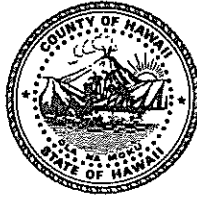


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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NOV 16 2000

Donna Y. L. Leong, Esq.
Cades Schutte Fleming & Wright
1000 Bishop Street, 10th Floor
Honolulu, HI 96813-4216

Dear Ms. Leong:

Special Permit Application (SPP 00-32)

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

Request: Allow for Two Existing 86-Foot Telecommunication Pole Towers,
Antennas, Accessory Equipment Building and Accessory Structures

Tax Map Key: 5-9-2:Portion of 4 (North Kohala Tower)

The Planning Commission at its duly held public hearing on October 20, 2000, voted to approve the above-referenced application. Special Permit No. 1082 is hereby issued to allow two existing 86-foot telecommunication pole towers, antennas, accessory equipment building and structures, and security fence on approximately 10,000 square feet of land plus access easement in the State Land Use Agricultural District. The project area is located on Ponoholo Ranch approximately 4,700 feet east of Kohala Mountain Road and northeast of Kohala Ranch Subdivision, Kahuanui and Kahualiilii, North Kohala, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205 and 205A, 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. The project site is located within an area whose soils are classified as "D" or Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) classifies Pu'u Waiakanonula as Other Important Agricultural Lands. Other Important Agricultural Lands are not Prime or Unique Agricultural Lands that is also of statewide or local importance for agriculture use. The

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remaining property is classified as Prime Agricultural Lands. The project site is a 10,000 square foot area portion of an approximately 2,208-acre parcel owned by Ponoholo Ranch. Although the requested use is not agricultural in nature, it comprises an area that is proportionately insignificant relative to the size of the property. A major portion of the property is used for pasture use and will continue to be used as such. Therefore, the use will not displace any of the existing agricultural uses on the property nor adversely affect the agricultural potential of the property and its surrounding area. Furthermore, the project area is about 1.1 miles from Kohala Mountain Road, and more than 9 miles from the nearest coastline. As such, the project will not have any adverse impacts on recreational or coastal resources. 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 nor by the Coastal Zone Management Area.

The desired use will not adversely affect the surrounding properties. The project area is located at Pu'u Waiakanonula and is a portion of an approximately 2,208-acre parcel of land located approximately 1.1 miles east of the Kohala Mountain Road. It is located at the 3,825-foot elevation. The landowner granted an irrevocable license in the subject property to US Cellular for a term that expires on January 31, 2003, with two options to extend the term for ten years each. The subject application covers approximately 10,000 square feet of land. The existing County's approximate 80-foot high communication tower and the Federal Aviation Administration's approximate 140-foot high tower and dome weather radar tracking station are also located on Pu'u Waiakanonula. Respectively, both towers are located approximately 125 feet and 250 feet away from the US Cellular tower. The remaining portion of the property is used for grazing purposes. Surrounding lands are similarly zoned A-20a and used for cattle grazing. The wind tower farm is situated to the south and near the base of Pu'u Waiakanonula on the adjacent property. These windmill towers were constructed in 1983-84 and stood approximately 110 feet and 150 feet in height. The Kahua Ranch headquarters and housing area, and numerous farm structures, greenhouses, and water tanks and sheds are located approximately one mile makai (west) of the project site. Due to its location more than a mile and the stand of ironwood trees along the Kohala Mountain Road, the tower will hardly be visible from said roadway, and therefore, will not affect any view plane from Kohala Mountain Road. No objections were received from the community. In regards to radio frequency emissions, the applicant would be required to comply with the requirements of the Federal Communications Commission. 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 has been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected.

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 Kohala Mountain Road turning mauka onto the paved 16-foot driveway to the Kahua Ranch headquarters and housing area, and onto an 11-foot paved roadway leading to the project site. The tower will only require periodic maintenance and repair and as such, access to the project site is deemed adequate to accommodate the anticipated traffic. Water is not available and not required for the telecommunication tower use. Power is already available to the project site for the use, with a back-up generator and fuel tank also on site. As the project site is located on Pu'u Waiakanonula, there is no known drainage channel in the area. Police, fire and emergency services are available in Hawi and Waimea, approximately 7.5 and 9 miles, respectively, to the site. Finally, the applicant shall meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In the 1960s and 1970s, when the State's agricultural district boundaries and regulations were first established pursuant to Chapter 205, Land Use Commission, Hawaii Revised Statutes, cellular telephone service was unknown and not available, and the predominant means of audio communication was by traditional telephone service, relying on telephone and power poles and lines. Section 205-4.5 of Chapter 205 lists permitted uses within the agricultural districts. Among others, 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 the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within agricultural districts, and including wind energy facilities, Section 205-4.5 does not specifically permit telecommunication towers. In recent years, however, technological advances in the telecommunications industry have grown considerably and services to the general public have become widespread. 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 antennas. US Cellular commenced cellular telephone service for the Island of Hawai'i in 1989 and its goal has been to provide cost-effective, complete and reliable cellular telephone service coverage

throughout the island, especially in rural and agricultural areas. In this particular location, the tower will allow US Cellular to provide more complete coverage through its island-wide system, by providing telephone service to residents who were unable to install telephones through land-line systems on Kohala Mountain Road from Wai'aka to Hawi and along Akoni Pule Highway. This tower also allows US Cellular to provide cellular telephone service to fishermen and boaters in off-shore areas covering approximately 454 square miles of ocean from Kiholo to Kawaihae. 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. As previously mentioned, the tower and related structures were established on the project site in 1993; and its immediate vicinity are also used for tower sites. Two other existing towers in the vicinity are the County's approximate 80-foot high communication tower and the Federal Aviation Administration's approximate 140-foot high tower and dome weather radar tracking station, located approximately 125 feet and 250 feet away, respectively, from the US Cellular tower. The applicant stated that they were not able to co-locate on the County's existing tower as there were already other co-located facilities on that tower and it could not structurally accommodate another co-locator with the improvements required by the applicant's network system. Further, there were no other towers of appropriate size at the site. The remaining portion of the 2,208-acre property has been used for and will continue to be used for grazing purposes. There are no known historic site nor threatened or endangered species of plants and animals on the project site. The request is to legitimize the existing 86-foot telephone poles as a telecommunication 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 totals approximately 2,208 acres, however, only a 10,000 square foot area is required for the tower and related facilities. The project site is within an area whose soils are classified as "D" or Poor by the Land Study Bureau's Overall Master Productivity Rating. As previously mentioned, the Agricultural Lands of Importance to the State of Hawaii (ALISH) classify Pu'u Waiakanonula as Other Important Agricultural Lands, however, the remaining property is classified as Prime Agricultural Lands. A 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 acreage of lands will be taken out of agricultural use.

The use is consistent with the following goals, policies and standards of the General Plan. The General Plan document lists as example of Natural Beauty the "Coastline viewplane from the Kohala Mountain Road" and the "Ironwood trees along

the Kohala Mountain Road” due to natural vistas at specific view places from Kohala Mountain Road. However, the tower site is hardly visible from the Kohala Mountain Road due to its location over a mile and the stand of ironwood trees along the road. The subject parcel fall within an area designated as Extensive 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.

The North Kohala Community Development Plan (CDP) was adopted by the Planning Commission by Resolution No. 2 84, dated September 1984. Under Natural Beauty, the CDP reflects the Kohala Mountain Road as one of the sites of natural beauty and therefore, recommends the retention of view places of natural vistas from Kynnersley Road to Waiaka Bridge. As mentioned previously, the tower site is hardly visible from the Kohala Mountain Road due to its location over a mile and the stand of ironwood trees along the road.

Based on the above considerations, the approval of the two existing 86-foot high telephone poles that comprise as a telecommunication tower, antennae, a prefabricated building that houses ancillary communication equipment, and security fence surrounding the transformer, a generator and generator building 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.

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 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 telecommunication tower, antennas and related improvements shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-71 (c)(3), 25-2-72 and 25-2-74 and 25-4-12; provided, however, that if Corporation Counsel determines that the current situation pertaining to plan approval for this tower is nonconforming then Final Plan Approval for the subject telecommunication tower, antennas and related improvements shall apply only to ensure compliance with this conditions of this Special Permit approval. 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 within the tower site shall be allowed 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 communication equipment building, generator and generator shed, and fence). 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.
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.

Donna Y. L. Leong, Esq.

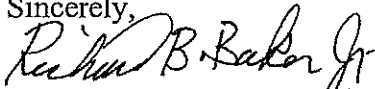
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7. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
8. Upon compliance with applicable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

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

LUSCOCSP00-032PC

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