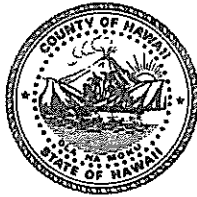


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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CERTIFIED MAIL  
7099 3220 0000 4869 5721

JUL 21 2000

Mr. Sidney Fuke  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application (SPP 00-017)

Applicant: SpectraSite Communications, Inc., Nextel WIP Lease Corp.,  
and SprintCom, Inc.

Request: Allow for a 200-Foot Telecommunication Tower, Antennas,  
Microwave Dish and Related Communication Equipment and Improvements

Tax Map Key: 6-6-5:Portion of 2

The Planning Commission at its duly held public hearing on July 7, 2000, voted to approve the above-referenced application. Special Permit No. 1065 is hereby issued to allow the establishment of a 200-foot telecommunication tower, antennas, microwave dish and related communication equipment and improvements on approximately 1,500 square feet of land within the State Land Use Agricultural District. The property is located within the Lalamilo Farmlots Subdivision on the south side of Lalamilo Farm Road, approximately 500 feet west from its intersection with Mamalahoa Highway, Lalamilo and Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The 200-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 to allow certain unusual and reasonable uses within the Agricultural District. The subject property is situated within the County's Agricultural-5 acre (A-5a) zoned district and within the State Land Use Agricultural 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. The subject of this request was constructed in 1999 in accordance

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with the County Zoning Code. However, as a result of a subsequent Hawaii Supreme Court ruling that telecommunication towers and antennas within the State Land Use Agricultural District 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 this existing telecommunication tower, related improvements and proposed additions. The applicants are requesting a special permit to legitimize an existing 185-foot high telecommunications tower and related improvements constructed by Nextel in 1999, and possibly to increase the height of the tower to 200 feet, as previously approved by the Final Plan Approval and Building Permit issued in 1999. The applicants are also requesting additional antennas, a microwave dish and an additional equipment building, which would enable SprintCom to co-locate its services on the tower. Thus, the overall request is for a 200-foot high telecommunications tower, 16 antennas, a microwave dish, 2 appurtenant prefabricated communications buildings, a gas-powered generator and related improvements within a 7-foot high chain link fence on approximately 1,500 square feet of land area. Should this request be approved, the applicants shall be required to secure an amended Final Plan Approval from the Planning Director for the proposed additions. While the subject property is considered very important as an agricultural resource, the use comprises less than one percent of the total land area of the property. Furthermore, the use will not encourage further urbanization of the area. The proposed improvements will not displace existing agricultural activity nor significantly diminish the agricultural potential of the area since the project site itself is not currently used for agricultural purposes.

The granting of this request would promote the effectiveness and objectives of Chapter 205 and 205A, 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 use is located within an area whose soils are classified as "B" or "Good" by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the area of the subject property as Prime Agricultural Land. Prime Agricultural Land is defined as land which has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods. The majority of the subject property is currently used for agricultural purposes, specifically for greenhouse grown flowers. Although the requested use is not agricultural in nature, it comprises an area that is proportionately insignificant relative to the size of the property. Furthermore, the use will not displace any of the existing agricultural uses on the property. The 200-foot telecommunication tower and related improvements will be confined to an area of approximately 1,500 square feet. Soils within the project site

are suitable for agricultural uses, and typically used for truck crops. However, as the telecommunication tower and related improvements occupy a small area, the use will not, in itself, adversely affect the agricultural potential of the project site or its surrounding area. Furthermore, the project will not have any significant adverse environmental or ecological effect on the subject property, either alone or in conjunction with other individual developments. 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 200-foot high telecommunication tower and related improvements are to be situated on a 1,500 square foot portion of a 15.95-acre parcel of land. The subject property is a roughly rectangular shaped parcel located within the Lalamilo Farmlots Subdivision, which is located along Mamalahoa Highway, southwest of Waimea Town's commercial hub. The subject property is located on the south side of the Lalamilo Farm Road, approximately 500 feet west from its intersection with Mamalahoa Highway. In addition to the subject request, the property has been improved with two other telecommunication towers and related improvements, a mobile paging service antenna mounted on a utility pole, an agricultural warehouse and office, eight greenhouses, and a farm dwelling. The two other telecommunication towers, which belong to GTE Wireless and VoiceStream, were previously permitted as wind towers and later converted for telecommunications use. These towers are 96.5 and 117 feet high, respectively. The mobile paging antenna, which is mounted on top of an approximately 55-foot high utility pole, is owned and operated by MobilOne. The agricultural warehouse and office are used for agricultural processing and retail sales of flowers grown in the greenhouses on the property. The greenhouses comprise the majority of the property and range in size from 3,000 to 11,500 square feet. The farm dwelling is located in the northwest corner of the property, over 300 feet from the area of the proposed use.

Properties immediately adjacent to the subject property are also located within the Lalamilo Farmlots Subdivision and zoned Agricultural (A-5a). The majority of these lots are between 15 to 20 acres, although there are some 5-acre lots within the subdivision. Most of these lots are used for agricultural purposes and have been improved with farm dwellings and farm structures related to the agricultural activities. Dwellings in the area are located over 500 feet from the project site. Visual impacts will be minimized by existing stands of trees located along the Mamalahoa Highway at the north end of the project site, makai of the highway within private properties and on the landowner's property fronting the Lalamilo Farm Road. The tower is somewhat visible within direct makai views from the highway and from the Lalamilo Farm Road; however, other structures adjacent to the highway, and the existing stand of trees and the landowner's agricultural warehouse fronting the subject property provide visual

buffers. It should be noted that the subject property is neither listed as an example of Natural Beauty by the County's General Plan nor located near any other properties so listed. During the construction phase of the project, short-term impacts such as noise, traffic and dust may be slightly elevated. However, the applicants will comply with Department of Health regulations to mitigate the effects of dust and noise. Once construction is completed, traffic is expected to be minimal as service personnel will only visit the site monthly. Once it is fully operational, the only noise impacts associated with the operation of the tower will be from air conditioning units installed in the telecommunications equipment buildings and from the occasional operation of the gas-powered generator. However, the resulting noise from the air conditioning units and the generator will be significantly less noisy than other equipment used on the subject property for farming operations. Radio frequency emissions from the operation of the tower's antennae do not cause interference with other electronic appliances and equipment. 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 telecommunication tower has been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected. Access to the subject property is provided by Lalamilo Farm Road, a County-owned road with a 50-foot right-of-way and 20-foot pavement width with 4 to 6-foot wide grassed shoulders. A gravel access way leading to the project site will provide sufficient vehicular access for the construction and maintenance of the facilities.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Only electrical service is required for the use and this is already available to the property. Access to the property is deemed adequate to accommodate the anticipated traffic generated by the use. Fire, police and emergency services are available from the fire station and police station located in Waimea, less than two miles away. The applicants shall meet all applicable agency requirements of the Department of Health, Department of Water Supply, Department of Public Works and the Fire Department.

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. This is especially true in rural areas where traditional land-line telephone service is sometimes unavailable due to the high cost of installing power poles and lines. The growth of the cellular telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunication towers and antennae. The use is part of an existing telecommunication infrastructure and will enable the applicants to provide uninterrupted telecommunication services to its customers throughout the County of Hawaii.

The land upon which the use is sought is not unsuited for the uses permitted within the district. The subject property is clearly an important agricultural resource and is accordingly used primarily for agricultural purposes. The Land Study Bureau's Detailed Land Classification System classifies soils within the subject property as "B" or "Good." The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the area of the subject property as Prime Agricultural Land. Prime Agricultural Land is defined as land which has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods. Although the property on which the project site is located is an important agricultural resource, the use will be limited to a 1,500 square foot land area and thus 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 use will not substantially alter or change the essential character of the land and the present use. The use is located on a 1,500 square foot portion of a 15.95-acre property that is presently developed with two other telecommunication towers, a mobile paging service antenna mounted on a utility pole, an agricultural warehouse and office, eight greenhouses and a farm dwelling. The majority of the subject property is used for agricultural production, specifically for greenhouse grown flowers. As such, the 200-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 property is within an area designated for Intensive Agricultural uses by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, the project area is limited to a 1,500 square foot portion of land, and thus does not preclude the other portions of the property from being used for agricultural purposes by the owner. Also, the 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 200-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 applicants, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. An amended Final Plan Approval for the 200-foot high telecommunication tower, antennas 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, fire protection measures, fencing, landscaping, driveways and one (1) gravel parking area associated with the use.

3. Co-location or any expansion on the proposed antenna shall be allowed within the parameters of the building height and envelope as represented.
4. The operation of the 200-foot high telecommunication tower and related improvements shall run co-terminus with the Nextel/SpectraSite and/or its successors or assigns ground license agreement.
5. Within 120 days of the permanent abandonment of the tower, the applicants shall remove the tower and its antennae and accessory structures (including the equipment building and the fence), down to, but not including, the concrete foundation. The applicants 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. 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.
7. 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-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.
8. 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.
9. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicants shall submit a written status report to the Planning Director.
10. 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 applicants, successors, or assigns and that are not the result of their fault or negligence.



Mr. Sidney Fuke  
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- 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.

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

Lnnextel01PC

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  
Dean Yamamoto, Esq.