

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

March 3, 2006

Cellco Partnership dba Verizon Wireless
c/o Les Young – AFL Telecommunications
1506 Ala Mahamoe Street
Honolulu, HI 96819

Dear Mr. Young:

Special Permit Application (SPP 05-004)

Applicant: Cellco Partnership dba Verizon Wireless

Request: New 100' Monopole Telecommunications Tower, Appurtenant Equipment
Cabinets & Equipment Shelter

Tax Map Key: 1-6-10:portion 48

The Planning Commission at a duly advertised public hearing on February 3, 2006, considered the above-referenced request for a Special Permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to allow the construction of a 104-foot high monopole telecommunications tower, appurtenant cabinets and equipment shelter, and chain link fence enclosure on approximately 1,100 square feet of land within the State Land Use Agricultural District. The property is located along the northeast side of 35th Avenue, approximately 650 feet from the 35th Avenue-Orchidland Drive intersection, Orchidland Estates Subdivision, Keaau, Puna, Hawaii.

The Commission voted to deny your request. Enclosed is the Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order.

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

Sincerely,

C. Kimo Alameda, Chairman
Planning Commission

Lcellcosp05-004PCdenial

Enclosure

cc/enc: State Land Use Commission
Department of Public Works
Department of Water Supply
Corporation Counsel
Mr. Joseph Lipinski/Orchidland C.A.

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MAR 03 2006

PLANNING COMMISSION OF THE COUNTY OF HAWAI'I

STATE OF HAWAI'I

Application of)	SPP No. 05-004
)	
CELLCO PARTNERSHIP DBA)	FINDINGS OF FACT, CONCLUSIONS
VERIZON WIRELESS)	OF LAW AND DECISION AND ORDER
)	
Special Permit to Allow the Construction of a)	
104-Foot High Steel Monopole)	
Telecommunications Tower and Related)	
Improvements on 1,110 Square Feet of Land)	
Situated In the State Land Use Agricultural)	
District, Orchidland Estates Subdivision,)	
Kea'au, Puna, Hawai'i,)	
Tax Map Key: 1-6-10: Portion of 48.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER**

I. FINDINGS OF FACT

A. Background

This matter involves an application for a Special Permit by Cellco Partnership dba Verizon Wireless (“the Applicant”) to allow the construction of a new 104-foot high steel monopole telecommunications tower, appurtenant cabinets and equipment shelter, and chain link fence enclosure on approximately 1,100 square feet of land within the State Land Use Agricultural District. The property is located along the northeast side of 35th Avenue, approximately 650 feet from the 35th Avenue – Orchidland Drive intersection, Orchidland Estates Subdivision, Kea’au, Puna, Hawai’i, TMK: 1-6-10: 48.

1. ***Proposed Development:*** The applicant is requesting a Special Permit to allow the construction of a new 104-foot high steel monopole telecommunications

tower, appurtenant cabinets and equipment shelter, and chain link fence enclosure on approximately 1,100 square feet of land on a 87,107-square foot parcel. The proposed facility will consist of the following:

(a) one unmanned 100-foot self-supporting steel monopole telecommunications tower with a total of twelve 8-foot high panel antennas mounted on top in three separate sectors with four antennas on each sector. According to the site plan, the combined tower and panel antenna height will be 104 feet.

(b) an equipment shelter that will house all BTS and radio cabinets, which will be placed on a 299 square foot concrete slab.

(c) a 6-foot high chain link security fence and locked gate.

2. **Reasons for request:** The telecommunication facility will provide higher and more consistent quality coverage for residents who live and travel between Kea'au and Pāhoā by "bridging" or linking the transmissions that now originates from the existing Kea'au and Pāhoā sites.

3. **Employees:** One, as needed.

4. **Traffic/Parking:** Traffic is expected to be minimal after completion of construction. The tower will require only periodic maintenance and repair.

5. **License Agreement:** A license agreement between the landowners and Verizon Wireless has been signed for an initial term of five (5) years with the option to renew for four (4) additional five-year terms for a total of 25 years.

B. Procedural Matters

1. On February 23, 2005 the Planning Department received the Special Permit Application. On January 25, 2005, the Applicant mailed notice of the application

to surrounding property owners within 500 feet of the property. Along with the application, the Planning Department received the Applicant's Certification of Mailing to the listed surrounding property owners and copy of the Notice.

2. On March 1, 2005, the Planning Department acknowledged receipt of the Special Permit Application (SPP 05-004).

3. On March 1, 2005, the Planning Director sent a request for written comment to public and interested private agencies, and provided a request for written comments no later than March 29, 2005. The agencies included the Department of Public Works, Hawai'i County Police Department, Hawai'i County Fire Department, Real Property Tax Office, Hawai'i County Civil Defense Agency, Department of Land and Natural Resources - Land Division and State Historic Preservation Division, Department of Health, State Land Use Commission, and the Orchidland Community Association.

4. By letter dated April 12, 2005, the Planning Department notified the Applicant that the Planning Commission would hold a public hearing on the application on May 12, 2005, in the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai'i. Notice of the public hearing was published by the Planning Commission on April 21, 2005 in the Hawai'i Tribune-Herald and the West Hawai'i Today.

5. On April 23, 2005, the Applicant mailed a notice of public hearing to property owners within 500 feet of the subject property.

6. On May 4, 2005, the Planning Department received a Petition For Standing in Contested Case Hearing from the Orchidland Community Association (OLCA) represented by Mr. Mya Pawu.

7. The Commission commenced the public hearing on the application on May 12, 2005. During the hearing, the Commission took testimony from Les Young, representative for the Applicant, Mya Pawu, representative for OLCA, and Arnold Westphal.

8. During the public hearing, the Commission voted to accept the petition of OLCA for standing to petition a contested case hearing on the application, and also approved the hiring of a hearing officer to conduct a contested case hearing on its behalf.

9. COLIN L. LOVE was approved as the Hearings Officer in this matter. By letter dated June 1, 2005, Mr. Love informed the Applicant, OLCA, and the Planning Director that a pre-hearing conference would be held to discuss the scheduling of the contested case hearing and related deadlines.

10. By letter dated June 23, 2005 to the parties, the Hearings Officer stated that he had not heard from Mr. Pawu or the attorney for OLCA and requested that someone from OLCA make contact so that a pre-hearing conference could be scheduled.

11. The Planning Department was informed via telephone that Steven Starnes was the new President of OLCA replacing Mya Pawu. Joe Lapinski and/or Robert Ely were assigned to represent OLCA in the contested case hearing, which was confirmed by letter dated August 18, 2006.

12. The contested case hearing was scheduled for August 29, 2005. The deadline for the submittal of exhibit lists and witness lists was August 19, 2005, and confirmed in writing to the parties by the Hearings Officer in a letter dated July 25, 2005.

13. Notice of Contested Case Hearing was published by the Planning Commission in the Hawai'i Tribune-Herald and the West Hawai'i Today on August 9, 2005.

14. Prior to the contested case hearing, the parties timely submitted and exchanged their Exhibit Lists and Witness Lists.

15. The contested case hearing was continued by the Hearings Officer until October 24, 2005.

16. Notice of Contested Case Hearing was published by the Planning Commission in the Hawai'i Tribune-Herald and the West Hawai'i Today on October 10, 2005.

17. The contested case hearing was conducted by the Hearings Officer on October 24, 2005, at 9:00 a.m., at the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai'i, pursuant to the Notice of Contested Case Hearing. Les Young appeared as the representative for the Applicant. Joseph Lapinski and Robert Ely appeared on behalf of OLCA. Deputy Corporation Counsel Bobby Jean Leithead-Todd appeared on behalf of the Planning Director. The County of Hawai'i Planning Department was a party to this contested case hearing pursuant to Rule 4-7(a) of the Hawai'i County Planning Commission Rules of Practice and Procedure.

18. The Hearings Officer received documentary evidence and testimony from witnesses into evidence. At the conclusion of the hearing, the contested case hearing was closed to further testimony and evidence.

19. At the conclusion of the contested case hearing, the Hearings Officer set the following timetable for submittals:

(a) Transcript to be completed by November 7, 2005.

(b) Deadline for parties to submit proposed findings of fact, conclusions of law and decision and order (optional) by December 5, 2005.

(c) Hearings Officer to submit his recommendation to the Planning Commission by December 19, 2005.

(d) January 3, 2006 was set as the deadline for parties to file objections to the Hearings Officer's report to the Planning Commission (optional).

(e) January 11, 2006 was set as the deadline for parties to file support of the Hearings Officer's report to the Planning Commission (optional).

20. The submittals were received in a timely manner.

21. The Planning Commission meeting to discuss and act on the Hearings Officer's report was scheduled for February 3, 2006.

22. Notice of Planning Commission meeting was published in the Hawai'i Tribune-Herald and the West Hawai'i Today on January 6, 2006.

23. The Planning Commission meeting to discuss and on the Hearings Officer's report was held on February 3, 2006, at 9:00 a.m., at the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai'i. Les Young on behalf of the applicant. Robert Ely appeared on behalf of OLCA. Deputy Corporation Counsel Bobby Jean Leithead-Todd appeared on behalf of the Planning Director. Commissioners Fred Galdones and Jeff McCall were absent.

C. General Information relating to Telecommunication Towers

1. ***State of Hawai'i Supreme Court Ruling:*** The application has been submitted to comply with the ruling issued by the State of Hawai'i Supreme Court filed on May 20, 1999, that a telecommunication tower on State Land Use Agricultural lands requires a Special Permit. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use as defined under Section 205-4.5(a)(7), Hawai'i Revised Statutes,

which states “public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings,”

2. ***Telecommunications Act of 1996:*** The Telecommunications Act of 1996, Section 704, which amended portions of the 1934 Act, limits the state or local authorities from regulating the placement, construction and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions, as long as such facilities comply with the FCC’s regulations concerning such emissions. The applicant has stated that they will adhere to FCC guidelines.

3. ***Federal Aviation Administration (FAA) Guidelines:*** According to the applicant, Verizon Wireless adheres to strict FAA rules governing antenna installation, maintenance, and safety of its facilities and this site will comply with all FAA guidelines.

D. Description of Property and Surrounding Areas

1. ***Subject Property and Existing Land Use Designation:*** The property is an approximate 2-acre parcel located in the Orchidland Estates Subdivision on the northeast side of 35th Avenue, approximately 650 feet from the 35th Avenue – Orchidland Drive intersection. The project site is a 1,100-square foot portion of the parcel. The remainder of the parcel is used as an orchid nursery. The site plan indicates two existing greenhouses and a packing shed on the property. The location of the proposed tower and equipment building is at the western corner of the property, near 35th Street. The Orchidland Estates Subdivision, which consists of 2,571 lots ranging in size from ½ acre to 3 acres in size, was created in 1958. The property is zoned Agricultural A-3a, is designated as Rural under the General Plan, and classified as Land Use Agricultural under the State Land Use classification.

2. ***Surrounding Zoning/Land Uses:*** Surrounding properties within the Orchidland Estates Subdivision are approximately one to two acres in size and zoned Agricultural (A-3a). Uses in the surrounding area consist of vacant lands and scattered single-family dwellings. According to building permit records, the closest dwellings to the proposed tower site are located on the adjoining lot to the northwest on TMK No. (3) 1-6-10: 49, owned by Alan Alatan, and on a lot across 35th Avenue on TMK No. (3) 1-6-10: 40, owned by James Pa.

3. ***Nearest Telecommunications Tower(s):*** The nearest telecommunications tower is located within the Ainaloa Subdivision. The Planning Commission approved SPP 1108 on March 16, 2001 for VoiceStream PCS II Corporation to allow the construction of stealth telecommunication antennas within an 80-foot flagpole, related equipment buildings and structures, and security fence on approximately 400 square feet of land.

4. ***U.S. Soil Survey:*** Lava flows, pahoehoe (rLW). This lava has no soil covering and is typically bare of vegetation except for mosses and lichens. This lava has a billowy, glassy surface that is relatively smooth.

5. ***Land Study Bureau Soil Rating:*** "E" or "Very Poor".

6. ***ALISH:*** Unclassified.

7. ***FIRM:*** Zone "X", areas determined to be outside the 500-year flood plain.

8. ***Floral/Fauna Resources:*** No formal flora/fauna study was submitted. The project site as being surrounded by short thick palms to the southwest and tall trees to the north. Grass, low-lying ferns, shrubs and brush are identified as being throughout the immediate area. The property is used as an orchid nursery.

9. ***Archaeological/Historical Resources:*** By memo dated April 1, 2005, the Department of Land and Natural Resources Historic Preservation Division has stated that “no historic properties will be affected” by this undertaking. There is no record of any significant historic sites in the project area.

10. ***Cultural Resources:*** It is unlikely that there are any valued cultural, historical or natural resources and no traditional and customary Native Hawaiian rights being practiced on the site, as it has been developed and is used as an orchid nursery.

E. Public Services and Facilities

1. ***Roads:*** Access to the property from the Kea‘au- Pāhoa Highway is via Orchidland Drive, one of the primary subdivision roads. Orchidland Drive is an approximately 60-foot wide right-of-way with a 20-foot wide pavement width from the Kea‘au – Pāhoa Highway to the intersection of 35th Street. Thirty Fifth (35th) Street has an approximately 40-foot wide right-of-way with an approximate 17-foot surface of cinder and gravel. The distance from the intersection of Orchidland Drive and 35th Street to the subject property is approximately 650 feet. The subdivision roads are considered private and are collectively owned by the lot owners within Orchidland Estates.

2. ***Water:*** The facility does not require any water.

3. ***Wastewater:*** No individual wastewater system will be required for the facility.

4. ***Utilities:*** Telephone and electricity are available to the site.

F. Comments from Public Agencies

1. **Department of Public Works:** March 28, 2005 Memo. The subject parcel is in an area that is not mapped by the Federal Emergency Management Agency (FEMA) and is designated Zone X – an area determined to be outside the 500-year floodplain (may include areas with unknown flood hazards). 35th Street, fronting the subject property, is a private road.

2. **Police Department:** March 22, 2005 Memo. Upon reviewing the attached documents, there does not appear to be any law enforcement concerns with this application.

3. **Civil Defense Agency:** April 21, 2005 Memo. We have no objections to this application and feel it is a welcome addition from the Public Safety standpoint in that it will increase the public communications assets in the lower Puna area.

4. **Department of Land and Natural Resources-Land Division (Engineering Division):** April 5, 2005 Memo. We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X. The Flood Insurance Program does not have any regulations for development within Zone X.

5. **Department of Land and Natural Resources- State Historic Preservation Division:** April 1, 2005 Memo. We (DLNR-SHPD) believe that there are no historic properties present because residential development/urbanization has altered the land. Thus, we (DLNR-SHPD) believe that “no historic properties will be affected” by this undertaking.

6. **Land Use Commission:** March 11, 2005 Letter. We have reviewed the subject application of the request forwarded by your correspondence dated

March 1, 2005, for the Applicant to construct and operate a wireless telecommunication facility.

Based upon review of the subject application, we have the following comments:

(a) We confirm that the subject parcel is located within the State Land Use Agricultural District as described in the subject application.

(b) We recommend that the Applicant articulate a facility removal plan in the event that use of the facility is discontinued in the future.

(c) We support efforts by the County to optimize co-location opportunities for these types of facilities to minimize the proliferation of impacts to the region's agricultural and scenic resources.

Given the location, scope, and nature of the proposed activity, the State Land Use Commission defers to the judgement of the County of Hawai'i regarding other matters in the application. We have no further comments to offer at this time.

G. Comments from Members of the Public

1. The following people sent letters in opposition to the proposed telecommunications tower, which were received by the Planning Department and the Planning Commission: Barbara Arthurs, James Pa, Raymond Romo, Alan Alatan, Robert Arthurs III, Keone Oskins and Kristie Goin. Mainly the letters spoke in opposition regarding issues such as devaluation of property value, health risks and danger risks if tower falls, visual impacts, and alternatives for relocation.

2. The following people sent in letters in support to the proposed telecommunications tower, which were received by the Planning Department and the Planning Commission: Lajuana Dohaney, Jeri Kunzer, Jose Archuleta, Robert L. DeVeer, Troy Stenzel, Kathleen Furtado, Tom Nelson, Delancey Juan Gacuzana, David Melnikov, David Melnikov,

Gary S. Safarik and Barbara Berringer. Mainly the letters spoke in support regarding issues such as increased public safety and improved cell phone service for the area.

3. The following members of the public testified at the public hearings held for this application: Steve Matthews, Alan Alatan, James Pa, Mark Kunzer, Jose Archuleta, Jerome Siebenrock, Robert De Veer, Arnold Westphal, Summer Stickney, Mark McNett, Ron Serrao, Raymond Romo, Carol Noel and Dean Monroe. Their testimonies are part of the record.

H. Position of the Applicant

1. The Applicant is requesting a Special Permit to allow the construction of a new 104-foot high steel monopole telecommunications tower, appurtenant cabinets and equipment shelter, and a 6-foot chain link fence enclosure on a 1,100-square foot area of a 2-acre parcel.

2. The telecommunication facility will provide higher and more consistent quality coverage for residents who live and travel between Kea‘au and Pāhoa by “bridging” or linking the transmissions that now originates from the existing Kea‘au and Pāhoa sites.

3. The Applicant has 28 telecommunication towers on the Island of Hawai‘i, and the proposed tower is intended to improve services in areas where better connections are needed.

4. Engineers who work with Verizon noticed that additional coverage and increasing usage or dropped calls were occurring in the stretch between Kea‘au and Pāhoa. They identified Orchidland Estates as an area that would proved a suitable location to increase the needed coverage for the area.

5. The Applicant has made efforts to relocate to other alternative sites and to co-locate on the nearest existing tower site located in the Ainaloa Subdivision.

6. The Applicant submitted several property value appraisal reports for out of state properties, evidencing the lack of adverse impact on property values of nearby properties to the out of state proposed tower sites.

I. Position of the Intervenor

1. Mya Pawu, President of OLCA, testified that OLCA was specifically directed to ask for the contested case hearing based on the visual impact, and the possible liability impacts should the tower fall onto the roadway, block the roadway or damage a vehicle driving on the private roadway and create liability for OLCA.

2. Robert Ely, representative for OLCA, testified regarding the negative visual impact, the negative impact on aesthetics, the possible health risks associated with emissions from the tower and the devaluation of property values for the nearest surrounding property owners, mainly Alan Alatan, James Pa and Keoni Oskins. Mr. Ely also testified as to several possible alternative locations for the proposed tower that would be more acceptable to OLCA.

J. Position of the Planning Department

1. The Planning Department reviewed the Special Permit application with regards to the criteria that are spelled out in the Planning Commission rules and regulations and in the Hawai'i County Code, and based on its analysis and comments received back from various departments, made its recommendation in favor of approving the permit.

K. Impacts on Surrounding Property

1. The proposed tower will be 63 feet away from the Alatan home, the nearest residence on an adjacent lot. That residence will be well within the fall radius of the 104-foot tower. There is no specific protection from possible tower fall proposed in the application.

2. Visually, the proposed tower will also be 200 feet away from the Pa's home, across the street, from which most of the tower will be visible. The tower will also be visible from the Alatan home, partially screened by trees, but only 63 feet away. Intervenor specifically objected to the visual impact of the proposed tower. It is well established that even under a substantial evidence review such as under the federal Telecommunications Act of 1996, land use decisions based on aesthetic concerns can be valid, and that aesthetic harmony is a "prominent goal" of land use codes. The Commission is entitled to make an aesthetic judgment as long as it is grounded in the specifics of the case, not just an objection to towers in general. *See, Voice Stream PCS I, LLC v. City of Hillsboro, 301 F.Supp.2d 1251, 1257-8 (D.Ore., 2004).*

3. It is reasonable to conclude that the property value of the Alatan residence would be adversely affected by the erection of a 104-foot tower 63 feet away, partially but substantially visible through intermittent trees, and within the tower's fall radius. It is also reasonable to conclude that the property value of the Pa residence would be adversely affected by the erection of a 104-foot tower across the street and largely visible from the residence. The Commission so finds.

4. The proposed tower would be approximately 50 feet from the roadway of 35th Street. The street would be well within the fall radius of the tower, posing

potential risk of casualty to those walking or driving upon the road, as well as damage or blockage to the road.

L. Alternative Sites

1. Verizon acknowledges that there are alternative sites which are viable from a radio transmission point of view. The Vern Wood property, TMK (3) 1-6-010:082 & 083 is about 700 feet away. Intervenor has no objections to that site. Mr. Wood had originally declined to allow the tower siting when approached by Applicant, but has recently agreed to reconsider the matter.

2. The Church on A Sure Foundation site is about 1200 feet away. The church has indicated a positive response to Intervenor's inquiry regarding siting of the proposed tower. Verizon indicated that it has not pursued that site since it was brought to their attention around early December 2005, and due to the support received from the Planning Department and the hearings officer for the current application.

3. The Ainaloa Community Association site was at least partially evaluated by Applicant, but the existing radio study does not appear to have considered the construction of a 104-foot tower, but rather co-location on the existing 80-foot tower. Based on the available radio study data in the record, the Ainaloa site also merits further investigation as an alternative site. The Intervenor does not object to this site.

M. Reasonableness of Use

1. Based on the foregoing, the Commission finds that the proposed 104-foot tower is not a "reasonable use" for Special Permit purposes under the facts of this particular case. The proposed site would put an occupied preexisting residence within the fall radius of the tower. It would also more likely than not have an adverse effect on the values of

nearby properties whose view planes would be affected by the tower against the skyline. The proposed tower would also pose a risk to those using 35th Street, and a risk of blockage of the street, since the roadway is well within the tower fall radius. There appear to be reasonable alternative sites nearby which are technically viable and would impose less adverse impact upon the surrounding community, and are not objected to by Intervenor.

II. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Planning Commission adopts the following conclusions of law, including mixed findings of fact and conclusions of law.

1) ***HRS Chapter 205-6 provides in pertinent part as follows:***

§ 205-6. Special permit

(a) The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

* * *

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands

shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

2) ***Rule 6-6 of the Planning Commission Rules provides that the Commission shall not approve a Special Permit unless it is found that the proposed use:***

(a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and

(b) Would promote the effectiveness and objectives of Chapter 205; Hawaii Revised Statutes, as amended.”

3) ***Rule 6-3(b)(5) of the Planning Commission Rules provides that in considering how the proposed use would promote the effectiveness and objectives of Chapter 205 and constitute an unusual and reasonable use of the land, the following criteria should be addressed:***

(b)(5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;

(B) The desired use shall not adversely affect surrounding properties;

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

(D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;

(F) The proposed use will not substantially alter or change the essential character of the land and the present use; and

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

4) *Hawai'i Administrative Rules ("HAR") Section 15-15-95(b)(1)-(5) reiterates Rule 6-3(5)(A)-(D) of the Planning Commission Rules of Practice and Procedure*

5) *H.R.S. Section 205-6(d) and HAR Section 15-15-95(b) delegate the authority to grant special permits to the County Planning Commission for proposals involving less than 15 acres.*

6) In determining whether a proposed Special Permit use is "unusual and reasonable," the Planning Commission should consider the impacts of the proposed use. The Special Permit provides a mechanism for addressing the nature and impact of proposed uses. Curtis v. Board of Appeals, 90 Hawaii 384, 397, 978 P.2d 822, 835, (1999)

7) As explained in the findings of fact, the proposed 104-foot monopole telecommunications tower will put a pre-existing occupied residence and 35th Street

within its fall radius. It will likely have adverse effects upon the property values of that residence as well as other nearby pre-existing residences whose views will include the tower. There are other alternative sites nearby which appear viable for the radio transmission uses proposed, and are not objectionable to Intervenor.

8) Therefore, the proposed Special Permit uses are inconsistent with Commission Rule 6-3(b)(5)(B), as the proposed uses create substantial adverse impacts upon the surrounding properties.

9) Under the foregoing circumstances, the Commission finds and concludes that the proposed Special Permit uses, while “unusual” are not “reasonable” for Chapter 205-6 purposes, under the particular facts of this case. Therefore, the Commission finds that the instant Special Permit application should be denied.

10) Neither does the record show that Applicant has carried its burden of showing that allowance of the proposed telecommunications tower uses, not related to any agricultural uses, would in any way promote the objectives and effectiveness of Chapter 205, HRS, under the particular facts of this case.

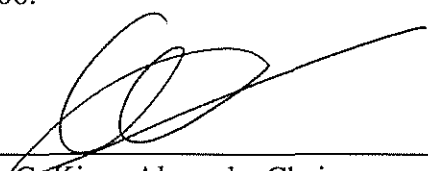
11) The Planning Commission has considered all proposed Findings of Fact and Conclusions of Law and Exceptions, and to the extent that the proposed findings or conclusions or exceptions are inconsistent with this decision, they are rejected, and to the extent that the proposed findings or conclusions are consistent with this decision, their intent is captured herein, with the specific language of this Findings of Fact, Conclusions of Law and decision to govern.

III. DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the request to allow the construction of a new 104-foot high steel monopole telecommunications tower, appurtenant cabinets and equipment shelter, and chain link fence enclosure on approximately 1,100 square feet of land on a 87,107-square foot parcel is not an unusual and reasonable use of the land, and would not support the objectives sought to be accomplished by the Land Use Law and Regulations. Special Permit Application No. 05-004 is hereby DENIED.

DATED: Hilo, Hawai'i, March 3, 2006.

By _____


C. Kimo Alameda, Chairman
Planning Commission