

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
)  
C. EARL STONER, JR. ON BEHALF )  
OF S & F LAND CO. )  
)  
To Amend the Special Permit For a )  
Time Extension to Continue to )  
Operate a Baseyard, Asphalt )  
Batching Plant and Related Uses on )  
Approximately 17.52 Acres of Land )  
Situate Within the Agricultural )  
District at Puunene, Wailuku, )  
Maui, Tax Map Key Number: 3-8-05: )  
Portion of Parcel 19 )  
\_\_\_\_\_ )

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

Aug 30 8 01 AM '89  
LAND USE COMMISSION  
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

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 S & F LAND CO. )	C. EARL STONER, JR., ON
)	BEHALF OF S & F LAND CO.
To Amend the Special Permit For a )	
Time Extension to Continue to )	
Operate a Baseyard, Asphalt )	
Batching Plant and Related Uses on )	
Approximately 17.52 Acres of Land )	
Situate Within the Agricultural )	
District at Puunene, Wailuku, )	
Maui, Tax Map Key Number: 3-8-05: )	
Portion of Parcel 19 )	
_____ )	

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

C. Earl Stoner, Jr., on Behalf of S & F Land Co.  
(hereinafter the "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Title 15, Chapter 15, Subchapter 12 of the Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"). The Land Use Commission (hereinafter "Commission"), having considered the entire record on this matter, and good cause appearing therefrom, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

Procedural Matters

1. The Special Permit Amendment request was initiated by letter dated January 24, 1989 from Petitioner to the County of Maui Planning Department.

2. On April 11, 1989 the County of Maui Planning Commission conducted a meeting on the subject request.

3. On April 11, 1989, the Maui Planning Commission voted to recommend approval of the request subject to ten conditions to replace all previous conditions.

4. The record of the County's proceedings on the request was received by the Commission on June 28, 1989.

Description of Property

5. The subject property is located within the State Land Use Agricultural District, at the southeast corner of Mokulele Highway-Waiko Road intersection in Puunene, Wailuku, Maui, Tax Map Key Number 3-8-05: portion of parcel 19, and consists of approximately 17.52 acres (hereinafter referred to as the "Property").

6. The Property is owned by A & B Properties, Inc. as of March 30, 1989. Prior to this date, the Property was owned by Alexander and Baldwin, Inc. from which authorization was obtained by Petitioner to submit the original Special Permit request.

7. The Property consists of two adjoining sections, one of which is located adjacent to the intersection of Mokulele Highway and Waiko Road. The remaining section is located south of the first section, and is approximately 400 feet east of Mokulele Highway separated from the first section by a cane haul road.

8. The first section of the Property is used for various construction related storage and limited fabrication while the remaining section is utilized for an asphalt batching plant.

9. There are no trees on the Property. Surrounding areas include a kiawe grove, cane fields and an intermittent stream.

10. The Property has been used for industrial-type facilities for the past 30 years.

11. The Property is designated Agricultural in the County of Maui Wailuku-Kahului Community Plan and is outside of the Special Management Area.

12. According to the Land Study Bureau, the Property is rated "A" in overall agricultural productivity.

13. Access to the Property is provided by Waiko Road through an existing service road. Waiko Road has a pavement width of 24 feet within a 30 foot wide right-of-way.

14. All other infrastructure such as wastewater disposal, electricity, telephone service, water and fire protection are or will be made available to the Property.

Previous Special Permits Approved for the Property and Proposal for Time Extension

15. On February 13, 1984, the Commission granted the original Special Use Permit for the operation of a baseyard for storage of construction related equipment and materials, and household storage subject to eight conditions as follows:

- "1. That the Special Use Permit shall be limited to the operation of a baseyard for household storage and storage of equipment and materials that are construction-related and that any additional proposals for industrial uses such as fabrication shall be subject to review and approval by the Maui Planning Commission.
- "2. That the Special Use Permit shall be valid for a period of five (5) years from the date of the granting of the permit. However, further extensions may be granted upon favorable review and approval by the Planning Commission and the Land Use Commission.
- "3. That full compliance with the attached comments of the Department of Water Supply dated September 16, 1983 shall be rendered.
- "4. That full compliance with the attached comments of the Department of Public Works dated September 20, 1983 shall be rendered except items 2 and 5.
- "5. That the Special Use Permit shall be non-transferable.
- "6. That the final landscape planting plan shall be submitted to the Planning Department for review and approval.
- "7. That a comprehensive sign program for the site shall be submitted to the Planning Department for review and approval.
- "8. That all other State and County requirements shall be met."

16. On December 17, 1984, the Commission approved a first amendment to the Special Use Permit to allow the following additional uses:

- a. Storage of parts and equipment and minor fabrication for a manufacturer of outrigger canoes.
- b. Storage of ceramic goods and fabrication for a decorative and construction ceramics company.

- c. Storage of contract appliance for a restaurant supply company.
- d. Storage of disposal containers including the welding and maintenance of containers.

17. The first amendment was approved subject to an additional condition as follows: "That an application for a district boundary amendment from Agricultural to Urban District be filed with the Land Use Commission within three years from this date, subject to owners consent."

To date, the Petitioner has been unable to obtain this consent from the landowners, Alexander and Baldwin, Inc.

18. On August 13, 1987, the Commission approved a second amendment to the Special Permit to establish a portable asphalt batching plant and the storage of related equipment and materials subject to the following 10 additional conditions:

- "1. That the operation of the batching plant shall be valid for a period of one (1) year subject to further extension by the Planning Commission.
- "2. That the operation of the batching plant shall begin within six (6) months of the date of this approval.
- "3. That a landscape planting plan shall be submitted for review and approval by the Planning Department within three (3) months of the granting of this approval.
- "4. That this approval shall be non-transferable.
- "5. That full compliance with all governmental requirements shall be rendered.
- "6. That in the event any historic, archaeological or cultural sites, remains, artifacts or resources are discovered during the preparation, work shall stop and the State Historic Office, Department of Land

and Natural Resources, and County Planning Department shall be duly notified for advisement on appropriate action.

- "7. The conditions of this approval shall be self-enforcing and, accordingly, the approval shall be suspended from and after the time of breach of same. Upon due notice by the Planning Department that such a breach has occurred the applicant/permittee shall be entitled to a hearing on the restoration of the permit, provided that a written request for such hearing is filed with the department within ten (10) days of the date of receipt of said notice of breach. If no appeal is duly filed, the Planning Commission shall revoke said approval.
- "8. That a left turn lane shall be installed on Mokulele Highway, and its intersection with Waiko Road, within two years of the issuance of this approval.
- "9. That truck traffic generated by the project shall be restricted as much as possible from left turn movement at the intersection of Waiko Road and Mokulele Highway between the peak hours of 7:00 a.m. - 8:00 a.m. and 5:00 p.m. - 6:00 p.m. until the left turn lane on Mokulele Highway is constructed and operational.
- "10. That full compliance with requirements of the Department of Fire Control shall be rendered. Said requirements may include provisions for: 1) at least two 160 lb. UL Approved Roll on dry chemical fire extinguishers, 2) the new waterline for the baseyard, to accommodate fire protection provisions for the batching plant, and 3) final review of plans by the Department of Fire Control during the building permit review process."

19. Petitioner is requesting a third amendment to the Special Permit to extend the term of the Special Permit by five years.

Summary of Agency Concern

20. In its April 2, 1989, the County Department of Water Supply stated that:

"Fire flow test of the private fire system at the subject site indicates a flow of 730 gallons per second. Therefore, we recommend that the water system in the area be upgraded to provide adequate fire protection for the subject project based upon the present light industrial uses."

21. No other agency comments were received.

#### Conformance With Special Permit Tests

22. The uses are not listed as permitted uses within the State Agricultural District. However, the Property has been used for limited industrial type uses through Special Use Permits since 1969. In addition, the Property was used as a concrete batching plant by the plantation prior to 1969.

23. The Property is surrounded by canefields and other industrial type uses (cabinet shop and wood treatment company) and therefore, the project is not anticipated to significantly impact surrounding areas.

24. The uses previously met the five tests of the Commission Rules Section 15-15-95(b) for unusual and reasonable uses within the State Agricultural District. Since the permitted uses will not be expanded, the uses still meet the five tests.

#### Planning Commission Recommendation

25. On April 11, 1989, the Maui Planning Commission voted to recommend approval of the time extension subject to 10 conditions as follows:

"1. That the Land Use Commission Special Permit shall be limited to 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;
- g. storage of disposal containers including the welding and maintenance of containers; and
- h. the operation of an asphalt batching plant.

"2. That the Land Use Commission Special Use Permit shall be valid for five (5) years only.

"3. That an application for a Community Plan Amendment from Agricultural Use to Light Industrial Use shall be filed with the Planning Department and a District Boundary Amendment from the Agricultural District to the Urban District shall be filed with the State Land Use Commission within two (2) years from April 11, 1989.

"4. That full compliance with the condition of the Department of Water Supply, as identified in their letter dated April 3, 1989, shall be rendered, unless written verification has been obtained that this condition has been either modified or deleted.

"5. That a left turn lane shall be installed on Mokulele Highway, and its intersection with Waiko Road by August 11, 1989.

"6. That truck traffic generated by the project shall be restricted as much as possible from the intersection of Waiko Road and Mokulele Highway between the peak hours of 7:00 a.m. - 8:00 a.m. and 5:00 p.m. - 6:00 p.m. until the left turn lane on Mokulele Highway is constructed and operational.

"7. 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 Planning 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 Use 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 Planning Commission may revoke said State Special Use Permit.

"8. The subject State Special Use Permit shall not be transferred without the prior written approval of the Planning Commission. However, in the event that a contested case hearing preceded issuance of said State Special Use Permit, a public hearing shall be held upon due notice, including actual written notice of the last known addresses of parties to said contested case and their counsel.

"9. 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 hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

"10. That full compliance with all applicable government requirements shall be rendered."

26. In a letter from the Planning Department to the Commission dated June 23, 1989, the Planning Director points out that:

"It should be noted that the permit holder was unable to obtain the owner's consent to proceed with a request for a District Boundary Amendment. In turn we have limited the Special Use Permit to five (5) years only with no extensions, and required the permit holder to apply for a District Boundary Amendment as well as a Community Plan Amendment within two (2) years from April 11, 1989."

#### CONCLUSIONS OF LAW

The Special Permit request to extend the term of the Special Permit is reasonable and non-violative of Section 205-6, Hawaii Revised Statutes, and the proposed time extension, subject to the conditions in the Order, 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 a five-year time extension to Special Permit Docket Number 83-358 by C. Earl Stoner, Jr., on Behalf of S & F Land Co., to continue to allow the operation of a baseyard, asphalt batching plant and related uses on the Property, is hereby approved, subject to the following conditions which replace all previous conditions of the Special Permit:

1. That the Land Use Commission Special Permit shall be limited to 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;
  - g. storage of disposal containers including the welding and maintenance of containers; and

- h. the operation of an asphalt batching plant.
2. That the Land Use Commission Special Use Permit shall be valid for five (5) years only.
  3. That an application for a Community Plan Amendment from Agricultural Use to Light Industrial Use shall be filed with the Planning Department and a District Boundary Amendment from the Agricultural District to the Urban District shall be filed with the State Land Use Commission within two (2) years from April 11, 1989.
  4. That full compliance with the condition of the Department of Water Supply, as identified in their letter dated April 3, 1989, shall be rendered, unless written verification has been obtained that this condition has been either modified or deleted.
  5. That a left turn lane shall be installed on Mokulele Highway, and its intersection with Waiko Road by August 11, 1989.
  6. That truck traffic generated by the project shall be restricted as much as possible from the intersection of Waiko Road and Mokulele Highway between the peak hours of 7:00 a.m. - 8:00 a.m. and 5:00 p.m. - 6:00 p.m. until the left turn lane on Mokulele Highway is constructed and operational.
  7. 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 Planning

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 Use 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 Planning Commission may revoke said State Special Use Permit.

8. The subject State Special Use Permit shall not be transferred without the prior written approval of the Planning Commission. However, in the event that a contested case hearing preceded issuance of said State Special Use Permit, a public hearing shall be held upon due notice, including actual written notice of the last known addresses of parties to said contested case and their counsel.

9. 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 hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

10. That full compliance with all applicable government requirements shall be rendered.

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

Done at Honolulu, Hawaii, this 30th day of August 1989,  
per motions on July 27, 1989 and August 25, 1989.

LAND USE COMMISSION  
STATE OF HAWAII

By (absent)  
\_\_\_\_\_  
RENTON L. K. NIP  
Chairman and Commissioner

By Lawrence F. Chun  
\_\_\_\_\_  
LAWRENCE F. CHUN  
Vice Chairman and Commissioner

By (abstain)  
\_\_\_\_\_  
SHARON R. HIMENO  
Commissioner

By Allen K. Hoe  
\_\_\_\_\_  
ALLEN K. HOE  
Commissioner

By Allen Y. Kajioha  
\_\_\_\_\_  
ALLEN Y. KAJIOHA  
Commissioner

By Eusebio Lapenia, Jr.  
\_\_\_\_\_  
EUSEBIO LAPENIA, JR.  
Commissioner

By James M. Shinno  
\_\_\_\_\_  
JAMES M. SHINNO  
Commissioner

By Elton Wada  
\_\_\_\_\_  
ELTON WADA  
Commissioner

By Frederick P. Whittemore  
\_\_\_\_\_  
FREDERICK P. WHITTEMORE  
Commissioner

Filed and effective on  
August 30, 1989

Certified by:

Robert Lee  
\_\_\_\_\_  
Executive Officer

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 S & F LAND CO. )	C. EARL STONER, JR., ON
)	BEHALF OF S & F LAND CO.
To Amend the Special Permit For a )	
Time Extension to Continue to )	
Operate a Baseyard, Asphalt )	
Batching Plant and Related Uses on )	
Approximately 17.52 Acres of Land )	
Situate Within the Agricultural )	
District at Puunene, Wailuku, )	
Maui, Tax Map Key Number: 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. CHRISTOPHER L. HART, Planning Director  
Planning Department, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

CERT. DEBORAH MACER CHUN, ESQ., Attorney for Petitioner  
Kiefer, Oshima, Chun & Webb  
841 Bishop Street, 4th Floor  
Honolulu, Hawaii 96813

CERT. C. EARL STONER, JR.,  
ON BEHALF OF S & F LAND COMPANY  
P. O. Box 806  
Puunene, Hawaii 96784

DATED: Honolulu, Hawaii, this 30th day of August 1989.

  
ESTHER UEDA  
Executive Officer