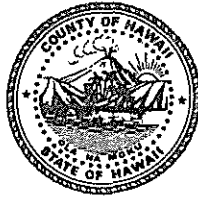


Stephen K. Yamashiro  
Mayor



## 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 5790

AUG 22 2000

Robert D. Triantos, Esq.  
P.O. Box 1720  
Kailua-Kona, HI 96745

Dear Mr. Triantos:

Special Permit Application (SPP 00-023)

Applicant: Robert S. Nackowski

Request: To Allow the Establishment of a Temporary Real Estate Sales Office Within  
a Model Home

Tax Map Key: 7-5-10:Portion of 4

The Planning Commission at its duly held public hearing on August 4, 2000, voted to approve the above-referenced application. Special Permit No. 1069 is hereby issued to allow a temporary real estate sales office within a model home situated on 5.002 acres of land within the State Land Use Agricultural District. The property is located in the Wehilani Subdivision on the east (mauka) side of Hawaii Belt Road, approximately 1,200 feet south of its intersection with Nani Kailua Drive, Puaa 2<sup>nd</sup>, North Kona, Hawaii.

Approval of this request is based on the following:

The proposed temporary real estate sales office is an unusual and reasonable use of land 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 5.002 acres in size. The proposed temporary real estate sales office will be developed within a permitted model home located within an existing agriculturally zoned subdivision. Further, the proposed use would not, in itself, displace agricultural activity nor diminish the agricultural potential of the area since this parcel has already been developed with the existing model home and related improvements.

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The granting of this request would promote the effectiveness and objectives of Chapter 205 and 205A, 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 "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH Map does not classify the subject property as having any agricultural importance.

The subject property is situated within the County's Agricultural-5 acre (A-5a) 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 will be confined to the model home, which comprises an area of approximately 1,700 square feet and will be removed two years following the effective date of the issuance of the Special Permit. Soils within the project site are of limited agricultural value and are generally used for grazing. 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 model home will be sold as part of a lot to be used for agricultural and residential purposes. The subject property is located approximately 4,400 feet from the shoreline and thus the subject request is not expected to adversely impact coastal recreational, historic, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, beach protection or marine resources. 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 5.002-acre parcel of land. The surrounding area consists of a mixture of single-family residences and vacant lots. Lands immediately adjacent to the subject property are zoned Agricultural (A-5a). Lands further to the east are zoned Residential-Agricultural (RA-5a) and Agricultural (A-1a). The Kailua View Estates Subdivision, which is zoned Single-Family Residential (RS-15), is located further to the north. Further north is the Kona Heights Subdivision, which is zoned Agricultural (A-5a) and consists of lots ranging in size between 7,500 to 10,000 square feet. West of the property, on the makai side of the Hawaii Belt Road, a few properties are zoned Agricultural (A-5a), and further to the west is the University of the Nations campus, which is zoned Multiple-Family Residential (RM-4). Further to the northwest of the property, also makai of the Hawaii Belt Road, are the Pines I & II Subdivisions, which are also zoned Multiple-Family Residential (RM-4). Properties

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further to the south are zoned Agricultural (A-1a and A-5a). Further to the southwest, also on the makai side of the Hawaii Belt Road, is the Kona Hillcrest Subdivision, which is zoned Single-Family Residential (RS-7.5).

Access to the makai portion of the Wehilani Subdivision, where the subject property is located, is provided from the Hawaii Belt Road, a State-maintained road with a 150-foot right-of-way and 32-foot pavement width. The proposed temporary real estate sales office will be staffed by one or more licensed sales agents seven days a week, from 11:00 a.m. to 5:00 p.m. As the proposed use will only be conducted during these hours and is directly adjacent to the Hawaii Belt Road, which allows for immediate ingress and egress, it is not expected to impact surrounding properties. 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. The subject property is within an approved subdivision with existing infrastructure. 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 1- to 5-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 within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH Map does not classify the subject property as having any agricultural

importance. Based on this information, the property is poorly suited for agricultural uses. The subject property is part of a 16-lot subdivision consisting of 1- to 5-acre lots, which will be developed with farm dwellings and, in some cases, backyard gardening and agricultural activities for personal consumption. Given that the subject property has been bulldozed, used for grazing, and developed with a farm dwelling, it is unlikely that any endangered or threatened species of flora or fauna exist on the property. Likewise, these conditions, and the fact that the only archaeological features identified on the mauka portion of the subdivision were associated with modern ranching activities, make it unlikely that significant archaeological sites exist on the property. As such, the temporary real estate sales office will not substantially alter or change the essential character of the land any more than the existing subdivision development. Furthermore, once the sale of the lots within the subdivision is completed, the model home in which the temporary real estate sales office is located will be sold and/or occupied as a permitted farm dwelling. 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.

#### 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 six (6) parking spaces associated with the

proposed use. Any material used for the parking spaces shall eliminate erosion, mud and standing water.

3. The real estate sales office shall not be occupied until the Department of Public Works, Building Division, conducts and approves a final inspection of the model home and closes the outstanding building permit for this structure.
4. Driveway access to the property shall meet with the approval of the Department of Public Works prior to occupancy.
5. The real estate sales from the real estate sales office shall be limited to lands within the 16-lot Wehilani Subdivision. Furthermore, the real estate sales office shall be terminated upon the initial sale of all lots within the Wehilani Subdivision, or within two (2) years of the date of issuance of Final Plan Approval, whichever comes first. The applicant shall immediately notify the Planning Director in writing of the termination of the real estate office use.
6. 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.
7. 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.
8. 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-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
9. The applicant shall comply with all applicable laws, rules and regulations of the affected agencies, including the requirements of Chapter 205, Hawaii Revised Statutes.
10. 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

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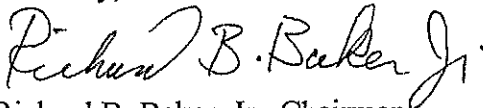
shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

11. 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).

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 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

Lnackowski01PC

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