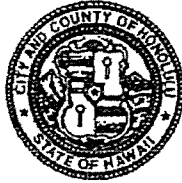


DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

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MAYOR



July 6, 2007

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IN REPLY REFER TO:
RA 07-044

Mr. Henry Eng
Director
Department of Planning and Permitting
City and County of Honolulu
640 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Mr. Eng:

Re: State Special Use Permit (SUP) No. 86/SUP-5;
In re Department of Environmental Services, City and County of Honolulu (FKA
Department of Public Works, City and County of Honolulu);
Application to Modify (1) the Findings of Fact, Conclusions and Decision dated
March 13, 2003, and (2) the Decision and Order Approving Amendment to
Special Use Permit Issued June 9, 2003

The Department of Environmental Services, City and County of Honolulu (the "Applicant" or the "Department of Environmental Services"), respectfully applies to the Planning Commission, City and County of Honolulu (the "Planning Commission"), for an Order modifying its Findings of Fact, Conclusions, and Decision, dated March 13, 2003 (the "2003 Planning Commission Decision"), which approved an amendment to the State Special Use Permit ("SUP") File No. 86/SUP-5 to allow a 21-acre expansion to the Landfill.¹ Applicant seeks to modify the 2003 Planning Commission Decision by extending the five-year deadline prohibiting further acceptance of waste material at the Waimanalo Gulch Sanitary Landfill (the "Landfill") by an additional two years or until the Landfill reaches its permitted capacity, whichever occurs first.

Should this request be approved by the Planning Commission, the entire record of this request is to be transmitted to the Land Use Commission, State of Hawaii (the "LUC"), for final action.²

¹ This Application is made in accordance with Section 2-49 of the Rules of the Planning Commission

² The LUC Decision and Order Approving Amendment to Special Use Permit No. 87-362 was issued on June 9, 2003 (the "2003 LUC Decision"). The LUC adopted the May 1, 2008, closure deadline as Condition No. 12 in the 2003 LUC Decision.

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The basis for this Application is that the current permitted area of the Landfill has a useful life of approximately two years beyond the May 1, 2008, deadline. The application which gave rise to the aforementioned decisions sought only to expand the Landfill by 21 acres, which was, at that time, projected to extend the useful life of the Landfill by five years. Since the decisions to permit the expansion, however, certain circumstances have increased the useful life of the Landfill by approximately two additional years. It is in the public interest to use this additional space, which is within the current footprint of the Landfill approved by the Planning Commission and the LUC.

Additionally, the Landfill is currently the only landfill permitted to receive municipal solid waste ("MSW") on Oahu. If the Landfill is forced to close on May 1, 2008, in accordance with Condition No. 10 of the 2003 Planning Commission Decision and Condition No. 12 of the 2003 LUC Decision, there will be no permitted landfill to serve Oahu's solid waste management needs. As a landfill is necessary for proper solid waste management, the lack of a permitted landfill would potentially create serious health and safety issues.

In order to alleviate this potential health and safety risk, it is respectfully requested that Condition No. 10 of the 2003 Planning Commission Decision be modified to extend the waste acceptance deadline of the Landfill by two years or until the Landfill reaches its permitted capacity, whichever occurs first. There is enough capacity remaining in the already-permitted footprint of the Landfill for an additional two years of use beyond the May 1, 2008 closure deadline. See Declaration of Frank J. Doyle, attached, at ¶¶ 8-9.

Moreover, the Final Supplemental Environmental Impact Statement (the "FSEIS"), dated December 2002, and accepted by the Department of Planning and Permitting on January 10, 2003, covers the already-permitted footprint, the current operations and impacts associated with continued use of the Landfill beyond the current end date for acceptance of waste. Furthermore, neither the permitted area nor the methods of operation will change with this extension. This alternative, therefore, appears to be the most feasible and appropriate to avoid the serious health and safety risks associated with halting acceptance of solid waste at the sole MSW landfill on Oahu.

It is thus respectfully requested that the Planning Commission modify Condition No. 10 of the 2003 Planning Commission Decision to read as follows:

The 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan [-] by May 1, 2010 or until the approved area reaches its permitted capacity, whichever occurs first.

Applicant is not seeking any other modifications to the 2003 Planning Commission Decision at this time. As discussed hereinafter, an application to amend the SUP to expand the Landfill by another approximately 92.5 acres is being prepared, and upon acceptance of the Final Environmental Impact Statement ("FEIS") for this further expansion, other modifications of the SUP will be sought.

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I. BACKGROUND

A. Establishment of the Landfill

On October 17, 1985, the Director of Land Utilization, City and County of Honolulu (*nka* the "Department of Planning and Permitting"), accepted the Environmental Impact Statement for the establishment of a landfill at Waimanalo Gulch, Honouliuli, 'Ewa, O'ahu, Hawai'i.

On February 4, 1987, the Planning Commission approved SUP application No. 86/SUP-5 to establish the Landfill on approximately 60.5 acres of land within the Agricultural District, subject to six conditions. The application was submitted by the Department of Public Works, City and County of Honolulu (*nka* the "Department of Environmental Services").

Because the SUP was for land greater than fifteen acres, on April 20, 1987, the LUC also approved the issuance of the SUP in LUC Docket Number 87-362 to establish the Landfill, subject to eight conditions.³ The LUC's Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, is attached hereto as Exhibit "A."

B. Expansion of the Landfill by 26 acres

On July 26, 1989, the Planning Commission approved an amendment to the SUP to expand the Landfill by 26 acres, with one additional condition. The amendment had been requested because 26 acres had been inadvertently left out of the original SUP. The additional 26 acres was necessary to allow enough land area for the proposed administration building, weighing station, drainage structures and access roads.

On October 31, 1989, the LUC also approved the SUP amendment to expand the existing permitted area by 26 acres, with the additional condition as recommended by the Planning Commission. The LUC's Findings of Fact, Conclusions of Law and Decision and Order dated October 31, 1989, is attached hereto as Exhibit "B."

C. Further Expansion of the Landfill by 21 acres

On January 10, 2003, the Department of Planning and Permitting accepted the FSEIS, which addressed a proposed 21-acre expansion of the landfill.

On March 13, 2003, the Planning Commission granted the application of the Department of Environmental Services to expand the landfill by 21 acres, which, at that time, was projected

³"Special permits for areas greater than fifteen (15) acres require approval of both the planning commission and the land use commission." Rules of Planning Commission § 2-38. See also Hawaii Revised Statutes § 205-6(d).

to extend the life of the landfill by five years. The proposed expansion included four cells (E1 through E4) for disposing MSW, berms, detention and stilling basins, drainage channels and access routes. In the 2003 Planning Commission Decision, attached hereto as Exhibit "C," the Planning Commission recommended that the Department of Environmental Services submit an alternative landfill site, or sites, to the City Council by December 31, 2003. The Planning Commission did not, however, condition its approval on this recommendation.

With its approval of the 21-acre expansion, the Planning Commission imposed two additional conditions. One of those conditions, Condition No. 10, required the following:

Within 5 years from the date of this Special Use Permit Amendment approval or date of the Solid Waste Management Permit approval for this expansion, whichever occurs later but not beyond May 1, 2008, the 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan.

On June 9, 2003, the LUC issued the 2003 LUC Decision, attached hereto as Exhibit "D." The LUC adopted Condition No. 10 of the 2003 Planning Commission Decision as Condition No. 12 in the 2003 LUC Decision.

D. Resolution Adopted by City Council Selecting the Landfill as Oahu's future landfill site.

On December 1, 2004, the City Council selected the Landfill as Oahu's future landfill site. The City Council's resolution is attached hereto as Exhibit "E." In selecting the Landfill as its future site, the City Council noted, in pertinent part, the following:

- (1) The site currently has over 15 years capacity left with further expansion, and this capacity can be further extended should the city be successful in reducing the amount of waste currently entering the landfill through recycling and the use of new technologies;
- (2) The city already owns the property and the infrastructure is already in place, making the site the most economical and least expensive to develop and maintain as a landfill;
- (3) Other sites will require a large capital outlay by the city to acquire the land through condemnation and to develop and construct the site and required supporting infrastructure;
- (4) A landfill management contract is already in place for 15 years;

Therefore, the City Council has decided that the Landfill will fulfill Oahu's solid waste management landfill needs for the foreseeable future.

II. REQUEST FOR MODIFICATION OF CONDITION NO. 10 OF THE 2003 PLANNING COMMISSION DECISION

Section 2-49 of the Rules of the Planning Commission provides, in relevant part:

(a) A petitioner who desires a modification or deletion of a condition imposed by the [planning] commission shall make such a request to the [planning] commission in writing. This request shall be processed in the same manner as the original petition for a SUP. A public hearing on the request shall be held prior to any commission action.

...

(c) ... Modification of conditions for areas greater than fifteen (15) acres will require the concurrence of the land use commission.

As discussed above, both the Planning Commission and the LUC imposed the May 1, 2008, deadline (Condition No. 10 and Condition No. 12, respectively). That condition reads as follows:

Within 5 years from the date of this Special Use Permit Amendment approval or date of the Solid Waste Management Permit approval for this expansion, whichever occurs later but not beyond May 1, 2008, the 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan.

The Solid Waste Management Permit approval for the expansion was issued on May 15, 2003. The SUP Amendment approval was issued on June 9, 2003. Therefore, the SUP now in effect requires that the Landfill stop accepting refuse on May 1, 2008. For the reasons that follow below, it is not only practical to extend the Landfill's solid waste acceptance deadline, but also necessary and critical.

A. The currently permitted Landfill has a useful life that will extend beyond the May 1, 2008, deadline.

The Landfill is currently permitted on approximately 107.5 acres of land. When the Department of Environmental Services requested the most recent expansion to the Landfill of 21 acres in 2003, it was projected that the additional 21 acres would extend the life of the Landfill by an additional five years. Due to several factors, however, the currently permitted Landfill area has a useful life of approximately two years beyond the May 1, 2008, deadline.

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In a ban that took effect on January 13, 2003, the green waste from Oahu was diverted from the Landfill to processing/recycling facilities. This ban also diverted Construction and Demolition Debris ("C&D") from the Landfill to a nearby C&D facility. Improved compaction and landfill operating methods have also contributed to the optimization of capacity at the Landfill. The additional available capacity at the Landfill is explained in the 2007 Airspace Report and tables showing site life projections at the Landfill for both MSW and ash, attached hereto as Exhibit "F".

B. Condition 10, if allowed to stand, presents a major health and safety issue.

The Landfill is a strategic component of the City's solid waste management system and the final destination for certain solid wastes including MSW, recycling residue, and H-POWER generated ash, residue and unacceptable waste that cannot further be combusted, recycled or reused. If Condition No. 10 of the 2003 Planning Commission and Condition No. 12 of the 2003 LUC decision are allowed to stand, the Landfill will be forced to stop accepting solid waste as of May 1, 2008, resulting in an adverse, island-wide impact to all the communities of Oahu due to loss of a landfill for the sanitary disposal of municipal refuse. Ceasing the acceptance of solid waste at the Landfill on May 1, 2008, would result in major public health and safety problems for the City, its residents and visitors, and the State of Hawaii, as there would be no sanitary and secure means of landfilling municipal refuse.

Although several alternatives to the Landfill have been proposed, none of those alternatives can eliminate the need for a landfill on Oahu.

1. H-POWER is not a viable alternative.

Although most municipal waste is currently directed to the H-POWER facility, H-POWER does not have the capacity, or ability, to accept all of Oahu's refuse. The H-POWER facility can only accept certain kinds of waste (i.e., combustible refuse), and the Landfill currently accepts H-POWER byproducts including ash, residue and unacceptable waste that cannot be further processed. H-POWER cannot replace the immediate need for the Landfill, which is currently set to cease accepting solid waste on May 1, 2008. Many types of waste, such as bulky waste, food waste and contaminated soils cannot be managed through H-POWER.

2. Other alternative technologies are not a viable alternative.

Although the Department of Environmental Services has issued a Request for Proposals for alternative technology waste-to-energy proposals, initial responses to which are due on July 30, 2007, such alternative technology facilities will not be in place by May 1, 2008, and in any event will not eliminate the continuing need for a landfill.

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3. Transshipment of solid waste off-island is not a viable alternative.

Although there may possibly be a role for limited off-island shipment of Oahu's solid waste to another state or another island, such efforts would not eliminate the need for a landfill. There will always be a need for a landfill in order to manage ash, residue and unacceptable waste that cannot be combusted at H-POWER or processed by alternative technologies, to manage solid waste during natural disasters, and to provide for other contingencies.

Accordingly, because the Landfill is the only currently permitted landfill available to serve Oahu's municipal solid waste needs, it is also the City's best and only viable solution. Requiring the Landfill to stop accepting solid waste on May 1, 2008, will have immediate and dire consequences for all of Oahu. The May 1, 2008, deadline imposed as Condition No. 10 of the 2003 Planning Commission Decision, and Condition No. 12 of the 2003 LUC Decision, respectively, must be extended to May 1, 2010, or until the Landfill reaches its permitted capacity, whichever occurs first.

C. Additional time is needed for completion of an application for further expansion of the Landfill.

On December 4, 2004, after the 2003 Planning Commission Decision and the 2003 LUC decision, the Honolulu City Council selected the Landfill as the landfill that will serve the island of Oahu for the foreseeable future. In order to accommodate and implement the City Council's selection, the Department of Environmental Services is now preparing an application to amend the SUP to expand the Landfill by another approximately 92.5 acres. The Final Environmental Impact Statement (the "FEIS") for this further expansion, however, is not expected to be completed until December 2007, and the administrative proceedings necessary to further expand the Landfill may not conclude until after the May 1, 2008 deadline, which was set forth in Condition No. 10 of the 2003 Planning Commission Decision and Condition 12 of the 2003 LUC Decision, respectively. See Declaration of Frank J. Doyle, attached, at ¶¶ 10-11.

Accordingly, the Applicant requests that the Planning Commission modify Condition No. 10 of the 2003 Planning Commission Decision to extend the solid waste acceptance deadline of the Landfill to May 1, 2010, or until the Landfill reaches its permitted capacity, whichever occurs first.

For all the foregoing reasons, the Department of Environmental Services respectfully requests that the Planning Commission grant this application.

Sincerely,



Dr. Eric S. Takamura, P.E.
Director

Attachments

EXHIBIT K71