

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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SEP 27 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 00-30)

Applicant: USCOC of Hawaii 3, Inc. (United States Cellular)

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

Tax Map Key: 3-9-2:Portion of 7 (Ookala Tower)

The Planning Commission at its duly held public hearing on September 15, 2000, voted to approve the above-referenced application. Special Permit No. 1077 is hereby issued to allow the establishment of the existing 180-foot telecommunication lattice tower, antennas, accessory equipment building and accessory structures, and security fence on approximately 9,643 square feet of land within the State Land Use Agricultural District. The property is located between Ka'oha'oha and Ka'owali'i gulches at the 1,080 foot elevation, approximately 0.8 miles mauka of Mamalahoa Highway and O'okala, Humu'ula, 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 Hawaii Revised Statutes (HRS), Section 205-4.5(1) permits cellular telephone towers as

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of right in the State Land Use 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 HRS 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 180-foot telecommunication lattice tower, antennae, accessory structures, and security fence on the project site. The State of Hawaii has granted the applicant a 30-year lease of the project area for access and utility purposes. Soils are classified "B" or Good, with the lands considered as Prime Agricultural lands under the ALISH designation. The project site is a 9,643 square foot area portion of a 934-acre parcel. A major portion of the parcel is leased by Big Island Dairy for pasture use and will continue to be used as such. Therefore, 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 project area, following a straight line, is approximately 0.8 mile to the Hawaii Belt Highway, the nearest coastal road, and more than 2 miles to the nearest coastline.

The desired use will not adversely affect the surrounding properties. The subject property totals approximately 934 acres. The tower, antennas, equipment building, generator and shed, and fuel tank are fenced in for security. Noise from the air conditioner or generator is expected to be minimal and not audible from over 100 feet. The applicant would be required to comply with all requirements of the Federal Communications Commission, which includes radio frequency emissions. The tower is located upslope from the Hawaii Belt Road and is visible to surrounding properties in the area. However, immediate surrounding lands to the north, west, south and east are State owned lands and portion of the parcel to the west and south is in pasture use by Big Island Dairy. The project area is immediately adjacent to GTE Hawaiian Telephone Company existing 200-foot tower site, which has stand of haole koa, yellow oleander and other plantings. In November 1993, GTE Mobilnet submitted cellular communication site plans for a 250-foot tower and related structures at the subject project site, but subsequently in February 1994 decided not to pursue it. There are no dwellings on the State lands. The existing tower is on the mauka side and visible, including the GTE 200-foot tower and stand of trees, at certain view plane areas from the Hawaii Belt Road. It is also visible from various areas along the O'okala and Ka'awali'i Roads leading up to the access road. The tower is also visible at a distance from Niu and O'okala Villages, at certain open view plane points. However, it should be pointed out that the taller GTE tower and several utility poles along the Hawaii Belt Road are also visible from said areas and therefore, view planes will not be significantly affected. In addition, coastal or makai view planes will not be affected from the Hawaii Belt Highway. Finally, no objections were received from the community.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The existing development of a telecommunication tower, antennae and related improvements will not require additional services. Access to the project site is from the Hawaii Belt Road turning mauka onto the O'okala Road which has an approximately 14 feet wide pavement, then onto the gravel Ka'awali'i Road, varying approximately 10-16 feet wide. The gravel access road from Ka'awali'i Road, approximately 7-9 feet wide, winds to the tower site. The tower site location via those roadways is approximately 2.5 miles from the Hawaii Belt Road. Traffic is expected to be minimal due to the fact that the tower will only require periodic maintenance and repair. Electricity is available to the property, with a back-up generator and propane tank also on site. Further, police and fire services are available in Honokaa and Laupahoehoe.

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 and services as a primary emergency communication system. In this particular location, the tower will allow US Cellular to provide cellular telephone service along the Hawaii Belt Highway from Laupahoehoe to Paauilo, including telephone service to fishermen and boaters in the ocean covering 688 square miles of ocean. 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 tower site is relatively flat and the remaining parcel is in pasture use or vacant. There is the GTE 200-foot high microwave relay tower which is supported by guy wires, accessory equipment structures, and four (4) 30 to 50 foot high wooden utility poles with antennas/transmitters and accessory equipment structures in the immediate area. These uses and structures existed in 1966, 1971 and/or prior year. The GTE 200-foot tower is located approximately 250 feet from the US Cellular tower site. The request is to legitimize the existing tower and related structures and therefore, no additional development is expected.

The lands upon which the use is sought is not unsuitable for the uses permitted in the district, however, the use will not interfere with permitted uses. The subject property total approximately 934 acres, however, only a 9,643 square foot area is required for the tower and related facilities. The major portion of the remaining land is in pasture use and will continue to be used as such. Therefore, no agricultural activity will be substantially diminished and no significant lands will be taken out of use.

The use is consistent with the following goals, policies and standards of the General Plan. The subject parcels fall within an area designated as Intensive Agricultural on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-20a) and the development falls within the State Land Use Agricultural District. 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 180-foot telecommunication lattice tower, antennas, equipment building and accessory structures, and security fence would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

This request is 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 proposed 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 and proposed structures, fire protection measures, roadway easements, driveway and parking areas and

fencing associated with the uses. Tower and antenna plans shall be stamped by a structural engineer.

3. Co-location or expansion of the tower and related facilities shall be allowed within the tower site but within the parameters of the tower height and envelope as approved by the Planning Commission.
4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antennae 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.

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- 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.

Should you have any questions, please contact Susan Gagorik or Alice Kawaha 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
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Jerry Erickson