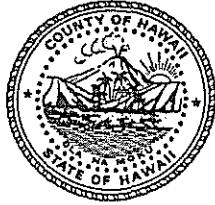


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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

April 19, 2004

Mr. Allen Yamanoha
Mr. Robert Hlivak
State of Hawaii Dept. of Accounting
and General Services
1151 Punchbowl Street, Room 430
Honolulu, HI 96813

Dear Mr. Yamanoha and Mr. Hlivak:

Special Permit Application (SPP 04-002)

Applicant: State of Hawaii, Dept. of Accounting & General Services

Request: 70-Foot Tower With Antennas, Equipment Building & Supporting
Facilities

Tax Map Key: 5-9-2:Portion of 2

The Planning Commission at its duly held public hearing on April 2, 2004, voted to approve the above-referenced application. Special Permit No. 1234 is hereby issued to allow the construction of a 70-foot high self-supporting communication tower with mounted antennas, equipment building, and supporting facilities on approximately 7,200 square feet of land situated within the State Land Use Agricultural District. The area involved is approximately 0.9 mile mauka of the Kohala Mountain Road and in the vicinity of the Kahua Ranch complex, Kahuihui, North Kohala, Hawaii.

Approval of this request is based on the following:

The applicant proposes to construct a four-legged self-supporting pipe-leg, 70-foot high tower that will be used to mount a total of 11 solid microwave antennas, the two largest of which will be 15-foot in diameter, microwave antennas, the largest which is 8-foot in diameter, and other antennas including top mounted whips and side mounted smaller antennas such as directional yagis and panel antennas. There will also be a three room, single story 914-square foot radio building with CMU walls and concrete slab floors constructed on site. This will be comprised of a 630-square foot radio equipment room, a 114-square foot battery room and a 170-square foot emergency generator room. The proposed facility will occupy approximately 7,200 square feet of a 1534-acre property, which is part of the Kahua Ranch complex.

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The granting of this request would promote the effectiveness and objectives of Chapter 205 and 205A, 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. 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 lists "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings . . ." as a permitted use.

The project site is located within an area whose soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) classifies Pu'u Waiakanonula as Other Important Agricultural Lands. Other Important Agricultural Lands are not Prime or Unique Agricultural Lands that is also of statewide or local importance for agriculture use. The project site is a 7,200 square foot area portion of an approximately 1534-acre parcel owned by Kahua Ranch. Although the requested use is not agricultural in nature, it comprises an area that is proportionately insignificant relative to the size of the property. A major portion of the property is used for pasture use and will continue to be used as such. Therefore, the use will not displace any of the existing agricultural uses on the property nor adversely affect the agricultural potential of the property and its surrounding area. Furthermore, the project area is about 1.1 miles from Kohala Mountain Road, and more than 9 miles from the nearest coastline. As such, the project will not have any adverse impacts on recreational or coastal resources. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations nor by the Coastal Zone Management Area.

The desired use will not adversely affect the surrounding properties. The surrounding area is characterized by agricultural uses. Surrounding properties to the north, south, east and west are zoned A-20a. The site is located on northern boundary of Kahua Ranch. Bordering to the north is another large agricultural parcel (approximately 2200 acres) owned by Ponoholo Ranch. Both properties are mainly used for pasture.

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The Anuenue Radio Facility will be located adjacent to three similar facilities that each contains a tower and supporting structures. The County of Hawaii facility is located adjacent to the site and includes a guy-supported 40-foot high tower and other support buildings. The FAA NEXRAD facility lies immediately south of the site and contains a 132 foot tower and radar dome with other support facilities. There is an AT&T Wireless facility located on the parcel to the north (TMK:5-9-2:4) owned by Ponoholo Ranch. This facility was approved by Special Permit No. 1082 on October 20, 2000 to allow for two existing 86-foot telecommunication pole towers, antennas, accessory equipment building and accessory structures.

A wind tower farm is situated near the base of Pu'u Waiakanonula on the same property. These windmill towers were constructed in 1983-84 and stand approximately 110 feet and 150 feet in height. The Kahua Ranch headquarters and housing area, and numerous farm structures, greenhouses, and water tanks and sheds are located approximately one mile makai (west) of the project site. Due to its location of more than a mile from the road plus the stand of ironwood trees that stretch along the Kohala Mountain Road, the tower will hardly be visible from the roadway, and therefore, will not affect the view plane from Kohala Mountain Road. No objections were received from the community. In regards to radio frequency emissions, the applicant would be required to comply with the requirements of the Federal Communications Commission. Furthermore, Section 704 of the Federal Telecommunications Act of 1996 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 as long as these towers comply with the Federal Communication Commission's guidelines. As the telecommunication tower has been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. The development of the tower and related improvements will not require additional services. Access to the project site is from the Kohala Mountain Road turning mauka onto the paved 16-foot driveway to the Kahua Ranch headquarters and housing area, and onto a 10-foot paved roadway leading to the project site. The tower will only require periodic maintenance and repair and as such, access to the project site is deemed adequate to accommodate the anticipated traffic. Water is not available and not required for the telecommunication tower use. Power is already available to the project site for the use. As the project site is located on Pu'u Waiakanonula, there is no known drainage channel in the area. Police, fire and emergency services are available in Hawi and Waimea, approximately 7.5 and 9 miles, respectively, to the site. Finally, the applicant shall meet all applicable agency

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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 pursuant to Chapter 205, Land Use Commission, Hawaii Revised Statutes, telecommunication service 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. Section 205-4.5 of Chapter 205 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, 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, or treatment plants, or corporation yards, or other like structures;" 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. The growth of the cellular telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunication towers and antennas. According to 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 new series of radio sites for Anuenue, including the Kahua Ranch Facility, is necessary to meet the line of sight criteria and to provide the minimum path length required for the new digital microwave radio system to operate reliably.

The use will not substantially alter or change the essential character of the land and the present use. As previously mentioned, the tower and related structures were established on the project site in 1993; and its immediate vicinity are also used for tower sites. Several other existing towers in the vicinity are the County's approximate 40-foot high communication tower, the Federal Aviation Administration's NEXRAD 132-foot high tower and dome weather radar tracking station and the two AT&T 86-foot towers located on the adjacent property approximately 250 feet away. The remaining portion of

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the 1,534-acre property has been used for and will continue to be used for grazing purposes. There are no known historic sites nor threatened or endangered species of plants and animals on the site.

The lands upon which the use is sought is not unsuitable for the uses permitted in the district, however, the use will not interfere with permitted uses. The subject property totals approximately 1,534 acres, however, only a 7,200 square foot area is required for the tower and related facilities. The project site is within an area whose soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating. As previously mentioned, the Agricultural Lands of Importance to the State of Hawaii (ALISH) classify Pu'u Waiakanonula as Other Important Agricultural Lands, however, the remaining property is classified as Prime Agricultural Lands. A major portion of the remaining land is in pasture use and will continue to be used as such. Therefore, no agricultural activity will be substantially diminished and no significant acreage of lands will be taken out of agricultural use.

The use is consistent with the following goals, policies and standards of the General Plan. The General Plan document lists as example of Natural Beauty the "Coastline viewplane from the Kohala Mountain Road" and the "Ironwood trees along the Kohala Mountain Road" due to natural vistas at specific view places from Kohala Mountain Road. However, the tower site is hardly visible from the Kohala Mountain Road due to its location over a mile and the stand of ironwood trees along the road. The subject parcel falls within an area designated as Intensive Agricultural on the General Plan LUPAG Map. The zoning for the property is Agricultural (A-20a) and the development falls within the State Land Use Agricultural District. In order to establish a telecommunication tower on the property, a Special Permit would be required. The tower would complement and be consistent with the following goals, policies and standards of the General Plan:

Public Utilities

- Ensure that adequate, efficient and dependable public utility services will be available to users.
- To have public utility facilities which are designed to fit into their surroundings or concealed from public view.
- Maximize efficiency and economy in the provision of public utility services.

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- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.

Public Facilities

- Encourage the provision of public facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community.
- The County shall seek ways of improving public service through the coordination of service and by maximizing the use of personnel and facilities.
- The County shall coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community

The North Kohala Community Development Plan (CDP) was adopted by the Planning Commission by Resolution No. 2 84, dated September 1984. Under Natural Beauty, the CDP reflects the Kohala Mountain Road as one of the sites of natural beauty and therefore, recommends the retention of view places of natural vistas from Kynnersley Road to Waiaka Bridge. As mentioned previously, the tower site is hardly visible from the Kohala Mountain Road due to its location over a mile and the stand of ironwood trees along the road.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. The property is not adjacent and/or proximate to the shoreline. As such, gathering of marine life and coastal access is not an issue. There are no known established valued cultural rights being exercised on the properties.

Investigation of valued resources: The applicant presented the following information within the Final Environmental Assessment from which the Planning Commission can determine impacts to the valued cultural, historical, and natural resources within the site:

- Cultural Impact Assessment (Appendix C of Final Environmental Assessment), Maria E. Ka'imipono Orr, February 25, 2003.
- Archaeological Assessment (Appendix C of Final Environmental Assessment), Haun & Associates, January 2003.

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- Botanical Survey Report (Appendix B of Final Environmental Assessment), Evangeline J. Funk, PH.D., October 2002.
- Survey of Avian and Terrestrial Mammalian Species (Appendix B of Final Environmental Assessment), Reginald E. David, October 2002.

The valuable cultural, historical, and natural resources found in the project site:
The Archaeological Assessment prepared in January 2003 by Haun and Associates concluded that the survey did not identify any sites or features. The State Department of Land and Natural Resources Historic Preservation Division in their comment letter dated March 10, 2004 stated that an acceptable archaeological assessment or inventory survey found no historic properties (LOG NO. 2003.0568 DOC NO: 0305PM07). Thus, DLNR-SHPD believes that "no historic properties will be affected by this undertaking."

The Cultural Impact Assessment prepared by Maria E. Ka'imipono Orr in February 2003 concluded that none of the types of cultural practices and beliefs subject to assessment will be affected by this project. The types of cultural practices and beliefs may include subsistence, commercial, residential, agricultural, access-related, recreational, and religious and spiritual customs.

A Botanical Survey was conducted to determine the vegetation on the project site. The survey found a total of 12 plant species on site. No listed or candidate threatened or endangered botanical species as set forth by the US Department of the Interior Fish and Wildlife Service (USFWS) were found on the site.

A survey of Avian and Terrestrial Mammalian Species was conducted on October 2002. A total of 14 birds representing five separate species were recorded during the survey. No USFWS or DLNR listed or candidate threatened or endangered avian species were detected during the avian survey.

Possible adverse effect or impairment of valued resources: As stated by the State Department of Land and Natural Resources Historic Preservation Division, they believe that "no historic properties will be affected by this undertaking."

Feasible actions to protect native Hawaiian rights: As no valued cultural rights are proposed to be impacted by this project, there is no action that needs to be implemented at this time. A condition of approval will be added to state that 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

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and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified.

Based on the above considerations, the approval to allow the construction of a 70-foot high self-supporting communication tower with mounted antennas, equipment building, and supporting facilities on approximately 7,200 square feet would be an unusual and reasonable use of land within the State Land Use Agricultural District and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules 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 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, roadway easements, 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 expansion of the tower and related facilities within the tower site shall be allowed within the parameters of the tower height and envelope as approved by the Planning Commission.
4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antennae and accessory structures (including the communication equipment building, generator and generator shed, and fence). 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. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the

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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.

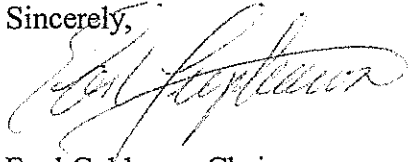
6. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
7. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a written status report to the Planning Director.
8. An initial 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.

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

Sincerely,



Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu
Mr. John Sakaguchi/Wilson Okamoto Corp.