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LAND USE COMMISSION

STATE OF HAWAI'I

ACTION

DR-08-35 DEPARTMENT OF ENVIRONMENTAL) VOL. I of II
SERVICES, CITY AND COUNTY OF HONOLULU)
SP87-362 DEPARTMENT OF)
ENVIRONMENTAL SERVICES, CITY & COUNTY)
OF HONOLULU -WAIMANALO GULCH (Oahu))
-----)

TRANSCRIPT OF PROCEEDINGS

LAND USE COMMISSION
STATE OF HAWAII
2008 MAR 17 A 8:29

The above-entitled matters came on for a Public
Hearing at Leiopapa A Kamehameha, Conference Room 405
235 So. Beretania Street, Honolulu, Hawai'i,
commencing at 11:00 a.m. on Wednesday, March 6, 2008
pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, RPR, CSR #130
Certified Shorthand Reporter

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EXHIBIT K83

1 A P P E A R A N C E S

2 COMMISSIONERS:
3 KYLE CHOCK
4 THOMAS CONTRADES
5 LISA M. JUDGE (Chairperson)
6 DUANE KANUHA
7 NORMAND LEZY
8 RANSOM PILTZ
9 NICHOLAS TEVES, JR.
10 REUBEN WONG

11

12 INTERIM EXECUTIVE OFFICER RODNEY MAILE, ESQ.
13 CHIEF CLERK: SANDRA MATSUSHIMA
14 STAFF PLANNER: BERT SARUWATARI

15 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

16 AUDIO TECHNICIAN: WALTER MENCHING

17 Docket No. DR08-35 D.E.S. City and County of Honolulu

18 Docket No. DR-SP87-362 D.E.S. City and County of
19 Honolulu

20 For the Applicant: GARY TAKEUCHI, ESQ.
21 Deputy Corporation Counsel

22 For the Intervenors: COLLEEN HANABUSA, ESQ.
23 KEN WILLIAMS, KOCA

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EXHIBIT K83

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1 March 6, 2008

2 CHAIRPERSON JUDGE: Good morning. Today is
3 March 6, 2008. This is a meeting of the State Land
4 Use Commission. The first item on our agenda is the
5 adoption of minutes from February 21st, 2008. Are
6 there any comments or corrections?

7 COMMISSIONER WONG: I move the adoption,
8 Madam Chair.

9 CHAIRPERSON JUDGE: We have a motion.

10 COMMISSIONER CONTRADES: Second.

11 CHAIRPERSON JUDGE: We have a motion by
12 Commissioner Wong seconded by Commissioner Contrades.
13 All those in favor say aye.

14 COMMISSIONERS VOTING: Aye.

15 CHAIRPERSON JUDGE: Those opposed? Okay, the
16 minutes are adopted.

17 The next item is our tentative meeting
18 schedule. Commissioners, if you look, the next
19 meeting is March 19th and 20th but it's indicated as a
20 Thursday/Friday, which is incorrect. It's actually a
21 Wednesday/Thursday in Kona. Then the following
22 meeting is April 10th and 11th which is a Thursday/
23 Friday. Both of those will be held in Kona.

24 The next item on our agenda is an action
25 item. This is a meeting on Docket No. -- okay. I'm

1 MR. TAKEUCHI: Yes.

2 COMMISSIONER LEZY: And that I believe you
3 went on to say that the new administration then
4 reviewed that selection and concluded that the
5 selection was the only appropriate option that was
6 available.

7 And that if I understand correctly that the
8 purpose of this amendment really is to provide a
9 bridge, a 2-year bridge essentially to allow the City
10 and County to comply with the requirements for the
11 projected new capacity at Waimanalo Gulch which will
12 then carry out for another 15 years; is that correct?

13 MR. TAKEUCHI: Well, I guess I think
14 basically I agree with your statement. I would maybe
15 rephrase it just to say that, yes, this extension
16 would be in order to allow us to put together all the
17 necessary approvals so we could come back before you,
18 hopefully, with that proposal for the future
19 expansion.

20 Fifteen years has frequently been used as the
21 amount of time for that expansion. I'm not sure if
22 that's exactly how it's going to be stated or whether
23 it's the remaining capacity of the facility. But
24 essentially you're correct.

25 COMMISSIONER LEZY: I have to go back to as a

1 starting point for my thought process your, Mr.
2 Takeuchi, the prior decision and order. One thing,
3 obviously, that stands out for me is the fact that in
4 granting DES' prior request for an amendment there was
5 a specific condition that was put into place by the
6 Commission that required that: Within five years of
7 the date of the amendment of the then existing special
8 use permit, that Waimanalo Gulch would be restricted
9 from accepting any additional waste material and would
10 be closed in accordance with an approved closure plan.

11 And that as part and parcel of that condition
12 there were additional conditions put into place,
13 Conditions 18 and 19, which directed the City and
14 County to the extent feasible to use alternate
15 technologies, to provide a comprehensive waste stream
16 management program including HPOWER, plasma arc,
17 plasma gasification, recycling technologies.

18 And in Condition 19, I won't read it
19 verbatim, but additional points concerning alternates
20 to landfill.

21 At least so far as I understand it appears
22 that there have been largely an absence of an effort,
23 at least in so far as I can find in the record, a good
24 faith effort by the City and County to comply with
25 those conditions.

1 I think that was illustrated by Commissioner
2 Wong's question to you regarding the shipping of solid
3 waste off-island and your notation that the plan is
4 only to ship upwards of a hundred thousand tons a
5 year, which you've indicated is certainly much less
6 than would have to go into the landfill.

7 And that at this point in time RFP's have
8 only just gone out, and there is no intention for an
9 actual service to begin until sometime in the middle
10 of this coming year.

11 I guess my question to you is what has been
12 done by the City and County to attempt to comply with
13 the very specific conditions of the prior amendment,
14 an amendment which stated with specificity, without
15 any ambiguity that the landfill would close in five
16 years?

17 MR. TAKEUCHI: Well, thank you. I appreciate
18 your question. And in terms of what might already be
19 on the record I would call your attention to both the
20 director's report for the Planning and Permitting
21 Department, which reviewed some of these issues, as
22 well as the testimony of Dr. Takamura and Mr. Doyle
23 who discussed some of the things that the City has
24 been doing in order to reduce the need for a landfill
25 by diverting some of the waste stream either to

1 MS. HANABUSA: I just would like to note an
2 objection. That is because if it's not in the record
3 below -- I can understand you can take testimony --
4 but I believe the Land Use Commission is bound by its
5 rules to only consider testimony which is in the
6 record from the Planning Commission. I'm just noting
7 that if whatever happens goes from there. Thank you.

8 CHAIRPERSON JUDGE: Your objection is noted,
9 thank you.

10 DR. TAKAMURA: To answer your question
11 simultaneously we're doing a 25-year solid waste
12 management plan. So we hired an environmental
13 engineering company to look at our waste stream.

14 Also look at all the technologies available,
15 look at our recycling program, look at our
16 waste-to-energy program, look at what is available
17 from a recycling market based, because we're an island
18 community, what is available to us that makes economic
19 sense and also environmental sense.

20 'Cause a lot of the plastics you guys see
21 recycled is not recycled here. It's packaged up, put
22 on a ship, put on a barge and it's shipped to China.

23 So if we were to be, I guess the word is
24 self-sustain or sustainability concept, we would do
25 all of those things here. That's why we push

1 waste-to-energy more than plastic recycling, glass
2 recycling because those things go off-island. Even
3 newspaper recycling they go off-island.

4 They did this Integrated Solid Waste Master
5 Plan. And they looked at if we increase curbside
6 community recycling programs where you have that blue
7 bins in Hawai'i Kai, Mililani, you look at expansion
8 of HPOWER 300,000-tons per year, you looked at
9 optimizing green waste collection not only on
10 residential communities but in the
11 industrial/commercial sector, resorts, et cetera, like
12 Ko Olina like that. If you do everything, we can
13 recycle waste-to-energy, recycle glass, et cetera,
14 79 percent of our waste that's generated on-island.
15 So we generate 1.8 million tons per year.
16 Twenty-one percent still needs to be disposed of
17 either at a landfill or it needs to be shipped.

18 Out of HPOWER even though 600 -- last year
19 was 640,000-tons was delivered to HPOWER, 180,000 tons
20 was what we call ash and residual. Not everything is
21 a hundred percent combustible.

22 So the inert materials, what we call ash,
23 came out to about roughly 95,000 tons. There's also
24 certain things that you put in the incinerator that
25 doesn't burn. That's what we call residue.

1 So out of the 640,000 tons, 180,000-tons had
2 to go someplace. So when we look at shipping, because
3 of the stringent requirements of running a furnace,
4 keeping the air emissions in check with our air
5 pollution controls, because a lot of the plastics we
6 burn create an acid type of gas that you guys probably
7 heard acid rain, besides global warming, CO₂ warming,
8 we add slate lime.

9 Slate lime or calcium carbonate helps to keep
10 the pH neutral so that when the air discharged
11 atmospherically it's at a neutral pH. It's not going
12 to cause acid rain and eat up or corrode things that
13 fall and harm our forests, like that.

14 So that type of ash is like almost cement.
15 It comes out in a liquid form. When it's cooled down
16 and the water drains from it it starts to harden, it
17 becomes almost like sand cement. So that is what is
18 the ash monofil. It's a pretty stable type of monofil
19 at the Waimanalo Gulch Landfill.

20 But we are doing all of these other
21 activities to try to get up to 79 percent waste
22 diversion from a landfill. We're currently doing
23 57 percent. Thirty-one, 32 percent material recycling
24 plastics, glass, et cetera, green waste. The other 20
25 something percent is going to our waste-to-energy and

1 is being recycled into electricity.

2 So the programs we have in place, like Mr.
3 Takeuchi said, we went out with an RFP was because one
4 of the conditions was look at plasma arc or the newer
5 technologies. We opened up the RFP conditions to
6 allow plasma arc, gasification technologies. Those
7 things were submitted, their proposals were submitted
8 July 30th, 2007.

9 And none of these newer technologies
10 submitted a proposal. It was still back to the
11 refined technologies that are currently widely used
12 all around the world.

13 So that's why -- the other issue was getting
14 this thing up and built and running in a timely
15 fashion which is as soon as possible. The time
16 schedules that we saw was further down the road than
17 if we were to just expand HPOWER.

18 So that's why the decision was made let's,
19 for the sake of time, let's cancel the RFP because we
20 didn't see new technologies being submitted.

21 Our waste loading shows that in about 20
22 years we can probably produce another 280, 300,000
23 tons of combustible waste. That's why we're going to
24 expand HPOWER by 300,000 tons per year.

25 If the waste loading or the waste generation

1 concerned. That's -- I really can't make anymore
2 representations on their behalf.

3 In terms of what we hope to do during this
4 2-year extension period I think we can provide you
5 with something on fairly quick order if that's
6 something you require.

7 COMMISSIONER WONG: Can we get that, say,
8 tomorrow morning as to what you're going to do in the
9 next 3 months, the next 6 months, the next whatever?

10 MR. TAKEUCHI: Yes, we can try to put --
11 well, if you don't go until midnight tonight I think
12 we can have something for you tomorrow morning, yes.

13 MS. HANABUSA: Madam Chair, I have a running
14 objection to any information that's not in the record.

15 CHAIRPERSON JUDGE: So noted. Commissioner
16 Chock.

17 COMMISSIONER CHOCK: I have a question for
18 Ms. Hanabusa. How confident are you on the City's
19 ability to move forward on condition 18 in the D&O,
20 the 2003 D&O?

21 MS. HANABUSA: Let me find it. I just put it
22 away. Condition 18 or 19?

23 COMMISSIONER CHOCK: 18.

24 MS. HANABUSA: Waste stream management
25 program includes HPOWER, plasma arc and recycling. No

1 | offense to the gentleman sitting all the way to my
2 | left --

3 | CHAIRPERSON JUDGE: Ms. Hanabusa, could you
4 | speak into the microphone.

5 | MS. HANABUSA: Thank you. I have very little
6 | confidence because this has been on the books since
7 | 2003. And I've heard people come forward on plasma
8 | arc, plasma gasification, recycling technologies,
9 | HPOWER.

10 | I don't think I'm misspeaking when I say
11 | Mr. Doyle is a fan of HPOWER. We all know that.
12 | Those of us who are following this, we know that.

13 | So the fact that we're still not there leads
14 | me to believe that I don't think they'll get there.
15 | The earliest calculation we have for even HPOWER,
16 | assuming it goes through the third boiler, would be
17 | 2011.

18 | So no. I mean even this expansion or this
19 | extension is to 2010. There's very little possibility
20 | that they will be able to move these technologies at
21 | any time soon, if they were inclined to do so.

22 | You can't have RFPs go out, retracted, then
23 | go out for something else and say, "We need this
24 | fast." You really needed it fast before you let out
25 | the first set of RFPs. So that should be an

1 have a running objection to because it's not in the
2 record.

3 (Laughter).

4 COMMISSIONER WONG: Without waiving your
5 rights to your objection.

6 MS. HANABUSA: What I believe that's
7 necessary, over Mr. Takeuchi's objections, what is
8 necessary, I believe, to move this along -- and I'm
9 along the lines of the questions that you've asked,
10 there's got to be something that says, "Look, this is
11 it and you gotta do it."

12 The Department of Health has come out and
13 it's in the papers as part of what you all read, part
14 of what you all read is that -- and I think Mr.
15 Takeuchi said it early on -- is that one of the
16 alternatives is to continue to operate under a penalty
17 because there is no other site that's permitted as a
18 landfill site. So sometimes it takes that.

19 So maybe that's what it's going to take to
20 move up to 79 percent of the waste being recycled.
21 Maybe that's what it's going to take to actually say,
22 "Okay. You continue, you're going to pay a penalty
23 and you can go see the governor if that's what the
24 mayor wants to do at this point and say 'I need, I
25 need emergency powers. Let's actually go in and

1 expedite this whole process on a third boiler." Or
2 something along those lines.

3 Let's also understand when we talk about
4 shipping and what is at stake here. When you hear the
5 reference to flow you're talking about a Supreme Court
6 decision that recently came down. The flow control is
7 money control.

8 And the reason why they're saying a hundred
9 thousand tons is because what they want to do is they
10 want to be able to say: If HPOWER expands we want to
11 take that back because we don't want them making the
12 money.

13 That's what it is. This landfill is big
14 bucks. Contrary to what they say it's big bucks. So
15 when they talk about flow control they want to control
16 the MSW.

17 MSW as it is now done is two major sources.
18 You have the quote "commercial pickups" which is all
19 condominiums, all resorts, anybody who doesn't have
20 the nice cans from the City and County. You pay
21 whether it's in a condo assessment or you're paying
22 part of your per capita, your CAB or whatever we call
23 these things. You're paying for that. That's where
24 the City makes its money. It's very important for the
25 City to be able to control that.

1 MR. MAILE: Commissioner Wong?

2 COMMISSIONER WONG: Yes.

3 MR. MAILE: Motion is carried.

4 CHAIRPERSON JUDGE: Thank you. Now we will
5 go into deliberation on the motion to consider the
6 amendment to special use permit file No.86-SUP-5 to
7 extend the deadline requiring cessation of waste
8 acceptance at Waimanalo Gulch Sanitary Landfill. So,
9 Commissioners what is your pleasure? (Pause)
10 Commissioner Teves.

11 COMMISSIONER TEVES: Chairman Judge, I make a
12 motion to grant the extension for 2 years.

13 CHAIRPERSON JUDGE: Okay. There's a motion
14 on the floor to grant the extension for two years. Is
15 there a second?

16 COMMISSIONER CONTRADES: Second.

17 CHAIRPERSON JUDGE: Seconded by Commissioner
18 Contrades. Now we'll have some discussion.
19 Commissioner Lezy.

20 COMMISSIONER LEZY: Thank you, Chair. I
21 can't agree with the motion as framed. If I
22 understand correctly Commissioner Teves' proposing
23 approval of the Planning Commission's amendment
24 without any modification..

25 My personal thought is that the Applicant's

1 request for amendment should be denied because I
2 believe, as I pointed out in my questioning of Mr.
3 Takeuchi, that the prior order was very clear that the
4 extension that was granted was granted with the
5 explicit understanding that it would expire in 5 years
6 time.

7 And that during that timeframe there were
8 certain conditions imposed with the purpose being to
9 allow Department of Environmental Services to make the
10 arrangements necessary in order to deal with the
11 stream of waste that was going into the landfill.

12 And from what I've seen in the record and
13 based on the Applicant's representations in connection
14 with the original order, I don't believe that there
15 has been a good faith effort on the part of the
16 Department of Environmental Services to comply with
17 those conditions.

18 And that this current application is in
19 direct contravention of the prior decision and order.

20 And it seems clear to me, based on what is in
21 the record and the argument that's been offered today,
22 that the obvious intention is to perpetuate the status
23 quo. And it is not to comply with the explicit
24 conditions of the prior order.

25 And in my estimation it would be

1 | inappropriate given that the alternatives that are
2 | available to address the stream of municipal waste
3 | into the landfill, then essentially ignore it.

4 | CHAIRPERSON JUDGE: Further discussion?

5 | COMMISSIONER CHOCK: Madam Chair?

6 | CHAIRPERSON JUDGE: Commissioner Chock.

7 | COMMISSIONER CHOCK: I share the concerns
8 | echoed by my fellow Commissioner Lezy. There's in my
9 | opinion been a dereliction of duty on the part of the
10 | City and County based on the record in front of me. I
11 | cannot in good conscience support an extension for two
12 | years.

13 | CHAIRPERSON JUDGE: Commissioner Kanuha.

14 | COMMISSIONER KANUHA: I'm not saying whether
15 | I'm going to support this motion or not. All I'm
16 | going to say is it's troublesome to me that by the
17 | granting of this extension it would only basically
18 | allow more time for the full development of the EIS
19 | for a subsequent expansion of the facility.

20 | So to me that's the real issue. And again
21 | that troubles me just to approve this extension just
22 | for the sole purpose, almost, of completing that
23 | application to further expand and perpetuate this
24 | landfill.

25 | CHAIRPERSON JUDGE: Commissioner Wong.

1 COMMISSIONER PILTZ: Madam Chair.

2 CHAIRPERSON JUDGE: Commissioner Piltz.

3 COMMISSIONER PILTZ: I feel that extending a
4 2-year grant and perhaps nothing being done in the
5 future might be difficult. But without any plan which
6 we are not privy to, we're really only looking at the
7 record that's below us, I find it very difficult to
8 support 2 years.

9 I go along with Commissioner Wong that maybe
10 one year. And show us that you really have a plan,
11 that you really want to do something. And maybe this
12 is the way we go.

13 But for the health and welfare of the
14 community it's really difficult for me to come up with
15 a decision. I just want to express my feeling on
16 this.

17 And we either deny or accept and hopefully we
18 can put some kind of conditions on there to say to the
19 City and County, "You need to come up with a better
20 plan that we can look forward to."

21 CHAIRPERSON JUDGE: I'd like to echo on the
22 sentiments of my fellow Commissioners that it's not an
23 enviable position that we're in here, with the
24 proposal coming, you know, with only sixty days with
25 our backs against the wall and being presented with no

1 viable alternatives.

2 I'm just wondering -- I would like to throw
3 out maybe some conditions that we could add to if we
4 do grant an extension, maybe new condition that would
5 say that: The LUC will not accept any further
6 amendments to the special permit and will not grant
7 any further time extensions.

8 And also another condition requiring that:
9 Within one year the ENV submit to the LUC an approved
10 closure plan for the Waimanalo Gulch Sanitary
11 Landfill.

12 So those are just friendly amendments. I
13 don't know if Commissioner Teves would want to
14 entertain those in his motion. I'm sorry. Those
15 would be...

16 COMMISSIONER PILTZ: Madam Chair, do we need
17 a second?

18 CHAIRPERSON JUDGE: We're trying to figure
19 out procedural issues how we do that.

20 COMMISSIONER PILTZ: Let me explain if we do
21 need a second I will second that because I feel that
22 that's something I could live with.

23 CHAIRPERSON JUDGE: Actually it would be, I
24 think traditionally the way we've done it if one
25 commissioner offers a friendly amendment the maker of

1 CHAIRPERSON JUDGE: They wouldn't be able to
2 use this special permit. They couldn't come back as
3 an amendment to this special permit.

4 COMMISSIONER KANUHA: So what would the, what
5 would the default procedure be, then, if they couldn't
6 come back for this proposed expansion under this
7 special permit?

8 CHAIRPERSON JUDGE: Well, in my mind it would
9 either be a new special use permit or a district
10 boundary amendment. And I think it would be, and I
11 don't know where that discussion comes, is when does
12 the use, a prolonged use and when does the special use
13 permit process end? And when is it more appropriate
14 to use the district boundary amendment? I hadn't
15 played that out yet.

16 COMMISSIONER KANUHA: Okay. You know,
17 there's a number of us on the commission that come
18 from various county perspectives. And to the extent
19 possible we've generally supported home rule, I mean
20 home rule or government rule at the lowest level.

21 In other words, like in areas of affordable
22 housing or conditions related to building we have
23 normally acquiesced to the county level of
24 decision-making for that.

25 But in my mind this particular project has

1 grown to the extent that it's way more than I think
2 the intent of the special permit was designed for.

3 And I think what we've seen in this process
4 is how we have been kind of hung up procedurally
5 because of the way there are different processes for
6 how the special permit is handled and how a boundary
7 petition would be handled.

8 So in my mind I think it's about time that we
9 recognize that this situation is of such a concern,
10 you know, that it's way more than, you know, just the
11 county/neighborhood/regional type concern.

12 It's clearly into the area of public health
13 and safety, welfare issues as it relates to our role
14 to implement state policy through our decision-making.

15 So that particular component of your proposal
16 I would certainly be inclined to support.

17 COMMISSIONER WONG: Madam Chair?

18 CHAIRPERSON JUDGE: Commissioner Wong.

19 COMMISSIONER WONG: I have a legal question.
20 And I don't know if it can be answered. When we say
21 that the commission will not accept an amendment, is
22 that binding upon the commission whoever they may be
23 at the time? Because it would be just an order. Who
24 knows whether or not the commission would then be
25 faced with the question, "Am I bound by the

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C E R T I F I C A T E

I, HOLLY HACKETT, R.P.R., C.S.R. in and for the State of Hawai'i, do hereby certify;

That I was acting as shorthand reporter in the foregoing LUC matter on the 6th day of March, 2008;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

DATED: This 14th day of March 2008

Holly M. Hackett

HOLLY M. HACKETT, R.P.R., C.S.R. #130
Certified Shorthand Reporter

--oo00oo--