



County of Hawai'i

LEEWARD PLANNING COMMISSION

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NOV 12 2013

Mr. William Keoni Fox
Ali'i Wireless Specialists LLC
45-955 Kamehameha Highway, Suite 308
Kāne'ohe, HI 96744

Dear Mr. Fox:

Use Permit Application (USE 13-000039)
Applicant: New Cingular Wireless PCS LLC dba AT&T
Request: To Allow the Establishment of an 84-Foot Tall Monopole and Related
Equipment on a 900 Square Foot Portion of a 1.962 Acre Property in the
County Agricultural (A-1a) Zoned District
Tax Map Key: 7-6-024:032

The Leeward Planning Commission, at its duly held public hearing on October 17, 2013, voted to approve the above-referenced request to construct an 88-foot tall steel telecommunication monopine tower and related facilities on a 900 square foot portion of a 1.962 acre parcel situated in the State Land Use Agricultural District and the County's Agricultural – 1 acre (A-1a) zoning district. The property is located on the north (mauka) side of Kuakini Highway, approximately 300 feet southeast of the intersection of Kuakini Highway and Keākealani Drive in Hōlualoa, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant originally submitted a request for a Use Permit for an 84-foot tall steel telecommunication monopole but has since changed the design in response to comments from DLNR-SHPD. The applicant has amended the request for a Use Permit to construct an 88-foot tall steel monopine with twelve (12) 8-foot panel antennas mounted on top of the monopine, which will be situated within a 900 square-foot portion of a 1.962-acre parcel. The monopine would be designed to also accommodate the placement of at least two (2) other carriers (co-location). In addition to the monopine, the

900-square foot (30' x 30') leased area would be used for accessory ground facilities, which includes a 230 square foot prefabricated equipment shelter and emergency backup generator. The leased area would be fenced with 6-foot high chain link security fencing. The proposed facility would be unmanned, and maintenance and repair activities will be performed by a technician on a periodic basis. The monopine will be constructed of steel and built to withstand 100 mph wind. The applicant stated that they adhere to the strict Federal Aviation Administration (FAA) rules. According to the applicant, they will adhere to all Federal Aviation Administration (FAA) and Federal Communications Commission (FCC) regulations. Additionally, the monopine will not interfere with the County's public safety radio system.

The objective of this site is to provide infrastructure necessary for improved wireless coverage of the Kailua-Kona subdivisions specifically Pualani Estates, Kahakai Estates, Ali'i Kai, Kamani Trees, Hualani Heights, Kalani Sunset, Leilani Sunset, Kona Vistas, Kilohana Kai, Kuakini Makai, Komohana Kai as well as commuters along Kuakini Highway and Queen Ka'ahumanu Highway. The existing AT&T facilities which service the Kona Town and Keauhou communities cannot support the increased wireless traffic from subscribers in the area. The new facility will "offload" wireless traffic from the existing facilities and there enhance coverage for the numerous subdivisions in the area as well as commuters along Kuakini Highway and Queen Ka'ahumanu Highway.

Telecommunication towers and antennas previously required a Special Permit to operate within the State Land Use Agricultural District. In 2007, the State Legislature adopted Act 171 to allow the construction and operation of wireless communication antennas and towers as permitted uses within the State Land Use Agricultural District. In 2010, the Hawai'i County Council approved Ordinance No. 10-17 to require a Use Permit for telecommunication antennas and towers in the County's Agricultural zoned district. As the applicant is proposing to construct a new tower in the County's Agricultural (A-1a) zoned district, a Use Permit is required.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits, requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;
- B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and

- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed request meets the guidelines for approval of a Use Permit, for the reasons outlined below:

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and polices of the General Plan. The Zoning Code allows for telecommunication antennas and towers to be a permitted use within the County's Agricultural zoned district if a Use Permit is approved by the Planning Commission.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The General Plan designation for this property is Low Density Urban, which allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre. The request is not contrary to the General Plan designation as it will only be utilizing a small portion of a larger property that will benefit the general public in the area and those that travel along the highway with enhanced cellular service. The request is also consistent with the Public Utilities Element of the General Plan.

The telephone is an essential means of voice communication for the majority of residents in Hawai'i County. However, over the last decade, the County has seen acceleration in the development of telecommunication technology and a transformation of the telecommunications industry. In addition to traditional phone communication, the telecommunications industry now includes technologies such as wireless cellular and digital mobile phones, the internet and World Wide Web.

During the last decade, wireless telecommunications has experienced a dramatic decrease in cost and a phenomenal increase in availability. Changes in technology and competition in the industry have made wireless communication more affordable to the general public.

Advances in telecommunications are not without cost or concerns. One such concern is the construction and location of telecommunication towers. Telecommunication towers are the physical structures to which antennas are attached to facilitate wireless communication. Because of the need for a clear line-of-site, telecommunication towers are usually located in areas with minimum obstructions between the tower and its area of service. Line-of-site refers to the imaginary line between a mobile phone antenna and a telecommunication tower. If there are impediments between the mobile phone antenna and the telecommunication tower, there may be signal degradation or signal loss. For example, the loss of line-of-sight occurs when a person uses a mobile phone while driving through a tunnel. Most often, communication is lost or unclear. The line-of-sight requirement often necessitates the conspicuous location of many telecommunication towers. Consequently, the telecommunication tower is usually taller than the surrounding structures or vegetation and may negatively impact the scenic nature of a given area.

A standard in the Public Utilities Element of the General Plan states that in the development and placement of telephone facilities, such as lines, telecommunications and cellular towers, poles, and substations, the design of the facilities shall consider the existing environment, and scenic view and vistas shall be considered and preserved where possible. The tower site is located on a small portion of a 1.962-acre property near a row of trees to help minimize any negative visual impacts to the surrounding properties and Kuakini Highway and Queen Ka'ahumanu Highway. There is significant public benefit to be gained by the installation of the proposed telecommunication tower for the residents in this area and for those traveling along this stretch of the Kuakini Highway and Queen Ka'ahumanu Highway. Therefore, approval of this request will not run contrary to the goals, policies and standards of the General Plan.

Based on the above, the request is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The project site is a 900 square-foot portion of a 1.962-acre property. The property is vacant of uses and structures. The surrounding area consists mainly of residential subdivisions including Pualani Estates to the north, Kahakai Estates and Kuakini Makai to the west, Ali'i Kai, Kamani Trees, Komohana Kai, and Kilohana Kai to the south and southwest, and Kalani Sunset, Leilani Sunset and Kona Vistas to the east. The nearest dwellings are located to the south directly across Kuakini Highway in the Kuakini Makai Subdivision. Directly north is a property zoned A-5a, which is the location for the Power Self Storage facility that was approved by Special Permit No. 1003. Directly east is a property zoned RM-5 that is the location of a HELCO

transfer station. The adjacent property to the northwest is zoned CN-10, which is the location for the Hillside Business Plaza.

The Commission has received concerns from the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) regarding the potential adverse visual effects of this project on the nearby significant historic properties, thereby necessitating the change in the design to a monopine.

It is anticipated that the approval of the telecommunication tower will be beneficial to the community as it will provide increased cell phone coverage in the area and will be a significant resource for emergency services.

The granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. 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 and telephone services are required for the use and they are already available to the property. Access to the tower site will be over an unimproved portion of old Walua Road, which is a government road that is not maintained by the County. There is a locked gate at the end of the improved portion of old Walua Road. The applicant will gain access to the property through the locked gate. As traffic is anticipated to be minimal, the access to the site on the property is adequate. Fire and police services are available to the project area in Kailua-Kona. Finally, the applicant will meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area. The subject property is located approximately 4,000 feet to the nearest shoreline and is not located in the Special Management Area, and therefore will not be impacted by coastal hazards and beach erosion. There are no identified coastal recreational resources, coastal scenic and open space resources, coastal ecosystems, and beach or marine resources in the area. Thus, the proposed request will not adversely impact coastal resources. Additionally, there is no record of a designated public access to the shoreline or mountain areas that traverses the property.

After reviewing the applicant's request, the DLNR-SHPD stated that because this project requires a permit from the FCC, this project also triggers historic preservation review pursuant to section 10 of the National Historic Preservation Act. DLNR-SHPD has previously reviewed this undertaking and discovered that an Archaeological Inventory

Survey of this property was prepared by Glenn Escort (2012). The AIS recorded 2 archaeological sites within the subject parcel, a historic ranch/boundary wall (SIHP 50-10-28-29503) and a modified outcrop (SIHP 29504). In addition, a review of our records indicates that there are a minimum of 241 archaeological sites recorded on the State Inventory of Historic Places within a 0.5 mile radius of this proposed project area. Some of these sites include highly significant sites with religious and cultural significance to native Hawaiians such as the Kealakowa'a Heiau (SIHP 3833) and the great wall of Kuakini (SIHP 6302). While these sites will not be directly impacted by the project, we request that the applicant take into account the potential adverse visual effects of this project on the nearby significant historic properties. In addition of completing the section 106 requirements of describing the area of potential effects, identification and assessment of effect on historic properties with the area of potential visual, and consultation Native Hawaiian Organizations on the identification of historic properties and assessment of the effect of this undertaking on historic properties, that were identified in the previous correspondence, we request the applicant consider possibilities to minimize any potential visual impacts to the setting of nearby historic properties.

In response these comments from DLNR-SHPD, the applicant submitted the additional requested information and received a "no historic properties will be affected" determination from DLNR-SHPD in a letter dated May 13, 2013. Additionally, the applicant changed the design of the monopole to a monopine to mitigate any potential visual impacts to historic properties in the area.

Lastly, this approval is made with the understanding that the Applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above, the request to construct an unmanned, 88-foot monopine, antennas and related improvements is hereby approved by the Leeward Planning Commission. Approval of this request is subject to the following conditions:

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

2. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-71(c)(3), 25-2-72, 25-2-74 and 25-4-12, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structures, fire protection measures, access easements and any fencing associated with the use. Landscaping shall also be indicated on the plans along the perimeter of the 900 square-foot project site for the purpose of reasonably concealing the ground facilities from adjacent properties and the highway. The antenna plans shall be stamped by a structural engineer.
3. The tower shall be constructed as represented in the revised tower design plans as a stealth "monopine tree" tower as indicated in Planning Department Exhibit 12.
4. Co-location or any expansion of the tower and related facilities within the project site may be allowed within the parameters of the tower height and envelope as approved by the Planning Commission.
5. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna 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.
6. 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.
7. The applicant shall comply with all applicable rules, regulations and requirements of the affected agencies for the proposed development, including the Federal Aviation Administration and Federal Communications Commission.
8. An initial extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:

Mr. William Keoni Fox
Ali'i Wireless Specialists LLC
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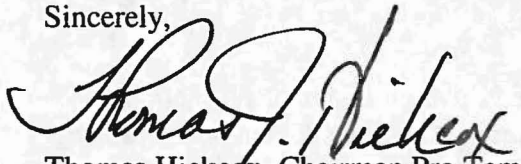
- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- C. Granting of the 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).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

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 Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Thomas Hickcox, Chairman Pro Tem
Leeward Planning Commission

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cc: New Cingular Wireless PCS, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Mr. Gilbert Bailado