

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
DEPARTMENT OF PUBLIC WORKS,)
COUNTY OF MAUI)
)
For a Special Permit to Establish)
an Integrated Solid Waste Facility)
on Approximately 37.9 Acres of Land)
Situated Within the State Land Use)
Agricultural District at Naiwa,)
Molokai, Tax Map Key Number:)
5-2-11: Portion of 27)
_____)

DOCKET NO. SP93-383
DEPARTMENT OF PUBLIC
WORKS, COUNTY OF MAUI

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LAND USE COMMISSION
STATE OF HAWAII

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

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

The Department of Public Works, County of Maui (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, and Sections 15-15-95 and 15-15-96 of the Hawaii Administrative Rules. The Land Use Commission (hereinafter "LUC"), having considered 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 December 7, 1992, the Special Permit Application (hereinafter "Permit") for establishment and operation of an Integrated Solid Waste Facility (hereinafter "Project") on approximately 40 acres at Naiwa, Molokai, was filed by the Applicant with the County of Maui Planning Department (hereinafter "Department").

2. On December 14, 1992, the Permit was certified as complete and ready for processing by the Applicant.

3. On December 16, 1992, the Molokai Planning Commission (hereinafter "Planning Commission") conducted a public workshop on the Permit.

4. The Planning Commission conducted a public hearing on the Permit on January 27, 1993.

5. On January 27, 1993, the Planning Commission recommended approval of the Permit to the LUC subject to twelve conditions. On March 24, 1993, the LUC received and accepted for consideration the complete record of the Planning Commission's proceedings on the Permit and the Planning Commission's decision.

6. On April 23, 1993, the LUC conducted a hearing to act upon the Applicant's petition.

7. On April 15, 1993 and April 21, 1993, the LUC received letters dated April 15, 1993 and April 20, 1993, respectively, from Ms. Sarah E. Sykes of Molokai. Said letters were admitted into evidence by the LUC, with no objections from the parties, on April 23, 1993.

8. On April 23, 1993, the LUC received a letter dated April 22, 1993 from Mr. John Harder, Coordinator of the Office of Solid Waste Management, State Department of Health. Said letter was admitted into evidence by the LUC, with no objections from the parties, on April 23, 1993.

9. On April 23, 1993, the Applicant orally amended its Permit by deleting the proposed access road and reducing the acreage of the Property to approximately 37.9 acres.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

10. The Special Permit area (hereinafter "Property") consists of approximately 37.9 acres located at Naiwa, Molokai, and is identified as Tax Map Key No.: 5-2-11: portion of 27.

11. The Property is located approximately 3.5 miles northwest of Kaunakakai and 3.5 miles southeast of Molokai Airport. The Property is owned by Molokai Ranch, Limited. The Applicant is in the process of obtaining the Property from Molokai Ranch, Limited.

12. Access to the Property is via a road off of Maunaloa Highway.

13. The originally proposed access road to the Property was to be shared with an existing quarry operation to the north of the Property. The proposal was not agreed upon by the quarry operator. Therefore, the Applicant has proposed a new access road south of the originally proposed access road.

14. The Property and surrounding areas are currently vacant and unimproved.

15. The slope of area in which the Property is situated varies from 3% to 40%.

16. Rainfall in the area is estimated to be approximately 15 inches annually.

17. The U.S. Department of Agriculture Soil Conservation Service classifies the Property as having two distinct types of soil series, Holomua Silt Loam (HvB3) and Very stony land (rVT2).

18. The Land Study Bureau's Detailed Land Classification Report designates the Property as Class "E" lands.

19. The Property is not classified under the State of Hawaii's Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

20. According to the U.S. Army Corps of Engineers Flood Insurance Rate Map, the Property is within an area of minimal flooding (Zone C).

SUMMARY OF PROPOSED USE

21. The Applicant is requesting the Permit to establish and operate an Integrated Solid Waste Facility for the island of Molokai. This Project will include areas for a solid waste landfill, areas for composting and an area for recycling. Additionally, the Project will include other improvements including a scale house, employee facilities, an equipment maintenance building, administrative office space, and parking.

22. The Project is designed to meet the County of Maui Drainage Plan and the U.S. Environmental Protection Agency's "small landfill" criteria for municipal solid waste landfills (40 CFR 258, Subtitle D).

23. The Project is intended to replace the existing landfill at Kalamaula, Molokai, which is at capacity and is scheduled to be closed in the near future.

STATE AND COUNTY PLANS AND PROGRAMS

24. The State Land Use District Classification of the Property is Agricultural, as reflected on State Land Use District boundary maps MO-3 (Kaunakakai).

25. The Molokai Community Plan designates the area as Agricultural and the current zoning for the area is unzoned.

26. The Property is not located within the County of Maui Special Management Area.

SUMMARY OF STATE AND COUNTY AGENCIES COMMENTS

27. The County of Maui Department of Fire Control commented that the Project site would need an adequate water supply available. Specific requirements for the Project could not be provided without additional information.

28. The County of Maui Department of Water Supply (hereinafter "DWS") commented that there is no water system in the area. Furthermore, DWS commented that the Applicant will need to demonstrate that adequate water for fire protection and other uses can be provided. DWS encouraged the use of non-potable water and recommended that the landfill incorporate a low permeability bottom liner.

29. Maui Electric Company (hereinafter "MECO") commented that additional data is needed to determine probable electrical usage for the Project.

30. The County of Maui Police Department had no comments to offer.

31. The State Department of Health commented that a National Pollutant Discharge Elimination System permit would be required for any discharge to waters of the State.

32. The Office of Solid Waste Management, State Department of Health commented that clay liner (described as Alternative 1 in Parametric, Inc. memo dated January 4, 1993 to Dave Wissmar), with a lysimeter in place will provide adequate protection of contamination to groundwater sources.

33. The State Department of Transportation (hereinafter "DOT") commented that illegal trash dumping at the access road and the possibility of "wind-blown" trash from the landfill be examined. Additionally, DOT commented that intersection connections within the State right-of-way should be provided to DOT for approval.

34. The State Historic Preservation Division of the Department of Land and Natural Resources (hereinafter "HPD-DLNR") has determined that the Project will have "no effect" on significant historic sites.

35. The State Department of Accounting and General Services had no comments to offer.

36. The State Department of Agriculture had no objections to the Project.

SOCIO-ECONOMIC IMPACTS

37. The Project is not expected to impact the socio-economic environment of the island of Molokai. Because the Property is currently vacant and undeveloped, no disruption of businesses or residents exists.

38. The Project is not expected to have any significant adverse secondary impacts or effect on the population, future development, and public facilities on the island of Molokai.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

39. The Project is not expected to have any impact on agricultural resources. The Property is currently vacant and undeveloped and is not classified by the ALISH system. Furthermore, the Property has poor suitability for most agricultural uses.

Flora

40. Vegetation on the Property and immediate surrounding area is dominated by kiawe and buffel grass. There are no rare, threatened, or endangered species of flora on the Property.

Fauna

41. The Property provides a limited range of habitats utilized by a typical range of exotic or introduced birds. However, none of the birds or mammals observed in the area are considered to be threatened or endangered species.

Scenic Resources

42. The Project is not fully visible to the passing motorist on Maunaloa Highway. A limited portion of the Project can be seen from Maunaloa Highway.

43. The landfill is not part of, nor does it overlook, any scenic corridor or aesthetic view plain.

Archaeological and Cultural Resources

44. An archaeological survey of the Property indicates that no archaeological surface remains or other significant cultural activities occur on the Property. The HPD-DLNR has concluded that the Project will have "no effect" on significant historic sites.

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highways and Roadway Facilities

45. A new permanent access road will provide access to the Project from Maunaloa Highway. The Applicant will obtain a road easement from the landowner, Molokai Ranch, Limited. The new access road is not a part of this Permit and will remain in the State Land Use Agricultural District.

Drainage

46. Manawainui Gulch, located 0.3 miles north of the Property, is a natural receptor for severe flooding or surface runoff in storms of 50-100 year event magnitude.

47. The Property and surrounding area are traditionally dry and arid. Therefore, the Property does not lend itself to local flooding conditions.

Air Quality

48. The Project will generate short-term fugitive dust which would exceed State standards. Mitigation measures will be incorporated by the Applicant into the operation of the Project.

Noise

49. Short-term noise is anticipated during the construction phase of the Project. It is estimated that the noise from the operation of the Project would not go beyond the boundaries of the Property. Mitigation measures will be incorporated by the Applicant in the operation of the Project.

Water

50. The Property is not serviced by the DWS. DWS has commented that the Applicant will be required to sign a private water system agreement and to demonstrate that adequate water for fire protection and other uses can be provided.

Electricity/Telephone Service

51. MECO has commented that additional information is required to determine electricity needs for the Project in a timely manner.

52. The Permit does not address the need for telephone service for the Project.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

53. The Planning Department, in its staff report to the Planning Commission dated January 27, 1993, provided the following comments related to the Permit's conformance with the

guidelines for "unusual and reasonable use" authorized by a Special Use Permit under Section 15-15-95(b) of the Commission's Rules:

- (1) The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, Hawaii Revised Statutes, as amended, and the rules of the State Land Use Commission.

43. The objective of the State Land Use Law is "to preserve, protect, and encourage the development of lands on the State for those uses to which these lands are best suited in the interest of the public health and welfare of the people of the State of Hawaii.

44. The proposed project relates to the following policies in the 1990 Maui County General Plan Update (Liquid and Solid Waste, p. 11):

- a. Explore new waste disposal methods that are safe, economical, environmentally sound, and aesthetically pleasing, and that minimize the disposal of wastes in landfills.
- d. Develop comprehensive and publicly acceptable methods of recycling solid and liquid waste.
- e. Encourage and promote public awareness to reduce, reuse, recycle, and compost waste materials."

45. The Special Use Permit policy in the Molokai Community Plan states that "Special Permits in the State Agricultural and Rural Districts may be approved only: ... (2) to permit a public facility use such as a sanitary landfill, sewer treatment plant, or utility installation whose location is determined by technical considerations....

The subject property is for a sanitary landfill whose location (sic) is determined by technical considerations as the County needs to comply with the new EPA standards for landfills.

46. The population of the island is expected to grow from 6,800 in 1990 to 10,000 in 2000 and 12,000 in 2010.

47. From Maunaloa Highway, the landfill site is not fully visible to the passing motorist, although a limited portion of the site can be seen from the highway. As it is sited, the landfill is not part of nor(sic) does it overlook any scenic corridor or aesthetic view plane.

48. The project will have "no effect" on significant historic sites.

49. Other landfills such as the Central Maui Landfill have been approved by the Land Use Commission Special Use Permit process.

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

50. The project site is located adjacent to an active rock and aggregate quarry operation. Noise from the quarry operations is an occasional disturbance. The landfill is surrounded by open range.

51. Mitigative measures will be utilized during the construction phase to curb the impacts from noise and fugitive dust.

52. Leachate migration and other landfill related impacts will be designed so as to prevent infiltration or percolation into the basal aquifer. Mitigative measures will include reducing the total daily tonnage placed in the landfill by recycling and composting of selected material to no greater than 20 tons/day and using a lysimeter as a monitoring mechanism.

53. The project is located in Zone C, an area of minimal flooding.

(3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

54. The project is a means of upgrading the Molokai infrastructure and comply with federal requirements.

55. The applicant's response comments have adequately addressed the concerns of the Department of Transportation.

56. More specific information needs to be provided to the Maui Fire Department on the types of materials to be stored and recycled so that the project can be more fully analyzed as far as fire protection is concerned.

57. Maui Electric Company needs more detailed information on the project.

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

58. The existing Kalamaula landfill is at capacity with no expansion capability. The federal standards regarding landfills have become more stringent.

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

59. The project site has a Land Study Bureau detailed land classification overall productivity rating of E, Poor suitability for most agricultural uses.

PLANNING COMMISSION RECOMMENDATION

54. At its meeting of January 27, 1993, the Planning Commission recommended approval of the Permit to the LUC, subject to the following conditions:

1. That appropriate monitoring of the quality of water to be discharged into neighboring gulches from drainage basins shall be undertaken to assure that toxic wastes are not part of the discharge.
2. That in preparation of the sanitary landfill, the landfill floor shall be further compacted and be made relatively impervious to water in order to contain leachates. Proper disposal methods of leachates shall be installed within the landfill.

3. That a traffic assessment shall be developed to determine the impact on Maunaloa Highway once the sanitary landfill is operating. This assessment shall be completed no later than one year after said landfill is in operation. Findings of the assessment shall be submitted to the State Department of Transportation, Highways Division and the Maui County Planning Department for review.
4. That the applicant shall stop work on the sanitary landfill and immediately contact the Department of Land and Natural Resources, Historic Sites Division, in the event that any previously unidentified historic, archaeological, or cultural sites are encountered.
5. That appropriate internal vehicle circulation patterns shall be designed so as not to cause confusion and congestion within the sanitary landfill.
6. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.
7. That appropriate rules shall be established to prohibit scavenging within the sanitary landfill operation shall be rendered.
8. That appropriate mitigative measures to control excessive dust generation shall be implemented.
9. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.
10. That final architectural and landscape planting plans be submitted to the Planning Department for review and approval.
11. That full compliance with other applicable government requirements shall be rendered.
12. That alternative No. 3 of the geomembrane liner as found in the January 4, 1993 memo from Parametrix, Inc. to Dave Wissmar shall be used for Phase 1 of the project.

CONCLUSIONS OF LAW

The Special Permit request to allow establishment and operation of an integrated solid waste facility for the island of Molokai constitutes an "unusual and reasonable" use as defined in Section 205-6, Hawaii Revised Statutes, 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.

ORDER

IT IS HEREBY ORDERED that the Special Permit Docket No. SP93-383 to allow establishment and operation of an integrated solid waste facility on approximately 37.9 acres of land designated within the State Land Use Agricultural District, Tax Map Key No.: 5-2- 11: portion of 27 at Naiwa, Molokai, and approximately identified on "Exhibit A" attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. That appropriate monitoring of the quality of water to be discharged into neighboring gulches from drainage basins shall be undertaken to assure that toxic wastes are not part of the discharge.

2. That in preparation of the sanitary landfill, the landfill floor shall be further compacted and be made

relatively impervious to water in order to contain leachates. Proper disposal methods of leachates shall be installed within the landfill.

3. That a traffic assessment shall be developed to determine the impact on Maunaloa Highway once the sanitary landfill is operating. This assessment shall be completed no later than one year after said landfill is in operation. Findings of the assessment shall be submitted to the State Department of Transportation, Highways Division, and the Maui County Planning Department for review.

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6. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.

7. That appropriate rules shall be established to prohibit scavenging within the sanitary landfill operation.

8. That appropriate mitigative measures to control excessive dust generation shall be implemented.

9. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.

10. That final architectural and landscape planting plans be submitted to the Planning Department for review and approval. Upon approval by the Planning Department, a copy of the plans shall be submitted to the Land Use Commission.

11. That full compliance with other applicable government requirements shall be rendered.

12. That alternative No. 3 of the geomembrane liner as found in the January 4, 1993 memo from Parametrix, Inc. to Dave Wissmar shall be used for Phase 1 of the project.


13. The Applicant shall provide the County of Maui Planning Department and the Land Use Commission copies of the final approved metes and bounds map and description delineating the Permit Area of approximately 37.9 acres.

14. The Applicant shall commence operations of the Molokai Integrated Solid Waste Facility no later than six months from the date of filing of this Decision and Order by the Land Use Commission.

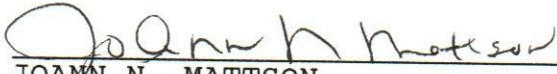
15. The Applicant shall provide annual reports to the County of Maui Planning Department and the Land Use Commission in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein.


Done at Honolulu, Hawaii, this 14th day of May 1993,
per motions on April 23, 1993 and May 13, 1993.

LAND USE COMMISSION
STATE OF HAWAII


By 
ALLEN Y. KAJIOKA
Chairman and Commissioner

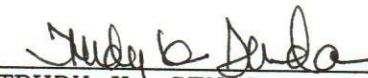
By 
KAREN S. AHN
Vice Chairman and Commissioner

By 
JOANN N. MATTSON
Vice Chairman and Commissioner

By 
ALLEN K. HOE
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By 
RENTON L. K. NIP
Commissioner

By 
TRUDY K. SENDA
Commissioner

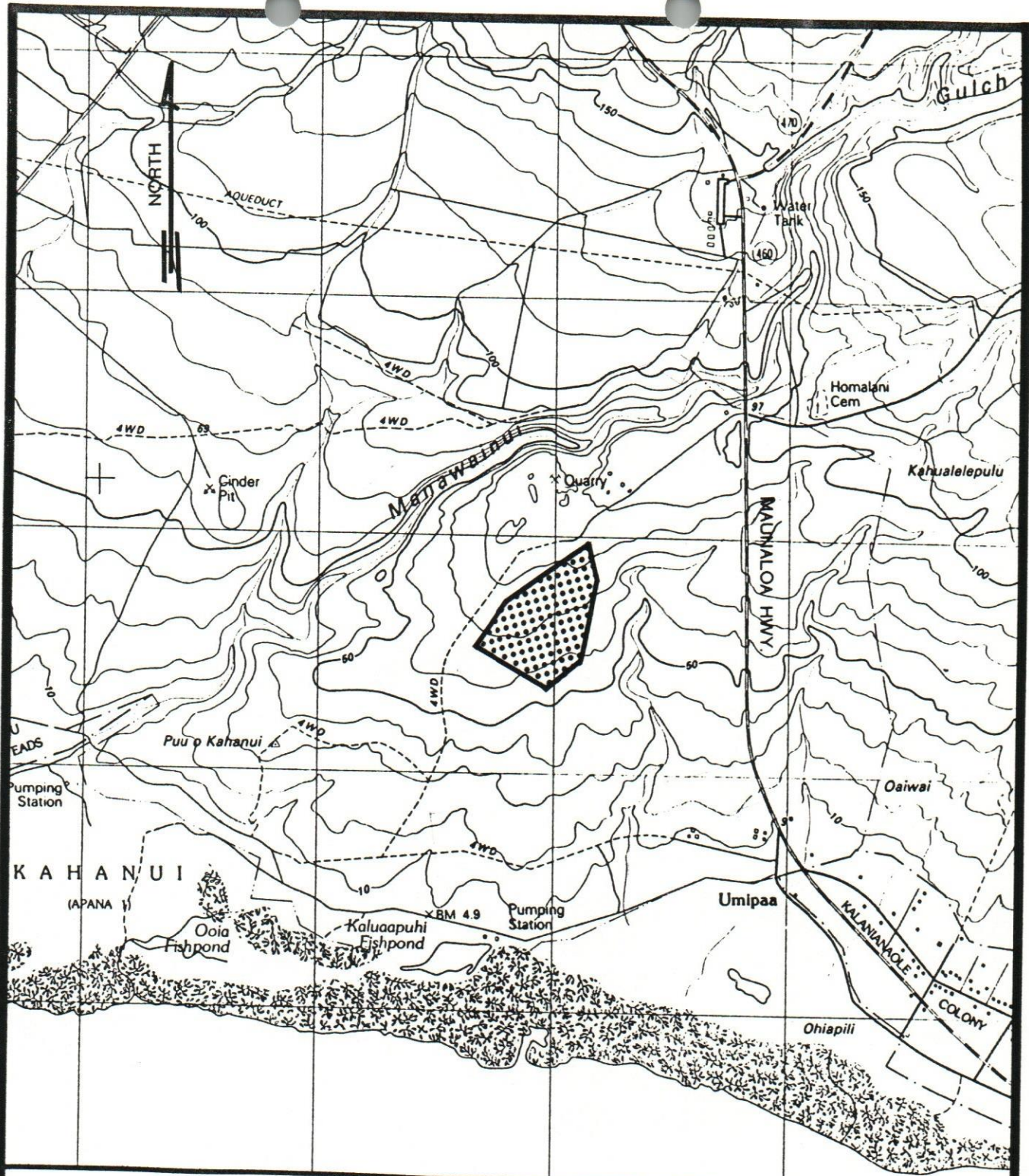
Filed and effective on
May 14, 1993

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner



DOCKET NO. SP93 - 383 / DEPARTMENT OF
PUBLIC WORKS, COUNTY OF MAUI

LOCATION MAP

TAX MAP KEY: 5-2-11: por. 27

NAIWA, MOLOKAI, HAWAII



APPROVED AREA

SCALE: 1" = 2,000 ft. ±

MOLOKAI



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_____)

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. GEORGE KAYA, Director
Department of Public Works
County of Maui
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 14th day of May 1993.



ESTHER UEDA
Executive Officer