

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

June 18, 2012

Daniel E. Orodener, Executive Officer
Land Use Commission
State of Hawaii
235 South Beretania Street, Room 406
Honolulu, Hawaii 96813


Dear Executive Officer Orodener:

**Subject: Modification to State Special Use Permit No. 2008/SUP-2 and
LUC Docket No. SP09-403, Deletion of Condition No. 14
Relating to Deadline Prohibiting the Acceptance of Municipal Solid
Waste at Waimanalo Gulch Sanitary Landfill - Honouliuli, Ewa, Oahu
Tax Map Key 9-2-003: 72 and 73**

Pursuant to the Planning Commission's letter of May 29, 2012 (attached), we are transmitting a copy of the record of the proceedings before the Planning Commission for the subject modification. Also included is a listing of all exhibits and a copy of the record on digital media.

If you or your staff have any questions, please contact Raymond Young of our staff at 768-8049.

Very truly yours,


David K. Tanoue, Director
Department of Planning and Permitting

DT:dj
Attachments
942770

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU
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DANIEL S. M. YOUNG

May 29, 2012

Normand R. Lezy, Chair
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804

Dear Mr. Lezy:

Re: Ewa – State Special Use Permit File No. 2008/SUP-2
Also referred to as LUC Docket No. SP09-403
Waimanalo Gulch Sanitary Landfill

This letter is in response to your letter dated May 22, 2012, on behalf of the State Land Use Commission ("LUC"), urging the City's Planning Commission ("Planning Commission") to stay its May 25, 2012, proceedings on the Department of Environmental Services, City and County of Honolulu's current Application to Modify the Special Use Permit No. 2008/SUP-2 by Modifying the Land Use Commission's Order Adopting City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009 ("ENV's Current Application"), until the LUC remands the records contained in File No. 2008/SUP-2 to the Planning Commission.

On May 25, 2012, the Planning Commission decided that a six-month stay of its proceedings on ENV's Current Application is warranted pending the LUC's decision after remand from circuit court on the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated August 4, 2009 ("Planning Commission's Order"), as directed by the Hawaii Supreme Court in the case of Department of Environmental Services v. Land Use Commission, SCAP-10-0000157, entered May 4, 2012, or a future request to the Planning Commission by any party. There is no necessity to remand the records contained in File No. 2008/SUP-2 so that they may be consolidated with the record in ENV's Current Application. This is because the Planning Commission already made its decision based on the records in File No. 2008/SUP-2 in the form of the Planning Commission's Order and previously transmitted

Normand R. Lezy
May 29, 2012
Page 2

those records including that decision to the LUC on August 10, 2009. There is no request to modify the Planning Commission's Order and it remains unchanged.

For similar reasons, there is no necessity to instruct your staff to forward the records in File No. 2008/SUP-2 from the LUC to the Planning Commission for the purpose of consolidation in the event the Planning Commission stays its proceedings on ENV's Current Application at ENV's request.

As an exception to the stay, the Planning Commission will transmit to you as soon as possible, under separate cover, a copy of the record that relates to ENV's Current Application for the LUC's consideration. In the opinion in the above-mentioned case, the Hawaii Supreme Court noted that the LUC could consider such record in further LUC proceedings consistent with the opinion.

Very truly yours,



GAYLE PINGREE
Chair

GP:li

cc: Dana Viola, Deputy Corporation Counsel
Ian L. Sandison, Esq.
Calvert G. Chipchase, Esq.

12-03497/228153

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2

LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

ITEM	DPP	ENV	KOCA	Schnitzer	Planning Commission	Description
1	DPP 1					Planning Division Master Application Form - Modification of Condition 14.
2	DPP 2					Application by Dept. of Environmental Services (ENV) to Modify SUP and Exhibits A thru P.
3	DPP 3					Letter from ENV on Whether a Supplemental EIS is Needed.
4	DPP 4					Dept. of Planning and Permitting (DPP) Environmental Checklist.
5	DPP 5					Acceptance of SUP Application for Processing Forms and Mailing List.
6	DPP 6					Agency Comments on SUP Application by HFD, DTS, DFM, HPD, DDC, DEM, BWS, DLNR, DOH, OHA.
7	DPP 7					Community Comments from Ko Olina Community Association, Ko Olina Fairways AOA, William and Sara Barnes, The Coconut Plantation, Councilmember Tom Berg, Commercial Contracting Hawaii, Alex Duarte, Alan Nakamura, Honu Group Communications, LLC, Pieter and Claire van Wingerden, Mario Beekes, Representative Jo Jordan, James Handzel, Resort Operations-LLC, Watabe Wedding, Congresswoman Colleen Hanabusa, Resort Management Company LLC, Ko Olina Weddings & Events, Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34.
8	DPP 8					Letter from DPP to Office of Environmental Quality Control - Determination for Supplemental EIS.
9	DPP 9					Letter from DPP to Councilmember Tom Berg on Request to Extend Comment Period.
10					PC 1	Hearing Notice October 5, 2011.
11	DPP 10					DPP's Report and Recommendation to Planning Commission and Hearing Map.
12					PC 2	Agenda October 5, 2011.

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2
LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

13		SCHN 1		Petition to Intervene filed by Schnitzer Steel Hawaii Corp. (Schnitzer).
14	KOCA 1			Motion to Recognize Ko Olina Association and Maile Shimabukuro (KOCA) as Parties, Memorandum in Support of Motion, Verification, Exhibit A.
15	P 1			ENV's Memorandum in Opposition to KOCA's Motion to Recognize KOCA as Parties, Attachment 1.
16	KOCA 2			KOCA's Reply to ENV's Memorandum in Opposition to Motion to Recognize KOCA as Parties.
17	KOCA 3			KOCA's Prehearing Conference Statement.
18		SCHN 2		Schnitzer's Prehearing Conference Statement.
19	P 2			ENV's Prehearing Conference Statement.
20			PC 3	Stipulation to Amend Briefing Schedule as Provided in the PC's Prehearing Conference Dated November 9, 2011.
21			PC 4	Planning Commission Order on Prehearing Conference dated November 9, 2011.
22	KOCA 4			KOCA's Motion to Dismiss, Memorandum in Support of Motion, Declaration of Christopher T. Goodwin, Exhibits 1-14.
23		SCHN 3		Schnitzer's Memorandum in Opposition to KOCA's Motion to Dismiss Filed November 7, 2011.
24	P 3			ENV's Memorandum in Opposition to KOCA's Motion to Dismiss, Exhibits A-D.
25		SCHN 4		Schnitzer's List of Exhibits and List of Witnesses.
26	P 4			ENV's List of Exhibits and List of Witnesses.
27	KOCA 5			KOCA's List of Witnesses and List of Exhibits (K 1 to K 79).

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2
LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

28	KOCA 6		KOCA's First Amended Witness List.
29	KOCA 7		KOCA's Second Amended Witness List.
30		PC 5	Public comments from Joseph Yamaoka, Takeo Ishii on behalf of Masaki Negamine, Congresswoman Colleen Hanabusa, Rep. Georgette Jordan, Rep Sharon Har, Louis Shiraishi, Harry Smiskin, D. Kawika Nahoopi, Hawaii Reporter News Article, "Time to Show a Little Respect", Councilmember Tom Berg, Dep. AG opinion dated Sept. 22, 2011, Commissioner Holma conflict of interest statement.
31		PC 6	Contested Case Hearing Notice of Dec. 7, 2011.
32		PC 7	Agendas - December 7, 2011, January 11, 2012, January 25, 2012, February 8, 2012, March 7, 2012, March 14, 2012*, April 4, 2012, April 11, 2012, April 17, 2012*, April 23, 2012, May 25, 2012. * No transcripts for these dates as meetings were cancelled.
33	P 5		ENV's First Amended List of Exhibits and Exhibits A1 through A33.
34	P 6		ENV's Written Direct Testimony of Timothy E. Steinberger.
35	P 7		ENV's Testimony of Steven Y. K. Chang.
36	P 8		ENV's Pre-Contested Case Hearing Statement.
37	P 9		ENV's First Amended List of Witnesses.
38		SCHN 5	Schnitzer's Written Direct Testimony of Larry Snodgrass, Exhibits S-2 to S-4.
39		SCHN 6	Schnitzer's Contested Case Opening Brief.
40	KOCA 8		KOCA's Written Direct Testimony of Ken Williams, Declaration of Ken Williams.
41	KOCA 9		KOCA's Written Direct Testimony of Maile Shimabukuro, Declaration of Maile Shimabukuro.

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2
LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

42	KOCA 10	KOCA's Written Direct Testimony of Cynthia K. L. Rezendes, Declaration of Cynthia K. L. Rezendes.
43	KOCA 11	KOCA's Written Direct Testimony of Maeda Timson, Declaration of Maeda Timson.
44	KOCA 12	KOCA's Written Direct Testimony of Shad Kane, Declaration of Shad Kane.
45	KOCA 13	KOCA's Written Direct Testimony of Duke Hospodar, Declaration of Duke Hospodar.
46	KOCA 14	KOCA's Written Direct Testimony of Beverly Munson, Declaration of Beverly Munson.
47	KOCA 15	KOCA's Written Direct Testimony of Dwight Miller, Declaration of Dwight Miller.
48	KOCA 16	KOCA's Pre-Contested Case Statement.
49	KOCA 17	KOCA's First Amended Exhibit List.
50	KOCA 18	KOCA's Exhibits K1 through K169.
51	KOCA 19	KOCA's Errata to Exhibit K154, Exhibit K154.
52	KOCA 20	KOCA's Errata to the Declaration of Dwight Miller Filed December 13, 2011, Exhibit A.
53	KOCA 21	KOCA's Second Amended Exhibit List, Exhibits K156-K158.
54	KOCA 22	KOCA's Third Amended Exhibit List, Exhibits K159-K161.
55	KOCA 23	KOCA's Request for Issuance of a Subpoena Duces Tecum to the Custodian of Records of Waste Management of Hawaii, Inc., Subpoena Duces Tecum, Exhibits A-B.
56	KOCA 24	KOCA's Fourth Amended Exhibit List, Exhibits K162-K163.

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2

LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

57		PC 8	Transcripts of the Public Hearing of October 5, 2011, Contested Case Hearings of December 7, 2011, January 11, 2012, January 25, 2012, February 8, 2012, March 7, 2012, April 4, 2012, April 11, 2012, April 23, 2012, May 25, 2012.
58	KOCA 25		KOCA's Fifth Amended Exhibit List, Exhibits K164 - K169.
59	KOCA 26		KOCA's Sixth Amended Exhibit List, Exhibits K171-K172, K173-K176, & K78-K179.
60	KOCA 27		KOCA's Subpoena Duce Tecum to the Custodian of Records of the Dept. of Environmental Services.
61		PC 9	Waste Managements Hawaii, Inc.'s Response and Objections to Subpoena Duces Tecum, Exhibit 1.
62	P 10		ENV's Second Amended List of Exhibits, Exhibits A34 Through A50.
63	P 11		First Annual Report for Special Use Permit No. 09-403.
64	P 12		Second Annual Report for Special Use Permit No. 09-403.
65	KOCA 28		KOCA's Seventh Amended Exhibit List, Exhibits K191, K194, K208, K215, K217, K218, K222, K223, K226, & K227.
66	KOCA 29		KOCA's Rebuttal Witness List.
67	KOCA 30		KOCA's First Amended Rebuttal Witness List.
68	KOCA 31		KOCA's Eighth Amended Exhibit List, Exhibits K189, K190, K192, K193, K195, K196, K198, K220, K230, K247, K251, K255, K256, K257, & K258.
69	KOCA 32		KOCA's Motion to Reopen Contested Case Hearing to Admit Limited Additional Evidence to Correct Error, Declaration of Calvert Chipchase, Exhibits A - B.
70	P 13		ENV's Memorandum in Opposition to KOCA's Motion to Reopen Contested Case Hearing.

Waimanalo Gulch Sanitary Landfill

State Special Use Permit No. 2008/SUP-2
LUC Docket No. SP09-403, Deletion of Condition No. 14

List of Exhibits

71	P 14		ENV's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
72	KOCA 33		KOCA's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
73	SCHN 7		Schnitzer's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
74	KOCA 34		KOCA's Response to ENV's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
75	KOCA 35		KOCA's Response to Schnitzer's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
76	P 15		ENV's Response to KOCA's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
77	SCHN 8		Schnitzer's Exceptions to KOCA's Proposed Findings, Conclusions of Law, and Decision and Order.
78	PC 10		Land Use Commission's Request to Planning Commission to Stay Proceedings.
79	P 16		ENV's Notification of Supreme Court Decision or in the Alternative Motion to Stay Contested Case Hearing.
80	KOCA 36		KOCA's Memorandum in Opposition to ENV's Notification of Supreme Court Decision or in the Alternative Motion for Stay of Contested Case Hearing.
81	SCHN 9		Schnitzer's Position on KOCA's Motion to Reopen Contested Case Hearing to Admit Limited Evidence to Correct Error.
82	SCHN 10		Schnitzer's Opposition to ENV's Notification of Supreme Court Decision or in the Alternative Motion to Stay Proceedings of Contested Case Hearing.
83	P 17		ENV's Notice Regarding Procedure for ENV vs. LUC in Civil No. 09-1-2719-11.