

BEFORE THE LAND USE COMMISSION

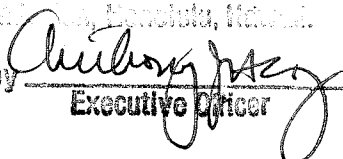
OF THE STATE OF HAWAII

In The Matter Of The Application Of )  
)  
SPHERE LLC dba PACIFIC AGGREGATE )  
)  
To Establish A Construction And Demolition )  
Debris Landfill On Approximately 190 Acres )  
Of Land Within The State Land Use )  
Agricultural District At Ma`ili, Wai`anae, )  
O`ahu, Hawai`i, Tax Map Key: 8-7-10: Por. 3 )  
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DOCKET NO. SP04-398  
DECISION AND ORDER  
DENYING AND REMANDING  
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.

8/12/04  
Date

by   
Executive Officer

DECISION AND ORDER DENYING AND REMANDING SPECIAL USE PERMIT

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DECISION AND ORDER DENYING AND REMANDING SPECIAL USE PERMIT

On September 10, 2003, Sphere LLC dba Pacific Aggregate ("Applicant") filed a Special Use Permit Application ("Application") with the City and County of Honolulu Department of Planning and Permitting ("DPP"), pursuant to section 205-6, Hawai`i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai`i Administrative Rules ("HAR"). The Applicant proposes to establish a construction and demolition debris ("C&D") landfill on approximately 190 acres of land within the State Land Use Agricultural District at Ma`ili, Wai`anae, O`ahu, Hawai`i, identified as Tax Map Key: 8-7-10: por. 3 ("Property").

On February 4, 2004, the City and County of Honolulu Planning Commission ("Planning Commission") conducted a hearing on the Application, pursuant to a public notice published in the Honolulu Star-Bulletin on January 2, 2004.

At the hearing there were eight individuals who presented oral and/or written testimony. The Planning Commission subsequently continued the hearing to February 18, 2004. At the continued hearing, there were 14 individuals who presented oral and/or written testimony. After due deliberation, the Planning Commission recommended approval of the Application to the Land Use Commission ("LUC"), subject to 14 conditions.

On April 19, 2004, the LUC received a copy of the Planning Commission's decision on the Application. On April 30, 2004, the LUC received a copy of the Planning Commission's record on the Application.

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 special use permits for areas greater than 15 acres where application for LUC approval is made within 60 days after the decision is rendered on the application by the Planning Commission.

On June 3, 2004, the LUC met in Honolulu, Hawai'i, to consider the Application.<sup>1</sup> Benjamin M. Matsubara, Esq., and Wyeth Matsubara, Esq., appeared on behalf of the Applicant. David K. Tanoue, Esq., and Raymond Young appeared on

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<sup>1</sup> Pursuant to section 92-3, HRS, Alice U. Greenwood; Joseph O'Donnell; Harry Choy; Franklin Hayashida; Earl Yamamoto; Georgette Jordan; Colleen Young on behalf of State Representative Maile Shimabukuro; John Kapua III; Cynthia K. L. Rezentes; Maralyn Kurshals; Clyde Calhoun; Gary Reed; James K. Manaku, Sr.; Phyllis Shimabukuro-Geiser; James R. Hollyer; Sandra Lee Kunimoto; Alan Takemoto; Breene Harimoto; David Carona; John Corbin; Adam C. Price; Malia Beaver; Johnnie-Mae L. Perry; Roland Lee; Dennis and Katherine Kamada; Allan L. Parker; and State Representative Maile Shimabukuro presented oral and/or written testimony.

behalf of the DPP. John W. K. Chang, Esq., and Abe Mitsuda were also present on behalf of the Office of Planning ("OP").

At the meeting, the Applicant presented an overview of the proposed C&D landfill and addressed issues that were raised during the Planning Commission's hearing on the Application, including but not limited to traffic, dust, runoff, erosion, drainage, groundwater contamination, odor, noise, asbestos, endangered birds, and the Applicant's community benefits program. Following the Applicant's presentation, the LUC raised questions about the potential impacts of the proposed C&D landfill to Ma`ili Elementary School and the neighboring residences and farming operations as reflected in the transcripts of the proceeding.

Following this discussion, the DPP summarized the City's position on the Application and responded to concerns about the operation of the proposed C&D landfill as it related to the acceptance of asbestos, the commencement date, the life of the Special Use Permit, the height limit, the enforcement of conditions, insurance requirements, and the recycling of material as reflected in the transcripts of the proceeding. The OP stated that it had no objections to the landfill provided conditions were imposed to mitigate the potential impacts.

Following further discussion by the Commissioners, a motion was made and seconded to grant the Special Use Permit, subject to (i) the conditions as recommended by the Planning Commission with amendments to Condition Numbers 3, 6, 7, 8, 11, and 13 as reflected in the transcripts of the proceeding; (ii) additional

conditions establishing a time limit for the duration of the proposed C&D landfill and requiring the Applicant to submit a metes and bounds map and description to the LUC and to substantially comply with the representations made to the LUC, including those representations pertaining to the height of the landfill, dust control, and the provision of an onsite detention basin; and (iii) the exclusion of asbestos from the landfill.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally of 3 ayes, 5 nays, and 1 absent, the motion failed. After further deliberation, a motion was made and seconded to deny the Special Use Permit. This motion was subsequently amended to deny the Special Use Permit and remand said Special Use Permit to the Planning Commission for further proceedings as provided for in section 15-15-96(a), HAR. Having been seconded, a vote was taken on this motion, as amended. There being a vote tally of 6 ayes, 2 nays, and 1 absent, the motion passed.

#### ORDER

Having duly considered the complete record of the Planning Commission's proceedings on the Special Use Permit and the oral arguments presented by the parties in this proceeding, and a motion having been made at a meeting conducted on June 3, 2004, in Honolulu, 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 DENIES the Special Use Permit granted by the Planning Commission to establish a C&D landfill on approximately 190 acres of land within the State Land Use Agricultural District at Ma'ili, Wai'anae, O'ahu, Hawai'i, identified as

Tax Map Key: 8-7-10: por. 3, and REMANDS the Special Use Permit to the Planning Commission for further proceedings pursuant to section 15-15-96(a), HAR, to supplement the record and address the special use permit criteria below in determining an “unusual and reasonable” use within the State Land Use Agricultural District pursuant to section 15-15-95(b), HAR, including without limitation the following issues:

1. Whether the use will be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Commission. The primary purpose of chapter 205, HRS, is to preserve, protect, and encourage the development of the lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai`i. The record reflects numerous concerns expressed by residents and farmers about the potential impacts to their health and welfare from fugitive dust, noise, runoff, flooding, fires, and traffic generated by the proposed C&D landfill. The Wai`anae Coast Neighborhood Board No. 24, in its deliberations on the Mayor’s Blue Ribbon Committee’s recommendations for alternative municipal solid waste sites, passed a motion to oppose all types of landfills throughout the Wai`anae Coast District. Further, the School Community Based Management Council of Ma`ili Elementary School has consistently opposed the development of a landfill at the Property.
2. Whether the desired use would adversely affect surrounding property. The record indicates that the immediate surrounding land uses include farms and single-family residences. Ma`ili Elementary School is located approximately, 1,100 feet to the west. The record indicates that the proposed C&D landfill would generate a total of 56 trucks per day, an increase of 21 trucks per day compared to current truck traffic using the existing quarry. The record also indicates that the Applicant’s current drainage study did not provide sufficient detail to substantiate the Applicant’s assertion that the landfill would not adversely impact onsite and offsite drainage patterns. The record further indicates that the maximum height of the completed landfill would be approximately 40 feet above the surrounding grade; however, there is no provision in the record to specifically require the Applicant to abide by this height. In addition, the record indicates that the Applicant would be responsible to self-police compliance with the requirement that all truck traffic entering

or leaving the Property with material be fully covered or fully enclosed to prevent the discharge of litter and dust along the access route to and from the Property, and that haulers to and from the Property be prohibited from using Hakimo Road for access. It is unclear, however, whether self-policing would be a reliable means to address the potential impacts of truck traffic and dust control upon the surrounding properties.

3. Whether unusual conditions, trends, and needs have arisen since the district boundaries and rules were established. The record does not indicate that there is a pressing need for the proposed C&D landfill at the present time. In fact, the record indicates that the existing PVT landfill, located approximately one mile to the southeast and five minutes from the Property, with its liner system has a 20-year capacity for its currently permitted area to accept C&D waste material.

Accordingly, the LUC may consider the Special Use Permit upon receipt of the complete record of the Planning Commission's proceedings on the remand within one year of the date of this Decision and Order.

Dated: Honolulu, Hawai'i, August 12, 2004.

APPROVED AS TO FORM:

*Diane Quisenberry*  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By *B. Coppa*  
BRUCE COPPA  
Vice-Chairperson and Presiding Officer

By *P. Roy Catalani*  
P. ROY CATALANI  
Vice-Chairperson and Commissioner

By *Pramin Desai*  
PRAMIN DESAI  
Commissioner

By *Isaac Fiesta, Jr.*  
ISAAC FIESTA, JR.  
Commissioner

By *Kyong-Su Im*  
KYONG-SU IM  
Commissioner

By ABSENT  
STEVEN LEE MONTGOMERY  
Commissioner

By *Randall F. Sakumoto*  
RANDALL F. SAKUMOTO  
Commissioner

Filed and effective on  
August 12, 2004

Certified by:  
*Anthony Ching*  
ANTHONY CHING

By *Peter Yukimura*  
PETER YUKIMURA  
Commissioner



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order Denying and Remanding Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail as noted:

DEL. MARY LOU KOBAYASHI  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

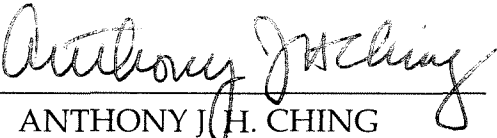
CERT. JOHN CHANG, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

CERT. LAWRENCE E. WILDERMAN  
Sphere LLC dba Pacific Aggregate  
P. O. Box 9  
Waianae, Hawaii 96792

CERT. ERIC G. CRISPIN, Director  
Department of Planning and Permitting  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

CERT. DAVID ARAKAWA, Esq.  
Corporation Counsel  
City & County of Honolulu  
530 South King Street  
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, August 12, 2004.

  
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ANTHONY J. CHING  
Executive Officer