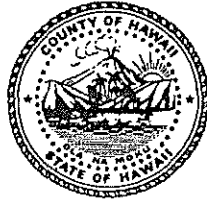


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

7000 0600 0024 2903 6649

JAN 07 2002

Nextel Partners
3375 Koapaka Street, Suite D-155
Honolulu, HI 96819

Gentlemen:

Special Permit Application (SPP 01-028)
Applicant: Nextel Partners (Napoopoo/Cantor Antennas)
Request: Establishment of Two 10 to 50 Foot Telecommunication
Antennas on an Existing Farm Structure and Appurtenant Equipment
Tax Map Key: 8-3-4:Portion of 8

The Planning Commission at its duly held public hearing on December 6, 2001, voted to approve the above-referenced application. Special Permit No. 1130 is hereby issued to allow the establishment of two 10 to 15-foot telecommunication antennas on an existing farm structure and appurtenant equipment on approximately 12,650 square feet of land within the State Land Use Agricultural District. The property is located at the intersection of Napoopoo Road/Middle Keei Road, Portion of Kahauloa 2nd-Keei 2nd, South Kona, Hawaii.

Approval of this request is based on the following:

Nextel is requesting to establish two 10 to 15-foot telecommunication antennas on an existing farm structure and appurtenant equipment. Nextel proposes to initiate its service in the Napoopoo area and to expand along the South Kona portion of the Island.

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

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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. This particular subject property is situated within the County's Agricultural (A-5a) zoned district and within the State Land Use Agricultural District. The subject property is an existing plumeria farm with two dwellings, a garage and a nursery building. The antennas will be located within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map considers the property as "Other Important Agricultural Land." The licensed area for the antennas and appurtenant equipment covers an approximately 12,650-square foot area of a 9.9-acre parcel. The proposed improvements will not displace any of the existing 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.

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 one mile from the nearest coastline. There is no designated public access to the mountain areas over the property. The subject property is adjacent to an existing mix of residential and agricultural uses. The proposed development will not impact any 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. The 10 to 15-foot antennas will extend approximately 10 feet above the existing 20+foot high nursery building. The light-blue antennas will not be significantly noticeable from the surrounding areas and the equipment building will be shielded from view by the nursery building. Therefore, due to its low profile and scale, the proposed antennas and equipment building will not significantly obstruct any ocean (makai) views or significantly affect visual resources in this location. Given the fact that the parcel has been previously cleared and developed with structures, 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 shall not adversely affect the surrounding properties. The 10 to 15-foot antennas attached to the nursery building and related improvements are situated on a 12,650 square foot portion of a 9.9-acre parcel of land. The existing plumeria farm

has two dwellings, a garage and a nursery building. There are scattered dwellings on the adjacent lands to the north, east and south, which are zoned Agricultural (A-1a and A-5a). To the adjacent parcel on the north is the Hawaiian Host's Visitor's Center. To the west is the B. P. Bishop Estates' 262-acre parcel which is vacant. The antennas would be visible to some nearby residents and from various points along Napoopoo Road. However, it is located approximately 150 feet in (southeast) from Napoopoo Road, which does minimize visual impacts from Napoopoo Road.

The antennas will be of fiberglass and light-blue in color. To avoid any unnecessary visual impact due to non use of the antennas, an abandonment clause is included as a condition, to require removal of the antennas within 120 days after permanent abandonment.

During the construction phase of the project, short-term impacts such as noise, traffic and dust may be slightly elevated. However, the applicant will comply with Department of Health regulations to mitigate the effects of dust and noise. Once construction is completed, traffic is expected to be minimal as service personnel will only visit the site for maintenance and occasional testing. Once it is fully operational, the only noise impacts associated with the operation of the antennas will be from the air conditioning units installed on the equipment building. However, the resulting noise from the air conditioning units will be significantly less noisy than other equipment used on the subject property for farming operations.

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 limits local authorities from regulating the placement, construction and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions, as long as these towers comply with the Federal Communication Commission's guidelines. As the antennas have been designed to and will be expected to comply with the above guidelines, no significant adverse impact to surrounding properties is expected.

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 Napoopoo Road, which is a County road with a 50-foot right-of-way and paved to an approximate width of 18 feet. The antennas will be mounted onto the southern wall of the existing nursery building. As the antennas are unmanned, traffic is minimal, and the existing driveway leading to the leased site on the subject property is adequate. Fire, police and emergency services are available at Captain

Cook. Further, the Police Department has stated that Nextel's 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. 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, 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, 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. According to the applicant, the subject antennas will connect to the USC of Hawaii 3, Inc. tower (SPP No. 1062 approved on June 2, 2000) at Kealahou. The proposed antennas are to expand Nextel's telecommunication infrastructure and enable them to provide service to the South Kona area, including Kealahou/Napoopoo and Honaunau. A Hawaii Supreme Court ruling has determined that a Special Permit would be the appropriate means to establishing 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 proposed use will not interfere with such uses. The subject property is zoned Agricultural (A-5a) and is an existing plumeria farm. 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 Other Important Agricultural Land. The antennas and appurtenant equipment will be limited to 12,650 square feet of land area and thus will not seriously

impair the agricultural productivity or potential of the subject 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. The two 10 to 15-foot tall antennas site is limited to a 12,650-square foot portion of a 9.9-acre property that is presently used as a plumeria farm. These antennas will extend a maximum of 10 feet above the roof line of the existing 20+foot high nursery building. However, this is below the 35-foot and 45-foot maximum height limit, respectively, for residential and non-residential structures in the County's Agricultural zoned district. Therefore, these antennas will not substantially alter the property visually. In addition, it will not substantially alter or change the essential character of the land nor the existing uses on the property. Further, no objections were received from the community.

The request will not be contrary to the General Plan. The subject property is within an area designated as Orchards/Intensive Agricultural by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The antennas site will be limited to a 12,650-square foot portion of land, and thus does not preclude the other portions of the property from continuing to be used for agricultural purposes by the owner. 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 to establish two 10 to 15-foot telecommunication antennas on an existing farm structure and appurtenant equipment 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.

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 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. Construction of the proposed telecommunication antennas shall be completed within two (2) years from the effective date of this permit.
3. Prior to the start of construction, Final Plan Approval for the proposed two 10 to 15-foot telecommunication antennas and appurtenant equipment 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, fire protection measures, driveway and parking area associated with the use. The antenna plans shall be stamped by a structural engineer.
4. Co-location or any expansion of the antennas and related facilities within the antennas site may be allowed within the parameters of the antennas height and envelope as approved by the Planning Commission.
5. Within 120 days of the permanent abandonment of the antennas, the applicant shall remove the antennas and its accessory structures (including the equipment building), down to, but not including, the concrete foundation or in the alternative, provide written notice from the lessee that the accessory building may remain as a farm building. The applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication antennas and related improvements and the removal of required 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 Communications Commission.
9. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a final written status report to the Planning Director.
10. 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 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.

Nextel Partners

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Geraldine M. Giffin".

Geraldine M. Giffin, Chairman
Planning Commission

Lnextel01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Gregory Mooers