

DOCKET NO. SP09-403
Department of Environmental
Services
(Waimanalo Gulch Sanitary Landfill)

Application to Modify Condition No. 1 of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019, and Condition No. 5 of the LUC's Findings of Fact, Conclusions of Law, and Decision and Order certified on November 1, 2019.

STAFF REPORT

Hearing
April 8, 2024



Daniel E. Orodenker, Executive Officer

Submitted: April 2, 2024

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1. **EXPLANATION OF THE PROCEEDING**

The proceeding before the Land Use Commission (“Commission”) is a Motion to Amend. Requesting the modification of (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

Special Permit application proceedings are made initially at the appropriate county planning commission, in this case the City and County of Honolulu Planning Commission. For an application that involves an area greater than 15 acres the record is developed at the County level and transferred to the Land Use Commission for decision making.

The Commission must decide on the request within 45 days after receipt of the complete record of the proceeding held by the County. Five affirmative votes are required to approve such a request.

LEGAL PRECEDENT AND OBLIGATIONS

Hawai'i Administrative Rules (“HAR”) **§15-15-70(a)** provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

Pursuant to **HAR §15-15-94**, a petitioner who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR §15-15-70, including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.

If good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (**HAR §15-15-94(b)**). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission. Pursuant to Hawai'i Revised Statute (“HRS”) **§91-10(5)**, the 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. Petitioner has the burden to

show good cause for the request and a preponderance of evidence.

The Commission has discretion based on the facts presented in the case to consider other factors, including (1) whether the need for the condition still exists; (2) whether an alternative method for ensuring compliance exists that protects the public trust; or (3) whether compliance with the condition would create an undue hardship.

2. BACKGROUND INFORMATION

The petition area includes two Special Permits (SP87-362 and SP09-403) which covers a period of over 35 years with numerous legal and administrative actions, for the purpose of the Motion in front of the Commission at this time, the background and historical information will only include history relevant to SP09-403.

2009 Original Petition

Petitioned for a new special use permit to supersede existing special use permit (SP-87-362) to allow a 92.5-acre expansion and time extension for Waimanalo Gulch Sanitary Landfill, O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72 And 73

The [2009 Order](#) was signed on October 22, 2009, which granted the Petition subject to 16 conditions. These conditions have been amended in subsequent years. Current Conditions will be listed in the 2024 Motion Amendment section.

September 24, 2009: [Agenda](#) | [Minutes](#)

October 22, 2009: [Agenda](#) | [Minutes](#)

2009 Motion for Reconsideration *(for modification of Condition 14 and deletion of Conditions 15 and 16 from the 2009 Order)*

On October 29, 2009, the Department of Environmental Services, City and County of Honolulu ("Applicant"), filed a Motion for Reconsideration to modifying Condition Number 14 and deleting Condition Numbers 15 and 16 of the 2009 Decision and Order

Condition 14: Municipal solid waste shall be allowed at the WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be

allowed at the WGS� after July 31, 2012

Condition 15: The Honolulu City Council through the City Administration shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGS�, including any funding arrangements that are being considered by the City Council and the City Administration.

Condition 16: The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGS�.

The LUC heard the matter on November 13, 2009, and issued the [Order Denying Motion to Reconsider](#) on December 1, 2009.

November 13, 2009: [Agenda](#) | [Minutes](#)

Appeal to first circuit court

On November 19, 2009, the Applicant appealed the LUC's decision to the First Circuit Court.

On September 21, 2010, The First Circuit Court affirmed the LUC's decision, including Condition No. 14, but modified Condition Nos. 15 and 16 by deleting reference to the City Council and City Administration and substituting the Applicant in their place.

Final Judgment was entered on October 19, 2010.

Appeal to the Intermediate Court of Appeals

On November 12, 2010, The Applicant appeals the Circuit Court's decision to the Intermediate Court of Appeals.

The matter is subsequently transferred to the Hawai'i State Supreme Court.

2011 Status Report

On January 21, 2011, [the Commission requested a status report](#) be held on February 2, 2011, in response to discharges of solid waste into the ocean.

The status report was to provide the Commission with information regarding the discharges, action taken to prevent recurrence, and the City and County of Honolulu's efforts to identify and develop an alternative site as required by Condition 4 of the 2009 Order.

February 02, 2011: [Agenda](#) | [Minutes](#)

Intermediate Court of Appeals to Hawai'i Supreme Court

On July 14, 2011, after briefing was completed, ENV filed an application for transfer to the Hawai'i Supreme Court, which was granted.

ENV argued that there was no substantial evidence in the record to support the imposition of Condition #14 in that the LUC wholly adopted the Planning Commission's findings of fact, including findings that it would take **seven years to identify and develop a new landfill site...**

Condition 14: Municipal solid waste shall be allowed at the WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012

2009-2012= three years to essentially stop use, and find another location (finding in the 2009 decision and order provide a specific timeline)

On May 4, 2012, the [Hawai'i Supreme Court issued its decision](#), holding that Condition #14 was not supported by substantial evidence in the record.

The Court found that the Planning Commission's findings of fact, which the LUC adopted, demonstrate the continuing need to dispose of MSW at WGS� beyond July 31, 2012.

The Court ordered that the matter be remanded to the LUC for further hearings as the LUC deems appropriate.

**2012 LUC Remand to City and
County of HNL

and Civil No. 09-1-2719-11**

On July 5, 2012, the LUC met to discuss and deliberate the procedural issues arising from Civil No. 09-1-2719-11.

Civil No. 09-1-2719-11: the Department of Environmental Services, City and County of Honolulu, appealed the October 19, 2010, final judgment of the First Circuit Court in support of its September 21, 2010, Order affirming the LUC's Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications ("LUC Order") filed October 22, 2009.

The LUC Order granted, among other things, a 92.5-acre expansion and time extension of the existing Waimanalo Gulch Sanitary Landfill located at Waimanalo Gulch, O'ahu, Hawai'i (County Special Use Permit File No. 2008/SUP-2 ("SUP-2")).

On May 4, 2012, the State Supreme Court issued its decision, which vacated the circuit court's judgment affirming the LUC's approval of SUP-2 and remanded the matter to the circuit court with instructions that the circuit court **remand this matter to the LUC for further proceedings.**

The LUC met on July 5, 2012, and September 14, 2012, to deliberate and discuss the procedures and act if necessary.

At the [September 14, 2012](#), hearing the Commission voted to remand the 2008 application to the City and County of Honolulu Planning Commission for consolidation with the 2011 application for the purpose of providing the LUC with the Findings of Fact, Conclusions of Law, and Decision and Order as a consolidated case.

2014-2019 Status Report

On May 16, 2014, the LUC to hear a status report on the proceedings before the City and County of Honolulu Planning Commission.

The Commission issued the [May 28, 2014, Decision and Order](#), and required:

The Applicant shall file written status reports with the LUC on the proceedings of the Planning Commission relating to County Special Use Permit File No. 2008/SUP-2 **every other month starting from July 2014** with service upon the other parties in this matter. The other parties are free to file written responses with the LUC regarding the status reports

The Reports listed below are posted to the LUC Website under the [2014-2019 Status Report](#) Tab

2014

[November 2014 Status Report](#)

[September 2014 Status Report](#)

[July 2014 Status Report](#)

[Supplement- Landfill Diversion Chart](#)

[Supplement- Landfill MSW](#)

2015

[November 2015 Status Report](#)

[September 2015 Status Report](#)

[July 2015 Status Report](#)

[May 2015 Status Report](#)

[March 2015 Status Report](#)

[January 2015 Status Report](#)

2016

[November 2016 Status Report](#)

[September 2016 Status Report](#)

[July 2016 Status Report](#)

[May 2016 Status Report](#)

[March 2016 Status Report](#)

[January 2016 Status Report](#)

2017

[November 2017 Status Report](#)

[Amended COS for NOV 2017 Status Report](#)

[September 2017 Status Report](#)

[July 2017 Status Report](#)

[May 2017 Status Report](#)

[March 2017 Status Report](#)

[January 2017 Status Report](#)

2018

[November 2018 Status Report](#)

[September 2018 Status Report](#)

[July 2018 Status Report](#)

[May 2018 Status Report](#)

[March 2018 Status Report](#)

[January 2018 Status Report](#)

2019

[November 2019 Status Report](#)

[September 2019 Status Report](#)

[July 2019 Status Report](#)

[May 2019 Status Report](#)

[March 2019 Status Report](#)

[January 2019 Status Report](#)

The Commission held meetings regarding the Status Reports on the following days:

May 16, 2014: [Agenda](#) | [Minutes](#)

October 22, 2015: [Agenda](#) | [Minutes](#)

May 18, 2016: [Agenda](#) | [Minutes](#)

May 24-25, 2017: [Agenda](#) | [Minutes](#)

2019 Motion to Approve with Modifications

On June 12, 2019, the LUC received the Preliminary Files from the City and County of Honolulu Department of Environmental Services (“C&C ENV”)

On September 11, 2019, the LUC received the transmittal of the [consolidated record](#) from the City and County of Honolulu Planning Commission (“C&C PC”).

Intervenors:

Ko Olina Community Association and Maile
Shimabukuro "KOCA"

Colleen Hanabusa

Schnitzer Steel Hawai'i Corporation

The action was to Consider the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order Relating to Proceedings on Remand Regarding the City and County of Honolulu Department of Environmental Services' Application for a New Special Use Permit to Allow a 92.5-Acre Expansion and Time Extension for the Waimanalo Gulch Sanitary Landfill and Application to Modify the Land Use Commission's 2012 Order.

On November 1, 2019, the Commission adopted the Decision and Order adopted with modifications the Planning Commission's recommendations to approve the special use permit.

The amendment is subject to 17 Conditions:

- 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.**

***Substantive to the current 2024 proceedings**

2. The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all onsite and offsite improvements involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.
3. In accordance with Chapter 11-60.1 "Air Pollution Control," Hawai'i Administrative

Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.

4. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai'i and all its agencies and/or employees for any lawsuit or legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the landfill.
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.**

***Substantive to the current 2024 proceedings**

6. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.
7. The Applicant shall provide semi-annual

reports to the Planning Commission and the Land Use Commission regarding (a) the status of the efforts to identify and develop a new landfill site on O'ahu, (b) the WGSL's operations, including gas monitoring, (c) the Applicant's compliance with the conditions imposed herein, (d) 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, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill and (g) 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.

8. Closure Sequence" A" for the existing landfill cells at WGSL as shown on Exhibit" A12" must be completed, and final cover applied, by December 31, 2012.
9. WGSL shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24 hours a day.
10. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGSL with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical powerlines
11. The operations of the WGSL under 2008/SUP-

2 (SP09-403) shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health

12. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate
13. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 (SP09-403) shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 (SP09-403) should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order
14. The Applicant shall notify the Planning Commission and Land Use Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2 (SP09-403).
15. The Applicant shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City Council and the City Administration.
16. The Applicant shall have a public hearing every three months in either Wai'anae, Mā'ili , or Nānākuli to report on the status of their

efforts to either reduce or continue the use of the WGSL

17. If the landfill releases waste or leachate, the Applicant must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/ Honokai Hale, Wai'anae Coast and Nānākuli-Mā'ili Neighborhood Boards, Intervenors Schnitzer Steel Hawaii Corp., Ko'Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the landfill' s shoreline outfall to prevent waste from spreading into the ocean.

2019 Motion to Terminate Order for Status Reports

On December 4, 2019, the Department of Environmental Services, City and County of Honolulu, filed a Motion to [Terminate Order Regarding Written Status Reports](#) on Proceedings of the Planning Commission Relating to County Special Use Permit.

On January 9, 2020, the LUC considered the Applicant's Motion.

The LUC, having duly considered the arguments of the Applicant, OPSD, the DPP, and Intervenors KOCA/Shimabukuro, the LUC approved the Applicants Motion to terminate Order Regarding Written Status Reports.

The LUC [Order to Terminate Order Regarding Written Status Reports](#) was issued January 28, 2020.

Subject Proceeding:

The City and County of Honolulu filed the Record

2024 Motion to Amend

with the Land Use Commission on July 15, 2024.

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

The Order from the Planning Commission established the following Conditions, which are present in the Order before the Commission:

- 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 WGS�. 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. Reports shall include but are not limited to the following information:
 - 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 potential sites under consideration

- c) list of obstacles their ability to choose a site
 - d) reporting on the investigation of alternative technologies for land fill (2019 LUC Decision and Order)
- 3) All other Conditions in the 2019 Order remain in full force and full effect .

During the proceeding currently in front of the Commission the Commission can; adopt, deny, or modify the pre-existing Decision and Order.

This Staff report will predominantly focus on the 2019 Order, in which Condition 5 was imposed, and the time extension is requested, and the current Motion in front of the Commission.

Subject Proceeding: [2019 Motion to Approve with Modifications](#)

On 06/12/19 the LUC received the Preliminary Files from the City and County of Honolulu Department of Environmental Services (“C&C ENV”)

Based on the consolidated record of proceedings, the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated June 10, 2019, the oral arguments of the parties and the record, the Commission adopted with modifications the Planning Commission's recommendations to approve a special use permit for the WGSL and Approves with Modifications the Application subject to 17 Conditions.

Condition One:

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

Condition Five:

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.

This brings us up to date, as it is 2024 and the City and County of Honolulu Department of Environmental Services has not identified an alternative landfill site. C&C ENV is seeking an Amendment to the Special Permits Decision and Order

to extend the time to continue the search for an alternative location and extend the closure date of the landfill.

3. SUMMARY OF PETITIONER'S MOTION

The Petitioner has filed the following documents that are composed of the Petition, these files were entered into the record at the County level during the Planning Commission contested case proceedings.

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, which was later deemed a contested case hearing.

On July 15, 2024, the Land Use Commission received the filings and record from the City and County of Honolulu Planning Commission.

These are titled below and available via the link to the electronic documents on the LUC website:

Exhibit 01 ; Application to Modify	Exhibit 30 ; Stip. To Admit Intervenor:
Exhibit 02 ; DPP Letter to ENV re:2022 Application	Schnitzer Steel amended list of exhibits
Exhibit 03 ; DPP Director Recommendation	Exhibit 31 ; PC Agenda Oct 18, 2023
Exhibit 04 ; Intervenor: Ko Olina objection to Notice of Hearing	Exhibit 32 ; PC October 18, 2023, Transcripts
Exhibit 05 ; Intervenor: Ko Olina Motion to be party/intervene	Exhibit 33 ; Intervenor: Ko Olina submission of slides
Exhibit 06 ; Intervenor: Schnitzer Steel Hawai'i Corp.'s Motion for Enlargement of Time	Exhibit 34 ; PC Agenda Nov 1, 2023
Exhibit 07 ; Intervenor: Schnitzer Steel Hawai'i Corp.'s Motion to intervene- memo in support	Exhibit 35 ; PC Transcripts Nov 1, 2023
Exhibit 08 ; ENV Response to Intervenor: Schnitzer Steel Hawai'i Corp.'s Motions	Exhibit 36 ; Intervenor: Ko Olina submission of slides
Exhibit 09 ; ENV Response to Intervenor: Ko Olina	Exhibit 37 ; ENV Proposed Decision and Order
	Exhibit 38 ; Intervenor: Schnitzer Steel proposed Decision and Order
	Exhibit 39 ; Intervenor: Ko Olina proposed Decision and Order
	Exhibit 40 ; ENV Amened Certificate of Service
	Exhibit 41 ; ENV Re: Intervenor: Ko

<p>Objection Exhibit 10; ENV Response to Intervenor: Ko Olina Motion Exhibit 11; June 28, 2023, Meeting notice Exhibit 12; June 28, 2023, Meeting Agenda Exhibit 13; June 28, 2023, Meeting Minutes Exhibit 14; Written Testimonies to PC Exhibit 15; ENV List of Witnesses Exhibit 16; ENV list of exhibits A1-A18 Exhibit 17; Intervenor: Ko Olina list of exhibits Exhibit 18; Intervenor: Ko Olina list of Witnesses Exhibit 19; Intervenor: Schnitzer Steel list of exhibits Exhibit 20; Intervenor: Schnitzer Steel list of witnesses Exhibit 21; Intervenor: Ko Olina Amended list of Exhibits (1) Exhibit 22; Intervenor: Ko Olina Amended list of Exhibits (2) Exhibit 23; Intervenor: Schnitzer Steel amended list of exhibits Exhibit 24; PC Notice of Contested Case Exhibit 25; PC Amended Notice of Contested Case Exhibit 26; PC August 9, 2023, Agenda Exhibit 27; PC August 9, 2023, Transcript Exhibit 28; Intervenor: Ko Olina Amended list of Witnesses Exhibit 29; Intervenor: Schnitzer Steel amended list of exhibits (2)</p>	<p>Olina proposed Decision and Order Exhibit 42; ENV Re: Schnitzer Steel proposed Decision and Order Exhibit 43; Intervenor: Ko Olina objection to ENV and Schnitzer Steel Proposed Decision and Orders Exhibit 44; PC Agenda Feb 7, 2024 Exhibit 45; PC Transcript Feb 7, 2024 Exhibit 46; Intervenor: Ko Olina Submission of Slides Exhibit 47; PC Draft Decision and Order Exhibit 48; ENV re: PC Draft Decision and Order Exhibit 49; Intervenor Schnitzer Steel Exceptions to PC Draft Decision and Order Exhibit 50; Intervenor: Ko Olina written comments on PC Draft Decision and Order Exhibit 51; PC Agenda April 3, 2024 Exhibit 52; PC Transcript April 3, 2024 Exhibit 53; Intervenor: Ko Olina Submission of Slides Exhibit 54; PC Agenda May 15, 2024 Exhibit 55; PC Transcript May 15, 2024 Exhibit 56; PC Transmittal to the Parties: Decision and Order Exhibit 57; PC July 15, 2024, Transmittal to LUC</p>
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The Honolulu Planning Commission adopted the Decision and Order on May 15, 2024, containing 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. Reports shall include but are not limited to the following information:
 - 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
 - List of potentials sites under consideration
 - List of obstacles their ability to choose a site
 - Reporting on the investigation of alternative technologies for landfill (2019 LUC Decision)
 3. All other conditions to Special Use Permit No. 2008/SUP-2 as stated in the 2019
- 4. SUMMARY OF COUNTY PLANNING DEPARTMENT POSITION STATEMENT**
The City and County of Honolulu has not filed with the LUC as of 07/30/2024.
- 5. INTERVENORS**
Ko Olina Community Association (“KOCA”) and Maile Shimabukuro
Upon The City and County of Honolulu Planning Commission record transferal, Intervenor Ko Olina Community Association (“KOCA”) and Maile Shimabukuro provided numerous Exhibit Lists, with no attached exhibits. The Exhibit List’s did not contain attached filings, however, unidentified and unexplained external links were provided at the end of the document.

Filings available at the following drop box links:

Item 17 Exhibit List and Documents	https://www.dropbox.com/sh/wi58i8stai3efap/AACPPHsyOX55AELqliFHn6v7a?dl=0
Item 21 First Amended List and Documents:	https://www.dropbox.com/sh/wi58i8stai3efap/AACPPHsyOX55AELqliFHn6v7a?dl=0
Item 22 Second Amended List and Documents:	https://www.dropbox.com/scl/fo/yxx6v8oxdbewyk4c3ucob/h?rlkey=a4cjn92nyf59t53i36bd794u8&dl=0

Due to the way these filings were transmitted from the City and County of Honolulu Planning Commission, the filings provided through the Dropbox Link have not been stamped in or processed as ADA Compliant. Land Use Commission Staff are working with the Intervenor to address the issue.

Schnitzer Steel Hawai'i Corporation

[Exhibit 19](#), List of Exhibits; Certificate of Service

[Exhibit 23](#), Amended List of Exhibits; Certificate of Service

[Exhibit 29](#), Second Amended List of Exhibits; Certificate of Service

6. OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (“OPSD”)

[Office of Planning and Sustainable Development Memo](#) filed on July 25, 2024

The Office of Planning and Sustainable Development recommends that the State Land Use Commission approve the Application to allow ENV to identify an alternative landfill site by the end of this year and provides the following reasoning in support of Honolulu Planning Commissions decision:

1. Good Faith Efforts to Comply with Conditions, Act 73 Session Laws of Hawai'i 2020, and the Honolulu Board of Water Supply (“BWS”) No Pass Zone
2. Reasonable Request
 - Vital public resource
 - No objections by parties for the extension request
 - Extension is brief
 - o OPSD believes the Department of Environmental Services, City and County of Honolulu can identify an alternate landfill site by December 31, 2024.

7. **STAFF NOTES/QUESTIONS**

Decision making process limitations presented in special permit proceedings:

Durning this proceeding in front of the Commission the Commission can; **adopt, deny, or modify the pre-existing Decision and Order.**

Variables of site identification:

(Not the only variables, but new and propose issues with limitations/identification)

No Pass Line

The Board of Water Supply 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.

Act 73, Session Laws 2020

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

Which took effect September 15, 2020, about a year after the 2019 LUC Decision and Order was signed

Practicality of the time extension

Considering the variables that must be considered by the Department of Environmental Services when identifying an alternate site, Staff would like to note the extension of time is until December 31, 2024.

Staff questions the practicality of this date. Having a date this soon may be premature and a misuse of Party resources. However, there is

nothing on the record to support a later date for compliance. As such, if the commission has concerns regarding the new date for compliance, it must remand the matter to the planning commission for further proceedings.