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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

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  
WRITTEN COMMENTS ON  
PLANNING COMMISSION'S  
DRAFT FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER**

**CERTIFICATE OF SERVICE**

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

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**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE  
SHIMABUKURO'S WRITTEN COMMENTS ON PLANNING  
COMMISSION'S DRAFT FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER**

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Intervenors Ko Olina Community Association and Maile Shimabukuro (“**Intervenors**”) submit their comments on the Planning Commission’s (“**Commission**”) draft Findings of Fact, Conclusions of Law, Decision and Order (the “**Draft Order**”).

Intervenors thank the Commission for the opportunity to offer these comments and for its significant efforts in these proceedings. Intervenors generally support the Draft Order and its conditions.

Intervenors respectfully suggest that the Draft Order should include certain findings that are important to framing and contextualizing Applicant Department of Environmental Services of the City and County of Honolulu’s (“**ENV**” or the “**Applicant**”) request for an extension of time to identify a new landfill site and otherwise offer comments on specific portions of the Draft Order as set forth below. Thank you for considering these comments.

First, the Draft Order discusses the BWS’s input on the site selection efforts. Because BWS’s approval is not a legal requirement for the siting of a landfill, Intervenors respectfully request that the Commission add a finding that states, “The No Pass Zone and BWS approval are not legal restrictions on the identification of a new landfill site.”

Second, the Draft Order does not find that ENV Director Babcock lacked information regarding the status of identifying a federal site. Identifying a federal

site is the sole solution that the Applicant has opted to pursue. Yet, apart from the locations of the potential federal sites, Director Babcock had no knowledge of the negotiations with the federal government, when a decision is expected to be reached, how long a federal site would take to develop, the conditions, if any, the federal government would impose on the site's development or use or even whether the federal government is likely to agree to siting a landfill on one of the four identified federal sites. Tr. 10/18/23 (Babcock) at 50:14–51:9; Intervenors' Proposed Order at FOF 62. This information is critical to understanding whether ENV is on track to meet its deadlines. The lack of testimony about these matters during these proceedings supports the condition that ENV must provide quarterly reports. Accordingly, Intervenors respectfully suggest that its Proposed Finding No. 62 be included, which provides:

Director Babcock identified the four federal sites currently being discussed. But besides the location of the sites, the Planning Commission has no information on how far negotiations with the federal government have progressed; when a decision is expected to be reached; how long a federal site would take to develop; the conditions, if any, the federal government would impose on the site's development or use; or even if the federal government is likely to agree to siting a landfill on one of the four identified federal sites at all. Tr. 10/18/23 (Babcock) at 50:2–51:9.

Third, FOF 87 is not supported by the record. FOF 87 provides: "When the BWS No Pass Zone and Act 73 are applied as restrictions, there were zero potential alternative landfill sites on Oahu. *See* 2022 Application, at 8." While employing the BWS No Pass Zone and Act 73 as restrictions rendered the six sites identified by the Applicant unavailable for a landfill, the record shows that there are other potential landfill sites on O'ahu. For example, as evidenced by Director Babcock's

testimony, several federal sites meet the criteria of Act 73 and fall outside the No Pass Zone. Tr. 10/18/23 (Babcock) at 50:2–13. Accordingly, Intervenors suggest that this finding be revised as follows (emphases included only to show proposed changes): “When the BWS No Pass Zone and Act 73 are applied as restrictions, the potential landfill sites identified by ENV are not viable. See 2022 Application, at 8. However, other sites, including federal sites, remain possibilities under these conditions.”

Intervenors agree with and support the conclusion that “Applicant must move urgently to identify a new landfill site” and that “Additional oversight by the Planning Commission is necessary and appropriate to ensure that the Applicant proceeds and is held accountable for meeting the siting deadline and complying with all other conditions in its special use permit.” COL 6. The following sentence, “Requiring the Applicant to report at least quarterly, in person, to the Planning Commission,” appears to be incomplete. Intervenors respectfully suggest that the COL might appropriately read, “Requiring the Applicant to report at least quarterly, in person, to the Planning Commission is therefore reasonable and necessary.”

Intervenors agree and support the decision to require the Applicant to provide specific information in the quarterly reports. This requirement will provide specific guidance to ENV and promote accountability. For clarity, Intervenors respectfully suggest that the condition be revised as:

2. 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; and to answer questions from the Commission and the community. Reports shall include but are not limited to the following information:

- a) timelines, milestones, and schedules of tasks for the specific plan to have a site selected by December 31, 2024.
- b) list of potential sites under consideration
- c) list of obstacles to the Applicant's ability to choose a site
- d) reporting on the investigation of alternative technologies for landfill (2019 LUC Decision)

Finally, Intervenors offer the following non-substantive corrections:

- **FOF 16–17:** There appears to be content missing between these findings, because it is not clear what “then” means in the statement that the LUC “then received and considered” (emphasis added). For clarity, Intervenors ask the Commission to consider the following: “The Planning Commission’s June 10, 2019, order was transmitted to the State of Hawai‘i Land Use Commission (“LUC”), which received and considered the 2019 Planning Commission Order and the record underlying it. On November 11, 2019 . . . .”
- **FOF 48:** The brackets around “[Mr. Miller]” appear to be extraneous.
- **FOF 66:** “May 8, 2008,” should be “May 1, 2008,” and “2044” should be “2004.”
- **FOF 67:** “December 1, 2004,” should be “December 1, 2009.”

DATED: Honolulu, Hawai‘i, March 27, 2024.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was duly served  
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DATED: Honolulu, Hawai'i, March 27, 2024.

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A handwritten signature in black ink, appearing to read "C. Chipchase", with a long horizontal line extending to the right.

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