

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

February 6, 2020

Mr. Eric Nakagawa, Director
Department of Environmental Management
2050 Main Street, Suite 2B
Wailuku, Hawaii 96793

Dear Mr. Nakagawa:

SUBJECT: AMENDMENT TO STATE LAND USE COMMISSION SPECIAL PERMIT NO. (SP 97-390) AND COUNTY OF MAUI SPECIAL USE PERMIT NO. (CUP 2008/0003) TO INCLUDE AN APPROXIMATELY 40-ACRE PROJECT AREA TMK (2) 3-8-003:019 (POR.) LOCATED AT 8100 PULEHU ROAD IN PUUNENE, MAUI, HAWAII FOR DEVELOPMENT OF THE CENTRAL MAUI LANDFILL FACILITIES PROJECT INVOLVING AN OFFICE, ABANDONED VEHICLE AREA, METAL PROCESSING AREA, OPEN CONSTRUCTION AND DEMOLITION MATERIAL RECOVERY AREA, HOUSEHOLD HAZARDOUS WASTE AND ELECTRONIC WASTE PROCESSING AND STORAGE AREA, WAREHOUSE BUILDING AND STORAGE AREA, REFUSE COLLECTION OFFICE, TRUCK PARKING AND MAINTENANCE AREA, DRAINAGE BASINS, AND ASSOCIATED INFRASTRUCTURE. THE AMENDMENT ALSO INCLUDES A TIME EXTENSION FOR SP 97-390 AND REMOVAL OF TMK (2) 3-8-003:020 (POR.) FROM BOTH SP 97-390 AND CUP 2008/0003. TOTAL AMENDED PERMITTED AREA COVERED BY BOTH PERMITS WILL BE APPROXIMATELY 96 ACRES. TMKS: (2) 3-8-003:019 (POR) AND (2) 3-8-003:020 (POR) LOCATED AT PUUNENE, MAUI, HAWAII; (CUP 2008/0003) (SP 97-390) (SUP1 1996/0009)

At its regular meeting on December 10, 2019, the Maui Planning Commission (Commission) reviewed the above requests and after due deliberation and receipt of testimony and exhibits, hereby orders approval of the County Special Use Permit, subject to the following conditions:

COUNTY SPECIAL USE PERMIT CUP 2008/0003

1. That the County Special Use Permit shall be valid until October 31, 2028, subject to extension by the Commission upon a timely request for extension filed at least 90 days prior to its expiration. The Commission may require a public hearing on the time extension.

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LAND USE COMMISSION
STATE OF HAWAII

2. That the County Special Use Permit shall not be transferred without the prior written approval of the Commission.
3. That full compliance with all applicable governmental requirements shall be rendered.
4. That the Applicant shall submit to the Department of Planning (Department) two copies of a detailed report addressing its compliance with the conditions established with the subject County Special Use Permit. Said compliance report shall be submitted with a time-extension request or request to amend the County Special Use Permit.
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, and prevent cement products, oil, fuel, and other toxic substances associated with the use of heavy machinery from spilling or leaching into the ground.
7. 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.
8. That the Applicant shall comply with the EPA's New Source Performance Standards.
9. That the Applicant shall immediately stop work and contact the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD), Department of Land and Natural Resources and the Applicant's cultural specialist should any previously unidentified archaeological resources such as artifacts, shells, bone, charcoal deposits, human burial, rock or coral alignments, pavings or wall be encountered during development of the Special Permit area.
10. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.
11. That the Applicant shall use non-potable water, to the extent possible, for grading, dust control, and irrigation of the landfill.
12. 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.

13. That full compliance with the requirements of the State's Department of Health for sanitary landfill operations shall be rendered.
14. That upon approval of the amendment to SP 97-390, the Applicant shall file a metes and bounds map and description of the new approximately 96 acre project area with the Land Use Commission and Maui Planning Commission.
15. That to the extent practicable leachate generated at the landfill shall be returned to the landfill.
16. The County of Maui shall review implementation of improvements at the Pūlehu Road/Hansen Road intersection as outlined in a Traffic Impact Analysis Report when warranted by the Department of Public Works.
17. To minimize impacts on animal species, the Applicant shall implement the following and if applicable consult with the U.S. Fish and Wildlife Service if deemed appropriate for further input on measures to avoid such impacts:

Hawaiian hoary bat: Woody plants greater than 15 feet tall should not be removed or trimmed during the Hawaiian hoary bat breeding season (June 1 to September 15). Additionally, barbed wire should not be used for fencing as part of the proposed action.

Blackburn's sphinx moth: A qualified biologist should survey areas of proposed construction activities for Blackburn's sphinx moth and its host plants prior to initiation during the wettest portion of the year (usually November to April or several weeks after a significant rain) and immediately prior to construction. Any host plants with eggs, larvae and signs of larvae feeding should not be cut or disturbed.

Hawaiian waterbirds and Hawaiian goose: To minimize adverse impacts such as predation and reduced reproductive success, the project should occur outside of the Hawaiian stilt breeding season (February through August). If the breeding period cannot be avoided, consultation with USFWS is recommended to develop measures to avoid impacts to listed species.

Further, the Commission adopted the Report and Recommendation prepared by the Department for the December 10, 2019, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceedings before the Commission may obtain judicial review of decision and orders issued by the Commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

Additionally, the Commission voted to approve the State Land Use Commission Special Permit subject to the following conditions and to transmit this decision to the State Land Use Commission:

STATE LAND USE COMMISSION SPECIAL PERMIT NO. SP 97-390

1. That the State Land Use Commission Special Permit shall be valid until October 31, 2028, subject to further time extensions by the Land Use Commission upon a timely request for extension filed at least 120 days prior to its expiration. The appropriate 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 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 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 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 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, and prevent cement products, oil, fuel, and other toxic substances associated with the use of heavy machinery from spilling or leaching into the ground.
7. 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.
8. That the Applicant shall comply with the EPA's New Source Performance Standards.
9. That the Applicant shall immediately stop work and contact the State Historic Preservation Division, Department of Land and Natural Resources and the Applicant's cultural specialist 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 Permit area.
10. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.
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.
12. That the Applicant use non-drinking water, to the extent possible, for grading, dust control, and irrigation of the landfill.
13. 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, are removed on a daily basis.
14. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.
15. That the Applicant shall file a metes and bounds map and description of the new approximately 96 acre project area with the Land Use Commission and Maui Planning Commission.

16. That to the extent practicable, leachate generated at the landfill shall be returned to the landfill.
17. That the County of Maui shall review implementation of improvements at the Pūlehu Road/Hansen Road intersection as outlined in a Traffic Impact Analysis Report when warranted by the Department of Public Works.
18. That to minimize impacts on animal species, the Applicant shall implement the following and if applicable consult with the U.S. Fish and Wildlife Service as deemed appropriate for further input on measures to avoid such impacts:

Hawaiian hoary bat: Woody plants greater than 15 feet tall should not be removed or trimmed during the Hawaiian hoary bat breeding season (June 1 to September 15). Additionally, barbed wire should not be used for fencing as part of the proposed action.

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Further, the Commission adopted the Report and Recommendation prepared by the Department for the December 10, 2019, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at 270-1789.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

Mr. Eric Nakagawa, Director
February 6, 2020
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xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Kurt Wollenhaupt, Staff Planner (PDF)
Mark Alexander Roy, Munekiyo Hiraga (PDF)
Eric Nakagawa, Director, Department of Environmental Management (PDF)
Elaine Baker, Department of Environmental Management, Solid Waste Division (PDF)
Development Services Administration (PDF)
Department of Health, Maui District (PDF)
State Office of Planning
State Land Use Commission
Project File

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