

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

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In the Matter of the	)	FILE NO. 2008/SUP-2 (RY)
Application of	)	AND 86/SUP-5
DEPARTMENT OF ENVIRONMENTAL	)	
SERVICES, CITY AND COUNTY	)	
OF HONOLULU	)	
For a New Special Use	)	
Permit to supersede	)	
Existing Special Use Permit	)	
to allow a 92.5-acre	)	
Expansion and Time Extension	)	
For Waimanalo Gulch Sanitary	)	
Landfill, Waimanalo Gulch,	)	
Oahu, Hawaii, Tax Map Key	)	
Nos. (1)9-2-003:072 and 073	)	

ORIGINAL

LAND USE COMMISSION  
STATE OF HAWAII  
2009 JUL 11 P 1:48

TRANSCRIPT OF HEARING

held on Thursday, July 2, 2009, at 9:10 a.m., at the City  
Council Committee Meeting Room, Third Floor, 530 South King  
Street, Honolulu, Hawaii,

APPEARANCES:

KARIN L. HOLMA, ESQ.  
Bays Deaver Lung Rose Holma  
16th Floor, Alii Place  
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Honolulu, Hawaii 96813

COLLEEN HANABUSA, ESQ.  
1157 Fort Street Mall  
Honolulu, Hawaii 96813

GARY Y. TAKEUCHI, ESQ.  
JESSE K. SOUKI, ESQ.  
Deputies Corporation Counsel  
City and County of Honolulu  
Honolulu, Hawaii 96813

1 COMMITTEE MEMBERS PRESENT:

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- 4 James C. Pacopac
- 5 Kerry M. Komatsubara
- 6 Vicki Gaynor
- 7 Rodney Kim
- 8 Andrew M. Jamila, Junior
- 9 Beadie K. Dawson

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1 THURSDAY, JULY 2, 2009

9:10 A.M.

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3 MS. HOLMA: Calling hearing number four of the  
4 contested case hearing.

5 Counsel, appearances, please.

6 MR. TAKEUCHI: Good morning, Gary Takeuchi, Deputy  
7 Corporation Counsel for the city, Department of Environmental  
8 Services, the applicant.

9 MS. HANABUSA: Colleen Hanabusa, for myself, with  
10 Ken Williams, for Ko Olina Community Association and Maile  
11 Shimabukuru, intervenors.

12 MS. HOLMA: Good morning.

13 Mr. Takeuchi, do you have any further witnesses to  
14 call?

15 MR. TAKEUCHI: We have concluded our case-in-chief,  
16 and reserve the right, of course, to call rebuttal witnesses  
17 at a later time.

18 Thank you.

19 MS. HOLMA: Thank you.

20 Senator, are you ready to start your case?

21 MS. HANABUSA: Yes.

22 We call Abbey Mayer.

23 (Mr. Mayer approached the stand.)

24 MS. HANABUSA: Before we begin, are the exhibits  
25 available that we have been using for all of the witnesses?

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EXHIBIT K10

1 The standard set that we have been using?

2 (Discussion off the record.)

3 MS. HOLMA: Mr. Mayer, can you raise your right  
4 hand, please.

5 Do you solemnly swear or affirm that the testimony  
6 you are about to give shall be the truth, the whole truth, and  
7 nothing but the truth?

8 THE WITNESS: I do.

9 ABBEY MAYER,  
10 called as a witness, having been produced and duly sworn to  
11 tell the truth, the whole truth, and nothing but the truth,  
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HANABUSA:

15 Q. Mr. Mayer, can you please tell us who you work for, and  
16 what title you hold, if any.

17 A. Sure.

18 Aloha, Chair and Commissioners. Again, my name is  
19 Abbey Mayer, I am the director of the State Office of  
20 Planning.

21 Q. And, in your capacity as the director of the State Office  
22 of Planning, can you just give us a brief description of what  
23 your duties are.

24 A. Sure.

25 Our office is composed of four divisions. We have a

1 THE WITNESS: Department of business, economic  
2 development and tourism.

3 MS. HOLMA: Okay.

4 MS. HANABUSA: They are attached for administrative  
5 purposes.

6 MS. HOLMA: Okay, that answers my question.

7 Thank you, Ms. Hanabusa.

8 BY MS. HANABUSA:

9 Q. Just so we are clear, the State's position is expressed  
10 through the Office of Planning?

11 A. Yes.

12 We compile the comments of all the different various  
13 affected agencies, and -- (inaudible) -- the state's position  
14 for the commissioner.

15 Q. And, in April of 2009, you did submit the State's  
16 position to David K. Tanouye?

17 A. Yes, I did.

18 Q. Can you summarize for the commission what the position of  
19 the state is as to the application for the special use permit?

20 A. Sure.

21 I would like to preface the position in saying we  
22 believe the special use permit process is the appropriate  
23 process for entitling this -- to entitle the landfill that's  
24 on agricultural land.

25 We feel that the district boundary amendment that

1 trash after November 1, 2009.

2 Are you familiar with that?

3 A. Yes.

4 Q. Now, in a situation where the Land Use Commission has  
5 issued an order such as that, one of the commissioners asked  
6 this question earlier, what's the impact of having that in an  
7 order?

8 A. If this SUP is not granted?

9 Q. Right.

10 A. Or is that regardless of whether it is or not?

11 Q. Regardless of whether it's granted or not.

12 A. Well, clearly, this issue has been coming around, and  
13 coming around, and coming around, again and again, over the  
14 last approximately ten years, and the same issues of the  
15 commitment to close, the same issues of capacity, the same  
16 issues of the city's -- MO, for lack of a better term, of  
17 waiting until the last minute to apply, without addressing  
18 these concerns fully, continues to plague all of the  
19 regulatory bodies involved, be it the county planning  
20 commission, the State Land Use Commission, or the Department  
21 of Health.

22 So it's my understanding that the commission's  
23 intent in forming that, giving that year and a half, was to,  
24 again, tighten the restriction, so to speak, and try to -- I  
25 think there's a frustration on the part of the commission, or

1 it seemed like it, that it's always feeling like its back is  
2 against the wall; that, if it doesn't act, then the  
3 consequences will be on their heads.

4 And I think that, in my reading of the decision,  
5 that it was an effort to put the responsibility back on to the  
6 county and say, no, this is a bigger planning issue, this is  
7 your responsibility, and it's not the responsibility,  
8 endlessly, of regulatory bodies to bail you out.

9 Q. The district boundary amendment is a completely new  
10 filing; correct?

11 A. Correct.

12 Q. And, as far as I know, and I'm asking if you know any  
13 different, the city has never filed for a district boundary  
14 amendment for Waimanalo Gulch, or what we call Waimanalo  
15 Gulch; is that also correct?

16 A. As far as I know that's correct.

17 Q. So if the commission -- this is the Land Use Commission,  
18 takes on the newly filed -- the first-time filed district  
19 boundary amendment, then it is technically not bound by any of  
20 its prior decisions, is it? Because that's in the light of  
21 the SUP?

22 A. Yes, that's correct.

23 Q. Now, what is before this commission is actually a new  
24 SUP, as well; it's got a new number, it's for the whole 200  
25 acres.



1 the way it's playing out?

2 A. It's my understanding that the process, as defined by  
3 Chapter 6-E, is being followed, and that the concerns are  
4 being addressed as they typically would in relation to the  
5 issue.

6 I'm sorry, I don't have enough of an expertise on  
7 the issue -- (inaudible).

8 Q. Okay.

9 I think you also said that the position of --  
10 (inaudible) -- contained in your submittal is that the city  
11 should be held to its prior commitments.

12 Tell me what you understand about how those  
13 commitments were made, what's happened since then, what  
14 happened before then, what is your understanding of that prior  
15 commitment?

16 A. My understanding is that the original SUP, which was a  
17 1987 docket number, contained a proposal for a 15-year  
18 capacity, which was reaching its conclusion in early 2000's;  
19 2003 was the date of the five-year extension.

20 I believe that an expansion area of approximately  
21 20 or 21 acres was needed at that time in order for the  
22 operation to have the capacity for the five-year expansion  
23 area.

24 But at the time, in the eighties, when the original  
25 SUP was applied for, it was for 15 years, it was supposed to

1 with integrity; that issues around siting, which include  
2 health and safety, environmental justice, community benefits,  
3 that those substantive issues are dealt with appropriately, in  
4 a process that's transparent, and has integrity; and that kind  
5 of holistic and comprehensive plan for dealing with this  
6 island's solid waste is not only created, but also adhered to.

7 Q. And you would agree that, if the process to obtain a new  
8 SUP, which is the proceeding we are in today, if that process  
9 results in the issuance of a new SUP, then that's an  
10 appropriate process to follow for this type of issue?

11 A. It is, with the caveat that certain requirements have to  
12 be met.

13 I feel like -- the state feels like the commitment  
14 to close has to be addressed.

15 So whether a new site is selected, or this site goes  
16 forward as the selected site, that commitment has to be  
17 addressed.

18 And whether that's through a community benefits  
19 package, or whether that's addressed in some other way by the  
20 City and County, I don't feel like there's any commitment  
21 within the present application that makes that commitment --  
22 or makes that either commitment to deal with that -- that  
23 nagging issue around the --

24 Q. Well, what do you know about the community benefits  
25 package that may exist -- (inaudible) --

1 truth, and nothing but the truth?

2 THE WITNESS: I do.

3 WILLIAM J. AILA, JR.

4 called as a witness, having been produced and duly sworn to  
5 tell the truth, the whole truth, and nothing but the truth,  
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. HANABUSA:

9 Q. Mr. Aila, can you please tell us where you live?

10 A. I live at 86-630 Lualualei Homestead Road, in Waianae.  
11 It's actually in Lualualei.

12 Q. And, can you tell us how long you have lived there?

13 A. I have lived in that valley for about 32 years.

14 MS. HOLMA: Mr. Aila, can you speak a little bit  
15 louder, and a little bit more slowly, so Steve can take it  
16 down.

17 A. Sure. About 32 years.

18 BY MS. HANABUSA:

19 Q. 32 years.

20 And have you lived in -- on the Waianae Coast for  
21 how many years?

22 A. All of my 50 years.

23 Q. Mr. Aila, where are you employed?

24 A. I am employed with the State of Hawaii, Department of  
25 Land and Natural Resources, Division of Boating and Ocean

1 Recreation, and I am the harbor master at the Waianae Boat  
2 Harbor.

3 Q. And you have been the harbor master at the Waianae Boat  
4 Harbor for how many years?

5 A. This year will be 23 years.

6 Q. And, in addition to being the harbor master, Mr. Aila,  
7 you are an avid fisherman in the area, are you not?

8 A. Yes, I am.

9 Q. And you also, in case people are not familiar with you,  
10 you were a candidate for governor a few years ago, were you  
11 not?

12 A. 2006, yes.

13 Q. 2006.

14 And, Mr. Aila, people may be most familiar with you  
15 in reference to makua.

16 A. Amongst other things, yes.

17 Actually, my efforts in makua has brought me some  
18 notoriety.

19 Q. So, can you tell us, because you obviously have a  
20 familiarity with environmental issues, as well as the EIS  
21 process, how many challenges to the EIS have you been involved  
22 with?

23 A. I have actually been a plaintiff in two major EIS's, and  
24 have acted as a consultant on several small claims.

25 Q. And the plaintiff in the two cases are -- who?

1 many years now?

2 A. I had black hair when it started... this is its 11th  
3 year.

4 Q. 11th year.

5 And you said that the significance of what -- so  
6 how does Waimanalo Gulch, that area, then link to what you say  
7 is the Ahi Koa area right --

8 A. Well, I believe, having done some investigation after the  
9 initial site visit, having talked to fishermen, having gone  
10 out to the area myself, having looked at its significance in  
11 terms of alignment with the fishing Koa that's down by the  
12 ocean there, I believe that the Opelu resources and the ahi  
13 resources are what makes Waimanalo Gulch special to Ko Olina,  
14 and then makes that special to the Hawaiian history, the  
15 Hawaiian culture, is these resources that are off shore.

16 And I gave the example of how Kamehameha was  
17 approached by the Kona chiefs because the ahi fishery in Kona  
18 was given away.

19 Q. You opposed the continuation of the landfill at Waimanalo  
20 Gulch?

21 A. And anywhere else on the Waianae Coast, yes.

22 Q. And can you tell us whether, in your fisherman  
23 capacities, or any capacities that you have, whether you have  
24 personally observed any kind of problems associated with the  
25 operations of Waimanalo Gulch and its impact in the area you

1 know best, which is the ocean?

2 A. Sure.

3 Initially, and continuing to today, we have the  
4 issue of the plastic bags.

5 Anybody that remembers the fence that was put up can  
6 remember how many plastic bags became airborne from the  
7 landfill activities at Waimanalo Gulch, and the many  
8 thousands, or tens of thousands, that ended up in the ocean.

9 You could actually follow a trail -- this was five  
10 years ago -- follow a trail from the off shore area of  
11 Waimanalo Gulch, going out, and then heading westward along  
12 current lines, the trash that was being blown into the ocean.

13 It continues today at a more limited level, but it  
14 still continues today.

15 Last winter it was brought to my attention, by  
16 commercial fishermen who were diving in the area adjacent to  
17 Waimanalo Gulch, that they had observed a black precipitate  
18 material in the lower sections of the reefs there, and I had  
19 the opportunity to go and look at it myself earlier this year,  
20 in late February, early March, and it does not appear to be  
21 petroleum base, because that's the first thought, that perhaps  
22 an oil spill from one of the tankers had drifted this way.

23 So it's the fishermen's belief, and my belief, that  
24 perhaps there is some leachate that's leaking into the ocean  
25 fronting Waimanalo Gulch, and due to some chemical process,

1 transitioning into some sort of precipitate that is black but  
2 not oily.

3 Q. You said that, five years ago, the plastic bags were  
4 really bad. Now it's at a more limited level, but it still  
5 exists.

6 What's the impact of what you have been able to  
7 observe recently, of trash in the ocean? How is that  
8 impacting the marine life?

9 A. If you are a boater, plastic bags can get stuck on the  
10 vessel's -- if it's an outboard engine, or inboard outboard  
11 engine, and cover its intake, which can result in overheating.  
12 I had that happen to me a couple of times, both near the  
13 harbor and out at Ko Olina.

14 Plastic bags are also oftentimes mistaken for  
15 jellyfish, by sea turtles, and ingested, and then cause  
16 digestive tract problems. If they get hung up in the wrong  
17 place, the turtle can no longer ingest and pass food, and  
18 dies.

19 Q. Have you ever, yourself, fished or dived right off of  
20 Ko Olina where you would have the -- you're familiar with the  
21 outfall from Waimanalo, that goes under the highway?

22 A. Yes.

23 Q. So, have you observed any kinds of changes in the  
24 fishing, or what you have been able to do when you dive, as a  
25 result of the landfill?

1 A. Should close?

2 Well, from a cultural perspective, and we are  
3 beginning to get these pieces of valuable cultural information  
4 which we have no choice because a lot of it has been lost, but  
5 to string together as our knowledge base increases.

6 Waimanalo Gulch, for several reasons, because it was  
7 one of the favorite places of Oahu chiefs, that's in and of  
8 itself significant.

9 Our children on the Waianae Coast grow up having the  
10 perception that they are second rate people, because we have  
11 all of the landfills, and have had most of the landfills for  
12 over 100 years.

13 And so it's important for the community, and  
14 especially for the young children growing up in the community,  
15 to, one, grasp the cultural significance, and importance of  
16 the Waianae Coast, in the stories and the heros that come from  
17 the Waianae Coast, for example, all the stories --  
18 (incomprehensible) -- that's all Waianae-related.

19 Sorry if anybody's here from Maui and I offend you,  
20 but we have all of the structures, we have all of the places,  
21 and I can point them out to you. I'm just sorry that somebody  
22 appropriated them and took it to Haleakala, because that's not  
23 correct.

24 So, to close the landfills on the Waianae Coast, and  
25 to not have any landfills on the Waianae Coast, and to have



1 other communities share the burden of landfills, that we have  
2 shared for more than 100 years, I think sends a strong message  
3 to our children that they are no longer second-class citizens;  
4 that they don't have to sacrifice health, they don't have to  
5 sacrifice self-esteem for the economic benefit of the rest of  
6 the island.

7           From a cultural perspective, we are trying to  
8 instill in our children the sense of place. And it's hard to  
9 instill a sense of place when part of that history is, we have  
10 to get all the rubbish for the rest of Oahu for 100 years.

11           We have also taken the largest power plant. We have  
12 also taken the largest military presence. So if you talk  
13 about cumulative impacts, I think Waianae has sustained the  
14 most cumulative impacts of any community on the island of  
15 Oahu.

16           So part of my opposition to not only the  
17 continuation and support of the closure of Waimanalo Gulch,  
18 and the continued opposition to any more landfills, whether  
19 they be construction, C & D, or municipal, or any of the other  
20 ones that are being masked now as recycling, is that enough is  
21 enough.

22           We need to heal. We need to provide our children  
23 with a better self-confidence, and we need to improve our  
24 schools, and we need to give our children more opportunity  
25 than they have had in the past.

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

STATE OF HAWAII )

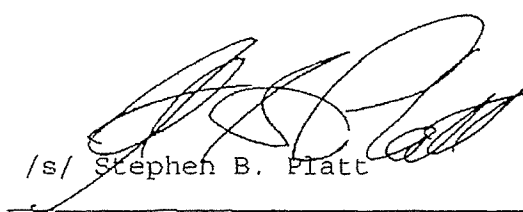
CITY AND COUNTY OF HONOLULU )

I, Stephen B. Platt, Certified Shorthand Reporter  
State of Hawaii, do hereby certify:

That on Thursday, July 2, 2009, at 9:05 a.m., the  
foregoing Hearing was taken down by me in machine shorthand  
and was thereafter reduced to typewriting by me; that the  
foregoing represents, to the best of my ability, a true and  
correct transcript of the proceedings had in the foregoing  
matter.

I further certify that I am not an attorney for any of the  
parties hereto, nor in any way concerned with the cause.

Dated this 8th day of July, 2009, in Honolulu, Hawaii.



/s/ Stephen B. Platt

STEPHEN B. PLATT CSR NO. 248

3169

EXHIBIT K10