



County of Hawai'i

WINDWARD PLANNING COMMISSION

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

APR 25 2013

Mr. Daniel Jandoc
Department of Accounting and
General Services
State of Hawai'i
1151 Punchbowl Street, Room 427
Honolulu, HI 96813

Dear Mr. Jandoc:

Use Permit Application (USE 13-000038)

Applicant: State of Hawaii, DAGS

Request: To Allow a Public Use Communication Facility, Including a 75-Foot Tall
Telecommunication Tower With Antennas and Related Improvements on Approximately
1.42 Acres of Land Within the County's Agricultural (A-1a) Zoned District

Tax Map Key: Portions of 2-4-001:170 and 2-4-001:040

The Windward Planning Commission, at its duly held public hearing on April 18, 2013, voted to approve the above-referenced request to allow the construction of a 75-foot tall, self-supported telecommunication tower with mounted antennas and related structures and uses on approximately 10,155 square feet of land within the State Land Use Agricultural District. The area involved is located approximately 1,300 feet northwest of the intersection of Komohana Street and Puainako Street Extension, Waiākea, South Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Use Permit to allow the construction of a 75-foot tall, 4-leg self supported telecommunication tower and related structures on a 10,155-square foot portion of two parcels totaling approximately 3.5 acres. The related structures and improvements will be the following:

Hawai'i County is an Equal Opportunity Provider and Employer

APR 25 2013

Mr. Daniel Jandoc
Department of Accounting and
General Services
State of Hawai'i
Page 2

- 75-foot tall, 4-leg self supported telecommunication tower;
- 1,092-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;
- 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 area to provide vehicle parking; and
- A 12-foot by 115-foot long improved access driveway to connect to the Department of Water Supply (DWS) parcel and access road located just south of the project site.

The tower will be used to mount 16 solid microwave antennas, including six 10-foot, one 6-foot, three 4-foot, and six 2-foot diameter antennas. The tower will also support 11 other antennas, including side mounted whips and side mounted smaller antennas such as directional yagis and panel antennas.

Although the tower is less than 200 feet in height, the FAA is requiring the applicant to include a steady burn red obstruction light on top of the tower. The tower will be factory painted a light grey color to mitigate visual impacts. The facility is anticipated to cost \$2.2 million and should be operational by June of 2014.

The purpose of the proposed facility is to support the rebuilding and modernization of the public microwave communication system known as the Ānuenu Radio system. This tower will replace the existing ICSD radio facility located at the University of Hawai'i at Hilo (UH Hilo) Campus Center building. The system is owned by DAGS and shared with the U.S. Coast Guard to support State and Federal agencies. This system is a successor to the Hawai'i Rainbow Communications Systems commonly known as "Rainbow," which was created through an agreement by three State and three Federal agencies to share infrastructure and microwave radio transmission systems. This resulted in a statewide system of facilities used by Federal, State, and local agencies in support of their law enforcement, public safety, emergency response, and civil defense missions. The Rainbow agreement dissolved at the end of September 2002. This new radio system will install a modern high capacity digital interconnect to replace the Rainbow analog radio channels used by various agencies. The digital interconnect will facilitate voice, digital radio, video, and data communications.

Mr. Daniel Jandoc
Department of Accounting and
General Services
State of Hawai'i
Page 3

The Waiākea Radio Facility will allow the establishment of microwave link needed to support interoperability between State agencies and the County as well as improve coverage. The Waiākea Radio Facility will significantly upgrade the infrastructure that supports local government communications as the facility may also be used by the County of Hawai'i to install microwave radio links from the Waiākea facility to other County of Hawai'i sites. The planned land mobile radio system (LMR) antennas at the Waiākea Radio Facility will provide radio coverage for government users in the Hilo vicinity.

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, civil defense missions and UH Hilo. The project site will utilize only a 10,155-square foot portion of two parcels totaling approximately 3.5 acres. 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 soils 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 small portions of two properties 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 surrounding area is zoned A-1a and is owned by the State of Hawai'i. The property to the north is the location of the U.S. Department of Agriculture, which has several structures. The property to the west and south is a large State owned parcel and is vacant of uses and structures. The property to the east across Komohana Street is the location of the UH Manoa Komohana Research Extension Center, which has a constructed facility. The nearest dwellings are located within the Komohana Gardens subdivision located approximately 1,500 feet to the south and Sunrise Ridge Estates located approximately 3,500 feet to the west. 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, the FAA required the applicant not to exceed a height of 76 feet about ground level. The FAA indicated that the 75-foot structure would 1) have no effect on any existing or proposed arrival, departure or en route instrument/visual flight rules (IFR/VFR) minimum flight altitudes; 2) not exceed traffic pattern airspace; 3) have no physical or electromagnetic effect on the operation of air navigation and communications

facilities; and, 4) have no effect on any airspace and routes used by the military. Lastly, the Planning Department has received no objections or concerns regarding this project 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 needed for the proposed use, which is available to the project site. Access to the project site will be via Komohana Street and an existing, non-exclusive road and utility easement. The existing road is approximately 10 feet wide and has an asphalt paved surface. The applicant will be constructing a 12-foot wide by approximately 115-foot long access driveway to connect the project site to the existing road. Therefore, the requested use will not unreasonably burden public agencies to provide improvements or services.

(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 consists of soils 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 poor soils. Therefore, the land upon which the proposed use is sought is unsuited for the 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 75-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 surrounding areas located mauka of the project site. This will affect the scenic views of the land, trees and ocean in this area, but the visual impact is expected to be minimal. 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 University Use on the LUPAG Map, which is for a public university, including ancillary public uses, residential, and support commercial uses. 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 and is approximately 2 miles from the nearest coastline. 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. 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: The project site was included in land considered during the preliminary planning for the USDA facility. An archeological reconnaissance was completed for the USDA facility in May 2000. The Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) has issued a "no-effect" letter dated October 29, 2012.

A cultural impact evaluation was conducted in February 2012 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 and avian resources, biological and avian surveys of the site were completed by Reginald E. David in March 2012.

The valuable cultural, historical, and natural resources found in the permit area: During the archeological reconnaissance for the USDA facility in May 2000, human skeletal remains, consisting of a single, left femur were found in a lava sink feature. DLNR-SHPD issued a "no-effect" determination based the completion of an approved burial treatment plan to remedy potential impacts to Site 22080 (burial) and with the understanding that interim construction fencing will be installed at the 5-foot buffer zone prior to commencement of construction and long term preservation measures as indicated in the approved plan are implemented. DLNR-SHPD also requests the opportunity to review the final grading/construction plans as part of the grading permit application. The grading permit process already includes a review of the DLNR-SHPD before the permit can be approved, so an additional condition is not warranted for this request.

In addition, the cultural impact evaluation of the area found no cultural resources recorded in the project area. Additionally, no natural resources used for cultural gathering purposes were identified on the site.

The findings for the botanical resources shows the vegetation is a mix of scrub 'ohi'a, koa haole, with an 'uluhe understory, interspersed with numerous alien species including strawberry guava, Christmas berry, octopus tree, and numerous alien weedy and grass species. The conclusion of the survey was that the Waiākea Radio Facility project site, including the access easement, contains no listed or candidate threatened or endangered botanical species as set forth by the U.S. Fish and Wildlife Service (USFWS). Thus, the construction of the Waiākea facility will not have an adverse impact to threatened or endangered species.

The avian survey found a total of five avian species were detected during the time spent in the study area. All of the species recorded are alien to the Hawaiian islands. Although no seabirds were detected during the survey, it is probable that both the endangered Hawaiian Hawk and the threatened endemic sub-species of the Newell's Shearwater over-fly the project area in small numbers between April and the middle of December each year. The USFWS recommended the following conservation measures to minimize potential project impacts to seabirds during their breeding season, all outdoor lights should be fully shielded so the bulb can only be seen from below the bulb height and only used when necessary. Nighttime construction should be avoided during the seabird fledging period of September 15 through December 15. If a light is required for the tower, a flashing red light is recommended by the USFWS, rather than a solid red or white light. The use of flashing red lights has been known to reduce seabird attraction. In conclusion, the construction of the building and tower would not adversely affect the bird population or mammalian species in the area of the project site or any USFWS or DLNR listed or candidate threatened or endangered species. A condition of approval will be added to reflect the recommendations of the USFWS.

Possible adverse effect or impairment of valued resources: As mentioned above, conditions of approval will be added to minimize any possible adverse effect or impairment to any valued resources. Additionally, 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 75-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. All exterior lighting shall be shielded, except the red flashing light required by the Federal Aviation Administration (FAA).
4. Co-location or any expansion on the tower and antenna shall be allowed within the parameters of the building height and envelope as represented.
5. 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.
6. 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.
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. 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. Daniel Jandoc
Department of Accounting and
General Services
State of Hawai'i
Page 10

- 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.
9. 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 Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Wallace Ishibashi, Jr., Chairman
Windward Planning Commission

Lstatedagsuse13-037

cc: Mr. John Sakaguchi/Wilson Okamoto Corp.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Mr. Gilbert Bailado