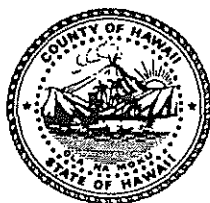


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

7000 0600 0024 2904 2282

NOV 28 2001

Mr. Gerald Park
1400 Rycroft Street, Suite 876
Honolulu, HI 96814-3021

Dear Mr. Park:

Special Permit Application (SPP 01-021)

Applicant: Hawaii Electric Light Company

Request: Allow the Existing Telecommunication Facilities Consisting of HELCO's Two 100-Foot Lattice Towers and Co-Located Facilities of the State of Hawaii and the County of Hawaii, Sun Cablevision's 65-Foot Lattice and 20-Foot Guyed Towers, GST Telecom's 100-Foot Lattice Tower, Antennas, Equipment Buildings and Accessory Structures

Tax Map Key: 7-2-2:13

The Planning Commission at its duly held public hearing on October 29, 2001, voted to approve the above-referenced application. Special Permit No. 1126 is hereby issued to allow the existing telecommunication facilities at Kaupulehu, consisting of HELCO's two 100-foot lattice towers and co-located facilities of the State of Hawaii and the County of Hawaii, Sun Cablevision's 65-foot lattice and 20-foot guyed towers, GST Telecom's 100-foot lattice tower, antennas, and related equipment buildings and accessory structures on approximately 0.23 acre of land in the State Land Use Agricultural District. The property is located at an elevation of approximately 3,400 feet on the lower slopes of Hualalai, mauka of Mamalahoa Highway, Kaupulehu, North Kona, Hawaii.

Approval of this request is based on the following:

Hawaii Electric Light Company (HELCO) is requesting to legitimize the existing telecommunication facilities at Kaupulehu, consisting of HELCO's two 100-foot lattice

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towers and co-located facilities of the State of Hawaii and the County of Hawaii, Sun Cablevision's 65-foot lattice and 20-foot guyed towers, GST Telecom's 100-foot lattice tower, antennas, and related equipment buildings and accessory structures. This site has been utilized since 1973.

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 for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The subject property is located within the County's Agricultural (A-20a) zoned district and designated Agricultural by the State Land Use Commission. The subject property has been cleared and the telecommunication facilities established from 1973 to 1989. There is a Verizon telecommunication site approximately 547 feet makai of the project site. Ranching use surrounds both of these properties. Soil is classified as "E" or Very Poor and the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map considers it "Unclassified." The project site covers only 0.23 acre; consequently, the telecommunication use will not displace any of the existing ranching uses nor adversely affect the agricultural potential of the surrounding area.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program. The intent of the Coastal Zone Management Program is to guide and regulate public and private uses in the Coastal Zone Management Area with respect to recreational resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, and beach protection. Although the entire island lies within the Coastal Zone Management Area, the property is located approximately six miles from the nearest coastline. There is no designated public access to the mountain areas over the property. The subject property is in the middle of ranching use. As such, the telecommunication facilities will not have any adverse impacts on recreational, including access to and along the shoreline, mountain access, coastal ecosystems and marine coastal resources. Further, the property will not affect any coastal hazards nor beach erosion. Due to its location and distance from the shoreline, the existing facilities do not significantly obstruct any ocean (makai) view. Located at an elevation of 3,400 feet, the top of the towers are visible from open areas along Mamalahoa Highway. However, the intermittent stands of trees and brush and the topography along said highway do provide some screening of the facilities from public view. These facilities have been in existence since 1973 and the Planning Department has not received any complaints. Based on the above, it is determined that the telecommunication facilities do not significantly affect any view plane from Mamalahoa Highway. Given the fact that the facilities have already been established, it is unlikely

that any cultural, archaeological or botanical resources will be affected. 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 desired use will not adversely affect the surrounding properties. The telecommunication facilities were developed between 1973 – 1989 on 0.23 acre of land. The subject property is surrounded by ranching use on 7,065 acres of land. Zoning for this surrounding parcel is Agricultural (A-20a) and the State Land Use (SLU) designation is Agricultural and Conservation. This parcel is leased by B. P. Bishop Estate to Hualalai Land Corporation for the ranching purpose. A Verizon telecommunication site consisting of 2 lattice towers with microwave dishes, one 60-foot monopole with antennas, a dish antenna near ground level and equipment buildings is located approximately 547 feet makai of the project site. The closest dwellings are located 1.2 miles makai, along Mamalahoa Highway. The tops of the towers are visible from various open areas along Mamalahoa Highway. However, the stands of trees and shrubs as well as the topography along the highway do minimize the visual impacts. In addition, the Planning Department has not received any written objections or comments from the surrounding landowners or the community on the telecommunication facilities use.

The towers are the natural gray color of galvanized steel. To avoid any unnecessary visual impact due to non-use of the towers, an abandonment clause is included as a condition, to require removal of any tower within 120 days after permanent abandonment.

As the towers already exist, the only construction impact would be the replacement of two existing standard microwave antennas with two new high-performance microwave antennas on HELCO's "new" tower. Traffic is minimal, as service personnel will only visit the site for maintenance. Further, due to its remote location, it is not anticipated that noise from air conditioners or generators will adversely impact the surrounding properties. In regards to radio frequency emissions, the applicant would be required to comply with the requirements of the Federal Communications Commission. Furthermore, Section 704 of the Federal Telecommunications Act of 1996 recognizes the absence of health hazards from cellular radio wave transmissions and accordingly prohibits local authorities from regulating the placement of cellular towers based on environmental effects of radio frequency emissions as long as these towers comply with the Federal Communication Commission's guidelines. As the telecommunication towers have already been constructed, compliance with these guidelines will be required as part of Final Plan Approval review to ensure that there are no adverse impact to the surrounding properties.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

As previously mentioned, the easements are privately maintained and the use of the site does not require public agencies to provide any improvements. Construction and improvements to the telecommunication facilities occurred between 1973 – 1989; and as such, the use will not require additional infrastructures and services. Access to the project site is from Mamalahoa Highway onto the easements. The first easement is a 10-foot wide partially paved/graveled 1.2 mile road within the 60-foot road easement. The second easement, 640-foot long, is a 12-foot wide gravel road within the 40-foot easement. This site will require only periodic maintenance and repair and as such, access to the project site is deemed adequate to accommodate the anticipated traffic. Water is not available and not required for the facilities use. Electrical and telephone services are already available to the project site, with some vendors utilizing back-up generators and a propane tank. Fire, police and emergency services are available from Waimea or Kona. Further, the existing facilities have not interfered with the County of Hawaii Public Safety System located on the "old" HELCO tower. Finally, the applicant will be required to meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In 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.

Section 205-4.5 of Chapter 205 lists permitted uses within the agricultural districts. Among others, the permitted uses include "Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;" and "Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agricultural land." While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within agricultural districts, and including wind energy facilities, Section 205-4.5 does not specifically permit telecommunication towers. In recent years, however, technological advances in the telecommunications industry have grown considerably and services to the general public have become widespread. This is especially true in rural areas where traditional land-line telephone service is sometimes unavailable due to the high cost of installing power poles and lines. The growth of the cellular telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunication towers

and antennas. These telecommunication facilities, constructed from 1973 to 1989, provide a consolidated site for five towers and numerous co-located antennas and microwave dishes. HELCO constructed their microwave system to link Waimea, South Kohala and Kona areas with East Hawaii. It is also essential for the County of Hawaii's mobile radio voice system that services police and fire agencies. In addition, the Information Communication and Services Division (ICSD) of the State of Hawaii and the three companies: Hawaiian Electric Company, Maui Electric Company, and HELCO have a joint use agreement in place regarding the shared use of telecommunication sites at Puu Kilea, Lanai; Haleakala, Maui and Kaupulehu, Hawaii. As part of its mission, the ICSD provides statewide support to the University of Hawaii, Hawaii Interactive Television System by providing facilities and shared use of antennas and feedlines. One antenna is networked to Maui and the second at Humuula. Proposed replacement antennas will allow flexible, high quality end-to-end interactive video capability throughout the UH system thus allowing the University to provide more educational services. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish telecommunication 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 use will not interfere with such uses. The subject property is approximately 0.23 acre in size. The project site is within an area whose soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. As previously mentioned, the land is not classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Although the property is suitable for agricultural uses, it is not being used for that purpose. The site is limited to 0.23 acre and thus will not seriously impair the agricultural productivity or potential or the surrounding property, nor will it seriously or significantly deplete the County of Hawaii's agricultural land resource.

The use will not substantially alter or change the essential character of the land and the present use. As previously mentioned, the telecommunication facilities were established on the project site from 1973 to 1989. There are five towers and numerous accessory structures. The facilities have altered the property visually, however, it has not substantially altered or changed the essential character of the surrounding land nor the existing uses on the surrounding property. Further, no objections were received from the community. Should there be any new land disturbance, such as grading or new equipment buildings, the land alteration shall not affect any lava feeding channels that may be present on the property site, unless a geologist is hired to determine the presence or absence of xerolithis associated with the Ka'upulehu lava flow. A condition of approval has been included to address this concern.

The use is consistent with the following goals, policies and standards of the General Plan. The subject property falls within an area designated as Extensive Agriculture on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The zoning for the property is Agricultural (A-20a) and the development falls within the State Land Use Agricultural District. In order to establish telecommunication facilities on the subject property, a Special Permit would be required. The existing facilities would complement and be consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the County.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County of Hawaii shall encourage the research, development and implementation of advanced technologies and processes in existing and potential economic endeavors.

Public Utilities

- Ensure that adequate, efficient and dependable public utility services will be available to users.
- To have public utility facilities which are designed to fit into their surroundings or concealed from public view.
- Maximize efficiency and economy in the provision of public utility services.
- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- Public utility facilities shall be designed so as to complement adjacent land uses and shall be operated so as to minimize pollution or disturbance.
- Improvement of existing utility services shall be encouraged to meet the needs of users.

Natural Beauty

- Protect, preserve and enhance the quality of area endowed with natural beauty, including the quality of coastal scenic resources.
- Protect scenic vistas and view planes from becoming obstructed.
- Criteria of safeguards of natural beauty shall be provided in the design review of developments so as to blend and harmonize man-made elements with their natural setting.

Based on the above considerations, the approval to allow the existing telecommunication facilities at Kaupulehu, consisting of HELCO's two 100-foot lattice towers and co-located facilities of the State of Hawaii and the County of Hawaii, Sun Cablevision's 65-foot lattice and 20-foot guyed towers, GST Telecom's 100-foot lattice tower, antennas, and related equipment buildings and accessory structures would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

1. The applicant, its successors or assigns shall comply with all of the stated conditions of approval.
2. Final Plan Approval for the existing telecommunication facilities at Ka'upulehu, consisting of HELCO's two 100-foot lattice towers and co-located facilities of the State of Hawaii and the County of Hawaii, Sun Cablevision's 65-foot lattice and 20-foot guyed towers, GST Telecom's 100-foot lattice tower, antennas, and related equipment buildings and accessory structures shall be secured from the Planning Director in accordance with the Zoning Code sections pertaining to Plan Approval and Telecommunication Antennas within six (6) months from the effective date of this permit. Plans shall identify existing and/or proposed structures, fire protection measures, driveways and parking area associated with the use. Tower and antenna plans shall be stamped by a structural engineer.
3. The University of Hawaii Information Technology Services Division shall be allowed to replace two existing microwave antennas prior to applicant receiving Final Plan Approval.
4. Building Permit No. 891835 and Building Permit No. 895540 shall be final within six (6) months from the effective date of this permit.
5. Co-location or any expansion of the towers and related facilities within the facilities site may be allowed within the parameters of the towers height and envelope as approved by the Planning Commission upon securing Final Plan Approval.
6. Written evidence of frequency analysis shall be submitted to the Planning Director with a copy to the Police Department that the telecommunication facilities shall not interfere with the County of Hawaii Public Safety Radio System.
7. If the applicant requests any new land disturbance, such as grading or new equipment buildings, the land alteration shall not affect any lava feeding channels that may be present on the property site, unless they hire a geologist to conduct a geological survey of the area to determine the presence or absence of xeroliths associated with the Ka'upulehu lava flow. If they are present, protective measures shall be taken.

8. Within 120 days of the permanent abandonment of any tower, the respective owner of the tower to be abandoned shall remove the tower and its antenna(s) and/or accessory structures down to, but not including any concrete foundation. The respective owner of the tower to be abandoned shall immediately provide written notification to the Planning Director of the termination of any telecommunication tower and related improvements and/or the removal of all accessory structures.
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. 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 of the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, 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 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.

Mr. Gerald Park
Page 10

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

Sincerely,

A handwritten signature in cursive script that reads "Geraldine M. Giffin". The signature is written in dark ink and is positioned below the word "Sincerely,".

Geraldine M. Giffin, Chairman
Planning Commission

Lhelcospp01-021

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Clyde Nagata