

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

July 20, 2009

Mr. William Keoni Fox
Ali'i Wireless Specialists, LLC
45-955 Kamehameha Highway, Suite 308
Kāne'ohe, HI 96744

Dear Mr. Fox:

Special Permit Application (SPP 09-000080)
Applicant: Anthem Telecom, LLC
Request: 150-Foot Monopole Telecommunications Tower and Appurtenant
Structures on 10,000 Square Feet of Land
Tax Map Key: 4-3-7;portion of 10

The Planning Commission at its duly held public hearing on July 1, 2009, voted to approve the above-referenced application to allow the construction of a 150-foot telecommunication tower and related structures on approximately 10,000 square feet of land situated within the State Land Use Agricultural District. The area under consideration is located along the mauka section of Pa'auilo Mill Road, approximately 1,300 feet mauka of Highway 19, Pa'auilo, Hāmākua, Hawai'i.

Approval of this request is based on the following:

The applicant requests a Special Permit to allow the construction of a 150-foot monopole telecommunications tower and related structures, including proposed pullboxes, overhead cable trays, H-Frames, panel antennas, gravel yard, gravel service drive, six-foot high chain link fence and gate. The proposed 150-foot monopole will be capable of co-locating six (6) or more wireless communications carriers. There are seven (7) proposed locations for equipment cabinets (24"x 24", approximately 6 feet high) within the fenced compound. The applicant's initial clients (T-Mobile, AT&T, and Mobi PCS) are expected to install their equipment once the proposed tower is permitted and constructed.

According to the applicant, the objective is to provide the infrastructure for improved wireless coverage of Highway 19 and Pa'auilo. The 150-foot monopole will be constructed to accommodate at least six wireless service providers. The site will resolve the current gap in coverage between existing towers from Honoka'a and 'O'ō-kala by "bridging" or linking transmission from existing towers, and provide service to the town of Pa'auilo.

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 150-foot monopole telecommunications tower and related structures to provide better cellular phone coverage between Highway 19 and Paauilo. The project site will utilize only a 10,000-square foot portion of an approximate 1,089-acre parcel. The remainder of the parcel was used as pasture and a horse stable since the 1930's, but the horse stable has since been removed. 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 classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and identified as Prime Agricultural Land by the Department of Agriculture's ALISH Map. The use will be located on a small portion of a large property and will not displace any existing agricultural activity or diminish the agricultural potential of the site. Therefore, the proposed use will not adversely affect the preservation, or any existing 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 agricultural lands. The proposed project will not adversely affect the preservation and agricultural use of the County's prime agricultural land; thus, the request 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 Highway 19 between the 36 and 37 mile markers, mauka to Pa'auilo Mauka Road and onto an existing 12-foot wide dirt road. The development will utilize only a 10,000-square foot portion of an approximate 1,089-acre parcel. The surrounding area is zoned A-40a and RS-10 makai towards the Hawai'i Belt Highway. The closest dwellings are located on the adjacent parcel to the west on TMK: 4-3-001: 007. The applicant indicates that the "nearest home is located at a lower elevation 790 feet to the north." The closest existing telecommunication towers are located in Honoka'a and 'O'ō-kala. On June 5, 2009, the Planning Commission approved Special Permit No. 09-79 for the construction of a telecommunication facility consisting of a 130-foot monopole, an equipment shelter, and fencing located near the 38-mile marker on the south (mauka) side of Highway 19 on TMK: 4-3-6: portion of 6.

In the initial review of this application, the Planning Department felt that perhaps, the service providers of the request could possibly co-locate on the tower recently granted by SP 09-79. However, during further review of this application during recent discussions with the applicant, while co-location may be possible on the recently approved Special Permit, the coverage area required of the proposed service providers would not be accomplishable. There will still be a "gap" between towers.

The 150-foot tower will not be visible from Highway 19, except from the intersection of Highway 19 and Pa'auilo Mauka Road, and the visual impact is expected to 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 proposed use, which is available to the project site. Access to the project site is from Highway 19.

(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 classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and identified as Prime Agricultural Land by the Department of Agriculture's ALISH Map. The parcel was previously used as a pasture and horse stable since the 1930's. Although agricultural activities can be established based on these classifications, the property has not been used for intensive agricultural activities in the past.

(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 an area with ironwood trees and other variety of foliage. There are no ongoing agricultural activities on the site. Thus, given the present use of the property, the proposed tower will not affect the scenic views of the land, trees and mountain in this area, and the visual impact is expected to be minimal. As the proposed tower and related equipment will occupy only a small area, 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 mauka of the town of Pa'auilo in an area identified as Low Density Urban in the General Plan. Scattered residential uses can be found near the proposed tower site; however, the concentration of low density uses occur proximate to Highway 19 in the town of Pa'auilo. Thus, 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. Located mauka of Hawai'i 19, over one mile from the nearest coastline, the property is not located within the Special Management Area. 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. 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, including the Federal Aviation Administration and Federal Communications Commission.
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. 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.
10. 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.

Mr. William Keoni Fox

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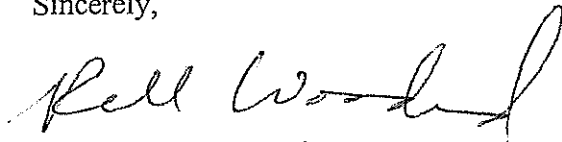
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted 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.

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: Anthem Telecom, LLC
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