

BEFORE THE HANA ADVISORY COMMITTEE

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the Application of:) SM1 2007/0003, SUP 2007/0004
) CUP 2007/0001
County of Maui, Department of Environ-) County of Maui
mental Management to Obtain a Special) (PFF)
Management Area Use Permit, Land)
Use Commission Special Use Permit,)
County Special Use Permit for the)
County's Hana Landfill for Land Consoli-)
dation, Boundary Realignment and)
Grading Activity on Approx. 74 Acres at)
Maui TMKs: (2) 1-3-006:012 (por.) and)
(2) 1-3-006:007 (por.), Hana, Maui,)
Hawaii)

MAUI PLANNING DEPARTMENT'S RECOMMENDATION
TO THE HANA ADVISORY COMMITTEE

February 21, 2008

DEPARTMENT OF PLANNING
COUNTY OF MAUI
250 S. HIGH STREET
WAILUKU, MAUI, HI 96793

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EXHIBIT 8

BEFORE THE HANA ADVISORY COMMITTEE

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CONCLUSIONS OF LAW

The application complies with the applicable standards for a State Land Use Commission Special Use Permit, County Special Use Permit and Special Management Area Permit as follows:

State Land Use Commission Special Use Permit:

The State Land Use Commission Special Use Permit request to allow for the establishment and operation of the Hana Landfill with recycling facility 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 of those uses to which they are best suited in the interest of the public health and welfare.

County Special Use Permit:

Pursuant to Maui County Code Section 19.30A060(L), landfills are a special use

permitted in the Agricultural district and require a County Special Use Permit be processed and approved by the Maui Planning Commission. The proposed use is not contrary to County land use laws.

Pursuant to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements, a Findings of No Significant Impact (FONSI) was issued by the Department of Public Works and Environmental Management, a FONSI was issued on December 24, 2007.

RECOMMENDATION

The Maui Planning Department recommends approval of the proposed action to:

- A. Realign the boundaries of Parcel 12 to be expanded in a north and west direction to incorporate an area of 45.14 acres;
- B. Construct a 100' x 100' runoff detention basin and appurtenant infrastructure.

The Planning Department recommends that the Hana Advisory Committee recommend approval of the State Special Use Permit and County Special Use Permit requests subject to the following conditions:

1. That the State Land Use Commission Special Use Permit and County Special Use Permit shall be valid until February 28, 2018, subject to further extensions by the Land Use Commission and/or the Maui Planning Commission as required by each permit accordingly, upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The Maui 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, Hawaii Revised Statutes. The County Special Use Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, §19.530.030 of the Maui County Code, as amended, 1980; 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 Dollars (\$1,000.00) per violation; that a

civil fine not to exceed Five Thousand 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 and County Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission and/or the Maui Planning Commission as required by permit requirements accordingly. The appropriate Planning Commission shall make a recommendation to the Land Use Commission as necessary. 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 permits and requirements shall be rendered.
5. That the applicant shall submit to the Land Use Commission and the Maui Planning Department copies of a detailed report addressing its compliance with the conditions established with the subject State Land Use Commission Special Use Permit. The compliance report shall be reviewed and approved by the Maui Planning Department prior to the establishment of the Special Use.
6. 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 and the Maui Planning Commission in obtaining the County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.
7. That the applicant shall begin construction of the landfill expansion within three years from 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.
8. 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.

9. That the applicant shall comply with Department of Health Ambient Air Quality Standards, Hawaii Administrative Rules, Title 11, Chapter 59 and Air Pollution Control, HAR 11-60.
10. That the applicant shall comply with the EPA's New Source Performance Standards.
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 utilize non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.
13. That the applicant shall ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right of way be removed in a timely manner.
14. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.

Special Management Area Use Permit:

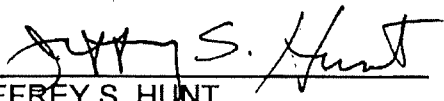
SMA Use Permit is also required pursuant to Chapter 202 of the Special Management Area Rules for the Maui Planning Commission. The proposed use is compliant with requirements of Chapter 202, provided that the State Special Use Permit and the County Special Use Permit are obtained.

The Planning Department recommends deferral on the SMA Permit until such time as both the State Special Use Permit (SUP) and the County Special Use Permit (CUP) are obtained. If the SUP and CUP permits are obtained without any major revisions to its proposed conditions, then the Hana Advisory Committee would recommend approval of the SMA permit subject to the following condition:

If there are substantive changes by the State Land Use Commission to the conditions, then the HAC may want to recommend referral of the SMA permit request to the HAC for a revised recommendation.

In consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's Report and Recommendation Report prepared for the February 21, 2008, meeting as its Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

APPROVED BY:



JEFFREY S. HUNT
Planning Director

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

March 9, 2018

Mr. Stewart Stant, Director
County of Maui
Department of Environmental Management
2200 Main Street, Suite 1C
Wailuku, Hawaii 96793

Dear Mr. Stant:

SUBJECT: COUNTY OF MAUI HANA LANDFILL 30-YEAR TIME EXTENSION APPROVALS FOR (SM1 2007/0003) AND (CUP 2007/0001) AND RECOMMENDATION FOR APPROVAL TO THE STATE LAND USE COMMISSION FOR DOCKET SP08-402, TMK: (2) 1-3-006:007 (POR.) AND 012 (POR.)

At its regular meeting on February 13, 2018, the Maui Planning Commission (Commission) reviewed the subject requests and after due deliberation, voted to grant a 30-year time extension approval for the Special Management Area (SMA) Use Permit (SM1 2007/0003) and County Special Use Permit (CUP 2007/0001) and to recommend a 30-year time extension approval for the State Land Use Commission Special Permit (SP08-402) subject to the following conditions accordingly:

SPECIAL MANAGEMENT AREA USE PERMIT

Standard Conditions

1. That the SMA Use Permit shall be valid until **February 28, 2048**, subject to further extensions by the Planning Director (Director), upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Director shall review and approve a time extension request but may forward said request to the Commission for review and approval. The Commission may require a public hearing on the time extension.
2. That the permit holder or any aggrieved person may appeal to the Commission any action taken by the Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
3. That the subject SMA Use Permit shall not be transferred without prior written approval in accordance with Section 12-202-17(d) of the SMA

Rules of the Commission. However, in the event that a contested case hearing preceded issuance of said SMA Use Permit, a public hearing shall be held 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 permits and requirements shall be rendered.
5. That the Applicant shall submit to the Department of Planning (Department) copies of a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit. The Compliance Report shall be reviewed and approved by the Department prior to the establishment of the special use.
6. That the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit. Failure to so develop the property may result in the revocation of the permit.

Project Specific Conditions

7. That the Applicant shall take appropriate mitigative measures to minimize erosion, prevent cement products, oil, fuel, and other toxic substances associated with heavy machinery from spilling or leaching into the ground.
8. That the Applicant shall comply with Department of Health (DOH) Ambient Air Quality Standards, Hawaii Administrative Rules (HAR), Title 11, Chapter 59 and Air Pollution Control, HAR 11-60.
9. That the Applicant shall comply with the Environmental Protection Agency (EPA's) New Source Performance Standards.
10. That the Applicant shall utilize non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.
11. That the Applicant shall ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right-of-way, be removed in a timely manner.
12. That full compliance with the requirements of the State's DOH for sanitary landfill operation shall be rendered.
13. That the Applicant increases its groundwater monitoring at the landfill from semi-annually to quarterly.

COUNTY SPECIAL USE PERMIT

1. That the County Special Use Permit shall be valid until **February 28, 2048**, subject to further extensions by the Director, upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Director shall review and approve a time extension request but may forward said request to the Commission for review and approval. The Commission may require a public hearing on the time extension.
2. That the subject County Special Use Permit shall not be transferred without the prior written approval of the Director.
3. That full compliance with all applicable governmental permits and requirements shall be rendered.
4. That the Applicant shall submit to the Department copies of a detailed report addressing its compliance with the conditions established with the subject County Special Use Permit and State Special Permit. The compliance report shall be reviewed and approved by the Department prior to the establishment of any new or change-in-use.
5. That the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.
6. That the Applicant shall take appropriate mitigative measures to minimize erosion, prevent cement products, oil, fuel, and other toxic substances associated with heavy machinery from spilling or leaching into the ground.
7. That the Applicant shall comply with DOH Ambient Air Quality Standards, Hawaii Administrative Rules (HAR), Title 11, Chapter 59 and Air Pollution Control, HAR 11-60.
8. That the Applicant shall comply with the EPA's New Source Performance Standards.
9. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.
10. That the Applicant shall utilize non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.
11. That the Applicant shall ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right of way, be removed in a timely manner.

12. That full compliance with the requirements of the State's DOH for sanitary landfill operation shall be rendered.
13. That the Applicant inform the Department of Public Works (DPW) of Han Advisory Committee (HAC's) safety concerns, and the departments make best efforts to insure daily operations are conducted in a safe manner, and undertake an engineering slope and soil stability analysis prior to construction within the three (3) year period.
14. That a cultural assessment be conducted to address impacts to cultural resources resulting from the excavation of cinder ash and that the Office of Hawaiian Affairs (OHA) shall be consulted prior to construction within the three (3) year period.
15. That the Applicant increase its groundwater monitoring at the landfill from semi-annually to quarterly.

STATE LAND USE COMMISSION SPECIAL PERMIT

The Commission recommends to the State Land Use Commission approval of a 30-year time extension for **SP08-402** with a new expiration date of **February 28, 2048** in conjunction with the following recommendations:

1. That all references to the County Special Use Permit (CUP) as mentioned in Docket **SP08-402** be omitted as the CUP is under the authority of the County of Maui and the Commission.
2. That all other (non-CUP) conditions of **SP08-402** remain binding as written and attached as Exhibit "A" of this document.

Further, the Commission adopted the Department's Report and Recommendation to the Department, dated February 13, 2018 meeting as its Findings of Fact, Conclusions of Law, and Decision and Order (D&O). Parties to proceedings before the Commission may obtain Judicial Review of D&Os issued by the Commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes (HRS).

Mr. Stewart Stant, Director
March 9, 2018
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Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Paul Fasi by email at paul.fasi@mauicounty.gov or by phone at (808) 270-7814.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Daniel E. Orodener, Executive Officer, Hawaii State Land Use Commission
Paul F. Fasi, Staff Planner (PDF)
Development Services Administration
Project File

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