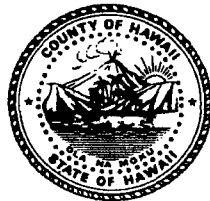


Harry Kim
Mayor



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County of Hawai'i

LEEWARD PLANNING COMMISSION

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SEP - 6 2017

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
121 Waiānuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

SUBJECT: Special Permit No. SPP 07-000044
Applicant: 1250 Oceanside, LLC (formerly 1250 Oceanside Partners)
Request: Amendment to Condition No. 2 (Time Extension to Convert Golf Shop to a Temporary Real Estate Office) and Condition No. 3 (Time Extension to Allow Continued Use of Temporary Real Estate Office)
Tax Map Key: 8-1-004:085

The Leeward Planning Commission, at its duly held public hearing on August 17, 2017, voted to approve the above-referenced request to amend Special Permit No. 07-000044 to grant a one-year extension of time to comply with Condition No. 2 (convert existing golf shop to a temporary real estate sales center), place a 15-year time limit on Condition No. 3 (timing for use of temporary real estate office) and grant an increase in the square footage of the permit area from 10,000 square feet to 13,900 square feet. The project site is located on Pu'u Ohau Place within the Club at Hōkūli'a, Ke'eke'e & Kana'au, South Kona, Hawai'i.

Approval of this amendment 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. Conversion of the existing golf shop to a temporary real estate sales center shall be completed within one (1) year from the effective date of this amended permit. Prior to issuance of a certificate of occupancy, 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), Hawai'i

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SEP - 6 2017

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. Use of the temporary structure as a real estate sales center shall terminate after all lots within the development are sold, or after 15 years from the effective date of this amended permit, whichever shall occur first. The structure shall be removed co-terminus with the expiration of the temporary real estate sales center use or converted into a use permitted by the applicable provisions in the State Land Use Law and Zoning Code.
4. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
5. As represented by the applicant, water and wastewater plumbing shall not be installed to the temporary real estate sales center structure.
6. 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, the number of lots sold and remaining number of lots to be sold 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.
7. 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.
8. 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.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

10. 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 manner, the Planning Director may initiate procedures to revoke this permit.

[Note: Ramseyer version available upon request.]

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 permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

L1250OceansideAmendSPP07-044|pc
Enclosure: PC Findings Report

cc w/enclosures: 1250 Oceanside, LLC
The Club at Hōkūli‘a, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
State Land Use Commission
DOT-Highways, Honolulu
GIS Section
Planning Department - Kona

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

1250 OCEANSIDE, LLC (FORMERLY 1250 OCEANSIDE PARTNERS)
AMENDMENT TO SPECIAL PERMIT NO. 07-000044 (SPP 07-044)

At their August 17, 2017 meeting, the Leeward Planning Commission (LPC) recommended the following changes to the Planning Director’s recommendation:

- Amend Condition No. 2 to state that prior to, *“issuance of a certificate of occupancy, the applicant, successors or assigns shall secure Final Plan Approval...”* The Director’s recommended condition language stated, *“Prior to construction...”*, however, the relocation of the temporary structure and some construction activity is already underway.
- Amend Condition No. 3 to terminate the use of the proposed structure after all lots within the development are sold or after 15 years from the effective date of this amended permit, whichever shall occur first.
- Correct “Preservation Site S-15” to read “Preservation Site S-31” in the Background, Planning Director’s Recommendation and Planning Commission Findings Reports.

Based on the preceding and following considerations, the LPC voted to approve the amendment to Special Permit 07-44 to grant a one-year extension of time to comply with Condition No. 2 (convert existing golf shop to a temporary real estate sales center), place a 15-year time limit on Condition No. 3 (timing for use of temporary real estate office) and grant an increase in the square footage of the permit area from 10,000 square feet to 13,900 square feet. The property is located on Pu‘u Ohau Place within the Club at Hōkūli‘a, Ke‘eke‘e & Kanakau, South Kona, Hawai‘i, TMK: (3)8-1-004:085.

1250 OCEANSIDE, LLC is requesting to amend Condition No. 2 and No. 3 of Special Permit 07-44 to allow for a one-year time extension to convert an existing temporary golf shop into a temporary real estate sales center. **Condition No. 2** states: *“Conversion of the existing golf shop to a temporary real estate sales center 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), Hawai‘i 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).”* **Condition No. 3** states: *“The temporary structure shall not be used for a period longer than five (5) years from the date of Final Plan Approval or after all lots within the development are sold, whichever occurs first. The structure shall be removed co-terminus with the expiration of the temporary real estate sales center use or converted into a use permitted by the applicable provisions in the State Land Use Law and Zoning code.”* The applicant is requesting an amendment to Condition No. 3 to remove the 5-year time limit to allow the continued use of the sales office until the last market lot is sold within the Hōkūli‘a project. Finally, the applicant is requesting an increase in the square footage of the permit area from 10,000 square feet to of 13,900 square feet to accommodate the installation of accent paving along the Pu‘u Ohau Place cul-de-sac, a new walkway from the cul-de-sac to the entrance of the proposed temporary real estate sales center, and landscaping improvements.

The applicant plans to renovate the existing 1,064 square-foot golf pro shop and construct an additional 628 square-foot terrace. Additionally, the applicant is proposing that the temporary real estate sales center be staffed by two (2) employees and that business hours for the sales center occur between 10 am to 6 pm daily. According to the applicant, walk-in traffic will not be allowed, as any potential clients will visit the sales center by invitation only, with a maximum of six (6) to eight (8) appointments per day. Condition No. 2 of Special Permit No. 07-44 originally required the applicant to complete the conversion of the temporary golf shop to a temporary real estate sales center by September 21, 2008. The applicant was unable to meet this deadline due to lengthy litigation, reorganization and bankruptcy, which the applicant emerged from in 2014. The one-year time extension will allow the applicant to complete the requested conversion. At the time of the original Special Permit application, the applicant represented that they could sell all the lots within the development within five (5) years. Based on that representation, Condition No. 3 required termination of the temporary real estate sales center within five (5) years from the date of Final Plan Approval. However, based on current market demands, the applicant now anticipates that lot sales should proceed at a gradual pace over the next 25 years. To avoid having to come back to the Planning Commission every five years for additional time extensions until the sales program concludes, the applicant is requesting a deletion of the 5-year permit lifespan limitation and proposes that the temporary real estate sales center use cease once the last lot is sold. Finally, as stated above, the applicant is requesting a 3,900 square-foot increase in the permit area to accommodate aesthetic improvements to the project area.

Granting of the amendment request would not be contrary to the original reasons for granting the permit and the request would not be contrary to the General Plan, the Zoning Code or the Kona Community Development Plan. The Planning Commission originally granted Special Permit No. 07-44 with a finding the temporary real estate sales center use would be an unusual and reasonable use of lands situated within the Agricultural District and would not be contrary to the objectives of Chapter 205, HRS.

The proposed real estate sales center permit area will only encompass 13,900 square feet of a larger 15.43-acre parcel. The permit area is not being used for active agriculture as it was previously permitted for golf course use under Use Permit 115. In addition, the soils within the permit area are classified "D" or "Poor" under the Land Study Bureau's soil productivity rating and is "Unclassified" on the ALISH map, therefore the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The proposed use will not substantially alter or change the character of the area, which includes the Club at Hōkūli'a (golf course, golf clubhouse and related amenities). The applicant will install landscaping, a paved walkway, accent paving and other improvements to the sales center that will integrate the temporary real estate sales center into the aesthetic character of the surrounding golf resort area.

The proposed real estate sales center is a low-impact, temporary facility that will not adversely affect surrounding properties. The proposed use is not expected to generate a significant amount of traffic as the business hours for the temporary real estate sales center will occur between 10 am to 6 pm daily and be staffed by two (2) employees. According to the applicant, walk-in traffic will not be allowed, as any potential clients will visit the sales center by invitation only, with a maximum of six (6) to eight (8) appointments per day. The applicant is proposing to provide six (6) total parking stalls for the proposed use, which include three (3) full-

size parking stalls, one (1) ADA accessible parking stall, and two (2) employee parking stalls in the adjacent parking lot based on the 1,064 square feet of enclosed office area within the proposed temporary real estate sales center. Final parking requirements will be determined through the Plan Approval process required as a condition of this permit amendment.

At the time of the original Special Permit application, the applicant represented that they could sell all the lots within the development within five (5) years. Based on that representation, Condition No. 3 of the original Special Permit required termination of the temporary real estate sales center within five (5) years from the date of Final Plan Approval. Based on current market demands, the applicant now anticipates that lot sales should proceed at a gradual pace over the next 25 years. The applicant is requesting this amendment to avoid having to come back to the Planning Commission every five years for additional time extensions until the sales program concludes. The use of the land in the permit area will remain the same while the real estate sales center is in operation, moreover, a condition of this permit amendment requires the proposed sales center use to terminate within 15 years and the lands will revert to their prior use or a use permitted by the applicable provisions in the State Land Use Law and Zoning Code.

The amendment requests will continue to 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 Resort, which consists primarily of areas with basic amenities and attributes that attract developments of visitor accommodations and related facilities. 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.

The Kona Community Development Plan (KCDP) was adopted by the Hawai'i County Council on September 25, 2008, after the original Special Permit was granted. The KCDP identifies the subject property as being located outside of the Kona Urban Area and Rural Transit Oriented Development (TOD) boundary. The KCDP suggests maintaining the rural character of the area outside of the Kona Urban Area by directing future growth to the existing rural towns and villages. Outside of these rural towns and villages, the protection of important agricultural land is a priority objective. As stated above, the soils on the project area are considered "poor" for agricultural production and the property has not been used for agriculture for many years, therefore, the propose use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Based on the preceding, the granting of the amendment request would not be contrary to the original reasons for granting the permit and the request would not be contrary to the General Plan, the Zoning Code or the Kona Community Development Plan.

The granting of the proposed amendment will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. Access to the permit area is via the privately owned and maintained Pu'u Ohau Place from Haleki'i Street and the Māmalahoa Bypass Road that serves the golf course and development. The proposed real estate sales center will be located at the head of the Pu'u Ohau Place cul-de-sac.

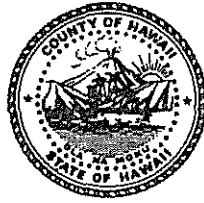
According to the Department of Water Supply (DWS), the subject parcel is served by a 1-inch meter, which is allowed up to three (3) units of water with an average daily usage of 1,200 gallons per day. Based on the last three billing cycles, the property is using an average of 1,690 gallons per day, and DWS is concerned that with ongoing construction, the demand for water would increase. Based on the preceding, DWS is requesting that the applicant submit maximum daily water usage calculations to determine anticipated demand and additional meters if necessary. According to the applicant, there is no plumbing in the existing golf pro shop and no plumbing is anticipated when the conversion to the temporary real estate sales center is complete. Based on the preceding, the Planning Director did not see a rational nexus between the proposed project and increased water usage and therefore did not recommend a condition requiring water usage calculations and possible upgrades. However, in order to address DWS' concerns, a condition of this amended permit restricts plumbing of water and wastewater lines to and from the temporary real estate sales center. The property is situated in an area determined by FEMA to be outside of the 500-year floodplain. In conjunction with Plan Approval, the applicant will submit a Drainage Plan for the property and install any drainage improvements deemed necessary by the Department of Public Works. Electrical and telephone service is currently available at the property. Police, fire and medical facilities are available nearby in Kona. Thus the requested use will not burden public agencies to provide additional services.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. 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. A small portion of the subject property is situated within the SMA, however, the permit area is located over 300 feet outside of the SMA. The project was approved under SMA Permit No. 403, which was approved in May of 2000. The permit area does not abut the shoreline and will not be impacted by coastal hazard and beach erosion. Professional flora and fauna surveys conducted of the site have concluded that it is not anticipated that endangered or threatened candidate species of flora or fauna are located in the area of the proposed real estate sales center. A survey titled "*A Botanical Survey Report of the Hokukano Lands, Keahou, Kona, Hawai'i*" by Evangeline J. Funk was prepared in November, 1991. The study concluded that "no proposed or listed candidate rare, threatened or endangered plant species were found on the site." Additionally, a survey titled "*Survey of the Avifauna and Feral Mammals at Hokukano, North and South Kona, Hawai'i*" was prepared by Phillip L. Bruner in October, 1991. No endemic birds and no unique wildlife habitat were found on the property.

A survey titled "*Archaeological Inventory Survey and Limited Subsurface Testing of a 1,540-acre Parcel in the Ahupua'a of Honuaino, Hokukano, Kanaeue, Haleki'i, Ke'eke'e, Ilikahi, Kanakau, Kalukalu, and Onouli, Districts of North and South Kona, Island of Hawai'i*" was prepared by Hallett H. Hammatt in January 1997. A Burial Preservation Plan (BPP) dated September 5, 2003 was prepared and approved by SHPD on April 22, 2004 for six (6) burial sites located on the subject parcel. While no historical sites are located within the permit area, Preservation Site No. 21837 is a burial situated adjacent to the east of the permit area. This preservation site is surrounded by a permanent stone wall preservation buffer, which was installed 20 feet from the edge of subject historic site per the BPP. The covenants/deed restrictions per the BPP are already in place, and SIHP 21837 is identified as "Preservation Site S-31" on the Final Plat for SUB-15-001461. There are no sites immediately adjacent to, or

underneath the subject permit area. Pedestrian access trails and parking have previously been enhanced within the Hōkūli‘a project site to allow for ease of access to the coastline and cultural resources. Thus, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes. According to the applicant, there is no evidence of traditional and customary Native Hawaiian rights currently being practiced on the proposed real estate sales center site.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.



County of Hawai'i

PLANNING COMMISSION

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September 21, 2007

Mr. Robert Stuit
1250 Oceanside Partners
78-6831 Alii Drive, Suite K-15
Kailua-Kona, HI 96740

Dear Mr. Stuit:

Special Permit Application (SPP 07-000044)

Applicant: 1250 Oceanside Partners

Request: Convert Temporary Golf Shop to Temporary Real Estate
Sales Center

Tax Map Key: 8-1-4:portion 68

The Planning Commission at its duly held public hearing on August 31, 2007, voted to approve the above-referenced application to allow the conversion of a temporary golf shop to a temporary real estate sales center on approximately 10,000 square feet of land situated within the State Land Use Agricultural District. The area under consideration is located within the Hokulia development, makai of Kealakekua Village in the vicinity of the proposed extension of Halekii Street, Halekii, Keekee, North and South Kona, Hawaii.

Approval of this request is based on the following:

The applicant proposes to convert an existing temporary golf shop to a temporary real estate sales center. The sales center and golf shop will initially be housed in the current golf shop building. The golf shop will eventually be moved to a new permanent clubhouse at a separate location within the development. In the interim, the golf shop will be relocated to an existing trailer on the site.

The sales center will be expanded to occupy the entire building when the golf shop is relocated. The building is proposed to be renovated to include approximately 1,320 square feet of outdoor decks and a 480 square-foot addition. As the renovations will occur on existing landscaped areas adjacent to the building, new landscaping will be

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added around the addition. In addition to the new landscaping, a new 57-stall parking lot is also proposed adjacent to and east of the building, with approximately 5 stalls proposed for the sales center.

The applicant expects the temporary real estate sales center will be needed for approximately 5 years. After the term of its use, the structure will be demolished or revert to another permitted use. Proposed hours of operation are 10 a.m. to 6 p.m. daily, and staffed with 3 employees. Visits to the sales center by potential clients will be by invitation only with a maximum of 6 to 8 appointments per day.

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 "D" or "Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property is the site of the Hokulia development and not currently in active agricultural use. As only a 10,000 square-foot portion of the 1,540-acre parcel will be used for the temporary real estate sales center, 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 project site does not abut the shoreline and will not be impacted by coastal hazard and beach erosion. Professional flora and faunal surveys conducted of the site have concluded that it is not anticipated that endangered or threatened candidate species of flora or fauna are located in the area of the proposed real estate sales center. The project site has not been identified as a significant botanical or biological habitat. Vegetation in the project area consists of euphorb, akoko, Hawaiian Caper, and three Hawaiian Wiliwili trees. The fauna on the site includes introduced species including mongoose, cardinal, spotted dove, mynah bird, golden

plover and house sparrow. According to the applicant, there is no evidence of traditional and customary Native Hawaiian rights currently being practiced on the proposed real estates sales center site, and mitigation measures currently in place will continue to be followed. Project representatives will continue the ongoing dialogue with members of the Hawaiian community.

An study titled "*Archaeological Inventory Survey and Limited Subsurface Testing of a 1,540-acre Parcel in the Ahupuaa of Honuaino, Hokukano, Kanaeue, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli, Districts of North and South Kona, Island of Hawaii*" was prepared by Hallett H. Hammatt in January, 1997 (Appendix C of application). Although a number of historic and archaeological resources were found on the site, according to the applicant, the proposed use will not impact any previously identified historic resources. There are no sites immediately adjacent to, or underneath the subject building, nor are there any sites in the area of the proposed addition. No archaeological sites were identified within the boundaries of the proposed temporary real estate sales center 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 are zoned A-1a to the north, east and south, and A-5a to the west. Existing land uses around the pavilion and golf course include portions of the Hokulia golf course and residential lots. 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 surrounding areas. No objections were received from the public as of this writing.

The establishment of a temporary real estate sales center 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 the Mamalahoa Highway and Halekii Street or via Alii Drive and the partially completed Mamalahoa Bypass Road that serves the golf course and development. Essential utilities are or can be made available to the site.

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 sales center would allow the applicant to market and promote the sale of house lots within the Hokulia development. According to Planning Department records, to date, there are thirteen Special Permits issued between 1986 and 2000 for temporary real estate sales centers.

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 Resort. 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: The applicant has submitted the following:

- *A Botanical Survey Report of the Hokukano Lands, Keahou, Kona, Hawaii* by Evangeline J. Funk prepared in November, 1991 (Appendix D of application).
- *"Survey of the Avifauna and Feral Mammals at Hokukano, North and South Kona, Hawaii"* prepared by Phillip L. Bruner in October, 1991 (Appendix E of application).
- *"Archaeological Inventory Survey and Limited Subsurface Testing of a 1,540-acre Parcel in the Ahupuaa of Honuaino, Hokukano, Kanaeue, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli, Districts of North and South Kona, Island of Hawaii"* prepared by Hallett H. Hammatt in January, 1997 (Appendix C of application).

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 real estate sales center site. No rare or endangered floral or faunal resources are likely to be on the site.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The project site does not abut the shoreline and is currently being used as a golf shop; therefore, Hawaiian gathering and fishing rights are 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 project 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, the approval of the request to convert an existing temporary golf shop to a temporary real estate sales center 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. Conversion of the existing golf shop to a temporary real estate sales center 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 five (5) years from the date of Final Plan Approval or after all lots within the development are sold, whichever occurs first. The structure shall be removed co-terminus with the expiration of the temporary real estate sales center use or converted into a use permitted by the applicable provisions in the State Land Use Law and Zoning Code.
4. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
5. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
6. 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.

7. 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.
8. 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.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
10. 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.

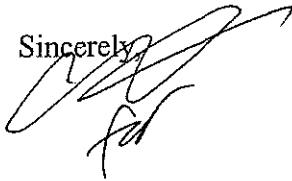
Mr. Robert Stuit
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Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

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.

Sincerely,



William Graham, Chairman
Planning Commission

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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/HPD-Kona
DOT-Highways, Honolulu