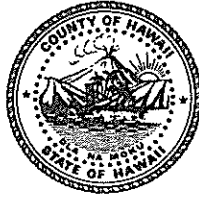


Stephen K. Yamashiro
Mayor



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 00-33)

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

Request: Allow for Existing 80-Foot Telecommunication Lattice Tower,

Antennas, Accessory Equipment Building, Solar Panels & Accessory Structures

Tax Map Key: 4-2-8:Portion of 21 (Iolehaehae Tower)

The Planning Commission at its duly held public hearing on October 20, 2000, voted to approve the above-referenced application. Special Permit No. 1083 is hereby issued to allow an existing 80-foot telecommunication lattice tower, antennae, accessory equipment building, solar panels, accessory structures and security fence on approximately 8,378 square feet of land in the State Land Use Agricultural District. The project area is located on Pohakea/Kukaiiau Ranch land at Iolehaehae approximately the 8,156-foot elevation, and north of Mauna Kea Forest Reserve, Kūka'iau, Hamakua, 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 "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) do not classify Pu'u 'Iolehaehae itself; however, the remaining property is classified as Other Important Agricultural Lands. Other Important

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Agricultural Lands are not Prime or Unique Agricultural Lands that is also of statewide or local importance for agriculture use. The project site is an 8,378 square foot area portion of a 1,945-acre parcel owned by Pohakea Ranch, Inc. and Kukaiau Ranch LLC. 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 19 miles from the Mamalahoa Highway-Mana Road intersection, and more than 20 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 'Iolehaehae and is a portion of an approximately 1,945-acre parcel of land located immediately north of the Mauna Kea Forest Reserve. It is located at the 8,156-foot elevation, and approximately 19 miles from the Mamalahoa Highway in Waimea. The landowner's predecessor had licensed the project site for access and utility purposes to the applicant for a term to expire on August 31, 2012. The tower and related structures and uses were established on the site in 1991. The subject application covers approximately 8,378 square feet of land. The project area and its immediate vicinity are also used for other communications companies. Existing at the site are the US Cellular 80-foot tower and related structures, the Pinnacle Towers Inc. 80-foot tower and its related structures, and the old Hamakua Plantation 50-foot tower and facilities presently leased to Leonard Cardoza. The Pinnacle Towers Inc.'s 80-foot tower is located approximately 150 feet away from the US Cellular tower. The remaining portion of the property is used for grazing purposes. Lands to the west and east are also used for grazing purposes, and to the south is the Mauna Kea Forest Reserve which is in Conservation District. The Hawaii County Public Safety Communication Facility is located to the east immediately adjacent to the subject area on a portion of approximately 3,100 acres of land owned by the State. Further, to the west is the HELCO's 45-foot high microwave reflector, constructed in 1981 and situated on a portion of a 2,550+-acre property. There are no dwellings near the project area, as the site is in a remote area above the cloud layer on the flanks of Mauna Kea. Due to its remote location, the tower will not be visible from any major roadways, and will not affect the view plane. 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 Mamalahoa Highway in Waimea turning mauka onto Mana Road which begins as an approximately 20 feet wide pavement with grass shoulders and narrows as the road heads toward the subject property, then onto the gravel/dirt access road 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. The solar panels provide power source for the use, with a back-up generator and fuel tank also on site. Police, fire and emergency services are available in Waimea, approximately 25 miles away. 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 cellular telephone service to residents who were unable to install telephones through land-line systems from Waimea to Papa'ikou and on Mamalahoa Highway between Waimea and Honoka'a. This tower also allows US Cellular to cover approximately 1,255 square miles of ocean from Hilo Bay to Kauhola Point, which provides cellular telephone service to fishermen and boaters as emergency communication system, especially in areas where VHF and citizens band radio communications are limited due to the island's topography. 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 1991; and its immediate vicinity is also used for tower sites by other communications companies. The applicant was not able to co-locate on Pinnacle Towers, Inc.'s 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 1,945-acre property has been used for and will continue to be used for grazing purposes. The request is to legitimize the existing 80-foot 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 1,945 acres, however, only an 8,378 square foot area is required for the tower and related facilities. The project site is within an area whose soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) do not classify Pu'u 'Iolehaehae itself, however, the remaining property is classified as Other Important 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 subject parcels fall within an area designated as Extensive Agricultural on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-40a) 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 Northeast Hawaii Community Development Plan (CDP) was adopted by the County Council by Ordinance No. 445, effective June 26, 1979. Under Public Utilities, the CDP recommends that "The County should encourage the telephone company to provide better telephone service in the North Hilo and Hamakua Districts" and that "telephone facilities, such as lines, poles and substations, shall enhance rather than detract from scenic vistas and views." There is no specific discussion on telecommunication towers and antennas within said document. Further, the subject location is not listed as a Natural Beauty Area.

Based on the above considerations, the approval of the existing 80-foot telecommunication lattice tower, antennae, accessory equipment building, solar panels, 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.

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 80-foot high 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, solar panels, fuel tank, generator and 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.
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 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).

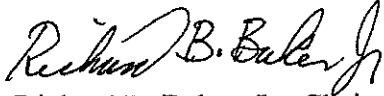
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Donna Y. L. Leong, Esq.

Page 9

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

Luscocsp00-033PC

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