

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

RENEGADE TOWERS LLC
USE PERMIT APPLICATION (PL-USE-2024-000028)

Upon review of the request against the guidelines for approving a Use Permit, the Planning Director recommends that a **Use Permit to allow the establishment of a multi-carrier telecommunication facility with a 150-foot-tall monopole tower and related equipment and improvements within a 15,423 square foot portion of a larger 32.721-acre parcel, be approved by the Planning Commission.** The Planning Director reserves the right to modify and/or alter this position based upon additional information presented at the public hearing. This approval is based on the following findings:

The applicant, Renegade Towers LLC, is requesting a Use Permit to construct a 150-foot tall steel monopole tower with twenty-four (24) panel antennas within a 15,423-square foot portion of a larger 32.721-acre parcel situated in the County’s Agricultural 3-acre (A-3a) zoning district. The subject property is located on the east (makai) side of Pāhoa-Kalapana Road (Highway 130) about 0.53 miles southeast of Black Sand Beach subdivision, Kīkala-Kēōkea Homesteads, Puna, Hawai‘i, TMK: (3) 1-2-007:034 por. To blend with the surrounding environment, the monopole tower will be painted a color to match the tall trees along the road and designed to accommodate multiple carriers (co-location). The facility will include a 2,880-square-foot (36’x80’) equipment area and a 12,423-square-foot access road. In addition to the monopole, the 2,880-square-foot area would be used for accessory ground facilities, which include outdoor equipment cabinets, a utility H-frame, internal systems (including an air conditioner), and a diesel-powered emergency generator, all enclosed within a 6-foot-tall chain link security fence with locked gates. The tower will be constructed of structural galvanized steel and built to withstand a 137-mph wind load. The proposed facility would be unmanned, and maintenance and repair activities will be performed by a technician on a periodic basis. The applicant will comply with all Federal Communications Commission (FCC) and

Federal Aviation Administration (FAA) rules. Additionally, the monopole will not interfere with the County's public safety radio system.

According to the applicant, most of the surrounding residents in Sea View Estates and Black Sands Beach subdivision currently have little to no wireless coverage. Verizon Wireless and AT&T have operated temporary Cell on Wheels ("COWs") next to the Star of the Sea Painted Church at the request of Civil Defense to provide service near the lava viewing area. Although the viewing area has closed, the authorities have not forced the removal of the temporary COW site because of the need for service in the area. The objective of this project is to improve the existing cell phone coverage surrounding the tower location, along Pāhoa Kalapana Road.

Telecommunication towers and antennas previously required a Special Permit to operate within the State Land Use Agricultural District. In 2007, the State Legislature adopted Act 171 to allow the construction and operation of wireless communication antennas and towers as permitted uses within the State Land Use Agricultural District. In 2010, the Hawai'i County Council approved Ordinance No. 10-17 to require a Use Permit for telecommunication antennas and towers in the County's Agricultural zoned district. As the applicant is proposing to construct a new tower in the County's Agricultural (A-3a) zoned district, a Use Permit is required.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;
- B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and
- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed request meets the guidelines for approval of a Use Permit, for the reasons outlined below:

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and policies of the General Plan. The Zoning Code allows for telecommunication antennas and towers to be a permitted use within the County's Agricultural zoned district if a Use Permit is approved by the Planning Commission.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The General Plan designation for the proposed building site is Extensive Agriculture which includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture category. The remaining property to the north is in the Important Agricultural Lands, which are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. Telecommunication facilities may be allowed in this area with the approval of a Use Permit from the Planning Commission.

The Natural Beauty Section of the General Plan lists areas of natural beauty for each island district and lists goals, policies, and actions for enhancing, protecting, and mitigating visual impacts in those areas. For the Puna District, this includes the "view plane from Pāhoa-Kalapana Highway looking makai" which includes the subject parcel. Verizon, in partnership with Cellco previously applied for a Use Permit for a telecommunications facility on the mauka side of the highway in 2019, however, given

difficulty in developing the approved tower on that site due to site access issues, Verizon requested the permit be revoked. Instead, Verizon will be the anchor tenant on tower the applicant, Renegade Towers LLC, is proposing on the subject property. Given the preceding, as part of the pre-application process, the applicant submitted a report with several alternative sites on the subject property, including photo simulations to identify an acceptable location that would have the smallest impact on the makai view plane from multiple locations along the highway. In addition to the current siting of the tower, which is set back far enough on the property to minimize visual impacts, the applicant is also proposing to paint the tower to blend in with the surrounding area. With proper siting and painting the tower, any visual impacts of the tower from the highway looking towards the sea will be mitigated.

During the last several decades, wireless telecommunications has experienced a dramatic decrease in cost and a phenomenal increase in availability. Changes in technology and competition in the industry have made wireless communication more affordable to the general public.

Advances in telecommunications are not without cost or concerns. One such concern is the construction and location of telecommunication towers. Telecommunication towers are the physical structures to which antennas are attached to facilitate wireless communication. Because of the need for a clear line-of-site, telecommunication towers are usually located in areas with minimum obstructions between the tower and its area of service. Line-of-site refers to the imaginary line between a mobile phone antenna and a telecommunication tower. If there are impediments between the mobile phone antenna and the telecommunication tower, there may be signal degradation or signal loss. For example, the loss of line-of-sight occurs when a person uses a mobile phone while driving through a tunnel. Most often, communication is lost or unclear. The line-of-sight requirement often necessitates the conspicuous location of many telecommunication towers. Consequently, the telecommunications tower is usually much taller than the surrounding structures or vegetation and may negatively impact the scenic nature of a given area.

A standard in the Public Utilities element of the General Plan states that in the development and placement of telephone facilities, such as lines, telecommunications and cellular towers, poles, and substations, the design of the facilities shall consider the existing environment, and scenic view and vistas shall be considered and preserved where possible. The tower site is located on a small portion of a 32.721-acre parcel. There is significant public benefit to be gained by the installation of the proposed telecommunication tower for the residents in this area. Therefore, approval of this request will not run contrary to the goals, policies and standards of the General Plan.

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

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The project site is within a 15,423 square-foot portion of a 32.721-acre parcel of land. The property is currently vacant and undeveloped. The surrounding properties are similarly zoned A-3a and consist of scattered dwellings, agricultural uses and vacant land.

In order to mitigate possible visual impacts, the monopole will be situated far enough within the property to have a minimal visual impact. The monopole will also be painted a color to blend with the surrounding area. According to the applicant, the only source of emitted noise may be from an air conditioner necessary to maintain the correct temperature and humidity in the equipment cabinets and a generator to be operated during emergencies and routine maintenance.

It is anticipated that the approval of the telecommunication facility will be beneficial to the community as it will provide increased cell phone coverage in the area and will be a significant resource for emergency services.

Therefore, based on the above, the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Only electrical and telephone services are required for the use, and they are available to the property. Access to the property will be off Pāhoa-Kalapana Road, a paved, public road, on the west side of the property. As traffic is anticipated to be minimal, the access to the site on the property is adequate. Fire and police services are available to the project area in nearby Pāhoa. The Telecommunications Act of 1996, Section 704, which amended portions of the 1934 Act, limits the state or local authorities from regulating the placement, construction and modification of personal wireless service facilities on basis of environmental effects of radio frequency emissions, as long as such facilities towers comply with the FCC's regulations concerning such emissions. Finally, the applicant will be required to meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area. The subject property is located approximately one and a half (1 1/2) miles from the nearest coastline and is not located in the Special Management Area, and therefore will not be impacted by coastal hazards and beach erosion. There are no identified coastal recreational resources, coastal scenic and open space resources, coastal ecosystems, and beach or marine resources in the area. Thus, the proposed request will not adversely impact coastal resources. Additionally, there is a record of a mauka to makai trail that traverses the property and is located approximately 1,000 feet north of the proposed building site.

The request will not have a significant adverse impact to traditional and

customary Hawaiian Rights. In view of the Hawai‘i State Supreme Court’s “PASH” and “*Ka Pa‘akai O Ka‘Aina*” decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: ACE Environmental LLC (ACE) prepared a Natural Resources Assessment of the subject property, dated June 10, 2024, which included the findings of a plant and animal inventory, as well as a literature review to document resident plant and animal species.

The valued cultural, historical, and natural resources found in the area: The review by ACE finds that there are no known federal listed (endangered or threatened) species within the project vicinity. The proposed facility location is not within a designated critical habitat.

Possible adverse effect or impairment of valued resources: The above-referenced Natural Resources Assessment concludes that no sensitive or regulated habitats were found on the project site. As such, the ACE review states the proposed facility is not expected to impact identified listed species. Additionally, as the tower will have no exterior lighting, except security lighting near the ground equipment, it is not anticipated to adversely affect migratory birds. By letter dated August 31, 2023, the Department of Land and Natural Resources-State Historic Preservation Division (SHPD) states that no historic properties will be affected by the proposed project.

Feasible actions to protect native Hawaiian rights: The applicant has not stated whether there are any traditional or cultural Hawaiian activities occurring on the property, nor does the Planning Department have any record of any traditional or cultural Hawaiian activities on the subject property.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all

applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above, it is recommended that the request to construct an unmanned, 150-foot monopole telecommunications facility, antennas and related improvements be approved by the Planning Commission. Approval of this request is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction and operation of the telecommunication facility shall be conducted in a manner that is substantially representative of plans and details as contained within the Use Permit application accepted on September 9, 2024 and representations made to the Windward Planning Commission.
3. To mitigate visual impacts the applicant shall maintain the existing landscaping to screen the facility and tower from public views along the highway. To further mitigate visual impacts, the applicant shall paint the tower a color to blend in with the surrounding landscape.
4. Construction of the monopole and related facilities shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Sections 25-2-71, 25-2-72, 25-2-73, 25-2-74 and 25-4-12, Chapter 25 (Zoning Code), Hawai'i County Code. The monopole tower shall be located as shown in the applicant's plan titled "Kalapana", submitted on August 22, 2024. Plans shall identify proposed structures, fire protection measures, access easements, fencing and related facilities associated with the use. The tower/antenna plans shall be stamped by a licensed structural engineer.
5. Prior to commencement of operation of the facility, the Applicant shall secure and finalize any building permits for the proposed use required by the Department of Public Works - Building Division.

6. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be disturbed, trimmed or removed during bat birthing and pup rearing season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service (USFWS) if nests are found. Surveys shall be conducted by a qualified biologist.
7. To protect any Hawaiian hawks in the vicinity of the property, ground clearing, grubbing activities and construction shall not occur in the permit area during hawk breeding season of March 1st to September 30th without first conducting surveys for hawk nests and coordinating with USFWS if nests are found. Surveys shall be conducted by a qualified ornithologist and are only valid for 14 days. Ground clearing or construction shall not occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season. Regardless of the time of year, trimming or cutting trees containing a hawk nest is prohibited.
8. To protect any seabirds (Hawaiian petrels, Newell's shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
9. To prevent the spread of Rapid 'Ōhi'a Death, a survey of the proposed site shall be conducted two weeks prior to any tree cutting to determine if there are any infected 'ōhi'a trees. If infected 'ōhi'a are suspected at the site, the applicant shall contact the appropriate agencies at UH-Hilo and USDA for further guidance. If 'ōhi'a trees will be cut during construction, the applicant shall follow procedures as described by the College of Tropical Agriculture and Human Resources (CTAHR).
10. All development runoff shall be disposed of on site and shall not be direct toward any adjacent properties.
11. All exterior lighting shall be shielded, unless complying with the Federal Aviation Administration and/or the Federal Communications Commission rules and regulations for lighting and marking.

12. Co-location of antennas upon the proposed tower and the addition of related support and ground equipment is required within the parameters of the tower height and ground lease area as approved by the Planning Commission without amendment of this permit or further Plan Approval. Co-location beyond the parameters approved by this permit but that results in less than a 'substantial change' to the tower height and ground lease area, as defined by the Federal Communication Commission, is allowed without amendment of this permit, provided Plan Approval has been issued by the Planning Director for the co-location. Co-location that results in a 'substantial change' to the tower height and ground lease area, as defined by the Federal Communication Commission, requires an amendment of this permit.
13. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (including the equipment building and the fence), down to, but not including the concrete foundation. The applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication tower and related improvements and the removal of all structures.
14. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including but not limited to, the Federal Aviation Administration and the Federal Communications Commission.
16. An initial extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
 - C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
17. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.