

LAND USE COMMISSION  
MINUTES OF MEETING

June 3, 2004

Conference Room 405  
Leiopapa A Kamehameha  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Kyong-Su Im  
Lawrence Ing  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta

STAFF PRESENT: Russell Suzuki, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter

Presiding Officer Coppa called the meeting to order at 10:00 a.m.

ADOPTION OF MINUTES

Commissioner Im moved to adopt the Land Use Commission meeting minutes of May 6, 2004 and May 20, 2004. Chair Ing seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the July hearings will be held in Kona on July 8 and 9, at the Hapuna Prince Resort.

Mr. Ching also noted that he received communication from the Governor's office indicating the appointment of Lisa M. Judge as the Maui representative to the Land Use Commission. The communication also lists Commissioner Coppa as a hold over commissioner until the appointment of a new "at-large" member.

DOCKET NO. SP04-398 SPHERE LLC dba PACIFIC AGGREGATE (Oahu)

Presiding Officer Coppa announced that this was an action meeting on Docket No. SP04-398 Sphere LLC dba Pacific Aggregate to consider the establishment of a construction and demolition debris landfill on approximately 190 acres of land situated in the State Land Use Agricultural District at Maili, Waianae, Oahu, Hawaii.

On April 19, 2004, the Commission received from the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions, and Decision and Order dated March 31, 2004 approving the Special Use Permit Application, File No. 2003/SUP-2 for a Construction and Demolition Debris Landfill.

On April 30, 2004, the Commission received the City and County of Honolulu Planning Commission's record for the Application for State Special Use Permit, Proposed Construction and Demolition Debris (C&D) Landfill Development, which was approved by the Planning Commission on March 31, 2004.

Commissioner Montgomery entered the meeting during this time at 10:05 a.m.

APPEARANCES

Ben Matsubara, Esq., represented Petitioner Sphere, LLC

Larry Wilderman, Sphere, LLC

Bernadette Kim, Sphere, LLC

David Tanoue, Esq., represented City and County of Honolulu

Ray Young, City & County of Honolulu, Department of Planning and Permitting

John Chang, Esq., represented Office of Planning

Abe Mitsuda, Office of Planning

## Staff Report

Mr. Saruwatari, staff planner, provided a GIS map orientation of the area. There were no questions by the parties and the Commission.

Mr. Ching briefly summarized the staff report and noted that the alternative actions that may be taken by the LUC in its consideration of the Application is that the LUC may approve, approve with modification, or deny the application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. The LUC may also remand the Application to the Planning Commission for further proceedings. Staff also suggested amendments to the order recommended by the City and County of Honolulu Planning Commission. These amendments were of a technical non-substantive nature and are consistent with past special permits issued by the Commission. After a brief discussion, there were no questions posed by the parties or the Commission.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:10 a.m.

Presiding Officer Coppa noted that the Commission will be taking a lunch break at 12:00 noon and asked if there were any public witnesses with time constraints, as they will be taken out of order and given the opportunity to testify before the next break.

## PUBLIC WITNESSES

### 1. Alice Greenwood

Ms. Greenwood stated that she has lived in the area for over 45 years and is opposed to the Sphere construction and debris landfill because of health and welfare concerns for the children of Maili Elementary School. She added that the money donated to the schools should instead be given to the Waianae Coast Comprehensive Health Center for the children who will need medical care. There were no questions by the parties or the Commission.

### 2. Joseph O'Donnell

Mr. O'Donnell stated that he is the Financial Officer/Treasurer of the Ironworkers 625. He indicated that he strongly supported the construction and

debris landfill because it will provide for much needed jobs in the area. Mr. O'Donnel added that construction in the State will increase in the next years and an alternate location to dump C&D is needed. There were no questions by the parties or the Commission.

3. Harry Choy

Mr. Choy stated that he was a hog farmer for 50 years and was a member of the neighborhood board. He indicated that he opposed the C&D landfill. Although the 25-cents per ton to be donated by the Petitioner for the elementary school is good, the roadways are not big enough to handle two trucks at a time. There were no questions by the parties or the Commission.

A lunch break was taken at 12:00 p.m. The meeting reconvened at 1:05 p.m.

Mr. Tanoue stated that the department's recommendation was to approve with conditions, and that the county has no objections to the proposed conditions by the LUC staff as presented earlier.

Chair Ing commented that the Commission has expressed concern over issues not previously covered by the Planning Commission and asked if the County had any further comments.

Mr. Tanoue stated that the time limits were not specifically addressed in their recommendation, and the time expectancy proposed by the applicant was for 75 years for the landfill and 50 years for the quarry. Mr. Tanoue added that there was technically no height limit since it is agricultural land and not a structure. The landfill limits are regulated by the Department of Health.

A recess break was taken at 2:05 p.m. The meeting reconvened at 2:20 p.m.

Presiding Officer Coppa stated that the Commission would continue receiving public testimony and will call upon the public witnesses in the order indicated on the sign up sheet.

4. Frank Hayashida

Mr. Hayashida stated that he was represented the Iron Workers 625 that represent 126 employers and over 12,000 unionized employees. Mr. Hayashida stated that they strongly supported Sphere's application, and that the industry needs more competition in the field of C&D landfills. Currently, there is only one place to dispose of construction materials and they are closed certain hours during the day, which creates an impact on the ironworkers. Mr. Hayashida added that they believe the issues are not capacity but competition. After a brief discussion, there were no further questions by the parties or the Commission.

5. Earl Yamamoto

Mr. Yamamoto stated that he was a planner from the Department of Agriculture, testifying on behalf of its Director, Sandra Lee Kunimoto. Mr. Yamamoto provided a brief statement of the department's position.

Commissioner Montgomery asked if the Department of Agriculture had any comments on utilizing the emptied out quarry for future uses in farming livestock or aquaculture. Mr. Yamamoto replied that there are many setbacks that will make it difficult to re-establish any livestock program and added that he was not sure about any potential aquaculture uses.

Commissioner Im asked what types of livestock farming were they referring to. Mr. Yamamoto stated that it would be poultry, pigs, and beef cattle, as he believes this area is the locust or center of livestock as a result of discussion with the statistics branch. This area has the greatest aggregation of small livestock farmers on Oahu.

After a brief discussion, there were no further questions by the parties or the Commission.

6. Georgette Jordan

Ms. Jordan stated that she opposed the project. Ms. Jordan noted that she has visited both the Sphere and the PVT landfill sites, and that the PVT site has the capacity to operate another another 30 years. She added that if approved, their community would house the only two C&D landfills on the island, with the attendant traffic congestion going in and out of the community. There were no questions by the parties or the Commission.

7. Colleen Young

Ms. Young stated that she was testifying on behalf of state Representative Maili Shimabukuro of District 45, who opposed the project. Representative Shimabukuro felt that more concrete facts on the impacts to the community should be submitted before a decision is made. Ms. Young also suggested that Pacific Aggregate provide scholarships to the residents or make other commitments to the community in regards to enhancing public education, health, and other services. There were no questions by the parties or the Commission.

8. John S. Kaopua, III

Mr. Kaopua stated that he was a private citizen and representative of the First Baptist Church in Nanakuli and other affiliates in Waianae Valley. He indicated that he supported the application by Pacific Aggregate because they have been a good steward in the community and very receptive to the community's needs. Mr. Kaopua noted that there was a need for a new C&D landfill as the PVT site is a mountain piled over 50 feet high. In regards to Maili Elementary School, he has many family, church members, and friends who believe that the landfill would not pose a problem for them and strongly supported Pacific Aggregate's application. There were no questions by the parties or the Commission.

9. Cynthia Rezendes

Ms. Rezendes stated that she was a resident of Waianae and extended her apologies for Phyllis Shimabukuro-Geiser who requested to testify, but needed to leave the meeting. Ms. Rezendes noted that Ms. Shimabukuro-Geiser has filmed the potential grading, which could cause flooding in the area and has also compiled historical information (which was included in her written testimony and provided to the Commission earlier). Ms. Rezendes added that she had serious concerns regarding the proposed recycling of hazardous materials and that all alternatives should be explored before this C&D landfill site is approved. After a brief discussion, there were no questions by the parties or the Commission.

10. Maralyn Kurshals

Ms. Kurshals expressed her appreciation to the Commission for the opportunity to provide her testimony and stated that accepting the money for the schools was not worth the potential health problems which might impact the well being of the area's children. Ms. Kurshals commented that she strongly opposed the landfill. There were no questions by the parties or the Commission.

11. Clyde Calhoun

Mr. Calhoun stated that he has lived close to the project site for over 30 years and was a mechanical engineer for about 35 years. Mr. Calhoun commented that recently Maili Road has been resurfaced, and that the road itself is not structurally capable to sustain heavy truck traffic. He added that there is a section on Paakea Road that is heavily dusted with coral dust and the dust needs to be controlled. Mr. Calhoun also noted that this venture may generate a high income of ten million dollars a year or more, and although it may be profitable, the impact on the community should be considered first. There were no questions by the parties or the Commission.

12. Gary Reed

Mr. Reed stated that he opposed the C&D landfill and added that the roads will not handle all the traffic impacts. There were no questions by the parties or the Commission.

13. James K. Manaku, Sr.

Mr. Manaku stated that he was a resident of Makaha but soon will be living with his daughter whose home is close to the project site. Mr. Manaku noted that he is appalled with the lack of concern for the children, especially with the potential asbestos to be dumped there. There were no questions by the parties or the Commission.

A recess break was taken at 3:25 p.m. The meeting reconvened at 3:40 p.m.

Mr. Matsubara stated that the Department of Health (DOH) administers a financial insurance program, which covers three aspects. The first involves financial insurance, which covers closure and post closure and requires that the

developer possess sufficient funds to cover incremental or closure cost of over one million dollars per cell. This program requires that a cash bond sufficient to cover cell closure or landfill closure needs to be deposited with the DOH. As each cell is filled, the applicant meets with the DOH and submits the cash equivalent. In case the developer does not close the cell as required for post closure, the applicant needs to submit funds necessary for 30 years of monitoring under the post closure. The program seeks to ensure that the DOH has the necessary funds in the event the applicant does not.

Mr. Matsubara noted that the second element is the requirement for the developer to obtain pollution insurance, five to ten million dollars for damages suffered by pollution or by third parties or toxic pollution from the landfill. The applicant needs to obtain the insurance and adopt that insurance policy with the DOH.

The third requirement is designed to cover remediation and the cost of curing the breakdown, the causes of the breakdown and repairing the facilities to assure it does not happen again. This \$500,000 to one million dollars is required by the DOH in issuance of the program. The applicant has an additional three million dollars for industry standards and another five million dollar coverage for the insurance, even if the applicant is no longer around.

Mr. Matsubara noted that the 40-foot height limitation was submitted as part of the Planning Commission's testimony. Exhibit 52 shows the line of sight and the 400-foot offset. As the view line will be over the landfill, the public will not see the quarry operations occurring below. The developer intends to submit a landscaping plan, which include shrubs and trees. This dense screening will block the view of the landfill, and a person will not see the landfill in its final development stage.

Mr. Matsubara commented that a plan was being submitted to the DOH for approval. Before the landfill operations begin, a dust control plan needs to be submitted. Plans will include perimeter landscaping and planted vegetation. The vehicles driving to and from the facility on surface roads will be watered down, and water trucks will constantly water the premises. The planning commission also has required that a community meeting be convened to receive public comment. Mr. Matsubara noted that landfills are a difficult topic, but believes that this is a good project and fulfills a land management need to try and make the land more useful. The developer understands the community's concerns and have attempted to address and design the project appropriately,



although some concerns may still exist, the petitioner believes they can handle this properly.

### Motion

Chair Ing moved to approve the special use permit for the C&D landfill, as recommended by the County with the following changes:

- The asbestos recycling would be excluded from the permit program.
- The technical amendments to the conditions of approval proposed by staff would be included in the permit.
- For condition number 3, delete the last sentence to ensure that a 400-foot buffer is established.
- For condition number 8, change the 25-cents per ton voluntary contribution to 1 percent of the gross charge per ton. Specify that this contribution is to benefit public schools in Nanakuli and Waianae only; and
- The term of the permit is set at 20 years after landfill operations commence with the right of the applicant to see further extensions of the permit.

Commissioner Yukimura seconded the motion.

### Discussion

Commissioner Sakumoto commented that he would not support the motion. He added that he was concerned about the adverse effects of the project. The Department of Agriculture had expressed concerns regarding dust and rain runoff to the adjacent farms and the residents. The Department of Health also expressed concerns about environmental issues. The Department of Education had concerns about air quality, dust, fires, and the proximity of Maili Elementary School to the petition area. There were other concerns that came up which warrants denying the petition. Questions were raised as to insurance coverage, and the record is unclear as to the appropriate term of the permit, and the maximum height of the landfill. We owe it to the residents in this area to determine what the height limit should be. There were much concerns expressed about the expected truck traffic generated by the project. Allowing the operator to self-police its truck traffic is not reliable.

Commissioner Im agreed with Commissioner Sakumoto and added that the amount of community concerns not being addressed or readily available to answer indicates that more information and discussion is needed between the developer and the community. There is not enough information to support the motion at this time.

Commissioner Desai also agreed with Commissioners Sakumoto and Im. He added that more discussion needs to occur between the planning department, the developer and the community. The petitioner needs to give assurance to the community that potential adverse impacts will be negated or mitigated appropriately.

Vice Chair Catalani commented that he agreed with the previous three Commissioners. Given the close proximity with the school, the Commission needs to be particularly diligent on these issues and seek a higher level of certainty.

Commissioner Montgomery stated there was insufficient discussion on the recycling program. He added that he would not support the motion at this time.

Presiding Officer Coppa commented that he supported the motion because the asbestos was a major issue to exclude. He added that the existing quarry currently operates without complaints about dust and expected that the C&D landfill could be operated just as well. He also agreed with Chair Ing's motion to set the educational contribution at one percent of the gross tipping fee.

Chair Ing asked if this motion is defeated, the special use application could be allowed to come back to this Commission. Mr. Suzuki replied that there is an option to allow it to come back by supporting a second motion to remand or deny.

Mr. Ching then restated the motion made to approve the application for the C&D landfill with the Planning Commission's recommendation, excluding acceptance and handling of asbestos, including the technical recommendations made by staff earlier with modification to conditions 3 and 8, as described by the Movants, and a new number 15 in which the permit will expire in 20 years with a right to seek extension. Also, in the motion that their representations regarding dust control made by the petitioner would be a part of the record, as well as on-site retention of all storm water runoff.

The Commission was polled as follows:

Ayes: Commissioners Ing, Yukimura, and Coppa.

Nays: Commissioner Catalani, Desai, Im, Montgomery, and Sakumoto.

The motion failed with a vote of 3 ayes, 5 nays, and 1 absent.

### Motion

Commissioner Sakumoto moved to deny the petition for the reasons stated earlier. Commissioner Im seconded the motion.

### Discussion

Vice Chair Catalani asked the reason why Commissioner Sakumoto did not include the possibility of remanding the motion. Commissioner Sakumoto commented that he has no problems in modifying the motion.

Mr. Suzuki added that rules generally have the forcible effect of the law which supports the concept that you need to deny the petition otherwise there is an automatic approval.

Commissioner Sakumoto amended the motion to deny the petition and to remand the matter to return to the City's Planning Commission pursuant to section 15-15-96a. Commissioner Im seconded the amended motion.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Im, Catalani, Desai, Ing, and Montgomery.

Nays: Commissioners Yukimura, and Coppa.

The motion passed with a vote of 6 ayes, 2 nays, and 1 absent.

Presiding Officer Coppa stated that tomorrow's meeting would begin at 9:00 a.m. The meeting was adjourned at meeting at 4:40 p.m.

*(Please refer to the Land Use Commission transcript of June 3, 2004 for additional details on all of the above matters.)*