

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
FONG CONSTRUCTION )  
To Establish a Construction )  
Baseyard and Accessory Uses on )  
Approximately 31.16 Acres of Land )  
within the State Land Use )  
Agricultural District at Waikapu, )  
Maui, Hawaii, TMK No.: 3-8-07: 89 )  
and por. 102 )  

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DOCKET NO. SP94-387  
ORDER REMANDING SPECIAL  
USE PERMIT

Dec 30 7 41 AM '94  
LAND USE COMMISSION  
STATE OF HAWAII

ORDER REMANDING SPECIAL USE PERMIT

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. SP94-387
FONG CONSTRUCTION )	
To Establish a Construction )	ORDER REMANDING SPECIAL
Baseyard and Accessory Uses on )	USE PERMIT
Approximately 31.16 Acres of Land )	
within the State Land Use )	
Agricultural District at Waikapu, )	
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and por. 102 )	
_____ )	

ORDER REMANDING SPECIAL USE PERMIT

On November 18, 1994, the County of Maui Planning Department ("Planning Department") filed a portion of the record of the County of Maui Planning Commission's ("Planning Commission") proceedings on the above-entitled Special Use Permit with the Land Use Commission ("Commission") pursuant to section 15-15-95(a), Hawaii Administrative Rules ("HAR"). On December 12, 1994, the Planning Department filed the remaining portion of the record of the Planning Commission's proceedings with the Commission.

On December 15, 1994, at its meeting in Lanai City, Lanai, Hawaii, this Commission heard oral arguments on the Special Use Permit from Roderick Fong, representing Applicant Fong Construction, and Gary Zakian, Esq., representing the Planning Commission.

This Commission, having considered the arguments presented by all the parties and the record in this proceeding, and there being no objections from Fong Construction and the Planning Commission to remand this matter to the Planning Commission, hereby finds and concludes that the record does not completely address 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, including without limitation information to the following questions:

1. Whether the use will be contrary to the objectives sought to be accomplished by chapters 205 and 205A, Hawaii Revised Statutes ("HRS"), and the rules of the Commission. One of the purposes of chapter 205, HRS, is to avoid piecemeal changes to the state classification system. Spot zoning through the special use permit process contributes to this piecemeal zoning. At this time, four special use permits have been granted by the county near the property that is inconsistent with the use authorized in an agricultural land use district.
2. Whether the desired use would "adversely affect the surrounding property." The record indicates that concerns have been raised over special use permits being issued for non-agricultural activities that will limit existing agricultural activities in the area. The record also indicates that there is the potential for groundwater contamination upon the surrounding property from the proposed use. The county should consider the potential adverse impacts associated with the use of hazardous substances in the course of the permitted activity. The county should also consider whether the proposed drainage scheme would increase the chance of groundwater contamination by promoting the percolation of contaminated stormwater into the ground.

The county should also address noise and increased air pollution upon the surrounding property. Additionally, the county should consider how the proposed use will impact the prominent dune features that exist within the project area, and whether any alteration of the



features will adversely impact the surrounding property.

3. Whether the use would unreasonably burden public agencies to provide roads and streets, sewers, water drainage, school improvements, and police and fire protection. The county should address the cost estimates and feasibility of the required roadway improvements, and whether the Applicant and its potential lessees have the economic ability to comply with such requirements.

Additionally, the record indicates that concerns have been raised over the availability and provision of water, electrical, and telephone service for the proposed use. The county should consider whether public agencies would be unreasonably burdened to provide these services to the Applicant and its lessees.

4. Whether unusual conditions, trends and needs have arisen since the district boundaries and rules were established. The county should address whether there is insufficient industrial sites, and whether rents in industrial zoned areas totally preclude the use of currently designated industrial sites for baseyards by the construction industry.
5. Whether the land upon which the proposed use is sought is unsuited for the uses permitted within the district. The Wailuku-Kahului Community Plan designates the property as "Agriculture." The record indicates that adjacent lands are currently being used for agricultural purposes. The county should address whether uses permitted within the agricultural land use district are unsuitable or economically unfeasible on the property. The purpose of the special use permit is "to provide landowners relief in exceptional situations where the use desired would not change the essential character of the district nor be inconsistent therewith." The county should also consider whether an exceptional situation exists to allow the proposed use when it fails to meet the criteria for a special use permit under the Wailuku-Kahului Community Plan.

IT IS HEREBY ORDERED that the Special Use Permit filed by Fong Construction in Docket No. SP94-387 be and is hereby REMANDED to the County of Maui Planning Commission for further

proceedings to supplement the record and address the  
aforementioned Special Use Permit criteria.

Dated: Honolulu, Hawaii, December 30, 1994.

LAND USE COMMISSION  
STATE OF HAWAII

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

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
FONG CONSTRUCTION ) DOCKET NO. SP94-387  
To Establish a Construction )  
Baseyard and Accessory Uses on ) CERTIFICATE OF SERVICE  
Approximately 31.16 Acres of Land )  
within the State Land Use )  
Agricultural District at Waikapu, )  
Maui, Hawaii, TMK No.: 3-8-07: 89 )  
and por. 102 )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Remanding Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. BRIAN MISKAE, Planning Director  
Planning Department, County of Maui  
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CERT. STEPHEN J. HLASTALA, Manager, Leasing  
A & B Properties, Inc.  
P. O. Box 156  
Kahului, Hawaii 96732-0156

DATED: Honolulu, Hawaii, this 30th day of December 1994.



for ESTHER UEDA  
Executive Officer