

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The)
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU (FKA DEPARTMENT OF)
PUBLIC WORKS, CITY AND COUNTY OF)
HONOLULU)
)
For An Amendment To The Special Use)
Permit Which Established A Sanitary Landfill)
On Approximately 86.5 Acres Of Land Within)
The State Land Use Agricultural District At)
Waimanalo Gulch, Honouliuli, 'Ewa, O'ahu,)
Hawai'i, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))
_____)

DOCKET NO. SP87-362
DECISION AND ORDER
APPROVING AMENDMENT
TO SPECIAL USE PERMIT

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.
6/9/03 by Anthony [Signature]
Date Executive Officer

DECISION AND ORDER APPROVING AMENDMENT TO SPECIAL USE PERMIT

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Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
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_____)

DECISION AND ORDER APPROVING AMENDMENT TO SPECIAL USE PERMIT

On January 17, 2003, the Department of Environmental Services, City and County of Honolulu (“Applicant”), formerly known as the Department of Public Works, City and County of Honolulu, filed an application to amend an existing special use permit (“Amendment”) with the Department of Planning and Permitting, City and County of Honolulu (“DPP”), pursuant to section 205-6, Hawaii Revised Statutes (“HRS”), and sections 15-15-95 and 15-15-96, Hawaii Administrative Rules (“HAR”). The Applicant proposes to expand the existing Waimanalo Gulch Sanitary Landfill on approximately 21 acres of land within the State Land Use Agricultural District at

Waimanalo Gulch, Honouliuli, `Ewa, O`ahu, Hawai`i, identified as TMK No: 9-2-03: portion 72 and portion 73 (“Property”).¹ The Property is owned by the City and County of Honolulu and is under the jurisdiction of the Applicant.

On January 22, 2003, the DPP accepted the Amendment.

On March 5, 2003, the Planning Commission, City and County of Honolulu (“Planning Commission”), conducted a hearing on the Amendment, pursuant to a public notice published on January 31, 2003. After due deliberation, the Planning Commission recommended approval of the Amendment to the Land Use Commission (“LUC”), subject to the existing nine conditions and two additional conditions.

On March 13, 2003, the LUC received a copy of the decision and record of the Planning Commission’s proceedings on the Amendment.

The LUC has jurisdiction over the Amendment. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the LUC to approve special use permits and amendments thereto for areas greater than 15 acres where application for LUC approval is made within 60 days after the decision is rendered on the request to the Planning Commission.

On March 27, 2003, the LUC met in Waipahu, O`ahu, to consider the Amendment.² Frank Doyle and Maile R. Chun, Esq., appeared on behalf of the

¹ The actual landfill expansion is planned on approximately 14.9 acres. Accessory structures and uses, including, but not limited to berms and detention basins, are planned on the remaining acreage.

Applicant. David K. Tanoue, Esq.; Eric G. Crispin; Barbara Kim-Stanton; and Raymond Young appeared on behalf of the DPP. Russell Y. Tsuji, Esq., and Abe Mitsuda were also present on behalf of the Office of Planning. At the meeting, the Applicant presented a chart entitled “Mayor’s Blue Ribbon Landfill Site Selection Committee, New Landfill Timeline, March 27, 2003,” which the LUC accepted as Exhibit Number 33 to the record in this proceeding. The Applicant represented, among other things, that it would continue to seek alternate disposal sites and other technologies and waste recovery programs to reduce the amount of waste that is disposed of in landfills.

Conformance With Special Use Permit Criteria

Following discussion by the Commissioners, a motion was made and seconded to grant the Amendment, subject to the conditions as reflected in the minutes of the meeting, including, among other requirements, that if a new landfill site is not selected by December 31, 2003, the special use permit would immediately expire. An amendment clarifying this motion was then made and seconded to amend the date to December 1, 2003, by which the Blue Ribbon Landfill Site Selection Committee is to recommend a new landfill site and to further specify that if the City Council fails to select the new site by June 1, 2004, the special use permit would immediately expire.

The LUC found that i) By Order dated April 20, 1987, the LUC approved a special use

² Pursuant to section 92-3, HRS, Ernest Adaniya, Greg Perry, Darrell Bussell, Paul B. Kekina, Lieutenant Commander Chuck Lewis, Richard Payne, Gail Butchart, Todd Apo, Cynthia K.L. Rezentes, and Kevin Mizuno presented oral testimony, and State Senator Brian Kanno and Councilmember Nestor Garcia submitted written testimony.

permit to establish the Waimanalo Gulch Sanitary Landfill on approximately 60.5 acres. By Order dated October 31, 1989, the LUC approved an amendment to the special use permit to expand the landfill by approximately 26 acres; ii) The current expansion is consistent with the solid waste handling and disposal policies of the `Ewa Development Plan and will serve all of O`ahu's residents and visitors; iii) The Property is currently in open space and is located adjacent to the existing landfill; iv) No agricultural production occurs on the Property; v) There are no historic sites on the Property and there are no traditional cultural practices that have been identified that are specific to the Property; vi) There are no threatened or endangered species of flora and fauna nor are there any species of concern on the Property; vii) The expansion of the landfill will not adversely affect surrounding properties provided mitigation measures and all applicable government rules and requirements are followed; viii) The Applicant will comply with Federal and State regulations governing siting, design standards, operating requirements, groundwater monitoring and corrective action, closure, post-closure care, and financial assistance; ix) The Property will be restricted from handling or treating toxic hazardous waste material; x) Permanent and temporary fencing will be utilized to control litter in the expansion cells; xi) Vacuum equipment will be employed to clean the litter from the fences, and cleanup crews will be deployed when notice is received that litter has drifted offsite; xii) The Applicant will implement odor and gas emission control measures including a gas recovery and monitoring system, regular use

of odor misters, regular use of cover material, early onsite queuing of waste haulers, and diversion of sewage sludge offsite for drying and processing at the Sand Island Wastewater Treatment Plant; xiii) The expansion is not expected to result in noise levels greater than produced from current activities; xiv) Most of the short-term noise generated will be during operation and mobilization of heavy construction equipment; xv) The Applicant will comply with State noise regulations to mitigate short-term impacts; xvi) Longer term measures to ensure noise abatement include properly muffling equipment with noise attenuation devices, scheduling rock crushing during normal landfill operation hours, and landscaping with vegetation; xvii) Upon closure of the landfill, the Applicant and Waste Management of Hawaii, Inc., the operator of the landfill, will be responsible for capping the entire landfill, monitoring groundwater, methane gas, and leachates for 30 years; xviii) Exposed areas will be seeded or hydromulched, as appropriate, using plants similar to those found around the landfill; xix) Fabric to mimic rock outcrops will also be strategically placed to break up the homogenous appearance of the filled areas relative to the surrounding hillside; xx) The impact of the landfill on `Ewa and Nanakuli residential values was studied; xxi) Proximity to the landfill is not a consistent contributor to property values and does not adversely affect property values; xxii) The existing landfill has been in operation since 1989 and the relevant support infrastructure and services for the proposed expansion are adequate; xxiii) The approved capacity of the landfill is rapidly approaching its

maximum; xxiv) The landfill receives on a daily basis 600 tons of ash residue from the Honolulu Program on Waste Energy Recovery and 800 tons of municipal solid waste for a total of 1,400 tons per day; xxv) The Applicant evaluated alternative sites and technologies for the disposal of municipal solid waste; xxvi) The expansion of the landfill is the only feasible alternative that can be implemented in time to dispose of municipal solid waste after the approved landfill capacity is exhausted; and xxvii) The Property has extremely rocky soils and is not conducive to crop production, and the steep terrain is not appropriate for pasture use.

Following discussion by the Commissioners, a vote was taken on the amendment to the motion. There being a vote tally of 7 ayes, 1 nay, and 1 absent, the amendment carried. A vote was then taken on the main motion, as amended. There being a vote tally of 7 ayes, 1 nay, and 1 absent, the motion carried.

ORDER

Having duly considered the complete record of the Amendment and the oral arguments presented by the parties in the proceeding, and a motion and amendment thereto having been made at a meeting conducted on March 27, 2003, in Waipahu, O`ahu, and the motion and amendment having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion and amendment, the Commission hereby APPROVES the Amendment granted by the Planning Commission to expand the existing Waimanalo Gulch Sanitary Landfill on

approximately 21 acres of land within the State Land Use Agricultural District at Waimanalo Gulch, Honouliuli, `Ewa, O`ahu, Hawai`i, identified as TMK No: 9-2-03: portion 72 and portion 73, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. The Blue Ribbon Site Selection Committee shall make its recommendation for a new landfill site to the City Council by December 1, 2003. The City Council shall select a new site by June 1, 2004. If a new site is not selected by June 1, 2004, this Special Use Permit shall immediately expire.

2. In the event that Condition No. 1 is satisfied, Condition No. 14 shall become effective.

3. That an earth berm shall be installed prior to the commencement of any waste disposal operations.

4. The landscaping plans which would include plant names, sizes, quantities and location shall be submitted to the Department of Planning and Permitting for approval and shall be implemented within 90 days of completion of the berm work.

5. The facility shall be operational between the hours of 7:00 a.m. and 4:30 p.m. daily.

6. 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 on-site and off-site improvements

involving access, storm drainage, leachate control, water, well construction, and wastewater disposal.

7. The Planning Commission or Director of the Department of Planning and Permitting may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate.

8. The Applicant shall notify the Planning Commission of termination of use for appropriate Planning Commission action or disposition of the permit.

9. In accordance with Chapter 11-60, "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.

10. 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.

11. The Applicant shall coordinate construction and operation of the landfill with the Hawaiian Electric Company.

12. Within 5 years from the date of this Special Use Permit Amendment approval or date of the Solid Waste Management Permit approval for this expansion, whichever occurs later but not beyond May 1, 2008, the 200-acre property shall be restricted from accepting any additional waste material and be closed in accordance with an approved closure plan.

13. Prior to commencing land filling in the 21-acre expansion area, the Applicant shall submit to the Director of the Department of Planning and Permitting for review and approval, a metes and bounds description and map of the approved landfill area as permitted by this Special Use Permit and amendments thereto. Any minor modifications to allow reasonable adjustments of the approved area due to engineering and/or health and safety requirements may be approved by the Director of the Department of Planning and Permitting; provided that there is no net increase to the approved area of 107.5 acres. A copy of the metes and bounds description and map shall be provided to the Land Use Commission.

14. The Applicant shall promptly provide, without any prior notice, annual reports to the Department of Planning and Permitting and the Land Use Commission in connection with the status of the landfill expansion and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

15. The City and County of Honolulu shall select a new landfill site. The recommendation for a new site shall be forwarded to the Planning Commission and City Council no later than December 1, 2003.

16. The City and County of Honolulu shall ensure that funding for design and planning is included in the FY05 budget to demonstrate the City's commitment to the new site and to ensure that no further extensions are necessary.

17. The City and County of Honolulu shall initiate the public comment and environmental review process for the new site no later than December 31, 2004.


18. The City and County of Honolulu shall, to the extent feasible, use alternative technologies to provide a comprehensive waste stream management program that includes H-Power, plasma arc, plasma gasification, and recycling technologies.

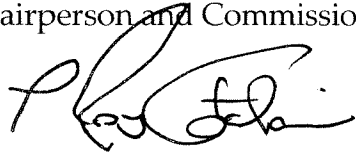
19. The City and County of Honolulu shall appropriately implement by executive order or ordinance the seven bullet points identified in the Applicant's Exhibit 3, Appendix H, page 1-3, regarding the third boiler at H-Power, wood recovery, metal recovery, gypsum recovery, enhanced enforcement of landfill bans, implementation of the bottle bill, and establishment of user fees.

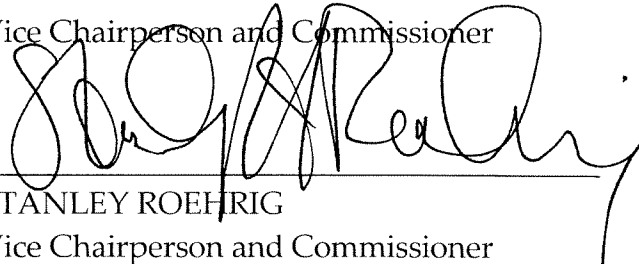
ADOPTION OF ORDER


The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 5th day of June, 2003 The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.


LAND USE COMMISSION
STATE OF HAWAII


By 
LAWRENCE N. C. ONG
Chairperson and Commissioner

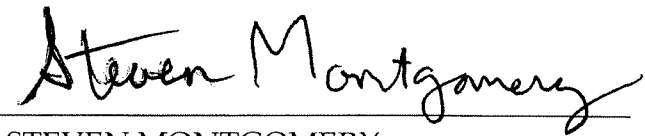
By 
P. ROY CATALANI
Vice Chairperson and Commissioner

By 
STANLEY ROEHRIG
Vice Chairperson and Commissioner

By 
BRUCE A. COPPA
Commissioner

By 
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

By 
STEVEN MONTGOMERY
Commissioner

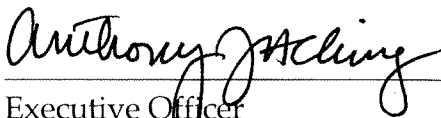
By 
RANDALL SAKUMOTO
Commissioner

By OPPOSED
PETER YUKIMURA
Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
June 9, 2003

Certified by:

Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
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DEPARTMENT OF ENVIRONMENTAL) CERTIFICATE OF SERVICE
SERVICES, CITY AND COUNTY OF)
HONOLULU (FKA DEPARTMENT OF)
PUBLIC WORKS, CITY AND COUNTY OF)
HONOLULU)
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Permit Which Established A Sanitary Landfill)
On Approximately 86.5 Acres Of Land Within)
The State Land Use Agricultural District At)
Waimanalo Gulch, Honouliuli, `Ewa, O`ahu,)
Hawaii, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order Approving Amendment to Special Use Permit 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:

DEL. MARY LOU KOBAYASHI
Office of Planning
P.O. Box 2359
Honolulu, Hawaii 96804

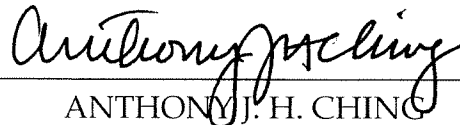
CERT. JOHN CHANG, ESQ.
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Hale Auhau
425 Queen Street
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CERT. ERIC G. CRISPIN, DIRECTOR
Department of Planning and Permitting
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CERT. FRANK DOYLE, DIRECTOR
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CERT. DAVID ARAKAWA, ESQ.
Corporation Counsel
City & County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 9th day of June, 2003.



ANTHONY J. H. CHING
Executive Officer