

Transmittal Memorandum

TO : Honolulu City Council
Committee on Public Works and Sustainability
Chair Stanley Chang
Vice Chair Ann H. Kobayashi

FROM : Calvert G. Chipchase

DATE : October 10, 2012

RE : Resolution No. 12-290

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REMARKS:

Please see the attached written testimony from Calvert Chipchase on behalf of Ko Olina Community Association and Senator Maile Shimabukuro in opposition to Resolution 12-290, which proposes to establish a city policy to continue the Waimanalo Gulch Sanitary Landfill as an Oahu landfill.

Please call 521-9220 if you have any questions.

Thank you.

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MISC. COM. 2427

PWS

Testimony in Opposition to Resolution 12-290

Ko Olina Community Association (“KOCA”) submits this testimony in opposition to Resolution No. 12-290. KOCA respectfully asks the Committee either to withdraw the Resolution or to continue the hearing on the Resolution until the ongoing administrative proceedings regarding the Waimanalo Gulch Sanitary Landfill (the “Landfill”) have been completed.

The following is a summary of the ongoing administrative proceedings:

- In December 2008, the Honolulu Department of Environmental Services (the “ENV”) applied for a special use permit (“SUP”) for the Landfill (“2008 Application”).
- The State Land Use Commission (the “LUC”) approved the 2008 Application, subject to the condition that the Landfill was to close to all waste, except H-POWER ash and residue, by July 31, 2012. The ENV appealed the closure condition.
- While the appeal was pending, the ENV filed an application with the Honolulu Planning Commission to delete the closure condition (“2011 Application”). KOCA and Senator Shimabukuro intervened.
- A contested case hearing began in December 2011. Over the course of several months, fifteen witnesses testified before the Commission, including two expert witnesses, and more than 260 exhibits were admitted into evidence. The parties made closing arguments and submitted proposed findings and conclusions to the Commission.
- As part of the ENV’s proposed findings and conclusions, the ENV agreed that “MSW [Municipal Solid Waste], including sewage sludge under the control of the City, that can be disposed of other than by landfilling, shall be allowed at the WGS� up to January 1, 2014, provided HPOWER or other facility is capable of processing the MSW, including sewage sludge under the control of the City.”
- The Commission was scheduled to make a decision on May 25, 2012.
- On May 4, 2012, the Hawaii Supreme Court decided the ENV’s appeal. The court held that the closure condition was not supported by “substantial evidence.” However, the court recognized that the closure condition was “material” to the LUC’s approval of the SUP. Consequently, the court vacated the LUC’s approval of the SUP and remanded the matter to the LUC for

further proceedings. As part of the remand, the court acknowledged the 2011 Application before the Commission and “encouraged” the LUC to consider any new testimony developed in those proceedings.

- In light of the court’s opinion, the Commission stayed the 2011 Application pending further developments. Last month, the LUC remanded the 2008 Application to the Commission with instructions to consolidate the 2008 and 2011 Applications and to enter findings and conclusions in the consolidated matter.
- The parties are currently waiting for the LUC to issue its written order. Once the written order has been issued, the parties will resume the proceedings before the Commission.

The parties have invested substantial time and resources in developing the record before the Commission and the LUC. The administrative proceedings are nearing a resolution. That resolution should be based on the testimony and exhibits that have been properly admitted into evidence. And until the administrative proceedings conclude, the Committee does not have all of the information it needs to formulate City policy.

Resolution No. 12-290 should be withdrawn or the hearing should be continued until the administrative proceedings have been completed.