



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2015 NOV 30 P 12:09
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of The)	DOCKET NO. SP94-386
)	
DEPARTMENT OF ENVIRONMENTAL)	ORDER ADOPTING
MANAGEMENT, COUNTY OF MAUI)	RECOMMENDATION OF THE
)	LĀNA`I PLANNING
For A Special Use Permit To Establish)	COMMISSION TO APPROVE
And Operate Expansion Of The Lāna`i)	TIME EXTENSION REQUEST
Sanitary Landfill On Approximately 25)	TO SPECIAL USE PERMIT
Acres Of Land Situated Within The)	AND CERTIFICATE OF
State Land Use Agricultural District At)	SERVICE
Lāna`i City, Lāna`i, Tax Map Key)	
Number: 4-9-002: Portion Of 60)	
(Formerly 4-9-002: Portion Of 1))	
_____)	

ORDER ADOPTING RECOMMENDATION OF THE LĀNA`I PLANNING
COMMISSION TO APPROVE TIME EXTENSION REQUEST
TO SPECIAL USE PERMIT

AND

CERTIFICATE OF SERVICE

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, Hawai`i.

November 30, 2015 by

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

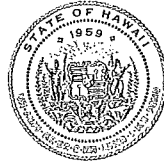
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ORDER ADOPTING RECOMMENDATION OF THE LĀNA`I PLANNING
COMMISSION TO APPROVE TIME EXTENSION REQUEST
TO SPECIAL USE PERMIT

On November 2, 2015, the County of Maui Department of Planning ("DP") filed a copy of the decision and a portion of the record of the Lāna`i Planning Commission's ("Planning Commission") proceeding on the 15-year time extension request of the Department of Environmental Management, County of Maui (formerly the Department of Public Works and Environmental Management) ("Applicant" or

“Petitioner”)¹ to the existing special use permit that allowed the expansion of the Lāna`i Sanitary Landfill with the State of Hawai`i Land Use Commission (“LUC”), pursuant to Hawai`i Administrative Rules (“HAR”) §15-15-95(b).² On November 5, 2015, the DP filed the remaining portion of the record of the proceeding with the LUC.

On November 19, 2015, the LUC met at the Maui Arts & Cultural Center, McCoy Studio Theater, in Kahului, Maui, Hawai`i,³ to consider the recommendation of the Planning Commission to approve the Applicant’s time extension request. At the meeting, the LUC heard a presentation on the time extension request from the Applicant’s representatives, Michael M. Miyamoto and Elaine Baker. Michael Hopper, Esq.; William Spence; and Kurt Wollenhaupt were also present at the meeting on behalf of the County of Maui Department of Planning (“DP”), and Bryan C. Yee, Esq., was present on behalf of the State of Hawai`i Office of Planning (“OP”).

Following discussion on the operations of the landfill as well as the Applicant’s compliance with the various conditions imposed, discussion on the

¹ The Department of Public Works and Environmental Management itself was previously known as the Department of Public Works and Waste Management.

² The Applicant initially filed a request for a 10-year time extension. The Applicant subsequently amended its request to a 15-year time extension based on a capacity study of the landfill.

³ The Commission’s agenda had stated that the meeting would be at the Maui Arts & Cultural Center, Haynes Meeting Room. However, the location was changed to a more expansive room within the same facility to accommodate the large numbers of the public who were present for an agenda item that immediately preceded this matter.

Planning Commission's vote record ensued.⁴ Thereafter, a motion was made and seconded to remand the recommendation of the Planning Commission to approve the Applicant's 15-year time extension request for further proceedings to obtain a clear vote in light of HRS §92-15 and AG Opinion No. 85-11. After further discussion, the motion and second were withdrawn. Thereafter, a motion to adopt the recommendation of the Planning Commission to approve the Applicant's 15-year time extension request was made and seconded. The seconder to the motion subsequently proposed an amendment to the motion, which was accepted by the movant, consisting of amendments to Condition Numbers 1 and 3⁵ to read as follows:

1. That the State Land Use Commission Special Use Permit shall be valid until September 13, 2029, subject to further extensions by the Lāna`i Planning Commission and the State Land Use Commission upon a timely request for extension filed at least ninety (90) days prior to its expiration.

⁴ The Planning Commission, in its decision to recommend approval of the time extension request, recorded a vote tally of four ayes, three noes, one abstention, and one excused. The abstention was deemed an affirmative vote, pursuant to the Planning Commission Rule §12-401-24(c), which states: "Unless a present member is disqualified from voting pursuant to section 12-401-25, their silence or refusal to vote shall be recorded as an affirmative vote." Based on this provision of the Planning Commission's rules, the motion passed with five votes in favor, three opposed, and one excused.

Attorney General ("AG") Opinion No. 85-11 addressed the issue as to whether a board member's act of abstention should be counted as a vote for the purpose of achieving the minimum number of votes necessary to validate a board's action. The AG Opinion concluded that "...abstentions are not equivalent to, nor do they constitute, 'concurrence' for the purpose of validating board action in conformity with section 92-15 and that the words 'concurrence of majority' mean nothing less than the affirmative votes of the majority."

⁵ The amendments represent technical, non-substantive changes to the conditions as recommended by the Planning Commission.

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

Following discussion by the Commissioners, a vote was taken on the motion, as amended. There being a vote tally of 6 ayes, 0 nays, and 2 excused,⁶ the amended motion carried.

ORDER

The LUC, having duly considered the arguments presented by the Applicant and the record in this proceeding, and an amended motion having been made and seconded at a meeting held on November 19, 2015, in Kahului, Maui, Hawai`i, and the amended motion having received the affirmative votes required by HAR §15-15-13, HAR, and there being good cause for the amended motion,

HEREBY ORDERS that the recommendation of the Planning Commission to approve the Applicant's 15-time extension request be ADOPTED, subject to the following amendments to Condition Numbers 1 and 3:

1. That the State Land Use Commission Special Use Permit shall be valid until September 13, 2029, subject to further extensions by the Lāna`i Planning Commission and the State Land Use Commission upon a timely request for extension filed at least ninety (90) days prior to its expiration.
3. That Petitioner shall use non-drinking water, to the extent possible, for grading and dust control of the landfill.

⁶ There are currently eight sitting commissioners on the LUC. The one remaining seat is vacant.

ADOPTION OF ORDER

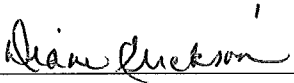
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 30th day of November, 2015, per motion on November 19, 2015.

LAND USE COMMISSION

APPROVED AS TO FORM

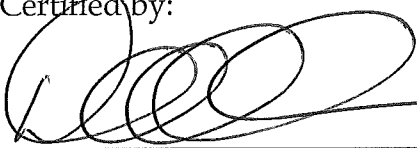
STATE OF HAWAII


Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

11/30/15

Certified by:

DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

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I hereby certify that due service of the within document was made by depositing the same with the United States Mail, postage prepaid, or by hand delivery, on November 30, 2015, addressed to:

BY HAND DELIVERY

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BY MAIL

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BY MAIL

DATED: Honolulu, Hawai'i, November 30 , 2015.



DANIEL ORODENKER
Executive Officer
State Land Use Commission