BEFORE THE LAND USE COMMISION

STATE OF HAWAI`I

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, Tax Map Key Nos. (1) 9-2-003:072 and 073)	)	DOCKET NO. SP09-403

LAND USE COMMISSION
STATE OF HAWAII
2009 SEP 21 A 11: 39

MOTION TO DENY PETITION;
MEMORANDUM IN SUPPORT OF MOTION;
DECLARATION OF COLLEEN HANABUSA;
EXHIBIT "A"

CERTIFICATE OF SERVICES

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KO OLINA COMMUNITY ASSOCIATION,
COLLEEN HANABUSA and MAILE SHIMABUKURO

BEFORE THE LAND USE COMMISION

STATE OF HAWAI`I

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, Tax Map Key Nos. (1) 9-2-003:072 and 073)	)	DOCKET NO. SP09-403

MOTION TO DENY PETITION

Come now KO OLINA COMMUNITY ASSOCIATION ("KOCA"), COLLEEN HANABUSA ("Hanabusa") and MAILE SHIMABUKURO (hereinafter, "Intervenors,") by and through their attorney, Colleen Hanabusa, and hereby respectfully move that the LAND USE COMMISSION of the State of Hawai`i ("LUC") deny the Application for a NEW Special Use Permit ("SUP") of the DEPARTMENT OF ENVIRONMENTAL SERVICES ("ENV") on the basis that ENV has failed to comply with the requirement of submitting a proper Environmental Impact Statement ("EIS") for its Application; alternatively, Intervenors move that the LUC declare the filing to be incomplete and remand the proceeding to the Planning Commission. In

addition, Intervenors add that Rules §15-15-96(b) Rules of the Land Use Commission ("LUC Rules") does not allow for a SUP to be considered which has been withdrawn by the petitioner within one year of the withdrawal.

This Motion is brought pursuant to Rules §§ 15-15-50, 70, 95 and 96 LUC Rules, ***Hawai`i Rev. Stat.*** *§§ 205 and 343-1, et seq.*, the Memorandum in Support of this Motion, the Exhibit attached hereto, the Declaration of Counsel and the record and files herein.

DATED: Honolulu, Hawai`i, September 18, 2009.

COLLEEN HANABUSA
Attorney for Movants KOCA, Hanabusa and Shimabukuro

BEFORE THE LAND USE COMMISION

STATE OF HAWAI`I

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, Tax Map Key Nos. (1) 9-2-003:072 and 073)	)	DOCKET NO. SP09-403

MEMORANDUM IN SUPPORT OF MOTION

The Intervenors herein respectfully submit the following memorandum in support of their Motion to Deny the Petition of ENV for a NEW SUP for the entire 200.622 acres of the area known as the Waimanalo Gulch Sanitary Landfill ("WGSL").

I. FACTS

In December 2008, the Director of ENV, Eric S. Takamura filed for a District Boundary Amendment with the Land Use Commission of the State of Hawai`i ("LUC"). The Petition clearly states that the DBA "will cover the entire 200.622 acre Property."

ENV also filed a NEW Special Use Permit ("SUP") to permit use of the site for a landfill which was decided by the Planning Commission of the City and County of Honolulu ("Commission"). The NEW SUP is also for the total area of 200.622 acres. The SUP was filed

at the Department of Planning and Permitting of the City and County of Honolulu ("DPP") in December of 2008 as well. As the LUC is well aware, a SUP which seeks the use of over 15 acres of Agricultural land requires the LUC's concurrence under the provisions of ***Hawai`i Rev. Stat.*** *§205-6.*

Attached hereto as Exhibit "A" is memo of January 5, 2009 from Raymond Young of the DPP which points out the concerns of the filing of a New SUP due to questions as to how this LUC would treat the limited language of its Rules as evidenced with the decision in Docket No. SP04-398 (In the Matter of the Application of SPHERE LLC dba PACIFIC AGGREGATE).

Exhibit "A" also correctly points out that the recommendation to ENV should be to seek an Application for the 92.5 acres and not the 200.622 acres.

On August 4, 2009, the Planning Commission entered its Findings of Fact, Conclusions of Law, and Decision and Order in the NEW SUP, indentified as 2009/SUP-2(RY). Simultaneous with the granting of the NEW SUP is the granting of the withdrawal of the prior SUP known as Special Use Permit File No. 86/SUP-5. This is Docket No. 87-362 before this LUC. Thus, prior to this matter being transmitted to the LUC, ENV has voluntarily withdrawn the SUP which addresses 107 acres of the WGSL.

Facts Relevant to EIS:

On November 23, 2006 the Environmental Impact Statement Preparation Notice ("EISPN") was published by the Office of Environmental Quality ("OEQC") of the State of Hawai`i. The Draft EIS was published by OEQC on May 23, 2008. The Draft EIS was entitled

"Waimanalo Gulch Sanitary Landfill Lateral Expansion" and spoke to the "proposed expansion."[1]

Comments made by the public were addressed to the Lateral Expansion. (See generally the comments in Volume 1 of the EIS).

Sometime in October 2008, ENV published the Final Environmental Impact Statement ("EIS") for the "Waimanalo Gulch Sanitary Landfill Lateral Expansion." The "Proposed Action" is defined in the EIS as follows:

> The landfill has been in operation since 1989 and has capacity remaining with the unused 92.5 acres of the approximately 200 acre property for an estimated minimum life of approximately 15 years. This will extend the use of the site beyond November 1, 2009, the date the amended State Special Use Permit will prohibit the further acceptance of waste at the WGSL.
>
> . . .
>
> The 92.5 acre area is proposed for uses that include construction of landfill cells; earthwork to support construction of an access roadway, drainage controls, berms and stability slopes; and excavation and stockpiling of cover material. The proposed expansion project will be subject to a minimum 100 foot buffer inside of the perimeter of the property boundary to reduce the impacts to neighboring properties.

There is no dispute that an EIS or an EA is required for both the SUP and the DBA. The EIS referenced herein is serving a dual purpose of satisfying the requirements of an EIS or EA to the LUC for the DBA as well as to the Planning Commission for the SUP and the LUC for the SUP process. When the EISPN or the DEIS was noticed to the public, no statements were made that the SUP or the DBA would be filed for the entire 200.622 acre parcel.

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[1] The Relevant Documents are part of the Record transmitted to the Planning Commission to the LUC and also Exhibits to the Motion to Dismiss Petition filed by the Intervenors in the District Boundary Amendment Proceeding pending before the LUC.

Thus, the EIS before the LUC and the Planning Commission does not address the 200.622 acre project or proposed action. The EIS is for a lateral expansion of 92.5 acres only.

II. ISSUE

Whether the Petition should be denied on the basis that the EIS fails to address the entire project for which the DBA is sought; or alternatively should the Petition/Filing be deemed incomplete by the LUC.

Whether the Petition should be denied on the basis that the Petition includes a voluntary withdrawal of the existing SUP which under the LUC Rules prohibits the consideration of any SUP for another year.

III. ARGUMENT

A. An Environmental Assessment or EIS Was Required For Total Site.

The LUC must meet the now well established requirement that an Environmental Assessment (EA) or EIS (Environmental Impact Statement) be prepared for the present SUP proceeding because it is the "earliest practicable time." ***Sierra Club v. Office of Planning***, *109 Hawai`i 411 (2006).*

> When interpreting statutes and administrative rules, it is a well established that: The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implement nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

Cases relied upon are: ***International Bhd. Of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.,*** *68 Hawai`i 316, 323, 713 P.2d 943, 950 (1986);* ***Allstate Ins. Co. v. Ponce,*** *105 Hawai`i 445, 454, 99 P.3d 96. 105 (2004).*

The EIS and/or EA must be first assessed in terms of what it is required to address. We begin the discussion with the relevant definitions under ***Hawai`i Rev. Stat.*** *§343-2:*

> **Definitions.** As used in this chapter unless the context otherwise requires:
>
> . . .
>
> "Action" means any program or project to be initiated by any agency or applicant.
>
> "Agency" means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.
>
> "Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.
>
> . . .
>
> "Environmental assessment" means a written evaluation to determine whether an action may have a significant effect.
>
> "Environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.
> The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.
>
> . . .

From the definitions above, the "proposed action" is the project initiated by ENV. What has clearly been initiated by ENV is the district boundary amendment for the entire 200.622 acres of Agricultural lands to be reclassified Urban.

The provisions of ***Hawai`i Rev. Stat.*** *§ 343-5* is clear and unambiguous and requires an EA or an EIS be prepared when either County land and funds are used and specifically when a landfill is being constructed:

> **Applicability and requirements.** (a) Except as otherwise provided, an environmental assessment shall be required for actions that:
>
> (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section [205-2(d)(10)] or [205-4.5(a)(13)] shall only be required pursuant to section 205-5(b);
>
> . . .
>
> 9) Propose any:
>
> . . .
>
> (C) Landfill; . . .
>
> . . .
>
> (b) Whenever an applicant proposes an action specified in by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.

It is anticipated that the argument may be made that there have been an EIS and a Supplemental EIS which along with the EIS before the LUC today addresses the 200.622 acre Project Site. Those EISs are not applicable here because this is a New SUP which requires an

EA or EIS to address the total area. In ***Sierra Club v. Office of Planning***, *supra at 418*, the argument was made that "an EA covering the whole petition area . . . may cover more land that [sic] will be permitted for the project . . ." This argument was rejected by the Supreme Court. The Court went on to affirm that "the appropriate time for preparing an EIS is prior to a decision, when the decision maker retains a maximum range of options." Id. at 419. Here, this LUC is not able to avail itself of the tool which an EIS is because there is none for the "whole petition" area.

The Hawai`i Supreme Court was clear in ***Kepo`o v. Kane,*** *106 Hawai`i 270, 292 (2005)* that projects which fail to comply with the provisions of ***Hawai`i Rev. Stat.*** *§343-5* will not be permitted to proceed. Under Kepo`o this meant DHHL's lease with Kawaihae Cogeneration Partners was void; and DHHL could not proceed until the terms of ***Hawai`i Rev. Stat.*** *§343-5* are complied with. ***Id.*** *at 293.* Likewise in ***Sierra Club v. Office of Planning,*** *supra,* the decision of the LUC was vacated for failure to prepare an EA.

B. The Lateral Expansion EIS Cannot Be Treated As A Supplemental EIS.

The obvious reason why the EIS before this LUC cannot be treated as a Supplemental EIS is because it does not address the Project described in the DBA Petition. The relevant provisions of the Rules governing the preparation of the EIS states as follows:

> Subchapter 10 Supplemental Statements
>
> §11-200-26 General Provisions
>
> A statement that is accepted with respect to a particular action **is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed**

> **shall no longer be valid** because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the statement associated with that action shall be deemed to comply with this chapter. (**emphasis** added).

Clearly, the EIS and Supplemental EIS relevant to WGSL were specific as to its application; just as this EIS is for the lateral expansion of 92.5 acres.

> If a supplemental EIS was done, then it must comply with the following:
>
> §11-200-28 Contents
>
> The contents of the supplemental statement shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as they relate to the changes.

For the present EIS to satisfy the requirements of addressing 200.622 acres it would have to incorporate unchanged materials as it relates to the other 107.5 acres. Then, there is a requirement to fully document the proposed changes. No such provisions are present in the FEIS of October 2008. As stated above, at no time was the EISPN, DEIS or the FEIS identified as addressing the total 200.622 acres.

An EIS is meaningless if it is self serving and rationalizes an outcome. It would appear that this EIS is meaningless in that it focuses on the lateral expansion only.

The Ninth Circuit has identified this concern as "timing." ***Idaho Sporting Congress, Inc. v. Alexander,*** *222 F.3d 562, 568 (9th Cir. 2000).* In ***Idaho***, the Ninth Circuit reversed the district court's denial of an injunction and discussed the timing of the agency's action and the fact that the process shall not be used to rationalize or justify decisions already

made. In ***Metcalf v. Daley,*** *214 F.3d 1135, 1143 (9th Cir. 2000),* the Ninth Circuit found another violation of the timing requirement and looked to the fact that the EIS process had begun after the agency had signed an agreement making the process one that rationalized the decision.

Moreover:

> An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision makers will be enlightened to any environmental consequences of the proposed action.

§11-200-14.

The failure to provide the public with the opportunity to comment on the total project size prevented the public from participating in the EIS process as a whole.

C. Alternatively, the LUC May Remand For Further Proceeding.

The provisions of Section 15-151-96 of the LUC Rules makes very clear the types of action the LUC may take:

> (a) Within forty-five days after receipt of the county planning commission's decision, together with the complete record of the proceeding before the county planning commission, the commission shall act to approve, approve with modification , or deny the petition. . . . Upon determination by the commission, the petition may be remanded to the county planning commission for further proceeding. [emphasis added.]

After the decision in ***Sierra Club v. Office of Planning,*** *supra,* a SUP involving the use of County funds for a proposed landfill would require an EIS.

Again, whether it be the reclassification request is for the total 200.622 acres or a NEW SUP for landfill purposes, this LUC must have an EIS for that request. The EIS, is

deemed acceptable by the LUC would be akin to granting any application based upon an EIS which addressed only 50% of the land requested.

It is unfortunate that the LUC and the parties are in this situation. However, it must be remembered that the City and County of Honolulu by and through its ENV has chosen what to file and when to file its request for the expansion of the WGSL. Contrary to the recommendation of an employee of DPP, ENV chose to apply for the entire 200.622 acres.

D. The Planning Commission's entire record only contains the EIS on 92.5 acres.

The proceeding before the Planning Commission was a contested case hearing. As such under the provisions of ***Hawai`i Rev. Sat.*** *§ 91-10* the evidence received and considered must be that which has been subject to cross examination during this proceeding. Specifically,

> **§91-10 Rules of evidence; official notice.** In contested cases:
>
> (1) Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law;
>
> . . .
>
> (3) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence;
>
> . . .
>
> (5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

An issue such as the sufficiency of the EIS must be determined by what is before the LUC and to what the public has had the opportunity to make comments upon. Nowhere has there been an EIS for the total 200.622 acres.

E. The LUC Must Follow It's Rules.

As stated above, the LUC Rules are very clear under Section 15-15-96 as to the actions is may take in a SUP proceeding. This was the outcome in Docket No. SP04-398 (In the Matter of the Application of SPHERE LLC dba PACIFIC AGGREGATE). It is therefore evident that when the LUC Rules clearly state that:

> §15-15-96 (b) . . . Additionally, the commission shall not consider any petition for special permit for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal[.],

this Petition must be denied.

Clearly, ENV knew that it could not have two SUPs before the LUC and needed to therefore withdraw one. Though it has attempted to word it as a conditional withdrawal before the Planning Commission, once the Decision and Order of the Planning Commission permitted the withdrawal, the LUC has a withdraw SUP before it. The LUC Rule referenced above is clear that the LUC is prohibited from considering this Petition because it involves the same land.

Again, ENV is the entity that determines what it files and the requests its makes. ENV chose to proceed with a NEW SUP for the 200.622 acres which was contrary to the recommendation of DPP.

IV. CONCLUSION

For the reasons set forth above, Intervenors respectfully move that the Petition for NEW SUP for the 200.622 acres be denied.

DATED: Honolulu, Hawai`i, September 18, 2009.

COLLEEN HANABUSA
Attorney for Intervenors KOCA ,
Colleen Hanabusa and Maile Shimabukuro

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of	)	DOCKET NO. A08-780
	)	
DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY & COUNTY OF HONOLULU	)	DECLARATION OF COLLEEN HANABUSA
	)	
To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 200.622 Acres of Land at Waimanalo Gulch, Hono`uli`uli, `Ewa, O`ahu, Hawai`i, Tax Map Key Nos. (1) 9-2-003:072 and 073	)	

DECLARATION OF COLLEEN HANABUSA

Under penalty of perjury your Declarant states as follows:

1. Your Declarant is the attorney representing Intervenors in the above referenced matter and an Intervenor as well.

2. Your Declarant makes this declaration of her own personal knowledge.

3. Attached hereto as Exhibit "A" is a true and correct copy of a Memorandum dated January 5, 2009 by Raymond Young to David Tanoue.

Your Declarant further sayeth naught.

Dated: Honolulu, Hawai`i, September 18, 2009.

COLLEEN HANABUSA

EXHIBIT "A"

January 5, 2009

MEMORANDUM

TO: DAVID K. TANOUE, ACTING DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

VIA: KATHY SOKUGAWA, CHIEF
PLANNING DIVISION

BONNIE ARAKAWA, CHIEF
COMMUNITY PLANNING BRANCH

FROM: RAYMOND YOUNG

SUBJECT: SUP AND STATE LAND USE DISTRICT BOUNDARY AMENDMENT FOR WAIMANALO GULCH SANITARY LANDFILL (WGSL)

DPP staff has general concerns on the above permit requests, and recommends a meeting with the Department of Environmental Services and Corporation Counsel to discuss these issues.

A. Background

The applicant, Department of Environmental Services (ENV), through its Deputy Corporation Counsel Gary Takeuchi, submitted a State Land Use District Boundary Amendment (SLUDBA) to the Land Use Commission (LUC) to reclassify the WGSL (submitted couple weeks ago), but not yet accepted by LUC, totaling 200 acres, from Agricultural to Urban. At about the same time, the applicant submitted an application to DPP for a new Special Use Permit (SUP) covering the same 200-acre area to supersede the existing approved SUP which covers about 107.5 acres. We assume the SLUDBA was submitted in response to comments raised by the Land Use Commission and Intervenors in the most recent proceedings on WGSL before the LUC (Time Extension). Submittal of a new SUP to supersede the existing SUP apparently addresses the existing SUP's November 1, 2009 deadline for terminating the acceptance of waste at WGSL. At a November 21, 2008 meeting with ENV and Corporation Counsel representatives, another factor was getting a SLUC decision prior to changes in SLUC membership which is expected to occur in June 2009.

B. Issues

1. Technical Questions on Existing SUP

   a. The applicant proposes a new SUP to "supersede" the existing SUP, but the application includes no clear proposal regarding the existing SUP (i.e., termination, withdrawal, etc.) and whether its conditions of approval are to be continued, modified, or terminated.

      The LUC is bound by it administrative rules (Sec. 15-15-96) to render one of the following in considering a request for an SUP: 1) approve, 2) approve w/ modifications, 3) deny. However, in the case of the Malli Quarry SUP application, the LUC refused to issue a decision, ruling that it lacked jurisdiction to render a decision. Similarly, lacking a request for termination or withdrawal of the existing WGSL SUP, the LUC may rule that it lacks jurisdiction on any decision affecting the existing SUP since no request regarding the existing SUP was ever before the Planning Commission. Procedurally, this could adversely affect the decision-making process for the new SUP.

   b. If the applicant proposes to keep the existing SUP active, can a second SUP be granted for the same project? Can a portion of WGSL be covered by conditions of approval from 2 separate SUPs? Is there precedence for the overlapping approvals?

2. SUP + SLUDBA Advantages

   a. There are apparent advantages to ENV in processing a new SUP together with a district boundary amendment for the same project.

      1. Addressing some LUC members' preference for a SLUDBA; and

      2. There is no loss in time, should the LUC deny the SUP application. However, there is sufficient amount of time between now and November 1, 2009 for the completion of either the SUP or SLUDBA.

   b. The LUDBA has the benefit of a quasi-judicial proceeding but so does the SUP under its contested case proceedings. It will have an

advantage for the applicant since the potential intervenor in both processes (Colleen Hanabusa) will have to extend her resources to cover both permit proceedings.

c. The argument will be used that the subject site is adjacent to Urban lands on three (3) sides, and landfill is an Urban use. Therefore, it is reasonable to approve the LUDBA. However, there is little benefit for Urban districting since the anticipated long term use of a closed landfill can be permitted under the current Agricultural land use classification. There is no plan for active urban use once the landfill is closed except pasture or passive recreational use. Other than placing the property entirely under City jurisdiction (home-rule), it would remove a land use decision making process from the public forum as the use does not require any City discretionary permits. The only permitting would be administrative; building permits reclamation reclassification grading, and the Department of Health's Solid Waste Management Permit. Significant changes to the uses could occur without discretionary review; e.g., the landfill can be extended to greater heights and thus an increase beyond its 15-year projected life. And, with new tech innovations, the landfill could even be mined for fuel for H-POWER justifying additional life.

3. SUP + SLUDBA Disadvantages

a. The dual processing of permits for the same project is a duplication of the State and City efforts as either permit alone may allow an extension/expansion of the project. This would be an inefficient use of government resources especially during the current freeze on staffing. Currently, separate staff planners are assigned the task to review these two permit applications (Ray-SUP and Mat-LUDBA). If the SUP goes into contested case proceedings, a separate Deputy Corp. Counsel may be required if DPP becomes a party to the proceedings (different Deputy assigned to LUDBA).

b. With respect to timing for decision-making, ENV expects both SUP and LUDBA to be on the same LUC agenda for decision-making. However, the PC rules for SUP processing do not permit much adjustment of the statutory timeframes for processing and deciding on an SUP. The SUP, due to its shorter processing timeframe, would be before the LUC for decision before the LUDBA is ready for a decision. If that being the case, would not the LUC deny the SUP if it

is inclined to decide on the LUDBA since LUC rules do not permit a deferral of the SUP? And, why would ENV withdraw either permit unless a decision is rendered on either permit in their favor?

C. Recommendation

1. Advise ENV to process an SUP amendment for the 92-acre expansion, rather than a new SUP for the 200-acre property.

2. Submit a "no position" on the LUDBA until DPP submits its recommendation on the SUP amendment to Planning Commission.

P:divfunction/sup/08sup2/WGSLSUPApplication/dualprocessmemo.ba.doc

BEFORE THE LAND USE COMMISION

STATE OF HAWAI`I

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, Tax Map Key Nos. (1) 9-2-003:072 and 073	DOCKET NO. SP09-403 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a copy of the foregoing will be duly served upon the following parties at their respective addresses by the manner indicated thereto:

	Mail	Delivery
CARRIE K.S. OKINAGA, ESQ. GARY Y. TAKEUCHI, ESQ. Corporation Counsel City & County of Honolulu 530 South King Street, Room 110 Honolulu, Hawai`i 96813		x
TIMOTHY STEINBERGER, P.E., DIRECTOR Department of Environmental Services City & County of Honolulu 1000 Uluohia Street, Suite 308 Kapolei, HI 96707	x	

	Mail	Delivery
DAVID TANOUE, DIRECTOR Planning Department City & County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai`i 96813		x
CHAIR, PLANNING COMMISSION c/o City & County Planning Department 650 South King Street, 7th Floor Honolulu, Hawai`i 96813.		x
Abbey Mayer Office of Planning 235 So. Beretania St., 6th Floor Honolulu, Hawai`i 96813		x

DATED: Honolulu, Hawai`i, September 18, 2009

COLLEEN HANABUSA
Attorney for Petitioners KOCA, Hanabusa
And Shimabukuro