

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

June 23, 2009

Ms. Danette Mettler, General Dynamics
76-6357 Kololia Street
Kailua-Kona, HI 96740

Dear Ms. Mettler:

Special Permit Application (SPP 09-000079)

Applicant: Cellco Partnership dba Verizon Wireless

Request: Establishment of a Non-Manned Telecommunications Facility, Which Includes a
130-Foot Monopole and Associated Equipment on 2,000 Square Feet of Land

Tax Map Key: 4-3-6:portion 6

The Windward Planning Commission at its duly held public hearing on June 5, 2009, voted to approve the above-referenced application to allow the construction of a telecommunication facility consisting of a 130-foot monopole and equipment shelter on approximately 2,000 square feet of land situated within the State Land Use Agricultural District. The area involved is located near the 38-mile marker and on the south (mauka) side of the Highway 19, Kaumō'ali, Hāmākua, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the construction of a new 130-foot high monopole and related uses on a 2,000-square foot portion of a larger 113-acre parcel located on the Hāmākua Coast near Pa'auilo. The telecommunication facility will provide higher and more consistent quality coverage for residents who live and travel between Honoka'a and 'O'ōkala by "bridging" or linking the transmissions that now originates from the existing Honoka'a and 'O'ōkala tower sites. Currently, there were no options for co-location in this area.

The facility will include one unmanned 130-foot self-supporting 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, a 312-square foot (12' x 26') equipment shelter with a 60 kw diesel emergency generator, and a 6-foot high chain link security fence enclosure on 2,000 square feet of land.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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, Hawai'i 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 130-foot high monopole telecommunications tower and related equipment to provide better cellular phone coverage between the Honoka'a and 'O'okala telecommunication sites. The project site will utilize only a 2,000-square foot portion of an approximate 113-acre parcel. The remainder of the parcel will remain mainly 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, Hawai'i 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 Hawai'i. 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 "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is unclassified 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. 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 Hawai'i Belt Road near the 38-mile marker. The development will utilize only a 2,000-square foot portion of an approximate 113-acre parcel. The remainder of the property will be used mainly as pasture for cattle. The surrounding area is zoned A-40a and consists predominately of undeveloped pasturelands with very few scattered dwellings. The 130-foot tower will be visible from the Hawai'i Belt Road, but the visual impact will be minimal. A condition of approval will be added to require the applicant to paint the monopole and antennas a color that will best blend with the existing trees and foliage. The tower site will be fenced 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.

(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 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 Hawai'i Belt Road between the 38 and 39-mile markers, which has a 42-foot wide pavement within an 80-foot wide right-of-way. Access will be from the highway through an access easement on TMK: 4-4-10:1, which is owned by the same landowner, to the project site on TMK: 4-3-6:6.

(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 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, therefore a Special Permit is required.

(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 "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The 113-acre property is being utilized mainly as pasture for cattle grazing. Based on the poor soil conditions of the project site, the land upon which the proposed use is sought is unsuited for uses permitted within the district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed 130-foot telecommunication tower will be located within an area where there are scattered trees and bushes. The proposed tower will stand above the existing trees to be visible from the highway. This will affect the scenic views of the land, trees and mountain in this area, but the visual impact is expected to be minimal. Therefore, being that the proposed tower and related equipment will occupy only 2,000 square feet of an approximate 113-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. The request is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and complements 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, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program. The property is not located within the Special Management Area and is over one mile from the nearest coastline. 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. It is unlikely that any archaeological features or threatened species of flora or fauna are present on 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.

Based on the above considerations, the approval of the request would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is 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), Hawai'i 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. Co-location or any expansion on the tower and antennae shall be allowed within the parameters of the building height and envelope as represented.

5. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
6. The applicant shall seek a formal consultation under Section 7 of the Endangered Species Act (ESA) from the U.S. Department of the Interior, Fish and Wildlife Service (FWS) to define measures to minimize and mitigate any adverse affects the telecommunication facility may have on endangered species in the area. Consultation with the FWS shall be completed prior to the initiation of construction of the telecommunication facility.
7. Should any remains of historic sites, such as rock walls, terraces, platforms, marine sell 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.
8. 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.
9. 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.
10. 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.
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.

Ms. Danette Mettler, General Dynamics

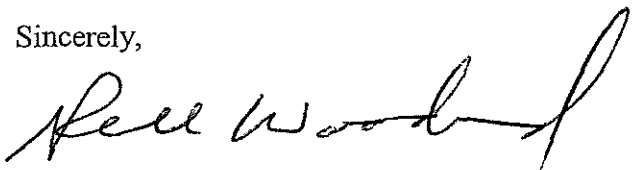
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- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
12. Should any of the conditions not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



Rell Woodward, Chairman
Windward 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
DOT-Highways, Honolulu
Mr. Gilbert Bailado