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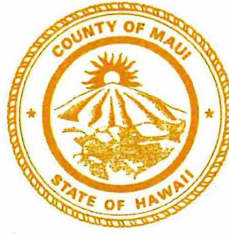
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COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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May 20, 2026



Mr. Brian Lee, Chair  
and Members of the State of Hawai'i Land Use Commission  
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Dear Chair Lee and Members:

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

Please accept this testimony from the County of Maui, Department of Environmental Management (DEM). DEM **opposes** Petitioner's position that a landfill on the subject property may only be permitted by a District Boundary Amendment from the Agricultural District to the Urban District and not also by Special Permit. See Sections V. and VI. of the Petition. DEM **supports** the Petitioner's request for guidance from the Hawaii State Land Use Commission (Commission or LUC) on whether a landfill within the Agricultural District may be authorized by a Special Permit.

As a preliminary matter, DEM also suggests that the Commission ask the Petitioner whether it plans a construction and demolition landfill or a municipal solid waste landfill. Should the Commission issue a Declaratory Order, DEM urges it to narrowly tailor the order to the type of landfill proposed by the Petitioner.

Hawaii Revised Statutes (HRS) § 205-4.5(a) sets out the permissible uses in the Agricultural District. Landfills are not identified as a permissible use in the Agricultural District. HRS § 205-6 authorizes county planning commissions (and the State Land Use Commission for areas over 15 acres) to permit "certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified." Hawaii Administrative Rules (HAR) § 15-15-95 provides the following guidelines that distinguish an allowable Special Permit use from a use requiring a DBA (quoted text in italics and brief analysis provided below each guideline):

- (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;*

HRS Ch. 205 and related regulations are intended to preserve, protect, and encourage the development of lands for those uses to which they are best suited in the interest of the public health and welfare of the people of Hawai'i. Landfills are essential public infrastructure. In contrast to a permanent DBA to the Urban District, the permitting of landfills by temporary Special Permit protects the long term integrity of the Agricultural District from the encroachment of urban uses and developments. Special Permits for landfills include requirements for the eventual closure of the facilities, remediation, and return to agricultural use.

A landfill permitted by Special Permit in the Agricultural District does not change the essential character of the Agricultural District into an urban center. As explained in the County of Maui, Department of Planning's May 04, 2026 Position Statement on the Petition, a landfill use is inconsistent with the standards for determining urban district boundaries and a DBA for a single landfill site often constitutes "spot rezoning," which is generally disfavored in land use law. A DBA to the Urban District is appropriate for permanent uses of "city-like" character where people work and live; in contrast, a landfill is better suited to areas removed from where people work and live.

- (2) *The proposed use would not adversely affect surrounding property;*

A landfill, whether a construction and debris or a municipal solid waste landfill, at the subject property would be adjacent to the Central Maui Landfill and near agricultural uses in Puunene, Maui. The Central Maui Landfill and adjacent commercial farming activities have long coexisted.

- (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;*

Landfills are essential public infrastructure and do not unreasonably burden public agencies for typical urban services like schools or sewers.

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

The critical need for waste disposal sites constitutes an "unusual need" that has arisen since the original 1960s district boundaries were drawn. Further, the expansion of urban uses since that time is an unusual trend causing the need to preserve the integrity of the Agricultural District.

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

Land used for landfills, including the property owned by the Petitioner and at issue in the Petition, is often unsuited for traditional agricultural activities. The subject property, like much of the neighboring Central Maui Landfill operated by

DEM, is located in former quarry sites. Remediation in connection with the closure of a landfill is intended, at least in part, to improve the suitability of a former quarry and landfill site for agricultural activity.

HAR § 15-15-95(c). Note that Maui County Code (Code or MCC) § 19.510.070.B sets out similar criteria for the evaluation of a County Special Use Permit to those included in HAR § 15-15-95(c), but that the Code also provides a list of uses that may be permitted in the Agricultural District by County Special Use Permit, including landfills. MCC § 19.30A.060.A (landfills are included in subsection 11).

In *Department of Environmental Services v. Land Use Commission*, the Hawai'i Supreme Court reviewed a challenge to a condition to the Special Permit for the Waimānalo Gulch Sanitary Landfill (located in the Ag. District). 127 Haw. 5, 275 P.3d 809 (2012). By ruling on the validity of the conditions to the Special Permit rather than requiring a DBA, the Court implicitly recognized the validity of the use of the Special Permit process for municipal solid waste landfill operations.

DEM acknowledges that the LUC has recently required the transition from Special Permit to DBA in Central Maui Landfill Docket No. SP97-390. In its 2020 decision in that matter, the LUC focused on the distinction between uses of a temporary nature (which may qualify as "unusual and reasonable" and be permitted by Special Permit) and uses of a permanent nature, which require a DBA from the Agricultural District to the Urban District. HRS § 205-6 does not contain any language explicitly limiting the duration of a Special Permit. If the legislature intended for Special Permit to be strictly "temporary" (for example, less than 10 years), it would have defined a specific maximum duration in the statute. Instead, it left the duration to the discretion of the LUC, as is apparent in the LUC's administrative rules. HAR § 15-15-95(f) ("The county planning commission shall establish, . . . if appropriate, a time limit for the duration of the proposed use, . . . the [C]ommission for good cause shown, may specify or change the time period of the special permit. . . [.]").

While most landfills operate for decades, all municipal solid waste landfills must comply with a Closure and Post-Closure Care Plan (as mandated by the State of Hawai'i, Department of Health (DOH) and U.S. EPA). Unlike a DBA to the Urban District, which typically results in permanent structures like housing or shopping centers, a closed landfill permitted by Special Permit is remediated and usually returned to open space or agricultural uses (such as, grazing or solar farms), preserving the long term integrity of the Agricultural District. HAR § 11-58.1-17(a) requires a final cover system that includes, among other things, "a minimum six inches of earthen material that is capable of sustaining native plant growth" for erosion control. The Petition provides the Commission with an important opportunity to recognize the validity of permitting landfills located within the Agricultural District by Special Permit. This position is consistent not only with HRS Ch. 205 and related law and regulations, but also with decades of the LUC's precedent and current permitting by Special Permit of all of the major landfills in the State.

Based on DEM's research, it appears that all of the currently operating municipal solid waste landfills in the State are permitted by Special Permit in the Agricultural District.

Maui County:

- Central Maui Landfill Docket No. SP97-390
- Hāna Landfill Docket No. SP08-402
- Molokai-Nā'iwa Landfill & Recycling Center Docket No. SP93-383
- Lāna'i Landfill Docket No. SP94-386

City and County of Honolulu:

- Waimānalo Gulch Sanitary Landfill Docket No. SP09-403

Hawai'i County:

- West Hawai'i (Pu'uana'hulu) Sanitary Landfill Docket No. SP91-379

Kaua'i County:

- Kekaha Landfill Docket No. SP93-384

DEM has not identified any municipal solid waste landfill in the State that is permitted by a completed DBA to the Urban District. As the operator of municipal solid waste facilities on Maui, Molokai, and Lāna'i that is responsible for the health, safety, and essential infrastructure of our community, we urge the Commission to make it clear that landfills located within the Agricultural District may be permitted by Special Permit (in addition to seeking a DBA from the Agricultural District to the Urban District). Doing otherwise would put in doubt the ongoing operation and future planning of landfills throughout the State.

DEM again emphasizes the practical considerations and public interest in the ability to permit a landfill located within the Agricultural District by Special Permit. Requiring a DBA for every landfill expansion or new site would create a lengthy and expensive administrative bottleneck. The DBA process is designed for large-scale, permanent urbanization, takes multiple years longer than an SP, and is inconsistent with the incremental expansion and closure/remediation of landfills. Waste management is a critical public health necessity; the flexibility of the Special Permit process allows the counties to create adequate landfill capacity with the necessary speed while still being subject to thorough environmental and land use review, including multiple public hearings. Municipal solid waste landfills must also comply with HRS Ch. 342H, regarding solid waste pollution and federal law and regulations concerning the same.

The County of Maui's experience following the August 2023 Wildfires disaster highlights the essential public interest in the availability of adequate landfill capacity. Due to the critically limited available capacity at the Central Maui Landfill, DEM—with the support of the federal, State, and other County departments—had to rapidly acquire a location for and construct the Permanent Disposal Site for the disaster debris adjacent to the CML without obtaining State and county land use permits. (DEM relied on the emergency proclamations of the Governor and Mayor, guidance from its DOH municipal solid waste regulator, and the support of the federal, State, and intra-county partners to build, operate, and close the PDS.) The Central Maui Landfill remains at extremely limited available capacity with a current approximate estimate of only four

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years of available airspace. In closing, DEM again urges the Commission to make it clear that landfills located within the Agricultural District may be permitted by Special Permit.

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,



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