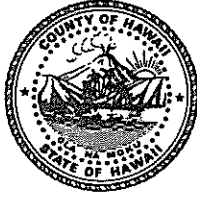


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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CERTIFIED MAIL  
7099 3220 0000 4869 7749

APR 20 2000

Ms. Patricia Provalenko  
PATDI, Inc.  
75-5706 Kuakini Highway, Suite 101A  
Kailua-Kona, HI 96740

Dear Ms. Provalenko:

Special Permit Application (SPP 00-003)  
Applicant: Yellow Brick Road, LLC  
Request: To Allow the Construction of a New Non-Manned 300 Foot High  
Telecommunication Tower and Related Improvements in the State Land  
Use Agricultural District  
Tax Map Key: 7-3-048:Portion of 006

The Planning Commission at its duly held public hearing on April 7, 2000, voted to approve the above-referenced application. Special Permit No. 1050 is hereby issued to allow the construction of a non-manned, 300-foot high telecommunication tower facility and related improvements on approximately 10,000 square feet of land situated in the State Land Use Agricultural District. The property is located in the Kaloko Mauka Subdivision Increment 5, on the east side of Huehue Street at approximately the 5,600-foot elevation, Kaloko, North Kona, Hawaii.

Approval of this request is based on the following:

The proposed non-manned, 300-foot high telecommunication tower and related improvements is an unusual and reasonable use of lands situated within the State Land Use Agricultural District. 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

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to allow certain unusual and reasonable uses within the Agricultural district. The proposed non-manned, 300-foot high telecommunication tower and related improvements will comprise an area of approximately 10,000 square feet within a 20.326-acre property. The proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since the project site is not used for agricultural purposes.

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 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. The proposed use will be located within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. Furthermore, the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map does not classify the subject property as having any agricultural importance.

The subject property is situated within the County's Agricultural-20 acre (A-20a) zoned district. Under the current Zoning Code, telecommunication antennas are considered a permitted use within the County's Agricultural District, as permitted by section 25-4-12. However, as the project site is located within the State Land Use Agricultural District and in accordance with a recent Hawaii Supreme Court ruling that telecommunication towers and antennas require a Special Permit under Chapter 205-6(a) Hawaii Revised Statutes, approval of a Special Permit is required from the County Planning Commission for the proposed telecommunication tower and related improvements. The proposed non-manned, 300-foot telecommunications tower and related improvements will be confined to an area of approximately 10,000 square feet. Soils within the project site are unsuitable for agricultural uses and typically used as pasture and range lands. In this case, the subject property is currently used for limited agricultural activity, consisting of limited livestock grazing. Furthermore, as the proposed telecommunication tower and related improvements would occupy a small area, the use would not, in itself, adversely affect the agricultural potential of the project site or its surrounding area. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The proposed non-manned 300-foot high telecommunication tower and related improvements will be situated on a 10,000 square foot portion of a 20.326-acre parcel

of land. Immediate surrounding properties are zoned Agricultural (A-20a) and characterized by forested areas with scattered farm dwellings and some agricultural uses. The nearest dwelling to the subject property is located on the adjacent property and more than 800 feet west of the proposed site. There are existing telecommunication towers on several adjacent properties. These towers are a 75-foot tower on TMK: 7-3-48:3 to the west, a 200-foot tower on TMK: 7-3-48:14 to the south, and various towers on TMK: 7-2-01:01 to the east, in the vicinity of Kaupulehu Crater, of the subject property. A County of Hawaii water reservoir is located on TMK: 7-3-48:12 adjacent and to the north of the property. While the 300-foot telecommunication tower will be visible from surrounding properties at higher elevations, the impact to these properties should be minimal as most of the surrounding properties are uninhabited and within forested areas. The tower will not be visible from Mamalahoa Highway but will be visible from Kuakini Highway and Queen Ka'ahumanu Highway between Kailua Village and the Keahole Airport, just as existing towers in the area are visible. However, given the distance of the proposed telecommunication tower from the highway and the shoreline, the scale of the visual impacts will be limited due to the tower's relationship to the forested areas and ranch lands that predominate at the subject elevation. Access to the subject property is from Huehue Street and a partly paved driveway, which leads to the farm dwellings and a four-wheel drive road that continues beyond the dwellings to the project site. No traffic impact is expected once construction is completed, as service personnel will visit the site only on an as needed basis. During the construction phase of the proposed use, which is expected to last approximately one month, the applicant will be required to comply with the rules and regulations of the Department of Public Works, Engineering Division, which will mitigate impacts to surrounding properties. Furthermore, Section 704 of the Federal Telecommunications Act of 1996 recognizes the absence of health hazards from cellular radio wave transmissions and accordingly prohibits local authorities from regulating the placement of cellular towers based on environmental effects as long as these towers comply with the Federal Communication Commission's guidelines. As the proposed telecommunication tower has been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected. Therefore, it is not expected that the construction and operation of the non-manned 300-foot telecommunication tower and related improvements will adversely impact any of the surrounding properties.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Water, telephone and electrical utilities currently service the site. However, the proposed use will only require electricity. Related improvements on the site include a back-up generator, which will provide electricity in the event of a power failure. No individual wastewater system will be needed for the proposed use. Access

to the property is deemed adequate to accommodate the anticipated traffic generated. Fire and police protection services are available from the Kailua-Kona Fire and Police Stations, located approximately 5 miles away. The applicant shall meet all applicable agency requirements of the Department of Health, Department of Water Supply, Department of Public Works and the Fire Department prior to the establishment of the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Section 205-4.5 of Chapter 205, Land Use Commission, Hawaii Revised Statutes, lists permitted uses within the agricultural districts. Among others, two of the permitted uses include "Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;" and "Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agricultural land." While it is clear from this language that the framers of the State Land Use Law recognized the need for public, private and quasi-public utility lines and roadways to be permitted within agricultural districts, and later amended the law to permit wind energy facilities, Section 205-4.5 does not specifically permit telecommunication towers. In recent years, however, it has become increasingly clear that technological advances in the telecommunications industry have outpaced the provisions of the land use law as telecommunications towers are now required in order to provide services to the general public. The growth of the telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunications and antenna. The proposed use is part of an existing telecommunication infrastructure and will enable the applicant to continue providing civil defense, radio and other telecommunication services to the entire County of Hawaii.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The subject property is used for limited livestock grazing, although the majority of the property is forested. Furthermore, the ALISH Map does not classify the land as having any agricultural importance and the Land Study Bureau's Overall Master Productivity rating for the area is "E" or "Very Poor." Furthermore, as the proposed use will be limited to a 10,000 square foot area, it will not seriously impair the agricultural productivity or potential of the subject property, nor will it seriously or significantly deplete the County of Hawaii's agricultural land resource.

The proposed use will not substantially alter or change the essential character of the land and the present use. The proposed use will be located on a 10,000 square foot portion of a 20.326-acre property that is presently used by two other telecommunication towers and two farm dwellings. The essential character of the Kaloko Mauka Subdivision is that of a forested area. As such, the proposed non-manned 300-foot telecommunication tower will not substantially alter or change the essential character of the land nor alter or change the existing uses on the property.

The request will not be contrary to the General Plan. Although the subject request appears to be contrary to the General Plan LUPAG Map, which designates the property for Extensive Agricultural uses, it will not significantly diminish the agricultural productivity or potential of the property. The proposed use will be located on a 10,000 square foot portion of the subject property that is not currently being used for agricultural purposes. Furthermore, the proposed use is consistent with the following goals and policies of the General Plan.

#### Economic Element

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- 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.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County of Hawaii shall encourage the research, development and implementation of advanced technologies and processes in existing and potential economic endeavors.

#### Natural Beauty

- Protect, preserve and enhance the quality of area endowed with natural beauty, including the quality of coastal scenic resources.

- Protect scenic vistas and view planes from becoming obstructed.
- Criteria of safeguards of natural beauty shall be provided in the design review of developments so as to blend and harmonize man-made elements with their natural setting.

#### Public Utilities

- Ensure that adequate, efficient and dependable public utility services will be available to users.
- Maximize efficiency and economy in the provision of public utility services.
- To have public utility facilities which are designed to fit into their surroundings or concealed from public view.
- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- Encourage the clustering of developments in order to reduce the cost of providing utilities.

#### Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.

Based on the above considerations, the approval of the proposed non-manned 300-foot high telecommunication tower and related improvements is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law 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 Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to start of construction, Final Plan Approval for the proposed non-manned 300-foot high telecommunication tower and related improvements shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(3), 25-2-72, 25-4-74 and 25-4-12. Plans shall identify existing and proposed structures, landscaping, driveways and two (2) gravel parking areas associated with the proposed use.
3. The non-manned telecommunication tower and related improvements shall not be operated or occupied until the applicant has secured final inspection for the Building Permit.
4. Co-location or any expansion on the proposed antenna shall be allowed within the parameters of the proposed building height and envelope as represented.
5. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (including the telecommunication equipment building, propane gas tank with generator and fence), down to, but not including, the concrete foundation. The applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication tower and related improvements and the removal of all structures.
6. Driveway access to the property shall meet with the approval of the Department of Public Works prior to occupancy.
7. Drainage improvements to the property, if required, shall meet with the requirements of the Department of Public Works. Such approval shall be secured prior to occupancy.
8. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the (DLNR-SHPD) when it finds that sufficient mitigative measures have been taken.

9. The operation of the non-manned 300-foot high telecommunication tower and related improvements shall run co-terminus with the lease agreement. The Planning Director may extend the life of this permit provided that the applicant present documentation that the tower facility ground lease agreement has been extended to allow the continued operation of the telecommunication tower and related improvements.
10. The telecommunication tower and all related improvements shall be removed upon termination of use.
11. The applicant shall comply with all applicable laws, rules and regulations of the affected agencies.
12. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a written status report to the Planning Director.
13. An initial extension of time for the performance of conditions within 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 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).

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.

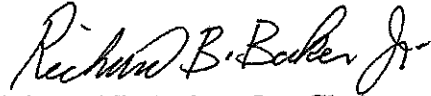


Ms. Patricia Provalenko

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Should you have any questions, please contact Pamela Harlow of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Richard B. Baker, Jr., Chairman  
Planning Commission

Lyellowbrickroad01PC

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office State Land Use Commission  
Department of Land & Natural Resources  
Kazu Hayashida, Director/DOT-Highways, Honolulu  
Yellow Brick Road, LLC