

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

March 5, 2010

**Committee**  
**Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on February 17, 2010, makes reference to County Communication No. 09-218, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3001 (2001), GRANTING A CONDITIONAL PERMIT TO CONSOLIDATED BASEYARDS, LLC, IN ORDER TO OPERATE A COMMERCIAL BASEYARD PRIMARILY FOR BUSINESS WITHIN THE CONSTRUCTION INDUSTRY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Bagoyo Development Consulting Group on behalf of Fong Construction Company, Limited, for a five-year extension of a Conditional Permit granted to Consolidated Baseyards, LLC, and a change in the permit holder to allow Fong Construction Company, Limited, to operate a material and equipment storage baseyard on Waiko Road, Waikapu, Maui, Hawaii (TMK: (2) 3-8-07:102 (por.)).

The Conditional Permit granted by Ordinance No. 3001 (2001) expired on September 30, 2004. Accordingly, the recommended five-year extension had already run its course. Your Committee expressed concern over the length of time it had taken for the Council to receive the application and associated planning commission recommendations.

Your Committee voted to recommend that the title of the proposed bill be revised to clarify that the permit holder would be Fong Construction Company, Limited, rather than Consolidated Baseyards, LLC. Your Committee also recommended that Sections 1 and 2 of the proposed bill be revised by deleting extraneous language, and that the subsequent sections of the proposed bill be renumbered accordingly.

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Your Committee noted that the proposed duration of the Conditional Permit set forth in Condition No. 2 contained two conflicting dates, and recommended that the phrase “for a period of five (5) years from the effective date of this ordinance or” be deleted. Your Committee supported a longer extension of the Conditional Permit and voted to recommend that it be valid until March 1, 2019.

Your Committee further voted to recommend that Condition No. 8, relating to the time frame for the initiation of construction, be deleted. Your Committee noted that the Department of Planning had indicated that the condition had been fulfilled and can, therefore, be removed.

Your Committee voted 8-0 to recommend passage of the revised proposed bill on first reading, incorporating the revisions made by your Committee, and filing of the communication. Committee Chair Baisa, Vice-Chair Molina, and members Johnson, Kaho`ohalahala, Mateo, Medeiros, Pontanilla, and Victorino voted “aye”. Committee member Nishiki was excused.

Your Committee is in receipt of a revised proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3001 (2001), TO GRANT A CONDITIONAL PERMIT TO FONG CONSTRUCTION COMPANY, LIMITED, IN ORDER TO OPERATE A COMMERCIAL BASEYARD PRIMARILY FOR BUSINESS WITHIN THE CONSTRUCTION INDUSTRY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII”, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2010), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3001 (2001), TO GRANT A CONDITIONAL PERMIT TO FONG CONSTRUCTION COMPANY, LIMITED, IN ORDER TO OPERATE A COMMERCIAL BASEYARD PRIMARILY FOR BUSINESS WITHIN THE CONSTRUCTION INDUSTRY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and

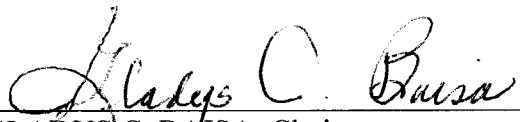
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2. That County Communication No. 09-218 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.

  
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GLADYS C. BAISA, Chair

lu:cr:10023aa:cmn

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2010)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3001 (2001), TO GRANT A CONDITIONAL PERMIT TO FONG CONSTRUCTION COMPANY, LIMITED, IN ORDER TO OPERATE A COMMERCIAL BASEYARD PRIMARILY FOR BUSINESS WITHIN THE CONSTRUCTION INDUSTRY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, the Conditional Permit granted by Ordinance No. 3001 (2001), is amended by amending Section 1 to read as follows:

"SECTION 1. Pursuant to Chapter 19.40    [of the] Maui County Code, a Conditional Permit is hereby granted to [Consolidated Baseyards, LLC,] Fong Construction Company, Limited, subject to the conditions imposed in Section 2 of this ordinance, for the operation of a commercial baseyard within the County Agricultural District. The site is identified for real property tax purposes by TMK: (2) 3-8-007:por. 102, and is comprised of approximately 11.836 acres of land, situated at Waikapu, Maui, Hawaii. The subject property sits astride property identified for real property tax purposes as TMK: (2)3-8-007:089 ("parcel 89") on the north side of Waiko Road, with 7.836 acres of the subject property located at the corner of Waiko Road and Kuihelani Highway and 4.000 acres of the subject property located on the opposite side of parcel 89."

SECTION 2. Ordinance No. 3001 (2001) is amended by amending Section 2 to read as follows:

"SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid [until September 30, 2004] until March 1, 2019; provided, that[, ] an extension of this period may be granted pursuant to Section 19.40.090,    [of the] Maui County Code.

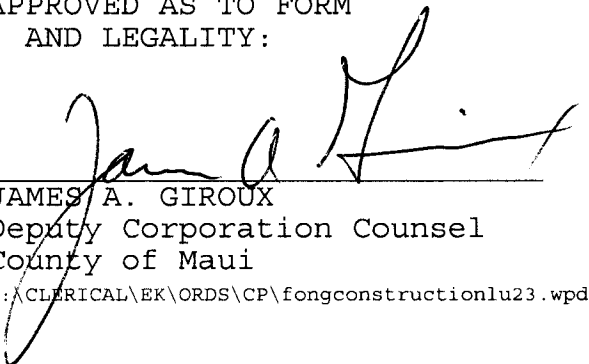
3. That the Conditional Permit shall be nontransferable[.] unless the Council approves the transfer by ordinance.
  
4. That [Consolidated Baseyards, LLC,] Fong Construction Company, Limited, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional [named] insured, insuring and defending [Consolidated Baseyards, LLC] Fong Construction Company, Limited and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this [permit] Conditional 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 [Consolidated Baseyards, LLC] Fong Construction Company, Limited of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this [permit] Conditional Permit. A copy of [a policy] the certificate of insurance naming County of Maui as an additional [named] insured shall be submitted to the [department] Department of Planning within ninety (90) calendar days from the effective date of this ordinance.
  
5. That this Conditional Permit shall be limited to the storage of equipment and materials, minor services 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 use. Structures shall be allowed to protect material and equipment as appropriate.

6. That [the permit holder] Fong Construction Company, Limited fully comply with the conditions established under the State Land Use Commission Special Use Permit No. SP94-387.
7. That [the permit holder] Fong Construction Company, Limited shall submit to the [Planning Department] Department of Planning annual reports addressing its compliance with the conditions established with the subject Conditional Permit.
8. That Fong Construction Company, Limited shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui County Code."

SECTION 3. Material to be repealed is bracketed. New material is underscored.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



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JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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