



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

AUG 16 2012

Mr. Brian A. Anderson
Poloke Farms LLC
64-5085 Kalake Street
Kamuela, HI 96743

Dear Mr. Anderson:

Special Permit (SPP 09-000095)

Applicant: Poloke Farms LLC

Request: To Allow a 2-Year Time Extension to Comply With Condition No. 2

(Time to Secure Final Plan Approval)

Tax Map Key: 4-7-007:040

The Windward Planning Commission, at its duly held public hearing on August 2, 2012, voted to approve the above-referenced request for an amendment to Condition No. 2 (secure Final Plan Approval) of Special Permit No. 09-000095 that allowed a country market and occasional special events for non-profit agencies within an existing covered equestrian arena on approximately 2.5 acres of land. The property is located along the north (makai) side of Highway 19 and east of the Waimea Country Club golf course near the 51-mile marker, Waikoekoe, Hāmākua, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting a 2-year time extension to comply with Condition No. 2 (secure Final Plan Approval) of Special Permit No. 09-000095. Condition No. 2 states the following:

“The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code within one hundred eighty (180) days of approval of this permit. Plans shall identify all existing structures, fire protection measures, parking stalls, and

other improvements associated with the use. Landscaping for the project site shall be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts on neighboring properties.”

The reason for the time extension request is that the applicant has been working with the Department of Transportation to comply with the access requirements for over two years and has not been able to receive final sign off. This has held up the applicant from completing the Plan Approval process.

Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence. The applicant has been trying to meet the requirements of the Department of Transportation for access to comply with Condition No. 11 of Special Permit No. 09-000095, which states “Access to the project site shall meet the requirements of the Department of Transportation.” For over two (2) years, the applicant has been trying to receive the final sign off without success.

The granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The requested amendment is limited to the additional time needed to submit plan approval as required by the Special Permit. No change in the approved scope of this project will result from this amendment. Therefore, the original reasons for approving the Special Permit will be preserved, which found that the use continues to be an unusual and reasonable use of land, which would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

The granting of the amendment request would not be contrary to the General Plan or Zoning Code. The limited nature of this amendment request will ensure that the approved country market operation will continue to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Important Agricultural Lands. Additionally, the request continues to be consistent with the zoning for the property, which is Agricultural 40-acre (A-40a), with the approval of the Special Permit.

Based on the above information, this amendment request is approved. Approval of this request is subject to the following conditions (new material is underscored and material to be deleted is struck through and bracketed):

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning

Code), Hawai'i County Code within [~~one hundred eighty (180) days of approval of this permit~~]two (2) years from the effective date of this amendment. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the use. Landscaping for the project site shall be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts on neighboring properties.

3. Prior to the continuation of the Country Market and associated uses, the applicant shall secure and finalize any building permits required by the Department of Public Works Building Division.
4. The hours of operation for the Country Market shall be limited to 8:00 a.m. to 5:30 p.m. on weekends only.
5. There shall be no more than 20 special events annually. All special events shall be limited to 8:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 10:00 p.m. on weekends. The Relay for Life benefit for the American Cancer Society is an allowable exception. Prior to allowing these special events, the applicant shall notify the Planning Department in writing.
6. Special events are intended for community gatherings, meetings or events with the use or proceeds benefiting a charity, nonprofit organization, social or political fundraiser or a worthwhile community case. No concerts or tourism related activities are permitted.
7. A policy for security and traffic control for special events shall be developed in consultation with the Hawai'i County Police Department with approval by the Director prior to Final Plan Approval.
8. The noise level during any Country Market or special event shall comply with the State Department of Health noise standards for agricultural properties and shall not exceed 70 decibels at any property boundary.
9. No exterior speakers shall be installed at the arena so as to be directed on any true bearing between 235 degrees and 045 degrees.
10. Parking shall be provided on-site and shown on the Plan Approval site plan per Condition No. 2.
11. Access to the project site shall meet the requirements of the Department of Transportation.

12. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
 13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
 14. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
 15. A progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. The report shall address in detail the status of the development and the compliance with the conditions of approval.
- ~~[15.]~~16. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements. Alcohol use shall be regulated by and comply with all State and County regulations and permit requirements.
- ~~[16.]~~17. ~~[An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:~~
- ~~A. Non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.~~
 - ~~B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.~~
 - ~~C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.~~
 - ~~D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).~~
 - E.] If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

Mr. Brian A. Anderson
Poloke Farms LLC
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

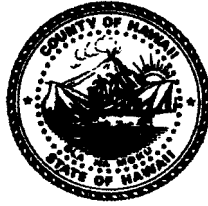
Sincerely,



Zendo Kern, Chairman
Windward Planning Commission

Lpolokefarms01wpc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado ✓



County of Hawai'i

WINDWARD PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

JUL 22 2014

Mr. Brian A. Anderson
64-5085 Kalake Street
Kamuela, HI 96743

Dear Mr. Anderson:

Special Permit (SPP 09-000095)

Applicant: Asia Pacific Group, LLC (formerly Poloke Farms, LLC)

Request: Amendments to Special Permit No. 09-000095 Including a 1-Year Time Extension to Condition 2 (Secure Final Plan Approval); Delete all References for a Weekly Country Market In Conditions 3, 4 & 8; Reduce Special Events to 6 (Condition 5); and Rewrite Condition 6
Tax Map Key: 4-7-007:040

The Windward Planning Commission, at its duly held public hearing on July 3, 2014, voted to approve the above-referenced request for amendments to Special Permit No. 09-000095, including a 1-year time extension to comply with Condition 2 (secure Final Plan Approval); the deletion of all references for a weekly country market in Conditions 3, 4 & 8; reduce special events from 20 to 6 events (Condition 5); and rewrite Condition 6 (definition of special events). The property is located along the north (makai) side of Highway 19 and east of the Waimea Country Club golf course near the 51-mile marker, Waikoekoe, Hāmākua, Hawai'i.

Approval of these amendments is subject to the following conditions (new material is underscored and material to be deleted is struck through and bracketed):

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning

JUL 22 2014

Code), Hawai'i County Code within two (2) years from the effective date of this second amendment. Plans shall identify all existing structures, fire protection measures, driveway access and parking stalls, and other improvements associated with the use. Landscaping for the project site shall be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts on neighboring properties.

3. ~~[Prior to the continuation of the Country Market and associated uses, the applicant shall secure and finalize any building permits required by the Department of Public Works Building Division.~~
4. ~~The hours of operation for the Country Market shall be limited to 8:00 a.m. to 5:30 p.m. on weekends only.~~
- 5.] There shall be no more than [20]6 special events annually. All special events shall be limited to 8:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 10:00 p.m. on weekends. The Relay for Life benefit for the American Cancer Society is an allowable exception. Prior to allowing these special events, the applicant shall notify the Planning Department in writing.
- [6.]4. ~~[Special events are intended for community gatherings, meetings or events with the use or proceeds benefiting a charity, nonprofit organization, social or political fundraiser or a worthwhile community case. No concerts or tourism related activities are permitted.]~~A special event is a sporting, cultural, business or other type of activity.
- [7.]5. A policy for security and traffic control for special events shall be developed in consultation with the Hawai'i County Police Department with approval by the Director prior to Final Plan Approval.
- [8.]6. The noise level during any [~~Country Market or~~]special event shall comply with the State Department of Health noise standards for agricultural properties and shall not exceed 70 decibels at any property boundary.
- [9.]7. No exterior speakers shall be installed at the arena so as to be directed on any true bearing between 235 degrees and 045 degrees.
- [10.]8. Parking shall be provided on-site and shown on the Plan Approval site plan per Condition No. 2.

[11.]9. Access to the project site shall meet the requirements of the Department of Transportation.

[12.]10. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.

[13.]11. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.

[14.]12. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

[15.]13. ~~[A progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. The report shall address in detail the status of the development and the compliance with the conditions of approval.]~~ If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

[16.]14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements. Alcohol use shall be regulated by and comply with all State and County regulations and permit requirements.

[17.]15. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

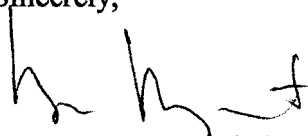
Mr. Brian A. Anderson
Page 4

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of this amendment request is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,

A handwritten signature in black ink, appearing to read 'Myles Miyasato', written over a horizontal line.

Myles Miyasato, Chairman
Windward Planning Commission

LAsiaPacificGroupspp09-095

Enclosure: PC Findings Report

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State Department of Transportation
State DLNR-HPD
Mr. Gilbert Bailado
Plan Approval Section

**COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS**

**ASIA PACIFIC GROUP, LLC (FORMERLY POLOKE FARMS LLC)
AMENDMENT TO SPECIAL PERMIT NO. 09-000095**

The property is located along the north (makai) side of Highway 19 and east of the Waimea Country Club golf course near the 51-mile marker, Waikoekoe, Hāmākua, Hawai‘i, TMK: 4-7-007: 040. The applicant is requesting several amendments to conditions of Special Permit No. 09-000095, which was originally approved to allow the establishment of a country market and occasional special events for non-profit agencies within an existing covered equestrian arena on approximately 2.3 acres of land. The applicant is requesting the following amendments:

- 1-year time extension to comply with Condition No. 2 (secure Final Plan Approval)
- Eliminate the weekly Country Market as a permitted use under Special Permit No. 09-000095, and delete all references to the weekly country market in Condition Nos. 3, 4 & 8.
- Reduce the number of special events annually from 20 to 6 for Condition No. 5.
- Rewrite Condition No. 6 to state “A special event is a sporting, cultural, business or other type of activity.”

The main reason for the amendment requests is that the applicant has been working with the Department of Transportation for over 4 years to comply with access requirements from the Māmalahoa Highway, as required by Condition No. 11, and has not been able to receive final approval. As a result, the applicant has not been able secure Final Plan Approval (Condition No. 2) that is necessary to proceed with obtaining building permits for a change of occupancy permit.

One possible solution is to construct ingress/egress lanes at the front of the property or to reduce the uses allowed in the Special Permit, which would be very costly. Another solution is to reduce the uses by eliminating the weekly country market and reduce the amount of special events from 20 to 6 per year. The Planning Director is supportive of the reduction of uses to resolve the access problem from the highway with the Department of Transportation as well a 2-year time extension to comply with Condition No. 2 (time to secure Final Plan Approval) in case other unforeseen issues arise that could delay efforts to get the plan approval.

The applicant is also requesting to amend Condition No. 6, which states “Special events are intended for community gatherings, meetings or events with the use or proceeds benefiting a charity, nonprofit organization, social or political fundraiser or a worthwhile community case. No concerts or tourism related activities are permitted.” The applicant is requesting that the new wording of Condition No. 6 state “A special event is a sporting, cultural, business or other type of activity.”

The Planning Director is supportive with this request but is concerned that the new wording for special events will allow basically any type of event on the property

including, but not limited to, large music concert events. To minimize these concerns, the applicant has been working with the Police Department to create a policy for security and traffic control for special events, which includes hiring Special Duty Police Officers to direct and monitor traffic, and to hire security personnel to manage the events. Additionally, the new Condition No. 6 requires the applicant to comply with the State Department of Health noise standards for agricultural properties that shall not exceed 70 decibels at any property boundary. Lastly the Planning Director is adding a new condition (new Condition No. 13) to address complaints and the process to resolve those complaints. With these conditions in place, there are solutions if these events cause complaints and create negative impacts to the surrounding community. The recommendation is based on the following:

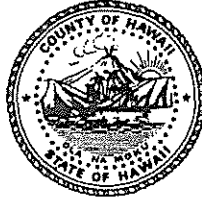
Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence. The applicant has been trying to meet the requirements of the Department of Transportation for access for over four (4) to comply with Condition No. 11 of Special Permit No. 09-000095. As of the date of this writing, the applicant has been unable to receive the final sign off from DOT. As a result, the applicant has not been able to comply with Condition No. 2 (Secure Final Plan Approval) as well. To resolve this matter, the applicant has met with representatives of the Department of Transportation and is requesting to reduce the amount of uses previously approved under this Special Permit. This includes eliminating the weekly country market and reducing the special events from 20 to 6 events per year. Based on the above, the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, and that are not the result of their fault or negligence.

The granting of the amendment requests would not be contrary to the original reasons for the granting of the permit. The requested amendments in part eliminates the weekly country market and reduces the amount of special events from 20 to 6 events per year. These amendments will reduce the overall approved scope and scale of this project. Therefore, the amendment requests would not be contrary to the original reasons for the granting of the Special Permit.

The granting of the amendment requests would not be contrary to the General Plan or Zoning Code. The amendment requests continues to be consistent with the Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan, and consistent with the Zoning Code as the applicant has previously received approval for this Special Permit from the Planning Commission and is not adding to the overall approved scope and scale of this project. Rather, the applicant is eliminating the weekly country market and reducing the amount of special events from 20 to 6 per year so that he can comply with Condition No. 2 (secure Final Plan Approval) and the previous Condition No. 11 (Access approval by DOT) within the Special Permit. Therefore, the amendment request would not be contrary to the General Plan or the Zoning Code.

Based on the above information, the requested amendments to Special Permit No. 09-000095 are approved to allow a 1-year time extension to comply with Condition 2 (Secure Final Plan Approval); the deletion of all references for a weekly country market

in Conditions 3, 4 & 8; reduce special events from 20 to 6 events (Condition 5); and rewrite Condition 6 (Definition of special events) on Tax Map Key: 4-7-007:040.



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

April 14, 2010

Mr. Gregory Mooers
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 09-000095)

Applicant: Gregory Mooers

Request: Operation of a Weekly Country Market and Occasional
Special Events for Non-Profit Agencies Within an Existing Covered
Equestrian Arena

Tax Map Key: 4-7-7:40

The Windward Planning Commission at its duly held public hearing on April 1, 2010, voted to accept the withdrawal of the Petition for Standing in Contested Case Hearing by Joanne Frederick. The Commission also voted to approve the above-referenced application to allow the establishment of a country market and occasional special events for non-profit agencies within an existing covered equestrian arena on approximately 2.3 acres of land situated within the State Land Use Agricultural District. The property is located along the north (makai) side of Highway 19 and east of the Waimea Country Club golf course near the 51-mile marker, Waikoekoe, Hāmākua, Hawai'i.

Approval of this request is based on the following:

The applicant requests a Special Permit to allow the operation of a weekly country market to provide local farmers and ranchers a venue to sell their produce and livestock and local vendors to sell their products to the general public. The landowners would also like to provide the arena for occasional special events for non-profit agencies, community gatherings and social functions. The country market will be held on weekends from 7:00 a.m. to 2:30 p.m. The applicant states that the hours of operation for occasional special events will be determined on a case-by-case basis.

Hawai'i County is an Equal Opportunity Provider and Employer

Since the arena was constructed in 2008, there have been numerous requests from the community to utilize the facility for other than equestrian and livestock events. According to the applicant, "the community recognizes this facility as a unique asset and opportunity for the community, as it provides a large area, covered from the weather, in a relatively remote location with large areas for parking."

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The request is unusual in that the proposed request is not strictly agricultural in nature; the use would allow the applicant a venue to market locally grown agricultural products in an existing equestrian arena. Therefore, it is reasonable that this use be allowed in the Agricultural district. The property is located within the Agricultural district and the portion of the site used for the arena supports the agricultural uses on the remaining portion of the property. The balance of the property will not impact agricultural uses and be affected by the proposed use.

Such uses shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The majority of the property is currently being used for pasturing livestock and is in agricultural use. The proposed request involves 2.353 acres of an approximately 73.438-acre parcel, and is developed with an approximately 42,000-square foot equestrian arena. Because the proposed use of the arena for a country market and special events occurs and will continue to be conducted within the existing arena, it will not displace any existing agricultural activity or diminish the agricultural potential of the property. Therefore, the use will not adversely affect the

preservation and agricultural use of the County's agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The desired use would not adversely affect surrounding properties.

Surrounding properties are zoned A-40a and A-35a and used primarily for pasturing livestock. The Waimea Country Club is located west of the project site. The closest dwelling is located east of the property, on TMK: 4-7-7: 39. The country market will be held on weekends from 7:00 a.m. to 2:30 p.m. The applicant states that the hours of operation for occasional special events will be determined on a case by case basis. Nevertheless, a condition of approval will be included to limit the hours of operation for special events. As a condition of approval, the applicant will be required to provide on-site parking, drainage improvements and landscaping as necessary. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is from the Māmalahoa Highway, a State roadway, to a 16-foot wide graveled road. The Department of Public Works had no objections to the request. As of this writing, no comments were received from the Department of Transportation.

Water is provided by a catchment system utilizing the roof of the arena. There is no public sewer in the area. Portable toilets on-site are serviced weekly, and additional units can be provided, if necessary. All utilities are available to the site. Police and fire services are available from Waimea. The property is large enough to provide for off-street parking. As a condition of approval, the applicant will be required to dispose of all drainage runoff on-site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various non-agricultural services that may not be available or allowed by zoning for its residents. Since the district boundaries were established, Waimea's population has grown substantially and the area has transitioned to more diversified agriculture. This has increased demand for businesses that service the agricultural industry.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Although the property is designated Other Important Agricultural Lands by the ALISH system, it is designated “D” or “Poor” for agricultural productivity by the Land Study Bureau Soil Classification System, and therefore does not have high agricultural potential due to the poor quality of its soils. Because the property is not optimal for growing agricultural crops, the applicant will continue to use a portion of the property for pasturing livestock.

The use will not substantially alter or change the essential character of the land and the present use. The essential character of the area is agricultural, and the proposed use will promote various locally grown agricultural products in the arena. The covered arena has been used as a country market and a venue for special occasions not in accordance with the State Land Use Law. Thus, the applicant has requested the Special Permit to legitimize the operation. As such, there will be no change to the agricultural character of the land and its present use.

The request will not be contrary to the General Plan and Community Development Plan (CDP). The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is identified by the LUPAG map as Important Agricultural Lands, described as lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The operation of a country market and use of the arena for occasional special events is not consistent with the LUPAG Map designation because it is not an agricultural use of the land. However, the current use has existed on the property since the structure was constructed in 2008 and would serve the needs of the Hamakua/Waimea community. As of this writing, no written objections were received from the public.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management. The property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems and marine resources. Additionally, it is not located in the Special Management Area. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the applicant, no valued cultural or natural resources exist on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced at the site. By letter dated December 10, 2009, the DLNR-State Historic Preservation Division has indicated that no historic properties will

be affected because previous grubbing/grading has altered the land, and SHPD previously determined that this project will have no effect on historic properties.

Based on the above, approval of the request to allow the operation of a country market and occasional special events within an existing covered equestrian arena on approximately 2.353 acres of land would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code within one hundred eighty (180) days of approval of this permit. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the use. Landscaping for the project site shall be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts on neighboring properties.
3. Prior to the continuation of the Country Market and associated uses, the applicant shall secure and finalize any building permits required by the Department of Public Works Building Division.
4. The hours of operation for the Country Market shall be limited to 8:00 a.m. to 5:30 p.m. on weekends only.
5. There shall be no more than 20 special events annually. All special events shall be limited to 8:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 10:00 p.m. on weekends. The Relay for Life benefit for the American Cancer Society is an allowable exception. Prior to allowing these special events, the applicant shall notify the Planning Department in writing.
6. Special events are intended for community gatherings, meetings or events with the use or proceeds benefiting a charity, nonprofit organization, social or political fundraiser or a worthwhile community case. No concerts or tourism related activities are permitted.
7. A policy for security and traffic control for special events shall be developed in consultation with the Hawai'i County Police Department with approval by the Director prior to Final Plan Approval.

8. The noise level during any Country Market or special event shall comply with the State Department of Health noise standards for agricultural properties and shall not exceed 70 decibels at any property boundary.
9. No exterior speakers shall be installed at the arena so as to be directed on any true bearing between 235 degrees and 045 degrees.
10. Parking shall be provided on-site and shown on the Plan Approval site plan per Condition No. 2.
11. Access to the project site shall meet the requirements of the Department of Transportation.
12. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
14. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements. Alcohol use shall be regulated by and comply with all State and County regulations and permit requirements.
16. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

Mr. Gregory Mooers
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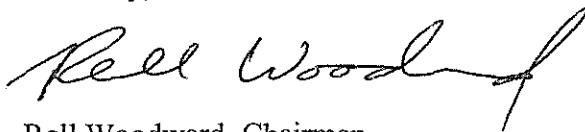
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact the Planning Department at 961-8288.

Sincerely,



Rell Woodward, Chairman
Windward Planning Commission

Lmooers(Anderson)spp09-000095wwpc
cc: Brad and Cord Anderson
David D. Higgins, Esq.
Brandon Gonzalez, Esq.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado