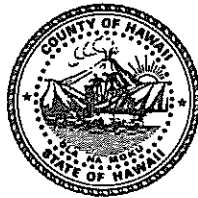


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
7099 3220 0000 4869 7756

APR 20 2000

Mr. Tyler Smith
Hiluhilu Development, LLC
65-1210 Kawaihae Road, 2nd Floor
Kamuela, HI 96743

Dear Mr. Smith:

Special Permit Application (SPP 00-005)
Applicant: Hiluhilu Development, LLC
Request: To Establish a Temporary Real Estate Office Located Within
the State Land Use Agricultural District
Tax Map Key: 7-2-005:Por. of 001

The Planning Commission at its duly held public hearing on April 7, 2000, voted to approve the above-referenced application. Special Permit No. 1051 is hereby issued to establish a temporary real estate sales office and related improvements on approximately 2,000± square feet of land situated in the State Land Use Agricultural District. The property is located on the west (makai) side of Mamalahoa Highway adjacent and to the south of Kona Ocean View Properties Subdivision, Kau, North Kona, Hawaii.

Approval of this request is based on the following:

The proposed temporary real estate sales office and related improvements is an unusual and reasonable use of lands situated within the State Land Use 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 subject property is 999.03 acres in size. The proposed temporary real estate sales office and related improvements will comprise an area of approximately 2,000 square feet within a 268-acre portion of the property that was recently granted final subdivision approval for the development of an 81-lot agricultural subdivision. The sales office will be used to facilitate the sale of the

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3-acre lots within the subdivision. None of the property is presently used for agricultural purposes. Once lots are developed within the subdivision for agricultural and residential purposes, however, it is anticipated that there will be small-scale agricultural activity in this area. Further, the proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use for some time.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The proposed use will be located within an area whose soils are classified as "C," "D" and "E" or "Fair," "Poor" and "Very Poor," respectively, by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH Map classifies a portion of the subject property as unique agricultural land while the majority of the property is not classified as having any agricultural importance. Unique agricultural land is defined as land that has the special combination of soil quality, location, growing season, moisture supply, and is used to produce sustained high quality and/or high yields of a specific crop when treated and managed according to modern farming methods.

The subject property is situated within the County's Agricultural-3 acre (A-3a) zoned district. A temporary real estate sales office would be a permitted use within the State Agricultural District provided a Special Permit is secured. The temporary real estate sales office and related improvements will be confined to an area of approximately 2,000 square feet. While some soils within the project site are fairly suitable for agricultural uses, the proposed real estate sales office is temporary in nature and will utilize a very small area. The proposed temporary real estate sales office use, in itself, would not adversely affect the agricultural potential of the project site or its surrounding area. Ultimately, the office will be removed and the site will be sold as part of a lot to be used for agricultural and residential purposes. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The proposed temporary real estate sales office will be situated on a portion of a 999.03-acre parcel of land. To the north and south of the subject property there are large tracts of vacant land owned by the State of Hawaii. Also, there are single-family residences and a number of vacant residential sized lots within the adjacent Kona Ocean View Properties, Kona Palisades Estates, Kona Acres, Kona Coast View Subdivision,

Kona Wonder View Lots, and Kona Highlands. The Kona Palisades Estates and Kona Coastview Subdivision are situated within the State Land Use Urban District and are primarily zoned Agricultural-5 acres (A-5a) by the County. However, these subdivisions were created in mid-1968 and are essentially non-conforming residential sized lots ranging between 8,000 to 20,000 square feet.

An existing 12-foot wide paved road that leads to Kau Well Site No. 1 provides access to the project site from Mamalahoa Highway. An existing gravel road that branches off the paved road will be used to access the temporary real estate sales office and the associated gravel parking spaces. No traffic lights are planned. Mamalahoa Highway is a two-lane State highway right-of-way with a posted speed limit of 45 mph. The proposed temporary real estate sales office will be used on an intermittent basis, seven days a week. The office operation will be restricted to daylight hours. It is expected that there will be no more than two sales agents and four buyers at the site at any given time. No increase in traffic is expected as a result of the proposed use as agents and buyers would be inspecting the subdivision by automobile whether or not the office was available. Therefore, it is not expected that the establishment and operation of the temporary real estate sales office will adversely impact any of the surrounding properties.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Water, telephone and electrical utilities currently service the site. The traffic to be generated by the temporary real estate office is minimal. Access to the property is deemed adequate to accommodate the anticipated traffic generated. The applicant shall meet all applicable agency requirements of the Department of Health, Department of Water Supply, Department of Public Works and the Fire Department prior to the establishment of the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Land developers and potential purchasers of homesites have recognized the need to maintain real estate sales offices on-site within larger subdivision developments such as this one. In recent years, there has been an increasing trend towards large lot agricultural subdivisions that enable buyers to build homes and engage in income-producing or personal agricultural pursuits. The proposed temporary real estate sales office and related improvements will be used to facilitate the sale of 3-acre lots for agricultural and residential purposes. Such use is consistent with the social and physical character of a rural-agricultural area and contributes to the economic structure of the County.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Further, the proposed use will not substantially alter or

change the essential character of the land and the present use. The proposed use will be located on a portion of the property that is presently being developed as an 81-lot agricultural subdivision. No endangered species will be impacted by the proposed use, as project site was recently graded and cleared of Christmas berry thickets. The proposed project is not expected to have any significant adverse effect on the wildlife of the region. The proposed temporary real estate sales office site is not near any of the historic sites identified for preservation or further data recovery. As such, the temporary real estate sales office will not substantially alter or change the essential character of the land any more than the subdivision development. Although the present permitted development of the subdivision has altered the appearance of the vegetation on the property, the proposed use will not contribute to this alteration. Furthermore, once the sale of the lots within the subdivision is completed, the temporary real estate sales office will be removed. Therefore, from a physical standpoint, the proposed use will not substantially alter or change the essential character of the land and its present use.

The request will not be contrary to the General Plan. The subject request is not contrary to the General Plan LUPAG Map, which designates the property for Urban Expansion uses. The proposed use is consistent with the following goals and policies of the General Plan.

Economic

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

Housing

- Attain safe, sanitary, and livable housing for the residents of the County of Hawaii.

- Attain a diversity of socio-economic housing mix throughout the different parts of the County.
- Maintain a housing supply which allows a variety of choice.
- Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.

Environmental Quality

- Maintain, and if feasible, improve the existing environmental quality of the island.
- The County of Hawaii shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.

Public Utilities

- Ensure that adequate, efficient and dependable public utility services will be available to users.

Transportation

- Provide a transportation system whereby people and goods can move efficiently, safely, comfortably and economically.

Land Use

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

- Rural-style residential-agricultural developments, such as new small-scale rural communities or extensions of existing rural communities, shall be encouraged in appropriate locations.

Based on the above considerations, the approval of the proposed temporary real estate sales office is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval of the temporary real estate office shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(4), 25-2-76 and 25-4-77, within one (1) year from the effective date of this permit. Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveways and four (4) gravel parking areas associated with the proposed use.
3. The real estate sales office shall not be occupied until the applicant has been issued a Certificate of Occupancy.
4. Driveway access to the property shall meet with the approval of the Department of Public Works prior to occupancy.
5. Drainage improvements to the property, if required, shall meet with the requirements of the Department of Public Works. Such improvements shall be provided prior to occupancy.
6. Wastewater generated by the real estate sales office shall be disposed of in a manner meeting with the requirements and approval of the Department of Health.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall

be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.


8. The real estate sales office shall be terminated upon the initial sale of all lots within the Makalei Estates subdivision. The real estate sales office, the driveway and parking area shall be removed upon termination of the use. The applicant shall immediately notify the Planning Director in writing of the termination of the real estate office use.
9. The real estate sales from the real estate sales office shall be limited to lands within the 81-lot Makalei Estates Subdivision.
10. The applicant shall comply with all applicable laws, rules and regulations of the affected agencies.
11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the real estate sales office, real estate sales and to what extent conditions of approval are being complied with. This condition 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.
12. An initial extension of time for the performance of conditions within 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.
 - 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).

Mr. Tyler Smith
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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 Pamela Harlow of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,

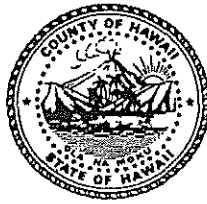


Richard B. Baker, Jr., Chairman
Planning Commission

Lhilihulu01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Guido Giacometti

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

March 5, 2001

Mr. Guido Giacometti
President
Island Advisors Inc.
P.O. Box 7121
Kamuela, HI 96743-7121

Dear Mr. Giacometti:

Special Permit No. 1051 (SPP 1051)
Applicant: Hiluhilu Development, LLC
Approved Use: Temporary Real Estate Office
TMK: 7-2-15: 3 (formerly 7-2-05: Portion of 1);
Makalei Estates Subdivision, North Kona, Hawaii

Thank you for your letter dated January 19, 2001, informing this office of the applicant's desire to relocate the approved temporary real estate office to another portion of the subject property now identified as Lot 1 of Makalei Estates Subdivision. We have determined that relocation of the temporary real estate office to another location within the affected area will require that Special Permit No. 1051 be nullified and a new application for a Special Permit be filed with the Planning Commission.

Our review of the record regarding the approval of Special Permit No. 1051 by the Planning Commission on April 7, 2000 clearly defines the location of the temporary real estate office within a portion of the Makalei Estates Subdivision identified as Lot 3 (TMK: 7-2-15: 3). According to the information contained within your letter, the applicant desires to relocate the temporary real estate office to Lot 1 (TMK: 7-2-15: 1), which is situated approximately 500 feet to the south of the location approved by the Planning Commission. The Planning Department does not have the authority to arbitrarily approve the relocation of uses as approved by the Planning Commission.

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Guido Giacometti
March 5, 2001
Page 2

Please feel free to contact Daryn Arai of our West Hawaii Office at 327-3510 should you have any questions or wish to discuss this matter further.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

DSA
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c w/ltr: West Hawaii Office