

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii
November 9, 2023

CDUP: KA-3625

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Third Time Extension Request for Conservation District Use Permit (CDUP) KA-3625 Regarding the County of Kaua'i's Kekaha Landfill Phase II Expansion

PERMITTEE: County of Kaua'i – Department of Public Works

LOCATION: Kekaha, Waimea District, Island of Kaua'i

TMK: (4) 1-2-002:009

AREA of USE: 35.67-acres

SUBZONE: Limited

BACKGROUND:

April 27, 1953 Executive Order (EO) 1558 established the 14.255-acres of the Kekaha Dumping Ground, and included a 2.55-acre access road.

October 14, 1977 The Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) KA-967 for an 18.868-acre expansion of the landfill [EO2872]

August 24, 2012 The Board approved CDUP KA-3625 for the County of Kaua'i Kekaha Landfill (KLF) Phase II Expansion Project subject to nineteen (19) conditions. The expansion of the landfill within the EO footprint, included the creation of two cells within the Conservation District. Expansion consists of the valley area between the existing Phases and the maximum height of the landfill would be no greater than 85-ft.

According to Condition #5 of CDUP KA-3625: Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have

been approved by the Department; further, all work and construction of the infrastructure must be completed within six (6) years of the approval. The permittee shall notify the Department in writing when construction activity is initiated and when it is completed.

Under this CDUP condition the applicant was permitted until August 24, 2014, to initiate construction, and until August 24, 2018, to complete construction of the KLF Phase II expansion project.

FIRST TIME EXTENSION REQUEST:

The County requested a time extension due to delays in obtaining the DOH - Solid Waste Permit required for the project. On April 30, 2014, the Chairperson approved a two (2) year time extension request for both the initiation of construction and the completion of construction deadlines. Based on the approved time extension, the applicant was provided a new initiation of construction deadline of August 24, 2016, and a new completion of construction deadline of August 24, 2020, to complete the KLF Phase II Expansion project.

SECOND TIME EXTENSION REQUEST:

The County requested a second time extension request as they were still in the process of obtaining the appropriate DOH - Solid Waste Permit. On July 8, 2016, the Board approved a time extension request for both the initiation of construction and the completion of construction deadlines. Therefore, condition five (5) of CDUP: KA-3625 was amended to provide that the County of Kaua'i – Department of Public Works will had until August 24, 2018, to initiate construction of the KLF Phase II Expansion project, and until August 24, 2022, to complete construction. An additional condition of no further extensions be given to initiate construction was added to the permit.

THIRD TIME EXTENSION REQUEST:

In August 2023, the County of Kaua'i – Department of Public Works, Solid Waste Division requested an extension to complete construction of the KLF Phase II-Cell 3. According to the submitted information, at the current fill rates, the Phase II operations, that includes Cell 1 and Cell 2 are expected to reach permitted capacity in the fall of 2026.

Further, it was stated that the County's intention was to not start construction of Cell 3 unless a new landfill could not be sited and built during the life of Cells 1 and 2. It has become evident that it is necessary for the County to commence construction of Cell 3 thus a time extension is requested.

Since Hurricane Iniki (1992), the County of Kaua'i became aware that a new landfill site would be needed. Commissioned studies were initiated, advisory committees met, sites were identified. A site was chosen, a Final EIS was published in July 2018, however as the County was unable to obtain HDOT Airports concurrency on the selection of the site for use as a landfill, the effort was discontinued in 2021.

The County has made efforts to reduce the waste stream and has initiated planning to implement curbside recycling, development of a materials recovery facility, construction and demolition materials diversion, and other repurposing technologies.

At this time, the County of Kaua'i – Department of Public Works, Solid Waste Division, has determined it will take a minimum of eight years to develop final construction documents, obtain other required permits, procure, construct, and complete the Kekaha Landfill (KLF) Phase II Expansion Project. The request is for an extension to complete construction by August 24, 2031.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawaii Administrative Rules (HAR), §13-5-43, which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, pursuant to HAR §13-5-43:

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant;

(c) Time extensions may be granted by the board upon the second or subsequent request for time extension on a board permit, based on supportive documentation from the applicant; and

(d) Unless otherwise authorized, all time extensions shall be submitted to the Department prior to the expiration deadline.

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee demonstrates some sort of hardship or delay in initiating work on a particular project or if more time is required to complete the project as proposed. Moreover, the permittee should be able to demonstrate to the BLNR and Department that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project under the approved conditions.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. In the first and second approved time extension, the applicant requested an extension due to delays in obtaining the DOH – Solid Waste Permit.

The County's efforts to find another landfill site was extensive, time consuming, and unsuccessful. Presently, there does not appear to be any other option for a landfill on Kaua'i. Should the BLNR choose to approve this request; the applicant will have been provided (19) years to complete construction from the original approval date.

Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** the time extension request to provide the County of Kaua'i – Department of Public Works, Solid Waste Division until **August 24, 2031**, to complete construction of the Kekaha Landfill Phase II Expansion project, located at Kekaha, Waimea District, Island of Kaua'i, TMK (4) 1-2-002:009, subject to the following conditions:

1. That condition five (5) of CDUP KA-3625 is amended to provide that the applicant (County of Kaua'i – Department of Public Works, Solid Waste Division) will have until August 24, 2031 to complete construction; and
2. That all other conditions imposed by the Board under CDUP KA-3625, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

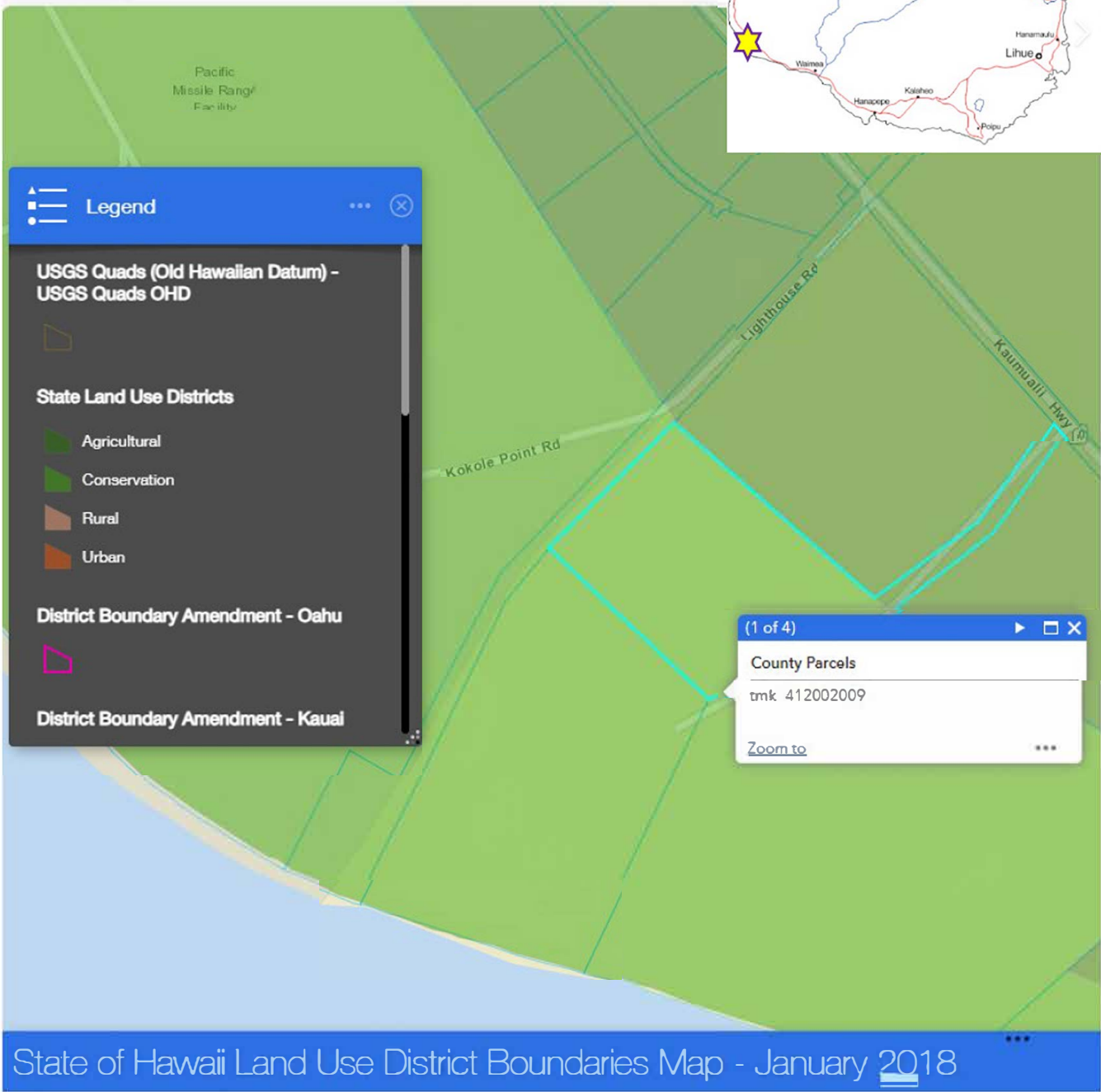


Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources



EXHIBITS

- A** Location Map
- B** Cross Section of the Kekaha Landfill Phase Lateral Expansion Plan
- C** County of Kaua'i Department of Public Works 3rd Time Extension Request



Luc.hawaii.gov

Exhibit A

NO	REVISIONS	CHK	DATE

DATE	OCTOBER 2007
PROJECT NO	MS044
FILED BY	Sam Seckin-AP
SHEET NO	

PREPARED BY

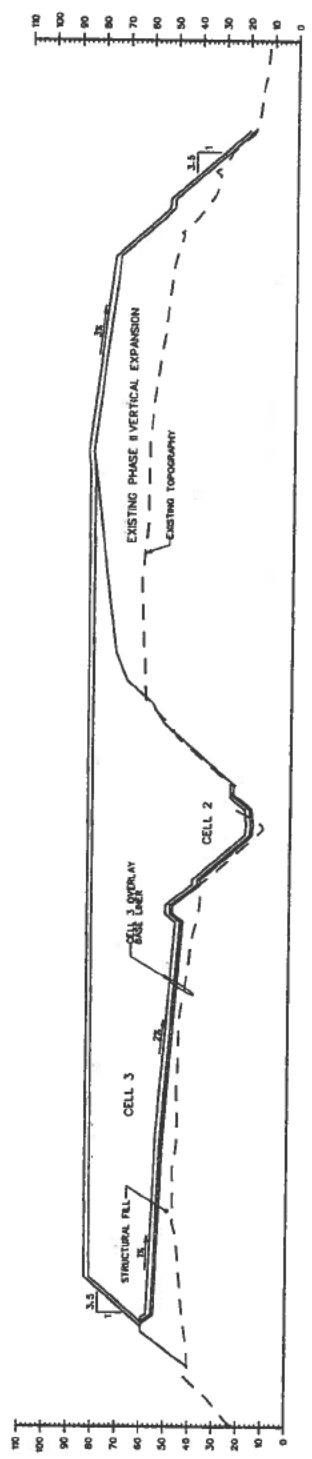


EarthTech
The International Company

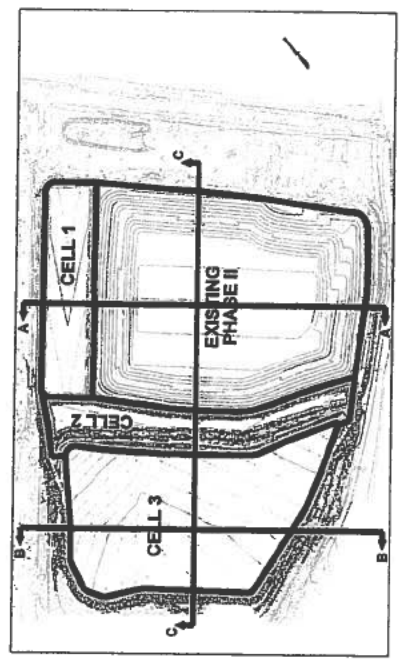
CROSS SECTI

KEKAHA LANDFILL PHASE II LATERAL EXPANSION
KEKAHA SANITARY LANDFILL
KUALA HAWAII

Figure 2-5



CROSS SECTION C-C



CROSS SECTION LOCATOR

Exhibit B



Small text at the bottom right corner, likely a project reference or contact information.

DEPARTMENT OF PUBLIC WORKS

TROY K. TANIGAWA, P.E., COUNTY ENGINEER
BOYD GAYAGAS, DEPUTY COUNTY ENGINEER



RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

2023 AUG 16 P 12: 20

August 14, 2023

DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Michael Cain, Administrator
State of Hawaii, Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813

Subject: Request for Time Extension for Construction of Phase II - Cell 3 for the Kekaha Municipal Solid Waste Landfill (KLF) under Conservation District Use Permit (CDUP) KA-3625; Tax Map Key (TMK) 1-2-002:001 (portion) and TMK 1-2-002:009, Waimea District, Kaua'i

Aloha Mr. Cain,

The County of Kaua'i (County), Department of Public Works (DPW), Solid Waste Division requests an extension to the timeline authorized by Time Extension (TE: KA-16-13) to complete construction of the KLF Phase II – Cell 3 authorized by CDUP KA-3625.

The KLF is operated upon a 98-acre site owned by the State of Hawai'i located in Kekaha, Kaua'i, Hawai'i. The KLF was established and has been in continuous operation through sequential operational phases and the addition of expansion cells since 1953. Phase I operations began in 1953 and were concluded in October 1993 when Phase II operations began.

On August 24, 2012, the Board of Land and Natural Resources (Board or BLNR) approved CDUP KA-3625, which authorized the County to expand and construct new expansion cells for the Phase II operations of the KLF: Cell 1, Cell 2, and Cell 3¹. Cell 1 was constructed in 2010 and expanded Phase II

¹ CDUP: KA-3625 issued August 28, 2012 (REF: OCCL:ARJ); Agenda for the Meeting of the BLNR on August 24, 2012, Submittals, Item K-1: DLNR-OCCL staff report to BLNR, August 24, 2012, recommending approval of CDUP KA-3625 (<https://files.hawaii.gov/dlnr/meeting/submittals/120824/K-OCCL-Submittals-K1a.pdf>); BLNR Minutes for the Meeting of the BLNR, August 24, 2012, Item K-1, approving CDUP KA-3625 (<https://files.hawaii.gov/dlnr/meeting/minutes/120824-minutes.pdf>).

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into the existing leachate lagoon and adjacent acreage.² Construction of Cell 2 was completed in 2020 and expanded Phase II into the valley area between the existing Phase I and Phase II operations. Cell 3 will expand Phase II operations directly over Phase I. Pursuant to CDUP KA-3625, the deadline for initiation of construction of the Phase II expansion was originally established as August 24, 2014, with a construction completion deadline of August 24, 2018³.

In April 2014, the County requested the first extension to CDUP KA-3625 due to delays in obtaining the Department of Health (DOH) Solid Waste permit for the project. On April 30, 2014, the DLNR OCCL granted the extension to extend the deadline for initiation of construction of the cells to August 24, 2016, with a construction completion deadline of August 24, 2020⁴.

In May 2016, the County requested a second extension to CDUP KA-3625 due to further delays in obtaining the DOH Solid Waste permit related to requests by the DOH for evaluations of alternative landfill designs. On July 8, 2016, the BLNR granted the second extension to extend the deadline for initiation of construction of the cells to August 24, 2018, with a construction completion deadline of August 24, 2022, with the condition that no further extensions be given to initiate construction⁵.

In 2018, the County began construction of Phase II, initiating construction of Cell 2 prior to the August 24, 2018, deadline authorized by the second extension approval (TE: KA-16-13). However, as Cell 3 construction has not been completed, the Phase II expansion is not yet complete, and DPW requests an extension to the construction completion timeline authorized by TE: KA-16-13/CDUP KA-3625.

² Although cited in the DLNR-OCCL staff report to BLNR, August 24, 2012, recommending approval of CDUP KA-3625, Cell 1 is not located within the State Conservation District and began operations in 2010.

³ CDUP: KA-3625 issued August 28, 2012. (REF: OCCL:ARJ).

⁴ DLNR-OCCL letter dated April 30, 2014, granting first time extension request for the initiation of and completion of construction deadlines on CDUP KA-3625, TE: KA-14-07.

⁵ DLNR-OCCL letter dated July 8, 2016, granting second time extension request for the initiation of and completion of construction deadlines on CDUP KA-3625, TE: KA-16-13; BLNR Meeting Agenda and Submittals for July 8, 2016, Submittal Item K-1: DLNR-OCCL staff report to BLNR, July 8, 2016, recommending approval of second time extension request for CDUP KA-3625 (<https://dlnr.hawaii.gov/wp-content/uploads/2016/01/K-1.pdf>); BLNR Meeting Minutes for July 8, 2016, Item K-1, approving second time extension request for CDUP KA-3625 (<https://dlnr.hawaii.gov/wp-content/uploads/2016/01/160708-minutes.pdf>).

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawaii Administrative Rules (HAR), § 13-5-43, which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, pursuant to HAR §13-5-43:

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline.

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

(f) Temporary variances are excluded from this provision.

BASIS FOR TIME EXTENSIONS:

"A time extension may be sought when a permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee demonstrates some sort of hardship or delay in initiating work on a particular project or if more time is required to complete the project as proposed. Moreover, the permittee should be able to demonstrate to the BLNR and Department that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project under the approved conditions [emphasis added]."⁶

⁶ DLNR-OCCL staff report to BLNR, July 8, 2016, recommending approval of request for second time extension to CDUP KA-3625, page 3.

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COUNTY'S GOOD FAITH EFFORT TO UNDERTAKE THE PROJECT UNDER THE APPROVED CONDITIONS and COUNTY OBLIGATIONS TO ITS CITIZENS

The County has pursued the expansion and construction of the permitted Cells 1 and 2 in good faith, and completed the work on both cells within the period provided under the permit, with the completion of construction of Cell 2 being the most recent in February 2020 – two and a half years before the permitted deadline. At current fill rates, the Phase II operations, including Cell 1 and Cell 2, are expected to reach permitted capacity in the Fall of 2026.

However, as expressed in the comments to the DLNR-OCCL staff report to BLNR recommending approval of CDUP KA-3625, it was the County's expressed intention to not start construction of Cell 3 unless a new landfill could not be sited and built during the life of Cells 1 and 2.

*"The County is responsible for ensuring that there is adequate landfill capacity to accommodate continued municipal solid waste disposal. There is no viable alternative to expansion into Cells 1 and 2 given the short timeline for the existing Phase II facility to reach capacity. A new landfill cannot be reasonably sited in less than 6 years and in response to the public opposition to the KLF expansion the County has stated that if the new landfill can be sited, permitted and built within the life of Cells 1 and 2, then Cell 3 will not necessarily proceed [emphasis added]."*⁷

Presently it is evident that a new landfill will not be permitted and opened within the life of Cell 1 and Cell 2, and thus it is necessary for the County to commence construction of Cell 3. Accordingly, the County requires the timeline authorized by TE: KA-16-13 to complete construction of the KLF Phase II – Cell 3 to be extended.

⁷ DLNR-OCCL staff report to BLNR, August 24, 2012, recommending approval of CDUP KA-3625. County response to comment no. 1 by Office of Hawaiian Affairs, regarding the draft Environmental Assessment not including consideration of suitable alternatives, page 5. [See also: AECOM (2007) Final EA, Kekaha Landfill Phase II Lateral Expansion, Kaua'i, Appendix D - Comments and Responses Agency Correspondence, State of Hawaii Office of Hawaiian Affairs - Response to Comments, County response to Comment No. 1, page 1 of 4 (.pdf document page 208).]

COUNTY EFFORTS TO ESTABLISH NEW LANDFILL

Since Hurricane Iniki, the need for a new landfill site has been known by the County, and the focus of efforts to locate an available site. A systematic site selection process for a new County landfill was initiated in 2000 when the County commissioned an initial siting study.⁸ That study, in two reports published in 2001 and 2002, identified eight potential sites across the island that were considered suitable for siting a new landfill. Following community inquiries, the County convened an advisory committee on landfill site selection in 2007 to involve the community in developing further siting selection criteria for a new County landfill. That committee met between 2008 and 2009 and developed additional community-based criteria from the 2001/2002 siting study⁹. Nevertheless, between 2009 and 2012 negotiations with owners of potential sites were unsuccessful due primarily to the inability of the County and any landowner to agree upon solutions to various objections.

In 2012, the County, yet again, commissioned another study¹⁰ to identify and reevaluate potential landfill sites on the island. This study essentially determined that the eight sites previously identified were the most appropriate landfill sites on the island, and established the Ma'alo site, west of the Kalepa Mountain Forest Reserve, as the best site for a new County landfill - first because it offered the longest-term solution to the County's waste disposal needs, and secondly because the owner of the site, the Hawai'i Agribusiness Development Corporation (ADC), was the only landowner on the island willing to site a landfill.

Following this determination, the County concentrated efforts to gain approval for the Ma'alo site from the various regulatory agencies with oversight over the approval. Given the proximity of the Ma'alo site to the Līhu'e airport, the Hawai'i Department of Transportation (HDOT) Airports Division had concerns regarding potential risks to the safety of flight operations from wild bird activity attracted to landfills. To address these concerns the County developed diversion and segregation programs, as well as wild bird control programs. In July 2018, the County published a Final Environmental Impact

⁸ Kaua'i Landfill Siting Study Report by Earth Tech Inc. 2001 – 2002.

⁹ Mayor's Advisory Committee on Landfill Site Selection Report by R.M. Towhill, March 2009.

¹⁰ New Kaua'i Landfill Siting Study Report by AECOM Technical Services Inc., July 2012.

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Statement regarding the site¹¹. Nonetheless, by the fall of 2021, the County was unable to obtain HDOT Airports concurrence on the selection of the site for use as a landfill, and the effort was discontinued.

In January 2023, the County executed a right-of-entry with the ADC to begin investigations and evaluations of a different potential landfill site on the Niu Valley plain approximately two miles from the current KLF. Investigation and evaluation of the Niu Valley site is currently ongoing.

Despite the County's good faith efforts to secure a site for a new landfill, this has not occurred. Siting a municipal landfill on Kauai is extremely challenging due to the lack of available suitable lands with willing landowners, coupled with environmental, geological, and hydrological issues, and cultural and community considerations. Accordingly, as it is evident that a new landfill will not be permitted and opened within the life of Cell 1 and Cell 2, Cell 3 is essential to the County's obligation to assure adequate landfill capacity to accommodate continued municipal solid waste disposal.

COUNTY EFFORTS TO FORGO THE NEED FOR CELL 3

As expressed in the DLNR-OCCL staff report to BLNR recommending approval of CDUP KA-3625, the County made a commitment to its citizens to not construct the Cell 3 unless a new landfill could not be sited and opened¹². Due to the lengthy process, it has taken and continues to take to site a new landfill (see discussion above), the County has made extensive efforts to reduce the waste stream and manage and conserve airspace at the KLF in an attempt to provide adequate time to site and permit a new landfill. These efforts have included securing incremental increases to the permitted heights of Phase II, as well as a successful diversion program that has reduced waste into the landfill by 42% over the past eight years. In addition to these efforts, the County has actively initiated planning to further implement curbside recycling, the development of a materials recovery facility, the diversion of construction and demolition waste, as well as considering conversion technologies that could further preserve airspace at the KLF.

¹¹ Final Environmental Impact Statement New Kaua'i Landfill, Ma'alo, Kaua'i, Hawai'i by R.M. Towhill, 2018.

¹² DLNR-OCCL staff report to BLNR, August 24, 2012, County response to comment no. 1 by Office of Hawaiian Affairs, page 5.

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Importantly, the County's successful efforts have postponed the need for Cell 3 beyond prior projections. Prior to the 2012 CDUP KA-3625 approval and the expansion of Cells 1 and 2, the projected capacity for Phase 2 was anticipated to be reached by January 2009. As was stated within the DLNR-OCCL summary report to BLNR recommending approval of CDUP KA-3625, Cells 1 and 2 were anticipated to add 6.6 years of additional capacity (i.e. through 2016) and Cell 3 was projected to add 5.4 years of additional capacity (i.e. through 2021).¹³ Currently, as stated above, at current fill rates Phase II, including Cell 1 and Cell 2, is projected to reach permitted capacity in the Fall of 2026. Therefore, the County has successfully managed KLF to accommodate the County's MSW needs for a longer extent than originally projected. Nevertheless, the current TE: KA-16-13/CDUP KA-3625 requirement to complete Phase II expansion construction by August 24, 2022, penalizes the County for its successful management and conservation efforts to forestall the need for Cell 3, now that it is evident the construction of Cell 3 must proceed.

BOARD AND CHAIRPERSON AUTHORITY AND DISCRETION

Pursuant to the rules the Board may clearly grant time extensions subsequent to a second request for a time extension of a board permit based upon supportive documentation from the applicant.¹⁴ Additionally, as the Board Chairperson has the authority to prescribe terms and conditions to board permits¹⁵, the County believes that the information provided above regarding the County's successful construction of Cell 2 within the permitted time frame, its good faith and continuing effort to secure a site for a new landfill, its successful and continuing efforts to manage and conserve airspace at the KLF, and the expressed intent of the County to not proceed with construction of Cell 3 unless a new

¹³ *"The County believes that a new landfill cannot be reasonably be sited in less than 6 years and if there are significant regulatory, technical, or community issues to overcome, siting a new facility could take longer. Although the County does not expect that 12 years will be required to site a new landfill, if Cell 3 is developed for any amount of waste, filling would continue until the Cell has reached capacity, expected to occur in 2021."* DLNR-OCCL staff report to BLNR, August 24, 2012, recommending approval of CDUP KA-3625. County response to comment no. 5 by Office of Hawaiian Affairs, regarding why 5-6 years is need for the County to site, design, and construct a new landfill, page 6. [See also: AECOM (2007) Final EA, Kekaha Landfill Phase II Lateral Expansion, Kaua'i, Appendix D - Comments and Responses Agency Correspondence, State of Hawaii Office of Hawaiian Affairs - Response to Comments, County response to Comment No. 1, page 3 of 4 (.pdf document page 210).]

¹⁴ HAR § 13-5-43 (c).

¹⁵ HAR § 13-5-42 (a) (26).

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landfill could not be sited and opened, can allow the Board and Chairperson to grant a further extension to the deadline to complete construction under CDUP KA-3625.

CONCLUSION AND REQUEST

Despite the County's proper efforts to forego the need for Cell 3, and efforts to secure a site for a new landfill, because of the difficulty and uncertainty in affirmatively securing a known site for a new landfill, the County requires the time extension so that construction of Cell 3 remains permitted under CDUP KA-3625. This permitted use will assure that the County can fulfill its obligation to provide adequate landfill capacity to accommodate continued municipal solid waste disposal. Accordingly, the County respectfully requests the Board to extend CDUP KA-3625 to allow completion of the construction of Cell 3 under the permit. As the County estimates it will take a minimum of at least eight years to develop final construction documents, obtain other required permitting, and solicit and procure construction for Cell 3, the County requests an extension to complete Phase II construction by August 24, 2031.

Thank you for your devoted service and consideration of the County's request. Pursuant to HAR §13-5-43 (e), as this request is after the expiration deadline, but within one year after the expiration deadline, please forward this request to the Board for review of the supportive information provided above. Allison Fraley with our Solid Waste Division is heading this request and can answer any questions or provide any additional information you may require. Please feel free to contact her at (808) 241-4837 or afraley@kauai.gov.

Sincerely,

Troy K
Tanigawa

Troy K. Tanigawa, P.E.
County Engineer

Digitally signed by Troy K
Tanigawa
Date: 2023.08.14
12:12:12 -10'00'