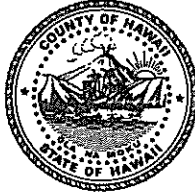


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
P 101 317 909

OCT 28 1999

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

Dear Mr. Lim:

Special Permit Application (SPP 99-009)
Applicant: Universal Space Network, Inc.
Request: Establishment of a Facility for Multiple Satellite Tracking
Antennas with Radome Concrete Pad and Accessory Structures
Tax Map Key: 9-3-003:Portion of 63

The Planning Commission at its duly held public hearing on October 15, 1999, voted to approve the above-referenced application. Special Permit No. 1036 is hereby issued to allow the establishment of a facility for multiple satellite tracking antennas with radome and concrete pad, and accessory structures and uses within the existing Satellite Tracking Station Facility, on approximately 3.00 acres of land situated in the State Land Use Agricultural District. The property is located in the Kamaoa Homesteads on the east side of South Point Road and approximately 1.2 miles south of its intersection with Mamalahoa Highway, Kamaoa, Kau, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. 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 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In a ruling filed on May 20, 1999, Judge J. Nakayama of the Hawaii State Supreme Court affirmed the Circuit Court's order reversing the Board of Appeals conclusion that HRS, Section 205-4.5(1) allows telecommunication towers in the State Land Use Agricultural District. As such, a Special Permit would be

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required to establish a use other than agricultural uses (such as a telecommunication tower/antenna) on the property. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use falling under Section 205-4.5(a)(7) which states, "within the agricultural district.....all lands... shall be restricted to the following permitted uses..... public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings....."

The subject property has not been actively used for agricultural purposes. The property is located in an area with soils classified as Kamaoa, which are soils that are used for pastures. The subject property has a soil rating of "D" or "Poor", and it is unclassified by the ALISH map. The applicant is requesting a Special Permit to allow the establishment of a facility for multiple satellite tracking antenna/rotating satellite dish with radome and concrete pad, and accessory structures and uses within the existing Satellite Tracking Station Facility. The subject property is approximately 14.66 acres in size, with site improvements including an 18-foot satellite tracking antenna, equipment building, and generator pad. Therefore, the proposed development would not remove significant lands from agricultural use.

The applicant proposes to construct (a) a 65-foot (at its highest point during activation) satellite tracking antenna with a 13 meter diameter rotating satellite dish on an 18'x 18'x 6' diameter concrete apron pad. Dependent upon weather conditions, the antenna may be enclosed in a 36-foot radius radome (fiberglass dome which shields the antenna from wind load); (b) an 8'x 20' pre-fab communications equipment trailer on a 10'x 22'x 6' concrete pad (which will accommodate the communications equipment); (c) a 100 square foot concrete generator pad for the back-up generator (in the event of a power outage). As the property is currently being used as an existing Satellite Tracking Station Facility, no existing or potential agricultural enterprise would be harmed by the proposed use, which will be confined to approximately 3 acres of the 14.66-acre property, and no additional surrounding lands will be affected. Therefore, the proposed use will not displace any agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use, and thus not be contrary to the objectives of the State Land Use Law for the Agricultural District.

The desired use will not adversely affect the surrounding properties. Surrounding uses include scattered single family residential dwellings and agricultural activities. As immediate surrounding properties are in agricultural or residential use, it is not expected that the proposed use would create significant adverse impacts to the area. The nearest residential dwelling is situated adjacent to the subject property, and the landowner has written in support of the proposed development. No written objections or concerns were received from the community. In addition, there are other similar (communications/energy) facilities in operation in close proximity to the subject property, including LeSea Broadcasting Corporation on TMK: 9-3-3: 6 and Apollo Energy Corporation on TMK 9-3-2: 6, 24 and 25. Both facilities are located along South Point Road. LeSea Broadcasting is located approximately 240 feet northwest of the subject property. Constructed in 1993, the LeSea facility, situated on approximately 18.97 acres, consists of two antennas (one, a curtain antenna approximately 242 feet high with maximum height of 266 feet, and another antenna approximately 129 feet in height) and a 2,600-square foot communications equipment building. There is no broadcasting from the station. The programming is received from the mainland via satellite and transmitted to foreign destinations through receiving

and transmitting equipment at the facility. Apollo Energy Corporation (AEC), a wind farm situated on approximately 96 acres, is located 660 feet south of the property. The fourteen towers on Apollo Energy Corporation's property are each 121 feet in height. AEC has been in operation for approximately 12 years.

According to the applicant, the establishment of a facility for multiple satellite tracking antennas with radome and concrete pad, and accessory structures and uses will not produce unsafe or unpleasant odors or noises, or cause noticeable increases in traffic or parking since the Facility will be unmanned, except for occasional maintenance of the property. The proposed use will be established on a site with existing improvements, and the property is sufficient in size to accommodate the proposed use. Overall, it is not anticipated that the immediate surrounding parcels would be impacted by the establishment of the proposed use.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. The project site is located within an area adequately served with essential services and facilities such as transportation systems and utilities. County water is available to the site. The property is located in Kamaoa Homesteads on the corner of South Point Road and Homestead Road, approximately 1.2 miles south of its intersection with Mamalahoa Highway. It is anticipated that the proposed use will not result in a significant increase in regional traffic along South Point Road, and future roadway impacts will be minimal since the Facility will be unmanned. However, there may be a slight increase in traffic during the 3-month construction phase of the additional satellite tracking antenna and accessory uses. Sewage is proposed to be handled by an existing cesspool.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The evolution of telecommunication has evolved from being land based (fiber optics) to space-based. Currently, telemetry and command services for government spacecraft have been driven by high performance military and NASA ground network support systems that were custom designed and manually operated. This approach, although effective, resulted in extremely high initial capital outlay and operating costs. The Facility is not a growth-inducing facility, but seeks to position itself strategically in the Pacific Rim thereby enhancing its ability to assist the United States satellite tracking system. In addition, the Facility is a quiet, low-impact business, is economically sustainable, will contribute to the region's economic development, and is consistent with the social and physical character of the rural-agricultural area, without negative effects upon the environment.

When the State Land Use District boundaries were established, it was only anticipated that communication and utility services would be transmitted by "utility lines." Today, the technological advances in this field have flourished to such a degree that the State Land Use Law has not kept pace. The market for space-based telecommunication has widened as the global economy expands, bringing the need to communicate with "all corners of the Earth." Satellite technology to provide global, space-based communications is now available, and new technologies are emerging, making it economically feasible to place these satellites in the "low earth orbit." This in turn reduces the cost of operation to commercial users, and in turn reduces the price of their consumer-directed technologies. Meeting the demand to accommodate further

growth in the information industry by expanding the telecommunication infrastructure serving Hawaii and facilitating the development of new business and service ventures in the information industry represents a significant shift in conditions, trends and needs for the County and State of Hawaii.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will be confined to approximately 3 acres of the 14.66-acre property, and will be in keeping with the existing residential/agricultural character of the surrounding community. The proposed improvements and use will neither conflict with nor intensify existing land uses, as approximately 20 percent of the approximately 14 acres will be affected, and the bulk of the property will remain in pasture and open space. The applicant proposes to retain the character of the land and minimize visual effects by the use of a neutral color for the Facility. Further, the proposed use will not significantly affect the view plane due to its remote location, distance from the roadways, and antenna height of approximately 65 feet.

The lands upon which the proposed use is sought is suitable for the uses permitted in the district, however, the proposed use will not interfere with permitted uses. The subject area is vacant of agricultural uses and is the site of the existing Satellite Tracking Station Facility. The applicant currently operates one radome antenna and accessory structure and uses pursuant to Final Plan Approval secured in 1998. Therefore, the land is not suitable for agricultural use, and no agricultural activity will be diminished.

The proposed use is consistent with the following goals, policies and standards of the General Plan. The subject parcel falls within an area designated as Extensive Agricultural on the General Plan LUPAG Map, which allows for pasturage and range lands. The zoning for the property is Agricultural-20 acres (A-20a) and the State Land Use designation is Agricultural.

The proposed request would complement and be consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- * Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the 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.

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * 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.

4. Within 120 days from the permanent abandonment of any antenna, the applicant shall remove the antenna down to, but not including the concrete pad. The applicant shall provide written notification to the Planning Director that the antenna has been removed.
5. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the proposed development shall not interfere with the County of Hawaii Public Safety Radio System.
6. Any exterior signs shall meet with the approval of the Department of Public Works.
7. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
8. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
9. An extension of time 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.
 - 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).

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.

- * The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- * The County of Hawaii shall encourage the research, development and implementation of advanced technologies and processes in existing and potential economic endeavors.

Public Utilities

- * Ensure that adequate, efficient and dependable public utility services will be available to users.
- * Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- * Improvement of existing utility services shall be encouraged to meet the needs of users.

Electricity, water, wastewater disposal facilities and other essential services are or will be made available for the proposed use.

Based on the above considerations, the request to establish a facility for multiple satellite tracking antennas with radome and concrete pad, and accessory structures and uses within the existing Satellite Tracking Station Facility would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

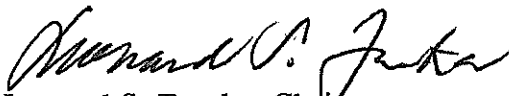
Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. Prior to the start of construction, Final Plan Approval for the proposed satellite tracking antenna with radome and concrete pad, and accessory structures and uses, shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-72 and 25-2-74 and 25-4-12. Plans shall identify the three-acre Special Permit area by metes and bounds, existing and proposed structures, fire protection measures, driveway and parking areas, fencing and landscaping associated with the proposed uses. Antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the proposed antenna shall be allowed within the parameters of the proposed building height and envelope as represented.

Steven S. C. Lim, Esq.
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Should you have any questions, please contact Susan Gagorik or Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Leonard S. Tanaka, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
Universal Space Network, Inc.