

LAND USE COMMISSION  
STATE OF HAWAII

2017 JUN -6 P 1:38

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Application Of The	)	DOCKET NO. SP09-403
	)	
DEPARTMENT OF ENVIRONMENTAL	)	ORDER GRANTING IN PART
SERVICES, CITY AND COUNTY OF	)	AND DENYING IN PART
HONOLULU	)	INTERVENORS KO OLINA
	)	COMMUNITY ASSOCIATION
For A New Special Use Permit To	)	AND MAILE SHIMABUKURO'S
Supersede Existing Special Use Permit To	)	MOTION TO DENY AND
Allow A 92.5-Acre Expansion And Time	)	REMAND; AND CERTIFICATE
Extension For Waimānalo Gulch Sanitary	)	OF SERVICE
Landfill, Waimānalo Gulch, O`ahu,	)	
Hawai`i, Tax Map Key: 9-2-03: 72 And 73	)	
_____	)	

ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S  
MOTION TO DENY AND REMAND

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawai'i.

June 6, 2017 by

Executive Officer



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ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO  
OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S  
MOTION TO DENY AND REMAND

On May 24, 2017, the State Land Use Commission ("LUC") met in Honolulu, Hawai`i, to consider (1) Ko Olina Community Association's and Maile Shimabukuro's ("KOCA/Shimabukuro") Motion to Deny and Remand;<sup>1</sup> (2) KOCA/Shimabukuro's Alternative Motion to Deny the Applications Unless

<sup>1</sup> On May 19, 2017, the City and County of Honolulu Department of Environmental Services ("Applicant") filed a Response to KOCA/Shimabukuro's Motion to Deny and Remand. On May 22, 2017, Colleen Hanabusa ("Hanabusa") filed a Joinder to KOCA/Shimabukuro's Motion to Deny and Remand.

Additional Conditions are Imposed (“Alternative Motion to Deny”);<sup>2</sup> and (3) the City and County of Honolulu Planning Commission’s (“Planning Commission”) Findings of Fact, Conclusions of Law, and Decision and Order relating to its proceedings on remand regarding the Applicant’s application for a new special use permit to supersede the existing special use permit<sup>3</sup> to allow for the expansion of the Waimānalo Gulch Sanitary Landfill (“WGSL”) (“2008 Application”) and the application to modify Land Use Commission Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications (“2011 Application”).

Calvert G. Chipchase, Esq., and Christopher T. Goodin, Esq.,

appeared on behalf of KOCA/Shimabukuro.<sup>4</sup> Dana Viola, Esq., and Kathleen

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<sup>2</sup> On May 19, 2017, the Applicant filed a Response to KOCA/Shimabukuro’s Alternative Motion to Deny.

<sup>3</sup> The existing special use permit is identified as County Special Use Permit File No. 86/SUP-5 (LUC Docket No. SP87-362).

<sup>4</sup> By letter dated May 23, 2017, to the LUC, Mr. Chipchase requested that the LUC enter a proposed form of an Order Granting in Part Intervenor Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand. The proposed Order provided (1) that the 2008 and 2011 Applications be denied without prejudice to entry of a single, consolidated findings of fact, conclusions of law, and decision and order by the Planning Commission on both Applications pursuant to Planning Commission Rule §2-75 (“New Decision”); (2) that consideration by the LUC of the New Decision on both Applications shall not be precluded by Hawai’i Administrative Rules (“HAR”) §15-15-96(b); (3) that both Applications and the records be remanded to the Planning Commission for further proceedings; (4) that the remaining portion of KOCA/Shimabukuro’s Motion to Deny and Remand concerning the recusal of Planning Commission Chair Dean I. Hazama and KOCA/Shimabukuro’s Alternative Motion to Deny be Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu 2  
Order Granting in Part and Denying in Part Intervenor Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand

Kelly, Esq., appeared on behalf of the Applicant.<sup>5</sup> Richard N. Wurdeman, Esq., appeared on behalf of Hanabusa. Ian L. Sandison, Esq., and Avery Matro, Esq., appeared on behalf of Schnitzer Steel Hawai`i Corp. (“Schnitzer Steel”).<sup>6</sup> Bryan C. Yee, Esq., and Rodney Funakoshi were present on behalf of the State Office of Planning (“OP”),<sup>7</sup> and Raymond Young was present on behalf of the City and County of Honolulu Department of Planning and Permitting.

At the meeting, the LUC heard oral argument from the parties and public testimony from Messrs. Yee and Young on KOCA/Shimabukuro’s Motion to Deny and Remand.<sup>8</sup> All of the parties expressed support for the remand of the record on the 2008 and 2011 Applications to the Planning Commission.

Following discussion, a motion was made and seconded to grant in part and deny in part KOCA/Shimabukuro’s Motion to Deny and Remand on the basis that the record of the Planning Commission’s proceedings on remand relating to the 2008 and 2011 Applications is not complete, and to therefore deny

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withdrawn without prejudice to refile; and (5) that this Order is without prejudice to any arguments that the parties have raised or may raise regarding the Applications.

<sup>5</sup> On May 23, 2017, the Applicant filed a response to Mr. Chipchase’s May 23, 2017, letter.

<sup>6</sup> On May 23, 2017, Schnitzer Steel filed a response to Mr. Chipchase’s May 23, 2017, letter.

<sup>7</sup> On May 22, 2017, OP filed comments in which it recommended additional and amended conditions to the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order.

<sup>8</sup> At the start of the proceeding, Commissioner Dawn Chang disclosed that a couple of years ago she was a consultant to the WGSF on a criminal matter. There were no objections by the parties to her participation in the proceeding.

the request to deny both Applications and to instead remand the matter to the Planning Commission pursuant to 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 WGSL reaching its capacity and the implications it has on the closure date of the WGSL 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 WGSL, 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. As part of the motion, the movant clarified that the issue raised by KOCA/Shimabukuro in their Motion to Deny and Remand that the participation of the Planning Commission Chair in the proceeding, including voting on the matter, violated KOCA/Shimabukuro's right

to due process is not within the jurisdiction of the LUC, and is therefore denied as a basis of the remand. There being a vote of 7 ayes and 1 excused,<sup>9</sup> the motion carried.

ORDER

The LUC, having duly considered KOCA/Shimabukuro's Motion to Deny and Remand, the oral and written arguments presented by the parties, and a motion having been made and seconded at a meeting on May 24, 2017, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that the Motion to Deny and Remand is granted in part and denied in part. Accordingly, the record on the 2008 Application and 2011 Application shall be REMANDED to the Planning Commission pursuant to 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 WGSL reaching its capacity and the implications it has on the closure date of the WGSL to use and the

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<sup>9</sup> The ninth seat on the LUC is currently vacant.

subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGSL, 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.

All other matters raised by the Motion to Deny and Remand are hereby DENIED either because they are contrary to HRS chapters 205 and 91 or because they are not within the jurisdiction of the LUC.<sup>10</sup>

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<sup>10</sup> KOCA/Shimabukuro's Alternative Motion to Deny is rendered moot by this action and shall not require consideration by the LUC.



ADOPTION OF ORDER

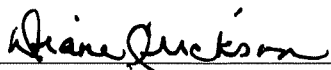
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 6<sup>th</sup>, day of June, 2017, per motion on May 24, 2017.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

  
Deputy Attorney General

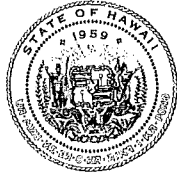
By   
EDMUND ACZON  
Chairperson and Commissioner

Filed and effective on:

6/6/17

Certified by:

  
DANIEL ORODENKER  
Executive Officer



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HONOLULU )  
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Existing Special Use Permit To Allow A )  
92.5-Acre Expansion And Time Extension )  
For Waimānalo Gulch Sanitary Landfill,  
Waimānalo Gulch, O`ahu, Hawai`i, Tax Map  
Key: 9-2-03: 72 And 73

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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Dated: June 6, 2017 Honolulu, Hawaii.



Daniel Orodener, Executive Officer