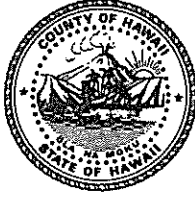


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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NOV 16 2000

Ms. Cynthia Takamiya
VoiceStream PCS II Corporation
615 Piikoi Street, Suite 302
Honolulu, HI 96814

Dear Ms. Takamiya:

Special Permit Application (SPP 00-039)
Applicant: VoiceStream PCS II Corporation
Request: Allow for a 150-Foot Telecommunication Monopole, Antennas,
Accessory Equipment and Structures
Tax Map Key: 1-5-7:Portion of 69 (Bryson's Tower)

The Planning Commission at its duly held public hearing on October 20, 2000, voted to approve the above-referenced application. Special Permit No. 1081 is hereby issued to allow the construction of a 150-foot telecommunication monopole, antennas, accessory equipment building and structures, and security fence on approximately 900 square feet of land plus access easement in the State Land Use Agricultural District. The project area is located in Keonepoko Homesteads, on the west side and approximately 575 feet from the Keaau-Pahoa Road, Keonepoko Iki, Pahoa, Hawaii.

Approval of this request is based on the following:

The proposed 150-foot high telecommunication tower, antennas and related improvements is an unusual and reasonable use of lands situated within the State Land Use 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.

This particular subject property is situated within the County's Agricultural (A-1a) zoned district and within the State Land Use Agricultural District. VoiceStream PCS II Corporation (VoiceStream) is proposing to construct a new 150-foot

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telecommunication monopole with antennas and related improvements on the subject property. VoiceStream has initiated its service in Kona and the proposed tower is included in their plans to enable expansion of coverage along the east side of the island of Hawaii. The applicant is requesting a special permit to construct a new tower that would be acceptable to the community. The proposed use includes a licensed area that covers only a 900-square foot area of the 3.311-acre parcel. The subject property has a dwelling and warehouse, with a pasture area and will continue to be used in that manner. As such, the proposed improvements will not displace existing agricultural activity nor significantly diminish the agricultural potential of the area.

The granting of this request would promote the effectiveness and objectives of Chapter 205 and 205A, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The use is located within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the area of the subject property as Existing Urban Development. Portions of the property are currently in pasture use. Although the requested use is not agricultural in nature, it comprises only a 900-square foot area. The use will not displace any of the existing agricultural uses on the property nor adversely affect the agricultural potential of the property or its surrounding area. Furthermore, the project is over 5 miles from the nearest shoreline and will not have any adverse impacts on coastal resources. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The 150-foot high proposed telecommunication tower and related improvements will be situated on a 900 square foot portion of a 3.31-acre parcel of land. The subject property is located at the edge of Pahoa Town. Immediate surrounding parcels vary in size from approximately 5+ to 15 acres and are vacant of dwellings. The subject property as well as a majority of the immediate surrounding lots are in pasture use. Approximately 1,350 feet northeast of the property are several one-acre lots zoned Agricultural (A-1a) with dwellings. The tower may be visible from these dwellings, which are at a lower elevation, however, it is not anticipated that the proposed tower would obstruct their ocean (makai) views or significantly affect their view planes. It is recommended that the tower remain the natural gray color of galvanized steel to blend in with the sky. The applicant will be required to comply with Department of Health

regulations to mitigate the effects of dust and noise during construction. Once construction is completed, traffic is expected to be minimal as service personnel will only visit the site for maintenance only. Although an air conditioning unit will be installed in the equipment building, it is anticipated that the sound will have minimal impact beyond the project site. Further, this facility will not have a back-up generator. Therefore, it is not anticipated that noise will adversely impact surrounding properties. In regards to radio frequency emissions, the applicant would be required to comply with the requirements of the Federal Communications Commission. Furthermore, Section 704 of the Federal Telecommunications Act of 1996 recognizes the absence of health hazards from cellular radio wave transmissions and accordingly prohibits local authorities from regulating the placement of cellular towers based on environmental effects as long as these towers comply with the Federal Communication Commission's guidelines. As the telecommunication tower has been designed to and will comply with these guidelines, no adverse impact to surrounding properties is expected. Access to the subject property is by the Old Keaau-Pahoa Road, a County-owned paved road. An access driveway leading to the site is sufficient vehicular access for the construction and maintenance of the facilities.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Only electrical service is required for the use and this is already available to the property. As traffic is anticipated to be minimal, the existing driveway access to the property is adequate. Fire, police and emergency services are available from the fire station and police station located in Pahoa Town, a little over a mile away. Finally, the applicant shall meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Section 205-4.5 of Chapter 205, Land Use Commission, Hawaii Revised Statutes, lists permitted uses within the agricultural districts. Among others, the permitted uses include "Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;" and "Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agricultural land." While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within agricultural districts, and including wind energy facilities, Section 205-4.5 does not specifically permit

telecommunication towers. In recent years, however, technological advances in the telecommunications industry have grown considerably and services to the general public have become widespread. This is especially true in rural areas where traditional land-line telephone service is sometimes unavailable due to the high cost of installing power poles and lines. The growth of the cellular telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunication towers and antennas. The proposed tower is part of the expansion of VoiceStream's telecommunication infrastructure and will enable them to expand their service area along to Hamakua Coast to provide uninterrupted telecommunication services to its customers throughout the County of Hawaii. A Hawaii Supreme Court ruling has determined that a Special Permit would be the appropriate means to establishing telecommunication towers and antennas within the State Land Use Agricultural District.

The land upon which the use is sought is unsuited for the uses permitted within the district. The subject property is an agricultural resource and is used primarily for pasture uses. The Land Study Bureau's Detailed Land Classification System classifies soils within the subject property as "E" or "Very Poor." The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the area of the subject property as Existing Urban. The property is suitable for agricultural uses and will continue to be used for pasture. The tower site will be limited to 900 square feet of land area and thus will not seriously impair the agricultural productivity or potential of the subject property, nor will it seriously or significantly deplete the County of Hawaii's agricultural land resource.

The use will not substantially alter or change the essential character of the land and the present use. The proposed tower site is limited to a 900-square foot portion of a 3.31-acre property that is presently used as the landowner's residence, agricultural warehouse and pasture land. Although the tower will be visible, it is set back approximately 600 feet from the Old Keaau-Pahoa Road and will not substantially alter or change the essential character of the land nor alter or change the existing uses on the property. As the property has been developed, it is not anticipated that cultural, archaeological or botanical resources will be affected.

The request will not be contrary to the General Plan. The subject property is within an area designated as Low Density Urban Development by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The tower site will be limited to a 900 square foot portion of land, and thus does not preclude the other portions of the property from continuing to be used for agricultural purposes by the owner. Also, the use is consistent with the following goals and policies of the General Plan.

Economic Element

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County of Hawaii shall encourage the research, development and implementation of advanced technologies and processes in existing and potential economic endeavors.

Natural Beauty

- Protect, preserve and enhance the quality of area endowed with natural beauty, including the quality of coastal scenic resources.
- Protect scenic vistas and view planes from becoming obstructed.
- Criteria of safeguards of natural beauty shall be provided in the design review of developments so as to blend and harmonize man-made elements with their natural setting.

Public Utilities

- Ensure that adequate, efficient and dependable public utility services will be available to users.
- Maximize efficiency and economy in the provision of public utility services.
- To have public utility facilities which are designed to fit into their surroundings or concealed from public view.
- Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- Encourage the clustering of developments in order to reduce the cost of providing utilities.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.

Based on the above considerations, the approval of a 150-foot high telecommunication monopole tower, antennas and related improvements is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.

2. Final Plan Approval for the proposed 150-foot high telecommunication tower, antennas and related improvements shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(3), 25-2-72, 25-4-74 and 25-4-12. Plans shall identify existing and proposed structures, fire protection measures, fencing, driveways and parking area associated with the use. Tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion of the tower and related facilities within the tower site shall be allowed within the parameters of the tower height and envelope as approved by the Planning Commission.
4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antennae 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.
5. 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.
6. Should any unidentified sites or remains such as 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.
7. 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.
8. 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.
9. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

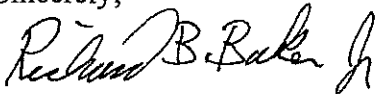
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- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would 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).

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 Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Richard B. Baker, Jr., Chairman
Planning Commission

LvoiceStreamspp00-039PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu