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Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAI‘I

In the Matter of the Application of
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

FILE NO. 2008/SUP-2
INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE SHIMABUKURO'S MOTION TO REOPEN THE CONTESTED CASE HEARING

MEMORANDUM IN SUPPORT OF MOTION
DECLARATION OF CHRISTOPHER T. GOODIN

EXHIBITS A - B
CERTIFICATE OF SERVICE
Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as 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 REOPEN THE CONTESTED CASE HEARING

Intervenors Ko Olina Community Association (the “Association”) and Maile Shimabukuro (together, “KOCA”) move the Honolulu Planning Commission to reopen the contested case hearing on the Honolulu Department of Environmental Services’ (the “ENV”) Applications re: Special Use Permit No. 2008/SUP-2 for the purpose of admitting evidence regarding the following issues relevant to the Applications:

(1) The ENV’s progress toward selecting and developing a new landfill site;

(2) The amount of waste that is currently being landfilled at, and the amount of waste that is currently being diverted from, the Waimanalo Gulch Sanitary Landfill (“WGSL”);

(3) Based on the current and anticipated landfill and diversion rates, the time until the WGSL is filled to capacity; and
(4) The current operation of the WGSL, including the criminal and enforcement proceedings regarding the December 2010 and January 2011 releases of waste and leachate from the WGSL into the ocean and surrounding community.

This motion is made pursuant to Planning Commission Rules 2-67 and 2-71(f) and is based on the attached memorandum, declaration and exhibits and on the records and files herein.

DATED: Honolulu, Hawai‘i, November 22, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
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FILE NO. 2008/SUP-2

MEMORANDUM IN SUPPORT OF MOTION

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 referred to as Land Use Commission Docket No. SP09-403) which states as 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."

MEMORANDUM IN SUPPORT OF MOTION
I. INTRODUCTION

The Honolulu Planning Commission (the “Commission”) conducted a contested case hearing on the Honolulu Department of Environmental Services’ (the “ENV”) Applications re: Special Use Permit No. 2008/SUP-2 (the “Applications”). The evidentiary portion of the contested case hearing closed in 2012, yet the contested case has continued. Thus, it has been five years since evidence was admitted in this matter.

Most recently, the Planning Commission issued a decision earlier this year, and the proceedings transferred to the State Land Use Commission (“LUC”). The LUC remanded the matter to the Planning Commission with instructions to, among other things, (a) “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”; and (b) “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.” Ex. B (6/6/17 Order).

Consistent with the LUC’s instructions, Intervenors Ko Olina Community Association and Maile Shimabukuro (together, “KOCA”) seek to reopen the contested case hearing for the purpose of admitting evidence regarding the following issues:

(1) The ENV’s progress toward selecting and developing a new landfill site;
(2) The amount of waste that is currently being landfilled at, and the amount of waste that is currently being diverted from, the Waimanalo Gulch Sanitary Landfill ("WGSL");

(3) Based on the current and anticipated landfill and diversion rates, the time until the WGSL is filled to capacity; and

(4) The current operation of the WGSL, including the criminal and enforcement proceedings regarding the December 2010 and January 2011 releases of waste and leachate from the WGSL into the ocean and surrounding community.

II. BACKGROUND

Under a prior SUP, the ENV was obligated to close the WGSL by the end of 2008. Instead of following that requirement, on December 3, 2008, the ENV filed an application (the "2008 Application") for a new special use permit ("SUP") for the WGSL. In its 2008 Application, the ENV sought to expand the permitted size of the WGSL.

After the Commission recommended approval of the 2008 Application, the LUC granted the 2008 Application subject to certain conditions ("LUC's 2009 Decision"), including a condition prohibiting the ENV from disposing of Municipal solid waste at the Landfill after July 31, 2012 ("Condition 14"). The ENV appealed the decision to the circuit court and later to the Hawai'i Supreme Court.

While the appeal of the 2008 Application was proceeding, on June 28, 2011, the ENV filed an application to modify the SUP by deleting Condition 14 (the "2011 Application") so that the City could use the Landfill until it reaches capacity.
KOCA intervened in the proceeding. After eight hearing days, the parties submitted proposed findings of fact, conclusions of law and decisions and orders.

Before the Commission entered its decision, the Hawai‘i Supreme Court ruled on the appeal of the LUC’s 2009 Decision, held that Condition 14 was not supported by the evidence and vacated the LUC’s decision because Condition 14 was material to the approval. Rather than reverse the decision, the court remanded the case to the LUC for further proceedings. The LUC ultimately remanded the 2008 Application to the Commission for consolidation with the 2011 Application.

In a hearing held on August 17, 2016, the Commission consolidated the 2008 Application and 2011 Application proceedings.

On January 27, 2017, the parties filed proposed findings of fact, conclusions of law and decisions and orders. On February 10, 2017, the parties filed responses to the respective submissions.

On March 1, 2017, the Commission held a hearing regarding the proposed findings of fact, conclusions of law and decisions and orders and adopted (1) ENV’s findings of fact and conclusions of law except for any findings predating 2011, (2) the decision and order and conditions in the LUC’s 2009 Decision except for Condition 14, (3) two conditions proposed by KOCA and (4) a new condition setting a deadline for the selection of a new landfill. The Commission issued its Findings of Fact, Conclusions of Law and Decision and Order in 2008/SUP-2 on April 28, 2017 (the “2017 Decision”).
On May 12, 2017, KOCA filed with the LUC a Motion to Deny and Remand that was based on procedural issues and its Motion to Deny the Applications Unless Additional Conditions are Imposed that addressed the substance of the 2017 Decision.

On May 24, 2017, the LUC heard KOCA’s motions. During the hearing, the Commissioners expressed interest in knowing when the WGSL would be filled to capacity. See, e.g., Ex. A (5/24/17 transcript) at 82:7-16, 85:20-89:13. The Commissioners also discussed whether the record includes information regarding the ENV’s recent efforts to select an alternative landfill location. See id. at 90:6-91:2. The ENV confirmed that the record has been frozen since 2012 and that no current information has been admitted. See id. at 91:8-12.

At the conclusion of the hearing, the LUC voted to approve in part and deny in part KOCA’s Motion to Deny and Remand. See id. at 99:14-101:1. On June 6, 2017, the LUC entered its Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand (the “2017 Order”). The order remanded the proceeding to the Planning Commission to do the following:

(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.


III. DISCUSSION

When relevant information becomes available after the initial hearing, an agency abuses its discretion by refusing to admit such evidence. See, e.g., Byers v. Dir., Dept. of Workforce Servs., No. E-14-52, 2014 WL 2804905, at *1 (Ark. Ct. App. Jun. 18, 2014) (holding that board abused its discretion when it refused to admit Grievance Decision Form that was not in appellant’s possession until one day after contested case hearing). Consistent with this principle, Planning Commission Rule 27-1(f) permits the Commission to reopen a contested case hearing “for the express purpose only of admitting new parol[1] and documentary evidence as the same shall be otherwise relevant to the issues in the contested case with notice to all parties.”

Reopening this contested case is necessary. First, the ENV’s progress toward selecting and developing a new landfill site is material to the ENV’s compliance with a condition that has been in every proposed or final order approving a special use permit for the landfill since 2009. In August 2009, the Planning Commission or-

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ordered the ENV, on or before November 1, 2010, to act with "reasonable diligence" to identify and develop a new landfill site for municipal solid waste ("MSW") that shall either replace or supplement the WGSL. The ENV has never sought to change that condition. Recognizing the importance of the ENV's site selection efforts and compliance with conditions, the LUC's 2017 Order specifically directed the Planning Commission to "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" and to "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." See Ex. B (emphasis added). Evidence of the ENV's efforts to site and develop an alternative landfill site was admitted during the 2012 evidentiary hearing. The ENV's efforts since 2012 remain unknown. The record needs to be updated to include this information.

Second and third, evidence related to the time until the WGSL is filled to capacity, including evidence related to the current diversion rate from the WGSL, is relevant to the Applications because ENV seeks to use the WGSL until it reaches capacity. See, e.g., Ex. A at 88:15-22. The longer that the Landfill remains in operation, the longer the surrounding community will be required to endure the problems caused by the Landfill. The LUC recognized the relevance of the diversion rate and
the life of the landfill when it directed the Planning Commission to “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.” Ex. B at 4 (emphasis added). Evidence related to these issues was admitted during the 2012 evidentiary hearing. The record needs to be updated to include the developments since 2012.

Lastly, evidence related to the current operation of the WGSL, including the December 2010 and January 2011 releases of waste and leachate from the WGSL into the ocean and surrounding community, is relevant to the risk of harm posed by the continued use of the WGSL. The LUC recognized the importance of having current information regarding the operation of the WGSL when it directed the Planning Commission to “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.” Id. (emphasis added). Evidence regarding the operation of WGSL and the release of leachate was admitted during the 2012 evidentiary hearing. The record needs to include the developments since 2012.

IV. CONCLUSION

Five years have passed since the close of the evidentiary hearing. The record needs to be updated before the Planning Commission makes its recommendation and the LUC makes its decision. Recognizing the passage of time and reacting to the LUC’s express directions to the Planning Commission, KOCA asks that the
Planning Commission reopen the evidentiary hearing to allow evidence on the following subjects:

(1) The ENV's progress toward selecting and developing a new landfill site;

(2) The amount of waste that is currently being landfilled at, and the amount of waste that is currently being diverted from, the WGSL;

(3) Based on the current and anticipated landfill and diversion rates, the time until the WGSL is filled to capacity; and

(4) The current operation of the WGSL, including the criminal and enforcement proceedings regarding the December 2010 and January 2011 releases of waste and leachate from the WGSL into the ocean and surrounding community.

There is no reason to act on less than a full and fully updated record. The Motion should be granted.

DATED: Honolulu, Hawai‘i, November 22, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership

[Signature]
CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
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In the Matter of the Application of 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

FILE NO. 2008/SUP-2

DECLARATION OF CHRISTOPHER T. GOODIN

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 referred to as Land Use Commission Docket No. SP09-403) which states as 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."
DECLARATION OF CHRISTOPHER T. GOODIN

I, Christopher T. Goodin, hereby declare as follows:

1. I am one of the attorneys for Intervenors Ko Olina Community Association and Senator Maile Shimabukuro in this action and make this declaration based on personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of an excerpt of the transcript of proceedings before the Land Use Commission ("LUC") held on May 24, 2017.

3. Attached hereto as Exhibit B is a true and correct copy of the LUC's Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro's Motion to Deny and Remand, entered on June 6, 2017.

I declare under penalty of perjury that the foregoing is true and correct.


CHRISTOPHER T. GOODIN
State OF HAWAII

LAND USE COMMISSION

Hearing held on May 24, 2017

Airport Conference Center

400 Rogers Blvd., Suite 700, Room #3

Honolulu, Hawaii 96813

Commencing at 9:00 a.m.

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

SP09-403 Department of Environmental Services, City and County of Honolulu (Waimanalo Gulch Sanitary Landfill), (Oahu)

V. Executive Session

VI. Adjournment

BEFORE: Jean Marie McManus, CSR #156

EXHIBIT A
APPEARANCES:
EDMUND ACZON, Chairman
JONATHAN SCHEUER, Vice Chairman
ARNOLD WONG, Vice Chairman

COMMISSIONERS:
GARY OKUDA
LINDA ESTES
DAWN N.S. CHANG
NANCY CABRAL

DIANE ERICKSON, ESQ.
Deputy Attorney General

STAFF:
DAN ORODENKER, Executive Director
RILEY K. HAKODA, Planner/Chief Clerk
BERT K. SARUWATARI, Planner

CALVIN CHIPCHASE, ESQ.
CHRISTOPHER GOODIN, ESQ.
For Ko Olina Community Association and
Maile Shimabukuro

RICHARD WURDEMAN, ESQ.
For Colleen Hanabusa

IAN SANDISON, ESQ.
AVERY MONTRO, ESQ.
For Schnitzer Steele Hawaii

DANA VIOLA, ESQ.
KATHLEEN KELLY, ESQ.
Deputies Corporation Counsel
For Department of Environmental Services
City and County of Honolulu

Bryan YEE, ESQ.
RODNEY FUNAKOSHI, Planner
Office of Planning
State of Hawaii

RAY YOUNG, planner
Department of Planning and Permitting
City and County of Honolulu
CHAIRMAN ACZON: Good morning. This is the May 24/25th, 2017 Land Use Commission meeting. The Chair notes for the record that there is a typographical error in Agenda item II. The date of the minutes to be considered is actually April 26, 2017.

The first order of business is adoption of any corrections or comments on that. If not, is there a motion to adopt?

COMMISSIONER CHANG: I move to adopt.

COMMISSIONER ESTES: Second the motion.

CHAIRMAN ACZON: A motion has been made by Commissioner Chang and seconded by Commissioner Estes.

All in favor say "aye". Opposed?

VICE CHAIR SCHEUER: Abstain.

CHAIRMAN ACZON: The minutes are adopted with one abstention.

Commissioner Chang, do you have any -- let me go through the next agenda. The next agenda item is the tentative meeting schedule. Mr. Orodenker.

EXECUTIVE DIRECTOR: Thank you, Mr. Chair, On May 31st, we have a special meeting to handle the Lana'i remand case. That will be on Maui.

June 14th was set aside for this Waimanalo
MS. VIOLA: That would be up to the
Commission.

COMMISSIONER CHANG: Just one final
question to the City.

In general, would you agree that when we
say the record is complete, we're usually talking
about the evidentiary record?

MS. VIOLA: I would say no. I would say
that in this circumstance, based on the law as it's
stated in 205-6 (e) and the rules, it also repeats
the basis for the remand, that there is some
discretion by the Land Use Commission to determine
what constitutes complete record.

Because the statute does not specifically
provide for remand as the rule does, the only way to
read the ability to remand with the statute is to
state that the prerequisite to making a decision has
not been satisfied, therefore, the record is not
complete. So the record in terms of complying with
all the evidentiary requirements, as well as the
procedural requirements.

So that would be a reasonable
interpretation of the statute and the rules, reading
them both together.

So in this situation it wouldn't
necessarily be limited to only the evidentiary portion, but would extend to the complete matter including procedural compliance by the Planning Commission.

COMMISSIONER CABRAL: Again, to the City and county.

According to the information I have in December of 2004 it was indicated that the landfill would be full to capacity in 15 years, which would bring it up to 2019, which is coming critically close. I don't know the current status on that fill, but also there was a number of time limitations on when it should be closed.

Is anyone looking for a new site at this time? Or are we just all spending time on this case? Is there any effort in a new site going on?

MS. VIOLA: One piece of evidence regarding the capacity of the landfill, there is other evidence in the underlying proceeding that would essentially argue very adamantly that it doesn't expire in 2019.

COMMISSIONER CABRAL: That was what the county council selected on their statement that it was projected it would be filled in 15 years, so that was coming from the council.

MS. VIOLA: I'm pointing out that's one
statement. That there is other evidence in the
record, as well as the updates that provided to the
Land Use Commission that talks about the continued
diversion of waste which would extend the life of the
landfill.

So that one statement is not necessarily
accurate at this time, as the Land Use Commission ENV
Annual Report to the Land Use Commission would
indicate.

COMMISSIONER CABRAL: So that means no one
is looking for another site?

MS. VIOLA: No, that's not true either.

CHAIRPERSON ACZON: Commissioner Cabral --
Commissioner Wong.

COMMISSIONER CABRAL: Thank you.

VICE CHAIR WONG: Chair, I wanted to move
for executive session to consult with the board's
attorney on questions and issues pertaining to the
board's powers, duties, privileges in regards to this
motion in front of us.

CHAIRPERSON ACZON: Is there any second?

COMMISSIONER CABRAL: I'll second.

CHAIRPERSON ACZON: Moved by Vice Chair
Wong and seconded by Commissioner Cabral to go into
executive session.
VICE CHAIR SCHEUER: We have not dispensed with our asking substantive questions.

CHAIRPERSON ACZON: We can go back and ask additional questions.

It's been moved and seconded. Those in favor say "aye". Opposed? Motion carried.

(Executive session.)

CHAIRPERSON ACZON: We're going to continue with Commissioners questions.

Vice Chair Scheuer.

VICE CHAIR SCHEUER: Moving aside from the procedural morass, which we are in, I have a question for Ms. Viola.

On the substance of the record, the Planning Commission has given proposed Condition No. 3 to delay closure of the landfill until I think it's December 2022.

MS. VIOLA: I think the December date is to identify alternative site. I believe that the deadline applies to the designation of an alternative landfill site, but the deadline for landfill is to capacity.

VICE CHAIR SCHEUER: So the Hawaii Supreme Court found that the Land Use Commission had erred earlier in this proceeding by not having enough
substantive information supporting our proposed
closure date in 2012.

    MS. VIOLA: I believe that the Supreme
Court ruled that the Land Use Commission abused its
discretion because the Findings of Fact didn't
support the deadline.

    VICE CHAIR SCHEUER: Do you believe the
Findings of Fact in the record, and which you say is
all but procedurally complete, have support for that
new date of 2022?

    MS. VIOLA: Well, the deadline is to
capacity, so not until 2022. That designation is to
identify alternative landfill that should be
operative at the point when Waimanalo Gulch reaches
capacity.

    But I believe that the record supports the
landfill operating at full capacity, and I do believe
that the record also supports the designation of many
alternative sites.

    VICE CHAIR SCHEUER: And you believe the
record supports that a determination by
December 31st, 2022 of a new site would provide
sufficient time for a new landfill on that site to be
opened and operational by the time that the existing
landfill is filled to capacity?
MS. VIOLA: No, I don't agree that that is what the record supports. The record supports the designation of the landfill, it doesn't support the creation or the establishment of a landfill when there is an existing landfill available.

VICE CHAIR SCHEUER: But this landfill can operate under the proposed order until its capacity?

MS. VIOLA: Yes.

VICE CHAIR SCHEUER: Is there any of date in the record that suggests when that capacity might be reached?

MS. VIOLA: No, that date is dependent on the physical capacity of the landfill.

VICE CHAIR SCHEUER: Is there a range of date?

MS. VIOLA: There is a range of date I think indicated in the updated reports to the Land Use Commission, because that date is not specifically determined, because as with technology, with advances by the department diverting waste from the landfill, the life of the landfill is extended. So it's a moving deadline based on the continued reduced use of the landfill.

VICE CHAIR SCHEUER: What I'm trying to get at, is there a specific date for choosing of a new
landfill on December 31st, 2022, that's presumably related to having a new landfill available by the time in which the existing landfill has reached capacity under the --

MS. VIOLA: Yes. But that 2022 deadline is not the date where the City is going to identify the site that is going to be present at that point available to use.

VICE CHAIR SCHEUER: I understand that, that's not my question.

My question is: Is there in the record substantial evidence that shows that that date, plus whatever time it would need to take from going from site selection to having an operational landfill sufficient, will that come late enough -- or early enough before the filling of Waimanalo gulch?

MS. VIOLA: So your question, if I may restate:

Is the 2022 deadline sufficient to allow for the City to have an operative landfill when Waimanalo gulch reaches capacity?

VICE CHAIR SCHEUER: Is there evidence in the record that that is the case?

MS. VIOLA: Yes, there is evidence in the record to support the landfill being operative until
it reaches capacity, and the designation of an
alternative landfill; there is also evidence in the
record that the City would be capable of identifying
another potential site.

VICE CHAIR SCHEUER: Well, are you going to
help me, Mr. Yee?

MR. YEE: So the Findings of Fact in the
Decision and Order sets forth a 2022 date by which
the landfill -- the alternative landfill is to be
identified, the replacement landfill.

The Findings of Fact also state it will
take seven or more years between the time to identify
a site, the time you can have an operative
replacement landfill.

I think the question is: So then by
December 31st, 2029, is there something in the record
that says that the replacement landfill would, by
December 31st, 2029, will there still be capacity in
the existing Waimanalo Gulch Sanitary Landfill, or
would that capacity have been reached one, two, three
years earlier, so that there would be a gap between
when the Waimanalo Sanitary Landfill is filled.

VICE CHAIR SCHEUER: You're getting at the
gist of my question.

MR. YEE: The Findings of Fact don't
explain that. Perhaps it's somewhere else in the record. That would -- and there is also nothing in the Findings of Fact that explain why December 31st, 2022 is the selected date or time.

So you don't know if it's related to the amount of time they need to find an alternative site? Is it related to the fact of when the Waimanalo Gulch Sanitary Landfill will reach capacity? That's not explained in the Decision and Order.

Presumably when this is remanded, the Planning Commission will have an opportunity to either supplement the record or explain in their Findings of Fact the basis for that decision.

VICE CHAIR SCHEUER: Thank you.

I have more for you, Ms. Viola.

The record -- the Planning Commission denied further evidentiary proceedings request by KOCA.

MS. VIOLA: Both KOCA and the City -- the City requested to reopen the record to submit new evidence as well.

VICE CHAIR SCHEUER: So when was the last time new evidence was entered into this record?

MS. VIOLA: It was before the Planning Commission. I don't know the specific date, but
before the Planning Commission closed the record and
before they made the decision.

VICE CHAIR SCHEUER: But it's been a number
of years?

MS. VIOLA: Yes.

VICE CHAIR SCHEUER: So regarding some
questions earlier from Hawaii Island Commissioner,
any further efforts, if there have been any, by the
City to identify new sites that are not in the record
right now?

MS. VIOLA: Well --

VICE CHAIR SCHEUER: Since the evidentiary
portion of the record was closed.

MS. VIOLA: That's a little bit of a trick
question, because the evidentiary portion of this
case has been closed, however, pursuant to the 2008
SUP, the City is required to provide annual reports
to the Land Use Commission on the landfill, on its
capacity, on waste diversion, on siting, finding a
new site, all of those issues.

So the City has been providing to the Land
Use Commission, as well as Planning Commission and
the parties, updated annual reports to reflect that
information.

So in terms of the underlying proceeding,
that updated information on the landfill is not included.

VICE CHAIR SCHEUER: So you would believe that the Land Use Commission could properly consider any of the information in the annual reports in addition to the information contained in the record?

MS. VIOLA: Yes.

VICE CHAIR SCHEUER: Do any of the other parties, the Intervenors, have the chance to review or question anything that's in your annual reports as part of these proceedings?

MS. VIOLA: No.

VICE CHAIR SCHEUER: That's it.

MR. WURDEMAN: May I make a comment?

CHAIRPERSON ACZON: Go ahead, Mr. Wurdemann.

MR. WURDEMAN: These same questions that are being asked by the Vice Chair are the same kind of questions that were asked by the Land Use Commission back in 2009. And the evidence in the record at that time was a statement made by City representative that it would take at least seven years to find a new site.

And in considering that, the Commission entered, as part of its order, a requirement that on or before November 1, 2010, that the City start
making those efforts.

All of the information that I've seen to date, other than just any initial selection site, is the City talking about alternative waste management at its current site.

I think, honestly, other than just them making this initial site, it appears to me that they've made absolutely no efforts whatsoever to look for alternative sites since the Land Use Commission, back in 2009, required them to do so.

So that's my understanding of what is going on with that.

CHAIRPERSON ACZON: Anybody else?

COMMISSIONER CHANG: Just a followup question.

So without reviewing, the parties -- I know the parties have not had an opportunity to submit comments on the proposed Decision and Order. Were those going to be some of the comments to the proposed Decision and Order's inadequacy of the record to address specifically the Land Use Commission's previous instructions to the Planning Commission on remand?

Was that the basis for both KOCA and the City's motion to reopen the record to include
specific evidence related to those kinds of questions?

MR. CHIPCHASE: Commissioner, part of our motion to reopen, and my memory is a little -- a portion of it certainly was to address the progress on selecting a new site. We believe that that's a critical question. Has the City sit done what they're supposed to do and made an effort for a new site, new landfill -- not just identifying a new landfill, the condition for a decade now has been to identify a site. And the record was closed in this matter in 2012. So when we went back, we had a motion pending to reopen before.

When we went back, we renewed it. The City also brought a motion to reopen to submit additional evidence. And we took a position supportive of reopening provided that we had an opportunity to submit evidence on this point and to potentially introduce witnesses. Across-the-board the Planning Commission denied reopening.

CHAIRPERSON ACZON: Anybody else? Since there is no further questions, Commissioners, what's your pleasure?

COMMISSIONER ESTES: Cut and run.

CHAIRPERSON ACZON: Vice Chair Wong.
VICE CHAIR WONG: I move to approve in part and deny in part the motion to deny the remand filed by the Ko Olina Community Association and Maile Shimabukuro. I believe this matter cannot be both denied and remanded.

If the matter is denied, based upon HRS 205-6, 205-19 and 91-14, it can only be appealable. Accordingly, the matter shall be remanded to the Planning Commission for further proceedings in accordance with HAR 15-15-96(a) to address the following:

1) to 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 31st, 2022 date by 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 all waste 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 WGLS, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu;

4) assuming the Planning Commission eventually approves this 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.

My motion is based on the review of the Motion to Deny and Remand, the oral and written arguments of the parties, and the record in this matter, including the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order.

With respect to KOCA/Shimabukuro's argument in their Motion to Deny and Remand that the participation of the Planning Commission Chair, including voting on the matter, violated their rights to due process, I believe that this issue is not within the jurisdiction of the Land Use Commission, and therefore denied as a basis of the remand.

COMMISSIONER CABRAL: I'll second that.
CHAIRPERSON ACZON: Seconded by Commissioner Cabral. There is a Motion to Remand to Planning Commission for further proceeding to address the five specific items.

Commissioners, we are in discussion.

COMMISSIONER CHANG: Just an addition. I would urge the parties, and specifically going back to the Planning Commission, that there be a timely action on this. I realize that over the last five years much of that time has been spent in trying to settle, but we realize that just didn't happen.

So while we cannot dictate to the Planning Commission its time period and its own schedule, we would urge the Planning Commission to take timely action on this matter.

COMMISSIONER OKUDA: Mr. Chair, I plan to vote in favor of the motion, if I can state the two reasons for it.

One, it is based on the expressed representation that has been made that this remand will not be constituted or argued to be any type of automatic approval of any pending matter; and also that no one has disagreed with that position.

So I take silence to be essentially an admission by silence.
And the second thing is, while I do agree that the issue of potential recusal of the Chair of the Planning Commission is not a basis for the remand, I'd just like to state for the record that, at least for me, I recognize what the Hawaii Supreme Court stated in Mauna Kea versus Board of Land and Natural Resources 136 Hawaii 376 at page 389 where, even though the Hawaii Supreme Court was speaking or citing from cases dealing with judicial decisions, it was discussing what an administrative agency, that being the Board of Land and Natural Resources, did in that case. And I quote what the Hawaii Supreme Court stated here that:

In the administration of justice by a court of law, no principle is better recognized as absolutely essential then that every cause, be it criminal or civil, and the parties involved therein, are entitled to -- and the Supreme Court quoted from United States Supreme Court case here:

Cold neutrality of an impartial judge.

And so recognizing our Supreme Court's admonition of having the cold impartiality of the decision-maker, even though I recognize the motion does not cover that, I'm aware of the admonition of the Hawaii Supreme Court. And those are my
statements for the record.

CHAIRPERSON ACZON: Thank you, Commissioner Okuda.

Anybody else? Vice Chair Scheuer.

VICE CHAIR SCHEUER: I'm trying to be as polite as I can in echoing Commissioner Chang's communication of the sense of urgency on the parties, particularly on the Planning Commission.

I think parties who believe they have been aggrieved in this matter have waited far, far too long for some kind of meaningful finality.

I think for a member of the general public, when they understand that they get a ticket leaving their car parked in a meter for too long, but the county can operate a landfill for years without a permit, does not encourage people's general faith in government and in our operations. I'll stop there.

CHAIRPERSON ACZON: Thank you, Vice Chair Scheuer.

Commissioner Cabral.

COMMISSIONER CABRAL: I would like to express that same concern. As I read through all of this, and again, I'm in a small business, I almost feel like it's been somewhat of a shell game or some intentional -- one has to wonder if there's not
conversations over the water cooler, that, oh, well, we'll just keep pushing this around legally and we will never have to close this landfill or deal with it.

And so I think that since this will come before us again, I would urge the Planning Commission to deal with this in a really responsible and timely manner. Thank you.

CHAIRPERSON ACZON: Thank you, Commissioner Cabral.

Anybody else? Hearing no further discussions, Mr. Orodenker, please poll the Commissioners.

EXECUTIVE DIRECTOR: Thank you, Mr. Chair. The motion is to deny in part and grant in part instructions to the Planning Commission for further proceedings.

Commissioner Wong?

VICE CHAIR WONG: Aye.

EXECUTIVE DIRECTOR: Commissioner Cabral?

COMMISSIONER CABRAL: Aye.

EXECUTIVE DIRECTOR: Commissioner Mahi is absent.

Commissioner Chang?

COMMISSIONER CHANG: Aye.
EXECUTIVE DIRECTOR: Commissioner Scheuer?

VICE CHAIR SCHUEER: Aye.

EXECUTIVE DIRECTOR: Commissioner Estes?

COMMISSIONER ESTES: Aye.

EXECUTIVE DIRECTOR: Chair Aczon?

CHAIRPERSON ACZON: Aye.

EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

Oh, wait a minute. My apology. Sorry I missed you, sorry.

Commissioner Okuda?

COMMISSIONER OKUDA: Yes.

EXECUTIVE DIRECTOR: My apologies. Thank you.

Mr. Chair, the motion passes.

CHAIRPERSON ACZON: Thank you. Since the Motion to Remand was voted on by the Commissioners, the other option items on this document are rendered moot. Than you very much.

Next item on the agenda is an executive session. Motion?

COMMISSIONER CABRAL: I'll move to go into execute session for other matters.

CHAIRPERSON ACZON: Any second?

VICE CHAIR WONG: Second.

CHAIRPERSON ACZON: Moved and seconded.
All in favor say "aye". Opposed? Motion carries.

(Executive session.)

(The proceedings adjourned at 12:03 p.m.)
CERTIFICATE

STATE OF HAWAII      )
) SS.
COUNTY OF HONOLULU   )

I, JEAN MARIE McMANUS, do hereby certify:

That on May 24, 2017, at 9:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 24th day of May, 2017, in Honolulu, Hawaii.

S/S Jean Marie McManus
JEAN MARIE McMANUS, CSR #156
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

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

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

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

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 2 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. 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"). Bryan C. Yee, Esq., and Rodney Funakoshi were present on behalf of the State Office of Planning ("OP"). 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. 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 WSGL 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 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 WGSGL reaching its capacity and the implications it has on the closure date of the WGSGL 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 WGSGL, 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

Docket No. SP09-403 Department Of Environmental Services, City And County Of Honolulu 4 Order Granting in Part and Denying in Part Intervenors Ko Olina Community Association and Maile Shimabukuro’s Motion to Deny and Remand
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

9 The ninth seat on the LUC is currently vacant.
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
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.10

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10 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\textsuperscript{th} day of June, 2017, per motion on May 24, 2017.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI‘I

Deputy Attorney General

EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

\textbf{6/6/17}

Certified by:

\textbf{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
OF THE STATE OF HAWAI‘I

In The Matter Of The Application Of The ) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL ) CERTIFICATE OF SERVICE
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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING IN PART AND DENYING IN PART INTERVENTORS 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.


\[Signature\]
Daniel Orondenker, Executive Officer

SF09-403- 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
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
BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAI'I

In the Matter of the Application of the
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

FILE NO. 2008/SUP-2
CERTIFICATE OF SERVICE

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

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
referred to as Land Use Commission
Docket No. SP09-403) which states as
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.”

CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing document was
duly served on the following persons by hand delivery:
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COLLEEN HANABUSA

DATED: Honolulu, Hawai‘i, November 22, 2017.

CADES SCHUTTE
A Limited Liability Law Partnership

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Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO