



Ko Olina Community Association

Presentation Before the State of Hawai'i, Land Use Commission

August 8, 2024



History of the Landfill

- The WGS� landfill requires a Special Use Permit
 - 2019 LUC Order COL ¶2
- The landfill has had an SUP since 1987, at which point its projected life was 8 years
 - 2019 LUC Order FOF ¶276
- In those 35+ years, the SUP has been extended, and the expansion of the WGS� has been approved, several times.
 - 2019 LUC Order FOF ¶¶280-293

History of the Landfill

- The most recent expansion and extension request was initiated by ENV's 2008 application to expand the WGS� to 200 acres
- After years of proceedings, the LUC issued the November 1, 2019 Order granting the SUP
 - 2019 LUC Order FOF ¶¶1-262 (procedural history leading to the 2019 LUC Order)
- **That 2019 Order remains in effect today and is the subject of these modification proceedings**

The 2019 Order Remains in Place

- The Planning Commission's Proposed Condition No. 3 makes this clear:

3. All other conditions to Special Use Permit No. 20080/SUP-2 as stated in the 2019 orders remain in full force and effect.

Why Did KOCA Join these Proceedings?

- The 2019 LUC Order imposed two conditions related to timing:
 - ENV must **site** a new landfill by **December 31, 2022** (Condition No. 5)
 - ENV must **close** WGSL by **March 2, 2028** (Condition No. 1)

The Siting and Closure Conditions Were Imposed Because the Landfill Adversely Affects the Community

- The 2019 LUC Order's findings detail the effects the WGSL has had on its neighbors, for example:

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. 2011AP Williams Written Direct Testimony at 9 (¶ 29).

The Siting and Closure Conditions Were Imposed as Mitigation Measures to Reduce Adverse Impacts to the Community

- 2019 LUC Order FOF ¶430:
 - “Based on the evidence in the record and the findings set forth above, **the LUC finds that the expansion of the WGSL will not adversely affect surrounding properties as long as (1) it is operated in accordance with the conditions imposed below and government approvals and requirements**”

The City Has Promised the WGSL Will Close

- The City has promised repeatedly that West O‘ahu will not have to bear the burdens of the landfill in perpetuity, as found by the 2019 LUC Order. For example:

282. In addition to citing health and safety concerns, the community objected to the expansion and identified a promise by Mayor Frank Fasi that the WGSL would only be used until the original acreage was filled. 2011AP Rezentes Written Direct Testimony at 3-4 (¶¶ 8-10).

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 Rezentes 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).

What Has ENV Requested?

- ENV did not meet Condition No. 5 because it did not meet the December 31, 2022 deadline to site a new landfill
- Planning Commissions Proposed FOF ¶19:

19. The Applicant did not meet Condition No. 5 because it did not identify an alternative landfill site by December 31, 2022.

- ENV filed its application to modify the siting deadline condition on December 22, 2022

What Has ENV Requested?

December 22, 2022 Application:

III. CONCLUSION

For the foregoing reasons, the Department of Environmental Services respectfully requests that the Planning Commission grant this application to modify the conditions of the WGSJ SUP. Specifically, Applicant requests that the Planning Commission modify Condition No. 1 of the Planning Commission's 2019 Decision by extending Applicant's deadline to identify an alternative landfill site from December 31, 2022 to December 31, 2024.

Sincerely,



ROGER W. BABCOCK Jr., Ph.D. P.E.
Director
Department of Environmental Services

The Application Only Relates to Siting

Director Babcock's October 18, 2023 Testimony:

9 Q: Both Decisions and Orders contain a condition
10 of a December 31, 2022 deadline to identify an alternative
11 landfill site that may be used upon closure of the WGSF, is
12 that correct?

13 A: That's correct.

14 Q: And in ENV's Application in front of the
15 Planning Commission were request to only modify this
16 condition?

17 A: That's correct.

ENV Believes the Extension Gives It Enough Time

Director Babcock's October 18, 2023 Testimony:

10 Q: Director, just coming back to some of the
11 dates we talked about. ENV filed its petition in December
12 2022 asking for an extension of the site selection deadline
13 to December 2024. Unbelievably to me we're already in
14 October 2023. Does the extension that ENV has requested
15 give it enough time to identify another site?

16 A: Our intension is to be able to identify a site
17 within the two-year extension.

18 Q: Do you believe that a two-year extension is
19 enough time to identify another site whether through federal
20 lands or by an amendment to Act 73?

21 A: I believe it's possible.



The Community Continues to Support Closing the Landfill

- Proposed FOF ¶96:

96. The Planning Commission received numerous letters from West O‘ahu community members opposing further extensions to the landfill’s operations and yet understanding the necessity of the critical need for the operation of a landfill and encouraging the Planning Commission to impose more oversight over ENV and hold it accountable for moving forward on its obligations. *See Exs. K266–K355.*

ENV Still Intends to Close the Landfill

Director Babcock's October 18, 2023 Testimony:

22 Q: Certainly. Do I understand from your
23 testimony that you don't believe that the community in West
24 Oahu has any reason to be concerned about the City's
25 intension to site any landfill?

1 A: They shouldn't have any concern about our
2 intension. Our intension is to site a new landfill as soon
3 as possible and within the requested extension period.

What Is the LUC's Role?

- To approve, approve with modifications, or deny the petition **based on the record developed by the Planning Commission**
- HRS § 205-6: “Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition.” *See also* HAR § 15-15-96.
- “The LUC reviews the special permit based upon the record developed in the planning commission proceeding and upon the memoranda and arguments before the LUC.”
Maha‘ulepu v. LUC, 71 Hawai‘i 332, 334–35, 790 P.2d 906, 908 (1990).

KOCA supports the Planning Commission's May 15, 2024 Findings of Fact, Conclusions of Law, and Decision and Order ("FOF COL D&O").

Summary of the Planning Commission's Proposed FOF COL D&O

- Grants the requested extension
- Site must be selected by **December 31, 2024**
- Requires ENV to report to the Planning Commission quarterly, in person, on its progress towards selecting a new site

Quarterly Updates Are Important

- The purpose of the reporting condition is:
 - To ensure that ENV's efforts are sincere
 - To allow for stakeholders and Commissioners to ask questions
 - To keep ENV accountable to its deadlines

ENV Did Not Oppose this Condition

Director Babcock's October 18, 2023 Testimony:

4 Q: Does the City have any objection to providing
5 quarterly reports in-person to the Honolulu Planning
6 Commission regarding its efforts to site any landfill?

7 A: No. We wouldn't object to that.

The Planning Commission Included the Requested Reporting Condition as Proposed Condition No. 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, 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 their ability to choose a site
- d) reporting on the investigation of alternative technologies for landfill (2019 LUC Decision)

Why Is the Planning Commission's Proposed Condition 2 Necessary?

- Proposed COL No. 6 explains the need for urgency:

6. All parties acknowledge that it is important for the island of O‘ahu to have an operational landfill. No party opposes granting the Applicant additional time to site a new landfill. However, given the limited extension provided, the Applicant must move urgently to identify a new landfill site. 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. Requiring the Applicant to report at least quarterly, in person, to the Planning Commission is therefore reasonable and necessary. The Planning Commission concludes that the Applicant has met its burden of proof with respect to the provisions set forth in Section 2-45 of the RPC.

**KOCA requests that this Commission
approve the Planning Commission's
proposed FOF COL D&O with the
unopposed reporting condition
(Condition No. 2)**