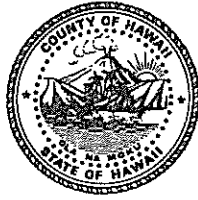


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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SEP 08 2000

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

Dear Ms. Leong:

Special Permit Application (SPP 00-025)

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

Request: Allow for an Existing 60' Telecommunications "Pole" Tower, Antennas,  
Accessory Equipment Building, and Accessory Structures

Tax Map Key: 9-2-149:52

The Planning Commission at its duly held public hearing on August 15, 2000, voted to approve the above-referenced application. Special Permit No. 1072 is hereby issued to allow the establishment of the existing 60-foot telecommunication pole tower, antennas, accessory equipment building and accessory structures, and security fence on approximately one acre of land within the State Land Use Agricultural District. The property is located in Hawaiian Ocean View Estates at the southwest corner of Lei Parkway and Liliana Lane intersection, and approximately 5 miles mauka of Mamalahoa Highway at the 4,680 foot elevation, Kahuku, Kau, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Based on a ruling by Judge J. Nakayama of the State of Hawaii Supreme Court, filed on May 20, 1999, the Court affirmed the circuit court's order reversing the Board of Appeals conclusion that HRS, Section 205-4.5(1) permits cellular telephone towers as of right in the State Land Use

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Agricultural District. Therefore, a Special Permit is now required 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 Section 205-4.5(a)(7) which states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, . . . ." The applicant is requesting to legitimize an existing 60-foot pole tower and accessory structures on the subject property. The subject property is approximately one acre in size and owned by United States Cellular. Soils are classified "E" or Very Poor and the lands are considered Existing Urban Development under the ALISH designation. The land is barren lava rock and vacant of any other uses besides the tower development. Therefore, no active agricultural activities will be diminished. The existing development would not remove significant lands from agricultural use and would not be contrary to the objectives of the State Land Use Law for the Agricultural District. Further, the subject property is approximately 5 miles to Mamalahoa Highway, the nearest coastal road.

The desired use will not adversely affect the surrounding properties. The subject property is approximately one acre in size. The existing pole is a 60-foot high telephone pole with antennas and is fenced in for security. Noise from an air conditioner is expected to be minimal and not audible from over 100 feet. According to real property records, there are no immediate adjacent dwellings to the site. A letter expressing concerns on health hazards from electronic transmissions as well as visual impacts of the pole was expressed by a surrounding property owner. As conditioned, the applicant would be required to comply with all requirements of the Federal Communications Commission, which includes radio frequency emissions. The tower is visible to surrounding properties in the area, as the lands are barren lava. However, visual impacts are not considered to be significant, as the pole is 60-feet high, brown and wooden, and similar to a telephone pole. Finally, the tower is not visible from the Mamalahoa Highway in a distance, and will not affect view planes from the highway.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The proposed development of a telecommunication pole tower and related improvements will not require additional services. As electricity is not available to the property, a generator and propane tank are on site. Access to the site is via Lei Parkway which is an approximately 21-foot wide chipseal road. Traffic is expected to be minimal due to the fact that the pole will only require periodic maintenance and repair.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In more recent years, the cellular phone industry has become a predominant means of communication due to its convenience. On the Big

Island, it has become a service to communities where previously telephone service was not available. In this particular location, the tower will also allow commercial and sports fishermen and boaters to use cellular telephones as their primary emergency communication system. According to a recent Supreme Court Ruling, a special permit is required in order to establish a cellular phone tower within the State Land Use Agricultural District.

The use will not substantially alter or change the essential character of the land and the present use. The subject property is relatively flat and barren with lava rock. The request is to legitimize the existing tower, therefore, no additional development is expected.

The lands upon which the proposed use is sought is not unsuitable for the uses permitted in the district, however, the proposed uses will not interfere with permitted uses. The property is presently a one acre lot and vacant of agricultural uses, therefore, no agricultural activity will be diminished and no significant lands will not be taken out of use.

The proposed use is consistent with the following goals, policies and standards of the General Plan. The subject parcel falls within an area designated as Extensive Agricultural on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-1a) and the proposed development falls within the State Land Use designation of Agricultural. In order to establish a cellular phone tower on the subject property, a Special Permit would be required. The existing tower would complement and be consistent with the following goals, policies and standards of the General Plan:

*Land Use Element*

- \* Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the County.
- \* The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

*Economic Element*

- Provide residents with opportunities to improve their quality of life.

- 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.
- 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.

*Public Utilities*

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

*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.

Based on the above considerations, the request to legitimize an existing 60-foot telecommunication pole tower, antennas, equipment building and accessory structures would be an unusual and reasonable use of land within the State Land Use Agricultural District, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

This request is hereby approved subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. Final Plan Approval for the existing tower and appurtenant uses shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-72 and 25-2-74 and 25-4-12. Plans shall identify existing structures, fire protection measures, roadway easements, driveway and parking areas and fencing associated with the existing uses. Tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the existing tower and antennae shall be allowed within the parameters of the existing building height and envelope as represented.
4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (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.
5. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the proposed development shall not interfere with the County of Hawaii Public Safety Radio System.
6. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the

immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.


7. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
8. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
9. An initial 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.
  - 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.

Donna Y. L. Leong, Esq.  
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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  
State Land Use Commission  
Department of Land & Natural Resources  
Kazu Hayashida, Director/DOT-Highways, Honolulu  
Roy A. Vitousek, Esq.