

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
CHRISTIAN BROADCASTING ASSOCIATION)
(Radio Station KAIM))
)
For a Special Permit to Allow the)
Continued Operation of a Radio)
Transmission Facility on Approxi-)
mately 30 Acres of Land Within the)
Agricultural District at Kaluakoi,)
Molokai, County of Maui, State of)
Hawaii, Tax Map Key No.: 5-1-04:19)

DOCKET NO. SP89-371

CHRISTIAN BROADCASTING
ASSOCIATION (Radio
Station KAIM)

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LAND USE COMMISSION
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FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER

Christian Broadcasting Association (Radio Station KAIM) (hereinafter "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Title 15, Chapter 15, Subchapter 12 of the Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"). The Land Use Commission (hereinafter "Commission") having considered the entire record on this matter, and good cause appearing therefrom, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

Procedural Matters

1. Petitioner filed Special Permit Docket No. SP89-371/ Christian Broadcasting Association (Radio Station KAIM) (hereinafter "Permit") with the County of Maui Planning Department on August 16, 1988.

The Permit was filed in response to a letter from the Maui County Planning Department to Petitioner that the original special permit, Docket No. SP78-296/Christian Broadcasting, which allows the establishment of the transmission facilities, had expired.

2. On November 17, 1988, the Molokai Advisory Committee (hereinafter "MAC") to the Maui Planning Commission conducted a public hearing pursuant to notice published in the Maui News on October 27, 1988.

3. At the public hearing five persons testified in favor of the Permit and two persons testified in opposition.

4. On November 17, 1988, the MAC recommended to the Maui Planning Commission (hereinafter "MPC"), approval of the Permit subject to nine conditions.

5. On January 10, 1989, the MPC accepted MAC's recommendation for approval subject to the said nine conditions.

6. On March 13, 1989, the record of the County's proceedings on the Permit was received by the Commission.

Background Information

7. The original special permit, Docket No. SP78-296/Christian Broadcasting, for the construction and operation of a radio transmission facility and related improvements at the site was approved by the Commission for an initial three-year period pursuant to Decision and Order issued on May 30, 1978.

8. On July 17, 1979, the Commission issued its Decision and Order granting an amendment of the special permit to

extend the time period for five years. As such, the original permit, as amended, was valid until July 17, 1984.

9. Per letter of inquiry dated June 12, 1988 from Kenneth Pollack, the Maui Planning Department discovered that the original special permit expired on July 17, 1984, and that no time extension request had been filed.

Description of Property

10. The petition area is located on the northern side of Kalua Koi Road approximately 1.75 miles mauka of Kepuhi Beach, Kaluakoi, Molokai, County of Maui, Tax Map Key Number: 5-1-04: parcel 19 (hereinafter "Property").

11. The Property consists of approximately 30 acres and is bounded to the north by Kakaako Gulch, to the west and east by vacant lands, and to the south by Kalua Koi Road.

The Kalua Koi Rural District and Kaluakoi resort area are located toward the north and west of the Property, respectively.

12. The Property is owned by the Billy Graham Evangelistic Association. Petitioner is a wholly owned subsidiary of said owner and has obtained authorization to file for the Permit.

13. Access to the Property is available from Kalua Koi Road.

14. The Land Study Bureau rates the Property as Overall Master Productivity "D" and "E", indicating low agricultural potential.

15. Slope of the Property ranges from zero to ten percent and the topography is characterized as "rolling".

16. Drainage on the Property appears to sheet flow and discharge towards Kakaako Gulch.

Description of Proposed Special Permit Use

17. Petitioner is requesting the Permit for the continued operation of a radio transmission facility on the Island of Molokai to serve the State of Hawaii and the South Pacific as a non-profit religious broadcasting station KAIM and to serve as the State's primary communication link in civil defense emergencies. KAIM is also designated "Primary CPCS-2, Common Program Control Station" for the Emergency Broadcast System of the State of Hawaii.

18. The radio transmission facility includes two 292-foot antenna towers, a 1,500 square-foot enclosed area comprising of a 690 square-foot transmitter room and a 810 square-foot studio/utility room, and related improvements including access road, electrical connections and four paved parking stalls.

19. Petitioner indicates that the facility is unmanned and that a maintenance staff monitors the station once a week.

20. Utilities such as water, electricity and telephone are available at the Kalua Koi Resort area to the west.

State and County Plans and Programs

21. The Property is designated within the State Land Use Agricultural District as reflected on MO-1, Ilio Point of the State Land Use District Boundaries Map.

22. The Molokai Community Plan designates the Property as Agriculture.

23. The Property is not within the County Special Management Area.

Summary of Agency Comments

24. The State Department of Agriculture and the State Department of Land and Natural Resources had no comments or objections to the Permit.

25. The County Department of Public Works and Department of Water Supply also had no comments or objections to the Permit.

Summary of Public Witnesses Concerns

26. Public witnesses who testified in opposition to the Permit request indicated that the facility causes transmission and reception interference to their electronic equipment such as telephones, radios and TVs, FAX machine and passing motorists' car radios which results in loss of privacy.

27. Another concern was the appropriateness of the use with respect to the current zoning for the area and the adverse visual impacts of the antenna towers.

28. Public witnesses who testified in favor of the Permit indicated that KAIM Radio Station is interdenominational and can help people throughout the State to learn about Christianity.

Conformance With Special Permit Tests

29. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and the Commission Rules.

The transmission facility on the 30-acre site continues to allow a substantial portion of the Property to be used for open agricultural land.

30. The desired use will not permanently adversely affect surrounding property.

Petitioner represents that with respect to the interference problem, it will identify the area of impact on surrounding properties including, but not limited to, the Kalua Koi Resort Area and nearby agricultural subdivisions, and assist those individuals experiencing interference problems by installing filters on electronic devices which are having interference due to Petitioner's transmission facilities.

31. The transmission facility will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements and police and fire protection.

The Property has direct access to Kalua Koi Road, a private roadway. Water to the Property is to be provided from a

private source. The station is not intended to be continuously manned by any person but only periodically monitored. Petitioner believes that the limited activity required for the station would hardly create unreasonable demands or burdens on public services.

32. Unusual conditions, trends and needs have arisen since the district boundaries and Commission Rules were established.

Radio KAIM, through the transmission facility on the Property, will serve a need to people of the Pacific Basin. Petitioner is desirous of continuing to provide inspirational broadcasts for peoples of the Pacific Basin.

33. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The Property has some limitations for agricultural uses. The Property is not classified as "prime" agricultural land and has been used for grazing and ranching. The Land Study Bureau's Overall Master Productivity soil ratings for the Property are Class "D" (Poor) and "E" (Very Poor).

Planning Commission Recommendation

34. On January 10, 1989, the Maui Planning Commission voted to recommend approval of the Special Permit request subject to the following conditions:

- "1. That the Special Use Permit shall be valid for the operation of a radio transmission facility and related improvements only, and is granted for a period of five (5) years

- commencing upon the date of the approval of the special permit by the Land Use Commission, and also subject to extension upon favorable review by the appropriate Planning Commission and the State Land Use Commission. The applicant is advised to file for an extension at least three months prior to the expiration date to facilitate timely review.
- "2. That the Special Use Permit shall be valid only for the uses as approved and in accordance with plans submitted therein.
 - "3. That the uses or structures allowed by the Special Use Permit shall not be expanded or increased in size or changed to another special use, unless so authorized.
 - "4. That appropriate security and/or safety measures be provided and maintained to mitigate any hazards to the public.
 - "5. That KAIM Radio shall seek to identify the area of impact on reception within the Kaluakoi Resort and develop an appropriate mitigation plan for implementation within a period of 60 days from the date of approval.
 - "6. That Federal Aviation Administration (FAA) requirements be complied with.
 - "7. That this permit shall be non-transferable unless prior approval has been obtained from the appropriate Planning Commission and the State Land Use Commission.
 - "8. That the conditions of this Land Use Commission Special Use Permit shall be self-enforcing and accordingly, upon due notice by the Planning Commission that there is prima facie

evidence that a breach has occurred the permit shall be automatically suspended pending a hearing on the continuity of such Land Use Commission Special Use Permit, provided that written request for such a hearing is filed with the department within ten days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Planning Commission may recommend the revocation of said Land Use Commission Special Use Permit. The Planning Commission's recommendation shall be transmitted to the State Land Use Commission for appropriate action.

"9. That the project shall conform to all the requirements of Federal, State, and County statutes, ordinances, rules, and regulations or codes."

CONCLUSIONS OF LAW

The Special Permit request to continue the operation of the transmission facility is an "unusual and reasonable" use as defined in Section 205-6, Hawaii Revised Statutes, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket Number 89-371/Christian Broadcasting Association (Radio Station KAIM) to

allow the continue operation of a radio transmission facility on the Property, is hereby approved, subject to the following conditions:

1. That the Special Use Permit shall be valid for the operation of a radio transmission facility and related improvements only, and is granted for a period of five (5) years commencing upon the date of the approval of the special permit by the Land Use Commission, and also subject to extension upon favorable review by the appropriate Planning Commission and the State Land Use Commission. The applicant is advised to file for an extension at least three months prior to the expiration date to facilitate timely review.

2. That the Special Use Permit shall be valid only for the uses as approved and in accordance with plans submitted therein.

3. That the uses or structures allowed by the Special Use Permit shall not be expanded or increased in size or changed to another special use, unless so authorized.

4. That appropriate security and/or safety measures be provided and maintained to mitigate any hazards to the public.

5. That KAIM Radio shall seek to identify the area of impact on reception within the Kaluakoi Resort and develop an appropriate mitigation plan for implementation within a period of 60 days from the date of approval.

6. That Federal Aviation Administration (FAA) requirements be complied with.

7. That this permit shall be non-transferable unless prior approval has been obtained from the appropriate Planning Commission and the State Land Use Commission.

8. That the conditions of this Land Use Commission Special Use Permit shall be self-enforcing and, accordingly, upon due notice by the Planning Commission that there is prima facie evidence that a breach has occurred, the permit shall be automatically suspended pending a hearing on the continuity of such Land Use Commission Special Use Permit, provided that written request for such a hearing is filed with the department within ten days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Planning Commission may recommend the revocation of said Land Use Commission Special Use Permit. The Planning Commission's recommendation shall be transmitted to the State Land Use Commission for appropriate action.

9. That the project shall conform to all the requirements of Federal, State, and County statutes, ordinances, rules, and regulations or codes.

DOCKET NO. SP89-371 - CHRISTIAN BROADCASTING ASSOCIATION

Done at Honolulu, Hawaii, this 30th day of May 1989,
per motions on April 14, 1989 and May 11, 1989.

LAND USE COMMISSION
STATE OF HAWAII

By Lawrence F. Chun
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By Sharon Himeno
SHARON R. HIMENO
Commissioner

By J.P. Tacbian
TEOFILO PHIL TACBIAN
Commissioner

By Toru Suzuki
TORU SUZUKI
Commissioner

Filed and effective on
May 30, 1989

By Allen Y. Kajioka
ALLEN Y. KAJIOKA
Commissioner

Certified by:

Robert S. Tamaye
Executive Officer

By Robert S. Tamaye
ROBERT S. TAMAYE
Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. CHRISTOPHER L. HART, Planning Director
Planning Department, County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. HEI WAI WONG, President
Christian Broadcasting Association
3555 Harding Avenue
Honolulu, Hawaii 96816

DATED: Honolulu, Hawaii, this 30th day of May 1989.



ESTHER UEDA
Executive Officer