

ORIGINAL

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 ) COMMISSION'S ORDER DENYING  
SERVICES, CITY AND COUNTY OF ) KO OLINA COMMUNITY  
HONOLULU (fka DEPARTMENT OF ) ASSOCIATION'S AND  
PUBLIC WORKS, CITY AND COUNTY ) COLLEEN HANABUSA'S MOTION TO  
OF HONOLULU) ) DISMISS  
)  
For An Amendment To The Special Use )  
Permit Which Established A Sanitary )  
Landfill On Approximately 107.5 Acres )  
Of Land Within The State Land Use )  
Agricultural District At Waimānalo )  
Gulch, Honouliuli, `Ewa, O`ahu, )  
Hawai`i, Tax Map Key: 9-2-03: Portion 72 )  
And Portion 73 (fka Tax Map Key: 9-2- )  
03: Portion 2 And Portion 13) )  
\_\_\_\_\_ )

COMMISSION'S ORDER DENYING  
KO OLINA COMMUNITY ASSOCIATION'S  
AND COLLEEN HANABUSA'S MOTION TO DISMISS

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COMMISSION'S ORDER DENYING  
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On July 6, 2007, the City and County of Honolulu Department of Environmental Services' ("Applicant") filed an application to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the Waimānalo Gulch Sanitary Landfill ("WGSL") from May 1, 2008, to May 1, 2010, or until the WGSL reaches its permitted capacity, whichever occurs first ("Application") with the City and

County of Honolulu Department of Planning and Permitting ("DPP"), DPP Docket Ewa – State Special Use Permit No. 86/SUP-5(RY) ("Application"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").

The Applicant sought to amend Condition Number 10 of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, by extending the deadline to accept solid waste at the WGSL from May 1, 2008, to May 1, 2010, or until the WGSL reached its permitted capacity, whichever occurred first. No other amendments were requested at that time.

On August 30, 2007, the DPP accepted the Application for processing as of August 30, 2007.

On October 12, 2007, the Notice of the Planning Commission public hearing on the Application was published in the *Honolulu Star-Bulletin*.

On January 16, 2008, the Planning Commission acted on the Application at the Mission Memorial Auditorium, City Hall Annex, in Honolulu, Hawai'i. After due deliberation and consideration of the record in this matter, the Planning Commission recommended approval of the Application to the LUC and issued its Findings of Fact, Conclusions of Law, and Decision and Order.

On January 31, 2008, the LUC received the decision and the complete record of the Planning Commission's proceedings on the Application.

On February 21, 2008, the LUC met in Conference Room 204, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i, to consider the Application. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the meeting. Following the receipt of public testimony, the LUC deferred the matter to its March 6, 2008, meeting in Honolulu, Hawai'i.

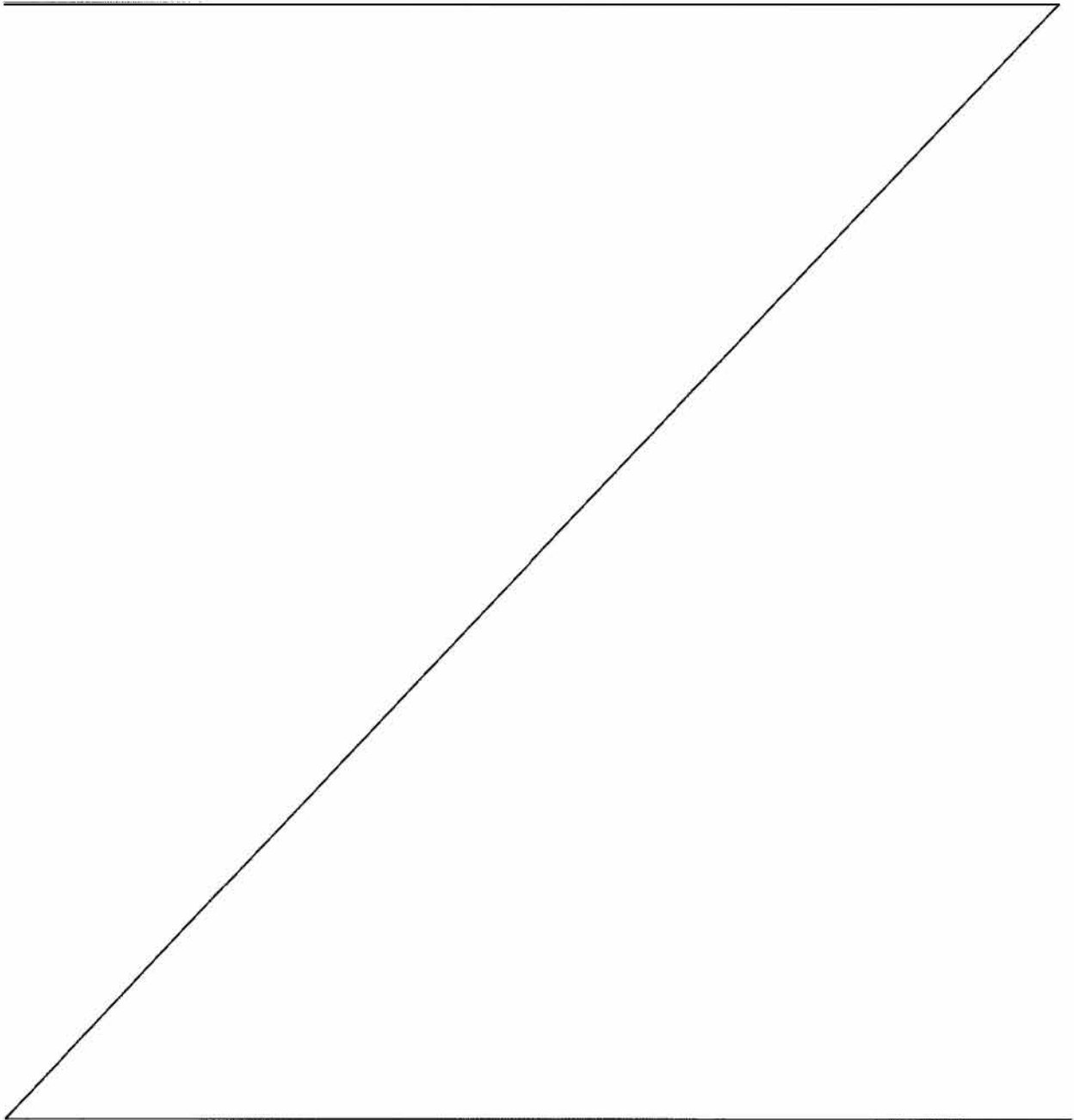
On February 15, 2008, Ms. Hanabusa filed a Motion to Dismiss, on behalf of herself and KOCA.

On February 21, 2008, the Applicant filed its Memorandum in Opposition to Motion to Dismiss.

On March 6, 2008, the LUC resumed its meeting on the Application and the pleadings filed by the Applicant and Ms. Hanabusa and KOCA in Conference Room 405, Leiopapa A Kamehameha Building, in Honolulu, Hawai'i. Gary Y. Takeuchi, Esq., and Eric S. Takamura appeared on behalf of the Applicant. Colleen Hanabusa, Esq., and Ken Williams were also present at the continued meeting. A motion to deny Ms. Hanabusa's Motion to Dismiss was made and seconded on the grounds that: (i) the Planning Commission's recommendation to approve the Application subject to the Applicant obtaining Department of Health approval of its grade modification request, was not a precondition based on the clear language of the condition; and (ii) the LUC has the authority to modify its conditions based on past practice and its interpretation

of section 15-15-95(e), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Accordingly,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Ms. Hanabusa behalf of herself and KOCA, be, and is hereby denied.



Done at Honolulu, Hawai'i, this 14th day of

March, 2008.

APPROVED AS TO FORM:

Diane Gussis  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAI'I

By Lisa Judge  
LISA JUDGE  
Chairperson and Commissioner

Filed and effective on

MAR 14 2008

Certified by:

Rodney A. Maile  
RODNEY A. MAILE, Interim Executive Officer

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 PUBLIC WORKS, CITY AND COUNTY )  
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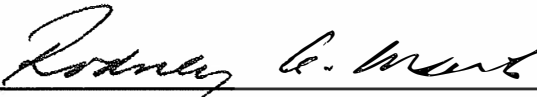
CERTIFICATE OF SERVICE

I hereby certify that a copy of the COMMISSION’S ORDER DENYING  
 KO OLINA COMMUNITY ASSOCIATION’S AND COLLEEN HANABUSA’S  
 MOTION TO DISMISS 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:

CERT: CARRIE OKINAGA, Esq.  
 Corporation Counsel  
 City and County of Honolulu  
 530 South King Street  
 Honolulu, HI 96813

CERT. COLLEEN HANABUSA, Esq.  
1100 Alakea Street, 12<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Dated: Honolulu, Hawai'i, MAR 14 2008.



RODNEY A. MAILE  
Interim Executive Officer