

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
DEPARTMENT OF PUBLIC WORKS AND)
WASTE MANAGEMENT, SOLID WASTE)
DIVISION, COUNTY OF MAUI)
)
For a Special 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 Puunene,)
Maui, Hawaii; TMK: 3-8-03: portion)
of 4)
_____)

DOCKET NO. SP97-390
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

JUL 21 1997

Date

by

[Signature]
Executive Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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LAND USE COMMISSION
STATE OF HAWAII

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
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The Department of Public Works and Waste Management, Solid Waste Division, County of Maui (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawai'i Revised Statutes (hereinafter "HRS"), as amended, and Subchapter 12, Chapter 15-15, Hawai'i Administrative Rules (hereinafter "HAR"). The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Special Permit Application (hereinafter "Application") for establishment and operation of an expansion of the Central Maui Sanitary Landfill on approximately 30 acres at

Puunene, Maui, was filed by the Applicant with the County of Maui Planning Department (hereinafter "Planning Department") on August 12, 1996.

2. On January 28, 1997, the Maui Planning Commission (hereinafter "Planning Commission") conducted a public hearing on the Application.

3. On January 28, 1997, the Planning Commission recommended approval of the Permit to the LUC subject to eleven (11) conditions. The LUC received a portion of the record of the County's proceedings on the Permit on March 20, 1997.

4. On May 1, 1997, the LUC received a copy of the minutes for the January 28, 1997 Planning Commission meeting from the Planning Department. Upon receipt of the minutes, the record was deemed complete for processing. The LUC also received clarification from the Planning Department that the acreage of the subject lands under the Application was approximately 29.340 acres.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

5. The Special Permit area consists of approximately 29.340 acres situated at Puunene, Maui, and further identified as Tax Map Key No.: 3-8-03: portion of 4 (hereinafter "Property").

6. The Property is located approximately 4 miles southeast of Kahului. The Property is owned by A&B Properties, Inc. The Applicant is in the process of acquiring the Property from A&B Properties, Inc.

7. Access to the Property is via the existing access road for the existing Central Maui Sanitary Landfill located off of Pulehu Road.

8. The Property is currently being utilized for a quarry operation.

9. The slope of area in which the Property is situated is approximately 3.5%, and the Property slopes downward towards the northwest.

10. Rainfall in the area is estimated to be approximately 20 inches annually.

11. The U.S. Department of Agriculture Soil Conservation Service classifies the Property as having two types of soil series, Rock Land (rRK) and Waiakoa silty clay loam (WeB).

12. The Land Study Bureau's Detailed Land Classification Report designates the Property as Class "A" lands.

13. The State of Hawaii's Agricultural Lands of Importance to the State of Hawaii (ALISH) system classifies the Property as "Prime."

14. According to the U.S. Army Corps of Engineers Flood Insurance Rate Map (FIRM), the Property is within an area of minimal flooding or Zone "C."

15. Adjacent uses to the Property are primarily agricultural in nature with existing quarry operations and Kalialinui Gulch to the north and east of the Property, respectively.

SUMMARY OF PROPOSED USE

16. The Applicant is requesting a Special Permit to establish and operate an expansion of the existing Central Maui Sanitary Landfill, which is located east of the Property beyond Kalialinui Gulch. This expansion area will operate as a Municipal Solid Waste Landfill as defined by Federal regulations 40 CFR §257 and §258 (also known as Subtitle D), and HAR Title 11, Department of Health Chapter 58.1, §11-58.1-03.

17. Federal regulations requires new landfills constructed after October 9, 1993 to include a bottom liner consisting of a layer of clay overlain by a layer of plastic.

18. The proposed expansion of the Central Maui Sanitary Landfill on the Property will include the following improvements: drainage control via perimeter drainage channel in accordance with Department of Health (hereinafter "DOH") regulations; lining of the expansion area with a composite, flexible membrane liner and a minimum two-foot layer of compacted soil or geocomposite liner if soils on the Property are not suitable; leachate collection and removal system designed and installed pursuant to DOH regulations; groundwater monitoring required by Federal and State regulations; gas extraction system; landfill operation and maintenance; landfill closure plan to be prepared when landfill operations are near completion; and off-site improvements including possible improvements to the existing transfer station (hereinafter collectively referred to as "Project").

19. The Applicant anticipates that no change to the existing operations at the existing Central Maui Sanitary Landfill will occur. No new buildings will be constructed for the expansion area, and no expansion will take place for existing buildings at the current landfill area.

20. The Project is intended to provide an expansion of the existing landfill located east of the Property, which is reaching capacity.

21. The Applicant has determined that utilizing the existing quarry pit on the Property would be feasible compared to excavating lands to develop the landfill expansion at another location.

22. The Applicant has also determined that the combination of a central yet rural location and compatible physical characteristics make the Property operationally and environmentally feasible for expansion of the existing landfill.

STATE AND COUNTY PLANS AND PROGRAMS

23. The State Land Use District Classification of the Property is Agricultural, as reflected on State Land Use District boundary map M-7 (Paia).

24. The Wailuku-Kahului Community Plan designates the area as Agricultural. The existing landfill is designated as Public/Quasi-Public.

25. Current zoning for the Property is County Interim.

26. The Property is not located within the County of Maui Special Management Area.

SUMMARY OF COUNTY, STATE, AND FEDERAL AGENCIES COMMENTS

27. The County of Maui Department of Public Works and Waste Management determined that a Special Permit is required for the proposed landfill expansion and no other permits would be required with the exception of a DOH operating permit and county building permits.

28. The County of Maui Police Department noted that the proposed expansion will have an impact on traffic and escaping litter from the landfill due to high winds.

29. The County of Maui Department of Parks and Recreation had no objections to the proposed Project.

30. The State Department of Transportation commented that the Project is not anticipated to have an adverse impact on State transportation facilities.

31. The Division of Aquatic Resources, State Department of Land and Natural Resources (hereinafter "DLNR"), commented that appropriate mitigative measures to minimize erosion and prevention of hazardous material spilling and leaching into the ground should be taken by the Applicant.

32. The State Historic Preservation Division, DLNR, determined that the proposed Project would have "no effect" on significant historic sites provided that all expansion activities avoid Kaliialinui Gulch.

33. The Clean Air Branch, DOH, provided mitigative measures to address possible nuisance odors and the potential for fugitive dust emissions.

34. The Solid Waste Management Office, DOH, noted that it will review environmental concerns and proposed mitigative measures upon receipt for an application for solid waste permit.

35. The LUC staff commented that Condition No. 13 of LUC Docket No. SP86-359/County of Maui, Department of Public Works (existing Central Maui Sanitary Landfill) had not been complied with.

36. The Department of Hawaiian Home Lands had no objections to the landfill expansion.

37. The Natural Resources Conservation Service, U.S. Department of Agriculture, had no comments on the Application.

38. The U.S. Fish and Wildlife Service did not anticipate significant adverse impacts to fish and wildlife resources, as the area lacks rare, threatened, or endangered species.

39. The Army Corps of Engineers noted that a Department of Army permit pursuant to the Flood Control Act of 1960, would not be required for the proposed expansion.

40. Maui Electric Company (hereinafter "MECO") had no objections to the Project and recommended that the Applicant meet with MECO to plan for electrical requirements.

SOCIO-ECONOMIC IMPACTS

41. The primary beneficial impact of the proposed landfill expansion is long-term and will occur in the area of public services and public health. The growing Maui community requires an adequate solid waste disposal system, and the proposed expansion will meet Maui's refuse disposal needs.

Phase IV has an estimated capacity of approximately 2.2 million cubic yards and a life expectancy of approximately 6 years.

42. Short-term economic impacts include increased demand for goods and services during construction of improvements.

43. The Final Environmental Impact Statement (hereinafter "FEIS") for the total overall expansion of the Central Maui Sanitary Landfill, of which the Project is one phase, states that the total overall landfill expansion may adversely impact the island's economy by placing a large capital expenditure on the County to establish the facility. Therefore, the total expansion has been phased, with this Application addressing the first expansion phase.

44. The FEIS states that continuing operation of the existing landfill will be easier and more cost effective than establishment of a new landfill at a new location.

45. The FEIS states that a secondary economic impact from expansion of the landfill may be rapid urban expansion and a corresponding increase in the cost of goods and services in the area.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

46. The Property is located within an area classified as "Prime" agricultural lands under the ALISH classification system. However, the site is already disturbed and will be even more so as quarry operations and landfill operations progress.

47. The proposed expansion is not expected to disturb activities on adjacent agricultural lands.

Flora/Fauna

48. The landfill expansion area may attract and encourage proliferation of scavenger-types fauna. Rats, birds and flies may encourage disease vector problems. Daily cover and dust and litter control measures will minimize impacts on flora and fauna.

Scenic Resources

49. The Project will have an adverse visual impact as the Property is located along Pulehu Road. A perimeter design, including trees, will be implemented in order to mitigate the visual impact of land filling activities.

Archaeological and Cultural Resources

50. No known significant or historical sites have been found on the Property or the immediate surrounding area. This has been confirmed by the State Historic Preservation Division, DLNR, in its comment letter regarding the Project.

51. The State Historic Preservation Division, DLNR, has concluded that the Project will have "no effect" on significant historic sites provided that all expansion activities avoid Kalialinui Gulch.

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highways and Roadway Facilities

52. Traffic is expected to increase during construction of the Project. However, overall traffic is not expected to increase in the immediate area.

Drainage

53. A perimeter drainage channel will be included as part of the landfill expansion on the Property. This channel is to collect runoff from the adjacent watershed and landfill fill slopes. This and other drainage improvements have been designed and will be implemented in accordance with applicable Federal and State rules and regulations.

Air Quality

54. Air quality is expected to be similar to the existing operation of the Central Maui Sanitary Landfill. Short-term impacts will be as a result of construction during the proposed expansion. Long-term impacts may result from decomposing refuse and landfill gases.

Noise

55. Noise levels in the area are relatively low. The only significant generator of noise in the area is the quarry operations adjacent to the Property. Seasonal noise impacts occur during harvesting of sugarcane on adjacent fields. The existing landfill operations contribute little noise pollution in the area.

56. Prevailing winds direct sounds towards adjacent sugarcane fields, and the Property's rural characteristics and distance from populated area serve to mitigate noise impacts.

Water

57. No potable water supply is available in the existing landfill or Property. Water requirements for fire and dust control are currently being provided by water trucks. A

portable storage facility is located in the area of the existing landfill, east of the Property, and has a capacity of 53,700 gallons with a reserve of 25,000 gallons for fire control.

Sewage

58. No sewer facilities are available at or near the Property. Plans for the Project provide for existing infrastructure (i.e, weighing station, etc.) to remain in its current location within the existing landfill, thus no other sewage requirements are required for the Property.

Electricity/Telephone Service

59. The Property has electrical and telephone services nearby. The Project is not anticipated to have any impact on such services.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

60. The Planning Department, in its staff report to the Planning Commission, provided the following comments with respect to the Permit's conformance with the Special Use Permit Tests as follows:

- (a) The use shall not be contrary to the objective sought to be accomplished by Chapters 205 and 205A, Hawaii Revised Statutes, as amended, and the rules of the State Land Use Commission.

"The proposed expansion of Central Maui Sanitary Landfill is not listed as a permitted use within the State Agricultural District, but the use is not contrary to the objectives of the Land Use Law, Chapter 205 and 205 which is to preserve, protect, and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii."

- (b) The desired use would not adversely affect surrounding property.

"The desired use would not adversely affect surrounding property since most surrounding properties are either undeveloped or are being mined. The existing quarry operations will leave the site essentially no (sic) suitable for any other use."

- (c) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection.

"No burden will be created to public agencies to provide roads, streets, sewers, water, or drainage facilities. No unreasonable burden to police and fire protection agencies is anticipated. There will be no burden on the school system."

- (d) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

"The use is in close proximity to other properties with landfill and quarrying uses."

- (e) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

"The land upon which the proposed use is sought is part of a mining operation and therefore would not be suitable for agricultural purposes."

PLANNING COMMISSION RECOMMENDATION

61. At its meeting of January 28, 1997, the Planning Commission recommended approval of the Application to the LUC, subject to the following conditions:

1. That the Land Use Commission Special Use Permit shall be valid for a period of ten (10) years from the date of its granting, subject to extensions by the Maui Planning Commission and the State Land Use Commission 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 begin construction of the landfill expansion within 6 months from the issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.
4. 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.
5. That the applicant shall provide adequate dust control measures during all phases of landfill operations in accordance with the provisions of Chapter 11-60.1, Hawaii Administrative Rules, Section 11-60.1-33 on Fugitive Dust, but not limited to:
 - a. Minimizing the amount of dust generating materials and activities, centralizing material transfer points and onsite activities, centralizing material transfer points and onsite vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact;
 - b. Providing an adequate water source at site prior to startup of construction activities;
 - c. Landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase;
 - d. Control of dust from shoulders, project entrances, and access roads;
 - e. Providing adequate dust and odor control measures as required by law during landfill closures, after hours, and prior to daily startup of construction activities; and
 - f. Odor control measures shall be taken during all phases of landfill operations.

6. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.
7. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.
8. That the applicant shall utilize non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.
9. That the applicant shall reasonably ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right-of-way shall be removed in a timely manner.
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 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 submissions of the annual report. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.
62. Any findings of fact that may be a conclusion of

law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The Special Permit request to allow establishment and operation of an expansion of the Central Maui Sanitary Landfill on the island of Maui constitutes an "unusual and reasonable" use as defined in Section 205-6, Hawaii Revised Statutes, as amended,

and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Special Permit under LUC Docket No. SP97-390 to allow establishment and operation of an expansion to the Central Maui Sanitary Landfill on approximately 29.340 acres of land designated within the State Land Use Agricultural District, Tax Map Key No.: 3-8-03: portion of 4 at Puunene, Maui, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. That the Land Use Commission Special Permit shall be valid for a period of ten (10) years from the issuance of the Land Use Commission's decision and order, subject to extensions by the Maui Planning Commission and the State Land Use Commission 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. Applicant shall begin construction of the landfill expansion within 6 months from the issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

4. 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.

5. That the Applicant shall provide adequate dust control measures during all phases of landfill operations in accordance with the provisions of Chapter 11-60.1, Hawaii Administrative Rules, Section 11-60.1-33 on Fugitive Dust, but not limited to:

- a. Minimizing the amount of dust generating materials and activities, centralizing material transfer points and onsite activities, centralizing material transfer points and onsite vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact;
- b. Providing an adequate water source at site prior to startup of construction activities;
- c. Landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase;
- d. Control of dust from shoulders, project entrances, and access roads;
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f. Odor control measures shall be taken during all phases of landfill operations.

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

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

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

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

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 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

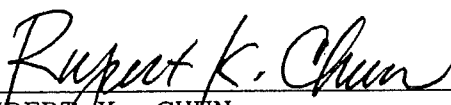
time of submission of the annual report. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.

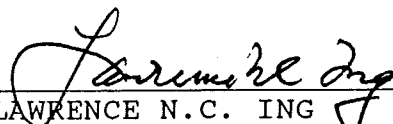
DOCKET NO. SP97-390 - DEPARTMENT OF PUBLIC WORKS & WASTE MANAGEMENT,
SOLID WASTE DIVISION

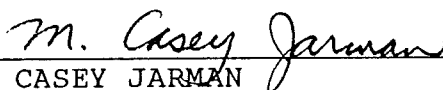
Done at Honolulu, Hawai'i, this 21st day of July 1997,
per motions on June 26, 1997 and July 17, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I

By 
TRUDY K. SENDA
Chairperson and Commissioner


By 
RUPERT K. CHUN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. ING
Commissioner

By 
M. CASEY JARMAN
Commissioner


By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By (absent)
LLOYD F. KAWAKAMI
Commissioner

By 
MERLE A. K. KELAI
Commissioner

Filed and effective on
July 21, 1997

Certified by:


Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By 
JOANN N. MATTSON



**SP97-390 / DEPARTMENT OF
PUBLIC WORKS & WASTE
MANAGEMENT, SOLID WASTE
DIVISION, COUNTY OF MAUI**

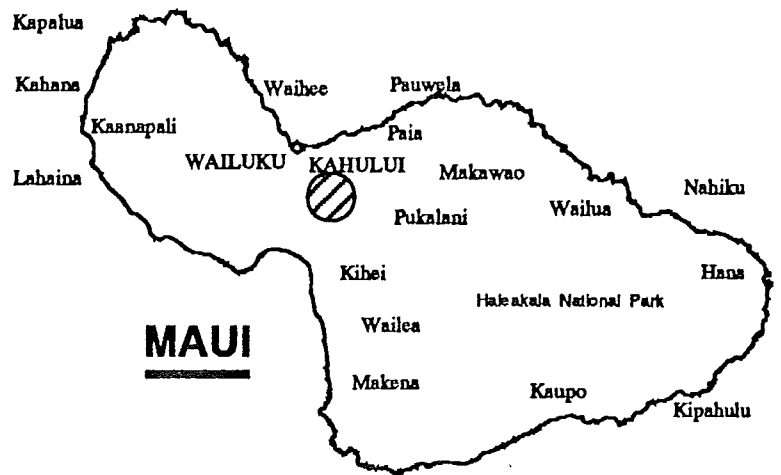
LOCATION MAP

TAX MAP KEY: 3-8-03: por. 4

Puunene, Maui, Hawaii

 PERMIT AREA
(APPROXIMATE)

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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of 4)
_____)


CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order 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 of Planning
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

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

DATED: Honolulu, Hawaii, this 21st day of July 1997.



ESTHER UEDA
Executive Officer