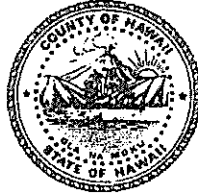


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

DEC 03 2002

Kelly G. LaPorte, Esq.
Cades Schutte Fleming & Wright
P.O. Box 939
Honolulu, HI 96808-0939

Dear Mr. LaPorte:

Special Permit Application (SPP 01-017)
Applicant: Cellco Partnership dba Verizon Wireless
Request: Establish a 60-Foot Telecommunication Monopole, Antennas, and
Related Equipment Structures
Tax Map Key: 6-8-2:Portion of 20

The Planning Commission at its duly held public hearing on November 1, 2002, voted to approve the above-referenced application and adopted the attached Hearings Officer's Findings of Fact, Conclusions of Law, Decision and Order, as amended.

Special Permit No. 1180 is hereby issued to allow the establishment of a 60-foot high telecommunication monopole with light fixture, antennas, related equipment buildings, and security fence on approximately 1,080 square feet of land in the State Land Use Agricultural District. The project area is located at the Waikoloa Stables on the north side of Waikoloa Road, Waikoloa, South Kohala, Hawai'i.

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

Sincerely,

Geraldine M. Giffin, Chairman
Planning Commission

Lcellcowaikoloa01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land and Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu
Ms. Danette Mettler

02814-100
DEC 04 2002

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII, STATE OF HAWAII

In the Matter of the Special Permit
Application of

CELLCO PARTNERSHIP dba VERIZON
WIRELESS

(TMK (3) 6-8-002: Por. 20)

SPP NO. 01-017

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT
APPLICATION SPP NO. 01-017

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT APPLICATION SPP NO. 01-017

APPLICANT CELLCO PARTNERSHIP dba VERIZON WIRELESS, (“**Verizon Wireless**” or “**Applicant**”), is seeking a special permit under Hawai‘i Revised Statutes (“**HRS**”) Chapter 205 for a telecommunication tower and antennae, an appurtenant prefabricated communication equipment shelter, a security fence, and appurtenant structures on approximately 1,080 square foot of land area, located at the Waikoloa Stables on the north side of Waikoloa Road, Waikoloa, South Kohala, Island and County of Hawai‘i, State of Hawai‘i (the “**Project**”).

At its meeting held on September 7, 2001, the Hawai‘i County Planning Commission (“**Commission**”) granted standing to intervene to Michele Ott and Edward Britton (collectively, the “**Intervenors**”) in the contested case hearing regarding the Project.

On August 30, 2002, Hearing Officer Kevin M. Balog conducted a site visit of the proposed Project location, the condominium apartments of the Interveners, and an alternate site location proposed by the Interveners, and reviewed evidence and heard testimony in a contested

case hearing conducted at the Civic Center Conference Room, 67-5189 Kamamalu Street, in Kamuela, South Kohala, Hawai'i. Kelly G. LaPorte appeared for Applicant; Deputy Corporation Counsel Patricia O'Toole appeared for the Hawai'i County Planning Department (the "**Department**"); and both Intervenors appeared pro se.

The Hearing Officer Kevin M. Balog, having reviewed the Special Permit Application filed by the Applicant on June 14, 2001, the Written Testimonies and Exhibit filed by Applicant on May 29, 2002, and the Written Rebuttal and Exhibits filed by Applicant on June 13, 2002; the Department's Statement of Issues and Exhibits filed on May 3, 2002; and the Intervenors' Statement of Issues set forth in their addendum to their petition for standing dated August 30, 2001, the Intervenors' Exhibits dated May 25, 2002, and the Intervenors' Exceptions to Applicants' Rebuttal of Issues and Exhibits dated July 19, 2002, of which the Applicant's, Department's, and Intervenors' (collectively, the "**Parties**") exhibits were entered into evidence; having read the transcript of and considered the testimony provided by the public and the Parties' witnesses at the hearing on August 30, 2002; having considered the entire record and file herein; and having heard and considered the arguments of the Parties, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The land that is the subject of this application (the "**Property**") in the State Land Use Agricultural District, is zoned A-5a (Agricultural) District by the County of Hawai'i ("**County**"), and is a portion of tax map key ("**TMK**") number (3) 6-8-002: Por. 20.

2. The Property is located on a parcel of land owned by the Waikoloa Village Association (the "**Owner**"), which parcel has a total of approximately 24.335 acres of land (1,060,032 square feet), and is located at a relatively high elevation of 1,024 feet above sea level.

The Owner's parcel is leased to CS Equine Ventures, Ltd., which operates the Waikoloa Stables located on the north side of Waikoloa Road.

3. The Owner has granted a license in the Property to Applicant for the Project. The remainder of the Owner's parcel is used as a riding stables and other equestrian-related activities. Access to the Project site is by an existing road at the Waikoloa Stables from Waikoloa Road.

4. Intervenors each owns a condominium apartment located on TMK (3) 6-8-003. This TMK is not adjacent to TMK No. (3) 6-8-002-020 where the Project site is located. Rather, a parcel consisting of more than 31 acres, being TMK No. (3) 6-8-002-021 owned by Waikoloa Land & Cattle Co. (the "31 Acre Waikoloa Cattle Property"), separates the Subject Property from the Intervenors' residences. The 31-Acre Waikoloa Cattle Property lies within the State agricultural district, which permissible uses under Haw. Rev. Stat. § 205-4.5(a) include farm buildings and uses related to animal husbandry; public, private, and quasi-public utility lines, transformer stations, communications equipment buildings, solid waste transfer stations, and major water storage tanks; and wind energy facilities.

5. The uppermost portion of the proposed tower will only be visible from one second-story bedroom window located at the rear of Ms. Ott's condominium apartment, as there is a large intervening hill on the 31 Acre Waikoloa Cattle Property between her apartment and the Project site. The uppermost portion of the Project may also be visible from a second-story bedroom window of Mr. Britton's condominium apartment, but this window does not face the Project site, and there are numerous two-story condominium apartments located between Mr. Britton's apartment and the Project site. There are many telephone or electric utility poles prominently visible from both Intervenors' residences.

6. The Intervenors' residences are approximately 1,000 feet or more from the Project site. This is twice the distance or more to the surrounding property of which owners a special permit applicant must notify according to Hawai'i County Code § 25-2-4.

7. Both Intervenors are members of the Waikoloa Village Association, a nonprofit Hawaii corporation, which owns the Property. The Owner has already consented to the use proposed by Verizon Wireless by consenting to the license between CS Equine Ventures, Ltd. and Verizon Wireless.

8. HRS section 205-6(a) and Hawai'i Administrative Rules ("HAR") section 15-15-95(b) authorize the Commission to permit "certain unusual and reasonable uses within [the State's] agricultural . . . districts other than those for which the district is classified." HRS section 205-6 delegates the authority to grant special permits to the Commission for proposals involving less than 15 acres of land. Because the Project involves only approximately 1,080 square feet of land, which is less than 15 acres, Verizon Wireless submitted an application for a special permit to the Commission on June 14, 2001.

9. The Project forms an integral part of establishing Verizon Wireless' island-wide network, which attempts to provide continuous and reliable cellular telephone coverage to its customers in an orderly plan.

10. The proposed tower is 60 feet tall and is a free-standing monopole that is designed to replace an existing light tower at the Waikoloa Stables. At the top of the proposed tower are three panel antennae that are planned for immediate use, and Verizon Wireless' application seeks approval for an additional nine antennae located below the top antennae for potential future use by Applicant if the need develops.

11. This proposed tower, like the other towers in Verizon Wireless' network, has a low power radio frequency ("RF") transmitter that provides cellular telephone service within its coverage area or "cell." As a telephone user passes from one coverage area to the next, the call is passed automatically to the next cellular tower site. Because of the low power transmitters, the "handoff" from one coverage area to the next requires many cellular tower sites that are strategically located to achieve good quality performance.

12. It is very difficult to engineer a tower in Hawai'i because of the terrain. Hawai'i is what is referred to in the cellular industry as "terrain limited," which means that the RF signal in many areas is severely degraded or blocked because the many slopes and curves of the mountains and valleys, as well as the foliage, cause shadows or "eclipses," which block or interfere with the RF signal. As Hawai'i's terrain does not permit the type of coverage that can be achieved on flat land, it requires towers in numerous locations to minimize RF signal blockage.

13. Verizon Wireless cannot currently provide cellular coverage to the entire Waikoloa Village area, and to the extent it has any coverage in Waikoloa Village, it is spotty, or marginal, at best. Based on this lack of reliable coverage in Waikoloa Village, Applicant initiated a tower site search in May 2000 to provide reliable coverage to all of Waikoloa Village, from Highway 19 (Waikoloa Road) to Highway 190 (Mamalahoa Highway), including the Waikoloa Village Golf Course. Due to terrain restrictions and the density of residences already constructed in Waikoloa Village, there was a limited area available for sites that would meet the technical criteria.

14. Applicant considered several other sites, but rejected them for various reasons, including the fact that the other sites would have required higher towers that would have been

more visible to residences located in Waikoloa Village and the general public, or sites would not meet the technical coverage criteria.

15. The Project site was selected for several reasons. It met the technical requirements, and it was available for lease or license. The Property for the proposed tower is level and thus buildable, it is at a relatively high elevation (1,024 feet above sea level), thus permitting a 60-foot tall monopole tower that is shorter than would have been required at other sites, and complies with all set-back requirements. This Project site will enable Verizon Wireless to provide reliable cellular telephone service in the Waikoloa Village area, including the Waikoloa Golf Course, from Waikoloa Highway to Mamalahoa Highway. This site will also fill existing coverage gaps in the currently existing Verizon Wireless service to fishermen and boaters off the coast from Hapuna Beach to Pauoa Bay.

16. Once placed in service, the coverage gap over Waikoloa Village will be eliminated. If the proposed tower site is not approved, there will be a significant gap in Verizon Wireless' coverage in the Waikoloa Village area.

17. Because the Waikoloa Stables area has already been developed and currently has several existing light poles around the horse arena, any visual impact is minimized since the monopole has been designed to replace one of the existing light poles. While the proposed tower is necessarily taller than the existing light poles to provide the required coverage over Waikoloa Village, it is designed to look similar to the other light poles in the immediate vicinity.

18. The three antenna panels that are planned for the monopole measure 12-inches wide by 7-inches deep by 48-inches in height, making for a relatively unobtrusive antenna array on the top of the pole.

19. It is Verizon Wireless' policy to offer efficient service by providing maximum cellular coverage with a minimal number of towers. This practice reduces the impact on the community and the natural environment by minimizing the number of cellular towers, associated facilities, and access roads to the extent possible.

20. While it is the policy of Verizon Wireless to permit co-location of other antennae on its towers as long as such co-location does not impair or compromise the operation of its or other users' improvements and existing facilities at the tower, sometimes co-location is not feasible if a low tower or a stealth tower is utilized. With respect to this Project, the low tower height of 60-feet precludes co-location of other wireless service providers.

21. The proposed tower is designed to withstand wind speeds over 100 miles per hour.

22. A 12-foot by 36-foot prefabricated equipment shelter, which houses the ancillary communications equipment needed for the tower to function, is adjacent to the proposed tower.

23. The proposed equipment shelter will be surrounded by a six-foot high chain link fence.

24. The only utility required is electricity, which is already available to the Owner's parcel.

25. Access to the site is provided by a private existing road to Waikoloa Stables from Waikoloa Road. Virtually no traffic will be generated by the operation of the proposed tower, as it is a low-maintenance, unmanned facility that is not continuously staffed. Except for maintenance and repair, the Project is self-operating. A Verizon Wireless employee will periodically monitor the tower, antennae and its appurtenant equipment. There are no long-term traffic impacts resulting from this Project.

26. The lower portion of the tower will not be visible from the nearest residential condominium apartments because a large intervening hill exists on the 31 Acre Waikoloa Cattle Property. The prefabricated shelter will be placed in a depression adjacent to the tower, thus minimizing its impact.

27. There are no known drainage channels within the Property and the area is designated "X" or outside the 500-year flood plain by the FIRM maps. Thus, the Project does not block any known drainage channels.

28. The General Plan Land Use Pattern Allocation Guide Map designates the area as "Open."

29. The Land Study Bureau Soil Rating of the Property is "E," or "Very Poor."

30. There is no county community plan or design plan to which the Property is subject, and the Property is located six miles to the closest shoreline.

31. Only electrical service is required for the proposed Project, and this is available onsite. Fire and emergency services are available through the fire station located in Waikoloa Village.

32. County zoning for the Property and the immediately adjacent properties is Agriculture with a five-acre minimum lot size (A5-a). Adjacent properties are undeveloped and vacant.

33. The Telecommunications Act of 1996, Section 704, which amended portions of the 1934 Act, prohibits local authorities from regulating the placement of cellular towers based on environmental effects, more specifically RF emissions, as long as those towers comply with the guidelines of the Federal Communication Commission ("FCC").

34. The Project was designed to comply with and will comply with FCC guidelines regarding RF emissions.

35. There were no major objections or concerns expressed by agencies reviewing Applicant's permit applications.

36. No members of the public testified in opposition to the Project at the contested case hearing conducted on August 30, 2002.

37. To the extent that any of these findings of fact constitute conclusions of law, they shall be so considered and construed.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over Verizon Wireless' special permit application pursuant to HRS section 205-6. because the Project involves less than 15 acres of land.

2. The Intervenors are not adjoining property owners, as the 31 Acre Waikoloa Cattle Property lies between their condominium apartments and the Property, and the Intervenors' residences are located twice or more than the 500-foot requirement for notification for special permit applications. The site visit to their residences conducted by the Hearing Officer Kevin M. Balog and the testimony presented at the contested case hearing confirmed that even assuming they have proper standing, the fact that there were many other poles more clearly in view of their residences than the single propose monopole tower at a distance of 1000 feet or more, undermine their contention that the Project would constitute a detrimental impact to their scenic views.

3. **The Project Is Consistent with the Objectives and Policies Contained in HRS chapters 205 and 205A, and the rules of the Land Use Commission.**

(a) HRS chapter 205

The basic objectives of HRS chapter 205 are to protect, to conserve, and to rationally develop through zoning the State's urban, agricultural and conservation lands using a coordinated, balanced approach not only within each county but on a statewide basis. This approach includes an overall balance of statewide land needs for economic growth and is essential to (i) utilize the land resources in an intelligent, effective manner based upon the capabilities and characteristics of the soil and the needs of the economy; (ii) conserve forests, water resources and land, and in particular, to preserve the prime agricultural lands from unnecessary urbanization; and (iii) state the allocation of land for development in an orderly plan to meet actual needs and minimize costs of providing utilities and other services through rational development.

The site of the Project's proposed tower, antennae, and appurtenant structures affects a total of approximately 1,080 square-feet, or approximately 0.001% of a parcel of land that has approximately 1,060,032 square feet. The Project will allow the remaining portion of the Owner's parcel to continue to be used for agricultural purposes. Therefore, the Project does not remove significant lands from agricultural use.

The Project provides a valuable and essential continuous, reliable cellular communication service to a large geographical area that is otherwise without such service. Accordingly, the Project's utilization of the Property's resources is a reasonable and cost-effective one and does not result in unnecessary urbanization. Verizon Wireless' island-wide communication network, of which the Project is an integral part, is an orderly plan to meet actual needs that minimizes the cost of providing the utility of telecommunications through rational development.

Accordingly, the Project is consistent with, and is not contrary to, the objectives sought to be accomplished by HRS chapter 205.

(b) HRS chapter 205A

HRS chapter 205A is the Coastal Zone Management Act (“**CZMA**”) for the State of Hawai‘i. All lands in the State, including the mountain tops, are in the coastal zone management area under HRS section 205A-1. Although the objectives of the CZMA are extremely broad and far reaching, the essence of the CZMA is “to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii” by “maintaining, restoring, and enhancing the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values, and to provide adequate public access to publicly owned or used beaches, recreation areas and national reserves” by controlling development within an area along the shoreline, the special management area (“**SMA**”). The Project is not within the SMA.

The Project furthers the goals of “[p]roviding coastal recreation opportunities” for the public by providing communications to cellular telephone users along the coast and at sea. Because the Property is located approximately six miles from the shoreline, it will not decrease any coastal recreational opportunities for the public.

The Project will also provide a service that is important to the State’s economy. Since the Applicant’s commencement of cellular telephone service on the Island of Hawai‘i in 1992, the number of consumers on the Island of Hawai‘i using its service has grown from zero to approximately 25,968. The proposed Project will provide service to fishermen and boaters off the coast from Hapuna Beach to Pauoa Bay.

(c) Land Use Commission Rules

HAR section 15-15-01 states that the Land Use Commission's Rules "shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawaii." Based on the discussion above that addresses the objectives of HRS Chapter 205, the Project is not contrary to the objectives sought to be accomplished by the Land Use Commission Rules.

4. **The Project does not adversely affect surrounding property.** Based on the contested case hearing held on August 30, 2002 by the Hearing Officer Kevin M. Balog for the Commission, and after balancing the various benefits and costs to the surrounding communities resulting from the Project, the Commission concludes that, on the whole, the Project does not adversely affect surrounding property.

A. RF Emissions

The operation of the radio antennae does not present health hazards or cause interference with other electronic appliances and equipment. The cellular radio antennae are designed to comply with all applicable FCC requirements regarding RF emissions.

Section 704 of the Telecommunications Act of 1996 (47 U.S.C. 332(c), as amended) 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 those towers comply with the FCC's guidelines. The subject tower has been designed to, and complies with, those guidelines. No RF emissions adversely affect the surrounding properties.

B. Noise Impacts

The only source of noise emitted from the Project will result from an air conditioner that is necessary to maintain correct temperature and humidity in the equipment building and a generator that will be utilized during power failures and periodic testing. The resulting noise will be virtually inaudible from farther than one hundred feet except under extraordinarily quiet conditions. The noise output of the air conditioning unit and generator is substantially less than any number of uses permitted in this zone (e.g., generators, farm equipment, vehicles, or farm animals). Thus, there are no noise impacts that adversely affect the surrounding properties.

C. Visual Impacts

Typically, no proposed utility facility completely avoids visual impacts without excessive expenses that prevent cost-effective delivery of the service. In In the Matter of the Application of Hawaiian Electric Company, Inc., 81 Haw. 459, 918 P. 2d 561 (1996), the Hawai'i Supreme Court upheld the PUC's finding that HECO's selected routing, location, configuration, and method of construction were "reasonable and preferable to HECO's other options," comparing certain factors, including aesthetic considerations. Id. at 464. Although the PUC found that HECO's proposed project would cause visual impacts, the PUC concluded that those visual impacts did not justify the underground placement of the transmission lines because "the utility has the responsibility to minimize the cost to ratepayers in providing reliable electric service [T]he cost of placing transmission lines underground is very high and the burden of that cost ultimately falls upon the ratepayers" and aesthetics "did not constitute [a] compelling reason that would outweigh the added cost of placing the lines underground." Id.

While the HECO case involved the PUC's approval of HECO's capital expenditure, the PUC's balancing and weighing of visual impacts to the immediate neighbors against the increase in costs to the telephone user and the availability of options to HECO are equally applicable in

this matter. Additionally, a single cellular telecommunication tower may make the need for additional telephone utility poles and lines unnecessary in areas that currently lack land line telephone service.

The substantial evidence offered by Applicant shows that the Project site is located on the far side of Waikoloa Stables away from Waikoloa Highway, where it will be visible along with the other currently existing light poles that surround the horse arena at the Waikoloa Stables. The visual impact associated with the Project is minimized by Applicant's efforts to camouflage it as a light pole, and replace an existing light pole among several others in the immediate vicinity. The tower will not represent a significant intrusion into public views.

Further, while currently undeveloped, the owners of the 31 Acre Waikoloa Cattle Property possess the right to develop the property in a number of manners that could potentially adversely affect the adjacent Intervenor's residences far more than a single monopole tower located on the far side of the 31 Acre Waikoloa Cattle Property. Such future development of the 31 Acre Waikoloa Cattle Property could easily dwarf and conceal what limited portion of the proposed single tower that might ever be visible to the Intervenor and other area residents.

Lastly, the tower is not obtrusive when compared to traditional telephone and power poles and lines, which are visually more predominant along the roads adjacent to the Project and from the Intervenor's residences.

5. **The Project does not unreasonably burden public agencies to provide roads, streets, sewer, water, drainage, school improvements, and police and fire protection.** The Project requires only power, which is provided by an existing power line to the Owner's parcel. No public expenditures for road, street, sewer, water, drainage or school improvements or increased police or fire protection are required. The Project enhances police and fire protection

by affording cellular telephone service to remote land and ocean areas so that emergency and crime-fighting officials can be contacted where no telephone land lines or other cellular service exist, or in the event of an emergency when land lines are disrupted.

6. **Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.** In the 1960s and the 1970s, when the State's agricultural district boundaries and regulations were first established pursuant to HRS Chapter 205, cellular telephone service was unknown, and the predominant means of audio communication was by traditional telephone service, which relies on telephone and power poles and lines. Verizon Wireless commenced cellular telephone service for the Island of Hawai'i in 1992, when it was formerly known as GTE Hawaiian/Hawaiian Tel. Since its commencement, the number of consumers on the Island of Hawai'i using its service has grown from zero to approximately 25,968 consumers. Further, the Project provides communication services to offshore fishermen and boaters. Substantial evidence was introduced from an area resident that recited the communication, economic, and safety benefits provided by the Project. Cellular telephone usage is an unusual trend and need that arose after the State's agricultural district boundaries and regulations were established.

7. **The Project is compatible with other uses permitted within the State agricultural district, and the Property is unsuited for most of the agricultural uses permitted within the district.** The Property is suited for a variety of uses permitted in the district. The Project will not displace the use of the remainder of Owner's parcel. The construction of the Project will impact a total of 1,080 square feet out of the Owner's total parcel of 1,060,032 square feet. The requested use is similar in character and impact to certain uses of

this parcel that are permitted under HRS chapter 205, including the construction of existing light poles, as well as dwellings, utility lines, and wind generating facilities allowed by law.

Further, the Project will not prevent, and is compatible with, other uses permitted in the State agricultural district, to which the remainder of the Owner's parcel is utilized.

8. **The Project does not substantially alter or change the essential character of the land and the present use of the land.** The essential character of the Owner's parcel is for agricultural use, consisting primarily of an equestrian center. As the portion of the Property with the tower and appurtenant structures will comprise only about 1,080 square feet or approximately 0.001% of a 24.335 acre parcel, the Project will not substantially alter or change the Owner's use as an equestrian stables and arena.

9. **The Project is consistent with, and not contrary to, the current General Plan.**

The Project promotes or balances, among others, each of the following relevant objectives and goals set forth in the General Plan:

A: ECONOMIC

GOALS:

- *Provide residents with opportunities to improve their quality of life.*
- *Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.*
- *The 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.*

POLICIES:

- *The County of Hawaii shall strive for the diversification of its economy by strengthening existing industries and attracting new endeavors.*

- *The County shall encourage the research, development, and implementation of advanced technologies and processes in existing and potential economic endeavors.*

J. PUBLIC UTILITIES

GOALS:

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

POLICIES:

- *Public utility facilities should be designed so as to complement adjacent land uses and shall be operated so as to minimize pollution or disturbance.*
- *Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.*
- *Utility facilities should be designed to minimize conflict with the natural environment and natural resources.*
- *Improvement of existing utility services shall be encouraged to meet the needs of users.*

(2) TELEPHONE

POLICIES:

- *The County shall encourage underground telephone lines where they are economically and technically feasible.*
- *The County shall work closely with the telephone company to provide all users with efficient service.*

STANDARD:

- *In the development and placement of telephone facilities, such as lines, poles and substations, the design of the facilities shall consider the existing environment, and scenic view and vistas shall be considered and preserved where possible..*

M. LAND USE

GOALS:

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

POLICIES:

- *The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.*

Regarding the identified economic considerations, a resident conducting business in Waikoloa Village provided unequivocal testimony in support of the Project to the Commission. These same considerations further the goals and policies outlined in the General Plan under the heading “public utilities,” as the Project helps to “[e]nsure that adequate, efficient and dependable public utility services will be available to users”; “[m]aximize efficiency and economy in the provision of public utility services”; and “[p]rovide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.”

On balance, the substantial evidence offered by Applicant indicates that the visual impact of the proposed tower is not sufficiently adverse to outweigh the benefits to the community at large. The Project is an integral part of an island-wide telephone utility service, assists community members in maintaining their livelihoods, serves as a lifeline in emergencies and accidents on land and at sea, and provides critical emergency communications across the Island of Hawai’i in the event of a natural disaster. Based upon the preceding considerations, the Project is consistent with, and not contrary to, the objectives of HRS chapters 205 and 205A and the rules of the Land Use Commission.

Based upon the foregoing considerations and the substantial evidence provided in these proceedings, this Commission determines that the Project constitutes an “unusual and reasonable

use” under HRS section 205-6 and that the Project promotes the effectiveness and objectives of HRS Chapter 205.

10. To the extent that any of these conclusions of law constitute findings of fact, they shall be so considered and construed.

DECISION AND ORDER

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

IT IS HEREBY ORDERED by the Planning Commission that the Special Permit Application, SPP No. 01-017 be approved subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely manner, the Director may initiate procedures to revoke the permit.

1. The applicant, its successors or assigns, shall comply with all of the stated conditions of approval.

2. Construction of the proposed telecommunication facility shall be completed within five (5) years from the effective date of this permit.

3. Prior to the start of construction, Final Plan Approval for the proposed monopole and antennas, with light fixtures, and related improvements shall be secured from the Planning Director in accordance with Sections 25-2-71(c)(3), 25-2-72, 25-2-74, and 25-4-12 of the Zoning Code. Plans shall identify existing and proposed structures, fire protection measures, fencing, driveways and parking area, and landscaping, if required, associated with the use. Monopole and antenna plans shall be stamped by a structural engineer.

4. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the proposed telecommunication facility shall not interfere with the County of Hawai‘i Public Safety Radio System.

5. Within 120 days of the permanent abandonment of the telecommunication facility, the applicant shall remove the monopole and its antenna and accessory structures (including the prefabricated communication equipment building and fence), down to, but not including, the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.

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 archeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

7. The applicant shall 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 the Federal Communications Commission (FCC).

8. Upon compliance with applicable conditions of approval and upon completion of construction, the applicant shall submit a written status report to the Planning Director.

9. An extension of time for the performance of conditions of the permit may be granted by the Planning Director in 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, its successors or assigns, and that are not the result of their fault or negligence.

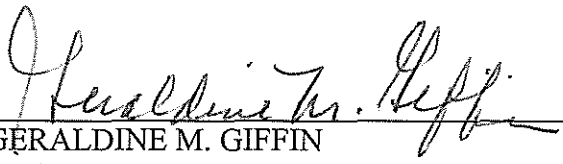
(b) Granting of the time extension would not be contrary to the General Plan or the Zoning Code.

(c) Granting of the extension of time 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 an additional one year).

DATED: Hilo, Hawai'i, December 2, 2002.

PLANNING COMMISSION, COUNTY OF
HAWAII



GERALDINE M. GIFFIN
Chairperson