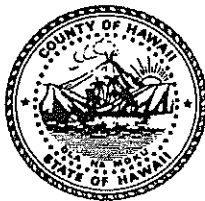


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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DEC 14 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 00-40)

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

Request: Allow for an Existing 135-Foot Telecommunication Lattice Tower, Antennas,
Accessory Equipment Building, Accessory Structures and Co-Located Facilities
of Mobile Communications Corp. of America

Tax Map Key: 6-4-1:Portion of 2

The Planning Commission at its duly held public hearing on November 17, 2000, voted to approve the above-referenced application. Special Permit No. 1087 is hereby issued to allow the existing 135-foot telecommunication lattice tower, antennas, accessory equipment building and accessory structures, co-located facilities of Mobile Communications Corporation of America, and security fence on approximately 1,800 square feet of land within the State Land Use Agricultural District. The property is located on the west side of Mana Road approximately 1,100 feet south of its intersection with Mamalahoa Highway, Puukapu, Waimea, South 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 subject property is located within an area whose soils are classified as "B" or Good by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of

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Importance to the State of Hawaii (ALISH) classifies the property as Prime Agricultural Lands. Although the requested telecommunication tower facilities use is not agricultural in nature, the subject property has been improved with structures. On June 28, 1979, the State Land Use Commission approved Special Permit No. 79-339 (SPP No. 417) to West Hawaii Associates for the establishment of a veterinary hospital on the subject property. The veterinary clinic was subsequently constructed in June 1981. Subsequently on April 15, 1991, the Planning Commission approved an amendment to said Special Permit to allow the conversion of an existing barn structure into an animal health supply outlet. The building conversion and final building inspection were completed on August 3, 1991. Later in January 1993, the Hawaii Real Estate Commission issued Registration No. 2758 (Conversion) to W. C. Bergin, Trustee, for a Declaration of Condominium Property Regime for "Animal Care Center of Hawaii - Waimea" on the subject property. The subject property has a fee simple condominium conversion project consisting of a total of three condominium units, each comprised of a separate structure or structures. Unit A is the animal care hospital facility, a two-story structure approximately 6,528 square feet in area; Unit B consists of 3 steel-frame horse barn structures, each approximately 350 square feet in area; and Unit C consists of an animal health supply outlet, a single-story structure (dwelling) approximately 5,203 square feet in area, and a 720 square feet detached structure and carport. Unit C consists of approximately 53,780 square feet of land area, and the existing tower facilities occupy a 1,800 square feet portion of this Unit C area. The Department of Public Works issued Building Permits #936240 and #936241 for the transmitter tower and equipment building, respectively. Final building inspection for those structures was completed on March 3, 1994. Since the subject property has been developed with the above-mentioned animal health facilities and structures, the telecommunication use will not displace any of the existing agricultural related uses on the property nor adversely affect the agricultural potential of the property and its surrounding area. In addition, the project area is located more than 9 miles from the nearest coastline and as such, the telecommunication use 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 within a portion of an approximately 3.136-acre parcel of land and approximately 560 feet west of Mana Road. The veterinary hospital and animal health facilities and structures on the subject property have been in existence and patronized since 1981 and 1991, respectively. The applicant has a lease agreement with the landowner for a term of 10 years beginning in 1993. The tower and related structures and uses were constructed on the site in 1994. Adjacent lands to the north, east and south are similarly zoned A-3a and the existing uses include mixed residences and

agricultural uses. Lands across of Mana Road to the east are zoned A-1a and A-5a and are pasture land. To the west, the lands are zoned A-5a and are presently vacant of any structures. The Planning Department has not received any written objections or comments from the surrounding landowners or the community on the telecommunication tower use. Therefore, the use will not adversely affect the surrounding properties. The tower is visible at certain areas from Mana Road. Due to its location of more than 1,000 feet from and the stand of trees and brush along Mamalahoa Highway, the tower is hardly visible from said roadway. Therefore, the telecommunication tower and use will not affect any view plane from Mamalahoa Highway. 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. As previously mentioned, the subject property has already being improved with the animal hospital facilities and health supply outlet since 1981 and 1991, respectively. The telecommunication tower, antennae and related improvements have been in existence since 1994 and as such, the use will not require additional infrastructures and services. Access to the project site is from Mana Road, which has a 40-foot right-of-way with 20-foot wide pavement and 4-5 feet grass shoulders. The driveway (Kauka Lane) has a 19-foot pavement within the 30-foot wide pole (about 350 feet in length) and leads from Mana Road to the tower 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 propane tank also on site. There is no known drainage channel in the area. Police, fire and emergency services are available in Waimea, approximately 2-3 miles 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 cellular telephone service to residents in Waimea town, and along Mamalahoa Highway between Waimea and Honoka'a as well as residents who were unable to install telephones through land-line systems. This location also allows US Cellular to provide cellular telephone service to cover approximately 670 square miles of ocean, providing cellular telephone service to fishermen and boaters in off-shore areas from Kawaihae Bay to Kāwili Point. According to the applicant, several other sites were considered, including sites in Hōkū'ula and Pu'uiki; however, those sites were not feasible due to agreement negotiations with the landowner or there were no acceptable microwave path to 'Iolehaehae, or both. 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 1994. In addition, the subject property has been used for and will continue to be used for the animal hospital and animal health supply outlet. It

should be pointed out that a Special Permit was previously approved to allow those uses. There are no known historic site nor threatened or endangered species of plants and animals on the project site nor in the vicinity. The request is to legitimize the existing 135-foot 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 is approximately 3.136 acres in size, however, only a 1,800 square foot area is required for the tower and related facilities. The project site is within an area whose soils are classified as "B" or Good by the Land Study Bureau's Overall Master Productivity Rating. As previously mentioned, the Agricultural Lands of Importance to the State of Hawaii (ALISH) classifies the area as Prime Agricultural Lands. However, as previously stated, a special permit was granted by the State Land Use Commission and subsequently amended by the Planning Commission to allow for the animal hospital and animal health supply outlet on the subject property. Those uses are and will continue to be in operation.

The use is consistent with the following goals, policies and standards of the General Plan. The subject property falls within an area designated as Low Density Urban on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-3a) 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.
- Public utility facilities shall be designed so as to complement adjacent land uses and shall be operated so as to minimize pollution or disturbance.
- Improvement of existing utility services shall be encouraged to meet the needs of users.

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 Waimea Design Plan was adopted by the Hawaii County Council through Resolution No. 214 86 on October 1, 1986, as the official document to guide future development and construction design in Waimea. The Land Use Concept Map does not include the subject property nor its vicinity for any proposed land development patterns. As mentioned previously, the tower site is hardly visible from Mamalahoa Highway due to its location over 1,000 feet from and the stand of trees and brush along the highway.

Based on the above considerations, the approval of the existing 135-foot telecommunication lattice tower, antennas, accessory equipment buildings and accessory structures, co-located facilities, 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 existing 135-foot telecommunication monopole tower, 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 and 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 application shall be secured from the Planning Director. If the tower is not nonconforming as to plan approval, plans shall identify existing and proposed structures, landscaping, and driveways associated with the use.
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.
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 time extension would not be contrary to the original reasons for the granting of the permit.

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- 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 Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Richard B. Baker, Jr., Chairman
Planning Commission

LuscocwaimeaappPC

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