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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

**KO OLINA COMMUNITY
ASSOCIATION AND MAILE
SHIMABUKURO'S JOINDER IN
DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF
HONOLULU'S, MOTION TO STAY
PROCEEDINGS TO APRIL 22,
2017**

EXHIBIT 1 - 4

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.”

**KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S
JOINDER IN DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY
AND COUNTY OF HONOLULU'S, MOTION TO STAY
PROCEEDINGS TO APRIL 22, 2017**

On June 22, 2016, Applicant Department of Environmental Services, City and County of Honolulu (“ENV”) filed a Motion to Stay Proceedings to April 22, 2017 (the “**Motion**”). Intervenors Ko Olina Community Association and Maile Shimabukuro (together, “**KOCA**”) join in the Motion, subject to the following clarifications:

First, in *Department of Environmental Services, City & County of Honolulu v. Land Use Comm'n, State of Hawaii*, 127 Hawai'i 5 (2012), the Hawai'i Supreme Court concluded that the record did not reflect the “substantial evidence” necessary to support the State Land Use Commission’s (“LUC”) Condition 14, which required the closure of the Waimanalo Gulch Sanitary Landfill (the “**Landfill**”) to municipal solid waste after July 31, 2012 but allowed the Landfill to continue to accept ash and residue from H-POWER. *Id.* at 10, 17. As the court explained, however, Condition 14 was “a material condition to the LUC’s approval.” *Id.* at 17. Because a material condition of the order could not stand, the court held that “the LUC’s approval of SUP-2 also cannot stand” *Id.* Accordingly, the court vacated the

order¹ and remanded the proceeding on SUP-2 to the LUC “for further hearings as the LUC deems appropriate.” *Id.* at 18. The State Office of Planning summarized the decision in its recent status report. *See Ex. 1.*

Second, the Memorandum in Support (“**Memorandum**”) attached to the Motion mistakenly reports that at a “meeting on September 14, 2012, the LUC decided to remand the Supreme Court case to the Planning Commission with a *recommendation* to consolidate the 2009 and 2011 SUP proceedings for decision-making.” Memorandum at 3 (emphasis added). To be accurate, the LUC ordered the consolidation of the proceedings:

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.

Ex. 2 at 4. On remand, KOCA filed a motion merely to implement the consolidation ordered by the LUC so that the proceedings could continue. The motion remains pending before the Planning Commission.

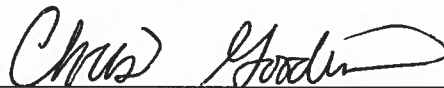
Finally, the Memorandum states that “[a] stay to April 22, 2017 will allow the parties to continue working toward the implementation of additional alternative uses or disposal methods to increase waste diversion, as set forth in Part III of this

¹ “Vacate” means “[t]o nullify or cancel; make void; invalidate.” *Black’s Law Dictionary* (10th ed. 2014). Thus, “[w]hen used in a[] [court] opinion or dispositional order, . . . the phrase ‘vacate and remand’ indicates the litigation continues in the court or agency in accordance with the appellate court’s instruction.” Hawai‘i Rule of Appellate Procedure 35(e).

memorandum and in the partially-executed Stipulation attached hereto as Exhibit A." Memorandum at 4. To be accurate, KOCA and the City agreed to stay the proceedings before the Planning Commission until April 22, 2017, subject to certain conditions and limitations on the use of the Landfill, to enable the parties to continue discussions regarding the possible preparation of a joint findings of fact, conclusions of law and decision and order. Ex. 3 (10/22/15 LUC transcript excerpt) at 14:24-15:5 (ENV's counsel), 17:1-17 (KOCA's counsel). As KOCA explained to the LUC, if a joint decision cannot be reached, the adversarial contested case proceedings before the Planning Commission will resume. Ex. 4 (5/18/16 LUC transcript excerpt) at 13:19-24.

Subject to the foregoing clarifications and the terms of the stay contained in the Motion, KOCA joins in the Motion to Stay Proceedings to April 22, 2017.

DATED: Honolulu, Hawai'i, July 5, 2016.



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MAILE SHIMABUKURO

DAVID Y. IGE
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DEPARTMENT OF THE ATTORNEY GENERAL
COMMERCE AND ECONOMIC DEVELOPMENT DIVISION
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HONOLULU, HAWAII 96813
(808) 586-1180
FAX (808) 586-1205

June 13, 2016

Planning Commission
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Re: A Request for Follow-Up Status Report or Extension on State Special Use Permit to Supersede Existing Special Use Permit to Allow a 92.5-Acre Expansion and Time Expansion for Waimanalo Gulch Sanitary Landfill, Waimanalo Gulch, Oahu, Hawaii; Tax Map Key: 9-2-03: 72 and 73

Dear Commissioners:

At the request of the Planning Commission, the Office of Planning ("OP") submits this status report. We are appreciative of the Planning Commission's efforts to ensure that this matter is completed on a timely basis. At the outset, however, we note that OP is not a party or participant at the Planning Commission level. Accordingly, the information available to us primarily relates to the matters that have occurred at the Land Use Commission ("LUC"). Where relevant, we have related our limited understanding of actions at the Planning Commission as reported by one of the parties to the LUC.

In 2009, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order (the "2009 Decision and Order") granting a Special Use Permit for the Waimanalo Gulch Sanitary Landfill, with a termination date of July 31, 2012. The applicant was the Department of Environmental Services, City and County of Honolulu ("ENV"). Senator Hanabusa, Representative Shimabukuro, and the Ko Olina Community Association ("KOCA") were intervenors. The 2009 Decision and Order was appealed to the Circuit Court, and then to the Hawaii Supreme Court. On May 4, 2012, the Hawaii Supreme Court reversed the 2009 Decision and Order, finding that the LUC did not have sufficient facts in the record to justify a termination date of July 31, 2012. The Hawaii Supreme Court, however, also found that the imposition of a termination date appeared to be a material condition of the LUC approval. The LUC, therefore, might not have approved the Special Use Permit in the absence of that termination date. Accordingly, rather than simply strike

down the termination date, the Hawaii Supreme Court remanded the entire case back to the LUC for appropriate proceedings which could include an enlargement of the record. In fact, the Hawaii Supreme Court encouraged the LUC to consider the testimony before the Planning Commission in the proceeding described below.

On June 28, 2011, during the pendency of the judicial appeals, ENV filed a motion with the Planning Commission to delete the termination date of July 31, 2012 from the Special Use Permit. OP understands that the Schnitzer Steel Hawaii Corp. ("Schnitzer Steel") was added as an Intervenor to this motion, and that the Planning Commission held several days of hearing on the motion to delete the termination date. After the Hawaii Supreme Court remanded the Special Use Permit to the LUC, ENV then asked the Planning Commission for permission to withdraw its motion to delete the termination date. OP further understands that the Planning Commission decided to stay those proceedings rather than dismiss it.

On October 8, 2012, the LUC remanded the matter to the Planning Commission to consolidate the two proceedings, update the record, make a decision as to the appropriate conditions to be imposed, and then send its decision and the updated record back to the LUC.

On May 16, 2014, the LUC held a hearing to find out the status of the proceedings before the Planning Commission. The City reported that it was in settlement discussions with some, but not all, of the parties. The LUC ordered ENV to file written status reports every two months beginning in July 2014.

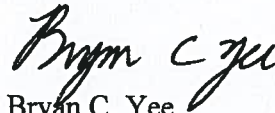
On May 18, 2016, the LUC held another status hearing to find out the status of the proceedings before the Planning Commission. ENV reported that they had reached an agreement to continue the Planning Commission proceedings to April 22, 2017 with all parties, except for Senator Hanabusa. ENV intends to file a motion to continue if an agreement amongst all parties is not reached. At this time, OP takes no position on matters currently before the Planning Commission. Settlement discussions were ongoing with some, but not all, of the parties.

Special Use Permit No. 2008/SUP-2, therefore, is pending before the Planning Commission. The motion to amend has been pending since June 28, 2011. The remanded Special Use Permit has been pending since October 8, 2012. Some but not all of the parties have been engaged in settlement discussions. After the Planning Commission completes its processes and issues a decision, it will then forward the entire consolidated record and decision to the LUC for consideration and possible approval pursuant to section 205-6(d),

Planning Commission
June 13, 2016
Page 3

Hawaii Revised Statutes (assuming the Planning Commission again grants the Special Use Permit).

Very truly yours,



Bryan C. Yee
Deputy Attorney General

c: Lori M. K. Kahikina, P.E.
Kamilla C. K. Chan, Esq.
Richard N. Wurdeman, Esq.
✓ Calvert G. Chipchase IV, Esq.
Edmund Aczon
Diane Erickson, Esq.
Ian L. Sandison, Esq.



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

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.
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)
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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



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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DEPARTMENT OF ENVIRONMENTAL)	ORDER REMANDING COUNTY
SERVICES, CITY AND COUNTY OF)	SPECIAL USE PERMIT FILE NO.
HONOLULU)	2008/SUP-2 TO THE CITY AND
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For A New Special Use Permit To)	PLANNING COMMISSION
Supersede 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)	
)	

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 1 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

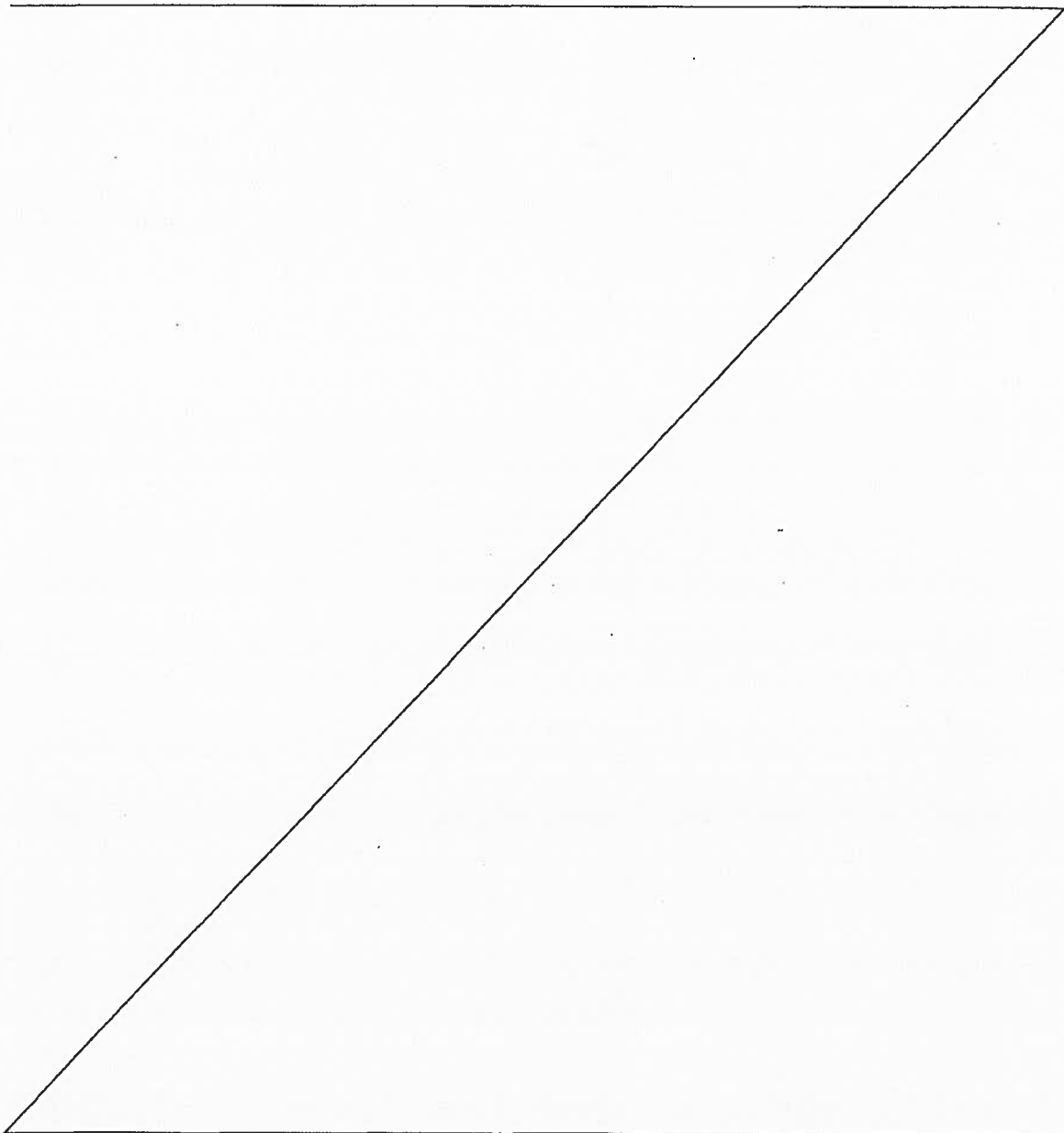
Following discussion, a motion was made and seconded to remand County Special Use Permit File No. 2008/SUP-2 to the Planning Commission for the expressed purpose of consolidating it with the proceeding on the Applicant's pending application to modify the LUC's Order filed October 22, 2009, in order that 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.

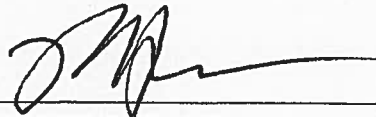
LAND USE COMMISSION

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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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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LAND USE COMMISSION

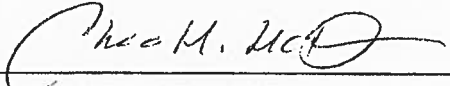
APPROVED AS TO FORM

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

By Sheldon R Biga
SHELDON BIGA
Commissioner

By Lance Inouye
LANCE INOUE
Commissioner

By (excused)
JAYE NAPUA MAKUA
Commissioner

By Ernest Matsumura
ERNEST MATSUMURA
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

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Land USE COMMISSION
STATE OF HAWAII

AIRPORT CONFERENCE CENTER
CONFERENCE ROOM 3
400 ROGERS BLVD., SUITE 7
HAWAIIAN AIRLINES TERMINAL BUILDING
HONOLULU, HAWAII 96819
ON OCTOBER 22, 2015
COMMENCING AT 9:35 A.M.

BEFORE: Jean Marie McManus, CSR #156

McMANUS COURT REPORTERS 808-239-6148

1 APPEARANCES:
2 EDMUND ACZON, CHAIRMAN

1uc102215(1)_1.txt

3 ARNOLD WONG, VICE CHAIRMAN
4 JONATHAN SCHEUER, VICE CHAIRMAN
5 COMMISSIONERS:
6 AARON MAHI
7 LINDA ESTES
8 NANCY CABRAL
9 CHAD McDONALD
10 KENT HIRANAGA
11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General
13 STAFF:
14 DANIEL ORODENKER, Executive Officer
15 BERT SARUWATARI, Planner
16 RILEY K. HAKODA, Planner/Chief Clerk
17 CALVERT G. CHIPCHASE, IV, ESQ.
18 Cades Schutte
19 1000 Bishop Street, 10th Floor
20 Honolulu, Hawaii 96813
21 For Intervenor Ko'olina Community Association
22 and Maile Shimabukuro
23 BRYAN YEE, ESQ.
24 Deputy Attorney General
25 RODNEY FUNAKOSHI, Office of Planning
For the State of Hawaii
Office of Planning
DANA VIOLA, ESQ.
Deputy Corporation Counsel
Department of Environmental Services

McMANUS COURT REPORTERS 808-239-6148

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McMANUS COURT REPORTERS 808-239-6148

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1 CHAIRPERSON ACZON: Good morning. This is
2 the October 22nd, 2015, Land Use Commission meeting.
3 The first order of business is the adoption
4 of the October 16, 2015 minutes. Are there any
5 corrections or comments on them? If not, is there a
6 motion to adopt minutes?
7 COMMISSIONER MAHI: I move.
8 COMMISSIONER ESTES: Second.
9 CHAIRPERSON ACZON: A motion has been made
10 by Commissioner Mahi and seconded by Commissioner

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MCMANUS COURT REPORTERS 808-239-6148

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

In the Matter of the) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
For a New Special Use)
Permit To Supersede)
Existing Special Use Permit)
to Allow A 92.5-Acre)
Expansion and Time)
Extension for Waimanalo)
Gulch Sanitary Landfill,)
Waimanalo Gulch, O'ahu,)
Hawai'i, Tax Map Key:)
9-2-03:72 and 73)

STATUS REPORT

Held on October 22, 2015, commencing at 9:35 a.m., at
the Honolulu Airport, 400 Rodgers Blvd., suite 700,
Room 3, Honolulu, Hawaii 96819.

16 and/or Representative Shimabukuro. I understand Mr.
17 Chipchase represents Shimabukuro, so it's helpful to
18 clarify whether this also represents a stipulation
19 from her, and whether this represents a stipulation
20 from Senator Hanabusa. Thank you.

21 CHAIRPERSON ACZON: I will have Mr.
22 Chipchase to help us with comments later.

23 Any comments from the Commissioners or
24 questions to Ms. Viola? VICE CHAIR WONG.

25 VICE CHAIR WONG: I have a question. First
MCMANUS COURT REPORTERS 808-239-6148

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14

1 thing is what is the status of SUP?

2 MS. VIOLA: The status of SUP is that it's
3 pending. It was remanded to the Land Use Commission,
4 and Land Use Commission has remanded or requested
5 consolidation with the related case that was ongoing
6 at the time. So the SUP is before the Planning
7 Commission presently.

8 VICE CHAIR WONG: Right now it's expired
9 per se, right?

10 MS. VIOLA: No. The position of the City
11 is that it has not expired. The Planning Commission
12 and the Land Use Commission had granted SUP for the
13 duration for the capacity of the landfill. So it has
14 not expired.

15 what has been struck by the Supreme Court
16 which is the subject matter of the appeal was the
17 deadline that was imposed by the Planning Commission
18 for municipal solid waste, not ash and residue, but
19 municipal solid waste as of July 31st, 2012. That

20 deadline has been struck by the courts.

21 VICE CHAIR WONG: So the question is when
22 is the Planning Commission going to take up this
23 issue?

24 MS. VIOLA: Well, what we're proposing is
25 that the Planning Commission, who has agreed to allow

McMANUS COURT REPORTERS 808-239-6148

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15

1 the parties to negotiate, would give us an additional
2 18 months, as described by both myself and Mr.
3 Chipchase. And so that the parties can provide for
4 joint recommendation to resolve the Application that
5 is now before the Planning Commission.

6 VICE CHAIR WONG: Thank you.

7 CHAIRPERSON ACZON: Any others questions?
8 Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Aloha. This would be
10 either to the City or the Intervenors. why
11 18-months? It seems like for something that's
12 already gone on a long time, it's a fairly long
13 additional time that you're seeking.

14 MS. VIOLA: Additional 18 months is
15 primarily in regards to the plans that the City has
16 for further diversion. Some of the waste streams
17 that we are focused on are shredder waste, the home
18 waste, to reduce number of trucks going to the
19 landfill, and ultimately ash and residue.

20 The reason why it's taken -- I understand
21 it's taken three years, and we ask for additional
22 time -- is that it's not a quick process. We have
23 been working to find alternative disposal methods for

24 these waste streams. We've reduced it significantly
25 in the last three years. The waste that we were

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1 talking about in 2011 and 2009, the City has made
2 great strides in reducing the amount of stuff going
3 to the landfill.

4 And we want to target additional waste
5 stream to remove from the landfill so that we would
6 ultimately have a landfill that perhaps would not be
7 a full landfill.

8 So the reason we need more time is because
9 the alternative uses or alternative disposal methods
10 are immediate. This is something that we have to
11 work on. At this point in time, ash and residue
12 reuse is not being conducted anywhere in the country.
13 I think at this point the State of Minnesota is doing
14 a private project on the reuse of ash. So that's
15 hopefully within reach of the City.

16 VICE CHAIR SCHEUER: So if I may follow up.
17 So that it's not really the negotiations themselves
18 that need additional time, but the City's work
19 towards finding an acceptable solution that they can
20 then bring into negotiations?

21 MS. VIOLA: That is really the focus on the
22 negotiations. I can let Mr. Chipchase speak on
23 behalf of his clients, but the joint goal is to
24 reduce use of landfill, so reduce impact on
25 surrounding community, but I'll let him comment.

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1 MR. CHIPCHASE: So the parties have been
2 working on reaching, if possible, a stipulated
3 proposed Findings of Fact, Conclusions of Law,
4 Decision and Order since about spring of 2013. So
5 the negotiations that have occurred to date have
6 taken us to this point where we're able to say, okay,
7 we're ready to identify a list of remaining diversion
8 objectives, and we as Intervenors -- and to clarify
9 for the Chair and body -- that does include Ms.
10 Shimabukuro, both of us would be stipulating to that.

11 I can't, of course, speak for Mr. Wurdeman
12 and his client, but as far as my clients are
13 concerned, this stipulation would cover both of them.

14 And so we have reached a point in those
15 negotiations where we see an end in sight, the
16 18 months, and we're willing to accept that, it's
17 gone on a long time for us as well.

18 We've been involved with this for many
19 years even before that, but we're happy to see some
20 end to that, and having come so far with the City and
21 achieved this much, we think we're at a point that if
22 we list out those objectives, remaining diversionary
23 objectives at the end of 18 months, hopefully we will
24 have finally achieved a stipulated order for review
25 by the Planning Commissioner and of course this body.

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1 VICE CHAIR SCHEUER: Thank you. One final
2 question for the City.

3 Do I understand correctly that because of

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BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

May 18, 2016
Commencing at 9:30 a.m.
State Office Tower
235 Beretania Street, Room #405
Honolulu, Hawaii 96813

AGENDA

- I Call to Order
 - II Adoption of Minutes.
 - III Tentative Meeting Schedule
 - IV Status Report and Appropriate Action, if any
SP09-403 Department of Environmental Services,
City and County of Honolulu (Waimanalo Gulch
Sanitary Landfill) O'ahu)
 - V Discussion and Action, if Appropriate,
2016 Legislation Status Report
 - VI Discussion and Action, if Appropriate,
Appointment of Hearings Officer for Land Use
Commission Docket No. A89-649 Lanai Resorts LLC
 - VII Executive Session
To consult with the Commissioner's Attorney
regarding the Commission's duties, rights,
responsibilities and obligations with respect
to Land Use Commission personnel matters
 - VIII Adjournment
- BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 ARNOLD WONG, Vice Chair

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5 COMMISSIONERS:

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7 NANCY CABRAL
8 DAWN N.S. CHANG
9 LINDA ESTES
10 KENT HIRANAGA

11 DIANE ERICKSON, ESQ
12 Deputy Attorney General

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14 STAFF:

15

16 DANIEL ORODENKER, Executive Director
17 RILEY HAKODA, Chief Clerk/Planner
18 BERT SARUWATARI, Planner
19 BRIANA BERNARDINO, Secretary

20 KAMILLA CHAN, ESQ.
21 For Dept. Of Environmental Services

22

23 CALVERT CHIPCHASE, ESQ.
24 For Ko Olina Community Association
25 and Maile Shimabukuro

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27 RICHARD N. WURDEMAN, ESQ.
28 Attorney for Colleen Hanabusa

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30 BRYAN YEE, ESQ.
31 KATHRYN MINEO, Planner
32 RODNEY FUNAKOSHI, Planner
33 For Office of State Planning

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1 CHAIRPERSON ACZON: Good morning.

2 This is the May 18, 2016 Land Use
3 Commission Meeting.

4 Before I start I would like to introduce
5 the newest member of the Commission, Ms. Dawn Chang
6 joining us with vast experience on this docket. So I
7 want to ask Ms. Chang to kind of introduce herself.

8 COMMISSIONER CHANG: Thank you very much.
9 Aloha mai kakou. My name is Dawn Chang. Thank you
10 very much, Chair.

11 It is with great pleasure and honor that
12 I'm sitting on the Land Use Commission, and I hope to
13 bring my experience as an asset to the Commission.
14 So thank you very much.

15 CHAIRPERSON ACZON: Thank you.

16 The first order of business is adoption of
17 April 20, 2016 minutes. Are there any corrections or
18 comments? If not, is there a motion to adopt the
19 minutes?

20 COMMISSIONER ESTES: So moved.

21 VICE CHAIR WONG: Second.

22 CHAIRPERSON ACZON: The motion has been
23 made by Commissioner Estes and seconded by
24 Commissioner Wong to adopt the minutes. All in favor
25 say "aye", opposed?

1 MR. CHIPCHASE: Thank you, Chair.

2 I take no issue with virtually everything
3 Mr. Wurdeman said in recounting the history. That's
4 almost entirely correct.

5 The question I think though is where do we
6 go from here? And we have been in this as long as
7 Ms. Hanabusa, and we have suffered the same
8 frustrations and delays and challenges.

9 And so I respect and appreciate everything
10 that he said with respect to that, but where do we go
11 from here? Right now the case sits with the Planning
12 Commission on remand from this body for a
13 consolidation of two matters.

14 And we have been in discussion with the
15 City now attempting to reach a stipulated resolution,
16 a stipulated Findings of Facts, Conclusions of Law,
17 Decision and Order presented to first to the Planning
18 Commission and then to this body for three years and
19 unable to do so.

20 What we have achieved is the stipulation
21 that we discussed at the Commission back in
22 October 2015 when Ms. Chan summarized quite
23 accurately. The intention of that stipulation was at
24 the time to provide for an 18-month standing within a
25 more structured framework than we had thus far been

1 able to achieve based around the waste streams and
2 the City's intentions with respect to those waste
3 streams.

4 In October we envisioned a stay lasting 18
5 months from then. We're up to -- with three status
6 reports, and we thought it would take us about two
7 months to finalize the form of that stay.

8 It took about six months, seven months to
9 finalize the form of that stay, but we didn't extend
10 the end point of the stay, we kept that deadline set.

11 So we remain on track with respect to the
12 overall arch of the stay, and the point that it was
13 intended to accomplish. The only date that's changed
14 in the entire stipulation is one status report from
15 the City back a month from May to June. Otherwise,
16 despite the length of time to negotiate the form of
17 that stipulation, which has some substantive points,
18 we stayed within that frame point.

19 On our side, we are committed to using that
20 period to continue to negotiate a resolution. And it
21 may not involve every party. Every party may not
22 agree, but as many as possible reaching that
23 conclusion before the Planning Commission to make
24 recommendation and this body to make its decision.

25 We may come to the end of that period

1 without a resolution, and we may need to resume the
2 hearing, and this body may need to make a decision on
3 a contested argument, contested case. That's
4 certainly possible.

5 But there is enough progress and enough
6 hope there that I think it's worth another year,
7 worth the time that we had committed to in October to
8 see this through and see if we can get it done.

9 If we can, then that's the best answer for
10 everyone. If we can, we are not materially worse off
11 with that stay, in fact, we're better off, even if we
12 don't reach a resolution, because in this time the
13 City's committed to doing certain things.

14 And if the City is able to do those things,
15 at least we have a more full record, at least we have
16 more information before this body that you need to
17 make a decision.

18 So with respect to everything that Mr.
19 Wurdeman said in Ms. Hanabusa's position, we
20 completely understand all of them. I believe that
21 the right course remains to let this matter be stayed
22 by the Planning Commission where its stayed either
23 through the stipulation or through motion effectively
24 informed by all but one party. And then see through
25 the status reports how the City progresses and see

1 then where we are at the end of that period.

2 CHAIRPERSON ACZON: Commissioners, any
3 questions for Mr. Chipchase?

4 Mr. Yee, would you like to comment?

5 MR. YEE: Yes, thank you.

6 I assume that the Commission has received
7 some sort of status report about the progress and
8 about this case, how it proceeded from start to
9 finish. But I do want to take a few minutes just to
10 go over some of the highlights of that past history,
11 because I know many of you were not personally
12 present during some of these proceedings.

13 I'm going to start back in 2009 where Mr.
14 Wurdeman said was the date that the Land Use
15 Commission reviewed the Special Permit that came up
16 to you. And at that point the Land Use Commission
17 imposed a condition requiring that the landfill be
18 closed by 2013. It went up to the Supreme Court.
19 The Supreme Court reversed, remanded basically saying
20 there really wasn't enough information from the
21 record to draw this conclusion, but the conditions
22 that were set was so material to the case, that it
23 was not prepared to simply reverse that one condition
24 that affirmed the remainder of the approval.

25 They sent the entire thing back to the Land

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

CERTIFICATE OF SERVICE

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
follows:

“14. Municipal solid waste shall be al-
lowed 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.”

CERTIFICATE OF SERVICE

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

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COLLEEN HANABUSA

DATED: Honolulu, Hawai'i, July 5, 2016.

CADES SCHUTTE
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KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO