



COUNTY OF MAUI  
DEPARTMENT OF PLANNING  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Hawai'i 96793  
Telephone: (808) 270-7735

**BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I**

In the Matter of:

KOMAR MAUI PROPERTIES I LLC

Petition for Declaratory Order from the State of Hawai'i Land Use Commission regarding whether a landfill may be permitted only by a District Boundary Amendment, or whether it may be permitted by a Special Use Permit.

DOCKET NO. DR26-79

POSITION STATEMENT OF THE COUNTY OF MAUI DEPARTMENT OF PLANNING ON A PETITION FOR A DECLARATORY ORDER; EXHIBIT 1; CERTIFICATE OF SERVICE

**POSITION STATEMENT OF THE COUNTY OF MAUI DEPARTMENT OF PLANNING**

The County of Maui Department of Planning (Department) is in receipt of the Petition for Declaratory Order (Petition) submitted by KOMAR MAUI PROPERTIES I LLC (Petitioner) to the State of Hawai'i Land Use Commission (LUC) on March 16, 2026. The Petition seeks a declaratory order from the LUC confirming that a proposed landfill located in the State Agricultural District can only be permitted by and requires a District Boundary Amendment, or whether it can be permitted by a Special Permit.

**BACKGROUND**

In its request for a declaratory order, the Petitioner provided their interpretation of Hawai'i Revised Statutes (HRS) Chapter 205-4.5 which lists permissible uses within the agricultural district,

and HRS § 205-6 which discusses Special Permits. The Petitioner states that it appears a landfill requires a District Boundary Amendment as it is not a permitted use under HRS § 205-4.5(a) and does not meet the guidelines of a “unusual and reasonable” use as listed in Chapter 15-15-95(c) of the Hawai‘i Administrative Rules. The Petitioner then concludes that a landfill on agricultural land does not meet the limited scope of a special permit, and therefore requires formal reclassification through a District Boundary Amendment.

## **POSITION OF THE DEPARTMENT OF PLANNING**

### **SPECIAL PERMITS:**

The Department differs in its interpretation of the HRS and HAR from the Petitioner. HRS § 205-4.5(b) states, “Uses not expressly permitted in subsection (a), including landfill units, as defined in section 342H-52, located on land within the agricultural district that has soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A in a county with a population greater than five hundred thousand, shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976.”

HRS § 342H-52 states that a 'Landfill unit' means a municipal solid waste landfill unit or a construction and demolition landfill unit.” The Department interprets this section of the HRS as allowing landfills, as defined in HRS § 342H-52, in the agricultural district with a Special Permit.

With respect to the processing of Special Permits, HRS § 205-6(a) states, “the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.” HRS § 205-6(d) goes on to state that, “Special permits for land the area of which is greater than fifteen acres or for lands designated as

important agricultural lands shall be subject to approval by the land use commission.”

In accordance with HAR § 15-15-95(c), “Certain 'unusual and reasonable' uses within agricultural and rural districts other than those for which the district is classified may be permitted.

The following guidelines are established in determining an 'unusual and reasonable use':

- (1) 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;
- (2) The proposed use would not adversely affect surrounding property;
- (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.”

The Department notes that the HAR clearly states that the aforementioned are guidelines, and not standards or requirements.

#### DISTRICT BOUNDARY AMENDMENTS:

In its Petition for Declaratory Order, the Petitioner concludes that landfills proposed on agricultural land exceed the limited scope of a Special Permit and instead requires formal reclassification through a District Boundary Amendment (DBA).

A DBA for land already designated as agricultural is limited to the urban, rural, or conservation district(s). Landfills do not meet the standards or requirements of the rural or conservation district as listed in HRS § 205-2(c) and (e), nor does it meet the standards in HAR § 15-15-20 and 21. Therefore, without the option of a Special Permit the only suitable district for a landfill is urban. However, HAR § 15-15-18 states the following:

“Standards for determining 'U' urban district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the 'U' urban district, the following standards shall be used:

- (1) It shall include lands characterized by 'city-like' concentrations of people, structures, streets, urban level of services and other related land uses;
- (2) It shall take into consideration the following specific factors:
  - (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;
  - (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and
  - (C) Sufficient reserve areas for foreseeable urban growth;
- (3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;
- (4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, particularly when indicated for future urban use on state or county general plans or county community plans or development plans;
- (5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans or county community plans or development plans;
- (6) It may include lands which do not conform to the standards in paragraphs (1) to (5):
  - (A) When surrounded by or adjacent to existing urban development; and
  - (B) Only when those lands represent a minor portion of this district;
- (7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and
- (8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county

agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.”

The Department notes the aforementioned are standards for determining urban district boundaries, rather than guidelines as listed for Special Permits. These standards are in direct conflict with the typical landfill since due to public resistance and health and safety concerns, landfills are generally not proposed on lands with “city-like” concentrations of people, structures, streets, or urban levels of service. Landfills are generally not proposed on “land contiguous with existing urban areas” for the same reasons. In addition, if landfills require a DBA to urban, unless it is next to other urban areas, the designation of urban will likely “contribute toward scattered spot urban development”.

In addition, HRS § 342H-52(b) states, “Beginning July 1, 2025, no person, including the State or any county, shall construct, modify, or expand a landfill unit or component of a landfill unit without first establishing a buffer zone of no less than one-half mile around the landfill unit or component of a landfill unit. This subsection shall not apply to the continued operation of an existing landfill unit or component of a landfill unit that is properly permitted; provided that continued operation does not require physical expansion, vertical or horizontal, of the landfill unit or component of a landfill unit requiring additional permitting review and a permit modification.” HRS § 342H-52 defines “Buffer zone” as, “the distance between the edge of the landfill or component of the landfill unit and the nearest residential, school, or hospital property line.”

In order to comply with this statute, landfills need to be located in an area generally devoid of urban type structures or development. This is in direct conflict with standards for determining urban district boundaries listed in HAR § 15-15-18, as it does not prioritize lands contiguous with existing urban areas and creates spot urban development. Requiring a landfill to seek formal reclassification through a District Boundary Amendment could create a scenario where the landfill is designated as

urban, but the surrounding one-half mile buffer area required by HRS § 352H-52(b) is in the rural, agricultural, or conservation district.

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (DEM) COMMENTS:**

The Department received a comment letter from DEM, dated April 20, 2026, indicating that DEM does not support Petitioner's position that a landfill may only be permitted through a District Boundary Amendment from the Agricultural District to the Urban District and not also by Special Use Permit, but that DEM supports Petitioner's request for guidance from the LUC on whether a landfill within the Agricultural District may be authorized by a Special Use Permit. DEM also indicated that it intends to submit public testimony on this matter to the LUC. See Planning Exhibit 1.

**CONCLUSION:**

In conclusion, the Department respectfully requests the LUC determine that landfills in the agricultural district can be allowed with a Special Permit rather than a DBA. A Special Permit is temporary and allows property to return to agricultural use, allows for landfills to be away from concentrations of people, and prevents scattered spot urban development. A Special Permit is also consistent with HRS § 205-4.5(b), HRS 205-6(d), HRS § 342H-52, and HAR § 15-15-95.

DATED: Wailuku, Hawaii, April 27, 2026.

  
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JACKY TAKAKURA  
Planning Director  
Department of Planning

**BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I**

In the Matter of:

KOMAR MAUI PROPERTIES I LLC

Petition for Declaratory Order from the State of Hawai'i Land Use Commission regarding whether a landfill may be permitted only by a District Boundary Amendment, or whether it may be permitted by a Special Use Permit.

DOCKET NO. DR26-79

POSITION STATEMENT OF THE COUNTY OF MAUI DEPARTMENT OF PLANNING ON A PETITION FOR A DECLARATORY ORDER; EXHIBIT 1; CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned I hereby certify that a copy of the foregoing was served on the following on the date indicated below:

STARN, O'TOOLE, MARCUS & FISHER  
A Law Corporation  
Pacific Guardian Center Makai Tower  
733 Bishop Street, Suite 1900  
Honolulu, Hawai'i 96813  
Attn: Sharon V. Lovejoy & Norman H.Y. Cheng  
Email: [slovejoy@starnlaw.com](mailto:slovejoy@starnlaw.com) & [ncheng@starnlaw.com](mailto:ncheng@starnlaw.com)


STATE OF HAWAI'I  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Anne E. Lopez, Attorney General

STATE OF HAWAI'I  
Office of Planning and Sustainable Development  
P.O. Box 2359  
Honolulu, Hawai'i 96804-2359  
Attn: Mary Alice Evans, Director

COUNTY OF MAUI  
Department of the Corporation Counsel  
200 South High Street  
Kalana O Maui Building, 3rd Floor  
Wailuku, Hawai'i 96793  
Attn: Victoria J. Takayesu, Corporation Counsel

DATED: Wailuku, Hawaii, April 27, 2026.

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JACKY TAKAKURA  
Planning Director  
Department of Planning

# PLANNING EXHIBIT 1

**RICHARD T. BISSEN, JR.**  
Mayor

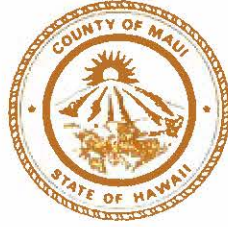
**SHAYNE R. AGAWA, P.E.**  
Director

**MICHAEL D. PETERSEN**  
Deputy Director

**MICHAEL KEHANO, P.E.**  
Solid Waste Division

**ERIC A. NAKAGAWA, P.E.**  
Wastewater Reclamation Division

**CECILE POWELL**  
Environmental Protection &  
Sustainability Division



**COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**  
2145 KAOHU STREET, SUITE 102  
WAILUKU, MAUI, HAWAII 96793

April 20, 2026

County of Maui  
Planning Department  
200 Main Street  
One Main Plaza, Suite 315  
Wailuku, Hawaii 96793  
Attn: Jacky Takakura, Director  
VIA EMAIL: [Jacky.Takakura@co.maui.hi.us](mailto:Jacky.Takakura@co.maui.hi.us)

**RE: Petition for Declaratory Order  
Land Use Commission Docket No. DR26-79  
Komar Maui Properties I LLC (Petitioner) for TMK No. (2) 3-8-003-020**

Dear Ms. Takakura:

Thank you for the opportunity to review and comment on the subject matter. The Department of Environmental Management (DEM) offers the following comments. DEM supports the Petitioner's request for guidance from the Hawaii State Land Use Commission on whether a landfill within the Agricultural District may be authorized by a Special Use Permit. DEM does not support Petitioner's position that a landfill may only be permitted through a District Boundary Amendment from the Agricultural District to the Urban District and not also by Special Use Permit. See Sections V. and VI. of the Petition. DEM will provide additional comments in forthcoming public testimony on this matter.

Thank you for your consideration and should you have any questions or concerns, please do not hesitate to contact me at (808) 270-8230.

Respectfully,

DN: cn=Shayne R. Agawa, o=Director  
of Dept. of Environmental  
Management, ou=County of Maui,  
email=shayne.agawa@co.maui.hi.us,  
c=US  
Date: 2026.04.20 10:15:49 -1000'

**SHAYNE R. AGAWA, P.E.**  
Director of Environmental Management