

**COPY**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION

VOLUME II of II

SP87-362 DEPARTMENT OF )  
ENVIRONMENTAL SERVICES, CITY & )  
COUNTY OF HONOLULU - WAIMANALO )  
GULCH. )  
----- )

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

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing  
at the Leiopapa A Kamehameha, commencing at 9:46 a.m.  
on Thursday, March 7, 2008 pursuant to Notice.

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

HOLLY M. HACKETT, RPR, CSR  
P. O. BOX 755 Honolulu, HI 96808  
Ph/FAX 538-6458

**EXHIBIT K84**

## 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    INTERIM EXECUTIVE OFFICER:     RODNEY MAILE, ESQ.

12    CHIEF CLERK:                    SANDRA MATSUSHIMA

13    STAFF PLANNER:                  BERT SARUWATARI

14    DEPUTY ATTORNEY GENERAL:        DIANE ERICKSON, ESQ.

15    AUDIO TECHNICIAN:                WALTER MENCHING

16    Docket No. SP87-362 D.E.S. City and County of Honolulu

17    For the Applicant:                GARY TAKEUCHI, ESQ.  
18                                        Deputy Corporation Counsel

19    For the Intervenors:             COLLEEN HANABUSA, ESQ.  
20                                        KEN WILLIAMS, KOCA

21

22

23

24

25

26

27

28

29

30

HOLLY M. HACKETT, RPR, CSR  
P. O. BOX 755 Honolulu, HI 96808  
Ph/FAX 538-6458

**EXHIBIT K84**

1 March 7, 2008

2 CHAIRPERSON JUDGE: (Gavel) Good morning.  
3 Today is March 7th, 2008 and this is a meeting of the  
4 Land Use Commission. We are currently discussing  
5 the -- considering amendment to special use permit No.  
6 86-SUP-5 to extend the deadline requiring cessation of  
7 waste acceptance of Waimanalo Gulch Sanitary Landfill.

8 At this point the commission is in  
9 deliberations so we will not be taking any more public  
10 testimony. The public testimony portion was closed  
11 yesterday. So we will just continue our deliberations  
12 on this matter. Commissioner Wong.

13 COMMISSIONER WONG: Madam Chair, I'd like to  
14 move that this commission adopt the recommendations of  
15 the Planning Department with the exception that  
16 instead of the date of May 1, 2010 that that date be  
17 changed to November 1, 2009 which means approximately  
18 18-months extension rather than 2-years extension.

19 And that in addition that the City give a  
20 report to this commission every six months with  
21 respect to the actions it's taken to alleviate the  
22 further use of the landfill.

23 COMMISSIONER PILTZ: Second.

24 CHAIRPERSON JUDGE: We have a motion on the  
25 floor for the commission to approve the Planning

1 Commission's recommendation with the modification  
2 that the May 1, 2010 date become May 1, 2009, and a  
3 new condition that states that the City will give the  
4 Land Use Commission reports every six months with  
5 respect to the actions taken to alleviate the further  
6 use of this landfill. Is that correct? Okay. I'm  
7 sorry, did you say November 1st?

8 COMMISSIONER WONG: November 1. If my  
9 calculation is right that should be 18 months.

10 CHAIRPERSON JUDGE: Okay. And that was  
11 seconded by Commissioner Piltz. Discussion?  
12 Commissioner Piltz.

13 COMMISSIONER PILTZ: Given the discussions  
14 that we had yesterday and going with home rule, I feel  
15 that is equitable. We need to know what the City's  
16 going to do. So we're asking them to come earlier  
17 instead of waiting until May 2010. Essentially all  
18 we're doing is asking for a report six months earlier.

19 CHAIRPERSON JUDGE: Okay. Thank you.  
20 Commissioner Lezy.

21 COMMISSIONER LEZY: Chair, I'd like to move  
22 that the commission go into executive session to  
23 discuss legal issues with our counsel.

24 CHAIRPERSON JUDGE: There's a motion to go  
25 into executive session. Is there a second?

1 COMMISSIONER CONTRADES: Second.

2 CHAIRPERSON JUDGE: Seconded by Commissioner  
3 Contrades. All those in favor please raise your hand.  
4 We will exit. You guys can all stay here. Thank you.  
5 There's fewer of us.

6 (Executive session 9:50)

7 CHAIRPERSON JUDGE: We'll go back on the  
8 record. We're currently in discussion over the motion  
9 made by Commissioner Wong and seconded by Commissioner  
10 Piltz. Is there a further discussion? Commissioner  
11 Wong.

12 COMMISSIONER WONG: Madam Chair, the issue  
13 before us relates to not just a question of placing  
14 waste material on a specific spot. It has a bigger  
15 issue dealing with the health and safety of the people  
16 of the City and County of Honolulu.

17 And it has to deal with the rights of the  
18 people living in the Leeward area who are subjected to  
19 the problems of the landfill. So it's a difficult  
20 question to try to balance these different issues.

21 I'm suggesting to my fellow commissioners  
22 that we find a method to do it. To totally deny the  
23 extension poses major problems for the people of  
24 Honolulu. Then to grant it summarily as the Planning  
25 Department did, raised other questions about what will

1 happen 2 years from now. As Commissioner Lezy and  
2 Commissioner Chock mentioned yesterday, Madam Chair,  
3 there's a serious question as to whether or not the  
4 City and County of Honolulu has in good faith complied  
5 with the order and conditions previously issued under  
6 the SUP.

7 So the question is how can we prevent this  
8 kind of thing from occurring. I want to make clear  
9 that in this motion where we ask for a status report  
10 six months from today and six months thereafter is to  
11 point out that this problem is a problem for the City  
12 and County of Honolulu government.

13 That by "government" I'm referring to the  
14 City Council as well as the administration. I think  
15 we need to make clear that this problem sits at the  
16 doorsteps of the City Council and the administration,  
17 not just one branch of the City but both branches,  
18 both the council and the administration.

19 And I think we ought to make clear that  
20 because that issue sits on the doorsteps of the  
21 government, both council and the administration, that  
22 they would be accountable in the event that this issue  
23 comes back to this commission again because not enough  
24 has been done.

25 I'd like to think that this is perhaps the

1 last chance for the City government to get together  
2 and solve this problem. Yes, they had a blue ribbon  
3 committee. But that's wonderful. That's all talk.  
4 Now it's time for action. That's what I think we need  
5 to do.

6           Again, by the reporting requirements we're  
7 going to find out whether or not the City government  
8 has the political will to do something about it. The  
9 reporting requirements, and I would like to suggest,  
10 Madam Chair, it not be some simple letter from the  
11 Deputy Corporation Counsel saying, "Well, we're  
12 thinking about rolling out blue bins or green bins or  
13 we're going to roll out this, or roll out that."

14           But it be words of action, "We have done  
15 this. We have done that." So time for talking and  
16 thinking about what we're going to do is over. I  
17 think we need action.

18           That, Madam Chair, is why I'm proposing that  
19 there be reports every six months. And it's my  
20 understanding that in the event these reports are  
21 inadequate or improper that this commission has the  
22 power to issue an order to show cause which has the  
23 effect, perhaps, of causing major problems with this  
24 SUP.

25           So in asking for my fellow commissioners'

1 support, what we have tried to do is to give the  
2 government another shot at it but there's going to be  
3 an end.

4 And that the second thing we'd like to do is  
5 ask for a report every six months to keep the  
6 government, shall we say, keep the feet under the fire  
7 so that we know that positive actions are being taken.

8 I believe, therefore, Madam Chair, that this  
9 provision, this motion that I'm proposing, covers the  
10 concerns that the various commissioners have. We all  
11 have different concerns. And I'm trying to find a way  
12 that we can come up with something that would work.

13 So, Madam Chair, I urge my fellow  
14 commissioners to go along with this motion.

15 CHAIRPERSON JUDGE: Thank you, Commissioner  
16 Wong.

17 COMMISSIONER PILTZ: Madam Chair?

18 CHAIRPERSON JUDGE: Commissioner Piltz.

19 COMMISSIONER PILTZ: I accept Commissioner  
20 Wong's addition to his motion. I too feel that it is  
21 an obligation of the City and the County. What I  
22 don't want to see is that two years from now they ask  
23 for another extension.

24 Although item No. 12 states that: The  
25 200-acre parcel shall be restricted from accepting any



1 additional waste material and be closed in accordance  
2 to an approved closure plan by May 1, 2010 or until  
3 approved area reached its permitted capacity."

4 This docket has been on our table since 1987.  
5 We really need to put a closure to it. You need to  
6 find out what else you need to do. Therefore I accept  
7 Commissioner Wong's addition to his motion.

8 CHAIRPERSON JUDGE: Commissioner Piltz, I  
9 want to be clear that the motion made by Commissioner  
10 Wong is that that date is changed to November 1, 2009.

11 COMMISSIONER PILTZ: That's correct.

12 CHAIRPERSON JUDGE: And at the end it says,  
13 "Reaches its capacity, whichever occurs first."

14 COMMISSIONER PILTZ: Correct.

15 CHAIRPERSON JUDGE: Thank you. Commissioner  
16 Lezy.

17 COMMISSIONER LEZY: Thank you, Chair. With  
18 due respect to Commissioners Wong and Piltz, I  
19 continue to believe that the appropriate course of  
20 action here for the commission is to deny this  
21 application.

22 I don't take this decision lightly, certainly  
23 not. But my principal concern has been and remains  
24 that the motion that's pending and the motions that  
25 were proposed prior create no binding obligation for

1 the Department of Environmental Services to meet their  
2 obligations under the prior order.

3 And that in allowing this extension, granting  
4 this amendment, we're contravening the basic purpose  
5 of the 2003 decision and order and I think, more  
6 importantly, the prior affirmative representations  
7 that were made by the Department of Environmental  
8 Services in connection with that previous amendment.

9 I believe that if we proceed as has been  
10 proposed that we will allow an improper status quo to  
11 remain.

12 I think it's clear, it's been by the  
13 Applicant that the intent is to return, come back to  
14 us and seek further amendment, again, in direct  
15 contravention of the prior decision and order which  
16 stated explicitly that the entire 200-acre property  
17 would cease to accept waste material May 1st of 2008.

18 Applicant is on record saying they will  
19 certainly come back and request further that portions  
20 of the property be opened to accept waste. I believe  
21 that that is simply inappropriate given the prior  
22 representations that were made.

23 Again, what I consider to be a lack of a good  
24 faith effort by the Applicant to adhere to the  
25 conditions that required them to look at alternatives

1 to deal with the stream of municipal waste, because of  
2 this I would ask my fellow commissioners as they  
3 consider the vote that they will give on this motion  
4 to look carefully at what they're doing and where this  
5 will end up.

6 CHAIRPERSON JUDGE: Any other comments,  
7 Commissioners? Commissioner Wong.

8 COMMISSIONER WONG: Madam Chair, I understand  
9 Commissioner Lezy's position. But, on the other hand,  
10 I think to totally deny is a draconian action that  
11 places the City government in a very precarious  
12 position in that the waste still has to be picked up  
13 and removed from the streets and put somewhere. And  
14 so to totally deny has a very catastrophic effect.

15 I agree with Commissioner Lezy that the City,  
16 the previous administrations and others and previous  
17 City Councils have not demonstrated good faith efforts  
18 to comply with the order that speaks of the fact that:

19 The City and County shall, to the extent  
20 feasible, use alternative technologies to provide  
21 comprehensive, a waste stream management program that  
22 includes HPOWER, plasma arc, plasma gasification and  
23 recycling technologies.

24 I would suggest that, hopefully this is the  
25 last extension, that with the reporting requirements

1 every six months that the report will not be a report  
2 just issued by the deputy corporation counsel but  
3 there be some evidence by the administration and by  
4 the City Council that they're on the same page to fix  
5 this problem.

6 Now, with respect to the concern about  
7 continuing, shall we say the special use permit, it  
8 would appear to me that at some point there may be a  
9 question as to whether or not the special use permit  
10 is the proper method such that it could be amended to  
11 add additional land area, or whether or not the proper  
12 method is for a new district boundary amendment  
13 application.

14 As we all know the district boundary  
15 amendment application is a more lengthy and probably  
16 more comprehensive process.

17 So recognizing all of these issues I believe  
18 that this motion with the reporting requirements and  
19 the -- with the reporting requirements makes it very  
20 clear that these issues are at the doorsteps of the  
21 City Council and Administration so that hopefully no  
22 further extensions of this particular special use  
23 permit would be made.

24 So, therefore, in trying to come up with a  
25 solution I urge my fellow commissioners to approve

1 this motion.

2 CHAIRPERSON JUDGE: Thank you, Commissioner  
3 Wong. Any further comments? Before I call for the  
4 question I'd just like to make one comment.

5 That, again, it's unfortunate that the  
6 commission finds itself in this very difficult  
7 position, rather untenable position being 60 days,  
8 less than 60 days from the promised closure of the  
9 landfill and no viable alternatives being presented to  
10 us.

11 We have heard through the record and read the  
12 testimony of the citizens of the Leeward Coast and the  
13 Ko Olina Resort and their concerns and issues. We  
14 have seen the promises of the City and County  
15 government.

16 And it's really hard to weigh all those  
17 things against what Commissioner Wong is explaining,  
18 the public health and safety issue that faces us with  
19 a need for a place to deposit the municipal solid  
20 waste.

21 And I think the question that a lot of the  
22 Commissioners are asking is what can we do to not find  
23 ourselves back here in the same situation in 2009?  
24 And hopefully the parties have heard these concerns of  
25 the commissioners and will take action so that we

1 don't find ourselves in the same position and that  
2 history does not repeat itself.

3 But with that being said, I will turn the  
4 microphone over to the interim executive officer and  
5 ask him to call for the question -- or take the vote.

6 COMMISSIONER KANUHA: Before you call for the  
7 question --

8 CHAIRPERSON JUDGE: I'm sorry. Sure.

9 COMMISSIONER KANUHA: Could the executive  
10 officer or you, Madam Chair, restate the motion again  
11 just so that we're perfectly clear on what we're  
12 voting on.

13 CHAIRPERSON JUDGE: I believe the motion  
14 that's before, on the floor right now, is to accept  
15 the Planning Commission recommendation with the one  
16 modification that the date of the May 1st, 2010 be  
17 modified to November 1st, 2009.

18 And that there be a new condition added that  
19 requires the Applicant to report to the Land Use  
20 Commission every six months the actions that it's  
21 taking to alleviate further use of the landfill. Is  
22 that correct, Commissioner Wong?

23 COMMISSIONER WONG: That's correct.

24 (Pause)

25 CHAIRPERSON JUDGE: Is that okay?

## C E R T I F I C A T E

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 7th 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 14<sup>th</sup> day of March 2008

Holly M. Hackett

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