

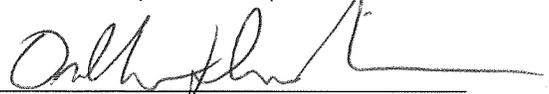


BEFORE THE LAND USE COMMISSION
STATE OF HAWAI'I

In The Matter Of The Application Of) DOCKET NO. SP08-402
The)
)
) DECISION AND ORDER REMANDING
DEPARTMENT OF) STATE SPECIAL USE PERMIT
ENVIRONMENTAL MANAGEMENT,) APPLICATION
COUNTY OF MAUI)
)
)
For a State Special Use Permit For An)
Approximately 14.615-Acre Portion Of)
The Existing 29.05-Acre Hāna Landfill)
And An Approximately 5.39-Acre)
Encroachment Area Situated Within)
The State Land Use Agricultural)
District At Hāna, Maui, Hawai'i, Tax)
Map Key: 1-3-06: Por. 7 And Por. 12)
_____)

DECISION AND ORDER REMANDING
STATE SPECIAL USE PERMIT APPLICATION

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII

Mo 19, 2009 BY 
Date Executive Officer



BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Application Of The) DOCKET NO. SP08-402
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DEPARTMENT OF ENVIRONMENTAL) DECISION AND ORDER
MANAGEMENT, COUNTY OF MAUI) REMANDING STATE SPECIAL
) USE PERMIT APPLICATION
For a State Special Use Permit For An)
Approximately 14.615-Acre Portion Of The)
Existing 29.05-Acre Hāna Landfill And An)
Approximately 5.39-Acre Encroachment)
Area Situated Within The State Land Use)
Agricultural District At Hāna, Maui,)
Hawai`i, Tax Map Key: 1-3-06: Por. 7 And)
Por. 12)
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DECISION AND ORDER REMANDING
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On June 12, 2007, the County of Maui Department of Public Works and
Environmental Management (“DPWEM”), Solid Waste Division¹, filed a State Special
Use Permit Application (“Application”) with the County of Maui Department of

¹ On July 1, 2007, the DPWEM split into the Department of Public Works and the Department of Environmental Management (“DEM”). The Solid Waste Division was placed within the DEM, the Applicant herein.

Planning ("DP"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").² The Applicant filed the Application for an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, identified as Tax Map Key: 1-3-06: por. 7 and por. 12, situated within the State Land Use Agricultural District at Hāna, Maui, Hawai'i.

On July 22, 2008, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on the Application.³ At the hearing, the Planning Commission heard public testimony from three individuals. After due deliberation, the Planning Commission recommended approval of the Application to the Land Use Commission ("LUC"). The Planning Commission did not recommend any additional conditions to the 20 conditions approved by the HAC for the Application.

On September 26, 2008, the LUC received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Application. On

² The Applicant concurrently filed applications for a Special Management Area ("SMA") Use Permit and a County Special Use Permit.

³ The Hāna Advisory Committee ("HAC"), an advisory committee that makes recommendations to the Planning Commission, held hearings on the Application, as well as the Applicant's request for an SMA Use Permit and County Special Use Permit, on February 21 and May 5, 2008. On May 5, 2008, the HAC recommended approval of the Application to the Planning Commission subject to the 14 conditions recommended by the DP and six additional conditions. The HAC also recommended approval of the County Special Use Permit request subject to the identical 20 conditions. The HAC deferred action on the Applicant's request for the SMA Use Permit until such time the State Special Use Permit and County Special Use Permit were obtained.

January 27, 2009, the LUC received additional documents to the record. On February 2, 2009, the LUC received the remaining portion of the record.

The LUC has jurisdiction over the Application. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, confer jurisdiction upon the LUC to approve State Special Use Permits for land the area of which is greater than 15 acres.

On February 19, 2009, the LUC met in Kahului, Maui, Hawai'i, to consider the Application. Michael Hopper, Esq.; Cheryl Okuma; Tracy Takamine; and Mich Hirano appeared on behalf of the Applicant. Paul Fasi was also present on behalf of the DP. Bryan C. Yee, Esq., and Abe Mitsuda entered appearances on behalf of the State Office of Planning ("OP").

At the meeting, the Applicant provided a background of the Hāna Landfill, including the basis for the Application and the Applicant's efforts in pursuing the necessary land use permits for the landfill. Following the Applicant's presentation, the Applicant requested that proposed Condition Number 7 be amended to clarify that the Applicant be required to begin construction of the landfill stormwater drainage retention basin within three years from the issuance of the LUC's decision and order instead of requiring that the Applicant begin construction of the landfill expansion within the specified time period. The Applicant noted that the requested modification to the condition would accurately reflect what the Applicant will, in fact, be doing. The Applicant also requested that proposed Condition Number 19 be amended to either

clarify that the Applicant's recycling program may include but not be limited to glass, aluminum, plastics, batteries, newspapers, cardboard, appliances, and oil instead of mandating that said program include the aforementioned materials or clarify that such mandate be contingent upon its practicability. The Applicant pointed out that without the requested modification to the condition, the Applicant may not be able to comply with the condition as compliance would be dependent upon factors that are beyond the control of the Applicant.

The OP had no comments on the Application.

Upon questioning by the LUC, the Applicant noted that pursuant to subsections 205-6(d) and 205-6(e), HRS, the LUC has the authority to modify the conditions in this situation in the manner requested by the Applicant. Additional questions were raised by the LUC as to whether it was within the authority of the LUC to approve the Application with modifications that were less restrictive in nature than what was recommended by the Planning Commission. Further discussion followed regarding the current operations at the Hāna Landfill, including the Applicant's efforts to recycle and alternatives to address the disposal of municipal solid waste at the landfill.

Upon additional discussion on the issue of the LUC's authority regarding special use permits under section 205-6, HRS, the Applicant requested that if the LUC was inclined to retain proposed Condition Number 19 as currently worded, that the

matter instead be remanded to the Planning Commission to allow them to clarify their intent with respect to said condition.

Thereafter, a motion was made and seconded to remand the Application to the Planning Commission for further proceedings as provided for in subsection 15-15-96(a), HAR. This motion was subsequently amended and seconded to remand the Application to the Planning Commission to specifically review proposed Condition Numbers 7 and 19 and to confirm whether the modifications requested by the Applicant to said conditions reflect the intent of the Planning Commission with respect to the Application and are supported by the record as established by the HAC. There being a vote tally of 7 ayes and 2 absent, the amended motion passed.

ORDER

Having duly considered the complete record of the Planning Commission's proceedings on the Application and the oral arguments presented by the Applicant, and an amended motion having been made at a meeting conducted on February 19, 2009, in Kahului, Maui, Hawai'i, and the amended motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the amended motion, the LUC hereby REMANDS the Application for an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, identified as Tax Map Key: 1-3-06: por. 7 and por. 12, situated within the State Land Use Agricultural District at Hāna, Maui, Hawai'i, to the Planning

Commission for further proceedings pursuant to subsection 15-15-96(a), HAR, to specifically review proposed Condition Numbers 7 and 19 and to confirm whether the modifications requested by the Applicant to said conditions reflect the intent of the Planning Commission with respect to the Application and are supported by the record as established by the HAC.

Accordingly, the LUC may consider the Application upon receipt of the complete record of the Planning Commission's proceedings on the remand.

DONE at Honolulu, Hawai'i, this 6th day of March, 2009, per motion on February 19, 2009.

APPROVED AS TO FORM:

Diane Jackson
Deputy Attorney General

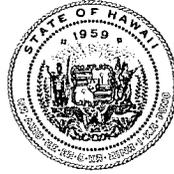
LAND USE COMMISSION
STATE OF HAWAII

By Duane Kanuha
DUANE KANUHA
Chairperson and Commissioner

Filed on:

March 9, 2009

Dale Kish
Executive Officer



BEFORE THE LAND USE COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the DECISION AND ORDER REMANDING STATE
SPECIAL USE PERMIT APPLICATION was served upon the following by either hand
delivery or depositing the same in the U. S. Postal Service by regular or certified mail as
noted:

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Dated: Honolulu, Hawai'i, March 9, 2009.



ORLANDO DAVIDSON
Executive Officer