

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

In the Matter of the Petition of)	DOCKET NO. SP94-387
)	
FONG CONSTRUCTION)	ORDER GRANTING REQUEST
)	FOR A TIME EXTENSION
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)	
<hr/>		

LAND USE COMMISSION
STATE OF HAWAII
1994 OCT 26 A 11:40

ORDER GRANTING REQUEST FOR A TIME EXTENSION

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

In the Matter of the Petition of)	DOCKET NO. SP94-387
FONG CONSTRUCTION)	
To Establish a Construction)	ORDER GRANTING REQUEST
Baseyard and Accessory Uses on)	FOR A TIME EXTENSION
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)	

ORDER GRANTING REQUEST FOR A TIME EXTENSION

On June 4, 1998, the County of Maui Planning Department received a request from Fong Construction Company, Limited ("Applicant"), for a time extension on the Special Permit issued in the subject docket.¹

On June 22, 1999, the County of Maui Planning Commission ("Planning Commission") conducted a public hearing on the Applicant's request. There was no written or oral public testimony provided at the hearing.

On June 22, 1999, after due deliberation at its meeting, the Planning Commission recommended approval of the Applicant's request to the Land Use Commission ("Commission"), subject to all the conditions originally imposed by the Commission in its Findings of Fact, Conclusions of Law, and Decision and Order dated September 19, 1995 ("Decision and

¹ Pursuant to a letter dated March 8, 1999, the Applicant clarified that he was requesting a ten-year time extension on the Special Permit.

Order"), as amended by Order Granting Request for a Time Extension dated July 21, 1997, with amendments to Condition Nos. 1, 2, 4, 8, 12, 24, and 25 as follows:

1. That the State Land Use Commission Special Use Permit shall be valid until September 30, 2009, subject to further extensions by the Maui Planning Commission upon a timely request for extension filed at least one hundred twenty (120) days prior to its expiration. The Maui Planning Commission may require a public hearing on the time extension.
2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per violation; that a civil fine not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand delivery unless written request for a hearing is mailed or delivered to the Planning Department within said thirty (30) days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director or the Director's designee in accordance with the provision of Chapter 91, HRS, as amended.
4. 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 Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire

period of this State Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui and State of Hawaii as an additional named insured, insuring and defending the applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.

8. That the site shall be used primarily for storage of equipment and material, minor servicing of said equipment, and offices appurtenant to such uses. No retailing or other sales activities shall be permitted except for limited sales accessory to the principal permitted uses. Pertinent structures may be allowed as appropriate to protect materials and equipment.
12. That a landscaping, planting, lighting, fencing, and signage plan shall be submitted to the Planning Department for review and approval.
24. The applicant shall commence construction of the baseyard no later than two (2) years after obtaining the State Land Use Commission time extension or Conditional Permit, which ever [sic] is later. If construction of the baseyard does not commence by this date, the Planning Commission and Land Use Commission may revoke said State Land Use Commission Special Use Permit. The Land Use Commission may extend the time limit if it deems that circumstances warrant the granting of the extension.
25. That all necessary County Land Use Permits shall be obtained by June 30, 2000.

On August 12, 1999, this Commission received a portion of the Planning Commission's record in this proceeding.

On September 15, 1999, the remaining documents to the record were received and accepted for consideration by this Commission.

This Commission, having duly considered the arguments provided by the respective parties at its hearing on September 23, 1999, in Waikapu, Maui, and good cause existing therefrom,

HEREBY GRANTS a time extension to the Applicant on the Special Permit issued in the above-entitled docket and a time extension on the period in which to initiate construction on the proposed construction baseyard.

IT IS HEREBY ORDERED that the Special Permit issued in LUC Docket No. SP94-387 shall be subject to the following conditions to supersede all previous conditions imposed on the Special Permit:

1. That the State Land Use Commission Special Use Permit shall be valid until September 30, 2009, subject to further extensions by the Maui Planning Commission and the State Land Use Commission upon a timely request for extension filed at least one hundred twenty (120) days prior to its expiration. The Maui Planning Commission and the State Land Use Commission may require a public hearing on the time extension.

2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Chapter 205, Hawai'i Revised Statutes (HRS). Failure to comply

with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per violation; that a civil fine not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand delivery unless written request for a hearing is mailed or delivered to the Planning Department within said thirty (30) days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director or the Director's designee in accordance with the provision of Chapter 91, HRS, as amended. Should breaches of the permit continue, the Planning Commission may recommend the revocation of said Land Use Commission Special Use Permit. The Planning Commission's recommendations 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 affected by subject State Land Use Commission Special Use Permit and shall defend, indemnify, and hold harmless the County of Maui and the State of Hawai'i from and against any loss, liability, claim or demand arising out of this Permit. In addition, the applicant, its successors and permitted assigns shall procure at its own cost and expense, and shall maintain during the entire period of this State Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawai'i as an additional named insured, insuring and defending the applicant, County of Maui and State of Hawai'i against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in

the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. A copy of a policy naming the County of Maui and the State of Hawai'i as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.

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, minor servicing of said equipment, and offices appurtenant to such uses. No retailing or other sales activities shall be permitted except for limited sales accessory to the principal permitted uses. Pertinent structures may be allowed as appropriate to protect materials and equipment.

9. That construction waste from the project shall be taken to the Ma'alaea Landfill on North Kihei Road and that refuse collection for the project shall be by a private collector with recycling capabilities.

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, planting, lighting, fencing, and signage plan shall be submitted to the Planning Department for review and approval.

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

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) Archaeological subsurface survey work shall be conducted on the prominent dune features within the project area. A report of the findings shall be approved prior to the initiation of any earthmoving or vegetation grubbing on the property. If evidence of human skeletal remains or cultural deposits are encountered during the archaeological inventory survey, compliance with Chapter 6E must occur and an acceptable mitigation plan must be prepared. The State Historic Preservation Division must verify in writing to the County that the plan has been successfully executed, prior to any land altering activities.

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.

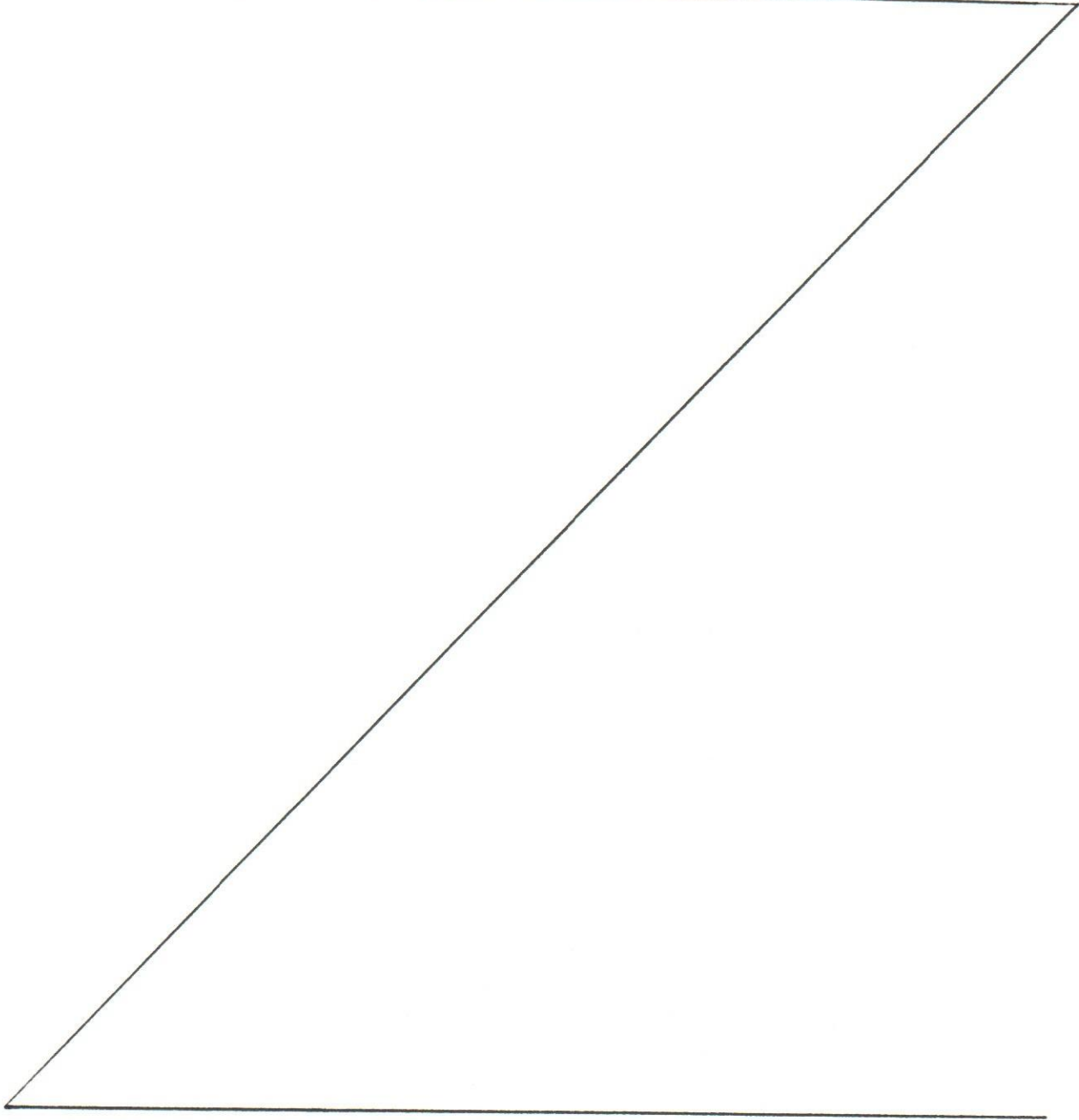
22. That the Applicant shall submit an annual progress report to the Planning Director and State Land Use Commission prior to the anniversary date of the approval of the Permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval 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 two (2) years after obtaining the State Land Use Commission time extension or Conditional Permit, whichever is later. If construction of the baseyard does not commence by this date, the Planning Commission and Land Use

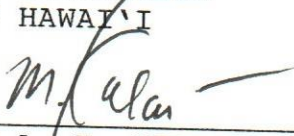
Commission may revoke said State Land Use Commission Special Use Permit. The Land Use Commission may extend the time limit if it deems that circumstances warrant the granting of the extension.

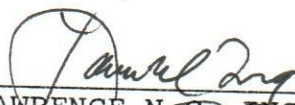
25. That all necessary County Land Use Permits shall be obtained by June 30, 2000.

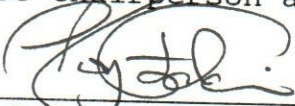



Done at Honolulu, Hawai'i, this 26th day of October 1999,
per motions on September 23, 1999 and October 21, 1999.

LAND USE COMMISSION
STATE OF HAWAII

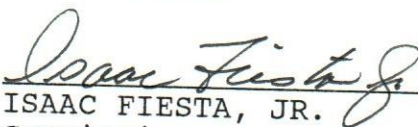
By 
MERLE A. K. KELAI
Chairperson and Commissioner

By 
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

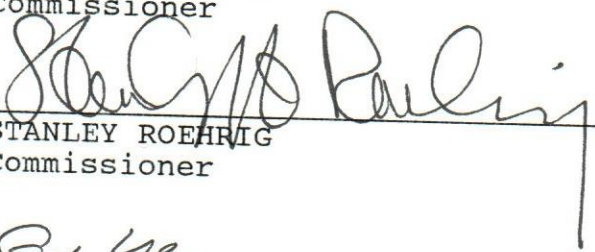
By 
P. ROY CATALANI
Commissioner

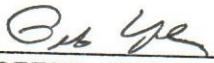
By 
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner


By (absent)
M. CASEY JARMAN
Commissioner

By 
STANLEY ROHRIG
Commissioner

By 
PETER YUKIMURA
Commissioner

Filed and effective on
October 26, 1999

Certified by:


Executive Officer

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

In the Matter of the Petition of)
FONG CONSTRUCTION) DOCKET NO. SP94-387
To Establish a Construction) CERTIFICATE OF SERVICE
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)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Request For A Time Extension was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

CERT. JOHN E. MIN, Director of Planning
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JAMES B. TAKAYESU, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. RODERICK FONG
Fong Construction Company, Ltd.
495 Hukilike Street, Bay 4
Kahului, Hawaii 96732-2960

DATED: Honolulu, Hawaii, this 26th day of October 1999.



ESTHER UEDA
Executive Officer