

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
BACKGROUND AND RECOMMENDATION

COUNTY COUNCIL INITIATED (PL-CCI-2024-000009)
AMENDMENT TO CHAPTER 25, ARTICLE 1, 2, 4, 5, AND 7 OF THE HAWAI‘I
COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO
TELECOMMUNICATION ANTENNAS AND TOWERS

The County Council has referred Bill 194 to amend Chapter 25 (Zoning), Article 1, 2, 4, 5, and 7 of the Hawai‘i County Code 1983 (2016 Edition, as Amended) (“HCC”), relating to telecommunication antennas and towers.

PURPOSE OF THE BILL

The purpose of Bill 194 as shown in the attached bill as **Planning Department Exhibit 1** is to implement a uniform and comprehensive regulatory framework for the development, siting, installation, and maintenance of telecommunication antennas and telecommunication towers.

PROPOSED AMENDMENTS

The proposed amendments affect Articles 1, 2, 4, 5, and 7 of the Zoning Code and aim to align the County’s regulatory framework with state laws, particularly Hawai‘i Revised Statutes, Section 46-89. Bill 194 introduces standards and application requirements that prioritize the careful design, siting, and maintenance of telecommunication infrastructure to minimize visual and operational impacts, enhance safety, and ensure adherence to federal and local regulations.

The proposed amendments include, but are not limited to, the following specific changes:

- Amends the definition of “Telecommunication Antennas” and creates a new definition of “Telecommunication Towers”;
- Creates additional Plan Approval application requirements for telecommunication antennas and towers;
- Creates additional standards for telecommunication antennas and towers, including increased setbacks and an order of priority for siting antennas and towers; and

- Removes the requirement to secure a Use Permit prior to establishing a telecommunication antenna and tower and adds telecommunication antennas and towers as a permitted use by right in Single-Family Residential (RS), Double Family Residential (RD), Multiple Family Residential (RM), Residential-Commercial Mixed Use (RCX), Residential and Agricultural (RA), Family Agricultural (FA), Agricultural (A), Intensive Agricultural (IA), and Open (O) zoning districts. With this change, telecommunication towers and antennas will be permitted in all zoning districts by right.

AGENCIES' COMMENTS

- 1) Police Department (**Planning Department Exhibit 2 – September 13, 2024 Memo**)
- 2) State Department of Transportation (**Planning Department Exhibit 3 – September 18, 2024**)
- 3) U.S. Fish and Wildlife Service – (**Planning Department Exhibit 4 - September 30, 2024 Email**)

AGENCY – NO COMMENTS/CONCERNS

- 4) Department of Public Works–Engineering Division; Department of Health; State Office of Planning and Sustainable Development-Department of Business, Economic Development & Tourism.

AGENCY – NO RESPONSE PROVIDED

- 5) Department of Public Works–Building Division; Civil Defense Agency; Department of Parks & Recreation; Fire Department; State Department of Education; State Land Use Commission; State Department of Land and Natural Resources; National Park Service.

PUBLIC COMMENTS PROVIDED

- 6) Comments from T-Mobile (**Planning Department Exhibit 5 - October 8, 2024 Letter**)
- 7) Comments from Wireless Policy Group LLC (**Planning Department Exhibit 6 - October 8, 2024 Letter**)
- 8) Comments from A T & T (**Planning Department Exhibit 7 – October 9, 2024**)

Letter)

- 9) Comments from Wireless Infrastructure Association (**Planning Department Exhibit 8 - October 9, 2024 Letter**)

PLANNING DEPARTMENT ANALYSIS

The Planning Director recently initiated a similar bill regarding telecommunication towers and antennas that has been reviewed by the Planning Commissions and forwarded with favorable recommendations to the County Council for action. Bill 194 incorporates some of the same amendments to the Zoning Code that were included in the Planning Director's proposed bill such as removing the requirement to secure a Use Permit to establish telecommunication antennas and towers and an increased setback from every property line of 120% of tower height.

The following points regarding Bill 194 are particularly significant and warrant careful consideration:

Bill 194's proposed structural requirements extend beyond the Zoning Code's authority and should be addressed by other regulatory agencies through their code such as building, fire, health, etc. Incorporating these provisions could complicate enforcement of the zoning code and lead to conflicts with existing regulations that would force the Planning Department to enforce regulations that are beyond its scope.

While Chapter 25 currently mandates that an applicant submit a plot plan for proposed telecommunication facilities, Bill 194's requirement in proposed **Section 25-2-74(1)** to provide a site plan displaying all buildings and uses within 300 feet of the subject parcel is excessive. A detailed rationale for including all nearby buildings and their current uses has not been provided; therefore, the Planning Director does not support this requirement.

Proposed **Section 25-2-74(3)** is not proposing to change the wind load capacities of 100 miles per hour (mph). The Planning Director's initiated bill proposes changing the wind load capacity to 130 mph which aligns with national safety and engineering guidelines.

Proposed **Section 25-2-74(5)** removes the existing requirement for applicants to provide a statement from the Federal Communications Commission (FCC) that a new tower either complies with FCC regulations or that such compliance is not necessary for

all new telecommunication tower and antenna applications. Instead, it proposes that a licensed professional electrical engineer submit a report certifying compliance with FCC and State of Hawai‘i standards, specifically regarding radio frequency (RF) emissions. This change is unnecessary because the FCC already regulates antennas and towers. Additionally, the proposed bill would require planners, who are not qualified as electrical engineers, to review the report and determine whether the tower meets these criteria.

Furthermore, the FCC regulations preempt local governments from imposing more restrictive RF emission standards than what is required by the federal government. As a result, requiring applicants to submit their own reports could inadvertently place the zoning code in conflict with federal regulations. It is crucial to remember that while counties may impose stricter requirements in areas such as aesthetics, zoning, and safety, they must still adhere to federal law.

Proposed **Sections 25-2-74 (5), (6), (7), (8) and (12)**, which address structural, fire safety, and flood hazards, should be governed under the Building, Fire, State Health, and Flood Codes rather than the Zoning Code. In addition, proposed **Section 25-2-74 (13)** which addresses maintenance requirements in accordance with industry standards would not fall under the scope of the Zoning Code, which focuses on planning and zoning.

Proposed **Section 25-2-74(15)** and **Section 25-4-12(e)** are redundant with the existing section of the Zoning Code, **Section 25-2-7** which already requires that Planning Department approvals be utilized within two years.

Proposed **Section 25-4-12(f)** provides an allowance for the Planning Director to engage a private consultant to inspect and determine whether the proposed use complies with FCC standards after Final Plan Approval is issued. This provision raises several concerns. Engaging private consultants could significantly increase costs for the County, imposing unnecessary financial burdens. The way that it is written, the intent is not clear this determination by the private consultant would be done after Plan Approval has been issued. At that stage, the next step would be to secure a building permit and construct the tower. It would be more logical to hire a consultant prior to Final Plan Approval than afterward. Regardless, the Director does not support this as this would place an undue financial burden on the County for the development of private towers. Furthermore, relying on private consultants may introduce delays in the approval process. This could

lead to lengthy and unpredictable timelines for applicants, counteracting the 60-day timeframe for approvals under HRS.

Moreover, the FCC has established protocols for compliance enforcement. Adding an additional layer of review via private consultants is redundant and risks inconsistency in interpretations of FCC standards. Given the potential for costs, delays, and regulatory overlap, including this provision in the Zoning Code is ill-advised.

Proposed **Section 25-4-12(h)** requires telecommunication towers to be sited in a prioritized order, starting with lands where there is an existing telecommunications facility (Priority Area 1) down to residentially zoned lands (Priority Area 4). It is unclear how Planning Department staff would manage the processing of applications in specific zoning districts while adhering to this priority to service a specific area. Is the intent of the bill to have the applicant provide analysis of alternative sites in lower priority areas that were determined to be unviable? Towers are typically sited to cover areas that do not have existing cell service, and if an underserved area does not have the requisite zoning to meet the criteria order, is the Planning Department required to deny processing the application, or is the Planning Department responsible to research and suggest other priority areas before processing the application? Based on the preceding and unclear intent, this prioritization may hinder timely decisions on permitting telecommunication antennas and towers, potentially exceeding the 60-day timeframe for approvals under State Law. Additionally, it remains unclear how to enforce this section of the code.

Finally, proposed **Sections 25-4-12(i)(3) and (4)**, which deal with the emergency power shut-off mechanism and surge protection, pertain more to operational and engineering standards that are typically governed by building codes or electrical regulations. As mentioned earlier, it is important to remember that the Zoning Code is primarily focused on land use, zoning, and structural placement, rather than specific technical requirements such as surge protection.

PLANNING DIRECTOR'S RECOMMENDATION

While acknowledging the County Council's effort in transmitting this legislation, the Planning Director does not support Bill 194 in its current form. The proposed extensive plan approval requirements—such as detailed engineering reports, FAA/FCC compliance statements, and various safety plans—extend beyond the expertise of land

use and zoning and should not be implemented in the Zoning Code. These requirements impose an excessive regulatory burden that may significantly hinder the deployment of telecommunication infrastructure.

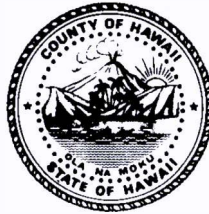
The bill's design requirements, and siting prioritization lack flexibility to site telecommunication facilities to serve the areas that need it most and may lead to impractical outcomes given the County's diverse topography and development patterns. Consequently, it could cause unnecessary delays and create compliance challenges with Hawai'i Revised Statutes Section 46-89.

Instead of adopting the amendments proposed in Bill 194, the Planning Director recommends adopting the amendments in the recent bill the Planning Director initiated. The amendments in the Director's proposed bill directly address standards for telecommunication infrastructure that fall within the purview of the Planning Department and the Zoning Code. Additionally, they provide clear justifications for the proposed amendments, ensuring they remain within the appropriate limits of the Zoning Code.

In light of these concerns, the Planning Director recommends that the Leeward and Windward Planning Commissions submit an **unfavorable recommendation regarding Bill 194 to the Hawai'i County Council for the amendment of Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 edition, as amended) relating to telecommunication antennas and towers.**

ASHLEY KIERKIEWICZ
Chairperson

HOLEKA GORO INABA
Vice Chair



CINDY EVANS
MICHELLE M. GALIMBA
JENN KAGIWADA
MATT KANEALI'I-KLEINFELDER
HEATHER L. KIMBALL
SUSAN L.K. LEE LOY
REBECCA VILLEGAS

HAWAI'I COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

DATE: August 23, 2024

TO: Planning Director Zendo Kern and Hawai'i County Leeward and Windward
Planning Commissions (Via Email)

FROM: Dr. Holeka Goro Inaba, Council Member
Council District 8

A handwritten signature in dark ink, appearing to read "Dr. Holeka Goro Inaba".

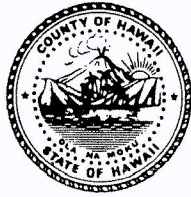
SUBJECT: Referral of Bill 194 to the Planning Director, Leeward and Windward Planning
Commissions; amends chapter 25, articles 1, 2, 4, 5, and 7, of the Hawai'i County
Code 1983 (2016 edition, as amended), relating to telecommunication antennas
and towers.

Pursuant to Section 25-2-43(b) of the Hawai'i County Code, on August 20, 2024, the Council
Committee on Planning, Land Use, and Development voted in favor of referring Bill 194 to the
Planning Director, and Leeward and Windward Planning Commissions for comments and
recommendations.

This referral directs the Planning Director and Leeward and Windward Planning Commissions to
provide their respective comments and recommendations, through the Mayor, to the County
Council within one-hundred twenty days of referral. Please return your comments and
recommendations to Council Chair Heather L. Kimball.

Thank you for your attention to this matter.

HGI/wpb
Attached: Bill 194

BILL NO. 194

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 25, ARTICLES 1, 2, 4, 5, AND 7, OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO TELECOMMUNICATION ANTENNAS AND TOWERS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Findings and purpose. The Council finds it necessary to provide standards and application requirements for the installation of telecommunication towers and antennas to minimize visual and operational effects through careful design, siting, and screening; to avoid potential damage to adjacent properties from tower failure through engineering and careful siting; and to maximize use of any new telecommunication tower or existing structures to reduce the number of towers needed. The Council further finds that due to the provisions of Hawai'i Revised Statutes, Section 46-89, the County Code must be updated for alignment with State regulations.

The purpose of this ordinance is to implement a uniform and comprehensive regulatory framework for the development, siting, installation, and maintenance of telecommunication antennas and telecommunication towers.

SECTION 2. Chapter 25, article 1, section 25-1-5, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by amending the definition of "Telecommunications antenna" in subsection (b) to read as follows:

““[Telecommunications] Telecommunication antenna” means an antenna, [~~tower and~~] equipment, repeater, wireless or broadband-related infrastructure, or other accessory structures for radio frequency (RF) transmissions intended for specific users who must have special equipment for transmission and/or reception. Also included are broadcasting facilities, lower power television, and small wireless facilities defined and regulated by the Federal [Communication] Communications Commission (FCC) under [the] Title 47 of the Code of Federal Regulations[, par. 74, which includes low power television]. Included are land-mobile or two-way radio, and one-way radio paging service broadcasting. Also included are independent receiving facilities which do not qualify as accessory uses. Not included are portable, hand held and vehicular transceivers or radios; industrial, scientific and medical equipment operating at frequencies designated for that purpose by the Federal Communications Commission (FCC); marketed consumer products, such as microwave ovens, citizens band radios, ham radios and remote control toys; and facilities for the receiving of these transmissions, including individual radio and television appliances.”

SECTION 3. Chapter 25, article 1, section 25-1-5 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by adding a definition in subsection (b) to be appropriately inserted and to read as follows:

““Telecommunication tower” or “tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed and primarily used to support a telecommunication antenna or antennas.”

SECTION 4. Chapter 25, article 2, division 6, section 25-2-61, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by amending subsection (a) to read as follows:

- “(a) The following uses shall be permitted within designated County zoning districts only if a use permit is obtained for the use from the commission:
- (1) Bed and breakfast establishments in RS, RA, FA, and A districts, provided that the property is within the state land use urban district.
 - (2) Crematoriums, funeral homes, funeral services and mortuaries in RS, RD, RM, RCX, RA, FA, A and V districts.
 - (3) Churches, temples and synagogues, including meeting facilities for churches, temples, synagogues and other such institutions, in RS, RD, RM, RA, FA, and A districts; provided that a minimum building site area of ten thousand square feet is required within the RS, RD, RM, and RA districts.
 - (4) Day care centers in RS, RD, RM, RA, FA and A districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
 - (5) Golf courses and related golf course uses including golf driving ranges, golf maintenance buildings, and golf club houses in the RS, RD, RM, RCX, RA, FA, A, V, CG, CV, and O districts, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
 - (6) Group living facilities that exceed the criteria in subsection 25-1-5(b), paragraph (b) of the definition of “group living facility” in the RS, RD, RM, RCX, RA, FA, A, CN, CG, CV, and V districts.
 - (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes in the RS, RD, RM, RCX, RA, FA, A, and V districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, RCX and RA districts.
 - (8) Major outdoor amusement and recreation facilities in RCX, RA, A, CN, CG, CV, MCX, ML, MG and O districts.
 - (9) Medical clinics in RS, RD, RM, RA, FA, and A districts.
 - (10) Schools in RS, RD, RM, RA, FA, A, V, MCX, ML, and MG districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
 - ~~[(11) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.]~~

- ~~[(+2)]~~ (11) Yacht harbors and boating facilities in the RS, RD, RM, RCX, RA, V, CG, CV, MCX, ML, MG and O districts.
- ~~[(+3)]~~ (12) Wind energy facilities in the O district; provided that the property is within the state land use agricultural district.
- ~~[(+4)]~~ (13) Other unusual and reasonable uses which are not specifically permitted in any zoning district with the approval of the director and the concurrence of the council by resolution.”

SECTION 5. Chapter 25, article 2, division 7, section 25-2-74, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended to read as follows:

“Section 25-2-74. Plan approval application requirements for telecommunication antennas~~[-]~~ or towers.

In addition to the application requirements for plan approval contained in section 25-2-72, an application for plan approval for a telecommunication antenna or tower shall contain the following information:

- (1) A plot plan showing the location of the proposed antenna or tower~~[-]~~ and all buildings and uses within three hundred feet thereof;
- (2) An elevation drawing of the building site showing the proposed antenna or tower relative to the ground surface and all existing structures;
- ~~[(2)]~~ (3) Building plans for the tower, certified by a licensed structural engineer, stating the maximum load of the tower and verifying that the tower, together with the initial antennas and other equipment or structures proposed to be installed thereon, will have a hard survivability for sustained winds of one hundred miles per hour~~[-]~~ or the applicable standard set forth in the current building code, whichever is greater;
- ~~[(3)]~~ (4) A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation; and
- ~~[(4)]~~ (5) ~~[A statement from the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.]~~ A report prepared by a person who is licensed in the State of Hawai‘i as a professional electrical engineer certifying that the proposed use complies with all applicable standards and regulations, including those related to radio frequency emissions, of the Federal Communications Commission and the State of Hawai‘i;
- (6) Electrical drawings and specifications of any antenna or equipment that have been prepared, designed, and stamped by a person who is licensed in the State of Hawai‘i as a professional electrical engineer;
- (7) A fire safety plan that meets the requirements of the Hawai‘i fire department and includes:
 - (A) A description of vegetation to be used for screening;
 - (B) An access easement to the building site in favor of the Hawai‘i fire department for fire suppression purposes to be kept in force until the abandonment or discontinuance of the proposed use; and

- (C) An executed agreement between the applicant and the Hawai'i fire department to allow for the installation, maintenance, and remote access of monitoring equipment on the building site; and
- (8) A statement from the State department of health regarding compliance with applicable standards for noise levels;
- (9) A statement from the applicant that the proposed use will not interfere with the County's land mobile radio system and other public emergency communication systems;
- (10) Documentation of efforts by the applicant to install or co-locate the proposed use in accordance with the order of priority set forth in section 25-4-12, subsection (g).
- (11) A decommissioning plan for the restoration of the building site to its original condition upon abandonment of the proposed use;
- (12) A statement that a geotechnical analysis of the soil conditions and flood hazard of the building site has been completed and verifies that the site is adequate to assure the stability of the proposed antenna or tower;
- (13) A maintenance plan in accordance with industry standards;
- (14) A copy of all required licenses issued by the Federal Communications Commission applicable to the proposed use;
- (15) A declaration that the proposed use will be operational within two years of the date of plan approval; and
- (16) A description of all lighting fixtures to be installed on the building site and used in connection with the proposed use, including a statement explaining how the proposed lighting is designed to minimize its effect on neighboring properties."

SECTION 6. Chapter 25, article 4, division 1, section 25-4-12, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended to read as follows:

"Section 25-4-12. Telecommunication antennas or towers.

- (a) ~~[A telecommunication antenna or tower shall be permitted in the V, CN, CG, CV, MCX, ML, MG and CDH districts; provided that the antenna, tower, and its use are not hazardous or dangerous to the surrounding area and the director has issued plan approval for such use. A telecommunication antenna or tower may be permitted in the RS, RD, RM, RCX, RA, FA, A, IA, and O districts if a use permit is obtained for such use. Where there is an existing telecommunication tower, co-location of additional antenna or equipment will be permitted provided the director has issued plan approval for such use.] A telecommunication antenna or tower, including any co-location of a new antenna upon an existing tower, shall be permitted in any zoning district, provided that the director has issued plan approval for such use.~~
- (b) ~~[The minimum setbacks for a telecommunication antenna and tower are as follows:~~
 - (1) ~~Freestanding antennas and towers shall be set back from every property line a minimum of one foot for every five feet of antenna or tower height.~~
 - (2) ~~Telecommunication antennas and towers supported by guy wires shall be set back from every property line a minimum of one foot for every one foot of antenna or tower height.]~~

- Telecommunication towers shall be set back from every property line no less than one hundred and twenty percent of tower height.
- (c) The tower, together with the initial antennas or other equipment proposed to be installed thereon, shall have a hard survivability for sustained winds of at least one hundred miles per hour[-] or the applicable standard set forth in the current building code, whichever is greater.
 - (d) A telecommunication antenna or tower shall not be permitted within one thousand feet of any property line of any hospital, school, or residential district.
 - (e) The proposed use shall be operational within two years of the date of plan approval or a longer time as may be agreed to by the director and the applicant. Failure of the applicant to comply with this requirement shall cause such plan approval to expire.
 - (f) The director may engage a private consultant to inspect and determine whether the proposed use violates any applicable standard of the Federal Communications Commission, provided that the time during which the private consultant is so engaged shall not count toward the time limit set forth in subsection (e).
 - (g) No telecommunication antenna may produce at any time power densities or radio frequency exposure levels that exceed the current standards of the Federal Communications Commission regarding radio frequency emissions applicable to the proposed use.
 - (h) Telecommunication antennas and towers shall be sited in accordance with the following order of priority:
 - (1) On building sites with existing telecommunication antennas or towers;
 - (2) On industrial zoned lands;
 - (3) All other lands, exclusive of industrial zoned lands and residential zoned lands; and
 - (4) Residential zoned lands.
 - (i) The design of a telecommunication antenna or tower shall include:
 - (1) The external appearance constructed of non-reflective and nonflammable materials;
 - (2) All associated equipment properly shielded to protect against fire risk;
 - (3) An emergency power shut-off mechanism;
 - (4) Surge protection to protect against significant electrical disturbance; and
 - (5) Signage that:
 - (i) Displays the owner of the antenna or tower, information by which the antenna or tower can be identified and located, and a telephone number for the owner or the owner's representative with responsibility for the antenna or tower; and
 - (ii) Is conspicuously posted in accordance with section 25-2-12, subsection (c), except that where no public road borders the subject property, such signage shall be posted at or near all property boundaries adjacent to properties not owned by the owner of the building site.
 - (j) All electrical support equipment shall be screened from public view in cabinets, boxes, or other similar structures; provided that, where practicable, all electrical support equipment shall be located and secured underground.

- (k) No outdoor storage facilities or structures related to the proposed use may be kept or maintained on the building site, except during the period of construction or to provide power to the antenna or tower on an emergency basis.
- (l) The applicant shall provide proof of a public liability insurance policy in an amount determined by the director and kept in effect until the abandonment of the subject use.”

SECTION 7. Chapter 25, article 5, division 1, section 25-5-3, division 2, section 25-5-22, division 3, section 25-5-32, division 4, section 25-5-42, division 5, section 25-5-52, division 6, section 25-5-62, and division 7, section 25-5-72 of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by repealing each paragraph reading “Telecommunication antennas and towers.” in the respective subsections (b) thereof and appropriately renumbering all subsequent paragraphs.

SECTION 8. Chapter 25, article 5, division 1, section 25-5-3, division 2, section 25-5-22, division 3, section 25-5-32, division 4, section 25-5-42, division 5, section 25-5-52, division 6, section 25-5-62, and division 7, section 25-5-72 of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by adding a paragraph to be appropriately inserted in the respective subsections (a) thereof and to read “Telecommunication antennas and towers, as permitted under section 25-4-12.” and by appropriately renumbering all subsequent paragraphs.

SECTION 9. Chapter 25, article 5, division 8, section 25-5-82 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended to read as follows:

“Section 25-5-82. Permitted uses.

- (a) The following uses shall be permitted in the IA district:
 - (1) Agricultural parks.
 - (2) Agricultural products processing, major and minor.
 - (3) Agricultural tourism as permitted under section 25-4-15.
 - (4) Aquaculture.
 - (5) Cemeteries, as permitted under chapter 6, article 1 of this Code.
 - (6) Crop production.
 - (7) Farm dwellings, as permitted under sections 25-5-87(b) and (c).
 - (8) Forestry.
 - (9) Livestock production, provided that piggeries, apiaries and pen feeding of livestock shall not be closer than one thousand feet to any major road or to any district other than the A district on building sites approved by the State department of health and the director.
 - (10) Public uses and structures which are necessary for agricultural practices.
 - (11) Telecommunication antennas and towers, as permitted under section 25-4-12.
 - ~~[(11)]~~ (12) Utility substations, as permitted under 25-4-11.
- ~~[(b)]~~ ~~The following uses may be permitted in the IA district, provided that a use permit is obtained for such use:~~
 - ~~(1) Telecommunication antennas and towers.~~

- (e)] (b) The following uses may be permitted in the IA districts, provided that a special permit is obtained for such use:
- (1) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (2) Churches, temples, or synagogues.
 - (3) Community buildings as permitted under section 25-4-11.
 - (4) Day care centers.
 - (5) Hospitals.
 - (6) Public uses and structures, other than those necessary for agricultural purposes, as permitted under section 25-4-11.
 - (7) Uses other than those specifically listed in this section, which meet the standards for a special permit under chapter 205, Hawai‘i Revised Statutes.
- [(d)] (c) In IA districts in areas with over thirty percent slope, in gullies, and where rough terrain discourages intensive agricultural uses, the director may approve any other uses which are permitted in the RA, FA, or A districts.
- [(e)] (d) Buildings and uses accessory to the uses permitted in this section shall also be permitted in the IA district.
- [(f)] (e) No building site shall be established in the IA district which shall in any way restrict or limit the uses permitted under this section.”

SECTION 10. Chapter 25, article 5, division 16, section 25-5-162 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by amending subsections (a) and (b) to read as follows:

- “(a) The following uses shall be permitted in the O district:
- (1) Aquaculture activities and facilities.
 - (2) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (3) Community buildings, as permitted under section 25-4-11.
 - (4) Existing churches and temples of historical significance.
 - (5) Forestry.
 - (6) Game preserves.
 - (7) Growing of plants provided such growth does not impair a view intended to be preserved in the O district.
 - (8) Heiaus, historical areas, structures, and monuments.
 - (9) Natural features, phenomena, and vistas as tourist attractions.
 - (10) Private recreational uses involving no aboveground structure except dressing rooms and comfort stations.
 - (11) Public parks.
 - (12) Public uses and structures, as permitted under section 25-4-11.
 - (13) Telecommunication antennas and towers, as permitted under section 25-4-12.
- [(+13)] (14) Utility substations, as permitted under section 25-4-11.
- (b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the O district, provided that a use permit is issued for each use:
- (1) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (2) Golf courses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted

within the state land use agricultural district unless approved by the County before July 1, 2005.

- (3) Yacht harbors and boating facilities; provided that the use, in its entirety, is compatible with the stated purpose of the O district.
- (4) Wind energy facilities; provided that the property is within the state land use agricultural district.
- ~~[(5) Telecommunication antennas:]~~

SECTION 11. Chapter 25, article 5, division 9, section 25-5-92, division 10, section 25-5-102, division 11, section 25-5-112, division 12, section 25-5-122, division 14, section 25-5-142, division 15, section 25-5-152, and article 7, division 2, section 25-7-22 of the Hawai'i County Code 1983 (2016 Edition, as amended) are amended by striking "Telecommunication antennas," and inserting "Telecommunication antennas and towers," in lieu thereof.

SECTION 12. Chapter 25, article 5, division 13, section 25-5-132 of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by striking "Telecommunications antennas," and inserting "Telecommunication antennas and towers," in lieu thereof.

SECTION 13. Except as otherwise provided herein, material to be repealed is bracketed and stricken and new material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 14. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 15. This ordinance shall take effect upon its approval.

INTRODUCED BY:

for

Cindy Evans

COUNCIL MEMBER, COUNTY OF HAWAII

_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:

Mitchell D. Roth
Mayor



Benjamin T. Moszkowicz
Police Chief

Reed K. Mahuna
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

September 13, 2024

COH PLANNING DEPT
SEP 18 2024 AM 10:35

REC'D HAND DELIVERED

TO : ZENDO KERN, PLANNING DIRECTOR

FROM : BENJAMIN T. MOSZKOWICZ, POLICE CHIEF 

SUBJECT : COUNTY COUNCIL INITIATED BILL NO. 194 (PL-CCI-2024-000009)
AMENDMENT TO CHAPTER 25 (ZONING), ARTICLES 1, 2, 4, 5, AND 7 OF
THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED)
RELATING TO TELECOMMUNICATION ANTENNAS AND TOWERS

Staff has reviewed the above-referenced amendments and provide the following comments.

The Hawai'i Police Department relies heavily on telecommunication antennas and towers both for its land mobile radio-based communications as well as cellular networks to carry data, voice and text information for our mobile data platforms. Hawai'i Island is a challenging environment for wireless telecommunications due to its geography and terrain.

While Hawai'i County's own land mobile radio system is operated by the Hawai'i County Civil Defense Agency, the Police Department is very sensitive to the radio system's reliability and range. Currently, there are areas within Hawai'i County that do not have reception and the only solution is to construct new telecommunications antennas and/or towers. Any amendments that make that less feasible would present an obstacle to the Police Department's mission of public safety.

For these reasons, the Hawai'i Police Department does not support these proposed amendments. The Hawai'i Police Department recommends that some exemption for public safety agencies' telecommunications antennas and towers be explored to alleviate these concerns.

If you have any additional questions or concerns regarding this matter, please feel free to contact Major Jeremie Evangelista of our Technical Services Division at (808) 961-2262 or via email at jeremie.evangelista@hawaiiicounty.gov.

AB/jce

24HQ0969

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
CURT T. OTAGURO
ROBIN K. SHISHIDO

IN REPLY REFER TO:

STP 00579.24
STP 8.3828

September 18, 2024

VIA EMAIL: planning@hawaiiicounty.gov

Mr. Zendo Kern
Planning Director
County of Hawaii
Planning Department
East Hawaii Office
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Dear Mr. Kern:

Subject: County Council Initiated Bill No. 194 (PL-CCI-2024-000009)
Amendment to Chapter 25 (Zoning), Articles 1, 2, 4, 5, and 7
of the Hawaii County Code 1983 (2016 Edition, as Amended)
Relating to Telecommunication Antennas and Towers

Thank you for your letter, dated September 6, 2024, requesting the Hawaii Department of Transportation's (HDOT) review and comments on the subject Hawaii County Council Initiated Bill No. 194.

HDOT supports the proposed amendments and has no comments.

Please submit any subsequent land use entitlement-related requests for review or correspondence to the HDOT Land Use Intake email address at DOT.LandUse@hawaii.gov.

If there are any questions, please contact Mr. Blayne Nikaido, Planner, Land Use Section of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Sniffen", is written over a horizontal line.

EDWIN H. SNIFFEN
Director of Transportation

Planning Dept.
Exhibit 3

Oda, Michelle

From: Nelson, Jay <jay_nelson@fws.gov>
Sent: Monday, September 30, 2024 9:14 AM
To: Coble, Tiara K.; Planning Internet Mail
Subject: Information provided for consideration, Referral of Bill 194 to Planning Director
Attachments: Animal Avoidance and Minimization Measures - FINAL May 2023.docx

Aloha Tiara,

The U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (USFWS/PIFWO) received your email, Subject: Referral of Bill 194 to the Planning Director, Leeward and Windward Planning Commissions; amends chapter 25, articles 1, 2, 4, 5, and 7, of the Hawaii County Code 1983 (2016 edition, as amended), relating to telecommunication antennas and towers, on September 9, 2024.

Enclosed are Avoidance and Minimization Measures for ESA (Endangered Species Act) listed animals that PIFWO has jurisdiction in the Pacific Region. These measures include recommendations to minimize risk to listed Hawaiian seabirds from telecommunication antennas and towers.

Thank you for the opportunity to review and provide comments on the subject application.

Jay

Jay Nelson
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard
Honolulu, HI 96850

FINAL Avoidance and Minimization Measures (AMMs)
Final revised May 2023

ESA Listed Species

Endangered ‘ōpe‘ape‘a (Hawaiian hoary bat, *Lasiurus cinereus semotus*): The Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you incorporate the following applicable measures into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15).
- Do not use barbed wire for fencing.

Endangered ‘ua‘u (Hawaiian petrel, *Pterodroma sandwichensis*), Threatened ‘a‘o, (Newell’s shearwater, *Puffinus newelli*), and Endangered Hawai‘i Distinct Population Segment of the ‘akē‘akē (band-rumped storm-petrel, *Hydrobates castro*):

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable to light attraction.

To avoid and minimize potential project impacts to seabirds we recommend you incorporate the following measures into your project description:

- Fully shield all outdoor lights so the bulb can only be seen from below.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.

Listed seabirds have been documented colliding with communication towers, particularly in areas of high seabird passage rate. In general, self-supporting monopoles are the least likely to result in collisions, whereas lattice towers, particularly those that rely on guy-wires, have a greater risk.

To avoid and minimize the likelihood that towers will result in collisions by listed seabirds we recommend you incorporate the following measures into your project description:

- The profile of the tower should be as small as possible, minimize the extent of the tower that protrudes above the surrounding vegetation layer, and avoid the use of guywires.
- If the top of the tower must be lit to comply with Federal Aviation Administration regulations, use a flashing red light versus a steady-beam red or white light.
- If possible, co-locate with existing towers or facilities.

Seabirds have been known to collide with fences, powerlines, and other structures near nesting colonies. To avoid and minimize the likelihood of collision we recommend you incorporate the following measures into your project description:

- Where fences extend above vegetation, integrate three strands of polytape into the fence to increase visibility.
- For powerlines, guy-wires and other cables, minimize exposure above vegetation height and vertical profile.

We recommend further coordination with our office to address specific project details and potential seabird interactions.

Threatened nēnē (Hawaiian goose, *Branta (Nesochen) sandvicensis*): Nēnē are found on the islands of Hawai‘i, Maui, Moloka‘i, and Kaua‘i. They are observed in a variety of habitats, but prefer open areas, such as pastures, golf courses, wetlands, natural grasslands and shrublands, and lava flows. Threats to the species include introduced mammalian and avian predators, wind facilities, and vehicle strikes.

To avoid and minimize potential project impacts to nēnē we recommend you incorporate the following measures into your project description:

- Do not approach, feed, or disturb nēnē.
- If nēnē are observed loafing or foraging within the project area during the breeding season (September through April), have a biologist familiar with nēnē nesting behavior survey for nests in and around the project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest).
- Cease all work immediately and contact the Service for further guidance if a nest is discovered within a radius of 150 feet of proposed project, or a previously undiscovered nest is found within the 150-foot radius after work begins.
- In areas where nēnē are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.

A 4(d) rule was established at the time the nēnē was downlisted to threatened status. Under the 4(d) rule, the following actions are not prohibited under the Act, provided the additional measures described in the downlisting rule are adhered to:

- Take by landowners, or their agents, conducting intentional harassment in the form of hazing or other deterrent measures not likely to cause direct injury or mortality, or nēnē surveys.

- Take that is incidental to conducting lawful control of introduced predators or habitat management activities for nēnē.
- Take by authorized law enforcement officers for the purpose of aiding or euthanizing sick, injured, or orphaned nēnē; disposing of dead specimens; and salvaging a dead specimen that may be used for scientific study.

Endangered Hawaiian waterbirds (ae‘o, Hawaiian stilt, *Himantopus mexicanus knudseni*; ‘alae ke‘oke‘o, Hawaiian coot, *Fulica alai*; ‘alae ‘ula, Hawaiian common gallinule, *Gallinula galeata sandvicensis*; koloa maoli, Hawaiian duck, *Anas wyvilliana*): Hawaiian waterbirds are currently found in a variety of wetland habitats including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, kalo or taro (*Colocasia esculenta*) lo‘i or patches, irrigation ditches, sewage treatment ponds, and in the case of the Hawaiian duck, montane streams and marshlands. Hawaiian stilts may also be found wherever ephemeral or persistent standing water may occur. Threats to these species include non-native predators, habitat loss, and habitat degradation. Hawaiian ducks are also subject to threats from hybridization with introduced mallards.

Based on the project details provided, your project may result in the creation of standing water or open water that could attract Hawaiian waterbirds to the project site. In particular, the Hawaiian stilt is known to nest in sub-optimal locations (e.g., any ponding water), if water is present. Hawaiian waterbirds attracted to sub-optimal habitat may suffer adverse impacts, such as predation and reduced reproductive success, and thus the project may create an attractive nuisance. Therefore, we recommend you work with our office during project planning so that we may assist you in developing measures to avoid impacts to listed species (e.g., fencing, vegetation control, predator management).

To avoid and minimize potential project impacts to Hawaiian waterbirds we recommend you incorporate the following measures into your project description:

- In areas where waterbirds are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.
- If water resources are located within or adjacent to the project site, incorporate applicable best management practices regarding work in aquatic environments into the project design (see enclosure).
- Have a biological monitor that is familiar with the species’ biology conduct Hawaiian waterbird nest surveys where appropriate habitat occurs within the vicinity of the proposed project site prior to project initiation. Repeat surveys again within 3 days of project initiation and after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest). If a nest or active brood is found:
 - Contact the Service within 48 hours for further guidance.
 - Establish and maintain a 100-foot buffer around all active nests and/or broods until the chicks/ducklings have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer.
 - Have a biological monitor that is familiar with the species’ biology present on the project site during all construction or earth moving activities until the

chicks/ducklings fledge to ensure that Hawaiian waterbirds and nests are not adversely impacted.

Endangered Hawaiian forest birds (O‘AHU: O‘ahu ‘elepaio, *Chasiempis ibidis*; ‘i‘iwi, *Drepanis coccinea*; KAUAI: puaiohi, *Myadestes palmeri*; ‘akikiki, *Oreomystis bairdi*; akeke‘e, *Loxops caeruleirostris*; ‘i‘iwi, *Drepanis coccinea*; HAWAI‘I: ‘akiapōlā‘au, *Hemignathus wilsoni*; ‘alawī, Hawai‘i creeper, *Loxops mana*; Hawai‘i ‘ākepa, *Loxops coccineus*; palila, *Loxioides bailleui*; ‘i‘iwi, *Drepanis coccinea*; MAUI: kiwikiu, Maui parrotbill, *Pseudonestor xanthophrys*; ‘ākohekohe, crested honeycreeper, *Palmeria dolei*; ‘i‘iwi, *Drepanis coccinea*; MOLOKA‘I: ‘i‘iwi, *Drepanis coccinea*

LISTED SPECIES BELIEVED TO BE EXTINCT: O‘ahu ‘alauahio, *Paroreomyza maculata*; kāmā‘o, *Myadestes myadestinus*; Kaua‘i ‘ō‘ō, *Moho braccatus*; Kaua‘i nuku pu‘u, *Hemignathus hanapepe*; Kaua‘i ‘akialoa, *Akialoa stejnegeri*; po‘ouli, *Melamprosops phaeosoma*; Maui nuku pu‘u, *Hemignathus affinis*; Maui ‘ākepa, *Loxops ochraceus*; kākāwahie, *Paroreomyza flammea*; Moloka‘i oloma‘o, *Myadestes lanaiensis rutha*; ‘ō‘ū, *Psittirostra psittacea*.

NOTE: Playback surveys may require a permit or an SOP reviewed and approved by PIFWO that would only result in minimal disturbance to forest birds.

Hawaiian forest birds’ current ranges are predominately restricted to montane forests above 3,500 feet in elevation due to habitat loss and threats at lower elevations. Hawaiian forest bird habitat has been lost due to development, agriculture, grazing, wildfire, and spread of invasive habitat-altering species. Forest birds are also affected by mosquito-borne diseases. Mosquitoes are not native to Hawai‘i; their occurrence increases in areas where ungulate presence results in small pools of standing water. Actions such as road construction and development increase human access and result in increased wildfire and invasive species threats. Grazing results in reductions in woody vegetation and increased grass cover, which reduces forest habitat quality and results in increased wildfire risk on the landscape.

Avoid conducting activities within forest bird habitat that:

- Promote the spread or survival of invasive species.
- Increase mosquito populations or stagnant water habitat.
- Increase wildfire threat to montane forest habitats.
- Remove tree cover during the peak breeding season between January 1 and June 30.

Endangered Blackburn’s sphinx moth (*Manduca blackburni*): NOTE: Found on Hawai‘i, Maui, Kaho‘olawe, Moloka‘i, and Lāna‘i.

The adult Blackburn’s sphinx moth feeds on nectar from native plants, including beach morning glory (*Ipomoea pes-caprae*), ‘ilie‘e (*Plumbago zeylanica*), maiapilo (*Capparis sandwichiana*), and others. Blackburn’s sphinx moth larvae feed on non-native tree tobacco (*Nicotiana glauca*) and native ‘aiea (*Nothocestrum* spp.). To pupate, the larvae burrow into the soil and can remain in a state of torpor for a year or more before emerging from the soil. Soil disturbance can result in death of the pupae.

We offer the following survey recommendations to assess whether the Blackburn's sphinx moth occurs within the project area:

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation.
 - Surveys should be conducted during the wettest portion of the year (usually November-April or several weeks after a significant rain) and within 4-6 weeks prior to construction.
 - Surveys should include searches for adults, eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage).
 - If moths, eggs, larvae, or native 'aiea or tree tobacco over 3 feet tall, are found during the survey, please contact the Service for additional guidance to avoid impacts to this species.

If no Blackburn's sphinx moth, 'aiea, or tree tobacco are found during surveys, it is imperative that measures be taken to avoid attraction of Blackburn's sphinx moth to the project location and prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. We therefore recommend that you:

- Remove any tree tobacco less than 3 feet tall.
- Monitor the site every 4-6 weeks for new tree tobacco growth before, during, and after the proposed ground-disturbing activity.
 - Monitoring for tree tobacco can be completed by any staff, such as groundskeeper or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.

Threatened (Central North Pacific DPS) (Hawai'i and Johnston Atoll) and Endangered (Central West Pacific DPS (Mariana Archipelago and Wake NWR) and Central South Pacific DPS (American Samoa, Palmyra, Kingman, Howland, Baker and Jarvis NWR)) Green sea turtles (*Chelonia mydas*) and Endangered Hawksbill sea turtle (*Eretmochelys imbricata*) (collectively referred to as sea turtles): The Service consults on sea turtles and their use of terrestrial habitats (beaches where nesting and/or basking is known to occur), whereas the National Oceanic and Atmospheric Administration (NOAA) Fisheries consults on sea turtles in aquatic habitats. We recommend that you consult with NOAA Fisheries regarding the potential impacts from the proposed project if it may affect off-shore or open ocean habitats.

INTERNAL NOTE: We assume that all sandy beaches may provide nesting and/or basking habitat for green sea turtles. We assume that all lighting that is visible from a beach environment has the potential to affect sea turtle nesting and hatchling emergence.

Green sea turtles may nest on any sandy beach area in the Pacific Islands. Hawksbill sea turtles exhibit a wide tolerance for nesting substrate (ranging from sandy beach to crushed coral) with nests typically placed under vegetation. Both species exhibit strong nesting site fidelity. Nesting occurs on beaches from May through September, peaking in June and July, with hatchlings emerging through November and December.

Construction on, or in the vicinity of, beaches can result in sand and sediment compaction, sea turtle nest destruction, beach erosion, contaminant and nutrient runoff, and an increase in direct and ambient light pollution which may disorient hatchlings or deter nesting females. Off-road vehicle traffic may result in direct impacts to sea turtles or nests, and also contributes to habitat degradation through erosion and compaction.

Projects that alter the natural beach profile, such as nourishment and hardening, including the placement of seawalls, jetties, sandbags, and other structures, are known to reduce the suitability of on-shore habitat for sea turtles. These types of projects often result in sand compaction, erosion, and additional sedimentation in nearshore habitats, resulting in adverse effects to the ecological community and may inhibit future sea turtle nesting. The hardening of a shoreline increases the potential for erosion in adjacent areas, resulting in subsequent requests to install stabilization structures or conduct beach nourishment in adjacent areas. Given projected sea level rise estimates, the likelihood of increase in storm surge intensity, and other factors associated with climate change, we anticipate that beach erosion will continue and likely increase.

Where possible, projects should consider alternatives that avoid the modification or hardening of coastlines. Beach nourishment or beach hardening projects should evaluate the long-term effect to sea turtle nesting habitat and consider the cumulative effects.

To avoid and minimize project impacts to sea turtles and their nests we recommend you incorporate the following measures into your project description:

- No vehicle use on or modification of the beach/dune environment during the sea turtle nesting or hatching season (May to December).
- Do not remove native dune vegetation.
- Incorporate applicable best management practices regarding Work in Aquatic Environments (see enclosed) into the project design. Have a biologist familiar with sea turtles conduct a visual survey of the project site to ensure no basking sea turtles are present.
 - If a basking sea turtle is found within the project area, cease all mechanical or construction activities within 100 feet until the animal voluntarily leaves the area.
 - Cease all activities between the basking turtle and the ocean.
- Remove any project-related debris, trash, or equipment from the beach or dune if not actively being used.
- Do not stockpile project-related materials in the intertidal zone, reef flats, sandy beach and adjacent vegetated areas, or stream channels.

Optimal sea turtle nesting habitat is a dark beach free of barriers that restrict sea turtle movement. Nesting turtles may be deterred from approaching or laying successful nests on lighted or disturbed beaches. They may become disoriented by artificial lighting, leading to exhaustion and placement of a nest in an inappropriate location (such as at or below the high tide line). Hatchlings that emerge from nests may also be disoriented by artificial lighting. Inland areas visible from the beach should be sufficiently dark to allow for successful navigation by hatchlings to the ocean.

To avoid and minimize project impacts to sea turtles from lighting we recommend incorporating the following applicable measures into your project description:

- Avoid nighttime work during the nesting and hatching season (May to December).
- Minimize the use of lighting on or near beaches and shield all project-related lights so the light is not visible from any beach.
 - If lights can't be fully shielded or if headlights must be used, fully enclose the light source with light filtering tape or filters.
- Incorporate design measures into the construction or operation of buildings adjacent to the beach to reduce ambient outdoor lighting such as:
 - tinting or using automatic window shades for exterior windows that face the beach;
 - reducing the height of exterior lighting to below 3 feet and pointed downward or away from the beach; and
 - minimize light intensity to the lowest level feasible and, when possible, include timers and motion sensors.

Endangered pe'e pe'e maka'ole, Kaua'i cave wolf spider (*Adelocosa anops*) and Kaua'i cave amphipod (*Spelaeorchestia koloana*): NOTE: Restricted to subterranean mesocavern (cracks, voids, spaces, caves) bearing rock with above ground soil deposits of less than 12 inches within the Koloa District of the island of Kaua'i. Mesocaverns that provide appropriate food sources (woody debris, plant roots penetrating the mesocavern) and conditions approaching 100 percent relative humidity levels are likely to contain these unique animals. All known areas likely to contain these animals have been designated critical habitat for these species.

The Kaua'i cave wolf spider and amphipod may be in the vicinity of the proposed project area. In addition, the proposed project also occurs within designated critical habitat for both animals. One of the primary threats to these two species is their mesocavern (underground spaces, caves, cracks, crevices) habitat being exposed to drying conditions, most typically from increased airflow created by breaking through the mesocaverns.

Survey Recommendations:

- Survey the project area for depth of soil deposits and the presence of caves. Any areas with soil deposits greater than 12 inches are not likely to provide appropriate habitat or have the species present. Contact the Service and do not disturb the vegetation or soil in areas with soil deposits less than 12 inches or if a cave is found.

Enhance cave invertebrate habitat if possible:

- Outplant native plants like maiapilo (*Capparis sandwichiana*) so roots eventually provide a food source and irrigate the surface. Control established ecosystem-altering non-native invasive plant species around all caves.
- Enhance habitat by sealing currently non-occupied caves with temporary air blocks – to increase relative humidity by restricting air flow through cave entrances.
- Design permanent air blocks (e.g., walls) and develop plans to replace temporary air blocks.

Endangered picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. digressa*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. sharpi*, *D. substenoptera*, *D. tarphytrichia*):

Picture-wing flies live in montane forest habitat and are restricted to single islands. Larvae of each species are dependent on a single or a few related plant species. The flies are threatened by destruction of habitat from non-native ungulates and invasive weeds, and also directly threatened by a variety of introduced invertebrates, including yellow jackets, crane flies, and several ant species.

- Avoid clearing forest vegetation within 200 feet of a site potentially occupied by endangered *Drosophila*.
- Restrict construction equipment to existing roads and trails.
- If the site is potentially occupied by endangered *Drosophila* based on location and presence of host plants, consult the Service since permits are required to conduct surveys.

NOTE: Cross-reference with the plant BMPs, as some host plants are also endangered (see below). Pesticide use may require a larger buffer distance and the Service should be consulted.

General Species Information (check Critical Habitat layers for specific locations):

Species	Island	Habitat	Host plant(s)
<i>D. aglaia</i> :	O'ahu	Mesic forest	<i>Touchardia oahuensis</i>
<i>D. differens</i>	Moloka'i	Wet forest	<i>Clermontia</i> spp.
<i>D. digressa</i>	Hawai'i	Mesic to wet forest	<i>Charpentiera</i> spp., <i>Ceodes</i> spp. or <i>Rockia sandwicensis</i> (<i>Pisonia</i> spp.)
<i>D. hemipeza</i>	O'ahu	Mesic forest	<i>Cyanea</i> spp., <i>Lobelia</i> spp., and <i>Urera kaalae</i>
<i>D. heteroneura</i>	Hawai'i	Mesic to wet forest	<i>Cheirodendron trigynum</i> ssp. <i>trigynum</i> , <i>Clermontia</i> spp., <i>Delissea argutidentata</i>
<i>D. montgomeryi</i>	O'ahu	Mesic forest	<i>Urera kaalae</i>
<i>D. mulli</i>	Hawai'i	Wet forest	<i>Pritchardia beccariana</i>
<i>D. musaphilia</i>	Kaua'i	Mesic forest	<i>Acacia koa</i>
<i>D. neoclavisetae</i>	Maui	Wet forest	<i>Cyanea</i> spp.
<i>D. obatai</i>	O'ahu	Dry to mesic forest	<i>Dracaena</i> spp.
<i>D. ochrobasis</i>	Hawai'i	Mesic to wet forest	<i>Clermontia</i> spp., <i>Marattia</i> spp., <i>Myrsine</i> spp.
<i>D. sharpi</i>	Kaua'i	Wet forest	<i>Cheirodendron</i> spp, <i>Polyscias</i> spp.
<i>D. substenoptera</i>	O'ahu	Wet forest	<i>Cheirodendron</i> spp, <i>Polyscias</i> spp.
<i>D. tarphytrichia</i>	O'ahu	Mesic forest	<i>Charpentiera</i> spp.

Endangered Hawaiian yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hiliaris*, *H. kuakea*, *H. longiceps*, and *H. mana*): NOTE: You cannot survey for bees without a permit as identification of yellow-faced bees requires trapping, capturing, and holding. The only recommendation we can provide is for the project proponent to consult with us to avoid Section

9 violations and protect the host plants. For the non-coastal species we can also recommend ant control. Pesticide use may require a larger buffer distance and the Service should be consulted.

General species information (bold islands are known populations):

Species	Island(s)	Habitat
<i>H. anthracinus</i>	Hawai'i, Maui, Kaho'olawe, Lāna'i, Moloka'i, O'ahu	Coastal and lowland dry forests
<i>H. assimulans</i>	Maui, Kaho'olawe, Lāna'i, O'ahu	Coastal and lowland dry forests
<i>H. facilis</i>	Maui, Lāna'i, Moloka'i, O'ahu	Coastal and dry and mesic shrublands and forests
<i>H. hilaris</i>	Maui, Lāna'i, Moloka'i	Coastal to dry forest; obligate parasite on <i>H. anthracinus</i> , <i>H. longiceps</i> , and <i>H. asssimulans</i> .
<i>H. kuakea</i>	O'ahu	Lowland mesic
<i>H. longiceps</i>	Maui, Lāna'i, Moloka'i, O'ahu	Coastal and dry shrubland
<i>H. mana</i>	O'ahu	Lowland mesic; possible close association with <i>Santalum freycinetianum</i>

For coastal species, we can offer:

Coastal populations of yellow-faced bees occur in habitat along rocky shorelines with *Scaevola taccada* (naupaka) and *Heliotropium arboreum* (tree heliotrope) with either landscaped vegetation, non-native kiawe (*Prosopis pallida*), or bare rock inland. Bees are restricted to an extremely narrow corridor, typically 10–20 meters wide, and do not occur on sandy beaches or inland, or on landscaped native plants on hotel grounds. Documented nectar plants include naupaka, *Sida fallax* ('ilima), *Euphorbia* spp. ('akoko), *Argemone glauca* (pua kala), *Myoporum sandwicense* (naio), and tree heliotrope.

Hylaeus kuakea has only been found at two sites in lowland mesic forest of the Wai'anae Mountains. Little is known about its habitat needs and distribution within its range.

Hylaeus mana is restricted to a few populations in a narrow band of native mesic koa forest around 1,400 feet in elevation in the Ko'olau Mountains. Limited information suggests that it has a possible close association with *Santalum freycinetianum*.

Threats to yellow-faced bees include habitat destruction and modification from land use change, non-native plants, ungulates, and fire, along with predation by non-native ants and wasps.

To avoid and minimize project impacts to yellow-faced bees and their nests, we recommend you incorporate the following applicable measures into your project description:

- If an action will occur in or adjacent to known occupied habitat, a buffer area around the habitat may be required and can be worked out on a site-specific basis through consultation with the Service.
- For coastal species, protect all coastal strand habitat from human disturbance, including:
 - No fires or wood collecting.
 - Leave woody debris in place.

- Restrict vehicles to existing roads and trails.
- Post educational signs to inform people of the presence of sensitive species.

Endangered Hawaiian tree snails (*Achatinella* spp., (O‘ahu), *Partulina* spp. (Lāna‘i), Newcomb’s tree snail (*Newcombia cumingi*) (West Maui)), Tutuila tree snail (*Eua zebrina*) (American Samoa) and the American Samoa land snail Sisi or akaleha’ (*Ostodes strigatus*):

Note: Surveys for different species of tree snails may require permits. Check with Annie and Joy about what is required if surveys are recommended. If permits are not needed we can offer the current tree snail survey protocol and the following recommendations.

Hawai‘i: Hawaiian tree snails are found in montane wet forests, usually dominated by ‘ōhi‘a (*Metrosideros polymorpha*). Snails feed on fungi and algae that grow on the leaves of trees. *Newcombia cumingi* is found nearly exclusively on ‘ōhi‘a, while other species can occur on a variety of predominately native, but also some non-native tree species. Common native species include *Hydrangea arguta*, *Psychotria* spp., *Melicope* spp., *Coprosma* spp., *Kadua* spp., *Antidesma* spp., and *Perrottetia sandwicensis*. Threats to tree snails include habitat destruction and fragmentation resulting from the impacts of non-native ungulates such as pigs, goats, and deer, habitat modification due to invasive plants, and predation by non-native mammals, reptiles, flatworms, and snails. Wildfire is also a threat to the tree snails.

American Samoa: *Eua zebrina* is a tree snail found on the islands of Tutuila and Ofu, where they are found primarily on leaves of understory trees. Native forest canopy and understory is a critical need for this species, as all live snails have been found on understory plants beneath native canopy. *Ostodes strigatus* is a ground-dwelling snail found in rocky areas under relatively closed canopy with sparse understory. It is endemic to Tutuila. Closed canopies and areas with heavy tree cover appear to be an important habitat factor for this species. Threats include habitat destruction through agriculture, urban development and introduced ungulates, fire, predation by introduced rats and invertebrates, typhoons, public collection, and low numbers of individuals.

Listed tree snails may occur in the vicinity of the proposed project area. To avoid potential adverse effects to listed tree snails, we offer the following recommendations:

- Where work must be conducted in forested areas, survey proposed project sites for the presence of tree snails. Surveys may only be conducted by biologists holding a Service permit for this work.
- If any tree snails are found, determine the extent of the colony by surveying outwards in all directions from the original sighting until individuals are no longer detected.
- Avoid cutting or removing vegetation within 200 feet of the known occurrence to minimize impacts to the tree snails and their habitat.
- Mark the trees and shrubs occupied by tree snails with brightly colored flagging tape and keep foot traffic to a minimum of 33 feet from marked vegetation to avoid inadvertently dislodging and trampling individuals.
- Avoid clearing understory and overstory forest vegetation outside existing developed areas. Intact vegetation is important for maintaining microclimates and air movement conditions that allow snails to survive in a given area.
- Confine movement of heavy equipment to existing roadways.

- If helicopters are used to reach the project site, avoid affecting the occupied site with helicopter rotor wash that could dislodge snails by selecting alternate landing areas.
- Train personnel who work in tree snail habitat to identify the listed species and their habitat.

Aquatic invertebrates in Hawai'i: Newcomb's snail (*Erinna newcombi*) (Kaua'i), Anchialine pool shrimp (*Procaris hawaiiiana* (Hawai'i Island, Maui) and *Vetericaris chaceorum* (Hawai'i Island), Hawaiian damselflies (crimson [*Megalagrion leptodemas*] (O'ahu), flying earwig (*M. nesiotes*) (Maui), blackline (*M. nigrohamatum nigrolineatum*) (O'ahu), oceanic (*M. oceanicum*) (O'ahu), Pacific (*M. pacificum*) (Moloka'i, Maui, Hawai'i), and orange-black (*M. xanthomelas*) (Hawai'i, Maui, Lāna'i, Moloka'i, O'ahu): Habitat requirements are different between all these species. The best BMPs to offer as a separate enclosure are the joint ACOE/Service BMPs for working in aquatic or marine environments. The language in these documents cannot be altered.

Newcomb's snail locations are all determined by the critical habitat and no work can occur without surveys. Permits are required for survey work.

Newcomb's snail is restricted to fast-flowing freshwater streams on Kaua'i, where it feeds on vegetation growing on submerged rocks. Threats to the species include reduced stream flow from drought, water diversion projects, or other natural and human causes; predation by introduced snails, flies, and aquatic species; and small population dynamics.

- Applicable best management practices regarding work in aquatic environments (see enclosure) should be incorporated into the project design to minimize the degradation of water quality and impacts to fish and wildlife resources.
- Permits are required for accurate surveys of this species, so consult with the Service if work will be done in proximity to stream areas or within water bodies.

Damselflies – You cannot survey for damselflies without a permit as accurate identification requires trapping, capturing, and holding. If work is occurring within a stream or within the riparian zone, the only recommendation we can provide is for the project proponent to consult with us to avoid Section 9 violations and give the ACOE/Service joint BMPs

All of the species are site specific, so check for detailed locations if stream work is occurring.

Megalagrion leptodemas breeds in slow reaches of streams and seep-fed pools.

Megalagrion nesiotes is found along one stream on Maui (formerly on Hawai'i as well). Naiads may be terrestrial or semi-terrestrial and the species appears to be closely associated with uluhe.

Megalagrion nigrohamatum nigrolineatum occurs in slow sections or pools along mid-reach and headwater sections of upland streams and seep-fed pools.

Megalagrion oceanicum is found in swiftly flowing sections of streams, usually amid rocks and gravel in stream riffles. Naiads can forage out of the stream on wet moss on rocks.

Megalagrion pacificum is found in seepage-fed pools cut off from the main stream channel, usually in areas with thick vegetation. Formerly found on all islands, now known from Moloka'i, Maui, and Hawai'i Islands at low elevations.

Megalagrion xanthomelas is known from Hawai'i, Maui, Lāna'i, Moloka'i, O'ahu, and formerly Kaua'i. It breeds in a widespread number of sites, including anchialine pools, coastal wetlands, small streams, and artificial ponds at low elevations.

Hawaiian damselflies are found in aquatic habitats across the islands, with high species endemism within islands. Breeding habitat includes anchialine pools, perennial streams, marshes, ponds, and even artificial pools and seeps. Major threats include introduced fish, amphibians, and invertebrates in streams, reduced stream flow from drought and water diversion, small isolated populations, reduced habitat quality from ungulates and nonnative plants, and possibly over-collection.

- Applicable best management practices regarding work in aquatic environments (see enclosure) should be incorporated into the project description to minimize the degradation of water quality and impacts to fish and wildlife resources.
- Permits are required for accurate surveys of this species, so consult with the Service if work will be done in proximity to stream areas or within water bodies.

Anchialine pool shrimp - The State is no longer allowing the trapping of anchialine pool shrimp with small mesh nets or traps. Surveying on Federal property would require a permit as identification of these species requires trapping, capturing, and holding. If work is occurring within an anchialine pool, ground disturbance occurs near the pools that increases run-off, erosion, or sedimentation, or toxic organic or inorganic substances, or increases the opportunity for the introduction of non-native fish, we recommend the project proponent consult with us to avoid Section 9 violations and give the ACOE/Service joint BMPs. If work is occurring around pools we can offer the following:

Anchialine Pools

Procaris hawaiiensis is restricted to a small number of anchialine pools on Hawai'i and Maui, while *V. chaceorum* is found in only two anchialine pool areas on Hawai'i. Threats to these species include habitat loss due to in-filling and bulldozing of anchialine pools, waste disposal including used oil and grease into pools, non-native fish, human use of pools for bathing, water extraction, in-flow of fertilizer and pesticides, and collection for the aquarium trade.

- Applicable best management practices regarding work in aquatic environments (see enclosure) should be incorporated into the project description to minimize the degradation of water quality and impacts to fish and wildlife resources.
- Protect anchialine pools (both in and around) from human disturbance by implementing the following measures:
 - Restrict vehicles to existing roads and trails.
 - Prevent trash, and other waste from entering into anchialine pools.
 - Avoid or limit to the maximum extent practicable entrance into the anchialine pools.
- Install educational signs near anchialine pools to inform people of the presence of sensitive species and habitats.

Migratory Bird Treaty Act protected species

Inclusion of these MBTA species is optional. However, if they one or more may be affected by a proposed action, it is recommended we include the information and AMMS below.

White terns or Manu o Kū (*Gygis alba*): NOTE: Currently only nesting on O'ahu in the main Hawaiian Islands, larger populations on Midway and Nihoa. State listed only. Include where projects are removing or trimming trees within the urban area of O'ahu. The white tern is not

federally listed, but it is a listed species under Hawai‘i State law. White terns often nest in urban parks and residential areas from Hawai‘i Kai to Hickam Air Force Base on the island of O‘ahu. White terns breed during all months of the year, but the core breeding season is January through June, with a major peak in March. White terns do not build nests, instead they lay a single egg directly on a ledge, tree branch, or other suitable location. The egg will hatch after approximately 35 days, after which it takes 45 days for the chick to be mature enough to leave the tree on its own. Signs that white terns are present include accumulation of white feathers or white droppings underneath the tree.

To avoid and minimize potential project impacts to white terns we recommend you incorporate the following applicable measures into your project description:

- If tree trimming is part of your project, please examine all trees slated to be cut to determine if there are white terns nesting in them.
- Do not trim branches or remove trees with nesting white terns.
- Do not disturb a nesting tree or branch for at least 80 days from when the egg is laid.

Wedge-tailed shearwater or ‘ua‘u kani (*Ardenna pacificus*): Unlike other Hawaiian seabird species, wedge-tailed shearwaters nest in littoral vegetation along coastlines. Nesting adults, eggs, and chicks are particularly susceptible to impacts from human disturbance and predators.

To avoid and minimize potential project impacts to wedge-tailed shearwaters we recommend you incorporate the following measures into your project description:

- Conduct surveys throughout the project area during the species’ breeding season (March through November) to determine the presence and location of nesting areas.
- If wedge-tailed shearwaters nest within a proposed project area and the project would cause ground disturbance, time project construction outside of the breeding season.
- If outdoor lighting is needed, use light shields that are completely opaque, appropriately sized, and positioned so that the bulb is only visible from below and that light from the shielded source cannot be seen from the beach.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.

Hawaiian hawk or ‘io (*Buteo solitarius*): NOTE: State listed only, but should include where projects are removing or trimming trees during the breeding season. See range map for specific areas of concern. The Hawaiian hawk was recently federally delisted, but remains a listed species under Hawai‘i State law. The Hawaiian hawk is known to occur across a broad range of forest habitats throughout the Island of Hawai‘i. Loud, irregular and unpredictable activities, such as using heavy equipment or building a structure, near an endangered Hawaiian hawk nest may cause nest failure. Harassment of Hawaiian hawk nesting sites can alter feeding and breeding patterns or result in nest or chick abandonment. Nest disturbance can also increase exposure of chicks and juveniles to inclement weather or predators.

To avoid and minimize impacts to Hawaiian hawks we recommend you incorporate the following applicable measures into your project description:

- If work must be conducted during the March 1 through September 30, the Hawaiian hawk breeding season, have a biologist familiar with the species conduct a nest search of

the project footprint and surrounding areas immediately prior to the start of construction activities.

- Pre-disturbance surveys for Hawaiian hawks are only valid for 14 days. If disturbance for the specific location does not occur within 14 days of the survey, conduct another survey.
- Clearing of vegetation or construction activities should not occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season until the young have fledged.
- Regardless of the time of year, avoid trimming or cutting trees containing a hawk nest, as nests may be re-used during consecutive breeding seasons.



Via Email to planning@hawaiiicounty.gov

October 08, 2024

Zendo Kern
Planning Director
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Re: T-Mobile Comments on County Council Initiated Bill No. 194 (PL-CCI-2024-000009)
Amendment to Chapter 25, (Zoning) Articles 1, 2, 4, 5, and 7, of the Hawai'i County
Code 1983 (2016 Edition, As Amended) Relating to Telecommunication Antennas and
Towers

Dear Mr. Kern,

I write on behalf of T-Mobile West, LLC ("T-Mobile") regarding the County Council of Hawaii County's (the "County Council") proposed amendment to Chapters 25, Articles 1, 2, 4, 5, and 7 of the Hawaii County Code 1983 (the "Bill No. 194"). T-Mobile appreciates the opportunity to review Bill 194 and provide feedback.

At the service of the community and residents of Hawaii County, T-Mobile provides wireless communication services across the County to its residents, thriving businesses, and visitors. Like the County, we are constantly striving to provide our customers and your community the services they expect in this ever-changing, growth of demands placed on network infrastructure during this time. Critical deployment of wireless and broadband infrastructure becomes increasingly important as individuals and businesses become ever more reliant on fast, reliable connectivity. It is also critically important to recognize the need for fast deployment of 5G technology as the increase in demand of data continues to grow.

As a result, T-Mobile actively encourages jurisdictions to put measures in place that will enable wireless providers to improve their networks using a range of technologies to achieve the coverage, capacity, and performance their networks need. While T-Mobile appreciates the County Council's desire to consider ways to improve and clarify its existing wireless facility requirements, unfortunately Bill 194 contains some issues that may discourage investment in next generation wireless infrastructure.

Specifically, T-Mobile would like to highlight the following significant concerns:

Plan Approval Application Requirements in Section 25-2-74: Bill 194 imposes application requirements that are confusing, irrelevant, infeasible, overly burdensome, time consuming and



12920 SE 38th Street, Bellevue, WA 98006
www.t-mobile.com

Planning Dept.
Exhibit <u>5</u>



well beyond the scope of standard requirements for the deployment of wireless facilities. Inclusion of these restrictions would be tantamount to an effective prohibition of service under federal law.

Setback Requirements in Section 25-4-12: The current code provides flexibility for carriers to build wireless infrastructure according to technical objectives particularly in densely populated areas where wireless coverage and capacity is strained. However, Bill 194 imposes severely restricting setbacks from property lines no less than 120% of the proposed tower height and 1,000 feet from any property lines of a school, hospital, or residential district. These restrictions would materially inhibit technical objectives to provide service virtually in any densely populated area of Hawaii County. The setbacks requirements for wireless facilities should be no different than property set back requirements per the zoning code. If these setbacks are imposed solely for wireless facilities as a guise regulation of radiofrequency emissions, the code would be discriminatory in nature and effectively inhibit provision of wireless services where the County would be regulating or restricting placement of facilities based on perceived health effects which is federally preempted by law.

While the above comments highlight critical concerns in Bill 194, they do not encompass all the potential barriers the Bill may impose on the effective deployment of wireless infrastructure in the County. T-Mobile respectfully requests an opportunity to work with the County's policymakers along with other wireless industry stakeholders to provide further clarification and revise the proposed draft. Meaningful engagement and a collaborative effort prior to adoption will help avoid confusion in interpretation of the code and delays in deployment. We would be happy to engage with the County further on additional clarifications and/or revisions. Please feel free to contact me at joseph.thompson@t-mobile.com.

Sincerely,

Joseph Thompson

Joseph Thompson
Site Development and Advocacy Manager.
California and Desert West
(949) 350-5376
joseph.thompson@t-mobile.com



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October 8, 2024

Director Zendo Kern
County of Hawai'i Planning Department
East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

via email: planning@hawaiiicounty.gov

RE: **Bill 194: Ordinance Amending Chapter 25 (PL-CCI-2024-000009)**

Greetings Director Kern,

Thank you for the opportunity to provide comment regarding Bill 194, which proposes and amendment to the County of Hawai'i Ordinance relating to telecommunications antennas and towers. On behalf of Verizon, please allow me to express our gratitude to you and the staff of Hawai'i County for your efforts to update telecommunications regulations. We previously provided comments regarding the Director's proposed ordinance (PL-PDI-2024-000008) ("Director's Proposed Ordinance") and in general find the Director's Proposed Ordinance to be a more functional regulation of the placement of wireless communications facilities than the proposed Bill 194, though we remain concerned with some elements of the Director's Proposed Ordinance as well, as noted in our separate testimony on that matter.

Wireless communication services are essential for supporting our communities. With 71.7% of adults living in homes without a landline phone¹, recent increases in remote work, and many essential tools we use every day moving to wireless applications, promoting a robust high-capacity wireless communications network is more important than ever.

According to NENA: The 9-1-1 Association, "An estimated 240 million calls are made to 9-1-1 in the U.S. each year. In many areas, 80% or more are from wireless devices."² Given these statistics, wireless technology is also critical for emergency services.

Wireless technology is broadly utilized in the medical field today, as well, allowing for improved health services. Smart pill bottles and cases can help patients and their caregivers track medication

¹ National Center for Health Statistics, National Health Interview Survey Early Release Programs, wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2022, released May 2023.

² www.nena.org/?page=911Statistics

usage, ensuring medications are taken on time and correctly. Wireless connected glucose monitors, blood-pressure cuffs, and EKGs can track a patient's vital signs and catch an issue before it turns into an emergency. Pacemakers and sleep apnea monitors can be tracked remotely. Routine eye exams can be conducted with a wireless device connected to a smartphone, bringing solutions and services to low-income and remote areas that would otherwise go unsupported. Such tools enable medical professionals to provide more consistent care and better preventative care, keeping patients in their homes longer and reducing the number of emergency visits to the doctor's office or hospital.

Verizon has several concerns with Bill 194 as drafted and we urge that this measure be rejected in favor of the Director's Proposed Ordinance, with suggested revisions. Bill 194 is generally overreaching and inconsistent with the mandates of federal law. As drafted, it would be very challenging to administer for both Hawai'i County and the wireless providers. It would also likely constitute an effective prohibition of service in some areas. We urge Hawai'i County to consider the importance of wireless communications for the residents of Hawai'i County and to impose regulations that are consistent with the applicable federal laws, and which will encourage investment in wireless infrastructure.

Verizon's most significant specific concerns with Bill 194 as proposed are as follows:

1. The setbacks and signage requirements within this ordinance are onerous and could constitute an effective prohibition of wireless service under federal law. They also appear to be aimed at regulating for RF emissions when that is preempted by the Federal Communications Commission ("FCC"). In its 2019 order, the FCC confirmed that a local jurisdiction may not adopt or enforce its own mitigation requirements for RF emissions. They specifically rejected attempts of local governments to require additional barriers or access restrictions.³ Certain setbacks within this ordinance are clearly intended to regulate for perceived health effect concerns in a manner that is not permitted under federal law.
 - a. The 1,000-foot setback proposed from the property line of any hospital, school, or residential district would severely limit the wireless industry's ability to provide service in areas where it is needed most. Both individuals and emergency services rely on wireless communications for 9-1-1 calls, connected lifesaving services, and to be in touch with family and friends in times of need. We urge that this setback be removed.
 - b. The 120% setback from the nearest property line greatly reduces the number of viable properties for wireless facilities, particularly in more densely populated areas. The current 1-foot setback for every 5-feet of tower height is typical and sufficient in most cases.
 - c. The requirement for signs at the entrance to a property is both onerous and unnecessary.

³ Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies, 34 FCC Rcd 11687 (2019). <https://www.fcc.gov/document/fcc-maintains-current-rf-exposure-safety-standards>

2. The ordinance would require that the wireless carriers both enter into agreement with a County agency, and secure agreements on behalf of a County agency. We feel both requirements are inappropriate.
 - a. The ordinance requires the applicant to obtain “an access easement to the building site in favor of the Hawai’i fire department for fire suppression purposes”. This is not at all standard for construction of a wireless facility. Facilities generally do have access easements which would provide access to the site, but it is not common for those easements to name emergency services as a party in the agreement. The wireless industry does not negotiate agreements on behalf of local government entities.
 - b. This ordinance would require applicants to enter into an agreement with Hawai’i fire department to allow for installation and maintenance of remote monitoring equipment. We have no objection to the reservation of space for emergency services, but we do not believe it appropriate to execute a separate agreement for every facility location for that purpose, particularly if the Fire Department does not have need for such an agreement. This would unduly burden the fire department and would unduly delay applications for new wireless facilities.
3. The ordinance places requirements on the applicant that are atypical for our industry, onerous and sometimes not possible to meet.
 - a. The ordinance requires that a licensed professional engineer certify compliance with FCC RF emission standards, when that is NOT the function of a licensed engineer. That work is done by radio frequency experts who are generally not licensed by the state. In addition, the FCC is the regulatory agency that is responsible for ensuring wireless carriers comply with radio frequency emissions standards, not the local municipality.
 - b. The ordinance requires that specification documents for any antenna and ancillary equipment be stamped by Professional Engineers licensed in the State of Hawaii. These documents are generally developed by the equipment manufacturer at a national level and not locally stamped. Electrical Engineers would generally stamp the appropriate electrical sheets in a permit drawing submittal set, but not sheets pertaining to the equipment design and specifications.
 - c. The wireless industry does not typically complete restoration plans prior to application. To our knowledge, no other industry is asked to provide plans for equipment removal prior to equipment installation. To require this of wireless carriers would be discriminatory.
 - d. The plan requirements for showing every building with 300 feet are out of line with industry best practices and increases the cost of design services for wireless facilities.
 - e. The ordinance requires a statement from the State Department of Health regarding compliance with applicable standards for noise levels. To our knowledge, this is not a function of the State Department of Health, and they do not routinely issue such statements. A more typical method of regulating noise levels is to require that the

applicant demonstrate compliance with a specific set standard. As written this standard is not practical. It would place an administrative burden on the Department of Health and it would unnecessarily delay wireless facility applications.

Wireless communications services are lifesaving technologies that have revolutionized how we live, work, and stay connected to our friends and family. We urge the County of Hawai'i to consider the tangible impacts to public safety that a robust wireless network provides, particularly in times of crisis, and to choose policies that encourage investment in our communities and promote public safety through improved wireless connectivity.

Thank you for hearing our comments and concerns and for your thoughtful consideration of our comments. We look forward to continuing to provide high quality wireless services in Hawai'i County.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lelah Vaga". The signature is fluid and cursive, with the first name "Lelah" and the last name "Vaga" clearly distinguishable.

Lelah Vaga

Vice President of Jurisdiction Relations

Wireless Policy Group

On behalf of Verizon



October 9, 2024

Planning Department
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Via email to: planning@hawaiiicounty.gov

Re: County Council Initiated Bill 194 – (PL-CCI-2024-000009)

Dear Director Kern and planning staff:

AT&T appreciates the opportunity to provide comments on the County Council initiated Bill 194 to amend Chapter 25, Articles 1, 2, 4, 5, and 7 of the Hawai'i County Code 1983 (2016 Edition, as amended) relating to telecommunication antennas and towers ("Bill 194").

Comments on Proposed Code Changes in Bill 194

AT&T is concerned that some of Bill 194's proposed changes, like PL-PDI-2024-000008, the Planning Department's proposed ordinance, will hamper our ability to effectively provide quality and reliable wireless services to our Hawai'i Island customers.

We are concerned that the effect of Bill 194 also appears contrary to the County's latest proposed 2045 General Plan. The proposed General Plan highlights the importance of access to broadband and telecommunications services and deployment of related infrastructure.¹ However, the changes proposed in Bill 194 create unnecessary barriers to the deployment of wireless infrastructure, thereby inhibiting the provision of communication services on the island.

We hope to continue to work with the Department and other stakeholders as both Bill 194 and the Department's proposed ordinance are considered so that we may minimize adverse impacts on wireless services our customers depend on. AT&T's legal and policy concerns with Bill 194 are included below.

Legal Concerns with Bill 194

The proposed 1,000-foot setback is contrary to federal law.

Bill 194 proposes a setback for all antennas and towers as follows: "A telecommunication antenna or tower shall not be permitted within one thousand feet of any property line of any hospital, school, or residential district." Proposed Subsection 25-4-12(d).

¹ See "County of Hawai'i General Plan 2045: Planning for a Sustainable Future, Final Recommended Draft, July 2024," <https://www.planning.hawaiiicounty.gov/home/showpublisheddocument/308136/638597487229830000>.

No rationale is provided for this proposed setback, but the Department’s proposal included a similar setback with reference to a “broader trend of using substantial setbacks to manage safety risks, visual impacts, and community concerns with placement of telecommunication towers near residences and schools.”²

Setbacks

As stated in AT&T’s written testimony submitted to the September 19, 2024, Leeward Planning Commission meeting, we disagree that there is a “broader trend” of using setbacks greater than a tower-height setback from a shared property line. To the contrary, the jurisdictions cited by the Department are outliers.

Lane County is the only jurisdiction that AT&T’s team is aware of in the Pacific Northwest (Oregon and Washington) that has a large setback from residences and schools. Although the 1,200-foot setback remains in Lane County’s zoning code, AT&T is aware of at least one instance where a local decision-maker found application of this setback to be in violation of federal law,³ resulting in Lane County approving the facility with a lesser setback.

Community concerns

Issues of “safety risks” and “fall zones” are adequately addressed by the proposed 120 percent setback from property lines with exceptions for towers engineered with breakpoint technology.⁴ In addition, compliance with the current building code, including structural code requirements, significantly reduces the likelihood of falling towers.

Fear of alleged health effects of radio frequency (“RF”) emissions is a typical “safety risk” raised during the review of a proposed wireless facility and was raised several times by testifiers in recent planning commission meetings. Such concerns are not a permissible basis on which to regulate a wireless facility. Federal law preempts local jurisdictions from considering the environmental effects of RF emissions (including health effects) in regulating the placement of proposed wireless facilities.⁵ The Federal Communications Commission (“FCC”) has exclusive jurisdiction to regulate RF emissions.⁶ This means a local jurisdiction cannot regulate, deny, or condition a wireless facility based on concerns about RF emissions.⁷

² Planning Director’s Report, PL-PDI-2024-000008, *Background and Recommendation*, July 23, 2024, p. 13.

³ The decision-maker there found the 1,200-foot setback to have the effect of prohibiting the provision of wireless service contrary to 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁴ With breakpoint technology, towers are engineered to collapse on themselves, significantly reducing a fall zone to less than tower height. See suggestion on setback variances on page 4 of this letter.

⁵ 47 U.S.C. § 332(c)(7)(B)(iv).

⁶ *Id.*

⁷ *AT&T Wireless Services v. City of Carlsbad*, 308 F.Supp.2d 1148 (S.D.Cal. 2003) (a denial may not be indirectly based upon concern over the environmental effects of RF emissions and how such concern may impact property values); *Sprint Spectrum L.P. vs. Ringwood Zoning Board*, 898 A.2d 1054 (2005)(a 1000-foot setback is preempted).

Aesthetics

AT&T believes that potential visual impacts are adequately addressed by other proposed provisions of the code, such as stealthing and concealment requirements. These provisions are typical visual mitigation measures included in zoning codes.

An example directly relevant here, is a case in New Jersey where a 1000-foot tower setback condition was determined invalid and stricken.⁸ In response to the local jurisdiction's argument that the setback was for aesthetic purposes, the court noted that such a setback "is of little if any significance regarding aesthetics."⁹

Inclusion of antennas

Bill 194 differs from the Department's proposed ordinance in that its proposed setback applies to antennas, in addition to towers. While Bill 194's proposed setback distance is less than the Department's proposed 1,200-foot setback, the inclusion of antennas (attached to structures other than towers) makes Bill 194's setback significantly more restrictive. Again, if the rationale is based on alleged health concerns, such concerns are not a permissible basis on which to regulate a wireless facility.

In addition, wireless companies often utilize existing structures, such as buildings, to deploy services, especially in more densely populated or developed areas. This practice is common across the country, including on Hawai'i Island. It helps minimize visual impacts of wireless facilities and reduces or eliminates the need to construct a new structure while effectively providing wireless services to the surrounding area.

Such areas often include residences, hospitals, and/or schools, where access to wireless services is critical. In fact, wireless facilities (both attached antennas and towers) are often located on school and hospital campuses, as well as on apartment and condominium buildings (attached antennas). Leasing to a wireless company can be a useful source of additional income for these entities.

For the reasons stated above, AT&T suggests that the proposed 1,000-foot setback be deleted from Bill 194.

Requiring a tower owner to give space on a tower to a public body, as well as an access easement to the tower, is an unconstitutional taking.

Bill 194 proposes the following in Section 25-2-74(7):

A fire safety plan that meets the requirements of the Hawai'i fire department and includes:

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⁸ *Sprint Spectrum L.P.*, at 1059.

⁹ *Id.*

- (B) An access easement to the building site in favor of the Hawai'i fire department for fire suppression purposes to be kept in force until the abandonment or discontinuance of the proposed use; and
- (C) An executed agreement between the applicant and the Hawai'i fire department to allow for the installation, maintenance, and remote access of monitoring equipment on the building site[.]

An ordinance that requires tower owners to grant an access easement and collocation rights to a government agency is an uncompensated taking of private property for public use.¹⁰ In response to a similar law in New York that required landlords to allow television cable companies to install cable facilities in their apartment buildings, the United States Supreme Court held the law was a taking.¹¹

While we recognize that there are fire safety concerns following the Maui wildfires, we do not believe that mandated access to telecommunications facilities is necessary. Our sites are built per county code, which includes fire safety requirements. Additionally, there are ongoing wildfire safety discussions, such as public safety power shutoffs (PSPS), which AT&T is engaged in to mitigate impacts to wireless services, including access to 9-1-1, during loss of power.

As it relates to monitoring equipment, we want to make clear that even if this subsection is deleted, its absence does not mean AT&T will not consider a request from another entity to collocate equipment on a structure we own. AT&T typically allows interested entities, including government entities, to collocate, if possible. We are not aware of issues that have arisen for government agencies to justify a mandate. Note that, sometimes, allowing collocation is simply not possible for various reasons, including available space and structural integrity.

AT&T suggests that this subsection be deleted from Bill 194.

The County May Not Regulate RF Interference.

Subsection 25-2-74(9) would require “A statement from the applicant that the proposed use will not interfere with the County's land mobile radio system and other public emergency communication systems[.]”

A permitting authority may not require a wireless applicant to demonstrate that its proposed facility will not cause RF interference.¹² In addition, a permitting authority may not enforce compliance with FCC guidelines or require mitigation of RF interference or cessation of a wireless facility's operation.¹³

AT&T suggests that subsection 25-2-74(9) be deleted from Bill 194.

¹⁰ The County's proposed regulation is a “physical” taking rather than a “regulatory” taking because it is a “regulation[] that compel[s] the property owner to suffer a physical ‘invasion’ of his property.” *Id.* at 1270, quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). See also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982).

¹¹ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

¹² *New York SMSA Limited Partnership v. Town of Clarkstown*, 612 F.3d 97, 105 (2nd Cir. 2010).

¹³ *Southwestern Bell Wireless, Inc. v. Johnson County*, 199 F.3d 1185 (1999) (local authority may not determine whether RF inference exists and/or order that operation from a wireless site be ceased).

The State of Hawai‘i May Not Regulate RF Emissions.

Subsection 25-2-74(5) is preempted by federal law to the extent it requires applicants to demonstrate compliance with RF emissions standards and regulations of the state of Hawai‘i.¹⁴ As explained above, the FCC has exclusive jurisdiction to regulate RF emissions.

AT&T suggests that subsection 25-2-74(5) be deleted from Bill 194.

The County May Not Regulate RF Signage.

Subsection 25-4-12(I)(5) requires “conspicuously posted” signage, to warn of potential RF emissions and incorporating by reference the County’s requirements for posting public notice of a project.

A local jurisdiction may not adopt local mitigation requirements for RF emissions, such as warning signs, barriers, or similar requirements.¹⁵

AT&T suggests that subsection 25-4-12(I)(5) be deleted.

The State of Hawai‘i May Not Regulate Antenna Specifications.

Subsection 25-2-74(6) requires applicants to submit “Electrical drawings and specifications of any antenna or equipment that have been prepared, designed, and stamped by a person who is licensed in the State of Hawai‘i as a professional electrical engineer[.]”

Antennas are type-accepted and approved for use by the FCC under its exclusive jurisdiction over radio frequency regulations. Neither the state of Hawai‘i nor Hawai‘i County has authority to review or approve antenna specifications.¹⁶

AT&T suggests that subsection 25-2-74(6) be deleted from Bill 194.

The County May Not Require Proof of Insurance Due to Concerns about RF Emissions.

Subsection 25-4-12(1) requires applicants to “provide proof of a public liability insurance policy in an amount determined by the director and kept in effect until the abandonment of the subject use.”

While no rationale is provided for this provision, it appears to be in line with testimony from opponents of wireless technology who allege that RF emissions have harmful effects. Again, the County may not regulate wireless facilities on that basis.

¹⁴ *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000).

¹⁵ Federal Communications Commission, “Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies,” 34 FCC Rcd 11687, ¶ 114 (2019).

¹⁶ *Id.*

Chapter 25 does not impose a proof of insurance required on any other part of the municipality's zoning review. Requiring proof of insurance from wireless applicants is thus also inequitable, when compared to all other applicants for zoning review.

AT&T suggests that the County continue to limit requirements to produce proof of insurance to those circumstances in which a developer or service provider is doing work on County property, as required under County Code Chapter 22 (County Streets) or negotiated as part of a franchise agreement or lease.

Additionally, HRS Section 46-89(d) provides that no action may be prosecuted or maintained against the county for reviewing or approving broadband-related permits,¹⁷ making the insurance requirement superfluous.

AT&T suggests that subsection 25-4-12(1) be deleted from Bill 194.

The County May Not Require RF Testing.

Subsection 25-4-12(f) states that "The director may engage a private consultant to inspect and determine whether the proposed use violates any applicable standard of the Federal Communications Commission, provided that the time during which the private consultant is so engaged shall not count toward the time limit set forth in subsection (e)."

Under the same authority described above, the County may not require RF testing of wireless facilities. To the extent that the County intends to charge a wireless facility owner for the inspection described in this subsection, it is impermissible.

AT&T suggests that subsection 25-4-12(f) be deleted from Bill 194.

Policy Concerns with Bill 194

AT&T suggests the following changes to Bill 194 as a matter of policy.

Setback Variance

For subsection 25-4-12(b), AT&T suggests adding a setback variance for instances in which aesthetic impacts may be reduced (such as placing a tower within trees near the perimeter of a property) and when break-point technology is used to limit the potential "fall zone" of a tower.

Wind Speed Standards

In the County's 2019 proposed code change, it planned to incorporate by reference the County's building code requirements, rather than updating to a specific wind speed.

¹⁷ Defined in HRS §46-89(h) as "all county permits required to commence actions with respect to the installation, improvements, construction or deployment of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, cable installation, tower construction, placement of broadband equipment in the road rights-of-way, and undersea boring, or the landing of an undersea communications cable."

AT&T suggests this approach, for the same reasons the County cited in 2019. It is the building department's responsibility to enforce building and structural codes. This relates to proposed subsections and 25-2-74(3) and 25-4-12(c).

Noise

Subsection 25-2-74(8), requires "A statement from the State department of health regarding compliance with applicable standards for noise levels."

As far as AT&T's team is aware, the State Department of Health does not provide statements such as described in this proposed section. AT&T suggests deleting this subsection.

Geotechnical Analysis

Subsection 25-2-74(12), requires "A statement that a geotechnical analysis of the soil conditions and flood hazard of the building site has been completed and verifies that the site is adequate to assure the stability of the proposed antenna or tower[.]"

In AT&T's experience, a geotechnical analysis is not completed under after a zoning use permit is obtained and is typically done as part of the building permit process.¹⁸ We find no other reference to a geotechnical analysis in Chapter 25's zoning requirements. AT&T suggests deleting this subsection.

Consistency with Section 6409 (47 C.F.R. §1.6100)

As the Department is aware, the current code does not incorporate facility modifications permitted under federal law. AT&T suggests revisions to proposed subsection 25-4-12 to address these permitted modifications.

Undergrounding of Equipment

AT&T appreciates that the proposed code's requirement for undergrounding equipment will apply only "where practicable," but we note that it is generally impracticable to underground sensitive electronic equipment in vaults. AT&T suggests deleting this provision in subsection 25-4-12(j).

Small Wireless Facilities

AT&T notes that section 25-1-5 will redefine "telecommunication antenna" to include "small wireless facilities" as defined by the FCC. HRS §206N exempts many small wireless facilities from zoning review or zoning approval except for property zoned "exclusively for conservation." AT&T suggests that any County ordinance reflect the requirements of state law.

¹⁸ Chapter 25 regulates and restricts "height, size of buildings, and other structures, the percentage of a building site that may be occupied, off-street parking, setbacks, size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." Subsection 25-1-2(b). In contrast, the Building Code regulates and controls "the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the County[.]" Section 5A-1-2.

Conclusion

AT&T's work is largely driven by the growing demand on our network as well as our role in building FirstNet, the nationwide public safety network, as part of a public-private partnership with the federal government.¹⁹ Our customers depend on us to deliver service they utilize daily in every aspect of their lives. The service we provide is especially critical during times of emergencies in support public safety as they utilize technology to carry out their missions and to provide 9-1-1 access.

AT&T understands the desire to incorporate certain requirements as part of the use permit application process for new wireless facilities. We look forward and appreciate the opportunity to continue working with the Department and all stakeholders on both the proposals being considered without compromising the quality and availability of wireless service that Hawai'i Island residents and visitors so critically depend on.

Mahalo for your consideration and the opportunity to submit written testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth Songvilay', with a stylized flourish at the end.

Elizabeth Songvilay
Director, External & Legislative Affairs – Hawai'i

cc: Suzanna Tiapula, Deputy Corporation Counsel

¹⁹ For more information on the history on the First Responder Network or FirstNet, you may visit:
<https://firstnet.gov/about/history>.



October 9, 2024

Director Zendo Kern
Planning Director
County of Hawaii
Planning Department

VIA EMAIL: planning@hawaiiicounty.gov

Re: County Council Initiated Bill No. 194 (PL-CCI-2024-000009)
Amendment to Chapter 25 (Zoning) Articles 1, 2, 4, 5, and 7 of the
Hawaii County Code 1983 (2016 Edition, As Amended) Relating to
Telecommunications Antennas and Towers

Dear Director Kern:

Thank you for the opportunity to provide comments on the above-reference Bill No. 194 proposing amendments to the current Hawaii County Code on Telecommunications Antennas and Towers. The Wireless Infrastructure Association¹ (WIA) has concerns with the provisions listed below in the order they appear in Bill No. 194. We welcome the opportunity to discuss these issues with the result of enacting tower code amendments appropriate for the community, compliant with FCC guidelines, supporting wireless infrastructure deployment and enabling connectivity for all residents.

1. The proposed amendments treat all tower and antenna applications identically which does not comply with FCC guidelines.

The FCC guidelines, specifically, in Section 6409 in the Telecommunications Act, provide different processes and timelines for a new tower site or modification (referred to as an Eligible Facilities Request or EFR in the FCC rules). Bill No. 194 applies the same public hearing process for both types of tower and antenna applications. The federal rules provide a simpler process for an EFR which is not reflected in Bill No. 194.

2. Bill No. 194 requires unnecessary and overly complicated application supporting documentation which will have the effect of delaying deployment of wireless services, which is prohibited under federal Sections 253 and 332 of the Telecommunications Act.

In working with communities nationwide, WIA has found that requiring application supporting documentation that illustrates the scope of work is best for applicants, permitting staff, and the community. Requiring unnecessary and overly complicated information such as included in Section 25-2-74 is a burden for staff in reviewing unnecessary details, for applicants in providing this information, and distracting community members reviewing these applications. Specifically:

¹ The Wireless Infrastructure Association (WIA) represents the businesses that build, develop, own, and operate the nation's wireless infrastructure. Members include infrastructure providers, wireless carriers, and professional services firms that are responsible for telecommunications facilities around the globe. On the federal, state, and local levels, WIA advocates for the widespread, responsible deployment of wireless infrastructure to enable mobile broadband access for communities everywhere.

- Section (1) requires plans to show buildings and uses within 300 feet of the tower or antenna. The zoning district provided in the basic information of the application will provide this detail without the need for such a detailed plot plan.
 - Section (7)(A) providing a description of screening vegetation is problematic. To help mitigate wildfire spread, WIA suggests use of non-combustible fencing as opposed to installation of screening vegetation.
 - Section (7)(C) allowing the County fire department to install, maintain, and monitor tower equipment may be considered a regulatory taking since there is no provision for the County providing compensation in exchange for installing its equipment at tower sites the County does not own. Additionally, providing the fire access easement may inhibit colocation at tower sites because it will eliminate the possibility of the tower owner leasing that fire easement space to another wireless service provider. Moreover, the tower owner may have not property rights to the fire easement path.
 - Section (11) requires a tower decommissioning plan which in the case of a EFR is challenging. Often the wireless service provider making the EFR application does not own or have control over the tower and, therefore, cannot make or agree to new tower obligations such as a tower decommissioning plan.
 - Section (16) requires a tower lighting description. Tower lighting is under the authority of the Federal Aviation Administration (FAA) and not local municipalities. The FAA conducts its own review and issues tower lighting and marking obligations.
3. Section 25-4-12(d) adds requirements that have the effect of prohibiting wireless service under federal Section 253 and 332 of the Telecommunications Act.

There are several tower and antenna siting requirements that may have the effect of prohibiting wireless service. Specifically:

- Section (b) requires a tower be setback from every property line 120% of tower height. This is overly broad and treats the distinct types of towers the same. Most towers installed today are monopoles which are constructed that in the very unlikely instance that the tower sustains structural damage, the tower is engineered to fold in on itself. Therefore, far less that the tower height is needed for a setback. This setback might apply to a guyed tower but the appropriate tower setback distance would be for tower height only and apply only to guyed towers.
- Section (d) requires a 1,000 foot setback from any tower or antenna to the property line of any hospital, school, or residential district. This section does not explain the rationale for this setback. Often jurisdictions require similar setbacks due to radio frequency concerns. The FCC rules do not allow a similar setback. Additionally, radio frequency issues are clearly and only within the jurisdiction of the FCC. As recently as 2021, the FCC confirmed that wireless communication radio frequency emissions are safe for the general public and a September 2024 study issued by the World Health Organization stated the same.
- Section (f) provides that the Planning Director may hire a consultant to inspect the tower. It is unclear whether this provision applies before or after the County issues an approved permit. Assuming that this provision applies after approval, the tower is built, and the municipal consultant issues a post-approval reversal, this violate federal Section 332 as a prohibition of wireless service. Regardless, under Section 6409, the FCC determines application and construction timelines and not local municipalities.

- Section (h) provides a tower and antenna siting priority which severely limits the locations for new towers which may have the effect of prohibiting wireless service. It is difficult to find a new tower location to meet this siting priority that also provides connectivity to underserved areas. Today, wireless coverage and capacity gaps are found in and near residential areas. This tower and antenna siting priority list has residential zoned lands as the last priority. The area where wireless service is more often lacking is the hardest to locate a new tower.
- Section (j) requires all electrical support equipment to be located and secured underground, which is impractical during times of routine maintenance and during rainy weather. Electrical vaults do accumulate water during rain events posing a safety risk.

Again, thank you for the opportunity to provide comments on Bill No. 194 and we look forward to continued engagement.

Respectfully Submitted,

/s/ Karmen Rajamani

Karmen Rajamani
VP, Government Affairs

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