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2018 FEB -5 PM 2:15
DEPT OF PLANNING
AND PERMITTING
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

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For a New Special Use Permit To Supersede
Existing Special Use Permit To Allow A
92.5-Acre Expansion And Time Extension For
Waimanalo Gulch Sanitary Landfill,
Waimanalo Gulch, O'ahu, Hawai'i, Tax Map
Key No. (1) 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

FILE NO. 2008/SUP-2

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU'S EXCEPTIONS TO
HONOLULU PLANNING
COMMISSION'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER DATED
DECEMBER 6, 2017; CERTIFICATE OF
SERVICE

Land Use Commission Docket No. SP09-403)
which states as follows:

“14. Municipal solid waste shall be allowed at the WGS� up to July 21, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGS� after July 31, 2012.”

**DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU’S EXCEPTIONS TO HONOLULU
PLANNING COMMISSION’S PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER DATED DECEMBER 6, 2017**

COMES NOW DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (“Applicant” or “ENV”), by and through its attorney, KAMILLA C. K. CHAN, Deputy Corporation Counsel, and respectfully submits its Exceptions to Honolulu Planning Commission’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order, dated December 6, 2017 (“Proposed Decision and Order”), pursuant to the Rules of the Planning Commission (“RPC”) § 2-75.

I. DISCUSSION

This matter is a consolidation of two contested case proceedings before the Planning Commission. The first proceeding involves ENV’s application for a new special use permit (“SUP”) for the expansion of Waimanalo Gulch Sanitary Landfill (“WGS�”) and the withdrawal of County Special Use Permit No. 86/SUP-5, dated December 3, 2008 (“2008 Application”), and designated as County SUP File No. 2008/SUP-2. The second proceeding involves ENV’s application to modify County Special Use Permit File No. 2008/SUP-2 for the sole purpose of

deleting the July 31, 2012 deadline for the landfill to accept municipal solid waste (“MSW”) (“2011 Application”).¹

By order dated June 6, 2017, the State Land Use Commission (“LUC”) remanded the record in the 2008 Application and 2011 Application to the Planning Commission pursuant to HAR § 15-15-96(a) for further proceedings to:

(1) clarify whether the Planning Commission followed Section 2-75 of the Rules of the Planning Commission in issuing its Findings of Fact, Conclusions of Law, and Decision and Order; (2) clarify the basis of the Planning Commission’s proposed additional Condition No. 3, which specifies a December 31, 2022, date within which the Applicant is to identify an alternative site that will be used upon the WGS� reaching its capacity and the implications it has on the closure date of the WGS� to use and the subsequent commencement of operations at the alternative landfill site; (3) clarify whether the record needs to include updated information on the operation of the WGS�, the landfill site selection process, and the waste diversion efforts of the City and County of Honolulu; (4) assuming the Planning Commission eventually recommends approval of the matter, clarify the effective date of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order; and (5) clarify whether the Planning Commission is ruling on both the 2008 Application and the 2011 Application in its Findings of Fact, Conclusions of Law, and Decision and Order.

See June 6, 2017 LUC Order at 5-6. Accordingly, the record on the 2008 Application and 2011 Application was remanded to the Planning Commission.

On December 6, 2017, the Planning Commission adopted the Proposed Decision and Order. Applicant’s exceptions to the Proposed Decision and Order are detailed in the paragraphs below. Applicant requests that the Planning Commission adopt the Proposed Decision and Order subject to the exceptions set forth herein.

¹ The complete procedural history of the two contested case hearings is set forth in the City’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed on January 27, 2017, and supplemented by the brief summary in the City’s Memorandum in Opposition to Intervenor Ko Oline Community Association and Maile Shimabukuro’s Motion to Reopen the Contested Case Hearing filed on December 2, 2017.

A. EXCEPTIONS TO CERTAIN PROPOSED FINDINGS OF FACT

Paragraph 49. Before voting, members of the Planning Commission who were not present during the entire contested case hearing are required to attest to the fact that they have reviewed the transcript of the proceedings for the date(s) they were absent and that they have studied, examined, and understand the record of the hearings. See RPC § 2-76(a).

Paragraph 49 states that on March 1, 2017, Planning Commission Chair Dean I. Hazama (“Hazama”) and members Ken K. Hayashida (“Hayashida”), Wilfred A. Chang (“Wilfred Chang”), Daniel S. M. Young (“Young”), and Cord D. Anderson (“Anderson”) each confirmed that they reviewed all evidence and the entire record from the 2008 and 2011 proceedings. After the LUC’s June 6, 2017 Order, Vice Chair Theresia C. McMurdo (“Vice Chair McMurdo”) and member Gifford K. F. Chang (“Gifford Chang”) are participating in the remanded proceedings, and Hazama and Young are apparently no longer on the Commission. See Proposed Decision and Order at 39-40. In order to comply with RPC § 2-76, before voting Vice Chair McMurdo and member Gifford Chang must attest to the fact that they reviewed the transcripts of the 2008 and 2011 proceedings for the date(s) they were not present and that they have studied, examined, and understand the record of the hearings. To ensure that a complete record is established, members Anderson, Hayashida and Wilfred Chang should make the same attestation. Further, the written decision and order rendered in this matter should include a statement to reflect the members’ attestation to this fact.

Paragraphs 65 and 66. Paragraphs 65 and 66 erroneously refer to the written exceptions filed in accordance with RPC § 2-75 as “exemptions.” The term “exemptions” should be deleted from both paragraphs and “exceptions” should be inserted in its place.

B. EXCEPTIONS TO CERTAIN PROPOSED CONCLUSIONS OF LAW

Proposed Conclusion of Law No. 1. The 2017 edition of the Revised Charter of the City and County of Honolulu (“City Charter”), which was published on June 30, 2017, is the current edition. Proposed Conclusion of Law No. 1 cites to the 2000 edition of the City Charter. The Planning Commission should cite to the 2017 edition and appropriately revise the citation in proposed Conclusion of Law No. 1.

C. EXCEPTIONS TO CERTAIN PROPOSED ADDITIONAL CONDITIONS

Proposed Condition No. 1. Proposed Condition No. 1 requires that on December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGS� reaching its capacity at a future date. See Proposed Decision and Order at 38. At a hearing on May 24, 2017, the LUC acknowledged that the findings of fact state that it will take at least seven years from the time a site is identified to have an operating landfill and expressed concern about whether the identification of a landfill site by December 31, 2022 would provide sufficient time for the Applicant to have an operative landfill available when WGS� reaches capacity. Accordingly, the LUC requested clarification of the basis of the condition that specifies a December 31, 2022 date within which the Applicant is to identify an alternative landfill site that will be used upon WGS� reaching capacity. See June 6, 2017 LUC Order at 5.

The Applicant submits that the Proposed Decision and Order may not adequately address the LUC’s request to clarify the basis of the December 31, 2022 date. Therefore, Proposed Condition No. 1 should be supplemented to include the basis of the December 31, 2022 date.

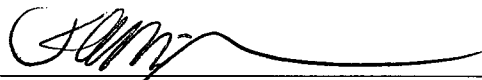
Proposed Condition No. 2. Proposed Condition No. 2 mistakenly refers to a Solid *and Hazardous* Waste Permit. The evidence establishes that the landfill has a Solid Waste Management Permit issued by the State Department of Health (“DOH”). See 2011 Exhibit

“A4.” Applicant respectfully requests that the Planning Commission revise Condition No. 2 of this Proposed Decision and Order to accurately reflect the permit issued by DOH.

II. CONCLUSION

Applicant respectfully requests that the Planning Commission adopt its Proposed Decision and Order subject to the exceptions set forth above.

DATED: Honolulu, Hawaii, February 5, 2018.



KAMILLA C. K. CHAN
Deputy Corporation Counsel
Attorney for Applicant
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FILE NO. 2008/SUP-2

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE **DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S
EXCEPTIONS TO HONOLULU PLANNING COMMISSION'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED**

DECEMBER 6, 2017 was duly served by hand-delivery to the following on the date below,
addressed as follows:

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DATED: Honolulu, Hawai'i, February 5, 2018.



KAMILLA C. K. CHAN
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