

County

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

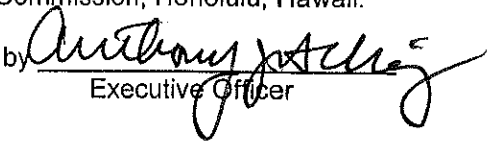
In The Matter Of The Application Of	)	DOCKET NO. SP86-359
	)	
COUNTY OF MAUI DEPARTMENT OF	)	DECISION AND ORDER
PUBLIC WORKS	)	APPROVING AN
	)	AMENDMENT TO A
For A Special Use Permit To Establish A	)	SPECIAL USE PERMIT
Sanitary Landfill, Weigh Station, And Access	)	
Road On Approximately 55 Acres Of Land In	)	
The Agricultural District At Pu'unene,	)	
Wailuku, Maui, Tax Map Key: 3-8-03: 18, 19,	)	
And Portion Of 4	)	
_____	)	

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.

JAN - 9 2006

Date

by  Executive Officer

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On March 15, 2005, the County of Maui Department of Public Works and Environmental Management ("Applicant") (fka the Department of Public Works) filed a written request on behalf of Pacific Biodiesel, Inc., the subcontractor to the County of Maui's biosolids and greenwaste co-composting contractor, Maui EKO Systems, with the County of Maui Department of Planning ("DP") to amend the special use permit issued in the above-entitled docket 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 requested that the special use permit issued pursuant to Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") dated July 21, 1986, be amended to include the processing of special waste into marketable materials,

such as biodiesel and compost, as an additional permitted use on approximately 10 acres of land, identified as Tax Map Key: 3-8-03: por. 19 ("Property")<sup>1</sup>, within Phase III of the Central Maui Sanitary Landfill ("Request").<sup>2</sup>

The Commission has jurisdiction over the Applicant's Request. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize this Commission to approve special use permits and amendments thereto for areas greater than 15 acres.

On May 24, 2005, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on the Applicant's Request. There was no public testimony provided on the Request. After due deliberation, the Planning Commission recommended approval of the Applicant's Request to this Commission.

On July 21, 2005, the Commission received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Applicant's Request. On November 2, 2005, the Commission received the remaining portion of the record.

On December 1, 2005, the Commission met in Kahului, Maui, Hawai'i, to consider the Applicant's Request. Elaine Baker appeared on behalf of the Applicant.

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<sup>1</sup> Due to the consolidation and resubdivision of the tax map key parcels following the issuance of the Decision and Order, the special use permit area is now identified as Tax Map Key: 3-8-03: 19.

<sup>2</sup> The Applicant originally requested to amend Condition Number 9 of the Decision and Order. To the extent that said condition pertained to the implementation of appropriate mitigative measures to control excessive dust generation, the Land Use Commission ("Commission") staff advised the Applicant through the DP's comment and recommendation process that the request should be restated to include the recycling operation as an additional use under the special use permit.

Jane Lovell, Esq., and Kivette Caigoy appeared on behalf of the DP. John W. K. Chang, Esq., and Abe Mitsuda also were present on behalf of the State Office of Planning ("OP").

At the meeting, Ms. Caigoy was asked to respond to the issue of the Applicant's conditional permit for the recycling operation on the Property. She pointed out that subsequent to the Planning Commission's action on the Applicant's Request, it was determined that the Property was not in the Agricultural Zoning District as previously thought but in the Interim Zoning District, and therefore a conditional permit was not applicable. She added that the DP was working with the Applicant to obtain a use variance permit.

Upon further discussion, the Commission raised questions in regard to the comments from the State Commission on Water Resource Management dated April 7, 2005, which expressed concerns about the potential for ground or surface water degradation/contamination and recommended that approvals for the Applicant's Request be conditioned upon a review by the State Department of Health ("DOH") and the Applicant's acceptance of any resulting requirements related to water quality. Ms. Baker responded that since 1995, the Applicant has tested the groundwater on a quarterly and biannual basis for volatiles and standard constituents and submitted reports to the DOH, which regulates landfills including the issuance of operating permits and the monitoring of groundwater. She added that several factors contributed

to the protection of the groundwater, including the depth of the aquifer, the density of the basalt layer overlying the aquifer, and surface containment. With respect to surface water, Ms. Baker noted that a National Pollutant Discharge Elimination System permit had been issued for the landfill. She further noted that the landfill has retention pond capacity and has not discharged stormwater for nine years.

The OP stated that it had no objections to the Applicant's Request. Upon questioning by the Commission, the DP stated that it had no objections to the conditions recommended in the Commission's staff report on the Applicant's Request.<sup>3</sup>

Thereafter, a motion was made and seconded to approve the Applicant's Request, subject to the following additional conditions to the Decision and Order dated July 21, 1986:

14. Permitted activities shall include the processing of special waste into marketable materials, such as biodiesel and compost, as an additional use under the special use permit.
15. That the Applicant shall satisfy the County of Maui Department of Water Supply standards for fire protection.
16. That security safety measures including, but not limited to, the methanol tanks, onsite catalyst, and lab container shall be implemented due to the type of products used and produced onsite.

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<sup>3</sup> The staff report recommended that the Applicant's Request be subject to additional conditions based, in part, on the comments of the County of Maui Department of Water Supply, Police Department, and the Department of Fire and Public Safety on the Applicant's Request and its previous conditional permit application.

17. That a combustible liquid tank permit shall be acquired and maintained, as necessary.
18. That the Applicant shall timely provide without any prior notice, annual reports to the Commission and the County of Maui Department of Planning in connection with the status of the uses approved under the special use permit and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally of 7 ayes, 0 nays, and 1 absent, the motion carried.

#### ORDER

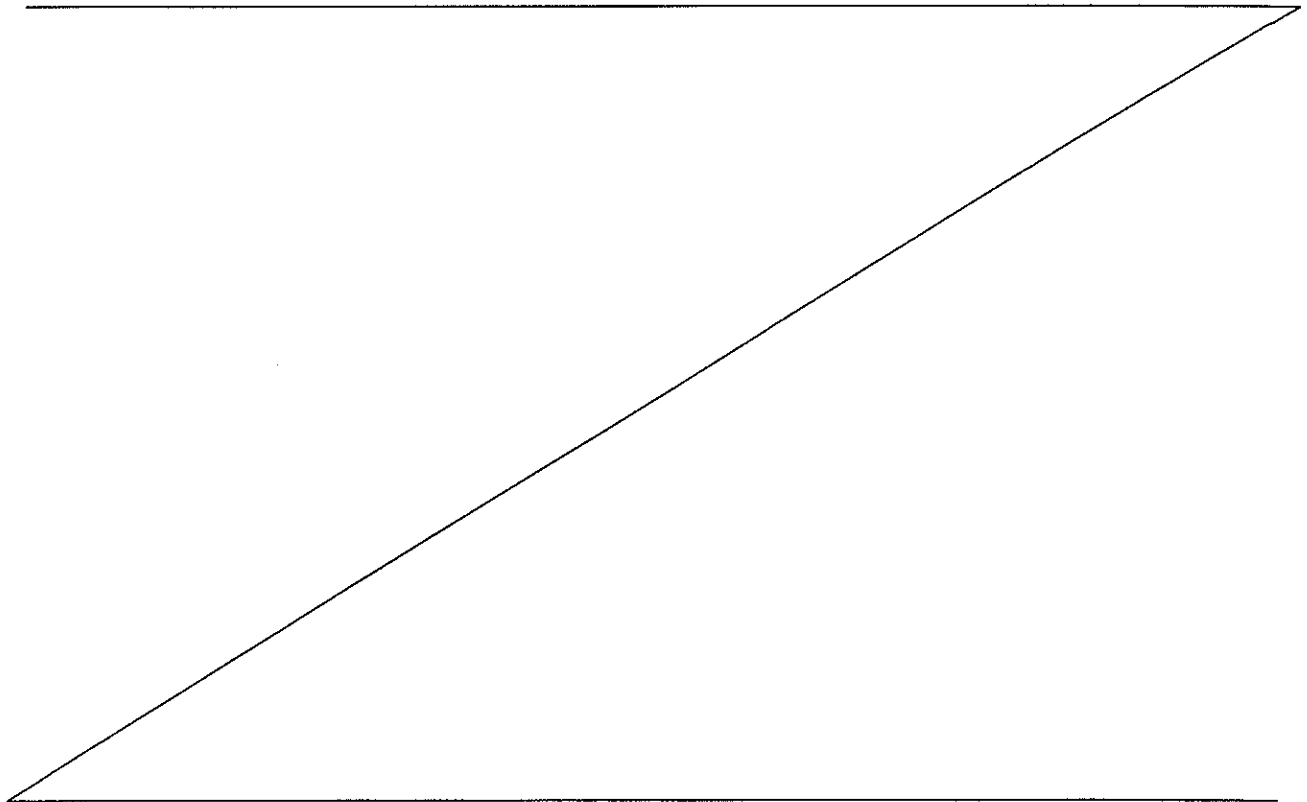
Having duly considered the complete record of the Applicant's Request and the oral arguments presented by the parties present in the proceeding, and a motion having been made at a meeting on December 1, 2005, in Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission hereby APPROVES the Applicant's Request, subject to the following additional conditions to the Decision and Order dated July 21, 1986:

14. Permitted activities shall include the processing of special waste into marketable materials, such as biodiesel and compost, as an additional use under the special use permit.
15. That the Applicant shall satisfy the County of Maui Department of Water Supply standards for fire protection.
16. That security safety measures including, but not limited to, the methanol tanks, onsite catalyst, and lab container shall be

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17. That a combustible liquid tank permit shall be acquired and maintained, as necessary.
18. That the Applicant shall timely provide without any prior notice, annual reports to the Commission and the County of Maui Department of Planning in connection with the status of the uses approved under the special use permit and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

All other conditions to the Decision and Order dated July 21, 1986, are hereby reaffirmed and shall continue in effect.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 9th day of January, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 9th day of January, 2006 per motion on December 1, 2005.

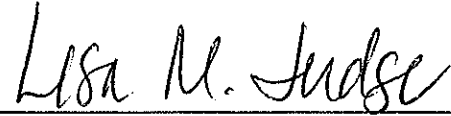
APPROVED AS TO FORM

LAND USE COMMISSION  
STATE OF HAWAII

  
Deputy Attorney General


By   
RANDALL F. SAKUMOTO  
Chairperson and Commissioner

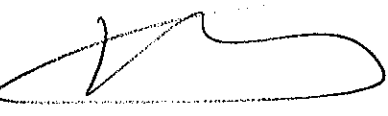
By   
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

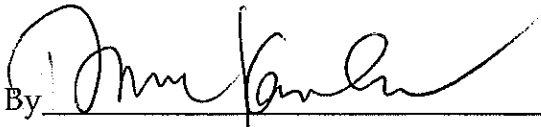
By   
LISA M. JUDGE  
Vice-Chairperson and Commissioner



By           (absent)            
THOMAS CONTRADES  
Commissioner

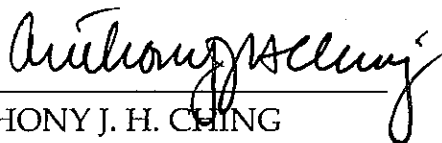
By   
MICHAEL D. FORMBY  
Commissioner

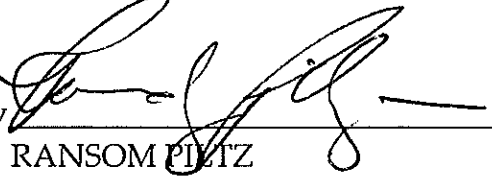
By   
KYONG-SU IM  
Commissioner

By   
DUANE KANUHA  
Commissioner

Filed and effective on  
          JAN - 9 2006          

Certified by:

  
ANTHONY J. H. CHING

By   
RANSOM PLETZ  
Commissioner

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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 regular or certified mail as noted:

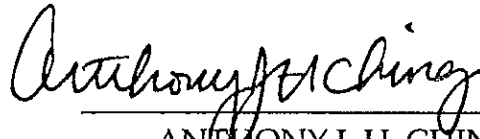
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Honolulu, Hawai'i, JAN - 9 2006



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ANTHONY J. H. CHING  
Executive Officer