

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP87-362
)
DEPARTMENT OF ENVIRONMENTAL) ORDER GRANTING IN PART
SERVICES, CITY AND COUNTY OF) AND DENYING IN PART
HONOLULU (FKA DEPARTMENT OF) MOTION TO AMEND AND/OR
PUBLIC WORKS, CITY AND COUNTY OF) STAY THE DECISION AND
HONOLULU) ORDER APPROVING
) AMENDMENT TO SPECIAL
For An Amendment To The Special Use) USE PERMIT DATED JUNE 3,
Permit Which Established A Sanitary Landfill) 2003
On Approximately 107.5 Acres Of Land Within)
The State Land Use Agricultural District At)
Waimanalo Gulch, Honouliuli, `Ewa, O`ahu,)
Hawai`i, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))
_____)

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO AMEND
AND/OR STAY THE DECISION AND ORDER APPROVING AMENDMENT TO
SPECIAL USE PERMIT DATED JUNE 3, 2003

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

MAY 10 2004

Date

by *Anthony J. Kelly*
Executive Officer

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ORDER GRANTING IN PART AND DENYING IN PART MOTION TO AMEND
AND/OR STAY THE DECISION AND ORDER APPROVING AMENDMENT TO
SPECIAL USE PERMIT DATED JUNE 3, 2003

On March 25, 2004, the Department of Environmental Services, City and County of Honolulu (“Applicant”), formerly known as the Department of Public Works, City and County of Honolulu, filed a Motion To Amend And/Or To Stay The Decision And Order Approving Amendment To Special Use Permit Dated June 3, 2003¹ (“Motion”), pursuant to section 15-15-70, Hawai`i Administrative Rules (“HAR”). The Applicant requested that the Land Use Commission (“Commission”) issue an Order (i)

¹ The actual issuance date of the Decision And Order Approving Amendment To Special Use Permit is June 9, 2003.

amending or, in the alternative, staying the site selection deadline for a new landfill as provided in this Commission's Decision And Order Approving Amendment To Special Use Permit dated June 3, 2003²; and (ii) clarifying whether the Waimanalo Gulch Sanitary Landfill is a site that may be considered by the Honolulu City Council ("Council").

Attached to the Motion was an Affidavit of Frank J. Doyle, P.E. ("Affidavit"), Director of the Department of Environmental Services, the Applicant herein. The Affidavit stated, among other things, that (i) in previous testimony before this Commission on March 27, 2003, regarding the expansion of the Waimanalo Gulch Sanitary Landfill, the Applicant represented that it would continue to seek alternate disposal sites and other technologies and waste recovery programs including the expansion of H-POWER to reduce the amount of waste that is disposed of in landfills and that consistent with planning objectives, it would discontinue landfill activities at Waimanalo Gulch by May 1, 2008, but that in accordance with Council Resolution 04-75, CD1, the Applicant was asked by the Council to appear before this Commission and request (a) an extension of the deadline to select a landfill site from June 1, 2004, to December 1, 2004, and (b) clarification from this Commission as to whether Waimanalo

² The condition to which the Applicant seeks an amendment or stay is Condition Number 1, which states:

"The Blue Ribbon Site Selection Committee shall make its recommendation for a new landfill site to the City Council by December 1, 2003. **The City Council shall select a new site by June 1, 2004.** If a new site is not selected by June 1, 2004, this Special Use Permit shall immediately expire." (Emphasis added)

Gulch may be considered by the Council as one of the available landfill sites; (ii) although the Applicant believes that the Council currently has sufficient information to select a new site for the City landfill, as set forth in Council Resolution 04-75, CD1, the Council believes that "it should not be expected to make a decision on the next landfill site until all available information has been presented and the public given every opportunity to comment." (Emphasis in original); and (iii) should this Commission grant the Applicant's Motion and extend the site selection deadline for six months, this Commission's May 1, 2008, deadline regarding the cessation of operations and closure of the Waimanalo Gulch Sanitary Landfill would also be affected and will require the Applicant to (a) request a six-month extension of the May 1, 2008, deadline; and (b) submit an application requesting allowance of additional acreage within the existing landfill area.

The Commission considered the Motion at its meeting on April 1, 2004, in Honolulu, Hawai'i. Gary Y. Takeuchi Esq., and Frank J. Doyle appeared on behalf of the Applicant. David K. Tanoue, Esq., Don Kitaoka, Esq., and Raymond Young appeared on behalf of the Department of Planning and Permitting ("DPP"). John W. K. Chang, Esq. and Abe Mitsuda appeared on behalf of the Office of Planning ("OP").³ At the meeting, the Commission heard testimony from the Applicant's witnesses, i.e.,

³ On March 31, 2004, the OP filed a Statement Of Position Regarding The Motion, which recommended that the deadline for selecting a landfill site be extended from June 1, 2004, to December 1, 2004, and that the decision on the location of the landfill be made by the City and County of Honolulu subject to receipt of all appropriate Federal, State, and County approvals.

Councilmembers Rod Tam and Mike Gabbard and four members of the Blue Ribbon Advisory Committee: Bruce Anderson, Cynthia K. L. Rezentes, Kathy Bryant-Hunter, and Todd K. Apo.⁴ The Commission also received into evidence oral and/or written public testimony from Jim Corcoran; Stann Reiziss; Dr. Terry Shintani; Kamaki Kanahele; Bill and Angela Hutton; Lorrie Stone, Esq.; Arvid Youngquist; Herbert Hew Len; Dayton M. Nakanelua; Councilmember Barbara Marshall; Councilmember Nestor Garcia; Alison and Nicholas Quinlivan; Lily and Oscar Wand; Mario, Henrietta, and Amanda Beekes; John A. and Laura L. Epstein and Family; Dave Dedinsky; Jo Anne SawyerKnoll; Ron and Carol Scherman; Wayne H. Muraoka; and State Senator Colleen Hanabusa.

Following discussion, the Commission clarified that it had jurisdiction only in regard to the Applicant's request to extend the site selection deadline for a new landfill from June 1, 2004, to December 1, 2004, and that Applicant's request for clarification as to whether the Waimanalo Gulch Sanitary Landfill is a site that may be considered by the Honolulu City Council was not within the jurisdiction of this Commission, and therefore it would not be considered as part of the Commission's deliberations on the Motion.⁵ As part of its case-in-chief, the Applicant noted, among

⁴ Councilmembers Tam and Gabbard and Todd Apo also submitted written testimonies.

⁵ The Commission also acknowledged that it would not consider the Applicant's requests for a six-month extension to the May 1, 2008, deadline and for additional acreage to be incorporated within the existing landfill area since the requests were not before the Commission at this time.

other things, that (i) its position that the Waimanalo Gulch Sanitary Landfill would close by May 1, 2008, had not changed; (ii) it believed there was sufficient information for the City Council to select a new site for the landfill; (iii) it opposed the extension to the site selection deadline; and (iv) although some financial information had to be acquired, efforts were already underway to obtain said information.

The DPP stated that it did not take a position on the Motion and further stated that since this Commission imposed the condition requiring that a new landfill site be selected by June 1, 2004, the Commission had jurisdiction to consider the requested extension to the deadline without the City and County of Honolulu Planning Commission first approving the extension.⁶ The OP stated that it had no objections to the extension of the June 1, 2004, deadline.

Following deliberation by the Commissioners, a motion was made and seconded to grant an extension of the deadline to select a landfill site from June 1, 2004, to December 1, 2004, subject to the condition that the City Council submit monthly progress reports to this Commission to include, among other things, updates on the City's efforts to select a new landfill site and to find alternative technologies to reduce or eliminate landfilling. Following discussion by the Commissioners, a vote was taken

⁶ Pursuant to the request of the Commission, the Office of the Corporation Counsel ("OCC") represented that it would provide this Commission with a post-hearing brief affirming the Commission's authority in this matter. The OCC subsequently filed the brief with the Commission on April 8, 2004.

on the motion. There being a vote tally of 7 ayes, 0 nays, and 2 absent, the motion carried.

ORDER

Having duly considered the Applicant's Motion, the supporting Affidavit, the oral and written testimonies of the public witnesses, and a motion having been made at a meeting conducted on April 1, 2004, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission hereby grants an extension of the deadline to select a landfill site from June 1, 2004, to December 1, 2004, subject to the City Council's submittal of monthly progress reports to this Commission to include, among other things, updates on the City's efforts to select a new landfill site and to find alternative technologies to reduce or eliminate landfilling. All other conditions to this Commission's Decision And Order Approving Amendment To Special Use Permit dated June 9, 2003, shall remain in full force and effect. All other matters raised by the pleadings are specifically not granted, either because they are not properly before the Commission or because they are not within the jurisdiction of the Commission.

ADOPTION OF ORDER

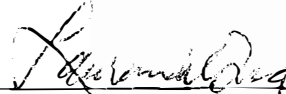
The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 6th day of

May, 2004. The ORDER and its ADOPTION shall take effect upon the date this

ORDER is certified and filed by this Commission.

Dated: Honolulu, Hawai'i, May 10, 20 04

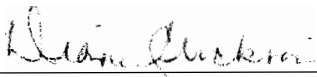
LAND USE COMMISSION
STATE OF HAWAII



By LAWRENCE N. ~~ONG~~
Chair and Commissioner

APPROVED AS TO FORM:

Filed and effective on
MAY 1 0 2004, 2004



Deputy Attorney General

Certified by:


Executive Officer

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SERVICES, CITY AND COUNTY OF) CERTIFICATE OF SERVICE
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PUBLIC WORKS, CITY AND COUNTY OF)
HONOLULU)
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Hawaii`i, TMK No: 9-2-03: Portion 72 and)
Portion 73 (fka TMK No: 9-2-03: Portion 2 and)
Portion 13))
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting in part and Denying in part Motion to Amend and/or Stay the Decision and Order Approving Amendment to Special Use Permit dated June 3, 2003 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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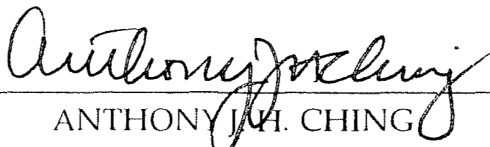
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Dated: Honolulu, Hawaii, MAY 10 2004 .



ANTHONY J. H. CHING
Executive Officer