

County of Hawai'i

PLANNING COMMISSION

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April 15, 2005

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

Dear Ms. Mettler:

Special Permit Application (SPP 04-003)

Applicant: Cellco Partnership dba Verizon Wireless

Request: 110-Foot Telecommunication Tower and Equipment Shelter

Tax Map Key: 6-6-5:portion of 2

The Planning Commission at its duly held public hearing on March 18, 2005, voted to approve the above-referenced application. Special Permit No. 1254 is hereby issued to allow the retention of an existing 110-foot high telecommunication tower facility, including the construction of an emergency generator, on 405 square feet of land within the State Land Use Agricultural District. The area involved is a portion of the Watanabe Floral, Inc. property along the south side of Lalamilo Farm Road, approximately 770 feet west of the Lalamilo Farm Road-Mamalaho Highway intersection, Lalamilo Farm Lots, Lalamilo, Waimea, South Kohala, 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. The State of Hawaii Supreme Court issued 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

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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 states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment building..." The applicant is requesting the Special Permit to allow the retention of a 110-foot high telecommunication tower facility, including the construction of an emergency generator. The facility occupies approximately 405 square feet on a parcel approximately 15.95 acres in size. The telecommunication facility will continue to provide coverage from Waikoloa at the Waikoloa Stables and east Waimea.

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 project site is located in Waimea in the Lalamilo Farm Lots. The property is currently operated as a rose farm. A portion of the property is currently being used by other wireless companies for similar uses. The adjacent tower is operated by Nextel and is approximately 180 feet in height. The site plan indicates three existing towers (Cellco, T-Mobile or Voicestream, and Mobile One), a Sprint PCS equipment yard, eight greenhouses, a caretaker's dwelling, and warehouse. Although no formal archaeological study was conducted of the site, the property is currently being used as a rose farm; thus, it is unlikely that any archaeological features or threatened species of flora or fauna are present on the property. By letter dated March 11, 2004, the State Department of Land and Natural Resources Historic Preservation Division has stated that "we believe there are no historic properties present because residential development/urbanization has altered the land; [there is an] existing facility. Thus, we believe that no historic properties will be affected by this undertaking." There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources. 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 desired use will not adversely affect the surrounding properties. Surrounding properties are mainly in agricultural uses. The property is located on Lalamilo Farm Road off the Mamalahoa Highway. The tower site is an existing fenced facility and self-contained, with periodic maintenance and repair. 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 telecommunication tower has been designed to and will comply with the FCC's guidelines, no significant adverse impact to

surrounding properties is expected. In addition, no objections or concerns were received from the community.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The requested use will not require additional services. Only telephone and electricity is required for the requested use. Access to the site is via Lalamilo Farm Road, a government road with a pavement width of approximately 20 feet.

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 has 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. The tower has been in existence for approximately eight years, and occupies approximately 405 feet of a 15.95-acre parcel used as a rose farm. No land or vegetation will be removed to alter or change the characteristics of the land. As the property is currently used as a tower site and a rose farm, the use will not change the present use of the land or alter the essential character of the land.

The property is zoned Agricultural 5-acre (A-5a) and falls within the State Land Use designation of Agricultural. As such, a Special Permit is necessary to establish the use, to allow for uses other than agricultural uses on the property. The property is designated Other Important Agricultural Lands by the ALISH map. The Land Study Bureau's Overall Master Productivity soil rating for the property is "B" or "Good." The portion of the property not used as the tower site is currently being operated as a rose farm. Therefore, no active agricultural activities will be diminished. As the facility occupies only 405-square feet of a 15.95-acre parcel, the 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 Department of Land and Natural Resources Land Division has stated that the property's deed restriction limits the use of the land to agricultural purposes only, and prior written consent must be obtained from the Board of Land and Natural Resources for uses other than agricultural purposes except for a personal residence. According to the applicant, negotiations between the DLNR and the landowner are ongoing, and the solution being negotiated should not affect the applicant's use and occupancy of the site. Thus, a condition of approval will be included to state that the permit will be effective only upon the resolution of the deed restriction issue.

The use is consistent with the goals, policies and standards of the General Plan. The General Plan LUPAG Map designation for the property is Intensive Agricultural, which includes sugar, orchard, diversified agriculture and floriculture. A portion of the property is used for the telecommunication facility, and the majority of the 15.95-acre parcel will continue to be used as a rose farm. The request complements and is consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

Based on the above, the request to allow the retention of an existing 110-foot high telecommunication tower facility including the construction of an emergency generator 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.

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. The applicant shall obtain written authorization from the Board of Land and Natural Resources to utilize the property for non-agricultural purposes. The effective date of the permit shall be the filing of the authorization with the Planning Department.
3. 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 any 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.

4. Co-location or any expansion on the existing tower and antennae shall be allowed within the parameters of the building height and envelope as represented.
5. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the 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.
6. 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.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. 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.
9. 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.


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Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate the revocation of the permit.

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 Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galtones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning – Kona
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu