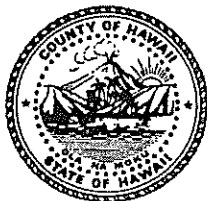


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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DEC 26 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 00-029)

Applicant: USCOC of Hawaii 3, Inc.

Request: Allow for an Existing 80-Foot Telecommunication Monopole/Antennas,
Accessory Equipment Building and Accessory Structures

Tax Map Key: 7-1-3:18

The Planning Commission at its duly held public hearing on November 30, 2000, voted to approve the above-referenced application. Special Permit No. 1090 is hereby issued to allow an existing 80-foot telecommunication monopole tower, antennas, accessory equipment building and structures, and security fence on approximately 5,541 square feet of land plus access easement in the State Land Use Agricultural District. The project area is located near the summit of the Pu'u Anahulu cinder cone, approximately 2.2 miles northwest of Mamalahoa Highway and the village of Pu'u'anahulu, Pu'u'anahulu, North Kona, Hawaii.

Approval of this request is based on the following:

The establishment of the 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures 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 establishment of the 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures will comprise an area of approximately 1,980 square feet within a 5,541-square foot property. The subject request

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would not displace agricultural activity nor diminish the agricultural potential of the area since the monopole, antennas and related improvements are already existing and the project site itself is not used for agricultural purposes.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The requested use is located within an area whose soils are classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating. Furthermore, the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map does not classify the subject property as having any agricultural importance.

The subject property is situated within the County's Agricultural-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 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures were constructed in 1996 in accordance with the County Zoning Code. However, as a result of a recent Hawaii Supreme Court ruling that telecommunication towers and antennae 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 telecommunication tower and related improvements. The 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures will be confined to an area of approximately 1,980 square feet. Soils within the project site are unsuitable for agricultural uses and are typically used for pasture and watershed. While the 1,980 square foot fenced area containing the monopole and related improvements is not used for agricultural purposes, a surrounding 20,138-acre parcel is an actively grazed pastureland and also a habitat for wild goats. The unfenced portion of the 5,541 square foot subject property is likely to be used in a similar manner. As the telecommunication monopole, antennas and related improvements will occupy a small area, the use will not, in itself, adversely affect the agricultural potential of the project site or its surrounding area. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The property is located approximately 2.2 miles northwest (makai) of Mamalahoa Highway and the town of Puuanahulu. The property has been improved with the existing 80-foot high

telecommunication monopole, antennas, a 160-square-foot accessory equipment building, a generator, a fuel tank and a security fence. Also located on the subject property are a 30-foot high wooden pole with a grid radio antenna and two equipment cabinets owned by Western PCS II Corporation. Western PCS II Corporation has also installed six panel type antennas at the top of US Cellular's 80-foot monopole. Before the existing improvements were constructed, the subject property was vacant and unimproved as is the rest of the State's 20,138-acre parcel now identified as TMK: 7-1-3:1. This parcel is an actively grazed pastureland and also a habitat for wild goats.

It should be noted that the subject property is not listed as an example of natural beauty by the County's General Plan. However, it is located near Pu'u Wa'awa'a which is listed as an example of natural beauty in North Kona. From a visual standpoint, the equipment building is essentially hidden because of its position on the downslope and mauka side of the Pu'u Anahulu cinder cone. Given the distance of the project site from Mamalahoa Highway (more than two miles) and Queen Ka'ahumanu Highway (approximately three miles), the monopole is not readily visible from either of these roads. The State Department of Land and Natural Resources, in its recommendation to the Board of Land and Natural Resources to issue a direct lease of and entry right to the property to US Cellular, remarked that, "from 6000 feet, the tower will appear to be the same size as a large sewing needle held at arm's length. From a distance of 60,000 feet, the tower would appear to be the size of a single strand of human hair held at arm's length". The only noise impacts associated with the operation of the tower is from an air conditioner that is necessary to maintain correct temperature and humidity in the equipment building. The resulting noise is very similar to that created by residential air conditioners and substantially less noisy than other uses permitted within the agricultural district. 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 and antennas have been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected. As the 80-foot high telecommunication monopole, antennas, accessory equipment building, generator, fuel tank and security fence have already been constructed, the only traffic impact will be from service personnel who periodically monitor the project site. An existing State owned four-wheel drive access road on portions of TMK: 7-1-3:1 and 16 provides access from Mamalahoa Highway to the subject property. The access road from its intersection with Mamalahoa Highway to the subject property is approximately 3.1 miles. Therefore, it is not expected that the operation of the 80-foot high telecommunication monopole, antennas, accessory equipment building, and related structures will adversely impact any of the surrounding properties.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Only electrical service is required for the subject request and this is already available as the applicant constructed an overhead branch transmission line from HELCO's main transmission line on Mamalahoa Highway to the subject property along the path of the existing four-wheel drive road. Access to the property is deemed adequate to accommodate the anticipated traffic generated. Fire, police and emergency services are available from the fire station and police sub-station located in Kona. The applicant shall meet all applicable agency requirements of the Department of Health, Department of Water Supply, Department of Public Works and 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 proposed use is part of an existing telecommunication infrastructure and will enable the applicant to provide uninterrupted telecommunication services to its customers throughout the County of Hawaii.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. While a portion of the subject property may be used for agricultural activities, the portion containing the subject telecommunication project is not. Furthermore, the ALISH Map does not classify the land as having any agricultural importance and the Land Study Bureau's Overall Master Productivity rating for the area is "D" or "Poor." Additionally, as the telecommunication use will be limited to a 1,980 square foot area, it will not seriously impair the agricultural productivity or potential of the subject property, nor will it seriously or significantly deplete the County of Hawaii's agricultural land resource.

The telecommunication use will not substantially alter or change the essential character of the land and the present use. The subject request will be located on a 1,980-square foot portion of a 5,541-square foot property that is presently developed with the 80-foot high monopole, antennas, accessory equipment building and accessory structures as well as a 30-foot high wooden pole used by another telecommunications service provider. Apart from the existing monopole and related improvements, the parcel is vacant. As such, the 80-foot telecommunication monopole and related improvements 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 Extensive Agricultural uses by the General Plan LUPAG Map, the soils on the property are unsuited to agricultural uses. Furthermore, as the project site is located on a 1,980-square foot portion of the subject property, it does not preclude the undeveloped portions of the property from being used for agricultural purposes by the owner. Also, the proposed use is consistent with the following goals and policies of the General Plan.

Economic Element

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

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

Natural Beauty

- Protect, preserve and enhance the quality of area endowed with natural beauty, including the quality of coastal scenic resources.
- Protect scenic vistas and view planes from becoming obstructed.
- Criteria of safeguards of natural beauty shall be provided in the design review of developments so as to blend and harmonize man-made elements with their natural setting.

Public Utilities

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

Land Use Element

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

- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.

Based on the above considerations, the approval of the existing 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

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

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the existing 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures 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, provided, however, that if the Planning Director determines that the subject tower is nonconforming as to plan approval, final plan approval under this condition solely to ensure compliance with the conditions of this special permit shall be secured from the Planning Director. If the tower is not nonconforming as to plan approval, (1) plans shall identify existing and proposed structures, landscaping, driveways and one (1) parking area associated with the use.
3. Co-location or expansion of the tower and related facilities shall be allowed within the tower site within the parameters of the tower height and envelope as approved by the Planning Commission.
4. Driveway access to the property shall meet with the approval of the Department of Public Works.
5. Drainage improvements to the property, if required, shall meet with the requirements of the Department of Public Works.
6. 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—State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological

clearance from the (DLNR-SHPD) when it finds that sufficient mitigative measures have been taken.

7. The operation of the existing 80-foot telecommunication monopole, antennas, accessory equipment building and accessory structures shall be co-terminus with the license agreement, as the same may be amended or replaced.
8. Within 120 days of the permanent abandonment of the tower, the applicant 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 applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication tower and related improvements and the removal of all structures.
9. The applicant shall comply with all applicable laws, rules and regulations of the affected agencies.
10. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a written status report to the Planning Director.
11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Donna Y. L. Leong, Esq.

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Should you have any questions, please contact Daryn Arai 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

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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
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Jerry Erickson