyze those sites. The consultant issued its report in 2017. Tr. 10/18/23 (Babcock) at 54:19–24; Ex. K444.

76. 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, (Babcock) 14:11-15, Exhibit A-14; *see also* 2022 Application, at 5, and DPP Recommendation, at 3.

77. Director Babcock testified that the new restrictions imposed by Act 73 prohibited Applicant from siting a landfill in a significant portion of the island of O‘ahu. See Tr. 10/18/23, 26:18-27:4, 28:1-28:10, Exhibit “A15” (map showing Act 73 restrictions).
78. 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
79. Separately, the Board of Water Supply (“BWS”) has created a “no-pass line” or “no-pass zone” around the island of O‘ahu. The no pass line is an approximate boundary that demarcates an area to protect groundwater. Tr. 11/01/23 (Miller) at 35:2–36:16.
80. The Applicant has been aware of the no-pass zone as a landfill siting consideration since at least 2003. 10/18/23 Tr. (Babcock) at 60:14–17.
81. Act 73 eliminated from consideration the previously proposed landfill sites outside of the No Pass Zone. See Dec. Babcock at ¶17; Tr. 10/18/23, 14:11-22.
82. In 2021, Mayor Rick Blangiardi appointed a new Landfill Advisory Committee (“LAC”) to assist with the evaluation and scoring of the six sites identified as the WGSLS’s potential replacement landfill sites. See Tr. 10/18/23, 14:23-15:4, 29:18-30:8. The LAC held eight public meetings between October 2021 and June 2022, during which it helped develop processes and criteria to evaluate and score the six Act 73 compliant landfill sites under consideration by the City and County of Honolulu (the “City”). See Tr. 10/18/23, 14:23-15:4, 29:25-30:12.

83. 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-
84. 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.
85. 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.
86. 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.
87. 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.

88. 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.
89. 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.
90. 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.*
91. 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.

92. 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.
93. 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), nine days before the December 31, 2023 deadline..
94. The Planning Commission received numerous letters from West O'ahu community members opposing further extensions to the landfill's operations and yet understanding the necessity of the critical need for the operation of a landfill and encouraging the Planning Commission to impose more oversight over ENV and hold it accountable for moving forward on its obligations. *See* Exs. K266-K355.

VII. Purpose and Need

95. WGSF 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.
96. An extension of two years is necessary because an alternative landfill site was not identified by December 31, 2022, in accordance by 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.

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

98. 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), until a new permitted landfill is operable. 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.

99. 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.

PROPOSED FINDINGS OF FACT OR CONDITIONS

Any proposed findings of fact or conditions submitted by the Applicant or Intervenors that are not expressly ruled upon by the Planning Commission by adoption herein, or rejected by clearly contrary findings of fact, are hereby denied. Planning Commission Rule § 2-77(b).

LABELING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

following Conclusions of Law be more properly deemed Findings of Fact, they are incorporated herein as Findings of Fact.

CONCLUSIONS OF LAW

The Planning Commission hereby concludes as follows:

1. The Planning Commission has jurisdiction to hold public hearings and make recommendations on all proposals to adopt or amend the general plan, development plans and zoning ordinances, and to approve special use permits for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified in accordance with the RPC. Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2017 Edition); HRS Section 205-6(a).

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

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

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

3. In the Application, the Applicant sought a modification of a single condition of the SUP No. 2008/SUP-2 (SP09-403), specifically the deadline to identify a new landfill site.

4. The WGSL requires a State special use permit for its operations.

5. Pursuant to Planning Commission Rule § 2-45, the following guidelines have been established for purposes of determining whether a proposed use is “unusual and reasonable”:

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

- (b) That the desired use would not adversely affect the surrounding property.
- (c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
- (d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
- (e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

6. All parties acknowledge that it is important for the island of O‘ahu to have an operational landfill. No party opposes granting the Applicant additional time to site a new landfill. However, given the limited extension provided, the Applicant must move urgently to identify a new landfill site. Additional oversight by the Planning Commission is necessary and appropriate to ensure that the Applicant proceeds and is held accountable for meeting the siting deadline and complying with all other conditions in its special use permit. Requiring the Applicant to report at least quarterly, in person, to the Planning Commission. The Planning Commission concludes that the Applicant has met its burden of proof with respect to the provisions set forth in Section 2-45 of the RPC.

DECISION AND ORDER

Having duly considered the record of proceedings, the oral arguments of the parties, and the record and files herein, it is the decision and order of the Planning Commission to APPROVE the Applicant’s December 22, 2022 application to modify Special Use Permit No. 2008/SUP-2, subject to the following provisions and conditions:

- 1. Condition No. 1 in the 2019 Planning Commission Order is modified to read as follows and it is recommended that Condition No. 5 in the 2019 LUC Order be modified to read as follows: By no later than December 31, 2024, the Applicant shall identify an alternative

landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. The Applicant shall report quarterly to the Planning Commission, in-person, to report the efforts it has taken and plans to take to identify an alternative landfill site by December 31, 2024; and to answer questions from the Commission and the community.

- a) Reports should include but are not limited to timelines, milestones, schedules of tasks for the specific plan to have a site selected by December 31, 2024.
- b) list of potentials sites under consideration
- c) list of obstacles their ability to choose a site
- d) reporting on the investigation of alternative technologies for landfill (2019 LUC Decision)

3. All other conditions to Special Use Permit No. 20080/SUP-2 as stated in the 2019 orders remain in full force and effect.

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

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

Application to Modify SUP No. 2008/SUP-2
(SP09-403) by Modifying (1) Condition No. 1
of the Planning Commission's Findings of Fact,
Conclusions of Law, and Decision and Order,
dated June 10, 2019, and (2) Condition No. 5
of the LUC's Findings of Fact, Conclusions of
Law, and Decision and Order Approving with
Modifications the City and County of
Honolulu Planning Commission's
Recommendation to Approve Special Use
Permit, certified on November 1, 2019,

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the City and County of Honolulu, Planning Commission's draft Findings of Fact, Conclusions of Law, and Decision and Order was duly served electronically on the following persons:

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DATED: Honolulu, Hawai'i, March 1, 2024.

/s/ Gloria Takara
GLORIA TAKARA
Secretary-Reporter
PLANNING COMMISSION