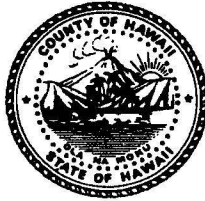


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## County of Hawai'i

### WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 15 2020

Mr. Andrew Tomlinson  
J5 Infrastructure  
677 Ala Moana Boulevard, Suite 917  
Honolulu, HI 96813

Dear Mr. Tomlinson:

**SUBJECT: Use Permit Application (USE 19-000081)**  
**Applicant: New Cingular Wireless PCS, LLC dba AT&T Mobility**  
**Permitted Use: Allow the Construction of a 180-Foot Monopole**  
**Telecommunication Tower with Related Equipment**  
**Tax Map Key: 1-7-031:031**

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The Windward Planning Commission, at its meeting on June 4, 2020, reviewed and considered the adoption of the proposed Findings of Fact, Conclusions of Law and Decision and Order for denial of a Use Permit to allow the construction of a non-manned telecommunication facility consisting of a 180-foot tall monopole and related equipment within a 2,500-square foot portion of a 9.65-acre property situated in the County's Agricultural zoning district. The property is situated north of Kua'aina Road, approximately 0.5 miles from the intersection with Volcano Road (Highway 11), Kea'au, Puna, Hawai'i.

The Commission voted and approved the Applicant's request for reconsideration of its March 5<sup>th</sup>, 2020 denial of USE Permit No. 19-000081. The Commission then approved USE 19-000081 subject to the following conditions as previously recommended by the Planning Director.

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

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northeast and northwest corner of the property for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. The plans shall identify existing landscaping and new landscaping in the areas that do not currently have landscaping in place. The antenna plans shall be stamped by a structural engineer.

3. Prior to commencing operation of the facility, the applicant shall secure and finalize any building permits for the subject property required by the Department of Public Works Building Division.
4. Co-location of antennas upon the existing tower and the addition of related support and ground equipment is allowed and encouraged within the parameters of the tower height and ground lease area as approved by the Planning Commission without amendment of this permit or further Plan Approval. Co-location beyond the parameters approved by this permit but that results in less than a 'substantial change' to the tower height and ground lease area, as defined by the Federal Communication Commission, is allowed without amendment of this permit, provided Plan Approval has been issued by the Planning Director for the co-location. Co-location that results in a 'substantial change' to the tower height and ground lease area, as defined by the Federal Communication Commission, requires an amendment of this permit.
5. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be disturbed, trimmed or removed during bat birthing and pup rearing season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service (USFWS) if nests are found. Surveys shall be conducted by a qualified biologist.
6. To protect any seabirds (Hawaiian petrels, Newell's shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
7. To prevent the spread of Rapid 'Ōhi'a Death, a survey of the proposed site shall be conducted two weeks prior to any tree cutting to determine if there are any infected 'ōhi'a trees. If infected 'ōhi'a are suspected at the site, the applicant shall contact the appropriate agencies at UH-Hilo and USDA for further guidance. If 'ōhi'a trees will be cut during construction, the applicant shall follow procedures as determined by US Fish and Wildlife Service.

8. To prevent the spread of harmful invasive species, the applicant shall follow biosecurity protocols as determined by US Fish and Wildlife Service.
9. 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.
10. 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.
11. 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. All exterior lighting shall be shielded.
12. An initial extension of time for the performance of conditions of 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 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).

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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.

Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Thomas R. Rapiy, Chair  
Windward Planning Commission

LNewCingularWirelessdbaAT&TMobilityUSE19-081wpc  
Enclosure: PC Findings

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
US Fish and Wildlife Service (USFWS)  
State DLNR-HPD  
Plan Approval Section  
GIS Section

# **COUNTY OF HAWAII**

## **PLANNING COMMISSION FINDINGS**

### **AT&T MOBILITY**

#### **USE PERMIT APPLICATION (USE 19-000081)**

Based on the following findings, Use Permit No. 19-000081 is hereby approved to allow the construction of a non-manned telecommunication facility consisting of a 180-foot tall monopole and related equipment within a 2,500-square foot portion of a 9.65-acre property situated in the County's Agricultural zoning district. The subject property is located north of Kua'āina Road, approximately 0.5 miles from the intersection with Volcano Road (Highway 11), Kea'au, Puna, Hawai'i, TMK: (3) 1-7-031:031.

The Applicant is requesting a Use Permit to construct a new, non-manned telecommunication facility, which includes a 180-foot tall monopole and antenna array for AT&T consisting of four (4) sectors with three (3) antennas per sector for a total of twelve (12) antennas, thirty-six (36) remote radio heads, six (6) surge suppressors, and one (1) global positioning system (GPS) antenna. No exterior lighting is proposed for the site. In addition to the tower and antennas, the 2,500-square foot (50' x 50') leased area would be used for accessory ground facilities located within an enclosed pre-fabricated 12' x 20'6" walk-in cabinet shelter. The leased area will be enclosed with a 6-foot high chain-link fence with landscaped buffer, green privacy slats, and a 10-foot wide locked access gate. Green privacy slats in the chain link fence surrounding the ground equipment is proposed to mitigate visual impacts. The proposed facility would be unmanned, and maintenance and repair activities will be performed by a technician on a periodic basis. The pole will be constructed of structural galvanized steel and built to withstand 105 mph wind. The applicant will comply with all Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) rules. Additionally, the monopole will not interfere with the County's public safety radio system. Staff notes that the original plans, dated July 10, 2019, were replaced with revised plans, dated January 14, 2020, showing the proposed modification from a 3-sector to a 4-sector design.

The objective of this project is to provide expanded wireless phone service to the Kurtistown area and expand AT&T's coverage throughout Hawai'i Island.

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 districts. As the applicant is proposing to construct a new tower in the County's Agricultural (A-20a) 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 policies 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 designations for this property is Low Density Urban, which includes single-family residential uses, ancillary community and public uses, and neighborhood and convenience-type commercial uses. Allowable uses within these areas, with a Use Permit, may include telecommunication facilities that serve the residents in the area. The request complements and is consistent with the Land Use, Economic, and Public Utilities elements 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 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-sight, telecommunication towers are usually located in areas with minimum obstructions between the tower and its area of service. Line-of-sight 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 telecommunications tower is usually much 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 9.65-acre property. There is significant public benefit to be gained by the installation of the proposed telecommunication tower for the residents in this area. Therefore, approval of this request will not run contrary to the goals, policies and standards of the General Plan.

Lastly, the Puna Community Development Plan (CDP) was adopted by the Hawai'i County Council on September 10, 2008. The request is consistent with Action 3.4.3(e) under the Public Safety and Sanitation Services section in the plan, which states, "encourage enhancement of cell phone service to expand coverage to more remote areas."

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 2,500-square foot (50' x 50') portion of a 9.65-acre property. The property is currently vacant except for a small barn approximately 50 feet from the proposed facility and a concrete pad. Properties located immediately to the north, east and west of the subject property are zoned A-20a. Properties located to the south of the subject property are zoned RS-20. Kamehameha Schools High School campus is located to the northeast across North Road. The nearest dwellings are located on adjacent properties to the southwest, with the closest located about 264 feet from the proposed tower location.

To help mitigate possible visual impacts in the immediate area, a condition of plan approval will be to maintain and/ or place landscaping along the northeast and northwest corners of the subject property where the tower will be located. If there is landscaping in place, the applicant will just be required to identify the landscaping on the site plan and make sure it is maintained in place. If landscaping is not in place, the applicant will need to identify the new landscaping in that area on the site plan and install and maintain the new landscaping.

The General Plan identifies views of Mauna Kea and Mauna Loa from various Puna subdivisions as an example of natural beauty in the Puna district. Properties surrounding the subject parcel are vegetated with medium to tall trees which block views of these mountains. It is not anticipated that the proposed Facility will have an impact on views of Mauna Kea and Mauna Loa from the neighboring subdivisions.

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.

Therefore, based on the above, 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 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 available to the property. Access to the Facility will be from Kua'āina Road on an

unnamed access road running along the Southeast property line. 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 Kea'au and Hilo. The Telecommunications Act of 1996, Section 704, which amended portions of the 1934 Act, limits the state or local authorities from regulating the placement, construction and modification of personal wireless service facilities on basis of environmental effects of radio frequency emissions, as long as such facilities towers comply with the FCC's regulations concerning such emissions. Finally, the applicant will be required to 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 over five (5) miles 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 and no gathering or other traditional practices have been documented.

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 properties. 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, it is recommended that the request to construct a non-manned telecommunication facility consisting of a 180-foot tall monopole and related equipment be approved by the Planning Commission.