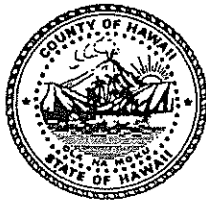


Harry Kim  
Mayor



Geraldine M. Giffn  
Chairperson

## County of Hawaii

### PLANNING COMMISSION

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

CERTIFIED MAIL  
7000 0600 0024 2903 7103

MAY 17 2002

Mr. Matthew Tobias  
3375 Koapaka Street, Suite D-155  
Honolulu, Hawaii 96819

Dear Mr. Tobias:

Special Permit Application (SPP 02-009)  
Applicant: NEXTEL Partners, Inc.  
Request: Establishment of a 35-foot Telecommunication  
Monopole with Antennas and Equipment Shelter  
Tax Map Key: 6-2-001:Portion of 023

The Planning Commission at its duly held public hearing on April 19, 2002, voted to approve the above-referenced application. Special Permit No. 1148 is hereby issued to establish a 35-foot high telecommunication wood utility pole with antennas, and related appurtenant equipment buildings and structures on approximately 750 square feet portion of 6,595 acres of land situated in the State Land Use Agricultural District. The project area is located approximately 134 feet west (makai) of Kohala Mountain Road and adjacent to the existing SprintCom and Puu Makela Radio Station sites, Kawaihae 2nd, South Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting to establish a non-manned telecommunication facility consisting of a 35-foot high telecommunication wood utility pole with nine light-gray 4-foot panel antennas, an equipment shelter and a generator. The proposed telecommunication facility will be completely enclosed by a 6-foot high chain link fence. The proposed project will expand Nextel's coverage along the northwest section of the Big Island.

Presently, Nextel has telecommunication facilities in Napo'opo'o, Kealakekua, Kailua-Kona, Kaloko, Hualalai, Kamuela, Honoka'a, Paauilo, Lolehaehae, Pepe'ekeo,

018917-AD  
MAY 17 2002

Saddle Road, North Hilo, South Hilo and Keaau. Expansion plans include providing service to North and South Kohala with three (3) sites in Hawi, South Kohala and the subject site. Other sites planned are at Kulani Cone, Pahoa, Pahala and Ka'u, which will help bridge Hilo to Kona along Highway 11. A site within the immediate area of the Puu Makela Radio Station was needed from a network design standpoint. The proposed facility will extend Nextel's coverage in North and South Kohala, from Waikoloa to possibly Mahukona. The proposed site will handoff to the existing Kamuela facility and eventually two other proposed facilities in South Kohala and Hawi. This will fulfill Nextel's short-term goal of providing seamless telecommunications coverage along the northwest section of the Big 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 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-40a) zoned district and within the State Land Use Agricultural District. The subject property has been improved with the Puu Makela Radio Station, the Verizon Hawaii Central Office, the Sprint PCS antenna facility and the VoiceStream Wireless antenna facility. Each antenna facility includes a 35-40 foot monopole with antennas mounted at the top of each monopole. There are no residences on the subject property. The parcel is characterized as pasture land and primarily used for cattle grazing. Other than the existing and proposed telecommunication facilities site, this grazing agricultural use will remain. The proposed use will be located within an area whose soils are classified as "D" or Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map has not classified the property. The property is primarily in pasturage and the proposed use will encompass 750 square feet of land but will not displace any large area 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.** Given the fact that the location of the proposed site is immediately adjacent to existing telecommunication facilities, it is unlikely that any archaeological features are present on the project site. Although *Acacia koa* (Koa) and *Melicope hawalensis* (Alani) are located in the vicinity, neither was observed in the immediate area of the project site. The dark-rumped petrel, a federal endangered species, was expected to occur within this vicinity. However, no artificial lighting that could possibly disorient these birds are

proposed, unless an intermittent flashing light is required in accordance with FCC or FAA regulations. Further, the State Historic Preservation Division stated that they believe no historic properties will be affected since previous grubbing/grading has altered the land. According to the applicant, there is no designated public access to the mountain areas or to the shoreline through the subject property. The project site is located more than six (6) miles from the nearest shoreline and is in close proximity to existing pasturage and vacant lands. The proposed development will not impact any recreational resources, 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. The proposed telecommunication wood utility pole with antennas may be visible from certain points along the Kohala Mountain Road, but it is located near a curve in the road where a prolonged makai view will not occur. Due to its location and distance from the ocean, it is not anticipated that the proposed telecommunication wood utility pole would significantly obstruct any ocean (makai) views. 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 proposed 35-foot high telecommunication wood utility pole with nine 4-foot panel antennas and related improvements will be situated on approximately 750 square feet portion of a 6,595-acre parcel of land. The nearest residence is located three (3) miles away. According to the applicant, the proposed telecommunication wood utility pole with antennas may be visible from certain points along the Kohala Mountain Road, but it is located near a curve in the road where a prolonged makai view will not occur. The proposed telecommunication wood utility pole was chosen to blend in with the existing utility lines. In addition, the proposed pole will not be any higher than the existing 35-40-foot telecommunication monopoles.

Although co-location is encouraged, it is understandable, that at a certain point, the number of antennas/panels placed on a 35-foot pole could have a visual impact. Therefore, it is recommended that plan approval be required for co-location and that the Planning Director may refer the request for additional antennas back to the Planning Commission for review and approval. Further, to avoid any unnecessary visual impact, an abandonment clause is included as a condition, to require removal of the wood monopole within 120 days after permanent abandonment.

The applicant will be required to comply with 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 monthly maintenance. It is anticipated that construction noise will have a minimal

impact beyond the project site. There will be an air-conditioned equipment shelter and a back-up generator. However, it is not anticipated that noise will adversely impact surrounding properties.

In regards to radio frequency emissions, the applicant would be required to comply with the requirements of the Federal Communications Commission (FCC). 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 such facilities comply with the FCC's guidelines. As the proposed telecommunication wood utility pole has 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 and school improvements, and police and fire protection.** Only electrical service is required for the proposed use and this is already available to the property. Access to the project site is from the Kohala Mountain Road and onto a private 9-foot wide concrete driveway that ends at the existing telecommunication facilities. As traffic is anticipated to be minimal, the roadway leading to the leased site on the subject property is adequate. Since the proposed facility will be unmanned, water and wastewater systems are not required for the facility. Further, the applicant and the Police Department have stated that the proposed telecommunication 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 and the Federal Aviation Administration.

**Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.** In the 1960s and 1970s, when the State's agricultural district boundaries and regulations were first established and subsequently amended pursuant to Chapter 205, Land Use Commission, Hawaii Revised Statutes, cellular telephone service to the general public was unknown and not available, and the predominant means of audio communication was by traditional telephone service, relying on telephone and power poles and lines. 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. 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.

The proposed telecommunication wood utility pole with antennas is part of the expansion of Nextel's telecommunication infrastructure and will enable them to provide seamless telecommunications coverage along the northwest section of the Big Island. 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.** As previously stated, the Puu Makela Radio Station, the Verizon Hawaii Central Office, the Sprint PCS antenna facility and the VoiceStream Wireless antenna facility are located immediately adjacent to the project site. SprintCom's 35-foot high telecommunication wood pole, approved last year, is located on the southeast corner of the project site. The remaining area is in pasture use and will continue to be used as such. The proposed telecommunication facility will be limited to 750 square feet of land area. Thus, the proposed project 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 subject property and its surrounding area have been in pasture use for many years. As previously stated, the proposed telecommunication facility will encompass about 750 square feet of land and will be located immediately adjacent to the existing telecommunication facilities which was initially established in 1979. The State Historic Preservation Division stated that they believe no historic

properties will be affected since previous grubbing/grading has altered the land. However, should any unidentified sites or remains be discovered during the land clearing or construction stages, our standard condition, relating to cease work in the area, shall be included as a precautionary measure. Finally, as no valued cultural, historical or native resources nor any traditional and customary Native Hawaiian rights were practiced in the area, it is also not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

**The request will not be contrary to the General Plan.** The subject property is within an area designated as Orchards on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The project area is not listed as an example of Natural Beauty. 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.

#### 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.

- 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.

The proposed telecommunication facility would also be implementing the following Hawaii State Plan goals and objectives of Chapter 226, Hawaii Revised Statutes.

Economy---Information Industry

- (b) To achieve the information industry objective, it shall be the policy of this State to:
- (1) Encourage the continued development and expansion of the telecommunications infrastructure serving Hawaii to accommodate future growth in the information industry;

Facility Systems---telecommunication

- (b) To achieve the telecommunications objective, it shall be the policy of this State to ensure the provision of adequate, reasonably priced, and dependable telecommunications services to accommodate demand.
- (c) To further achieve the telecommunications objective, it shall be the policy of the State to:
- (1) Facilitate research and development of telecommunications systems and resources;
  - (2) Encourage public and private sector efforts to develop means for adequate, ongoing telecommunications planning;
  - (3) Promote efficient management and use of existing telecommunications systems and services; and
  - (4) Facilitate the development of education and training of telecommunications personnel.

Based on the above considerations, the approval of a proposed 35-foot high telecommunication wood utility pole with antennas and related appurtenant equipment buildings and structures 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, its successors or assigns shall be responsible for complying with all 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 telecommunication facility shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(3), 25-2-72, 25-2-74 and 25-4-12. Plans shall identify existing and proposed structures, fencing, driveway, and parking area, associated with the use. The wood monopole and antenna plans shall be stamped by a structural engineer.
4. Co-location or any expansion of the wood monopole and related facilities within the site may be allowed within the parameters of the monopole height and envelope as approved by the Planning Commission upon securing Final Plan Approval. However, the Planning Director shall determine during the Plan Approval process, as to whether the request for co-location shall have significant visual impact that it shall require review by the Planning Commission.
5. Within 120 days of the permanent abandonment of the wood monopole, the applicant shall remove the monopole and its 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 wood monopole and related improvements 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.



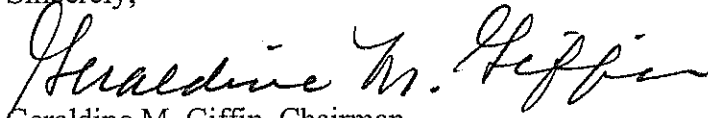
7. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources--Historic Preservation Division (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 laws, rules, regulations and requirements of the affected agencies for the proposed development, including the Federal Aviation Administration and 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 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, its successors, or assigns and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

Mr. Matthew Tobias  
Page 9

Should you have any questions regarding the above, please do not hesitate to contact Eileen O'Hora-Weir or Susan Gagorik of this department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman  
Planning Commission

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