

County of Hawai'i

LEEWARD PLANNING COMMISSION

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

November 9, 2010

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

Dear Mr. Mooers:

Special Permit Application (SPP 10-000105)

Applicant: Jeffrey Hanneken

Request: Operate a Ranch Fencing Business on a 0.7-Acre Portion of
A 4-Acre Parcel

Tax Map Key: 6-2-005:031

The Leeward Planning Commission at its duly held public hearing on October 22, 2010, voted to approve the above-referenced application to allow the establishment of a ranch fencing business on 0.7-acre portion of a larger 4-acre parcel situated within the State Land Use Agricultural District. The subject property is situated on the north side of Kawaihae Road near the 61-mile marker within the Waimea Landmark Estates Subdivision, Ouli, South Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to continue the operation of a ranch fencing business on the property by storing equipment and materials used in the business such as piping, trailers, hoe rams, a back hoe and attachments. The Hannekan's have owned the subject property since 1999 and have used a portion of their home as a business office for their company, Ranch Services, since that time. The business operation consists of using a portion of the dwelling as a home office and storing ranch fencing materials used in fabricating gates and equipment on an approximately 0.7-acre portion of a 4-acre parcel. The applicant is specifically proposing to store the majority of equipment and materials northwest of a berm so that it is hidden from Kawaihae Road. However, a trailer, back hoe and back hoe attachments would be stored southeast of the berm and would be viewable from Kawaihae Road. No additional structures are

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proposed. The owners will be the only employees and no clients or the general public will be visiting the site at any time in association with the business. Stockpiling or selling of fencing material will not occur on the subject property. Equipment and materials will be hauled to and from the property each day by the applicant using his personal truck.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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. 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 proposed use is unusual in that it is not an agricultural use of land but is reasonable because it will directly support agricultural activities (ranching) on other more suitable pasture lands throughout the district and county.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. 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 property is not classified by the State or County as important agricultural land. Soils on the property are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and are unclassified by the Department of Agriculture's ALISH Map. The request will not displace any agricultural activity or diminish the agricultural potential of the site because the proposed use will occur on 0.7-acres of the property and within an existing dwelling. The proposed use will not adversely affect the continued use of the property to pasture the applicant's horse or the preservation of the County's prime agricultural lands. Thus, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject request is considered an unusual and reasonable use of agricultural lands. The requested use will not adversely affect the preservation and agricultural use of the County's prime agricultural land; thus, the request is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned A-40a, A-5a and A-3a and consist mainly of vacant pasture land to the north and rural-residential subdivisions to the south. Many of the properties in the Kamuela Plantation and Kānehoa subdivisions are about 5 acres in size and contain farm dwellings. These dwellings are located across Kawaihae Road thus any noise and dust that may be generated by the proposed use is not anticipated to adversely affect neighboring properties. A portion of the permit area southeast of the berm can be easily viewed from these neighboring properties because they sit at a higher elevation than the subject property. Other than the applicant's home there are no dwellings in the immediate area north of Kawaihae Road. To minimize views of the permit area from surrounding properties a condition of approval will require the applicant provide a landscape buffer along the properties Kawaihae Road frontage. With the implementation of this condition, the requested use will not adversely affect surrounding properties.

(C) 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 site is via an existing private graveled driveway from Kawaihae Road, which is a two-lane paved State highway. The owners will be the only employees and no clients or the general public will visit the site at any time in association with the business, thus an increase in traffic is not anticipated. County water is available to the property but is limited to one unit of water. The Department of Water Supply recommends a backflow prevention assembly be installed for the existing water meter. Wastewater from the existing dwelling is disposed of into a septic system. The proposed use will not require additional County water and will not generate additional wastewater. Telephone and electrical services are available to the site. Medical, fire and police services are available in Waimea, approximately 5 miles from the property. Expansion of the use beyond what currently exists is not proposed at this time; therefore the requested use will not burden public agencies to provide additional services.

(D) 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 proposed use which best fits the definition of a "contractor's base yard" in the zoning code is permitted on industrial-zoned lands. However, the amount of industrial and commercial-zoned lands in Waimea has not kept pace with demand.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Due to very poor soil quality and low annual rainfall the property is not well suited for traditional agriculture. However, the applicant will continue to pasture his horse on the property.

(F) The use will not substantially alter or change the essential character of the land and the present use. The character of the area is rural and residential in nature with open, dry pasture land to the north of the property and rural-residential subdivisions across Kawaihae Road to the south. In 1999 the applicant constructed his home on the property and began operating a ranch fencing business by storing materials and equipment on the site and using a portion of the home as an office. No new construction is proposed and activities on the property will continue to occur as they have for the past 11 years if the request is approved, thus the essential character of the land will not change.

(G) The request will not be contrary to the General Plan or the South Kohala Community Development Plan (SKCDP). 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 located in an area identified as Rural on the LUPAG Map. Rural lands may be used for commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed use is a support service of livestock ranching, which has historically been considered a primary agricultural activity of South Kohala. Allowing the applicant to continue his ranch fencing business will help to maintain the agricultural character of Waimea and South Kohala without conflicting with any of the district-wide policies of the SKCDP.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program. The subject property is located outside of the Special Management Area about six miles from the nearest shoreline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the properties distance from the shoreline, the request will not impact recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources. No historic properties exist on the property due to grading and grubbing and use of the property for cattle grazing. Further, there is no evidence of

valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

Based on the above considerations, approval of the request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter on private property, which must be inspected and approved by the Department of Water Supply prior to commencing the proposed use.
3. A description of the 0.7-acre permit area in map and written form by metes and bounds as certified by a registered surveyor shall be submitted to the Planning Department within ninety (90) days from the effective date of this permit. All outdoor activities associated with the proposed use shall be conducted entirely within the permit area.
4. As represented by the applicant, the stockpiling and selling of fencing material from the subject property shall be prohibited.
5. Clients and the general public shall not visit the property to conduct ranch fencing business.
6. The applicant shall submit a landscape plan for review and approval by the Planning Director. All required landscaping shall be installed within ninety (90) days from the effective date of this permit.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. An initial administrative time extension for the performance of conditions of the permit 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.

Mr. Gregory R. Mooers
Page 6

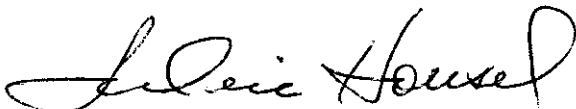
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely manner, 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 Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Frederic Housel, Chairman
Leeward Planning Commission

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cc: Mr. Jeffrey Hanneken
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Mr. Gilbert Bailado
Zoning Inspector - Kona