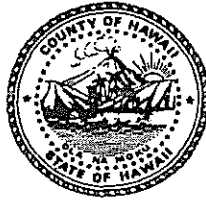


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

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SEP 04 2001

Mr. C. M. Hancock
Assistant Chief, Navigation Systems Branch
Maintenance and Logistic Command Pacific
Coast Guard Island, Building 54
Alameda, CA 94501

Dear Mr. Hancock:

Special Permit Application (SPP 01-018)

Applicant: U. S. Coast Guard

Request: Allow for the Establishment of a Differential Global Positioning System (DGPS), Consisting of a 150-Foot Lattice Tower, Two 20-Foot Lattice Towers, Antennas, Equipment Shelter and Related Improvements

Tax Map Key: 1-5-10:Portion of 3

The Planning Commission at its duly held public hearing on August 24, 2001, voted to send a favorable recommendation to the State Land Use Commission to allow the establishment of a Differential Global Positioning System (DGPS), consisting of a 150-foot lattice tower, two 20-foot lattice towers, antennas, equipment shelter and related improvements on approximately 45.9 acres of land in the State Land Use Agricultural District. The project site is located in the vicinity of the former Pahoia Landing Airstrip, on the Pahoia side of the Maku'u Farm Lots Subdivision, and on the west (makai) side of the Keaau-Pahoia Road (Highway 130), Puna, Hawaii.

The favorable recommendation of this request is based on the following:

Under a mandate from Congress, funding has been provided to the U. S. Coast Guard to construct a Differential Global Positioning System (DGPS) consisting of a 150-foot lattice tower with guy wires and a ground plane consisting of 120 copper radials

EXHIBIT

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that would radiate out from the base of the tower to a distance of 500 feet, two 20-foot lattice towers, antennas, equipment shelter and related improvements on the Big Island. The proposed site would provide navigational aid coverage to the southeast section of the Big Island which is not currently within the range of the existing DGPS site at Upolu Point and would also provide additional important terrestrial functions.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and 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 State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effective in 1962; and subsequently the Regulations and Land Use District Boundaries became effective in August 1964. The Puna District Zone Map was adopted on December 20, 1967 that classified this parcel Agricultural (A-3a). This particular subject property is situated within the State Land Use Agricultural District. The project site is adjacent to the former Pahoehoe Airstrip and there has been no history of agricultural use. The project site, proposed Lot B-1 of Subdivision No. 2001-0055, is located within an area whose soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. The property is designated as lava flows, pahoehoe (rLW) by the Soil Survey of the Island of Hawaii. It is considered unclassified and not Prime, Unique or Other Important Agricultural Land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

The Coast Guard is proposing to construct a new 150-foot high lattice tower with guy wires, surrounded by a ground plane consisting of copper radials extending out from the antenna base to a distance of 500 feet. In addition, there are two 20-foot lattice towers with antennas and an equipment shelter. The towers and guy wire anchor foundations are all enclosed with fencing. This proposed use will cover 45.9 acres, or proposed Lot B-1, of Subdivision No. 2001-0055. The proposed improvements will not displace any agricultural uses on the property, diminish the agricultural potential of the area nor adversely affect the agricultural potential of the property or its surrounding area. 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.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. According to the applicant, there are no known archaeological features or threatened plants present on the property. There is no designated public access to the mountain or coastal areas over this property. The project site is located over 6 miles from the nearest shoreline and in an undeveloped area. The proposed development will not

impact any recreational, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Finally, although the tower will be visible due to its location, it is not anticipated that the proposed tower would significantly obstruct any ocean (makai) views or significantly affect view planes. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

The desired use shall not adversely affect the surrounding properties. The 150-foot high proposed tower and related improvements will be situated on a 45.9 acre portion of a 3,924.6-acre parcel of land. The subject property's west and northwest boundaries border the Department of Hawaiian Home Lands' Makuu Farm Lots and Hawaiian Paradise Park Subdivision; lands to the east and south are State-owned, including the Pahoia Agricultural Park; and to the southwest are the Keonepoke Homesteads, State-owned lands and the Department of Hawaiian Home Lands' Makuu Agricultural Lots. However, the applicant proposes to subdivide the 45.9 acre portion for the project site. With this action, the proposed west boundary of the project site would be approximately 285 feet away from the Makuu Farm Lots Subdivision, with the north (makai) boundary terminating in the vicinity of TMK: 1-5-118:45, the third lot from the Keaau-Pahoia Road within the Makuu Farm Lots Subdivision. The proposed project site boundary would also be at a distance of approximately 900 feet from the nearest lot with a dwelling in the Makuu Farm Lots Subdivision. The project site is also located approximately 4,000 feet west of the Pahoia Agricultural Lots.

The existing ohia trees, ferns, shrubs and grasses throughout the parcel will provide some buffer to minimize visual impacts to the adjoining properties. Although there are 20 to 30-foot high ohia trees, they are scattered throughout the area. The towers will be gray in color to blend in with the sky. The 150-foot tower would be intermittently visible by drivers along the Keaau-Pahoia Road. However, it is not anticipated that the tower would significantly affect or obstruct any view planes toward the ocean. It should be pointed out that the project site is located approximately 6 miles from the nearest shoreline. In addition, to avoid any unnecessary visual impact, an abandonment clause is included as a condition to require removal of the towers within 120 days after permanent abandonment.

The applicant will be required to comply with the Department of Health regulations to mitigate the effects of dust and noise during construction. Once construction is completed, traffic is expected to be minimal as service personnel will only visit the site for maintenance only. It is anticipated that sound will have a minimal impact beyond the project site. Further, the facility will not have a back-up generator. Therefore, it is not anticipated that noise will adversely impact surrounding properties. At it's nearest point, the proposed 150-foot tower structure would be approximately 800

feet from the Keaau-Pahoa Road. The tall ohia trees that are scattered throughout the property will provide some buffer to minimize any visual impacts to the drivers on the Keaau-Pahoa Road and from the Makuu Farm Lots. The DGPS electric and magnetic field would not exceed the national and international safety standards for exposure of the general public at any place outside the security fence. As the tower will be designed to and will be expected to comply with the above guidelines and proper measures taken to prevent exposure, no significant adverse impact to surrounding properties is expected. Finally, no objections were received from the general public.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Only electrical service is required for the use and this is already available to the property. Access to the subject property is from the Keaau-Pahoa Road onto the former Pahoa Airstrip with a right of entry granted by the State. The access driveway leading to the site is sufficient vehicular access for the construction and maintenance of the facility. Fire, police and emergency services are available from the fire station and police station located in Pahoa Town, approximately 2 miles away. Further, the applicant has stated that their system will not interfere with the County of Hawaii Public Safety System. Finally, the applicant shall meet all applicable agency requirements, including the Federal Communications Commission.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Section 205-4.5 of Chapter 205, Land Use Commission, Hawaii Revised Statutes, 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," 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, Section 205-4.5 does not specifically permit telecommunication towers. However, in recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. Congress has mandated funding for a DGPS on the Big Island to improve the efficiency of Coast Guard maritime safety activities, thereby improving service to the public. The DGPS would enable expansion of coverage along the southeast side of the island. In the case of the Big Island, navigational safety and environmental security are the predominant concerns. These include positioning aids to navigation, dredging operations by the U. S. Army Corp of Engineers, hydrographic surveying by the National Geodetic Survey, vectoring

search and rescue units to distressed vessels, assisting with environmental assessments and cleanup efforts, and assisting with environmental studies/surveys of native plants and animals. A Hawaii Supreme Court ruling has determined that a Special Permit would be the appropriate means to establish towers and antennas within the State Land Use Agricultural District.

The land upon which the use is sought is suited for the uses permitted within the district; however, the proposed use will not interfere with such uses. The subject property has been vacant and undisturbed with no historic agricultural activity. The Land Study Bureau's Detailed Land Classification System classifies soils within the subject property as "E" or Very Poor. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map considers the area as unclassified. The property is designated as lava flows, pahoehoe (rLW). Although the requested use is not agricultural in nature, it will not displace any existing agricultural uses on the property. As the surrounding area is similar in characteristic to the project site, it is not anticipated to affect the agricultural potential of the rest of the parcel. The use will not substantially alter or change the essential character of the land and the present use. The proposed tower site is limited to a 45.9 acre portion of a 3,924.6 acre property that is presently vacant and undeveloped with scattered tall ohia trees, shrubs, ferns and grasses. Although it is anticipated that there will be some visibility of the 150-foot tower from the Keaau-Paho Road, at its closest point the ground plane radials of the 150-foot tower will be approximately 300 feet away and will not substantially alter or change the essential character of the land. To minimize vegetation disturbance, clearing would be limited to the area required to install and maintain the ground plane, towers and equipment shelter. The ground plane would then be covered by soil and the cleared vegetation would be mulched and also placed on top of the ground plane. Loss of vegetation due to clearing and grubbing would be short term in nature, as the surrounding vegetation would eventually repopulate the area cleared for the ground plane. There are no known cultural, archaeological or botanical resources that will be affected. Should any unidentified sites, remains or caves containing cultural material be discovered during the land clearing or construction stages, our standard condition to cease work in the area shall be included as a precautionary measure. One endangered species, the Newell shearwater or Ao, has been identified during the Environmental Assessment. However, the Coast Guard had been in contact with the Department of the Interior, Fish and Wildlife Service concerning appropriate measures to minimize impacts to the Ao through the Terms and Conditions and Conservation Recommendations in the Biological Opinion (Log Number 1-2-00-F-01).

The request will not be contrary to the General Plan. The subject property is within an area designated as Orchard by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The DGPS site will be limited to a 45.9-acre portion of a 3,924.6 acre parcel, and thus does not preclude the other portions of the property from continuing to be used for other purposes by the State. Also, the use is consistent with the following goals and policies of the General Plan.

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.
- 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.
- 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.

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.

Public Utilities

- 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.
- 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.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.

Based on the above considerations, the approval of the DGPS system is an unusual and reasonable use of lands situated within the State Land Use Agricultural District which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The favorable recommendation for this Special Permit is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Comply with all applicable rules, regulations and requirements of the affected agencies for approval of the proposed development.
3. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within two (2) years from the effective date of this permit.

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4. Construction of the proposed towers, ground plane radials, antennas, equipment shelter, fencing and related improvements shall be completed within two (2) years from the effective date of final subdivision approval.
- 7/16/02 ✓ 5. Prior to the start of construction, Final Plan Approval for the proposed 150-foot lattice tower with guy wires and ground plane radials, two 20-foot lattice towers, antennas, equipment shelter, fencing and related improvements shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval and Telecommunication Antennas. Plans shall identify proposed structures, fencing, driveways and parking area associated with the use. Tower and antenna plans shall be stamped by a structural engineer. 7/16/02
6. Within 120 days of the permanent abandonment of the Digital Global Positioning System (DGPS), the applicant shall remove the towers, ground plane radials, antennas, and accessory structures (including the equipment building and the fence), down to, but not including, the concrete foundation. The applicant shall immediately provide written notification to the Planning Director of the termination of the DGPS and the removal of all structures.
7. 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.
8. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, 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 sufficient mitigative measures have been taken.
9. 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.
10. Comply with the Department of Interior, Fish and Wildlife Services' requirements of Biological Opinion (Log Number 1-2-00-F-01).
11. 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.

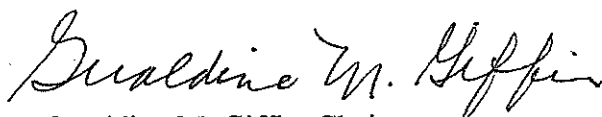
Mr. C. M. Hancock
Page 9

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

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

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Luscoastguard01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources – Hilo and Oahu
Brian Minaai, Director/DOT-Highways, Honolulu

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
U.S. COAST GUARD)
)
To Establish a Differential Global)
Positioning System Facility on)
Approximately 45.9 Acres of Land in the)
State Land Use Agricultural District for)
Approximately 45.9 acres of land at Pahoā,)
Puna, Island, County and State of Hawai'i,)
TMK No: 1-5-010:portion of 003)
_____)

DOCKET NO. SP01-396
DECISION AND ORDER
APPROVING SPECIAL USE PERMIT

This is to certify that this is a true and correct copy of the Decision and Order on file in the office of the State Land Use Commission, Honolulu, Hawaii.

OCT 30 2001 by *Antony [Signature]*
Date Executive Officer

DECISION AND ORDER APPROVING SPECIAL USE PERMIT

LAND USE COMMISSION
STATE OF HAWAII

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FILED
COUNTY OF HAWAII

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP01-396
)	
U.S. COAST GUARD)	DECISION AND ORDER
)	APPROVING SPECIAL USE PERMIT
To Establish a Differential Global)	
Positioning System Facility on)	
Approximately 45.9 Acres of Land in the)	
State Land Use Agricultural District for)	
Approximately 45.9 acres of land at Pahoia,)	
Puna, Island, County and State of Hawai'i,)	
TMK No: 1-5-010:portion of 003)	
_____)	

DECISION AND ORDER APPROVING SPECIAL USE PERMIT

On June 12, 2001, the U.S. Coast Guard ("Applicant" or "USCG") submitted a Special Use Permit Application ("Application") with the County of Hawaii Planning Department ("Planning Department") pursuant to Section 205-6, Hawaii Revised Statutes ("HRS") and Sections 15-15-95 and 15-15-96 of the Hawaii Administrative Rules ("HAR"). The Applicant proposes to establish a Differential Global Positioning System ("DGPS") facility on approximately 45.9 acres within the State Land Use Agricultural District at Pahoia, Puna, Hawaii, identified as TMK No: 1-5-010:portion of 003 ("Permit Area"). The Permit Area is a portion of a parcel of approximately 3,924.56 acres owned by the State of Hawaii.

The USCG DGPS facility would consist of: a radiobeacon tower comprised of a 150-foot lattice tower secured with guy wires; a ground plane consisting of 120 copper radials that would radiate out from the base of the tower to a distance of 500 feet; two 20-foot lattice towers and receiving antennas; equipment shelter; and related improvements (including power lines and security fencing). The DGPS facility will receive signals from the satellite based global positioning system ("GPS") and provide all-weather global coverage of specific locational information 24 hours/day; process differential corrections to intentionally distorted GPS signals; and transmit the corrected signals to users of the locational information. Other facility functions and capacities include: providing positioning aids which support navigational safety and environmental security; assisting with dredging operations conducted by the U.S. Army Corps of Engineers; facilitating hydrographic surveying by the National Geodetic Survey; vectoring search and rescue units to distressed vessels; assisting with environmental assessments and cleanup efforts; and supporting environmental studies/surveys of native plants and animals. Development of the proposed DGPS site will also ensure that there is GPS coverage throughout the State of Hawaii.

The proposed DGPS facility will be located in the vicinity of the former Pahoa Airstrip with the Keaau-Pahoa road serving as the permit area's west boundary.

On November 17, 2000, the Board of Land and Natural Resources, Department of Land and Natural Resources, State of Hawaii ("BLNR"), approved the Set Aside and Issuance of Construction Right-of-Entry to the USCG for establishing the

proposed DGPS Site at Keonepoko Nui, Pahoia, Puna, Hawaii, TMK No: 1-5-010:portion of 3. The BLNR recommended that an executive order setting aside the subject lands to the Applicant subject to specific terms and conditions be issued by the Governor of the State of Hawaii.

On August 24, 2001, a public hearing on SP01-396 was conducted by the Planning Commission. Commander Frederick Wright and Chief Warrant Officer 4 Louis Frey of the USCG provided testimony on behalf of the Applicant. There was no public witness testimony.

Thereafter, the Planning Commission voted to send a favorable recommendation to the State Land Use Commission ("Commission" or "LUC") for SPP 01-018 ("LUC Docket No. SP01-396" or "SP01-396") subject to twelve conditions.

On September 10, 2001, the Planning Commission's findings and decision as well as a copy of the record of the Planning Commission's proceedings were received by the Commission.

On September 17, 2001, the Planning Department provided the Commission with additional information, which LUC staff certified as completing the record and application.

The Commission has jurisdiction over the Application. Section 205-6, HRS, and Sections 15-15-95 and 15-15-96, HAR, authorizes the Commission to approve special permits for areas greater than 15 acres where application for commission

approval is made within 60 days after the decision is rendered on the application to the Planning Commission.

On October 4, 2001, the Commission held a hearing on SP01-396 at its meeting in Hilo, Hawaii. Commander Frederick Wright and Chief Warrant Officer 4 Louis Frey appeared on behalf of the Applicant. Alice Kawaha appeared on behalf of the Planning Department. Dina Pascua, Merlin Keaulana-Dyball and Larry Volz provided testimony expressing interest in reviving the site of the former Pahoia Airstrip for general aviation purposes.

The County requested the deletion of Condition No. 2 imposed by the Planning Commission because of redundancy with Condition No. 9 and subsequent renumbering.

The Applicant has agreed to implement appropriate measures recommended by the Fish and Wildlife Service, Department of Interior, United States of Hawaii, to safeguard the Newell Shearwater or A'o that may nest and habitat near the Permit Area.

Conformance with the Special Use Permit Criteria

The Commission found that based upon information in the record of the Planning Commission's decision, the proposed use has met the special use permit criteria pursuant to Section 15-15-95 (b), HAR.

1. The Commission found that the land is unsuited for agricultural uses based on the following: i) The Permit Area does not have a history of agricultural

use; ii) The soils in the Permit Area are classified as "E" by the Land Study Bureau, and unclassified by the Agricultural Lands of Importance to the State of Hawaii; iii) The Property is unsuited for agricultural cultivation due to the presence of the abandoned runway of the old Pahoia Airstrip; and iv) The DGPS facility will not displace nor diminish any agricultural potential in the Permit Area or surrounding areas.

2. The Commission further found that the proposed project will not impact shoreline, mountain, scenic and open space, archaeological, and marine coastal and ecosystem resources pursuant to the objectives and policies of Chapter 205A, HRS, relating to the Coastal Zone Management Program.

3. The Applicant did not find any evidence of any known traditional and customary native Hawaiian Rights or Practices on the Property as a result of the solicitation of evidence or input.

4. The Permit Area's west and northwest boundaries border the DHHL Maku`u Farm Lots and Hawaiian Paradise Park Subdivision; lands to the east and south are State-owned, including the Pahoia Agricultural Park; and the Keonepoke Homesteads, State-owned lands and the DHHL Maku`u Agricultural Lots to the southwest. The desired use would not adversely affect surrounding property. The project area would be approximately 285 feet away from the Maku`u Farm Lots Subdivision to the north where the closest parcel with a dwelling would be approximately 1,300 feet away from the 150-foot radiobeacon tower.

5. The Applicant proposed to implement visual impact measures that include: using existing and planting of new trees as visual buffers along the Keaau-Pahoa Road; the coloring of the towers to blend in with the skies; and removal of the towers within 120 days of their abandonment.

6. The Applicant will implement measures to mitigate fugitive dust and noise generated during the construction period as required by the Department of Health, State of Hawaii; and safeguard public health and safety from radiofrequency ("RF") radiation exposure using a 40-foot perimeter security fence around the 150-foot radiobeacon tower.

7. The proposed project will not require any additional public services or facilities. Access to the Permit Area will be along the Keaau-Pahoa Road and through a permitted access at the Airstrip as granted by the State. The DGPS facility will not interfere with the County of Hawaii Public Safety System, and the Applicant shall meet all applicable agency requirements, including those of the Federal Communication Commission.

8. Congress has approved funding for the DGPS facility to improve the efficiency of Coast Guard maritime safety activities. The facility will also improve navigation, environmental security and hydrographic surveying.

9. By reason of the foregoing, the proposed use is not contrary to the objectives of Chapters 205 and 205A and the rules of the Commission.

Following discussion by the Commissioners, a motion to approve SP01-396 allowing the establishment of the proposed DGPS facility was made and seconded by the LUC. There being a vote tally of five ayes and zero nays, the motion carried.

DECISION AND ORDER

Having duly considered the complete record of the Application and the oral arguments presented by the parties in the proceeding, and a motion having been made at a hearing conducted on October 4, 2001, in Hilo, Hawaii, and the motion having received the affirmative votes required by Section 15-15-13, HAR, and there being good cause for the motion, the Commission hereby APPROVES the Special Use Permit granted by the Planning Commission to establish a new DGPS facility on approximately 45.9 acres of land within the State Land Use Agricultural District at Pahoa, Puna, Hawaii, identified as TMK No: 1-5-010:portion of 003, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within two (2) years from the effective date of this permit.

3. Construction of the proposed towers, ground plane radials, antennas, equipment shelter, fencing and related improvements shall be completed within two (2) years from the effective date of final subdivision approval.

4. Prior to the start of construction, Final Plan Approval for the proposed 150-foot lattice tower with guy wires and ground plane radials, two 20-foot lattice towers, antennas, equipment shelter, fencing and related improvements shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval and Telecommunication Antennas. Plans shall identify proposed structures, fencing, driveways and parking area associated with the use. Tower and antenna plans shall be stamped by a structural engineer.

5. Within 120 days of the permanent abandonment of the DGPS, the applicant shall remove the towers, ground plane radials, antennas, and accessory structures (including the equipment building and the fence), down to, but not including, the concrete foundation. The applicant shall immediately provide written notification to the Planning Director of the termination of the DGPS and the removal of all structures.

6. 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.

7. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, 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 sufficient mitigative measures have been taken.

8. 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.

9. Comply with the Department of Interior, Fish and Wildlife Services' requirements of Biological Opinion (Log Number 1-2-00-F01).

10. 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.

11. 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 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 Zoning Code.

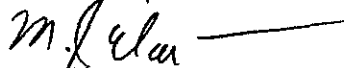
C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

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).

12. Within one year of the issuance of this Decision and Order, written evidence shall be submitted to the Commission with a copy to the Planning Director that the Governor of Hawaii has issued an Executive Order granting Applicant a right of entry to project lands as recommended by the BLNR on November 17, 2000.

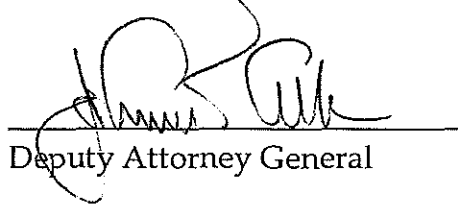
Dated: Honolulu, Hawai'i, October 30, 2001

LAND USE COMMISSION
STATE OF HAWAII

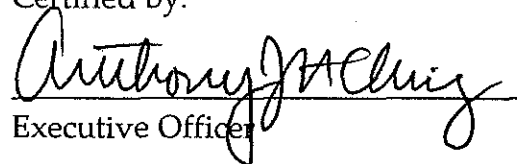


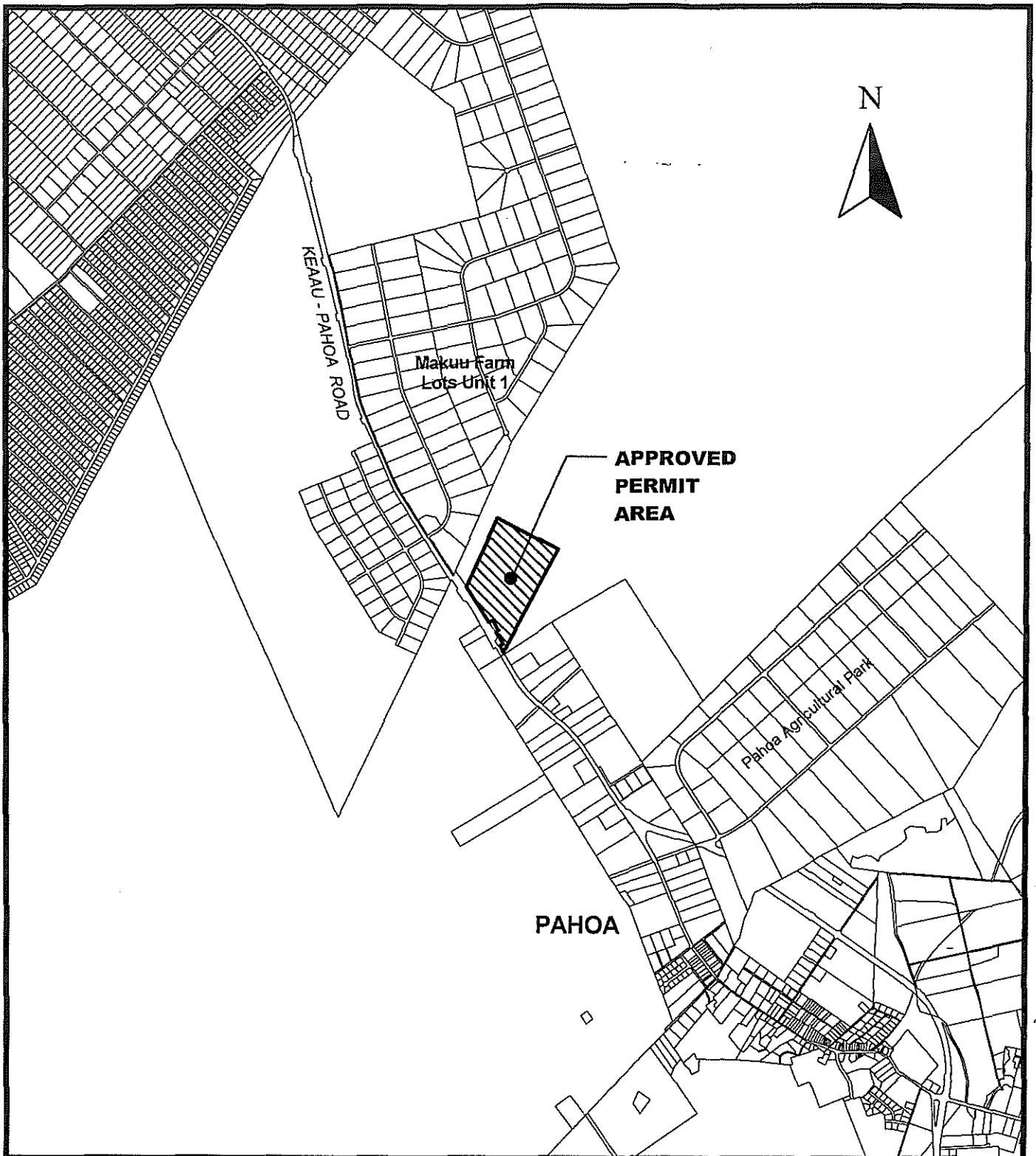
By MERLE A.K. KELAI
Chairperson and Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
October 30, 2001

Certified by:

Executive Officer

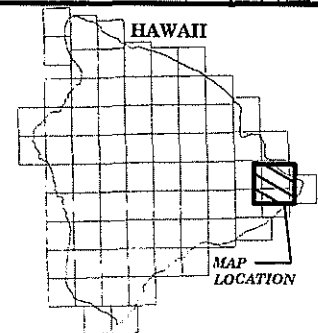


SP01-396 U.S. COAST GUARD

LOCATION MAP

Tax Map Key: 1-5-10: por. 3
Keonepoko Nui, Puna, Hawaii
Scale: 1" = 2,000 ft.

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. SP01-396
)
U.S. COAST GUARD) CERTIFICATE OF SERVICE
)
To Establish a Differential Global)
Positioning System Facility on)
Approximately 45.9 Acres of Land in the)
State Land Use Agricultural District for)
Approximately 45.9 acres of land at Pahoā,)
Puna, Island, County and State of Hawai'i,)
TMK No: 1-5-010:portion of 003)
_____)

CERTIFICATE OF SERVICE

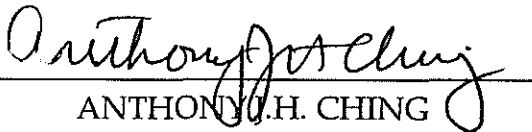
I hereby certify that a copy of the Decision And Order Approving Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. C. M. HANCOCK, representing Petitioner
Assistant Chief, Navigation Systems Branch
Maintenance and Logistic Command Pacific
Coast Guard Island, Building 54
Alameda, California 94051

CERT . CHRISTOPHER YUEN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. LINCOLN ASHIDA, ESQ.
Corporation Counsel
County of Hawaii
The Hilo Lagoon Center
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 30th day of October 2001.



ANTHONY H. CHING
Executive Officer