



County of Hawai'i

PLANNING COMMISSION

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

June 16, 2006

Mr. Thomas Yamamoto
Lynch Hawaii Development
P.O. Box 6150
Kamuela, HI 96743

Dear Mr. Yamamoto:

Special Permit Application (SPP 06-000027)
Applicant: Lynch Hawaii Development
Request: Temporary Real Estate Office on 0.25 Acre
Within State Land Use Agricultural District
Tax Map Key: 7-2-7;portion 1

The Planning Commission at its duly held public hearing on May 26, 2006, voted to approve the above-referenced application to allow the establishment of a temporary real estate office on 0.25 acre of land situated within the State Land Use Agricultural District. The proposed site is located at the corner of Mamalahoa Highway (Highway 190) and Makalei Hawaii Country Club Road, Awalua, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant proposes to construct a temporary real estate office to market 180 agricultural lots known as Ainamalu at Huehue Ranch. The project consists of:

- one 1,440-square foot trailer to house a large display room, two small offices and a restroom;
- trailer height approximately 13 feet 4 1/8 inch from the finish grade to the top;
- an approximately 720-square foot lanai constructed against the trailer to serve as a viewing area;
- driveway;
- seven (7) parking spaces;

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- hours of operation - 12:00 p.m. to 4:00 p.m. Tuesdays through Sunday;
- two employees.

The temporary real estate office will be removed from the site after all 180 lots are sold, or upon expiration of the Special Permit, whichever comes first. Once the structure is removed, the site will become a landscaped, open ranching area. The applicant's objective is to utilize the temporary sales center for a period of not more than three (3) years.

The existing use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), 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. In recognizing that lands within the 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.

Soils on the property are classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau and designated Other Important Agricultural Land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property is the site of the Makalei Hawaii Country Club and not currently in active agricultural use. As only a .25-acre portion of the 989.112-acre parcel will be used for the temporary real estate office, the use will not displace any agricultural activity nor diminish the agricultural potential of the area. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The property is located mauka of the Mamalahoa Highway and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Although there were no professional surveys conducted of the site, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the property, and the area has not been identified as a significant botanical or biological habitat. Vegetation in the five acres surrounding the proposed project consists of a variety of introduced and native species,

including ohia, kukui nut trees, Christmas berry, silver oak, lantana and kikuyu grass. The fauna on the site includes mongoose, pea fowl, turkeys, game birds, feral birds and pigs. Owls, hawks, song birds and honey creepers are seen on occasion. The applicant states that no rare or endangered species have been found on the site. The applicant has stated that there are traditional and customary Native Hawaiian rights being practiced on the site.

By letter dated March 29, 2006, Haun and Associates has requested a letter of "no effect." An Archaeological Inventory Report was prepared by Haun & Associates in August, 2005. The report surveyed 989 acres and a total of 34 sites containing 56 features were identified on the property. However, no archaeological sites were identified within the boundaries of the proposed temporary sales office site. Thus, it is not anticipated that the proposed request will have an adverse impact on cultural or historical resources in the area.

The desired use will not adversely affect surrounding properties. Surrounding properties to the north and south are zoned A-20a. Properties across the Mamalahoa Highway to the west are zoned A-500a, A-5a and A-3a. Due to the limited and temporary nature of the proposed use, it is not anticipated that the use will adversely impact surrounding properties. As a condition of approval, the applicant will be required to provide landscaping to mitigate any potential adverse noise or visual impacts to adjacent properties. No objections were received from the public as of this writing.

The establishment of a temporary real estate office will 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 from Mamalahoa Highway, a State-owned highway via a driveway leading to the Makalei Hawaii Country Club. Water is available via a connection to the existing infrastructure servicing the Makalei Hawaii Country Club. Water is presently supplied to the property by the State Department of Health's approved Huehue Ranch water system and will serve the project as well. Protective services are located in Kailua-Kona, approximately eight miles from the site. All other essential utilities and facilities are available to support the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. The establishment of a temporary real estate office would allow the applicant to market the 180 agricultural lots for proposed residential and agricultural uses and address the growing housing needs in North Kona.

The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan. 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 property is designated Extensive Agriculture, which are lands not classified as Important Agricultural Land, and includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. The proposed use is compatible with the Extensive Agriculture designation, and is consistent with the Land Use, Housing and Economic elements of the General Plan. The Special Permit process, established by legislation, allows for other uses to be established for which the district is classified, provided the objectives of Chapter 205, HRS, are promoted.

In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An Archaeological Inventory Report was prepared by Haun & Associates in August, 2005. The report surveyed 989 acres and a total of 34 sites containing 56 features were identified on the property. No formal botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the rezoning area: According to the applicant, no archaeological sites were identified within the boundaries of the proposed temporary sales office site. No rare or endangered floral or faunal resources are likely to be on the site. The applicant has requested a letter of "no effect" from the DLNR-HPD.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: A condition of approval will be included to require the applicant to notify the DLNR-HPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-HPD. The applicant has stated that there is no evidence of any traditional or customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Thus, it is believed that the

project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

Based on the above considerations, the approval of the request to establish a temporary real estate office 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. Construction of the temporary real estate office shall be completed within one (1) year from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
3. The temporary structure shall not be used for a period longer than thirty-six (36) months from the date of a Certificate of Occupancy or after all 180 lots at the Ainamalu at Huehue Ranch are sold, whichever occurs first. The structure shall be removed co-terminus with the expiration of the temporary real estate office use.
4. Real estate sales shall be restricted only to lots within the proposed Ainamalu at Huehue Ranch Subdivision. Sales reports indicating the Tax Map Key of each property sold shall be submitted to the Planning Department with the annual report.
5. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
6. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
7. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.

8. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
9. 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-HPD when it finds that sufficient mitigative measures have been taken.
10. Upon compliance with all conditions of approval and prior to the start of the operation, the applicant shall provide, in writing, a final status report to the Planning Director.
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
12. 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 applicants, 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.

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Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this 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 Norman Hayashi of the Planning Department at 961-8288, ext no. 205.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

C. Kimo Alameda, Chairman
Planning Commission

Llynch01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu
Ms. Marissa Furfaro/PBR Hawaii