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

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
For A New Special Use Permit To ) COMMUNITY ASSOCIATION
Supersede Existing Special Use Permit To ) AND MAILE SHIMABUKURO'S
Allow A 92.5-Acre Expansion And Time ) MOTION TO DENY AND
Extension For Waimānalo Gulch Sanitary ) REMAND; AND CERTIFICATE
Landfill, Waimānalo Gulch, O‘ahu, ) OF SERVICE
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 AND AMENDED 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.

July 28, 2017 by

Executive Officer

PC4
EXHIBIT 1
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

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ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA
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AND

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

In The Matter Of The Application Of The  
DOCKET NO. SP09-403 

DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU  
ORDER GRANTING IN PART 
AND DENYING IN PART 
INTERVENORS KO OLINA COMMUNITY ASSOCIATION  
AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND 

For A New Special Use Permit To 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 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;1 (2) KOCA/Shimabukuro’s Alternative Motion to Deny the Applications Unless

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1 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. Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand
Additional Conditions are Imposed ("Alternative Motion to Deny");² 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 permit³ 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.⁴ Dana Viola, Esq., and Kathleen

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

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

⁴ 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 Intervenors 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 Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand
Kelly, Esq., appeared on behalf of the Applicant.5 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”).6 Bryan C. Yee, Esq., and Rodney Funakoshi were present on behalf of the State Office of Planning (“OP”),7 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.8 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

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

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


7 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.

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

Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu 3 Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand
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, 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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9 The ninth seat on the LUC is currently vacant.

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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.\(^\text{10}\)

\(^{10}\) KOCA/Shimabukuro’s Alternative Motion to Deny is rendered moot by this action and shall not require consideration by the LUC.

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ADOPTION OF ORDER

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

Done at Honolulu, Hawai‘i, this 6th 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

Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu
Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand
BEFORE THE LAND USE COMMISSION
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In The Matter Of The Application Of The 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

DOCKET NO. SP09-403
CERTIFICATE OF SERVICE

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:

DEL. Leo Asuncion, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359

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Dated:  June 6, 2017  Honolulu, Hawaii.

Daniel Orodenker, Executive Officer
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In The Matter Of The Application Of The 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 Waimānalo Gulch Sanitary Landfill, Waimānalo Gulch, O‘ahu, Hawai‘i, Tax Map Key: 9-2-03: 72 And 73

DOCKET NO. SP09-403 AMENDED CERTIFICATE OF SERVICE

AMENDED 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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SP09-403- ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO’S MOTION TO DENY AND REMAND
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Dated:  June  15, 2017  Honolulu  ,  Hawaii.

Daniel Orodenker, Executive Officer

SP09-403- ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO DENY AND REMAND