



BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. SP94-386
)
DEPARTMENT OF PUBLIC WORKS) DECISION AND ORDER APPROVING A
AND WASTE MANAGEMENT,) TIME EXTENSION AND THE DELETION
COUNTY OF MAUI) OF CONDITIONS TO A SPECIAL USE
) PERMIT
For a Special Use Permit To Establish)
And Operate Expansion Of The Lāna`i)
Sanitary Landfill On Approximately 25)
Acres Of Land Situated Within The)
State Land Use Agricultural District At)
Lāna`i City, Lāna`i, Tax Map Key)
Number: 4-9-02: Portion Of 1)
_____)

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OF CONDITIONS TO A SPECIAL USE PERMIT

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LAND USE COMMISSION
STATE OF HAWAII



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DECISION AND ORDER APPROVING A TIME EXTENSION AND THE DELETION
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On June 30, 2004, the County of Maui Department of Public Works and Environmental Management, Solid Waste Division,¹ filed a written request for a ten-year time extension to continue the operation of the Lāna`i Sanitary Landfill and to delete Condition Numbers 3 and 4 of the Findings of Fact, Conclusions of Law, and

¹ The Department of Public Works and Environmental Management was previously known as the Department of Public Works and Waste Management. On July 1, 2007, the Department of Public Works and Environmental Management split into the Department of Public Works and the Department of Environmental Management. The Solid Waste Division was placed within the Department of Environmental Management ("Petitioner" or "Applicant").

Decision and Order ("Decision and Order") issued on September 13, 1994 ("Request"), with the County of Maui Department of Planning ("DP"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").²

The Land Use Commission ("LUC") has jurisdiction over Petitioner's Request. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, confer jurisdiction upon the LUC to approve special use permits and amendments thereto for areas greater than 15 acres.

On March 19, 2008, the Lāna'i Planning Commission ("Planning Commission") conducted a hearing on Petitioner's Request. At the hearing, the Planning Commission heard public testimony from two individuals. After due deliberation, the Planning Commission recommended approval of Petitioner's Request to the LUC, subject to an additional condition to the special use permit.

On April 23, 2008, the LUC received a copy of the decision and a portion of the record of the Planning Commission's proceedings on Petitioner's Request. On July 2, 2008, the LUC received additional documents to the record. On August 8, 2008, the LUC received the remaining portion of the record.

² The DP delayed processing of Petitioner's Request until the issue of whether a use variance was required for the landfill was resolved. It was subsequently determined that the landfill was permitted as a public utility use in the County's Interim Zoning District, and therefore a use variance was not required. Docket No. SP94-386 Department of Public Works and Waste Management, County of Maui Decision And Order Approving A Time Extension And The Deletion of Conditions To A Special Use Permit
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On September 12, 2008, the LUC met in Makena, Maui, Hawai`i, to consider Petitioner's Request. Jane Lovell, Esq.; Michael Hopper, Esq.; Cheryl Okuma; and Tracy Takamine appeared on behalf of Petitioner. Joe Prutch was also present on behalf of the DP. Bryan C. Yee, Esq., and Abe Mitsuda entered appearances on behalf of the State Office of Planning ("OP").

At the meeting, Petitioner pointed out that Condition Numbers 3 and 4 have already been complied with. Petitioner then provided a background of the landfill, including information on the services provided by the landfill, the ongoing storm water project, the conveyance status of the landfill property, and the status of the draft integrated solid waste management plan.

OP stated that it had no objections to Petitioner's Request.

Following discussion, a motion was made and seconded to approve Petitioner's Request for a ten-year time extension and to delete Condition Numbers 3 and 4 of the Decision and Order issued on September 13, 1994, and further to amend existing Condition Numbers 1 and 5 and to impose an additional condition as follows:³

1. That the State Land Use Commission Special Use Permit shall be valid until September 13, 2014, subject to further extensions by the Lāna`i Planning Commission and the LUC upon a timely request for extension filed at least ninety (90) days prior to its expiration.

³ Because of the deletion of Condition Numbers 3 and 4, existing Condition Number 5 is now identified as Condition Number 3 and the additional condition pertaining to the implementation of Best Management Practices is identified as Condition Number 10. Petitioner had no objections to the amendments to the conditions and the additional condition.

5. Petitioner shall utilize non-drinking water, to the extent possible, for grading and dust control of the landfill.
10. That the Applicant implement the attached Best Management Practices designed to minimize infiltration and runoff during the operation of the landfill.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally of 6 ayes, 2 absent, and 1 excused, the motion carried.

ORDER

Having duly considered the complete record of Petitioner's Request and the oral arguments presented by Petitioner, and a motion having been made at a meeting on September 12, 2008, in Makena, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby APPROVES Petitioner's Request, subject to the following conditions to replace all previous conditions imposed on the special use permit:

1. That the State Land Use Commission Special Use Permit shall be valid until September 13, 2014, subject to further extensions by the Lāna`i Planning Commission and the LUC upon a timely request for extension filed at least ninety (90) days prior to its expiration.
2. That full compliance with all applicable governmental requirements shall be rendered.

3. Petitioner shall utilize non-drinking water, to the extent possible, for grading and dust control of the landfill.

4. Petitioner shall ensure that impacts from windblown debris into Kalamaiki Gulch is mitigated in a timely manner.

5. Petitioner shall immediately stop work and contact the State Historical Preservation Division, Department of Land and Natural Resources should any previously unidentified archaeological resources such as artifacts, shell, bone, charcoal deposits, human burial, rock or coral alignments, pavings or wall be encountered during development of the Special Permit area.

6. Petitioner shall fully comply with requirements of the State Department of Health for sanitary landfill operation.

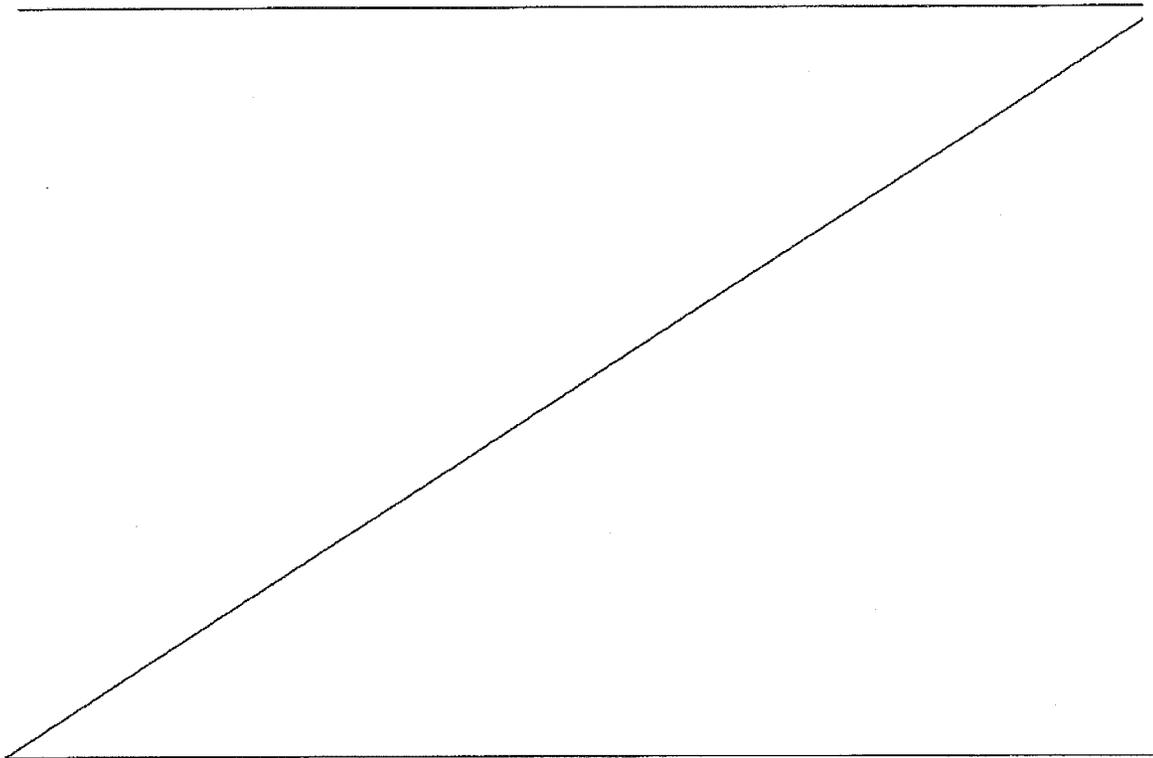
7. Petitioner shall timely provide without any prior notice, annual reports to the Land Use Commission and the County of Maui Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall also include the capacity remaining in the landfill at the time of submission of the annual report. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

8. The conditions imposed herein may be fully or partially released upon timely motion to the Lāna`i Planning Commission and Land Use Commission and

upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

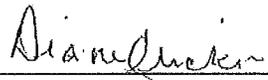
9. Two years prior to the expiration of this Permit, the Applicant shall come before the Lāna`i Planning Commission with a comprehensive plan describing how the County and/or State plan to manage the Island of Lāna`i's solid waste and recycling.

10. That the Applicant implement the attached Best Management Practices designed to minimize infiltration and runoff during the operation of the landfill.



Done at Honolulu, Hawai'i, this 2nd day of
October, 2008, per motion on September 12, 2008.

APPROVED AS TO FORM



Deputy Attorney General

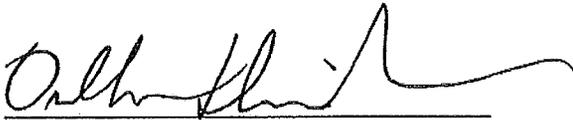
LAND USE COMMISSION
STATE OF HAWAI'I

By 

DUANE KANUHA
Chair

Filed and effective on
OCT - 6 2008

Certified by:



Executive Officer

Best Management Practices

The following BMPs should be considered with respect to storage of recyclable and waste materials to prevent contamination of runoff.

General BMPs

Scrap containers should be covered to prevent them filling with rain and should not have perforated bottoms to allow fluids to escape.

Scrap containers should be cleaned on a regular schedule and the washwater treated appropriately (i.e., as hazardous waste if necessary).

The area where containers are stored, or uncontainerized scrap is piled, should have an impervious surface area to prevent infiltration. The area should also be bermed to collect all runoff for treatment and kept clean at all times.

Storage of Automotive Batteries

Store batteries upright in a covered place and check routinely for leaks and cracks, especially when exposed to freezing temperatures.

Dropped or cracked batteries should be stored in an acid resistant tub.

Batteries stored outside should be suspended above an impermeable surface and covered to prevent acid runoff.

Keep a neutralizing agent (e.g., baking soda) nearby in case of spills or leaks.

Stack batteries no more than five high and make sure that any leaking fluid will not be washed away as runoff.

Never drain batteries into a drain or onto the ground.

Small quantities of lead acid batteries should be stored in acid resistant tubs.

Large quantities of batteries should be stored in an isolated area with no floor drains.

Avoid long-term storage of batteries.

Storage of Unused Paint

Unused paint should remain in the can and stored in leak-proof tub skids, preferably with a lid. If the tub skid does not have a lid, the collection area should be covered.

The storage site must meet all provincial and local requirements and standards.

Avoid long-term storage of unused paint products.

Storage of Household Hazardous Wastes

Solvents, pesticides, gasoline and other household hazardous wastes must be stored in a concrete bunker. Within in the bunker they should be stored in leak-proof tub skids. The bunker must be fire-proof, vented and provide spill containment capabilities.

Household hazardous waste bunkers must meet all provincial and local requirements and standards, including approval by the local fire authority.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of) DOCKET NO. SP94-386
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DEPARTMENT OF PUBLIC WORKS) CERTIFICATE OF SERVICE
AND WASTE MANAGEMENT,)
COUNTY OF MAUI)
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Lāna`i City, Lāna`i, Tax Map Key)
Number: 4-9-02: Portion Of 1)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the DECISION AND ORDER
APPROVING A TIME EXTENSION AND THE DELETION OF CONDITIONS TO A
SPECIAL USE PERMIT was served upon the following by either hand delivery or
depositing the same in the U. S. Postal Service by regular mail as noted:

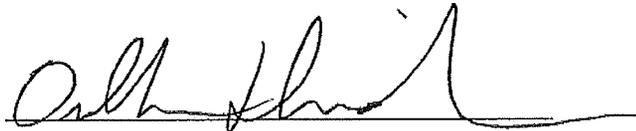
DEL. ABBEY MAYER, Director
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JANE LOVELL, Esq.
Corporation Counsel
200 South High Street
Wailuku, Hawaii 96793

Dated: Honolulu, Hawaii, OCT - 6 2008.

A handwritten signature in black ink, appearing to read "Orlando Davidson", written over a horizontal line.

ORLANDO DAVIDSON
Executive Officer