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KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU



BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

Application to Modify SUP No.
2008/SUP-2 (SP09-403) by Modifying (1)
Condition No. 1 of the Planning
Commission's Findings of Fact,
Conclusions of Law, and Decision and
Order, dated June 10, 2019, and (2)
Condition No. 5 of the LUC's Findings of
Fact, Conclusions of Law, and Decision
and Order Approving with Modifications
the City and County of Honolulu
Planning Commission's
Recommendation to Approve Special Use
Permit, certified on November 1, 2019

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
SUBMISSION OF SLIDES USED
DURING THE CROSS-
EXAMINATION OF ROGER
BABCOCK**

ATTACHMENT "A"

CERTIFICATE OF SERVICE

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S SUBMISSION OF SLIDES USED DURING THE
CROSS-EXAMINATION OF ROGER BABCOCK**

Intervenors Ko Olina Community Association and Maile Shimabukuro hereby submit as Attachment "A" a copy of the slides that were used during the cross-examination of Department of Environmental Services, City and County of Honolulu's Director Roger Babcock at the Meeting of the Planning Commission on October 18, 2023.

DATED: Honolulu, Hawai'i, October 26, 2023.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Christopher T. Goodin

CALVERT G. CHIPCHASE
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and MAILE SHIMABUKURO

283. The Applicant represented to the community that it intended to close the landfill in 2008 if it were allowed to expand the WGSL. During the LUC's 2003 proceedings to expand the WGSL, the Applicant expressed its "commitment" to close the WGSL in 2008. 2011AP Rezendes Written Direct Testimony at 4 (¶ 12); 2011AP Ex. K85 at 96:18-22, 125:7-11, 128:2-5, 145:21-146:2 (3/27/03 Tr.:Doyle), 117:11-13 (3/27/03 Tr.:Apo); *See also* 1/11/12 Tr. at 32:3-7 (Steinberger).

Source: Ex. K259 at PDF page 55.



ATTACHMENT "A"

39. The Applicant called Richard Von Pein, who was qualified as an expert in the field of landfill design and geotechnical engineering, and Frank Doyle, who at the time was the Chief of the Division of Refuse, City and County of Honolulu, to testify. 2008AP 7/1/09 Tr. at 93:2-8 (Von Pein); 176:4-9 (Doyle).

284. In the 2003 proceeding before the LUC, Mr. Doyle explained the compromise that the Applicant had made with the community regarding the operation of the WGS. The original plan was to have the WGS operate for another 15 years. After discussions with the community and hearing their concerns, the operating time period for the WGS was reduced to five years. 2011AP Ex. K85 at 96:18-22 (3/27/03 Tr.: Doyle); *see also* 1/11/12 Tr. at 32:3-7 (Steinberger); 2011AP Ex. K85 at 117:11-13 (3/27/03 Tr.: Apo); 2011AP Ex. K220 at 177:1-9 (7/1/09 Tr.: Doyle).

Source: Ex. K259 at PDF page 11, 55-56.

285. In the 2003 proceedings, Mr. Doyle repeatedly expressed the Applicant's "commitment" to close the WGSL in 2008. 2011AP Ex. K85 at 125:7-11, 128:2-5, 145:21-146:2 (3/27/03 Tr.).

Source: Ex. K259 at PDF page 56.



286. On June 9, 2003, the LUC approved the expansion of the WGS� by an additional 21 acres. With this expansion, the WGS� consisted of approximately 107.5 acres. The LUC also required that within five years from the date of the approval or the date of the Solid Waste Management Permit approval for the expansion, whichever occurred first but not beyond May 1, 2008, the WGS� shall be restricted from accepting any additional waste material and be closed. The LUC further required the selection of a new landfill site by June 1, 2004, or the special use permit would immediately expire. 2011AP Ex. K2 at 7 (¶ 1), 9 (¶ 12), 10 (¶15) (LUC 6/9/03 Order).

Source: Ex. K259 at PDF page 57.



291. In its Findings of Fact, Conclusions of Law, and Decision and Order Adopting With Modifications, the City and County of Honolulu Planning Commission's Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008, the LUC amended the condition to extend the closure deadline of the WGSL to November 1, 2009, or until the approved area reaches its permitted capacity, whichever occurs first. 2011AP Ex. K155 at 18 (¶ 12) (LUC 3/14/08 Order)

Source: Ex. K259 at PDF page 57.



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

Source: Ex. K15 at PDF page 8.



59. In its decision, the Planning Commission imposed several conditions, including the following:

1. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on O'ahu. Upon the selection of a new landfill site or sites on O'ahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 and shall determine whether modification or revocation of 2008/SUP-2 is appropriate at that time.

Source: Ex. K259 at PDF page 14.



426. The LUC further finds that when calculated from October 22, 2009 (the most recent date upon which the Applicant knew or should have known that it needed to exert reasonable diligence in identifying and developing a new landfill site to replace or supplement the WGSL) to the March 2, 2028 closure date imposed below, the Applicant will have been afforded a minimum of 18 years to site and develop a new landfill.

Source: Ex. K259 at PDF page 91.



418. It took the Applicant approximately 2 1/2 years to identify, permit, and have the WGSL operational. 2011AP Ex. K220 at 244:16-19 (7/1/09 Tr.:Doyle).

Source: Ex. K259 at PDF page 89.



424. Based on the evidence, the LUC finds that a minimum of five to seven years is a reasonable time within which a landfill can be sited and developed if the Applicant proceeds with reasonable diligence.

Source: Ex. K259 at PDF page 91.



425. The LUC finds that, as of the date of this Order, the March 2, 2028 closure date imposed below affords more than seven years to site and develop a new landfill and as such, constitutes a reasonable amount of time.

Source: Ex. K259 at PDF page 91.



2. Current Status

The City has been engaged in an ongoing effort to identify a landfill site. Condition 4 of the prior LUC Order in Docket No. SP09-403, which was certified on October 22, 2009 (“2009 LUC Order”), stated:

“On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL.”

In accordance with Condition 4 of the 2009 LUC Order, the Landfill Advisory Committee (LAC) met in 2011 and 2012, and completed its final report on September 25, 2012. All committee meetings were open to the public and to public comment. In the final report, 11 potential sites were identified and ranked based on community criteria. Handouts provided to the LAC, the Group Memory of each meeting, and the final report are posted online at www.opala.org.

The City retained a consultant to further review and analyze the sites based on technical and engineering considerations. The report, “Assessment of Municipal Solid Waste Handling Requirements for the Island of Oahu”, was completed in November 2017 and is available online at www.opala.org.

Funding has been requested and approved to begin planning for siting a new landfill based on the results of these reports. See section on Funding Arrangements in this report.

Source: Ex. K444 at PDF page 5.



3.3 Ground Water Restrictions

The State Department of Health has established an Underground Injection Control (UIC) Line and the BWS established a Ground Water Protection Zone (No Pass Line) around the island of Oahu that preclude the siting of certain types of facilities mauka of these areas. The lines were developed to identify inappropriate locations for injection wells and septic or cesspool development. The City Council in 2003 by Resolution 03-09, applied these criteria to protect Oahu's groundwater, by precluding the siting of landfills in these areas. However, the delineation of lines shown on a map is not as useful as having input from the BWS on the water development potential of these locations.

ENV and the consultant chose a less conservative, but more accurate approach to determining whether a potential site was appropriate by interviewing BWS staff responsible for ensuring future safety and sufficiency of Oahu's water supply. BWS staff identified sites, which they believe are important for future potable water supply or which are critical to protection of the groundwater resource. Sites, which did not meet BWS review, were eliminated from further consideration.

This step brought the site list from 34 to 16 sites remaining for further evaluation.

Source: Ex. K58 at PDF page 19.



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CERTIFICATE OF SERVICE

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

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DATED: Honolulu, Hawai'i, October 26, 2023.

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