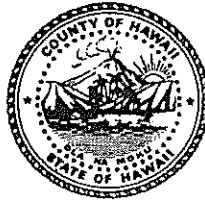


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

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NOV 14 2001

Roy Vitousek, Esq.
Cades Schutte Fleming & Wright
75-170 Hualalai Road, Suite B303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Special Permit Application (SPP 01-020)
Applicant: VoiceStream Wireless Corporation
Request: Legitimize an Existing 100-Foot Monopole With
Antenna and Appurtenant Equipment
Tax Map Key: 2-4-33:10

The Planning Commission at its duly held public hearing on October 19, 2001, voted to approve the above-referenced application. Special Permit No. 1123 is hereby issued to legitimize an existing 100-foot monopole with antennas and appurtenant equipment on approximately 400 square feet of land in the State Land Use Agricultural District. The property is located on Ala Oli Street, approximately 937 feet on the Puna side of Ainaola Drive, Waiakea Homesteads 2nd Series, South Hilo, Hawaii.

Approval of this request is based on the following:

VoiceStream Wireless Corporation (VoiceStream) is requesting to legitimize an existing 100-foot monopole with antennas and appurtenant equipment. VoiceStream has initiated its service on the Island of Hawaii and the existing monopole in the Waiakea Homesteads provides the coverage they need for this section of the Hilo community. The existing monopole has been located at this site for approximately two (2) years.

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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. This particular subject property is situated within the County's Agricultural (A-1a) zoned district and within the State Land Use Agricultural District. The subject property has been cleared and there are two dwellings on the subject property. A first dwelling was constructed in 1993 and an Ohana Dwelling Permit was secured from the Planning Department and the dwelling constructed in 1994. There is a pending subdivision application to subdivide the property into two separate lots for each of the dwellings. There are no agricultural uses occurring on the subject property. The monopole 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 considers the lower portion of the property as "Unclassified" and the upper portion as "Prime Agricultural Lands." The licensed area for the monopole covers an approximately 400-square foot area of a 3.43-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.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. The intent of the Coastal Zone Management Program is to guide and regulate public and private uses in the coastal zone management area with respect to recreational resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, and beach protection. Although the entire island lies within the Coastal Zone Management Area, the property is located approximately six miles east from the nearest coastline. There is no designated public access to the mountain areas over the property. The subject property is adjacent to an existing mix of residential and agricultural uses. The proposed development will not impact any recreational, including access to and along the shoreline, mountain access, coastal ecosystems, and marine coastal resources. Further, the property will not affect any coastal hazards nor beach erosion. Due to its location and distance from the shoreline, the proposed monopole does not significantly obstruct any ocean (makai) views or significantly affect view planes. The 100-foot monopole, however, is visible to existing lots along Ala Oli Street, and from various locations along Ainaola Drive. VoiceStream has stated that the monopole has been in existence for over two (2) years without any complaints from surrounding neighbors. Further, the Planning Department has not received any complaints from the community. Based on the above, it is determined that the existing monopole does not significantly affect visual resources in

this location. Given the fact that the parcel has been previously cleared and developed with structures, it is unlikely that any cultural, archaeological or botanical resources will be affected. 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 100-foot high monopole and related improvements are situated on a 400-square foot portion of a 3.43-acre parcel of land. The subject lot has two dwellings, one of which is an ohana dwelling that has secured approval from the Planning Department and Building Division. With the exception of the dwellings on the subject parcel, there are no dwellings on the adjacent lands to the north, east and west, which are zoned Agricultural (A-1a). Lots along Ala Oli Drive are approximately 1.5 acres in size and have dwellings or are vacant lands. The adjacent parcels to the south of the subject property are zoned Agricultural (A-3a) and vacant. Lands along Ainaola Drive on both sides of Ala Oli Street are zoned CN-10 and vacant of commercial uses. Lands to the north and across Ainaola Drive are zoned Single Family Residential (RS-7.5, RS-15 and RS-20) and include existing dwellings and vacant lots. There is a commercial lot (CN-10) further mauka on the corner of Ainaola Drive/Kupulau Road intersection which is the site of a small store. The monopole is visible to nearby residents and from various points along Ainaola Drive. However, it is located approximately 937 feet in (south) from Ainaola Drive, which does minimize visual impacts from Ainaola Drive.

The monopole is a natural gray color of galvanized steel. To avoid any unnecessary visual impact due to non-use of the monopole, an abandonment clause is included as a condition, to require removal of the monopole within 120 days after permanent abandonment.

As the monopole already exists, there will be no construction impacts. Traffic is minimal, as service personnel will only visit the site for maintenance only. Further, this facility does not have an air conditioner or 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 limits local authorities from regulating the placement, construction and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions, 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 Ainaola Drive onto Ala Oli Road which is private road with a 40-foot right-of-way and paved to an approximate width of 13 feet. The area surrounding the monopole has been cleared and has an adequate driveway. As the monopole is unmanned, traffic is minimal, and the existing driveway with proposed extension leading to the leased site on the subject property is adequate. Fire, police and emergency services are available within Hilo. Further, the applicant has stated that its 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 existing network for VoiceStream's telecommunication infrastructure and enables them to provide service area to the Waiakea Homestead area, including the area from Kawailani Street to the Hilo Municipal Golf Course. 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. Although the

subject property is zoned Agricultural (A-1a), it is not being used for agricultural purposes. 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 considers the area as Unclassified and Agricultural Lands of Importance. Although the property is suitable for agricultural uses it is not being used for that purpose. 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 existing 100-foot monopole site is limited to a 400-square foot portion of a 3.43-acre property that is presently used as residences. The existing parcel has a pending subdivision for two lots. The monopole has altered the property visually, however, it has not substantially altered or changed the essential character of the land nor the existing uses on the property. According to the applicant, the existing monopole can accommodate up to two additional carriers, without increasing the height of the existing monopole. Therefore, co-location shall be allowed within the existing parameters of this approved permit. Further, no objections were received from the community.

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 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 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 an existing 100-foot high monopole and antennas, with appurtenant equipment 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. Final Plan Approval for the existing 100-foot high monopole and 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, 25-2-74 and 25-4-12 with six (6) months from the effective date of this permit. 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.
3. 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 upon securing Final Plan Approval.
4. 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 buildings 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.
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. 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.

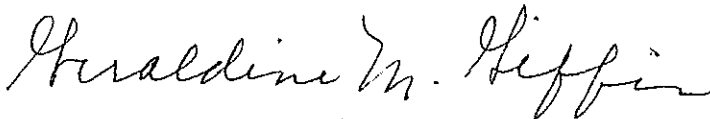
Roy Vitousek, Esq.
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7. Upon compliance with applicable conditions of approval, the applicant shall submit a final written status report to the Planning Director.
8. An initial extension of time for the performance of conditions within the permit may 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.

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

Lvoicestreamsp01-020PC

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