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LAND USE COMMISSION
STATE OF HAWAII

2019 OCT 17 P 3:20

Attorney for Intervenor
COLLEEN HANABUSA

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of) DOCKET NO. SP09-403
)
DEPARTMENT OF ENVIRONMENTAL) PLANNING COMMISSION NO. 2008/SUP-2
SERVICES, CITY AND COUNTY OF)
HONOLULU) INTERVENOR COLLEEN HANABUSA'S
) FURTHER OBJECTIONS TO THE LAND USE
For a New Special Use Permit to Supersede) COMMISSION'S APPROVAL WITH
Existing Special Use Permit to Allow a 92.5) MODIFICATIONS OF SPECIAL USE PERMIT
Acre Expansion and Time Extension for) AND ANY PROPOSED FINDINGS OF FACT,
Waimanalo Gulch Sanitary Landfill,) CONCLUSIONS OF LAW, AND DECISION
Waimanalo Gulch, Oahu, Hawai'i, Tax Map) AND ORDER, AND THE FINAL FINDINGS
10/17/19 2:30 PM; Key: 9-2-03: 72 and 73) OF FACT AND CONCLUSIONS OF LAW,
) AND DECISION AND ORDER TO BE
) ENTERED BY THE LAND USE
In the Matter of the Application of) COMMISSION; and CERTIFICATE OF
) SERVICE
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY OF)
HONOLULU) Hearing
) DATE: October 9-10, 2019
To Delete Condition No. 14 of Special) TIME: 9:00 a.m.
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.")
)

INTERVENOR COLLEEN HANABUSA'S FURTHER OBJECTIONS TO
THE LAND USE COMMISSION'S APPROVAL WITH MODIFICATIONS
OF SPECIAL USE PERMIT AND ANY PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER, AND THE FINAL FINDINGS
OF FACT AND CONCLUSIONS OF LAW AND DECISION AND ORDER TO BE
ENTERED BY THE LAND USE COMMISSION

COMES NOW INTERVENOR COLLEEN HANABUSA (also referred to hereinafter as "Hanabusa") or (Intervenor Hanabusa"), by and through her counsel undersigned, and hereby respectfully submits to this Honorable Commission her further objections to the Land Use Commission's Approval with Modifications of the application by the Department of Environmental Services, City and County of Honolulu ("ENV" or "City"), for the Special Use Permit ("SUP") for the Waimanalo Gulch Sanitary Landfill. As indicated at the conclusion of the Commission's meeting on October 10, 2019, counsel for Intervenor Hanabusa informed the LUC that she did not want to waive her positions or objections by submitting proposed findings of fact and conclusions of law consistent with the LUC's adoption of its motion to approve with modifications the application for an SUP for the Waimanalo Gulch Sanitary Landfill. The LUC's Chair informed counsel for Intervenor Hanabusa that he could file written objections, instead.

Intervenor Hanabusa hereby respectfully submits her written objections, and in so doing, also incorporates her Position Statement and Objections to the Planning Commission's Findings of Fact and Conclusions of Law, and Decision and Order, Filed on September 24, 2019, and also incorporates all of her objections and arguments presented before the LUC during the October 9 and 10, 2019 hearings before the LUC as well as her previous positions and objections to the consolidation of the records in the 2009 and 2012 proceedings, as well as her other objections and positions made before the Planning Commission and the LUC, previously.

In addition, Intervenor Hanabusa objects to all findings of fact and conclusions of law that in any way support the issuance of an SUP as being clearly erroneous, in view of the reliable, probative and substantial evidence, and wrong, as well as being contrary to law, made upon unlawful procedure, arbitrary and capricious and/or an abuse of discretion. Further, Intervenor Hanabusa, and in addition to her positions and objections included in her statement and objections before this Commission, filed on September 24, 2019, also asserts that the consolidation of the 2009 and 2012 records is not supported by any rule and is contrary to HRS Chapter 91 and the State of Hawaii and federal constitutions, and the separate 2012 proceedings are invalid and void as no rule or any authority allows for such proceedings, and the proceedings are contrary to HRS Chapter 91, the State of Hawaii and federal constitutions, and other authorities. In addition, the matter was also pending before the Hawaii Supreme Court at the time of the 2012 proceedings and Intervenor Hanabusa further asserts that the Planning Commission was, therefore, without jurisdiction.

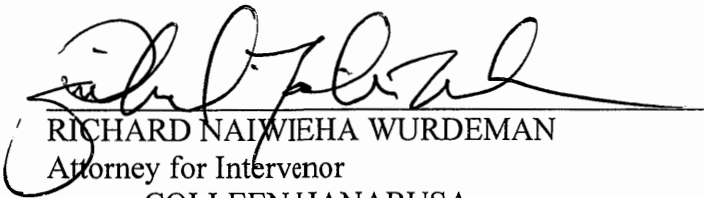
Without waiving any of her positions and objections, Intervenor Hanabusa also maintains that the City failed to meet its burden of proof, its burden of persuasion, and its burden of producing evidence to support its petition.

Finally, and as argued and maintained in great detail at the LUC, Intervenor Hanabusa again asserts that given the piece-meal and essentially permanent nature (even with a 2028 closure date) of the requested SUP, the Special Use Permit is not the proper mechanism for a requested use of the Waimanalo Gulch Sanitary Landfill and is contrary and is in conflict with the Hawaii Supreme Court's holding in Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission, 64 Haw. 265 639 P.2d 1097, and other authorities, and that the LUC abused its discretion and was clearly erroneous and wrong in approving a special use permit in

that the use was more properly the subject of a district boundary amendment petition (which would have been the subject of a challenge by Intervenor Hanabusa, as well).

Respectfully submitted.

Dated: Honolulu, Hawaii, October 17, 2019.



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Attorney for Intervenor
COLLEEN HANABUSA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing document was served on the following parties by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

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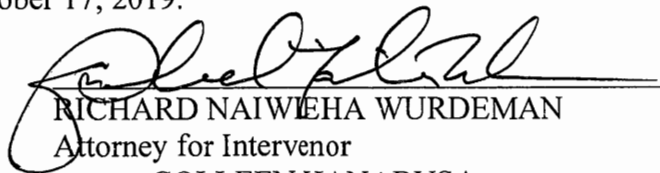
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DATED: Honolulu, Hawaii, October 17, 2019.


RICHARD NAIWEHA WURDEMAN
Attorney for Intervenor
COLLEEN HANABUSA