

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 ) APPLICANT'S REQUEST FOR  
HONOLULU (fka DEPARTMENT OF ) OFFICIAL NOTICE AND  
PUBLIC WORKS, CITY AND COUNTY ) KO OLINA COMMUNITY  
OF HONOLULU) ) ASSOCIATION'S AND  
 ) COLLEEN HANABUSA'S MOTION TO  
For An Amendment To The Special Use ) STRIKE REQUEST FOR OFFICIAL  
Permit Which Established A Sanitary ) NOTICE  
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) )  
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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 21, 2008, the Applicant filed its Request for Official Notice.<sup>1</sup>

On February 26, 2008, Ms. Hanabusa filed a Motion to Strike Request for Official Notice on behalf of herself and KOCA.

On March 4, 2008, the Applicant filed its Memorandum in Opposition to Motion to Strike Request for Official Notice.

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. Following the receipt of

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<sup>1</sup> The Request for Official Notice requested the LUC to take official notice of true and correct copies of (i) *Honolulu Advertiser* and *Honolulu Star-Bulletin* articles dated December 12, 2007, regarding the settlement of the State Department of Health's ("DOH") Notice of Violation; (ii) the settlement agreement dated December 7, 2007, between the DOH, the City and County of Honolulu, and Waste Management Hawaii, Inc. ("WMH"); and (iii) Modification of Solid Waste Permit No. LF-0054-02 for the WGS� dated February 20, 2008.

public testimony<sup>2</sup>, and upon further discussion, a motion was made and seconded to deny the Applicant's Request for Official Notice on the grounds that the documents for which official notice was requested: (i) are not part of the Planning Commission record that is to be considered by the LUC pursuant to section 205-6, HRS, and (ii) did not meet the criteria cited in section 15-15-63(k), HAR. By a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried. Having denied the Applicant's Request for Official Notice, the Motion to Strike Request for Official Notice filed by Ms. Hanabusa was deemed moot. Accordingly,

IT IS HEREBY ORDERED that Applicant's Request for Official Notice, be, and is hereby denied.

IT IS FURTHER ORDERED that the Motion to Strike Request for Official Notice filed by Ms. Hanabusa behalf of herself and KOCA, be, and is hereby denied.

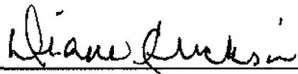
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<sup>2</sup> Pursuant to section 92-3, HRS, Ralph F. Harris, Edgar Gum and Mark Donnelly, Josiah Ho`ohuli, Nina Fisher, Cynthia K.L. Rezentes, Isireli Qalo, and Pele Toomata provided written testimony on the Application. The LUC also heard testimony from Ralph F. Harris, Mike Nelson, Isireli Qalo, Greg Nichols, Pele Toomata, and Russell Duong.


Done at Honolulu, Hawai'i, this 14<sup>th</sup> day of

March, 2008.

APPROVED AS TO FORM:

  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By   
LISA JUDGE  
Chairperson and Commissioner

Filed and effective on

MAR 14 2008

Certified by:

  
RODNEY A. MAILE, Interim Executive Officer

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 DEPARTMENT OF ENVIRONMENTAL ) CERTIFICATE OF SERVICE  
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 PUBLIC WORKS, CITY AND COUNTY )  
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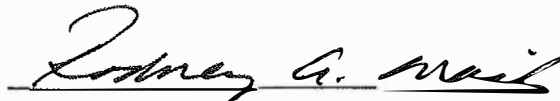
CERTIFICATE OF SERVICE

I hereby certify that a copy of the COMMISSION'S ORDER DENYING  
 APPLICANT'S REQUEST FOR OFFICIAL NOTICE AND KO OLINA COMMUNITY  
 ASSOCIATION'S AND COLLEEN HANABUSA'S MOTION TO STRIKE REQUEST  
 FOR OFFICIAL NOTICE 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