

DOCKET NO. SP97-390

Central Maui Landfill

County of Maui

Status Report

STAFF REPORT

Hearing
June 19, 2024



Daniel E. Orodenker, Executive Officer

Submitted: June 14, 2024

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1. EXPLANATION OF PROCEEDING

Status and Progress Report hearings provide the Petitioner an opportunity to update the Commission on progress or problems in complying with the representations and conditions of the decision and order.

Any decisions by the Commission should be based on good cause (or lack of) shown by the Petitioner for its lack of progress and evidence put on the record. If the Commission finds that Petitioners are not in compliance with the [Errata](#) to and [Order issuing the Fourth amendment](#) to the 1997 Decision and Order for the Special Permit, or subsequent amendments, they may request staff to schedule a follow up status report hearing.

Legal precedent and obligation

Pursuant to HAR 15-15-90(c) “The Commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.”

Condition 11 of the 2020 Decision and Order Relating to Annual Reports “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 the Executive Officer of the Land Use Commission”

After hearing from the Petitioner and other parties, the Commission may decide whether they are satisfied with Petitioner’s progress and report; or, whether additional information may be needed from the Petitioner and hold further hearings on the matter; or, that there is a reason to believe that Petitioner is non-compliant with representations and conditions in the D&O and set an Order to Show Cause hearing pursuant to HAR 15-15-79 and 15-15-93(b).

2. BACKGROUND INFORMATION

Original Petition

[Original Decision and Order](#) Signed on July 21, 1997

The Decision and Order established 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 TMK No: 3-8-03

The original special permit was subject to 11 conditions, these conditions have been amended in subsequent years. Relevant Conditions will be listed in the 4th Amendment section.

1st Amendment

(For modification of Special Permit)

The [Decision & Order Approving 1st Amendment](#) was signed on May 14, 2002.

The first amendment was proposed by the Applicant to construct and operate a new entrance facility and related improvements as a part of the Central Maui Landfill expansion. The proposed project was to be located on approximately 5.3 acres of land within the State Land Use Agricultural District. TMK No: 3-8-03: por. 4 and por.25

The Commission approved the application to amend the special permit to construct and operate a new entrance facility and related improvements as a part of the Central Maui Landfill expansion subject to 15 conditions.

Condition 6 of the 2002 Decision and Order states: that the Applicant shall begin construction of the landfill expansion within six months from issuance of the Land Use Commission's decision and order on the amendment. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

The Conditions in this decision and order been amended in subsequent years.

2nd Amendment

(For modification and per Condition 6 of 2002 decision and order)

The [Decision & Order Approving 2nd Amendment](#) was signed on December 14, 2004.

The second amendment involved:

- (i) a site plan modification of the new entrance facility for the Central Maui Sanitary Landfill expansion by adding approximately 1.395 acres of land within the State Land Use Agricultural District at Pu'unene, Maui, Hawai'i, identified as Tax Map Key: 3-8-03: por. 4 ("Property")¹; and
- (ii) an extension of the time in which to initiate construction of the Central Maui Sanitary Landfill expansion due to the site plan modification by amending Condition Number 6 of the Decision and Order Approving an Amendment to the Special Use Permit ("Decision and Order") dated May 13, 2002.

Condition 6 was amended to extend the time to initiate construction to begin construction of the landfill expansion within 12 months from issuance of the Land Use Commission's decision and order dated May 13, 2002.

The other Conditions established in the May 13, 2002, Decision and Order were reaffirmed and remained in effect.

3rd Amendment

(for expansion, modification, and time extension)

The [Decision & Order Approving 3rd Amendment](#) was signed on March 23, 2009.

The third amendment was brought before the Commission to obtain a time extension, for expansion of the permit area by 41.2 acres, for addition of composting and quarrying related activities as permitted uses, and to request a transfer of permit holder to establish and operate Central Maui Sanitary Landfill on approximately 70.5 acres of land situated within the State Land Use Agricultural District.

The 2009 Decision and Order amended the existing

Conditions 1, 13, 14, and the added new Conditions 16 and 17 as recommended by the Maui Planning Commission.

The other Conditions in the May 13, 2002, as amended in the December 14, 2004, Order were reaffirmed and in effect.

4th Amendment
(for time extension, modify acreage total through deletion and expansion)

The Decision & Order Approving 4th Amendment was signed on August 13, 2020.

The fourth amended Decision and Order approved the Commission to (1) extend the time to October 31, 2028, (2) delete approximately 16.841 acres of land and (3) include approximately 39.573 acres of land.

This Decision and Order imposed and **replaced all other conditions** in the docket set in previous decision and orders (2002, 2004, and 2009). The Decision and Order imposed 23 Conditions three of which are :

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.

19) Within one year of approval of this Fourth Amendment, the County shall identify County-owned agricultural property of similar land properties and equivalent acreage on Maui and submit a request to have it designated as IAL to compensate for the loss of the 22 acres of IAL associated with the CML Facilities Project

21) That the Applicant shall submit a petition for Declaratory Ruling to the LUC to withdraw the 22 acres of IAL from the IAL designation within one

year of the LUC's Decision and Order for the Applicant's Fourth Amendment Request

23) That the Applicant shall commence the process to seek a district boundary amendment with the LUC for the approximately 22 acres of IAL within five years of the LUC's Decision and Order for the Applicant's Fourth Amendment Request (amended in the LUC Staff Errata).

To review the other conditions please review the [Decision & Order Approving 4th Amendment](#).

The [Order Dismissing the Office of Planning's Motion for Reconsideration](#) was signed on October 15, 2020.

OPSD requested the LUC reconsider Condition 23, but the Commission dismissed the OPSD's Motion for Reconsideration for lack of jurisdiction due to untimeliness of its filing pursuant to HAR § 15-15-84 (a)

The [Order Granting Land Use Commission Staff's Request to Issue an Errata to the Decision and Order](#) was signed on October 27, 2020.

LUC Staff requested to issue an erratum to the 2020 Decision and Order to provide the corrected language of Condition No, 23 and Findings of Fact Nos. 12,135, 138 of the Decision and Order filed August 13, 2020.

The corrected language of Condition 23 is:

That the Applicant shall commence the process to seek a district boundary amendment with the LUC for the approximately ~~22 acres of IAL~~ 95.659 acres of the total permitted area of the CML within five years of the LUC s Decision and Order for the Applicant s Fourth Amendment Request.

Five years after the adoption of the Order is:
August 13, 2025

Current: Status Report **Annual Report: [2023 Annual Report](#)** rcvd: 11/27/23

See section 6 for more information on why a status report was deemed necessary.

3. **PETITIONER FILINGS**

The County of Maui Environmental Services (“CoM ENV”), filed their status report filing on June 12, 2024.

The filing was one continuous PDF, but the different parts are as the follows:

General Letter

Exhibit A: Petition for DR to designate Important Agriculture Land

Exhibit B: Docket No. SP97-390: Petition for Declaratory Order to Designate Important Agricultural Lands and Petition for Declaratory Order to Remove Important Agricultural Lands Designation

Exhibit C: Petition to remove Important Agricultural Lands Designation

Exhibit D: Central Maui Landfill Updates PowerPoint

Exhibit E-1: Minutes from March 19, 2024, Government Relations, Ethics, And Transparency Committee

Exhibit E-2: Minutes from March 22, 2024, Maui County Council Meeting

In Petitioners general letter regarding the Status report, the following responses were provided:

Response to Condition 19, of the 2020 Decision and Order

CoM ENV acknowledged its lateness in compliance with the condition, and submitted a draft Petition for Declaratory Order to Designate Important Agricultural Lands to the LUC and various Parties.

Response to Condition 21, of the 2020 Decision and Order

CoM ENV acknowledged its lateness in compliance with the condition, and submitted a draft Petition for Declaratory Order to Withdraw Important Agricultural Lands to the LUC and various Parties

Response to Condition 23, of the 2020 Decision and Order

CoM ENV noted that the deadline for the DBA is 2025, and stated they will provide an update regarding the progress of technical studies and the

environmental impact statement, and the larger DBA process at the upcoming status report hearing.

The CoM ENV is intending to seek a DBA for not only the approximately 96 acres included in the D&O, but all of the areas comprising the CML (approximately 259 acres). CoM ENV mentioned they will provide more information regarding the final disposal site for the Lahaina Fire debris at the status hearing.

4. OPSD POSITION

The OPSD is responsible for representing the State’s interest in dockets before the LUC. As of 6/14/2024 no filings or position statement have been received from OPSD on this matter.

5. COUNTY OF MAUI PLANNING DEPARTMENT POSITION

As of 6/14/2024 no filings or position statements have been received from the County.

6. WHY A STATUS REPORT?

The Status Report provides the Petitioner, OPSD, the County, other government agencies, and the general public an opportunity to share information about this project, steps needing to be taken to move it forward, and whether and which government agencies might be able to provide assistance.

Annual Report: [2023 Annual Report](#) rcvd: 11/27/23

Condition 19:

Within one year of approval of this Fourth Amendment, the County shall identify County-owned agricultural property of similar land properties and equivalent acreage on Maui and submit a request to have it designated as IAL to compensate for the loss of the 22 acres of IAL associated with the CML Facilities Project

On 06/04/2024 LUC Staff received the preliminary filing (not posted) for the DR. COM ENV, will be filing the Official Petition for Declaratory Ruling in mid-July in efforts to comply with this condition.

Condition 21:

Requires that the Applicant shall submit a petition for Declaratory Ruling to the LUC to withdraw the 22 acres of IAL from the IAL designation **within one year** of the LUC's Decision and Order for the Applicant's Fourth Amendment Request.

- According to the 2023 Annual Report the Applicant states “on August 6, 2021, CoM-DEM prepared and transmitted a petition for Declaratory Ruling”, the LUC staff reserved number DR21-74 for the matter.
- The 2021 Declaratory Ruling was withdrawn via email communication with the determination that the matter should be conducted through motion to amend.

On 06/04/2024 LUC Staff received the preliminary filing (not posted) for the DR COM ENV, will be filing the Official Petition for Declaratory Ruling in mid-July in efforts to comply with this condition.

Condition 23:

Requires the Applicant shall commence the process to seek a district boundary amendment with the LUC for the approximately 95.659 acres of the total permitted area of the CML within five years of the LUC Decision and Order for the Applicant's Fourth Amendment Request.

- As stated earlier five years after the adoption of the Order is: August 13, 2025.

The 2023 Annual Report indicates that the County of Maui Department of Environmental Management is in the process of complying with this condition, and consultants have been contracted with funding authorized in the FY 2023 and FY 2024 budgets for planning and engineering support for the district boundary amendment application...

7. STAFF CONCERNS AND QUESTIONS:

(see following page)

Expansion of the DBA Acreage

The recent news regarding the condemnation of land for the Central Maui Landfill expansion and permanent disposal site for the debris and ash from the Lahaina fires, provides an opportunity for the County of Maui to include the expansion in the required district boundary amendment. Including the expansion site in the DBA, would promote consistency with Chapter 205.

Commissioners should ask if the CoM ENV started the environmental analysis process, and who will be the accepting authority.

Condemnation of Land for Lahaina Fire Debris

The recent news regarding the condemnation of land for the Central Maui Landfill expansion and permanent disposal site for the debris and ash from the Lahaina fires is possibly included in the [Eleventh Proclamation Relating to Wildfires](#). It should be noted that when the Proclamation is terminated, any contracts, agreements, procurements, programs, or employment of personnel entered, started, amended, or continued by reason of the provisions of the proclamation relating to this emergency shall continue in full force and effect (essentially grandfathered in).

However, it is not clear if the County of Maui Environmental Services is going to rely completely on the Proclamation or not.

If not covered in the Petitioners presentation: Commissioners should ask questions regarding the intentions of CoM ENV, and the future inclusion of the final disposal site in the district boundary amendment.