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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Attorneys for Intervenors

KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In The Matter Of The Application Of
The

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For A New Special Use Permit To Su-
persede Existing Special Use Permit To
Allow A 92.5-Acre Expansion And Time
Extension For Waimānalo Gulch Sani-
tary Landfill, Waimānalo Gulch, O'ahu,
Hawai'i, Tax Map Key: 9-2-03: 72 And 73

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
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

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also re-
ferred to as Land Use Commission
Docket No. SP09-403) which states as

CERTIFICATE OF SERVICE

follows:

“14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012.”

INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO’S 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

In May 2012, the Hawai‘i Supreme Court vacated the order approving Applicant Department of Environmental Services’ (“ENV”) December 3, 2008 application for an SUP (the “2008 Application”) and “remand[ed] [the matter] to the LUC for further hearings as the LUC may deem appropriate.” *Dep’t of Env’tl. Servs. v. Land Use Comm’n*, 127 Hawai‘i 5, 18 (2012) (emphasis added). The court’s judgment on appeal in turn “remanded [the case] to the circuit court with instructions that the circuit court remand the matter to the Land Use Commission for further proceedings consistent with the [supreme court’s] opinion.” Ex. 1. And in accordance with the judgment on appeal, the circuit court “remand[ed] [the] matter to the Land Use Commission for further proceedings consistent with the Supreme Court’s opinion.” Ex. 2.

On remand from the circuit court, the LUC deemed it appropriate to remand the 2008 Application proceeding to the Planning Commission with the express direction to

consolidat[e] [the 2008 Application proceeding] with the proceeding on the [June 28, 2011 application (the ‘2011 Application’)], in order that the Plan-

ning 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, HRS, and sections 15-15-95 and 15-15-96, HAR.

Ex. 3 at 3–4.¹

In remanding the proceeding to the Planning Commission, the LUC acted in accordance with Hawai'i Supreme Court's direction and pursuant to Hawai'i Administrative Rule § 15-15-95(a), which provides that “[u]pon determination by the commission, the petition may be remanded to the county planning commission for further proceedings.”² Given the LUC's remand instructions, the Planning Commission's act of consolidating the 2008 and 2011 Application proceedings is ministerial and non-discretionary. *See, e.g., Anderson v. City of Spokane*, No. 22749-9-III, 2005 Wash. App. LEXIS 1889, at *4 (Wash. Ct. App. Jul. 28, 2005) (unpublished decision) (holding that an agency's action was ministerial where it was ordered or instructed to take the action by another reviewing agency).

¹Honolulu Planning Commission Rule § 2-61 allows consolidation “for hearing or for other purposes, or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the commission finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.”

²The power to remand to the Planning Commission is consistent with the Commission's function on applications for special use permits involving properties larger than 15 acres. On those applications, the Commission receives evidence, decides whether to approve the permit and, if the permit is approved, transmits the decision and record to the LUC for review and final decision. *See* Hawai'i Revised Statutes § 205-6; HAR § 15-15-95. Here, the LUC has directed the LUC to perform its function by consolidating the proceedings and transmitting a single findings of fact, conclusions of law, decision and order.

The Planning Commission, in turn, must effect the consolidation of the 2008 and 2011 Application proceedings as ordered by the LUC. This motion is made pursuant to Honolulu Planning Commission Rule § 2-67 and is based on the attached exhibits and on the records and materials on file with the Planning Commission.

DATED: Honolulu, Hawai'i, January 15, 2013.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

Electronically Filed
Supreme Court
SCAP-10-0000157
31-MAY-2012
08:52 AM

NO. SCAP-10-0000157

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU,
Petitioner/Appellant-Appellant,

vs.

LAND USE COMMISSION, STATE OF HAWAI'I; COLLEEN HANABUSA;
MAILE SHIMABUKURO; and KO OLINA COMMUNITY ASSOCIATION,
Respondents/Appellees-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-2719-11))

JUDGMENT ON APPEAL
(By: Duffy, J., for the court¹)

Pursuant to the opinion of the Supreme Court of the State of Hawai'i entered on May 4, 2012, the judgment of the Circuit Court of the First Circuit (circuit court) entered on October 19, 2010 is vacated and the case is remanded to the circuit court with instructions that the circuit court remand the matter to the Land Use Commission for further proceedings consistent with the May 4, 2012 opinion.

DATED: Honolulu, Hawai'i, May 31, 2012.

FOR THE COURT:

/s/ James E. Duffy, Jr.

Associate Justice



¹ Court: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.

FIRST CIRCUIT COURT
 STATE OF HAWAII
 830 FILED A M.
 JUN - 8 2012
 J. CHUN
 Clerk, 10th Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
 STATE OF HAWAII

Department of Environmental Services, City and County of Honolulu,)	Civil No. 09-1-2719 (RAN)
)	
Appellant,)	Order Remanding Matters to the Land Use Commission for Further Hearing
vs.)	
)	
Land Use Commission, State of Hawaii, Colleen Hanabusa, Maile Shimabukuro, and Ko Olina Community Association,)	
)	
Appellees.)	

Order Remanding Matters to the Land Use Commission for Further Hearing

Pursuant to the Supreme Court Opinion, No. SCAP-10-0000157, filed on May 4, 2012, the Circuit Court is remanding this matter to the Land Use Commission for further proceedings consistent with the Supreme Court's opinion.

DATED: Honolulu, Hawai'i, JUN - 6 2012



 Judge of the above-entitled Court



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2012 OCT - 8 P 12:45
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL)	ORDER REMANDING COUNTY
SERVICES, CITY AND COUNTY OF)	SPECIAL USE PERMIT FILE NO.
HONOLULU)	2008/SUP-2 TO THE CITY AND
)	COUNTY OF HONOLULU
For A New Special Use Permit To)	PLANNING COMMISSION;
Supersede Existing Special Use Permit To)	AND CERTIFICATE OF SERVICE
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)	
_____)	

ORDER REMANDING COUNTY SPECIAL USE PERMIT FILE NO. 2008/SUP-2 TO
THE CITY AND COUNTY OF HONOLULU PLANNING COMMISSION

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.

October 8, 2012 by

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2012 OCT - 8 P 12:41

LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL)	ORDER REMANDING COUNTY
SERVICES, CITY AND COUNTY OF)	SPECIAL USE PERMIT FILE NO.
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ORDER REMANDING COUNTY SPECIAL USE PERMIT FILE NO. 2008/SUP-2 TO
THE CITY AND COUNTY OF HONOLULU PLANNING COMMISSION

AND

CERTIFICATE OF SERVICE



LAND USE COMMISSION
STATE OF HAWAII

2012 OCT -8 P 12:41

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP09-403
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ORDER REMANDING COUNTY SPECIAL USE PERMIT FILE NO. 2008/SUP-2
TO THE CITY AND COUNTY OF HONOLULU PLANNING COMMISSION

On September 14, 2012, the State Land Use Commission ("LUC") met in Ko `Olina, O`ahu, Hawai`i, to continue discussion and deliberation on the procedural issues arising from Civil No. 09-1-2719-11.¹ Dana Viola, Esq., and

¹ On July 5, 2012, the LUC commenced its proceedings on this matter. During its presentation, the Department of Environmental Services, City and County of Honolulu ("Applicant"), orally moved for an additional two weeks for the parties to file written briefs with the LUC to more fully address the procedural issues. The LUC granted the Applicant's oral motion and ordered the parties to file the written briefs with the LUC by the close of business on July 19, 2012. The State Office of Planning ("OP") and Schnitzer Steel Hawai`i Corp. ("Schnitzer"), an intervenor in the Applicant's pending application before the City and County of Honolulu Planning Commission ("Planning Commission") to modify the LUC's Order Adopting The City And Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu Order Remanding County Special Use Permit File No. 2008/SUP-2 To The City And County Of Honolulu Planning Commission

Brian Black, Esq., appeared on behalf of the Applicant. Calvert G. Chipchase, Esq., appeared on behalf of Intervenors the Ko `Olina Community Association ("KOCA") and Maile Shimabukuro ("Shimabukuro"). Richard Wurdeman, Esq., appeared on behalf of Intervenor Colleen Hanabusa ("Hanabusa"). Don Kitaoka, Esq., was also present on behalf of the City and County of Honolulu Department of Planning and Permitting as were Bryan C. Yee, Esq., and Rodney Funakoshi on behalf of OP.

At the meeting, the LUC heard public testimony from Cynthia Rezentes, Beverly Munson, Kirk Fritz, Kamaki Kanahele, Maile Shimabukuro, and Joseph Imaoka, and entered the written testimonies of Greg Nichols, Ken Williams, Sweetie Nelson, and Joy Leilei Shih into the record.²

Following the receipt of public testimony, the parties provided oral argument on the procedural issues and options available to the LUC in this matter.

County Of Honolulu Planning Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order With Modifications ("LUC Order") filed October 22, 2009, were also free to file written briefs with the LUC by the aforementioned date.

² Prior to the receipt of public testimony, Commissioner Nicholas Teves disclosed that his firm, Commercial Electric Inc., had completed two projects for KOCA in 2011, but that he did not have any personal contact in the projects and could make an impartial decision on the matter. Commissioner Ronald Heller disclosed that he represents the Association of Apartment Owners of Beach Villas, a member of KOCA, in litigation against KOCA. There were no objections by the Applicant or Intervenors KOCA and Shimabukuro to the participation of Commissioners Teves and Heller in the proceeding. Intervenor Hanabusa took no position on the matter.

Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu 2
Order Remanding County Special Use Permit File No. 2008/SUP-2 To The City And County Of Honolulu Planning Commission

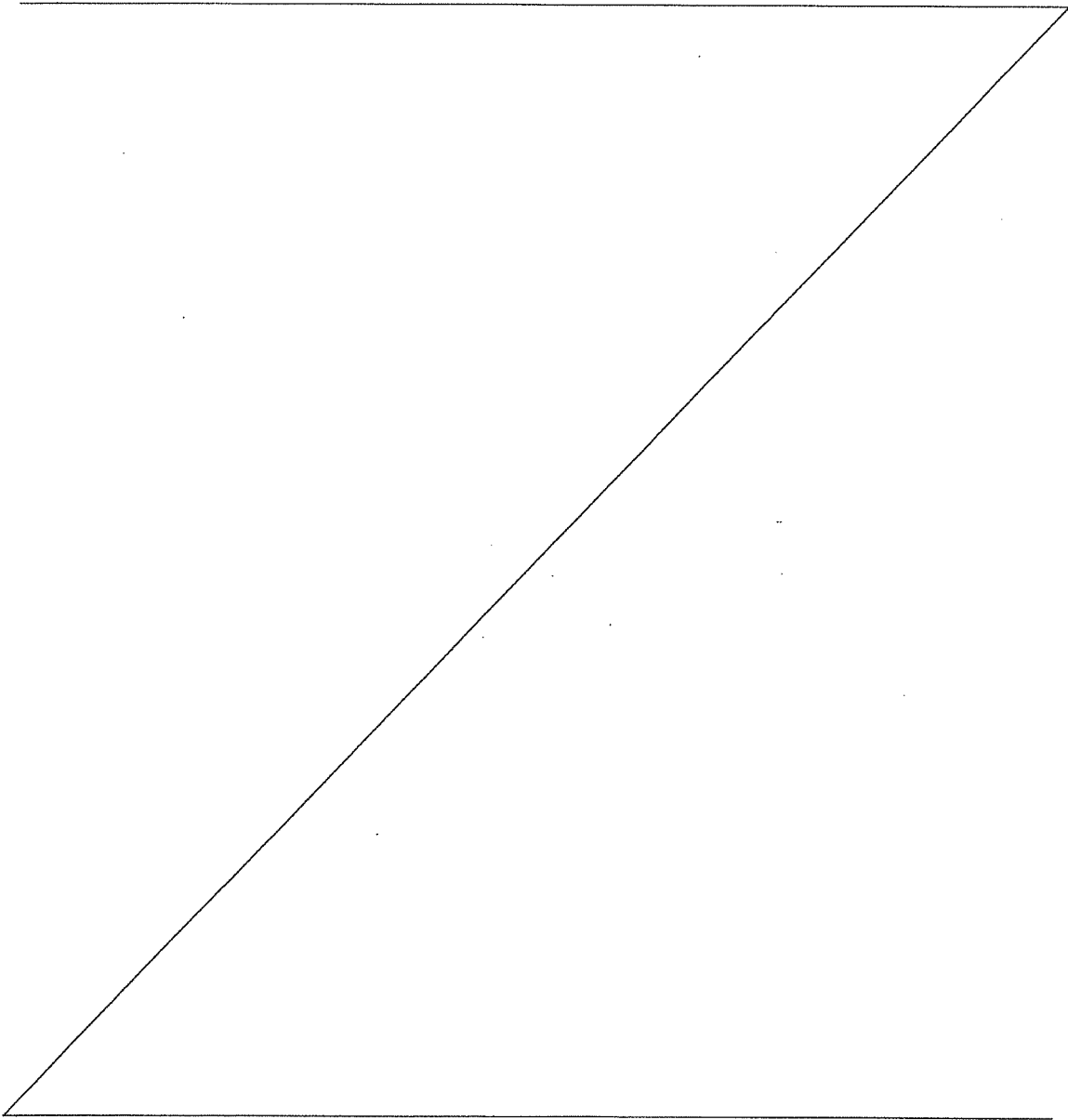
Following discussion, a motion was made and seconded to remand County Special Use Permit File No. 2008/SUP-2 to the Planning Commission for the expressed purpose of consolidating it with the proceeding on the Applicant's pending application to modify the LUC's Order filed October 22, 2009, in order that 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 ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR"). There being a vote of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

The LUC, having duly considered the written and oral arguments presented by the Applicant, Intervenors KOCA, Shimabukuro, and Hanabusa, OP, and Schnitzer, and a motion having been made and seconded at a meeting on September 14, 2012, in Ko `Olina, O`ahu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that County Special Use Permit File No. 2008/SUP-2 be REMANDED to the Planning Commission for the expressed purpose of consolidating it with the proceeding on the Applicant's pending application to modify the LUC's Order filed October 22, 2009, 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, HRS, and sections 15-15-95 and 15-15-96, HAR.



ADOPTION OF ORDER

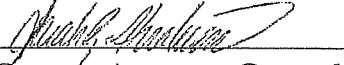
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 8th day of October, 2012. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu Hawai'i, this 8th day of October, 2012, per motion on September 14, 2012.

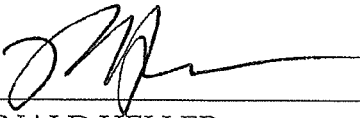
LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

By _____
KYLE CHOCK
Chairperson and Commissioner

By  _____
RONALD HELLER
Vice- Chairperson and Commissioner

By _____
CHAD McDONALD
Vice- Chairperson and Commissioner

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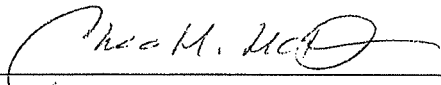
APPROVED AS TO FORM

STATE OF HAWAII

Deputy Attorney General

By _____
KYLE CHOCK
Chairperson and Commissioner

By _____
RONALD HELLER
Vice- Chairperson and Commissioner

By  _____
CHAD McDONALD
Vice- Chairperson and Commissioner

By Sheldon R. Biga
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Commissioner

By Lance Inouye
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By (excused)
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Commissioner

By Ernest Matsumura
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Commissioner

Filed and effective on:

10/8/12

By (excused)
THOMAS CONTRADES
Commissioner

Certified by:

Daniel Orodanker
DANIEL ORODENKER
Executive Officer

By Nicholas W. Teves Jr.
NICHOLAS W. TEVES JR.
Commissioner

BEFORE THE PLANNING COMMISSION
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FILE NO. 2008/SUP-2

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lowed at the WGS� up to July 31, 2012,
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H-POWER shall be allowed at the
WGS� after July 31, 2012.”

CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing document was
duly served on the following persons:

ROBERT CARSON GODBEY, ESQ. (Hand Delivery)

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ROBERT BRIAN BLACK, ESQ.

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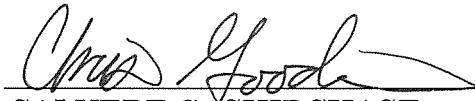
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(Hand Delivery)

Attorney for
DEPARTMENT OF PLANNING AND PERMITTING,
CITY AND COUNTY OF HONOLULU

DATED: Honolulu, Hawai'i, January 15, 2013.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO