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KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

2017 NOV 22 PM 4: 12
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

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

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special

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

R4

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
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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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 WGS� reaching its capacity and the implications it has on the closure date of the WGS� 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 WGS�, 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, Intervenor 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 WGS� 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 WGS� reaching its capacity and the implications it has on the closure date of the WGS� 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 WGS�, 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.

Ex. B (6/6/17 Order) (emphasis added).

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-

¹ “Parol” means “[a]n oral statement or declaration.” *Black’s Law Dictionary* (10th ed. 2014).

dered 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 WGS�. 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 WGS� reaching its capacity and the implications it has on the closure date of the WGS� 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 WGS�, 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 WGS� is filled to capacity, including evidence related to the current diversion rate from the WGS�, is relevant to the Applications because ENV seeks to use the WGS� 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 WGS�, 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 WGS�, including the December 2010 and January 2011 releases of waste and leachate from the WGS� into the ocean and surrounding community, is relevant to the risk of harm posed by the continued use of the WGS�. The LUC recognized the importance of having current information regarding the operation of the WGS� when it directed the Planning Commission to “clarify whether the record needs to include updated information on **the operation of the WGS�**, 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 WGS� 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

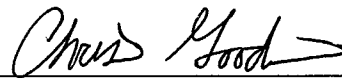
Planning Commission reopen the evidentiary hearing to allow evidence on the following subjects:

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

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CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
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FILE NO. 2008/SUP-2

**DECLARATION OF CHRISTOPHER
T. GOODIN**

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from H-POWER shall be allowed at the
WGS� 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.

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



CHRISTOPHER T. GOODIN

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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

1 APPEARANCES:

2 EDMUND ACZON, Chairman
3 JONATHAN SCHEUER, Vice Chairman
4 ARNOLD WONG, Vice Chairman

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 DAWN N.S. CHANG
9 NANCY CABRAL

10 DIANE ERICKSON, ESQ.
11 Deputy Attorney General

12 STAFF:

13 DAN ORODENKER, Executive Director
14 RILEY K. HAKODA, Planner/Chief Clerk
15 BERT K. SARUWATARI, Planner

16 CALVIN CHIPCHASE, ESQ.
17 CHRISTOPHER GOODIN, ESQ.
18 For Ko Olina Community Association and
19 Maile Shimabukuro

20 RICHARD WURDEMAN, ESQ.
21 For Colleen Hanabusa

22 IAN SANDISON, ESQ.
23 AVERY MONTRO, ESQ.
24 For Schnitzer Steele Hawaii

25 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

1 CHAIRMAN ACZON: Good morning. This is the
2 May 24/25th, 2017 Land Use Commission meeting. The
3 Chair notes for the record that there is a
4 typographical error in Agenda item II. The date of
5 the minutes to be considered is actually April 26,
6 2017.

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

10 COMMISSIONER CHANG: I move to adopt.

11 COMMISSIONER ESTES: Second the motion.

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

15 All in favor say "aye". Opposed?

16 VICE CHAIR SCHEUER: Abstain.

17 CHAIRMAN ACZON: The minutes are adopted
18 with one abstention.

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

22 EXECUTIVE DIRECTOR: Thank you, Mr. Chair,

23 On May 31st, we have a special meeting to
24 handle the Lana'i remand case. That will be on Maui.

25 June 14th was set aside for this Waimanalo

1 MS. VIOLA: That would be up to the
2 Commission.

3 COMMISSIONER CHANG: Just one final
4 question to the City.

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

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

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

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

25 So in this situation it wouldn't

1 necessarily be limited to only the evidentiary
2 portion, but would extend to the complete matter
3 including procedural compliance by the Planning
4 Commission.

5 COMMISSIONER CABRAL: Again, to the City
6 and county.

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

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

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

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

25 MS. VIOLA: I'm pointing out that's one

1 statement. That there is other evidence in the
2 record, as well as the updates that provided to the
3 Land Use Commission that talks about the continued
4 diversion of waste which would extend the life of the
5 landfill.

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

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

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

13 CHAIRPERSON ACZON: Commissioner Cabral --
14 Commissioner Wong.

15 COMMISSIONER CABRAL: Thank you.

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

21 CHAIRPERSON ACZON: Is there any second?

22 COMMISSIONER CABRAL: I'll second.

23 CHAIRPERSON ACZON: Moved by Vice Chair
24 Wong and seconded by Commissioner Cabral to go into
25 executive session.

1 VICE CHAIR SCHEUER: We have not dispensed
2 with our asking substantive questions.

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

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

7 (Executive session.)

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

10 Vice Chair Scheuer.

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

14 On the substance of the record, the
15 Planning Commission has given proposed Condition No.
16 3 to delay closure of the landfill until I think it's
17 December 2022.

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

23 VICE CHAIR SCHEUER: So the Hawaii Supreme
24 Court found that the Land Use Commission had erred
25 earlier in this proceeding by not having enough

1 substantive information supporting our proposed
2 closure date in 2012.

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

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

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

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

20 VICE CHAIR SCHEUER: And you believe the
21 record supports that a determination by
22 December 31st, 2022 of a new site would provide
23 sufficient time for a new landfill on that site to be
24 opened and operational by the time that the existing
25 landfill is filled to capacity?

1 MS. VIOLA: No, I don't agree that that is
2 what the record supports. The record supports the
3 designation of the landfill, it doesn't support the
4 creation or the establishment of a landfill when
5 there is an existing landfill available.

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

8 MS. VIOLA: Yes.

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

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

14 VICE CHAIR SCHEUER: Is there a range of
15 date?

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

24 VICE CHAIR SCHEUER: What I'm trying to get
25 at, is there a specific date for choosing of a new

1 landfill on December 31st, 2022, that's presumably
2 related to having a new landfill available by the
3 time in which the existing landfill has reached
4 capacity under the --

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

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

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

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

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

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

24 MS. VIOLA: Yes, there is evidence in the
25 record to support the landfill being operative until

1 it reaches capacity, and the designation of an
2 alternative landfill; there is also evidence in the
3 record that the City would be capable of identifying
4 another potential site.

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

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

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

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

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

25 MR. YEE: The Findings of Fact don't

1 explain that. Perhaps it's somewhere else in the
2 record. That would -- and there is also nothing in
3 the Findings of Fact that explain why December 31st,
4 2022 is the selected date or time.

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

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

14 VICE CHAIR SCHEUER: Thank you.

15 I have more for you, Ms. Viola.

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

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

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

24 MS. VIOLA: It was before the Planning
25 Commission. I don't know the specific date, but

1 before the Planning Commission closed the record and
2 before they made the decision.

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

5 MS. VIOLA: Yes.

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

11 MS. VIOLA: Well --

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

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

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

25 So in terms of the underlying proceeding,

1 that updated information on the landfill is not
2 included.

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

7 MS. VIOLA: Yes.

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

12 MS. VIOLA: No.

13 VICE CHAIR SCHEUER: That's it.

14 MR. WURDEMAN: May I make a comment?

15 CHAIRPERSON ACZON: Go ahead, Mr. Wurdeman.

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

23 And in considering that, the Commission
24 entered, as part of its order, a requirement that on
25 or before November 1, 2010, that the City start

1 making those efforts.

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

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

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

13 CHAIRPERSON ACZON: Anybody else?

14 COMMISSIONER CHANG: Just a followup
15 question.

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

24 Was that the basis for both KOCA and the
25 City's motion to reopen the record to include

1 specific evidence related to those kinds of
2 questions?

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

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

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

24 COMMISSIONER ESTES: Cut and run.

25 CHAIRPERSON ACZON: Vice Chair Wong.

1 VICE CHAIR WONG: I move to approve in part
2 and deny in part the motion to deny the remand filed
3 by the Ko Olina Community Association and Maile
4 Shimabukuro. I believe this matter cannot be both
5 denied and remanded.

6 If the matter is denied, based upon HRS
7 205-6, 205-19 and 91-14, it can only be appealable.
8 Accordingly, the matter shall be remanded to the
9 Planning Commission for further proceedings in
10 accordance with HAR 15-15-96(a) to address the
11 following:

12 1) to clarify whether the Planning
13 Commission followed Section 2-75 of the Rules of the
14 Planning Commission in issuing its Findings of Fact,
15 Conclusions of Law and Decision and Order.

16 2) clarify the basis of the Planning
17 Commission's proposed additional Condition No. 3,
18 which specifies a December 31st, 2022 date by which
19 the Applicant is to identify an alternative site that
20 will be used upon the WGSJ reaching its capacity and
21 the implications it has on the closure date of the
22 WGSJ to use and all waste and the subsequent
23 commencement of operations at the alternative
24 landfill site;

25 3) clarify whether the record needs to

1 include updated information on the operation of WGSL,
2 the landfill site selection process, and the waste
3 diversion efforts of the City and County of Honolulu;

4 4) assuming the Planning Commission
5 eventually approves this matter, clarify the
6 effective date of the Planning Commission's Findings
7 of Fact, Conclusions of Law, and Decision and Order,
8 and;

9 5) clarify whether the Planning Commission
10 is ruling on both the 2008 Application and the 2011
11 Application in its Findings of Fact, Conclusions of
12 Law and Decision and Order.

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

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

25 COMMISSIONER CABRAL: I'll second that.

1 CHAIRPERSON ACZON: Seconded by
2 Commissioner Cabral. There is a Motion to Remand to
3 Planning Commission for further proceeding to address
4 the five specific items.

5 Commissioners, we are in discussion.

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

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

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

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

24 So I take silence to be essentially an
25 admission by silence.

1 And the second thing is, while I do agree
2 that the issue of potential recusal of the Chair of
3 the Planning Commission is not a basis for the
4 remand, I'd just like to state for the record that,
5 at least for me, I recognize what the Hawaii Supreme
6 Court stated in Mauna Kea versus Board of Land and
7 Natural Resources 136 Hawaii 376 at page 389 where,
8 even though the Hawaii Supreme Court was speaking or
9 citing from cases dealing with judicial decisions, it
10 was discussing what an administrative agency, that
11 being the Board of Land and Natural Resources, did in
12 that case. And I quote what the Hawaii Supreme Court
13 stated here that:

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

20 Cold neutrality of an impartial judge.

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

1 statements for the record.

2 CHAIRPERSON ACZON: Thank you, Commissioner
3 Okuda.

4 Anybody else? Vice Chair Scheuer.

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

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

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

18 CHAIRPERSON ACZON: Thank you, Vice Chair
19 Scheuer.

20 Commissioner Cabral.

21 COMMISSIONER CABRAL: I would like to
22 express that same concern. As I read through all of
23 this, and again, I'm in a small business, I almost
24 feel like it's been somewhat of a shell game or some
25 intentional -- one has to wonder if there's not

1 conversations over the water cooler, that, oh, well,
2 we'll just keep pushing this around legally and we
3 will never have to close this landfill or deal with
4 it.

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

9 CHAIRPERSON ACZON: Thank you, Commissioner
10 Cabral.

11 Anybody else? Hearing no further
12 discussions, Mr. Orodener, please poll the
13 Commissioners.

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

18 Commissioner Wong?

19 VICE CHAIR WONG: Aye.

20 EXECUTIVE DIRECTOR: Commissioner Cabral?

21 COMMISSIONER CABRAL: Aye.

22 EXECUTIVE DIRECTOR: Commissioner Mahi is
23 absent.

24 Commissioner Chang?

25 COMMISSIONER CHANG: Aye.

1 EXECUTIVE DIRECTOR: Commissioner Scheuer?

2 VICE CHAIR SCHEUER: Aye.

3 EXECUTIVE DIRECTOR: Commissioner Estes?

4 COMMISSIONER ESTES: Aye.

5 EXECUTIVE DIRECTOR: Chair Aczon?

6 CHAIRPERSON ACZON: Aye.

7 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

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

10 Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE DIRECTOR: My apologies. Thank
13 you.

14 Mr. Chair, the motion passes.

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

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

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

23 CHAIRPERSON ACZON: Any second?

24 VICE CHAIR WONG: Second.

25 CHAIRPERSON ACZON: Moved and seconded.

1 All in favor say "aye". Opposed? Motion carries.

2 (Executive session.)

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

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

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

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

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

17
18
19 S/S Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
24
25



LAND USE COMMISSION
STATE OF HAWAII

2017 JUN -6 P 1:38

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

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

AND

CERTIFICATE OF SERVICE

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

June 6, 2017 by

Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

2017 JUN -6 P 1:38

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The	)	DOCKET NO. SP09-403
)	
DEPARTMENT OF ENVIRONMENTAL	)	ORDER GRANTING IN PART
SERVICES, CITY AND COUNTY OF	)	AND DENYING IN PART
HONOLULU	)	INTERVENORS KO OLINA
	)	COMMUNITY ASSOCIATION
For A New Special Use Permit To	)	AND MAILE SHIMABUKURO'S
Supersede Existing Special Use Permit To	)	MOTION TO DENY AND
Allow A 92.5-Acre Expansion And Time	)	REMAND
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

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.

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.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 refile; 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.

⁶ On May 23, 2017, Schnitzer Steel 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.

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,⁹ 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.

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

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

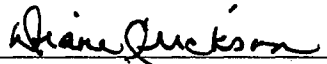
This ORDER shall take effect upon the date this ORDER is certified by this Commission.


Done at Honolulu, Hawai'i, this 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



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF) CERTIFICATE OF SERVICE
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 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

Bryan Yee, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
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CERT. George Atta, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
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- CERT. IAN L. SANDISON, Esq.
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- CERT. Kamilla Chan, Esq.
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1000 Uluohia Street, 3rd Floor
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- CERT. RICHARD WURDEMAN, Esq.
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Honolulu, Hawaii 96813
- CERT. CADES SCHUTTE LLP
CHRISTOPHER G. CHIPCHASE
CHRISTOPHER T. GOODIN
1000 Bishop St. Suite 1200
Honolulu, HI 96813

Dated: June 6, 2017 Honolulu, Hawaii.



Daniel Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF) AMENDED
HONOLULU) 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)

AMENDED CERTIFICATE OF SERVICE

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Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

Dated: June 15, 2017 Honolulu, Hawaii.



Daniel Orodener, Executive Officer

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
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

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
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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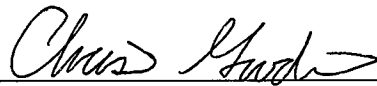
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