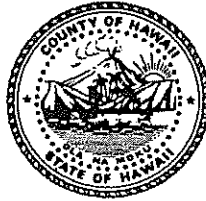


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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APR 02 2001

Ms. Cynthia Takamiya
VoiceStream PCS II Corporation
615 Piikoi Street, Suite 100
Honolulu, HI 96814

Dear Ms. Takamiya:

Special Permit Application (SPP 01-004)
Applicant: VoiceStream PCS II Corporation
Request: Allow for the Construction of Stealth Telecommunication Antennas Within an
80-Foot Steel Flagpole, Appurtenant Equipment, Cabinets and Structures
Tax Map Key: 1-6-92:Portion of 31

The Planning Commission at its duly held public hearing on March 16, 2001, voted to approve the above-referenced application. Special Permit No. 1108 is hereby issued to allow the construction of stealth telecommunication antennas within an 80-foot flagpole, related equipment buildings and structures, and security fence on approximately 400 square feet of land in the State Land Use Agriculture District. The property is located in the Ainaloa Subdivision at the Ainaloa Community Center site, and on the Pahoa side of Ainaloa Boulevard, Puna, Hawaii.

Approval of this request is based on the following:

VoiceStream PCS II Corporation (VoiceStream) is proposing to construct a new 80-foot monopole with antennas concealed in a flagpole, with related equipment buildings and structures and security fence. VoiceStream has initiated its service in Kailua-Kona and Hilo, and the proposed monopole in the Ainaloa/Orchidland area is included in their plans to enable expansion of coverage along the east side of the island of Hawaii. According to the applicant, its network coverage report for December 2000 showed a total of 160 customer requests for coverage in the Ainaloa and Orchidland Estates area. The applicant is requesting a special permit to construct a new monopole that would be acceptable to the community; and therefore have selected the flagpole design. The concealed antennas are an example of stealth technology rather than the traditional monopole with exposed antennas.

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APR 02 2001

The granting of this request would promote the effectiveness and objectives of Chapter 205, 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 Ainaloa Subdivision was created in November 1959 as residential lots and consisted of 3,627 parcels, primarily 12,000 square foot lots. The subject property and adjacent Ainaloa Recreation Center site are one of the reserved areas delineated for park or school area. The State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effect in 1962; and subsequently the Regulations and Land Use District Boundaries became effective in August 1964. The Puna District Zone Map was adopted on December 20, 1967, that classified the Ainaloa Subdivision as Agricultural-1 acre (A-1a) and the areas reserved for park or school as Open. Therefore, the Ainaloa Subdivision consists of non-conforming lots. This particular subject property is situated within the State Land Use Agricultural District. There have been no agricultural uses on the subject property. The project site 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 considers the area as unclassified.

VoiceStream is proposing to construct a new 80-foot high telecommunication monopole with antennas and related improvements on the subject property that will be concealed within a flagpole. The proposed use includes a licensed area that covers approximately a 400-square foot area of an approximately 2.76-acre parcel. The proposed improvements will not displace any of the existing agricultural uses on the property, diminish the agricultural potential of the area nor adversely affect the agricultural potential of the property or its surrounding area. 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 granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. Given the fact that the parcel has been previously cleared and developed with the existing structures and open grassed playfield, it is unlikely that any archaeological features and threatened species of plants or animals are present on the property. There is no designated public access to the mountain or coastal areas over the property. The subject property is located over 5.5 miles from the nearest shoreline and is adjacent to residential and vacant uses. The proposed development will not impact any recreational, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Finally, due to its location,

it is not anticipated that the proposed monopole would significantly obstruct any ocean (makai) views or significantly affect view planes. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

The desired use shall not adversely affect the surrounding properties. The 80-foot high proposed monopole and related improvements will be situated on a 400-square foot portion of a 2.76-acre parcel of land. The use of stealth technology with a flagpole design is intended to minimize any visual impacts that the monopole and antennas would have to surrounding properties. The property's north boundary borders Ainaloa Boulevard and its west side along Tiki Lane, a 40-foot roadway. The front third of the property has been developed with a mailbox structure and paved parking area, playground/picnic area, open basketball court, pavilions, restroom and shed since 1990. The remainder of the parcel is maintained open grassed playfield. A line of tall ohia trees, ferns and grasses border the east, south and a portion of the west property boundaries. The proposed facility is approximately 10 feet to the rear of the existing shed, 15-20 feet from the boundary along Tiki Lane, and approximately 250 feet from Ainaloa Boulevard. It is expected that the monopole and flag would have some visibility by nearby residents and from Ainaloa Boulevard. However, the existing ohia trees, ferns and grasses along the east, south, and portion of the west property boundaries, will provide some buffer to minimize any visual impacts to the adjacent property owners. Further, based on the stealth design, the monopole and antennas are disguised by concealing them within a flagpole, which is visually, a more acceptable structure.

According to the applicant, the pole can either remain the natural gray color or be painted to minimize any further visual impact to the immediate area. It is recommended that initially, the monopole remains the natural gray color of galvanized steel, and that it be assessed in consultation with the Planning Department, to see if it blends in with the sky, prior to the decision to paint the monopole. Further, to avoid any unnecessary visual impact, an abandonment clause is included as a condition, to require removal of the monopole within 120-day after permanent abandonment.

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. It is anticipated that sound will have a 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 (FCC). 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 monopole has been designed to and will be expected to comply with the above guidelines, no significant adverse impact to surrounding properties is expected.

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 subject property is from Ainaloa Boulevard and onto an existing 20-foot pavement driveway within Tiki Lane. As traffic is anticipated to be minimal, the existing driveway to the leased site on the subject property is adequate. Fire, police and emergency services are available from the fire station and police station located in Keaau Town and Pahoia Town, approximately 5.8 miles and 5 miles away, respectively. Further the applicant has stated that their system will not interfere with the County of Hawaii Public Safety System. 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. 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.

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," 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 monopole is part of the expansion of VoiceStream's telecommunication infrastructure and will enable them to

expand their service area to the Ainaloa/Orchidland area 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 suited for the uses permitted within the district, however, the proposed use will not interfere with such uses. The subject property is not an agricultural resource and has been reserved for park or school area at the time of the Ainaloa Subdivision development. It is used primarily for the community recreation facilities. 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 considers the area as unclassified. The monopole site will be limited to 400 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 400-square foot portion of a 2.76-acre property that is presently used for the community recreation activities. Although the flagpole will be visible from Ainaloa Boulevard, it is set back approximately 250 feet away 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 originally cleared, it is not anticipated that cultural, archaeological or botanical resources will be affected. Should any unidentified sites or remains be discovered during the land clearing or construction stages, our standard condition, to cease work in the area, shall be included as a precautionary measure.

The request will not be contrary to the General Plan. The subject property is within an area designated as Orchard by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The monopole site will be limited to a 400-square foot portion of land, and thus does not preclude the other portions of the property from continuing to be used for recreational purposes by the owner and community. 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 new 80-foot high monopole and antennas, concealed in a flagpole, with related improvements is an unusual and reasonable use of lands situated within the State Land Use Agricultural District 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. Construction of the proposed telecommunication pole and antennas shall be completed within two (2) years from the effective date of this permit.
3. Prior to the start of construction, Final Plan Approval for the proposed 80-foot high monopole and antennas, concealed in a flagpole, 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, 25-2-74 and 25-4-12. Plans shall identify existing and proposed structures, fire protection measures, fencing, driveways and parking area associated with the use. Monopole and antenna plans shall be stamped by a structural engineer.
4. Co-location or any expansion of the monopole and related facilities within the monopole site may be allowed within the parameters of the monopole height and envelope as approved by the Planning Commission.
5. Within 120 days of the permanent abandonment of the monopole, the applicant shall remove the monopole and its 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 telecommunication monopole and related improvements 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. 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.
10. 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
Page 9

Should you have any questions, please contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lvoicestreamspp01-004PC

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