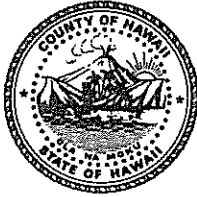


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
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CERTIFIED MAIL  
7099 3220 0000 4869 7770

MAY 01 2000

Mr. James Black  
Mobile Telephone and Paging, Inc.  
P.O. Box 1705  
Kamuela, HI 96743

Dear Mr. Black:

Special Permit Application (SPP 00-002)  
Applicant: Mobile Telephone and Paging, Inc.  
Request: Establishment of a Radio Communication Tower & Related Uses  
Tax Map Key: 4-2-8:Portion of 21

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The Planning Commission at its duly held public hearing on April 20, 2000, voted to approve the above-referenced application. Special Permit No. 1053 is hereby issued to allow the construction of an unmanned 80-foot high radio communications tower and related facilities on approximately 2,000 square feet of land situated in the State Land Use Agricultural District. The project site is located on Kukaiiau Ranch land at approximately the 8,000-foot elevation, south (makai) of the Iolehaehae triangulation and Mauna Kea Forest Reserve, Kukaiiau, Hamakua, 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. On May 20, 1999, Judge J. Nakayama of the State of Hawaii Supreme Court 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 telecommunication

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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 an 80-foot high radio communications tower and related uses on the site. The project site covers approximately 2,000 square feet of a 1,945-acre parcel owned by Kukaiau Ranch. Although the bulk of the property is used for ranching, several existing towers, including Motorola, U.S. Cellular, and the old Hamakua Plantation facility, dot the site on Iolehaehae Hill. The subject property is classified as Other Important Agricultural Lands under the ALISH designation, and soils are classified as "E" or Very Poor. No active agricultural activities will be diminished as only a 2,000 square foot portion of the 1,945-acre property will be used for the proposed radio communications tower on a site with existing towers, and the remaining area will continue to be used for ranching. Therefore, the proposed use 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 approximately 1,945 acres in size and primarily used for ranching. Surrounding properties are also used for ranching, and the Mauna Kea Forest Reserve is located immediately south and mauka of the property. There are no dwellings near the subject property, as the site is in a remote area above the cloud layer on the flanks of Mauna Kea at the 8,000 foot elevation approximately three miles from the "main" Keanakolu Road. The proposed location is already used as a site for other telecommunication facilities including Motorola, U.S. Cellular, and the former Hamakua Sugar communications facility. The Hawaii County Public Safety facility is located on the adjacent state-owned parcel on TMK: 4-1-6:7, and the HELCO microwave reflector on TMK: 4-2-8:13 straddles the property boundary between the subject property and TMK: 4-2-8:8. The site of the proposed radio communications tower is fenced and gated to control access, and the tower will be periodically maintained as necessary. Due to its remote location, the tower will not be visible from any major roadways, and will not affect the view plane. 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, police and fire protection. The proposed radio communication tower and related improvements will not require additional services. Access to the site is via Mana and Keanakolu Roads, which are unimproved one-lane dirt roads in fair to poor condition. Final access to the site is via an established unimproved "jeep" trail accessible only by 4-wheel drive. These roads are currently being used by the other facilities established at this location. Traffic is expected to be minimal as the tower will only require periodic maintenance and repair.

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 telephone service was previously not available. With the growth and expansion of the high technology industry, wireless communication is becoming more dominant worldwide. The applicant currently has transmitter sites in Hilo and Kona, and proposes to cover the gap in the Hamakua region. The tower's placement in the proposed location will allow communication services to radio dispatchers for freight hauling services, taxicabs, cable TV, professional trades, paging and other forms of wireless communication. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish a telecommunications 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. Although the proposed tower will be a new structure on the property, in this particular section of the subject property on Iolehaehae Hill, there are several existing towers, including Motorola, U.S. Cellular and the old Hamakua Sugar communications facility. The Hawaii County Public Safety Communications facility is located on Iolehaehae Hill on an adjacent property in close proximity to the existing towers, and the HELCO microwave reflector is located nearby. The subject property is presently used for ranching, and the majority of the 1,945-acre parcel will continue to be used for ranching purposes.

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 ranching. There are existing towers on the property, and no agricultural activity will be diminished and no significant lands will 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 Land Use Pattern Allocation Guide (LUPAG) Map. The zoning for the property is Agricultural-40 acres (A-40a) and the proposed development falls within the State Land Use Agricultural district. This would require a Special Permit to be secured 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 an 80-foot high radio communication tower and related uses 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.

This request is approved 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 Sections 25-2-72, 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 may 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 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 shell 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 mitigation 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.

Mr. James Black  
Page 6

- 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 Phyllis Fujimoto or Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Richard B. Baker, Jr., 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  
Mr. Ivan Nakano