

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. SP01-396  
)  
U.S. COAST GUARD ) DECISION AND ORDER  
) APPROVING SPECIAL USE PERMIT  
To Establish a Differential Global )  
Positioning System Facility on )  
Approximately 45.9 Acres of Land in the )  
State Land Use Agricultural District for )  
Approximately 45.9 acres of land at Pahoā, )  
Puna, Island, County and State of Hawai'i, )  
TMK No: 1-5-010:portion of 003 )  
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DECISION AND ORDER APPROVING SPECIAL USE PERMIT

On June 12, 2001, the U.S. Coast Guard ("Applicant" or "USCG") submitted a Special Use Permit Application ("Application") with the County of Hawaii Planning Department ("Planning Department") pursuant to Section 205-6, Hawaii Revised Statutes ("HRS") and Sections 15-15-95 and 15-15-96 of the Hawaii Administrative Rules ("HAR"). The Applicant proposes to establish a Differential Global Positioning System ("DGPS") facility on approximately 45.9 acres within the State Land Use Agricultural District at Pahoā, Puna, Hawaii, identified as TMK No: 1-5-010:portion of 003 ("Permit Area"). The Permit Area is a portion of a parcel of approximately 3,924.56 acres owned by the State of Hawaii.

The USCG DGPS facility would consist of: a radiobeacon tower comprised of a 150-foot lattice tower secured with guy wires; a ground plane consisting of 120 copper radials that would radiate out from the base of the tower to a distance of 500 feet; two 20-foot lattice towers and receiving antennas; equipment shelter; and related improvements (including power lines and security fencing). The DGPS facility will receive signals from the satellite based global positioning system ("GPS") and provide all-weather global coverage of specific locational information 24 hours/day; process differential corrections to intentionally distorted GPS signals; and transmit the corrected signals to users of the locational information. Other facility functions and capacities include: providing positioning aids which support navigational safety and environmental security; assisting with dredging operations conducted by the U.S. Army Corps of Engineers; facilitating hydrographic surveying by the National Geodetic Survey; vectoring search and rescue units to distressed vessels; assisting with environmental assessments and cleanup efforts; and supporting environmental studies/surveys of native plants and animals. Development of the proposed DGPS site will also ensure that there is GPS coverage throughout the State of Hawaii.

The proposed DGPS facility will be located in the vicinity of the former Pahoia Airstrip with the Keaau-Pahoia road serving as the permit area's west boundary.

On November 17, 2000, the Board of Land and Natural Resources, Department of Land and Natural Resources, State of Hawaii ("BLNR"), approved the Set Aside and Issuance of Construction Right-of-Entry to the USCG for establishing the

proposed DGPS Site at Keonepoko Nui, Pāhoa, Puna, Hawaii, TMK No: 1-5-010:portion of 3. The BLNR recommended that an executive order setting aside the subject lands to the Applicant subject to specific terms and conditions be issued by the Governor of the State of Hawaii.

On August 24, 2001, a public hearing on SP01-396 was conducted by the Planning Commission. Commander Frederick Wright and Chief Warrant Officer 4 Louis Frey of the USCG provided testimony on behalf of the Applicant. There was no public witness testimony.

Thereafter, the Planning Commission voted to send a favorable recommendation to the State Land Use Commission ("Commission" or "LUC") for SPP 01-018 ("LUC Docket No. SP01-396" or "SP01-396") subject to twelve conditions.

On September 10, 2001, the Planning Commission's findings and decision as well as a copy of the record of the Planning Commission's proceedings were received by the Commission.

On September 17, 2001, the Planning Department provided the Commission with additional information, which LUC staff certified as completing the record and application.

The Commission has jurisdiction over the Application. Section 205-6, HRS, and Sections 15-15-95 and 15-15-96, HAR, authorizes the Commission to approve special permits for areas greater than 15 acres where application for commission

approval is made within 60 days after the decision is rendered on the application to the Planning Commission.

On October 4, 2001, the Commission held a hearing on SP01-396 at its meeting in Hilo, Hawaii. Commander Frederick Wright and Chief Warrant Officer 4 Louis Frey appeared on behalf of the Applicant. Alice Kawaha appeared on behalf of the Planning Department. Dina Pascua, Merlin Keaulana-Dyball and Larry Volz provided testimony expressing interest in reviving the site of the former Pahoia Airstrip for general aviation purposes.

The County requested the deletion of Condition No. 2 imposed by the Planning Commission because of redundancy with Condition No. 9 and subsequent renumbering.

The Applicant has agreed to implement appropriate measures recommended by the Fish and Wildlife Service, Department of Interior, United States of Hawaii, to safeguard the Newell Shearwater or A'o that may nest and habitat near the Permit Area.

#### Conformance with the Special Use Permit Criteria

The Commission found that based upon information in the record of the Planning Commission's decision, the proposed use has met the special use permit criteria pursuant to Section 15-15-95 (b), HAR.

1. The Commission found that the land is unsuited for agricultural uses based on the following: i) The Permit Area does not have a history of agricultural

use; ii) The soils in the Permit Area are classified as "E" by the Land Study Bureau, and unclassified by the Agricultural Lands of Importance to the State of Hawaii; iii) The Property is unsuited for agricultural cultivation due to the presence of the abandoned runway of the old Pahoia Airstrip; and iv) The DGPS facility will not displace nor diminish any agricultural potential in the Permit Area or surrounding areas.

2. The Commission further found that the proposed project will not impact shoreline, mountain, scenic and open space, archaeological, and marine coastal and ecosystem resources pursuant to the objectives and policies of Chapter 205A, HRS, relating to the Coastal Zone Management Program.

3. The Applicant did not find any evidence of any known traditional and customary native Hawaiian Rights or Practices on the Property as a result of the solicitation of evidence or input.

4. The Permit Area's west and northwest boundaries border the DHHL Maku`u Farm Lots and Hawaiian Paradise Park Subdivision; lands to the east and south are State-owned, including the Pahoia Agricultural Park; and the Keonepoke Homesteads, State-owned lands and the DHHL Maku`u Agricultural Lots to the southwest. The desired use would not adversely affect surrounding property. The project area would be approximately 285 feet away from the Maku`u Farm Lots Subdivision to the north where the closest parcel with a dwelling would be approximately 1,300 feet away from the 150-foot radiobeacon tower.

5. The Applicant proposed to implement visual impact measures that include: using existing and planting of new trees as visual buffers along the Keaau-Pahoa Road; the coloring of the towers to blend in with the skies; and removal of the towers within 120 days of their abandonment.

6. The Applicant will implement measures to mitigate fugitive dust and noise generated during the construction period as required by the Department of Health, State of Hawaii; and safeguard public health and safety from radiofrequency ("RF") radiation exposure using a 40-foot perimeter security fence around the 150-foot radiobeacon tower.

7. The proposed project will not require any additional public services or facilities. Access to the Permit Area will be along the Keaau-Pahoa Road and through a permitted access at the Airstrip as granted by the State. The DGPS facility will not interfere with the County of Hawaii Public Safety System, and the Applicant shall meet all applicable agency requirements, including those of the Federal Communication Commission.

8. Congress has approved funding for the DGPS facility to improve the efficiency of Coast Guard maritime safety activities. The facility will also improve navigation, environmental security and hydrographic surveying.

9. By reason of the foregoing, the proposed use is not contrary to the objectives of Chapters 205 and 205A and the rules of the Commission.

Following discussion by the Commissioners, a motion to approve SP01-396 allowing the establishment of the proposed DGPS facility was made and seconded by the LUC. There being a vote tally of five ayes and zero nays, the motion carried.

#### DECISION AND ORDER

Having duly considered the complete record of the Application and the oral arguments presented by the parties in the proceeding, and a motion having been made at a hearing conducted on October 4, 2001, in Hilo, Hawaii, and the motion having received the affirmative votes required by Section 15-15-13, HAR, and there being good cause for the motion, the Commission hereby APPROVES the Special Use Permit granted by the Planning Commission to establish a new DGPS facility on approximately 45.9 acres of land within the State Land Use Agricultural District at Pahoa, Puna, Hawaii, identified as TMK No: 1-5-010:portion of 003, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within two (2) years from the effective date of this permit.

3. Construction of the proposed towers, ground plane radials, antennas, equipment shelter, fencing and related improvements shall be completed within two (2) years from the effective date of final subdivision approval.

4. Prior to the start of construction, Final Plan Approval for the proposed 150-foot lattice tower with guy wires and ground plane radials, two 20-foot lattice towers, antennas, equipment shelter, fencing and related improvements shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval and Telecommunication Antennas. Plans shall identify proposed structures, fencing, driveways and parking area associated with the use. Tower and antenna plans shall be stamped by a structural engineer.

5. Within 120 days of the permanent abandonment of the DGPS, the applicant shall remove the towers, ground plane radials, antennas, 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 DGPS and the removal of all structures.

6. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the proposed development shall not interfere with the County of Hawaii Public Safety Radio System.

7. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or



walls 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. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.

9. Comply with the Department of Interior, Fish and Wildlife Services' requirements of Biological Opinion (Log Number 1-2-00-F01).

10. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a written status report to the Planning Director.

11. An initial extension of time for the performance of conditions within 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 Zoning Code.

C. Granting of the time 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).

12. Within one year of the issuance of this Decision and Order, written evidence shall be submitted to the Commission with a copy to the Planning Director that the Governor of Hawaii has issued an Executive Order granting Applicant a right of entry to project lands as recommended by the BLNR on November 17, 2000.

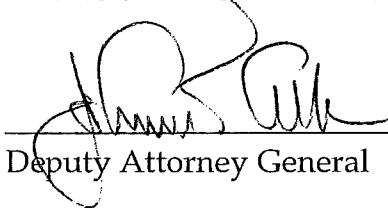
Dated: Honolulu, Hawai'i, October 30, 2001

LAND USE COMMISSION  
STATE OF HAWAII



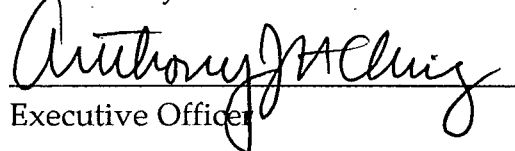
By MERLE A.K. KELAI  
Chairperson and Commissioner

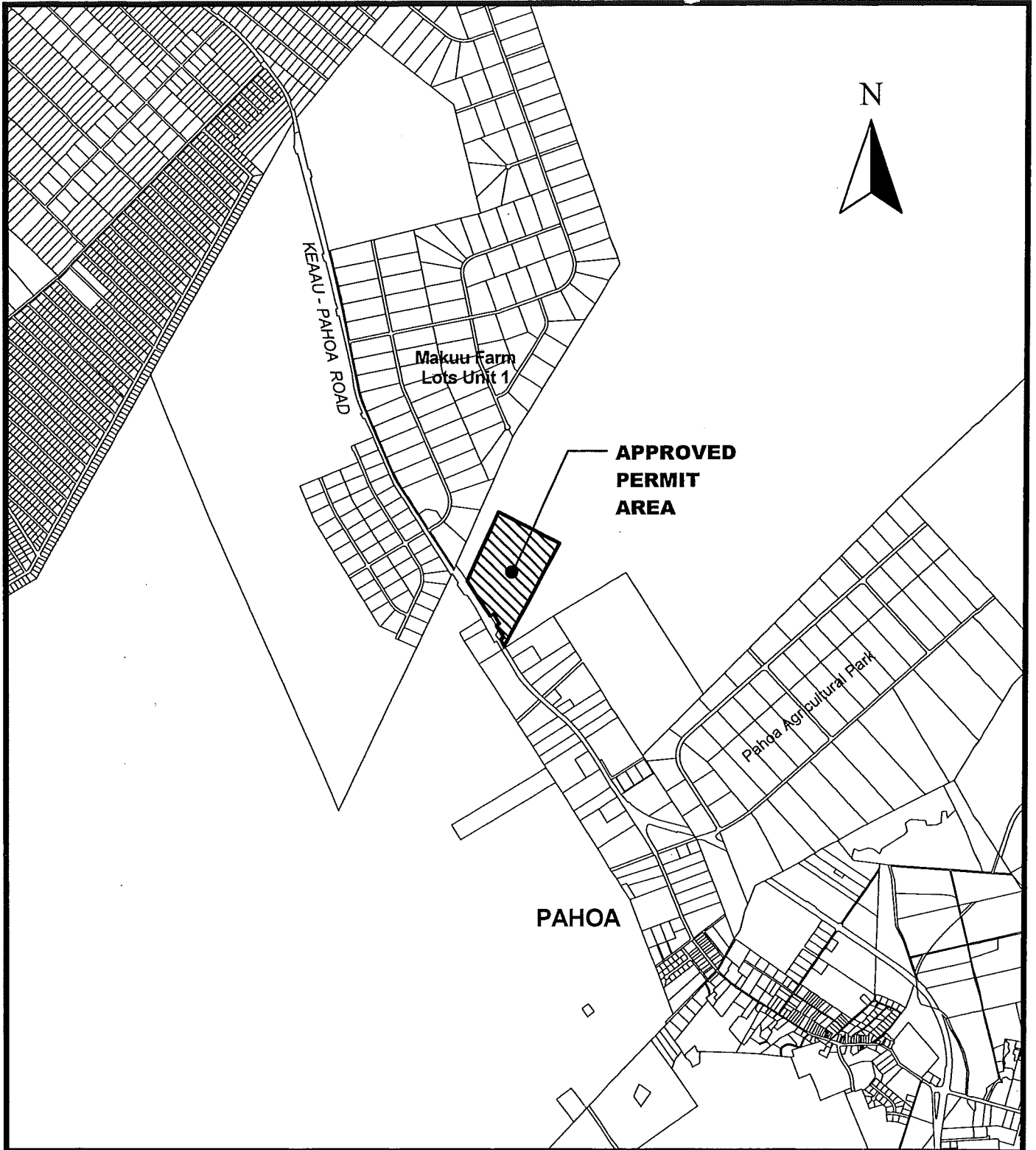
APPROVED AS TO FORM:

  
Deputy Attorney General

Filed and effective on  
October 30, 2001

Certified by:

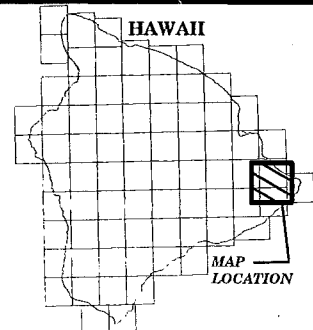
  
Executive Officer



**SP01-396 U.S. COAST GUARD  
LOCATION MAP**

Tax Map Key: 1-5-10: por. 3  
Keonepoko Nui, Puna, Hawaii  
Scale: 1" = 2,000 ft.

**EXHIBIT "A"**



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	)	
To Establish a Differential Global	)	
Positioning System Facility on	)	
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TMK No: 1-5-010:portion of 003	)	
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CERTIFICATE OF SERVICE

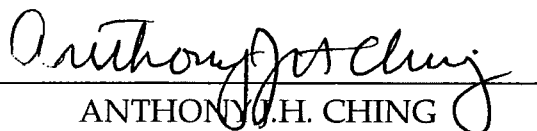
I hereby certify that a copy of the Decision And Order Approving Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT.           C. M. HANCOCK, representing Petitioner  
Assistant Chief, Navigation Systems Branch  
Maintenance and Logistic Command Pacific  
Coast Guard Island, Building 54  
Alameda, California 94051

CERT .         CHRISTOPHER YUEN, Planning Director  
Planning Department, County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

CERT. LINCOLN ASHIDA, ESQ.  
Corporation Counsel  
County of Hawaii  
The Hilo Lagoon Center  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 30th day of October 2001.

  
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ANTHONY H. CHING  
Executive Officer