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CITY COUNCIL
HONOLULU, HAWAII

April 16, 2010

VIA HAND DELIVERY

David K. Tanoue, Director
Department of Planning and Permitting
City and County of Honolulu
650 S. King Street
Honolulu, Hawaii 96813

Re: Preliminary Comments of Leeward Land Company, Ltd. re Proposed Public Infrastructure Map Revision -- Nanakuli Regional Park, Waianae, Oahu, Hawaii

Dear Mr. Tanoue:

This office represents, Leeward Land Company, Ltd. ("Leeward") in connection with the above-referenced matter. Thank you for your Memorandum dated March 18, 2010 requesting Leeward's comments and in particular for the assistance rendered by Mike Watkins in furnishing my office with a copy of the application of the City Department of Design and Construction ("Department") to add a Park (P) symbol to the Waianae Public Infrastructure Map (PIM).

Leeward is the owner of the affected site and is strongly opposed to the proposed revision. The revision would be short-sighted, contrary to the public interest and unlawful. Acquisition of the site for a regional park would deprive Oahu of a site uniquely suitable and available for use as a sanitary landfill. Acquisition cost would be prohibitive. Committing additional funds to a new park in these difficult times would be unjustifiable. Use of money from the Clean Water and Natural Lands Fund ("Fund") would be bad public policy, usurp the proper role of the City Council in prioritizing expenditures from the Fund and illegal.

I summarize the basis for these points below.

The site has been identified as one of Oahu's few and indispensable remaining potential sites for sanitary landfill purposes for over 30 years. In 2003, the Mayor's Advisory Committee on Landfill Selection, known as the "Blue Ribbon Committee," identified the site (referred to in the Committee's report as "Nanakuli") as one of only 4 sites it could recommend

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out of 45 evaluated for selection as Oahu's new landfill site upon the closure of Waimanalo Gulch.

The acreage proposed for the park by the Department would preclude the use of any substantial portion of the larger lot for the expansion of the current construction and demolition material landfill operated across Lualualei Naval Road from the site by Leeward's affiliate, PVT Land Co., Ltd. ("PVT"), (as Leeward has planned) or for a possible public landfill because of the need for a buffer between the disposal area and adjacent uses. Construction and demolition material accounts for approximately 20% of Oahu's solid waste stream. H-POWER is unable to accept construction and demolition material. Oahu's need for a construction and demolition landfill will become even more acute as the development of the rail transit system proceeds. The site is a public necessity for the disposal of construction and demolition material even if the City never again wishes to consider it for municipal solid waste.

The City's permit from the Land Use Commission for the use of Waimanalo Gulch expires in less than 3 years. Barging trash to the mainland has proven problematic at best and is needlessly expensive. H-POWER reduces the volume of waste but does not eliminate the necessity for landfill disposal.

Even if the City could afford to acquire, develop, operate and maintain another regional park, parks in the vicinity of the site are plentiful, and the application makes no showing of any shortage of alternative sites or of any necessity for using this particular site. The application fails to show that there is any access given to the site, either by the State, or by the Navy (which owns Lualualei Naval Road). The Puu Heleakala Recreation Center is adjacent to substantial flat and vacant acreage just makai of the site. Kamokila Community Park is a five-minute Saturday-morning drive from Nanakuli High School and is adjacent to substantial flat and vacant acreage. As discussed below, the development of a park might even be incorporated into the closure plan for the current landfill. To our knowledge, the need for a regional park in Nanakuli or the idea of using the site as a park was not publicly discussed or proposed by the City prior to the Mayor's February 22, 2010 State of the City address. No regional park or use of the site as a park is included in any applicable land use plan.

Designating the site for park use would deprive Oahu of a critical resource which can be located practically nowhere else. That would be short-sighted and contrary to public policy.

It would also be illegal because it would violate Revised Ordinances of Honolulu ("ROH") § 4-8.2(d). Section 4-8.2(d) provides:

> Revisions of the public infrastructure maps shall be made only for those public infrastructure projects that are of a type enumerated in Section 4-8.3, that meet the criteria set forth in Section 4-8.4, and *that are consistent with the general plan, the development plans,*

> *any applicable special area plans, and the appropriate functional plans*. (Emphasis added.)

The public policy underlying this requirement is that development should be done in accordance with the applicable plans, not on an ad hoc, uninformed and uncoordinated basis having no basis in the planning documents. Neither the Waianae Sustainable Communities Plan ("Plan") nor any other plan referenced in Section 4-8.2(d) makes any reference to a plan for or even a need for any additional park facilities. The Department tacitly admits this fact by making no reference to any supporting provision of the Plan or any other land use plan in response to the explicit requirement to furnish this information stated on the application form.

Leeward recognizes that designating the site for park use is a step distinct from authorizing acquisition. Designation is however a necessary first step in an ill-considered and ill-fated journey, even leaving aside its tendency to squander a precious and unique land resource.

Acquisition will be prohibitively expensive. In condemnation proceedings, the City will be required to pay fair market value according to the site's highest and best use. The highest and best use is for a sanitary landfill. The value as a sanitary landfill will be established by various methods, including most prominently the value of the stream of income generated by tipping fees over the life of the facility, discounted to present value. Leeward's *conservative* estimate of this value is approximately $100 million. The $3 million estimate for land acquisition provided by the Department it its application is *dramatically* understated. If the City nevertheless pursues condemnation and is unable or unwilling to pay the jury's condemnation award within two years, it will have to pay the reasonable attorney fees and trial expenses of the landowner.

Acquisition cost does not include the expense of development, operation and maintenance, and that expense is nowhere estimated by the Department. These costs likely will also be significantly higher than expected, considering that the brackish wells and groundwater in the vicinity are too saline for irrigating grass, rainfall is low, the predominate hot sunshine without any natural shade and the periodic wildfires. This expense supposedly would be undertaken by the City's Parks and Recreation Department Budget, which has already been cut by about 5% and which contains no apparent reference in its 2011 budget for this new regional park expense. Extensive new cuts recently proposed by Council Budget Committee Chair Garcia would cut another $20 million—about one-third of the Parks and Recreation Department budget. Now plainly is not the time to be committing to substantial and unknown recurring expense for a new regional park.

The costs associated with park development go far beyond those incurred by the City itself. The cost impact on Hawaii's struggling construction industry will be profound. If contractors were forced to use Waimanalo Gulch, for example, they would encounter tipping fees approximately three times greater than the tipping fees at the PVT landfill.

Funding the acquisition is proposed via a $3 million appropriation from the Fund, presumably because there is no other available source. Taking money from the Fund would constitute a separate and distinct violation of law and public policy. There are at least two aspects to this problem.

First, use of the Fund for "four multi-use ball fields, eight play courts, parking, two comfort stations, and a maintenance building" with associated improvements is not permitted under Revised Charter of Honolulu § 9-204(2), which provides that "[m]oneys in the Clean Water and Natural Lands Fund *shall be used* to purchase or otherwise acquire real estate or any interest therein *for land conservation* . . . ." "[P]ublic outdoor recreation and education, including access to beaches and mountains," is a permitted purpose, provided that it is for *land conservation*. The digest of Charter Question 3 on the November 2006 ballot (passed and enacted as § 9-204 stated, "[i]f proposal passes: . . . Moneys in the 'Clean Water and Natural Lands Fund' would be used to purchase or acquire real estate for *land conservation*." (Emphasis added.) Development of new and substantial public infrastructure such as the proposed regional park simply is not for conservation or preservation and thus is not allowed. "The moneys in each fund *shall not be used* for any purposes except those listed in this section. " Section 9-204(6) (emphasis added).

Even if a regional park were a permitted purpose, an appropriation "*shall not substitute for, but shall be in addition to*, those appropriations historically made for the purposes stated in this section." Section 9-204(7) (emphasis added). The application simply concludes that this is so. At the very least, the Department would need to, but did not, show that this use of the Fund would be *over and above* amounts appropriated for like purposes.

Second, ROH § 6-62.5(a) requires that all expenditures from the Fund be made consistent with the priorities established by the Fund Commission ("Commission"). The Commission submitted its priorities to the City Council on September 26, 2008 pursuant to a matrix submitted to the Council on September 9, 2008. The matrix in pertinent part considers the extent to which and acquisition "will help *preserve* public outdoor recreation and educational opportunities." (Emphasis added.) The Commission has subsequently considered, ranked and made recommendations for approval of 6 applications for payments from the Fund in amounts totaling approximately $24 million. The Department has made no application to the Commission for consideration of its request and the application makes no claim that it the acquisition would be consistent with the Commission's priorities.

In fact, such an acquisition would be inconsistent the Commission's priorities, which are just as strict as those of the Charter insofar as they restrict usage of the Fund to *land preservation and conservation* purposes. As the Commission Chair stated in her April 9, 2009 letter to the City Council, the "Clean Water and Natural Lands Fund is itself a strong and long lasting commitment by the people of O'ahu to the *preservation* of important natural lands and resources in our state." (Emphasis added.)

The Commission has labored admirably to develop objective ranking criteria, to facilitate public input and access to its deliberations and to "create a public process that sets a bar of excellence for how this new fund is used for the benefit of the City and all of its citizens." *Id.* By proposing this PIM revision with the intent to finance acquisition from the Fund, the Department is not only proposing to violate the law and bypass the Council's control over the disposition of the Fund, but to circumvent the Commission and make a mockery of its efforts and proceedings, and of all those who in good faith have submitted funding applications and helped evaluate them.

The application indicates that there is nothing urgent about the designation request: it notes that ("[f]ull development of park is likely to be phased over period of *at least* several years") (emphasis added). There is no justification therefore for the Department's attempt to leapfrog the planning process, bypass the Commission and Council and make a profoundly unwise and plainly illegal land use decision.

As an alternative, Leeward has suggested to the City's Parks and Recreation Department the possibility of a cooperative plan to locate park facilities within the current PVT landfill. As it reaches capacity, the landfill can be reclaimed for other uses. A phased approach to developing a regional park there could be mutually advantageous and avoid the shortcomings of the designation approach. Thus far, the City's only response has been to continue to pursue the PIM revision.

The PIM revision is improper and unfeasible for so many reasons that it is highly unlikely that the City will actually ever acquire the site for that purpose. The need for at least a construction and demolition landfill will persist and grow ever more urgent as time goes by. Instead of enabling the development of a regional park, the true purpose of the revision appears more likely to be to shut down the PVT landfill or prevent its expansion, to impose a blight on the site, to require a construction and demolition landfill to be newly developed on less suitable private property elsewhere, and/or to establish the Mayor's supremacy over the Commission and the Council in establishing priorities for the use of the Fund.

No landfill will ever win a popularity contest against a park, but the questions raised by the Department's application are far more profound and important than that. The questions it raises go beyond the wisdom and feasibility of developing a regional park on this particular site—they implicate the integrity of the planning process, the transparency of the decision-making process, and the City's commitment to following the law. Leeward urges DPP to redeem the City's involvement in this misguided project by rejecting the Department's application.

Sincerely,

Bruce L. Lamon

cc: Todd K. Apo, Chair
Ikaika Anderson
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Donovan M. Dela Cruz
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