Stephen K. Yamashiro
Mayor

County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
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Donna Y. L. Leong, Esq.
Cades Schutte Fleming & Wright
1000 Bishop Street, 10th Floor
Honolulu, HI 96813-4216

Dear Ms. Leong:

Special Permit Application (SPP 99-010)
Applicant: USCOC of Hawaii 3, Inc. (United States Cellular)
Request: Allow for a Telecommunication Tower, Antenna and Appurtenant Equipment Building, Propane Tank and Generator
Tax Map Key: 9-5-007:Portion of 016

The Planning Commission at its duly held public hearing on October 15, 1999, voted to approve the above-referenced application. Special Permit No. 1037 is hereby issued to allow the construction of a telecommunication tower, antenna and appurtenant equipment building, propane tank and generator, together with a roadway access and utility easement over an existing gravel road, on approximately 10,184 square feet of land area situate in the State Land Use Agricultural District. The property is located approximately one mile south (makai) of the Mamalahoa Highway between Naalehu and Waiohinu, Kahilipali Nui, 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. 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. Based on a ruling by Judge J. Nakayama of the State of Hawaii Supreme Court, filed on May 20, 1999, he affirmed the circuit court's order reversing the Board of Appeals conclusion that HRS, Section 205-4.5(1) permits cellular telephone towers as of right in the State Land Use Agricultural District. Therefore, a Special Permit is now required in order to establish a cellular telephone tower on State Land Use Agricultural lands. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use falling under Section 205-4.5(a)(7) which states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, ..." The applicant proposes to establish a 200-foot high telecommunications tower, several

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9-foot long omni-directional antennae and one 15-foot long lightening rod with appurtenant equipment building, propane tank and generator; with a total height of 215 feet. The proposed site covers approximately 3,600 square feet with roadway easements covering approximately 6,584 feet and totaling 10,184 square feet. The subject lands are approximately 2,013 acres in size, owned by Kau Agribusiness, Inc. and used for cattle grazing. Soils are classified "D" or Poor and the lands are unclassified under the ALISH designation. No active agricultural activities will be diminished. Therefore, the proposed development would not remove significant lands from agricultural use and would 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. The subject property is over 2,000 acres in size and used for cattle grazing as is lands to the east and west. The site is in a remote area about 1-1/4 miles from Mamalahoa Highway. The immediate site is already used as a stage for other telecommunication facilities. There is a GTE monopole with antennas approximately 110 feet high. A separate tax map key within the site (TMK: 9-5-7:30) contains the site of a microwave station and 50-foot tower. The easement roads leading to the subject area is presently gated at two locations to control access. The proposed telecommunication tower site will be fenced and self-contained, with periodic maintenance and repair. Although the tower will be visible from Mamalahoa Highway in a distance, it will not significantly affect view plane from the highway. The natural gray color of the steel will be close in color with the sky and ocean. In addition, no objections or concerns were received from the community.

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 proposed development of a telecommunication tower and related improvements will not require additional services. Only electrical utilities are required for the proposed use, which is already available to the site due to the other facilities presence. Access to the site is via gravel road easements that are also already being used by the other facilities established at this same location. Traffic is expected to be minimal due to the fact that the tower will only require periodic maintenance and repair. Concerns expressed by the Police Department that the proposed tower operations not interfere with their radio systems will be addressed as a condition of the permit.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In more recent years, the cellular phone industry has become a predominant means of communication due to its convenience. On the Big Island, it has become a service to communities where previously telephone service was not available. In this particular location, the tower will also allow commercial and sports fishermen and boaters to use cellular telephones as their primary emergency communication system. According to a recent Supreme Court Ruling, a special permit is required in order to establish a cellular phone tower within the State Land Use Agricultural District.

The use will not substantially alter or change the essential character of the land and the present use. The subject property is relatively flat with sparse vegetation and presently used for cattle grazing. Although the tower will be a new structure on the property, in this particular section of the subject property, there is already a GTE Mobilnet monopole and antenna approximately 110 feet high and a microwave station.

The lands upon which the proposed use is sought is not unsuitable for the uses permitted in the district, however, the proposed uses will not interfere with permitted uses. The property is presently used for cattle grazing. On the subject property and approximately 80 feet from the proposed tower is the GTE Mobilnet monopole. Also approximately 215 feet south of the proposed site is a separate microwave and tower, which has its own TMK: 9-5-7:30. Therefore, no agricultural activity will be diminished and no significant lands will not be taken out of use.

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. The zoning for the property is Agricultural-20 acres (A-20a) and the proposed development falls within the State Land Use designation of Agricultural. This would allow a Special Permit to be applied for to allow for other than agricultural uses on the subject property. 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.

* 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.

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.

Based on the above considerations, the request to establish a telecommunication tower approximately 200 feet high with a 9-foot long omni-directional anntenae and one 15-foot lightening rod along with appurtenant uses would be an unusual and reasonable use of land within the State Land Use Agricultural District, which 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 this 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 tower and appurtenant 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 existing and proposed structures, fire protection measures, roadway easements, driveway and parking areas, fencing and landscaping associated with the proposed uses. Tower and antenna plans shall be stamped by a structural engineer.

3. Co-location or any expansion on the proposed tower and antennae shall be allowed within the parameters of the proposed building height and envelope as represented.

4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (including the prefabricated communication equipment building, propane gas tank, generator and fence), down to, but not including, the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.

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. Should any remains of historic sites, such as rock walls, terraces, platforms, marine sell concentrations or human burials 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.

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.

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
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
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