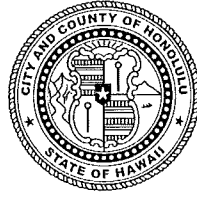


DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813
PHONE: (808) 568-5193 • FAX: (808) 768-5105 • INTERNET: www.honolulu.gov

PLANNING COMMISSION
STATE OF HAWAII

KIRK CALDWELL
MAYOR



2016 JUN 27 A 6:43

DONNA Y. L. LEONG
CORPORATION COUNSEL

PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

June 22, 2016

Edmund Aczon, Chair
Land Use Commission
Leiopapa A. Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawaii 96813

Bryan C. Yee
Deputy Attorney General
Hale Auhau, Third Floor
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Re: Department of Environmental Services, City and County of Honolulu's Motion to Stay Proceedings at the Planning Commission to April 22, 2017

Dear Mr. Aczon and Mr. Yee:

On June 22, 2016, the Department of Environmental Services, City and County of Honolulu, filed its Motion to Stay of Proceedings to April 22, 2017 with the Planning Commission. A copy is transmitted herewith.

Sincerely,

A handwritten signature in black ink, appearing to be "Kamilla C. K. Chan", written over a horizontal line.

KAMILLA C. K. CHAN
Deputy Corporation Counsel

KCC:di
Enc.

cc: Dean I. Hazama, Chair
Planning Commission (w/o enc.)

Edmund Aczon
Bryan C. Yee
June 22, 2016
Page 2

Calvert G. Chipchase IV, Esq.
Christopher T. Goodin, Esq.
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LAND USE COMMISSION
STATE OF HAWAII

2016 JUN 27 A 6:43

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'16 JUN 22 12:56

DEPT. OF PLANNING
AND REVENUE
CITY & COUNTY OF HONOLULU

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of) FILE NO. 2008/SUP-2
)
DEPARTMENT OF ENVIRONMENTAL) DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF) SERVICES, CITY AND COUNTY OF
HONOLULU) HONOLULU'S MOTION TO STAY
) PROCEEDINGS TO APRIL 22, 2017;
For A New Special Use Permit To) MEMORANDUM IN SUPPORT OF
Supersede Existing Special Use Permit) MOTION TO STAY; EXHIBIT A;
To Allow A 92.5-Acre Expansion And) CERTIFICATE OF SERVICE
Time Extension For Waimanalo Gulch)
Sanitary Landfill, Waimanalo Gulch, O'ahu,)
Hawaii'i, Tax Map Key: 9-2-03: 72 And 73)
_____)
In the Matter of the Application of)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
)
To delete Condition No. 14 of Special Use)
Permit No. 2008/SUP-2 (also referred to as Land)
Use Commission Docket No. SP09-403) which)
states as follows:)
)
"14. Municipal solid waste shall be allowed at)
the WGSL up to July 31, 2012, provided that)
only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")
_____)


**DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU'S
MOTION TO STAY PROCEEDINGS TO APRIL 22, 2017**

Comes now Petitioner DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU, by and through its attorneys, DONNA Y. L. LEONG, Corporation Counsel, and KAMILLA C. K. CHAN, Deputy Corporation Counsel, under Section 2-67 of the Rules of the Planning Commission, and hereby respectfully requests that the Planning Commission stay the proceedings in the above-captioned matters to April 22, 2017.

A stay of the proceedings before the Planning Commission to April 22, 2017, will allow the parties the time needed to implement additional alternative uses or disposal methods to further reduce the amount of waste accepted at the Waimanalo Gulch Sanitary Landfill so that the parties may better explore options for resolving these matters.

DATED: Honolulu, Hawaii, June 22, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By 

KAMILLA C. K. CHAN
Deputy Corporation Counsel
Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY
OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

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only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")

MEMORANDUM IN SUPPORT OF MOTION TO STAY

I. BRIEF SUMMARY OF PROCEDURAL HISTORY

In December 2008, the DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU ("City" or "ENV") filed a State Special Use Permit ("SUP") application to expand the existing Waimanalo Gulch Sanitary Landfill ("WGSL"). The application is designated as County SUP File No. 2008/SUP-2. The Planning Commission

recommended approval of the application, subject to ten conditions. The decision was set forth in the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated August 4, 2009. The City did not object to any of the conditions imposed by this Commission.

The State Land Use Commission ("LUC") adopted the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order as its own, but modified the decision by making the approval of the application subject to six additional conditions. In particular, Condition 14 prohibited any further disposal of municipal solid waste ("MSW") at the WGSL after July 31, 2012, and allowed only ash and residue from the H-POWER facility to be placed at the WGSL after July 31, 2012.

ENV appealed Condition 14 to the Circuit Court, which affirmed the LUC's order. ENV appealed the Circuit Court's decision to the Hawaii Supreme Court. Oral arguments were heard by the Supreme Court in February 2012.

In 2011, out of a concern that the Supreme Court would not rule on the appeal before the July 31, 2012 deadline, ENV filed a SUP Amendment Application to delete Condition 14. A contested case hearing was held and the ENV application has been fully briefed and is pending before the Planning Commission for deliberation and decision.

On May 4, 2012, the Supreme Court ruled in favor of ENV and struck down Condition 14. The Supreme Court ruled that the MSW deadline imposed by the LUC is inconsistent with the evidence in the record and not supported by substantial evidence. The Supreme Court also determined that because Condition 14 appeared to be material to the LUC's approval of the SUP, the approval could not stand without further consideration. Accordingly, the Court remanded the matter to the LUC for further hearings as the LUC deems appropriate to

determine whether the LUC would have reached the same conclusion (to approve the SUP) without the imposition of Condition 14.

At a meeting on September 14, 2012, the LUC decided to remand the Supreme Court case to the Planning Commission with a recommendation to consolidate the 2009 and 2011 SUP proceedings for decision-making. Since then, the Planning Commission has continued its consideration of the LUC's request to consolidate, based on the parties' representation that they intended to file a joint recommendation to the Planning Commission regarding both the consolidation and the subject matter of the remand.

On October 22, 2015, ENV appeared before the LUC to report on the status of the proceedings before the Planning Commission. ENV represented that it made progress in negotiating with Intervenor Ko Oline Community Association ("KOCA") as evidenced by the City's success in diverting additional waste streams from the landfill. The City reported, however, that the parties needed additional time to establish objectives for further landfill waste diversion. Thus, ENV and KOCA represented that they intended to file a stipulation with the Planning Commission to commit to an 18-month schedule to implement additional alternative uses or disposal methods to increase waste diversion. The parties estimated that they needed two months to agree on the stipulation that would memorialize the diversion objectives. The LUC agreed to this plan of action but requested that ENV and KOCA include Intervenor Colleen Hanabusa ("Hanabusa") in these negotiations.

On May 18, 2016, ENV, KOCA, and Hanabusa appeared before the LUC to provide an update on the status of the negotiations and proceedings before the LUC. ENV represented that during the nearly six months since it last appeared before the LUC, ENV and KOCA reviewed and discussed the objectives to include in the stipulation. ENV further represented that while

this process took longer than initially anticipated, the parties ultimately reached a productive agreement. ENV and Intervenors KOCA, Maile Shimabukuro (“Shimabukuro”), and Schnitzer Steel Hawaii Corp. (“Schnitzer”) signed the stipulation to continue proceedings before the Planning Commission to April 22, 2017. A copy of the stipulation was forwarded to Hanabusa, but Hanabusa stated that she would not sign the document. A copy of the partially-executed stipulation is attached hereto as Exhibit A (the “Stipulation”).

Because ENV reached an agreement with four of the five parties, but is unable to obtain the concurrence of one party, it now moves to stay the proceedings to April 22, 2017 in accordance with the Stipulation.

II. GROUNDS FOR GRANTING STAY

The Planning Commission has the discretion to stay the proceedings. Thus, the Planning Commission stayed these proceedings on May 25, 2012, after the Supreme Court’s May 4, 2012 ruling that struck Condition 14 and remanded the matter to the LUC for further proceedings, and in February 2013, at the request of the parties.

A stay of proceedings to April 22, 2017 is appropriate and warranted because the parties have made progress that resulted in an agreement between the City, KOCA, Shimabukuro, and Schnitzer. A stay to April 22, 2017 will allow the parties to continue working toward the implementation of additional alternative uses or disposal methods to increase waste diversion, as set forth in Part III of this memorandum and in the partially-executed Stipulation attached hereto as Exhibit A.

III. TERMS OF THE STAY OF PROCEEDINGS

In bringing this motion for stay of the proceedings before the Planning Commission, ENV seeks to implement the terms of the Stipulation that are agreed upon by four of the five

parties. (See Exhibit A.) More specifically, ENV requests that the Planning Commission grant this motion in accordance with the terms set forth below.

During the stay of the proceedings, ENV will work to divert all waste from the landfill that can be disposed of by methods other than by landfilling, except if (1) H-POWER cannot accept the landfill waste or there is an emergency, and (2) there is no reasonably available alternative disposal method for the waste, by the following means:

A. Municipal Solid Waste, specifically:

(i) Residue: ENV will divert residue resulting from the H-POWER waste-to-energy process through H-POWER equipment improvements that will enable H-POWER to better filter residue to capture more of the burnable material and reduce the disposable waste. ENV will also continue to evaluate ways, including boiler optimization, to capture more of the residue at H-POWER.

(ii) Bulky waste: As of July 2015, ENV has diverted all bulky waste previously used to dispose of sludge from the landfill.

(iii) Unacceptable waste or waste rejected for disposal at H-POWER such as long wires, car parts, cables, and other oversized items: ENV will divert these wastes through H-POWER equipment improvements, such as the addition of a new waste shredder that will further process unacceptable waste so that these wastes may be incinerated at H-POWER. ENV is also investing in additional staff training at the WGSF to enhance inspections of incoming waste loads such that waste that could be burned at H-POWER will be identified and screened out in the future.

B. Ash (residue from H-POWER waste-to-energy process): ENV will follow the progress of facilities in Pasco County, Florida, and York County, Pennsylvania, that are

pioneering ash reuse and will seek the Department of Health's approval of ash reuse projects modeled after these programs.

C. Automotive Shredder Waste ("ASR"), which comprises the majority of the Miscellaneous Special Waste category: The Department of Health has approved a pilot project for the City to evaluate the constituents of ASR to ensure it is compatible with the H-POWER system and/or determine what is needed to enable H-POWER processing.

D. Wastewater Treatment Plant Waste: ENV has diverted all sewage sludge produced by the City and County of Honolulu from the landfill as of July 2015. For sewage sludge from the private wastewater treatment plant, ENV will determine if adding water to the sludge or combining it with loads at the City's wastewater treatment plants will enable processing at H-POWER. For bar screening waste, ENV will institute enhanced odor control protocol or equipment to enable processing at H-POWER.

E. Homeowner Waste: ENV will continue efforts to establish a new refuse convenience center in the Campbell Industrial Park so there is an alternative depository for homeowner waste loads currently going to the landfill.

F. Outdated Food Waste: ENV will evaluate the constituents to determine compatibility with the H-POWER system to enable burning.

G. Treated Medical Waste: As of the end of December 2015, ENV has diverted all treated medical waste except for treated medical sharps.

H. Rendering Waste: Currently, only approximately 1,700 tons of rendering waste is disposed of at the landfill each year, and a single company is responsible for producing this waste stream. ENV intends to work with this company to further evaluate the rendering waste to

determine whether it can be diverted from the landfill to H-POWER. In the interim, ENV will require this company to implement enhanced odor control measures for disposal at the landfill.

I. Animal Waste: ENV cannot divert large animal carcasses from the landfill because H-POWER does not have the ability to incinerate these large masses. However, ENV will work with the Department of Health to further characterize this waste, in particular the smaller animal carcasses, with the intent to burn this waste at H-POWER.

J. Petroleum Contaminated Soils and Asbestos-Containing Materials: These waste streams are already going to the private PVT landfill instead of WGS.

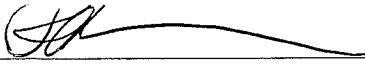
ENV shall file three reports with the Planning Commission to update the status of the above-referenced objectives. These reports shall be submitted on July 22, 2016, September 22, 2016, and March 22, 2017.

IV. REQUESTED RELIEF

WHEREFORE, ENV requests that the Planning Commission stay the proceedings before the Planning Commission to April 22, 2017.

DATED: Honolulu, Hawaii, June 22, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By 
KAMILLA C. K. CHAN
Deputy Corporation Counsel
Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY
OF HONOLULU

DONNA Y. L. LEONG, 3226
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KAMILLA C. K. CHAN, 9184
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City and County of Honolulu
Honolulu, Hawaii 96813
Telephone: 768-5168

Attorneys for Applicant
DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of)
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DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU)
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FILE NO. 2008/SUP-2
STIPULATION AND ORDER TO
CONTINUE PROCEEDINGS TO APRIL 22,
2017; CERTIFICATE OF SERVICE

**STIPULATION AND ORDER TO
CONTINUE PROCEEDINGS UNTIL APRIL 22, 2017**

Applicant DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU ("ENV"), and Intervenors KO OLINA COMMUNITY ASSOCIATION and MAILE SHIMABUKURO, SCHNITZER STEEL HAWAII CORP., and COLLEEN HANABUSA request that the Commission continue the proceedings to April 22, 2017.

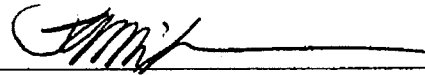
During the continuation, ENV will work to divert all waste from the landfill that can be disposed of by a method other than by landfilling, except if (1) H-POWER cannot accept the landfill waste or there is an emergency, and (2) there is no reasonably available alternative disposal method for the waste, by the following means:

1. Municipal Solid Waste, specifically:
 - (a) Residue: ENV will divert residue resulting from the H-POWER waste-to-energy process through H-POWER equipment improvements that will enable H-POWER to better filter residue to capture more of the burnable material and reduce the disposable waste. ENV will also continue to evaluate ways, including boiler optimization, to capture more of the residue at H-POWER.
 - (b) Bulky waste: As of July 2015, ENV has diverted all bulky waste previously used to dispose of sludge from the landfill.
 - (c) Unacceptable waste or waste rejected for disposal at H-POWER such as long wires, car parts, cables, and other oversized items: ENV will divert these wastes through H-POWER equipment improvements, such as the addition of a new waste shredder that will further process unacceptable waste so that these wastes may be incinerated at H-POWER. ENV is also investing in additional staff training at the Waimanalo Gulch Sanitary Landfill ("WGSL") to enhance inspections of incoming waste loads such that waste that could be burned at H-POWER will be identified and screened out in the future.
2. Ash (residue from H-POWER waste-to-energy process): ENV will follow the progress of facilities in Pasco County, Florida, and York County, Pennsylvania, that are pioneering ash reuse and will seek the Department of Health's approval of ash reuse projects modeled after these programs.

3. Automotive Shredder Waste ("ASR"), which comprises the majority of the Miscellaneous Special Waste category: The Department of Health has approved a pilot project for the City to evaluate the constituents of ASR to ensure it is compatible with the H-POWER system and/or determine what is needed to enable H-POWER processing.
4. Wastewater Treatment Plant Waste: ENV has diverted all sewage sludge produced by the City and County of Honolulu from the landfill as of July 2015. For sewage sludge from the private wastewater treatment plant, ENV will determine if adding water to the sludge or combining it with loads at the City's wastewater treatment plants will enable processing at H-POWER. For bar screening waste, ENV will institute enhanced odor control protocol or equipment to enable processing at H-POWER.
5. Homeowner Waste: ENV will continue efforts to establish a new refuse convenience center in the Campbell Industrial Park so there is an alternative depository for homeowner waste loads currently going to the landfill.
6. Outdated Food Waste: ENV will evaluate the constituents to determine compatibility with the H-POWER system to enable burning.
7. Treated Medical Waste: As of the end of December 2015, ENV has diverted all treated medical waste except for treated medical sharps.
8. Rendering Waste: Currently, only approximately 1,700 tons of rendering waste is disposed of at the landfill each year, and a single company is responsible for producing this waste stream. ENV intends to work with this company to further evaluate the rendering waste to determine whether it can be diverted from the landfill to H-POWER. In the interim, ENV will require this company to implement enhanced odor control measures for disposal at the landfill.
9. Animal Waste: ENV cannot divert large animal carcasses from the landfill because H-POWER does not have the ability to incinerate these large masses. However, ENV will work with the Department of Health to further characterize this waste, in particular the smaller animal carcasses, with the intent to burn this waste at H-POWER.
10. Petroleum Contaminated Soils and Asbestos-Containing Materials: These waste streams are already going to the PVT landfill instead of WGSL.

ENV shall file three reports with the Commission to update the status of the above-referenced objectives. These reports shall be submitted on June 22, 2016, September 22, 2016, and March 22, 2017.

DATED: Honolulu, Hawaii, _____.



KAMILLA C. K. CHAN
Deputy Corporation Counsel
Attorney for Applicant
DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU



IAN L. SANDISON
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CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODWIN
Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

RICHARD D. WURDEMAN
Attorney for Intervenor
COLLEEN HANABUSA

APPROVED AND SO ORDERED:

Authorized Representative of the
Honolulu Planning Commission

FILE NO. 2008/SUP-2, In the Matter of the Application of DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU - Stipulation and
Order to Continue Proceedings to April 22, 2017

09-01760/483350

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of) FILE NO. 2008/SUP-2
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only ash and residue from H-POWER shall be)
allowed at the WGSL after July 31, 2012.")

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by mailing the same, postage prepaid, on June 22, 2016:

CALVERT G. CHIPCHASE IV, ESQ.
CHRISTOPHER T. GOODIN, ESQ.
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KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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Attorney for Intervenor
COLLEEN HANABUSA



KAMILLA C. K. CHAN
Deputy Corporation Counsel