

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
DEPARTMENT OF PUBLIC WORKS AND)
WASTE MANAGEMENT, COUNTY OF MAUI)
)
For a Special Permit to Establish)
and Operate Expansion of the Lanai)
Sanitary Landfill On Approximately)
25 Acres of Land Situated Within)
The State Land Use Agricultural)
District at Lanai City, Lanai, Tax)
Map Key Number: 4-9-02: Portion of)
1)
_____)

DOCKET NO. SP94-386
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
SEP 13 9 44 AM '94

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

The Department of Public Works and Waste Management, County of Maui ("Petitioner") initiated these proceedings pursuant to Section 205-6, Hawaii Revised Statutes ("HRS"), and Sections 15-15-95 and 15-15-96, Hawaii Administrative Rules ("HAR"). The Land Use Commission ("LUC"), having considered the arguments, both written and oral, presented by the Petitioner and 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. On April 5, 1994, a Land Use Commission Special Use Permit Application Form ("Petition") to allow establishment and operation of an expansion of the present Lanai Sanitary

Landfill on approximately 25 acres at Lanai City, Lanai, was filed by the Petitioner with the County of Maui Planning Department ("Planning Department").

2. On April 6, 1994, the Petition was certified as complete and ready for processing by the Department of Public Works and Waste Management, County of Maui.

3. On June 16, 1994, the Lanai Planning Commission ("Planning Commission") conducted a public hearing on the Petition.

4. On June 16, 1994, the Planning Commission recommended approval of the Petition to the LUC, subject to the two conditions recommended to the Planning Commission by the Planning Department.

5. On July 26, 1994, the LUC received and accepted for consideration the record of the County of Maui's proceedings on the Petition from the Planning Department.

6. On August 9, 1994, the LUC held a meeting in Lanai City, Lanai on the Petition. The Petitioner was represented by Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui and Mr. Andy Hirose, Engineer, Department of Public Works and Waste Management, Solid Waste Division, County of Maui.

7. On August 9, 1994, the LUC received oral public testimony from Mr. Ron McOmber.

8. Upon due deliberation by the LUC, the Petition was deferred until completion of a site visit by the LUC members.

9. On August 10, 1994, the LUC continued deliberation on the Petition at its meeting at Lanai City, Lanai. The

Petitioner was represented by Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui and Mr. Charles Jencks, Deputy Director, Department of Public Works and Waste Management, County of Maui. The Petition was deferred by the LUC until its next meeting.

10. On August 23, 1994, the LUC held a meeting at Kailua-Kona, Hawaii on the Petition. The Petitioner was represented by Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui and Mr. Charles Jencks, Deputy Director, Department of Public Works and Waste Management, County of Maui.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

11. The special permit area consists of approximately 25 acres located at Lanai City, Lanai, and is identified as Tax Map Key No.: 4-9-02: portion of 1 ("Property").

12. The Property is located along Kaunalapau Highway, approximately 4 miles southwest of Lanai City and approximately 1 mile west from Lanai Airport.

13. The Property is owned in fee by Dole Food Company, Inc. The Property is currently in the process of being subdivided and will be leased by the County of Maui for operation of the Lanai Sanitary Landfill.

14. Current access to the Property is from Kaunalapau Highway.

15. The Property is bounded to the north by Kalamaiki Gulch and partially to the south by Kaunalapau Highway. Open space lies to the west and east with the closest pineapple field located approximately 2,000 feet east of the Property. The

Property is also adjacent to an approximately 10 acre parcel of land to the south, partially forming the south boundary of the Property.

16. The adjacent approximately 10 acre parcel is the existing site of the Lanai Sanitary Landfill. This approximately 10 acre parcel was the subject of a special permit petition under LUC Docket No. SP66-36, approved by the LUC on October 29, 1966, for establishment of the Lanai Sanitary Landfill.

17. A veterinary clinic is located approximately 500 feet south of the existing landfill area.

18. The Property is currently vacant except for an approximately 5.7 acre portion in which the existing landfill area has encroached upon. The encroachment upon the approximately 5.7 acres occurred over a number of years subsequent to the approval of LUC Docket No. SP66-36.

19. The Land Study Bureau's Detailed Land Classification System (with "A" being the best and "E" being the worst) classifies the overall productivity rating of the Property as "D", or low productivity rating.

20. According to the Soil Conservation Service, United States Department of Agriculture, the four soil groups on the area are classed as moderate to severe.

DESCRIPTION OF PROPOSED USES

21. The Applicant is requesting the special permit to establish and operate an expansion of the existing Lanai Sanitary Landfill in order to continue operation of the landfill.

22. The expansion would involve retrieval of debris outside of the current footprint of the landfill, establishment of a perimeter road, development of environmental controls which includes a surface water management system consisting of drainage ditches and a sedimentation basin, fencing of the Property, vertical expansion of the landfill, and environmental monitoring activities.

23. The development of the surface water management system will minimize the amount of water infiltrating into refuse, minimize the amount of leachate generated, and minimize soil erosion.

NEED FOR PROPOSED USE

24. The proposed expansion of the landfill would allow continued operation of the landfill and extend the lifespan of the landfill to meet the public health and welfare needs of the residents and visitors of Lanai.

25. The existing landfill has been in operation for more than 20 years, is at capacity, has encroached onto the Property and was expected to be closed by April 1994, with a new or interim landfill in operation.

26. A new landfill site was approved by granting of a special permit petition (LUC Docket No. SP88-368) by the LUC on October 3, 1988.

27. Upon review of costs to construct the new landfill site and commence closure of the existing landfill site, the County of Maui determined that it would be infeasible to establish a landfill at the new landfill site.

28. The Petitioner currently plans to continue operations at the existing landfill and close portions of it as designed final grades are met. Vertical expansion of the existing landfill footprint would allow the existing landfill to have an extended lifespan of 10 to 15 years.

29. The proposed expansion would rectify the encroachment that has occurred and would upgrade operations to achieve consistency with State regulations.

STATE AND COUNTY PLANS AND PROGRAMS

30. The Property is situated within the State Land Use Agricultural District, as depicted on the State Land Use District Boundary Map for the island of Lanai.

31. The proposed expansion on the Property would meet the objective to provide efficient, safe and environmentally sound systems for the disposal and reuse of liquid and solid waste, as stated in the General Plan of the County of Maui 1990 Update.

32. The Lanai Community Plan of the County of Maui designates the area as Agriculture.

33. The Lanai Community Plan also discourages approvals of Special Permits in the State Agricultural District unless the Special Permit is to accommodate public-facility uses whose location is determined by technical considerations; supportive of agricultural uses; or required for the use or distribution of economic resources and not otherwise adversely affecting the environment or surrounding agricultural uses.

34. Although the Property is within the Coastal Zone Management Area, the Property is not located within the Special Management Area as established by the County of Maui.

35. In accordance with section 11-200-8(6), HAR, the County of Maui has determined that due to the construction or placement of minor structures accessory to existing facilities, the proposed expansion is exempt from the preparation of an environmental assessment for the construction and placement of such accessory structures.

SUMMARY OF COUNTY, STATE AND FEDERAL AGENCY COMMENTS

County Agencies

36. The Department of Public Works and Waste Management had no comments.

37. The Board of Water Supply ("BWS") noted that the Project would be served by a private water system, owned by Lanai Company, Inc. Therefore, a private water system agreement would be required if the applicant constructs new structures. The BWS also advised that non-potable water be used, if possible, for grading and dust control.

State Agencies

38. The Office of Solid Waste Management, Department of Health ("OSWM"), reviewed engineering drawings related to the expansion and revised operating plan for the landfill as part of its permit process. The OSWM has also discussed the encroachment of 5.7 acres and the potential disposal alternatives with the landowner.

39. In light of the OSWM's discussions with the landowner, the OSWM feels that the proposed expansion, along with coordinated efforts by the County and Lanai Company to divert waste, represents the best practical solution to waste disposal on Lanai at this time.

40. The Survey Division, Department of Accounting and General Services had no objections to the proposed expansion.

41. The Department of Transportation commented that the Project will not impact transportation facilities on the island of Lanai.

42. The Department of Land and Natural Resources ("DLNR") did not have any comments to offer.

43. The State Historical Preservation Division, DLNR ("SHPD") commented that given that historical sites were located on adjacent parcels, it recommended that an archaeological inventory survey be conducted on the Property and also recommended deferral of any decision on the Permit until the survey findings could be reviewed by the SHPD.

44. The SHPD revised its position based on clarification by the Petitioner that the proposed expansion was to occur on the existing landfill site. Therefore, the SHPD withdrew its recommendation for an archaeological inventory survey and stated that it would not be necessary for the County of Maui to provide an archaeologist to monitor grading and filling operations.

45. The Office of Environmental Quality Control ("OEQC") concurred with the determination of the County of Maui

that the changes to a negative declaration determination for closure of the Lanai Landfill does not require an amended environmental assessment ("EA")

46. The OEQC also concurred that construction of surface water drainage facilities and installation of ground cover may be exempted from preparation of an amended EA pursuant to section 11-200-8(a)(1), HAR, with due regards to section 11-200-8(b), HAR, and the construction of fencing and internal roadways within areas previously disturbed may be exempted as appurtenant structures pursuant to section 11-200-8(a)(3)(d), HAR, with due respect to section 11-200-8(b), HAR.

Federal Agencies

47. The Department of the Army had no comments to offer regarding the Petition.

48. The Soil Conservation Service ("SCS"), Department of Agriculture commented that the four soil groups on the area are classed as moderate to severe.

49. The SCS also commented that the potential for aquifer use as a potable source is unlikely due to high salinity but vulnerability to contamination is listed as high and raised the concern that possible seepage or wind-blown debris into Kalamaiki Gulch may result in transport via the gulch to Class AA coastal waters, slightly more than 1 mile away.

SOCIO-ECONOMIC IMPACTS

50. According to the environmental assessment completed for closure of the existing landfill ("Closure EA"), the County currently employs a small staff to collect refuse

and operate the landfill. Two employees are on-site during landfill operation hours.

51. It is expected that there will be little impact on employment as the County expects to have the present landfill employees operate the expansion of the landfill.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

52. Expansion of the existing landfill is expected to have minimal impact on agricultural resources.

53. The Property would be unsuited for uses within the Agricultural District as it is basically open space and has no ongoing agricultural activity.

54. The nearest agricultural activity is a pineapple field situated approximately 2,000 feet east of the Property.

Flora

55. According to the Closure EA, no previous investigation was conducted for rare and endangered plants near the existing landfill. However, the Closure EA states that an investigation was performed at a site approximately 1 mile north of the existing landfill at a similar elevation where an endangered shrub was discovered.

56. It is not expected that rare or endangered plants are currently on the Property as the Property has been cleared and excavated for landfill use.

Fauna

57. The Property is located within public hunting grounds. Therefore, deer may occasionally be found on the

Property. Additionally, mynahs and rats may also be found on the Property.

58. The addendum to the staff report from the Planning Department to the Planning Commission states that according to the DLNR, rare or endangered fauna are not found on Lanai.

Scenic Resources

59. According to the Closure EA, the landfill work area cannot be seen from Kaunalapau Highway. However, it is stated that proceeding major wind storms, paper and other debris blown from the work area can be observed.

60. An existing stockpile of abandoned vehicles located at the existing landfill can be seen from Kaunalapau Highway. The County of Maui currently has a contract for the removal of said vehicles from the landfill.

61. The slope of the land in a northwest direction from Kaunalapau Highway towards Kalamaiki Gulch minimizes the visual impact of the existing landfill and the final grade of the expanded landfill will follow the existing northwest slope. Vertical expansion of the landfill may ultimately be visible from Kaunalapau Highway.

Archaeological and Cultural Resources

62. The State Historic Preservation Division, DLNR ("SHPD") recommended that an archaeological inventory survey be done for the property since historic sites have been located on adjacent parcels and also recommended deferral of any decision on the Permit until the survey findings could be reviewed by the SHPD.

63. The SHPD revised its position based on clarification by the Petitioner that the proposed expansion was to occur on the existing landfill site. Therefore, the SHPD withdrew its recommendation for an archaeological inventory survey and stated that it would not be necessary for the County of Maui to provide an archaeologist to monitor grading and filling operations.

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highway and Roadway Facilities

64. The Property surrounds the existing Lanai Sanitary Landfill site, which has vehicular access from Kaunalapau Highway.

66. The Department of Transportation (DOT) has commented that the proposed expansion of the landfill would not impact transportation facilities.

Drainage

66. Drainage of the Property runs towards Kalamaiki Gulch due to the Property's elevation and slope characteristics.

67. The Federal Emergency Management Agency has not determined flood hazards for the landfill site. Historically, because of the elevation and slope, flooding has not been a problem.

68. The Soil Conservation Service, United States Department of Agriculture, has commented that debris from the landfill may enter Kalamaiki Gulch and be transported to Class AA coastal waters approximately 1 mile away.

Air Quality

69. Short-term effects on air quality can be anticipated, mainly dust from landfill construction and operation. Dust and exhaust emission concentrations will be limited to meet state and federal regulations.

Noise

70. According to the Closure EA, ambient noise on the existing landfill is generally low with occasional noise from the one piece of heavy equipment (bulldozer) that spreads and compacts refuse.

Water

71. The Property is located above an unconfined basal aquifer system which is brackish and unfit for human consumption, nor useful for agricultural activities.

72. The landfill area is downgradient from and in a different aquifer that supplies Lanai City's domestic water supply.

73. The Board of Water Supply of the County of Maui ("BWS") noted that water service to the proposed expansion of the landfill would be through a private water system, owned by Lanai Company, Inc. Therefore, a private water system agreement would be required if the applicant constructs new structures.

74. The BWS also advised that non-potable water be used, if possible, for grading and dust control.

Utilities

75. According to the Closure EA, there are no water, sewer, electrical or telephone services at the Property.

CONFORMANCE WITH SPECIAL PERMIT CRITERIA

76. The Planning Department, in its addendum report to the Planning Commission on the Petition, provided the following findings in regards to the Applicant's conformance with the guidelines for "unusual and reasonable use" authorized by a Special Permit under Section 15-15-95(b), HAR:

- (A) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission.

The purpose of the rules of the commission is, "to preserve, protect, and encourage the development and preservation of land in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii."

The existing landfill site has been operating for over 20 years. The proposed expansion would allow the County to continue operations and extend the life of this landfill to meet the public health and welfare needs of the residents and visitors of Lanai. Further, the Department of Health feels that the proposed expansion, in conjunction with the coordinated efforts by both the County and Lanai Company in the area of waste diversion, represents the best practicable solution to waste disposal on Lanai at this time.

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

Inasmuch as the landfill has been in operation for over 20 years, the expansion would not adversely affect surrounding property. The area around the landfill site is primarily open land. Pineapple fields exists approximately 2,000 feet east of the site and a veterinary clinic approximately 500 feet south of the site.

- (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 infrastructural improvements are proposed by the Applicant or required by governmental agencies at this time. Upon closure of the landfill, the Applicant must comply with various State and Federal requirements pertaining to environmental controls.

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

With the construction of the Manele and Koele Hotels, and the increase in residents and visitor populations, solid waste disposal has increased on Lanai. This increase of solid waste disposal has led the County to expand their existing facility beyond the originally approved 10 acre site. Therefore, unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

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

The site has been previously cleared and excavated for landfill operations. Therefore, with (sic) the Property would be unsuited for uses permitted within the Agricultural District. According to the Detailed Land Classification for the Island of Lanai, the Property has an overall productivity rating of "D", low productivity.

PLANNING COMMISSION RECOMMENDATION

77. At its meeting on June 16, 1994, the Planning Commission recommended adoption of the Planning Department's staff report and addendum which recommended approval of the petition, subject to the following stated 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 further extensions by the Lanai 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.

78. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The Special Permit Petition to establish and operate an expansion of the Lanai Sanitary Landfill constitutes an "unusual and reasonable" use as provided in section 205-6, HRS, and as established in section 15-15-95(b), HAR, 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. The proposed use is also not contrary to the objectives and policies under chapter 205A, HRS.

ORDER

IT IS HEREBY ORDERED that the Special Permit Petition filed in this Docket No. SP94-386 requesting the establishment and operation of an expansion of the Lanai Sanitary Landfill on approximately 25 acres of land designated within the State Land Use Agricultural District, and identified as Tax Map Key No.: 4-9-02: portion of 1, situated at Lanai City, Lanai 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 Use Permit shall be valid for a period of ten (10) years from the date of its granting, subject to further extensions by the Lanai 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 initiate proceedings to terminate the Special Permit issued in LUC Docket No. SP88-368 within 30 days of the issuance of this decision and order.

4. Petitioner shall begin construction of the landfill expansion within 6 months from the issuance of this decision and order. Construction shall include removal of any debris or waste material currently in the encroached area and any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

5. Petitioner shall utilize non-potable water, to the extent possible, for grading and dust control of the landfill.

6. Petitioner shall ensure that impacts from wind-blown debris into Kalamaiki Gulch is mitigated in a timely manner.

7. Petitioner shall immediately stop work and contact the State Historical 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 Permit area.

8. Petitioner shall fully comply with requirements of the State Department of Health for sanitary landfill operation.

9. Petitioner 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 Petitioner'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 Commission.

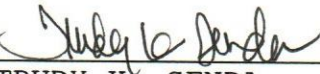
10. The conditions imposed herein may be fully or partially released upon timely motion to the Lanai Planning Commission and Land Use Commission and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.


DOCKET NO. SP94-386 - DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT,
COUNTY OF MAUI

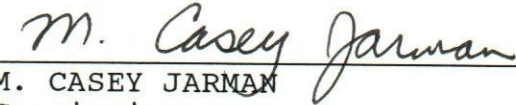
Done at Honolulu, Hawaii, this 13th day of September 1994,
per motions on August 23, 1994 and September 9, 1994.

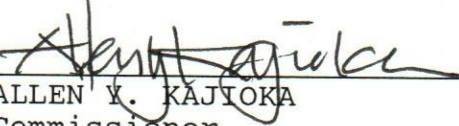
LAND USE COMMISSION
STATE OF HAWAII

By 
JOANN N. MATTSON
Chairperson and Commissioner

By 
TRUDY K. SENDA
Vice Chairperson and Commissioner

By 
ALLEN K. HOE
Commissioner

By 
M. CASEY JARMAN
Commissioner

By 
ALLEN K. KAJIOKA
Commissioner


By 
LLOYD F. KAWAKAMI
Commissioner

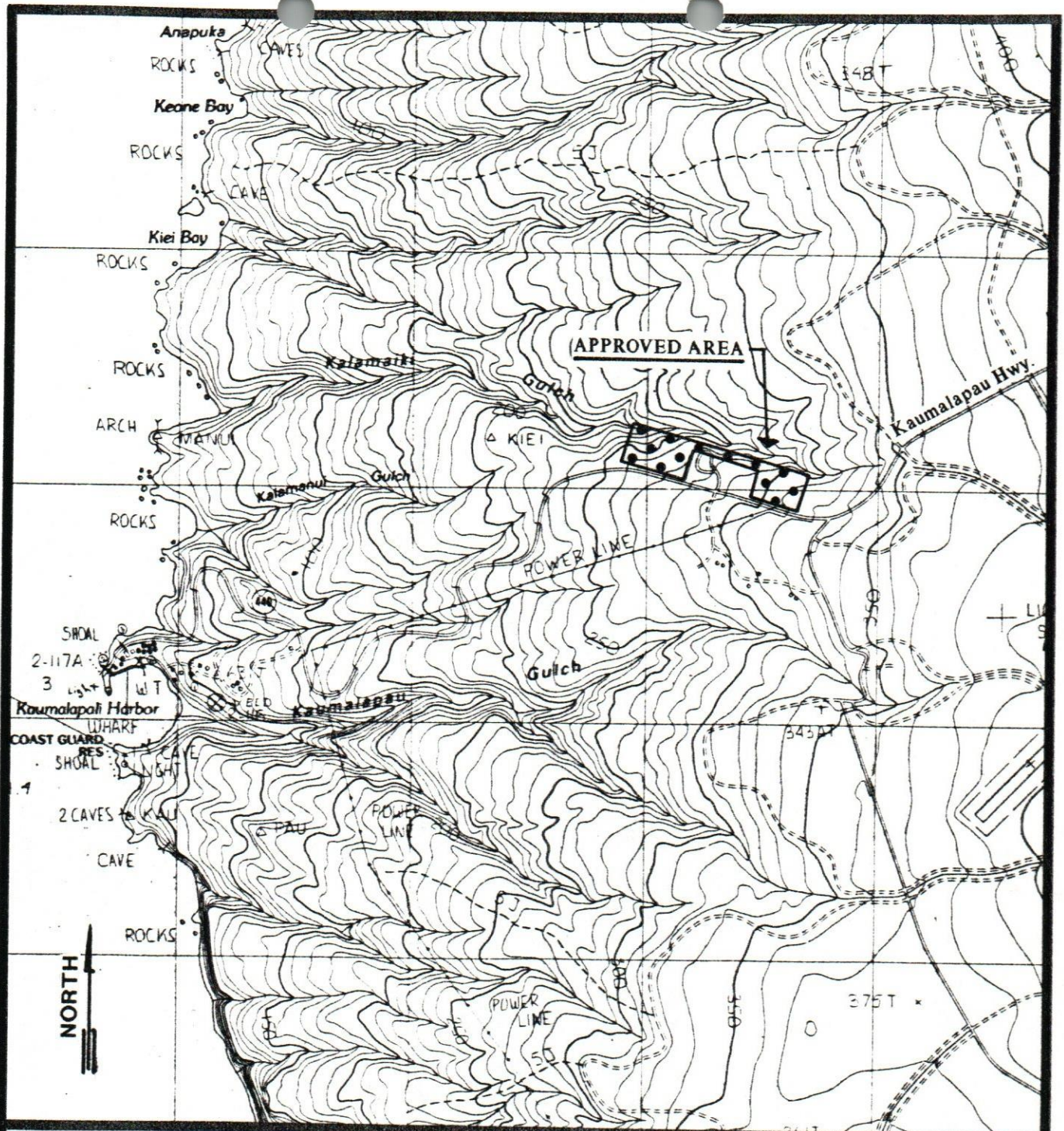
By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By (absent)
RENTON L. K. NIP
Commissioner

By 
ELTON WADA

Filed and effective on
September 13, 1994

Certified by:

Executive Officer

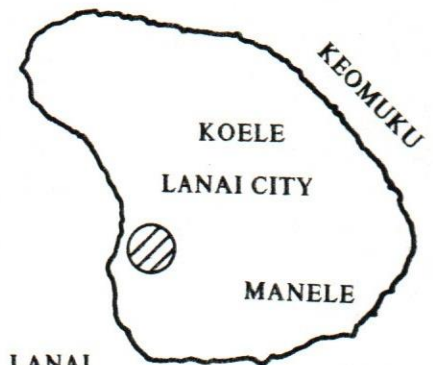
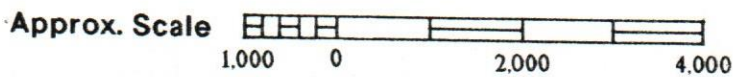


LOCATION MAP

DOCKET NO. SP94-386 / DEPARTMENT OF PUBLIC
WORKS AND WASTE MANAGEMENT, COUNTY OF MAUI

TAX MAP KEY: 4-9-02: por. 1

LANAI CITY, LANAI, HAWAII



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1)
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DOCKET NO. SP94-386
CERTIFICATE OF SERVICE

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. BRIAN MISKAE, Planning Director
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. GUY A. HAYWOOD, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. DAVID WISSMAR, Solid Waste Division Chief
Department of Public Works & Waste Management
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 13th day of September 1994.



ESTHER UEDA
Executive Officer