



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

October 5, 2009

Mr. Daniel Jandoc
State of Hawaii – DAGS
1151 Punchbowl Street, Room 427
Honolulu, HI 96813

Dear Mr. Jandoc:

Special Permit Application (SPP 09-000086)
Applicant: State of Hawaii, DAGS
Request: To Construct a 150-Foot Telecommunication Tower
And Appurtenant Structures
Tax Map Key: 7-2-2:portion of 1

The Leeward Planning Commission at its duly held public hearing on September 18, 2009, voted to approve the above-referenced application to allow the construction of a 150-foot tall telecommunication tower and related structures on approximately 31,015 square feet of land within the State Land Use Agricultural District. The area involved is located on the northern slope of Hualālai, approximately 2 miles mauka and east of the Māmalahoa Highway 29-mile marker, Ka'ūpūlehu, North Kona, 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 tall, 4-leg self supported telecommunication tower and related structures including an approximately 914-square foot radio equipment building containing an equipment room with related mechanical and fire protection systems, a rectifier room and an emergency generator room; underground electrical lines; a site grounding system for the tower, building and fence; a 1,000-gallon aboveground double-wall fuel tank; buried electrical conduits; an 8-foot high chain-link fence topped with strand barbed wire; a concrete paved apron to provide vehicle parking; and a 115-foot long improved access driveway to connect to the existing HELCO access road located south of the project site. The tower will be used to mount 14 solid microwave antennas, including eight 10-foot diameter

antennas and will be factory painted a light shade of gray similar to the color of the galvanized finish.

The purpose of the proposed facility is to support the rebuilding and modernization of the public microwave communication system known as the Ānuenue Radio system. The new Ānuenue Radio system is necessary to meet the line of sight criteria and to provide the minimum path length required for the new digital microwave radio system to operate reliably. The proposed facility will be owned and operated by DAGS and utilized by the State and other public agencies for public purposes.

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 proposing a telecommunication facility to be used by public agencies for public purposes which will include support for law enforcement, public safety, emergency response, and civil defense missions. The project site will utilize only a 31,015-square foot portion of an approximate 7,056-acre parcel. The remainder of the parcel will continue to be used for grazing operations by Hualālai Ranch. Based on the minimal use of land and the public benefit to be provided by the proposed telecommunication facility, 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 located on the 1800-1801 Ka'ūpūlehu lava flow which consists of 'a'ā lava with little or no soil. Any soils on the site are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is in an area unclassified 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 of the County's prime agricultural lands for agricultural use, 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 adjacent to several existing telecommunication towers near the center of a 7,056-acre parcel that is leased by Hualālai Ranch for grazing operations. It is in an isolated area on the northern slope of Hualālai Volcano approximately 1,400 feet mauka of Māmalahoa Highway near the 29-mile marker. The surrounding area is zoned A-20a. The closest dwellings are located 1.2 miles makai of the site, along Māmalahoa Highway. The 150-foot tower will be intermittently visible from Māmalahoa Highway but the visual impact is expected to be minimal due to the distance of the tower from the highway and the elevation of the site. The tower will be sited within the project area so as to prevent radio interference with the surrounding telecommunication facilities. Specifically, there will be no blockage or infringement of the adjacent HELCO electric wave easements. 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 to 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 electricity is required for the proposed use, which is available to the project site. Access to the project site from Māmalahoa Highway is via a 2-mile long, partially improved road within a roadway easement.

(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 the 1800-1801 Ka'ūpūlehu lava flow which consists of 'a'ā lava with little or no soil. Surrounding lands are leased to Hualālai Ranch for cattle grazing, although grazing near the project site does not occur due to the absence of vegetation. Soils on the site are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and unclassified by the Department of Agriculture's ALISH Map. The potential for agricultural productivity at the site is very limited due to the lack of vegetation and poor soils.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed facility will be located in a remote area adjacent to several existing telecommunication towers surrounded by land currently used for grazing operations by Hualālai Ranch. Public views of the facility will be confined to distant glimpses of the upper portion of the new tower at gaps in the terrain by motorists traveling along Māmalahoa Highway towards Kailua-Kona. The remote location, elevation, and distance from the highway will ensure that the facility will not have a significant adverse impact on scenic views of the slopes of Hualālai. Additionally, a condition of approval will require the applicant paint the tower and antennas a color that will best blend in with the surrounding landscape. Therefore, the proposed use will not substantially alter or change the essential character of the land.

(G) The request will not be contrary to the General Plan and Kona Community Development Plan (CDP). 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 an area identified as Extensive Agriculture on the LUPAG Map,

which are lands not classified as Important Agricultural Land because they are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture category. The request is not contrary to any of the goals or policies of the General Plan or Kona CDP. Approval of the request will support the modernization of the public microwave communication system used for emergency services, law enforcement, public safety and civil defense purposes which would complement the Public Facilities elements of these plans.

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 project site is located outside of the Special Management Area over 6 miles from the nearest coastline, above Māmalahoa Highway at an elevation of 3,300 feet mean sea level. There is no record of a designated public access to the shoreline or mountain areas traversing the site. Due to the project site's distance from the shoreline, the property will not impact recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources. No historic properties were identified on the project site during an archeological field survey conducted in December 2007. 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 proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An archeological assessment was completed for the project site in January 2008 by Haun & Associates. A cultural impact evaluation was conducted in April 2008 by Cultural Surveys Hawai'i, Inc. and the applicant consulted with the Hawaiian community to determine if the site holds significant cultural value. To determine the presence of biological resources, biological surveys of the site were completed by Reginald E. David in April 2008 and avian radar surveys were conducted in October 2008. The findings of bird studies conducted in September 2003 for the nearby HELCO telecommunication facility are also relevant to the project site.

The valuable cultural, historical, and natural resources found in the permit area:
The project site is located on the 1800-1801 Ka'ūpūlehu lava flow, which consists of

uneven weathered 'a'ā lava with little or no soil covering and very little vegetation. The archeological assessment of the project area found no evidence of historic properties and in a letter dated March 17, 2008, the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) concurred with this finding. A cultural impact evaluation of the area found no cultural resources recorded in the project area. In a letter dated July 15, 2008, the DLNR-SHPD concurred with this finding and indicated that due to the relatively barren Ka'ūpūlehu lava flow, the project area has not been used for traditional cultural practices within recent times. Additionally, no natural resources used for cultural gathering purposes were identified on the site.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline and is not in a forested area of the mountain, therefore Hawaiian gathering, fishing and hunting rights is not an issue.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicants to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD.

Based on the above considerations, the approval of the request to construct a 150-foot high telecommunication tower and related structures 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. The tower and antenna plans shall be stamped by a structural engineer.
3. The applicant shall paint the tower 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. All exterior lighting shall be shielded.
5. Co-location or any expansion on the tower and antenna shall be allowed within the parameters of the building height and envelope as represented.
6. 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.
7. 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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD 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. 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.
 - 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).

Mr. Daniel Jandoc
Page 8

- 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,



Rodney Watanabe, Chairman
Leeward Planning Commission

Lstatedagsspp09-000086PC

cc: Mr. John Sakaguchi/Wilson Okamoto Corp.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado /