

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

**STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL**

425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

September 27, 2011

Representative Jo Jordan
House of Representative, State Capitol
415 S. Beretania Street, Room 324
Honolulu, Hawaii 96813

Re: Request for an Opinion on Special Use Permit No. 2008/SUP-2

Dear Representative Jordan:

By letter dated September 16, 2011, you asked whether the Department of Planning and Permitting, ("DPP") City and County of Honolulu may delete a condition set by the Land Use Commission ("LUC"). The answer to your specific question is DPP itself may not delete a condition in Special Use Permit No. 2008/SUP-2.

DPP may recommend to the Planning Commission that the request to delete the July 31, 2012 deadline to cease disposal of municipal solid waste at the Waimanalo Gulch Sanitary Landfill be approved. If the Planning Commission approves the proposed amendment to Special Use Permit No. 2008/SUP-2, the matter then goes to the LUC for its approval. With the approvals of both the Planning Commission and the LUC, Special Use Permit No. 2008/SUP-2 may then be amended. See section 205-6, Hawaii Revised Statutes.

If you have any further questions, please feel free to call me at 586-1180.

Very truly yours,

Bryan C. Yee
Deputy Attorney General

APPROVED:

David M. Louie
Attorney General

RECEIVED

Colleen Hanabusa
545 Queen Street
Honolulu, Hawai'i 96813

'11 OCT -3 P2:48

October 2, 2011

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLU.

Planning Commission
City and County of Honolulu
c/o Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawai'i 96813

Re: 2011/GEN-8

Dear Members of the Planning Commission:

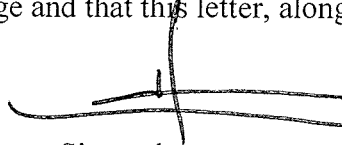
Though the notice of this public hearing as published in the newspaper calls for public comment, I contend that it is premature for comment.

At the outset, I incorporate my comments on the Application which was timely filed by August 13, 2011 as required by the Notice of Amendment of Special Use Permit dated July 13, 2011. It continues to be my position that the Department of Planning and Permitting (DPP) and therefore, you the Planning Commission (PC), is without jurisdiction over this Application which proposes to amend 2008/SUP-2. The basis of my argument is that the Decision and Order which is before the PC is not subject to amendment because it has no July 31, 2012 deadline. It is the Decision and Order of the Land Use Commission (LUC) which has the deadline and that Decision and Order has not been accepted by the PC or the City and is pending appeal with the Hawai'i Supreme Court. This is a very different situation compared to prior SUPs in that the deadlines were consistent or accepted as the Decision and Order by the City. Here it is not.

Moreover, to comment on the Application at this time is premature in that the Director of DPP has yet to issue his Report. His report is what transmits his recommendation along with the Application to the PC. Such a report has not been completed as of the date of this letter. There is nothing to comment upon for the public in light of the fact that one cannot take issue with the recommendations which may be set forth in his Report.

I therefore object to the fact that the Report is not in hand and question whether the DPP and the PC are with jurisdiction over this matter both under the law and procedurally.

I request a ruling on this challenge and that this letter, along with my prior comment are made part of the record.



Sincerely yours,



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

October 3, 2011

To: The Members of the Planning Commission of the City and County of Honolulu
Fr: Representative Georgette "Jo" Jordan, District 45 *GS*
RE: EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

I submit this testimony in opposition to the request made by the 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."

I am deeply concerned that this administration continues to disregard commitments made to my community to close WGSL and seriously consider other sites outside of the Leeward Coast since our community has tolerated the landfill and the waste from the entire island for over 20 years. Despite recommendations from both this Planning Commission and the State Land Use Commission (LUC) to consider alternative sites from 2003, the City administration has continued to claim that they lack sufficient time to locate alternate sites. This practice is simply unacceptable, especially in light of past violations resulting in a \$1.5 million settlement and recent contamination and closure of the WGSL earlier this year.

If this Planning Commission is inclined to approve the request to delete Condition No. 14 of Special Use Permit No. 2008/SUP-2, I have enclosed an opinion from the Attorney General clearly stating that such approval must still go before the LUC for approval. Only with the approvals of both the Planning Commission and the LUC, can Special Use Permit No. 2008/SUP-2 be amended.

Thank you for this opportunity to submit testimony in opposition. Should you have any questions or concerns, feel free to contact my office at 586-8460.

Hawaii State House of Representatives
State Capitol, Room 438
Honolulu, Hawaii 96813
Phone: (808) 586-8500
Fax: (808) 586-8504

Representative Sharon Har

Fax



To: City and County of Honolulu, Department of
Planning and Permitting

From: Rep. Sharon Har

Fax: 768-6743

Pages: 2

Phone: 768-8007

Re: Oct. 5 Public Hearing Testimony re: Deletion **CC:**
of Condition No. 14 of Special Use Permit No.
2008/SUP-2

Urgent **For Review** **Please Comment** **Please Reply** **For Your Files**

• **Comments:** Please call Rep. Har's office at 586-8500 with any questions. *Please disregard the first fax from this office, on an unrelated DPP matter, and use this testimony instead.*



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

October 3, 2011

Department of Planning and Permitting
City and County of Honolulu
650 South King St., 7th Floor
Honolulu, HI 96813

RE: Deletion of Condition No. 14 of Special Use Permit No. 2008/SUP-2

I would like to take this opportunity to express my opposition to the proposal to amend Special Use Permit No. 2008/SUP-2 to delete Condition No. 14, which places a sunset date of July 31, 2012 (the "Condition") on disposal of municipal solid waste at the Waimanalo Gulch Sanitary Landfill ("WGSL"). The Condition was inserted by the Land Use Commission ("LUC") on October 22, 2009.

As the state representative for the 40th District, consisting of Kapolei, Makakilo, Royal Kunia and Kalaeloa, I am very concerned that the proposed deletion of this condition runs contrary to what my constituents and other residents of the Leeward Coast have been led to believe regarding WGSL. Our area has accepted waste from across the island in this landfill, with the understanding that other sites would eventually be utilized. The City and County of Honolulu has had ample time to identify alternative sites, and it is highly objectionable that instead, residents of the Leeward Coast may have to continue to live with an active landfill in their backyards.

Furthermore, as the Condition was inserted by the LUC, it is clear that the LUC's intent was to hold the City and County responsible to the residents of Leeward Oahu, for continuing to extend the deadline to close WGSL. As a state representative, I support the LUC's intent and therefore respectfully oppose the City and County's Department of Environmental Services' request to delete the Condition.

Thank you very much for your consideration. Should you have any questions, please contact my office at 586-8500.

Sincerely,

Sharon E. Har
State Representative
40th House District
Kapolei, Makakilo, Royal Kunia, Kalaeloa

SEH:mn

Representative Sharon E. Har
State Capitol, Room 438 • Honolulu, Hawaii 96813
Phone: (808) 586-8500 • Fax: (808) 586-8504 • E-mail: rephar@capitol.hawaii.gov



1150 S. KING STREET, SUITE 1101

HONOLULU, HAWAII 96814

PH (808) 593-2902 FAX (808) 593-9299

FAX INSTRUCTIONS

DATE: 3 007 2011 TIME: _____

FROM: L. SHIMAZU FAX NO. _____

TO: _____ FAX NO. 768-6743

FIRM: _____

ADDRESS: _____

MESSAGE: _____

WE ARE SENDING YOU 2 PAGES, INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE (808) 593-2902 OR FAX
NO. (808) 593-9299. THANK YOU.



1150 S. KING STREET, SUITE 1101 HONOLULU, HAWAII 96814
PH (808) 593-2902 FAX (808) 593-9299

WRITTEN TESTIMONY - PUBLIC HEARING

Date: 3 October 2011

RE: Whether the Waimanalo Gulch Sanitary Landfill will be allowed to continue accepting municipal solid waste for disposal after July 31, 2012.

Comments:

The deadline of July 31, 2012 is unrealistic. Until a suitable replacement site is found and the necessary permits and infrastructure are secured we must continue accepting municipal solid waste at the Waimanalo Gulch Sanitary Landfill. By imposing the restriction that only ash and H-POWER residue be accepted with no alternative landfill in the offering the cost to do business in Hawaii will escalate. Small businesses will suffer and our economy will suffer.

Louis Shiraishi
President
Cen Pac Properties, Inc.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

October 5, 2011

SENT VIA FAX AND FED EX

Planning Commission of City and County of Honolulu
Frank F. Fasi
Municipal Building, 7th Floor
650 South King Street
Honolulu, Hawaii 96813
Fax: 808-768-6743

RE: PUBLIC TESTIMONY OF THE CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA NATION REGARDING EWA-STATE SPECIAL USE PERMIT AMENDMENT
APPLICATION – 2008/SUP-2 (RY) WAIMANALO GULCH SANITARY LANDFILL (WGSL)

To Whom It May Concern:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (the “Yakama Nation” or “Nation”), a federally-recognized Indian tribe, whose Reservation was established by the 1855 Treaty With The Yakama, 12 Stat. 951 (1859). The Yakama Nation currently occupies, regulates and self-governs approximately 1.3 million acres of lands within the Yakama Indian Reservation located in Washington State. In 1855 the Yakamas signed a Treaty ceding about 10 million acres – 90 percent of our aboriginal land.

On September 4, 2011, the City and County of Honolulu (“Honolulu”) issued notice of a Public Hearing to be held October 5, 2011. Because the subject matter of that notice pertains to a matter that could adversely affect the Yakama Nation its lands, and its citizens, the Nation submits the following testimony.

The subject matter of the proposed hearing pertains to a proposal to delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (“Condition 14”). This permit states in its current form that only municipal solid waste is to be allowed at the Waimanalo Gulch Sanitary Landfill (“WSGL”) until July 31, 2012, and that only “ash and residue from H-POWER” be allowed at WSGL thereafter. The purpose of the proposed change is to allow WSGL to continue accepting municipal waste at all times, until the landfill reaches full capacity as permitted by the State Department of Health.

The Yakama Nation does not wish to interfere with intramural matters of Hawaii, however, the events of recent years lead the Nation to believe that if Condition No. 14 is not deleted, the Nation’s sacred lands will be in jeopardy. The Nation will take whatever steps are necessary to protect those lands, and the resources on them for the benefit of future generations of Yakamas. Indeed, during 2010, the Nation did just that, by suing the federal government to prevent the transportation of Honolulu’s waste to Yakama



Confederated Tribes and Bands
of the Yakama Nation

Established by the
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lands. See e.g., *Confederated Tribes and Bands of Yakama Nation v. U.S. Dept. of Agriculture*, No. 10-3050, 2010 WL 3434091 (E.D. Wash. Aug. 30, 2010) [hereinafter "*Hawaii Waste*"].

While the Nation recognizes and appreciates that Honolulu has made clear their opinion that "off-island shipment of Oahu's solid waste is no longer a viable alternative" in light of the *Hawaii Waste* litigation, the Nation also is aware that HWS, the low-bid corporation that previously contracted with Honolulu to ship waste to Yakama lands, has refused to withdraw its application for a compliance agreement to otherwise ship waste from Hawaii to the U.S. Mainland. This causes grave concerns for the Nation. The Nation supports the deletion of Condition 14 because it will reduce the chances that HWS will succeed in moving Hawaiian waste to Yakama lands. Moreover, Hawaiian waste presents an exponentially higher risk of harm to Yakama lands, since the very pests and invasive species of concern are likely endemic to the area surrounding Waimanalo Gulch.

To attempt to explain how important these lands are to the Nation: the Nation's Reservation and ceded lands have been utilized by the Yakama people from time immemorial – for fishing, hunting, gathering, religious ceremonies, and other usufructuary benefits. These exercises and the lands that permit them are now protected by federal law vis-à-vis the Treaty With The Yakamas, 12 Stat. 951 (1859) [hereinafter "the Treaty"]. In short, these lands are what sets the Yakama Nation apart from other tribes, governments, and peoples. It is the responsibility of the Yakama Nation's elected representatives to do everything within their power to protect these lands and the rights exercised thereupon.

The Nation will consider legal action against governments who threaten Treaty resources. As the Nation has shown through its litigation with the United States, no threat to Treaty lands and resources will go unanswered, whether it be from state, local, county or city government. Should Honolulu attempt to circumvent federal law by taking actions that adversely affect that Nation, the Nation is prepared to do what it must to protect itself from state and local governments and their officials.

Honolulu must also consider that it has a legal responsibility to the international community to see that indigenous lands are treated with respect and are kept free and clear of waste, invasive species, and other threats. On December 16, 2010, President Obama formally endorsed the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). This endorsement was intended to serve as a "stated commitment" by the Administration to the international community that it will "improve the conditions of Native Americans and to address broken promises." See S. James Anaya, UN Expert Welcomes United States' Endorsement of the Declaration on the Rights of Indigenous Peoples. One of these "promises" is made explicit in Articles 10, 11, 19, 28 and 32, and requires that "before adopting and implementing legislative or administrative measures that may affect [indigenous peoples]" and "prior to the approval of any project . . . affecting their land," that local governments obtain a tribes' "free, prior and informed consent." UNDRIP, art. 19. Article 29 also mandates that "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent." *Id.* at art. 29. The UNDRIP is binding international law, and must guide Honolulu as it takes action that could adversely affect the Nation's lands, citizens, and Treaty resources.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Finally, the Nation would like to point out what the Yakamas and the people of Hawaii share: a firm connection with the land and the needs of indigenous communities to protect that land. We are confident that Honolulu's waste situation is exceedingly difficult, but the solution is not to target the lands of another community rooted in indigenous culture and its traditional lands. Shipping Hawaiian waste to and through Yakama lands is a slap in the face to not only the Yakama Nation, but to indigenous communities around the world.

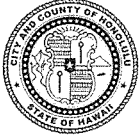
In sum, the Yakama Nation fully supports the Commission's efforts to the extent they safeguard our lands and our people. Because it appears that the proposed deletion of Condition No. 14 could reduce the chance of waste being transported to Yakama lands, the Yakama Nation does not object to, and indeed supports, the proposed deletion of Condition No. 14.

Thank you for your consideration of the Yakama Nation's testimony.

Sincerely,

Harry Smiskin
Chairman
Confederated Tribes and Bands of the Yakama Nation

cc: Yakama Nation Office of Legal Counsel
Attn: Julio V.A. Carranza



WAI'ANAЕ COAST NEIGHBORHOOD BOARD NO. 24

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET ROOM 406 • HONOLULU, HAWAII, 96813
PHONE (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www1.honolulu.gov/nco>

City and County of Honolulu
Planning Commission
Mission Memorial Hearings Room
Mission Memorial Building
550 South King Street
Honolulu, HI 96813

October 5, 2011

Aloha Planning Commission Members,

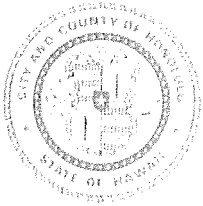
The Wai'anae Neighborhood Board #24 at the September 6, 2011 meeting by majority vote is in **OPPOSITION to the 15-year extension of the Waimanalo Gulch landfill**. The Wai'anae Board Members additionally support the comments expressed by Representative Jo Jordan in her report to the WNB #24 in which she stated, that on August 13, she submitted comments to the City and County of Honolulu Department of Planning and Permitting in **opposition** to the application to amend Special Use Permit No. 2008/SUP-2 to delete the July 31, 2012 deadline to cease disposal of municipal solid waste at Waimanalo Gulch Sanitary Landfill. The WNB #24 supports the request to extend the public comment period to allow the community a reasonable opportunity to submit comments on this issue. Representative Jordan noted that the Planning Commission must deny the application because it doesn't have the authority to modify the State Land Use Commission's Order dated October 22, 2009, which added the July 31, 2012 deadline to cease disposal of municipal solid waste. The WNB #24 is in agreement with Representative Jordan in her deep concern that the City continues to disregard comments to close Waimanalo Gulch Sanitary Landfill and seriously consider other sites outside of the Leeward Coast.

In addition, the WNB #24 voted to support Representative Jordan's supplemental statements on the Waimanalo Gulch Sanitary Landfill Expansion in which she stated the City and County of Honolulu, Department of Planning and Permitting (DPP) has determined that the Department of Environmental Services' request to modify Condition No. 14 of the State Land Use Commission's Decision and Order, date October 22, 2009, to delete the July 31, 2012 deadline to cease disposal of municipal solid waste (MSW) at Waimanalo Gulch Sanitary Landfill (WGSL), does not need a supplemental environmental impact statement. The WGSL Lateral Expansion Final EIS was accepted and published in The Environmental Notice, October 23, 2008. Deletion of this deadline would allow the WGSL to continue receiving MSW until the site reaches capacity as permitted by the State Department of Health. The determination is based on consideration of the age of data, new information or development, time frame and phasing, and whether it is a different action. The information presented in the 2008 final environment impact statement is still current. Therefore, DPP has determined that a Supplemental EIS is not required, pursuant to Section 11-200-27, Hawaii Administrative Rules.

Mahalo for your time and consideration for allowing me the opportunity to convey the decision of the Wai'anae Neighborhood Board #24 Members.

Malama Pono,
D. Kawika Naho'opi'i, Chair
Wai'anae Neighborhood Board #24





CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
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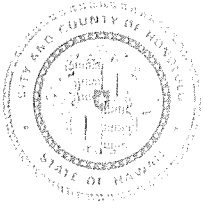
TOM BERG
COUNCILMEMBER
HONOLULU CITY COUNCIL • DISTRICT I
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October 5, 2011

**Testimony from Councilmember Tom Berg
Ewa-State Special Use Permit Amendment Application – 2008/SUP-2 (RY)
Waimanalo Gulch Sanitary Landfill (WGSL)**

As the city councilman whose jurisdiction houses this landfill, our neighborhood boards including Nanakuli and Waianae have taken a formal stand to unite against the proposal to extend the landfill by another 15 years. I urge you stop enabling this reckless behavior that condones the broken treaties and is an affront to the economic engine of businesses thriving in West Oahu with the stipulation this landfill was to go away. Families and economic development ventures have invested their hard earned dollars into the vicinity of the landfill with the promise the landfill will have found its terminus years ago. For example, when the Dakota Sioux were given bad meat and at times no food at all in violation of treaties made, the government responded to the starving people, "Let them go and eat grass." Right here, possibly in this room, another treaty will be broken and not honored.

Please do what is just and right, and stop turning our coastline on the leeward coast into an ashtray for the rest of the island.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
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TOM BERG
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October 5, 2011

**Testimony from Councilmember Tom Berg
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Please do what is just and right, and stop turning our coastline on the leeward coast into an ashtray for the rest of the island.

**BAYS
LUNG
ROSE
HOLMA**

Attorneys at Law

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1099 Alakea Street
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Harvey J. Lung
Crystal K. Rose
Karin L. Holma
Bruce D. Voss
Craig P. Wagnild
Ryan H. Engle
Michael C. Carroll

A Partnership of
Law Corporations

Of Counsel:
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Edward E. Case
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Sarah M. Love
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Sarah M. Blackman
Matthew C. Shannon
Christian D. Chambers
David R. Major
Aarin E. Gross

Jason N. Baba
(1957-2001)

October 4, 2011

Via Facsimile: (808) 768-5552

Via E-mail: ctotto@honolulu.gov

Mr. Douglas Chin
Managing Director
530 S. King St., Rm. 306
Honolulu, HI 96813

Mr. Charles Totto
Executive Director & Legal Counsel
Ethics Commission
715 S. King St., Ste. 211
Honolulu, HI 96813-3091

Re: Disclosure of Conflict of Interest Statement, Planning Commission, City
and County of Honolulu

Dear Messrs. Chin and Totto:

I am a Commissioner on the Planning Commission of the City and County of Honolulu. Attached please find my Disclosure of Conflict of Interest Statement. Based on the issue I am disclosing, I am recusing myself from participating in the proceedings involving the Waimanalo Gulch Sanitary Landfill to avoid any appearance of impropriety. My apologies for the late notice on this. I only learned about the extent of this issue yesterday.

Thank you for your attention to this matter.

Very truly yours,

BAYS LUNG ROSE & HOLMA

By: 

Karin L. Holma
Attorney at Law, A Law Corporation
Its General Partner

KLH:mmml
Enclosure

DISCLOSURE OF CONFLICT OF INTEREST STATEMENT

TO: ETHICS COMMISSION

FROM:

Karin L. Holma
Name
Planning Commission
Agency, Board or Commission

Commissioner
Position
523-9000
Telephone

OFFICER, EMPLOYEE OR MEMBER OF BOARD OR COMMISSION COMPLETES

1. §11-103, Revised Charter of Honolulu, requires an elected or appointed officer or employee to disclose in writing any interest he or she possesses or acquires that might reasonably tend to create a conflict with the public interest. Please be advised that I have the following business, financial or personal interest:

My husband may have future business dealings related to Waimanalo Gulch Sanitary Landfill.

2. I have the following duties or responsibilities to the City that are related to the above interest:

I am a Commissioner on the Planning Commission.

3. The following matter is before this agency, board or commission and is related to the above interest:

Ewa-State Special Land Use Permit Amendment Application -- 2008/SUP-2 (RY), Waimanalo Gulch Sanitary Landfill

4. a. A decision on this matter will take place, or took place, on 10/05/2011.

b. I participated, or plan to participate, in the decision making process on this matter.

I did/will not participate in the decision making process on this matter. [checkmark]

5. I request advice from the Ethics Commission regarding this matter.

10/4/2011
Date

[Handwritten Signature]
Signature

ETHICS COMMISSION COMPLETES

1. The facts disclosed do not indicate a conflict of interest exists.

2. The facts disclosed indicate a conflict of interest exists because:

[Blank lines for response to question 2]

3. The Ethics Commission recommends:

[Blank lines for response to question 3]

Date

For Ethics Commission

cc: Appointing Authority
City Clerk