

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In The Matter Of The Petition Of ) DOCKET NO. SP97-390  
)  
PUBLIC WORKS AND WASTE ) APPROVING A THIRD  
MANAGEMENT, SOLID WASTE ) AMENDMENT TO THE LAND USE  
DIVISION, COUNTY OF MAUI ) COMMISSION'S SPECIAL USE  
(DEPT. OF ENVIRONMENTAL ) PERMIT  
MANAGEMENT) )  
)  
To Obtain A Third Amendment To )  
Land Use Commission Special Use )  
Permit 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 )  
At Pu'unene Maui, Hawai'i, Tax Map )  
Key: 3-8-03: Por. 4, Por. 20, and Por. 21 )  
\_\_\_\_\_ )

DECISION AND ORDER APPROVING A THIRD AMENDMENT TO THE LAND USE  
COMMISSION'S SPECIAL USE PERMIT

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.

MAR 23 2009

Date

BY

Executive Officer



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STATE OF HAWAI'I

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LAND USE COMMISSION'S SPECIAL USE PERMIT

On June 12, 2008, the County of Maui, Department of Environmental Management (“Petitioner”), filed a written request for amendment to State Special Use Permit SP97-390 with the County of Maui Department of 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”).<sup>1</sup>

The Petitioner sought to amend SP97-390 by: 1) Requesting a Ten Year Time Extension; 2) Expanding the Permit Area by 41.2 acres; 3) adding composting and quarrying related uses; and 4) requesting a transfer of permit holder from the Department of Public Works to the Department of Environmental Management. The Maui Planning Department supported the request with conditions.

On October 28, 2008, the County of Maui Planning Commission (“Planning Commission”) conducted a hearing on the Petitioner’s Request. One public witness expressed opposition to the request. After due deliberation, the Planning Commission voted to approve the amendment with the existing Conditions currently included in SP97-390, as amended, plus the addition of two new Conditions that provide as follows: 1)“ That the Applicant shall clarify the entire acreage that is the subject of LUC Docket No. SP97-390 with the Maui Planning

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<sup>1</sup> The Applicant concurrently filed applications for a Special Management Area (“SMA”) Use Permit and a County Special Use Permit. This is the Third Amendment to this Docket. The Applicant had titled it the Second Amendment.

Commission and the LUC by filing an aerial photographic map with overlay and a site map clearly depicting the proper acreage of SP97-390.”; and 2) “ That to the extent practicable, leachate generated at the landfill shall be returned to the landfill.”

The Planning Commission also amended existing Condition 1. by extending the term of the Special Permit 20 years until October 31, 2028, instead of the ten years recommended by the Planning Department.

The Land Use Commission (“Commission”) has jurisdiction over the Applicant’s Request. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize this Commission to approve special use permits and amendments thereto for areas greater than 15 acres.

On December 24, 2008, the Commission received a copy of the decision and a portion of the record of the Planning Commission’s proceedings on the Petitioner’s Request. On February 9, 2009, the Commission received the remaining portion of the record.

On February 19, 2009, the Commission met in Kahului, Maui, Hawai`i, to consider the Petitioner’s Request. Cheryl Okuma, Director of the Maui Department of Environmental Management, and Tracy Takamine of the Department of Environmental Management represented the Petitioner. Michael Hopper, Esq. and Robyn Loudermilk represented the County of Maui Planning Department.

Following a presentation by Petitioner, in which it pointed out that approval of this special permit was needed to satisfy Department of Health requirements, and questions and discussion by the Commissioners, a motion was made and seconded to approve the Petitioner's Request as approved by the Maui Planning Commission, subject to the following amendments to the existing Conditions and the addition of new Conditions 16 and 17 as recommended by the Maui Planning Commission. However, the Commission approved a 10 year rather than 20 year extension of the Special Permit. The amended conditions provide as follows:

1. That the State Land Use Commission Special Permit shall be valid until October 31, 2018, subject to further time extensions by the Land Use Commission upon a timely request for extension filed at least one-hundred twenty (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.
13. That the Applicant use non-drinking water, to the extent possible, for grading, dust control, and irrigation of the landfill.
14. That the Applicant shall reasonably ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right-of-way, are removed on a daily basis.
16. That the Applicant shall clarify the entire acreage that is the subject of LUC Docket No. SP97-390 with the Maui Planning Commission and the LUC by filing an aerial photographic map with overlay and a site map clearly depicting the proper acreage of SP97-390.

17. That to the extent practicable, leachate generated at the landfill shall be returned to the landfill.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally 7 ayes and 2 absent, the motion carried.

### ORDER

Having duly considered the complete record of Petitioner's Request and the oral arguments presented by the parties present in the proceeding, and a motion having been made at a meeting on February 19, 2009, in Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby APPROVES Petitioner's Request to (i) transfer the Permit holder from the Department of Public Works and Waste Management, Solid Waste Division County of Maui to the Department of Environmental Management, County of Maui; (ii) add approximately 41.2 acres of land to the Permit Area as shown on Exhibit "A" attached hereto and incorporated by reference herein; and (iii) add composting and quarrying activities as allowed uses in this 41.2 acre area being added to the Permit Area; subject to the following Amendments: to the existing Permit Conditions and new Conditions 16 and 17:

1. That the State Land Use Commission Special Permit shall be valid until October 31, 2018, subject to further time extensions by the Land Use Commission upon a timely request for extension filed at least one-hundred twenty (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.

13. That the Applicant use non-drinking water, to the extent possible, for grading, dust control, and irrigation of the landfill.
14. That the Applicant shall reasonably ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right-of-way, are removed on a daily basis.
16. That the Applicant shall clarify the entire acreage that is the subject of LUC Docket No. SP97-390 with the Maui Planning Commission and the LUC by filing an aerial photographic map with overlay and a site map clearly depicting the proper acreage of SP97-390.
17. That to the extent practicable, leachate generated at the landfill shall be returned to the landfill.

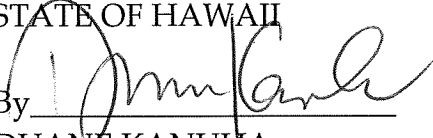
All other conditions to the Decision and Order dated May 13, 2002, as further amended by Decision and Order dated December 14, 2004 are hereby reaffirmed and shall continue in effect.

DONE at Honolulu, Hawai'i, this 19<sup>th</sup> day of March, 2009, per motion on  
February 19, 2009.

APPROVED AS TO FORM:

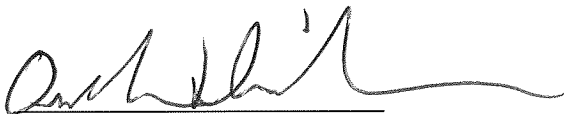
  
\_\_\_\_\_  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

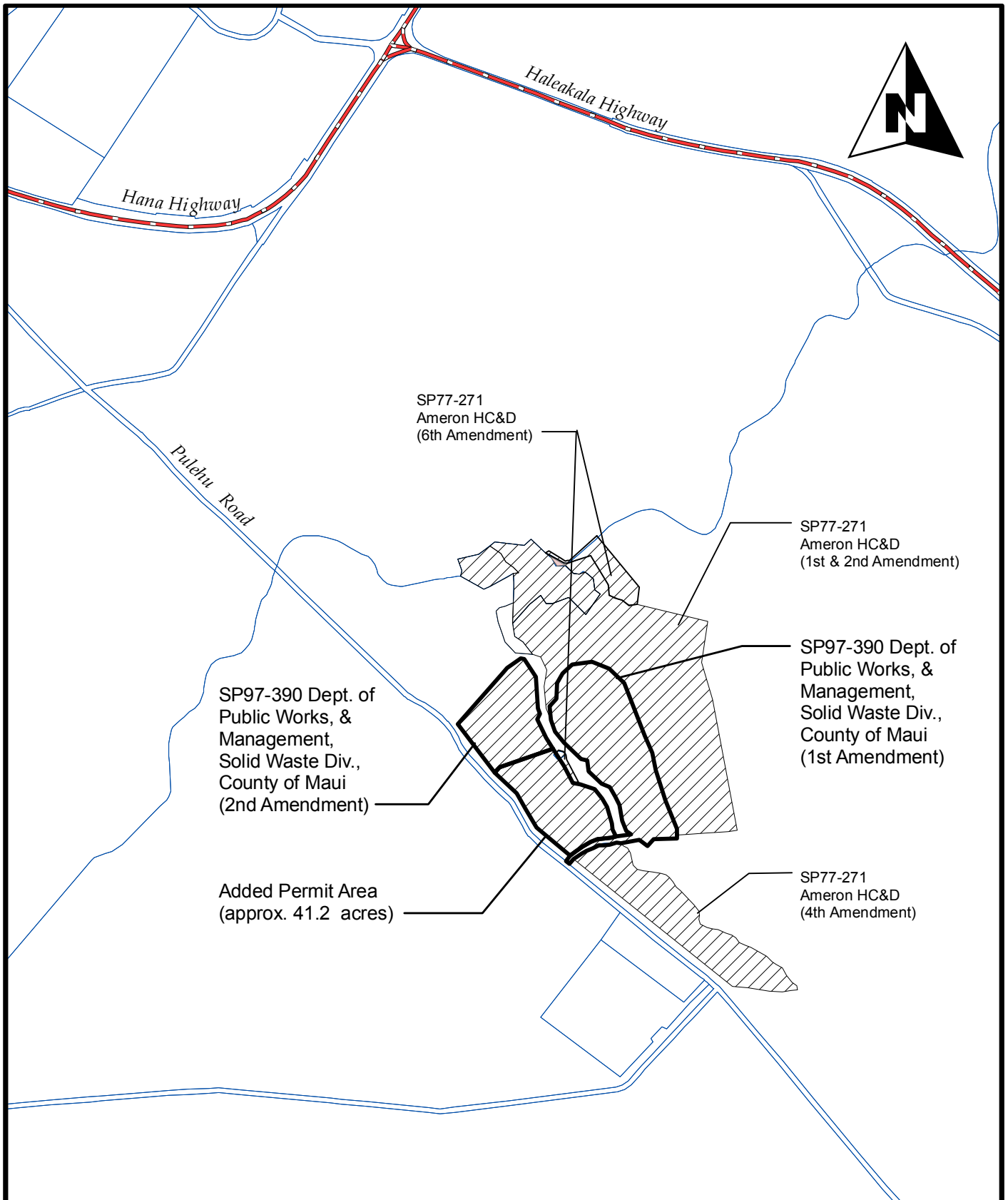
By   
\_\_\_\_\_  
DUANE KANUHA  
Chairperson and Commissioner

Filed on:

MAR 23 2009

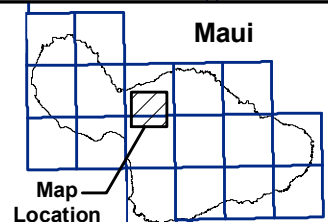
\_\_\_\_\_  
  
Executive Officer





**SP97-390 PUBLIC WORKS AND WASTE MANAGEMENT, SOLID WASTE DIVISION,  
COUNTY OF MAUI (DEPT. OF ENVIRONMENTAL MANAGEMENT)**

Location Map  
 Tax Map Key: 3-8-03: Por. 4, Por. 20, and Por. 21  
 Pu`unene, Maui, Hawai`i  
 Scale: 1" = 2,000 ft.  
**Exhibit "A"**





BEFORE THE LAND USE COMMISSION  
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PUBLIC WORKS AND WASTE ) CERTIFICATE OF SERVICE  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of DECISION AND ORDER APPROVING A THIRD AMENDMENT TO THE LAND USE COMMISSION SPECIAL USE PERMIT 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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Honolulu, Hawaii, MAR 23 2009.



ORLANDO DAVIDSON  
Executive Officer