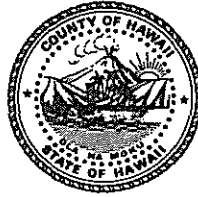


Stephen K. Yamashiro
Mayor



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 00-31)

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

Request: Allow for an Existing 150-Foot Telecommunication Lattice Tower,
Antennas, Accessory Equipment Building and Accessory Structures

Tax Map Key: 9-5-14:Portion of 8 and 9-5-12:Portion of 26 (Pahala Tower)

The Planning Commission at its duly held public hearing on September 15, 2000, voted to approve the above-referenced application. Special Permit No. 1076 is hereby issued to allow the establishment of the existing 150-foot telecommunication lattice tower, antennas, accessory equipment building and accessory structures, and security fence on approximately 6,806 square feet of land within the State Land Use Agricultural District. The property is located on the makai side of Ka'alaiki Road at approximately the 1,360 foot elevation and two miles mauka of Pahala Village, Honu'apo and Ki'olokū, Ka'u, 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 150-foot lattice tower and accessory structures on the subject property. The applicant has a license with Kau Agribusiness Co., Inc., the landowner. Soils are classified "B" or Good and "C" or "Fair," with the lands are considered as Other Important Agricultural lands under the ALISH designation. The lands are in 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 subject properties, following a straight line, are a little over one mile to the Hawaii Belt Highway, the nearest coastal road, and approximately 1.2 miles to the nearest coastline or Honuapo Bay.

The desired use will not adversely affect the surrounding properties. The subject properties total approximately 436 acres. Presently, the 150-foot lattice tower is located on TMK: 9-5-14: 8, and it does not have sufficient setbacks as required by the County Zoning Code. According to plans, the existing setbacks are approximately 15 feet from the adjacent TMK: 9-5-12:26 property boundary. Setbacks require one foot for every five feet of tower height or 30 feet for this particular tower. A condition is being included to require the applicant to consolidate and resubdivide the subject parcels so that sufficient setbacks are created. The tower, antennas, equipment building, generator and gas 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 on the mountain top in a remote area and is visible to surrounding properties in the area, however, lands are in pasture use and vacant of dwellings. The US Cellular tower, as well as the FAA weather facility is visible from the Hawaii Belt Highway in a distance, however, 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 or concerns 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 development of a telecommunication pole tower and related improvements will not require additional services. Electricity is available to the property, with a back-up generator and propane tank also on site. Access to the site is Ka'alaiki Road, which is an approximately 26-foot wide paved government road. Traffic is expected to be minimal

due to the fact that the pole will only require periodic maintenance and repair. Further, police and fire services are available in Naalehu Town approximately 2 miles to the west.

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 Volcanoes National Park to Honuapo, including telephone service to fishermen and boaters in the ocean covering 134 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 in pasture use. There is an FAA weather facility on site as well as a 50+ foot high GTE Wireless tower within close proximity of the existing US Cellular tower site. 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 subject properties total approximately 436 acres, however, only a 6,806 square foot area is required for the tower and related facilities. The lots are in pasture use and will continue to be used as such, therefore, no agricultural activity will be substantially 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 parcels fall within an area designated as Intensive Agricultural, Orchards and Extensive Agricultural on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-20a) 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 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. Consolidation/resubdivision of the subject lots shall be secured within one year from the effective date of this permit and prior to the submittal of plans for Final Plan Approval.
3. 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 proposed uses. Tower and antenna plans shall be stamped by a structural engineer.
4. Co-location or expansion of the tower and related facilities shall be allowed within the proposed tower site within the parameters of the tower height and envelope as approved by the Planning Commission.
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. 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.
7. 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.
8. 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.
9. 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.
10. 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).


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