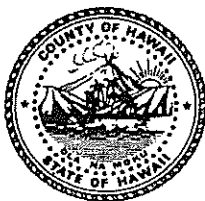


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

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DEC 14 2000

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

Dear Ms. Leong:

Special Permit Application (SPP 00-024)

Applicant: USCOC of Hawaii 3, Inc. dba U.S. Cellular

Request: Allow for an Existing 180' Lattice Tower, Antennas, Accessory Equipment,
Building, and Accessory Structures

Tax Map Key: 1-4-17:Portion of 3

The Planning Commission at its duly held public hearing on November 17, 2000, voted to approve the above-referenced application and adopt the applicant's Findings of Fact, Conclusions of Law and Decision and Order. Special Permit No. 1088 is hereby issued to allow the establishment of the existing 180-foot lattice telecommunication tower, antennas, accessory equipment building and accessory structures, and security fence on approximately 27,428± square feet of land within the State Land Use Agricultural District. The project area is located east (makai) of Puu Honuaula and the PGV Geothermal Site, and approximately 2,000 feet south of the Kapoho-Paho Road, Kapoho, Puna, Hawaii.

Approval of this request is based on the following:

FINDINGS OF FACT

1. The land that is the subject of this application is a leased area located within the State Land Use Agricultural District, is zoned A-10a (Agricultural) District by the County of Hawai'i ("County"), and is a portion of tax map key ("TMK") number (3) 1-4-017-003 (the "Property").
2. The Property is located at the southerly end of a parcel of land owned by Ruth Miller Duff (the "Owner") and leased to Cellular, which has approximately 32.101 acres of

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land.1 The Property lies northwest of Kapoho Point; near the Lava Tree State Park, at an elevation of approximately 687 feet. The Owner's parcel and most of the surrounding parcels consist of old sugar cane fields and trees. A 20-foot dirt road provides access to the Owner's parcel from Kapoho-Pāhoa Road.

3. 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, fence), down to, but not including, the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.
4. Intervenor Gregory Pommerenk and Deborah A. Erickson-Pommerenk own, but do not reside on, three parcels of land in the vicinity of the Property. They reside on Kaua'i and moved there starting in 1995. Albert and Theresa Pommerenk own, but do not reside on, one parcel of land in the vicinity of the Property. They reside in Dana Point, California. There are no dwellings on any of Intervenor's parcels. There was a dwelling on TMK parcel 1-4-17:04, but it burned down in 1997.
5. The Project was built in 1991. Before the tower and building were constructed, the Property and the driveway being used by Cellular consisted of unimproved land that was previously used as a commercial sugar cane field for years.
6. At the time the Project was built, the Department, the agency charged with the implementation of HRS Chapter 205 on the Island of Hawai'i, ruled that a special permit was not required for telecommunication towers and antennae in the State Agricultural District because the Department considered telecommunications towers as a permitted use pursuant to HRS section 205-4.5(a)(7), which includes "public, private and quasi-public utility lines and roadways, transformer stations, [and] communications equipment buildings." The Hawai'i Supreme Court, however, subsequently held that telecommunication towers and antennae in the State's agricultural district require a special permit under HRS section 205-6(a) in Curtis v. Board of Appeals, 90 Hawai'i 384, 978 P.2d 822 (1999) ("Curtis").
7. To comply with the decision in Curtis, US Cellular submitted an application for a special permit for the Project on June 9, 2000.
8. The Land Study Bureau Overall Master Productivity Rating for the Property is "D" to "E" or "Poor" to "Very Poor." The subject area is not classified on the Agricultural Lands of Importance to the State of Hawai'i ("ALISH") map, which means that the land is not Prime, Unique, or Other Important agricultural land.

1 As Cellular is a public utility, the Planning Director has confirmed that Hawai'i County Code ("HCC") section 23-11, exempts Cellular from the subdivision requirements of HCC Chapter 23.

9. The Owner's parcel (other than the Project site) is vegetated with grass, feral sugar cane, and charcoal trees. The site is bordered on three sides by old sugarcane fields, and a small group of trees grows on the fourth side.
10. The botanical survey report dated April 14, 2000 prepared by Phillip Conley indicates that only sow thistle and partridge pea plants were found within the fence surrounding the Project. Mr. Conley reports that he saw no animals in or around the site, and no endangered or threatened species of plants in the area.
11. There are no archaeological or historic sites on the Property.
12. There are no known drainage channels within the Property and the area is designated "X" or outside the 500-year flood plain by the FIRM maps. Thus, the Project does not block any known drainage channels.
13. The General Plan Land Use Pattern Allocation Guide Map designates the area as "extensive agriculture."
14. There is no county community plan or design plan to which the Property is subject.
15. The Property is not located in a Special Management Area as such term is defined under HRS Chapter 205A.
16. Only electrical service is required for the proposed use, and this was readily available from already existing power lines along the 20-foot road. No other utilities are required.
17. The only noise emitted from the Project is from an air conditioner that is necessary to maintain correct temperature and humidity in the equipment building. However, the resulting noise is virtually inaudible from farther than one hundred feet except under extraordinarily quiet conditions.
18. The Project does not emit dust, debris, odors, or vibrations.
19. The Property is located approximately four and one-third miles east of Pāhoa and about one-half mile south of the Kapoho-Pāhoa Road. Surrounding properties range from about 1.4 acres to 557 acres in size.
20. There are no dwellings on the Owner's parcel. There is a dwelling on TMK parcel 1-4-17:05.

21. Cellular uses the Property for road and utility cellular and microwave telecommunications purposes.
22. The approximately 2,500 square foot area where the Project's tower and building are situated is surrounded by an eight-foot high chain link fence.
23. Existing roads provide access to the Owner's parcel. The tax maps identify the 20-foot roads in the vicinity of the project site as having Tax Map Key Parcels Nos. (3) 1-4-017-013 and (3) 1-4-018-012. The most recent real property tax assessment rolls list Kapoho Land and Development Company, Limited ("Kapoho") as the owner of those parcels. Kapoho granted Mrs. Duff, Cellular's landlord, a nonexclusive perpetual easement in the roads pursuant to Deed dated July 20, 1981, recorded in the Bureau of Conveyances of the State of Hawai'i in Book 15711, Page 228. Mrs. Duff then granted Applicant an easement "20 feet wide extending the entire distance from the Premises to the dedicated public road."
24. The driveway access from the 20-foot roads to the tower site comprises approximately 24,928 square feet of land area. Except during the construction and extension of the tower, which occurred in 1991 and 1992, respectively, virtually no traffic is generated by the operation of the tower, as it is a low-maintenance facility that is not continuously staffed. Except for brief periods of maintenance and repair, the Project is self-operating. A Cellular employee periodically monitors the tower, antennae, and its appurtenant equipment. Consequently, there are no long-term traffic impacts resulting from this Project.
25. The tower is 180 feet tall and is a free-standing, self-supporting, lattice structure on a concrete base that is about two feet thick above the ground. The tower was constructed to withstand windspeeds over 100 miles per hour, which exceeds the Uniform Building Code standard of 80 miles per hour. In the event of extreme wind conditions, the tower was constructed to fall upon itself. The tower was not painted as the gray color of the galvanized steel best matches the hues of the sky.
26. The Project forms an integral part of establishing Cellular's island-wide network, which attempts to provide continuous cellular telephone coverage to its customers in an orderly plan.
27. At the top of the tower is a triangular platform with three 10-foot long, omnidirectional antennae and one eight-foot long lightning rod mounted vertically on top of the platform. At the 170-foot level, there is one six-foot grid microwave dish directed towards Hilo. At the 180-foot level, there is one 10-foot grid antenna facing toward Volcano. This antenna is not currently in use because the inflation and deflation of the volcano results in an inconsistent quality of coverage.

28. The microwave dish antenna pointed towards Hilo is part of the "backbone" of Cellular's network that transmits and receives microwave transmissions to and from Cellular's Mobile Telephone Switching Office ("MTSO"), where all call routing occurs, calls are tracked, and commands are originated for handoffs from cell site to cell site. The microwave dish links the Project cell site to the MTSO and requires line-of-sight between the Project site and the tower at the MTSO in south Hilo.
29. Because of the microwave backbone that is able to function when land-line telephone service is disrupted or lost, Cellular's network is used by Hawai'i's Civil Defense as part of their emergency reaction network and by the American Red Cross.
30. This tower, like the other towers in Cellular's network, has a low power radio frequency ("RF") transmitter that provides cellular telephone service within its coverage area or "cell." As a telephone user passes from one coverage area to the next, the call is passed automatically to the next cellular tower site. Because of the low power transmitters, the "handoff" from one coverage area to the next requires many cellular tower sites that are strategically located to achieve good quality performance.
31. It is very difficult to engineer a tower in Hawai'i because of the terrain. Hawai'i is what is referred to in the cellular industry as "terrain limited," which means that the RF signal in many areas is severely degraded or blocked because the many slopes and curves of the mountains and valleys, as well as the foliage, cause shadows or "eclipses," which block or interfere with the RF signal. As Hawai'i's terrain does not permit the type of coverage that can be achieved on flat land, it requires towers in numerous locations to minimize RF signal blockage.
32. With respect to this Project, the Pāhoa Tower site was selected for several reasons. The Property's terrain permits a tower that is shorter than would have been required at other sites, as the Property is located on the side of a pu'u. The site is also suitable for linkage to other Cellular network facilities by line-of-sight, thus permitting Cellular to provide more complete coverage through its island-wide system with a minimal number of towers.
33. The pre-existing 20-foot road, and the power lines along the 20-foot roads leading to the Owner's parcel, provided readily-available power and access to the Property that minimized disturbance to the environment. The Owner of the Property was also willing to reach an agreement with US Cellular for the use of her land for the Project.
34. US Cellular considered several other sites, but rejected them for various reasons. Other potential sites in Pāhoa either did not provide necessary coverage for Hawaiian

Paradise Park or the Kapoho area or were not at sufficient elevation to provide optimal coverage. The two sites in Pāhoa were in the same vicinity as the existing Project site.

35. It is Cellular's policy to offer efficient service by providing maximum cellular coverage with a minimal number of towers. This practice reduces the impact on the community and the natural environment by minimizing the number of cellular towers, associated facilities, and access roads to the extent possible.
36. Cellular's policy is to permit co-location of other antennae on its towers as long as such co-location does not impair or compromise the operation of Cellular's or other users' improvements and existing facilities at the Project.
37. The Property's location allows Cellular to provide cellular telephone service to the town of Pāhoa to the west, along Kea`au-Pāhoa Road, and on Kapoho-Pāhoa Road to Kapoho, thus providing telephone service to residents who may have been previously unable to install telephones through land-line systems due to the high cost of constructing poles and transmission lines.
38. In particular, the Project provides cellular service not only to the town of Pāhoa, but also to the residential subdivisions of Hawaiian Paradise Park, Hawai'i Beaches Estates, and Leilani Estates.
39. This Project provides the only cellular telephone service in the coverage areas described above.
40. Residents of Opihikao, Lower Puna, and the Kalapana-Pohoiki area provided evidence that there are no traditional telephone land lines and no other cellular telephone service available to them. Without the Project, the residents of those areas will have no telephone service at all.
41. This tower also enables Cellular to provide cellular telephone service to fishermen and boaters in the ocean covering most off-shore areas from Hilo to Ka`ena Point, consisting of an area of about 694 square miles of ocean. Evidence from several fishermen was submitted that they need the cellular telephone service provided to them as a result of this Project for safety reasons.
42. 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 RF emissions, as long as those towers comply with the guidelines of the Federal Communication Commission ("FCC").

43. The cellular radio antennae have filter equipment and operate in the ultra-high frequency radio wave band, between 800-to-900 megahertz. The propagation pattern of the antennae is directed towards the horizon and not downward, and the radio frequency energy near the base of the tower is minimal.
44. The Project was designed to comply with and does comply with FCC guidelines regarding RF emissions.
45. There were no major objections or concerns expressed by agencies reviewing Cellular's application for this special permit.
46. Letters from approximately 300 community organizations, businesses, and residents from the area, supported approval of a special permit for the existing Project.
47. To the extent that any of these findings of fact constitute conclusions of law, they shall be so considered and construed.

CONCLUSIONS OF LAW

This Commission has jurisdiction over this request for a special permit pursuant to HRS section 205-6, as the Project involves less than 15 acres of land.

The Project is consistent with, and not contrary to, the objectives sought to be accomplished by HRS chapters 205 and 205A, as amended, and the rules of the Land Use Commission.

(a) HRS chapter 205

The basic objectives of HRS chapter 205 are to protect, to conserve, and to rationally develop through zoning the State's urban, agricultural and conservation lands using a coordinated, balanced approach not only within each county but on a statewide basis. This approach includes an overall balance of statewide land needs for economic growth and is essential to (i) utilize the land resources in an intelligent, effective manner based upon the capabilities and characteristics of the soil and the needs of the economy; (ii) conserve forests, water resources and land, and in particular, to preserve the prime agricultural lands from unnecessary urbanization; and (iii) state the allocation of land for development in an orderly plan to meet actual needs and minimize costs of providing utilities and other services through rational development.

The site of the Project's tower, antennae, and appurtenant structures affects a total of approximately 2,500 square-feet of a parcel of land that has more than 1.39 million square feet (32.1 acres). The driveway is approximately 24,928 square feet. The Project continues

to allow the remaining portion of the Owner's parcel, which is currently and primarily feral sugar cane, to be used for agricultural purposes. Therefore, the Project does not remove significant lands from agricultural use.

The Project provides a valuable and essential continuous cellular communication service to a large geographical area that is otherwise without such service. Certain areas within that large geographical area do not otherwise have any telephone service. Accordingly, the Project's utilization of the Property's resources is a reasonable and cost-effective one and does not result in unnecessary urbanization. Cellular's island-wide communication network, of which the Project is an integral part, is an orderly plan to meet actual needs that minimizes the cost of providing the utility of telecommunications through rational development.

Accordingly, the Project is consistent with, and is not contrary to, the objectives sought to be accomplished by HRS chapter 205.

HRS chapter 205A (Coastal Zone Management Act)

HRS Chapter 205A is the Coastal Zone Management Act ("CZMA") for the State of Hawai'i. All lands in the State, including the mountain tops, are in the coastal zone management area under HRS section 205A-1. Although the objectives of the CZMA are extremely broad and far reaching, the essence of the CZMA is "to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii" by "maintaining, restoring, and enhancing the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values, and to provide adequate public access to publicly owned or used beaches, recreation areas and national reserves" by controlling development within an area along the shoreline, the special management area.

The Project furthers the goals of HRS Section 205A-2 by "[p]roviding coastal recreation opportunities" for the public and "[r]educing hazard to life and property from tsunamis, storm waves, [and] stream flooding" by providing both normal and emergency communications to cellular telephone users along the coast and at sea. The Project provides cellular communications to boaters in off-shore areas from Hilo to Ka'ena Point, an area of about 694 square miles of ocean.

Beyond affording cellular communications to persons enjoying the resources of the coastline, Cellular is part of the civil defense network for the County of Hawai'i and provides communication service to the American Red Cross, affording communications in the event of a natural disaster, such as a tsunami, hurricane, lava flow, or earthquake where telephone line systems might become damaged or disrupted.

(b) Land Use Commission Rules

HAR section 15-15-01 states that the Land Use Commission's Rules "shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawaii." Based on the discussion above that addresses the objectives of HRS Chapter 205, the Project is not contrary to the objectives sought to be accomplished by the Land Use Commission Rules.

The Project does not adversely affect surrounding property. Based on the site inspection and the contested case hearing held on October 9, 2000 by hearing officers of the Planning Commission, and after balancing the various benefits and costs to the surrounding communities resulting from the Project, the Commission concludes that, on the whole, the Project does not adversely affect surrounding property.

(a) RF Emissions

The operation of the radio antennae does not present health hazards or cause interference with other electronic appliances and equipment. The cellular radio antennae have filter equipment and operate in the ultra-high frequency radio wave band, between 800-to-900 megahertz. The propagation pattern of the antennae is directed towards the horizon and not downward, and the radio frequency energy near the base of the tower is minimal.

Section 704 of the Telecommunications Act of 1996 (47 U.S.C. 332(c), as amended) 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 those towers comply with the FCC's guidelines. The subject tower has been designed to, and complies with, those guidelines. No RF emissions adversely affect the surrounding properties.

(b) Noise Impacts

The only source of noise emitted from the Project results from an air conditioner that is necessary to maintain correct temperature and humidity in the equipment building. However, the resulting noise is virtually inaudible from farther than one hundred feet except under extraordinarily quiet conditions. The noise output of the air conditioning unit is substantially less than any number of uses permitted in this zone (e.g., generators, farm equipment, vehicles, or farm animals). Thus, there are no noise impacts that adversely affect the surrounding properties.

(c) Visual Impacts

Typically, no proposed utility facility completely avoids visual impacts without excessive expenses that prevent cost-effective delivery of the service. Although the HCC, as amended, permits a telecommunication tower up to a height of 500 feet, at 180 feet, the tower was built at the lowest height feasible to also provide extensive coverage for the desired area. The singular tower is not obtrusive when compared to traditional telephone and power poles and lines, which are visually more predominant in the vicinity than the tower and many more thousands of miles of which would have to be installed to provide the coverage afforded by this single tower. Similarly, the singular tower is less obtrusive than “wind energy” generating facilities, which are expressly permitted on the Property without a special permit under HRS § 205-4.5(12), and “solid waste transfer stations,” which are similarly permitted pursuant to HRS § 205-4.5(7).

To determine whether the fact that the tower can be seen from Intervenors’ properties provides this Commission with a sufficient basis on which to conclude that the Project “adversely affects” those properties, the reasoning of the California court of appeals in Oliver v. AT&T Wireless Services, 90 Cal. Rptr. 2d 491 (1999) is instructive. There, a neighbor brought an action against a cellular telephone company that had constructed a 130-foot tall cellular telephone communications tower on the basis that, among other things, the tower “dominates the landscape around their home.” 90 Cal. Rptr. 2d at 533. The court, however, barred any claim on a nuisance theory, noting that “[t]he displeasing height and shape of the new tower cannot, in and of itself, make it a nuisance to those who sit on the other side of the property line.” Id. at 534.

The court noted that the property owner on which the tower was located also possessed rights that must be protected:

In short, the displeasing appearance of an otherwise lawful structure on one side of a boundary cannot be deemed to substantially interfere with the enjoyment of that which is on the other side of the boundary without significantly diminishing the rights associated with both sides of the boundary. . . .

Moreover, “as a general rule, a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right.”

Id. at 535. And in Oklejas v. Williams, 302 S.E.2d 110 (Ga. Ct. App. 1983), the court held that an unsightly wall built by neighboring landowners did not constitute a nuisance, even if it tended to devalue the adjoining property.

There is no dwelling on any of Intervenors’ neighboring parcels of land.

Patrick Taketa, a real estate appraiser, provided written testimony that he compiled data about the sales of surrounding properties and conducted interviews with real estate agents and property owners who listed, sold, or purchased parcels in the vicinity of the Project site. He did not interview Pahoia Realty, Ltd., because he felt that, as the listing real estate agents for the Pommerenks, they might have a conflict of interest responding to his questions.

Mr. Taketa's interviews reflected the following. The seller in a July 2000 sale of TMK 1-4-17:8, whose parcel is adjacent to a Pommerenk parcel, said the tower had no effect on her listing or sales price and that she did not think the tower created any adverse effect on the real estate market. The owner of a lot adjacent to the Project site said he did not feel the tower has any negative effect on property values, and that the tower does not cause any detrimental effect to the area. Ernest Medeiros of Ala Kai Realty, Inc., the listor of TMK 1-4-21:1 and TMK 1-4-1:28, said there were absolutely no problems or any detrimental comments and concerns over the tower and that the tower was not a factor in the listing or sales price. Terry Schoneberg of Sunrise Properties, Inc., the listor of TMK 1-4-1:60, said there were no inquiries or comments about the tower, and that the tower was not a factor in the listing price. Gerald Clark of Savio Realty, Ltd., the listor of TMK 1-4-20:2, said there were no inquiries or comments about the tower, and that the tower was not a factor in the listing or purchasing of the parcel.

Mr. Taketa noted that the tower does not appear to create any hazard due to its location away from the boundaries of the parcel on which it is located, that he observed no odor or noise emitting from the tower to influence market value, and that ocean views are not blocked by this tower because it is located at the highest elevation with respect to parcels that are adjacent to the Project site. Based upon Mr. Taketa's professional experience and interviews with the real estate agents who have sold property in the vicinity of the Project site and the owner who lives adjacent to the Project site, he concluded that the tower is not a factor in listing or purchasing neighboring parcels.

While Intervenors claim that the tower "adversely affects" their property because they think it is unsightly or obstructs a view, based on the preponderance of the evidence, this Commission concludes that the tower does not decrease the market value of surrounding properties and does not adversely affect surrounding properties. The displeasing appearance of the tower to Intervenors, which Aurora Martinovich, who actually lives just below the tower, says is not unsightly to her, is not sufficient to support a conclusion that the tower adversely affect surrounding properties.

The Project does not unreasonably burden public agencies to provide roads, streets, sewer, water, drainage, school improvements, and police and fire protection. The Project requires only power, which is provided by an existing power line to the Owner's parcel. No public expenditures for road, street, sewer, water, drainage or school improvements or

increased police or fire protection are required. The Project enhances police and fire protection by affording cellular telephone service to remote land and ocean areas so that emergency and crime-fighting officials can be contacted where no telephone land lines or other cellular service exist, or in the event of an emergency when land lines are disrupted.

Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established. In the 1960s and the 1970s, when the State's agricultural district boundaries and regulations were first established pursuant to HRS Chapter 205, cellular telephone service was unknown, and the predominant means of audio communication was by traditional telephone service, which relies on telephone and power poles and lines. Given the expense of those poles and lines and the relatively low number of residents served in areas with large rural and agricultural tracts of land, telephone service was unavailable to certain parts of the Island of Hawai'i. This is very true for the Puna area.

US Cellular commenced cellular telephone service for the Island of Hawai'i in 1989. Since its commencement, the number of consumers on the Island of Hawai'i using such service has grown from zero to approximately 24,000 consumers. Further, the Project provides communication services to offshore fishermen and boaters.

Substantial evidence was introduced from area residents, community organizations, and businesses that recited the communication and safety benefits provided by the Project. This Project provides the only cellular telephone service in the coverage areas. Residents of Opihikao, Lower Puna, and the Kalapana-Pohoiki area provided evidence that there are no traditional telephone land lines and no other cellular telephone service available to them. Without the Project, the residents of those areas will have no telephone service at all.

Cellular telephone usage is an unusual trend and need that arose after the State's agricultural district boundaries and regulations were established.

The Project is compatible with other uses permitted within the State agricultural district, and the Property is unsuited for most of the agricultural uses permitted within the district. The Owners' parcel is currently not used for any purposes, but can be used for agricultural purposes, with which the Project does not interfere. Notably, the soil is rated "Poor" to "Very Poor," and its absence from the classified lands on the ALISH map means that the land is not Prime, Unique, or Other Important agricultural land. Further, the relatively small size of the Property does not prevent, and is compatible with, other uses permitted in the state agricultural district, to which the remainder of the Owner's parcel may be put.

The Project does not substantially alter or change the essential character of the land and the present use of the land. The essential character of the Owner's parcel is feral sugar cane. As the fenced portion of the Property with the tower and appurtenant structures

comprises only about 2,500 square feet of a 32 + acre parcel, the Project does not substantially alter or change the use of the land.

The Project is consistent with, and not contrary to, the current General Plan.

The Project promotes or balances, among others, each of the following relevant objectives and goals set forth in the General Plan:

A: ECONOMIC

GOALS:

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- 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.

POLICIES:

- The County of Hawaii shall strive for the diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County shall encourage the research, development, and implementation of advanced technologies and processes in existing and potential economic endeavors.

J. PUBLIC UTILITIES

GOALS:

- 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.

POLICIES:

- Public utility facilities should be designed so as to complement adjacent land uses and shall be operated so as to minimize pollution or disturbance.
- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- Utility facilities should be designed to minimize conflict with the natural environment and natural resources.
- Improvement of existing utility services shall be encouraged to meet the needs of users.

(2) TELEPHONE

POLICIES:

- The County shall encourage underground telephone lines where they are economically and technically feasible.
- The County shall work closely with the telephone company to provide all users with efficient service.

STANDARD:

- In the development and placement of telephone facilities, such as lines, poles and substations, the design of the facilities shall consider the existing environment, and scenic view and vistas shall be considered and preserved where possible.

M. LAND USE

GOALS:

- Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the County.

POLICIES:

- The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Regarding the identified economic considerations, the Project enhances the quality of life for many residents that were previously denied telephone service because of their remote locations and for fishermen from Hilo to Ka'ena Point. Because cellular phones are

not restricted to households, evidence presented to the Commission indicated that the economic benefits extend to those conducting business in the vicinity of Pāhoa and to fishermen who depend on cellular communications. Further, the single Pāhoa Tower not only negates the construction of multiple telephone poles and aerial lines in the area, it is much more economical to members of the community who do not have to pay for the extension of land lines to obtain telephone service.

These same considerations further the goals and policies outlined in the General Plan under the heading “public utilities,” as the Project helps to “[e]nsure that adequate, efficient and dependable public utility services will be available to users”; “[m]aximize efficiency and economy in the provision of public utility services”; and “[p]rovide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.”

On balance, the substantial evidence offered by Applicant indicates that the visual impact of this single tower is not sufficiently adverse to outweigh the benefits to the community at large. The Project is an integral part of an island-wide telephone utility service, assists community members in maintaining their livelihoods, serves as a lifeline in emergencies and accidents on land in the Pāhoa area and at sea, and provides critical emergency communications across the Island of Hawai’i in the event of a natural disaster.

Based upon the preceding considerations, the Project is consistent with, and not contrary to, the objectives of HRS chapters 205 and 205A and the rules of the Land Use Commission.

48. Based upon the foregoing considerations and the substantial evidence provided in these proceedings, this Commission determines that the Project constitutes an “unusual and reasonable use” under HRS section 205-6 and that the Project promotes the effectiveness and objectives of HRS Chapter 205.
49. Intervenors’ Proposed Findings of Fact, Conclusions of Law and Order have been considered by this Commission and are hereby not adopted.
50. The Department’s Proposed Findings of Fact, Conclusions of Law and Order have been considered by this Commission and are hereby not adopted.
51. To the extent that any of these conclusions of law constitute findings of fact, they shall be so considered and construed.

APPROVAL OF SPECIAL PERMIT APPLICATION SPP. NO. 00-024

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission hereby APPROVES Special Permit Application SPP No. 00-024 subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely manner, the Director may initiate procedures to revoke this permit:

- A. US Cellular, Cellular, or their successors or assigns shall comply with all of the stated conditions of approval.
- B. Final Plan Approval to ensure that pertinent conditions of this approval have been implemented shall be secured from the Director.
- C. 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, fence), down to, but not including, the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.
- D. Co-location or any expansion of the Project's tower and antennae shall be allowed within the parameters of the represented Project height and envelope.
- E. Applicant shall comply with all applicable rules, regulations, and requirements of the affected agencies for the development of the Property, including the Federal Aviation Administration and the FCC.
- F. An extension of time for the performance of these conditions of this special permit may be granted by the Director in the following circumstances:
 - (1) Non-performance is the result of conditions that could not have been foreseen or are beyond the control of US Cellular, Cellular, or their successors or assigns, and that are not the result of the fault or negligence of US Cellular, Cellular, or their successors or assigns.
 - (2) Granting the extension would not be contrary to the original reasons for granting the special permit.
 - (3) The time extension 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 an additional one year).

Donna Y. L. Leong, Esq.

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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

Luscockapohosp00-024pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
Patricia K. O'Toole, Esq.
Mr. Gregory C. Pommerenk
Mr. Jerry Erickson