

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

57962
MAY 14 2002
L-2901

In The Matter Of The Application Of The)
)
DEPARTMENT OF PUBLIC WORKS)
AND WASTE MANAGEMENT, SOLID)
WASTE DIVISION, COUNTY OF MAUI)
)
For A Special Use Permit To Establish)
And Operate An Expansion To The)
Central Maui Sanitary Landfill On)
Approximately 29.340 Acres Of Land)
Situated Within The State Land Use)
Agricultural District At Pu'unene,)
Maui, Hawai'i, TMK No: 3-8-03: 25)
_____)

DOCKET NO. SP97-390
DECISION AND ORDER
APPROVING AN
AMENDMENT TO A
SPECIAL USE PERMIT

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.
MAY 13 2002 by *Anthony J. [Signature]*
Date Executive Officer

DECISION AND ORDER APPROVING AN AMENDMENT
TO A SPECIAL USE PERMIT

LAND USE COMMISSION
STATE OF HAWAII
2002 MAY 13 P 12:32

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP97-390
)	
DEPARTMENT OF PUBLIC WORKS)	DECISION AND ORDER
AND WASTE MANAGEMENT, SOLID)	APPROVING AN
WASTE DIVISION, COUNTY OF MAUI)	AMENDMENT TO A
)	SPECIAL USE PERMIT
For A Special Use Permit To Establish)	
And Operate An Expansion To The)	
Central Maui Sanitary Landfill On)	
Approximately 29.340 Acres Of Land)	
Situated Within The State Land Use)	
Agricultural District At Pu`unene,)	
Maui, Hawai`i, TMK No: 3-8-03: 25)	
_____)	

DECISION AND ORDER APPROVING AN AMENDMENT
TO A SPECIAL USE PERMIT

On April 30, 2001, the Department of Public Works and Waste Management, Solid Waste Division, County of Maui ("Applicant"), filed an application to amend the Special Use Permit issued in the above-entitled docket ("Application") with the County of Maui Planning Department ("Planning Department"), 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 proposes to construct and operate a new entrance facility and related improvements as a part of the Central Maui Landfill expansion. The facility will include an entry road; perimeter road; self-haul

recycling and service area; reuse center for materials exchange; self-haul disposal and service area; scale and scale house; office building; wash slab for heavy equipment; and water, septic, and power infrastructure ("Project"). The Project will be located on approximately 5.3 acres of land within the State Land Use Agricultural District at Pu`unene, Maui, Hawai`i, identified as TMK No: 3-8-03: por. 25 ("Property"). The County of Maui owns the Property.

The Land Use Commission ("Commission") has jurisdiction over the Application. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the Commission to approve special permits for areas greater than 15 acres.

On May 18, 2001, the Applicant certified the Application as complete and ready for processing.

On September 11, 2001, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on the Application, pursuant to a public notice published in the Maui News on August 10, 2001. There was no public testimony provided on the Project. After due deliberation, the Planning Commission recommended approval of the Application to the Commission, subject to 14 conditions.¹

On November 13, 2001, the Commission received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Application. On March 8 and 12, 2002, the Commission received additional materials to

¹ The 14 conditions included the original conditions and amendments thereto as well as new conditions.

the record. On March 13, 2002, the Commission received the remaining portion of the record.

On March 21, 2002, the Commission met in Kailua-Kona, Hawai'i, to consider the Application. John Harder appeared on behalf of the Applicant. Richard Minatoya, Esq., and Joe Alueta appeared on behalf of the Planning Department.

At the meeting, the Applicant pointed out that i) the proposed entry road on TMK No: 3-8-03: por. 4 is an integral part of the Project and should be included as a part of the Application²; ii) improvements on the entry road will include two lanes of paving and a chain link fence with a gated entry; and iii) the approximately 5.3 acres comprising the Property includes the proposed entry road. The Applicant further stated that it will obtain written authorization from landowner A&B-Hawaii, Inc., to utilize the land on which the entry road is proposed and provide said authorization to the Commission.

Conformance With Special Use Permit Criteria

Following discussion by the Commissioners, and with the understanding that the proposed entry road is an integral part of the Project and should be included as a part of the Application, a motion was made and seconded to approve the Application,

² The tax map key designation of the proposed entry road was inadvertently left out of the description of the Property in the Application, hearing notice, and other documents. The road will be located at the site of access and utility easement "A," which runs from Pulehu Road to the Property. This easement was included together with the Property A&B-Hawaii, Inc., conveyed to the County of Maui by Warranty Deed dated September 19, 1997.

subject to the conditions as recommended by the Planning Commission, with the exception that i) original Condition Numbers 10 and 11 relating to archaeological resources and annual reports, respectively, be retained; and ii) Condition Number 5 relating to a compliance report as recommended by the Planning Commission be deleted. The Commission found that i) The Project is in proximity to other areas with landfill and quarrying uses; ii) The Property is relatively barren with clumps of pili grass. There are no endangered or rare fauna present on the Property; iii) No archaeological or historic sites or remains were discovered during the construction of Phase IV of the landfill expansion, which includes the Property. There are no known cultural resources on the Property; iv) The Project would not adversely affect surrounding property since most of the surrounding lands are either undeveloped and under agricultural production or are being mined. The existing quarry operation will leave the site unsuitable for any other use; v) The Project will result in construction-related impacts to air quality that will be mitigated by dust control measures, such as regular watering and sprinkling. The ground surface of the Project will be covered by either asphalt or vegetation. Odor problems will be minimized through proper waste handling and soil covering; vi) The Project may result in minor short-term noise impacts. Construction activities will be restricted to normal daylight working hours. Landfill and entrance facility functions, such as weighing and recycling, do not generate loud noises in the long term; vii) A litter control plan is included in the Operations

Manual for Phase IV to reduce litter problems associated with the landfill expansion.

Slopes and other unpaved surfaces will be covered with groundcover. A landscaping plan will be prepared that meets the water and wind conditions of the Property; viii)

The Project primarily involves weighing, recycling, and reuse functions, which will place minimum demand on public facilities and services; ix) Since the district

boundaries and rules were established, the economy of Maui has diversified from agriculture to the resort and retail trade industries, which placed further demand on

solid waste facilities; x) The Project will provide direct access to the landfill expansion without commercial and County trucks fording Kaliahinui Gulch, which becomes

impassable when it flows. The Project will provide the public with a safe alternative to disposing of their refuse at the landfill and an additional opportunity for recycling,

which will contribute to the life of the landfill; and xi) The Project is located on land that was previously quarried, which removed the topsoil and made it unsuitable for

agricultural purposes. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 6 ayes and 0 nays, the motion carried.

ORDER

Having duly considered the complete record of the Application and the oral arguments presented by the parties in the proceeding, and a motion having been made at a hearing conducted on March 21, 2002, in Kailua-Kona, 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 Commission hereby APPROVES the Application to amend the Special Use Permit to construct and operate a new entrance facility and related improvements as a part of the Central Maui Landfill expansion on approximately 5.3 acres of land within the State Land Use Agricultural District at Pu`unene, Maui, Hawai`i, identified as TMK No: 3-8-03: por. 4 and por. 25, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. That the State Land Use Commission Special Use Permit shall be valid until July 21, 2007, subject to further extensions by the Land Use Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the Land Use Commission and may require a public hearing on the time extension.

2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawai`i Revised Statutes. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative

development be removed; that a civil fine be paid not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per violation; that a civil fine not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Planning Department within said thirty (30) days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director or the Director's designee in accordance with the provisions of Chapter 91, HRS, as amended.

3. That the subject State Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission. The appropriate Planning Commission shall make a recommendation to the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said State Land Use Commission Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

4. That full compliance with all applicable governmental requirements shall be rendered.

5. That the Applicant shall develop the Property in substantial compliance with the representations made to the Land Use Commission in obtaining the State Land Use Commission Special Use Permit. Failure to so develop the Property may result in the revocation of the permit.

6. That the Applicant shall begin construction of the landfill expansion within six months from issuance of the Land Use Commission's decision and order on the amendment. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

7. That the Applicant shall take appropriate mitigative measures to minimize erosion, and prevent cement products, oil, fuel, and other toxic substances associated with the use of heavy machinery from spilling or leaching into the ground.

8. That the Applicant shall comply with Department of Health Ambient Air Quality Standards, Hawai'i Administrative Rules, Title 11, Chapter 59 and Air Pollution Control, HAR 11-60.

9. That the Applicant shall comply with the EPA's New Source Performance Standards.

10. That the Applicant shall immediately stop work and contact the State Historic 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 Use Permit area.

11. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.

12. That the Applicant 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 Applicant'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 Land Use Commission.

13. That the Applicant shall utilize non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.

14. That the Applicant shall ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right of way, are removed in a timely manner.

15. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.

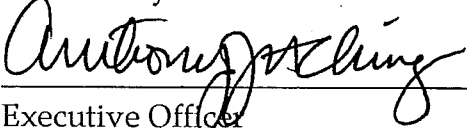
Dated: Honolulu, Hawai'i, MAY 13 2002

LAND USE COMMISSION
STATE OF HAWAII

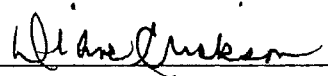


By MERLE A.K. KELAI
Chairperson and Commissioner

Filed and effective on
MAY 13 2002, 2002

Certified by:

Executive Officer

APPROVED AS TO FORM:


Deputy Attorney General

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of The)	DOCKET NO. SP97-390
)	
DEPARTMENT OF PUBLIC WORKS)	CERTIFICATE OF SERVICE
AND WASTE MANAGEMENT, SOLID)	
WASTE DIVISION, COUNTY OF MAUI)	
)	
For A Special Use Permit To Establish)	
And Operate An Expansion To The)	
Central Maui Sanitary Landfill On)	
Approximately 29.340 Acres Of Land)	
Situated Within The State Land Use)	
Agricultural District At Pu`unene,)	
Maui, Hawai`i, TMK No: 3-8-03: 25)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order Approving an Amendment 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 certified mail:

CERT. DAVID W. BLANE, Director
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

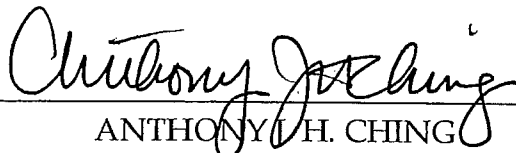
CERT. JOHN CHANG, ESQ., Deputy Attorney General
 Department of the Attorney General
 Hale Auhau
 425 Queen Street
 Honolulu, Hawaii 96813

CERT. DAVID GOODE, Director
Department of Public Works and Waste Management
Solid Waste Division
200 South High Street
Wailuku, Hawaii 96793

CERT. JOHN E. MIN, Director of Planning
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JAMES B. TAKAYESU, ESQ.
Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 13th day of May, 2002.



ANTHONY L. CHING
Executive Officer