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DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

November 9, 2017

GCH 34-17-1209
Speaker Benjamin J.F. Cruz

NOV 09 2017
Time: 3:5 [ ] AM [ ] PM File No. 34-1199
Received By:

To: Office of the Speaker of the Guam Legislature
Guam Congress Building
Hagatna, GU

From: Planning Division
Department of Land Management

Hafa Adai!

Pursuant to 5GCA, Chapter 8, §8113.1, Reporting Requirements for Boards and Commissions, transmitted herewith is the Minutes from the Guam Land Use Commission meeting of:

- Regular meeting of October 12, 2017

Thank you.

Received by: _____
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1209

GOVERNMENT OF GUAM – Department of Land Management
Office of the Recorder

File for Record is Instrument Number 914421

on the Year 20 17 Month 11 Day 04 Time 11:48

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Deputy Recorder: Jane Yamasaki
JANE T YAMASAKI

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GUAM LAND USE COMMISSION REGULAR MEETING MINUTES

Department of Land Management Conference Room
ITC Building, Tamuning

Thursday, October 12, 2017
1:35 p.m. to 3:20 p.m.

GUAM LAND USE COMMISSION
Regular Meeting
Thursday, October 12, 2017
Department of Land Management Conference Room
3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Z. Arroyo, Chairman

Mr. Victor F. Cruz, Vice Chairman

Ms. Conchita D. Bathan, Commissioner

Mr. Michael Borja, Executive Secretary

Mr. Nicolas Toft, Legal Counsel

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Mr. Penmer Gulac, Case Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Attendance Sheet

Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting:	Thursday, October 12, 2017		X	GLUC	
			X	Regular	
Time of Meeting:	GLUC: 1:25pm	GSPC:		Special	
			✓	Quorum	
				No-Quorum	

	GSPC
	Regular
	Special
	Quorum
	No-Quorum

COMMISSION MEMBERS	SIGNATURE
Chairman John Z. Arroyo	
Vice Chairman Victor F. Cruz	
Commissioner Conchita D. Bathan	
Commissioner Tae S. Oh	Excused
Commissioner Hardy T.I. Vy	Excused

STAFF	
Michael J.B. Borja, Executive Secretary	
Nicolas E. Toft, Legal Counsel (OAG)	
Marvin Q. Aguilar, Chief Planner	Present @
Frank Taitano, Planner IV	Present @
Penmer Gulac, Planner IV	
Celine Cruz, Planner IV	
M. Cristina Gutierrez, WPS II	

ADJOURNMENT: GLUC: 3:20pm GSPC:

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Speaker's Sign-In Record
Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

[X]	GLUC	[X]	Regular	Date:	Thursday, October 12, 2017
[ ]	GSPC	[ ]	Special	Time:	1:35pm
[✓]	Quorum	[ ]	No Quorum	Adjournment:	3:20pm

(THIS RECORD WILL BE USED IN THE TRANSCRIPTION OF THE GLUC/GSPC MINUTES. PLEASE PROVIDE YOUR FULL NAME AND WHO YOU REPRESENT, I.E., ITEM ON AGENDA.)

PLEASE PRINT NAME CLEARLY	APPLICATION NAME AND/OR NUMBER	Telephone No.
TERRY BROOKS	S+C INVESTMENTS / SAN VITORES PLAZA	472 6848

GLUC Form 20 - GLUC Speaker Log Record Form - APRIL 2010

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Public Attendance Record
Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

[X]	GLUC	[X]	Regular	Date:	Thursday, October 12, 2017
[ ]	GSPC	[ ]	Special	Time:	1:35 pm
[✓]	Quorum	[ ]	No Quorum	Adjournment:	3:20 pm

PLEASE PRINT NAME CLEARLY	APPLICATION NAME AND/OR NUMBER	Telephone No.
Scott Clark	Ladera Towers	735-1111
Rebecca Cobian	Docomo	7674059
[illegible]	Docomo	7290 rod
JOWEL LYPINA	DOCOMO PACIFIC	6892707

GLUC Form 21 - GLUC Public Attendance Record Form - APRIL 2010

GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh
Commissioner Hardy T.I. Vy

Michael J.B. Borja, Executive Secretary
Nicolas E. Toft, Legal Counsel (OAG)

AGENDA

Regular Meeting

Thursday, October 12, 2017, 2017 at 1:30 p.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning
[As advertised in the Guam Daily Post on October 5th and October 10th, 2017]

I. Notation of Attendance [ ] Quorum [ ] No Quorum

II. Approval of Minutes

- GLUC Regular Meeting of Thursday, September 14, 2017

III. Old or Unfinished Business [None]

IV. New Business

Zone Variance

A. The Applicant, Docomo Pacific Inc., Guam; request for a Zone Variance for Height/Use for the construction of a 100-foot telecommunication monopole tower, Lot 1, Block 1, Tract 173, in the Municipality of Santa Rita, in an "A" (Rural) zone, Application No. 2016-47.
Case Planner: Celine Cruz

V. Administrative & Miscellaneous Matters

Conditional Use Renewal

B. The Applicant, BME & Sons, Inc.; annual renewal request of a previously approved Conditional Use permit for the continued operations of a temporary workforce housing facility, Lot 5223-R9-3, in the Municipality of Barrigada, in an "M-1" (Light Industrial) zone, Application No. 1997-23E.
Case Planner: Penmer Gulac

Horizontal Property Regime

C. The Applicant, LGI Pacific Guam, LLC represented by Atty. Michael Flynn; requests issuance of its 2nd Supplementary Final Public Report for the Ladera Towers Condominium, Lots 4 & 5, Tract 1822, in the Municipality of Mangilao, in an "R-2" (Multi Family Dwelling) zone, HPR No. 104, Application No. 1993-01E.
Case Planner: Celine Cruz

D. The Applicant, S&C Investments, Inc. represented by Atty. Terence M. Brooks; requests issuance of a Final Public Report for a three-story structure (San Vitores Palace Condominiums), consisting of fifteen (15) residential units, Lots 5118#1-2-4NEW and 5118#1-2-4NEW-R/W, in the Municipality of Tamuning, in an "H" (Hotel/Resort) zone, HPR No. 170, Application No. 2017-02.
Case Planner: Celine Cruz

VI. Adjournment

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES
Department of Land Management Conference Room, 3rd Floor, ITC Bldg., Tamuning
Thursday, October 12, 2017 • 1:35 p.m. to 3:20 p.m.

I. Attendance

Chairman Arroyo called the regular meeting of the Guam Land Use Commission for Thursday, October 12, 2017 to order at 1:35 p.m., noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioner Conchita Bathan, Executive Secretary Michael Borja, Legal Counsel Nick Toft, Guam Chief Planner Marvin Aguilar, Planning Staff Penmer Gulac, Celine Cruz, and Recording Secretary Cristina Gutierrez

Excused: Commissioner Tae Oh and Commissioner Hardy Vy]

Chairman Arroyo the agenda that is before the Commission, is everybody okay with the order of the items on the agenda. [No changes noted from the Commissioners]

II. Approval of Minutes

Chairman Arroyo the first item on the agenda is the approval of the September 14th, 2017 meeting minutes.

Commissioner Bathan made a motion to approve the GLUC meeting Minutes of September 14th, 2017 subject to any correction of minor typographical errors to be submitted to the Recording Secretary by close of business today.

Chairman Arroyo motion on the floor by Commissioner Bathan. Can I have a second.

Vice Chairman Cruz seconds the motion.

Chairman Arroyo seconded by the Vice Chairman Cruz. Any discussion on the motion? [None noted] All in favor of the motion say "aye" [Chairman Arroyo, Vice Chairman Cruz, and Commissioner Bathan], all opposed say "nay."

[Motion to approve the Minutes of September 14, 2017 was passed; 3 ayes, 0 nay]

III. Old or Unfinished Business

Chairman Arroyo we do not have any old or unfinished business; let's move on to New Business.

IV. New Business

Zone Variance

A. The Applicant, Docomo Pacific Inc., Guam; request for a Zone Variance for Height/Use for the construction of a 100-foot telecommunication monopole tower, on Lot 1, Block 1, Tract 173, in the Municipality of Santa Rita, in an "A" (Rural) zone, under Application No. 2016-47. Case Planner: Celine Cruz

Commissioner Bathan disclosed that the applicant has an existing contract with the company that she is employed with. Docomo has a roof-top antenna located at one of the properties that is owned by the company. Commissioner Bathan added that she had signed that contract.

Chairman Arroyo asked Commissioner Bathan if she felt that because she was party to that contract that there is a conflict of interest.

Commissioner Bathan reiterated that she wanted to disclose the information, and personally felt that there is no conflict of interest.

Vice Chairman Cruz inquired if this was property that was acquired by the company.

Commissioner Bathan responded and confirmed that it had been acquired by the company.

Vice Chairman Cruz asked Mr. Toft for an opinion.

Nick Toft (Legal Counsel) it is a decision Commissioner Bathan can make as long as she can maintain a fair and impartial decision on the matter.

Chairman Arroyo added that the definition of "conflict of interest" is if one stands to gain financially from the contract.

Commissioner Bathan replies that personally, she does not.

Chairman Arroyo asked Commissioner Bathan if she felt that this would be a conflict of interest for her.

Commissioner Bathan the relationship between the company she works for and Docomo for that particular contact which she signed, there is no personal conflict. Commissioner Bathan added that she does not gain any monetary benefit and felt that she needed to disclose the nature of the contract between the company and Docomo.

Chairman Arroyo since there are only three (3) Commissioners available today, and all three will be needed to make an affirmative decision, do you feel that you are okay to participate and make a decision or do you feel that you should be recused.

Commissioner Bathan replied that she is okay to participate as long as the Commissioners have no objections and that they recognize that there is no conflict of interest.

Vice Chairman Cruz had no objection.

Nick Toft for clarification, the company that Commissioner Bathan works for acquired a building that had a Docomo tower on the property.

Commissioner Bathan yes, and signed the Docomo contract on behalf of the company.

Nick Toft affirmed that it would be okay for Commissioner Bathan to participate.

Chairman Arroyo okay, let's proceed.

Celine Cruz summarized the staff report to include location of the subject property, purpose, facts, public hearing results, staff discussion/analysis, recommendation and conditions. [For full content/context, refer to attached report.]

[Attachment A – Staff Report dated September 19, 2017]

Chairman Arroyo questions for staff.

Commissioner Bathan asked if there was an updated copy of the billboard sign noting today's GLUC meeting.

Celine Cruz the applicant submitted an updated photo as soon as they were informed that they would be on today's agenda. There is a copy on file.

Chairman Arroyo pointed out the comments noted on DPW's position statement; Page 3, item 7 mentions that the drawings in the application were totally different from the lot number and location, and that a revised sheet content in the drawings per the location be resubmitted. Was this received.

Celine the drawings for the leased portion was just a square although there was a slight slant; and, Docomo did resubmit a revised plan that is on file.

Chairman Arroyo it mentions structural, electrical and civil plans. Are there a different set of plans that was submitted in error?

Marvin Aguilar (Chief Planner) Docomo submits a standard engineering plan.

Chairman Arroyo you are on the ARC. Was it pointed out at the meeting.

Marvin Aguilar it was not pointed out; however, the members advise the applicant that they will further review the application and any additional comments will be placed in their official position statement.

Chairman Arroyo other than their comments, is this the first time we've heard of it that the plans are different.

Celine Cruz responded that she checked the application to ensure that what Ms. Wilson was talking about was addressed. And if you look at the location (Tab P) all the sheets do reflect the actual location where this tower is located.

[Discussion ensues]

Chairman Arroyo if there are no other questions, let's proceed with the presentation. Please state your name for the record.

[Before the Commission, representing Docomo Pacific Guam were Diana Guzman, Rebecca Sablan and Jowell Lapira (Wireless Infrastructure Manager)]

Diana Guzman we are here to seek the Commission's approval for the seventh monopole project for Docomo which is based on the old Executive Order.

Chairman Arroyo I am anticipating that this is basically going to be the same presentation that the Commission has heard previously. It is the same type of tower, it will do the same sort of things, meets all the FCC specs and as far as the emission hazards and things of that nature that there is no difference. The only question that I would have to ask is what other locations did you consider or survey for this tower to meet the connectivity requirements for the areas that have poor coverage.

Diana Guzman there were actually two locations which is the existing tower with the Leon Guerreros', but they declined because of the height and the amount of space that was needed. The other location was the existing GTA tower. We inquired if would be able to co-locate with GTA. Those were the two choices that we had.

Chairman Arroyo what was GTA's response to the request.

Diana Guzman GTA approved the request, but the team decided to go this route.

Chairman Arroyo why is that.

Jowell Lapira this location can provide more and better coverage especially on the Naval Base site because it is closer.

Chairman Arroyo I read the public hearing minutes, and a question was asked about if there were any more towers that you were considering to put up and the response was there would be one on Base.

Diana Guzman yes.

Chairman Arroyo would this one tower being discussed today eliminated the need to put one on Base because you said it provides more coverage for the Base.

Jowell Lapira it is still not enough to cover the entire Naval Base. This tower will only cover the front gate area. So, there will be a need for at least two more inside the Base.

Chairman Arroyo is the purpose for this particular tower is to provide coverage for that area.

Jowell Lapira yes, especially where the front gate is located and the Visitor's Center where the coverage is poor.

Chairman Arroyo and the GTA tower will not do that.

Jowell Lapira it will be shadowing on the hill, the reflection of the hill.

Chairman Arroyo so due diligence was done, and specifically this site is the only site that will provide the coverage needed for the area that needs to be covered.

Jowell Lapira yes. GTA allowed us to co-locate with them, but by the time we were ready there was another operator that co-located with them. So, according to the structural analysis the GTA tower was already loaded.

Chairman Arroyo this tower has not been built?

Diana Guzman the tower is built. This application falls under the old Executive Order and located behind Sumay Baptist Church and Payless.

Vice Chairman Cruz when was the tower built.

Jowell Lapira the tower was built last year.

[Brief discussion on content/context of the old Executive Order for telecommunication towers.]

Commissioner Bathan how many 100-foot towers does Docomo currently have.

Diana Guzman there are a total of nine towers. We have already seven that are done and in process. Based on the new Executive Order; one that was approved in Talofofo and two pending which are located in YSengSong and one at the Yigo Church.

Vice Chairman Cruz if you build the one inside Naval Station, where will it be located on Base.

Diana Guzman across from the McCool school; toward Orote Point. We had one at Orote Point but was demolished two years ago.

Jowell Lapira the Sumay tower will cover the front gate.

Diana Guzman we are also requesting to co-locate on the existing (undecipherable) which is cellular on wheels with GTA.

Commissioner Bathan there will be a total of nine 100-foot towers. After the nine are built will that be it.

Diana Guzman no, we still have plans to build more.

Vice Chairman Cruz how many more towers.

Diana Guzman we are looking at least three more for next year.

Commissioner Bathan does Docomo have a long-term plan that you can share with the Commission because we would like to know how many more 100-foot monopole towers will be built around the island. Right now, it seems that you are locating the towers in residential areas.

Diana Guzman we can get an estimate from the engineering team; but for next year, we foresee at least three which are the Naval Station and Andersen. I'm sorry, a total of five. We are also trying to resort in using utility poles and roof top sites.

Jowell Lapira at this time, Docomo is trying to upgrade its capacity. Because coverage wise we already have most of the island covered.

Vice Chairman Cruz on roof-top how high does it go.

Jowell Lapira 20 to 30-feet high.

Vice Chairman Cruz I have seen a few roof-top antennas that have been placed on two-story buildings and exceeds the 30-foot high requirement.

Nick Toft these are some of the problems that he has discussed with Mr. Aguilar about. The statutes permit for structures on tops of buildings including parapets, antenna and it also says towers. However, when it says towers it doesn't necessarily say just only on tops of buildings, and that has been used as a justification to allow these 100-foot poles that are not attached to roof-tops because the statute's wording is ambiguous enough that it could be interrupted to mean towers are acceptable at whatever height. Mr. Toft further added that this concern has been mentioned the last few times Docomo was before the Commission. The variance law is being used to kind of *"shoe-horn in a square peg to a round hole sort of thing."* Mr. Toft disagrees that there are practical difficulties and unnecessary hardships with regards to the land. Because of the lack of clear legislation on what kind of tower can be built and where and the exceptional circumstances is not hardship. That particular piece of land is elevated and has an advantage instead of a hardship. There is kind of this combination of the expiration of the Executive Order and the lack of any clear laws on this. The law has not been updated and there is a need to get the Legislature to look into this because they are not going to stop building towers. We need more clear guidance on where these towers can be built and how big can they be and we do not have anything on that. *"At some point, somebody is going to look at it and say, where are the boundaries here. It puts a burden on us to look at a case by case basis every single time a tower needs to go up. It is a situation where if we let the last one up why are we not allowing this one up if it is the same situation. I believe it is something we need to bring up to the Legislature that will need legislation. Marvin and I have looked at this and argued back and forth and it's a mess."*

Vice Chairman Cruz asked if there will there be towers built in the south.

Jowell Lapira Talofofo is the first tower. There are tripods and utility poles; because we only cover the road and so it placed on the easement which is only a 45-foot pole.

Michael Borja you have theoretical capacity on each one of these towers, and so the denser the user population is around that tower the less the efficient it becomes to the users; so, you need to have multiple towers in like Dededo, Yigo, NCS areas. And as it continues to grow in population you need more towers to handle the capacity. It is primarily data now and not voice.

Diana Guzman yes, that is correct.

Chairman Arroyo this particular application is a little bit of a twist. And Nick, I understand what you are saying and wholeheartedly agree with you. These last couple of hearings with Docomo for these towers there have been a bunch of questions. I think we do need to get some more direction on how to move on these particular requests.

So, Mike (Borja), I would like to ask you to get a legal opinion from the Attorney General regarding the regulation and see if they could shed some light and guidance for the Commission with respect to these types of towers.

Nick Toft I will probably come back with the same comments because we have been discussing this and I will come back with the same answer, and that is we will need additional legislation. On this one, the tower was built based off the old Executive Order, it's already up. Moving forward, we will need legislation. It would be more productive if we get the Legislature involved. The sooner the better.

Chairman Arroyo Mike, in parallel to that can you also maybe raise the issue up with our Oversight Chair.

Michael Borja can you as an industry collaborate to designate potential tower locations that you can jointly use. Looks like you have already negotiated for potential sharing of towers.

Diana Guzman we are currently doing that now and co-locating with IT&E, GTA and IConnect.

[Discussion ensues on co-locating with other providers]

Chairman Arroyo I want to go back to the questions we were asking about DPW's comments. Were the plans ever mentioned at the ARC meeting.

Diana Guzman no, it was not never brought up to my attention; however, it could have been brought up during the last ARC meeting we attended for the Yigo telecommunication tower. I advised Ms. Wilson that I would furnish her with the documents she was requesting.

Chairman Arroyo Planning staff will clarify to make sure that Public Works has the proper plans.

Diana Guzman I believe it was from the last ARC meeting for the Yigo Church location. Because of the new Executive Order, the contractor did not want to move forward until an approval was secured from the Commission. The contractor provided preliminary drawings on the scope of work and the location of the church, and there were no site plans provided in the application. And this is what DPW was concerned with.

Marvin Aguilar for the record, this was prior to the changeover of the old Executive Order. If building plans were drawn, it would be stamped and approved by DPW.

Chairman Arroyo just so that Public Works has the current plans. It could be a mistake, but we don't want to leave this kind of thing hanging.

If there are no other questions, I will open the floor for public comments. [No additional comments and/or questions from the Commission.]

Public Comment [Chairman Arroyo opened the floor for public comment. Seeing none, public comment period was closed.]

Chairman Arroyo any other questions or comments before we proceed with a vote. [None noted]

Vice Chairman Cruz makes a motion to approve the request for a Zone Variance for the applicant Docomo Pacific for height/use for the construction of a telecommunication monopole tower, on Lot 1, Block 1, Tract 173, in the municipality of Santa Rita, in an "A" zone, under Application No. 2016-47; subject to the following conditions:

1. Applicant shall adhere to the ARC conditions as stipulated in their official position statements; and,
2. The initial approval shall be limited to a two-year term. The applicant shall appear before the Commission and provide a status report of its operations during the initial 2-year term for consideration of any renewals.

Chairman Arroyo motion made by Vice Chairman Cruz. Is there a second.

Commissioner Bathan seconds the motion.

Chairman Arroyo seconded by Commissioner Bathan. Any discussion on the motion. [None] On the motion, all in favor say "aye" [Chairman Arroyo, Vice Chairman Cruz, Commissioner Bathan.], all opposed say "nay." **Motion passed.**

[Commission takes a five-minute recess at 2:20 p.m. and reconvenes at 2:25 p.m.]

Chairman Arroyo we are back in session. The next item on the agenda –

V. Administrative & Miscellaneous Matters

Conditional Use Renewal

B. The Applicant, BME & Sons, Inc.; annual renewal request of a previously approved Conditional Use permit for the continued operations of a temporary workforce housing facility, on Lot 5223-R9-3, in the Municipality of Barrigada, in an "M-1" (Light Industrial) zone, under Application No. 1997-23E. Case Planner: Penmer Gulac

Penmer Gulac summarizes the supplementary staff report to include purpose, facts, staff analysis/discussion, recommendation and conditions. [For full content/context, see attached report.]

[Attachment B – Staff Report dated September 21, 2017.]

Chairman Arroyo is the facility vacant.

Penmer Gulac yes, but it is being maintained in the event that workers will be allowed back on the island. They can also house local hires that are working for the company. The facility is currently vacant at this time.

Chairman Arroyo any other questions? [None] We'll invite the applicant up. Please state your name for the record.

Danny Natividad I am before the Commission to ask for the company's request for your favorable consideration for the renewal of the housing facility. All information was submitted, and if there are any questions, I will try my best to answer them.

Commissioner Bathan when did your H-2 workers leave the island.

Danny Natividad some left in March 2016 and the remaining left September 2016.

Commissioner Bathan so, since September of last year there has not been anyone staying in the facility.

Danny Natividad none.

Chairman Arroyo what is your opinion on this whole H-2 labor issue.

Danny Natividad we are hoping that Immigration and our President will approve the importation of H2-B. And we are just trying to be ready for when that happens.

Chairman Arroyo if it takes a couple of years for this to happen will you still maintain the property and remain vacant until that time.

Danny Natividad yes.

Commissioner Bathan how about the four buses that are mentioned in the application for use of transporting H-2 workers to the job site. How are these being maintained.

Danny Natividad they are being maintained, and there are times when our local workers use them to the job sites. We only have 15-passgenger vans, no buses.

Vice Chairman Cruz are there plans for your company to bid for military contracts.

Danny Natividad yes; and at this time, we are preparing our bid for upcoming bidding at the Andersen Air Force Base on October 28th.

Vice Chairman Cruz if you are successful, on military funding there is a provision to allow for H-2 workers. So, you will be able to use that.

Danny Natividad yes.

Commissioner Bathan I appreciate the applicant because it is not easy to maintain a barracks facility when it is empty. You are short of workers and it is better to use the workers towards projects that make money rather than maintaining a barracks. By the looks of the photos provided, they are doing a good job in maintaining the facility.

Chairman Arroyo any other questions? [None]

Public Comments **[Chairman Arroyo opened the floor for public comments. Seeing none, public comment period was closed.]**

Chairman Arroyo is there anything else you would like to say before we make a decision.

Danny Natividad we are just hoping for your favorable approval.

Chairman Arroyo any other comments or questions from the Commissioners? [None] I am ready entertain a motion.

Commissioner Bathan I would like to make a motion to approve the request to renew and continue the operation of a temporary workers housing facility and further reporting annually on the status of the housing facility, on Lot 2553-R9-3, in the municipality of Barrigada, under Application No. 1997-23E as submitted by BME & Sons, Inc

Vice Chairman Cruz second.

Chairman Arroyo moved by Commissioner Bathan, seconded by Vice Chairman Cruz. Any discussion on the motion. [None noted]

Chairman Arroyo on the motion, all in favor say "aye" **[Chairman Arroyo, Vice Chairman Cruz and Commissioner Bathan],** all opposed say "nay."

[Motion passed; 3 ayes, 0 nay]

Next item on the agenda –

Horizontal Property Regime

C. The Applicant, LGI Pacific Guam, LLC represented by Atty. Michael Flynn; requests issuance of its 2nd Supplementary Final Public Report for the Ladera Towers condominiums, on Lots 4 & 5, Tract 1822, in the Municipality of Mangilao, in an "R-2" (Multi Family Dwelling) zone, HPR No. 104, under Application No. 1993-01E.
Case Planner: Celine Cruz

Celine Cruz reads the staff report to include purpose, facts, and staff recommendation. [For full content/context of the report refer to Attachment C.] **[It was noted for the record that Atty. Flynn was not at today's hearing, and in his place was Mr. Scott Clark]**

[Attachment C – Staff Report dated September 21, 2017]

Chairman Arroyo questions for staff. [None noted] Please state your name for the record.

Scott Clark [Director of LGI Pacific Guam] the only material change from the last application to this one is the refinancing. Other than that, pretty much the contents are the same from the last request that was approved.

Chairman Arroyo there are still 222 units that need to be sold.

Scott Clark yes.

Vice Chairman Cruz how many total units are there.

Scott Clark 222.

Vice Chairman Cruz the units are occupied.

Scott Clark yes, they are not sold and being run as a rental apartment building at the moment.

Chairman Arroyo are you actively marketing the units for sale.

Scott Clark because of the refinancing we took a real go-slow approach on it because we needed to have the refinance completed and finished before we could start selling units because divided ownership would have locked up the refinancing process.

Chairman Arroyo so, you are now going to actively be selling units.

Scott Clark yes, starting now. We saw that this timing was coming up and we needed to go through this process again.

Chairman Arroyo are you listing them yourselves or using a real estate agent to that for you.

Scott Clark we will be using Century 21 to do this for us.

Chairman Arroyo do you have a projected timeframe for the complete sell of these units.

Scott Clark when I spoke with Chris Felix about it, he said because of the volume, and it's a lot of volume for the size of the market here it may take two or three years to sell it out.

Chairman Arroyo are you appealing just to the local market or looking overseas.

Scott Clark we are looking at overseas as well.

Chairman Arroyo and Chris will be marketing to those markets as well.

Scott Clark no, he is the Broker of Record and focusing on the local market and Hawaii. We are using other relationships to market in other places.

Chairman Arroyo is there a particular target market segment that you are appealing to or just to everybody.

Scott Clark we are trying to cast the net wide, but more so investors because it is being run as a rental apartment right now. It is a very popular rental apartment; the occupancy rates stay very high, and that appeals to individual investors.

Chairman Arroyo are any of the units being run as bed and breakfast.

Scott Clark no.

Vice Chairman Cruz of the 222 units are they various bedroom sizes.

Scott Clark 178 units are 3-bedroom, 2 baths and almost all of the rest of them are 4-bedroom, 2 baths and a there are 2, 5-bedroom penthouses.

Commissioner Bathan what is the price range the units are being sold for.

Scott Clark starting at the $350,000 range.

Vice Chairman Cruz what is the common fee area.

Scott Clark around $400/month which includes all common area maintenance, common area power, pool upkeep and landscaping.

Chairman Arroyo any other questions. [None noted] On the request to issue the second supplementary final public report, do I have a motion.

Commissioner Bathan Mr. Chair, I would like to approve the issuance of a 2nd Supplementary Final Public Report in order for the developer Ladera Towers to market and sell the 222 condominium units, and pursuant to Section 45154 of Chapter 45, the issuance of this 2nd Supplementary Final Public Report is for a period of thirteen months commencing October 12, 2017 with an expiration date of November 12, 2018.

Vice Chairman Cruz seconds the motion.

Chairman Arroyo seconded by Vice Chairman Cruz. Any discussion on the motion. [None noted] On the motion, all in favor say "aye" **[Chairman Arroyo, Vice Chairman Cruz, Commissioner Bathan]**, all opposed say "nay."

[Motion is approved; 3 ayes, 0 nay]

Chairman Arroyo next item on the agenda –

Horizontal Property Regime

D. The Applicant, S&C Investments, Inc. represented by Atty. Terence M. Brooks; requests issuance of a Final Public Report for a three-story structure (San Vitores Palace Condominiums), consisting of fifteen residential units, on Lots 5118#1-2-4NEW and 5118#1-2-4NEW-R/W, in the Municipality of Tamuning, in an ~~"H" (Hotel/Resort)~~ "R-2" (Multi Family Dwelling) zone, under Application No. 2017-02. Case Planner: Celine Cruz

Celine Cruz reads staff report to include purpose, facts, application chronological facts, discussion, recommendation and conditions. [For full content/context, refer to attached staff report]

[NOTE: Ms. Cruz noted for the record, corrections of minor typographical errors on the staff report, to include expiration of Final Public Report being November 12, 2018.]

[Attachment D – Staff Report dated September 22, 2017]

Chairman Arroyo questions for staff. [None noted] Please state your name for the record.

Terry Brooks (on behalf of S&C Investments, Inc., with Scott Clark) this is basically a conversion of an existing apartment building that has been there for 30-years. The applicant is requesting that this project be converted into a condominium. The reason for many of the documents not being available is because there is no need for them since the building is already complete. There are a full set plans if necessary.

Chairman Arroyo where is the project located.

Terry Brooks the Bank of Guam in Tumon, it's in that road.

Chairman Arroyo are there plans to sell the units at some point in time.

Scott Clark it is currently being discussed. A final decision has not been made, but we will talk about it some more if we get the approval here, and when Chris gets back.

Chairman Arroyo what if the decision is not to sell would you still need the HPR.

Scott Clark we are leaning towards that direction and that is why we are going through this process.

Michael Borja Mr. Brooks, can I ask a question about the grant deed that was filed on September 20th, under number 912639. Why would a grant deed be done where the grantee or grantor and its duly authorized representative is the exact same corporation.

Terry Brooks Ms. Cruz recommended that this be done. There is some language in the deed that this property being deeded with specific of intent of creating a condominium, and so she recommended that that language be inserted into the grant deed.

Celine Cruz it is considered the master deed.

Commissioner Bathan on Tab 3 of the application; on number 5, I understand that this tab explains the absence of documents. On item 5, Statement of Architect; it says *"certified statement of engineer has been submitted."* Was this document provided in the application.

Terry Brooks yes, there is a statement of the architect and attached in the application; and that is to confirm that the plans and the actual building are the same.

Chairman Arroyo what Commissioner Bathan is saying is if it was submitted why would it be in your explanation of absence of documents. In otherwords, it shouldn't have been included in this particular document. In otherwords, you could strike number five.

Terry Brooks okay; although I don't think it really matters one way or the other.

Commissioner Bathan it's a clarification because this tab pertains to documents that have not been submitted.

Vice Chairman Cruz on the Statement of Architect it is submitted by a civil engineer. On the drawings, you signed the drawings.

Terry Brooks these drawings are 30-years old and we could not obtain the certification of the architect who prepared the drawings. In lieu of that we obtained the statement from the engineer who went out and inspected the property and certified that the property and the plans are identical.

Commissioner Bathan can a civil engineer be authorized to sign as an architect.

[Discussion ensues]

Chairman Arroyo called for a five-minute recess.

[Commission recessed at 3:00 p.m. and reconvened at 3:05 p.m.]

Chairman Arroyo we are back in session. Where we left off was on the issue whether or not a civil engineer could sign off for an architect on the certified statement.

Nick Toft during the break, Mr. Brooks showed me the statute that is applicable to this. It is 21GCA, Section 45113 that says it could be a registered architect or a professional engineer certifying that it is an accurate copy.

Commissioner Bathan the only issue that we have on this certification by this Mr. Gonzalvo, P.E. is that he did not sign his certification. I think we can require that as a document that will be submitted by the applicant. We want to make that the P.E.'s seal is current with the PEALS Board.

Paul Santos (Chief of Cadastre) an engineer's certification is limited to three-story buildings. If it is for residential a professional engineer can do it and if it is for commercial use an architect has to do it for that type of work.

Terry Brooks clarified that it was a three-story residential structure.

Paul Santos confirmed that a professional engineer can certify the document.

Chairman Arroyo any other questions. [None noted from Vice Chairman Cruz and Commissioner Bathan] A question was raised on the grant deed. Were there conditions on the deed.

Terry Brooks language that says it is transferred to the grantee with the expectation that it is going to be used as a condominium. It is going to be submitted under the condominium act.

Chairman Arroyo getting to my question whether or not the units will be sold, and if you don't plan to sell these units, how will that affect that particular condition in the deed. Will it just be satisfied once we approve this as an HPR.

Terry Brooks that is my understanding. There is another provision that says if they ever want to take it out of the HPR they can do that. It is the applicant's intent to go forward and expecting to sell.

Chairman Arroyo what would lead your group to decide not to sell.

Scott Clark it is the changes in market conditions.

Marvin Aguilar after the thirteen months and if they do not want to pursue this, it dies.

Chairman Arroyo if it is the decision not to sell are you still going to come back and say we want to keep it in place until some point we decide to sell.

Scott Clark that decision will be made based on where the market was at that point.

Chairman Arroyo at this point in time it is the intention to sell.

Scott Clark yes.

Chairman Arroyo no other questions? [None noted] On your request to issue a final public report, do I have a motion.

Commissioner Bathan I would like to make a motion to approve the issuance of a final public report for S&C Investments, for a three-story structure known as San Vitores Palace Condominium, consisting of fifteen (15) residential units on Lots 5118#1-2-4NEW and 5118#1-2-4NEW-R/W in the municipality of Tamuning, under Application 2017-02, HPR No. 107 with the final public report expiring thirteen (13) months and/or November 12, 2018.

Vice Chairman Cruz second.

Chairman Arroyo moved by Commissioner Bathan, seconded by Vice Chairman Cruz. Any discussion on the motion. [None noted]

All in favor of the motion say "aye" **[Chairman Arroyo, Vice Chairman Cruz and Commissioner Bathan]**, all opposed say "nay."

[Motion passed; 3 ayes, 0 nay]

Chairman Arroyo there are no other items on the agenda unless somebody has something they would like to discuss.

VI. Adjournment

Vice Chairman Cruz motion to adjourn.

Commissioner Bathan seconds the motion.

Chairman Arroyo all in favor of the motion say "aye" [Chairman Arroyo, Vice Chairman, Commissioner Bathan].

The regular meeting of the Guam Land Use Commission for Thursday, October 12, 2017 was adjourned at 3:20 p.m.

Approved by:

John Z. Arroyo, Chairman
Guam Land Use Commission

Transcribed by:

M. Cristina Gutierrez, Recording Secretary
Planning Division, DLM

Date approved: Oct 26, 2017

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ATTACHMENT A

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

DEPARTMENT OF LAND MANAGEMENT

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

September 19, 2017

MEMORANDUM

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report - Application No. 2016-47, Zone Variance on a Lot 1, Block 1, Tract 173, Municipality of Santa Rita

1. **PURPOSE:**
   a. **Application Summary:** The applicant, Docomo Pacific Inc. Guam, in compliance with Executive Order 2001-36 is requesting approval of its Zone Variance application for Use and Height to maintain and operate a 100' foot telecommunication monopole tower on a portion of Lot 1, Block 1, Tract 173, in the municipality of Santa Rita.

   b. **Legal Authority:** Title 21, GCA (Real Property), Chapter 61 (Zoning Law) Sections 61616 to 61624 (Variances), Executive Order 2001-36 and GLUC Resolution No. 2008-02

2. **FACTS**:
   a. **Location:** The lot is located along Route 5 in Santa Rita, the current Light House Baptist Church property. **Lot Area:** The leased site is approximately 900 Square Feet, (as identified in the site plan,) of a portion from the total acreage of 86,035 Square Feet.
   c. **Present Zoning:** "A" (Rural) Zone.

   d. **Field Description:** The leased portion of the lot is cleared and generally flat. Currently, there is a Telecommunications Monopole Tower and accessory structures within the leased portion of the lot.

   e. **Masterplan:** Undesignated

   f. **Community Design Plan:** Undesignated

   g. **Previous Commission Action:** A Conditional Use Permit was granted by the Guam Land Use Commission on April 28, 2005 to construct a Church (Application No. 2005-13).

3. **APPLICATION CHRONOLOGICAL FACTS:**

   a. **Date Application Accepted:** November 17, 2016

   b. **Date Heard By ARC:** December 15, 2016

   c. **Public Hearing Results:** ***(Please see Attachment 1)***

4. **STAFF ANALYSIS:** This application for a variance is pursuant to the requirements of E.O. 2001-36. By virtue of the Executive Order, the Applicant is allowed to secure a building permit to erect and operate an antenna not to exceed 100' feet. The Executive Order further affords Government Agencies, through the Guam Land Use Commission's application process, the opportunity to assess aspects of the project such as proper design and proof of acceptable structural integrity and that possible subsequent impact directly or indirectly resulting from such variance are appropriately addressed and mitigated or eliminated.

   The applicant submitted the following justification in support of their request for a variance for height.

   That there are practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Law: Docomo Pacific, Inc. seeks to improve its telecom infrastructure to provide quality services across the island of Guam, most especially in underserved areas with less robust signal coverage. The proposed tower location is critical to ensure the widest and best coverage. Guam enacted the Executive Order 2001-36 to allow Guam Telecommunications companies to develop competitive, safe and efficient mobile communication services. This variance request is consistent with the general purpose and intent of the law, and further, if not granted, will impose significant delays and logistical hardship, not least of which will be the necessity of selecting and inferior alternative site.

   That there are exceptional circumstances or conditions applicable to the property or the intended use that do not apply generally to other properties in the same zone: the Company performed extensive radio frequency (RF) simulation and testing conducted at several locations, the results of which indicated that the site in question is ideal for improving coverage in the area, and also that alternative sites in the area were inferior from a coverage and/or logistical standpoint.

   That the grant of variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located: All equipment installed and maintained by the Company is licensed and regulated by the Federal Communications Commission (FCC), with regulations include operating frequencies, range, and power levels consistent with public safety and industry best practices. Further, the Company maintains a Comprehensive General Liability Insurance policy, which requires a minimum of $1,000,000 liability policy for each site constructed. All sites are registered and recorded with the FCC.

That the grant of the variance will not be contrary to the objectives of any part of the master plan adopted by the Commission or Legislature: The Telecommunication site is being constructed to fulfill both the current and future demands of the Community for state-of-the-art coverage island-wide, a goal that is consistent with Executive Order 2001-36 enacted to benefit the people of Guam.

That, as to variances from the restrictions of §61504 [of the zoning law], the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or publics' right to an untrammeled use of the beach and its natural beauty: The requested variance is not located near a beach.

As in any variance application, there are 5 criteria that must be addressed and therefore we provide the following analysis:

That there are practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Law: We have looked at 21GCA, Chapter 61, Article 4, § 61402, paragraph (b), **Building and Structures Permitted Above Height Limit**. This section cites "*Aerials, flagpoles, skylights, steeples, towers (emphasis added), fire or parapet walls, or other similar structures*". However, because of the requirement to further comply with EO 2001-36, telecommunications towers **must be** subjected to the **variance requirements**. We feel that this is contradictory and therefore, the "DIFFICULTIES or UNNECESSARY HARDSHIP" lies in the requirement to comply with the EO despite the fact that the "TOWER" is an "EXEMPTED" structure per the Zoning Law. In addition, GLUC Resolution No. 2008-02, further expounds on the allowance of wireless communications use; and because the zoning of the property whereby the tower is situated is zone "A", this variance must be subjected pursuant to Resolution 2008-02, paragraph 2 for the Commission's review.

That there are exceptional circumstances or conditions applicable to the property or the intended use that do not apply generally to other properties in the same zone: The circumstance or conditions that is applicable in this case is in the **"PROPERTY".** In the case of the property, this site chosen is the sole area whereby the tower is best located.

The single underlying reason for the use of this property is that it is the only one that has the greatest elevation in the surrounding area; and therefore, is conducive for the use.

That the grant of variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located: The Federal Communications Commission (FCC) regulates the wireless emissions and frequencies whereby such emissions do not pose a safety and health hazard to people and other living creatures. Strict compliance to FCC standards and requirements must be adhered to by the operator, otherwise, cellular operations could not be realized.

We note that there is a measure of improvement as emergency services will be able to utilize the connectivity this equipment provides to the immediate area.

That the grant of the variance will not be contrary to the objectives of any part of the master plan adopted by the Commission or Legislature: Our current laws including applicable Land Use Plans (circa 1966/1967) did not address the use of cellular telecommunications. The idea of cellular telecommunication was not even thought about back then when Comprehensive Plans, Land Use Plans, Community Plans and Zoning Ordinances were developed for the simple reason that this "cellular/wireless" communications was not the "technology" at the time not anticipated. Therefore, the "use" is not contrary to any Master Plan in effect. There is none that addresses "wireless-cellular" use and associated accessories.

We point out the fact that since the introduction and upsurge in usage of wireless communications, criteria had been implemented via an Executive Order (2001-36) which was in effect as of November 25, 2001. This EO, however, only addresses the physical location and allowable placement of cellular towers; and defers any specific operational characteristics such as, emissions, frequencies, safety, liability insurance requirements and so forth, to FCC compliance and oversight. GLUC Resolution No. 2008-02, supplements this EO with specific actions the Applicant must adhere to including Land Use Commission Review and approval.

That, as to variances from the restrictions of §61504 [of the zoning law], the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or publics' right to an untrammeled use of the beach and its natural beauty: The criteria is "**NOT APPLICABLE**" for the wireless telecommunications use. The site is not located near or on any public "Beach" area whereby it will affect, hinder, obstruct the ocean beach access for both private residents or the public at large.

Executive Order 2001-36 was promulgated for the purpose of supporting the development of wireless telecommunications systems in Guam; we have since seen a maturity in the cellular telecommunication industry. It is for this reason that the Executive Order 2001-36 has been repealed and rescinded.

5. **CONCLUSION:** The ARC agencies who have officially responded have "no objections with conditions" as reflected in their position statement. Based on the above preceding discussions, we find the criteria for the grant of variance for the requested use is justified. We further find that the application is complete and contains all requested information/data; and therefore, meets the *requirements of the variance criteria* as cited in the Zoning Law and Executive Order 2001-36.

6. **RECOMMENDATION:** Recommend **APPROVAL WITH CONDITIONS** as follows:

   a. The Applicant shall adhere to the ARC conditions and requirements as stipulated in their Official Position Statement; and

   b. That the initial approval shall be limited to a two-year term. The applicant shall appear before the Commission and provide a status report of its operations during the initial 2-year for consideration of any renewals.

MARVIN Q. AGUILAR

Attachments

CASE PLANNER: Celine Cruz

ATTACHMENT 1

PUBLIC HEARING RESULTS

A public hearing was conducted on August 30, 2017, 6:10 p.m., at the Santa Rita Senior Center. Present were Planning Division staff, representatives of Docomo Pacific Guam, the Mayor of Santa Rita and several of his staff.

The public hearing was called to order at 6:10PM by Department of Land Management (DLM) Planning Division staff. A brief explanation on the purpose of the public hearing was provided to the audience. The applicants representative, Ms. Diane Guzman, Lease Coordinator for Docomo Pacific Guam explained the project and opened the floor for questions regarding the project request; also present on behalf of the applicant were Mr. Jowell Lapira to assist with technical questions regarding cellular technology.

Q:Darlene Camacho of the Santa Rita Mayor's Office - Is this tower erected to replace another one?
A: Diane Guzman – This tower has been erected because it is at a higher location. We have other antenna sites in Santa Rita, such as the site here by the Senior Center. We are collocating our antenna on an existing antenna with IT&E and will be taking down our pole.
Q: Ryan Anderson – Is the antenna a repeater?
A: Diane Guzman – This is a full site.
Q: Ryan Anderson – Are there plans to apply for other variances in Santa Rita.
A: Diane Guzman – We are focused now in Naval Station and have plans to put one there (on base).
Q: Ryan Anderson – Is that antenna up and running?
A: Diane Guzman – We have applied for a permit but their (Naval Station) permitting process takes a long time.
Q: Ryan Anderson – If you are able to put up the antenna on base, will this one be taken down?
A: Diane Guzman – The existing one does not cover the Naval Base Sector so having the additional one on base will help with coverage.
Q: Ryan Anderson – How soon before the antenna on Base goes up?
A: Diane Guzman – It's a longer process so between 12-18 months.
Q: Darlene Camacho – Are there health hazards?
A: Diane Guzman – We have handouts regarding radio frequencies, it discusses the effects of the base station (2 way communications), cable loss and free space loss.
Q: Darlene Camacho – Can the structure withstand high winds?
A: Diane Guzman – It meets Building Code requirements, in addition, Docomo carries insurance for each of its antenna sites since it is an expensive investment.

Addition questions regarding areas in Santa Rita with poor or no cellular service were discussed at length. Since there were no other questions regarding the Lighthouse Baptist Site, the hearing was closed at 6:31 PM.

GUAM LAND USE COMMISSION
Department of Land Management

RESOLUTION 2008-02

Establishing a Policy for the Implementation of Executive Order No. 2001-36 Relative to the Permitting And Construction of Wireless Communication Towers

WHEREAS, the United States Government has created laws and regulations intended to encourage the development of competitive, efficient mobile communications services infrastructure; and

WHEREAS, Executive Order No. 2001-36 created expedited procedures for the Department of Public Works (DPW) to permit certain wireless communication services in non-residential zones in compliance with federal mandates; and

WHEREAS, the Executive Order directs DPW to issue building permits prior to any applicant seeking a variance from the Guam Land Use Commission (GLUC); and

WHEREAS, the order states that "Within Thirty (30) days of a building permit pursuant to this executive order the mobile service operator shall apply for a variance to permit the antenna structure pursuant to Article 6, Part 2 of Title 21 GCA."; and

WHEREAS, the GLUC finds that 21 GCA §61402 entitled "Building and Structures Permitted Above Height Limit" allows that specified buildings, structures and equipment may be erected and maintained above the permitted height limit and specifically identifies, in subsection (d): Aerials, flagpoles, steeples, towers, fire or parapet walls, or other similar structures" (emphasis added); and

WHEREAS, the GLUC now desires to create a practical policy for allowing the construction of certain wireless antenna structures.

NOW THEREFORE BE IT RESOLVED that, for purposes of complying with Executive Order 2001-36, the GLUC hereby adopts the following Policy and Procedure:

1. Wireless communication facilities, including antenna towers not to exceed One Hundred Feet (100') from average ground elevation of the site, which have been granted a valid building permit by the Department of Public Works, shall be allowed in any M Zone subject to the administrative review by the GLUC to ensure that intended use will not be materially detrimental or injurious to the property or improvements in the immediate neighborhood. For these applications, the GLUC shall hear the application under its administrative agenda at any regular meeting and the application shall be considered a minor variance and not subject to public hearing and notice requirements.

2. Any application for the construction of wireless communications in any other zoning area shall be subject to the GLUC's regular variance process.

3. Any application for a tower which is permitted in excess of One Hundred Feet (100'), regardless of the zoning area, shall also be subject to the regular variance process.

This Resolution was passed by a majority of the Members of the Guam Land Use Commission at its regular meeting held on the 28th day of August, 2008.

JAY L. LATHER, Chairperson

TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U.S.A.

EXECUTIVE ORDER NO. 2001-36

RELATIVE TO THE PERMITTING OF TOWER SITES FOR WIRELESS COMMUNICATIONS SERVICE IN NON-RESIDENTIAL ZONES.

WHEREAS, in revising §332 of the Communications Act in 1993 and in enacting §253 and 704(c) of the Telecommunications Act of 1996 ("1996 Act"), the United States Congress intended to encourage the development of a competitive, efficient mobile communications services infrastructure subject to uniform federal regulation, with limited competitively neutral local intervention; and

WHEREAS, §332(c), expressly prohibits local governments from regulating entry into mobile services and establishing local entry barriers, whether direct or indirect, which substantially interfere with the build out of commercial mobile radio services; and

WHEREAS, the additional costs imposed by unnecessary local regulation will ultimately be borne by the consumer in the form of higher rates and delayed services which are contrary to the public interest as expressed in the 1996 Act and the development of a healthy and competitive communications industry on Guam; and

WHEREAS, the timely and cost-effective development of wireless telecommunications systems across the island, is in the public interest by providing affordable and easy access for business, personal and emergency communications services; and

WHEREAS, The Guam Land Use Commission is granted the authority pursuant to §61616(i) of Title 21 GCA to grant variances for public utilities and public service uses or structures when such uses are deemed essential or desirable in accordance with the provisions of §61616 of Title 21 GCA; and

WHEREAS, numerous antenna facilities already exist throughout the island which are utilized for various Federal Communication Commission services including to commercial mobile radio services; and

WHEREAS, numerous existing antenna facilities on Guam fail to conform to the Guam Zoning regulations pursuant to Article 3 of Title 21 GCA nor have they been granted a conditional use or variance by the Guam Land Use Commission;

NOW, THEREFORE, I, CARL T.C. GUTIERREZ, I Maga'Lahen Guåhan, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do order:

1. The Department of Public Works shall expeditiously issue permits for the construction of antenna facilities to commercial mobile radio service operators licensed by the Federal Communications Commission within the guidelines of this order.

2. Pursuant to §61402 (d) of Title 21 GCA, antenna and antenna structures not to exceed 50 ft. additional height shall be permitted on any structure in a non-residential zone.

3. Towers not to exceed 100 ft. above ground level shall be permitted within any commercial, industrial, or agriculture property owned by a commercial mobile radio service operator licensed by the Federal Communications Commission.

4. Towers not to exceed 100 ft. above ground level shall be permitted within any commercial, industrial, or agriculture property in which an easement for telecommunications facilities is granted by the owner of the property pursuant to §7101 (f) of Title 21 GCA to a commercial mobile radio service operator licensed by the Federal Communications Commission.

5. Permits shall only be issued for antennas, antenna structures or towers that are designed by a Guam Professional Engineer to meet the minimum wind and seismic requirements of the Department of Public Works.

6. Commercial mobile radio service operators constructing antennas, antenna structures or towers pursuant to this executive order shall obtain a minimum of a One Million Dollar ($1,000,000) liability policy prior to this issuance of a building permit and shall maintain the policy until the facility is removed.

7. Within Thirty (30) days of the issuance of a building permit pursuant to this executive order the mobile service operator shall apply for a variance to permit the antenna structure pursuant to Article 6, Part 2 of Title 21 GCA. All antenna facilities constructed pursuant to this executive order shall be authorized until Ninety (90) days after final action by the Guam Land Use Commission including appeals pursuant to §61621 of Title 21 GCA and §253 of the 1996 Act.

8. Within Thirty (30) days of the date of this executive order, any mobile radio service operator with an existing non-conforming antenna structure shall apply for a variance to permit the antenna structure pursuant to Article 6, Part 2 of Title 21 GCA. All existing antenna structures shall be authorized until Ninety (90) days after final action by the Guam Land Use Commission, including appeals pursuant to §61621 of Title 21 GCA and §253 of the 1996 Act. Existing non-conforming antenna structures without pending applications for variances or which fail to comply with Paragraphs 5 and 6 of this order shall be subject to the penalty provisions of §61621 of Title 21 GCA Thirty (30) days after this order.

9. Pursuant to §253 of the 1996 Act, the Guam Land Use Commission shall process applications from commercial mobile radio service operators licensed by the Federal Communications Commission for variances for antenna structures on a competitively neutral and non-discriminatory basis and shall not consider the environmental effects of radio emissions of facilities which comply with the Federal Communications Commission's regulations concerning such emissions.

SIGNED AND PROMULGATED at Hagåtña, Guam this 25th day of November, 2001.

CARL T. C. GUTIERREZ
I Maga'Lahen Guåhan
Governor of Guam

TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U.S.A.

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WHEREAS, the timely and cost-effective development of wireless telecommunications systems across the island, is in the public interest by providing affordable and easy access for business, personal and emergency communications services; and

WHEREAS, The Guam Land Use Commission is granted the authority pursuant to §61616(i) of Title 21 GCA to grant variances for public utilities and public service uses or structures when such uses are deemed essential or desirable in accordance with the provisions of §61616 of Title 21 GCA; and

WHEREAS, numerous antenna facilities already exist throughout the island which are utilized for various Federal Communication Commission services including to commercial mobile radio services; and

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5. Permits shall only be issued for antennas, antenna structures or towers that are designed by a Guam Professional Engineer to meet the minimum wind and seismic requirements of the Department of Public Works.

6. Commercial mobile radio service operators constructing antennas, antenna structures or towers pursuant to this executive order shall obtain a minimum of a One Million Dollar ($1,000,000) liability policy prior to this issuance of a building permit and shall maintain the policy until the facility is removed.

7. Within Thirty (30) days of the issuance of a building permit pursuant to this executive order the mobile service operator shall apply for a variance to permit the antenna structure pursuant to Article 6, Part 2 of Title 21 GCA. All antenna facilities constructed pursuant to this executive order shall be authorized until Ninety (90) days after final action by the Guam Land Use Commission including appeals pursuant to §61621 of Title 21 GCA and §253 of the 1996 Act.

8. Within Thirty (30) days of the date of this executive order, any mobile radio service operator with an existing non-conforming antenna structure shall apply for a variance to permit the antenna structure pursuant to Article 6, Part 2 of Title 21 GCA. All existing antenna structures shall be authorized until Ninety (90) days after final action by the Guam Land Use Commission, including appeals pursuant to §61621 of Title 21 GCA and §253 of the 1996 Act. Existing non-conforming antenna structures without pending applications for variances or which fail to comply with Paragraphs 5 and 6 of this order shall be subject to the penalty provisions of §61621 of Title 21 GCA Thirty (30) days after this order.

9. Pursuant to §253 of the 1996 Act, the Guam Land Use Commission shall process applications from commercial mobile radio service operators licensed by the Federal Communications Commission for variances for antenna structures on a competitively neutral and non-discriminatory basis and shall not consider the environmental effects of radio emissions of facilities which comply with the Federal Communications Commission's regulations concerning such emissions.

SIGNED AND PROMULGATED at Hagåtña, Guam this 25th day of November, 2001.

CARL T. C. GUTIERREZ
I Maga'Lahen Guåhan
Governor of Guam

OFFICE OF THE GOVERNOR
HAGÅTÑA, GUAM 96910
U.S.A.

EXECUTIVE ORDER NO. 2016-01

REPEAL OF EXECUTIVE ORDER NO. 2001-36 RELATIVE TO THE PERMITTING OF TOWER SITES FOR WIRELESS COMMUNICATIONS SERVICE IN NON-RESIDENTIAL ZONES

WHEREAS, Section 1422c(c) of the Organic Act of Guam, Title 48 United States Code, provides that the Governor shall, "from time to time, examine the organization of the executive branch of the government of Guam, and shall determine and carry out such changes therein as are necessary to promote effective management and to execute faithfully the purposes of this chapter and the laws of Guam"; and

WHEREAS, Executive Order No. 2001-36 was promulgated on November 25, 2001, for the purpose of supporting the development of wireless telecommunications systems in Guam; and

WHEREAS, since 2001, the telecommunications industry has matured significantly, and ample wireless telecommunication coverage is available island-wide; and

WHEREAS, it is in the best interest of the People of Guam that the permitting of tower sites for wireless communications service in non-residential zones be subject to the existing statutory permitting requirements and processes as specified in Guam and/or federal law; and

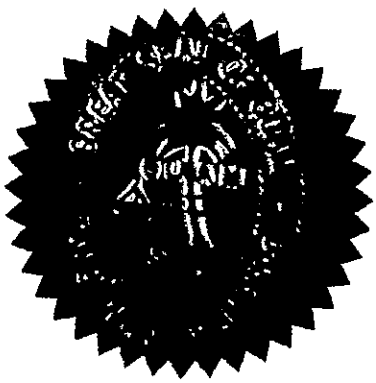
WHEREAS, in order to allow for telecommunications providers to transition accordingly with compliance and adherence to existing statutes which Executive Order 2001-36 had permitted, a 90-day transition period effective from issuance of this new Executive Order shall commence;

NOW, THEREFORE, I, EDDIE BAZA CALVO, *I Maga'Låhen Guåhan,* Governor of Guam, by virtue of the authority vested in me by the Organic Act and laws of Guam, do hereby order and direct as follows:

1. Effective 90 days from issuance of this new Executive Order, Executive Order No. 2001-36 as promulgated on November 25, 2001, is hereby repealed and rescinded in its entirety, and is of no further force or effect, once the transitory period lapses.

All pending and new applications for the permitting of tower sites for wireless communications service in non-residential zones shall comply with the existing statutory permitting requirements and processes that are specified in Guam and/or federal law, once the 90-day transition period expires.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 23rd day of March, 2016.



EDDIE BAZA CALVO
I Maga'Låhen Guåhan
Governor of Guam

NOTICE TO REZONE

PUBLIC NOTICE

AN APPLICATION HAS BEEN FILED WITH THE GUAM LAND USE COMMISSION (GLUC) FOR A ZONE VARIANCE:

APPLICATION DESCRIPTION: 100ft. Monopole Tower

OWNER: Docomo Pacific GUAM

DEVELOPER: Docomo Pacific GUAM

LOT, BLOCK, TRACT, MUNICIPALITY: Lot # 1, Block # 1, Tract 173 Santa Rita

PROPOSED ZONE VARIANCE: 100ft. Monopole Tower

	DATE	TIME	PLACE
PUBLIC HEARING:	AUGUST 24	6:00 P.M.	SANTA RITA SENIOR CITIZEN CENTER

GLUC MEETING: SEPTEMBER 28,2017 1:30 P.M. 3RD FLOOR LAND MGMT. OFFICE ITC BLDG.

Doc. No. 34GL-17-1209

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
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Hagåtña, GU 96932

Website:
http://dlm.guam.gov

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671-649-5383

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

September 19, 2017

MEMORANDUM

TO: Guam Land Use Commission (GLUC) Members

FROM: Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC Members

RE: Zone Variance Application – 2016-47

Listed below are the **APPLICATION REVIEW COMMITTEE POSITION STATEMENTS** as submitted:

PERMANENT VOTING MEMBERS

1. **DEPARTMENT OF LAND MANAGEMENT:**
   1. The Applicant shall adhere to the ARC conditions and requirements as stipulated in their Official Position Statement; and
   2. That the initial approval shall be limited to a two year term. The applicant shall appear before the Commission and provide a status report of its operations during the initial 2-year period. Subsequent requests to extend the Variance Permit shall be renewed for a term determined by the Commission at the time of the request.

2. **GUAM ENVIRONMENTAL PROTECTION AGENCY:**
   No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

3. **DEPARTMENT OF AGRICULTURE**:
   No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

4. **GUAM WATER WORKS AUTHORITY**:

Given the information provided in the application and existing conditions observed in the field, the following is GWA's position in favor of the approval of this zone variance application:

The applicant's request for a zone variance for height will not require an increase in water and wastewater services and there are no GWA utilities that will be impacted following the approval of this zone variance request. Therefore, GWA has no objection to this application request.

5. **GUAM POWER AUTHORITY**:

A. Comments and Recommendations Concerning GPA requirements:

1. Customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
   - Coordinate overhead/underground power requirements with GPA Engineering for new structure.
   - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
   - Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.
   - Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.
   - Provide scheduling and magnitude of project power demand requirements for new loads.
   - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
   - GPA reserves its easement rights established at the Department of Land Management under document numbers **773505** and **753088.**
2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

Pending GPA easement to be acquired on Lot 1, Block 1, Tract 173 (Santa Rita).

6. **DEPARTMENT OF PARKS AND RECREATION**:
No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

7. **DEPARTMENT OF PUBLIC WORKS:**
The Department of Public Works recommends approval, subject to the comments reviewed by the Application Review Committee (ARC) with the following conditions:
- The drawings (structural, electrical, civil) incorporated in the application is totally different from the above lot number and location;
- Must revise the sheet content in the drawings as per location;
- Installation must be well engineered that can withstand all wind, vibration forces of 170 MPH; and
- For building permit application must have a complete set of drawings that meets all the requirements in conformance with the latest building code edition and must be signed by a registered engineer per discipline.

8. **BUREAU OF STATISTICS AND PLANS**:
The Bureau of Statistics and Plans (Bureau) has completed its review of the subject application and provides the following comments and recommendations.

Land Use. The subject lot is with the "A" (Agricultural) Zone in the southern portion of the island, which contains the as-built 100 ft. telecommunications monopole tower. Although the tower has already been constructed, Docomo Pacific Inc. Guam is advised to consult with the Department of Agriculture on any potential adverse conservation or agricultural effects resulting from this project.

Safety Precaution. According to Docomo Pacific Inc. Guam representatives, the 100 ft. monopole tower is not nearby any developed structures so it poses little if minor potential damages due to natural hazards. However, the 100 ft. telecommunications monopole tower is approximately 10 to 12 stories in height. The Bureau is concerned about the potential of the tower collapsing in the event of tropical storms and typhoons. Therefore, the applicant is strongly advised to implement safety measures to ensure the protection of the community in the event of tropical storms, typhoons, seismic activity and other catastrophic events.

Although the proposal is considered as as-built development all regulatory compliance requirements and/or conditions still must be considered and adhered to in its entirety including any other applicable local and federal statues.

EX-OFFICIO MEMBERS

9. **DEPARTMENT OF PUBLIC HEALTH and SOCIAL SERVICES:**
   No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

10. **GUAM FIRE DEPARTMENT:**
    No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

11. **GUAM ECONOMIC DEVELOPMENT AUTHORITY:**
    No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

12. **GUAM PUBLIC SCHOOL SYSTEM:**
    No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

13. **DEPARTMENT OF CHAMORRO AFFAIRS:**
    No Position Statement has been received as of the date of this Memorandum of September 19, 2017.

Marvin Q. Aguilar
Chairman, ARC

Case Planner: Celine Cruz

ATTACHMENT B

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

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671-649-LAND (5263)

Facsimile:
671-649-5383

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

September 21, 2017

MEMORANDUM

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Supplemental Staff Report - Application No. 1997-023E, Conditional Use Permit-TWHF ; Lot 5223-R9-3, Municipality of Barrigada;
GLUC Meeting of September 28, 2017.

1. PURPOSE:

A. Application Summary: The Applicant, BME & Sons, Inc., are requesting approval for the renewal of a previously approved Conditional Use Permit to continue operations of a Temporary Workers Housing Facility (TWHF), consisting of an existing 2-storey workers dormitory for 86 workers and an additional single-storey concrete dormitory for 28 workers, at the site will be housing a total 114 workers. The adjacent buildings are administrative/planning office, a motorpool/transport/maintenance facility, and a fabrication shop and materials yard. The BME village (compound) have support facilities such as dining area, lounge, recreation area, and other amenities to support the operation of a Temporary Workers Housing Facility (TWHF) on Lot 5223-R9-3, Municipality of Barrigada, in an "M-1" Light- Industrial) Zone.

B. Legal Authority: Title 21, Guam Code Annotated, Chapter 61 Section 61303 Conditional Uses, and pertinent regulations of the Zoning Law ; Section 61309, (c) and Public Law 31-07 (Policy for Workforce Housing Facility for Temporary Workers; and GLUC Executive Order 2009-01 applicable to Temporary Workers Housing Facilities (TWHF).

2. FACTS:

A. Location: The subject site is fronting a 40-foot right of way known as Perez Coral Pit Road and directly behind Asia Motors and west across Perez Quarry and approximately 500 feet north off Route No. 16 underpass in Barrigada **(See Application).**

B. Lot Area: 4 ,934 square meters or 53,109.13 square feet or 1,219 acre.

C. Present Zoning: "M-1" (Light-Industrial) Zone.

D. Field Description: There an existing 2-storey barracks/dormitory facility and maintenance shop and office and materials yards on the site. The topography is fairly flat. On the west, there are a few residential duplexes, to the east and across the street is a light industrial activity and a quarry. Other land use activities within a 500 - 2,000 feet radius are warehouses, commercial activities along Route No. 16 and Guam International airport to the south and sporadic residential homes and vacant lots. All utility infrastructures are within 100 feet of the subject development.

E. Masterplan: Residential – Low Density

F. Community Design Plan: Conservation

G. Previous Commission Action (s): Conditional Use Permit for Temporary Workers Housing Facility (TWHF) on October 7, 1997; Ref: Application No. 1997-023; GLUC – 1997-23B Conditional Use Permit-TWHF Renewal July 25, 2013 for 2-years (24 months) and thereafter renewed annually; GLUC -1997-23C Annual Renewal June 23, 2015; GLUC -1997-23D Annual Renewal September 8, 2016. All approvals with conditions noted on all Notice of Actions remain in force and applicable conditions for compliance of Workforce Housing Facilities for Temporary Workers to references P.L. 31-72, and to GLUC Resolution 2009-01, Policy for Workforce Housing Facility for Temporary Workers) – SEE ATTACHED

3. DISCUSSION:

On September 8, 201, BME & Sons, Inc., submitted a letter of request for their annual review/reporting renewal of their Temporary Workers Housing Faciltity as required by Notice of Action dated September 14, 2016, and reporting that they have complied with all GLUC and ARC conditions and applicable conditions for compliance of Workforce Housing Facilities for Temporary Workers to references P.L. 31-72, and to GLUC Resolution 2009-01, Policy for Workforce Housing Facility for Temporary Workers). That they have maintained operations to meet or exceed standards of operating a temporary workforce facility and make it a safe and comfortable for all their workers. They have further maintained good standing and relations to the community and clients. They report of no complaints /problems or negative impacts of their operations on and off-site. They have been pro-active in supporting commu

community based projects, assist non-profit organizations, assist GDOE prepare for the school year in maintenance in various sites and assist the municipal mayors (Barrigada & Mangilao) with facility upgrades and repairs as well as being a good neighbor in the immediate area. They continue to maintain and make improvements on site in the event the federal government and Guam Department of Labor approves H2 importations of foreign labor. At present, they have 70 local workers on jobsites around the island and still need more workers for more new projects, to include bidding for military/federal projects for the military build-up and future community projects, further contributing to the island tax base and economic prosperity.

On September 15, 2017, the Mayor of Barrigada submitted a letter that the fully in support for the request of renewal of BME's TWHF and commended the company for their contribution and supporting the community and benefitting the residents and surrounding boundaries.

RECOMMENDATION: Having complied with previously approved Conditional Use Permit conditions imposed by the Guam Land Use commission, in the operations of its Temporary Workers Housing Facility, Planning staff recommends approval of the applicants request for renewal and continuation for the operation of a Temporary Workers Housing Facility and further reporting annually on their status. All Commission, ARC, Workforce Housing applicable conditions, and GLUC Resolution No. 2009-01 is still applicable and in force.

Marvin Q. Aguilar
Guam Chief Planner

ATTACHMENTS

Case/Project Planner: Penmer C. Gulac

BME & SONS INC.

GENERAL CONTRACTOR & EQUIPMENT RENTAL

P.O. Box 24402, GMF, Barrigada, Guam 96921 * Tel: (671) 632-3338 * 637-5498 * Fax: (671) 632-3334
E-mail: bvm@bmesons.com

October 12, 2017

Mr. John Z. Arroyo, Chairman & Commissioners
Guam Land Use Commission
c/o Department of Land Management/Land Planning Division
Attn: Mr. Marvin Q. Aguilar, Guam Chief Planner

Subject: Authorization of Representation
Ref: GLUC No. 1997-23E (Conditional Use Permit for renewal request of Temporary Workers Housing Facility (TWHF), for BME & Sons, Inc.
Lot 5223-R9-3, Barrigada, Guam

Hafa Adai Mr. Chairman & Commissioners:

This letter authorizes Danny Natividad, BME & Sons, Inc., Chief Operating Office/Safety Manager to act on my behalf in representing, discussing, matters, answering questions pertaining to our request for renewal of our Annual Conditional Use Permit located in Barrigada.

Your attention and favorable consideration is greatly appreciated, and should you have questions, please feel free to call me anytime.

Thank You Again.

Very Respectfully,

Bernie V. Maranan
President

Office Site Address: #132 Golden Cupid, Latte Hts, Mangilao, Guam

P. Gulac 10/12/17
RECEIVED
Land Plng Div
Ref GLUC 1997-23E

BME & SONS INC.

GENERAL CONTRACTOR & EQUIPMENT RENTAL

P.O. Box 24402, GMF, Barrigada, Guam 96921 * Tel: (671) 632-3338 * 637-5498 * Fax: (671) 632-3334
E-mail: bvm@bmesons.com

October 12, 2017

Mr. John Z. Arroyo, Chairman & Commissioners
Guam Land Use Commission
c/o Department of Land Management/Land Planning Division
Attn: Mr. Marvin Q. Aguilar, Guam Chief Planner

P-Gola 10/12/17
RECEIVED
Land Plng Div

Subject: Annual Renewal of Conditional Use Permit for Temporary Workers Housing Facility (TWHF), Lot 5223-R9-3, Barrigada, Guam; Ref. GLUC # 1997-23E

Hafa Adai Mr. Chairman & Commissioners:

I am Danny Natividad, Chief Operations Officer/Safety Manager of BME & Sons, Inc., I am here before you on behalf of Mr. Bernie V. Maranan, our company president.

Our company request for renewal and to update and inform you on our on-going operations as well as maintaining a Temporary Workers Housing Facility (TWHF). This is to be in full compliance to the Notice of Action (NOA) that was granted for a Conditional Use Permit for a TWHF on July 25, 2013 and the period will be for 24 months (2 years) and thereafter shall be renewed annually. Further adhere to all provisions of GLUC Resolution #2009-01 on policy and operations for Temporary Workforce Housing and all GLUC imposed conditions. Most recent GLUC approval on September 8, 2016 (see attached NoA) is for our workforce housing to accommodate 114 workers on-site facilities.

BME & Sons, Inc., has continued to adhere to all GLUC imposed conditions on the Notice of Action and all ARC conditions on the above subject lot where the workers facility is located.

We have updated our operating licenses as a general contractor and also maintain an administrative office at another location (GLUC approved). All licenses and permits for its activities on the subject lot, has complied to all conditions and requirements and we have enhanced and improved the landscape of the property and which has not negatively been detrimental to the immediate neighborhood and surrounding community since our initial approval July 25, 2013. Our company's operation and activities comprises of projects both local and federal funded. For example, recently various Guam International Airport interior complex improvement and perimeter security fencing; Guam Port Authority Wharf Repairs; Guam Legislature (Congress Building) Rehabilitation; Guam Waterworks Authority (Baza Garden/Route 17) Phase 1 & 2 pumping and conveyance(sewer lines) is on-going; Tumon Bay Mall Civil Works; and Governor's office improvements; Demolition of the Manuel FL Leon Guerrero Administration Building (Hagatna Revitalization Project)and other local projects. We continue to hire more local workers/employees at this time to support on-going community and federal funded projects around the island. We are optimistic the Federal Government, Immigration and the President will support the approval for foreign labor. Our facility will be ready once they give contractors on island the green light for importation for H2B workers. We have supported our local municipal mayors and government civic action projects, island-wide beautification projects, community parks, contributed our services to GDOE prep of school year 2017-18 and to many non-profit groups and organizations. Guam is our home and our company will continue to support in improving a stronger island economy and prosperity for our people.

BME & SONS INC.

GENERAL CONTRACTOR & EQUIPMENT RENTAL

P.O. Box 24402, GMF, Barrigada, Guam 96921 * Tel: (671) 632-3338 * 637-5498 * Fax: (671) 632-3334
E-mail: bvm@bmesons.com

Cont:

BME & Sons continues to be proactive in the management and operation of our TWHF facility and ensure that we comply will all requirements, licenses, permits, transportation, taxations, as well as the safety of our workers on and off site.

We will continue be pro-active in managing our business activities, projects, and contracting for future projects for our company. We further request your favorable acceptance of our request for renewal and consideration for the continuance of operations of TWHF to support operations island-wide and to include future military base and community projects.

Please be advised that letters of support have been received from Barrigada Mayor and we are grateful to inform the commission, that we will continue to work closely with all agencies and comply to all requirements of the Application Review Committee, Guam Land Use Commission requirements and imposed conditions well as the Guam Chief Planner and Land Management Planning Staff.

Should have questions, I will do my best to provide acceptable answers.

Thank You Again.

Very Respectfully,

Danny Natividad

Chief Operations Officer
of BME & Sons, Inc.
Contact Nos. 632-3338/988-4421

RGala 10/2/17
RECEIVED
Land Plng Div

ATTACHMENT C

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
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671-649-5383

September 21, 2017

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report - Application No. 1993-01E
Request for Issuance of Second Supplementary Final Public Report
(Ladera Towers Condominium – Registration No. 104)

1. PURPOSE:

a. Application Summary: The Association of Apartment Owners of Ladera Towers Condominium, represented by Michael Flynn, Jr. Esq. request issuance of a Second Supplementary Final Public Report for "Ladera Towers Condominium", on Lots 4 and 5, Tract 1822, in the Municipality of Mangilao, in an "R-2" (Multi-Family Dwelling) zone, HPR Registration No. 104, under application No. 1993-01E.

b. Legal Authority: Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act), §45154, Automatic Expiration of Public Reports.

2. FACTS:

a. A Horizontal Property Regime Final Public Report for the Ladera Towers Condominium under Registration No. 104 was issued no December 27, 2007 and Expired on January 26, 2009. Said public report was recorded under instrument number 773111 at the Department of Land Management on May 12, 2008.

b. The Amended and Restated Floor Plans of Ladera Towers Condominium dated July 1, 2016 was recorded on August 30, 2016 under Instrument No. 896812 at the Department of Land Management.

c. The Amended and Restated Declaration of Horizontal Property Regime for Ladera Towers Condominium dated April 27, 2016 and recorded on August 30, 2016 under Instrument No. 896815 at the Department of Land Management.

d. First Supplementary Final Report was issued on July 29, 2016 and expired on August 29, 2017. (Reference Instrument No. 897182 dated September 9, 2016).

e. There have been no condominium units sold. As such, Two Hundred Twenty-Two (222) condominium units remain unsold.

f. **Changes to Original Project.** The Developer has refinanced the mortgage on the property. The following prior mortgages and assignments of rental income have been released: 1) **Mortgage** and **Assignment of Rental Income** dated March 1, 2012 and recorded on March 2, 2012 under Instrument No. 833850 and 833851, respectively, executed by LGI Pacific Guam, Inc. in favor of First Commercial Bank in the principal amount of $30,000,000.00, plus interest. ***Release of Mortgage and Assignment of Rental Income*** *recorded under Instrument No. 909526*; and 2) **Amendment of Mortgage** and **Amendment to Assignment of Rental Income** dated September 19, 2012 and recorded November 19, 2012 under Instrument No. 844363 and 844364 respectively. ***Release of Amended Mortgage and Amendment to Assignment of Rental Income*** *recorded under Instrument No. 909530.*

The project is now subject to the following mortgage and assignment of rental income: 1) Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing and Financing Statement dated May 26, 2017 and recorded on June 29, 2017 under Instrument No. 909121, executed by LGI Pacific Guam, LLC in favor of Bank of Hawaii; 2) Assignment of Leases and Rents dated May 26, 2017 and recorded June 29, 2017, under Instrument No. 909127, executed by LGI Pacific Guam, Assignor to Bank of Hawaii, Assignee; and 3) Assignment of Sales Contracts and Sales Proceeds dated May 26, 2017 and recorded on June 29, 2017 under Instrument No. 909128.

3. **STAFF RECOMMENDATION:** Recommend issuance of a Second Supplementary Final Public Report in order for the developer to market and sell the 222 condominium units in the project, and pursuant to §45154 of Chapter 45, Title 21 the issuance of this Second Supplementary Final Public Report is for a period of thirteen months.

Marvin Q. Aguilar
Chief Planner

Case Planner: Celine Cruz

ATTACHMENT D

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
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671-649-5383



September 22, 2017

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: [Corrected] Staff Report – HPR Application No. 2017-02 Request for Public Report

RE: San Vitores Palace Condominiums – Registration No. 170

1. PURPOSE:

A. Application Summary: The applicant, S & C Investments, LLC, represented by Attorney Terrence M. Brooks, requests issuance of a Final Public Report for a project to be known as "San Vitores Palace Condominiums" (the Project., hereafter). The project consists of a three-story building containing a total of fifteen (15) apartments with common elements to include fifteen parking stalls and fifteen storage rooms in an "R-2" (Multi-Family Dwelling) Zone, Tumon, Municipality of Tamuning.

B. Legal Authority: Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act)

2. FACTS:

A. Location: "San Vitores Palace Condominiums" is located off Pale San Vitores Road on Bamba Street, a thirty-feet (30'-0") wide Public Access and Utility Easement.

B. Lot Area: Lot 5118#1-2-4NEW: 1,483.56± Square meters
Lot 5118#1-2-4NEWR/W: 220.644± Square meters

C. Present Zoning: "R-2" (Multi-Family Dwelling) Zone.

D. Sewer Status: With sewer.

3. **APPLICATION CHRONOLOGICAL FACTS:**

A. **Previous Commission Actions:** None.

B. **Date Application Accepted:** September 8, 2017

C. **Date Heard by ARC:** Not applicable.

D. **Public Hearing Results:** Not applicable.

4. **DISCUSSION:**

A. **Buildings:** The Project consists of a three-story building with basement/garage within the "Project" limits and consists of fifteen (15) apartment units as follows:

a. Type A – 3 units

b. Type B – 3 units

c. Type C – 3 Units

d. Type D – 3 units

e. Type E – 3 units

OFFERINGS

B. **Apartment Description:** There are five types of Apartments, Type A, Type B, Type C, Type D and Type E.

a. **Type A:** Type A apartments have an area of approximately 1,322 square feet and consist of 3 bedrooms, 2bathrooms, living room, dining room, and kitchen.

b. **Type B:** Type B apartments have an area of approximately 1,203 square feet and consist of 3 bedrooms, 2bathrooms, living room, dining room, and kitchen.

c. **Type C:** Type C apartments have an area of approximately 1,407 square feet and consist of 3 bedrooms, 2bathrooms, living room, dining room, and kitchen.

d. **Type D:** Type D apartments have an area of approximately 1,271 square feet and consist of 3 bedrooms, 2bathrooms, living room, dining room, and kitchen.

e. **Type E:** Type E apartments have an area of approximately 1,157square feet and consist of 3 bedrooms, 2bathrooms, living room, dining room, and kitchen.

C. **Common Elements:** The common elements shall include all portions of the project other than the apartment, and shall include, but not be limited to:

a. Land. The land in fee simple.

b. Building Elements.

i. All foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, corridors, entry halls, stairs, walkways, pipe chase, outdoor lights, entrances and exits of said building;

ii. All yards, grounds, landscaping, mail boxes, refuse facilities, drainage ditches, walkways and steps;

iii. All driveways and parking areas, and fencing and walls, (unless specifically designated as limited common area);

iv. All ducts, sewer and water lines, fire protection systems, electrical equipment, wiring and other central power, light, refuse, telephone and television lines; excluding the individual air-conditioning units and refrigerant lines.

c. Parking. The total number of parking stalls is fifteen (15). Each unit shall be assigned one parking space; and

d. Other Parts of the Property. All other parts of the project defined as common elements.

D. **Limited Common Elements:**

The assigned automobile parking space and basement storage unit assigned for each unit.

E. **Required Documents:** (refer to index)

a. Notice of Intention & Questionnaire Form (Tabs 1 & 2)

b. A copy of Master Deed and Recording Data (Tab 7)

c. A copy of the Declaration (Tab 4)

d. By-Laws of the Association of Apartment Owners (Exhibit 2)

e. Condominium Plans and Property Map, Building plans, drawings and specification (Tab 5)

f. Copy of corporate papers (Articles of Organization) (Tab 8)

g. Copies of all options, contracts of purchase, mortgages and trust agreements, lease agreements on the property submitted to the regime (Tab 6)

h. Specimen Apartment Deed or Apartment Lease to be used to covey property to purchaser (Tab 9)

i. Copy of House Rules (Exhibit 3)

j. Explanation of Absence of Documents (Tab 3)

Based on the submitted documents we find the material facts have been presented and considered adequate for any prospective purchaser to consider; and that adequate protection for purchaser's funds has been provided. This position reflects staff findings and assessment of the project proposal *within* Lot 5118#1-2-4NEW.

Staff further discovered what appeared to be parking stalls located along the project's west boundary that perhaps encroaches onto the Right-of-Way or Lot 5118#1-2-4NEWR/W. We suspect these stalls are presently being used by renting tenants and are not part of the total parking count as offered by the applicant. In this matter, we recommend the applicant:

a. To clearly disclose to potential owners these stalls are not part of the HPR offering; and

b. Resolve any possible encroachment onto the designated Right-of-Way.

5. **STAFF RECOMMENDATION:** Recommend issuance of a Final Public Report. This Project shall be registered as Registration No. 170, known as "San Vitores Palace Condominiums" and said Public Report shall expire in thirteen months or on November 12, 2018.

Marvin Q. Aguilar
Chief Planner

Case Planner: Celine Cruz