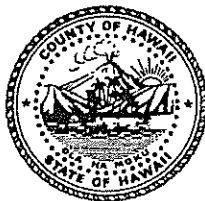


Harry Kim
Mayor



Geraldine M. Giffin
Chairperson

County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL
7000 0600 0024 2904 9175

MAY 17 2002

R. Ben Tsukazaki, Esq.
Tsukazaki Yeh & Moore
85 W. Lanikaula Street
Hilo, HI 96720

Dear Mr. Tsukazaki:

Special Permit Application (SPP 01-015)
Applicant: AT&T Wireless Services of Hawaii, Inc.
Request: Allow for the Establishment of a 180-Foot Telecommunications Tower
Microwave and Panel Antennas, Equipment Building, and Related Improvements
Tax Map Key: 2-4-006:Portion 108

Attached is a certified copy of the Findings of Fact, Conclusions of Law, and Decision and Order adopted by the Planning Commission for the subject property.

Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

Geraldine M. Giffin, Chairperson
Planning Commission

Att.

xc: Colin Love, Esq.
Lester Ishado, Esq.
Christopher J. Yuen, Planning Director
Jackie DeLima
Duane DeLima

018919 *MD*

MAY 17 2002

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAI'I

In the Matter of the Special Permit of)	SPP 01-015
AT&T WIRELESS SERVICES)	FINDINGS OF FACT AND
OF HAWAII, INC.)	CONCLUSIONS OF LAW
To allow for the establishment of)	AND APPROVAL OF
a 180-foot telecommunication tower,)	SPECIAL PERMIT
microwave and panel antennas, equipment)	APPLICATION NO. 01-015
building and related improvements, at Waiakea)	
Homesteads, 3rd Series, South Hilo, Hawai'i,)	
Tax Map Key: 2-4-6: Portion of 108)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT APPLICATION NO. 01-015**

APPLICANT AT&T WIRELESS SERVICE OF HAWAII, INC. ("AWS")

is seeking a Special Permit under Chapter 205, Hawai'i Revised Statutes, and Rule 6 of the Hawai'i County Planning Commission Rules of Practice and Procedure, to allow the establishment of a 180-foot telecommunication lattice tower, microwave and panel antennas, equipment building and related improvements, on approximately 3,600 square feet of land of a 40.012-acre parcel of land, at Waiakea Homesteads, 3rd Series, South Hilo, Hawai'i, Tax Map Key: 2-4-6: Portion of 108.

The Hawai'i County Planning Commission ("Planning Commission") having reviewed the respective pleadings and exhibits submitted in this matter; and having heard and considered the arguments of the parties, makes the following findings of fact and conclusions of law.

Hearing Officer Colin L. Love's Proposed Findings of Fact, Conclusions of Law and Recommendation for approval of Special Permit Application No. 01-015, and Supplemental Report, submitted to the Planning Commission on January 28, 2002 and April 12, 2002, respectively, have been considered by this Planning Commission and is hereby adopted except to the extent that the Reasons for Conclusion of Law #4 on pages 19 and 20; and Reasons for Conclusion of Law #9 on pages 21 and 22 have been amended by the Planning Commission and replaced by the present conclusions.

I. FINDINGS OF FACT

1. The landowner of TMK 2-4-6: Por. 108 (Subject Property) is the Leialoha Family Partners, a Hawaii limited partnership
2. The landowner uses the Subject Property¹ for pasture and cattle grazing and other related agricultural purposes.
3. A license has been granted by the landowner to AWS for the use of 3600 square feet (Project Site) in an Agreement dated September 28, 2000. The terms of the agreement are for an initial five-years, renewable for five additional terms.
4. The Subject Property is designated as Other Important Agricultural Lands -- Land other than Prime or Unique Agricultural under the ALISH system.
5. A portion of the Subject Property and the existing access road is found within Flood Zone "A", however, the proposed driveway expansion and Project Site are in Flood Zone "X", areas outside the 500 year flood plane.

¹ Where the term "Subject Property" is used the reference is to all of TMK 2-4-6: Por. 108, including the 3600 square feet that is the proposed location of the new telecommunication tower and other improvements. Where the term "Project Site" is used the reference is just to the 3600 square feet that is the proposed location of the new telecommunication tower.

6. The Subject Property is characterized by Hilea Silty Clay Loam (HIC).
7. The elevation of the Subject Property is 1200 to 1250 feet above sea level and the slope is generally flat.
8. The Land Study Bureau Soil Rating of productivity rating for agricultural use is "C" or "Fair".
9. On the Subject Property there are structures that include one dwelling, a garage/storage/office complex and two chicken coops (applicant refers to it as "coop/tack" room). There is an open carport north of the coop/tack room. Remainder of the property is in pasture use with cattle and horses.
10. The Island of Hawai'i is divided into zones according to the degree of hazard from lava, with Zone 1 being the area of greatest and Zone 9 being the least hazard. The Subject Property is rated as Zone 3, areas where less than 5 percent has been covered with lava in historical time, but more than 75 percent has been covered in the last 750 years.
11. There is no public access to the mountains or the shoreline that run through the Subject Property.
12. The Subject Property does not fall within the Special Management Area (SMA) and is 14 miles from the nearest shoreline.
13. The State Land Use designation for the Subject Property is "Agricultural District".
14. The Hilo Community Development Plan designates the parcel A-3a.

15. County of Hawaii zoning for the subject parcel is Agricultural (A-3a).

16. There are no identified recreational resources, historic resources, scenic and open space preserves, coastal systems, coastal hazards, marine resources or other natural and environmental resources on the Subject Property that will be adversely impacted. (Coastal Zone Management; HRS Chapter 205A)

17. The Subject Property receives approximately 180 inches of rain per year and runoff from the improvements on the Project Site will be contained on the Project Site.

18. The Subject Property is located near the end of Hoaka Road, approximately two miles west or mauka of the Malaai Road/Hoaka Road intersection.

19. The immediate surrounding parcels range in size from 3+ acres to 68 acres and are zoned Agricultural (A-3A) by the County and designated Agricultural by the State Land Use Commission.

20. The Waiakea Forest Reserve, a relatively intact native forest to the north and west, is designated Conservation.

21. The State of Hawaii and County of Hawaii's parcels to the northeast are zoned Agricultural (A-20a) by the County and designated Agricultural by the State Land Use Commission.

22. One of the parcels that abuts the Subject Property's east property line, Tax Map Key 2-4-006:113, has ongoing agricultural activity but no residential dwelling.

23. Three of the four lots in the Nani O Waiakea Estates Subdivision that abut the Subject Property on the east have been residentially developed.

24. There are no dwellings to the immediate south, west and north of the Subject Property.

25. According to the Flora and Fauna Report for the Subject Property, the area surrounding the Project Site is primarily cattle pasture with vegetation consisting of Hilo grass, with a few large remnant 'Ohi'a (*Metrosideros polymorpha*) trees and a few native plant species, including Hapu'u (*Cibotium* sp.), Uluhe (*Dicranopteris linearis*), Neneleau (*Rhus sandwichensis*) and ground cover of introduced plant species.

26. No native fauna exist on the site or the proposed access road.

27. The Project Site and Subject Property do not contain good native bird habitat, given that the vegetation is highly disturbed and the area is at a low elevation location where large numbers of disease carrying mosquitoes are present.

28. The openness of the Project Site makes the site an unlikely essential habitat for the Hawaiian Hawk or the Hawaiian Hoary Bat.

29. No listed, candidate or proposed endangered plant or animal species were found or are expected in the area, and no botanical or zoological resources requiring special protection are present on the Subject Property.

30. According to the May 13, 2001 report of Rechtman Consulting, pre-contact uses of the Subject Property likely involved planting and cultivation of non-irrigated taro and bananas. Subsequent historical land use likely involved ranching and sugar cane development.

31. The proposed cell tower location is within a grassed pasture that was previously leveled. No archaeological resources were observed and none have previously been identified in the immediate vicinity.

32. There are no known traditional cultural resources within the Project Site, and there have been no observation of persons accessing the Subject Property for gathering or other potential traditional practices.

33. A new tower at the Project Site will improve cell phone services to portions of the Hilo area and adjacent portions of Puna, including Waiakea Uka, Kaumana, and Kulani that now have poor service or no service.

34. Two design criteria used by AWS when selecting a location for a cellular tower site are (1) whether the site location will allow Radio Frequency (RF) signals to provide continuous coverage and service over an area in which additional coverage is desired or lacking in quality, and (2) whether the site location provides direct line of sight microwave link between the site and adjacent cell sites.

35. Due to the varied terrain on the Big Island, suitable cell site locations are difficult to find, and several towers are required to minimize RF signal blockage.

36. The subject site was selected by the AWS because propagation studies confirmed that it met all their required criteria, and a license could be obtained from the land owners.

37. The site is level and suitable for building the proposed facilities.

38. The high elevation maximizes the service coverage of facility and enables AWS to connect the proposed facility to its other wireless network facilities by

the point-to-point microwave links that are necessary to provide more complete and continuous coverage in their service area.

39. Before selecting the Project Site, AWS investigated a number of alternative sites and existing towers, including a 135 foot high VoiceStream monopole in the lower Waiakea Uka area. That alternative was rejected because a relatively high elevation link is needed in the AWS wireless network in Hilo. A high elevation link maximizes service coverage of the project. Also, the height and location of the VoiceStream monopole, along with the limited height and space available for AWS's antennae, did not provide the AWS with sufficient tree clearance of 25-30 feet to accomplish the desired RF signal coverage. Building another tower at the location would also not be practical as the location is densely populated.

40. AWS rejected a suggested site on State land in the area of the Project Site because the suggested site is in the Waiakea Forest Reserve and the land is zoned for Conservation use and consists of relatively intact native forests. The impact on the forest and cost of construction were not considered justifiable.

41. AWS contends that it rejected other State land in the vicinity at the 1,700 foot elevation because:

A. It would be cost prohibitive as both power for electricity and a lengthy road would have to be brought in and constructed, and

B. RF propagation study revealed that the RF signal coverage was not as good.

42. AWS contends that it rejected a site near the County Club Estates in Kaumana because it would not provide adequate coverage of the Waiakea Uka area.

43. AWS contends that it considered other potential sites in Kaumana and Waiakea Uka but they did not test out as suitable for various technical, economic and environmental reasons.

44. The proposed tower is approximately 180 feet in height with a free standing lattice structure on concrete base.

45. Lattice struts provide greater structural stability than monopole towers and the tower is designed to withstand wind speeds over 100 miles per hour and up to a Level 4 earthquake.

46. At the top of the tower will be nine eight-foot long panel antennae to receive and transmit RF signals, and a six foot diameter microwave dish located at a height of 100 feet that points to the MTSO at Shipman Industrial Park.

47. When viewed from the east (the residential area) the proposed tower will be backed by the Waiakea Forest Reserve tree line which is estimated at 120 feet in height.

48. The tree line will serve as a backdrop to the lower two-thirds portion of the tower and the tower will be painted so as to blend into the background and to the extent possible camouflage its presence.

49. The tower will be visible from Intervener Harvey Honda's property which is located approximately 900 feet away from the Project Site.

50. The proposed tower will not be visible from inhabited areas mauka or west of the site.

51. The service building will be located in a depression and not be visible from most locations outside of the property.

52. AWS plans to allow co-location of four additional antennae by its competitors.

53. Such co-location would reduce the need for additional towers in the area and also increase cell phone service to members of the public who do not subscribe to AWS's service.

54. The 180 foot height of the tower is a function of being above the surrounding tree line to avoid absorption of the PR signal (30 feet above), and in order to allow co-location of up to four (4) more providers.

55. Were co-location for other providers not considered, the height of the tower would be approximately 150 feet, based on propagation studies.

56. Stealth technology involving an attempt to camouflage the proposed tower to make it blend into the surrounding area is not appropriate for a 180 foot high tower that is designed for numerous panel antenna and for co-location by other service providers.

57. The structure on the Subject Property closest to the proposed tower is the coop/tack room, approximately 275 feet away. The nearest Nani O Waiakea Estates Subdivision's residence is over 1,350 feet to the east of the proposed tower.

58. Electricity is available to the Project Site for the air conditioner in the equipment building. A back-up generator will operate only during power outages. According to AWS, while noise will be emitted from the air conditioners, they are insulated and are not audible from a distance of 100 feet.

59. The tower will be self-operating and unmanned, with the exception of periodic maintenance and repair therefore no traffic impacts are anticipated.

60. Water is not required for the proposed use.

61. Sewage system is not required for the tower use.

62. Access to the Subject Property is from Hoaka Road, approximately 2 miles west of the Malaai Road/Hoaka Road intersection.

63. Electric and telephone services are available to the Project Site.

64. No public expenditures for roads, streets, sewer, water, drainage, school improvements or increased police or fire protection are required for this project.

65. AWS has made reasonable efforts in its design to minimize the visual impact of the proposed improvements on property owners in the vicinity of the project.

66. The proposed improvements will occupy a small portion of TMK 2-4-6: Portion of 108, and will not change the basic character of the larger parcel.

67. Some property owners expressed concern about the affect the proposed tower will have on their property's value but no property owner presented any evidence to support this contention.

68. The essential character of the Subject Property is for agricultural (grazing) use. As the fenced portion of the Subject Property with the tower, parking area, and appurtenant structures comprises only about 3,600 feet of a 40.012-acre parcel, the proposed project does not substantially alter or change the Owner's grazing use.

69. No area identified as a site of natural beauty in the General Plan is being impacted by the proposed project.

70. The operation of the antennas at the proposed site will not present health hazards to humans or other animals and will not cause interference with other

electrical appliances or equipment.

71. Section 704 of the Telecommunications Act of 1996 (47 U.S. C. 332(c), as amended) prohibits local authorities from regulating the placement of cellular towers based on environmental effects, as long as those towers comply with the Federal Communication Commission's guidelines. The subject tower has been designed to, and complies with, those guidelines.

72. The majority of towers owned by AWS are on land zoned for agriculture.

73. The proposed project is part of an AWS's Island wide program for the development of an efficient, cost effective cellular network to meet actual needs.

74. Cellular service is relied upon by a large portion of the population on the Island of Hawaii for communication during emergencies.

75. Cellular service is a phenomenon of the 1990's and it has grown in importance since the district boundaries and regulations were established.

76. Access to reliable cellular service is important to social and business life on the Island of Hawaii.

Rule 4-29 of the Planning Commission Rules of Practice and Procedure states in part that ...”the hearing officer shall prepare a report, setting forth findings of fact, conclusions of law, and the reasons therefore and a recommended order and submit the report of the case to the Commission.” For that reason the Conclusions of Law submitted herewith are accompanied where necessary with a discussion of the reasons for reaching the conclusions.

II. CONCLUSIONS OF LAW

Rule No. 6 of the County of Hawaii Planning Commission Rules of Practice and Procedures provides in pertinent part:

“6.6 Grounds for Special Permit

The Commission shall not approve a Special Permit unless it is found that the proposed use :

- (a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended

The Commission shall also consider the criteria listed under section 6.3(b)(5)(A) through (G).”

Section 6.3(b)(5) of Rule 6 of the County of Hawaii Planning Commission Rules of Practice and Procedures require that the following criteria shall also be addressed:

- “(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (B) The desired use shall not adversely affect surrounding properties;
- (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.”

Conclusion of Law #1. The proposed use is an unusual and reasonable use of land situated within the Agricultural District.

Reasons for Conclusion of Law #1. The proposed use is not one of the uses listed in Hawaii Revised Statutes Chapter 205, nor is it listed in the County of Hawaii Zoning Code. The Hawaii Supreme Court in Curtis v. Board of Appeals, 90 Haw. 384, filed on May 20, 1999, found that a telecommunication tower was not the same as the utility line and poles contemplated by HRS § 205-4.5(a)(7). The Court went on to find that uses not expressly permitted HRS §205-4.5(a) are prohibited except as may be allowed by a special permit. The use is therefore unusual.

The conclusion as to whether a proposed use is reasonable should be based on the analysis of a number of factors. Among them are (a) alternative sites and designs for the use, (b) the benefits to be obtained from the use of the proposed site, and (c) the burden, harm or detriment resulting from the proposed use, (d) whether the same or similar uses are allowed in agricultural districts elsewhere.

a. AWS investigated several other sites and found that the subject site was the most suitable for their purposes (see FF 39 – 43). They also investigated the possibility of using a lower tower but found that the benefits of the 180 foot tower outweighed the use of a lower tower or towers. The tower would be 150 feet high but for the intent to provide space for co-location by other providers (FF 53 – 55).

b. The proposed tower will provide new and improved cellular service to several areas of the community (FF 33). The bottom two-thirds of the tower will be back dropped by trees and painted to blend in with the background (FF 47 – 48). The use of the subject 3600 square feet will not adversely affect the present use of the

balance of the 40.012 acre parcel (FF 68). By designing the site to include co-location by other providers it will reduce the over all number of telecommunication towers in the vicinity (FF 53).

c. The top 60 feet of the tower will be above the skyline formed by the forest trees and it will be visible from the Intervener's property approximately 900 feet away (FF 47). The extent to which the lower portion of the proposed tower will be visible will depend on what improvements are put on the Intervener's property such as fences and shrubs.

d. HRS § 507(a)(7) & (12) allow "... Public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings... wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy." The majority of the telecommunication tower presently operated by AWS are in Agricultural Districts (FF 72).

In summary, the testimony was that AWS used reasonable efforts to find alternative sites, the selected site is the most suitable for its purposes, the proposed design will allow for co-location by other providers there is little impact on the Project Site, and similar uses are allowed within Agricultural Districts. The proposed use is reasonable.

Conclusion of Law # 2. The proposed use will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

Reasons for Conclusion of Law #2. In Curtis v. Board of Appeals the Hawaii Supreme Court found that the spirit of state land use law is:

“to protect and conserve through zoning the urban, agricultural and conservation lands within all the counties. A coordinated, balanced approach not only within each county but an overall balance of statewide land needs for economic growth is essential to:

- (1) Utilize the land resources in an intelligent, effective manner based upon the capabilities and characteristics of the soil and the needs of the economy;
- (2) Conserve forests, water resources and land, particularly to preserve the prime agricultural lands from unnecessary urbanization;
- (3) State the allocation of land for development in an orderly plan to meet actual needs and minimize costs of providing utilities and other public services.”

Hse. Stand. Comm. Rep. No. 395, in 1961 House Journal, at 855-56 (emphasis added). In sum, the overarching purpose of the state land use law is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. See 1961 Haw. Sess. L. Act 187, § 1 at 299 ("[I]n order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare . . . , the power to zone should be exercised by the State."). See also Pearl Ridge Estates Community Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 144 n.9, 648 P.2d 702, 709 n.9 (Nakamura, J., concurring) ("Thus, conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.").

At Footnote #15 the Court stated:

“15. We note that this reference to "minimi[zing] costs of providing utilities and other public services" arose in the context of uncontrolled residential development without regard to available utilities and infrastructure. See 1961 Haw. Sess. L. Act 187, § 1 at 299 ("Scattered subdivisions with expensive, yet reduced, public services . . . [is] evidence[] of the need for public concern and action."). This statement, therefore, expresses a subsidiary goal of minimizing utility costs through the primary objective of rational development, rather than at its expense.”

The evidence introduced was that reliable cellular communication is important to the public welfare, especially during emergencies (FF 74 & 75). The subject tower will

provide service to areas not presently receiving service and it will improve service to other areas (FF 33). It will be significantly less expensive than other suggested sites (FF 41), and it will reduce the need for other suppliers to construct towers in the area (FF 54). The impact on agricultural lands and the surrounding area will be minimal (FF 7, 10, 16 and 24 – 33) and the construction of this tower is part of an organized plan by AWS for providing service to the entire island (FF 73). These factors cause your Hearing Officer to conclude that the proposed use will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

Conclusion of Law # 3. Such use will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Reasons for Conclusion of Law # 3. Having concluded that the proposed use would promote the effectiveness and objectives of Chapter 205 of Hawaii Revised Statutes, as amended, (the State of Hawaii Land Use Law) Conclusion of Law # 3 necessarily follows.

Conclusion of Law # 4. The desired use will not adversely affect surrounding properties.

Reasons for Conclusion of Law # 4. There will be no sound emanating from the site that can be heard from adjoining property (FF 58) and rainfall runoff will be contained on the site (FF 17). The operation of the telecommunication tower will not result in a health hazard (FF 70 & 71).

Adjoining property owners testified at the Contested Case Hearing and prior hearings that the construction of the proposed tower would adversely affect their property values. There was no evidence presented to substantiate these statements. No one

testified as to the amount that their property values would be reduced nor was there any expert opinion on the subject or any comparison with other areas where telecommunication towers had been built. The result is that your Hearing Officer must treat the testimony as speculation and it cannot form the basis for a Conclusion of Law.

There is no doubt that some property owners will be able to see the tower if they look in the appropriate direction. Some stated that it will be an “eyesore”. Whether something is an eyesore is a matter of opinion, taste and aesthetic values. As stated in Curtis v. Board of Appeals

“[Land use statutes] are in derogation of the common law, and their provisions must be strictly construed. [T]he terms of the [land use statute] should be accorded their natural and most obvious meaning when there is no manifest legislative intent contrarywise. In interpreting a [land use statute], the duty of this court is to ascertain and give effect to the intent of the [legislature]”

In a proper case when the negative aesthetic effects of a wireless tower are great and clearly established by substantial numbers of objecting residents who have a specific, fact based objection, such negative aesthetic effects may be relevant to the issue of adverse effects on surrounding property. Here, there are no dwellings to the immediate south, west and north of the property. (FOF 24). Three of the four lots in the Nani O Waiakea Estates subdivision that abut the subject property on the east have been residentially developed. (FOF 23). However, the nearest residence is over 1,350 feet (over ¼ mile) from the site. (FOF 57). Intervenor Harvey Honda’s property is 900 feet away from the project site. (FOF 49). When viewed from the east (the residential area) the proposed tower will be backed by the Waiakea Forest Reserve tree line, estimated at 120 feet in height. (FOF 47) The tree line will serve as a backdrop to the lower two-thirds portion of the tower, which will be painted to blend into the background. (FOF 48). The proposed tower will not be visible from inhabited areas mauka or west of the site. (FOF 50). On these facts, there is not

sufficient substantial evidence to justify denial of the application on aesthetic grounds.

Conclusion of Law # 5. Such use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

Reasons for Conclusion of Law # 5. The proposed site will be unoccupied and no additional services of any kind will be required (FF 63 & 64).

Conclusion of Law # 6. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

Reasons for Conclusion of Law # 6. The explosion in the use of cellular communication has occurred since the district boundaries and regulations were established (FF 74 – 76).

Conclusion of Law # 7. The land upon which the proposed use is sought is *not* unsuited for the uses permitted within the district.

Reasons for Conclusion of Law # 7. The property has been used for grazing for years and nothing about it has changed (FF 1). The auxiliary structures would all be permitted uses (see HRS § 507(a)(7)). The only use that is not a permitted use is the telecommunication tower itself, and that tower occupies only a small portion of the 3600 square feet. Aside from that small area there is no deviation from permitted uses.

Conclusion of Law # 8. The proposed use will not substantially alter or change the essential character of the land and the present use.

Reasons for Conclusion of Law #8. All of the auxiliary structures are permitted uses. Constructing them therefore cannot be said to change the essential character of the land and the present uses. There was no testimony that even suggested that the presence of the telecommunication tower would interfere with, alter or in any way change the essential character of the 40.012 acres not actually occupied by the tower.

Conclusion of Law # 9. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Reason for Conclusion of Law # 9. The request will not be contrary to the General Plan, given the following existing goals and policies of the General Plan:

Land Use Element

Goal:

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

Policy:

- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.

Environmental Quality

Goal:

- Maintain and, if feasible, improve the existing environmental quality of the island.

Policy:

- The County of Hawai'i shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.

Economic Element

Goals:

- The County of Hawai'i shall provide residents with opportunities to improve their quality of life.
- The County of Hawai'i 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 diversity and stability in its economic system.

Policies:

- 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

Goals:

- Ensure that adequate, efficient and dependable public utilities will be available to users.
- Maximize efficiency and economy in the provision of public utility service.
- To have public utility facilities which are designed to fit into their surroundings or concealed from public view.

Policies:

- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- Encourage the clustering of developments in order to reduce the cost of providing utilities.
- Public utility facilities shall be designed so as to complement adjacent land uses and shall be operated so as to minimize pollution or disturbance.
- Utility facilities shall be designed to minimize conflict with the natural environment and natural resources.

Natural Beauty

Goals:

- 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.

Policy:

- 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.

It is clear that the General Plan recognizes the importance of cellular communication and the fact that telecommunication towers can be an intrusion into the landscape. The proposed use places that intrusion back against the forest, away from the view of all but the adjoining property owners and it appears to be consistent with the intent of the General Plan.

III. APPROVAL OF SPECIAL PERMIT APPLICATION NO. 01-015

In accordance with the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED by the Planning Commission that the application of AT&T Wireless Services of Hawaii, Inc., SPP No. 01-015, for a Special Permit to allow the establishment of a 180-foot telecommunication lattice tower, microwave and panel antennas, equipment building and related improvements, on approximately 3,600 square feet of land of a 40.012-acre parcel of land, at Waiakea Homesteads, 3rd Series, South Hilo, Hawai'i, Tax Map Key: 2-4-6: Portion of 108, is approved subject to the conditions set forth below. Should any of these conditions not be met or substantially complied with in a timely manner, the Director may initiate procedures to revoke this permit.

1. AWS, and successors or assigns, shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the proposed 180-foot telecommunication lattice tower, microwave and panel antennae, equipment building and related improvements, and security fence shall be secured from the Planning Director in accordance with the

Zoning Code, Sections, 25-2-71 (c)(3), 25-2-72, 25-4-74, and 25-4-12. Plans shall identify existing and proposed structures, fire protection measures, fencing, driveway and parking areas associated with use. Tower and antennae plans shall be stamped by a structural engineer.

3. Within 120 days of the permanent abandonment of the tower and antennas, AWS shall remove the tower and its antennas and accessory structures (including the equipment building and the fence), down to, but not including the concrete foundation. AWS 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.

4. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, paving or walls 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 sufficiently mitigation measures have been taken.

5. Buildings shall conform to all requirements of code and statutes pertaining to building construction.

6. All development generated runoff shall be disposed on-site and shall not be directed toward any adjacent properties.

7. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.

8. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks of the Hawaii County Code. Hoaka Road, fronting the Subject Property, is a County road.

9. If the proposed access road is found to be located within Flood Zone “A”, the construction of the area’s road will be subject to the requirements of Chapter 27, Flood Control, Hawaii County Code, and any alteration of existing ground conditions may require a grading permit and a Letter of Map Revision (LOMR) to the Federal Emergency Management Agency (FEMA). Approval of this LOMR shall be secured before any development.

10. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the Project Site, including the Federal Aviation Administration and Federal Communications Commission.

11. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, AWS shall submit a written status report to the Planning Director.

12. An initial extension of time for the performance of conditions within 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 AWS, its 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 Zoning Code.


C. Granting of the time 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.

DATED: Hilo, Hawai'i, May 17, 2002.

PLANNING COMMISSION
COUNTY OF HAWAI'I


GERALDINE M. GIFFIN
Chairperson