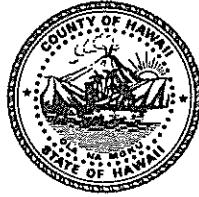


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
7000 0600 0024 2903 8902

NOV 16 2000

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

Dear Ms. Takamiya:

Special Permit Application (SPP 00-042)
Applicant: VoiceStream PCS II Corporation
Request: Allow the Establishment of a 23.5-Foot Post and Antennas Within a
Mock Chimney and Accessory Equipment Cabinets Within a New Garage
Tax Map Key: 6-4-26:Portion of 36

The Planning Commission at its duly held public hearing on October 20, 2000, voted to approve the above-referenced application. Special Permit No. 1080 is hereby issued to allow the construction of a 23.5 foot post and antennas within a mock chimney, accessory equipment cabinets within a new garage and chain link fence on approximately 150 square feet of land in the State Land Use Agricultural District. The property is located in Puu Nani Subdivision at the end of Puu Ohu Place, Waimea, South Kohala, Hawaii.

Approval of this request is based on the following:

The proposal to construct an approximately 23.5-foot high post with antennas concealed within a newly constructed mock chimney, accessory equipment cabinets and chain link fence 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. Although the land use of the subject property is designated as Agricultural, a majority of the lots in the Puu Nani Subdivision are approximately 15,000 square feet in size and used for dwelling purposes. Therefore, the proposed construction of a concealed post and antenna is being presented to minimize any visual impacts that the antenna would have on immediate surrounding residents.

191
011543

NOV 16 2000

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 stealth telecommunication antenna, chimney enclosure, appurtenant equipment cabinet attached to a new garage and chain link fence on approximately 150 square feet of land. VoiceStream has initiated its service in Kona and the proposed telecommunication pole 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 pole that would be acceptable to the community. The proposed use includes a licensed area that covers only a small 150 square foot area. In addition, the antennas will be constructed within a chimney attached to an existing dwelling. The proposed improvements will not displace existing agricultural activity nor significantly diminish the agricultural potential of the area since the subject property is not currently in agricultural use.

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 "D" or "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 Other Important Agricultural Land. The subject property has already been developed with a dwelling and a concrete driveway. Although the requested use is not agricultural in nature, it comprises an area that is proportionately insignificant relative to the size of the property. The use will not displace any agricultural uses on the property nor adversely affect the agricultural potential of the property or its surrounding area. Furthermore, the project is not in the vicinity of the 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 proposed 23.5-foot telecommunication pole and antennas concealed within a chimney will be attached to an existing dwelling. The chimney will extend approximately 6 feet above the existing height of the dwelling. Immediate surrounding parcels are approximately 15,000 square feet in size. The subject property as well as a majority of the immediate surrounding lots are used for dwelling purposes. During construction, the applicant shall comply with Department of Health regulations to mitigate the effects of

dust and noise. Once construction is completed, traffic is expected to be minimal as service personnel will only visit the site for maintenance only. It is also anticipated that noise will be minimal. Further, this facility will not have a back-up generator. VoiceStream does not anticipate any interference with the County of Hawaii Public Safety Radio system and will close down transmission if such interference occurs. 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 from Hohola Street, a 60-foot wide County-owned road and onto Puu Ohu Place, a 50-foot wide County-owned road. A concrete driveway leads to a concrete pad for parking.

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. Access to the property is deemed adequate to accommodate the anticipated traffic generated by the use. Fire, police and emergency services are available from the fire station and police station located in Waimea Town. Finally, the proposed design to conceal the antennas will minimize any visual impacts to the existing residents in the subdivision.

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 pole with antennas is part of the expansion of VoiceStream's telecommunication infrastructure and will enable them to expand their service area along to Honokaa 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 presently not in agricultural use and is not unsuitable for these uses. However, the proposed pole and antennas will be concealed in a chimney and not remove any land from being used for agriculture. The Land Study Bureau's Detailed Land Classification System classifies soils within the subject property as "D" or "Poor." The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the area of the subject property as Other Important Agricultural Land. The proposed development is limited to an approximately 150 square feet of land area and thus will not seriously impair the agricultural 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 development is limited to a 150-square foot portion of an approximately 15,000-square foot property that is presently used for dwelling purposes. The telecommunication pole and antennas will not be visible and will be concealed in a mock chimney. Therefore, it will not substantially alter or change the essential character of the land nor alter or change the existing uses on the property.

The request will not be contrary to the General Plan. The subject property is within an area designated for Low Density Urban uses by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, and limited to a 150-square foot portion of land, and thus does not preclude the other portions of the property from being 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, approval of the request to allow for an approximately 23.5-foot high telecommunication post with antennas, to be concealed within a newly constructed mock chimney, along with accessory equipment cabinets and chain link fence 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 23.5 foot telecommunication post with antennas within a mock chimney, accessory equipment cabinets and chain link fence 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. Pole, antenna and chimney plans shall be stamped by a structural engineer.
3. Within 120 days of the permanent abandonment of the pole and antennas, the applicant shall remove the pole and its antennas and accessory structures (including the equipment building and the fence), but excluding the chimney, 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 pole and related improvements and the removal of all structures.

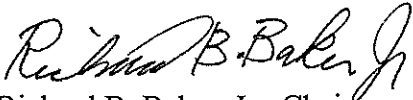
4. Written evidence shall be submitted to the Planning Director with a copy to the Police Department that the proposed development shall not interfere with the County of Hawaii Public Safety Radio System.
5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, 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.
6. 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.
7. 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.
8. 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).

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.

Ms. Cynthia Takamiya
VoiceStream Wireless Corporation
Page 8

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

LVoicestreamSPP00-042PC

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