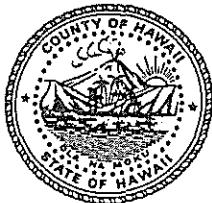


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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OCT 03 2003

Ms. Danette Mettler
Martin Pacific Property Services
75-5744 Alii Drive, Suite 247
Kailua-Kona, HI 96740

Dear Ms. Mettler:

Special Permit Application (SPP 03-011)
Applicant: County of Hawaii
Request: Non-Manned Microwave Facilities and Related Improvements
Tax Map Key: 8-8-1:portion 3

The Planning Commission at its duly held public hearing on September 22, 2003, voted to approve the above-referenced application. Special Permit No. 1219 is hereby issued to allow the construction of a non-manned microwave facility, including a 150-foot tower and antenna improvements, equipment shelter, and related improvements on a 1,196 square foot area situated within the State Land Use Agricultural District. The project site (referred to as "Ohia Mill") is located approximately 1.25 miles east (mauka) of Highway 11, and approximately 6,000± feet north of Honomalino Acres Subdivision, Alika, South Kona, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Judge J. Nakayama of the State of Hawaii Supreme Court filed a ruling on May 20, 1999, and affirmed the circuit court's reversal of the Board of Appeals order that HRS, Section 205-4.5(1) permits telecommunication towers as of right in the State Land Use Agricultural District.

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Therefore, a Special Permit is now required to establish a telecommunication tower on State Land Use Agricultural lands. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use under Section 205-4.5(a)(7) which states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings . . ." The applicant proposes to construct an unmanned 150-foot microwave tower and antenna improvements. The existing 100-foot tower will be demolished. The proposed facility will occupy approximately 1,196 feet on a parcel approximately 2,396 acres in size.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. The County's 100-foot tower and a caretaker's dwelling are currently located on the project site. Thus, as the site has already been disturbed, it is unlikely that any archaeological features or threatened species of flora or fauna are present on the property. According to the applicant, on April 28, 2003, an archaeological and cultural assessment was conducted by Scientific Consultant Services, Inc. (SCS) under contract to PBR Hawaii. The assessment concluded that the project would have "no effect" on historic and cultural resources. The applicant is awaiting a "no effect" letter from the State Department of Land and Natural Resources Historic Preservation Division. According to the applicant, there is no record of a designated public access to the shoreline or mountain areas traversing the property. The project site is located mauka of Highway 11 and therefore, will not be impacted by coastal hazard and beach erosion. The proposed project will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

The desired use will not adversely affect the surrounding properties. Surrounding properties are vacant, and the forest reserve is adjacent to the property. In addition, the property is already used as a stage for the County's 100-foot tower. The proposed tower site will be fenced and self-contained, with periodic maintenance and repair. The generator will emit some minimal noise only when in operation. Due to its remote location, the proposed tower will not be painted. As the site is heavily wooded and provides a screen of the tower and related improvements from Highway 11, the view plane from the highway will not be affected. Furthermore, the Telecommunications Act of 1996 recognizes the absence of health hazards from radio wave transmissions and accordingly prohibits local authorities from regulating the placement of communication towers based on environmental effects as long as those towers comply with the Federal Communication Commission's guidelines. As the proposed microwave tower has been designed to and will comply with the FCC's guidelines, no significant adverse impact to surrounding properties is expected.

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

The proposed development will not require additional services. Only electricity is required for the proposed use. Access to the site is via Highway 11. Traffic is expected to be minimal due to the fact that the tower will only require periodic maintenance and repair. The proposed facility will improve public safety by providing the infrastructure to the new microwave system to provide effective and reliable communication to County agencies.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August, 1964. At that time, the predominant means of audio communication was by traditional telephone service, and public, private and quasi-public utility lines and roadways including communication equipment buildings were permitted uses within the State Land Use Agricultural District. However, changes in technology in recent years have advanced beyond what the Land Use Law had envisioned for radio and telecommunications. While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within the Agricultural districts, Section 205-4.5 does not specifically permit telecommunication towers on Agricultural designated lands. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish a telecommunication tower within the State Land Use Agricultural District.

The use will not substantially alter or change the essential character of the land and the present use. Although the tower will be a new structure on the property, it will replace an existing 100-foot tower. Thus, the proposed use will not substantially alter the essential character of the land. According to the applicant, there is no record of a designated public access to the shoreline or mountain areas traversing the property. Further, there is no evidence of valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

The lands upon which the proposed use is sought is not unsuitable for the uses permitted in the district, however, the proposed uses will not interfere with permitted uses. The property is zoned Agricultural (A-5a) and falls within the State Land Use designation of Agricultural. As such, a Special Permit is necessary to establish the proposed use, to allow for uses other than agricultural uses on the subject property. The property is currently not in agricultural use, and there is an existing tower and dwelling on the site. Therefore, no active agricultural activities will be diminished. As the proposed facility will occupy approximately 1,196 square feet of a 2,396-acre parcel, the proposed use will not remove significant lands from agricultural use and would not be contrary to

the objectives of the State Land Use Law for the Agricultural District. The property is designated as Other Important Agricultural Lands by the ALISH map. These are lands other than Prime or Unique Agricultural Land that is also of statewide or local importance for agricultural uses. The Land Study Bureau's Overall Master Productivity soil rating for the property is "D" or "Poor." While the potential for agricultural uses may exist, the soil conditions within the site and surrounding area would preclude intensive agricultural activities from being conducted on the site.

The proposed use is consistent with the goals, policies and standards of the General Plan. The General Plan LUPAG Map designation for the property is Orchards, which are agricultural lands which though rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. Although a small portion of the property will be used for the proposed development, the majority of the 2,396-acre parcel will remain in its current state. Finally, the proposed request would complement and be consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

Based on the above considerations, the request to establish an unmanned, 150-foot microwave tower and related uses would be an unusual and reasonable use of land within the State Land Use Agricultural District, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

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

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within five years from the effective date of this permit. Final Plan Approval by 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 shall be secured prior to the commencement of construction. Development plans shall identify existing and proposed structures, fire protection measures, roadways, driveway and parking areas, fencing and any landscaping associated with the proposed uses. Tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the proposed tower and antennae shall be allowed within the parameters of the proposed building height and envelope as represented.

4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the microwave tower, antenna and accessory structures, with the exception of the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.
5. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials 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.
6. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
7. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
8. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
 - A) Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B) Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
 - C) Granting of the 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.

Ms. Danette Mettler
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



VICE CHAIRMAN

Fred Galtones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu
Major Elroy Osorio/County of Hawaii Police Dept.