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and MAILE SHIMABUKURO

2024 FEB -7 PM 4:04

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 FEBRUARY 7, 2024,  
PLANNING COMMISSION  
HEARING**

**ATTACHMENT A**

**CERTIFICATE OF SERVICE**

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE  
SHIMABUKURO'S SUBMISSION OF SLIDES USED DURING THE  
FEBRUARY 7, 2024, PLANNING COMMISSION HEARING**

Intervenors Ko Olina Community Association and Maile Shimabukuro hereby submit as Attachment "A" which is a copy of the final slides that were used at the Meeting of the Planning Commission on February 7, 2024.

DATED: Honolulu, Hawai'i, February 7, 2024.

CADES SCHUTTE  
A Limited Liability Law Partnership

*/s/ Katherine E. Bruce*

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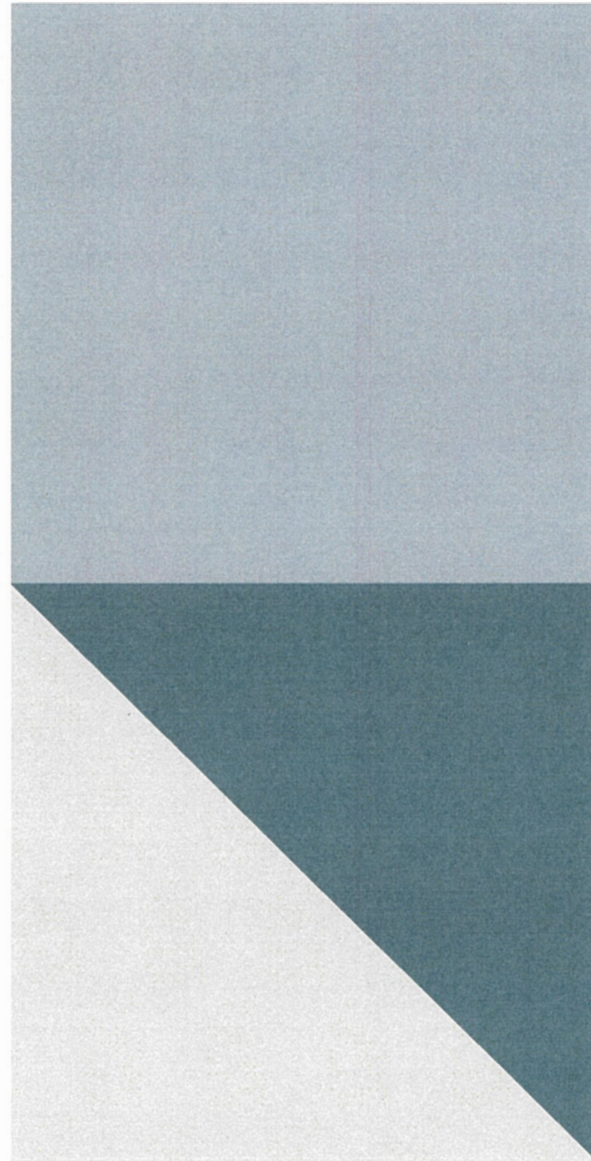
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# **Ko Olina Community Association**

Presentation before the Planning  
Commission, City and County of  
Honolulu

February 7, 2024



**ATTACHMENT "A"**

## Why Are the Parties Before the Commission?

- ENV Seeks “an Order modifying the [Land Use Commission’s] State Special Use Permit (“SUP”) No. 2008/SUP-2 (SP09-403).
- The amendment would “modify the conditions that set a December 31, 2022 deadline for [ENV] to identify an alternative landfill site ....”
- The **new deadline** to identify an alternative land fill would be December 31, 2024.
- ENV also agreed to a **new quarterly reporting** condition.
- The LUC’s order of November 1, 2019 would otherwise be unchanged.



## Why Did KOCA join?

- The landfill requires an SUP.
- The landfill has adverse impacts on its neighbors.
- The landfill has been ordered to close.
- Hold the City to its word.

## The Landfill Use Requires an SUP

- Planning Commission Rule § 2-45: “(b) That the desired use would not adversely affect the surrounding property.”
- E.g., LUC FOF ¶327: “Ko Olina’s residents, workers, and visitors have expressed concerns regarding the odors, noise, dust, blasting, visual blight, truck traffic and flying litter from the WGSL.” *See also* LUC FOF ¶¶318-348

## Conditions Are Necessary to Mitigate The Adverse Impacts

- LUC Order FOF ¶430: “[T]he LUC finds that the expansion of the WGS� will not adversely affect surrounding properties as long as (1) **it is operated in accordance with the conditions imposed below....**”
- LUC COL ¶13: “the LUC further concludes that the conditions imposed below are **necessary or appropriate in granting the approval**, including but not limited to, **ensuring the adherence to representations made by the Applicant.**”

## ENV Failed to Comply with One of The Conditions:

- 5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.
- Since ENV did not complete required mitigation, ENV is in violation of the LUC's order and the harm to the community is not fully mitigated.



**The LUC Obligation to Site a New Landfill and  
Order to Close WGS� Were Based on  
“Reasonable Diligence”**

**LUC FOF ¶406: “Thus, as of October 22, 2009, 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 WGS�.”**



## The LUC Obligation to Site a New Landfill and Order to Close WGS� Were Based on “Reasonable Diligence”

LUC FOF ¶ ¶ 424-26:

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.**

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.

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 WGS�**) 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.

## Hold the City to Its Word

- ENV says it is only here to modify the site selection deadline of December 31, 2022.
- Its proposed findings suggest otherwise.
- ENV signals that WGS� should stay open **beyond March 2, 2028.**

## Hold the City to Its Word

- ENV remains under an obligation to find a **new** landfill site—not WGSL.

### ENV Proposed Finding 58:

Assuming current fill rates, WGSL is expected to reach full capacity in 2036.

### ENV Proposed Finding 59, 62 (internal citations omitted):

59. WGSL is the only permitted public MSW facility on the island of Oahu. It is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by H-POWER. A landfill to dispose of MSW is required because there will always be material that cannot be combusted, recycled, reused or shipped.....

62. Therefore, a landfill is and will be necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for the residents of O‘ahu....

## Those and Other FOFs and COLs Are Not Necessary for the Amendment

- FOF ¶ 4
- FOF ¶ 24
- FOF ¶¶ 30-33
- FOF ¶ 37
- FOF ¶ 42
- FOF ¶¶ 46-57
- FOF ¶ 58
- FOF ¶¶ 59-62
- COL ¶ 4
- Proposed Condition No. 1

## KOCA's Necessary FOFs and COLs:

- FOF ¶ 5
- FOF ¶¶ 20-34
- FOF ¶¶ 20-21
- FOF ¶ 34
- FOF ¶ 41
- FOF ¶ 42
- FOF ¶¶ 43-47
- FOF ¶¶ 48-63
- FOF ¶¶ 63-64
- COL ¶ 5
- COL ¶ 6
- COL ¶ 7
- COL ¶¶ 10-11
- Proposed Amended Condition No. 5
- Proposed Reporting Condition

## Examples:

- **KOCA's proposed FOF ¶ 42:** “However, the Applicant has been aware of the no-pass zone as a landfill siting consideration since at least 2003.”
  - **ENV's objection:** “Applicant's awareness of the No Pass Zone since at least 2003 is not relevant....”
  - **Response:** Prior site selection efforts are relevant to whether ENV has been meeting its obligation to select a new site, which condition is necessary to protect neighboring communities.
  
- **KOCA's proposed FOF ¶ 47.** “The community situated nearest the landfill has been adversely affected by the landfill's continued operations and continues to be impacted by living near an active landfill, notwithstanding the Applicant's numerous promises to the community over the years that it will close the WGS�.”
  - **ENV's objection:** “Not relevant to the 2022 Application.”
  - **Response:** The condition was imposed to mitigate adverse impacts to the surrounding communities. The landfill's impact on those communities is relevant.

# ENV's Proposed Condition 1 Is Improper

Rejected Condition	Adopted Conditions
<p>I. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGSL reaching its capacity at a future date. <u>This identification shall have no impact on the closure date for the WGSL because the WGSL shall continue to operate until it reaches capacity....</u></p>	<p><b>1. The WGSL shall close by no later than March 2, 2028. The WGSL shall not accept any form of waste after March 2, 2028.</b></p> <p>....</p> <p>5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.</p>



## The Parties Agreed to This Condition:

- The Applicant shall report quarterly to the Planning Commission, in-person, to report the efforts it has taken and plans to take to identify an alternative landfill site by December 31, 2024; ~~to explain how its landfill siting efforts have been reasonably diligent;~~ and to answer questions from the Commission and the community.
- ENV objected to the text that has been struck.
- KOCA agrees to the deletion.



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Permit, certified on November 1, 2019,

**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, February 7, 2024.

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