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September 25, 2001

Via Facsimile Only

Suzan Wood, Case Manager
Jefferson County Planning
and Zoning Department
100 Jefferson County Parkway, Suite 3550
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Fax No. (303) 271-8744

Re: Pinnacle Towers, Inc. - Application for Rezoning and Exemption from Platting
(Case Nos. 00015485RZP1 and 00015485EXP1)
Access to Pinnacle Towers, Inc.'s Property

Dear Susan:

In the December 4, 2000 letter of Levi D. Deike, Field Office Manager of the Bureau of Land Management ("BLM"), addressed to Mr. Greg Monroe of Colorado State Parks, Mr. Deike states that an easement for a road across the park land at issue constitutes a change in the control or use of the land for purposes not provided in the applicable patent and, therefore, would subject the patent for the land to revert.

Mr. Deike also states that a radio tower does not provide a direct or indirect benefit to the patented land. Pinnacle Towers, Inc. is not putting a radio tower on patented land, rather it has put a road on patented land. Mr. Deike states that an example of a direct benefit would be a road which crosses patented land that would provide public access to a part of the land that did not have adequate public access. There is no other access to the land other than by the road at issue. Public access cannot be guaranteed by Pinnacle Towers but administrative access can. Therefore, the road provides a direct benefit to the patented land.

In addition, under applicable state and federal law, Pinnacle Towers will be able to obtain access to its land either across the Keller land or across state park land. The following is a discussion of state and federal law applicable to access to the Pinnacle Towers land.

I. Pinnacle Towers may obtain an easement across the Keller land.

Article II, §14 of the Colorado Constitution provides that:

easements in lands requires, needs, or desires to appropriate lands, rights-of-way, or other rights or easements in lands which belong to the United States, the state of Colorado, or any other state or sovereignty, such corporation, for the purpose of having such lands, rights-of-way, or other rights or easements appropriated to such use and for determining the compensation to be paid to such owner therefor, may present a petition to the district court in each of the counties in which such lands, or any part thereof, are located, describing the desired property, giving the name of the owner thereof, and stating by whom and for what purpose it is proposed to be appropriated and that it is needed and required by the petitioner for the public use to which it is proposed to devote the same, and praying that such court appropriate such property to its use and determine the compensation to be paid to the owner therefor.

Article II, §14, authorizes corporations to appropriate for a public use by the exercise of the right of eminent domain lands, rights-of-way, or other rights or easements in lands. *See, e.g., Crystal Park, supra.* A Proceeding to condemn private way of necessity constitutes a public use. *See, e.g., Bear Creek, supra.* Therefore, Pinnacle Towers should be entitled by the right of eminent domain to appropriate for public use an easement of necessity on state park land.

3. Reverter of land from State to BLM appears discretionary.

Pursuant to 43 U.S.C. §869-2(a), if at any time after title to land is conveyed by the federal government to a state for public purposes, the grantee attempts to transfer title or control over the land to another or the land is devoted to a use other than that for which it was conveyed, without consent of Secretary of the Interior, title to the lands shall revert to the United States. The December 4, 2000 letter from the BLM states that an easement constitutes a transfer of control which "subjects the patent to the reverter process." As the letter also states, the reverted provision is contained in the patent. Pursuant to the patent, a copy of which is enclosed:

. . . title shall revert to the United States upon a finding, after a notice, and an opportunity for a hearing, that, without the approval of the Secretary of Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, or the lands have been devoted to a use other than that for which the lands were conveyed.

Therefore, it appears reverter is (i) not automatic, (ii) subject to a "reverter process" and (iii) at the discretion of the Secretary of the Interior.

4. Pinnacle Towers may obtain a right of access from BLM even in event of a reverter.

In 1988, due to concerns regarding the vague rights of access across federal lands, the United States Congress enacted the Alaska National Interests Lands Conservation Act (ANICLA), 16 U.S.C. §3210, to eliminate any lingering questions regarding access. Although

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the Act was initially directed at Alaskan public land, the Act has since been held to apply to all National Forest and BLM public land. *Montana Wilderness Ass'n. v. United States* 655 F. 2d 951, 957 (9th Cir. 1981, *cert. denied*, 455 U.S. 989 (1982) (National Forest); *Utah Wilderness Ass'n*, 91 Interior De. 165 (1984) (Interior Board of Land Appeal held that ANICLA ensures access across all land managed by BLM).

Specifically, Section 3210, Access by owner to nonfederally owned land, subsection (b), Reasonable use and enjoyment of land surrounded by public lands managed by Secretary, provides:

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: provided, that such owner comply with rules and regulations applicable to access across public lands.

(Emphasis added.)

Thus, ANICLA and the subsequent regulations ensure landowner access to private holdings, while retaining control over the public lands in order to preserve and accommodate the land for other uses.

Pursuant to 43 U.S.C. 1761(a), the Secretary of Interior is authorized to grant rights-of-way for, among other things, (i) "systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication," (ii) "roads, trails, highways [etc.], or other means of transportation," and (iii) "such other necessary transportation or other systems or facilities which are in the public interest and which require rights of way over, upon, under or through such lands." Pursuant to 43 C.F.R. 2800, it is the objective of the Secretary of the Interior to grant rights-of-way to any qualified individual, business entity, or governmental entity.

Local law can be considered applicable to federal right-of-way only to extent it does not result in land use which conflicts with federally designated land use and, thus, local regulations must give way to statutorily authorized granting of federal right of way. *See, e.g., Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051 (9th Cir. 1985).

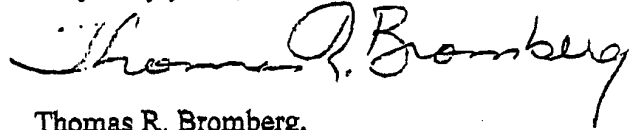
Therefore, Pinnacle Towers should be able to obtain a right of access from BLM even in the event of a reverter.

In any event, Pinnacle Towers will be able to obtain a right of access to its land, whether across the Keller land or across state park land.

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I hope this answers some of your questions. I can be reached at the address and telephone number above if you have any questions or comments. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas R. Bromberg". The signature is written in black ink and is positioned above the typed name.

Thomas R. Bromberg,
For the Firm

Enclosure