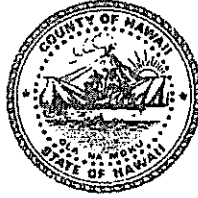


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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CERTIFIED MAIL
7000 0600 0024 2903 9183

NOV 18 2002

Mr. Gregory R. Mooers
Mooers Enterprises
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 02-28)
Applicant: American Tower Corporation
Request: Establish a 150-Foot Monopole Telecommunication Tower With Antennas
and Related Equipment Buildings and Accessory Structures
Tax Map Key: 9-6-5:portion of 1

The Planning Commission at its duly held public hearing on October 17, 2002, voted to approve the above-referenced application. Special Permit No. 1179 is hereby issued to establish a 150-foot high monopole telecommunication tower with antennas, and related equipment buildings and accessory structures on an approximately 10,000 square foot portion of a 51.128-acre parcel situated in the State Land Use Agricultural District. The project site is located northwest of Pahala Town, approximately 90 feet northwest of the Pakalana Street-Huapala Street intersection at Palima, Pahala, Kau, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting to establish a 150-foot high monopole telecommunication tower with antennas and related equipment buildings and accessory structures. The applicant's primary business is the development of co-locatable communication towers for wireless service providers. American Tower Corporation provides both the tower structure for its customer's antennas and the ground space for radio equipment. The facility is capable of co-locating 5 carriers. VoiceStream Wireless

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is the initial client and will be installing their equipment once the proposed tower is permitted and constructed. The objective is to provide the infrastructure necessary to improve wireless coverage within the town of Pāhala and along Māmalahoa Highway from Honuapo towards Volcano. Wireless signals will hand off to the 100' Crown Castle monopole and the 150' AT&T lattice tower about ten miles south above Honuapo. Signals will also hand off north to existing towers on Kulani cone.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i 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 Hawai'i. 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-20a) zoned district and within the State Land Use Agricultural District. The project area will encumber a 10,000 square foot portion of a 51.128-acre parcel. The project site is in a macadamia nut orchard. Approximately 10-15 trees will be removed to allow for the proposed use. This site is located within an area whose soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State Hawai'i (ALISH) Map classifies the property as Other Important Agricultural Land. The proposed improvements do not displace any significant portion of the agricultural uses on the property, diminish the agricultural potential of the area, or adversely affect the agricultural potential of the property and the surrounding area.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. Given the fact that the project site has been previously grubbed and graded for sugarcane cultivation and macadamia nut orchard use, there are no archaeological features and threatened species of plants or animals on the site. There is no designated public access to the mountain areas or to the shoreline over the property. The project site is located approximately 4 miles from the nearest shoreline and is in an area of agricultural use. The development does 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 or beach erosion. The tower may be visible from Pahala Village and the Māmalahoa Highway; however, the monopole structure has a slim profile thereby minimizing the visual impact. Since there are no residences mauka of the subject parcel and due to its location and distance from the ocean, it is not anticipated that the proposed tower would significantly obstruct any 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 150-foot high monopole with antennas and related equipment buildings and accessory structures will be situated on a 10,000 square foot portion of the 51.128-acre parcel of land. The project site is located along the old cane haul road in a macadamia nut orchard. There are no dwellings mauka of the project site, and no objections were received from any surrounding or makai property owners.

An incomplete Petition for Standing in Contested Case Hearing was received. However, subsequent correspondences with the petitioner did not elicit any further submittals.

The 150-foot tower is capable of co-locating five (5) wireless communication carriers. Therefore, it is recommended that plan approval be required for co-locations 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 tower within 120 days after permanent abandonment.

It is anticipated that noise and dust will have minimal impacts at the project site. Generators or air conditioning units may be installed in the equipment buildings by the individual carriers. However, it is not anticipated that noise will adversely impact any residences. In regards to radio frequency emissions, the applicant would require that their wireless carriers 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 tower will be designed to and is 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 and telephone services are required for the use and they are already available to the property. Access to the project site is from County maintained roads onto a paved cane haul road and the parcel's dirt road. As traffic is anticipated to be minimal, the access to the leased site on the subject property is adequate. Fire and police services are available to the project area. Further, the applicant has stated that their system does not interfere with the County of Hawai'i Public Safety System. Finally, the applicant will require their wireless carriers 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 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, Hawai'i 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.

This tower will be constructed to improve wireless coverage within the town of Pāhala and along Māmalahoa Highway from Honuapo towards Volcano. VoiceStream Wireless has already entered into an agreement to locate at this site. Four other carriers can be accommodated on this tower. A Hawai'i 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, most of the subject property will remain in macadamia nut orchard use and can continue to be used for agricultural purposes. The tower and related improvements would be contained within 10,000 square foot of land and enclosed by a chain link fence. Adequate area within the project site has been set aside to accommodate the co-locators' equipment buildings and accessory structures. Only 10 to 15 macadamia nut trees will be removed to allow for the proposed use. Thus, the development will not seriously impair the agricultural productivity or potential of the subject property, nor will it seriously or significantly deplete the County of Hawai'i's agricultural land resource.

The use will not substantially alter or change the essential character of the land and the present use. The proposed 150-foot tower and antennas will be located approximately 900 feet from the Pakalana Street – Huapala Street intersection. The tower may be visible from Pāhala Village and the Māmalahoa Highway; however, the monopole structure has a slim profile thereby minimizing the visual impact. Since this particular site had been cleared for agricultural uses, there are no cultural, archaeological or botanical resources that are affected. However, should any unidentified sites or remains be discovered in the context of future construction, our standard condition, relating to cease work in the area, shall be included as a precautionary measure. Further, as no valued cultural, historical or native resources or 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 Urban Expansion in the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. 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.

Based on the above considerations, the approval of a 150-foot high monopole telecommunication tower with antennas and related equipment buildings and accessory 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. Prior to the start of construction, including co-location of additional carriers, Final Plan Approval for the proposed antennas and related improvements 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, fire protection measures, fencing, driveways, and parking area, and proposed tree planting associated with the use. The tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion of the tower and related facilities within the site may be allowed within the parameters of the tower 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.

4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower 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 telecommunication tower and related improvements and the removal of all structures.
5. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the existing development and any proposed expansion of the existing equipment and facility shall not interfere with the County of Hawaii Public Safety Radio System.
6. 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.
7. Comply with all applicable rules, regulations and requirements of the affected agencies for the proposed development, including the Federal Aviation Administration and Federal Communications Commission.
8. 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.

Mr. Gregory R. Mooers

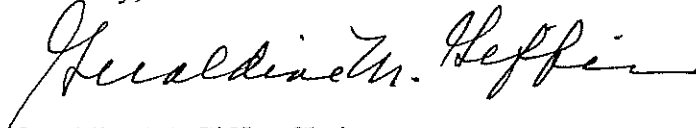
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- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

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

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lamericantowerspp02-028PC

cc: 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
Mr. William Fox/American Tower