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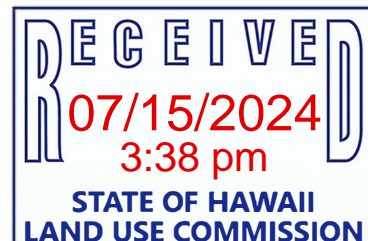
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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU



Attorneys for Intervenors
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
SUBMISSION OF SLIDES USED
DURING THE APRIL 3, 2024,
PLANNING COMMISSION
HEARING**

ATTACHMENT A

CERTIFICATE OF SERVICE

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S SUBMISSION OF SLIDES USED DURING THE
APRIL 3, 2024, PLANNING COMMISSION HEARING**

Intervenors Ko Olina Community Association and Maile Shimabukuro hereby submit as Attachment "A" which is a copy of the slides that were used at the Meeting of the Planning Commission on April 3, 2024.

DATED: Honolulu, Hawai'i, April 4, 2024.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Christopher T. Goodin

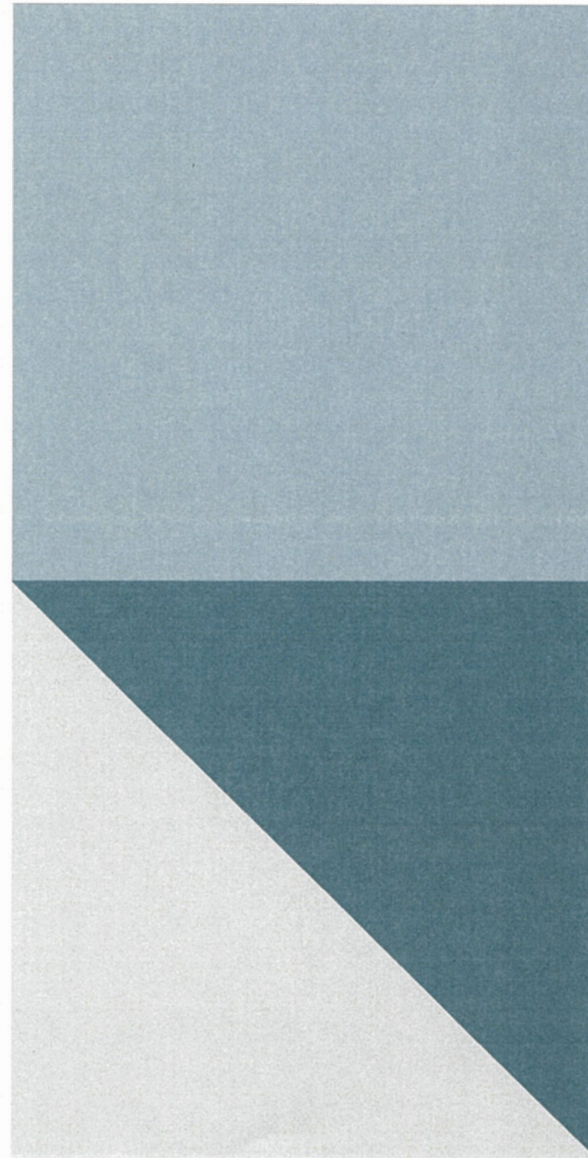
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Ko Olina Community Association

Contested Case before the Planning
Commission, City and County of
Honolulu

April 3, 2024



ATTACHMENT "A"

KOCA's Suggestions – Condition 2

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) ~~Reports should include but are not limited to~~ timelines, milestones, and schedules of tasks for the specific plan to have a site selected by December 31, 2024.
- b) list of potential ~~s~~ sites under consideration
- c) list of obstacles to the Applicant's ~~their~~ ability to choose a site
- d) reporting on the investigation of alternative technologies for landfill (2019 LUC Decision)

KOCA's Suggestions – COL 6

6. . . Requiring the applicant to report at least quarterly, in person, to the Planning Commission is therefore reasonable and necessary. . .

KOCA's Suggestions – FOF 17

17. The Planning Commission's June 10, 2019, order was transmitted to ~~T~~ the State of Hawai'i Land Use Commission ("LUC"), then which received and considered the 2019 Planning Commission Order and the record underlying it, and on November 11, 2019, the LUC issued its findings of fact, conclusions of law, and decision and order ("**2019 LUC Order**") (the 2019 Planning Commission Order and 2019 LUC Order collectively, the "**2019 orders**") adopting with modifications the Planning Commission's recommendations to approve the SUP for the WGS� and imposing conditions, including Condition No. 5:

5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGS�. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

KOCA's Suggestions – FOF 48, 66, 67

48. . . . The Commission continued to recognize [Mr. Miller] as an expert in solid waste management including landfill siting and design. Tr 11/01/23 (Miller) at 32:12-16.

66. In 2003, a five-year extension was approved on the condition that the landfill close by May 18, 2008 and a new site be selected by June 1, ~~2004~~ 2044. 2019 LUC Order at FOF 286, Tr. 11/01/23 (Williams) at 16:1-3.

67. The City Council received an extension of the June 1, 2004, deadline from the LUC to December 1, ~~2009~~ 2004. 2019 LUC Order at FOF 288.

KOCA's Substantive Suggestions

- KOCA offers a few additional suggestions for clarity and support of the granted extension and conditions, as stated in its papers, for the Commission's consideration.

The Other Parties' Positions

- ENV does not object.
- Schnitzer offers revisions that should be rejected.

Schnitzer repeats arguments that have already been considered.

- Schnitzer does not offer anything new and asks for changes that have already been considered – like findings regarding the City’s “diligence” – by this Commission, e.g.:

95. ENV’s site selection process was delayed based on circumstances beyond its control that occurred after the SUP permit was issued. The passage of Act 73 into law and the 2021 Red Hill Fuel Leak could not have been predicted at the time of the 2019 PC Decision.

- Schnitzer’s other findings that have already been considered fully by this Commission by the parties’ proposed findings and conclusions:
 - Proposed FOF 100-109
 - Proposed FOF 114

Schnitzer's findings related to procedure are not necessary.

- Proposed findings 49 and 50 are technically correct, but do not add anything meaningful to the order.

Schnitzer's findings go beyond the scope of the proceedings.

- These findings have no import on the conclusion that an extension of time to **site** a landfill is appropriate here, e.g.:

100. The City has continued its efforts to use alternative technologies to provide a comprehensive waste stream management program, consistent with the 2019 LUC Decision. *See* 2022 Application, at 11. Over the years, the City has been able to divert more and more waste from the WGS� to H-Power. *See* 2022 Application, at 11.

- Schnitzer's other findings that are immaterial:
 - Revisions to FOF 81
 - Proposed FOF 95
 - Proposed FOFs 100-109
 - Proposed FOF 114

Schnitzer's proposed findings are incorrect.

98. If the City's requested extension is granted, it intends to use the remaining time to further evaluate and pursue other options for siting an alternative landfill outside of the No Pass Zone. *See* DPP Recommendation, at 6. As recommended by the LAC's Final Report, the City will: (1) seek a repeal or amendment to Act 73; (2) continue discussions with the U.S. military regarding the acquisition of a site outside the No Pass Zone; and (3) evaluate the feasibility of acquiring (by eminent domain if necessary) residential properties adjacent to potential landfill sites to create sites that would comply with the one-half mile buffer required by Act 73. *See* Tr. 10/18/23, 15:17-25; *see also* DPP Recommendation, at 6.

99. The City is currently actively engaging in the recommendations identified by the LAC. *See* Tr. 10/18/23, 39:3-40:19. The City has made contact with federal governmental agencies about the potential to use their parcels and is evaluating the possibility of eminent domain to create a buffer area that complies with Act 73. *See* Tr. 10/18/23, 39:7-25. The City has also looked into the potential of modifying the restrictions of Act 73 to examine what sites may become available if Act 73 is amended. *See* Tr. 10/18/23, 40:1-9. However, the City is pursuing the other options first. *See* Tr. 10/18/23, 40:10-11, 49:21-50:1.

- Not so -- ENV Director Babcock testified that the City is **only** pursuing federal lands at this time.
- Schnitzer's other findings that are unsupported by the record:
 - Revisions to FOF 81
 - Proposed FOF 95

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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, April 4, 2024.

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