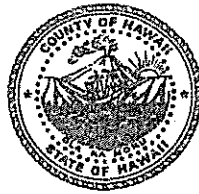


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

March 10, 2003

Donna Y.L. Leong, Esq.
CADES SCHUTTE
A Limited Liability Law Company
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Dear Ms. Leong:

Special Permit No. 1178

**Applicant: Maverick Media of Hawaii LLC fka Yellow Brick
Road LLC**

**Subject: Compliance with Condition No. 2 (Final Plan Approval) and
Condition No. 5 (Police)**

Tax Map Key: 2-8-76:009

This is in response to your letter dated February 21, 2003 regarding Conditions No. 2 and 5 of the above-referenced Special Permit.

Regarding Condition No. 5, you have stated that the existing tower will not interfere with the police radio band since they are on different frequency wave bands. You have also informed the Police Department by a copy of your letter.

Regarding Condition No. 2, you have asked that the tower be considered a nonconforming structure, and not be required to secure Final Plan Approval. This is based on information you submitted stating that an application for Plan approval was submitted on April 3, 1996 for a 300-foot tower. Further, by letter dated April 18, 1996, the Planning Director responded by saying that Plan Approval was not required for a development within the Agricultural District.

We concur with the above justification. At the time of this tower development, the County of Hawaii Zoning Code did not address plan approval or setback requirements for telecommunication towers. The County Zoning Code amendments regarding telecommunication antennas and towers became effective December 7, 1996.

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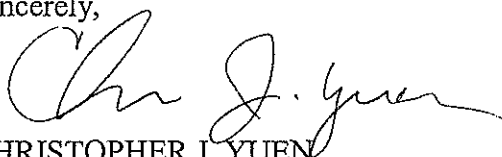
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Donna Y.L. Leong, Esq.
CADES SCHUTTE
A Limited Liability Law Company
Page 2
March 10, 2003

Therefore, we shall consider the existing 300-foot telecommunication tower to be a nonconforming structure which shall not require securing Final Plan Approval as noted in Condition No. 2 of Special Permit No. 1178.

Should you have any questions regarding this matter, please contact Susan Gagorik or Esther Imamura of this department at (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

SG:pak

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2003 FEB 24 PM 2 13
 PLANNING DEPARTMENT
 COUNTY OF HAWAII

February 21, 2003

VIA CERTIFIED MAIL

Donna Y. L. Leong
 Direct Line: (808) 521-9232
 Direct Fax: (808) 540-5026
 E-mail: dleong@ca des.com

Christopher Yuen, Planning Director
 Planning Department
 County of Hawai'i
 25 Aupuni Street, Room 109
 Hilo, Hawai'i 96720-4252

Re: Special Permit No. 1178
 Applicant: Maverick Media of Hawaii LLC fka Yellow Brick
 Road Radio LLC; TMK (3) 1-8-076-009; 'Ola'a, District of Puna
 Island, County and State of Hawai'i

Dear Mr. Yuen:

The purpose of this letter is to respond, on behalf of Maverick Media of Hawaii, LLC fka Yellow Brick Road Radio LLC dba KKO A ("Applicant"), to Condition Nos. 2 and 5 of the County of Hawai'i Planning Commission's Approval and Issuance of Special Permit No. 1178, dated November 18, 2002 ("Special Permit").

Condition No. 2. Condition No. 2 requires Applicant to secure "Final Plan Approval for the proposed antennas and related improvements" from the Planning Director "[f]or the existing development (unless determined to be a nonconforming structure)." We would like to confirm that the existing development is a nonconforming structure based on the following information.

The KKO A tower, antennae and existing improvements (the "Existing Development") were constructed by the fall of 1996 by Li Hing Mui, Inc., a company that previously owned KKO A (the "Original Owner").

By letter dated April 3, 1996, the Original Owner applied to the County of Hawai'i Planning Department (the "Department") for plan approval for the proposed Existing Development. By letter dated April 18, 1996, the then-Director of the Department (the "Former Director"), determined that plan approval was not required. Copies of those letters are attached. Pursuant to and in reliance upon the Former Director's determination, the Original Owner constructed the Existing Development.

At the time the Former Director determined that plan approval was not required and at the time the Existing Development was constructed, the county's zoning code did not have setback requirements specific to telecommunication towers. The Existing Development is in an agricultural district, and the minimum yards required in agricultural districts at the time the

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Christopher Yuen, Planning Director
February 21, 2002
Page 2

Existing Development was constructed were 30 feet for the front and rear yards and 20 feet for side yards.¹ As noted by the Former Director in her letters to Charles Hanson and Harold Goodson dated October 11 and 14, 1996, respectively, the KKOA tower is set back at least 100 feet from each property boundary line. Copies of those letters are attached. Accordingly, the KKOA tower conformed to the minimum yard requirements that were in effect at the time of its construction.

Based on the foregoing, we ask that you confirm that the Existing Development is a nonconforming structure.

Condition No. 5. Condition No. 5 requires Applicant to submit written evidence to the Planning Director with a copy to the Police Department that the Existing Development does not interfere with the County of Hawai'i Public Radio System.

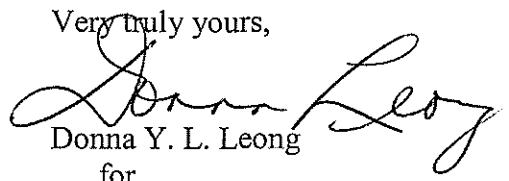
As stated in the special permit application, the Existing Development will not interfere with the police radio band because the police radio is on different frequency wave bands and all of the receiving devices have filter equipment. The police radio band is at the 450-megahertz frequency. Applicant's radio antennae operates at the 107.7-megahertz frequency. The cellular antennae operate in the ultra-high frequency radio wave band, between 824 to 2,400 megahertz. Accordingly, as the radio wave bands are at markedly different radio wave frequencies, KKOA's and the co-located cellular transmissions should not interfere with the police department's radio system.

We are so informing the County of Hawai'i Police Department by copy of this letter, along with a copy of the special permit application and relevant attachments thereto.

Other Conditions. Applicant acknowledges conditions numbered 1, 3, 4, 6 and 7 of the Approval. Please confirm that we have satisfied all Special Permit Conditions as of this date.

Please acknowledge your receipt of this letter by file-stamping the enclosed copy of this letter and returning the same to me in the enclosed envelope. Please let me know if you require additional information.

Thank you for your consideration of this request.

Very truly yours,

Donna Y. L. Leong
for
CADES SCHUTTE
A Limited Liability Law Company

attachments

cc: General Manager, Maverick Media of Hawaii LLC
Acting Police Chief, Police Department, County of Hawai'i

¹ The minimum yard requirements that are currently applicable to telecommunication towers did not become effective until December 1996, after the tower was constructed.

Christopher Yuen, Planning Director

February 21, 2002

Page 3

cc addresses:

Mr. Philip Brewer
Maverick Media of Hawaii LLC
913 Kaneolehua Avenue
Hilo, Hawai'i 96720

Mr. Lawrence K. Mahuna, Acting Police Chief
Police Department
County of Hawai'i
349 Kapi'olani Street
Hilo, Hawai'i 96720-3998

bc: Taya Naruse, Esq.

Paul Banks

IMANAGEDB:460674.2

SANDRA PECHTER SCHUTTE

ATTORNEY AT LAW

101 Aupuni Street, Suite 1014A
Hilo, Hawaii 96720
Telephone: (808) 969-7331
Fax: (808) 934-9819

April 3, 1996

Virginia Goldstein
Planning Director
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Li Hing Mui, Inc.
"KKOA-FM" Radio Tower Site
Olaa Reservation Lots, Olaa, Puna, Hawaii
Tax Map Key No.: (3) 1-8-76:9

Dear Ms. Goldstein:

On behalf of my client, Li Hing Mui, Inc., submitted herewith is an application for plan approval of the proposed KKOAFM radio tower site on a portion of the above-referenced property.

The facility will consist of a 300' high radio antenna and an unmanned communications equipment structure. Two copies of the site plan depicting the location of the improvements on the property and sections showing the elevations of the tower are included as part of this application. Also enclosed is a copy of Tax Map Key: (3) 1-8-76 with the location of the parcel depicted.

It should be pointed out that the tower has been sited on a portion of the 5.344 acre parcel with due regard for boundary setbacks so that the tower would be contained within the parcel in the event of an unforeseen accident which would cause the tower to collapse.

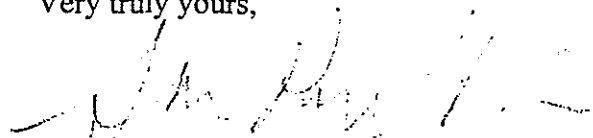
An application has been submitted to the FCC for authorization to utilize the proposed tower for radio communication transmission and my client anticipates receiving the required approval in the near future.

Virginia Goldstein
April 3, 1996
Page Two

Based upon my review of Section 205-4.5(7), Hawaii Revised Statutes, it is my understanding that the proposed antenna and communications equipment structure are permitted uses on the subject State Land Use Agricultural parcel and that the only County land use permit required for this utility facility would be the requested plan approval.

Should you have any questions regarding this application or require additional information, please feel free to contact me at 969-7331. Thank you for your prompt review of this submittal.

Very truly yours,



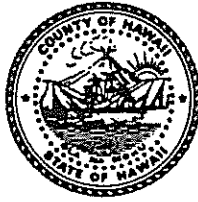
SANDRA PECHTER SCHUTTE

SPS:KYL

Enclosures

xc w/o enclosure: Li Hing Mui, Inc.

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

April 18, 1996

Sandra Pechter Schutte, Esq.
101 Aupuni Street, Suite 1014A
Hilo, HI 96720

Dear Ms. Schutte:

Li Hing Mui, Inc.
"KKOA-FM" Radio Tower Site
Olaa Reservation Lots, Olaa, Puna
Tax Map Key: 1-8-76:9

We have received your letters of April 3, 1996 and April 12, 1996 requesting plan approval of the proposed KKOA-FM radio tower site. We assume you are referring to plan approval pursuant to Sections 25-241 through 25-244 of the Zoning Code, our authority to closely inspect certain development and all development in certain districts.

According to Section 25-242 plan approval is required only in the following circumstances:

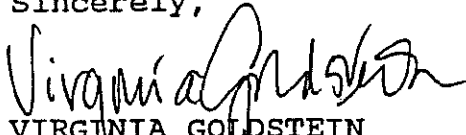
- "(a) No structure may be erected, no use may be established and no significant development or improvement of structures or of land may be accomplished in RS, RM, V, CO, CV, CN, CG, ML, MG, U, O or CDH districts or within seventy-five feet of the right-of-way of any road, street or highway designated on the zoning map as a tourist route, unless plan approval has first been secured for such structure, use, development or improvement.
- (b) Plan approval may be required as a condition of approval of any use permit, variance, or other action relating to a specific use, in which case the use or development so conditioned may not be established until plan approval has been secured therefor."

Sandra Pechter Schutte, Esq.
Page 2
April 18, 1996

The proposed building site, 5.3444 acres in size is situated in the County's Agricultural (A-5a) District and the building site is also within Agricultural District designated by the State Land Use Commission. Plan approval is not required for development in the Agricultural District. The radio tower use is not being established under a discretionary permit issued by the Planning Commission, hence, Plan approval is not a requirement of a condition of approval of permit.

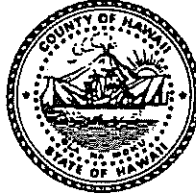
Should you have any questions, please contact Rodney Nakano of my staff at 961-8288.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

October 11, 1996

Mr. Charles Hanson
P. O. Box 577
Mt. View, HI 96771

Dear Mr. Hanson:

Private Radio Transmission Tower
Tax Map Key: 1-8-76:9

Upon receipt of your complaint that a radio transmission tower had been erected on the subject property creating television reception interference and annoying flashing red lights, Francis Saiki conducted an investigation into this matter. This investigation has revealed the following:

1. The property is located within the State Land Use Commission's agriculture zone and the County's agricultural (A-5a) zone district.
2. The lot, containing 5.344 acres, was created by Subdivision No. 1698 and recertified on February 2, 1982.
3. The tower, as constructed, is three hundred and five (305) feet tall.
4. The tower is 123 feet from the west property line, 145 feet from the east property line, 222 feet from the north property line and 442 feet from the front property line.
5. Upon consultation with the Building Division of the Department of Public Works, we have been advised that no building permits are required for towers that are approved by the Federal Communications Commission (FCC).

Mr. Charles Hanson
Page 2
October 11, 1996

6. Section 205-4.5(a)(7) of the Hawaii Revised Statutes states that "Public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, 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, treatment plants, corporation yards or other like structures.
7. Section 25-51(a) of Division 7 of Article 1 of Chapter 25 of the Hawaii County Code states that "Communication, transmission and power lines of public and private utilities and governmental agencies are permitted uses within any district."
8. Section 25-56(c) of Division 8 of Article 1 of Chapter 25 of the Hawaii County Code states that "Chimneys, spires, belfries, water tanks, monuments, steeples, antennae, flag poles and other similar features may exceed the district height limits by no more than ten feet and upon securing a "variance" therefore may exceed the district height limits by an additional number of feet necessary as permitted by the Planning Department; provided that power and communication poles and links, microwave towers and other similar structures used by governmental agencies and by public and private utility companies for power, light and communication purposes may be constructed, added to and maintained in all districts to the height required by considerations of safety and optimum utilization or specifically required by rules and regulations of the Public Utilities Commission (PUC)."
9. Section 25-242(a) does not require a Plan Approval to be secured for uses, structures, developments or improvements in an agriculture zone district unless it is required as a condition of approval of any Use Permit, Variance or other action relating to a specific use.
10. The Federal Communications Commission Permit File No. BMPH-960304-IF was granted on April 10, 1996 for the construction of an FM radio transmitting apparatus.

Based on all of the above, it has been determined by this office that no violation of Chapter 205 of the Hawaii Revised Statutes and Chapter 25 of the Hawaii County Code has occurred.

Mr. Charles Hanson
Page 3
October 11, 1996

Nevertheless, we suggest that you contact the Federal Communications Commission to inform them of your complaint as it is our understanding that interferences by the tower on surrounding properties are within their jurisdiction.

Should you require any further assistance on this matter, please feel free to contact us at 961-8288.

Sincerely,

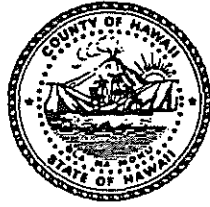


Virginia Goldstein
Planning Director

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xc: Mayor's Office

Stephen K. Yamashiro
Mayor



Virginia Goldsteir
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

October 14, 1996

Mr. Harold Goodson
P. O. Box 758
Mt. View, HI 96771

Dear Mr. Goodson:

Private Radio Transmission Tower
Tax Map Key: 1-8-76:9

Upon receipt of your complaint that a radio transmission tower had been erected on the subject property creating television reception interference and annoying flashing red lights, Francis Saiki conducted an investigation into this matter. This investigation has revealed the following:

1. The property is located within the State Land Use Commission's agriculture zone and the County's agricultural (A-5a) zone district.
2. The lot, containing 5.344 acres, was created by Subdivision No. 1698 and recertified on February 2, 1982.
3. The tower, as constructed, is three hundred and five (305) feet tall.
4. The tower is 123 feet from the west property line, 145 feet from the east property line, 222 feet from the north property line and 442 feet from the front property line.
5. Upon consultation with the Building Division of the Department of Public Works, we have been advised that no building permits are required for towers that are approved by the Federal Communications Commission (FCC).

Mr. Harold Goodson

Page 2

October 14, 1996

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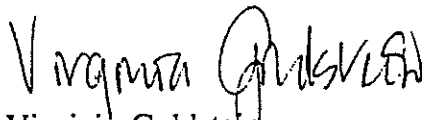
Based on all of the above, it has been determined by this office that no violation of Chapter 205 of the Hawaii Revised Statutes and Chapter 25 of the Hawaii County Code has occurred.

Mr. Harold Goodson
Page 3
October 14, 1996

Nevertheless, we suggest that you contact the Federal Communications Commission to inform them of your complaint as it is our understanding that interferences by the tower on surrounding properties are within their jurisdiction.

Should you require any further assistance on this matter, please feel free to contact us at 961-8288.

Sincerely,



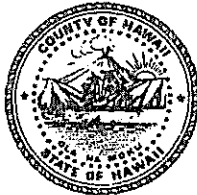
Virginia Goldstein
Planning Director

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xc: Mayor's Office

Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2903 9169

NOV 18 2002

Donna Y. L. Leong, Esq.
Cades Schutte Fleming & Wright
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4216

Dear Ms. Leong:

Special Permit Application (SPP 02-030)

Applicant: Maverick Media of Hawaii, LLC
fka Yellow Brick Road Radio LLC dba KKOA FM

Request: Allow the Existing 300-Foot Lattice Telecommunication Tower, Antennas,
Appurtenant Equipment Shelters, Accessory Structures and Security Fence

Tax Map Key: 1-8-76:Portion of 9

The Planning Commission at its duly held public hearing on October 17, 2002, voted to approve the above-referenced application. Special Permit No. 1178 is hereby issued to allow the existing 300-foot lattice radio/telecommunication tower, antennas, appurtenant equipment buildings and structures on approximately a 4,315 square foot portion of a 5.344 acre parcel situated in the State Land Use Agricultural District. The project site is located to the north (Hilo side) of North Glenwood Road, approximately 1 ½ miles west of Volcano Highway, Olaa, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting to legitimize an existing 300-foot lattice radio tower with antennas, appurtenant equipment buildings and structures. Records seem to indicate that the tower was constructed in 1996. The lattice tower has twelve guy wires attached to six anchors. The tower rests on a base approximately five (5) feet high on a concrete pier. It is painted flat white with international orange as required by the Federal Aviation Administration. Further, the tower has a beacon at the top that is 620 watts and flashes 40 times per minute; and two side lamps at 205 feet and two more at 105 feet. Situated

NOV 21 2002 027622

on the tower are KKOA FM, AT&T, and VoiceStream. According to the applicant, the existing tower may accommodate additional carriers should the guy wires be changed. Plans indicate that the tower has less than the required 300 foot structural setback from the property lines as required by the County Zoning Code. Therefore, a variance shall be applied for from the Planning Department.

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-5a) zoned district and within the State Land Use Agricultural District. 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 classifies the property as Other Important Agricultural Lands. The improvements do not displace any existing 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, Hawaii Revised Statutes, relating to coastal zone management program. Given the fact that the location of the existing telecommunication site has been previously pasture lands and used for cattle grazing, it is unlikely that any archaeological features and threatened species of plants or animals are present on the property. There is no designated public access to the mountain areas or to the shoreline over the property. The project site is located approximately 21 miles from the nearest shoreline and consists of dwellings, agricultural uses, and vacant lands. 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 is approximately 1-1/2 miles from Highway 11, and is not visible from the highway due to the tall trees and the heavily forested area along the highway. However, the lattice tower with the flashing light is visible to immediate surrounding properties. The lattice effect, does help to minimize visibility due to its see-through effect. The tower may also be visible in a distance from lower elevations, such as Mountain View, at night. Due to its location and distance from the ocean, it is not anticipated that the proposed tower 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 existing 300-foot high tower and related improvements are currently situated on a 4,315 square foot portion of the 5.344-acre parcel of land. Files indicate that an ongoing complaint regarding the tower were received since 1996. Concerns included television interference, annoying flashing red light, height of tower, and the legality of establishing the tower without a building permit or a special permit. At the time the tower was constructed, the Planning Director interpreted that telecommunication towers were a permitted use within the State Land Use Agricultural District, and responses to the complaints were reflective of that position. The Building Division's position at that time was that if the tower was Federal Communications Commission (FCC) regulated, a building permit was not required. However, subsequent to the 1999 Supreme Court ruling that required the issuance of a Special Permit for cellular towers, another complaint was received by the Planning Department. By letter dated August 10, 2001, the Planning Director informed the radio tower operator that based on the recent Supreme Court decision, a Special Permit and a variance from the setback requirement was now required. The applicant submitted a Special Permit in response to the Planning Department's requirement. According to the applicant, television interference has been minimized with shielding. A variance would be required to legitimize the inadequate setbacks from the property boundary. Further, no additional complaints have been received since the submittal of this application. Although this tower is tall, it has provided needed services in the area for the radio station and for cellular carriers AT&T and VoiceStream. In this particular situation, the public benefit of providing radio and cellular services outweighs the disadvantages.

Co-location is encouraged, and it is understood that additional antennas may be placed on a 300-foot tower with new guy wires. Therefore, it is recommended that plan approval be required for future 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 tower within 120 days after permanent abandonment.

It is anticipated that noise and dust will have minimal impacts at the project site. There is an air-conditioning unit in the equipment building, however, the noise would be similar to a unit installed in a dwelling. 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 tower has been 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 service is required for the use and is already available to the property. Access to the project site is from Highway 11 onto North Glenwood Road, which is a paved County road. As traffic is anticipated to be minimal, the access to the leased site on the subject property is adequate. Fire, police and emergency services are available to the project area in Kea'au approximately 12 miles away. There is a volunteer fire station in Volcano Village approximately 7 miles away. Further, the applicant has stated that their system does not interfere with the County of Hawaii Public Safety System. Finally, the applicant has met 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.

This tower was originally to serve the KKOA FM radio station and also accommodates cellular antennas for AT&T and VoiceStream. According to the applicant, additional antennas can be accommodated if the existing guy wires are replaced. Approval of the request would bring the tower in conformance with the Hawai'i Supreme Court ruling 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 was used as a cattle ranch since the 1970's. There is a single family dwelling on the subject property surrounded by pasture lands. The existing tower and related improvements are currently contained within a 4,315 square foot area and enclosed with a chain link fence. Thus, the development does 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 existing 300-foot tower and antennas are located approximately 1.5 miles from Highway 11 along North Glenwood Road. The view of the tower and antennas is visible by nearby residents and possibly from lower elevations in Mountain View. Since this particular area has already been cleared and used for ranching purposes, it is not anticipated that cultural, archaeological or botanical resources are affected. 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 Intensive Agricultural 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.

Finally, based on plans submitted, the existing guy wires do not meet the necessary 300-foot structural setback as required by the Zoning Code. Therefore, a variance would need to be applied for.

Based on the above considerations, the approval of an existing 300-foot high lattice radio/telecommunication tower, antennas, related equipment buildings and security fence 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. For the existing development (unless determined to be a nonconforming structure) and prior to the start of future construction including co-location of additional carriers, but not including repair and replacement of facilities existing as of the date of approval, 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 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 Building Division - Department of Public Works (unless determined to be a nonconforming structure), 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.
 - 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.

Donna Y. L. Leong, Esq.
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Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lmaverickmedia01PC

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
Maverick Media of Hawaii