

LAND USE COMMISSION  
Minutes of Meeting  
Legacy II Room  
Hawaii Okinawa Center  
94-587 Ukee Street  
Waipahu, Hawaii 96797

March 27, 2003

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Isaac Fiesta  
Lawrence Ing  
Randall Sakumoto  
Stanley Roehrig  
Peter Yukimura

COMMISSIONERS ABSENT: Steven Montgomery

STAFF PRESENT: Russell Suzuki, Deputy Attorney General  
Anthony J. H. Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Russell Kumabe, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:30 a.m.

ADOPTION OF MINUTES

Commissioner Coppa moved to adopt the minutes of the March 5-6, 2003 Land Use Commission meeting. Commissioner Desai seconded the motion, and said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that there would be a prehearing on April 2, 2003 on Maui regarding Docket No. DR02-26 Kuleana Ku'ikahi LLC. Mr. Ching also reported that there will also be a field trip that day to visit the site. A videotape will be made of the field trip, and a copy of the video will be sent to the commissioners who were unable to attend.

On April 9-10, 2003, the Commission will hold its hearing on said docket on Maui at the Wailea Marriott Outrigger Resort.

On May 8-9, 2003, site visits will be conducted for three upcoming petitions. The Commission will visit Maui on May 8, 2003 to view sites of the Upcountry Town Center and the Maui Business Park. On May 9, the Commission will visit Kauai to view the Kukuiula Development Company's project site.

On June 26-27, 2003, the Commission will likely hear Docket No. A00-730 Lanihau Properties LLC's petition for district boundary amendment.

### LEGISLATION

Mr. Ching reported on HCR 201 relating to investigation on the state land use policies and solid waste management programs. While the staff will not provide testimony on this proposal, it is mentioned given the topics before the Commission today.

### STATUS REPORT

#### A89-635 HENRY R. SHIGEKANE REVOCABLE TRUST, JOANNE H. SHIGEKANE REVOCABLE TRUST, ROBERT R. MIDKIFF, AND ELIZABETH M. MORRIS (Oahu)

Chair Ing announced that a status report will be made by representatives of the Petitioners on status of development and compliance with conditions pursuant to the conditions of approval imposed by the Commission's Findings of Fact, Conclusions of Law and Decision and Order issued on November 9, 1989, for the subject docket ("Decision and Order"). The subject docket involved the reclassification of approximately 9.917 acres from the Conservation District to the Urban District, and imposed eight (8) conditions of approval.

### APPEARANCES

Dickson Lee, Esq., representing Henry R. Shigekane Revocable Trusts and the Joanne H. Shigekane Revocable Trust ("Shigekane Trusts")

Donna Leong, Esq., representing Petitioners Robert R. Midkiff and Elizabeth M. Morris ("Midkiff/Morris")

Russell Tsuji, Esq., Deputy Attorney General representing the Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

## PUBLIC WITNESSES

1. Jerry (Gerard) Jervis, representing the Aha Hui Malama O Kaniakapupu (“Hui”)

Mr. Jervis introduced himself as the representative of the Hui and also introduced its chair, Mr. Mel Kalahiki. He stated that the Hui is tasked with the care and maintenance of the ruins of the summer palace of King Kamehameha III (“Kaniakapupu”), which abuts the Petition Area and described the site. He informed the Commission that the Hui was formed by the Department of Land and Natural Resources (“DLNR”) in 2002.

Chair Ing asked staff planner, Russell Kumabe, to provide the Commission with an orientation of the Petition Area. Staff described the Petition Area as being comprised of two (2) parcels, one owned by the Shigekane Trusts and the other owned by Midkiff/Morris. It was shown that the Midkiff/Morris parcel abuts the parcel containing Kaniakapupu.

1. Jerry Jervis (continued)

Mr. Jervis described significant features in the area such as a waterfall site near the Midkiff/Morris parcel and several burial sites located along the adjacent Lulumahu Stream. Co-Petitioner, Elizabeth M. Morris (“Ms. Morris”) owns the portion of the Midkiff/Morris parcel that was described, and Mr. Jervis showed an old government road leading to waterfall via an 1838 map. Upon inquiries from Commissioner Desai, Mr. Jervis stated that Midkiff/Morris families have maintained the waterfall area and that the burial sites were not a part of the Petition Area.

Mr. Jervis informed the Commission that Ms Morris had listed a 2.32-acre lot for sale for \$12 million (Refer to 3/27/03 transcripts for a more detailed account). He believed that this was contrary to intent and requirements of the Decision and Order. Condition Nos. 3 and 4 required Petitioners or their families to retain ownership of lots in the Petition Area through a twenty- (20-) year restriction or sale or conveyance to anyone outside the families. During this period, the respective families were to have the right of first refusal prior to sale or conveyance to third parties.

Mr. Jervis believed the intent of the Decision and Order, in reclassifying the Petition Area from Conservation to Urban, was to maintain the continued and proposed residential use of the Petition Area for Petitioner’s families. He believed that the listing of the Morris lot was contrary to the intent and requirements of the Decision and Order.

Mr. Jervis explained that their concerns, as an abutting landowner, were potential impacts to Kaniakapupu that may arise from the potential sale of the Morris

lot. He believed that a third party “outsider” may be insensitive to the cultural historical significance of the site. He acknowledged that the Midkiff/Morris have resided on the property for over 117 years and have been respectful of the Hawaiian values of the ruins of the former summer home of King Kamehameha III. Upon inquiry from Vice Chair Roehrig, Mr. Jervis clarified that the Hui did not know for certain if the potential new landowner will or will not be sensitive to the significance of Kaniakapupu, but they felt precautions needed to be taken.

Chair Ing asked what the Hui is proposing as protection measures after the 20-year restriction expires. Mr. Jervis responded that they are looking into creating a buffer area between the properties through government funding that may incorporate fencing or landscaping options.

Vice Chair Catalani acknowledged that the Commission was receiving a status report but asked what kind of relief was being sought by the Hui. Mr. Jervis responded that their first choice was to directly contact the Midkiff/Morris parties to discuss the situation; second choice was to have Mr. Anthony Ching, LUC Executive Officer, coordinate the discussions; and third choice was to file a Motion for Order to Show Cause. He acknowledged that Mr. Ching advised that the status report proceeding may provide opportunities for the Hui to inform the Commission of issues of concerns prior to its filing of the motion. Commissioner Coppa advised that the Hui discuss the issues it brought forth with the Midkiff/Morris parties. Mr. Jervis stated that the Hui is still willing to discuss the matter with the Midkiff/Morris parties prior to any filing, but if there is no response, then it will file its motion.

Vice Chair Roehrig inquired of any PASH rights in the Petition Area, in regard to access to Kaniakapupu and the waterfall and stream areas. Mr. Jervis did not know of any access rights, because the Hui was formed in 2002, and did not believe PASH pertained to the Petition Area. Upon inquiry from Vice Chair Roehrig, Mr. Jervis stated he believed that the Petition Area may have been part of Kaniakapupu as part of Crown Lands in the region.

A break was taken at 10:33 a.m., and the meeting reconvened at 10:50 a.m.

Chair Ing introduced Russell Suzuki, Deputy Attorney General, filling in for the Deputy Attorney General Diane Erickson.

Mr. Lee, representing the Shigekane Trusts, stated that it had filed its status report to the Commission on this matter and clarified it had 6 lots in its parcel (Refer to the Shigekane status report filed 3/25/03). Mr. Lee recited compliance with conditions of the Decision and Order and informed the Commission that the Shigekane Trusts was not planning any new developments in its portion of the Petition Area and will

continue with the existing residential use of its properties by its families. Upon inquiry from Vice Chair Roehrig, Mr. Lee believed that PASH was not applicable for the Shigekane parcel due to lack of trails in this portion and such resources were not identified in a prior archaeological survey. Mr. Lee also stated that he did not have any information of PASH rights for the Shigekane parcel.

Ms. Leong, representing Midkiff/Morris, clarified that the location of the Midkiff/Morris parcel in relation to Kaniakapupu was several hundred feet and not directly abutting each other. She pointed out that the petition was filed fourteen (14) years ago and since then Midkiff/Morris has been in the process of obtaining rezoning and subdivision approvals and unilateral agreements for 6 lots and servicing roadway. She clarified that lots are split between Midkiff and Morris, and that Ms Morris listed her properties for sale out of financial need incurred arising from the development of drainage, sewer, waterline, electrical, cable, communication and other infrastructure costs.

In her recital of compliance with conditions of the Decision and Order, Ms. Leong informed the Commission of an additional written agreement between Midkiff and Morris for the right of first refusal (Refer to 3/27/03 transcripts for a more detailed account). Chair Ing requested a copy of the agreement.

Ms. Leong stated that Mr. Jervis' representation that the Morris lot has direct impact upon Kaniakapupu is inaccurate, because of the distance from each site; a natural buffer of bamboo outgrowth at the common boundary; and the lack of any established entrance/exit from the Midkiff/Morris property to the site. She pointed out that the accessibility of the Board of Water Supply access road near the site may pose more impacts to Kaniakapupu than from the sale of Morris lot. She also objected to the standing of the Hui to file the motion, because the landowner of Kaniakapupu is the State of Hawaii and not the Hui.

Vice Chair Roehrig reminded Petitioners that under the Kapaakai decision, the Commission has a duty to enforce the provisions of the constitution relating to the cultural, historical and traditional Hawaiian rights of the Hawaiian community, and it goes on in perpetuity unless the court abolishes those rights, and that the Commission is mandated by that decision to address this issue. Upon inquiry from Vice Chair Roehrig, Ms. Leong clarified PASH analysis was more appropriate for action on a petition, and not applicable for a status report, but in relation to PASH, she reported that the Petition Area has been developed, and given the length of ownership, PASH rights may not apply to the Midkiff/Morris parcel.

Upon inquiry from Commissioner Sakumoto, Ms. Leong reported that Midkiff/Morris are interested in talking with the Hui but needed a bit more time.

Mr. Tsuji, representing the State Office of Planning, inquired of the respective Petitioners as to their intentions for selling the property to third parties now, and after 2008. Mr. Lee responded that presently there is no intent to sell any of the Shigekane properties, but cannot expand on what will happen after 2008.

Ms. Leong responded that Mr. Midkiff intends to keep his three lots in the family limited partnership. Ms. Leong further indicated that Ms. Morris may have to sell her lot(s) due to insufficient funds to pay her share of infrastructure costs.

Upon inquiry from Commissioner Coppa, Ms. Leong responded that an environmental assessment ("EA") was provided during the rezoning process. (Pursuant to LUC files, an EA was done and accepted for the Petition Area during the hearing proceedings of this docket).

Vice Chair Roehrig moved to enter into executive session to discuss this matter with the Commission's counsel. Commissioner Coppa seconded the motion, and said motion was unanimously approved by voice votes. The Commission entered into executive session at 11:34 a.m.

The meeting reconvened at 11:53 a.m.

Chair Ing announced that the matter would be continued to receive additional information from the Midkiff/Morris party such as a copy of the right of first refusal agreement between Midkiff and Morris and a copy of the current subdivision map.

Vice Chair Roehrig reiterated that due to the sensitivity of the location of the Midkiff/Morris property and the rarity of LUC reclassification of Conservation lands for residential purposes, the Commission relied upon the initial representations made by Midkiff/Morris to keep the property within the families. He believed that upon such representations, they functioned as the stewards of this property.

Mr. Lee received clarification from the Chair that since the Shigekane Trusts properties were not pursuing any development action or sale at this time, it was relieved from participating in further proceedings regarding this docket.

Chair Ing clarified that Midkiff/Morris should submit two (2) items: the right to first refusal agreement; and a current subdivision map. Upon receipt of these items, a meeting continuing this proceeding will be scheduled within 45 days.

A lunch break was taken at 11:59 a.m., and the meeting reconvened at 1:07 p.m.

SP87-362 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY & COUNTY OF HONOLULU (Oahu)

Chair Ing announced that this was an action meeting on Docket No. SP87-362 Department of Environmental Services, City & County of Honolulu (fka Department of Public Works, City & County of Honolulu)(Oahu) to consider a 21-acre expansion to the existing 86.5-acre Waimanalo Gulch Sanitary Landfill located within the State Land Use Agricultural District at Waimanalo Gulch, Honouliuli, Ewa, Oahu.

Chair Ing indicated that the Commission received letters dated March 5, 2003 and March 27, 2003 from City Councilman Nestor Garcia and State Senator Brian Kanno.

APPEARANCES

Eric Crispin, Director, Department of Planning and Permitting, City & County of Honolulu

David Tanoue, Esq., Deputy Corporation Counsel, representing Department of Planning and Permitting, City & County of Honolulu

Russell Tsuji, Esq., representing the Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Frank Doyle, Acting Director, Department of Environmental Services, City & County of Honolulu

Maile Chun, Esq.; Deputy Corporation Counsel, representing Department of Environmental Services, City & County of Honolulu

PUBLIC WITNESSES

1. Ernest Adaniya

Mr. Adaniya is a resident of the Waianae community and indicated that he takes his dead animals to the Waimanalo Gulch landfill because it is convenient and close to his home, and that it helps a lot where you can get rid of dead animals immediately to prevent health problems. He also indicated that he supports the continued operation of the landfill.

2. Greg Perry

Mr. Perry represented the Environmental Services and Training Center. Many of the resources its company utilizes at the Waimanalo Gulch are unique and allowed him to offer a feasible option for clients to manage their solid waste property. Without the Waimanalo Gulch, many projects and environmental services currently performed in

the past may not have been accomplished to the benefit of the State of Hawaii community. Without the Waimanalo Gulch Sanitary landfill, disposal options for the commercial generators of solid waste within the State of Hawaii would be extremely limited and could cause solid waste management costs to increase dramatically.

### 3. Darrell Bussell

Mr. Bussell works for Phillips Services located at Campbell Industrial Park. It is an industrial cleaning company with service lines associated with environmental cleanup and remediation. Phillips Services has been in operation since 1994 and performs work for all branches of the military, for the elevator industry, and cleans aboveground tanks and underground tanks, fuel tanks, etc. with the petroleum industry. It also performs cleaning of sewage lines and storm drains, performs work for the state and city and county and private industry as well, monitors well installations that are put at former underground storage tank sites producing soil cuttings. All of this type of work generates waste is analyzed to verify that it is non-hazardous, then profiled and upon approval for acceptance goes to Waimanalo Gulch Sanitary Landfill. Mr. Bussell indicated that if there was no local facility to accept this type of waste, businesses would be forced to pack and ship its waste to the mainland, which could be extremely costly. Mr. Bussell expressed that Waimanalo Gulch Sanitary Landfill provides a great service in accepting industrial waste from all aspects of industry, keeps business and personal costs down in the State of Hawaii for all residents, and prevents illegal dumping, in return helping keep the island clean from contamination.

### 4. Paul Kikina

Mr. Kikina represented Eckard Brandes Incorporated, which is an Industrial Pipe Cleaning Inspector and no-digging repair company that serves the State, Federal, and County and island chain. It uses Waimanalo Gulch to dispose of processed waste products and needs this service for its company's operations.

### 5. Lt. Commander Chuck Lewis

Lt. Commander Louis represented the U.S. Navy Region Hawaii whose mission is to provide support for home-ported ships, maintenance personnel, and also has a shipyard that provides repair and ship maintenance, which includes painting, rest decking, and so forth. An item necessary for the maintenance of the ships is sand blasting of the surfaces so that they can adequately be prepared for painting. The sand blasting itself creates a grit that is only accepted at Waimanalo Gulch. At the shipyard, approximately 1150 tons of this type of grit is generated each year. The cost that the Navy pays for disposing of it at Waimanalo Gulch is approximately \$95,000 per year. Lt. Commander Louis expressed that if the landfill were to close, the cost to send this to



the mainland would be approximately \$790,000. Therefore, cost would increase by almost \$695,000.

#### 6. Richard Payne

Mr. Payne represented Chevron Corporation, a Hawaii refinery, as an Environmental Specialist whose job is to manage both hazardous and non-hazardous waste and is sensitive to the concerns of the community. Chevron has made efforts to minimize waste to reuse and recycle whenever possible because it is very expensive to manage waste and is a high liability in incorrectly managing waste. Chevron produces both hazardous, non-hazardous, and green waste. All hazardous waste is sent off island, and non-hazardous waste, approximately 310 tons per year, which most are non-flammable. The flammable waste is segregated into H-power. Non-flammable waste is sent to Waimanalo Gulch. Chevron does not send any waste to an unapproved landfill. Waste is sent to the landfill five days a week. If that were to stop at any point, the process stops, and starts backing up very quickly. The types of waste sent to the landfill are special waste such as catalyst finds, asbestos, boiler ash, sandblast grit, etc. Special waste takes a planning of 24 hours notice in advanced. Its company need and depend on a close and well-managed landfill.

#### 7. Gail Butchard

Ms. Butchard is the district manager for Commonwealth Brands, a tobacco company that manufactures, distributes, and sells cigarettes. Its corporate office headquarters is in Kentucky and its manufacturing plant is in California. The company employs six people here in Hawaii. In 2002 it sold over a million cartons of cigarettes, and generated over \$16 million dollars in tax revenue for Hawaii. Cigarettes that are damaged or out of date are sent to the landfill, which gets crushed and buried. Because of the ATF requirements, it must crush and burry its product. Ms. Butchard expresses the need for its company to be able to use the Waimanalo Gulch Sanitary Landfill, as it is imperative to be able to continue use of the landfill because of federal requirements. H-power is not an option. The destruction of the product has to be done instantly and witnessed. To use the landfill on Oahu, it pays a special handling fee, in addition to paying for tonnage; therefore, keeping people employed which trickles down to spending, which generates tax revenue and generates living. If the landfill were to close, it would cost Commonwealth Brands \$60 a case (there are 30 cartons of cigarettes to a case) to send the unsold products to California to be crushed and buried, which is about the same cost in doing so here in Hawaii, which generates tax revenue for the benefit of the state.

Bert Saruwatari, Staff Planner, provide the Commission with a map orientation of the subject area.

Frank Doyle, Acting Director of the Department of Environmental Services, appeared on behalf of the Applicant. Mr. Doyle reported that operation of the landfill has been reduced to five years as requested by the City Council. He noted that the City's intent was to have the landfill expanded due to the 800 tons of municipal wastes that went into the landfill everyday. The goal was to significantly reduce the alliance on the landfill. He further noted that the City was presently negotiating expansion of H-power facility. An RFP was issued for new technologies. Responses to the RFP are due on May 14, 2003, and another RFP would soon be issued for people to use the new technology park located adjacent to H-power. Its purpose was to encourage technologies to recycle materials that were presently going to the landfill. Mr. Doyle pointed out that the City asked for a 5-year extension because of the time it will take to establish the new landfill. The City was in the process of establishing a Blue Ribbon Committee to assist the department in finding a new location for a landfill. Mr. Doyle added that the department was required by the Planning Commission to make a report by the end of the year as to the recommended site.

Vice Chair Catalani, referred to Councilmember Garcia's letter of March 5, 2003, mentioned that Councilmember Garcia proposed four conditions, three of which were part of the timeline that may or may not be strict enough for other members of the Commission. Vice Chair Catalani asked the Petitioner if the City was amenable to the first three conditions. Mr. Doyle responded that the City had no objections to these conditions.

Vice Chair Catalani noted that the fourth condition encouraged the use of alternate technologies. Mr. Doyle responded that they were in the process of pursuing alternate technologies.

Vice Chair Catalani noted that Senator Kanno's primary concern was the use of the ocean side of the landfill, and the community's concern about using that cell first. He asked the Applicant how the City would respond to that issue. Mr. Doyle explained that there were some concerns expressed as to how the City would begin to use an area, which was lower on the face. He added that the City proposed to work in the front of the landfill first, then continue to the back of the valley. He pointed out that this would not present a visual impact and would provide stability for the back end of the landfill.

In regard to obnoxious odors, Mr. Doyle reported that the City has used odor equipment, and as part of the landfill, will be putting in a methane gas collection system to reduce odor-producing materials. The City will mitigate further odor produced at the landfill both by processes currently in use as well as the installation of a gas recovery system and reduction of those materials presently going into the landfill.

Vice Chair Roehrig's expressed concern as to why the City did not make the decision to look for a new landfill site five years ago. Mr. Doyle responded that the City made efforts to address all of the issues, which explained why it had taken this long to get where they were today.

Vice Chair Roehrig referred to Appendix H, page I-3, of the Final Environmental Impact Statement (FEIS), which identified long-term cost effectiveness programs for the City & County to pursue. Vice Chair Roehrig asked if the City & County endorsed the recommendations listed. Mr. Doyle responded in the affirmative.

A break was taken at 2:12 p.m. The meeting reconvened at 2:25 p.m.

PUBLIC WITNESSES (continued)

8. Todd Apo

Mr. Apo represents the Ko O'lina Resort Marina, which sits across the street of the landfill and represents that it opposes of the landfill and appreciate the City's efforts of reducing its operation from 15 to 5 years. It supports finding an alternative party for landfill site.

9. Cynthia Rezendes

Ms. Rezendes is a member of the Waianae Neighborhood Board and opposes the expansion of the landfill. She has stated that it is about time the landfill is closed and would like to see it gone as soon as possible.

10. Kevin Mizuno

Mr. Mizuno represents the Pacific Commercial Services, which uses the landfill to dispose non-hazardous waste items. It supports that there should be a landfill. The spread of contamination is minimal. There is a lot of room further back to expand the landfill. If the expansion is not authorized, there would be no other landfill on Oahu to send non-hazardous waste.

Mr. Doyle indicated that monies generated by the landfill were sent to a solid waste special fund.

There was discussion and deliberation about the City's efforts to find a new landfill site no later than December 31, 2003. It was suggested by Commissioner Sakumoto that benchmarks be identified and used as a gauge to monitor the process as it moved forward.

The Applicant requested that the Blue Ribbon timeline chart be entered into the record. Chair Ing granted the Applicant's request and entered the chart as Exhibit No. 33 into the record. The State and City and County had no objections.

Russell Suzuki excused himself from the proceedings at 3:05 p.m. and returned to the proceedings at 3:07 p.m.

A break was taken at 3:23 p.m., and the meeting reconvened at 3:39 p.m.

Vice Chair Roehrig commented that he preferred to have a decision on the new landfill site made by the end of the year.

Mr. Eric Crispin, Director of the Department of Planning and Permitting (DPP), addressed the question that the Chair had posed with regard to why the SUP process was chosen for the landfill. Mr. Crispin explained that there was a difference between the existing land use and development on the mauka side of the highway. From a planning standpoint, he noted that the landfill was more consistent with the current designation than with urban. He added that once site was no longer in use, it could be landscaped and returned essentially to open space. Mr. Crispin further indicated that the expansion met the criteria for a state special use permit and referred the Commission to the DPP's report of February 2003 and the Planning Commission's report transmitted to the Land Use Commission.

Mr. Tsuji asked if the Blue Ribbon panel was an advisory panel or a decision-making panel. Mr. Doyle responded that it was an advisory to the Mayor and City Council, and selection would be made by the administration. He added that selection of the site would be reviewed based on the recommendations of the committee.

Vice Chair Roehrig noted that the Commission had received no input from the City Council at today's hearing.

Mr. Crispin responded that DPP and ENV could not speak for the City Council, but he noted that they have been working cooperatively with the City Council. He also noted that letters received were from the most interested council members, and that the record reflected input from the City Council as a whole.

Mr. Mitsuda provided testimony for the Office of Planning (OP) in support of the landfill expansion. Mr. Mitsuda also noted that OP was in agreement with the conditions as approved by the City Planning Commission as amended and supplemented by the State Land Use Commission staff.

Vice Chair Roehrig made a motion that the Commission grant the expansion of the landfill conditionally, and that the Commission provide an approval for the continuation of the Waimanalo Gulch Sanitary Landfill until December 31, 2003, and no longer. Vice Chair Roehrig stated that the Commission would not approve or disapprove of the City's 5-year plan to close the landfill but instead proceed on the assumption that the City will cease operation in 5 years. Vice Chair Roehrig included in the motion that conditions proposed by Councilmember Garcia be included utilizing the word "shall," and that with respect to Condition No. 4, the phrase "shall use to the extent feasible" with respect to the programs identified in Exhibit H, page I-3, of the FEIS be incorporated. Vice Chair Roehrig further noted that the intent of the motion was to require that by December 31, 2003, the City & County of Honolulu, through the administration and the City Council, put in place the necessary executive orders and ordinances to implement the goals itemized on page I-3. He added that it was also the intent of the motion to have the administration send to the council the new landfill site, and that the Council, by December 31, 2003, vote on the site.

Commissioner Fiesta seconded the motion.

Discussions on the motion were made by the Commissioners. Commissioner Desai expressed that he had a structural problem with saying that the Commission will allow the City to continue operation until the end of the year. He noted that if the City Council failed to vote on a new site, a question would be raised as to where the City would go from there.

Commissioner Sakumoto asked the Commission's counsel, Mr. Suzuki, whether the Commission had the authority to revoke the permit if the City failed to comply with the schedule for the landfill timeline. Mr. Suzuki responded that it was unlikely unless there was an automatic revocation provision for failure to comply with the conditions. Absent such a provision, a hearing to make a determination that the conditions have been met may require a hearing.

Commissioner Sakumoto noted that he agreed with Vice Chair Roehrig's concept to establish the benchmarks to monitor the progress against the schedule. He added that the Commission may have difficulty to control the 5-year period versus granting a one-year permit. Commissioner Sakumoto suggested that the matter be continued to provide time to determine what the major benchmarks should be.

Vice Chair Roehrig expressed concern that the matter had not been properly tended to since 1989 when the original application was granted by this Commission. He believed that there was a consensus that an incremental approval was needed for lack of better benchmarks.

Commission Coppa asked counsel if there was something to ensure that the first milestone was met and yet approve the 5-year plan.

Chair Ing reminded the Commission that the first nine conditions were the current conditions except with the paraphrasing on Condition No. 7. The Planning Commission of the City & County of Honolulu added Condition Nos. 10 and 11, and the Commission staff added Condition No. 12.

Mr. Suzuki commented that a commitment from the City Council or administration was needed. He added that the Commission needed to have formal acknowledgement that the City would commit to an implementation plan that was going to be followed. Mr. Suzuki's suggestion was to conditionally grant a 5-year special permit with the condition that by December 31, 2003, the City submit an approved implementation plan approved by the City Council and the Mayor that can be presented to the Commission as their commitment. He added that if the City Council did not approve the plan, the City could come back to the Commission for relief of conditions.

Vice Chair Roehrig expressed concern that Condition No. 12 appeared to supersede the condition that requires the Applicant to perform by December 31, 2003.

Chair Ing clarified that Condition No. 12 has the Commission's standard condition that was put in every order.

Vice Chair Roehrig further indicated that since it was a conditional permit, No. 12 should say "In addition to the above conditions, they shall provide this information to make it clear that this is a supplemental condition and not one that supersedes the December 31<sup>st</sup> clause that was recommended by counsel."

Chair Ing suggested that the additional condition would be new Condition No. 12 and the proposed Condition No. 12 would be Condition No. 13 with the understanding that upon the conditions being met, then the new Condition No. 13 would kick in.

Vice Chair Catalani excused himself from the proceedings at 4:50 p.m. and returned to the proceedings at 4:52 p.m.

A break was taken at 5:00 p.m., and the meeting reconvened at 5:12 p.m.

Executive Officer Anthony Ching repeated the motion to grant the application to expand the Waimanalo Gulch Sanitary Landfill with the following conditions:

1. If by December 31, 2003 a site has not been selected as referenced by Petitioner's Exhibit 33 and approved by the City Council, then the special permit shall immediately expire.
2. In the event that Condition No. 1 is satisfied, then Condition No. 12 shall become effective.

Other conditions included Conditions 3 through 15 as noted by Commission staff. Conditions 16 through 20 were as described by Councilmember Garcia's March 5<sup>th</sup> letter to the Commission with the inclusion of the word "shall" in items 1, 2, and 3, and with item 4 incorporating the phrase "shall use to the extent feasible alternative technologies." Condition 21 would incorporate the seven bullet points identified in Exhibit H, page I-3, of the FEIS.

Commissioner Fiesta seconded the motion.

Chair Ing clarified that there were two dates. One dated, December 1, 2003, identified when the recommendation was passed to the City Council. The other date, December 31, 2003, identified when the City Council was to make its decision.

Commissioner Yukimura indicated that he would vote against the motion. He stated that he did not have a problem with putting conditions on staff and agencies, but that he had a difficult time doing the same with the City Council. He further indicated that he believed in the sincerity of the DPP and ENV to close the landfill in 5 years.

Commissioner Coppa agreed that there should be a recommendation in front of the City as one of the milestones that there be a selected site.

Commissioner Coppa moved for an amendment that at minimum, a recommendation should be in front of the City Council by December 31, 2003, and that some checkpoints be incorporated. The motion was seconded by Commissioner Yukimura.

Further discussion and deliberation were made by the Commissioners. Commissioner Fiesta commented that he had a problem with giving the council or the Mayor more time than what they needed, and noted that a representative of the City Council should be here at this meeting. Commissioner Fiesta further indicated that he was in favor of the original motion.

Commissioner Desai indicated that he was in favor of the amendment made by Commissioner Coppa and seconded by Commissioner Yukimura, because he believed

that the Commission could hold the City Council or the City administration to the conditions.

Commissioner Coppa clarified that his amendment would require that the Blue Ribbon Committee will submit a recommendation before the City Council by December 1, 2003, and that the City Council select a new site by June 1, 2004.

Chair Ing indicated that the Commission would vote on Commissioner Coppa's second amendment to the motion.

The Commission was polled as follows:

Ayes: Commissioners Coppa, Desai, Fiesta, Sakumoto, Catalani, Roehrig, and Ing

Nays: Commissioner Yukimura

The motion passed with 7 ayes, 1 nay, and 1 absent.

On the motion by Vice Chair Roehrig as amended by Commissioner Coppa's motion, the Commission was polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Desai, Coppa, Catalani, Sakumoto, and Ing

Nays: Commissioner Yukimura

The motion passed with 7 ayes, 1 nay, and 1 absent.

The meeting was adjourned at 5:40 p.m.