

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP83-358
))
C. EARL STONER, JR. ON BEHALF OF)	FINDINGS OF FACT,
S & F LAND CO.)	CONCLUSIONS OF LAW, AND
)	DECISION AND ORDER
To Amend The Special Permit For A)	
Time Extension To Continue To)	
Operate A Baseyard, Storage Area,)	
And Related Uses On Approximately)	
17.52 Acres Of Land Situate Within)	
The State Land Use Agricultural)	
District At Puunene, Wailuku, Maui,)	
Tax Map Key No.: 3-8-05: Portion of)	
Parcel 19)	
_____)	

LAND USE COMMISSION
STATE OF HAWAII
FEB 6 9 45 AM '96

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

On August 23, 1994, C. Earl Stoner, Jr., on Behalf of S & F Land Co. (hereinafter "Applicant"), requested a time extension for the Special Permit by letter to the County of Maui Planning Department ("hereinafter "Planning Department"). The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On August 23, 1994, the Applicant filed a request for time extension for the Special Permit (hereinafter "Fourth Amendment"), with the Planning Department.
2. On August 22, 1995, the County of Maui Planning Commission (hereinafter "Planning Commission") conducted the

public hearing on the Fourth Amendment. The Planning Commission did not receive any public testimony on the Fourth Amendment.

3. On August 22, 1995, after due deliberation, the Planning Commission recommended approval of the Fourth Amendment to the LUC, subject to six conditions that would replace all previous conditions of the Special Permit.

4. On October 30, 1995, a copy of the complete record of the Planning Commission's proceedings were received for consideration by the LUC.

5. On November 30, 1995, the Fourth Amendment came before the LUC at its meeting in Kailua-Kona, Hawai'i. No public testimony was received by the LUC.

DESCRIPTION OF SUBJECT PROPERTY

6. The subject property, consisting of approximately 17.52 acres, is identified as TMK: 3-8-05: portion of 19 (hereinafter "Property").

7. The Property is located on the southeast corner of the intersection of Mokulele Highway and Waiko Road.

8. The Property is currently being utilized as a baseyard and storage area.

9. The Applicant has represented before the Planning Commission that the asphalt batching plant, previously approved as a permitted use within the Property, no longer operates on the Property.

10. The Land Study Bureau Detailed Land Classification Report designates the Property as Class "A" lands.

11. The Property is surrounded by a kiawe grove, cane fields, and an intermittent stream.

DESCRIPTION OF PROPOSED AMENDMENT TO SPECIAL PERMIT

12. Pursuant to Condition Number 2 of the Findings of Fact, Conclusions of Law, and Decision and Order filed on August 30, 1989, in the subject docket, the Special Permit was valid for a period of five years. Therefore, the Special Permit had an expiration date of August 30, 1994.

13. The Applicant filed a request for time extension with the Planning Department on August 24, 1994.

14. Condition Number 3 of the Findings of Fact, Conclusions of Law, and Decision and Order filed on August 30, 1989, required the Applicant to file a Community Plan Amendment application with the Planning Department and a District Boundary Amendment petition with the LUC within two years from April 11, 1989.

15. In 1991, the Applicant was prepared to submit a Community Plan Amendment application to the Planning Department. However, the Applicant was advised by the then planning director not to file the application since the comprehensive review of the Kihei-Makena Community Plan was about to be initiated.

16. The Applicant presented its proposed Community Plan Amendment during the comprehensive review to the citizens advisory group and the Planning Department.

17. The comprehensive review of the Kihei-Makena Community Plan has taken longer than anticipated and the Maui County Council is currently considering the Community Plan

amendments. The Maui County Council is not scheduled to review the Community Plan amendments until late 1995 or early 1996.

18. Due to the extended timeframe for the comprehensive review, the Planning Department has subsequently advised the Applicant to submit applications for a Community Plan Amendment and Change in Zoning with the Planning Department and to file a District Boundary Amendment petition with the LUC.

19. On June 15, 1995, the Applicant submitted the applications for a Community Plan Amendment and Change in Zoning with the Planning Department. The Applicant anticipates filing a District Boundary Amendment petition with the LUC in January, 1996.

20. The extended timeframe for the comprehensive review has impacted the Applicant's compliance with Condition Number 2, since the Applicant anticipated that the Community Plan amendment would be completed prior to the August 30, 1994 expiration date.

STATE AND COUNTY PLANS AND PROGRAMS

21. The State Land Use District Classification of the Property is Agricultural, as reflected on State Land Use District Boundary Map M-5 (Wailuku).

22. The Kihei-Makena Community Plan of the County of Maui designates the area a Agriculture. The comprehensive review of the Kihei-Makena Community Plan recommends that the area be designated for Light Industrial Use.

23. Although the Property is located within the State Coastal Zone Management Program Area, pursuant to chapter 205A,

Hawai'i Revised Statutes (hereinafter "HRS"), it is not within the Special Management Area as established by the County of Maui.

SUMMARY OF COUNTY AND STATE AGENCIES COMMENTS

24. The County of Maui Department of Public Works and Waste Management had no comments to offer.

25. The County of Maui Board of Water Supply commented that it had no objections to the time extension and that it has previously agreed with the Applicant that processing of future building permits would be under the conditions that building would be within available fire and domestic flow from existing waterline improvements, and that there is adequate fire protection.

26. The County of Maui Fire Department did not provide any comments.

27. The State Department of Health commented that because the asphalt batching plant operation has ceased, no air pollution control permits would be required.

28. The State Department of Transportation commented that it did not have any objections to the time extension and that the Applicant should be informed that Mokulele Highway is planned for future widening and may require additional right-of-ways which adjacent landowners should commit to dedicating when details have been determined.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

29. The Planning Department, in its report to the Planning Commission, represented that the uses on the Property were previously considered as an "unusual and reasonable use."

The report continued to state that "Inasmuch as the land area and uses have not been expanded, increased on size, or changed to another special use,..." the determination that the uses permitted under the Special Permit are "unusual and reasonable uses" is still valid.

PLANNING COMMISSION RECOMMENDATION

30. At its meeting of August 22, 1995, the Planning Commission, after due deliberation, recommended approval of the Fourth Amendment to the LUC, subject to six conditions, which are recommended to replace all previous conditions of the Special Permit. The six recommended conditions read as follows:

1. That the Land Use Commission Special Permit shall be limited to the 17.52 acre site with the following uses:
 - a. the operation of a baseyard for storage of construction equipment and materials;
 - b. fabrication of large construction material items;
 - c. storage of containerized household storage and freight goods;
 - d. storage of parts and equipment and minor fabrication for a manufacturer of outrigger canoes;
 - e. storage of ceramic goods and fabrication for a decorative and construction ceramics company;
 - f. storage of contract appliances for a restaurant supply company; and
 - g. storage of disposal containers including the welding and maintenance of containers.
2. That the Land Use Commission Special Permit shall expire on August 30, 1997.
3. That the conditions of this State Special Use Permit shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Land Use Commission that there is prima facie evidence that a breach has occurred, the permit shall be automatically suspended pending a hearing on the continuity of such State Special Permit, provided that written

request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Land Use Commission may revoke said State Special Permit.

4. That this permit shall be non-transferable unless prior approval has been obtained for the Maui Planning Commission and the State Land Use Commission.
5. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject State Special Use Permit and shall defend, indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
6. That full compliance with all applicable governmental requirements shall be rendered.

CONCLUSIONS OF LAW

The Applicant's request to allow a time extension for the Special Permit is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Applicant's request for a time extension for the Special Permit permitting operation of a baseyard, storage area, and related uses on approximately 17.52 acres of land, identified as TMK: 3-8-05: portion of 19, and shown on Exhibit "A", attached hereto and incorporated by reference herein, is and shall be granted, subject to the

following conditions, which supersede all previous conditions imposed in this Special Permit:

1. That the Land Use Commission Special Permit shall be limited to the 17.52 acre site with the following uses:
 - a. the operation of a baseyard for storage of construction equipment and materials;
 - b. fabrication of large construction material items;
 - c. storage of containerized household storage and freight goods;
 - d. storage of parts and equipment and minor fabrication for a manufacturer of outrigger canoes;
 - e. storage of ceramic goods and fabrication for a decorative and construction ceramics company;
 - f. storage of contract appliances for a restaurant supply company; and
 - g. storage of disposal containers including the welding and maintenance of containers.
2. That the Land Use Commission Special Permit shall expire on August 30, 1997.
3. That the conditions of this State Special Permit shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Land Use Commission that there is *prima facie* evidence that a breach has occurred, the permit shall be automatically suspended pending a hearing on the continuity of such State Special Permit, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such

notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Land Use Commission may revoke said State Special Permit.

4. That this permit shall be non-transferable unless prior approval has been obtained for the Maui Planning Commission and the State Land Use Commission.

5. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject State Special Use Permit and shall defend, indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

6. That full compliance with all applicable governmental requirements shall be rendered.

7. The applicant shall file with the Land Use Commission, a district boundary amendment petition, pursuant to chapter 205, Hawai'i Revised Statutes, for the subject property. The district boundary amendment petition shall be filed no later than August 30, 1997.

DOCKET NO. SP83-358 - C. EARL STONER, JR. ON BEHALF OF S & F LAND COMPANY

Done at Honolulu, Hawaii, this 6th day of February 1996, per motions on November 30, 1995 and February 2, 1996.

LAND USE COMMISSION
STATE OF HAWAII

By *Allen K. Hoe*
ALLEN K. HOE
Chairperson and Commissioner

By (absent)
TRUDY K. SENDA
Vice Chairperson and Commissioner

By *Rupert K. Chun*
RUPERT K. CHUN
Commissioner

By *M. Casey Jarman*
M. CASEY JARMAN
Commissioner

By *Lloyd F. Kawakami*
LLOYD F. KAWAKAMI
Commissioner

By *Merle A. K. Kelai*
MERLE A. K. KELAI
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

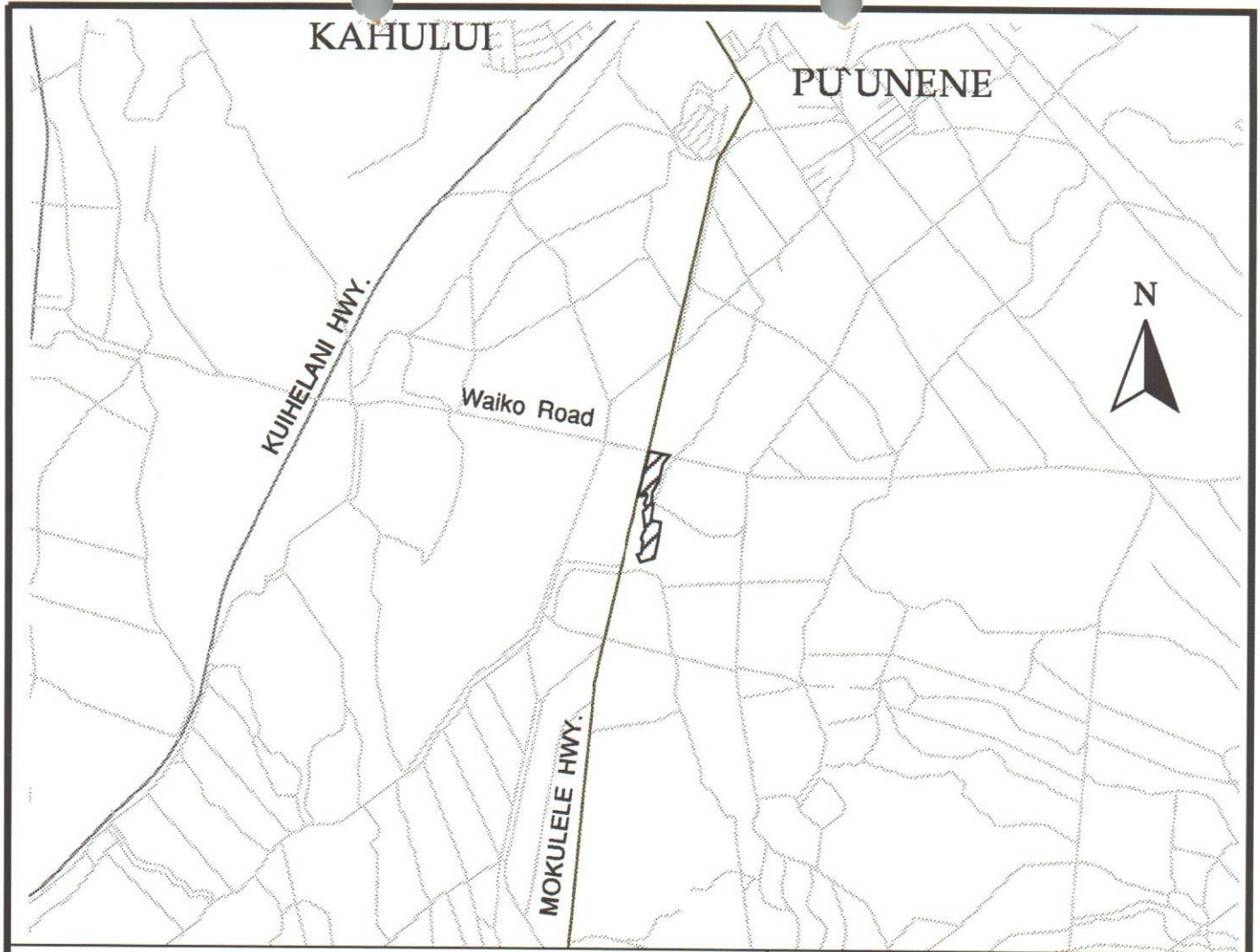
Filed and effective on
February 6, 1996

Certified by:

Elton Wada
Executive Officer

By (absent)
JOANN N. MATTSON
Commissioner

By *Elton Wada*
ELTON WADA



DOCKET NO. SP83-358
C. EARL STONER, JR., on
Behalf of S&F Land Company

LOCATION MAP

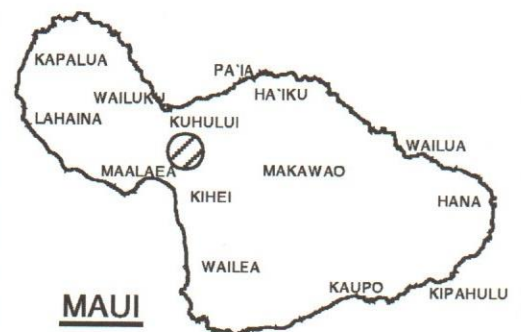
TAX MAP KEY: 3-8-05: por. 19

PU'UNENE, WAILUKU, MAUI



PERMIT AREA

2000 0 2000 4000 6000 8000 10000 Feet



MAUI

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C. EARL STONER, JR. ON BEHALF OF)
S & F LAND CO.)
DOCKET NO. SP83-358
CERTIFICATE OF SERVICE
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To Amend The Special Permit For A)
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Operate A Baseyard, Storage Area,)
And Related Uses On Approximately)
17.52 Acres Of Land Situate Within)
The State Land Use Agricultural)
District At Puunene, Wailuku, Maui,)
Tax Map Key No.: 3-8-05: Portion of)
Parcel 19)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. DAVID W. BLANE, Director of Planning
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JEFFREY SCHMIDT, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. C. EARL STONER, JR.
S & F Land Co., Inc.
P. O. Box 806
Puunene, Hawaii 96784

DATED: Honolulu, Hawaii, this 6th day of February 1996.


ESTHER UEDA
Executive Officer