

Attachment 46
Environmental Protection Act Statement

The Applicant's certification to Section III-D, Question 2, is based, in part, on a National Environmental Policy Act and National Historic Preservation Act Compliance Report (the "Report") prepared in October 2008 by KC Environmental, Inc. ("KC Environmental").

KC Environmental was retained by the third-party owner and developer of the tower site proposed in the instant application. The Applicant intends to operate the proposed facility as a tenant on the tower site.

Attached is a copy of KC Environmental's Executive Summary of the Report. KC Environmental has forwarded a complete copy of the Report to the Commission's staff. A complete copy of the Report can also be provided to the Commission by the Applicant upon request.

As the Commission's staff is already aware, the site developer completed construction of the tower structure in advance of completion of the NEPA process. Accordingly, upon grant of the instant application, the Applicant can immediately commence the process of constructing its post-transition DTV facility.



P.O. Box 1208
Makawao HI 96768

(808) 573-1903
fax: (808) 573-7837
charlie@kcenv.com

October 6, 2008

**NEPA/NHPA Evaluation Process for Antenna Site and New Tower
'Ulupalakua Ranch Antenna Farm, Maui, Hawai'i**

Executive Summary

KC Environmental, Inc. (KCE) has completed a National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) evaluation for a new 199-foot tower and its host 3-acre antenna site at 'Ulupalakua Ranch, Maui, Hawai'i. The tower will house antennas to be used by the Maui Television Broadcasters LLC for television broadcasts, which are currently transmitted from the General Broadcast Area on Pu'u Kolekole, Haleakalā, Maui. The purpose of this report is to evaluate the tower and antenna site property in advance of broadcaster relocation, to ensure that environmental and historical concerns specified by the Federal Communications Commission (FCC) in 47 CFR 1.1307 and general industry standards have been addressed.

The 'Ulupalakua Ranch antenna site property is located at TMK (2) 2-1-009: 001, about 1,500 feet southwest of Pu'u Makua, at approximately 4,450 feet elevation on the western side of a series of extinct cinder cones and volcanic vents that constitute the Southwest Rift Zone of Haleakalā volcano. The site itself is on a broad, gently sloping saddle area approximately 2.4 miles upslope from the nearest inhabited area in 'Ulupalakua. The antenna site is therefore not in a residential area and does not require high intensity white lighting for any purpose.

The new tower location and antenna site are not located in an officially designated wilderness area or wildlife preserve. The nearest wildlife preserve is the Kanaio Natural Area Reserve, which is part of the State of Hawai'i Natural Area Reserve System. The Reserve is approximately 2 miles to the southeast of the antenna site and as such it will not be impacted by the tower or its broadcast operations.

In compliance with Section 7 of the Endangered Species Act (ESA), the FCC entered into formal consultation with the U.S. Fish & Wildlife Service (USFWS) to verify that no jeopardy to any endangered species would result from the new 199-foot tower or support facilities at the 'Ulupalakua site. A Biological Opinion was prepared by USFWS and transmitted to the FCC with the Determination that the tower and broadcast facilities would not jeopardize the survival of any endangered species. While the tower and its associated facilities do not threaten the existence or habitat of any endangered species, mandatory terms and conditions have been agreed upon by both FCC and USFWS in order to monitor Incidental Take (endangered species fatalities due to collisions with the tower) of Hawaiian petrels ('ua'u), Hawaiian geese (nēnē), and the Hawaiian hoary bat ('ope'ape'a). Additional conservation measures were recommended by USFWS to be employed at the discretion of the FCC, in accordance with Section 7 (a) (1) of the ESA, to benefit threatened and endangered species.

The project does not affect any district, site, building, structure or object listed in the National Register of Historic Places or is eligible for listing. While there are no historic features on the antenna site listed in the National Register of Historic Places, KCE identified historic properties in the Area of Potential

Effects for visual impact, e.g., historic locations from which the new tower is potentially visible. Two such properties were identified and listed in Appendix 8 of FCC Form 620, New Tower Submission Packet, which was filed with the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR). Site visits to those properties confirmed that neither of them has a clear line-of-sight to the 'Ulupalakua antenna site, and therefore no historic site experiences a visual impact from any structure at the 'Ulupalakua antenna site.

Through formal notification, inquiry, communication with the Native Hawaiian community, the State Historic Preservation Division, and other interested agencies, it has been determined that the relocation project will have no impact on any Native Hawaiian religious site, resources, or practices. An archaeological survey of the 3-acre antenna site and surrounding ranch property identified no archeological or cultural resources. Subsequent to the survey, and in accordance with the FCC Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, KCE filed FCC Form 620 with the Hawai'i SHPD and entered into consultations with them to evaluate potential historic effects. KCE also submitted the necessary project information on-line with the FCC Tower Construction Notification System (TCNS), published notification of the proposed action in the news media, sent letters requesting comments on the tower and support facilities to 32 recognized Native Hawaiian organizations and individuals in the community, and evaluated those comments received. All participants in this National Historic Preservation Act Section 106 consultation process concur that the new tower and relocation of broadcasters will have no adverse impact on any Native Hawaiian religious site, resources or practices.

An extensive environmental evaluation of the 3-acre antenna site property was conducted in 2007. The evaluation included all aspects of the affected environment, including biological resources, water resources, air quality, noise, traffic and transportation, public utilities and infrastructure, and solid and hazardous waste. During the evaluation of environmental consequences, site surveys were conducted to establish property metes and bounds, site arthropod and faunal inventory, site geological and soil characteristics, botanical inventory and diversity, cultural history, and to evaluate flight movements of endangered Hawaiian petrels and Hawaiian bats in the vicinity using ornithological radar.

We found no adverse effects with respect to the geographical location of the tower and antenna site, in that they are not in any floodplain, and the tower and antenna site do not require construction that involved significant changes in surface features (e.g., wetland fill, deforestation or water diversion).

In conclusion, the findings of our environmental evaluation are that the new tower, its support facilities, and the relocation of broadcasters pose no significant environmental impact.



Dr. Charlie Fein
Vice President