

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

RECEIVED
CORPORATION COUNSEL
C AND C OF HONOLULU

In the Matter of the Application of)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
For Amendment to State Special Use)
Permit and Extension of Deadline to Cease)
Acceptance of Additional Waste Material.)

EWA—STATE SPECIAL USE PERMIT)
NO. 86/SUP-5 (RY)

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FINDINGS OF FACT, CONCLUSIONS)
OF LAW, AND DECISION AND ORDER)

REFERRED TO

I certify that this is a full, true and correct copy of the original document on file with the Planning Commission, City and County of Honolulu.

Patricia J. Kalapa

1-18-2008
DATE

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

This matter came on for a contested case hearing before the Planning Commission of the City and County of Honolulu ("Planning Commission") on December 7, 2007, at 9:00 a.m. at Kapolei Hale. Based on the record in this matter, including the evidence adduced at the contested case hearing, the credibility of the witnesses testifying at the hearing, the proposed findings of fact and conclusions of law submitted by the parties and their respective responses thereto, and the written arguments of the parties, the Planning Commission hereby finds as follows:

FINDINGS OF FACT

1. The Waimanalo Gulch Sanitary Landfill ("WGSL") is located at 92-460 Farrington Highway, Honouliuli, Ewa, Oahu. It is within the State Land Use Agricultural District.
2. On March 13, 2003, the Planning Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order ("2003 Planning Commission Decision") containing Condition No. 10, which required in part that WGSL be restricted from

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accepting any additional waste material by May 1, 2008, and be closed in accordance with an approved closure plan.

3. On July 6, 2007, Department of Environmental Services, City and County of Honolulu ("ENV") filed with the Department of Planning and Permitting ("DPP") a request to amend Condition No. 10 by extending the deadline to accept solid waste at WGSJ from May 1, 2008, to May 1, 2010, or until WGSJ reaches permitted capacity, whichever occurs first (the "Application").
4. On October 12, 2007, notice of the Planning Commission's public hearing to consider ENV's Application was published in the Honolulu Star-Bulletin.
5. By letter dated October 24, 2007, Petitioner Colleen Hanabusa ("Hanabusa"), filed with DPP her Petition to Intervene and Request for Contested Case. On October 26, 2007, Ko Olina Community Association, Inc. ("KOCA"), filed with DPP its petition to intervene in ENV's time extension request.
6. On November 2, 2007, ENV filed with DPP its memoranda in opposition to the petitions to intervene filed by Hanabusa and KOCA.
7. On November 5, 2007, DPP filed its Director's report with the Planning Commission, which recommended approval of the time extension requested by ENV.
8. On November 7, 2007, ENV submitted two letters to DPP in response to DPP's staff requests, providing additional information relating to ENV's time extension request.
9. On November 14, 2007, the public hearing was held on ENV's time extension request at Mission Memorial Auditorium, City Hall Annex, where public testimony was received.
10. On November 14, 2007, during the public hearing, the Planning Commission granted intervener status to petitioners Hanabusa and KOCA.

11. On November 14, 2007, during the public hearing, the Planning Commission approved the consolidation of the two intervention petitions into one contested case proceeding.
12. On November 14, 2007, the Planning Commission closed the public hearing shortly after the Commission granted the petitioners intervener status.
13. On November 21, 2007, the Planning Commission issued notice of the contested case hearing to the parties.
14. On November 30, 2007, the Planning Commission Chair held a prehearing conference with the parties.
15. On December 7, 2007, the contested case hearing was held at Kapolei Hale.
16. The current permitted area of the WGSL has a useful life of approximately two years beyond the May 1, 2008, deadline if the State Department of Health ("DOH") approves ENV's request to modify the grade as discussed in paragraph 24 below.
17. The additional useful life is the result of ENV's efforts in diverting solid waste from WGSL and improved landfill operating methods to optimize the landfill's capacity.
18. ENV has diverted solid waste from WGSL through the H-Power waste-to-energy facility and through its reuse and recycling programs for municipal solid waste ("MSW"). ENV expects additional diversion to occur through its efforts to expand its waste-to-energy program, biosolids reuse, and possibly off-island shipping of some solid waste.
19. Despite ENV's efforts to divert solid waste from WGSL, a landfill is currently necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for residents on Oahu. There will always be material that cannot be combusted, recycled, reused or shipped, and a landfill is also needed to manage solid waste during natural disasters and other contingencies. Currently, technology has not advanced far enough to eliminate the need for a landfill on Oahu.

20. The H-Power facility requires periodic equipment shutdown for maintenance. During these periods, H-Power does not accept or burn solid waste and the waste is diverted to WGS. Further, if WGS were unable to accept H-Power ash and residue, with no approved landfill for that material, H-Power might have to close in a matter of days.
21. On January 31, 2006, the DOH issued a Notice of Violation ("NOV") to ENV and Waste Management of Hawaii, Inc. ("WMH"), containing 18 alleged violations at WGS.
22. When DOH issued the NOV, 16 of the 18 alleged violations had already been brought into compliance by WMH.
23. The two matters in the DOH NOV for which WGS was not in compliance when the NOV was issued were the 4-B sump for leachate control and the grade exceedances. On September 26, 2007, DOH approved the replacement of the 4-B sump.
24. The remaining unresolved compliance issue in the NOV is the grade exceedances. There is presently a lack of permitted capacity in the ash monofill portion of the landfill, and certain small parts of the MSW portion are over currently permitted grades. ENV has submitted a grade modification request to DOH to correct these exceedances and allow for additional capacity in the ash monofill portion.
25. DOH has completed its technical review of the grade modification request, issued a draft permit, and was expected to hold a public hearing on Tuesday, December 11, 2007, on the request.
26. If DOH approves the grade modification request, the modified grades would be below the original grades approved by DOH in 1989.
27. In 2001, during design for the 14.9-acre expansion, WMH, the operator of WGS, conducted a stability analysis for the entire landfill. Although the landfill site was stable, differences in the coarseness of the landfill liner used caused the factor of safety in

some places of the landfill to be lower than the standard 1.5 factor of safety required by DOH.

28. WMH then worked with DOH to lower the permitted landfill height to increase the factor of safety, which resulted in some areas of the MSW portion and one area of the ash monofill portion becoming out of compliance due to overfill.

29. DOH was notified of the overfill in those areas, and to address the issue, a toe berm was constructed at the front of the landfill.

30. If DOH approves the grade modification request, there would be approximately 4.7 years, as of March 2, 2007, of additional capacity in the ash monofill portion of the landfill. The grade modification request does not change the MSW peak elevation of 510 feet.

31. The time extension sought by ENV would not affect the footprint, the permitted landfill elevations, the daily tonnages of solid waste received at WGSL, or any of the landfill operations.

32. In the Solid Waste Management Permit, the MSW portion of WGSL has a specified elevation of 510 feet. The permit, however, does not have a specific elevation for the ash monofill portion, but references the grading plan submitted to DOH along with the permit application.

33. The May 1, 2008, deadline for accepting solid waste at WGSL was based on a 5-year expectancy for a 21-acre expansion proposed by ENV and approved by the Planning Commission and the LUC in 2003. At that time, it was not known that improved landfill operations and recycling efforts would contribute to an increase in the life expectancy of WGSL.

34. WGSL has been in operation since 1989, and is currently the only landfill permitted to receive MSW on the island of Oahu.

35. If WGS� closes by May 1, 2008, in accordance with Condition No. 10 of the 2003 Planning Commission Decision and Condition No. 12 of the Decision and Order Approving Amendment to Special Use Permit, issued on June 9, 2003, by the Land Use Commission, State of Hawaii ("2003 LUC Decision"), there will be no permitted landfill to serve the MSW needs on Oahu.

36. The Final Supplemental Environmental Impact Statement ("FSEIS") dated December 2002 and accepted by DPP on January 10, 2003, covers the currently-permitted footprint of WGS�.

37. The FSEIS also covers the current operations and impacts associated with continued use of WGS� beyond the May 1, 2008, deadline for accepting waste.

38. ENV does not seek any other modification at this time other than extending the deadline of accepting solid waste at WGS� from May 1, 2008, to May 1, 2010, or until WGS� reaches permitted capacity, whichever occurs first.

39. Any proposed findings of fact or conditions submitted by ENV, Hanabusa, or KOCA that are not expressly ruled upon by the Planning Commission, or rejected by clearly contrary findings of fact, are deemed to be denied.

40. To the extent that any of the foregoing Findings of Fact are more properly deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the following Conclusions of Law be more properly deemed to be Findings of Fact, they are incorporated herein as Findings of Fact.

CONCLUSIONS OF LAW

The Planning Commission hereby concludes as follows:

1. Hawaii Revised Statutes § 91-10(5) provides that:

[T]he party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

As the applicant, ENV has the burden of proof.

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2. WGS� operates under a State Special Use Permit. Chapter 2, Subchapter 4, of the Rules of the Planning Commission sets forth the rules applicable to State Special Use Permits. Section 2-45 provides as follows:

Test to be applied. Certain "unusual and reasonable" uses within agricultural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

- (a) Such use shall not be contrary to the objectives sought to be accomplished by the state land use law and regulations.
- (b) That the desired use would not adversely affect surrounding property.
- (c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
- (d) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.
- (e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

3. Based on the findings set forth above, the Planning Commission concludes that the requested time extension (a) is not contrary to the objectives sought to be accomplished by the state land use law and regulations; (b) would not adversely affect surrounding property; and (c) would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. The Planning Commission further concludes that the same unusual conditions, trends, and needs that existed at the time the original Special Use Permit was granted continue to exist and that the land upon which the WGS� is located continues to be unsuited for agricultural purposes.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE the ENV's request to modify Condition 10 of the 2003 Planning Commission Decision dated March 13, 2003, Special Use Permit File No. 86/SUP-5, as follows:

The 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure

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plan by May 1, 2010 or until the approved area reaches its permitted capacity, whichever occurs first.

Consistent with the foregoing, it is the further decision and order of the Planning Commission to recommend to the Land Use Commission that Condition No. 12 of the 2003 LUC Decision, Docket No. SP87-362, issued on June 9, 2003, be amended 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.

The foregoing APPROVAL by the Planning Commission is subject to the following condition:

1. The ENV must obtain approval of its pending grade modification request for WGS� from the State Department of Health.

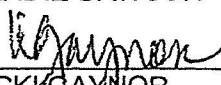
Dated at Honolulu, Hawaii, this 16th day of January, 2008.

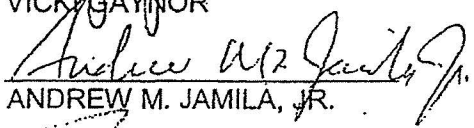
PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU


KARIN L. HOLMA, Chair

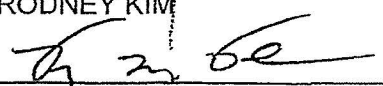

JAMES PACOPAC, Vice Chair

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KERRY M. KOMATSUBARA

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HONOLULU) CERTIFICATE OF SERVICE
For Amendment to State Special Use)
Permit and Extension of Deadline to Cease)
Acceptance of Additional Waste Material.)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Findings of Fact, Conclusions of Law,
and Decision and Order was served upon the following by certified mail, return receipt
requested, postage prepaid, on January 18, 2008:

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Attorney for Intervenors
Senator Colleen Hanabusa and
Ko Olina Community Association, Inc.

DATED: Honolulu, Hawaii, January 18, 2008.

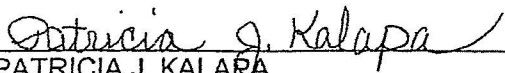

PATRICIA J. KALARA
Secretary-Reporter
Planning Commission

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