



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP09-403
)
DEPARTMENT OF ENVIRONMENTAL) ORDER ADOPTING THE CITY
SERVICES, CITY AND COUNTY OF) AND COUNTY OF HONOLULU
HONOLULU) PLANNING COMMISSION'S
) FINDINGS OF FACT,
For A New Special Use Permit To) CONCLUSIONS OF LAW, AND
Supersede Existing Special Use Permit To) DECISION AND ORDER WITH
Allow A 92.5-Acre Expansion And Time) MODIFICATIONS
Extension For Waimānalo Gulch Sanitary)
Landfill, Waimānalo Gulch, O'ahu,)
Hawai'i, Tax Map Key: 9-2-03: 72 And 73)
_____)

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH
MODIFICATIONS

On July 31, 2009, the City and County of Honolulu Planning Commission ("Planning Commission") met at the City Council Committee Meeting Room, Second Floor, in Honolulu, Hawai'i, to consider a new special use permit application ("Application") filed by the Department of Environmental Services, City and County of Honolulu ("Applicant"), to supersede the existing special use permit to allow a 92.5-acre expansion and time extension for the

EXHIBIT K94

EXHIBIT M

existing Waimānalo Gulch Sanitary Landfill ("WGSL") located at Waimānalo Gulch, O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72 and 73 ("Property").

After due deliberation and consideration of the record in this matter, the Planning Commission recommended approval of the Application (County Special Use Permit File No. 2008/SUP-2), subject to ten conditions, and further recommended approval of the withdrawal of County Special Use Permit File No. 86/SUP-5 upon 2008/SUP-2 taking effect, and that all conditions previously placed on the Property under County Special Use Permit File No. 86/SUP-5 shall be null and void.

On August 11, 2009, the Land Use Commission ("LUC") received the decision and a portion of the record of the Planning Commission's proceedings on the Application.

On August 20, 2009, the LUC received the remaining portion of the record.

On September 10, 2009, the Ko Olina Community Association, Colleen Hanabusa, and Maile Shimabukuro ("Intervenors") filed a Motion To Intervene.¹

¹ At the September 24, 2009 meeting the LUC recognized Ms. Hanabusa, Ms. Shimabukuro and the Ko Olina Community Association as intervenors in the LUC's proceeding based upon their intervenor status before the Planning Commission and therefore denied the Motion to Intervene as moot.

On September 17, 2009, the Applicant filed a Memorandum In Opposition To Intervenors Ko Olina Community Association, Colleen Hanabusa, And Maile Shimabukuro's Motion To Intervene.

On September 21, 2009, Intervenors filed a Motion To Deny Petition.

On September 23, 2009, the Applicant filed a Memorandum In Opposition To Intervenors Ko Olina Community Association, Colleen Hanabusa And Maile Shimabukuro's Motion To Deny Petition.

On September 24, 2009, the LUC conducted a meeting on the Application in the Kaua'i Meeting Room, Sheraton Waikiki Hotel, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Jesse K. Souki, Esq., appeared on behalf of the Applicant. Colleen Hanabusa, Esq.; Ken Williams; and Maile Shimabukuro were present on behalf of the Intervenors. Bryan C. Yee, Esq., and Abbey Mayer were also present on behalf of the State Office of Planning, and Don Kitaoka, Esq., and Robert Bannister were present on behalf of the Department of Planning and Permitting.² At the meeting, both the Applicant and Intervenors provided

² Pursuant to section 92-3, HRS, the LUC heard public testimony from Fred Dodge; William Aila, Jr.; City Council Chair Todd Apo; Mel Kahele; Abbey Mayer; and Robert Bannister. The LUC also received written testimony from Ka'eo Gouveia; Nobuko Maria Mori; Ali Mahmoodi; Laura Kay Rand; Mario Beekes; Lorita Nordlum; Paulette Dibibar; Clara Batongbacal; Elizabeth Dunne; Kalena Hew Len; Kamaki Kanahele; Ralph F. Harris; James C. Banigan III; Greg Nichols; Howard Perry, Jr.; and Michael Nelson. At the meeting, the LUC denied Intervenors' Motion To Deny Petition.

oral argument in support of their respective positions on the Application.

Following discussion, a motion was made and seconded to grant the Application subject to (1) the withdrawal of County Special Use Permit File No. 86/SUP-5 and LUC Docket No. SP87-362, provided that the existing conditions therein shall be incorporated to the extent they are consistent with and applicable to this decision and are not duplicative of any additional conditions imposed hereafter; (2) the conditions as recommended by the Planning Commission in County Special Use Permit File No. 2008/SUP-2 (LUC Docket No. SP09-403) and modified as appropriate; and (3) the following additional conditions: municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012; the Honolulu City Council through the City Administration shall report to the public every three months on their efforts regarding the continued use of the WGSL, including any funding arrangements that are being considered by the City Council and the City Administration; and the City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSL. By a vote of 5 ayes, 3 nays, and 1 absent, the motion carried.

The LUC, upon consideration of the Planning Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order, the oral

arguments of the parties and the record and files herein, and good cause existing and upon motion duly passed by the LUC,

HEREBY ORDERS that the LUC shall adopt the Planning Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order as its own Findings Of Fact, Conclusions Of Law, And Decision And Order, subject to the following conditions:

1. The Applicant shall obtain all necessary approvals from the State Department of Health, Department of Transportation, Commission on Water Resource Management, and Board of Water Supply for all onsite and offsite improvements involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.

2. In accordance with Chapter 11-60.1 "Air Pollution Control," Hawai'i Administrative Rules, the Applicant shall be responsible for ensuring that effective dust control measures during all phases of development, construction, and operation of the landfill expansion are provided to minimize or prevent any visible dust emission from impacting surrounding areas. The Applicant shall develop a dust control management plan that identifies and addresses all activities that have a potential to generate fugitive dust.

3. That the City and County of Honolulu shall indemnify and hold harmless the State of Hawai'i and all of its agencies and/or employees for

any lawsuit or legal action relating to any groundwater contamination and noise and odor pollution relative to the operation of the landfill.

4. On or before November 1, 2010, the Applicant shall begin to identify and develop one or more new landfill sites that shall either replace or supplement the WGSL. The Applicant's effort to identify and develop such sites shall be performed with reasonable diligence, and the Honolulu City Council is encouraged to work cooperatively with the Applicant's effort to select a new landfill site on Oahu. Upon the selection of a new landfill site or sites on Oahu, the Applicant shall provide written notice to the Planning Commission. After receipt of such written notice, the Planning Commission shall hold a public hearing to reevaluate 2008/SUP-2 (SP09-403) and shall determine whether modification or revocation of 2008/SUP-2 (SP09-403) is appropriate at that time. The Planning Commission shall make a recommendation to the Land Use Commission.

5. The Applicant shall continue its efforts to use alternative technologies to provide a comprehensive waste stream management program that includes H-POWER, plasma arc, plasma gasification and recycling technologies, as appropriate. The Applicant shall also continue its efforts to seek beneficial reuse of stabilized, dewatered sewage sludge.

6. The Applicant shall provide, without any prior notice, annual reports to the Planning Commission and the Land Use Commission regarding the status of identifying and developing new landfill sites on Oahu, the WGSL's operations, and Applicant's compliance with the conditions imposed herein. The annual reports also shall address the Applicant's efforts to use alternative technologies, as appropriate, and to seek beneficial re-use of stabilized, dewatered sewage sludge. The annual reports shall be submitted to the Planning Commission and Land Use Commission on June 1 of each year subsequent to the date of this Decision and Order.

7. Closure Sequence "A" for the existing landfill cells at WGSL as shown on Exhibit "A12" must be completed, and final cover applied, by December 31, 2012.

8. WGSL shall be operational only between the hours of 7:00 a.m. and 4:30 p.m. daily, except that ash and residue may be accepted at the Property 24 hours a day.

9. The Applicant shall coordinate construction of the landfill cells in the expansion area and operation of WGSL with Hawaiian Electric Company, with respect to required separation of landfill grade at all times and any accessory uses from overhead electrical power lines.

10. The operations of the WGS� under 2008/SUP-2 (SP09-403) shall be in compliance with the requirements of Section 21-5.680 of the Revised Ordinances of the City and County of Honolulu 1990, to the extent applicable, and any and all applicable rules and regulations of the State Department of Health.

11. The Planning Commission may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

12. Enforcement of the conditions to the Planning Commission's approval of 2008/SUP-2 (SP09-403) shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause why 2008/SUP-2 (SP09-403) should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein by this Decision and Order.

13. The Applicant shall notify the Planning Commission and Land Use Commission of termination of the use of the Property as a landfill for appropriate action or disposition of 2008/SUP-2 (SP09-403).

14. Municipal solid waste shall be allowed at the WGS� up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012.

15. The Honolulu City Council through the City Administration shall report to the public every three months on the efforts of the City Council and the City Administration in regard to the continued use of the WGSL, including any funding arrangements that are being considered by the City Council and the City Administration.

16. The City Council and the City Administration shall have a public hearing every three months to report on the status of their efforts to either reduce or continue the use of the WGSL.

APPROVED AS TO FORM

Diane Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By *Ransom Piltz*
RANSOM PILTZ
Chairperson and Commissioner

By (Excused)
VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner

By *Reuben S. F. Wong*
REUBEN S. F. WONG
Vice-Chairperson and Commissioner

By (Nay)
KYLE CHOCK
Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By (Nay)
LISA M. JUDGE
Commissioner

By Duane Kanuha
DUANE KANUHA
Commissioner

By (Nay)
NORMAND LEZY
Commissioner

Filed and effective on:

October 22, 2009

Certified by:

By Nicholas W. Teves, Jr.
NICHOLAS W. TEVES, JR.
Commissioner

Orlando Davidsion
ORLANDO DAVIDSION
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Adopting the City and County of Honolulu Planning Commission's Finding of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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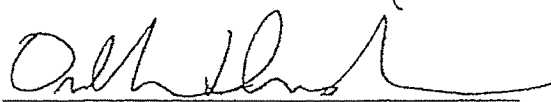
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Dated: October 22, 2009, Honolulu, Hawaii.



Orlando Davidson, Executive Officer



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This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

October 22 2009 by

Executive Officer

Orlando Davidson, Executive Officer