

Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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CERTIFIED MAIL

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1000 Bishop Street, 10<sup>th</sup> Floor  
Honolulu, HI 96813

Dear Ms. Leong:

Special Permit Application (SPP 00-020)

Applicant: USCOC of Hawaii 3, Inc.

Request: Allow for an Existing 195-Foot Telecommunication Tower,  
Accessory Equipment Building and Accessory Structures

Tax Map Key: 3-4-1:Portion of 22

The Planning Commission at its duly held public hearing on October 20, 2000, voted to approve the above-referenced application and adopt the Planning Director's Findings of Fact, Conclusions of Law and Decision and Order. Special Permit No. 1084 hereby issued to allow the establishment of an existing 195-foot telecommunication tower, antenna, accessory equipment building and structures, and security fence on approximately 6,100 square feet of land plus access easement within the State Land Use Agricultural District. The project area is located above and on the Hilo side of Maulua Gulch approximately 1.3 miles mauka of the Hawaii Belt Highway, Maulua Iki, North Hilo, Hawaii.

Approval of this request is based on the following:

I. FINDINGS OF FACT

A. Procedural Background

1. On April 27, 2000, US Cellular filed an application for a special permit under Chapter 205, Hawai'i Revised Statutes, with the County of Hawai'i

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Planning Department, to allow an existing 195-foot telecommunication lattice tower, antennas, accessory equipment building, and accessory structures, on approximately 400 square feet of land zoned Agricultural (A-20a) and situated in the State Land Use Agricultural District. The property is located above and on the Hilo side of Maulua Gulch, approximately 1.3 miles mauka of the Hawai'i Belt Highway, Maulua Iki, North Hilo, Hawai'i, TMK: 3-4-01: Portion of 22. (County Ex. 1, p. 1; USCOC Ex. B.)

2. The application for a special permit was filed in order to legitimize the existing tower to conform to a Hawai'i Supreme Court ruling filed on May 20, 1999 which held that a special permit must be obtained 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 HRS, Section 205-4.5(a)(7), which states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, ..." and the instant tower was constructed under that interpretation. (County Ex. 1, p. 3; USCOC Ex. A.)
3. The Planning Commission held a public hearing on the subject application on June 19 and July 21, 2000, County Building, Council room 201, 25 Aupuni Street, Hilo, County and State of Hawai'i.
4. At the public hearings, the Planning Commission considered the completed petition of intervenors Christopher J. Yuen, Noelle Rodriguez, and George H. Robertson, to intervene as parties and their request for standing in a contested case hearing under Rule 4 of the Planning Commission.
5. After consideration of the intervenors' petition on June 19, 2000, the Planning Commission voted to admit the intervenors as parties to the proceeding and to conduct the proceeding on the subject application in the manner provided by Chapter 91, HRS, and Rule 4 of the Planning Commission (contested case hearing).
6. The Planning Commission voted to continue the public hearing until July 21, 2000 in order that attorney Christopher J. Yuen could be present to set the schedule for the contested case proceedings. (Tr. 6/16/00 mtg., p. 15.)

7. At that 7/21/2000 public hearing, the Planning Commission decided that the entire Planning Commission would serve as hearing officers and all they set the contested case hearing and site inspection for 8/29/00. (7/21/00 minutes, p. 2.)
8. Intervenors, through their counsel, Christopher J. Yuen, filed their statement of issues, lists of witnesses and list of exhibits on August 17, 2000.
9. The applicant, through its counsels Donna Y.L. Leong and Kelly LaPorte, filed its statement of issues, list of witnesses and list of exhibits on August 16, 2000.
10. The Planning Department filed its statement of issues, list of witnesses and list of exhibits on August 14, 2000.
11. A site inspection was conducted on August 29, 2000 at the subject property, as well as various points from which the tower could be seen, including intervenors Yuen and Rodrigues' property and a point on the State highway. (8/29 Tr. 2.)
12. A public hearing and contested case hearing was held on August 29, 2000 at Papaaloa Gym.

B. Substantive Facts

13. The landowners of the subject property are First Hawaiian Bank, Trustee for Vern Yamanaka, Inc., profit-sharing plan; David W. Larsen and Shirley A. Larsen; and Martin Anderson. The applicant US Cellular has an irrevocable license in the property for the existing tower and appurtenant uses. (County Ex. 1, p. 1; USCOC Ex. B.)
14. The subject property is designated as Prime Agricultural Lands under the ALISH system. (County Ex. 1, p. 6.)
15. The area of the proposed use is in Zone "X," areas outside the 500-year flood plain. (County Ex. 1, p. 6.)
16. The subject property is designated with a soil type of Honokaa silty clay loam (HTD or HsD). (County Ex. 1, p. 6.)
17. The Land Study Bureau Soil Rating is "D" or Poor. (County Ex. 1, p. 6.)

18. No known drainage channels are found within the property.
19. The Island of Hawai'i is divided into zones according to the degree of hazard from lava, with Zone 1 being the area of greatest and Zone 9 being of the least hazard. The subject property falls within the area rated as Lava Flow Hazard Zone 8, areas where none of their surfaces have been covered by lava within the past 750 years. (County Ex. 1, p. 6.)
20. The 195-foot lattice tower, accessory equipment building and security fence have existed on the subject property since December 1998. The free-standing, self-supporting lattice tower lies on a concrete base that is 2 feet and 3 inches thick. According to the applicant, the tower was not painted as the gray color of the galvanized steel best matches the hues of the sky. At the top of the tower are 6 panel antennas, each 6 feet long, and one 15-foot lightening rod is mounted vertically on a platform at the very top. At the 145-foot level, there is a microwave dish that is 6 feet in diameter and directed towards Ookala. All of these antennas belong to US Cellular and are used to receive and transmit ultra high frequency radio waves in the range of 800-900 megahertz. There is also an equipment building which sits on a concrete slab measuring approximately 240 square feet. Although the area involved in the requested permit is 6,100 square feet, the tower and equipment building are on an approximately 3,600 square foot area and surrounded by an 8-foot high chain link fence. Power is provided by a generator and a 2,000-gallon fuel tank. (USCOC Ex. B, p. 3, Special Permit Application.)
21. According to Planning Department files, final plan approval was secured on November 30, 1998 for a 195-foot lattice tower with satellite dishes installed at different heights and a panel antenna with platform at the top. A special permit was not required at that time. Building permits were also not required by the Department of Public Works, Building Division. (County Ex. 1, p. 3.)
22. The Hawai'i Public Utilities Commission granted US Cellular a Certificate of Public Convenience and Necessity as a domestic Cellular Telephone Communications Service Common Carrier under Docket No. 6684. (County Ex. 1, p. 4; USCOC Ex. B.)
23. Site selection in the vicinity was difficult because of the terrain and deep gulches. (Tr. 73.) Other high elevation sites were considered but not selected because they were not buildable, suitable for linkage or required a

400-foot tower. (Tr. 80; USCOC Ex. B.) The subject site was selected as the parcel is level and buildable. It is at a relatively high elevation of 1,017 feet and suitable for linkage to other US Cellular network facilities by line-of-sight. This site allows US Cellular to provide more complete coverage through its island-wide system, by providing telephone service to residents who were unable to install telephones through land-line systems. US Cellular is presently the only cellular company that provides usable service along the Hamakua Coast. This location allows US Cellular to provide cellular telephone service to the Hamakua Coast, including approximately 1,153 square miles of ocean, and coverage on Hawai'i Belt Highway from Laupahoehoe to Honomu. (USCOC Ex. B, p. 5.)

24. Conventional land line telephone services are not available in the area. Telephone communications made possible by the subject USCOC tower are helpful for business and personal work as well as for aiding in the provision of emergency services in the area. (Tr. pp. 17-18, 29-30, 49-50, 94-95; Written Testimony of Peter Young.)
25. A US Cellular employee periodically monitors the tower, antennas and its appurtenant equipment. (County Ex. 1, p. 4; USCOC Ex. B.)
26. Access is available to the site via a Homestead Road and a driveway easement to the tower site. (USCOC Ex. B.)
27. The existing tower is a low maintenance facility and will not generate traffic that will adversely affect the area. The tower is not continuously staffed, except for maintenance and repair. (County Ex. 1, p. 4; USCOC Ex. B.)
28. The subject property is designated as Intensive Agricultural on the Land Use Pattern Allocation Guide Map. The General Plan document also lists TMKs: 3-4-4: 9, 11 and 12 within the Maulua Gulch as examples of natural beauty. The tower is not constructed on any of these listed tax key parcels. (USCOC Ex. Q, p. 32; Tr. 44, 133.)
29. The Northeast Hawai'i Community Development, adopted by the County Council by Ordinance No. 445, effective June 26, 1979, lists the Maulua Gulch as a "Natural Beauty Area" within the North Hilo District and recommends that boundaries be established to protect this visual asset. (County Ex. 4; USCOC Ex. P; Yuen Ex. D.)

30. The subject parcel does not fall within the special management area. (County Ex. 1, p. 5.)
31. The subject property is an approximately 50.33 acre parcel of land located in Ninole, above and on the Hilo side of the Maulua Gulch, and approximately 1.3 miles mauka (west) of the Homestead Road's intersection with the Hawai'i Belt Road. The owners do not reside on the land, which is used for pasture. The subject application covers approximately 6,100 square feet of land with a short gravel driveway. The property is mainly covered with grass and used for grazing purposes. Cattle graze on the parcels above and below the subject property. (County Ex. 1, p. 1; USCOC Written Testimony of Rechtman, p. 1.)
32. The subject parcel is located on the Hilo side and near the ridge of the Maulua Gulch and the Makahiloa Stream. Immediately surrounding properties to the east, south and southwest are large acreage parcels ranging between 16 to 100+ acres in size and also zoned A-20a. Those lands owned by Bishop Estate are presently in eucalyptus tree farming. An 18-acre parcel containing 2 dwellings is located approximately 850 feet west of the subject property's western boundary but more than 3,600 feet from the project site. The owners of the subject property also own the adjoining makai 30-acre parcel which is also zoned A-20 and in cattle grazing. Christopher Yuen and Noelle Rodrigues are owners of TMK: 3-4-4:22, containing approximately 19.6 acres along the Homestead Road and located approximately 2,550 feet below the tower site. Across the road from Mr. Yuen's property is a dwelling and further makai is a former small plantation camp located at the lower part of the Homestead Road approximately 3/4 of a mile below (makai) the tower. The 75-acre property immediately north of the project site and located within Maulua Gulch is owned by the State. George Robertson and 10 other individuals are the owners of TMK: 3-4-2:4, containing approximately 1,000 acres and located further north and northwest of the project site behind the horseshoe of Maulua Gulch. This property is presently vacant of any structures. It should be noted that there are also 2 dwellings on separate parcels behind the horseshoe of Maulua Gulch. (County Ex. 1, p. 8.)
33. Access to the subject property is from the Hawai'i Belt Road approximately at the 21 mile marker heading towards Honokaa, turning mauka onto a Homestead Road. This road is approximately 9-10 feet wide and winds up toward the tower which is located approximately 1.4 miles from the Hawai'i Belt Road. (County Ex. 1, p. 8.)

34. There are no archaeological or historic sites on the property. A field inspection was conducted by Bob Rechtman Ph.D. of Paul H. Rosendahl, Ph.D., Inc. who reported no observation of archaeological resources as well as none having been previously identified in the immediate vicinity. (USCOC Ex. L.)
35. As the parcel is used for grazing, there are some sugar cane and other grasses and weeds on the property. A botanical survey report dated September 29, 1999 was prepared by Phillip Conley. He noted sugar cane, milkwort, partridge pea, goose grass, fountain grass, Kyllinga grass, sensitive plant, Hilo grass and Spanish clover. Mr. Conley reported no threatened or endangered species in or around the site. (USCOC Ex. K.)
36. The parcel is slightly sloped with grasslands and adjacent pasture lands. The northern boundary of the property is steep with a vertical cliff bordering the Maulua Gulch. The existing tower is mauka of the Hawai'i Belt Road and visible from the highway at a distance from the Waimea side of the horseshoe turn to the middle of the turn. It is also visible from various areas along the Homestead Road leading up to the subject property. There are several dwellings on the other side of the gulch that are visible from the subject property; however, it is not known whether the tower is visible to these residents. (County Ex. 1, p. 7.)
37. US Cellular provided evidence of its attempt to mitigate the impact of the tower by the repositioning of the tower further away from the ridge line, changing original plans to build the tower on the knoll located further makai and towards the gulch (Tr. 44), and placing the tower 200 feet back from the property boundary line and the easterly edge of the gulch (Tr. 45).
38. Planting of trees can mitigate the view of the tower but not completely block its view. (Tr. 53.)
39. US Cellular took little action to "fit" its surroundings or conceal the tower from public view, other than the choice of paint color. (USCOC Ex. B, p. 3.)
40. A stealth tower is not a feasible option because of the height of the tower. (Tr. pp. 50-51).
41. It would take four 100 foot towers to provide the service of the 195-foot tower (Tr. 77).

42. Testimony was received that some members of the public find the visual impact of the tower to be significant and negative and others do not. (Tr. pp. 3-5, 7, 12, 18, 20-21, 27, 31.)
43. The tower as constructed has a visual impact to the overall quality of the visual aspects of the Malua Gulch area. Such impact however, can be mitigated by landscaping with trees. (Tr. 133.)
44. Noise will be emitted from an air conditioner to maintain temperature and humidity in the equipment building. However, it is anticipated that noise will be inaudible from farther than 100 feet, except under extraordinarily quiet conditions. (County Ex. 1, p. 7.)
45. The operation of the radio antennas will not present health hazards or cause interference with other electronic appliances and equipment. The cellular radio antenna operates at an ultra-high frequency radio wave band between 800-900 megahertz. The pattern of the antenna is directed towards the horizon and not downward, therefore, the radio frequencies near the base of the tower is minimal. Reviews of scientific literature by the Environmental Protection Agency (EPA), the National Institute of Occupational Safety and Health (NIOSH), the American National Standards Institute (ANSI) and the National Council on Radiation Protection and Measurements (NCRP) have been conducted by the applicant. None of these agencies have identified harmful health effects associated with low power densities and the ultra-high frequency of the cellular radio wave transmissions. The tower was designed to and comply with Federal Communication Commission's (FCC) guidelines. (County Ex. 1, p. 7.)
46. The Telecommunications Act of 1996, Section 704, which amended portions of the 1934 Act, prohibits local authorities from regulating the placement of cellular towers based on environmental effects, more specifically radio frequency emissions, as long as those towers comply with the FCC's guidelines. (County Ex. 1, p. 7.)
47. Water is not required for the proposed use. (County Ex. 1, pp. 8, 9.)
48. No sewage will be disposed of on the property. (County Ex. 1, p. 8.)



49. There are no utilities to the subject property. A generator is used to run the equipment building. Police, fire and emergency services are available at Honokaa. (County Ex. 1, p. 8.)

## II. CONCLUSIONS OF LAW

1. The special permit process established by the State legislature under Section 205-6, HRS, is a conditional use system which authorizes the Planning Commission (where the affected area is less than 15 acres in area) to issue special permits for the establishment of certain uses in the State Land Use Agricultural District.
2. Under Section 205-6, HRS, the Planning Commission may issue a special permit for a use that the Planning Commission finds is unusual and reasonable.
3. By its own Rule 6, the Planning Commission established decision criteria for determining whether a proposed use meets the unusual and reasonable standard of Section 205-6, HRS.
4. The proposed use would promote the effectiveness and objectives of Chapter 205, HRS, 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 Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.
5. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection.
6. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
7. The lands upon which the proposed use is sought is unsuited for the uses permitted in the district.
8. The use will not substantially alter or change the essential character of the land and the present use.

9. The proposed use is not contrary to the General Plan and other documents such as design plans. The proposed request would complement and be consistent with, among others, 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.

10. The desired use will not adversely affect the surrounding properties.

12. With conditions imposed, the subject request can be made consistent with and can adequately address the Natural Beauty Element of the General Plan, in the following respects:

- 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.
12. Conditions are that the applicant must plant trees of varying heights and growth rates along the ridge line and upper elevations of the property to reduce the visual impact along the Maulua Gulch by partially blocking the view of the tower from below and providing a backdrop of trees which will mitigate the stark contrast of the tower against the horizon; and that additional trees be planted along the property border. Considerations in tree selection should include 1) ability of trees to blend in with the surrounding area; and 2) how quickly the tree grows.

III. Decision and Order

Based on the foregoing Findings of Fact and Conclusions of Law, the Planning Commission hereby approves that the application of USCOC of Hawai'i 3, Inc. dba US Cellular, for a special permit to allow the applicant to continue to use the project site for a telecommunications tower, antennas accessory equipment building and accessory structures; provided however, that the applicant shall be responsible to observe and comply with the conditions of approval affixed hereto and which, by this reference, are incorporated herein and made a part of the special permit granted to the applicant.

**CONDITIONS OF APPROVAL**

Special Permit Application No. 00-0020  
USCOC of Hawai'i 3, Inc. dba US Cellular

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. To reduce the visual impact along Maulua Gulch, trees shall be planted at varying heights along the ridge line and upper elevations facing the Maulua Gulch.
3. A revised final plan approval for the existing tower and related improvements shall be secured from the planning director in accordance with the Sections 25-2-72, 25-2-74 and 25-4-12 of the Zoning Code. Plans shall identify existing and proposed structures, fire protection measures, roadway easements, driveway and parking areas, and fencing associated with the proposed uses and proposed tree planting. Tower and antenna plans shall be stamped by a structural engineer.
4. Prior to securing revised final plan approval, a tree planting plan should be submitted to the planning director for review and approval. The plan should include the type and

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- number of trees and should include a visual plan specifically showing the location of the planting.
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 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.
  6. A written statement with a copy to the Police Department that the existing tower development shall not interfere with the County of Hawai'i Public Safety Radio System.
  7. Co-location or expansion of the tower and related facilities shall be allowed within the parameters of the tower height and envelope as approved by the Planning Commission.
  8. 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 mitigative measures have been taken.
  9. 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.
  10. Upon compliance with applicable conditions of approval, the applicant shall submit a status report, in writing, to the planning director.
  11. 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.

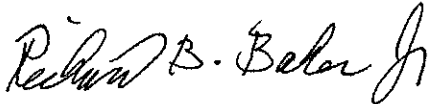
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- d) The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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 Alice Kawaha or Susan Gagorik 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  
~~West Hawaii Office~~  
State Land Use Commission  
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