

DEPARTMENT OF THE
CORPORATION COUNSEL 205

MOANA M. LUTEY 6385

Corporation Counsel

RICHELLE M. THOMSON 8965

First Deputy Corporation Counsel

County of Maui

200 S. High Street

Wailuku, Hawaii 96793

Telephone: (808) 270-7741

Facsimile: (808) 270-7152

Email: richelle.thomson@co.maui.hi.us



Attorneys for

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
COUNTY OF MAUI

LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Application of the:

COUNTY OF MAUI DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

To Obtain A Fourth Amendment To
Land Use Commission Special Permit
To (1) Extend The Time For The
Special Permit To October 31, 2028,
For The Central Maui Landfill; (2)
Delete Approximately 16.841 Acres Of
Land From The Special Permit; And (3)
Include Approximately 39.573 Acres
Of Land Within The Special Permit For
The Development Of Recycling And
Diversion Facilities

DOCKET NO. SP97-390

DEPARTMENT OF
ENVIRONMENTAL
MANAGEMENT, COUNTY OF
MAUI'S JOINDER IN THE OFFICE
OF PLANNING'S MOTION FOR
RECONSIDERATION OF THE
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER
APPROVING WITH
MODIFICATION THE
RECOMMENDATION OF THE
COUNTY OF MAUI PLANNING
COMMISSION TO APPROVE A
FOURTH AMENDMENT TO THE
LAND USE COMMISSION
SPECIAL PERMIT; CERTIFICATE
OF SERVICE

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI'S JOINDER IN THE OFFICE OF PLANNING'S MOTION FOR RECONSIDERATION OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER APPROVING WITH MODIFICATION THE RECOMMENDATION FOR THE COUNTY OF MAUI PLANNING COMMISSION TO APPROVE A FOURTH AMENDMENT TO THE LAND USE COMMISSION SPECIAL PERMIT

Applicant DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI ("County"), by and through its attorneys Moana M. Lutey, Corporation Counsel, and Richelle M. Thomson, First Deputy Corporation Counsel, hereby submits this Joinder in the Office of Planning's Motion for Reconsideration of the Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modification the Recommendation for the County of Maui Planning Commission to Approve a Fourth Amendment to the Land Use Commission Special Permit filed August 31, 2020.

The County joins the Office of Planning's motion for reconsideration and specifically supports the Office of Planning's request that the Land Use Commission delete Condition No. 23 altogether, which presently requires the Department of Environmental Management, County of Maui ("DEM:") to seek a district boundary amendment ("DBA") with the LUC for "the approximately 22 acres of [Important Agricultural Lands]."

I. The County Has Committed to Seeking a Redesignation of the Important Agricultural Lands

Consistent with the Office of Planning's recommendation and the County's representation to the Commission, the County intends to seek the Commission's approval to withdraw the 22 acres of Important Agricultural

Lands (“IAL”) within one year of the Commission’s decision on the Fourth Amendment to the Special Permit. As part of this process, it is the County’s intention to propose other lands suitable for IAL designation in order that there is no net loss of IAL on Maui. The County respectfully submits that the condition requiring the County to seek a DBA for the 22 acres of IAL permanently removes these lands from the Ag District, and further supports the Office of Planning’s opinion that the Special Permit provides flexibility to regulate the intended “unusual and reasonable” uses, which will change over time.

II. Landfills Are Best Regulated Under Special Permit Rather than Reclassification to State Urban District Through a DBA

Historically, the Central Maui Landfill has utilized Agricultural District lands that have been previously quarried. As the quarry use ceases, the landfill has sought and obtained the Commission’s approval to utilize the land for landfilling and waste diversion activities by way of special permit. The project site is bounded by agricultural lands previously owned by Alexander & Baldwin (“A&B”) and formerly cultivated by Hawaiian Commercial and Sugar Company (“HC&S”). HC&S ended its sugar cane cultivation operations in 2016. Northeast of the project site is HC&D, LLC’s quarry operation. (Docket Exhibit No. 3, Final Environmental Assessment, Section I.A.). The CML was specifically sited due to its central location with respect to major population centers on Maui, as well as being situated in a rural/agricultural setting that *minimizes adverse impacts on*

urban areas. (Docket Exhibit No. 1, Application, Reason(s) Justifying the Proposed Request; emphasis added).

A municipal solid waste landfill, or landfill unit, is a temporary use of land, which following “closure” requires that the municipality conduct post-closure care for a period of thirty years. Hawaii Revised Statutes (“HRS”) §342H-53(d). Closure is highly regulated by the Department of Health (“DOH”) and requires a written closure plan that involves infiltration and erosion controls, including placement of earthen materials to “cap” the area. Hawaii Administrative Rules (“HAR”) §11-58.1-17.

Post-closure uses of the land may include those uses that do not disturb the integrity of the final cover and are approved by the DOH. *Id.* The U.S. Environmental Protection Agency supports the use of closed landfills as “community assets,” including open-space and agriculture.¹ Utilizing the Special Permit as the regulatory vehicle provides the flexibility to respond to community needs, and to implement environmentally sustainable practices, including reduction and diversion of solid waste, pursuant to HRS §342G-3. Requiring a DBA to the State Urban District may negatively impact or redirect the potential of the uses of the land post-closure.

¹ U.S. Environmental Protection Agency, Office of Research and Development, “Closed Waste Sites as Community Assets: A guide for Municipalities, Landfill Owners, and Regulators,” at <https://nepis.epa.gov/Exe/ZyNET.exe/P100LHOS.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2011+Thu+2015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C11thru15%5CTxt%5C00000013%5CP100LHOS.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>

The Commission has utilized the flexibility of the Special Permit to review and approve the uses as the needs of the community have changed and the County has made progress toward the goals of its Integrated Solid Waste Management Plan, as required under HRS Chapter 342G. The LUC approved the County's request for a Fourth Amendment, which both removed acreage formerly under the Special Permit and added acreage. (Docket Exhibit No. 3, Final Environmental Assessment, Section I.B.).

Further, as the Office of Planning points out, spot zoning is disfavored. Requiring the DBA would create a pocket "industrial park." Additionally, if the County is required to seek a DBA for a predetermined acreage, this may prove inadequate over time, requiring either successive DBAs or over/underestimating the future need. One of the primary bases for the current amendment was the intention of consolidating the accessory landfill diversion uses as recommended in the County's 2009 Integrated Solid Waste Management Plan, a requirement of HRS Chapter 342G. (Docket Exhibit No. 3, Final Environmental Assessment, Section I.B.).

III. Economic Burden Without Environmental Benefit

The DBA process is complex and will not alone result in an environmental benefit to the CML site. Ancillary to the DBA process, the County may need to prepare an Environmental Impact Statement, and pursue Change in Zoning, Community Plan Amendment, and Maui Island Plan Amendment. The economic considerations of requiring CML, and potentially the County's other landfills in Hana, Molokai, and Lanai, to undergo the DBA and other entitlement processes

may cost in excess of \$500,000 to \$1 million at each site. In addition, presuming that the DBA (either for the 22 acre IAL portion or some other portion of the CML) would be approved by the Commission, this would greatly reduce the flexibility that the Special Permit process provides, in adding to or deleting acreages from the Special Permit as the uses of the area have and will continue to change over time.

For the reasons stated above, the County supports the Office of Planning's motion, and specifically requests that the Commission delete Condition 23.

DATED: Wailuku, Maui, Hawai'i, September 16, 2020.

MOANA M. LUTEY
Corporation Counsel
Attorneys for DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
COUNTY OF MAUI

By /s/ Richelle M. Thomson
RICHELLE M. THOMSON
First Deputy Corporation Counsel

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on this date on the below-named parties electronically and by U.S. Mail, postage prepaid:

DAWN T. APUNA
Deputy Attorney General
State of Hawaii
425 Queen St.
Honolulu, Hawaii 96813
Dawn.T.Apuna@hawaii.gov
Attorney for the Office of Planning, State of Hawaii

MICHELE MCLEAN
Planning Director
County of Maui
Michele.McLean@co.maui.hi.us

MICHAEL J. HOPPER, ESQ.
Deputy Corporation Counsel
County of Maui
Michael.Hopper@co.maui.hi.us
Attorney for Planning Director

DATED: Wailuku, Maui, Hawai'i, September __, 2020.

MOANA M. LUTEY
Corporation Counsel
Attorneys for DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
COUNTY OF MAUI

By /s/ Richelle M. Thomson
RICHELLE M. THOMSON
First Deputy Corporation Counsel