

## 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

February 15, 2007

Ms. Danette Mettler  
Martin Pacific Property Services  
76-6357 Kololia Street  
Kailua-Kona, HI 96740

Dear Ms. Mettler:

Special Permit Application (SPP 06-000035)  
Applicant: Cellco Partnership dba Verizon Wireless  
Request: A Telecommunication Facility Consisting of Approximately  
2,000 Square Feet With a 150-Foot Monopole, A Prefabricated Equipment  
Shelter (12'x26") and Fencing  
Tax Map Key: 4-7-7:portion 10

The Planning Commission at its duly held public hearing on February 2, 2007, voted to approve the above-referenced application to allow the construction of a telecommunication facility consisting of a 150-foot monopole, an equipment shelter, and fencing on approximately 2,000 square feet of land situated within the State Land Use Agricultural District. The area involved is located on the south side of the Hawaii Belt Road (Highway 19), approximately 4 miles east of the Hawaii Belt Road-Old Mamalahoa Highway intersection, Kapaaula, Hamakua, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the construction of a new 150-foot high monopole telecommunications tower, a prefabricated equipment shelter, and chain link fence enclosure on approximately 2,000 square feet of land of a larger 418-acre parcel located on the Hamakua Coast between Waimea and Honokaa. The telecommunication facility will provide higher and more consistent quality coverage for residents who live and travel between Waimea and Honokaa by "bridging" or linking the transmissions that now originates from the existing East Waimea and Honokaa sites. There were no options for co-location in this area.

The facility will include one unmanned 150-foot self-supporting monopole telecommunications tower with a total of twelve 8-foot high panel antennas mounted on

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top in three separate sectors with four antennas on each sector, a 312-square foot (12' x 26') prefabricated equipment shelter with an internal emergency generator, and a 6-foot high chain link security fence enclosure.

The previous denial recommendation was based primarily on the possible negative visual impacts of the proposed tower from Mamalahoa Highway to motorists and residents in this area. Previous options made available to the applicant included relocating the tower to an area that would not be as visually obtrusive and/or lowering the tower height. In considering the options of relocation and lowering of the tower height, the coverage area to bridge the gap between the Waimea site and the Honokaa site would be minimized, thereby requiring an additional facility to achieve connectivity. In light of the above, the Planning Director is willing to recommend approval with additional conditions requiring the applicant to make efforts to minimize the negative visual impacts of the tower. These conditions would require the applicant to paint the monopole with a color that would minimize its visual impact by blending in with its immediate surroundings. Additionally, the applicant will be required to plant certain types of trees that will help hide the tower from the motorists along the highway.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning 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) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. 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. The applicant is requesting a Special Permit to allow the construction of a new 150-foot high monopole telecommunications tower and related equipment to provide better cellular phone coverage between the Honokaa and Waimea telecommunication sites. The project site will utilize only a 2,000-square foot portion of an approximate 418-acre parcel. The remainder of the parcel is vacant and will remain as pasture for cattle grazing. Based on the minimal use of land and the public benefit to be provided by the additional tower, the subject request is considered an unusual and reasonable use of agricultural land.

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 as of right in the State Land Use Agricultural District. Therefore, a Special Permit is now required to establish a telecommunications 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 permitted uses. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The project site is situated on soil identified as Rough Broken Land (RB), which is used for pasture. The project site is classified as "D" or "Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is not classified by the Department of Agriculture's ALISH Map. The use will be located on a very small portion of a large agricultural property and will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The project site is located on the mauka side of the Hawaii Belt Road near the 48-mile marker. The development will utilize only a 2,000-square foot portion of an approximate 418-acre parcel. The remainder of the property is vacant and used as pasture for cattle. The surrounding area is zoned A-40a and consists predominately of undeveloped pasturelands with very few scattered dwellings. The 150-foot tower will be visible from the Hawaii Belt Road. A condition of approval will require the applicant to plant trees that will grow to a height of 100+ feet on the sides of the tower that face the highway to help minimize the visual impact of the monopole to motorists along the highway.

Additionally, a condition of approval will require the applicant to paint the monopole and antennas a color that will best blend with the existing trees and foliage. These added conditions should minimize the negative visual impacts of the tower from the motorists and the residents in the area. The tower site will be a 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 regulations. As the applicant has represented that they will adhere with the FCC's regulations, no significant adverse impact to surrounding properties is expected. In addition, no objections or concerns were received from the community. Based on the above information, the applicant has met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The applicant has met this criterion. The requested use will not burden public agencies to provide additional services. Only telephone and electricity is required for the requested use, which is available to the project site. Access to the project site is from Hawaii Belt Road between the 48 and 49-mile markers, which has a 42-foot wide pavement within an 80-foot wide right-of-way.

(D) Unusual conditions, trends, and needs have arisen since 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 of 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 telecommunications tower within the State Land Use Agricultural District.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The project site is situated on soil classified as Rough Broken Land (RB). The project site is classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of

Agriculture's ALISH Map. The 418-acre property is being utilized as pasture for cattle grazing. Although the location can be used for pasture, based on the poor soil conditions of the project site and the small portion of land being utilized for this request, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed 150-foot telecommunication tower will be located within a cluster of ironwood trees that are approximately 50 feet in height. The proposed tower will stand approximately 100 feet above the ironwood trees with a total of twelve 8-foot high panel antennas mounted on top. This will affect the scenic views of the land, trees and mountain in this area. Conditions of approval will be added to help minimize any negative visual impacts of the proposed tower. Therefore, being that the proposed tower and related equipment will occupy only 2,000 square feet of an approximate 418-acre parcel and that the present use of the land will continue its present use as pasture, the small portion of land proposed for the use will not substantially alter or change the essential character of the land and its present use.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in area identified as Important Agricultural Land in the General Plan. Important agricultural lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. As the project site is unclassified by the Department of Agriculture's ALISH Map and is identified as having "D" or "Poor" soil by the Land Study Bureau's Overall Master Productivity Rating, the request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, the request complements and is consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

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 the Hamakua district on the mauka side of the Hawaii Belt Road (Highway 19), near the 48 mile marker. Presently, the property is vacant of structures. Although no formal archaeological study was conducted of the site, the property is currently being used as pasture for cattle grazing. It is unlikely that any archaeological features or threatened species of flora or fauna are present on the property. 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.

Based on the above, the request to allow the construction of a telecommunication facility consisting of a new 150-foot monopole telecommunications tower, an equipment shelter, and fencing on approximately 2,000 square feet of land 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:

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 (5) years from the effective date this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-71(c)(3), 25-2-72, 25-2-74 and 25-4-12, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). The tower and antenna plans shall be stamped by a structural engineer.
3. The applicant shall paint the monopole and antennas, including future co-location antennas, a color that will best blend the tower and antennas with its immediate surroundings. Prior to Plan Approval, the applicant shall submit a photosimulation of the site with the proposed tower and color to the Planning Director for review and approval of the color choice.
4. The applicant shall plant trees that will grow to a height of 100+ feet, along the outside of the north, west and east boundaries of the proposed project site to minimize any negative visual impacts to the highway. These trees shall be in place within one year from the effective date of this permit. The applicant shall implement a Tree Planting Program as represented. The applicant shall submit photographs from different points along the highway confirming that this condition has been complied with annually on the anniversary date of the permit

until the trees have reached 100 feet in height. The applicant shall fertilize and maintain the trees for optimum growth.

5. Prior to submitting plans for Plan Approval, the applicant shall show control of the areas necessary for tree planting by easement or license by the owner.
6. Co-location or any expansion on the tower and antennae shall be allowed within the parameters of the building height and envelope as represented.
7. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower, antenna and accessory structures. The applicant shall provide written notification to the Planning Director of such removal.
8. 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.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Federal Aviation Administration and Federal Communications Commission.
10. 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.
11. 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.

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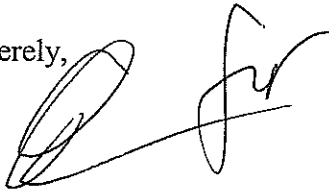
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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, x205.

Sincerely,



William Graham, 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/HPD-Kona  
DOT-Highways, Honolulu  
Cellco Partnership dba Verizon Wireless  
Alfred Jose Andrade Family Limited Trust