

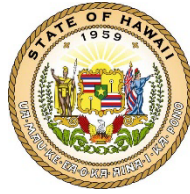
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Application of) DOCKET NO. SP09-403
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU.) FINDINGS OF FACT, CONCLUSIONS OF
) LAW, AND DECISION AND ORDER
) APPROVING APPLICATION TO MODIFY
To Modify Special Use Permit (SUP)) RECEIVED JULY 15, 2024; AND
No. 2008/SUP-2 (SP09-403) by Modifying) CERTIFICATE OF SERVICE
(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, certified November)
1, 2019, For the Existing SUP To Allow For)
Waimānalo Gulch Sanitary Landfill,)
Waimānalo Gulch, O'ahu, Hawai'i, Tax Map)
Key: (1) 9-2-003: 072 And 073)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
APPROVING MOTION TO MODIFY RECEIVED JULY 15, 2024 AND
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct
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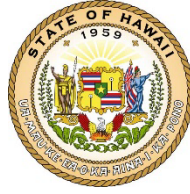
BY _____
DANIEL E. ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Application of) DOCKET NO. SP09-403
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DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU.) FINDINGS OF FACT, CONCLUSIONS OF
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No. 2008/SUP-2 (SP09-403) by Modifying) CERTIFICATE OF SERVICE
(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, certified November)
1, 2019, For the Existing SUP For Waimānalo)
Gulch Sanitary Landfill, Waimānalo Gulch,)
O'ahu, Hawai'i, Tax Map Key: (1) 9-2-003:)
072 And 073)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
APPROVING MOTION TO MODIFY RECEIVED JULY 15, 2024
AND
CERTIFICATE OF SERVICE



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Application of	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIORNMENTAL)	
SERVICES, CITY AND COUNTY OF	)	FINDINGS OF FACT, CONCLUSIONS OF
HONOLULU.	)	LAW, AND DECISION AND ORDER
	)	APPROVING APPLICATION TO MODIFY
To Modify Special Use Permit (SUP)	)	RECEIVED JULY 15, 2024; AND
No. 2008/SUP-2 (SP09-403) by Modifying)	CERTIFICATE OF SERVICE
(1) Condition No. 1 of the Planning)	
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LUC’s Findings of Fact, Conclusions of Law,)	
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1, 2019, For the Existing SUP For Waimānalo)	
Gulch Sanitary Landfill, Waimānalo Gulch,)	
O’ahu, Hawai’i, Tax Map Key: (1) 9-2-003:)	
072 And 073)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
APPROVING MOTION TO MODIFY RECEIVED JULY 15, 2024, REGARDING
(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 2019 LUC FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER, CERTIFIED NOVEMBER 1, 2019**

The State of Hawai’i Land Use Commission (“LUC” or “Commission”), having
examined the complete record of the City and County of Honolulu Planning Commission’s

(“Planning Commission”) consolidated proceedings on the Department of Environmental Services, City and County of Honolulu’s (“Applicant” or “ENV”) application to modify the State Special Use Permit SP09-403 (County Special Use Permit No.2008/SUP-2), 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 Approving with Modifications the City and County of Honolulu Planning Commission’s Recommendation to Approve Special Use Permit, certified November 1, 2019, which application (the “2024 Motion to Modify”) was received by the LUC on July 15, 2024.

The 2024 Application to Modify specifically sought to amend the conditions that set a December 31, 2022, deadline for Applicant to identify an alternative landfill site, which at the time of initial filing at the County, was to extend the deadline to identify a new landfill by two years, from December 31, 2022, until December 31, 2024.

The Commission, having heard and examined the testimony, evidence, and argument of counsel for the Petitioner, Intervenors, and other Parties presented during the August 8, 2024, hearing, along with the Planning Commission’s pleadings filed herein, and public testimony received, makes the following Findings of Fact, Conclusions of Law, and Decision and Order Approving the 2024 Application to Modify.

FINDINGS OF FACT

BACKGROUND OF THE APPLICATIONS

2008 Application

1. On November 23, 2006, the former State of Hawai'i Office of Environmental Quality Control of the State of Hawai'i ("OEQC") published notice that the environmental impact statement for the expansion of the Waimānalo Gulch Sanitary Landfill ("WGSL") was available for public review and comment. *See* 2008 Application Proceeding ("2008AP") 5/1/09 Department of Planning and Permitting of the City and County of Honolulu Findings of Fact, Conclusions of Law and Decision and Recommendation ("OPP's 2009 Recommendation") at 6
2. On October 13, 2008, the Department of Planning and Permitting of the City and County of Honolulu ("OPP") accepted a final environmental impact statement for the expansion of the WGSL ("2008 FEIS") on behalf of the Mayor of the City and County of Honolulu. 2008AP OPP's 2009 Recommendation at 6; 2008AP 8/11/09 ENV's Opp. to Intervenors Motion to Dismiss, Ex. 7.
3. On October 23, 2008, OEQC published notice of the 2008 FEIS acceptance. 2008AP OPP's 2009 Recommendation at 6.
4. On December 3, 2008, the Applicant filed the 2008 Application to expand the 107.5-acre operating portion of the WGSL by approximately 92.5 acres for a total of approximately 200 acres. 2008 Application at 1-1.
5. Of the approximately 92.5 acres in the expansion area, approximately 37 acres were to be utilized for landfill cells and related uses. 2008 Application at 1-2.
6. The expansion area also was to include the development of landfill- associated support infrastructure, including drainage, access roadways, a landfill gas collection and monitoring system, leachate collection and monitoring systems, stockpile sites, a public

drop-off center, a landfill gas-to-energy system, and other related features. 2008

Application at Part 1.

7. In the 2008 Application, the Applicant sought to withdraw its existing special use permit for approximately 107.5 acres, Special Use Permit File No. 86/SUP-5, and the conditions imposed therein, if the request for the new special use permit was granted. 2008AP DPP's 2009 Recommendation at 3.
8. The Planning Commission scheduled a public hearing to consider the Applicant's 2008 Application for May 6, 2009.
9. On April 3, 2009, a notice of the hearing of the matter was published in the Honolulu Star-Bulletin.
10. On April 16, 2009, the Ko Olina Community Association ("KOCA"), Maile Shimabukuro ("Shimabukuro"), and Colleen Hanabusa ("Hanabusa") filed a Petition to Intervene; Memorandum in Support; Verification; Exhibit "A"; and Certificate of Service (collectively "Petition to Intervene").
11. On April 24, 2009, the Applicant filed a Memorandum in Opposition to the Petition to Intervene.
12. On May 1, 2009, the City and County of Honolulu Department of Planning and Permitting ("DPP") transmitted its report and recommendation for approval of the 2008 Application to the Planning Commission.
13. On May 1, 2009, the Planning Commission conducted a site visit to the WGSL and the H-POWER facility.

14. On May 6, 2009, the Planning Commission held a public hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i, and heard public testimony.
15. On May 7, 2009, Todd K. Apo filed a Petition to Intervene; Verification; and Certificate of Service.
16. On May 18, 2009, the Applicant filed a Memorandum in Opposition to Mr. Apo's Petition to Intervene; Exhibits "1" through "4"; and Certificate of Service.
17. On May 20, 2009, KOCA, Shimabukuro, and Hanabusa filed a Motion to Recuse Commissioner John Kaopua; Memorandum in Support of Motion; Exhibit 11 "A" and "B"; Declaration of Colleen Hanabusa; and Certificate of Service (collectively "Motion to Recuse").
18. On May 20, 2009, the Planning Commission resumed the public hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.
19. The Planning Commission heard and granted the Petition to Intervene filed by KOCA, Shimabukuro, and Hanabusa.
20. Pursuant to Planning Commission Rules Subchapter 5, the matter was noted as a contested case.
21. The Planning Commission also heard argument on Mr. Apo's Petition to Intervene.
22. On June 5, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Recuse and Certificate of Service.
23. On June 10, 2009, the hearing resumed at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

24. The Planning Commission heard and granted the Motion to Recuse Commissioner Kaopua filed by Intervenors KOCA, Shimabukuro, and Hanabusa. 2008AP 6/10/09 Minutes at 9.
25. The Planning Commission denied Mr. Apo's Petition to Intervene on the grounds that it was untimely filed; that Mr. Apo's position regarding the 2008 Application was substantially the same as the position of Intervenors KOCA, Shimabukuro, and Hanabusa; and that the proceeding would be inefficient and unmanageable if Mr. Apo were allowed to intervene. 2008AP 7/27/09 Planning Commission's findings of fact, conclusions of law, and order at 3.
26. The Planning Commission closed the public hearing on the 2008 Application.
27. On June 15, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed their List of Witnesses naming 42 potential witnesses, including Mr. Apo. The Applicant also filed its List of Witnesses, naming six potential witnesses.
28. On June 22, 2009, the Planning Commission commenced the contested case hearing at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai'i.
29. The Applicant offered Exhibits A1 through A31, which were accepted into the record by the Planning Commission.
30. The Applicant called Brian Takeda, who was qualified as an expert in the field of urban and regional planning, and Hari Sharma, Ph.D., who was qualified as an expert in the field of geotechnical and geo-environmental engineering, to testify. 2008AP 6/22/09 Tr. at 33:5-8 (Takeda), 234:7-12 (Sharma).
31. Intervenors KOCA, Shimabukuro, and Hanabusa offered, and the Planning Commission received into the record, Exhibits B1 and B4. 2008AP 6/22/09 Tr. at 81:6-11, 226:14-15.

32. On June 24, 2009, the Planning Commission resumed the contested case hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.
33. On June 24, 2009, the Applicant filed List of Exhibits; Exhibits "A1"-"A31"; and Certificate of Service.
34. During the June 24, 2009, contested case hearing, the examination of Dr. Sharma was completed.
35. The Applicant called Joseph R. Whelan, who was the General Manager of Waste Management of Hawai'i, Inc. ("WMH"), which operates the WGSL, to testify.
36. On June 29, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Motion to Dismiss Application; Memorandum in Support of Motion to Dismiss; Declaration of Colleen Hanabusa; Exhibits "A" -"E"; and Certificate of Service (collectively "Motion to Dismiss"). Intervenors contended that the 2008 FEIS did not cover the entire 200-acre site, and therefore the 2008 Application must be dismissed.
37. On July 1, 2009, the Planning Commission resumed the contested case hearing at Kapolei Hale, 1000 Uluohia Street, Kapolei, Hawai'i.
38. During the July 1, 2009, contested case hearing, the examination of Mr. Whelan was completed.
39. The Applicant called Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, who at the time was the Chief of the Division of Refuse, City and County of Honolulu, to testify. 2008AP 7/1/09 Tr. at 93:2-8 (Von Pein); 176:4-9 (Doyle).

40. The Applicant offered, and the Planning Commission accepted for the record, Exhibit A32. 2008AP 7/1/09 Tr. at 168:16-17.
41. On July 2, 2009, the Planning Commission resumed the contested case hearing at the City Council Chambers, Third Floor, 530 South King Street, Honolulu, Hawai'i.
42. The Applicant offered no further witnesses and concluded its case- in-chief. 2008AP 7/2/09 Tr. at 4:15-17.
43. Intervenors KOCA, Shimabukuro, and Hanabusa began their case- in-chief and presented testimony from Abbey Mayer; Josiah Ho'ohuli; William J. Aila, Jr.; Daniel Banchiu; Cynthia K. L. Rezentes; Maeda Timson; and Todd Apo.
44. The Applicant offered, and the Planning Commission received into the record, Exhibits A33 and A34. 2008AP 7/2/09 Tr. at 32:20-25, 240:7-13.
45. Intervenors KOCA, Shimabukuro, and Hanabusa offered, and the Planning Commission received into the record, Exhibit BS. 2008AP 7/2/09 Tr. at 185:21- 23.
46. Other documents were referenced by the Planning Commission and the parties as Exhibits B2 and B3, but the documents were not received into evidence. 2008AP 7/2/09 Tr. at 9:4-6, 21:25.
47. At the conclusion of their case-in-chief, Intervenors KOCA, Shimabukuro, and Hanabusa rested their case. 2008AP 7/2/09 Tr. at 279:15.
48. On July 6, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Dismiss; Declaration of Gary Y. Takeuchi; Exhibits "1"-"8"; and Certificate of Service.
49. On July 8, 2009, the Planning Commission resumed the contested case hearing at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawai'i.

50. The Applicant presented as a rebuttal witness David M. Shideler, who was qualified as an expert in archaeology and historical cultural resources. 2008AP 7/8/09 Tr. at 11:16-21.
51. The Applicant offered, and the Planning Commission received into the record, Exhibits A35, A36 and A37. 2008AP 7/8/09 Tr. at 8:25-9:5, 65:14-22, 68:6-13.
52. Intervenors KOCA, Shimabukuro, and Hanabusa made their witness, Mr. Apo, available for additional questions by Commissioner Beadie Dawson.
53. Upon the conclusion of questioning, the examination of Mr. Apo was completed.
54. The Planning Commission heard and denied the Motion to Dismiss filed by Intervenors KOCA, Shimabukuro, and Hanabusa.
55. On July 17, 2009, the Applicant filed its Post-Hearing Brief; Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Certificate of Service. Intervenors KOCA, Shimabukuro, and Hanabusa also filed their Post- Hearing Brief; Proposed Findings of Fact and Conclusions of Law and Decision and Order; and Certificate of Service.
56. On July 28, 2009, the Planning Commission filed its Findings of Fact, Conclusions of Law, and Order and Certificate of Service denying Mr. Apo's Petition to Intervene.
57. On July 29, 2009, the Applicant filed (1) Response to Post-Hearing Brief of Intervenors and (2) Exceptions to Intervenors' Proposed Findings of Facts, Conclusions of Law, and Decision and Order; Declaration of Gary Y. Takeuchi; Exhibits "1" -"3"; and Certificate of Service. Intervenors KOCA, Shimabukuro, and Hanabusa filed a Reply Brief.
58. On August 4, 2009, the Planning Commission entered its Findings of Fact, Conclusions of Law, and Decision and Order granting the 2008 Application ("Planning Commission's 2009 Decision").

59. In its decision, the Planning Commission imposed several conditions, including the following:

1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on O'ahu. Upon the selection of a new landfill site or sites on O'ahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.
2. 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.
3. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission regarding the status of identifying and developing new landfill sites on O'ahu, the WGSL's operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission on June 1 of each year subsequent to the date of this Decision and Order
4. 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.
5. 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 power lines.

6. The operations of the WGSL under 2008/SUP-2 shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.
7. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.
8. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 should not be revoked if this Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.
9. The Applicant shall notify the Planning Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2.

2011AP Ex. K12 at 25-26 (Planning Commission's 2009 Decision).

60. The Planning Commission transmitted the record and its decision in the 2008 Application proceeding to the LUC.
61. On September 10, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Motion to Intervene; Memorandum in Support; and Certificate of Service (collectively "Motion to Intervene") before the LUC.
62. On September 17, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Intervene filed by Intervenors KOCA, Shimabukuro, and Hanabusa.
63. On September 21, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Motion to Deny the 2008 Application; Memorandum in Support of Motion; Declaration of

Colleen Hanabusa; Exhibit "A," and Certificate of Service (collectively "Motion to Deny").

64. On September 22, 2009, the State of Hawai'i Office of Planning and Sustainable Development ("OPSD") filed testimony recommending that the 2008 Application be denied, that the request to withdraw 86/SUP-05 be denied, and that it instead be extended for three years, with additional expansion space of one cell for ash and two cells for municipal solid waste. OPSD further recommended that the Applicant be required to complete a public site selection process within 12 months of the date of the Decision and Order followed by the City Council being required to select a site(s) based on the recommendations within an additional six months, with an automatic expiration of the permit if this condition is violated. In the alternative, OP recommended that the matter be remanded to the Planning Commission.
65. On September 23, 2009, the Applicant filed a Memorandum in Opposition to the Motion to Deny filed by Intervenors KOCA, Shimabukuro, and Hanabusa.
66. On September 24, 2009, the LUC conducted a meeting on the 2008 Application in the Kaua'i Meeting Room, Sheraton Waikiki Hotel, Honolulu, Hawai'i. The LUC held a hearing and recognized Intervenors KOCA, Shimabukuro, and Hanabusa as having intervenor status based their intervenor status before the Planning Commission.
67. At the meeting, the LUC heard argument from the Applicant and Intervenors KOCA, Shimabukuro, and Hanabusa regarding the 2008 Application.
68. Following discussion, the LUC granted the 2008 Application.
69. On October 22, 2009, the LUC filed its Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order

With Modifications ("LUC's 2009 Decision") and imposed the following additional conditions:

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.
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.
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�.

2011AP Ex. K15 at 8-9 (LUC's 2009 Decision).

70. The Applicant and Intervenors KOCA, Shimabukuro, and Hanabusa appealed the LUC's 2009 Decision.

2009 Motion for Reconsideration

71. On October 29, 2009, the Applicant filed a Motion for Reconsideration; Memorandum in Support of Motion for Reconsideration; and Certificate of Service.
72. On November 12, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Memorandum in Opposition to Department of Environmental Services, City and County of Honolulu's Motion for Reconsideration.
73. On November 19, 2009, the Applicant filed a Notice of Appeal to the Circuit Court of the First Circuit, State of Hawai'i ("Circuit Court"); Exhibit "A," "B," and "C"; Statement of the Case; Designation of the Record on Appeal; Order for Certification and Transmission

- of Record; Request for Written Briefs and Oral Argument; and Certificate of Service, challenging the LUC's Condition Nos. 14, 15, and 16.
74. The Applicant did not challenge any conditions imposed by the Planning Commission.
 75. On November 19, 2009, Intervenors KOCA, Shimabukuro, and Hanabusa filed a Notice of Appeal to Circuit Court; Exhibit "A," "B," and "C"; Statement of the Case; Designation of the Record on Appeal; Order for Certification and Transmission of Record; Request for Written Briefs and Oral Argument; and Certificate of Service, challenging the LUC's 2009 Decision to permit the expansion of the WGS� and its continued operation.
 76. On July 14, 2010, the Circuit Court held a hearing.
 77. On September 21, 2010, the Circuit Court entered an order affirming the LUC's 2009 Decision with modifications. The Circuit Court affirmed Condition No. 14. With respect to Condition Nos. 15 and 16, the Circuit Court deleted the references to the Honolulu City Council and the City administration and substituted the Applicant as the responsible body. The Circuit Court affirmed the LUC's 2009 Decision in all other respects.
 78. On October 19, 2010, the Circuit Court entered final judgment in both appeals.
 79. On November 12, 2010, the Applicant filed its Notice of Appeal with the State of Hawai'i Intermediate Court of Appeals ("ICA"). On appeal, the Applicant challenged only Condition No. 14.
 80. Intervenors KOCA, Shimabukuro, and Hanabusa did not appeal the Circuit Court's ruling.
 81. On July 14, 2011, the Applicant filed an application to transfer the case to the Hawai'i Supreme Court.

82. On August 1, 2011, the Hawai'i Supreme Court granted the application to transfer.
83. While the Applicant's appeal of Condition No. 14 was pending, on June 28, 2011, the Applicant filed the 2011 Application to modify the special use permit ("2011 Application") by deleting the LUC's Condition No. 14. 2011AP Ex. K161 at 1 (2011 Application).¹
84. The 2011 Application sought to "modify 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, dated October 22, 2009, by deleting the July 31, 2012, deadline to cease disposal of municipal solid waste at [the Waimānalo Gulch Sanitary Landfill (WGSL)], as set forth in Condition No. 14 of said Order." 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).
85. By requesting the deletion of Condition No. 14, the Applicant sought to use the WGSL until it reaches its permitted capacity. 2011AP Ex. K161 at 3 (6/28/11 Steinberger letter).
86. The basis for the 2011 Application was the Applicant's belief that the currently permitted area of the WGSL, consisting of approximately 200 acres, had a useful life well beyond July 31, 2012. 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).
87. It was the Applicant's belief that it was in the public interest to use the WGSL to its capacity. 2011AP Ex. K161 at 4 (6/28/11 Steinberger letter).

¹ Hanabusa did not file a motion to intervene or otherwise seek to participate in the proceedings on the 2011 Application.

88. On September 4, 2011, a notice of the Planning Commission's public hearing to consider the 2011 Application set for October 5, 2011, was published in the Honolulu Star-Bulletin.
89. On September 9, 2011, the DPP Director sent the Planning Commission a report and recommendation for approval of the 2011 Application. *See* Planning Commission Rules § 2-41(d).
90. On September 16, 2011, KOCA/Shimabukuro filed a Motion to Recognize them as Parties or, Alternatively, to Intervene.
91. On September 16, 2011, Schnitzer Steel Hawai'i Corp. ("Schnitzer") filed a Motion to Intervene.
92. On September 23, 2011, the Applicant filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro's Motion to Recognize them as Parties or, Alternatively, to Intervene.
93. On September 30, 2011, KOCA/Shimabukuro filed a Reply to the Applicant's Memorandum in Opposition.
94. On October 5, 2011, the Planning Commission held a public hearing on the 2011 Application at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai'i.
95. The Planning Commission heard testimony in favor of the 2011 Application from Raymond Young of DPP; Lee Mansfield of Hawai'i American Water; Edwin Arellano of Hawai'i Bio-Waste; Matt McKinney of 1-800-GotJunk; Kris Gourlay of Rolloffs Hawai'i; and John Tsukada of Island Commodities. 2011AP 10/5/11 Tr. at 5:3, 19:6, 20:6, 25:13, 28:8, 31:17.

96. The Planning Commission heard testimony in opposition to the 2011 Application from Council member Torn Berg of the Honolulu City Council; Patty Teruya of Nanakuli-Ma'ili Neighborhood Board No. 36; Celeste Lacuesta; and Evelyn Souza. 2011AP 10/5/11 Tr. at 15:4, 22:21, 29:4, 30:11.
97. The Planning Commission granted Schnitzer's Petition to Intervene, granted KOCA/Shimabukuro's Motion to Intervene, and denied KOCA/ Shimabukuro's Alternative Motion for Continued Recognition as Party Intervenors. 2011AP 10/5/11 Tr. at 35:5-23, 42:9-43:3.
98. Pursuant to Planning Commission Rule § 2-56(c), the 2011 Application was processed as a contested case.
99. On October 14, 2011, the Planning Commission held a prehearing conference with the parties and the Chair of the Planning Commission.
100. On October 26, 2011, the Applicant filed a List of Witnesses naming five potential witnesses. Intervenors KOCA/Shimabukuro filed a List of Witnesses naming 31 potential witnesses. Intervenor Schnitzer filed a List of Witnesses naming one potential witness.
101. On November 9, 2011, the Planning Commission entered an order regarding the prehearing conference. The order stated in relevant part that "[t]he deadline for filing and serving written direct testimony and exchanging exhibits shall be November 30, 2011" and that "[a]t the contested case hearing, all written direct testimony shall be preceded by an oral summary of no more than 10 minutes." 11/9/11 order regarding prehearing conference at 2-3 (¶10).
102. On November 7, 2011, Intervenors KOCA/Shimabukuro filed a Motion to Dismiss the 2011 Application for Lack of Jurisdiction ("KOCA/Shimabukuro's Motion to Dismiss").

Intervenors KOCA/ Shimabukuro asserted that the Planning Commission did not have jurisdiction to decide the 2011 Application because (1) the LUC's 2009 Decision was on appeal to the Hawai'i Supreme Court; and (2) the LUC has original and exclusive jurisdiction to consider modifications of its own conditions.

103. On November 14, 2011, the Applicant and Intervenor Schnitzer filed Memoranda in Opposition to KOCA/Shimabukuro's Motion to Dismiss.
104. On November 29, 2011, the parties stipulated to amend the briefing schedule set forth in the order regarding the prehearing conference. The parties agreed that "[t]he deadline for filing and serving written testimony and exchanging exhibits shall be December 13, 2011."
105. On December 7, 2011, the Planning Commission held a hearing on Intervenors KOCA/Shimabukuro's Motion to Dismiss at the Mission Memorial Hearings Room, Mission Memorial Building, 550 South King Street, Honolulu, Hawai'i ("Mission Memorial Hearings Room").
106. After hearing argument from the parties, the Planning Commission went into executive session.
107. Following the executive session, the Planning Commission denied Intervenors KOCA/Shimabukuro's Motion to Dismiss.
108. Thereafter, the parties made opening statements.
109. On December 13, 2011, the parties filed written direct testimony.
110. The Applicant filed the written direct testimony of its Director Timothy E. Steinberger and State of Hawai'i Department of Health ("DOH") Solid and Hazardous Waste Branch Chief Steven Y.K. Chang.

111. Intervenor Schnitzer attempted to file the written direct testimony of Schnitzer General Manager Larry Snodgrass. Because Mr. Snodgrass did not sign his written direct testimony, it was not admissible in the contested case hearing.
112. Intervenors KOCA/Shimabukuro filed the written direct testimony of Ken Williams, General Manager of the Association; Ms. Shimabukuro; Beverly Munson, Ko Olina resident; Paul Duke Hospodar, Ko Olina Security Director, Resort Operations Director, resident and AOA board member; Cynthia K. L. Rezentes, Waianae resident, Nānākuli -Mā‘ili Neighborhood Board No. 36 member and 2003 Blue Ribbon Landfill Site Selection Committee (“SSC”) member; Maeda Timson, Kapolei resident and Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 member; Shad Kane, Native Hawaiian cultural practitioner and 2003 Blue Ribbon Landfill SSC member; and Dwight Miller, P.E.
113. On December 14, 2011, the Applicant, Intervenor Schnitzer, and Intervenors KOCA/Shimabukuro filed Pre-Contested Case Hearing Statements.
114. On January 6, 2012, at the request of Intervenors KOCA/ Shimabukuro, the Planning Commission issued a Subpoena Duces Tecum (“Subpoena”) to WMH, which operates the WGSL. 2011AP Ex. K164 (Subpoena).
115. The Subpoena directed the production of, among other things, “all documents containing or evidencing fabricated readings; all investigation reports related to the fabricated readings; all assessment documents related to the fabricated readings; and all documents related to remedial actions taken to address the fabricated readings.” 2011 AP Ex. K164 (Subpoena at 2).
116. On January 20, 2012, WMH filed a Response and Objections to the Subpoena.

117. On February 8, 2012, the Planning Commission heard argument on WMH's objections.
118. WMH represented that it had produced all responsive documents, and that it had no additional documents to produce related to its internal investigation regarding fabricated gas wellhead readings or any other matter responsive to the Subpoena. 2011AP 2/8/12 Tr. 9:17-13:21.
119. Based on these representations, the Planning Commission did not order WMH to produce further documents.
120. On January 11, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
121. The Applicant called Director Steinberger to testify.
122. The Planning Commission received into evidence, without objection, the October 5, 2011, transcript of proceedings and, over the partial objection of the Applicant, Intervenor KOCA/Shimabukuro's Exhibits K1-K162. 2011AP 1/11/12 Tr. at 15:12-17:23, 96:2-4.
123. On January 25, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
124. The Applicant called Branch Chief Chang to testify. Intervenor Schnitzer called Mr. Snodgrass to testify.
125. The Applicant rested, subject to its right to call rebuttal witnesses. Intervenor Schnitzer rested without reserving the right to call rebuttal witnesses. 2011AP 1/25/12 Tr. at 71:17-72:1, 86:20.
126. The Applicant indicated that it intended to call two rebuttal witnesses. 2011AP 1/25/12 Tr. at 87:12-16.

127. Intervenor KOCA/Shimabukuro objected to the Applicant's intention to call these witnesses as rebuttal witnesses rather than as direct witnesses. 2011 AP 1/25/12 Tr. at 87:17-24, 88:24-89:10. The Planning Commission overruled Intervenor KOCA/Shimabukuro's objection. 2011AP 1/25/12 Tr. at 89:16-17.
128. Without objection, the Planning Commission received into evidence the Applicant's Exhibits A1-A33 and Intervenor KOCA/Shimabukuro's Exhibits K163-K169. 2011AP 1/25/12 Tr. at 6:10-20, 37:14-20, 51:8-13, 55:12-16, 85:22-86:3.
129. On February 8, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
130. Intervenor KOCA/Shimabukuro called Mr. Williams, Ms. Munson, Ms. Rezentes, and Mr. Hospodar to testify.
131. Without objection, the Planning Commission received into evidence the Applicant's Exhibits A34 and A35. 2011AP 2/8/12 Tr. at 29:25-30:2, 56:6-9.
132. On March 7, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
133. Intervenor KOCA/Shimabukuro called Mr. Kane and Mr. Miller to testify.
134. Without objection, the Planning Commission admitted Mr. Miller as an expert witness in "solid waste management, including landfill siting and design and comprehensive solid waste management." 2011AP 3/7/12 Tr. at 17:25-19:25.
135. Without objection, the Planning Commission received into evidence Intervenor KOCA/Shimabukuro's Exhibits K170, K171, K173, K174, K175, K176, K178, and K179. 2011AP 3/7/12 Tr. at 152:19-155:5, 122:17-123:1.

136. At the conclusion of the March 7, 2012, hearing, the Applicant renewed its right to call rebuttal witnesses. The Applicant identified four rebuttal witnesses: Director Steinberger, Dr. Sharma, and DOH Deputy Director Gary Gill. 2011AP 3/7/12 Tr. at 218:7-15.
137. Intervenors KOCA/Shimabukuro renewed their objection to those rebuttal witnesses on the grounds that Director Steinberger had already been called and that Dr. Sharma and Deputy Director Gill should have been direct witnesses. 2011AP 3/7/12 Tr. at 218:18-219:1.
138. The Planning Commission overruled Intervenors KOCA/Shimabukuro's objection. 2011AP 3/7/12 Tr. at 219:6-7.
139. Intervenor Schnitzer also announced that it would be calling an unnamed rebuttal witness on the "H-POWER issue." 2011AP 3/7/12 Tr. at 219:8-13.
140. On April 4, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
141. The parties agreed to take the remaining witnesses out of order due to scheduling difficulties. 2011AP 4/4/12 Tr. at 6:6-7-15.
142. Intervenor Schnitzer called Tom Zalenka, vice president of environmental affairs for Schnitzer, as a rebuttal witness.
143. The Applicant called Janice Marsters, current Landfill SSC member, and Deputy Director Gill as rebuttal witnesses.
144. Intervenors KOCA/Shimabukuro called Ms. Shimabukuro and Ms. Timson to testify.
145. Intervenors KOCA/Shimabukuro rested subject to their right to call rebuttal witnesses. 2011AP 4/4/12 Tr. at 143:11-13.

146. Without objection, the Planning Commission received into evidence the Applicant's Exhibit A36 and Intervenors KOCA/Shimabukuro's Exhibits K191, K194, K208, K215, K217, K218, K222, K223, K226, and K227. 2011AP 4/4/12 Tr. at 15:18-22, 18:24-19:18, 24:4-16, 33:4-16, 83:14-19, 101:14-19, 122:20-123:3, 143:4-10, 168:22-169:11.
147. On April 11, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room
148. The Applicant called Dr. Sharma and Director Steinberger as rebuttal witnesses.
149. Without objection, the Planning Commission qualified Dr. Sharma as an expert in landfill design and permitting. 2011AP 4/11/12 Tr. at 9:11-20.
150. The Planning Commission received into evidence the Applicant's Exhibits A37-A50. 2011AP 4/11/12 Tr. at 13:1-9, 15:21-16:1, 25:1-7, 36:10-37:20, 43:11- 44:13, 105:11-16, 138:1-5. Intervenors KOCA/Shimabukuro objected to the admission of Exhibits A43-A46. The Planning Commission overruled Intervenors KOCA/ Shimabukuro's objections. 2011AP 4/4/12 Tr. at 36:15-17, 37:7-12.
151. Without objection, the Planning Commission also received into evidence Intervenors KOCA/Shimabukuro's Exhibits K189, K190, K193, K195, K196, K198, K230, K247, and K251. 2011AP 4/11/12 Tr. at 191:19-21.
152. On April 23, 2012, the Planning Commission resumed the contested case hearing at the Mission Memorial Hearings Room.
153. Intervenors KOCA/Shimabukuro called Mr. Miller and Eddie Belloumini of Ko Olina Resort Operations as rebuttal witnesses.

154. Without objection, the Planning Commission received into evidence Intervenors KOCA/Shimabukuro's Exhibits K192, K220, K255, K256, K257, and K258. 4/23/12 Tr. at 12:13-17, 15:16-21, 47:19-48:23.
155. The Planning Commission subsequently closed the evidentiary portion of the hearing. 2011AP 4/23/12 Tr. at 49:16-21.
156. The Planning Commission heard closing arguments from the parties. 2011AP 4/23/12 Tr. at 49:22-80:7.
157. The Planning Commission scheduled decision-making for the 2011 Application on May 25, 2012, at the Mission Memorial Hearings Room.
158. On April 27, 2012, Intervenors KOCA/Shimabukuro filed a Motion to Reopen the Contested Case Hearing To Admit Limited Additional Documentary Evidence to Correct an Error that was Discovered After the Hearing Closed; Declaration of Calvert G. Chipchase; Exhibits A-B; and Certificate of Service (collectively, the “Motion to Reopen”), pursuant to Planning Commission Rule § 2-71(f), for the limited purpose of admitting additional documentary evidence to correct an error in the SSC’s scores identified in Intervenors KOCA/Shimabukuro’s Exhibit K258 that was discovered after the hearing closed.
159. Intervenors KOCA/Shimabukuro’s Motion to Reopen was based on the disclosure of the SSC's prime consultant, R.M. Towill Corporation (“RMTC”), and its subconsultant, SMS Research (“SMS”), on April 25, 2012, that SMS had made an error in ranking the sites. Because of the error, SMS provided new scores for the sites, a new ranking list, and a new map of the ranked sites. Based on the new list, the scores and map entered into evidence as Intervenors KOCA/Shimabukuro's Exhibit K258 were no longer accurate.

160. Intervenors KOCA/Shimabukuro attached proposed Exhibit K259, which explained the error, and proposed Exhibit K260, which was composed of the corrected list of sites and a new map of the sites, to correct their Exhibit K258.
161. On May 1, 2012, the Applicant filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro's Motion to Reopen.
162. On May 2, 2012, the Applicant, Intervenor Schnitzer, and Intervenors KOCA/Shimabukuro filed their respective proposed findings of fact, conclusions of law, and decisions and orders.
163. On May 14, 2012, the Applicant filed a response and Intervenor Schnitzer filed exceptions to Intervenors KOCA/Shimabukuro's proposed findings. Intervenor KOCA/Shimabukuro also filed responses to the Applicant's and Intervenor Schnitzer's proposed findings.
164. On May 4, 2012, the Hawai'i Supreme Court decided the Applicant's appeal of the LUC's 2009 Decision.
165. The Hawai'i Supreme Court held that Condition No. 14 was "not supported by substantial evidence in the record" and therefore could not be affirmed. *Department of Environmental Services v. Land Use Commission*, 127 Hawai'i 5, 17, 275 P.3d 809, 821 (2012).
166. The Hawai'i Supreme Court further concluded that, "[h]aving held that Condition 14 cannot stand because it is inconsistent with the evidence shown in the record and not supported by substantial evidence, the LUC's approval of [the subject SUP] also cannot stand because Condition 14 was a material condition to the LUC's approval." *Id.* at 17–18, 275 P.2d at 821–22.

167. The Hawai‘i Supreme Court vacated the Circuit Court’s judgment affirming the LUC decision and remanded the case on the 2008 Application “to the LUC for further hearings as the LUC deems appropriate.” *Id.* at 18, 275 P.2d at 822.
168. In remanding the 2008 Application proceeding, the Hawai‘i Supreme Court acknowledged the 2011 Application proceeding pending before the Planning Commission and “encourage[d] the LUC to consider any new testimony developed before the Planning Commission in that case.” *Id.* at 19 n.16, 275 P.2d at 823 n.16.
169. On May 15, 2012, the Applicant filed a notification of the Hawai‘i Supreme Court’s May 4, 2012, decision on Condition No. 14 or, alternatively, a Motion to Stay Proceedings on the 2011 Application during the pendency of the remand proceedings before the LUC (the “2012 Motion to Stay Proceedings”).
170. On May 22, 2012, Intervenors KOCA/Shimabukuro filed a Memorandum in Opposition to the Applicant’s 2012 Motion to Stay Proceedings.
171. On May 22, 2012, LUC Chair Normand R. Lezy sent a letter on behalf of the LUC to Planning Commission Chair Gayle Pingree urging the Planning Commission to stay its proceedings on the 2011 Application until the LUC remanded the 2008 Application proceedings to the Planning Commission.
172. Based on the Hawai‘i Supreme Court’s recommendation for the LUC to consider the new testimony in the 2011 Application proceeding, Chair Lezy explained that consolidation on remand of the 2008 and 2011 Application proceedings would serve the public interest and provide a more economical disposition of both matters.

173. In the letter, Chair Lezy noted that, if the Planning Commission stayed the proceedings on the 2011 Application, the LUC would forward the record on remand for the 2008 Application proceeding to the Planning Commission.
174. On May 25, 2012, the Planning Commission held a hearing in the contested case at the Mission Memorial Hearings Room.
175. Planning Commission Chair Pingree confirmed that the hearing portion of the contested case hearing was not closed. 2011AP 5/25/12 Tr. at 11:5-7.
176. The Planning Commission entered a six-month stay of the 2011 Application proceeding pending the decision of the LUC on the 2008 Application proceeding or any future request by the parties to the Planning Commission. 2011AP 5/25/12 Tr. at 11:14-13:2. Based on its disposition, the Planning Commission did not decide Intervenors KOCA/Shimabukuro's Motion to Reopen the Contested Case Hearing or the Applicant's 2012 Motion to Stay Proceedings.
177. On May 29, 2012, Planning Commission Chair Pingree sent a letter to LUC Chair Lezy explaining that on May 25, 2012, the Planning Commission had decided that a six-month stay of its proceedings on the 2011 Application was warranted pending the LUC's decision on the 2008 Application proceeding after remand or a future request to the Planning Commission by any party.
178. Planning Commission Chair Pingree stated that it was unnecessary for the LUC to remand the 2008 Application proceeding to the Planning Commission.
179. Planning Commission Chair Pingree noted that, as an exception to the stay, the Planning Commission would transmit the record for the 2011 Application proceeding to the LUC for its consideration.

180. On July 5, 2012, the LUC met in Leiopapa A Kamehameha, Conference Room 204, Second Floor, 235 South Beretania Street, Honolulu, Hawai'i. The purpose of the meeting was to discuss and deliberate on the procedural issues arising from the remand from the Hawai'i Supreme Court.
181. At the meeting, the LUC heard public testimony from Ian Sandison, Esq., on behalf of Intervenor Schnitzer.
182. Following public testimony, the LUC heard oral argument on the procedural options available to the LUC. The Applicant orally moved for, and the LUC granted, an additional two weeks for the parties to file written briefs to more fully address the procedural issues.
183. On July 12, 2012, the LUC filed an order granting the Applicant's request to submit additional briefing.
184. On July 18, 2012, Intervenor Schnitzer filed a statement regarding procedural issues and next steps in light of the Hawai'i Supreme Court's decision.
185. On July 19, 2012, Intervenors KOCA/Shimabukuro filed a brief in support of remand with instructions. The Applicant filed a brief in support of the LUC retaining jurisdiction. Intervenor Hanabusa filed a memorandum regarding procedural issues. OP filed a brief on procedural issues.
186. On September 14, 2012, the LUC met at Ihilani Hotel, Lurline Room, 92-1001 Olani Street, Ko Olina, Hawai'i, to continue discussion and deliberation on procedural issues.
187. After receiving public testimony, the LUC heard argument from the parties on the procedural issues and options available to the LUC.

188. On October 8, 2012, the LUC entered an order remanding the 2008 Application proceeding to the Planning Commission “for the expressed purpose of consolidating it with the proceeding on the [2011 Application] in order that the Planning Commission may issue and transmit a single, consolidated Findings of Fact, Conclusions of Law, and Decision and Order on the matter to the LUC for further action pursuant to section 205-6, [Hawai‘i Revised Statutes], and sections 15-15-95 and 15-15-96, [Hawai‘i Administrative Rules]” (the “2012 Remand Order”).
189. On December 19, 2012, the Planning Commission held a hearing at the Mission Memorial Hearings Room to discuss the 2008 and 2011 Applications and the LUC’s 2012 Remand Order.
190. At the hearing, the Applicant asked the Planning Commission to continue the proceeding to allow the parties an opportunity to discuss the submission of joint findings and conclusions. Intervenors KOCA/Shimabukuro joined in the request. Intervenors Hanabusa and Schnitzer did not object.
191. The Planning Commission continued the hearing.
192. On January 15, 2013, Intervenors KOCA/Shimabukuro filed a Motion to Effect the Consolidation of the Separate Proceedings in 2008 SUP-2 as Ordered by the State Land Use Commission on October 8, 2012; Exhibits 1-3; and Certificate of Service (collectively, “Motion to Effect the Consolidation”).
193. On January 23, 2013, the Applicant filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro’s Motion to Effect the Consolidation.
194. On February 20, 2013, the Planning Commission resumed the hearing at the Mission Memorial Hearings Room.

195. The hearing concerned the LUC's 2012 Remand Order and Intervenor KOCA/Shimabukuro's Motion to Effect the Consolidation.
196. At the hearing, the parties filed a Stipulation to continue the hearing so that the parties could discuss a resolution of this matter.
197. The Planning Commission continued the hearing to April 17, 2013.
198. On April 17, 2013, the Planning Commission continued the hearing to allow the parties to attempt to reach a stipulated order to be presented to the Planning Commission for review and decision.
199. On October 22, 2015, the LUC held a meeting at the Airport Conference Center, 400 Rodgers Boulevard, Suite 700, Room #3, Honolulu, Hawai'i, at which time the Applicant and Intervenor KOCA/Shimabukuro updated the LUC on the parties' negotiations.
200. On May 18, 2016, the LUC held a meeting at State Office Tower, Leiopapa A. Kamehameha Building, Conference Room 405, Honolulu, Hawai'i, at which time the Applicant updated the LUC on the parties' negotiations.
201. At the meeting, the LUC directed that a letter be written to the Planning Commission to inquire about the status proceedings.
202. On May 25, 2016, the Planning Commission wrote a letter to the parties requesting a status report.
203. By letter dated June 3, 2016, the Applicant advised that all parties, except for Intervenor Hanabusa, had signed a stipulation to stay the contested case proceedings and that the Applicant was preparing a motion to stay proceedings.
204. On June 13, 2016, OPSD submitted a status report to the Planning Commission.

205. On June 22, 2016, the Applicant filed a Motion to Stay Proceedings to April 22, 2017; Memorandum in Support of Motion to Stay; Exhibit A; and Certificate of Service (collectively “2016 Motion to Stay Proceedings”), so that the parties could continue to explore a stipulated resolution of the matter.
206. Intervenors KOCA/Shimabukuro filed a Joinder to the Applicant’s 2016 Motion to Stay Proceedings, and Intervenor Schnitzer filed a Joinder to Intervenors KOCA/Shimabukuro’s Joinder.
207. On August 17, 2016, the Planning Commission held a hearing at Mission Memorial Hearings Room.
208. The Planning Commission granted Intervenors KOCA/ Shimabukuro’s Motion to Effect the Consolidation. 2011AP 8/17/16 Tr. at 32:21-33:16. The Planning Commission denied the Applicant’s 2016 Motion to Stay Proceedings. 2011AP 8/17/16 Tr. at 33:19-34:2.
209. On September 22, 2016, Intervenor Hanabusa filed a statement regarding Intervenors KOCA/Shimabukuro’s Motion to Reopen.
210. On September 30, 2016, the Applicant filed a Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts; Memorandum in Support of Motion to Reopen the Contested Case Hearing for the Limited Purpose of Taking Official Notice of Facts; Attachment 1; and Certificate of Service (collectively "Applicant’s Motion to Reopen the Contested Case Hearing").
211. On October 5, 2016, the Applicant filed a Motion for Extension of Time; Memorandum in Support of Motion for Extension of Time; Declaration of Kamilla C. K. Chan; and Certificate of Service (collectively "Motion for Extension of Time") for the filing of

- proposed findings of fact, conclusions of law, and decision and order and consideration of and decision-making on all motions pending before the Planning Commission.
212. On October 6, 2016, Intervenor Schnitzer filed a Joinder to the Applicant's Motion to Reopen the Contested Case Hearing.
 213. On October 6, 2016, Intervenors KOCA/Shimabukuro filed a response to the Applicant's Motion to Reopen the Contested Case Hearing.
 214. On October 7, 2016, Intervenors KOCA/Shimabukuro filed a response to the Applicant's Motion to Reopen the Contested Case Hearing and Intervenor Hanabusa filed a statement.
 215. On October 12, 2016, the Planning Commission held a hearing in the Mission Memorial Hearings Room.
 216. The Planning Commission denied Intervenors KOCA/ Shimabukuro's Motion to Reopen filed April 27, 2012; denied the Applicant's Motion to Reopen the Contested Case Hearing filed September 30, 2016; and granted in part the Applicant's Motion for Extension of Time to the extent that the motion requested additional time for the filing of proposed findings.
 217. On January 27, 2017, the parties filed proposed findings of fact, conclusions of law, and decisions and orders.
 218. On February 10, 2017, the parties filed responses to the other parties' proposed findings of fact, conclusions of law, and decisions and orders.
 219. On February 10, 2017, Intervenor Hanabusa filed her (1) renewal of submission of proposed findings of fact and conclusions of law, and (2) objections and rebuttals.

220. On February 17, 2017, the Applicant filed a Motion to Strike Intervenor Colleen Hanabusa's (1) Renewal of Submission of Proposed Findings of Fact and Conclusions of Law; Memorandum in Support of Motion to Strike; Declaration of Kamilla C. K. Chan; Exhibits "1"- "2"; and Certificate of Service (collectively, the "2017 Motion to Strike").
221. On February 23, 2017, Intervenor Hanabusa filed a Memorandum in Opposition to the Applicant's 2017 Motion to Strike.
222. On March 1, 2017, the Planning Commission held a hearing at Mission Memorial Hearings Room. The Planning Commission granted the Applicant's 2017 Motion to Strike. The Planning Commission voted to adopt findings of fact, conclusions of law, and decision and order.
223. On or about April 28, 2017, the Planning Commission filed Findings of Fact, Conclusions of Law, and Decision and Order. Among other things, the Planning Commission imposed the following condition: "3. The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimānalo Gulch Sanitary Landfill reaching its capacity."
224. On May 3, 2017, the LUC received the consolidated record from the Planning Commission, an index of the record, and original and copies of the 2008 proceedings.
225. On May 12, 2017, Intervenor KOCA/Shimabukuro filed a Motion to Deny and Remand and an Alternate Motion to Deny the Applications Unless Additional Conditions are Imposed.
226. On May 19, 2017, the Applicant filed responses to Intervenor KOCA/Shimabukuro's motions.

227. On May 22, 2017, OPSD filed a written statement recommending approval of the Applicant's special use permit application with additional and amended conditions.
228. On May 22, 2017, Intervenor Hanabusa filed a Joinder to Intervenors KOCA/Shimabukuro's Motion to Deny and Remand.
229. On May 23, 2017, the LUC received correspondence from Intervenors KOCA/Shimabukuro regarding a request to settle the proposed form of order granting in part their motion to deny and remand, and correspondence from Intervenor Schnitzer regarding its statement of position on Intervenors KOCA/ Shimabukuro's Motion to Deny and Remand.
230. On May 24, 2017, the LUC met in Honolulu, Hawai'i, to consider Intervenors KOCA/Shimabukuro's Motion to Deny and Remand. The LUC granted in part and denied in part the motion and remanded the record on the 2008 and 2011 Applications to the Planning Commission pursuant to Hawai'i Administration Rules ("HAR")§ 15-15-96(a) for further proceedings to (1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission's proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGS� reaching its capacity and the implications it has on the closure date of the WGS� to use and the subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGS�, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually

recommends approval of the matter, clarify the effective date of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

Remanded Proceedings of The Planning Commission

231. On June 20, 2017, Intervenors KOCA/Shimabukuro filed a Motion for Recusal or Disqualification of Chair Hazama; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits A-E; and Certificate of Service (collectively "Motion for Recusal or Disqualification").
232. On June 26, 2017, the Applicant filed a Response to Intervenor KOCA/Shimabukuro's Motion for Recusal or Disqualification and Certificate of Service.
233. On June 26, 2017, Intervenor Hanabusa filed a Renewal of Objections to Chair Dean Hazama's Participation and Votes in the Instant Case and Joinder to Intervenors KOCA/Shimabukuro's Motion for Recusal or Disqualification and Certificate of Service.
234. On August 16, 2017, the Planning Commission held a hearing in the Mission Memorial Hearings Room. At the hearing, Chair Hazama declined to recuse himself.
235. On October 23, 2017, Intervenors KOCA/Shimabukuro filed Objections to Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibit A; and Certificate of Service.
236. On November 22, 2017, Intervenors KOCA/Shimabukuro filed a 2017 Motion to Reopen the Contested Case Hearing; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits A-B; and Certificate of Service.

237. On November 30, 2017, Intervenors KOCA/Shimabukuro filed Objections to Agenda for December 6, 2017; Declaration of Christopher T. Gooden; Exhibits 1-2; and Certificate of Service.
238. On December 4, 2017, the Applicant filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro's 2017 Motion to Reopen the Contested Case Hearing; Declaration of Kamilla C. K. Chan; Exhibits "1" through "3"; and Certificate of Service.
239. On December 4, 2017, Intervenor Hanabusa filed a Joinder to Intervenors KOCA/Shimabukuro's Objections to Agenda for December 6, 2017, filed on November 30, 2017, and Certificate of Service.
240. On December 5, 2017, the Applicant filed a Response to Intervenors KOCA/Shimabukuro's Objections to Agenda for December 6, 2017; Declaration of Kamilla C. K. Chan; Exhibits "1" through "4"; and Certificate of Service.
241. On December 6, 2017, the Planning Commission held a hearing at the Mission Memorial Hearings Room. The Planning Commission voted to adopt Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
242. On or about December 6, 2017, the Planning Commission circulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
243. On February 5, 2018, the parties filed Exceptions to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order of the Planning Commission with Certificates of Service. Intervenor Schnitzer's submission included Proposed Findings of Fact, Conclusions of Law, and Decision and Order (Exhibit 1). Intervenors KOCA/Shimabukuro's submission included the Declaration of Christopher T. Goodin; and Exhibits 1-5.

244. On February 13, 2018, Intervenors KOCA/Shimabukuro filed a Motion to Strike Schnitzer's February 2018 Proposed Findings; Memorandum in Support of Motion; Declaration of Christopher T. Goodin; Exhibits 1-4; and Certificate of Service (collectively "2018 Motion to Strike").
245. On February 14, 2018, Intervenor Schnitzer filed a Memorandum in Opposition to Intervenors KOCA/Shimabukuro's 2018 Motion to Strike and Certificate of Service.
246. On February 16, 2018, Intervenors KOCA/Shimabukuro filed a Response to Schnitzer's February 5, 2018, Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibits 1-5; and Certificate of Service.
247. On March 7, 2018, the Planning Commission held a hearing in the Mission Memorial Hearings Room. The Planning Commission granted Intervenors KOCA/Shimabukuro's 2018 Motion to Strike and denied their 2017 Motion to Reopen the Contested Case Hearing. The Planning Commission also heard argument from the parties regarding the proposed decision.
248. On April 11, 2018, the Planning Commission advised the parties that the matter could not be scheduled for further hearing due to lack of quorum.
249. On January 7, 2019, Intervenors KOCA/Shimabukuro filed a Position Statement regarding the process for adoption of any decision and order.
250. On January 15, 2019, the Planning Commission circulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order to the parties.
251. On February 7, 2019, Intervenor Hanabusa filed Objections, Exceptions, and Positions Re: Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Counsel; Exhibit "1"; and Certificate of Service.

252. On February 8, 2019, the Applicant filed Exceptions to the Planning Commission’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order Served on January 15, 2019, and Certificate of Service. Intervenor Schnitzer also filed Exceptions to the Planning Commission’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Exhibit A; and Certificate of Service.
253. On February 11, Intervenors KOCA/Shimabukuro filed Exceptions to Planning Commission’s January 15, 2019 Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Declaration of Christopher T. Goodin; Exhibits 1-5; and Certificate of Service.
254. On February 13, 2019, Intervenors KOCA/Shimabukuro filed a Stipulation Allowing an Extra Day to File Their Exceptions to Planning Commission’s January 15, 2019, Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
255. On February 28, 2019, the Planning Commission held a hearing in the Mission Memorial Hearings Room. The Planning Commission approved the Stipulation. The Planning Commission heard argument regarding the proposed decision. The Planning Commission continued the hearing based on Commissioner Hayashida’s request to review the record.
256. On March 18, 2019, the Applicant filed a Motion for Leave to File Supplemental Brief; Memorandum in Support of Motion; Declaration of Kamilla C. K. Chan; Exhibit "1"; and Certificate of Service (collectively “Motion for Leave”).
257. On March 19, 2019, the Applicant filed a published report entitled Assessment of Municipal Solid Waste Handling Requirements for the Island of O‘ahu (“March 19, 2019, Submission”).

258. On March 25, 2019, Intervenors KOCA/Shimabukuro filed a Response to the Applicant's Motion for Leave to File Supplemental Brief Filed March 18, 2019, and Objection to the ENV's March 19, 2019, Submission.
259. On April 10, 2019, Intervenor Schnitzer filed a Statement of Position on the Planning Commission's January 15, 2019, Proposed Condition Concerning Closure of the Waimānalo Gulch Sanitary Landfill and Certificate of Service.
260. Intervenor Schnitzer filed a Notice of Appearance and Request for Service of Notices and Papers and Certificate of Service.
261. On April 11, 2019, the Planning Commission held a hearing at the Mission Memorial Hearings Room in which it denied the Applicant's Motion for Leave. The Planning Commission also voted to adopt Findings of Fact, Conclusions of Law, and Decision and Order, including the exceptions provided by the Applicant and Intervenor Schnitzer and paragraphs 89 through 102 of the 2009 Planning Commission Findings of Fact, Conclusions of Law, and Decision and Order granting the 2008 Application.
262. On June 10, 2019, the Planning Commission filed its Findings of Fact, Conclusions of Law, and Decision and Order ("Planning Commission's 2019 Decision").

2019 Motion to Approve with Modifications LUC Proceedings

263. On September 11, 2019, the LUC received a portion of the record of the Planning Commission proceedings on remand regarding the Applicant's 2008 and 2011 Applications.
264. On September 20, 2019, the LUC received the remaining portion of the record, thereby completing the record.

265. On September 17, 2019, Intervenors KOCA/Shimabukuro filed Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; Declaration of Christopher T. Goodin; Exhibits 1-7; and Certificate of Service.
266. On September 17, 2019, Intervenors KOCA/Shimabukuro filed a Summary of Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.
267. On September 24, 2019, Intervenor Hanabusa filed a Position Statement and Objections to the Planning Commission's Findings of Fact and Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.
268. On September 24, 2019, Intervenor Hanabusa filed an Amended Certificate of Service.
269. On September 25, 2019, the Applicant filed a Response to Intervenors Ko Olina Community Association and Maile Shimabukuro's Objections to Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; Declaration of Kamilla C.K. Chan; Exhibits 1-7; and Certificate of Service.
270. On September 25, 2019, Intervenor Schnitzer filed Comments to Intervenors Ko Olina Community Association and Maile Shimabukuro's Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.
271. On October 1, 2019, OPSD filed a Memorandum recommending approval of the Special Permit Application, SP09-403, as approved by the Planning Commission, with additional and amended conditions.

272. On October 2, 2019, Intervenors KOCA/Shimabukuro filed a Reply in Support of Their Objections to Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; and Certificate of Service.
273. On October 4, 2019, Intervenor Schnitzer filed Comments to Intervenor Colleen Hanabusa's Position Statement and Objections to the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019, Filed September 24, 2019; and Certificate of Service.
274. On October 7, 2019, Intervenors KOCA/Shimabukuro filed a Reply to the State Office of Planning's October 1, 2019 Letter Regarding the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Dated June 10, 2019; Declaration of Christopher T. Goodin; Exhibit 1; and Certificate of Service.
275. On October 7, 2019, the Applicant filed a letter providing comments on the recommendations in the Office of Planning's memorandum dated October 1, 2019.
276. On October 9, 2019, the LUC met at the Airport Conference Center, Room #IIT#3, Honolulu Hawai'i, to consider the Planning Commission's 2019 Decision relating to proceedings on remand regarding the Applicant's 2008 and 2011 Applications.
277. At the October 9, 2019, meeting, Kamilla C.K. Chan, Esq., appeared on behalf of the Applicant. Calvert G. Chipchase, Esq., and Christopher T. Goodin, Esq., appeared on behalf of Intervenors KOCA/Shimabukuro. Richard N. Wurdeman, Esq., appeared on behalf of Intervenor Hanabusa. Ian L. Sandison, Esq., appeared on behalf of Intervenor Schnitzer. Dina Wong appeared on behalf of the DPP. Bryan C. Yee, Esq.; Mary Alice Evans; and Aaron Setogawa appeared on behalf of OPSD.

278. At the October 9, 2019, meeting, OPSD filed a letter dated October 8, 2019, notifying the LUC that OPSD and the Applicant had jointly agreed to amended conditions to the Planning Commission's 2019 Decision.
279. At the October 9, 2019, meeting, the LUC heard public testimony from Thomas-Ryan Cleek and Cynthia K. L. Rezendes.
280. Following presentations by the Applicant, Intervenor Schnitzer, Intervenor KOCA/Shimabukuro, Intervenor Hanabusa, and OPSD, the LUC recessed the matter to the following day, October 10, 2019.
281. On October 10, 2019, the LUC resumed consideration of the Planning Commission's 2019 Decision relating to proceedings on remand regarding the Applicant's 2008 and 2011 Applications at the Airport Conference Center, Room #IIT#3, Honolulu Hawai'i, with the parties' same representatives in attendance. Upon resumption of the proceeding, each party was afforded an opportunity to provide rebuttal to the arguments of the other parties made during their respective presentations as well as to provide final comments.
282. Thereafter, the LUC entered into deliberations on the matter. Following discussion, a motion was made and seconded to approve with modifications the Planning Commission's recommendation to approve the special use permit with a closure date of the WGSL of March 2, 2028. After additional discussion, a vote was taken on this motion. There being a vote tally of 6 ayes and 2 nays, the motion passed.
283. Thereafter, the LUC Chair requested that no later than October 18, 2019, the Applicant, Intervenor KOCA/Shimabukuro, Intervenor Schnitzer, Intervenor Hanabusa, and OPSD provide the LUC with proposed findings of fact and conclusions of law consistent with

the October 10, 2019, motion passed by the LUC regarding the Planning Commission's recommendations on this matter.

284. On October 17, 2019, Intervenor Hanabusa filed Further Objections to the LUC's Approval with Modifications of Special Use Permit and Any Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Final Findings of Fact and Conclusions of Law, and Decision and Order to be Entered by the LUC.
285. On October 18, 2019, the Applicant and Intervenors KOCA/Shimabukuro each filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
286. On October 18, 2019, Intervenor Schnitzer filed a Joinder in the Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
287. On October 18, 2019, OPSD filed a letter stating that, as it is not a party in this matter, it will not be filing a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
288. On October 31, 2019, the LUC held a meeting to adopt the form of the 2019 Order to Modify simultaneously by interactive conference technology, pursuant to HRS § 92- 3.5. The meeting utilized the Video Conference Centers located at the Kalanimoku Building, State of Hawai'i Department of Land and Natural Resources Conference Room #132, Honolulu, Hawai'i; the Wailuku State Office Building, Wailuku, Hawai'i; the Hilo State Office Building, Hilo, Hawai'i; and the Uhu'e State Office Building, Lihu'e, Hawai'i. At the meeting, the LUC heard public testimony from Katherine Kamada and Lily Cabinatan. Thereafter, a motion was made and seconded to adopt the form of the 2019 Order to Modify with an amendment to Condition No. 16 to require that the Applicant 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.

After discussion, a vote was taken on this motion. There being a vote tally of 8 ayes and 0 nays, the motion to adopt the form of the Order, as amended, passed.

Motion to Terminate Order Regarding Status Reports

289. On December 4, 2019, the ENV filed a Motion to Terminate Order Regarding Written Status Reports on Proceedings of the Planning Commission Relating to County Special Use Permit File No. 2008/SUP-2; Declaration of Kamilla C. K. Chan; Exhibit "1"; and Certificate of Service (collectively, "2019 Motion").
290. In its 2019 Motion, the Applicant requested that the LUC terminate its Order Requiring Written Status Reports filed on May 28, 2014, as the proceedings at the City and County of Honolulu Planning Commission relating to File No. 2008/SUP-2 have concluded.
291. The LUC's 2014 Order Requiring Written Status Reports required the Applicant to 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.
292. On December 24, 2019, OPSD filed a Statement of No Opposition to Applicant's Motion to Terminate Order Regarding Written Status Reports on Proceedings of the Planning Commission Relating to County Special Use Permit File No. 2008/SUP-2.
293. On January 9, 2020, the LUC considered the Applicant's 2019 Motion at its meeting at the Airport Conference Center, Room #IIT#2, in Honolulu, Hawai'i. Kamilla C. K. Chan, Esq., appeared on behalf of the Applicant. Rodney Funakoshi appeared on behalf of OPSD. Dina Wong appeared on behalf of the City and County of Honolulu Department

of Planning and Permitting (DPP). Cal Chipchase, Esq., appeared on behalf of Intervenor Ko Olina Community Association (KOCA) and Maile Shimabukuro; Intervenor Colleen Hanabusa was served with a copy of the Motion and was notified of the date, time, and place of the LUC's meeting on the matter but was not present or represented at the meeting.

294. At the January 9, 2020 meeting, the Applicant argued for the termination of its requirement to file written status reports. Intervenor KOCA/Shimabukuro argued for the need of an ongoing reporting obligation on the part of the Applicant to provide timely notice as well as periodic updates to the LUC, the parties, and the community regarding any plans involving the Waimānalo Gulch Sanitary Landfill. The DPP and OPSD stated that they had no objections to the Applicant's 2019 Motion.
295. At the January 9, 2020, meeting in Honolulu, Hawai'i, the 2019 Motion received the affirmative votes required by HAR § 15-15-13. In light of the 2019 Motion's passage, and there being good cause for the 2019 Motion, the LUC issued an order (the "2019 Order") terminating its 2014 Order Requiring Written Status Reports. As a result, the Applicant was no longer required to file bi-monthly, written status reports with the LUC on the proceedings of the Planning Commission relating to County Special Use Permit File No. 2008/SUP-2.

2022 ENV Motion to Modify

296. On December 22, 2022, the Applicant filed the Application with the Planning Commission to modify Condition No. 5 of the 2019 Order to Modify (and the corresponding condition in the Planning Commission's proposed decision underlying the

- 2019 Order), which states in relevant part: “By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL” (the “2022 Application”).
297. The 2022 Application sought to extend the site selection deadline from December 31, 2022, until December 31, 2024.
298. 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.
299. 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 was published in the Honolulu Star-Advertiser.
300. On June 8, 2023, Intervenors Ko Olina Community Association (“KOCA”) and Maile Shimabukuro filed an Objection to Notice of Hearing.
301. On June 9, 2023, Intervenors KOCA/Shimabukuro filed a Joint Motion to Recognize Ko Olina Community Association and Maile Shimabukuro as Existing Parties or in the Alternative Motion to Intervene (“KOCA’s Petition to Intervene”).
302. On June 13, 2023, Intervenor Schnitzer Steel Hawai‘i Corp. filed a Petition to Intervene in the proceedings relating to the 2022 Application.
303. Also on June 13, 2023, Schnitzer filed a Motion for Enlargement of Time.
304. On June 19, 2023, ENV filed a response to Schnitzer’s Motion for Enlargement of Time and its Petition to Intervene. ENV stated that it took no position on either the motion or petition.

305. Also on June 19, 2023, ENV filed a response to Intervenors KOCA/Shimabukuro’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.
306. Lastly, on June 19, 2023, ENV filed a response to KOCA’s Motion to Intervene. ENV requested that the Planning Commission deny the portion of KOCA’s Motion to Intervene that moved for recognition of Ko Olina Community Association and Maile Shimabukuro as existing parties, but ENV took no position on the portion of KOCA’s Petition to Intervene requesting permission to intervene in the proceedings.
307. At the public hearing on June 28, 2023, at the Mission Memorial Auditorium, 550 South King Street, Honolulu, Hawai‘i, 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.
308. 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.
309. 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.

310. 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.
311. On July 28, 2023, KOCA filed its First Amended Exhibit List.
312. On July 31, 2023, KOCA filed its Second Amended Exhibit List.
313. On August 7, 2023, Schnitzer filed its Second Amended Exhibit List.
314. 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 8/9/23 County Tr. at 6:19-7:5.*
315. 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 Intervene; (2) Intervenors KOCA/Shimabukuro's Objection to Notice of Hearing; (3) Schnitzer's Petition to Intervene; and (4) Schnitzer's Motion for Enlargement of Time. *See 8/9/23 County Tr. at 7:8-14:5.*
316. 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 8/9/23 County Tr. at 7:15-9:23.* KOCA withdrew its Objection to Notice of Hearing, and the Planning Commission accepted the withdrawal. *See 8/9/23 County Tr. at 9:24-10:24.*
317. At the continued public hearing on August 9, 2023, the Planning Commission heard and granted Schnitzer's Petition to Intervene. *See 8/9/23 County Tr. at 10:25-13:11.* Schnitzer withdrew its Motion for Enlargement of Time, and the Planning Commission accepted the withdrawal. *See 8/9/23 County Tr. at 13:12-14:5.*

318. At the continued public hearing on August 9, 2023, the Planning Commission began the presentation of evidence in the contested case hearing. *See* 8/9/23 County Tr. at 14:18-34:11. The Parties presented their opening statements. *See* ENV' s Opening Statements (8/9/23 County Tr. at 18:19-22:12); Schnitzer's Opening Statements (8/9/23 County Tr. at 22:16-24:14); KOCA's Opening Statements (8/9/23 County Tr. at 24:16-29:18)
319. On September 21, 2023, KOCA filed its First Amended Witness List.
320. On September 28, 2023, Schnitzer filed its Second Amended Exhibit List.
321. On October 3, 2023, Schnitzer filed its Stipulation to Admit Intervenor Schnitzer's Additional Exhibits into Evidence
322. 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* 10/18/23 County Tr. at 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 Hawai'i Corp. and Scott B. Sloan, Vice President Environmental and National Environmental Director of Schnitzer Steel Industries, Inc. (the parent company of Schnitzer Steel Hawai'i Corp). *See* Garofolo Testimony (10/18/23 County Tr. at 68:6-82:11); Sloan Testimony (10/18/23 County Tr. at 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* 10/18/23 County Tr. at 101:17-102:25.
323. 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 (11/1/23 County Tr. at 11:8-30:10); Miller Testimony (11/1/23 County Tr. at 30:12-46:11). The Commission continued to recognize Mr. Miller as an expert in solid waste management including landfill siting and design. 11/1/23 County Tr. at 32:12-16 (Miller). The Parties then presented their closing statements. *See* ENV Closing Statements (11/1/23 County Tr. at 49:9-51:18); Schnitzer Closing Statements (11/1/23 County Tr. at 51:20-54:25); KOCA Closing Statements (11/1/23 County Tr. at 55:2-61:10). Following the Parties' closing statements, the Planning Commission closed the contested case hearing on the 2022 Application. *See* 11/1/23 County Tr. at 61:17-62:3.

324. 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* 8/9/23 County Tr. at 30:20-32:16.
325. 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* 10/18/23 County Tr. at 9:14-10:3.
326. ENV called the following witness: Roger Babcock. *See* 10/18/23 County Tr. at 11:1-41:14.
327. Schnitzer called the following witnesses: Nicholas I. Garofolo and Scott B. Sloan. *See* Garofolo Testimony (10/18/23 County Tr. at 68:6-82:11); Sloan Testimony (10/18/23 County Tr. at 85:18- 97:21).

328. 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 (10/18/23 County Tr. at 101:17-102:25); Williams Testimony (11/1/23 County Tr. at 11:8-30:10); Miller Testimony (11/1/23 County Tr. at 30:12-46:11).
329. Pursuant to the Rules of the Planning Commission (“RPC”) § 2-75, on March 1, 2024, the Planning Commission served on the Parties its Proposed Findings of Fact, Conclusion of Law, and Decision and Order. The Parties were given until March 27, 2024, to submit their exceptions. *See* RPC § 2-75.
330. On May 15, 2024, the Planning Commission considered the adoption of Findings of Fact, Conclusions of Law, and Decision and Order. During the hearing, each Planning Commissioner who was absent during scheduled contested hearing dates and proceedings attested to the fact that he or she reviewed the transcripts and records of the proceedings for the dates that he or she was absent, and that he or she studied, examined, and understood the record of the hearings pursuant to RPC § 2-76(a).
331. The Planning Commission did, in fact, adopt its Findings of Fact, Conclusions of Law, Decision & Order on May 15, 2024 (the “2024 Planning Commission Order”)
332. On May 15, 2024, the Planning Commission having duly considered the record of proceedings, the oral arguments of the parties, and the record and files, approved the Applicant’s December 22, 2022, application to modify Special Use Permit No. 2008ISUP-2 (SP09-403), 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. 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 landfill (2019 LUC Decision)

3. All other conditions to Special Use Permit No. 2008OISUP-2 as stated in the 2019 orders remain in full force and effect.

333. On July 15, 2024, the Planning Commission Transmitted the record to the State Land Use Commission (LUC) for Special Use Permit (SUP) No. 2008/SUP-2 (SP09- 403); LUC Docket No. SP09-403, Waimānalo Gulch Sanitary Landfill.

2024 LUC Proceedings Motion to Modify

334. On July 15, 2024, the Land Use Commission received the record from the Planning Commission for the 2022 ENV Motion/ Application to Modify Conditions in the State Special Use Permit (“SUP”) No. 2008/SUP-2 (SP09-403). The record was stamped and posted on the Land Use Commission website for public review.
335. On July 25, 2024, the Office of Planning and Sustainable Development (OPSD), filed its position statement, which was posted on the Land Use Commission website and made available for public review.
336. On July 29, 2024, the Land Use Commission emailed and mailed the Agenda notice for the planned LUC meeting on August 8, 2024, to the Statewide, O‘ahu, and Parties, mailing lists.
337. On August 2, 2024, the Land Use Commission Staff Report was signed and posted on the Land Use Commission website for public review.
338. On August 5, 2024, the Land Use Commission received public testimony from T. George Paris, which was stamped and posted on the Land Use Commission website for public review.
339. On August 6, 2024, KOCA provided their PowerPoint presentation for August 8, 2024, meeting, which was stamped and posted on the Land Use Commission website for public review.
340. On August 6, 2024, KOCA provided their Provided ADA Complaint Exhibit Files for Exhibits K001-K475, which were stamped and posted on the Land Use Commission website for public review.²

² The record transmitted from the City and County of Honolulu Planning Commission had an inconsistency involving Ko Olina Community Association and Maile Shimabukuro's exhibits. The exhibit lists provided did not

341. On August 7, 2024, ENV Provided PowerPoint Presentation for the August 8, 2024, meeting, which was stamped and posted on the Land Use Commission website for public review.
342. On August 7, 2024, the Land Use Commission received public testimony from Senator Kurt Fevella, which was stamped and posted on the Land Use Commission website for public review.
343. On August 8, 2024, the Land Use Commission held its meeting in person, at 8:30 a.m., at the Airport Conference Center (in Hawaiian Airlines Terminal Building) 400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819, to consider the 2024 Planning Commission Order.³ Jeffrey Hu, Esq. and Kamilla Chan, Esq. appeared on behalf of the Applicant. ENV Director, Dr. Roger Babcock, also attended on behalf of the Applicant. Brad Saito, Esq. appeared on behalf of the City and County of Honolulu Department of Planning and Permitting (DPP). Allison Kato, Esq. and Katia Balassiano appeared on behalf of the State of Hawai'i Office of Planning and Sustainable Development (OPSD). Joyce Tam-Sugiyama Esq., Ian Sandison, Esq., and Rihui Yuan, Esq. appeared on behalf of Schnitzer. Cal Chipchase, Esq., Christopher Goodin, Esq., and Katherine Bruce, Esq. appeared on behalf of KOCA. The position advanced by each of these parties is summarized below.

indicate that the filings were made available via a Dropbox link located at the end of the various exhibit lists, so the filings were not officially received, filed, downloaded, and stamped by LUC Staff in the first instance. LUC Staff worked to address the issue and updated the record accordingly well in advance of the August 8, 2024 meeting, and in accordance with HRS § 92-7.5. A disclosure was made at the time of hearing, and each Party was asked whether it consented to moving forward with the LUC hearing, as scheduled. The Parties all indicated no objection to continue.

³ Commissioner Ken Hayashida recused himself, as he did not believe he could be impartial after having previously considered this matter as a member of the City and County Planning Commission. Other commissioners were given the opportunity to disclose conflicts of interest or make other disclosures at the August 8, 2024, hearing. No conflicts of interest or other disclosures were made.

344. At the August 8, 2024, hearing, the LUC heard public testimony from three members of the public, Ed Paole Hanapi Werner, State Senator Kurt Fevella, and De Monte Kalai Manaole.
345. At the August 8, 2024, hearing, the LUC then heard presentations from the Applicant, DPP, OPSD, Schnitzer, and KOCA. ENV Director Babcock was then sworn in and addressed questions from the Commissioners.
346. At the August 8, 2024, hearing, the LUC then reopened public testimony. Three members of the public testified, Ed Paole Hanapi Werner, State Senator Kurt Fevella, and De Monte Kalai Manaole.
347. At the August 8, 2024, hearing after the Applicant, DPP, OPSD, Schnitzer, and KOCA were given the opportunity to provide final comments, the LUC entered deliberations on this matter. Following discussion, a motion was made and seconded to approve the Application with modifications. After additional discussion, a vote was taken on this motion. There being a vote total 7 ayes and 0 nays, the motion passed.

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (“OPSD”) POSITION

348. OPSD’s written response to Department of Environmental Services’ application to extend the deadline to identify an alternative landfill site for the Waimānalo Gulch Sanitary Landfill (WGSL) until December 31, 2024 (the 2024 Motion to Modify), was filed with the Land Use Commission on July 25, 2024. OPSD recommended that the State Land Use Commission approve the 2024 Motion to Modify to allow Department of

Environmental Services to identify an alternative landfill site by the end of 2024.

Specifically, OPSD supports the 2024 Motion to Modify for the following reasons:

- a. ENV's Good Faith Efforts to Comply
 - i. ENV has actively and in good faith attempted to identify an alternative landfill. ENV made several attempts to identify alternative landfill sites even before the 2019 Order to Modify and the imposition of Condition 5
 - ii. Committees were established to locate, review and analyze the proposed sites
- b. Act 73 Session Laws of Hawai'i 2020 Restrictions
 - i. Act 73, Session Laws of Hawai'i 2020 ("Act 73") amended State law to prohibit "waste or disposal facilities" (e.g., landfills) in the State Land Use Conservation District and the construction of "waste or disposal facilities" within one-half mile from residential, school, or hospital property lines.
 - ii. The new restrictions following the effective date of Act 73 prohibited ENV from locating a landfill in a significant portion of O'ahu.
- c. Red Hill Fuel Storage Leak and Board of Water Supply's ("BWS") No Pass Zone
 - i. The BWS No Pass Zone is an approximate boundary around the island of O'ahu that demarcates an area to protect groundwater.
 - ii. No Pass Zones are defined to mean "areas in which the installation of waste disposal facilities, such as sanitary landfills, that may contaminate groundwater resources used or expected to be used for domestic water supplies, are prohibited

- iii. In November 2021, while the Landfill Advisory Committee was evaluating the proposed landfill sites, a petroleum release from the Red Hill Bulk Fuel Storage Facility contaminated the Red Hill drinking water well. The Red Hill Facility's proximity to Oahu's main drinking water aquifer caused widespread public health and environmental concerns about the contamination of the island's drinking water
 - iv. During the Landfill Advisory Committee's ("LAC") December 14, 2021 meeting, BWS asserted that no landfill should be sited mauka of the BWS No Pass Zone and encouraged the LAC not to recommend any of the six proposed sites since all of them are mauka of the No Pass Zone.
349. ENV's request to extend the LUC Condition 5 and Planning Condition 1 deadlines until December 31, 2024, is reasonable when taking into consideration various factors.
350. During the LUC's August 8, 2024, hearing, OPSD recommended the LUC approve the City and County of Honolulu Department of Environmental Services' application to extend the deadline to identify an alternative location, until December 31, 2024 (the 2024 Motion to Modify). *See* 8/8/24 Tr. at 69-71.

CITY AND COUNTY OF HONOLULU DEPARTMENT OF PLANNING AND PERMITTING POSITION

351. The City and County of Honolulu Department of Planning and Permitting (DPP) did not file a written position statement directly to the Land Use Commission, but its rationale is

set forth in the director’s report dated May 25th, 2023, which is in the record from the Planning Commission. *See* 8/8/24Tr. at 67-68.

352. During the hearing, DPP represented its support for the Planning Commission with respect to the time extension to designate a new site. 8/8/24 Tr. at 67-68.

**KO OLINA COMMUNITY ASSOCIATION (“KOCA”) and MAILE SHIMABUKURO
POSITION**

353. KOCA requests that this Commission approve the proposed 2024 Planning Commission Order with the unopposed reporting condition (Condition No. 2).

SCHNITZER STEEL HAWAII CORP. POSITION

354. Schnitzer did not file any written position statement with the LUC. However, it did file Exhibit 19 (List of Exhibits), Exhibit 23 (Amended List of Exhibits), and Exhibit 29 (Second Amended List of Exhibits). *See* 8/8/24 Tr. at 89:16-21.

**SIGNIFICANT ADDITIONAL FINDINGS BY THE COMMISSION DURING THE
AUGUST 8, 2024, HEARING**

355. The WGSL requires a special use permit for its operations. Its current special use permit was issued by the LUC on November 1, 2019, and remains in full force and effect.

356. One of the conditions in the WGSL’s special use permit required identification of a new landfill site to replace the WGSL no later than December 31, 2022. The Applicant did not meet this condition.

357. Public Testimony heard at the August 8, 2024, hearing indicates public outcry for oversight. *See* 8/8/24 Tr. at 130.
358. The December 31, 2024, deadline is fast approaching, and communication and updates from the applicant, should not have to wait until the time of the deadline. *See* 8/8/24 Tr. at 131.
359. Quarterly reporting from the Department of Environmental Services will be accomplished in the form of progress reports, exhibits, transcripts, and evidence that will be presented during its quarterly meetings with the City and County Planning Commission. *See* 8/8/24 Tr. 08/08/2024 at 132-33.
360. Based upon the record and files herein, and in light of the proposed findings of fact set out by the Planning Commission in the 2024 Planning Commission Order, the LUC hereby finds that there is substantial evidence in the record to support granting the Applicant's request to modify and extend the site selection deadline from December 31, 2022, to December 31, 2024.
361. Based upon the record and files herein, and in light of the proposed findings of fact set out by the Planning Commission in the 2024 Planning Commission Order, the LUC further finds that the conditions imposed, including the condition that the Applicant report on its progress to both the Planning Commission and the LUC, are necessary or appropriate in granting the approval for reasons including but not limited to, ensuring the adherence to representations made by the Applicant and curtailing adverse impacts on surrounding properties. The LUC further finds that the conditions imposed are supported by substantial evidence in the record.

362. After additional discussion during the August 8, 2024 LUC meeting of these findings, a motion was made to approve the 2024 Motion to Modify. A vote was taken on this motion. There being a vote total 7 ayes and 0 nays, the motion passed.

RULINGS ON FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Subject to HRS § 205-6, a county planning commission may permit certain unusual and reasonable uses of lands within agricultural and rural districts other than those for which the district is classified. *See* HRS § 205-6(a).
2. The WGSL requires a special use permit (SUP) for its operations.
3. Pursuant to HRS § 205-6(d), special use permits for land with an area of greater than fifteen acres shall be subject to approval by the LUC.
4. Pursuant to HAR§ 15-15-95(b), special permits for areas greater than fifteen acres require approval of both the county planning commission and the LUC.

5. Because the Applications seek a special use permit for land the area of which is greater than fifteen acres, the LUC has jurisdiction over this matter pursuant to HRS § 205-6 and HAR § 15-15-95.
6. Pursuant to HAR § 15-15-95(c), the following guidelines have been established for purposes of determining whether a proposed use is "unusual and reasonable:"
 - a. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC.
 - b. The proposed use would not adversely affect surrounding property.
 - c. The proposed 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 rules were established.
 - e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.
7. Based upon the record and files herein and the findings set forth above, and pursuant to HRS § 205-6 and HAR § 15-15-95, the LUC concludes that the WGS� is an "unusual and reasonable use" within the State Land Use Agricultural District.
8. Within forty-five days after receipt of the complete record from the county planning commission, the LUC shall act to approve, approve with modification, or deny the petition. See HRS§ 205-6(e).

9. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the Applicant.
See HRS § 205-6(d).
10. The LUC is authorized to impose restrictive conditions in its approval of special use permits provided its decision to impose such a restriction is supported by substantial evidence in the record. Dept. of Environmental Services v. Land Use Comm'n, 127 Hawai'i at 13, 275 P.3d at 817.
11. Based upon the record and files herein and the findings set forth above, the LUC concludes that there is substantial evidence .in the record to support the conditions imposed below, including but not limited to a March 2, 2028, closure date for the WGSL.
12. Based upon the record and files herein and the findings set forth above, the LUC further concludes that the conditions imposed below are necessary or appropriate to protect public health, safety, and welfare, and are material to the LUC's approval.
13. Based upon the record and files herein and the findings set forth below, the LUC further concludes that the conditions imposed below are necessary or appropriate in granting the approval, including but not limited to, ensuring the adherence to representations made by the Applicant.
14. Article XI, section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

15. Article XI, section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.
16. Article XII, section 7, of the Hawai'i State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.
17. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).
18. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).
19. HRS §205-1(c) authorizes the Commission to “adopt rules guiding its conduct[.]”
20. As defined in HAR §15-15-03,
“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:
 - (1) Petitions for district boundary amendment;
 - (2) Petitions for special permit;

- (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
- (4) Petitions for declaratory orders under section 91-8, HRS;
- (5) An investigation or review instituted or requested to be initiated by the commission; and
- (6) All other matters in the administration of chapter 205, HRS.

- 21. Pursuant to HAR §15-15-70(a), any party may make a motion before, during, or after the close of hearing.
- 22. Pursuant to HAR §15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission's order, the petitioner 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.
- 23. HRS §91-10(5) provides "Except as otherwise provided by law, 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."
- 24. HAR §15-15-59(a), provides that "...Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion."
- 25. Pursuant to HAR §15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.

26. The courts have recognized that an agency, acting as factfinder, has the discretion to determine the credibility of a witness and weigh the evidence before it.⁴

DECISION AND ORDER

The LUC, having duly considered the written and oral arguments presented by the Applicant, the City and County Department of Environmental Services, the City and County Department of Planning, the Office of Planning and Sustainable Development, Intervenor Ko Olina Community Association and Maile Shimabukuro, and Schnitzer Steel Hawai'i Corporation, and members of the public, and a motion having been made and seconded at the meeting on August 8, 2024, held at the Honolulu Airport Conference Center, 400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819, and the motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion,

HEREBY FINDS AND CONCLUDES that, pursuant to HRS Chapter 205 and the Commission Rules under HAR chapter 15-15, upon consideration of the decision-making criteria set forth in HRS § 205-17, and based upon the preponderance of the evidence and good cause shown, the extension requested in the 2024 Motion to Modify by the Applicant is, reasonable, and Condition 1 and Condition 5 are thus modified.

NOW, THEREFORE, the Applicant's 2024 Motion to Modify Condition 1 of the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, dated June 19, 2019, and Condition 5 of the Land Use Commission's Findings of Fact, Conclusions of

⁴ *State v. Pioneer Mill Co., Ltd.*, 64 Haw. 168, 179, 637 P. 2d 57, 65 (1996) (citing *Territory v. Adelmeyer*, 45 Haw. 144, 163, 363 P.2d 979, 989 (1961)); *State v. Eastman*, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996); *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai'i 505, 52, 364 P.3d 213, 230 (2015); *In re Gray Line Hawai'i, Ltd.*, 93 Hawai'i 45, 52-53, 995 P.2d 776, 783-784 (2000); and *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)).

Law, and Decision and Order, certified November 1, 2019, be GRANTED, to extend the deadline to identify a new landfill site from December 31, 2022 to December 31, 2024, with the addition of quarterly reporting from the Applicant to the Land Use Commission.

ADOPTION OF DECISION AND ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing DECISION AND ORDER on _____. This DECISION AND ORDER may be executed in counterparts. This DECISION AND ORDER shall take effect upon the date this DECISION AND ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this day of _____, per motion on August 8, 2024.

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAI'I

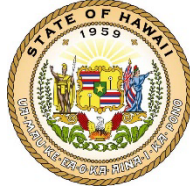
Melissa Goldman, Esq.
Deputy Attorney General

By _____
DAN GIOVANNI
Chairperson and Commissioner

Filed and effective on:

Certified by:

DANIEL E. ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In the Matter of the Application of	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIORNMENTAL)	
SERVICES, CITY AND COUNTY OF	)	FINDINGS OF FACT, CONCLUSIONS OF
HONOLULU.	)	LAW, AND DECISION AND ORDER
	)	APPROVING MOTION TO MODIFY
To Modify Special Use Permit (SUP)	)	RECEIVED JULY 15, 2024; AND
No. 2008/SUP-2 (SP09-403) by Modifying	)	CERTIFICATE OF SERVICE
(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, certified November)	
1, 2019, For the Existing SUP For Waimānalo)	
Gulch Sanitary Landfill, Waimānalo Gulch,)	
O‘ahu, Hawai‘i, Tax Map Key: (1) 9-2-003:)	
072 And 073)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER APPROVING THE MOTION TO MODIFY RECEIVED
JULY 15, 2024 was served upon the following, by either hand delivery or depositing the same in
the U.S. Postal Service by regular or certified mail on the date appearing below, as follows:

//
//

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Dated _____
Honolulu, Hawai'i.

DANIEL E. ORODENKER
Executive Officer