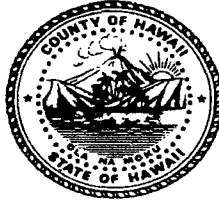


Harry Kim
Mayor



Gregory Henkel, Chair
Myles Miyasato, Vice Chair
Joseph Clarkson
Donn Dela Cruz
Donald Ikeda

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

JUL 14 2017

Mr. David Yamamoto, Building Chief
Department of Public Works – Building Division
101 Pauahi Street, Suite 7
Hilo, HI 96720

Dear Mr. Yamamoto:

SUBJECT: Use Permit No. USE 17-000069
Applicant: County of Hawai'i, Department of Public Works
Permitted Use: Develop a Hawai'i County Radio Communication Site at
Ocean View Fire Station
Tax Map Key: 9-2-031:019

The Windward Planning Commission, at its duly held public hearing on July 6, 2017 voted to approve the above-referenced request to the construction of a 130-foot tall, steel lattice radio tower equipped with one microwave dish and two, 2-way radio antennas and related structures and improvements on approximately 2,178 square feet of land within the State Land Use Agricultural District. The project site is situated at 92-6091 Orchid Circle Mauka which is also the site of the Ocean View Fire Station at the intersection of Orchid Circle Mauka and Ocean View Parkway, Ocean View, Ka'u, Hawai'i.

Approval of this permit 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 any fencing associated with the proposed development. The tower and antenna plans shall be stamped by a structural engineer.

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[JUL 14 2017]

3. Co-location or any expansion on the tower and antenna shall be allowed within the parameters of the building height and envelope as represented.
4. To avoid impacts to the Hawaiian hoary bat, no woody plants over 15 feet tall shall be removed, cut, or trimmed during the sensitive bat pup-birthing and rearing season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist. Additionally, no barbed wire shall be used for any fencing (temporary or permanent).
5. To avoid impacts to the Hawaiian hawk, no construction or brush/tree clearing shall occur during the nesting season of March through September. If this time period cannot be avoided, a hawk nest search shall be conducted by a qualified biologist, within 1,600 feet of the project site and pre-disturbance surveys shall be conducted within 14 days prior to construction activity. If surveys determine the presence of Hawaiian hawks nesting in the action area or within 1,600 feet of the action area, the applicant shall contact USFWS immediately to develop appropriate avoidance and minimization measures dependent upon the site-specific information.
6. To minimize impacts to seabirds (Hawaiian petrels, Newell's shearwaters and band-rumped storm petrels), the tower shall be designed to minimize total surface area and avoid the use of guy wires. Any lights associated with the project shall be cutoff, equipped with a motion sensor, or shielded so that the light cannot be seen from above. If the top of the tower must be lighted to meet FAA regulations, a red flashing light shall be used versus a solid red or white light. Nighttime construction shall be avoided during the seabird fledging period of September 15th to December 15th.
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 and its antenna and accessory structures (including the equipment building and the fence), down to, but not including, the concrete foundation. The applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication tower and related improvements and the removal of all structures.
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).
 - 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.
11. 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.

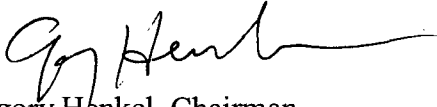
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Mr. David Yamamoto, Building Chief
Department of Public Works – Building Division
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Should you have any questions, please contact Christian Kay of the Planning Department at 961-8139

Sincerely,



Gregory Henkel, Chairman
Windward Planning Commission

LDPWUSE17-069wpc

Enclosure: PC Findings Report

cc w/enclosures: Mr. Ron Terry, Geometrician Associates, LLC
Mr. John Drummond, Civil Defense
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
US Fish and Wildlife Service
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

COUNTY OF HAWAI'I DEPARTMENT OF PUBLIC WORKS
USE PERMIT APPLICATION NO. 17-000069 (USE 17-069)

Based on the following, Use Permit No. 17-69 is approved and hereby issued by the Planning Commission to allow the construction of a 130-foot tall, self-supporting, steel lattice radio tower equipped with one microwave dish and two (2), 2-way radio antennas and related structures and uses on approximately 2,178 square feet of land within the State Land Use Agricultural District. The project site is situated at 92-6091 Orchid Circle Mauka which is also the site of the Ocean View Fire Station at the intersection of Orchid Circle Mauka and Ocean View Parkway, Hawaiian Ocean View Estates, Ka'ū, Hawai'i, TMK: 9-2-031: Portion of 019.

COUNTY OF HAWAI'I DEPARTMENT OF PUBLIC WORKS is requesting a Use Permit to allow the construction of a telecommunication tower and related structures on a 2,178-square foot (0.05-acre) portion of a two (2)-acre parcel, which will include the following:

- 130-foot tall, self-supporting structural galvanized steel lattice telecommunication tower with one (1) microwave dish and two (2), two-way radio antennas;
- 200-square foot radio equipment shelter containing an communications equipment;
- Underground electrical lines in conduit to the equipment shelter;
- An emergency generator on a concrete pad;
- A propane fuel tank on a concrete pad; and
- Ten (10)-foot high fencing around the project area.

The facility is anticipated to cost \$1.2 million with construction commencing once the Use Permit is issued and should be complete within six to eight months.

The County of Hawai'i is upgrading its radio system, which is used by various County agencies for emergency and other communications. Some components of the current radio system are outmoded and in need of repair. The County is undertaking a variety of coordinated actions to address this issue. According to the County of Hawai'i Civil Defense Agency, limitations with the current coverage present mission safety issues for responding public safety agencies. Reliable and complete communications infrastructure is critical for effective mission operations, public safety and general government operations. With the current system, there are certain areas of the island with poor to no radio communications, particularly the Puna and Ka'ū Districts. This means that Fire, Police and Civil Defense personnel are sometimes cut off from communication with headquarters and other personnel. During wildfire, tsunami, storms or other disaster events, all other conventional and public communications can be affected. This places an even greater need to insure operability and coverage of the County radio system. Tests have demonstrated that this will be a safe and effective location that offers transmission "lines of sight" to other key facilities, which will enable critical coverage of gap areas and improve overall County radio coverage in Ka'ū.

Telecommunication towers and antennas previously required a Special Permit to operate within the State Land Use Agricultural District. In 2007, the State Legislature adopted Act 171 to allow the construction and operation of wireless communication antennas and towers as permitted uses within the State Land Use Agricultural District. In 2010, the Hawai'i County

Council approved Ordinance No. 10 17 to require a Use Permit for telecommunication antennas and towers in the County's Agricultural zoned district. As the applicant is proposing to construct a new tower in the County's Agricultural (A-1a) zoned district, a Use Permit is required.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits, requires that such action conform to the following guidelines:

A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;

B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and

C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed request meets the guidelines for approval of a Use Permit, for the reasons outlined below:

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and policies of the General Plan. The Zoning Code allows for telecommunication antennas and towers to be a permitted use within the County's Agricultural zoned district if a Use Permit is approved by the Planning Commission. Additionally, the Zoning Code requires that any freestanding tower must be set back from every property line a minimum of one foot for every five feet of tower height. A 130-foot tower thus requires a 26-foot setback from the property line. The minimum distance to all property lines from the outside edge of the tower will be 32 feet. Therefore, the tower conforms to the setback requirement.

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 General Plan designation for this property is Rural, which includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The Rural designation does not necessarily mean that these areas should be further subdivided to smaller lots. Most lack the infrastructure necessary to allow further subdivision. Telecommunication facilities may be allowed in this area with the approval of a Use Permit from the Planning Commission. The proposed project is also consistent with the following goals, policies and actions articulated in the General Plan:

- Public Facilities Goal: Encourage the provision of public facilities that effectively service community and visitor needs and seek ways of improving public service through better and more functional facilities in keeping with the environmental and aesthetic concerns of the community.
- Public Facilities Policies:
 - Continue to seek ways of improving public service through the coordination of service and maximizing the use of personnel and facilities.
 - Coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community.
- Public Facilities Protective Services Policies: Development of police and fire facilities should entail joint use structures whenever feasible.
- Public Facilities Protective Services Courses of Action: Expansion of Police, Fire, and emergency medical facilities should be considered in accordance with district needs.

The General Plan also discusses the importance of protecting native species in order to maintain an ecological balance for the well-being of the island. According to the applicant, the project site has been modified by bulldozing, and the area no longer supports natural vegetation. Based on the project site's nearly 3,000-foot elevation, average annual rainfall of 35 inches, recent lava geologic substrate, and adjacent vegetation, the natural vegetation here is Montane Dry Shrubland (Gagne and Cuddihy 1990). The surrounding vegetation is typical of lava flows at this elevation in Ka'ū and Kona: 'ōhi'a, ama'u, uki, pilo, 'akia, a'ali'i, pukiawe, and kolea lauli'i. The site proposed for the tower has been bulldozed and now contains weeds, except for a very small corner with a remnant of the natural vegetation consisting of a few 'ōhi'a, a'ali'i, pilo, 'akia, uki, and pukiawe. A botanical survey conducted by Ron Terry, Ph.D., determined that no rare, threatened or endangered plant species are present at the site. Because of the primarily non-native, managed vegetation on the utilitarian site, which is managed to support a fire station, there is little habitat for native animal species. Systematic 8 to 10-minute bird counts were conducted by professional ornithologist Reginald David. Most birds seen or heard on the site were alien to the Hawaiian Islands, although some native birds were observed; other native birds were not observed but may be present. The Ocean View project site had a total of 32 individual birds of eight species recorded during the point count. One Hawaiian Hawk, an endangered endemic species, was seen flying over nearby. House Sparrows accounted for 50 percent of all birds recorded. In addition to birds, the presence of dogs was detected nearby. No reptiles or amphibians were observed, although it is likely that various non-native lizards are present. In their March 23, 2017 letter to Hawai'i County Civil Defense on the subject project, the United State Fish and Wildlife Service (USFWS) identified the federally endangered Hawaiian hawk, Hawaiian hoary bat, Hawaiian petrel band-rumped storm-petrel, and the threatened Newell's shearwater(collectively referred to as seabirds) in the project area. Additionally, USFWS stated that no critical habitat is located within the action area and therefore will not be affected. Finally, the letter outlined three (3) conservation measures to avoid and minimize impact on the identified species. According the applicant has stated that they will implement and enforce the conservation measures as part of the construction contract. These conservation measures will also be added as conditions of this permit.

Based on the above, the request is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County of Hawai'i General Plan.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The two (2)-acre subject parcel is rectangular in shape and situated in the interior of Orchid Circle Mauka at the intersection of Ocean View Parkway. The parcel supports the Ocean View Fire Station which was permitted by Special Permit No. 957 in 1997. The mauka half of the property has been mostly bulldozed and utilized for the Fire Station and related activities. The makai portion of the property is currently covered with vegetation. The approximately 0.05-acre portion that would be utilized by the radio communication facility, including the tower, is located adjacent and makai of the existing fire station. It has been previously disturbed and currently has no structures.

Properties adjacent to the subject parcel are all similarly zoned A-1a. To the north of the subject parcel, there are two undeveloped one (1)-acre properties. To the west is Orchid Circle Makai, beyond which is a one (1) acre property with a single-family residence. To the south is a two (2)-acre County-owned property that is currently vacant and to the east is Orchid Circle Mauka, beyond which is a one (1)-acre property with a single-family residence. Single-family homes are present on approximately one-third of nearby properties. The remainder of the lots are vacant.

A radio frequency (RF) study was conducted, as part of the Environmental Assessment process. According to that study, the RF energy near the base of the tower is minimal, and no adverse electromagnetic energy exposure to the public or workers would occur as result of the proposed communications infrastructure, which will have appropriate signage for worker and general public safety. The site will comply with the regulations of the Federal Communications Commission.

Additionally, the State Department of Health Indoor Air and Radiological Health Branch regulates telecommunications towers, states the following in relation to electromagnetic radiation:

"At the present time, there are no general public exposure limits for electromagnetic radiation. Science has not provided a validated basis for dose response. In other words, the amount of exposure cannot be correlated with long term health effects. A number of scientific studies have been done indicating correlations. However, these studies could not duplicated with the same results and/or had inherent flaws which precluded validation of the study. As such, potential health impacts associated with electromagnetic radiation cannot be determined at this time."

There will be minimal noise and dust generated during the construction phase of the project, however, this will be mitigated by proper construction techniques, dust control, and limiting construction to daylight hours.

Finally, as part of the EA process, the applicant conducted a visual impact assessment which found that the proposed 130-foot tower will be visible from surrounding locations that lack forest cover. The height of the tower has been carefully calculated to be the minimum necessary to achieve its communication objective and provide coverage as it operates by line of sight to other facilities. The tower will be visible from a number of locations as the project site is within an area with other developed structures, primarily homes and public infrastructure. However, according to the study, at most viewer locations, trees would obscure views of the tower. Depending on the particular circumstances, trees from 20 to 80 feet in height would tend to block views of the tower. In areas without such tree cover nearby, however, the tower would

be visible, although as an increasingly minor component of the overall view with increasing distance. The operations area at the base of the tower will be surrounded by a 10-foot high fence. Applicants are sometimes required to provide landscaping as part of the Plan Approval process in order to screen the view of these areas from surrounding properties. In this case, the proposed location of the tower on the lot and the occurrence of existing trees and vegetation surrounding most of the subject parcel will make it unlikely that the operations area can be seen from surrounding properties, therefore the applicant will not be required to install landscaping as part of this project. Finally, as the site is approximately seven (7) miles away from the nearest shoreline, it will not significantly impact any coastal view planes and will not impact any General Plan "areas of natural beauty" as none have been identified in Ocean View area.

It is anticipated that the approval of the telecommunication tower to improve emergency communications in the area will be beneficial to the community as it will help address limitations with the current coverage which present mission safety issues for responding public safety in the Ka'ū District. The new tower will allow Fire, Police and Civil Defense personnel to better communicate with headquarters and other personnel during disaster events.

Therefore, based on the above, the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the subject parcel is off of Orchid Circle mauka, near the intersection of Ocean View Parkway. All roads in HOVE are private roads owned and maintained by the Hawaiian Ocean View Estates Road Maintenance Corporation (RMC). The Hawai'i Fire Department has access rights to its fire station from the RMC, which also allows the County to access the communication site. The project site will be accessed by the paved Ocean View Fire Station driveway. This current access is suitable for construction and maintenance of the project, and no additional road or driveway construction will be required. While there will be an increase in traffic during the construction phase of the project, the operation of the tower is not anticipated to increase traffic to the site.

The only necessary utility is electrical service which will be provided to the equipment shelter via buried conduit from the existing Fire Station building. No public water, drainage or wastewater facilities are present or needed. There are no floodways or drainage ways on the subject property and it is designated by the FIRM map as Zone "X", outside the 500-year flood plain. No education, recreational or other public services are required or would be affected. The project will enhance police and fire services in the district.

Finally, the applicant will be required to meet all applicable agency requirements, including the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA).

In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area.

The subject property is located approximately seven (7) miles to the nearest shoreline and are not located in the Special Management Area, and therefore will not be impacted by coastal hazards and beach erosion. There are no identified coastal recreational resources, coastal scenic and open space resources, coastal ecosystems, and beach or marine resources in the area. Thus, the proposed request will not adversely impact coastal resources. Additionally, there is no record of a designated public access to the shoreline or mountain areas that traverses the subject parcel.

Additionally, the project site was inspected for surface archaeological sites and other historic properties, and none appeared to be present. In their March 27, 2017 letter to County of Hawai'i Civil Defense Agency, the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) has issued a determination of "no historic properties affected." According to the applicant, a Cultural Impact Assessment (CIA) was conducted as part of the Environmental Assessment process, which included consultation with neighbors, agencies and organizations with potential knowledge of cultural practices. The project site is confined entirely within a disturbed lot dedicated to County fire protection infrastructure. No caves, springs, pu'u, native forest groves, gathering resources or other natural features are present on or near the previously disturbed project site. As part of the EA, an effort was made to obtain information about any potential traditional cultural properties and associated practices that might be present, or have taken place at the project site. Property neighbors and various agencies including the Office of Hawaiian Affairs and the State Historic Preservation Division were contacted. There are no initial indications that there are any traditional cultural properties in the immediate vicinity or current use for traditional and customary practices. The project site is not located near the coast or streams and no fishing or gathering of aquatic resources occurs. The vegetation is generally non-native and does not contain the quality and quantity of resources that would be important for native gathering, and no hunting occurs at this developed site. No archaeological remains reflecting cultural history or supporting cultural values are present. Based on this, it would appear that no known valuable natural, cultural or historical resources are present on the project site. It appears that use of the project site for communication infrastructure to increase coverage of the County radio system that is critical for providing emergency responses would not likely impact any culturally valued resources or cultural practices. Additionally, in the event inadvertent discoveries are made, work in the immediate area of the discovery shall be halted and the State Historic Preservation Division will be contacted.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, FCC and FAA requirements, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.