

ORDINANCE NO. 3713BILL NO. 103 (2009)

A BILL FOR AN ORDINANCE GRANTING NEW CINGULAR WIRELESS PCS, LLC; CLEARWIRE US, LLC; CORAL WIRELESS, LLC, DBA MOBI PCS; SPRINTCOM, INC., DBA SPRINT NEXTEL; T-MOBILE WEST CORPORATION; AND VERIZON WIRELESS A CONDITIONAL PERMIT TO ESTABLISH A TELECOMMUNICATION FACILITY WITHIN THE COUNTY URBAN RESERVE DISTRICT FOR PROPERTY SITUATED AT PAIA, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to New Cingular Wireless PCS, LLC; Clearwire US, LLC; Coral Wireless, LLC, dba Mobi PCS; Sprintcom, Inc., dba Sprint Nextel; T-Mobile West Corporation; and Verizon Wireless (collectively the "Carriers", and individually, each a "Carrier") to establish a telecommunication facility on a portion of the former Paia Mill site that is zoned County Urban Reserve, identified for real property tax purposes by Tax Map Key Number: (2)2-5-005:054, comprising approximately 20.275 acres of land situated at Paia, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable, unless the Council approves the transfer by ordinance. A transfer of the Conditional Permit shall not include any mergers, acquisitions, or renaming among the six

RECEIVED AT LU MEETING ON 11/2/18  
Committee Chair Carroll

permittees: New Cingular Wireless PCS, LLC; Clearwire US, LLC; Coral Wireless, LLC, dba Mobi PCS; Sprintcom, Inc., dba Sprint Nextel; T-Mobile West Corporation; and Verizon Wireless.

4. That New Cingular Wireless PCS, LLC; Clearwire US, LLC; Coral Wireless, LLC, dba Mobi PCS; Sprintcom, Inc., dba Sprint Nextel; T-Mobile West Corporation; and Verizon Wireless, their successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by each of the Carriers of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.
5. That the Carriers shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That the Carriers shall comply with the guidelines provided by the Maui Police Department.

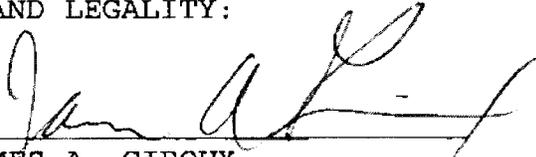
7. That the Carriers shall coordinate the turn-up date with the Maui Police Department Communications Coordinator to verify that there is no adverse impact on the Maui County Public Safety Radio System in the area surrounding this site.
8. That the Carriers shall strive to meet the recommendations of the "Best Practices Guide" as they relate to reducing interference with Public Safety radio systems, as recommended by the Federal Communications Commission.
9. That, if the Carriers' equipment causes the RF noise floor to rise, resulting in interference which adversely affects the Maui County Public Safety Radio System, or degrades system performance, the Carriers shall be responsible for restoring the use of Maui County's Public Safety radio system by whatever means available and agreeable to the Maui Police Department Communications Coordinator. These remedies may include, but are not limited to, changing operational frequencies, and filtering and controlling RF output. Costs incurred shall be the responsibility of the Carriers.
10. That any changes to the operational frequencies at this site, through returning or dynamic reassignment, shall be coordinated with the Maui Police Department Communications Coordinator to ensure that there is no potential degradation of the Maui County Public Safety Radio System.
11. That the Carriers shall notify the Maui Police Department Communications Coordinator of system expansion, installation of equipment operating in the 800MHz band, or co-location with other wireless carriers at this site prior to these changes being made to ensure that there is no potential degradation of the Maui County Public Safety radio system.
12. That the Carriers shall submit to the Department of Planning five (5) copies of a detailed report addressing their compliance with the conditions established with the

subject Conditional Permit with the request for a time extension.

13. That the Carriers shall provide an all-weather apron on the access driveway to the satisfaction of the Department of Public Works within one year of the effective date of the ordinance.
14. That an appropriately-sized sign, as approved by the Department of Planning, shall be erected with emergency contact information.
15. That the Carriers shall each be individually responsible for complying with the applicable conditions and requirements of this ordinance. The noncompliance and/or breach of any condition or requirement of this ordinance by one Carrier shall not result in the termination of the ordinance as it pertains to the other Carriers, or result in enforcement against any other Carrier for such noncompliance or breach, provided the other Carrier continues to comply with the terms of the ordinance.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



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JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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