

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of )	DOCKET NO. SP94-387
FONG CONSTRUCTION )	FINDINGS OF FACT,
To Establish a Construction )	CONCLUSIONS OF LAW, AND
Baseyard and Accessory Uses on )	DECISION AND ORDER
Approximately 31.164 Acres of Land )	
within the State Land Use )	
Agricultural District at Waikapu, )	
Maui, Hawai'i, TMK 3-8-07: 89 and )	
por. 102 )	
_____ )	

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LAND USE COMMISSION  
STATE OF HAWAII

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

Fong Construction ("Applicant") initiated this proceeding, pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules. The Land Use Commission ("LUC"), having considered the entire record on this matter, hereby makes the following findings fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 24, 1993, a Special Permit application ("Permit") to establish a construction baseyard and accessory uses to service the construction and heavy equipment industry on approximately 23.164 acres at Waikapu, Maui, Hawai'i, was filed by the Applicant with the County of Maui Planning Department ("Planning Department").

2. On December 2, 1993, the Department of Public Works certified the Permit as complete and ready for processing.

3. By letter dated July 11, 1994, the Applicant amended the Permit to include an additional 8 acres for a total area of approximately 31.164 acres under the Permit.

4. On October 25, 1994, the County of Maui Planning Commission ("Planning Commission") conducted a public hearing on the Permit pursuant to a public notice published in the Maui News on September 27, 1994.

5. On October 25, 1994, the Planning Commission recommended approval of the Permit to the LUC, subject to 22 conditions.

6. On November 18, 1994, a portion of the Planning Commission's record on the Permit was received and accepted for consideration by the LUC.

7. On December 12, 1994, additional supporting documents to the record were received and accepted for consideration by the LUC.

8. On December 15, 1994, the LUC held a meeting on the Permit in Lanai City, Lanai, at which time it admitted into evidence, without objection, a letter dated December 9, 1994, from David Nobriga transmitting his letter to the Planning Commission dated October 24, 1994. The LUC also admitted into evidence, without objection, a letter from Hideo Kawahara to the Planning Department dated December 6, 1994.

9. On December 15, 1994, and by a written Order Remanding Special Use Permit, the LUC remanded the Permit to the



Planning Commission for further proceedings to supplement the record and address the Permit's conformance to the Special Use Permit criteria for an "unusual and reasonable" use within the State Land Use Agricultural District pursuant to section 15-15-95(b), HAR.

10. On February 28, 1995, the Planning Commission deferred action on the remand until its meeting on March 13, 1995, at which time after due deliberation the Planning Commission voted to forward the record of its remand proceedings to the LUC.

11. On July 25, 1995, the record of the Planning Commission's remand proceedings was received and accepted for consideration by the LUC.

12. On August 25, 1995, the LUC held a meeting on the Permit in Honolulu, Hawai'i. The Applicant was represented by Roderick Fong, and the County of Maui was represented by Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui, and Ann Cua of the Planning Department.

#### DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

13. The Permit area, as amended, is approximately 31.164 acres and is comprised of TMK 3-8-07: 89 and 102 (por.) ("Property"). The Property is located in Waikapu, Maui, Hawai'i.

14. TMK 3-8-07: 89 is owned in fee by A & B Properties, Inc., and TMK 3-8-07: 102 is owned in fee by A & B Hawaii, Inc. Both entities are subsidiaries of Alexander & Baldwin, Inc. The Applicant intends to lease the Property from the landowners.



15. The Property is covered with pasture grasses, immature kiawe, and koa haole trees, with a few scattered mature trees present. A portion of the Property has previously been graded. To the north and east of the Property are vacant agricultural lands, while sugarcane fields and an orchid farm are located to the south.

16. Access to the Property is from Waiko Road, which is located to the immediate south of the Property and runs in a general east to west direction, intersecting Honoapiilani Highway to the west and Kuihelani Highway to the east. Waiko Road has a 60-foot right-of-way with an approximately 20-foot paved travel way. Waiko Road's pavement structure is currently inadequate to handle heavy truck traffic. Honoapiilani Highway runs generally in a north to south direction and is a two-lane travel way with left turn storage lanes at its intersection with Waiko Road. Kuihelani Highway also runs generally in a north to south direction and is a two-lane travel way with improved shoulders. Waiale cane haul road, which runs parallel with the two highways, intersects Waiko Road at its middle.

17. The Property generally slopes in a diagonal direction from the southwest corner to the northeast corner at approximately 2 percent. The elevations on the Property range from 238 feet above mean sea level ("MSL") to approximately 197 feet above MSL.

18. The Property is not currently under agricultural cultivation and has a Land Study Bureau Overall Master

Productivity Rating of "E" or very poor for agricultural productivity.

19. An existing 18-inch water transmission line to Maalaea and Kihei from Wailuku is located west of the Property. There is no county or private water system or sewer system currently servicing the Property.

20. Drainage on the Property sheet flows in a southwest to northeast direction. Runoff then flows into a natural drainageway located on the adjacent lands.

21. Maui Electric Company ("MECO") has a 69 KV and a 23 KV transmission line in the vicinity of the Property. There are no MECO distribution lines servicing the Property. The Property currently does not have telephone service.

22. The nearest landfill site to the Property is located at the Maui Central Landfill in Puunene approximately four miles away.

23. The Kahului Fire Station on Dairy Road located approximately three miles north of the Property. Police and medical facilities are situated on Mahalani Road in Wailuku approximately four miles away.

#### SUMMARY OF PROPOSED USE

24. The Applicant proposes to establish a baseyard facility and accessory uses for businesses within the construction and heavy equipment industry ("Project"). In addition to storing and servicing its own equipment within the Property, the Applicant proposes to lease areas to other individual businesses within the industry.



25. The Applicant proposes the following on-site improvements: a 9,000-square-foot warehouse; a 1,440-square-foot service building comprised of a lubrication and oil changing facility; an above ground waste oil tank and dispensing system to minimize spillage; a 300-square-foot fire pump building; a 250,000-gallon open reservoir; a booster pump system and piping with hydrants; a wash area with oil/water separator; individual wastewater systems composed of a septic tank discharging into an absorption bed; and paved and unpaved vehicular areas for ingress/egress and parking.

26. Off-site improvements include driveways connecting to Waiko Road for ingress/egress to the Property; a 1 1/2-inch domestic water line from an off-site meter; and a 6-inch pipe to convey fire protection water from Hawaiian Commercial & Sugar Co.'s ("HC&S") irrigation ditch to the proposed on-site open reservoir.

27. On November 7, 1989, the Planning Commission granted a Special Use Permit (89/SUP-015) to the Applicant to operate an equipment baseyard for material and equipment storage only on a portion of the Property, TMK 3-8-07: 102 (por.). The baseyard served as a pickup and return area for needed equipment, with only minor repairs allowed to maintain the equipment.

#### NEED FOR THE PROPOSED USE

28. The Project will provide "dead storage," which involves the storage of odd materials or equipment that was used for a specific construction job but may not be used again in the near future and is too valuable to be disposed. Due to the slow



construction period, there is a need for greater storage space of construction equipment. The current industrial district zoning allows retail businesses in industrial zoned areas, which have escalated the rents for industrial lands and limited the number of affordable areas for storing heavy equipment. The on-site central servicing area will service the equipment stored on the Property.

#### STATE AND COUNTY PLANS AND PROGRAMS

29. The Property is located within the State Land Use Agricultural District, as reflected on the LUC's official map, M-5 (Wailuku).

30. The Property is designated Agriculture in the Wailuku-Kahului Community Plan.

31. The Property is zoned Agriculture.

#### SUMMARY OF COUNTY, STATE, AND FEDERAL AGENCY COMMENTS

##### County Agencies

32. The County of Maui, Department of Public Works and Waste Management, Engineering Division ("DPWWM-ED"), commented that improvements to Waiko Road, including road widening and a 30-foot radius at the intersection of the proposed access road and Waiko Road, be undertaken to meet County standards. The DPWWM-ED also commented that a final detailed drainage and erosion control plan be submitted to the DPWWM-ED for its review and approval. The DPWWM-ED further stated that all existing features such as structures, driveways, drainageways, edge of pavement, and the 100-year flood inundation limits, if applicable, be shown on a project site plan to be submitted for

its review and approval. A "sight distance" report was also requested to be submitted.

33. The Department of Public Works and Waste Management, Solid Waste Division, commented that solid waste reduction, re-use, and recycling programs be implemented to reduce the amount of solid waste to be disposed of at the County landfills. Refuse collection should be done by a private collector.

34. The Department of Public Works and Waste Management, Land Use and Codes Administration, commented that parcel 102 be subdivided and/or consolidated with parcel 89, and that all areas used for parking, loading, or storage of vehicles or equipment be paved and landscaped.

35. The Department of Public Works and Waste Management, Wastewater Reclamation Division, had no comments on the Permit.

36. The County of Maui, Board of Water Supply, stated that the Project lies in a de facto well-head protection area. The Applicant should be advised that water for the construction and domestic purposes of the Project may not be available until such time as new sources have been developed to service the Central Maui area. No guarantee of water for the Project is granted or implied as a result of these comments or the approval of the subject discretionary permit. The Applicant would be required to enter into a private water system agreement at the time of the building permit application.



The Applicant would be required to provide fire protection in accordance with the rules and standards. The private water system agreement will be required to have a registered engineer's certification of the system's design and construction. The department would determine if water is available at such time as an application for water service is approved and the subject fee is paid.

#### State Agencies

37. The Department of Accounting and General Services, Survey Division, had no objections to the Project.

38. The Department of Health ("DOH") noted that the Property is located in the critical wastewater disposal areas as determined by the Maui County Wastewater Advisory Committee. No new cesspools will be allowed on the Property. The DOH concurs with the Applicant's proposal of the treatment individual wastewater system to be constructed on-site. The treated effluent should be reused for irrigation wherever possible. All wastewater plans must conform to applicable provisions of the DOH's Administrative Rules, Chapter 11-62, "Wastewater System," and the DOH will review these wastewater plans for conformance to the applicable rules.

39. The DOH also commented that the developer, owner, or operator of the Property should be aware of the hazardous waste rules and regulations promulgated under the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). Hazardous waste regulations are codified in Title 40 of the Code of Federal Regulations ("CFR") Parts 260 through 270. The



hazardous waste regulations incorporate the management of hazardous waste from the point of the generation to its final disposal, storage, or treatment. If the developer of the Property generates solid waste as defined in 40 CFR 261.2, the developer must determine if that waste is a hazardous waste as defined in 40 CFR 261.3. The developer, owner, or operator of the Property who intends to treat, store, or dispose of hazardous waste is subject to RCRA section 3005, USC 6925, and 40 CFR Parts 264 and 270.

40. The DOH further commented that should the proposed construction involve the installation and/or removal of underground storage tanks ("USTS"), these USTS may be regulated in accordance with the technical standards and financial responsibility regulations of 40 CFR Part 280. At this time, the oil/water separator appears only to be regulated under 40 CFR 280, Subparts A and F (corrosion protection and release response).

Owners of newly installed USTS must notify the UST Section of the existence of such USTS within 30 days of installation. The installation of UST systems containing flammable and combustible liquids is also subject to regulation by the County Fire Departments.

41. The Department of Land and Natural Resources, Historic Preservation Division ("DLNR-HPD"), originally commented that the then 23.164-acre Property is located within the Sand Hills area of Wailuku, which consists of pleistocene age sand dune formations. No historic sites are presently recorded for

this Property. Recent archaeological testing in an area of the Sand Hills to the north identified a concentration of burials in an undisturbed dune remnant. Burials were also disturbed during construction in a second location to the north of this Property. A field inspection of the original 23.164-acre Property was conducted by the DLNR-HPD staff on April 8, 1994.

42. There are two relatively prominent hills in the south-central portion of the Property that appear to be undisturbed dune features. Due to the relatively close location of the Property to Waikapu Village and the presence of prominent sand hills, there is a possibility that burials could be present.

43. The DLNR-HPD subsequently reviewed the Permit, as amended, and recommended that conditions relating to historic preservation be attached to the Permit.

44. The Commission on Water Resource Management commented that should the proposed impoundment cause more water to be diverted from Waikapu Stream via the HC&S diversion than the amount diverted when the interim instream flow standard was implemented (effective December 10, 1988), a stream diversion works permit and an amendment to the interim instream flow standard will be required before the Applicant can proceed with the Project. In addition, if modification of the intake structure on Waikapu Stream is proposed as part of this Project, a stream channel alteration permit may be required.

45. The Department of Transportation ("DOT") commented that they are concerned about piecemeal development occurring in the Waikapu area. The cumulative impacts of piecemeal



developments on the transportation facilities can be significant. The landowner should be encouraged to master plan the area to determine the local and regional infrastructure needs to accommodate the proposed uses.

46. The DOT further commented that their analysis indicated that the projected traffic generated from the Project significantly exceeds those presented in the Applicant's traffic assessment. The impact of this additional traffic will require improvements to the Kuihelani Highway/Waiko Road intersection at no cost to the State.

#### Federal Agencies

47. The U.S. Department of Agriculture, Soil Conservation Service, had no comments on the Permit.

48. The Department of the Army ("DA") stated that based on the Applicant's plans there will be no discharge of fill material; therefore, a DA permit will not be required.

#### MAUI ELECTRIC COMPANY COMMENTS

49. MECO commented that its 69 KV and 23 KV transmission lines run in the vicinity of the Property. Layout of the Project should be done so that access to these lines by MECO personnel is not inhibited. Safety clearances must also be maintained between these lines and structures and operating equipment. MECO does not have distribution lines in the area. Customers are normally served from distribution lines.

#### SOCIO-ECONOMIC IMPACTS

50. The construction industry is a vital component of Maui's economy. Currently, there is a shortage of essential



baseyard facilities to service local construction, trucking, and industrial-based operations. The Project will provide a large baseyard to service these construction and industrial businesses.

#### IMPACTS UPON THE RESOURCES OF THE AREA

51. The Project is not expected to adversely impact agricultural or flora resources. The Project will generate noise and some air pollution from increased traffic; however, the Property is not located near any residential areas.

#### ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

##### Water

52. There is no county or private water system currently servicing the Property. The Applicant proposes to connect into an existing 1 1/2-inch domestic water meter located 1/4 mile west of the Property. This water will service the domestic water needs of the Project. A 250,000-gallon open reservoir will be constructed along with a 6-inch water line from HC&S's ditch to the new on-site reservoir. A booster pump system housed within a building will be constructed along with an 8-inch water line and fire hydrants.

53. Fire protection water will come from existing water being diverted from Waikapu Stream by HC&S. The proposed fire system will not create a demand for more water to be diverted from Waikapu Stream nor is any stream alteration proposed as part of the Project.

##### Drainage

54. Stormwater from the Property will be released downstream at the pre-development rate. Grading and drainage

schemes will be used to create detention and retention areas and to promote percolation of stormwater into the ground.

#### Roadways

55. Access to the Property will be from Waiko Road via a single driveway to service the Project. Waiko Road is presently inadequate to handle heavy truck traffic and will need to be upgraded to accommodate the Project.

#### Wastewater

56. The Applicant proposes to construct an individual wastewater system in accordance with the DOH's requirements. A separate absorption bed will be used to dispose of wash-down water from the on-site steam cleaning operation. Water from the wash-down area is proposed to be processed through an oil/water separator and water recycler.

#### Electrical and Telephone Service

57. The Applicant proposes to connect into the existing overhead utility lines within the area. No adverse impact on these services are expected.

#### CONFORMANCE WITH THE SPECIAL USE PERMIT CRITERIA

58. The Planning Department provided the following in response to the Permit's conformance with the Special Use Permit guidelines for an "unusual and reasonable" use within the State Land Use Agricultural District pursuant to section 15-15-95(b), HAR:

1. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission.



The general intent of the State Land Use Law is "to preserve, protect, and encourage the development of land in the State for those uses to which they are best suited in the interest of public health and welfare of the State of Hawai'i".

The availability in Central Maui of parcels in the State "Urban" district large enough to accommodate baseyard operations for construction, trucking, and industrial based operations is limited. This limitation is evidenced, in part, by requests for similar permits for the surrounding area. (Fong Construction, 89/SUP-015), (Maui Scrap Metal, 89/SUP-07), (Diversified Machinery, 90/SUP-06), and (Wailuku Agribusiness Company, 90/SUP-04). It should be noted that those operations characterized as commercial in nature such as offices and servicing of equipment have either been deemed subordinate to agricultural operations or restricted to the "urban core" of Central Maui. Operations have generally been limited to overflow parking of equipment and materials. Inasmuch as the construction industry is a vital component of the islands [sic] economy, the utilization of alternate land areas to accommodate essential baseyard operations is considered a logical solution for local construction companies.

2. The desired use would not adversely affect surrounding property.

Surrounding properties would not be affected by the proposed construction baseyard. The property is surrounded by vacant and active agricultural lands north, south, east, and other industrial type baseyards to the west.

3. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

Through the construction of on-site domestic water and fire protection improvements, individual wastewater treatment systems, and off-site road improvements to mitigate traffic, the proposed project is not expected to adversely impact public facilities and would not unreasonable [sic] burden public agencies to provide roads, sewers, water drainage, and school improvements. The proposed project would require police and fire service. Due to its location outside of the urban center, police and fire service routes would need to be expanded.



4. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

Unusual conditions, trends and needs have arisen since the district boundaries and rules were established. Industrial and other heavy type businesses such as construction, trucking, and excavation require large amounts of storage area for equipment. The current industrial district zoning allows retail and service type business in industrial zoned areas. The retail uses in the area has [sic] resulted in escalating rents for industrial lands making it financially difficult for certain industrial uses such as storage yards for the construction industry.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The project area has an over all [sic] agricultural productivity rating of "E," and (therefore it) would not be economicly [sic] feasible to cultivate the project area.

#### PLANNING COMMISSION RECOMMENDATION

59. At its meeting on October 25, 1994, the Planning Commission voted to recommend approval of the Permit to the LUC, subject to the following conditions:

1. That the Land Use Commission Special Use Permit shall be valid for one (1) year, subject to further extensions upon a timely request for extension filed at least ninety (90) days prior to its expiration with the Maui Planning Commission. The Maui Planning Commission may require a public hearing on the time extension.
2. That the conditions of this Land Use Commission Special Use Permit shall be self enforcing and, accordingly, upon due notice by the Land Use Commission to the permit holder that there is a prima facie evidence that a breach has occurred the permit shall be automatically suspended pending a hearing on the continuity of such Land Use Commission Special Use Permit, provided that written request for such a hearing is filed with the Land Use Commission 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 Land Use Commission Special Use Permit.



3. That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas and uses affected by subject Land Use Commission Special Use Permit and shall defend, indemnify, hold harmless the County of Maui and the Land Use Commission from and against any loss, liability, claim or demand arising out of this permit.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That the applicant shall comply with all standards of the Department of Water Supply. Should any waivers from said standards be granted by the Board of Water Supply, copies of said waivers shall be kept on file with the Planning Department.
7. That construction shall be in accordance with preliminary plans dated September 1994 as depicted by exhibit 2 in the Maui Planning Commissions report.
8. That the site shall be used primarily for storage of equipment and material only. No retailing or other sales activities shall be permitted on site. Minor security structures may be allowed as appropriate to protect material and equipment.
9. That alternative means of disposal of grubbed material and rock shall be utilized other than disposed of at the County landfills.
10. That non-potable water shall be used in grading and construction work.
11. That landscaping shall be designed to survive on the site's natural rainfall and/or use low amounts of irrigation water.
12. That a landscaping and planting plan shall be submitted to the Planning Department for review and approval.



13. That fire protection shall be provided in accordance with the rules and standards of the Board of Water Supply.
14. That the following road way improvements to Waiko Road shall be provided:
  - a) That a road widening lot be provided for the adjoining half of the project site along Waiko Road to Kuihelani Highway. Said lot shall be improved to County standards, as approved by the Department of Public Works and Waste Management, and dedicated to the County upon completion of improvements.
  - b) All structures, such as walls, trees, etc., shall be removed or relocated from the road widening strip. The rear boundaries of the road widening strip shall be clearly marked to determine if said structures have been properly removed and relocated.
  - c) That 30' radius be provided at the intersection of proposed access road and Waiko Road.
  - d) That a site plan and a "sight distance" report to determine required sight distance and available sight distance at existing and proposed street intersections shall be provided to the Department of Public Works and Waste Management for review and approval.
15. That the following road way and intersection improvements to Kuihelani Highway shall be provided:
  - a) That a left turn storage lane on Kuihelani Highway shall be provided.
  - b) That acceleration/deceleration lanes shall be provided.
  - c) That sufficient pavement turning radii for large trucks shall be provided.
  - d) That the intersection of Waiko road and Kuihelani Highway shall be widened to allow for left and right turn lanes on Waiko Road.
  - e) That details of the intersection geometries shall be coordinated with and approved by the Department of Transportation, Highways Division.

16. That a final detailed drainage and erosion control plan including, but not limited to, hydrologic and hydraulic calculations, scheme for controlling erosion and disposal of runoff water, and an analysis of the soil loss using the HESL erosion formula, be submitted to the Department of Public Works and Waste Management, Engineering Division for review and approval. Said plan shall provide verification that the grading and runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties.
17. That the owners and their contractors shall implement solid waste reduction, re-use and recycling programs to reduce the amount of solid waste to be disposed of at the County landfills.
18. That the TMK 3-8-07 portion of parcel 102 affected by the project shall be subdivided and /or consolidated with TMK 3-8-07:89.
19. Refuse collection shall be by a private collector.
20. That all wastewater system plans shall conform to all applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater System," and shall be reviewed and approved by the Department of Health.
21. That the following conditions relating to historic preservation shall be adhered to:
  - a) That archaeological subsurface survey work shall be conducted on the prominent dune features within the project area. A report of the findings shall be submitted to the Department of Land and Natural Resources, Historic Preservation Division (DLNR, HPD), and reviewed prior to the initiation of any earthmoving or vegetation grubbing on the property.
  - b) That a qualified archaeologist shall be on site to monitor vegetation clearing, grubbing, grading, and excavation. A report of the monitoring activities and findings shall be submitted to DLNR, Historic Preservation Division for review.
  - c) That if remains of historic sites are encountered during construction, all work in the vicinity of the find shall stop and the archaeologist shall be given sufficient time to collect information and assess the significance of the find. If human burials are encountered, procedures as outlined in



Hawai'i Revised Statutes 6E-43.6 shall be followed.

22. That the Petitioner shall submit an annual progress report to the Planning Director and State Land Use Commission prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This conditions shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

60. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

#### CONCLUSIONS OF LAW

The Special Permit application to establish a construction baseyard and accessory uses constitutes an "unusual and reasonable" use as provided in section 205-6, HRS, and as established in section 15-15-95(b), HAR, and the proposed use 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. The proposed use is also not contrary to the objectives and policies under chapter 205A, HRS.

#### ORDER

IT IS HEREBY ORDERED that the Special Permit application filed in this docket requesting the establishment of a construction baseyard and accessory uses on approximately 31.164 acres of land within the State Land Use Agricultural District, and identified as Tax Map Key 3-8-07: 89 and por. 102, situated at Waikapu, Maui, Hawai'i, and approximately identified

on Exhibit "A," attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. That the Land Use Commission Special Use Permit shall be valid for one (1) year, subject to further extensions upon a timely request for extension filed at least ninety (90) days prior to its expiration with the Maui Planning Commission. The Maui Planning Commission may require a public hearing on the time extension.

2. That the conditions of this Land Use Commission Special Use Permit shall be self enforcing and, accordingly, upon due notice by the Maui County Planning Commission to the Permit holder that there is prima facie evidence that a breach has occurred, the Permit shall be temporarily suspended pending a prompt hearing on the continuity of such Land Use Commission Special Use Permit, provided that written request for such a hearing is filed with the Maui County Planning Commission no later than ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within the ten (10) day period, the Planning Commission may recommend the revocation of said Land Use Commission Special Use Permit. The Planning Commission's recommendation shall be promptly transmitted to the State Land Use Commission for appropriate action.

3. That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission. However, in the event that



a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

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

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

6. That the Applicant shall comply with all standards of the Department of Water Supply. Should any waivers from said standards be granted by the Board of Water Supply, copies of said waivers shall be kept on file with the Planning Department.

7. That construction shall be in accordance with preliminary plans dated September 1994 as depicted by Exhibit 2 in the Maui Planning Commission's report.

8. That the site shall be used primarily for storage of equipment and material only. No retailing or other sales activities shall be permitted on-site. Minor security structures may be allowed as appropriate to protect materials and equipment.

9. That alternative means of disposal of grubbed material and rock shall be utilized other than disposed of at the County landfills.

10. That non-potable water shall be used in grading and construction work.

11. That landscaping shall be designed to survive on the site's natural rainfall and/or use low amounts of irrigation water.

12. That a landscaping and planting plan shall be submitted to the Planning Department for review and approval.

13. That fire protection shall be provided in accordance with the rules and standards of the Board of Water Supply.

14. That the following roadway improvements to Waiko Road shall be provided:

a) That a road widening lot be provided for the adjoining half of the Project site along Waiko Road to Kuihelani Highway. Said lot shall be improved to County standards, as approved by the Department of Public Works and Waste Management, and dedicated to the County upon completion of improvements.

b) All structures, such as walls, trees, etc., shall be removed or relocated from the road widening strip. The rear boundaries of the road widening strip shall be clearly marked to determine if said structures have been properly removed and relocated.

c) That a 30' radius be provided at the intersection of the proposed access road and Waiko Road.



d) That a site plan and a "sight distance" report to determine required sight distance and available sight distance at existing and proposed street intersections shall be provided to the Department of Public Works and Waste Management for review and approval.

15. That the following roadway and intersection improvements to Kuihelani Highway shall be provided:

a) That a left turn storage lane on Kuihelani Highway shall be provided.

b) That acceleration/deceleration lanes shall be provided.

c) That sufficient pavement turning radii for large trucks shall be provided.

d) That the intersection of Waiko Road and Kuihelani Highway shall be widened to allow for left and right turn lanes on Waiko Road.

e) That details of the intersection geometries shall be coordinated with and approved by the Department of Transportation, Highways Division.

16. That a final detailed drainage and erosion control plan including, but not limited to, hydrologic and hydraulic calculations, scheme for controlling erosion and disposal of runoff water, and an analysis of the soil loss using the HESL erosion formula, be submitted to the Department of Public Works and Waste Management, Engineering Division, for review and approval. Said plan shall provide verification that the grading

and runoff water generated by the Project will not have an adverse effect on the adjacent and downstream properties.

17. That the owners and their contractors shall implement solid waste reduction, re-use, and recycling programs to reduce the amount of solid waste to be disposed of at the County landfills.

18. That the TMK 3-8-07 portion of parcel 102 affected by the Project shall be subdivided and/or consolidated with TMK 3-8-07:89.

19. Refuse collection shall be by a private collector.

20. That all wastewater system plans shall conform to all applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater System," and shall be reviewed and approved by the Department of Health.

21. That the following conditions relating to historic preservation shall be adhered to:

a) That archaeological subsurface survey work shall be conducted on the prominent dune features within the Project area. A report of the findings shall be submitted to the Department of Land and Natural Resources, Historic Preservation Division (DLNR/HPD), and approved prior to the initiation of any earthmoving or vegetation grubbing on the Property. If evidence of human skeletal remains is encountered during the archaeological inventory survey, the Applicant shall submit a burial preservation or burial treatment plan to the DLNR/HPD for approval. If the burial site appears to be Hawaiian, the



treatment plan will be submitted to the Burial Council for their determination.

b) That a qualified archaeologist shall be on-site to monitor vegetation clearing, grubbing, grading, and excavation. A report of the monitoring activities and findings shall be submitted to DLNR/HPD for approval.

c) That if remains of historic sites are encountered during construction, all work in the vicinity of the find shall stop and the archaeologist shall be given sufficient time to collect information, assess the significance of the find, and confer with the DLNR/HPD regarding appropriate treatment. If human burials are encountered during monitoring, procedures as outlined in Hawai'i Revised Statutes §6E-43.6 shall be followed.

22. That the Applicant shall submit an annual progress report to the Planning Director and State Land Use Commission prior to the anniversary date of the approval of the Permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. These conditions shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

23. The Applicant shall provide the Maui County Planning Department and the Land Use Commission copies of the final approved metes and bounds map and description of the 31.16-acre Property.

24. The Applicant shall commence construction of the baseyard no later than one year from the date of filing of this Decision and Order by the Land Use Commission. If the construction of the baseyard does not commence by this period, the Planning Commission may revoke said Land Use Commission Special Use Permit. The Planning Commission, with the concurrence of the Land Use Commission, may extend the time limit if it deems that circumstances warrant the granting of the extension.



DOCKET NO. SP94-387 - FONG CONSTRUCTION

Done at Honolulu, Hawaii, this 19th day of September 1995,  
per motions on August 25, 1995 and September 14, 1995.

LAND USE COMMISSION  
STATE OF HAWAII

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

By Eusebio Lapenia, Jr.  
EUSEBIO LAPENIA, JR.  
Vice Chairperson and Commissioner

By Rupert K. Chun  
RUPERT K. CHUN  
Commissioner

By (opposed)  
M. CASEY JARMAN  
Commissioner

By Lloyd F. Kawakami  
LLOYD F. KAWAKAMI  
Commissioner

By (excused)  
MERLE A. K. KELAI  
Commissioner

By Joann N. Mattson  
JOANN N. MATTSON  
Commissioner

By Trudy K. Senda  
TRUDY K. SENDA  
Commissioner

By (absent)  
ELTON WADA  
Commissioner

Filed and effective on  
September 19, 1995

Certified by:

Robert L. ...  
Executive Officer







BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of )  
FONG CONSTRUCTION )  
To Establish a Construction )  
Baseyard and Accessory Uses on )  
Approximately 31.164 Acres of Land )  
within the State Land Use )  
Agricultural District at Waikapu, )  
Maui, Hawai'i, TMK 3-8-07: 89 and )  
por. 102 )

DOCKET NO. SP94-387  
CERTIFICATE OF SERVICE

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. RODERICK FONG  
Fong Construction  
495 Hukilike Street, Bay #4  
Kahului, Hawaii 96732

CERT. STEPHEN J. HLASTALA, Manager, Leasing  
A & B Properties, Inc.  
P. O. Box 156  
Kahului, Hawaii 96732-0156

DATED: Honolulu, Hawaii, this 19th day of September 1995.



ESTHER UEDA  
Executive Officer