

LAND USE COMMISSION  
MEETING MINUTES

May 14, 2009

Department of Hawaiian Home Lands  
Hale Kalaniana`ole  
Hale Pono`i Meeting Room  
91-5420 Kapolei Parkway  
Kapolei, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha  
Ransom Piltz  
Vladimir Devens  
Thomas Contrades  
Kyle Chock  
Lisa Judge  
Normand Lezy  
Nicholas Teves, Jr.  
Reuben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Darlene Benton, Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Stephen Crowell

**CALL TO ORDER**

Chair Kanuha called the meeting to order at 10:15 a.m.

**ADOPTION OF MINUTES**

Commissioner Judge moved to adopt the April 30-May 1, 2009, minutes of the Commission. Commissioner Piltz seconded the motion. The motion was unanimously approved by voice votes.

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson announced that the Commission will conduct a site visit on June 3, 2009, on Maui and have a hearing on the following day on Maui. The Commission will then continue its hearing on the D.R. Horton-Schuler Homes docket as well as consider other matters on June 5 on Oahu.

## **HEARING**

### **A08-780 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (O`AHU)**

Chair Kanuha stated that this was hearing to consider the reclassification of approximately 200.622 acres of land from the Agricultural District to the Urban District at Waimānalo Gulch, Honouliuli, `Ewa, O`ahu, Tax Map Key: 9-2-03: 72 and 73.

## **APPEARANCES**

Gary Takeuchi, Esq., represented the Department of Environmental Services, City and County of Honolulu

Jesse K. Souki, Esq., represented the Department of Environmental Services, City and County of Honolulu

Don Kitaoka, Esq., represented the Department of Planning and Permitting, City and County of Honolulu

Bryan C. Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning

Mary Alice Evans, State Office of Planning

Colleen Hanabusa, Esq., represented Intervenors

Ken Williams, Intervenor

Maile Shimabukuro, Intervenor

Chair Kanuha announced the following significant actions in the docket to date:

- 1) On December 2, 2008, the Commission received Petition for Land Use District Boundary Amendment; Verification; Exhibits "1" – "32"; and Certificate of Service.
- 2) On January 30, 2009, the Commission received from Petitioner, Exhibit 32-A; and Exhibit 1-A.

- 3) On February 5, 2009, the Executive Officer sent a letter to Petitioner deeming the Petition a complete filing and accepting it for processing as of February 2, 2009.
- 4) On March 18, 2009, the Commission received the Position Statement of the Office of Planning Recommending Denial of the Petition.
- 5) On April 2, 2009, the Commission and staff took a site visit to the Waimānalo Gulch Sanitary Landfill (WGSL) and the City's H-POWER facility.
- 6) On April 8, 2009, the Commission received Petition for Intervention from Ko Olina Community Association and Colleen Hanabusa.
- 7) On April 13, 2009, the Commission received Petition for Intervention from Maile Shimabukuro.
- 8) On April 14, 2009, the Commission received Office of Planning's Statement of No Opposition to Intervenors Ko Olina Community Association, Colleen Hanabusa and Maile Shimabukuro's Petitions for the Intervention.
- 9) On April 15, 2009, the Commission received Department of Environmental Services, City & County of Honolulu's Memorandum in Opposition to Ko Olina Community Association and Colleen Hanabusa's Petition for Intervention.
- 10) On April 16, 2009, the Commission granted the Petition to Intervene filed by Ko Olina Community Association and Colleen Hanabusa.
- 11) On April 21, 2009, the Commission held a Pre-Hearing Conference on this docket.
- 12) On April 21, 2009, the Commission received from DPP, David K. Tanoue, Statement of Position of the Department of Planning and Permitting recommending approval of the Petition.
- 13) On April 22, 2009, a Pre-Hearing Order was issued to the parties.

- 14) On April 23, 2009, the Commission received Department of Environmental Services, City & County of Honolulu's Memorandum in Opposition to Maile Shimabukuro's Petition for Intervention.
- 15) On May 1, 2009, the Commission granted the Petition for Intervention filed by Maile Shimabukuro.
- 16) On May 5, 2009, the Commission received Department of Environmental Services, City & County of Honolulu's List of Exhibits; Petitioner's Exhibits "1" –"18"; List of Witnesses.
- 17) On May 11, 2009, the Commission received testimony from Iron Workers Stabilization Fund, T. George Paris, Executive Managing Director.
- 18) On May 12, 2009, the Commission received testimony from Sara and Wm. (Andy) Anderson Barnes.
- 19) On May 13, 2009, the Commission received testimony from Marriott's Ko Olina Beach Club, Edgar Gum, General Manager.
- 20) On May 13, 2009, the Commission received testimony from Mokulua Contracting LLC, Ka`eo Gouveia, CEO/General Manager.

Chair Kanuha then asked Mr. Takeuchi if the Commission staff informed him of the Commission's policy regarding the reimbursement of hearing expenses. Mr. Takeuchi responded in the affirmative. He added that he will be seeking a waiver of the fees based upon Petitioner's standing as a public entity seeking approval for public purposes, and will file a motion to that effect at the appropriate time.

The parties were then given an opportunity to provide initial opening statements.

Mr. Takeuchi provided a brief background of the events leading up to the filing of the Petition and the basis for the requested expansion of the WGSL.

Mr. Kitaoka reiterated his previous comments on the distinction between the Department of Environmental Services, Petitioner herein, and the Department of Planning and Permitting (DPP). He noted that the DPP supported and

recommended approval of the Petition because the WGS� is consistent with the City's objectives, plans, and policies.

Mr. Mayer summarized the position of the Office of Planning (OP). He pointed out that the OP has recommended denial of the Petition for several reasons which were outlined in OP's Position Statement. Among the concerns he noted were that Petitioner had not represented what urban uses will exist in the Petition Area following the closure of the WGS�. In particular, he pointed out that because of settling and other stability issues, significant engineering challenges would exist if the Petition Area were subsequently used for urban structures. He argued that remediation would be needed at an indeterminate cost. Another concern identified by Mr. Mayer was the presence of volatile gases that build up underground and which could pose a significant risk to the public. He also pointed out that the public itself could pose a risk to post-closure monitoring systems.

Mr. Mayer further alluded to the potential impacts of the WGS� expansion to the two low-density residential communities across Farrington Highway and the Makaiwa Hills development adjacent to the Petition Area. He noted that the reclassification of the Petition Area to the Urban District would eliminate the opportunity for existing and future residents of these developments to testify on these impacts before the Planning Commission and the Land Use Commission. He also argued that this combined with the City's reneging on its past commitments to close the WGS� could undermine the public trust in government and in the land use entitlement process. He further pointed out that the Petition Area was placed within the Agricultural and Preservation area on the Urban Land Use Map of both the current and draft Ewa Development Plan and was also placed within the Preservation Area on the Phasing and Open Space Maps on these same plans.

With respect to the Hawai'i State Plan, Mr. Mayer contended that the WGS� expansion was not consistent with the objectives and policies for solid and liquid wastes, in particular, subsections 226-15(b)(2) and (b)(3), Hawai'i Revised Statutes (HRS). He additionally noted that unlike a district boundary amendment, a special permit must be reviewed and renewed every five years. The requirement for a periodic review would maintain the pressure on the City to continually improve its diversion and recycling programs. It was OP's position that a district boundary amendment would eliminate any future reviews and reduce the pressures to improve. He therefore asserted that the district boundary amendment was inconsistent with the State Plan.

Mr. Mayer further argued that the WGS� expansion was inconsistent with the Urban District standards, in particular, subsections 15-15-18(1) and (3), Hawai'i Administrative Rules (HAR). He maintained that the WGS� expansion should be allowed for a temporary period by special permit and not by a permanent change in the Petition Area's classification. In summary, he pointed out that (1) the WGS� expansion was a temporary use and allowable by a special permit; (2) future uses would be appropriate for the Agricultural District; (3) the unprecedented nature of the reclassification request was an apparent hedge to the risk that the special permit application that was filed concurrently may be unsuccessful; (4) no bona fide future urban uses were being proposed; (5) alternative solutions to Oahu's solid waste stream have not been fully pursued; and (6) the success of this Petition would further eliminate the motivation to do so.

Ms. Hanabusa stated that she shared many of the concerns voiced by OP; however, she noted that she was not necessarily in agreement with OP's argument that the district boundary amendment process was not the proper process. Ms. Hanabusa related certain historical information on the WGS� and the previous promises by the City to the community to close the landfill. She expressed concerns about the slope stability issues associated with the landfill, the impacts of blasting, and the potential loss of traditional and cultural properties. She also raised concerns about the proximity of the landfill to the Makaiwa Hills development and the inability of the City to properly address stormwater runoff at the WGS�.

Following the parties' initial opening statements, the Commission heard from the public witnesses in this matter.

#### PUBLIC WITNESSES

1) Kahu Victor Kila

Mr. Kila noted, among other things, that he served on the Nanakuli-Maili Neighborhood Board No. 36 and was the chair for the Department of Health and Human Service and Public Safety. He testified that he was in support of the WGS� expansion. He questioned whether there were any alternative landfill sites to the WGS�. He expressed concern about the health problems that affected residents in the Nanakuli area with regard to the PVT Landfill.

Mr. Yee asked Mr. Kila if he was a member of the Nanakuli-Mā`ili Neighborhood Board No. 36. Mr. Kila affirmed his membership on the board. Mr. Yee noted that he received a document dated March 16, 2009,

containing a motion which supported the special use permit for the WGSL expansion. He asked Mr. Kila if he remembered the wording of the motion. Mr. Yee pointed out that the document before him did not describe the district boundary amendment proceeding. He asked whether that proceeding was not part of the actual motion. Mr. Kila responded in the affirmative. Mr. Yee then questioned him if he knew the difference between the special use permit process and the district boundary amendment process. Mr. Yee clarified that he was attempting to find out the basis for the motion, i.e., whether the motion covered only the special use permit, which was one process, or whether the motion also covered the district boundary amendment process, which was a different process. Mr. Kila noted that the board was currently working on that.

There were no further questions for Mr. Kila.

2) John Dudoit, Jr.

Mr. Dudoit expressed concerns about the PVT Landfill and how his family members have been affected by its operation. He questioned whether the PVT Landfill would take the place of the WGSL if WGSL closed. He supported the WGSL expansion.

Commissioner Lezy asked Mr. Dudoit whether anyone told him that the PVT Landfill would take the place of the WGSL in the event the WGSL closed. Mr. Dudoit stated that it was just his concern.

There were no further questions for Mr. Dudoit.

3) Arviella Keli`i

Ms. Keli`i stated that she was against the closing of the WGSL. She questioned whether there were any alternatives to the WGSL. She also expressed concerns about the PVT Landfill.

4) Patty Kahanamoku Teruya (submitted written testimony)

Ms. Teruya spoke in favor of the WGSL expansion.

Mr. Yee asked Ms. Teruya, as the chair of the Nanakuli-Mā`ili Neighborhood Board No. 36, about the action taken by the board in regard to the WGSL

expansion. Ms. Teruya clarified that the board has not yet voted on the question of whether to support the district boundary amendment. She noted that the board's vote was only to support the special use permit. She also stated that she understood the difference between the two processes.

There were no further questions for Ms. Teruya.

Chair Kanuha declared a recess at 10:59 a.m. The hearing resumed at 11:16 a.m.

5) Bailey Barnes

Ms. Barnes testified that she wanted to see the WGS� remain open beyond the expiration date. She also voiced concern about the PVT Landfill.

There were no questions for Ms. Barnes.

6) Kanakanai Segā

Mr. Segā stated that he was against the WGS� closing down.

There were no questions for Mr. Segā.

7) Alice Greenwood

Ms Greenwood testified that she opposed the WGS� expansion.

There were no questions for Ms. Greenwood.

8) Lily Cabinatan

Ms. Cabinatan provided testimony as it related to the toxins and free radicals associated from the operation of landfills.

There were no questions for Ms. Cabinatan.

9) Kurt Fevella

Mr. Fevella supported the WGS� expansion. He noted that the technology used at the landfill was state-of-the-art.



There were no questions for Mr. Fevella.

10) Arviella Benavides

Ms Benavides testified that she opposed all landfills in the area. She preferred that the PVT Landfill close rather than the WGS�. She supported the WGS� expansion.

There were no questions for Ms. Benavides.

11) Karen Young

Ms. Young testified in opposition to the WGS� expansion. She raised concerns about the PVT Landfill, which was located near her workplace, the Wai`anae Comprehensive Health Center. She also related the health concerns experienced by residents in the area. She stated that change should be evaluated with the utmost concern for the people who will be affected, which was the whole west coast of Oahu. As with the previous testifiers, she also raised concern about waste being diverted to the PVT Landfill in the event the WGS� closed. She also stated that the issues of violations needed to be addressed at the WGS� before any changes were made.

Commissioner Judge asked Ms. Young whether she had addressed her concerns with the Department of Health (DOH). Ms. Young responded that she was testifying as a community member, not as a representative of any organization. She noted that while she worked for the health center, she did not represent them at this time. She confirmed that they have expressed alarm throughout the years to the DOH and the military. While they may have reviewed the situation, she was not sure if that has resulted in any action at all.

There were no further questions for Ms. Young.

12) Roy Nihoa

Mr. Nihoa raised concerns about the PVT Landfill. He related the health issues that his family members have faced. He believed that if the WGS� closed, these problems would intensify. He supported the WGS� expansion.

There were no questions for Mr. Nihoa.

13) Mel Kahele

Mr. Kahele pointed out that in the event the WGS� closed, no one knew if the PVT Landfill would take its place, and that was the problem. He spoke about previous attempts to establish landfills along the Leeward Coast. He believed that the matter was about respect, and that Hawaiians were not second class citizens. Mr. Kahele then read Mr. Paris' written testimony into the record.

There were no questions for Mr. Kahele.

14) John Kaopua

Mr. Kaopua noted that the WGS� was a state-of-the-art run facility unlike the PVT Landfill and provided examples to support his assertions.

Ms. Hanabusa asked Mr. Kaopua to clarify his position on the WGS� expansion. He responded that he rested his faith on the Commission to make the right decision. Ms. Hanabusa stated that she was still unclear. Mr. Kaopua stated that he was here to provide the Commission with the history and knowledge of the area as a kupuna. He asserted that kupuna did not need to provide any type of scrutiny as was being requested.

Ms. Hanabusa asked Mr. Kaopua to confirm that he was a sitting member of the Planning Commission, which was considering a special use permit for the WGS� expansion. She questioned whether his term would expire before a decision would be made on that application. He reserved comment on her question. He subsequently affirmed that he was a sitting member on the Planning Commission. Upon additional questioning, he stated that his term on the Planning Commission would not expire before a decision would be rendered on the special use permit application by the Planning Commission.

Mr. Takeuchi asked Mr. Kaopua to clarify his testimony about contaminated waste from Bellows going to the WGS�. Mr. Kaopua clarified that he meant the contaminated waste was going to the PVT Landfill.

There were no further questions for Mr. Kaopua.

15) Beverly Munson

Ms. Munson testified in opposition to the WGS� expansion. She believed that all landfills should close in the State. She noted that there were limited space and limited resources and landfill operations brought about pollution and health issues. On Oahu, she pointed out that the problem was especially acute and no alternative landfill site has been found. She also remarked that Petitioner has made little progress to address alternatives to landfilling and she looked to the Land Use Commission to hold Petitioner accountable to do its job. She further questioned the accuracy of statements made by previous testifiers that held the WGS� up to be a state-of-the-art facility.

There were no questions for Ms. Munson.

Chair Kanuha announced that before the Commission recessed for lunch, he would entertain a motion to go into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Piltz thereafter moved to go into executive session. Commissioner Contrades seconded the motion.

The Commission exited the hearing at 12:16 p.m. and entered executive session immediately thereafter.

The hearing reconvened at 2:10 p.m.

Chair Kanuha continued the receipt of public testimony in this matter.

16) Kimo Keli`i

Mr. Keli`i testified in support of the WGS� expansion. He noted that he had yet to hear from State and City elected officials about alternative sites or methods. Although his preference was for the closure of all landfills along the Leeward Coast, until there were concrete answers, he believed that the landfill should remain open and be expanded.

There were no questions for Mr. Keli`i.

Commissioners Lezy and Devens entered the proceedings at 2:15 p.m.

Commissioner Wong entered the proceedings at 2:16 p.m.

Bert Saruwatari, staff planner, provided the Commission with a brief map orientation of the Petition Area.

DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU

Mr. Takeuchi described Petitioner's List of Exhibits and Exhibits 1 through 18. At this time, he moved to have the exhibits entered into evidence.

Mr. Kitaoka had no objections.

Mr. Yee pointed out that while Petitioner served the Exhibit and Witness Lists on the Department of the Attorney General, they were not served on OP as was the customary practice by all petitioners. He noted that the prehearing schedule for these documents was pretty tight because of the logistics of this case, so they did not have the normal amount of time to review the documents or the witness statement. He stated that OP would not object to the admission of Petitioner's exhibits, but because OP was not aware of the departure in the customary practice of serving OP, OP has not had an opportunity to assist him in preparing for his examination of Mr. Takeda. As such, Mr. Yee stated that he would be reserving the right to recall Mr. Takeda after OP had a further opportunity to review the documents, including Mr. Takeda's written testimony.

Chair Kanuha noted Mr. Yee's comments.

Ms. Hanabusa stated that she had no objections; however, she wanted to ensure that the record was clear that the underlying environmental impact statement was part of this record. She was informed that it was.

Chair Kanuha admitted Petitioner's Exhibits 1 through 18 into the record.

At this time, Mr. Takeuchi offered Mr. Takeda as an expert in urban and regional planning.

There were no objections by the parties.

Before Mr. Takeda began his testimony, Mr. Takeuchi described the events that have transpired regarding the WGSL since its inception to the present situation and the efforts undertaken by the City to alleviate the need for the landfill.

Commissioners Chock and Lezy exited the proceedings at 2:51 p.m. Commissioner Lezy returned to the proceedings at 2:53 p.m. Commissioner Chock returned to the proceedings at 2:54 p.m.

Mr. Takeuchi pointed out that Mr. Takeda's written direct testimony was presented as Petitioner's Exhibit 1 and his curriculum vitae was identified as Petitioner's Exhibit 2. Mr. Takeuchi asked Mr. Takeda to summarize the content of his written direct testimony with particular regard to the other exhibits that were provided.

Ms. Hanabusa made a point of inquiry. She noted that the parties had the written testimony of Mr. Takeda, which was an exhibit. To the extent that he was not going to testify directly from it, she asked whether the parties could have an affirmation from him that what was stated in his testimony he would so state under oath. Mr. Takeda responded that he would.

Mr. Takeda proceeded with a summary of his testimony referencing Petitioner's Exhibits 3 through 18. He also highlighted various portions of his testimony relating to the topography, soils, climate, and botanical resources of the Petition Area, and compliance of the proposed reclassification to the Commission's decision-making criteria.

Commissioner Teves exited the proceedings at 3:21 p.m.

Chair Kanuha called a recess at 3:23 p.m. The hearing resumed at 3:40 p.m. with Commissioner Teves present.

Mr. Takeda continued with his presentation. Upon questioning by Mr. Takeuchi, Mr. Takeda confirmed that the PVT Landfill referenced by some of the public testimony was located in the Urban District. As far as future uses, he explained that if the WGS� was converted to open space at the end of its useful life and used for recreational functions such as future trails and other types of recreational-related activities, that would not be inconsistent with the way such urban designated park lands would be used.

Mr. Takeda concluded that in his professional opinion, the WGS� expansion satisfied the decision-making criteria, and therefore he recommended reclassification of the Petition Area from the Agricultural District to the Urban District.

Mr. Kitaoka asked Mr. Takeda to clarify whether a passive park was included as a future urban use for the Petition Area. Mr. Takeda clarified that it was. He noted that Kaka`ako Park qualified as such a park. He noted that the site of the Kaka`ako Park served as a prior landfill. Mr. Kitaoka then asked him whether there were any attendant concerns about the use of a former landfill as a passive park. Mr. Takeda responded that whenever a landfill closed, it was required by the EPA to undergo not less than 30 years of environmental monitoring, both for the stability of the site as well as for any potential contaminants in the form of leachate, gases, etc., coming from the site. He noted that at the end of 30 years, the site would stabilize and then be available for other uses contingent on City review of the site to ensure that it was safe for passive recreational activities.

Mr. Kitaoka continued his cross-examination of Mr. Takeda. Mr. Kitaoka questioned him as to whether he or his firm was familiar with any successful incidents of reclaimed landfill for passive park purposes. Mr. Takeda noted that Kaka`ako Waterfront Park was one example. He added that portions of Ala Moana Park were once a landfill. Mr. Kitaoka next asked him whether there were any other urban uses that can be envisioned for a reclaimed landfill. Mr. Takeda pointed out that it went with the creativity that was available to the community in looking at what can be recovered from the site in a safe manner.

Mr. Kitaoka then asked Mr. Takeda to describe the alternatives to a landfill in the event of a natural disaster. Mr. Takeda explained that once the capacity of a landfill was identified, the rate at which such capacity was exhausted was a function of the amount of waste generated over time. He further explained that a landfill may get filled up a lot faster depending on the state of the economy or a natural disaster. He pointed out that in those times, the landfill became a valuable resource. When large areas need to be cleaned up and public health and safety need to be maintained, he remarked that a repository for demolition and clean up debris was needed. Upon hearing his response, Mr. Kitaoka reiterated his question. Mr. Takeda responded that if there were no landfills and there was a large-scale disaster, there would be a severe problem because there would be no place to put the refuse. He explained that the debris could not be incinerated or otherwise disposed of using alternative technologies all at one time. Mr. Kitaoka then asked him for his assessment of the current alternative technologies that were in place in other jurisdictions. Mr. Takeda remarked that an analysis for looking at alternative technologies or alternative landfill sites was undertaken for this project by Pacific Waste Consulting Group. He deferred to them for the answer, but his review of the work performed by the consultant group told him that there were presently no existing full-scale facilities that had not functioned without any kind of severe

operating problems. He noted that the City had a small-scale plasma arc incinerator which had a processing capability in the magnitude of ounces or pounds rather than in the magnitude of hundreds of thousands of tons, which was what the City really needed.

Upon further questioning by Mr. Kitaoka, Mr. Takeda confirmed that the WGS� expansion was consistent with the `Ewa Development Plan (DP), and further that the WGS� facility was indicated in the Public Facilities Map for the `Ewa DP. Mr. Kitaoka then asked him whether he has been involved in the five-year review of the revision of the `Ewa DP. Mr. Takeda responded in the negative. However, he understood that the City was close to completing the present review. Upon additional questioning, Mr. Takeda confirmed that the WGS� expansion was consistent with zoning because it was a public use, and that it was a permitted use in any zone because it was a public use. He further confirmed that the Petition Area was not in the Special Management Area. Mr. Kitaoka next asked him whether there was anything in City policies or plans that may be blatantly inconsistent with the use that was being proposed. Mr. Takeda pointed out that Petitioner was before the Commission to request a change from the Agricultural District to the Urban District. He noted that in relation to the City and County, the designation of land uses may not always be consistent simply because it may be that different policies were being developed at different periods of time. He indicated that there were many places throughout the island where there may not be a consistency of zoning with the land use district classification.

Continuing with his cross-examination, Mr. Kitaoka commented that this side of the island became one of directed growth, which was not necessarily true when the WGS� started. Mr. Takeda agreed. Mr. Kitaoka then asked whether Mr. Takeda agreed that the WGS� expansion was now consistent with that directed growth. Mr. Takeda remarked that when the WGS� first started up in 1989, there was not that much growth in the area occurring. He noted that the area of Kapolei grew from the seventies to 2004 by leaps and bounds, so the land use context in which the WGS� grew did not match with what has happened to it today. He added that while within that previous context the WGS� was in the Agricultural District, it was not surrounded by principal agricultural uses today.

Mr. Kitaoka then asked Mr. Takeda whether the WGS� proximity to H-POWER was significant. Mr. Takeda responded that it was significant only to the extent that the ash and residue that were generated from H-POWER needed to be disposed of at a landfill facility, and the route that was taken to dispose of these byproducts was from Campbell Industrial Park to the WGS�. He explained that if

the landfill was located somewhere else, the route would be longer or shorter depending on the location. Mr. Kitaoka next asked whether plasma arc technology would take care of the ash problem. It was Mr. Takeda's understanding that there were no alternative energy technologies that will completely eliminate the generation of some waste byproduct that could not be further recycled, reused, or otherwise recovered in some fashion.

Mr. Kitaoka had no further questions for Mr. Takeda.

Mr. Yee asked Mr. Takeda whether he prepared the Final EIS in this case. Mr. Takeda responded that he prepared the EIS along with his project team comprised of various subconsultants. He added that they were also represented in the review by a team of legal consultants. Turning to page 20 of Mr. Takeda's written testimony, Mr. Yee asked whether he deferred to his consultants for discussion of the various subject matters. Mr. Takeda responded in the affirmative. Mr. Yee then asked whether he knew if there will be a witness who will testify on the operation and management of the WGS. Mr. Takeda responded in the affirmative. Mr. Yee next asked whether he knew if there will be a witness who will be testifying on behalf of the Department of Environmental Services to direct questions about the City's efforts at recycling and other alternatives to a landfill. Mr. Takeuchi interjected and pointed out to the provisions outlined in the Prehearing Order. Mr. Takeuchi noted that that he will attempt to have a number of expert witnesses who will cover some of these major areas; however, he could not say who they were at this time. He added that he was lining up the appropriate people. In response, Mr. Yee clarified the basis for his line of questioning to Mr. Takeda regarding the availability of witnesses for the various subject matters. Mr. Yee reiterated his intention to reserve the right to recall Mr. Takeda if necessary. Mr. Takeuchi remarked that Mr. Takeda's written direct testimony was served on the attorney of record as required and it was timely served on May 5<sup>th</sup>, so he was not at all clear under those circumstances that Mr. Yee should have the right to recall Mr. Takeda. He added that Mr. Takeda was available now and Mr. Yee should be able to ask him whatever questions he wanted, and to the extent Mr. Takeda could not answer those questions and would defer to another expert, he could state as much. At this point, Mr. Yee reiterated his earlier argument about the lack of service of Mr. Takeda's written direct testimony on OP. Upon questioning by Chair Kanuha, Mr. Yee stated that he did receive a copy of the testimony. Chair Kanuha then asked Mr. Yee whether there was no coordination with OP between the time he received the copy of the testimony (May 6<sup>th</sup>) and yesterday to prepare himself to cross-examine Mr. Takeda. Mr. Yee responded that he was working on it. He only discovered that OP had not received the testimony yesterday when he went to their office to consult



about this cross-examination, and they tried to work on it. He admitted that he had knowledge of the contents of the exhibit. Chair Kanuha next asked Mr. Yee whether based on this knowledge, he was able to begin cross-examination of Mr. Takeda. Mr. Yee responded in the affirmative.

With that, Mr. Yee began his cross-examination of Mr. Takeda. Upon questioning, Mr. Takeda confirmed his previous testimony that a park could be done in an urban setting. He also confirmed that an open space recreational park would be a permissible use within the Agricultural District, and that the use of the Petition Area as an open space recreational park would be consistent with an agricultural classification. Upon additional questioning, Mr. Takeda confirmed that currently the WGSL was operating under a special use permit, and that there was a process to get a new special use permit to allow the continued operation of the WGSL that was pending before the City and County. He also confirmed that the WGSL could continue to operate under a special use permit. Mr. Yee then asked him to confirm whether a special use permit was typically valid for a period of time. Mr. Takeda stated that he had seen permit examples in the past where it was not limited. He acknowledged that he had seen special use permits with some period of time. Mr. Yee next asked whether the permit would either have to be renewed or a new permit would have to be obtained after that period of time. Mr. Takeda responded affirmatively. Mr. Yee then asked what powers were available to the City if there was a violation of a special use permit. Mr. Takeda noted that the City always has the right to revoke the permit. He added that if the violation was limited to some sort of civil damage, the City could impose a fine and if it was more severe than that (i.e., injury, loss of life), criminal damages. Mr. Yee next asked him what the Commission was able to do to enforce the violation of a district boundary amendment condition. Mr. Takeda responded that it would be a function of the outcome of the decision-making power of the Commission. Mr. Yee then asked Mr. Takeda if the Commission would be allowed to revert the property to its original or other appropriate classification. Mr. Takeda responded that whatever decision was rendered by the Commission was the decision. Mr. Yee further asked whether it was true that the Commission did not have the power to fine for violations of a district boundary amendment decision. Mr. Takeda stated that he did not know.

Mr. Yee continued with his cross-examination by asking whether Mr. Takeda knew that the WGSL will have, just by the nature of a landfill, a limited period of time in which it will be operating until it reached capacity. Mr. Takeda responded affirmatively. Mr. Yee then asked Mr. Takeda to confirm that a district boundary amendment typically did not have a limited duration. Mr. Takeda stated that he believed so. He added that the only problem that he saw in assigning a specific

target date in the future was that there was no way of knowing whether that landfill will actually be fully utilized at that future date, simply because there were a lot of different factors that determined how quickly the landfill reached capacity. He added that the desire would be to maximize the landfill facility so that it was treated as a precious resource that it was.

Mr. Yee then asked Mr. Takeda if under a special use permit there would typically be periodic reviews of that use. Mr. Takeda responded that could be a condition of the permit. Mr. Yee questioned whether the same would be true for a district boundary amendment. Mr. Takeda stated that he believed under the current special use permit, there was a provision for periodic review and he saw no reason why a condition could not be placed by the Commission where the land was placed under a district boundary amendment. Mr. Yee asked whether that was his recommendation in this case. Mr. Takeda responded that his comments were not necessarily a recommendation. Mr. Yee next asked whether Mr. Takeda knew that there was a clear distinction between a status report under a district boundary amendment proceeding and a periodic review of a special use permit. Mr. Takeda stated that he was not familiar with that provision. Mr. Takeda reiterated his previous response that from a procedural standpoint, there could be a condition calling for a status review in a district boundary amendment petition. Mr. Yee attempted to make the distinction between the two processes for Mr. Takeda. Mr. Takeda believed that the two processes would not necessarily be different. If the objective was to have the applicant be able to provide regular updates and reports in connection with the project, he related that it would be a viable instrument for doing that. Mr. Yee clarified that the periodic review for a special use permit involved a decision on whether to renew the permit. When questioned as to whether this was right, Mr. Takeda stated that he did not know.

Mr. Yee next asked Mr. Takeda whether the current anticipated period of time in which the WGS� expansion will be operating was 15 years was right. Mr. Takeda responded that the current plan was to identify the maximum life of the site, and the 15-year figure was identified as the minimum life of the site and was based on the current rates of waste disposal as of 2007-2008 when the EIS was prepared. Mr. Yee then referenced page 22, lines 13 to 14, of Mr. Takeda's written direct testimony and asked Mr. Takeda to confirm the statements contained therein and elsewhere in his testimony pertaining to the anticipated operating timeframe of the WGS� expansion, the post-closure requirements of the WGS�, and the proposed uses following the 30-year mandated period following its closure. Mr. Yee next questioned Mr. Takeda if he knew whether the City has agreed to all of the mitigation recommendations in the FEIS. Mr. Takeda responded that the City has

committed, by the acceptance of the document by the Mayor, to implementation of the mitigation measures as identified in the FEIS. Mr. Takeda confirmed that the City agreed to all of the mitigation items that were specifically identified in the document. In some cases, he noted that it was suggested that other types of provisions be done and he did not know if the administration has committed to those. Mr. Takeda provided Mr. Yee with an example pursuant to his request. One of the recommendations was to provide for some mitigation of stormwater impacts. He explained that in order to mitigate those impacts on the WGS� property, stormwater mitigation measures will have to be done off of the property on land that the City did not own. He was unsure whether the City was necessarily willing or able to commit to do work on someone else's property. Mr. Yee then asked whether there were any mitigation efforts that the City refused to do where the issue was within the City's power. Mr. Takeda responded that there were no such efforts to his knowledge.

Mr. Yee then referenced page 8, line 34, of Mr. Takeda's written direct testimony pertaining to the rock land soil that characterized the Petition Area and which was not conducive to urban development. Mr. Takeda clarified that the passage cited in his testimony came from the Soil Conservation Service. He pointed out that it meant that the soil was not easily developable, and that special provisions would be necessary to ensure that it was sufficiently stable to support foundations.

Commissioner Lezy exited the proceeding at 4:25 p.m.

Mr. Yee next turned his attention to the FEIS. Starting with page 1-15, he requested that Mr. Takeda describe his conclusion regarding diminishing community trust. Mr. Takeda noted that was a passage from a study performed by SMS Research who undertook a review of the socio-economic environment. According to Mr. Takeda, the passage was one of the observations made by the researcher. He then proceeded to read the actual passage into the record. Upon questioning, he stated that was not necessarily his conclusion. Mr. Yee then asked Mr. Takeda whether the FEIS contained information describing Mr. Takeda's disagreement with SMS Research. Mr. Takeda responded that he did not believe he disagreed with SMS Research; it was a statement based on research they performed.

Commissioner Lezy returned to the proceeding at 4:27 p.m.

Continuing with his cross-examination, Mr. Yee asked whether a representative from SMS Research will be testifying in this case. Mr. Takeda responded in the affirmative. Mr. Yee stated that he would withhold his questions about their findings until then unless Mr. Takeda was going to tell him that there

was something in the findings with which he disagreed. Mr. Takeda stated that the results of the research done by SMS Research were what they were and he reported that. He clarified that the overall objective was to identify the perceived adverse effect and then identify the proper mitigation to overcome that issue. Mr. Yee noted that he would withhold his questions for the witness from SMS Research. Mr. Yee then pointed to the first two sentences of page 1-20 in the FEIS referring to the City's search for the next landfill on Oahu. He questioned why ten years was selected as the time in which the search would be initiated. Mr. Takeda stated that the City will commit to initiating a search for the next landfill site well in advance of the closure of the present expansion. He added that although the City was seeking an expansion of the WGSL, the City will not begin actively working that area until such time that the existing area has been exhausted. Upon questioning, he confirmed that if the expansion involved less time than the 15 years, the search would begin earlier.

Mr. Yee then asked Mr. Takeda whether a special use permit with a time period of less than 15 years would encourage the City to begin that search process earlier than ten years. Mr. Takeda pointed out that whether the City had a land use district boundary amendment or a special use permit, the search for the next landfill site, if in fact one was needed, would need to be initiated well before (i.e., within about a five-year period) the landfill ran out of space. Mr. Yee next turned his attention to the issue of hazardous waste and whether the WGSL accepted such waste. Mr. Takeda confirmed that the WGSL did not accept hazardous waste. Mr. Yee questioned whether the ash received by the WGSL was categorized as hazardous waste. It was Mr. Takeda's understanding that the ash was not considered hazardous waste, and that was why the WGSL could accept it. With respect to municipal solid waste, Mr. Yee asked how one could know whether such waste contained hazardous waste. Mr. Takeda deferred to Waste Management Hawaii on the question.

Upon additional questioning, Mr. Takeda pointed out that on the Public Facilities Map, the site was identified as a landfill. Mr. Yee then asked whether the `Ewa DP would indicate that the Petition Area be used for open space or preservation after the WGSL reached capacity. Mr. Takeda stated that he did not believe the `Ewa DP stated that. Mr. Yee further questioned Mr. Takeda about State restrictions on use in the Urban District. Mr. Takeda responded that he did not know of any use restrictions, but that it did not mean that there would not be use restrictions based on the City's management of the property where zoning and land use normally took place. Upon hearing his response, Mr. Yee reiterated his question. Mr. Takeda confirmed that there were no restrictions; however, certain uses would not be appropriate in the Urban District. He subsequently agreed with

Mr. Yee's assertion that from a legal standpoint, any use would be consistent in the Urban District because there simply were no restrictions on urban use.

Mr. Yee next questioned Mr. Takeda about the special use permit and the district boundary amendment processes relative to the WGSL expansion. Mr. Yee asked him to identify what process was more appropriate for the WGSL expansion. Mr. Takeda responded that was not an area with which he was familiar to render an opinion. However, he believed that both approaches were valid. Upon hearing his response, Mr. Yee reiterated his question. Mr. Takeda remarked that it was a difficult question for him to answer and he restated his previous response to the question.

Upon further questioning by Mr. Yee, Mr. Takeda confirmed that the FEIS examined the impact on future uses of the surrounding lands to the extent that they looked at what would happen once the site was capped and monitored for its 30-year period and used for open park space. He also confirmed that the FEIS examined the impact of the WGSL expansion on the Makaiwa Hills development. According to him, they were aware that the development had received its land use entitlements and that similar to the surrounding land uses, such as Ko Olina, HECO, and the nearby Nanakuli area, the mitigation measures that would apply to the site should therefore also be similar. He added that this new community should be a part of the discussion and dialogue to address any community concerns. He noted that there were typically three areas of concern associated with a landfill: litter, odor, and aesthetics.

Mr. Yee pointed out that he had some questions about the challenges of a landfill, such as leachate, fires, etc. Mr. Takeda noted that those questions would be better addressed by the WGSL operation and management personnel.

Mr. Yee had no further questions for Mr. Takeda.

Chair Kanuha adjourned the hearing at 4:44 p.m. He noted that Executive Officer Davidson will determine when the next hearing date will be for this docket.

*(For more details on this matter, see LUC transcript of May 14, 2009.)*