

LAND USE COMMISSION  
MEETING MINUTES

**September 24, 2009 – 9:30 a.m.**  
**Sheraton Waikiki Hotel- Kauai Ballroom**  
**2255 Kalakaua Avenue**  
**Honolulu, Hawaii**

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

COMMISSIONERS ABSENT: Vladimir Devens

STAFF PRESENT: Orlando Davidson, Executive Officer  
Bert Saruwatari, Staff Planner  
Robyn Loudermilk, Staff Planner  
Riley Hakoda, Chief Clerk

COURT REPORTER: Holly Hackett  
AUDIO TECHNICIAN: Walter Mensching

**CALLED TO ORDER**

Chair Piltz called the meeting to order at 9:35 a.m.

**APPROVAL OF MINUTES**

Commissioner Wong moved to adopt the August 27-28, 2009 meeting minutes. Commissioner Contrades seconded the motion. There was no discussion. The motion was unanimously approved by voice vote. 8-0

**TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson provided the following:

- The LUC would be attending the HCPO Conference Awards Luncheon that was scheduled from 12:00 – 1:30 p.m.
- When the Commission reconvened after lunch, Agenda item VI. Docket #A99-728 Housing and Community Development Corporation of Hawaii,

State of Hawaii (Oahu) (Kroc Center) would be heard to accommodate the schedules of the Parties involved and then the remainder of the agenda would resume from where it halted at the recess.

**ACTION A87-617 BRIDGE AINA LE'A, LLC (Waikoloa, South Kohala, Hawaii)**

Chair Piltz stated that this was an action meeting on Docket No. A87-617 to adopt the order in this matter.

**APPEARANCES**

Bruce Voss, Esq., represented Petitioner Bridge Aina Le'a, LLC  
Alan Okamoto, Esq., represented Co-Petitioner DW Aina Le'a Development, LLC  
Norman Hayashi, County of Hawaii, Dept. of Planning  
Bryan Yee, Esq., represented State Office of Planning  
Abby Mayer, State Office of Planning  
Lorene Maki, State Office of Planning

**PUBLIC WITNESSES**

Chair Piltz stated that he would entertain a Motion to adopt the form of the order Granting the rescission of the Order to Show Cause Action dated April 30, 2009 and to allow DW Aina Le'a Development LLC to be Co-Petitioner with Bridge Aina Le'a, LLC.

Commissioner Wong made the motion to adopt the form of the order and clarified the details in the August 27, 2009 order. He stated that when the Commission voted on its August 27<sup>th</sup> motion to vacate and rescind its Order to Show Cause, it was the intent of the Commission to also rescind and vacate its April 30, 2009 reversion of the Petition Area back to Agriculture District as well.

Commissioner Kanuha seconded the motion.

There was no discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades and Chair Piltz.  
Nays: None  
Abstentions: Commissioners Chock and Lezy.

The motion passed with 6 ayes, 0 nays, 2 abstentions and 1 absent.

**ACTION SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (OAHU)**

Chair Piltz stated that this was an action meeting on Docket No. SP09-403 to consider a new special use permit to encompass the existing approximately 107.5 acre Waimanalo Gulch Sanitary Landfill and an approximately 93.122 acre lateral expansion,

Tax Map Key:9-2-03: 72 and 73 and withdrawal of an existing special use permit for the existing Waimanalo Gulch Sanitary Landfill issued in Docket No. SP87-362.

Chair Piltz stated that before starting the action item, for logical sequencing and the necessity to define who the parties were in the present proceedings, the Commission would be taking the Motion to Intervene first. Chair Piltz acknowledged that Colleen Hanabusa, Maile Shimabukuro, and the Ko Olina Community Association were granted Intervenor status at the Planning Commission level and on the basis of a past Supreme Court decision, the Intervenors below should have similar status before the Land Use Commission. Chair Piltz entertained a Motion to recognize Colleen Hanabusa, Maile Shimabukuro, and the Ko Olina Community Association (KOCA) as Intervenors in this Docket SP09-403, and subsequently deny the current motion to intervene because it is unnecessary.

Commissioner Wong asked for clarification and discussion over Chair Piltz's request ensued. Commissioner Wong moved that the pending Motion to Intervene be declared moot. Commissioner Lezy offered a friendly amendment to state explicitly that Colleen Hanabusa, KOCA, and Maile Shimabukuro be recognized as Parties to the Intervention. Commissioner Lezy seconded the motion.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades, Chock, Lezy and Chair Piltz.

Nays: None

The motion passed with 8 ayes, 0 nays, 1 absent.

Executive Officer Davidson clarified procedures for providing the Public Testimony for the Motion to Intervene, the Motion to Deny and the case in chief on the agenda items before the Commission.

#### PUBLIC WITNESSES (On the Motion to Deny)

Councilman Todd Apo spoke in support of the motion to deny and provided his perception of why he felt that the City had not represented the EIS properly in this matter.

There were no questions for Mr. Apo.

Chair Piltz stated that it would be logical to hear the Motion to Deny the Special Use Permit but that it had been received after the agenda had been posted. Therefore, Chair Piltz entertained a motion consistent with HRS92-7 to amend the agenda and add the hearing and action on the Motion to Deny to the existing agenda.

Commissioner Chock moved to put the Motion to Deny on the agenda. Commissioner Teves seconded the motion.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades, Chock, Lezy and Chair Piltz.

Nays: None

The motion passed with 8 ayes, 0 nays, 1 absent.

### MOTION TO DENY

#### MOVANT

Ms. Colleen Hanabusa identified herself, Maile Shimabukuro, and Ko Olina Community Association (KOCA) as the Intervenors in the case. Ms. Hanabusa described the details of her Motion to Deny, why she felt that the EIS was inadequate, what she perceived was a technical glitch in the withdrawal of acreage from the landfill and how the City had mis-handled its Petition.

There were no questions for the Movant.

#### DEPARTMENT OF ENVIRONMENTAL SERVICES

Mr. Gary Takeuchi identified himself and Jesse Souki as representatives for the Petitioner. Mr. Takeuchi asked to verify procedures on public testifiers and reserved the right to question Mr. Apo at a later time. Mr. Takeuchi argued that the LUC did not have jurisdiction to determine if the EIS was sufficient or not; and that the EIS did deal with the entire Petition Area and not a portion of it. Mr. Takeuchi argued that the Movants did not have standing on the issue. He also mentioned the merits of the existing EIS and explained why it should be sufficient for the Petition, and what the role of the Department of Planning and Permitting would be if the case were remanded.

#### MOVANT'S REBUTTAL

Ms. Hanabusa referred to the historical aspects of the Petition and identified critical dates and findings which she considered pertinent to the Motion. Ms. Hanabusa argued that the City did not disclose its intentions and related her reasons why she took this position and described the consequences she felt would occur if the proper procedures were not followed.

#### DEPARTMENT OF ENVIRONMENTAL SERVICE'S REBUTTAL

Mr. Takeuchi argued that Ms. Hanabusa had already taken legal action to challenge the EIS, and that HRS chapter 343 did not provide for other administrative bodies to have jurisdiction or the right to make EIS determinations or provide the forum for these challenges. Mr. Takeuchi provided his perception of how the withdrawal of the existing Permit would continue to provide adequate compliance despite the representations made by the Intervenors and urged the Commission to deny this

motion. Mr. Takeuchi recalled Mr. Apo to the witness stand and questioned him on what capacity he was testifying in before the Commission. Mr. Apo responded that he was testifying in his capacity as the Chair of the City Council but did not represent the entire Council and that he did not testify before the Planning Commission as a party since his Petition for Intervention was denied but did testify as a witness.

There were no further questions for Mr. Apo.

#### COMMISSIONERS

Commissioner Wong had a question for both counsels regarding the EIS and how the Circuit Court challenge outcome would affect the LUC proceedings or decisions.

Ms. Hanabusa replied that she could address the question since she had filed the Circuit Court action and provided her perceptions of the different scenarios that would occur based on different outcomes.

Mr. Takeuchi agreed with Ms. Hanabusa's statement that the case's pending in Court doesn't establish a stay of these proceedings and argued that the timing and processing of the application and the EIS was sufficient. Mr. Takeuchi described what he thought would happen if the Court action was inconsistent with the LUC decision.

Commissioner Lezy moved for an Executive Session to consult with Deputy Attorney General. Commissioner Judge seconded the motion. By a unanimous show of hands (8-0) the Commission entered Executive Session at 10:37 a.m. and returned at 11:33 a.m.

Commissioner Lezy moved to deny the Intervenor's Motion to Deny the Petition and commented on his reasons for making his motion. Commissioner Judge seconded the motion.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades, Chock, Lezy and Chair Piltz.

Nays: None

The motion passed with 8 ayes, 0 nays, 1 absent.

#### CASE IN CHIEF

#### PUBLIC WITNESSES

Fred Dodge

Mr. Dodge requested that future meetings on this matter be held in the Leeward area and commented on potential health hazards that he felt were associated with the Landfill. Mr. Dodge was opposed to the continued use of the Landfill.

Mr. Takeuchi asked if Mr. Dodge had testified in prior hearings on this matter. Mr. Dodge responded that he had not. Mr. Takeuchi stated that he had a standing objection to the Commission's basing any ruling on any testimony which was not in the record below. Mr. Dodge replied that he recollected sending a letter to the Land Use Commission but could not provide a date when he submitted it. Mr. Takeuchi asked if Mr. Dodge was related to any of the Intervenors and about the extent of proof which he had for his allegations about the health hazards of the landfill. Mr. Dodge replied that he was the step-father to Maile Shimabukuro and described his activities related to his suspicions about the landfill health hazards.

Ms. Hanabusa asked Mr. Dodge to provide his occupational background. Mr. Dodge replied that he had worked in the leeward area as a medical practitioner for quite a number of years till his retirement and his testimony was relating his experiences and knowledge from having lived and worked in the community. There were no further questions for Mr. Dodge.

William Johnson Aila Jr.

Mr. Aila provided his recollection of past City actions on the Waimanalo Gulch Landfill and expressed his concerns regarding the cultural impact of allowing the expansion of the landfill. Mr. Aila spoke in support of the motion to deny the SUP.

Mr. Aila stated that he had testified at prior hearings and Mr. Takeuchi renewed his objections to allowing Mr. Aila's continued testimony. Ms. Hanabusa argued that the proceedings would be procedurally flawed if the public's testimonies were not allowed and described how she perceived the way testimony should be admitted for consideration by the Commission. There were no further questions for Mr. Aila.

Todd Apo

Mr. Apo described the history of City actions in regards to Waimanalo Gulch and recounted the actions that had been taken and some possible remedies for the waste issue. Mr. Apo was in support of denying the Petition and stated that two years was a reasonable time for the City to prepare for future waste disposal demands and provided his perception of how the Petition was flawed.

Commissioner Wong had a question on the City Council's funding for the third boiler for waste disposal and expressed his concerns for ensuring that funds were available for alternative means to dispose of waste. Mr. Apo replied it was his understanding that the Council would be making policy resolutions to better handle waste in the future and explained how the Council would be providing the funding in the future.

Commissioner Lezy inquired what the City and County would do if the Landfill were closed in November. Mr. Apo provided his understanding of how the City would deal with that scenario.

Commissioner Chock requested clarification on Mr. Apo's proposal on how the City should handle its waste and whether the City Council had passed adequate funding to provide for the third H-power boiler. Mr. Apo related the actions that the City Council had taken and would need to be taking to react to any decision to close the landfill, and discussed the plans for funding this activity. Mr. Apo provided his understanding of the current status of the progress on constructing and completing the third boiler and what the community reaction might be to a landfill closure.

The Commission went into recess at 12:15 p.m. and reconvened at 1:38 p.m.

ACTION A99-728 HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, STATE OF HAWAII (OAHU) (KROC CENTER)

Chair Piltz announced that this was an action hearing regarding A99-728 HCDCH-Kroc Center to consider Petitioner's Motion for Order releasing Movant from the Conditions of the Findings of Fact, Conclusions of Law, and Decision and Order Dated September 8, 1999, the issuance of a new Docket number, and the establishment of appropriate Findings of Fact, Conclusions of Law, and Decision and Order and the conditions that are applicable to the Kroc Community Center.

Public Witnesses

Todd Apo

Mr. Apo testified in support of the project and described how the region would benefit by the Commission's approval of the Petition. There were no questions for Mr. Apo.

Appearances

Benjamin Matsubara, Esq., represented Petitioner-The Salvation Army

Curtis Tabata, Esq., represented Petitioner

Brian Bagonia, The Salvation Army

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

Matthew Higashida, Department of Planning and Permitting

Dana Viola, Esq., represented Intervenor-Haseko (Ewa) Inc.

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Ms. Loudermilk provided the LUC staff report. There were no questions for Ms. Loudermilk.

Movant

Mr. Matsubara stated that he concurred with the LUC Staff Report conclusions, recommendations and the Stipulated Agreements.

### County

The City and County of Honolulu stated that it supported the Stipulation.

### State

The State Office of Planning stated that it supported the Stipulation.

### Haseko (Ewa)

Haseko stated that it supported the Stipulation.

Commissioner Chock requested a status and construction/development timetable report on the Project. Mr. Matsubara replied that groundbreaking had occurred about 2 weeks ago and construction was estimated to be completed within 18 months.

Commissioner Chock moved to grant the motion for amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated September 8, 1999 as follows:

1. Recognize the Salvation Army as the Successor in Interest to the 15 acre property described in the motion.
2. Issue a new Docket number -A99-728(b) - for Land Use proceedings pertaining to the property.
3. Release the property from the Conditions of the September 8, 1999 Decision and Order.
4. Issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the property incorporating the following conditions from the September 8, 1999 Decision and Order. Conditions 2, 6, 7, 9, 10, 11, 15, 18, 22-27 with no modifications; and 1-5, 8, 12, 13, 19, and 20 as proposed by the Petitioner to be modified.

Commissioner Chock further moved that LUC staff be directed to prepare the new Findings of Fact, Conclusions of Law, and Decision and Order consistent with the pleadings filed on this matter. Commissioner Contrades seconded the motion.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades, Chock, Lezy and Chair Piltz.

Nays: None

The motion passed with 8 ayes, 0 nays, 1 absent.



**ACTION SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (OAHU)**

The hearing on this Docket resumed and the City recalled Mr. Apo to the witness stand for questions.

Questions for the witness-

City and County of Honolulu

Mr. Takeuchi asked Mr. Apo to identify what capacity he was testifying in and whether or not he had testified below. Mr. Apo replied that he had testified below and that he was testifying as a member of the City Council, and stated the nature of his other employment besides his Councilman position. Mr. Apo described his familiarity with handling waste and with providing for additional waste disposal expansion and all the technological requirements to perform that function. Mr. Apo provided his understanding of the details involved in the interim shipping of waste and the Council's efforts to find alternative means of waste disposal.

Mr. Apo explained why he thought the City might be in violation of the Land Use Ordinance, how the Planning and Permitting Department administered the bulk of the LUO and how the budget for the solid waste disposal was funded. Mr. Takeuchi asked several questions regarding activity which occurred below and argued that it was for the purpose of ensuring that all the testimony heard before the Commission was understood.

Intervenor

Ms. Hanabusa requested clarification on Mr. Apo's comments on mass burn technology, and the events that had occurred since this matter was before the Planning Commission. Mr. Apo summarized the details of mass burn technology and described the actions that the City Council and Neighborhood Board/Community organizations had taken since the Planning Commission decision.

There were no further questions for Mr. Apo.

Public Witness- Mel Kahele

Mr. Kahele testified in opposition to using PVT as a landfill area or any other leeward coastline locales if the Waimanalo Gulch Sanitary Landfill was closed.

The City had no questions for Mr. Kahele.

Intervenor- Ms. Hanabusa asked if Mr. Kahele had testified before the Planning Commission. Mr. Kahele acknowledged that he had testified before both the Planning Commission and the LUC and provided his employment affiliations and his familiarity with landfill issues within the leeward communities.

There were no further questions for Mr. Kahele.

The Commission went into recess at 2:35 p.m. and reconvened at 2:47 p.m.

Mr. Saruwatari provided the LUC map orientation and staff report. There were no questions for Mr. Saruwatari.

#### APPEARANCES

Jesse Souki, Esq., City and County of Honolulu  
Gary Takeuchi, Esq., City and County of Honolulu  
Colleen Hanabusa, Esq., Intervenor  
Maile Shimabukuro, Intervenor

#### Petitioner

Mr. Takeuchi provided background information and history on the City's role in the Special Use Permit application. Mr. Takeuchi described the efforts of the City Department of Environmental Services (ENV) in preparing the record for the Petition and highlighted the issues which he felt that the Commission should consider in its decision-making. Mr. Takeuchi argued the reasons that a landfill disposal option was necessary and described the efforts, anticipated procedures and programs for handling waste that were being put into place and why the Commission should consider them and grant the Special Use Permit.

Commissioner Wong requested clarification on the City's submitted status report regarding the Landfill cell E-4's capacity. Mr. Takeuchi replied that sufficient capacity remained in the current permitted footprint to last till February or March of 2010 and that work would need to begin in November on a new cell to add capacity to the Landfill. Mr. Takeuchi described the procedures and permits required to construct a new cell and identified this cell area as E-5 with an area of approximately 3 acres.

Commissioner Lezy provided his recollection of the past Commission hearing 18 months ago and described his expectations of the County resulting from that hearing and why he was disappointed with the information presented at this hearing. Mr. Takeuchi responded by referring to the record and argued that the reasons for the time extension and the request for expansion of the facility were stated to the Commission previously and that the Commission should not be surprised by the information being presented. Commissioner Lezy recalled that closure of the Landfill in November was a possibility if the City was unable to perform as expected. Mr. Takeuchi argued that the initial 24-month extension request was for completing the EIS and making a request for expanding the facility.

Commissioner Lezy requested clarification on the area that the EIS was intended to encompass. Mr. Takeuchi responded by describing the manner in which the City

intended to laterally expand the landfill from the existing acreage and described his perception of the area that the EIS covered.

Commissioner Wong requested clarification of the long term placement of waste in Waimanalo Gulch with consideration to the third boiler coming online, trans-shipment of waste and alternative methods for waste disposal. Mr. Takeuchi responded that landfill disposal of waste was still needed and described how efforts to reduce the amount of waste being deposited into the landfill would help reduce capacity demands. Commissioner Wong asked what assurances could be made to the Leeward communities that the City Council and Administration would adequately fund efforts to reduce or limit the amount of waste being deposited in the landfill. Mr. Takeuchi acknowledged that he could not address how the City Council funding for waste would be handled and provided his understanding of how the City was reducing or diverting the amount of waste being put into the landfill. Commissioner Wong asked if there were alternate ways to call attention to the landfill problem other than shutting it down. Mr. Takeuchi responded that Mr. Apo's testimony reflected the concerns that the City Council had for the waste disposal problem and that the Planning Commission's recommendation for action to be taken by early 2010 demonstrated that active resolution was being sought.

Chair Piltz commented on his reasons for voting to reduce the time request extension to 18 months. Commissioner Kanuha asked if the City would still be in front of the LUC if the full two years had been granted. Mr. Takeuchi responded affirmatively. There were no further questions for Mr. Takeuchi.

Intervenor

Ms. Hanabusa described the history and different situations that were involved with the landfill issue with requests for special use permits, district boundary amendments, and the legal considerations involved. She argued that the Commission should deny the Petition, and reminded the Commission that her legal challenges against the EIS were still pending. Ms. Hanabusa referred to and commented on various parts of the City's Proposed Decision and Order that she took exception to and provided her reasoning for why the landfill should be closed. There were no questions for Ms. Hanabusa.

OP

Mr. Mayer provided public witness testimony on behalf of the State Office of Planning and referred to OP's September 22, 2009 written correspondence submittal to Chair Piltz and the LUC and explained the comments made on the 2008 SUP 2 and the 1986 SUP 5. Mr. Mayer stated that the Office of Planning recommended denying the 2008 SUP 2 and the request to withdraw the 1986 SUP 5; and described the issues considered and the details of OP's recommendations. Mr. Mayer identified and discussed the legal and procedural issues and problems that he perceived in reviewing the docket's history that might trigger different decision outcomes and the reasons why OP took the position that an SUP was the appropriate method for handling a landfill.

Mr. Mayer explained the various conditions that OP suggested imposing upon Decision and Orders that would extend or grant to existing or new special use permits.

Commissioner Wong requested clarification on how the 1986 SUP could be amended without a Motion on the floor. Mr. Mayer provided his understanding of why the 1986 SUP could be considered. Commissioner Wong asked what Mr. Mayer's perception was of the continuing need for Waimanalo Gulch as a landfill. Mr. Mayer responded that the Waimanalo Gulch might not always be necessary and that conditions should be imposed within the SUP to best utilize landfills.

Commissioner Lezy requested clarification on how Mr. Mayer arrived at his conclusions and recommendations in his written testimony. Mr. Mayer responded by explaining the considerations and reasoning that he employed.

The Commission went into recess at 4:18 p.m. and reconvened at 4:32 p.m.

Commissioner Contrades disclosed that his daughter is currently employed by the City and County of Honolulu as an attorney. There were no objections from the parties to Commissioner Contrades' continued participation in this matter.

#### Department of Planning and Permitting

Mr. Kitaoka provided public witness testimony, and stated that the Department of Planning and Permitting was not a party to the proceedings and explained the presence and role of the DPP at these proceedings. Mr. Kitaoka clarified that the DPP was not the applicant and was the processor of the application from the Department of Environmental Services. Mr. Kitaoka explained how the Land Use Ordinance, by City Charter, was overseen by the Department of Planning and Permitting and would comment accordingly.

Mr. Kitaoka referred to page 30 of the LUC staff report and stated that in response to question #1, his interpretation was that the LUO did not apply to Waimanalo Gulch, and to question #2, that section of the ordinance will not impact operations at the Waimanalo Gulch Sanitary Landfill. Mr. Kitaoka offered Mr. Robert Bannister, head of the Land Use Permits Division, to answer any questions regarding the applicability or the interpretation of the Land Use Ordinance.

Commissioner Lezy requested clarification on the basis for the DPP's position. Mr. Bannister provided public witness testimony, and described the DPP's interpretation of the terms and reasoning for the DPP stance in this matter. There were no other questions for Mr. Bannister.

#### Petitioner's Questioning of the Witnesses

Mr. Takeuchi asked if Mr. Mayer was testifying as a member of the Public in these proceedings. Mr. Mayer acknowledged that he was and confirmed that he was a witness at the contested case hearing. Mr. Takeuchi referred to his standing objection

regarding public witnesses on the record before the Commission and argued that Mr. Mayer's proposal for a 3 year expansion of the landfill was not based on professional experience or education.

Mr. Yee clarified the OP role in making its comments and referenced the sections of the statute which allowed the Office of Planning's participation during the proceedings. There was discussion and clarification between the Intervenor and the Petitioner over remarks made by the Petitioner regarding consideration of arguments and considerations of the record below. Mr. Takeuchi acknowledged that there was a clear right for public testimony at this proceeding and that when considering facts and evidence, the Commission should refer to the record below. Mr. Mayer described his perception of the extent of his testimony before the Commission.

Commissioner Wong moved that the Special Use Permit before the Commission be granted with the conditions that:

1. The Conditions set forth in the 1986 SUP be included
2. Solid waste be allowed at the Waimanalo Gulch only up until July 31, 2012.
3. After July 31, 2012, only ash and residue from the H-Power be allowed in the landfill (no more municipal solid waste).
4. The City Administration and City Council be required to report to the public every 3 months on activities being taken on Waimanalo Gulch .
5. The City schedule public hearings every 3 months to report to the public on the status to reduce or continue use of the Waimanalo Gulch.

Commissioner Teves seconded the motion.

Commissioner Lezy stated that he could not support the motion and explained his reasoning. Commissioner Contrades stated that he reluctantly supported the motion and recognized the difficulties involved in this matter and with finding a suitable replacement site for waste disposal on Oahu. Commissioner Kanuha commented that no information had been provided on where the waste could be taken if the landfill was closed. Commissioner Chock referred to the 2003 LUC transcript on the Landfill hearing and quoted passages regarding considerations for closure of the landfill and explained the reasoning involved with his decision to vote against the motion. Commissioner Wong commented on the considerations and reasoning involved with his motion and clarified his position in more detail.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Teves, Contrades, and Chair Piltz.

Nays: Commissioners Judge, Chock, and Lezy

The motion passed with 5 ayes, 3 nays, 1 absent.

The Commission went into recess at 5:14 p.m. and reconvened at 5:25 p.m.

Chair Piltz announced that Agenda item VIII- Adoption of Amendments to Administrative Rules would be deferred and that there would be no meeting on September 25, 2009

**ACTION A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LTD. (OAHU)**

Chair Piltz announced that this was an action meeting on A07-777 Hawaiian Memorial Life Plan, Ltd. to consider Intervenor's Motion to Strike Petitioner's Untimely Filing.

**Public Witnesses**

There were no Public Witnesses.

**Appearances**

William Yuen, Esq., represented Hawaiian Memorial Life Plan Ltd.  
Jay Morford, General Mgr., Hawaiian Memorial Life Plan Ltd.  
Bryan Yee, Esq., represented State Office of Planning  
Abby Mayer, State Office of Planning  
Grant Yoshimori, Intervenor  
Richard McCreedy, Intervenor

**Intervenor**

Mr. Yoshimori argued for his Motion to Strike Petitioner's Untimely Filing and explained how Intervenor had been prejudiced by the untimely filing. Mr. Yoshimori corrected the date that he received comments from OP on his motion to September 25<sup>th</sup> after receiving concurrence from all parties.

**OP**

OP stated that it had no position on the motion.

**City and County of Honolulu**

There was no City representative. Executive Officer Davidson reported that the City had notified him that they had no position on the motion.

**Petitioner**

Mr. Yuen argued that the Parties had not been prejudiced by the untimely filing and suggested the parties be allowed another week to file supplemental arguments to his pleading.

**Intervenor's Rebuttal**

Mr. Yoshimori argued that despite the offer of an additional week from the Petitioner, Intervenors were still prejudiced by the untimely submittal.

### Deliberation

Commissioner Judge requested clarification on the options available to the Commission in regards to the motion. Executive Officer Davidson stated that there were two options- one was to grant the motion to strike the pleading as untimely and the other was to deny the motion but allow the Parties an additional week from today to respond to the September 11, 2009 filing.

Commissioner Judge moved to deny the motion, but to allow the parties one week to responde to the September 11,2009 filing. Commissioner Kanuha seconded the motion.

There was no further discussion. The Commission was polled as follows:

Ayes: Commissioners Wong, Kanuha, Judge, Teves, Contrades, Chock, Lezy and Chair Piltz.

Nays: None

The motion passed with 8 ayes, 0 nays, 1 absent.

There being no further items to discuss, and with the deferral of the Adoption of Administrative Rules, the Commission adjourned at 5:43 p.m. with no meeting on September 25, 2009.