

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
BACKGROUND AND RECOMMENDATION

PLANNING DIRECTOR INITIATED (PL-PDI-2024-000008)
AMENDMENT TO CHAPTER 25, ARTICLE 2, ARTICLE 4, ARTICLE 5, AND
ARTICLE 7 OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS
AMENDED), RELATING TO TELECOMMUNICATION ANTENNAS AND
TOWERS

The Planning Director has initiated an ordinance to amend Chapter 25 (Zoning), Article 2, Article 4, Article 5, and Article 7 of the Hawai‘i County Code 1983 (2016 Edition, as amended) relating to telecommunication antennas and towers. The purpose is to remove the requirement for a use permit to establish telecommunication antennas and towers in certain zoning districts, add application requirements, and amend standards for the establishment of telecommunication antennas and towers.

PURPOSE OF THE BILL

The purpose of this bill is to amend the Zoning Code to bring the Planning Department’s review and processing of permits for telecommunication towers and antennas into conformance with requirements of State statute pursuant to a legal opinion and recommendation provided by the Hawai‘i County Corporation Counsel (**Planning Department Exhibit 1 – Legal Opinion from Corporation Counsel to Planning Director Dated December 27, 2023**). According to the opinion, the County’s current procedures for processing permits for telecommunication towers and antennas are inconsistent with state law as follows:

The County Zoning Code currently requires the issuance of a Use Permit to construct and operate telecommunication antennas and/or towers in certain zoning districts in Hawai‘i County. This process includes review and approval by the Windward or Leeward Planning Commissions, which are allowed 90 days to commence a public hearing on a Use Permit application (see HCC §25-2-63 (a)) and an additional 60 days thereafter to render a decision on the request (see HCC §25-2-64 (a)). Moreover, Use Permit applications heard by the Planning Commissions are subject to contested case hearings. Planning Commission Rule No. 4, related to Contested Case Hearings allows members of the public to petition for standing in a contested case hearing pursuant to

Hawai‘i Revised Statutes (HRS) Chapter 91. Should the Planning Commissions grant standing to a contested case petitioner, the subsequent contested case process can take a significant additional amount of time.

Conversely, HRS Section §46-89 mandates that all broadband-related permits must be either approved, approved with modifications, or disapproved within sixty days of a complete application submission, pre-empting any conflicting provisions in the Hawai‘i County Code. The statute also shields the county, its officials, and employees from legal action concerning permit decisions made under this section.

Based on the preceding, Corporation Counsel recommended that the Planning Department amend the County Code and its administrative rules to be consistent with Hawai‘i Revised Statutes Section §46-89, either by exempting telecommunication antenna and tower permits from the current Use Permit process or by establishing a new alternative process that is not subject to a contested case hearing.

The proposed amendments will make the following specific changes:

- Clarifies that a Use Permit is no longer required to be obtained for a telecommunication antenna and tower. Instead, Plan Approval would need to be secured from the Planning Department and building permits would need to be secured from the Department of Public Works Building Division before the facilities could be built.
- Creates additional requirements for Plan Approval for telecommunication antennas and towers to complete.
- Creates new standards for telecommunication towers.
- Clarifies action process on Plan Approval applications for telecommunication towers and antennas.
- Adds telecommunication antennas and towers as a permitted use by right in the 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.

Chapter 25 (Zoning) of the Hawai‘i County Code 1983 (2016 Edition, as amended) is proposed to be amended as shown in the attached bill as **Planning Department Exhibit 2. (Material to be deleted is bracketed and struck through; material to be added is underscored).**

CHRONOLOGICAL BACKGROUND

In 1996, the Hawai‘i County Council adopted Ordinance 96-160, which defined and regulated telecommunication antennas and towers in Hawai‘i County. Prior to 1996, the Hawai‘i County Code did not include any regulations regarding the construction, placement, or operation of telecommunication towers. The inclusion of telecommunication antennas and towers in the 1996 Zoning Code was likely a response to the growing need for comprehensive regulations as cellular telecommunications became an integral part of modern life and infrastructure. Ordinance No. 96-160 required the issuance of a Use Permit for telecommunication antennas and towers on lands zoned RS, RD, RM, and RCX, while permitting them in lands zoned RA, FA, A, IA, V, CN, CG, CV, MCX, ML, MG, O, and CDH. Additionally, to ensure conformance with the General Plan, to carry out the intent and purpose of the Zoning Code, and to implement pertinent conditions of previous approvals related to development, Plan Approval requirements were added for any new telecommunication antennas and tower facilities.

In 2007, the State Legislature passed Act 171, permitted the construction and operation of wireless telecommunication antennas and towers within the State Land Use Agricultural District without this issuance of a Special Permit by the Planning Commission. At the time, the Hawai‘i County Council believed that Act 171 had eliminated the requirement for public hearings. As a result, the Council sought to reinstate these hearings to ensure that surrounding property owners could voice their concerns about nearby construction projects. In response, the Hawai‘i County Council adopted Ordinance No. 10-17 which amended the Zoning Code to require the issuance of a Use Permit by the Planning Commission for telecommunication antennas and towers on lands zoned Residential Agricultural (RA), Family Agricultural (FA), Agricultural (A) and Important Agricultural (IA) by the County.

In 2011, the Hawai‘i County Council adopted Ordinance No. 11-25, requiring a Use Permit for telecommunication antennas and towers to be located within any Open

(O) zoned district which aimed to align with the intent of the Open-zoned district, and therefore required that a Use Permit must be obtained for telecommunication antennas and towers to be located within any Open zoned district.

In the 2013, the State Legislature passed Act 264 (**Planning Department Exhibit 3**) which provided specific directives to Counties regarding the issuance of broadband-related permits. The act (which later became HRS §46-89) mandated that Counties act on all broadband-related permits within sixty days of a complete application, except in cases of disaster, state of emergency, or union strike that prevents the applicant, agency, or department from fulfilling application review requirements. Additionally, the act included provisions that prohibit legal actions against any County, its officials, or employees for actions taken during the permit process. Despite the preceding, there was no subsequent update made to the Hawai'i County Code to address the changes.

A Use Permit application for a telecommunication tower facility in Ka'u was heard by the Windward Planning Commission at its public hearing on December 7, 2023. In addition, a neighbor filed a petition for standing in a contested case hearing for the application. The Windward Planning Commission voted to grant the petition for standing to participate in a contested case hearing procedure. After standing was granted, the applicant's representative requested a determination on whether the Commission's action was at odds with the timeframes in State Law for taking action on a broadband-related permit.

As a result of this request, the Corporation Counsel provided the Planning Department with a legal opinion on December 27, 2023, and opined that based on Hawai'i Revised Statutes §46-89, telecommunication antenna and tower use permit applications are not subject to a contested case hearing. Therefore, Corporation Counsel recommended that the Planning Department introduce amendments to the Hawai'i County Code and the Planning Commission's administrative rules. These amendments would either exempt broadband-related permits from the current use permit process or create a different process that conforms to HRS §46-89.

PROPOSED AMENDMENTS TO HCC CHAPTER 25 (ZONING)

This bill is initiated by the Planning Director to amend the Zoning Code as follows (sections to be deleted are bracketed and struck-through and sections to be added are underlined):

Relating to Applicability; Use Permit required.

Section 25-2-61 is proposed to be amended 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:

~~[(11) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.]~~

Reason for the Amendments: This amendment is necessary to expedite the development of telecommunication infrastructure by removing the requirement for use permits and comply with the 60-day action requirement on telecommunication permits found in HRS §46-89.

Relating to Plan Approval application requirements for telecommunication antennas.

Section 25-2-74(2) is proposed to be amended as follows:

- (2) Building plans for the tower, certified by a licensed structural engineer, verifying that the tower, ~~[together with the initial antennas and other equipment proposed to be installed thereon,]~~at full build out inclusive of all potential antennas and equipment, will have a hard survivability for sustained winds of one hundred thirty miles per hour;

Reasons for the Amendment: This amendment aims to ensure telecommunication towers are strong enough to handle future additions, enhancing their long-term safety and reliability. Submitting detailed plans, certified by a licensed structural engineer, confirms the tower's design is structurally sound and can withstand expected windloads. Overall, this ensures

that all telecommunication towers meet safety standards and building codes, protecting public safety and ensuring compliance with regulations.

Relating to Plan Approval application requirements for telecommunication antennas.

To ensure that telecommunication tower projects undergo a thorough review and documentation regarding their compliance with National Historic Preservation Act of 1966, Section 106, **Section 25-2-74(5)** is proposed to be added as follows:

- (5) Documentation demonstrating compliance with the National Historic Preservation Act of 1966 Section 106 review has been completed.

Reasons for the Amendment: Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the potential impact of their actions on historic properties. The Federal Communications Commission (FCC) regulates the construction of cell towers, which are considered federal undertakings and are therefore subject to Section 106 review. Our current Use Permit application process requires Section 106 compliance documentation, but as a Use Permit will no longer be required for telecommunication towers and antennas, this amendment will ensure compliance with Federal law.

Relating to the Plan Approval application requirements for telecommunication antennas.

To ensure that proposed telecommunication facilities are sited in a manner that maximizes co-location opportunities, minimizes visual and environmental impact, and encourages efficient use of existing infrastructure, **Section 25-2-74 (6)** is proposed to be added as follows:

- (6) A report indicating whether the facility could be co-located elsewhere.

The report shall include:

- (A) A statement from the applicant that diligent, but unsuccessful efforts to install or co-locate the applicant's telecommunication antennas on existing towers or feasible antenna support structures have been made;

- (B) A map showing the sites that have been investigated with a detailed analysis on how those sites are inadequate and how the site selected is the least obtrusive;
- (C) A letter from the nearby tower owners indicating the tower is not feasible for co-locating antennas; and
- (D) A statement that the wireless telecommunications provider commits to allow a minimum of two other wireless telecommunications providers to co-locate antennas on their proposed tower facilities wherever structurally and technically feasible.

Reasons for the Amendment: This amendment aims to promote the shared use of telecommunications infrastructure, reduce the proliferation of new towers, and enhance the aesthetic and environmental quality of the community. By requiring thorough investigation and documentation of co-location possibilities, it facilitates responsible development while meeting the growing demand for wireless communication services.

Relating to the Plan Approval application requirements for telecommunication antennas.

To ensure transparency and community involvement in the development of telecommunication facilities by requiring justification for their location, design, and height, **Section 25-2-74 (7)** aims to document efforts made to engage with adjacent landowners and the community, fostering communication and addressing concerns early in the planning process with the following:

- (7) A statement providing the reasons for the location, design and height of the proposed tower or antennas and the efforts made to meet with the adjacent landowners and/or community regarding the development.

Reasons for the Amendment: This amendment is essential to promote responsible development practices that consider community preferences and minimize potential impacts on surrounding properties. By requiring a comprehensive statement on

location rationale, design considerations, and outreach efforts, it enhances public trust, facilitates informed decision-making, and promotes the integration of telecommunication infrastructure in a manner that respects the surrounding properties.

Relating to the Plan Approval application requirements for telecommunication antennas.

To ensure that telecommunication antennas are sited and designed in a manner that minimizes visual impacts on the surrounding community and landscape. **Section 25-2-74 (8)** is amended to require comprehensive visual impact analyses and mitigation measures, promoting aesthetic compatibility and preserving scenic quality as follows:

(8) A visual impact analysis shall be provided and include:

(A) Mitigation measures to minimize the visual impacts of the tower;

(B) Before and after photo simulations from various locations and/or angles from which the public would typically view the site; and

(C) A map depicting where the photos were taken.

The application shall demonstrate that less intrusive sites are not available or do not provide the necessary communication coverage to provide the service. The director may request the submission of additional materials, including but not limited to photo overlays, scaled models, renderings, or field mock-ups, to evaluate potential visual impacts. These materials should address appropriate coloration, blending, and stealth design (e.g., monopine, monopalm) to harmonize the facility with the surrounding area.

Reasons for the Amendment: This amendment is essential to address community concerns regarding the visual intrusion of telecommunication towers and antennas. By mandating detailed visual impact assessments, including photo simulations and mitigation strategies, it enhances transparency, facilitates informed decision-making,

and encourages the integration of telecommunication infrastructure in a manner that respects and enhances the character of the surrounding environment.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(a) is proposed to be amended as follows:

- (a) A telecommunication antenna or tower shall be permitted in [~~the V, CN, CG, CV, MCX, ML, MG and CDH~~] all zoning 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.~~] Co-location of antennas upon an existing privately owned tower and expansion of related support equipment within the project site is permitted and encouraged provided the director issued plan approval for the existing tower. The ground lease areas of co-locating carriers must be adjacent to the existing ground lease area and not located within the open yard setback areas, and the co-location must not result in a ‘substantial change’, as defined by the Federal Communication Commission. Co-location that results in a ‘substantial change’ to the tower height or ground lease area, as defined by the Federal Communication Commission, requires issuance of a new plan approval.

Reasons for the Amendment: This amendment is necessary to provide regulatory clarity and consistency in managing telecommunication infrastructure projects due to the changes made by HRS 46-89. By specifying requirements for plan approval, co-location, and potential changes to existing structures, it enhances transparency, facilitates regulatory compliance, and supports responsible growth of telecommunication networks.

The Planning Director is encouraging co-location in an effort to improve

coverage and capacity in high-demand areas while enhancing signal strength and reliability by allowing multiple providers to share infrastructure, reducing the need for additional towers, and expediting the approval process. A new plan approval will be required if the co-location results in a substantial change under the Federal Communications Commission (FCC) Section 6409(a) of the Spectrum Act.

According to Section 6409(a) a modification is deemed “substantial” if it involves: a height increase of more than 10% or one additional antenna array (up to 20 feet) for towers outside public rights-of-way, or more than 10% or 10 feet for towers within public rights-of-way and base stations; a width increase of more than 20 feet or the width of the tower structure for towers outside public rights-of-way, or more than 6 feet for towers within public rights-of-way and base stations; installation of more than four new equipment cabinets, or one new cabinet if no pre-existing cabinets or ground cabinets increasing by more than 10% in size for towers within public rights-of-way and base stations; any excavation or deployment outside current property boundaries; modifications that defeat existing concealment elements; and non-compliance with prior conditions of approval unless due to specified changes.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(b) is proposed to be added as follows:

- (b) Telecommunication facilities developed primarily to protect public health, safety, and welfare, including but not limited to facilities for police, fire, ambulance, and other emergency dispatch services, shall be exempt from the telecommunication tower requirements outlined in this chapter.

Reasons for the Amendment: The proposed amendment to Section 25-4-12(b) aims to exempt telecommunication facilities that are developed primarily to protect public health, safety, and welfare from the standard telecommunication tower requirements. Facilities supporting police, fire, ambulance, and other emergency dispatch services are essential for the safety and well-being of the community. Exempting these facilities from certain requirements ensures that they can be established and maintained without unnecessary delays, ensuring uninterrupted emergency services.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(c) and (d) is proposed to be amended as follows:

~~[(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.]~~

(c) Minimum Lot Size Requirements for Telecommunication Towers.

- (1) The minimum lot size for the placement of any telecommunication tower within an A, FA, IA and O zoning districts shall be five (5) acres.
- (2) The minimum lot size for the placement of any telecommunication tower within a RS, RD, RM and RA zoning district shall be one (1) acre.
- (3) No minimum lot size shall be required for the placement of telecommunication towers within the V, CN, CG, CV, MCX, ML, MG, and CDH zoning districts.
The minimum lot size may be reduced, upon finding that the issuance of a variance by the director will not result in adverse impacts, including but not limited to noise, light, glare, visual, drainage, or other detrimental effects to adjacent property.

(d) The minimum setback for telecommunication towers are as follows:

- (1) Telecommunication towers shall be set back from any property line with a minimum distance equal to one hundred and twenty (120) percent of the tower height as measured from the ground level.

(2) Telecommunication towers must be sited at least 1,200 feet from nearby residences and schools not on the subject property.

(3) Telecommunication towers located within Commercial or Industrial zoning districts shall be exempt from the property line setback requirement stated in Section 25-4-12(d)(1).

Reasons for the Amendment: This amendment is crucial for establishing guidelines that balance the need for telecommunication infrastructure with community interests and safety. By specifying a minimum lot size of five acres for agricultural districts, this amendment aims to ensure enough land area to site new telecommunication facilities a safe distance from any surrounding structures and to comply with newly proposed setback requirements.

While in more densely populated residential districts, a minimum lot size of one acre balances the need for infrastructure with the preservation of community character.

In commercial and industrial districts, where land use accommodates multifaceted and complex uses, no minimum lot size is required, allowing for greater flexibility in tower placement. This consideration helps to mitigate visual and noise impacts on adjacent properties, as well as provide sufficient clearance for maintenance and emergency access around the tower base.

Recognizing that some properties, particularly narrow lots that are three acres or less, may face challenges in meeting this requirement, the director has included provisions for variances from the minimum lot size. This flexibility allows for the accommodation of unique site conditions while still maintaining safety and community standards. The variance process ensures that each case is carefully evaluated to balance the specific circumstances of the lot with the overarching goals of the amendment.

In addition, the Planning Director proposes to remove the current setback requirements for towers, which state that 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, and that 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.

Instead, the Planning Director proposes setting the setback distance to 120% of the tower height. For example, a 100-foot-tall tower would need to set back 120 feet from a property line. This adjustment addresses safety concerns by reducing the risk of a tower collapsing beyond its base footprint, thereby protecting adjacent properties, roads, and public safety. This distance is supported to account for potential structural failures and ensure that towers are situated far enough away to minimize damage and risk.

While the proposed setback requirement applies to all towers, it's important to note that it does not affect telecommunication towers within the commercial and industrial zoning districts. These districts have their own setback requirements in the Zoning Code, which allow for greater flexibility in placing necessary infrastructure to support business and industrial operations. As such, the proposed amendment ensures that the new setback standards are only enforced in districts where concerns about the potential impact on adjacent residential properties and public safety.

Additionally, the Planning Director is proposing to require that all telecommunication towers be set back a minimum 1,200 feet from nearby residences and schools that are not located on the subject property. Research conducted by Planning Department staff, including a comparative analysis of setbacks in various municipalities, identified a 1,200-foot minimum setback in Lane County, Oregon, and a 1,500-foot minimum setback in Copake, New York, and Sallisaw, Oklahoma as a relevant benchmark. These examples illustrate 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. Furthermore, the Planning Director believes that the proposed setbacks align with our county's rural character and long-term planning goals, supporting sustainable development and effective land use. By adopting these standards, we ensure that telecommunication infrastructure is integrated safely and harmoniously within our community, addressing both current needs and future growth.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(e) is proposed to be amended as follows:

- (e) Fencing and Safety Measures. Telecommunication towers must be enclosed by fencing a minimum of 6 feet in height, and towers must be equipped with an anti-climbing device.

Reason for the Amendment: This amendment aims to add safety requirements that protect both the public and the tower facility, ensuring that ground equipment is securely enclosed and that towers are safeguarded against potential unauthorized climbing risks.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(f) is proposed to be amended as follows:

- ~~[(e)]~~(f) 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 thirty miles per hour.

Reasons for the Amendment: This amendment ensures that telecommunication towers and their associated equipment adhere to design criteria for wind loads. By maintaining compliance with established standards, we enhance the reliability of communication networks during severe weather events, thereby improving public safety and ensuring continuous service.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(g) is proposed to be added as follows:

- (g) The telecommunication antennas and tower shall comply with all applicable rules, regulations and requirements of the affected agencies, including the Federal Aviation Administration and Federal Communications Commission. All exterior lighting, except safety beacons required by the FAA, shall be shielded to minimize impacts to migrating seabirds.

Reasons for the Amendment: This amendment ensures that telecommunication towers and antennas meet the necessary regulatory standards set by the FAA and FCC, enhancing safety and compliance. The requirement for a beacon improves tower visibility, crucial for aviation safety. Additionally, by specifying that the tower shall not be shielded in a way that affects seabirds, the amendment aims to protect local wildlife from potential hazards. Shielding other exterior lighting minimizes light pollution, further benefiting both the environment and the community.

Relating to Standards for Telecommunication antennas and towers.

Section 25-4-12(h) is proposed to be added as follows:

- (h) To enhance wildfire detection and response capabilities, telecommunication towers located in areas identified as high-risk for wildfire activity may be required to provide space for a surveillance camera system designed to monitor and detect wildfire activity as a condition of Final Plan Approval. High-risk wildfire activity areas shall be determined by the director in consultation with any relevant federal, state, and county emergency service agencies.

Reasons for the Amendment: This amendment aims to enhance wildfire detection and response capabilities by requiring tower developers to provide space for wildfire surveillance camera systems on telecommunication towers located in high-risk wildfire areas. The Planning Director will consult with relevant federal, state, and county emergency service agencies to determine areas of wildfire risk and require the space on a tower for such camera systems as a condition of Final Plan Approval. This amendment does not require the tower developer to purchase, install, or maintain the camera system, rather this responsibility will fall on public emergency service agencies or private organizations.

Relating to Standards for Telecommunication antennas and towers.

To ensure that telecommunication antennas and towers development projects adhere to regulations aimed at protecting state or federally listed endangered species,

Section 25-4-12(i) is proposed to be added as follows:

(i) Should any state or federally listed or endangered species be found on the subject property, the applicant shall comply with all applicable requirements of Department of Land and Natural Resources-Division of Forestry and Wildlife and/or the United States Fish and Wildlife Service.

Reasons for the Amendment: Compliance with Department of Land and Natural Resources-Division of Forestry and Wildlife (DLNR-DOFAW) and United States Fish and Wildlife Service (USFWS) regulations helps safeguard vulnerable wildlife populations, habitats, and ecosystems. This amendment supports sustainable development practices that balance technological advancement with environmental stewardship and ensures that telecommunication projects are conducted responsibly, minimizing disturbances to sensitive species and their habitats. Notably, this language has also been a standard condition in all Use Permits issued for telecommunication towers.

Relating to Standards for Telecommunication antennas and towers.

To ensure timely and complete removal of telecommunication towers,

Section 25-4-12(j) is proposed to be added as follows:

(j) Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (including the equipment building and the fence), down to, but not including the concrete foundation. The applicant shall immediately provide written notification to the director of the termination of the telecommunication tower and related improvements and the removal of all structures.

Reasons for the Amendment: This amendment is crucial to address concerns regarding the long-term impacts of abandoned telecommunication towers. By mandating the removal of towers and associated structures within a specific timeframe after abandonment, it prevents derelict infrastructure from posing safety risks. Additionally, the requirement for written notification to the director

facilitates regulatory oversight and ensures compliance with removal obligations, promoting accountability in the management of telecommunication infrastructure. This language has also been a standard condition in all Use Permits issued for telecommunication towers.

Relating to Standards for Telecommunication antennas and towers.

To empower that the director with authority to impose conditions and modifications on the location and design of telecommunication antennas and towers,

Section 25-4-12(k) is proposed to be added as follows:

- (k) The director may require any conditions or changes in the location and design of telecommunication antennas and towers which, in the director's opinion, are necessary to carry out the purposes of this chapter and the considerations contained in section 25-2-74, 25-2-77, and the natural beauty chapter of the General Plan. This can include but not be limited to requiring stealth tower design (e.g., monopine, monopalm) in order to reduce visual impacts to surrounding properties. If the proposed site is located within an area of the natural beauty as designated by the General Plan or is located along a roadway, bikeway, trail or park used by the public the director may require an on-site or off-site relocation of the telecommunication tower in an effort to mitigate visual impacts.

Reasons for the Amendment: This amendment is essential to provide flexibility and discretion to the director in managing the siting and design of telecommunication antennas and towers by ensuring that the director will have the authority to impose conditions on telecommunication antennas and towers. By allowing for conditions such as stealth tower design options (e.g., monopine, monopalm) and potential relocation within scenic areas designated by the General Plan or along public view corridors, this will ensure that there will still be some regulatory oversight to ensure that telecommunication projects contribute positively to the character of the area and align with broader planning goals.

Relating to Action on Plan Approval application.

To establish specific time frames and procedures for the director's review and decision-making on plan approval applications, tailored to different types of developments including agricultural tourism facilities, special districts with design guidelines, and telecommunication antennas or towers, **Section 25-2-76(d)** is proposed to be amended as follows:

- (d) The director shall render a decision to either approve or deny a plan approval application, other than for an agricultural tourism facility ~~[or]~~, any special district with adopted design guidelines and/or standards, or any telecommunication antenna or tower, within thirty days after acceptance of the application. If the director fails to render a decision within the thirty-day period, the application shall be considered approved without further certification by the director. In addition, the following specific provisions shall apply:
 - a. For an agricultural tourism facility, the department shall conduct a site inspection prior to issuing plan approval within sixty days after acceptance of the application. If the director fails to render a decision within the sixty-day period, the application shall be considered approved without further certification by the director.
 - b. For any plan approval application within a special district with adopted design guidelines and/or standards, the director shall render a decision to either approve or deny the plan approval application within forty-five days after acceptance of the application. If the director fails to render a decision within the forty-five day period, the application shall be considered approved without further certification by the director.
 - c. For a telecommunication antenna or tower, the director shall render a decision to either approve or deny the plan approval application within sixty days after acceptance of the application, in accordance with Hawai'i Revised Statutes, Chapter 46-89. If the director fails to render a decision within the time frame

specified by Hawai‘i Revised Statutes Chapter 46-89, the application shall be considered approved without further certification by the director.

Reasons for the Amendment: This amendment is necessary to enhance efficiency and accountability in the planning approval process. By setting clear time frames for decision-making, specifically, for telecommunication antennas and towers, adherence to the timelines prescribed by Hawai‘i Revised Statutes ensures compliance with state regulatory requirements and facilitates the timely deployment of essential communication infrastructure. Moreover, the provision for automatic approval if deadlines are not met encourages proactive review and timely decision-making by the director, reinforcing transparency and responsiveness in regulatory procedures.

AGENCIES’ COMMENTS

- 1) **Police Department (Planning Department Exhibit 4 – July 10, 2024 Memo)**
- 2) **Civil Defense (Planning Department Exhibit 5 – July 18, 2024 Memo)**
- 3) **State Department of Land and Natural Resources-Division of Forestry and Wildlife (Planning Department Exhibit 6 – July 29, 2024 Memo)**

AGENCY – NO COMMENTS/CONCERNS

- 4) Department of Public Works Engineering Division, State Department of Transportation, State Department of Land and Natural Resources.

AGENCY – NO RESPONSE PROVIDED

- 5) Department of Public Works – Building Division; Department of Parks and Recreation; Fire Department; State Department of Health; State Department of Education; State Land Use Commission, State Office of Planning and Sustainable Development; National Park Service; U.S. Fish and Wildlife Service

PUBLIC COMMENTS PROVIDED

- 6) **Comments from Verizon Wireless (Planning Department Exhibit 7 - July 16, 2024 Memo)**
- 7) **Comments from AT&T (Planning Department Exhibit 8 - July 24, 2024 Letter)**
- 8) **Comments from Crown Castle (Planning Department Exhibit 9 - July**

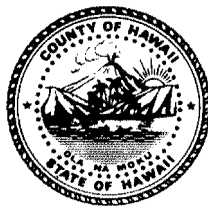
26,2024 Email)

- 9) **Comments from Elizabeth Songvilay Clements (Planning Department
Exhibit 10 - August 7, 2024 Email)**

PLANNING DIRECTOR'S RECOMMENDATION

For the reasons cited above, the Planning Director recommends that the Leeward and Windward Planning Commission send a **favorable recommendation of this bill to the Hawai'i County Council for the amendment to Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 edition, as amended) relating to telecommunication antennas and towers.**

Mitchell D. Roth
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December 27, 2023

Via Email

Director Zendo Kern
Department of Planning
County of Hawaii

Re: Telecommunication Tower Use Permits Approval Process As Required
By HRS §46-89

Dear Director Kern:

This letter provides a legal opinion on the process by which the County of Hawaii currently processes telecommunication tower use permit applications.

Question Presented: Are telecommunication tower permit applications subject to petitions for contested case hearings?

Short Answer: No. State law, Hawaii Revised Statutes Section 46-89, requires all broadband-related permits be approved, approved with modification, or disapproved within sixty days of submission of a complete permit application. Further, it bars any action against any county, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application pursuant to the section. [See, HRS 46-89(a) and 46-89(d)] This state law preempts the Hawaii Code which contains contrary provisions.

Discussion:

An express limitation on county authority to enact laws is that a county may not enact laws which are "inconsistent with, or tending to defeat, the intent of any state statute". HRS §46-1.5. See also, *Ruggles v. Yagong*, 135 Hawaii 411, 422, 353 P.3d 953, 964 (2015) (County of Hawaii law placing low enforcement on cannabis laws was preempted by state law which placed primary enforcement of penal laws on the counties. The laws were of general application throughout the state and the comprehensive nature of the laws implied an intent they be uniform throughout the state.)

Hawai'i Revised Statute §46-89 contains express directives to counties relative to issuing broadband related permits. In relevant part it states:

(a) A county **shall** approve, approve with modification, or disapprove all applications for broadband-related permits within sixty days of submission of a complete permit application and full payment of any applicable fee. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the county, the application shall be deemed approved by the county.

(b) Permits issued pursuant to this section **shall** contain the following language: "This is a broadband-related permit issued pursuant to section 46-89, Hawaii Revised Statutes."

* * * * *

(d) No action **shall** be prosecuted or maintained against any county, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application pursuant to this section, or against public utilities resulting from such actions.

(e) The sixty day time period established by subsection (a) **shall** be extended in the event of a natural disaster, state emergency, or union strike that prevents the applicant, agency, or department from fulfilling application review requirements.

(h) For the purposes of this section, "broadband-related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development 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. The term does not include any county permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the county.

(Emphasis added). This statute requires action on a permit within sixty days unless there is a disaster, state of emergency or union strike. Further, it contains the extraordinary provision of prohibiting actions against a county and its employees for their actions taken in the permit process.

Hawai'i County Code ("HCC") Section 25-2-61(a)(11) requires a landowner to obtain Planning Commission approval of a use permit for the construction of a telecommunications tower in certain zoning districts. HCC §25-2-63 governs the procedure for issuing the use permit. It requires scheduling a public hearing within 90

days of accepting a permit application. Upon close of the hearing, HCC §25-2-64(a) allows the commission up to sixty days to deny or approve a permit application. A person aggrieved by a commission's decision may file a lawsuit with the third circuit court pursuant to HCC §25-2-66 and in accordance with HRS Chapter 91. In other words, the HCC envisions a process that may take more than 60 days and allows an aggrieved party to file a legal action in violation of HRS §46-89.

Additionally, the Planning Commissions have adopted Rule 4-1 which governs the procedure for contested case hearings in violation of HRS §46-89. Rule 4-1 provides in relevant part:

*This rule governs contested case procedure whenever it is required by law,....
This procedure shall be used in all cases where the action of the commission is the final action of a county official or agency, prior to the opportunity to appeal to the third circuit court, whenever it is required. It shall therefore be followed in all cases where state statutes provide for direct appeal from the commission to the third circuit court.*

This contested case hearings and appeal process described above and set forth in the State Administrative Act, HRS Ch. 91 is inconsistent with the mandate of HRS §46-89. A standard rule of statutory construction is that special or particular provisions control over general provisions. *Ho'omoana Foundation v. land use Commission*, 152 Hawai'i 337, 344, 526 P.3d 314, 321 (2023). With that in mind, any provision of HRS Chapter 91 which might generally suggest that a contested case hearing provides an opportunity to appeal from an administrative decision such as a use permit is preempted by the very specific terms of HRS 46-89.

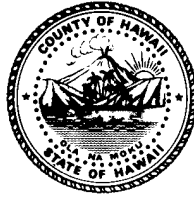
Based upon the foregoing, we recommend the Planning Department introduce amendments to the Hawaii County Code and the planning commissions' administrative rules which exempt broadband related permits from the current use permit process or create a different process which conforms to HRS §46-89.

Sincerely,

 Digitally signed by Elizabeth
Strance
Date: 2023.12.27 14:10:33 -10'00'

Elizabeth A. Strance
Corporation Counsel

cc: Jean Campbell



BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 25, ARTICLES 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 purpose of these regulations is to provide a comprehensive set of standards for the development of telecommunications facilities. The regulations contained herein are designed to protect and promote public safety and community welfare, while at the same time not unduly restricting the development of telecommunications facilities.

SECTION 2. 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.]~~

~~[(12)]~~(11) Yacht harbors and boating facilities in the RS, RD, RM, RCX, RA, V, CG, CV, MCX, ML, MG and O districts.

~~[(13)]~~(12) Wind energy facilities in the O district; provided that the property is within the state land use agricultural district.

~~[(14)]~~(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.

- (b) Any use which received an approval as a conditionally permitted use prior to September 25, 1984, or which received prior approval through the use permit process, is considered a legal use of the affected parcel and may be expanded or enlarged without obtaining another use permit, provided such expansion, enlargement or addition is in full compliance with this chapter and the applicable district regulations.
- (c) A use permit shall not be required for any use described in subsection (a) above, if a special permit is obtained for that use, pursuant to section 205-6, Hawai'i Revised Statutes.

SECTION 3. 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.

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 on the building site of the proposed antenna or tower;
- (2) Building plans for the tower, certified by a licensed structural engineer, verifying that the tower, ~~[together with the initial antennas and other equipment proposed to be installed thereon,]~~ at full build out inclusive of all potential antennas and equipment, will have a hard survivability for sustained winds of one hundred thirty miles per hour;
- (3) A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation; and

- (4) 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.
- (5) Documentation demonstrating compliance with the National Historic Preservation Act of 1966 Section 106 review has been completed.
- (6) A report indicating whether the facility could be co-located elsewhere. The report shall include:
 - (A) A statement from the applicant that diligent, but unsuccessful efforts to install or co-locate the applicant's telecommunication antennas on existing towers or feasible antenna support structures have been made;
 - (B) A map showing the sites that have been investigated with a detailed analysis on how those sites are inadequate and how the site selected is the least obtrusive;
 - (C) A letter from the nearby tower owners indicating the tower is not feasible for co-locating antennas; and
 - (D) A statement that the wireless telecommunications provider commits to allow a minimum of two other wireless telecommunications providers to co-locate antennas on their proposed tower facilities wherever structurally and technically feasible.
- (7) A statement providing the reasons for the location, design and height of the proposed tower or antennas and the efforts made to meet with the adjacent landowners and/or community regarding the development.
- (8) A visual impact analysis shall be provided and include:
 - (A) Mitigation measures to minimize the visual impacts of the tower;
 - (B) Before and after photo simulations from various locations and/or angles from which the public would typically view the site; and
 - (C) A map depicting where the photos were taken.

The application shall demonstrate that less intrusive sites are not available or do not provide the necessary communication coverage to provide the service. The director may request the submission of additional materials, including but not limited to photo overlays, scaled models, renderings, or field mock-ups, to evaluate potential visual impacts. These materials should address appropriate coloration, blending, and stealth design (e.g., monopine, monopalm) to harmonize the facility with the surrounding area.

SECTION 4. Chapter 25, article 4, division 1, section 25-2-12, 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] all zoning 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.]~~ Co-location of antennas upon an existing privately owned tower and expansion of related support equipment within the project site is permitted and encouraged provided the director issued plan approval for the existing tower. The ground lease areas of co-locating carriers must be adjacent to the existing ground lease area and not located within the open yard setback areas, and the co-location must not result in a 'substantial change', as defined by the Federal Communication Commission. Co-location that results in a 'substantial change' to the tower height or ground lease area, as defined by the Federal Communication Commission, requires issuance of a new plan approval.
- ~~[(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.]~~
- (b) Telecommunication facilities developed primarily to protect public health, safety, and welfare, including but not limited to facilities for police, fire, ambulance, and other emergency dispatch services, shall be exempt from the telecommunication tower requirements outlined in this chapter.
- (c) Minimum Lot Size Requirements for Telecommunication Towers.
- (1) The minimum lot size for the placement of any telecommunication tower within the A, FA, IA and O zoning districts shall be five (5) acres.
 - (2) The minimum lot size for the placement of any telecommunication tower within a RS, RD, RM and RA zoning districts shall be one (1) acre.
 - (3) No minimum lot size shall be required for the placement of telecommunication towers within the V, CN, CG, CV, MCX, ML, MG and CDH zoning districts.
- The minimum lot size may be reduced, upon finding that the issuance of a variance by the director will not result in adverse impacts, including but not limited to noise, light, glare, visual, drainage, or other detrimental effects to adjacent property.
- (d) The minimum setback for telecommunication towers are as follows:
- (1) Telecommunication towers shall be set back from any property line with a minimum distance equal to one hundred and twenty (120) percent of the tower height as measured from the ground level.
 - (2) Telecommunication towers must be sited at least 1,200 feet from nearby residences and schools not on the subject property.

- (3) Telecommunication towers located within V, CN, CG, CV, MCX, ML, MG and CDH zoning districts shall be exempt from the property line setback requirements stated in Section 25-4-12(d)(1).
- (e) Fencing and Safety Measures. Telecommunication towers must be enclosed by fencing a minimum of 6 feet in height, and towers must be equipped with an anti-climbing device.
- [(e)](f)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 thirty miles per hour.
- (g) The telecommunication antennas and tower shall comply with all applicable rules, regulations and requirements of the affected agencies, including the Federal Aviation Administration and Federal Communications Commission. All exterior lighting, except safety beacons required by the FAA, shall be shielded to minimize impacts to migrating seabirds.
- (h) To enhance wildfire detection and response capabilities, telecommunication towers located in areas identified as high-risk for wildfire activity may be required to provide space for a surveillance camera system designed to monitor and detect wildfire activity as a condition of Final Plan Approval. High-risk wildfire activity areas shall be determined by the director in consultation with any relevant federal, state, and county emergency service agencies.
- (i) Should any state or federally listed or endangered species be found on the subject property, the applicant shall comply with all applicable requirements of Department of Land and Natural Resources-Division of Forestry and Wildlife and/or the United States Fish and Wildlife Service.
- (j) Within 120 days of the permanent abandonment of the tower, the applicant shall remove the tower and its antenna and accessory structures (including the equipment building and the fence), down to, but not including the concrete foundation. The applicant shall immediately provide written notification to the director of the termination of the telecommunication tower and related improvements and the removal of all structures.
- (k) The director may require any conditions or changes in the location and design of telecommunication antennas and towers which, in the director's opinion, are necessary to carry out the purposes of this chapter and the considerations contained in section 25-2-74, 25-2-77, and the natural beauty chapter of the General Plan. This can include but not be limited to requiring stealth design (e.g., monopine, monopalm) in order to reduce visual impacts to surrounding properties. If the proposed site is located within an area of the natural beauty as designated by the General Plan or is located along a roadway, bikeway, trail or park used by the public the director may require an on-site or off-site relocation of the telecommunication tower in an effort to mitigate visual impacts.

SECTION 5. Chapter 25, article 5, division 1, section 25-2-76, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-2-76. Action on plan approval application.

- (a) The director may issue plan approval subject to conditions or changes in the proposal which, in the director's opinion, are necessary to carry out and further

- the purposes of this chapter and the considerations contained in section 25-2-77.
- (b) The director may only issue plan approval for a telecommunication antenna or tower if the proposed use meets all of the conditions contained in sections 25-2-77 and 25-4-12, and if the applicant provides all verification required under section 25-2-74.
 - (c) The director may only issue plan approval for a temporary model home or real estate office if the proposed use meets all of the conditions in section 25-2-77 and 25-4-8.
 - (d) The director shall render a decision to either approve or deny a plan approval application, other than for an agricultural tourism facility ~~[or]~~, any special district with adopted design guidelines and/or standards, or any telecommunication antenna or tower, within thirty days after acceptance of the application. If the director fails to render a decision within the thirty-day period, the application shall be considered approved without further certification by the director. In addition, the following specific provisions shall apply:
 - (1) For an agricultural tourism facility, the department shall conduct a site inspection prior to issuing plan approval within sixty days after acceptance of the application. If the director fails to render a decision within the sixty-day period, the application shall be considered approved without further certification by the director.
 - (2) For any plan approval application within a special district with adopted design guidelines and/or standards, the director shall render a decision to either approve or deny the plan approval application within forty-five days after acceptance of the application. If the director fails to render a decision within the forty-five day period, the application shall be considered approved without further certification by the director.
 - (3) For a telecommunication antenna or tower, the director shall render a decision to either approve or deny the plan approval application within sixty days after acceptance of the application, in accordance with Hawai'i Revised Statutes, Chapter 46-89. If the director fails to render a decision within the time frame specified by Hawai'i Revised Statutes, Chapter 46-89, the application shall be considered approved without further certification by the director.

SECTION 6. Chapter 25, article 5, division 1, section 25-5-3, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-3. Permitted uses.

- (a) The following uses shall be permitted in the RS district:
 - (1) Adult day care homes.
 - (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) Crop production.
- (5) Dwellings, single-family.
- (6) Family child care homes.
- (7) Group living facilities.
- (8) Home occupations, as permitted under section 25-4-13.
- (9) Meeting facilities.
- (10) Model homes, as permitted under section 25-4-8.
- (11) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (12) Public uses and structures, as permitted under section 25-4-11.
- (13) Short-term vacation rentals situated in the general plan resort and resort node areas.
- (14) Telecommunication antennas and towers, as permitted under section 25-4-12.
- ~~[(14)]~~(15) Temporary real estate offices, as permitted under section 25-4-8.
- ~~[(15)]~~(16) 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 RS district, provided that a use permit is issued for each use:
 - (1) Bed and breakfast establishments as permitted under section 25-4-7.
 - (2) Care homes.
 - (3) Churches, temples and synagogues.
 - (4) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (5) Day care centers.
 - (6) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, 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.
 - (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
 - (8) Medical clinics.
 - (9) Schools.
 - ~~[(10)]~~(10) Yacht harbors and boating facilities.
- (c) Buildings and uses normally considered directly accessory to the uses permitted in this section shall also be permitted in the RS district.

SECTION 7. Chapter 25, article 5, division 2, section 25-5-22, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-22. Permitted uses.

- (a) The following uses shall be permitted in the RD district:
 - (1) Adult day care homes.
 - (2) Bed and breakfast establishments as permitted under section 25-4-7.
 - (3) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (4) Community buildings, as permitted under section 25-4-11.

- (5) Crop production.
- (6) Dwellings, double-family or duplex.
- (7) Dwellings, single-family.
- (8) Family child care homes.
- (9) Group living facilities.
- (10) Home occupations, as permitted under section 25-4-13.
- (11) Meeting facilities.
- (12) Model homes, as permitted under section 25-4-8.
- (13) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (14) Public uses and structures, as permitted under section 25-4-11.
- (15) Short-term vacation rentals situated in the general plan resort and resort node areas.
- (16) Temporary real estate offices, as permitted under section 25-4-8.
- (17) Telecommunication antennas and towers, as permitted under section 25-4-12.
- ~~[(17)]~~(18) 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 RD district, provided that a use permit is issued for each use:
 - (1) Care homes.
 - (2) Churches, temples and synagogues.
 - (3) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (4) Day care centers.
 - (5) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, 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) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
 - (7) Medical clinics.
 - (8) Schools.
 - ~~[(9) Telecommunication antennas and towers.]~~
 - ~~[(10)]~~(9) Yacht harbors and boating facilities.
- (c) Buildings and uses normally considered directly accessory to the uses permitted under this section shall also be permitted in the RD district.

SECTION 8. Chapter 25, article 5, division 3, section 25-5-32, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-32. Permitted uses.

- (a) The following uses shall be permitted in the RM district:
 - (1) Adult day care homes.
 - (2) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (3) Boarding facilities, rooming, or lodging houses.
 - (4) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.

- (5) Commercial or personal service uses, on a small scale, as approved by the director, provided that the total gross floor area does not exceed one thousand two hundred square feet and a maximum of five employees.
- (6) Community buildings, as permitted under section 25-4-11.
- (7) Crop production.
- (8) Dwellings, double-family or duplex.
- (9) Dwellings, multiple-family.
- (10) Dwellings, single-family.
- (11) Family child care homes.
- (12) Group living facilities.
- (13) Home occupations, as permitted under section 25-4-13.
- (14) Meeting facilities.
- (15) Model homes, as permitted under section 25-4-8.
- (16) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (17) Public uses and structures, as permitted under section 25-4-11.
- (18) Short-term vacation rentals situated in any of the following:
 - (A) General plan resort and resort node areas.
 - (B) Outside the general plan resort and resort node areas, in multiple family dwellings within a condominium property regime as defined and governed by chapters 514A or 514B, Hawai'i Revised Statutes.
- (19) Temporary real estate offices, as permitted under section 25-4-8.
- (20) Telecommunication antennas and towers, as permitted under section 25-4-12.
- ~~[(20)]~~(21) Time share units situated in any of the following:
 - (A) Areas designated as resort under the general plan land use pattern allocation guide (LUPAG) map.
 - (B) Areas determined by the director to be within resort areas identified by the general plan land use element, except for retreat resort areas.
 - (C) Areas determined for such use by the council, by resolution.
- ~~[(21)]~~(22) 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 RM district, provided that a use permit is issued for each use:
 - (1) Care homes.
 - (2) Churches, temples and synagogues.
 - (3) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (4) Day care centers.
 - (5) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, 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) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
 - (7) Medical clinics.
 - (8) Schools.

~~[(9)] [Telecommunication antennas and towers.]~~

~~[(10)]~~(9) Yacht harbors and boating facilities.

- (c) Buildings and uses normally considered directly accessory to the uses permitted in this section shall also be permitted in the RM district.

SECTION 9. Chapter 25, article 5, division 4, section 25-5-42, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-42. Permitted uses.

- (a) The following uses shall be permitted in the RCX district:
- (1) Adult day care homes.
 - (2) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (3) Boarding facilities, rooming, or lodging houses.
 - (4) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (5) Churches, temples and synagogues.
 - (6) Commercial or personal service uses, on a small scale, as approved by the director.
 - (7) Community buildings, as permitted under section 25-4-11.
 - (8) Convenience stores.
 - (9) Crop production.
 - (10) Day care centers.
 - (11) Dwellings, double-family or duplex.
 - (12) Dwellings, multiple-family.
 - (13) Dwellings, single-family.
 - (14) Family child care homes.
 - (15) Group living facilities.
 - (16) Home occupations, as permitted under section 25-4-13.
 - (17) Medical clinics.
 - (18) Meeting facilities.
 - (19) Model homes, as permitted under section 25-4-8.
 - (20) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
 - (21) Public uses and structures, as permitted under section 25-4-11.
 - (22) Restaurants.
 - (23) Schools.
 - (24) Short-term vacation rentals situated in the general plan resort and resort node areas.
 - (25) Telecommunication antennas and towers, as permitted under section 25-4-12.
 - ~~[(25)]~~(26) 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 RCX district, provided that a use permit is issued for each use:
- (1) Care homes.
 - (2) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (3) Golf courses and related golf course uses, including golf driving ranges,

golf maintenance buildings and golf club houses, 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.

- (4) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
- (5) Major outdoor amusement and recreation facilities.
- ~~[(6) Telecommunication antennas and towers.]~~
- ~~[(7)]~~(6) Yacht harbors and boating facilities.
- (c) Buildings and uses normally considered directly accessory to the above uses shall also be permitted in the RCX district.

SECTION 10. Chapter 25, article 5, division 5, section 25-5-52, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-52. Permitted uses.

- (a) The following uses shall be permitted in the RA district:
 - (1) Adult day care homes.
 - (2) Agricultural products processing, minor, provided that the site or buildings used for such processing, shall be located at least seventy-five feet from any street bounding the building site.
 - (3) Agricultural tourism as permitted under section 25-4-15.
 - (4) Animal hospitals.
 - (5) Aquaculture.
 - (6) Botanical gardens, nurseries and greenhouses, seed farms, plant experimental stations, arboretums, floriculture, and similar uses dealing with the growing of plants.
 - (7) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (8) Crop production.
 - (9) Dwelling, single-family, one per building site.
 - (10) Family child care homes.
 - (11) Group living facilities.
 - (12) Kennels, provided that the building site is a minimum of five acres in area and the structures are located at least one hundred feet away from any lot line.
 - (13) Livestock production (excluding pigs), provided that:
 - (A) The requirements of the department of health are met;
 - (B) Approval of the director is obtained; and
 - (C) Any feed or water area, salt lick, corral, run, barn, shed, stable, house, hutch, or other enclosure for the keeping of any permitted animal shall be located at least seventy-five feet from any lot line.
 - (14) Parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities.
 - (15) Public uses and structures, as permitted under section 25-4-11.
 - (16) Roadside stands for the sale of agricultural products grown on the premises.
 - (17) Stables, commercial or boarding, provided that the building site is a minimum of five acres in area and the structures are located at least one

hundred feet away from any lot line.

(18) Telecommunication antennas and towers, as permitted under section 25-4-12.

[(48)](19) Utility substations, as permitted under section 25-4-11.

[(49)](20) Veterinary establishments.

(b) The following uses may be permitted in the RA district, provided that a use permit is issued for each use:

- (1) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, 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.

[(2) Telecommunication antennas and towers.]

SECTION 11. Chapter 25, article 5, division 6, section 25-5-62, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-62. Permitted uses.

(a) The following uses shall be permitted in FA districts:

- (1) Agricultural products processing, minor, provided that the area or buildings used for such processing, shall be located at least seventy-five feet from any street.
- (2) Agricultural tourism as permitted under section 25-4-15.
- (3) Animal hospitals.
- (4) Aquaculture.
- (5) Botanical gardens, nurseries and greenhouses, seed farms, plant experimental stations, arboretums, floriculture, and similar uses dealing with the growing of plants.
- (6) Campgrounds, parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities, where none of the recreational features are entirely enclosed in a building.
- (7) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (8) Crop production.
- (9) Dwelling, single-family, as permitted under chapter 205, Hawai'i Revised Statutes and as permitted under section 25-5-67(b).
- (10) Farm dwellings, as permitted under section 25-5-67(b) and (c).
- (11) Game and fish propagation.
- (12) Group living facilities.
- (13) Kennels.
- (14) Livestock, grazing; provided that any feed or water area, salt lick, corral, run, barn, shed, stable, house, hutch, or other enclosure for the keeping of any permitted animals shall be located at least seventy-five feet from any lot line.
- (15) Public uses and structures, necessary for agricultural practices.
- (16) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest.

- (17) Riding academies, and rental or boarding stables.
- (18) Roadside stands for the sale of agricultural products grown on the premises.
- (19) Telecommunication antennas and towers, as permitted under section 25-4-12.
- ~~[(18)]~~(19) Utility substations, as permitted under section 25-4-11.
- ~~[(19)]~~(20) Vehicle and equipment storage areas that are directly accessory to aquaculture, crop production, game and fish propagation, and livestock grazing.
- ~~[(20)]~~(21) Veterinary establishments.
- (b) The following uses may be permitted in the FA district, provided that a use permit is issued for each use:
 - (1) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, 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.
 - ~~[(2)- Telecommunication antennas and towers.]~~

SECTION 12. Chapter 25, article 5, division 7, section 25-5-72, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-72. Permitted uses.

- (a) The following uses shall be permitted in the A district:
 - (1) Agricultural parks.
 - (2) Agricultural products processing, major and minor.
 - (3) Agricultural tourism as permitted under section 25-4-15.
 - (4) Animal hospitals.
 - (5) Aquaculture.
 - (6) Botanical gardens, nurseries and greenhouses, seed farms, plant experimental stations, arboretums, floriculture, and similar uses dealing with the growing of plants.
 - (7) Campgrounds, parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities, where none of the recreational features are entirely enclosed in a building.
 - (8) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (9) Crop production.
 - (10) Dwelling, single-family, as permitted under chapter 205, Hawai'i Revised Statutes and as permitted under section 25-5-77(b).
 - (11) Farm dwellings, as permitted under section 25-5-77(b) and (c).
 - (12) Fertilizer yards utilizing only manure and soil, for commercial use.
 - (13) Forestry.
 - (14) Game and fish propagation.
 - (15) Group living facilities.
 - (16) Kennels.
 - (17) Livestock production, provided that piggeries, apiaries, and pen feeding

of livestock shall only be located on sites approved by the State department of health and the director, and must be located no closer than one thousand feet away from any major public street or from any other zoning district.

- (18) Public uses and structures which are necessary for agricultural practices.
 - (19) Retention, restoration, rehabilitation, or improvement of building or sites of historic or scenic interest.
 - (20) Riding academies, and rental or boarding stables.
 - (21) Roadside stands for the sale of agricultural products grown on the premises.
 - (22) Telecommunication antennas and towers, as permitted under section 25-4-12.
 - ~~[(22)]~~(23) Utility substations, as permitted under section 25-4-11.
 - ~~[(23)]~~(24) Vehicle and equipment storage areas that are directly accessory to aquaculture, crop production, game and fish propagation, livestock grazing and livestock production.
 - ~~[(24)]~~(25) Veterinary establishments.
 - ~~[(25)]~~(26) Wind energy facilities.
- (b) The following uses may be permitted in the A district, provided that a use permit is issued for each use:
- (1) Golf courses and related golf course uses, including golf course driving ranges, golf maintenance buildings and golf club houses, 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.
 - ~~[(2) Telecommunication antennas and towers.]~~

SECTION 13. 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 section 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 14. Chapter 25, article 5, division 13, section 25-5-130, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-132. Permitted uses.

(a) The following uses shall be permitted in the MCX district:

- (1) Agricultural products processing, minor.
- (2) Amusement and recreation facilities, indoor.
- (3) Art galleries, museums.
- (4) Art studios.
- (5) Automobile sales and rentals.
- (6) Automobile service stations.
- (7) Bars, nightclubs and cabarets.
- (8) Broadcasting stations.
- (9) Business services.
- (10) Car washing.
- (11) Catering establishments.
- (12) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (13) Churches, temples and synagogues.
- (14) Cleaning plants using only nonflammable hydrocarbons in a sealed unit as the cleaning agent.
- (15) Commercial parking lots and garages.
- (16) Community buildings, as permitted under section 25-4-11.

- (17) Convenience stores.
- (18) Crematoriums, funeral homes, funeral services, and mortuaries.
- (19) Data processing facilities.
- (20) Display rooms for products sold elsewhere.
- (21) Equipment sales and rental yards.
- (22) Farmers markets.
- (23) Financial institutions.
- (24) Food manufacturing and processing.
- (25) Home improvement centers.
- (26) Ice storage and dispensing facilities.
- (27) Kennels in sound-attenuated buildings.
- (28) Laboratories, medical and research.
- (29) Laundries.
- (30) Manufacturing, processing and packaging establishments, light.
- (31) Medical clinics.
- (32) Meeting facilities.
- (33) Model homes.
- (34) Motion picture and television production studios.
- (35) Offices.
- (36) Personal services.
- (37) Photographic processing.
- (38) Photography studios.
- (39) Plant nurseries.
- (40) Public uses and structures, as permitted under section 25-4-11.
- (41) Publishing plants for newspapers, books and magazines, printing shops, cartographing, and duplicating processes such as blueprinting or photostating shops.
- (42) Repair establishments, minor.
- (43) Restaurants.
- (44) Retail establishments.
- (45) Sales and service of machinery used in agricultural production.
- (46) Schools, business.
- (47) Schools, photography, art, music and dance.
- (48) Schools, vocational.
- (49) Self-storage facilities.
- (50) Telecommunication[s] antennas and towers, as permitted under section 25-4-12.

SECTION 15. Chapter 25, article 5, division 14, section 25-5-142, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-142. Permitted uses.

- (a) The following uses shall be permitted in the ML district:
 - (1) Agricultural products processing, minor.
 - (2) Airfields, heliports and private landing strips.
 - (3) Amusement and recreation facilities, indoor.
 - (4) Animal hospitals.
 - (5) Animal quarantine stations.

- (6) Aquaculture activities.
- (7) Automobile and truck storage facilities.
- (8) Automobile and truck sales and rentals.
- (9) Automobile service stations.
- (10) Bakeries.
- (11) Bars.
- (12) Broadcasting stations.
- (13) Car washing.
- (14) Carpentry, hardwood products and furniture manufacturing and storage establishments.
- (15) Catering establishments.
- (16) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (17) Churches, temples and synagogues.
- (18) Cleaning and dyeing plants.
- (19) Commercial parking lots and garages.
- (20) Community buildings, as permitted under section 25-4-11.
- (21) Contractors' yards for equipment, material, and vehicle storage, repair, or maintenance.
- (22) Crematoriums, funeral homes, funeral services, and mortuaries.
- (23) Day care centers.
- (24) Financial institutions.
- (25) Food manufacturing and processing facilities.
- (26) Greenhouses, plant nurseries.
- (27) Heavy equipment sales, service and rental.
- (28) Home improvement centers.
- (29) Junkyards, provided that the building site is not less than one acre in area.
- (30) Laboratories, medical and research.
- (31) Laundries.
- (32) Lumberyards and building material yards, but not including concrete or asphalt mixing and the fabrication by riveting or welding of steel building frames.
- (33) Manufacturing, processing and packaging establishments, light.
- (34) Motion picture and television production studios.
- (35) Photographic processing.
- (36) Plumbing, electrical, air conditioning and heating establishments.
- (37) Primary airports, provided that plan approval is secured from the director.
- (38) Public uses and structures, as permitted under section 25-4-11.
- (39) Publishing plants for newspapers, books and magazines, printing shops, cartographing, and duplicating processes such as blueprinting or photostating shops.
- (40) Recycling centers, which do not involve the processing of recyclable materials.
- (41) Repair establishments, minor.
- (42) Restaurants.
- (43) Self storage facilities.
- (44) Storage and sale of seed, feed, fertilizer and other products

essential to agricultural production.

(45) Telecommunication antennas and towers, as permitted under section 25-4-12.

SECTION 16. Chapter 25, article 5, division 15, section 25-5-152, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-152. Permitted uses.

- (a) The following uses shall be permitted in the MG district:
- (1) Agricultural products processing, major and minor.
 - (2) Airfields, heliports and private landing strips.
 - (3) Amusement and recreation facilities, indoor.
 - (4) Animal hospitals.
 - (5) Animal quarantine stations.
 - (6) Animal sales, stock, and feed yards.
 - (7) Aquaculture activities and facilities.
 - (8) Automobile and truck storage facilities.
 - (9) Automobile body and fender establishments.
 - (10) Automobile service stations.
 - (11) Bakeries.
 - (12) Bars.
 - (13) Breweries, distilleries, and alcohol manufacturing facilities.
 - (14) Broadcasting stations.
 - (15) Bulk storage of flammable products and bulk storage of explosive products.
 - (16) Car washing.
 - (17) Catering establishments.
 - (18) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (19) Churches, temples and synagogues.
 - (20) Cleaning and dyeing plants.
 - (21) Commercial parking lots and garages.
 - (22) Community buildings, as permitted under section 25-4-11.
 - (23) Concrete or asphalt batching and mixing plants and yards.
 - (24) Contractors' yards for equipment, material, and vehicle storage, repair, or maintenance.
 - (25) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (26) Day care centers.
 - (27) Dumping, disposal, incineration, or reduction of refuse or waste matter.
 - (28) Expansion of an existing commercial excavation operation, provided that plan approval is secured from the director.
 - (29) Fabricating establishments.
 - (30) Fertilizer manufacturing plants.
 - (31) Financial institutions.
 - (32) Food manufacturing and processing facilities.
 - (33) Freight movers.
 - (34) Greenhouses, plant nurseries.
 - (35) Heavy equipment sales, service and rental.
 - (36) Home improvement centers.

- (37) Junkyards.
- (38) Kennels.
- (39) Laboratories, medical and research.
- (40) Laundries.
- (41) Lava rock or stone cutting or shaping facilities.
- (42) Lumberyards and building material yards.
- (43) Machine, welding, sheet metal, and metal plating and treating establishments.
- (44) Manufacturing, processing and packaging establishments, light and general.
- (45) Marine railways, drydocks, and ship or boat yards.
- (46) Motion picture and television production studios.
- (47) Photographic processing.
- (48) Primary airports, provided that plan approval is secured from the director.
- (49) Public dumps.
- (50) Public uses and structures, as permitted under section 25-4-11.
- (51) Publishing plants for newspapers, books and magazines, printing shops, cartographing, and duplicating processes such as blueprinting or photostating shops.
- (52) Recycling centers.
- (53) Reduction, refining, smelting, or alloying of metals, petroleum products or ores.
- (54) Repair establishments, major and minor.
- (55) Restaurants.
- (56) Saw mills.
- (57) Self storage facilities.
- (58) Slaughterhouses.
- (59) Storage and sale of seed, feed, fertilizer and other products essential to agricultural production.
- (60) Storage, curing, or tanning of raw, green, or salted hides or skins.
- (61) Telecommunication antennas and towers, as permitted under section 25-4-12.

SECTION 17. Chapter 25, article 5, division 16, section 25-5-162, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-5-162. Permitted uses.

- (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 18. Chapter 25, article 7, division 2, section 25-7-22, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

Section 25-7-22. Permitted uses.

- (a) The following uses shall be permitted uses in the CDH district:
 - (1) Adult day care homes.
 - (2) Amusement and recreation facilities, indoor.
 - (3) Art galleries.
 - (4) Automobile service stations or garages, excluding body and fenderworks, electric tire rebuilding or battery rebuilding and provided that all work is conducted wholly within a completely enclosed building.
 - (5) Bakeries.
 - (6) Bars, cocktail lounges and night clubs.
 - (7) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (8) Boarding facilities, rooming, or lodging houses.
 - (9) Broadcasting stations or studios (radio and television).
 - (10) Business services.
 - (11) Car washing, provided that the facilities are not detrimental to the character of the district.
 - (12) Commercial parking lots and garages.
 - (13) Community buildings, as permitted under section 25-4-11.
 - (14) Crop production.
 - (15) Display rooms for products sold elsewhere.
 - (16) Dwellings, double-family or duplex, with a maximum density of five hundred square feet of land area per rentable unit or dwelling unit.
 - (17) Dwellings, multiple-family, with a maximum density of five hundred

square feet of land area per rentable unit or dwelling unit.

- (18) Dwellings, single-family.
- (19) Family child care homes.
- (20) Farmers markets. When the vending activity in a farmers market involves more than just the sale of local fresh and/or raw produce, plant life, fish and local homegrown and homemade products for more than two days a week, the director, at the time of plan approval, shall restrict the hours of use, maintenance and operations and may require improvements as determined appropriate to ensure its compatibility with the existing character of the surrounding area.
- (21) Financial institutions.
- (22) Group living facilities.
- (23) Home occupations, as permitted under section 25-4-13.
- (24) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
- (25) Hotels and apartment hotels with a maximum density of five hundred square feet of land area per rentable unit.
- (26) Laundries other than those utilizing steam cleaning equipment, provided that the facilities are not detrimental to the character of the district.
- (27) Manufacturing, processing and packaging, light, provided that the activities are not detrimental to the character of the district.
- (28) Medical clinics.
- (29) Meeting facilities.
- (30) Model homes, as permitted under section 25-4-8.
- (31) Modeling agencies.
- (32) Museums and libraries.
- (33) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
- (34) Offices.
- (35) Personal services.
- (36) Photography and artist studios.
- (37) Public uses and structures, as permitted under section 25-4-11.
- (38) Publishing plants for newspapers, books and magazines, printing shops, cartographing and duplicating processes such as blueprinting or photostating.
- (39) Repair establishments, minor.
- (40) Restaurants.
- (41) Retail establishments, provided that they are not detrimental to the character of the district.
- (42) Schools, business.
- (43) Schools, photography, art, music, dance or other similar studios or academies.
- (44) Schools, vocational.
- (45) Telecommunication antennas and towers, as permitted under section 25-4-12.

SECTION 19. New material is underscored and material to be repealed is bracketed stricken. In printing this ordinance, the underscoring, brackets, and bracketed and stricken text need not be included.

SECTION 20. 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 21. This ordinance shall take effect upon approval.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:

ACT 264

H.B. NO. 635

A Bill for an Act Relating to Broadband.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 27, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

“§27- Broadband-related permits; automatic approval. (a) The State shall approve, approve with modification, or disapprove all applications for broadband-related permits within sixty days of submission of a complete permit application and full payment of any applicable fee; provided that this subsection shall not apply to a conservation district use application for broadband facilities. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the State, the application shall be deemed approved by the State.

(b) The State shall approve, approve with modification, or disapprove use applications for broadband facilities within the conservation district within one hundred forty-five days of submission of a complete application and full payment of any applicable fee. If, on the one hundred forty-sixth day, an application is not approved, approved with modification, or disapproved by the State, the application shall be deemed approved by the State.

(c) Permits issued pursuant to this section shall contain the following language: “This is a broadband-related permit issued pursuant to section 27- , Hawaii Revised Statutes.”

(d) An applicant and a public utility shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology.

(e) No action shall be prosecuted or maintained against the State, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application pursuant to this section, or against public utilities resulting from such actions.

(f) The sixty day time period established by subsection (a) shall be extended in the event of a natural disaster, state emergency, or union strike that prevents the applicant, agency, or department from fulfilling application review requirements.

(g) If an application is incomplete, the State shall notify the applicant in writing within ten business days of submittal of the application. The notice shall inform the applicant of the specific requirements necessary to complete the application. The sixty-first day automatic approval provisions under subsection (a) shall continue to apply to the application only if the applicant satisfies the specific requirements of the notice and submits a complete application within five business days of receipt of the notice.

(h) Nothing in this section shall affect the provisions of section 3 of Act 151, Session Laws of Hawaii 2011.

(i) For the purposes of this section, “broadband-related permits” means all state permits required to commence actions with respect to the installation, improvement, construction, or development 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. The term does not include any state permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the State.”

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Broadband-related permits; automatic approval. (a) A county shall approve, approve with modification, or disapprove all applications for

broadband-related permits within sixty days of submission of a complete permit application and full payment of any applicable fee. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the county, the application shall be deemed approved by the county.

(b) Permits issued pursuant to this section shall contain the following language: "This is a broadband-related permit issued pursuant to section 46- , Hawaii Revised Statutes."

(c) An applicant and a public utility shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology.

(d) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application pursuant to this section, or against public utilities resulting from such actions.

(e) The sixty day time period established by subsection (a) shall be extended in the event of a natural disaster, state emergency, or union strike that prevents the applicant, agency, or department from fulfilling application review requirements.

(f) If an application is incomplete, the county agency shall notify the applicant in writing within ten business days of submittal of the application. The notice shall inform the applicant of the specific requirements necessary to complete the application. The sixty-first day automatic approval provisions under subsection (a) shall continue to apply to the application only if the applicant satisfies the specific requirements of the notice and submits a complete application within five business days of receipt of the notice.

(g) Nothing in this section shall affect the provisions of section 3 of Act 151, Session Laws of Hawaii 2011.

(h) For the purposes of this section, "broadband-related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development 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. The term does not include any county permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the county."

SECTION 3. Act 151, Session Laws of Hawaii 2011, is amended by amending sections 2 and 3 to read as follows:

"SECTION 2. From January 1, 2012, to January 1, 2017, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance;

provided that the installation, improvement, construction, or development of infrastructure shall:

- (1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:
 - (A) On existing or replacement utility poles and conduits; and
 - (B) Using existing infrastructure and facilities;
- (2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and
- (3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.

~~[A person or entity]~~ An applicant shall ~~[use reasonable best efforts to]~~ comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.

A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure.

SECTION 3. Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or to improve existing telecommunications cables; provided that:

- (1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement; ~~[and]~~
- (2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission;
and
- ~~[(2)]~~ (3) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.

The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, Hawaii Revised Statutes, including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband service provider.

If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards."

ACT 264

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 2014, and shall be repealed on June 30, 2018; provided that this Act shall apply to permit applications filed with the State or county after December 31, 2013.

(Approved July 3, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.

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

July 10, 2024

COH PLANNING DEPT
JUL 11 2024 PM 4:07

REC'D HAND DELIVERED

TO : ZENDO KERN, PLANNING DIRECTOR

FROM : REED K. MAHUNA, ACTING POLICE CHIEF

SUBJECT : PLANNING DIRECTOR INITIATED (PL-PDI-2024-000008) AN ORDINANCE AMENDMENT TO CHAPTER 25 (ZONING CODE), ARTICLE 2, ARTICLE 4, ARTICLE 5, AND ARTICLE 7 OF THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED) RELATING TO TELECOMMUNICATION ANTENNAS AND TOWERS

Staff has reviewed the above-referenced change of zone application 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 Hawai'i County Civil Defense, 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 ordinance that makes that less feasible, as this amendment proposes, is an obstacle to the Police Department's mission of public safety.

For these reasons, the Hawai'i Police Department does not support this proposed amendment.

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.

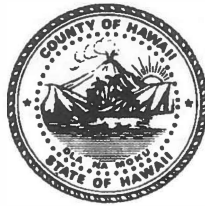
AB/jce

24HQ0739

Mitchell D. Roth
Mayor

Deanna S. Sako
Managing Director

Robert H. Command
Deputy Managing Director



County of Hawaii CIVIL DEFENSE AGENCY

920 Ululani Street • Hilo, Hawai'i 96720-3958
(808) 935-0031

Talmadge J. Magno
Civil Defense Administrator

July 18, 2024

Subject: Chapter 25 Ordinance Amendments to Telecommunication Towers and Antennas

Aloha Planning Director Kern,

After a thorough review of the proposed ordinance amendments to Chapter 25 (ZONING), specifically relating to telecommunication antennas and towers, the Hawai'i County Civil Defense Agency has identified significant concerns. As it stands, we would not recommend supporting the amendments in their current form.

The proposed changes could adversely impact the essential public safety communications over the county Land Mobile Radio (LMR) system. In addition, the amendments would affect wireless/cellular networks, radio stations, utilities, and hobby telecommunication towers and antennas, all of which play crucial roles in communication and information dissemination to the public.

In light of these concerns, we strongly urge the Planning Department to collaborate with the Hawai'i County Civil Defense Agency. Together, we can work towards developing ordinance amendments that balance regulatory requirements with the operational needs of public safety communications.

We propose collaborative meetings between our agencies to discuss the following:

1. **Streamlining the Permit Approval Process:** Develop a more efficient permit approval process that ensures compliance, while minimizing delays for critical infrastructure projects.
2. **Public Safety Communication Infrastructure:** Highlight the unique requirements of public safety communication systems and incorporate provisions that safeguard their functionality and reliability.
3. **Impact Assessment:** Conduct joint impact assessments to evaluate how proposed changes will affect various stakeholders, including public safety, utilities, and private telecommunication entities.

By working together, we can ensure that the ordinance amendments support the critical communication needs of Hawai'i County while maintaining regulatory integrity and community engagement.

We look forward to your response and the opportunity to collaborate on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Talmadge Magno', followed by a long horizontal flourish line extending to the right.

Talmadge Magno
Administrator

Hawai'i County Civil Defense Agency

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

P.O. BOX 621
HONOLULU, HAWAII 96809

July 29, 2024

County of Hawaii
Planning Department
Attn: Ms. Tracie-Lee Camero
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

via email: planning@hawaiicounty.gov

Dear Ms. Camero:

SUBJECT: Planning Director Initiated (PL-PDI-2024-000008) – An **Ordinance** Amendment to Chapter 25 (Zoning Code), Article 2, Article 4, Article 5, and Article 7 of the Hawaii County Code 1983 (2016 Edition, as Amended) **Relating to Telecommunication Antennas and Towers** for the County of Hawaii

Thank you for the opportunity to review and comment on the subject matter. In addition to our previous comments dated July 18, 2024, enclosed are comments from the Division of Forestry & Wildlife on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at (808) 587-0417 or email: darlene.k.nakamura@hawaii.gov. Thank you.

Sincerely,

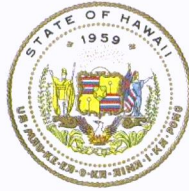
Russell Tsuji

Russell Y. Tsuji
Land Administrator

Enclosure
cc: Central Files

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

P.O. BOX 621
HONOLULU, HAWAII 96809

July 5, 2024

MEMORANDUM

FROM:

DLNR Agencies:

- ☒ Div. of Aquatic Resources (kendall.l.tucker@hawaii.gov)
- ☒ Div. of Boating & Ocean Recreation (richard.t.howard@hawaii.gov)
- ☒ Engineering Division (DLNR.ENGR@hawaii.gov)
- ☒ Div. of Forestry & Wildlife (rubyrosa.t.terrago@hawaii.gov)
- ☒ Div. of State Parks (curt.a.cottrell@hawaii.gov)
- ☒ Commission on Water Resource Management (DLNR.CWRM@hawaii.gov)
- ☒ Office of Conservation & Coastal Lands (sharleen.k.kuba@hawaii.gov)
- ☒ Land Division – Hawaii District (gordon.c.heit@hawaii.gov)
- ☒ Aha Moku Advisory Committee (leimana.k.damate@hawaii.gov)

TO:

Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT:

Planning Director Initiated (PL-PDI-2024-000008) – An **Ordinance**
Amendment to Chapter 25 (Zoning Code), Article 2, Article 4, Article 5, and
Article 7 of the Hawaii County Code 1983 (2016 Edition, as Amended)
Relating to Telecommunication Antennas and Towers

LOCATION:

Island of Hawaii

APPLICANT:

County of Hawaii, Planning Department

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit comments by **July 17, 2024**.

If no response is received by the above date, we will assume your agency has no comments. Should you have any questions about this request, please contact Darlene Nakamura at darlene.k.nakamura@hawaii.gov. Thank you.

BRIEF COMMENTS:

- ☐ We have no objections.
- ☐ We have no comments.
- ☐ We have no additional comments.
- ☒ Comments are included/attached.

Signed:

Afsheen Siddiqi

Print Name: Afsheen A. Siddiqi, Acting Wildlife Prog. Mgr.

Division:

Forestry and Wildlife

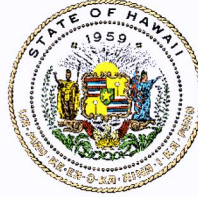
Date:

Jul 24, 2024

Attachments

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 24, 2024

Log no. 4644

MEMORANDUM

TO: RUSSELL Y. TSUJI, Administrator
Land Division

FROM: AFSHEEN A. SIDDIQI, Acting Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Request for Comment on An Ordinance Amendment to Chapter 25 (Zoning Code), Article 2, Article 4, Article 5, and Article 7 of the Hawaii County Code 1983 Relating to Telecommunication Antennas and Towers, Hawai'i

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comment An Ordinance Amendment to Chapter 25 (Zoning Code), Article 2, Article 4, Article 5, and Article 7 of the Hawaii County Code 1983 Relating to Telecommunication Antennas and Towers on the island of Hawai'i. The propose of the ordinance is to provide a comprehensive set of standards for the development of telecommunications facilities.

DOFAW concurs with the measures included in the ordinance intended to avoid construction and operational impacts to State-listed species. DOFAW provides the following additional comments regarding the potential for the telecommunications facilities work to affect listed species in the vicinity of the project area.

The State listed 'ōpe'ape'a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided in any construction as bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided

during the seabird fledgling season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/>

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

State-listed waterbirds such as ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or Hawaiian coot (*Fulica alai*), koloa maoli or Hawaiian Duck (*Anas wyvilliana*), and nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Hawai'i Branch DOFAW Office at (808) 97974-4221 and establish a buffer zone around the nest.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Kate Cullison, Protected Species Habitat Conservation Planning Coordinator via email at katherine.cullison@hawaii.gov.

Sincerely,

Afsheen Siddiqi

AFSHEEN A. SIDDIQI
Acting Wildlife Program Manager

Oda, Michelle

From: Lelah Vaga <lelah.vaga@wirelesspolicy.com>
Sent: Tuesday, July 16, 2024 11:44 AM
To: Planning Internet Mail; Camero, Tracie-Lee
Cc: Dacayanan, Melissa
Subject: Verizon Comments: Request for Comments on Planning Director Initiated (PL-PDI-2024-000008) Ordinance Relating to Telecommunication Antennas and Towers
Attachments: Verizon Comment Letter Hawai'i County 7.16.24.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Greetings members of the County of Hawai'i Planning Commission and Ms. Camero,

I'm writing today in response to Melissa Dacayanan-Salvador's email of July 5, 2025, and the attached memorandum of the same date from Planning Director Zendo Kern, requesting comment on the proposed Ordinance Amending Chapter 25, Article 2, Article 4, Article 5, and Article 7 relating to Telecommunications Antennas and Towers.

I am a consultant working on behalf of Verizon. Working together with Verizon staff, we have reviewed the proposed Ordinance language and respectfully propose certain revision in order to better align the ordinance with the practical and technical requirements of the wireless industry.

Wireless telecommunication is a very technical topic, and I am always happy to meet with you or others within Hawai'i County to discuss both the comments enclosed and wireless more generally. I would be happy to answer your questions. Please also feel free to include me in any meeting or communication regarding wireless industry feedback that you feel appropriate. I have worked in this industry for over 20 years, and I am happy to lend my expertise. Please feel free to reach out to me anytime via the contact information below.

Verizon is grateful for the efforts of the County staff and Planning Commission. Mahalo for your time and consideration.

Sincerely,

Lelah Vaga
Wireless Policy Group LLC on behalf of Verizon
lelah.vaga@wirelesspolicy.com
(206) 459-8791
Pronouns: She/Her

This email and any attachments are proprietary and confidential information, to be used solely by the intended recipients. If you received this message in error, please notify me and permanently delete this message from your computer. Any unauthorized retention, distribution or other use of this email or its attachments is a misuse of confidential and proprietary information.

Planning Dept. Exhibit <u>7</u>



July 16, 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: Planning Director Initiative (PL-PDI-2024-000008), Ordinance Amendment to
Hawai'i County Code Relating to Telecommunication Antennas and Towers**

Greetings Director Kern,

Thank you for the opportunity to provide comment regarding the County of Hawai'i Ordinance Amendment 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 and for your ongoing partnership in our efforts to provide high quality wireless communications services throughout Hawai'i County.

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. Wireless communications are essential to how we live and work, and also essential for public safety. In many areas, more than 80% of emergency 911 calls are made on wireless devices.² Wireless technology is also critical for emergency services.

Verizon appreciates the opportunity to provide input on the proposed ordinance. Verizon is generally supportive of this ordinance amendment, though we do have specific concerns with the language as proposed with respect to a few key points. Verizon's specific comments and concerns are as follows:

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

Section 25-2-74 Paragraph (4): Verizon respectfully requests that the language be modified as follows. The Federal Communications Commission does not generally issue statements of compliance for specific facilities.

(4) A statement ~~from the Federal Communications Commission~~ that the application complies with the regulations of the ~~Federal Communications~~ Commission or a statement that no such compliance is necessary.

Section 25-2-74 Paragraph (6)(C): Verizon respectfully requests that this language be removed from the ordinance. Obtaining a letter from a tower owner is not always feasible, and often is not necessary to determine that a co- location is not viable. In most cases co-locations are both viable and the most favorable choice for placing a new wireless communications facility. However, when they are not viable, in most cases it is for a technical reason and not the result of unwillingness by the tower owner. That determination of technical feasibility is made by the wireless carrier's teams of subject matter experts, and not by the property owner.

~~(C)A letter from the nearby tower owners indicating the tower is not feasible for co-locating antennas; and~~

Section 25-2-74 Paragraph (8): Verizon requests that the language indicated below be struck. While we support providing as much detail as is needed for informed decision making, those requirements must be stated in advance and clear for the applicant. Items like scale models and field mock-ups are costly, time consuming, and not typical for the wireless industry. We are concerned that this open-ended requirement could result in significant project delays. We ask for clear requirements and standards, published in advance.

~~The application shall demonstrate that less intrusive sites are not available or do not provide the necessary communication coverage to provide the service. The director may request the submission of additional materials, including but not limited to photo overlays, scaled models, renderings, or field mock-ups, to evaluate potential visual impacts. These materials should address appropriate coloration, blending, and stealth design (e.g., monopine, monopalm) to harmonize the facility with the surrounding area.~~

Section 25-4-12 Paragraph (b): Verizon respectfully requests that this language be removed. This restriction is of significant concern. It greatly limits the areas where towers can be placed, particularly in more densely populated areas where high-capacity service is most needed. It is also not typical of our industry and would hamper the ability of wireless carriers to provide service. We strongly recommend no minimum lot size, provided that setbacks can be met.

~~(b) The minimum lot size of any tower shall be five acres. The minimum lot size may be reduced, upon finding that the issuance of a variance by the director will not result in adverse impact from noise, light, glare, visual, drainage, or other detrimental effects to adjacent property.~~

Section 25-4-12 Paragraph (c): Verizon respectfully requests that this section be either removed or edited in a manner similar to that indicated below. The setback requirements as stated here are out of line with wireless industry standards and would severely limit our ability to provide service, particularly in more populous areas. We recommend that setbacks for the tower either match the setbacks for the zones or that setbacks from the property line be based on a proportion of tower height. For example, we often see setbacks requiring one foot of setback for every 5 feet of height on the tower. While it is typical to have increased setbacks from residences, a more typical number is 100-120 feet, which is an order of magnitude less than what is currently proposed.

(c) The minimum setback for all telecommunication antenna and towers are as follows:

(1) All towers shall be set back from any property line with a minimum distance equal to one ~~foot for every 5 feet hundred and twenty (120) percent~~ of the tower height as measured from the ground level.

(2) Towers must be sited at least ~~100~~ ~~1,200~~ feet from nearby residences and schools not on the subject property.

Section 25-4-12 Paragraph (e): Verizon has no objection to the requirement to shield exterior lighting in most cases, but there are cases when that lighting is required by the Federal Aviation Administration or other agency. In those cases, shielding is not practical. Verizon recommends the following addition to this section.

(e) The telecommunication antennas and tower shall comply with all applicable rules, regulations and requirements of the affected agencies, including the Federal Aviation Administration and Federal Communications Commission. All exterior lighting shall be shielded- ~~unless required by the affected agency or agencies.~~

Section 25-4-12 Paragraph (h): Verizon respectfully requests that this provision be struck. We strongly object to the Director having discretion to require a change in the location of a wireless communications facility. The location and height of a facility are driven by the needs of the wireless network. Several factors contribute to appropriate siting of a facility and determining if a location is viable. Those factors include pre-published requirements for setbacks and design standards in a municipal code. A discretionary ability to change tower location is both not customary for our industry and not functional for most projects. This provision makes it next to impossible to identify what tower specifications and designs would be approved. It would greatly increase both the potential expense of the project and potential project delays. We instead recommend that specific standards be published that specify when visual mitigation or additional setbacks are required so that such standards are known in advance.

~~(h) The director may require any conditions or changes in the location and design of telecommunication antennas and towers which, in the director's opinion, are necessary to carry out the purposes of this chapter and the considerations contained in section 25-2-74, 25-2-77, and the natural beauty chapter of the General Plan. This can include but not be limited to requiring stealth design (e.g., monopine, monopalm) in order to reduce visual impacts to surrounding properties. If the proposed site is located within an area of the natural beauty as designated by the General Plan or is located along a roadway, bikeway, trail or park used by the public the director may require an on-site or off-site relocation of the telecommunication tower in an effort to mitigate visual impacts.~~

Section 25-4-12 (Suggested Additions): We respectfully request that, in keeping with recent ruling by the Federal Communications Commission, all standards relating to the design and placement of a wireless communications facility be both objective and published in advance. Verizon strongly recommends that the County identify zones or areas where visual mitigation would be required, if technologically feasible. We also suggest that acceptable methods for reducing visual impact be specifically defined in the ordinance, with discretion for the Director to approve additional designs when appropriate. For example, measures such as painting antennas to match the existing structure, providing backing or screening for antennas, installing a stealth "tree" facility, or providing opaque fencing for equipment areas could be identified as specific measures that are permitted to minimize visual impacts in areas of natural beauty as designated by the General Plan. We would be happy to meet with County staff to discuss language that might be appropriate and to provide insight into what is generally feasible in the wireless industry.

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. Please also feel free to reach out to me if you have any questions regarding our comments, or about wireless technology. We understand that wireless telecommunication is a highly technical subject, and we are always happy to provide information.

Sincerely,

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

Lelah Vaga
Vice President of Jurisdiction Relations
Wireless Policy Group
On behalf of Verizon



July 24, 2024

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

RE: Proposed Amendments to Chapter 25 (Zoning Code), Articles 2, 4, 5, and 7

Dear Director Kern:

On behalf of AT&T, thank you for sharing the Department of Planning's proposed amendments to Chapter 25 (Zoning Code), Articles 2, 4, 5 and 7 and for inviting our input. AT&T appreciates the Department's efforts to update its zoning code and this opportunity to provide feedback.

As you know, Hawai'i Island residents and visitors heavily rely on our network as they live, learn, work, and play. Notably, access to 9-1-1 and other emergency services are critical for the public and first responders. To maintain quality and reliable services throughout Hawai'i Island, AT&T must continually invest in its network and infrastructure. This increasing demand on telecommunications services and infrastructure is acknowledged in Hawai'i County's 2045 Draft General Plan, which recognizes telecommunications as a "critical service" and expresses support for increased access to broadband communications.¹ AT&T is concerned that the Department's proposed changes would hinder the deployment of wireless services and ability to achieve the goals in the County's 2045 Draft General Plan.

We noted the Department's request for suggestions, however, we would first appreciate the opportunity to learn more about the Department's underlying goals for the proposed changes so that we may provide helpful feedback. We hope to work with the Department in finding ways to achieve the County's goals while facilitating an efficient process for deploying wireless services where needed, especially as demand for wireless services grows.

Thank you again for inviting AT&T's feedback to the Department's proposed changes. We look forward to working with the Department and other stakeholders as proposed changes are considered.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Songvilay".

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

¹ See County of Hawai'i, General Plan 2045, September 2023 Draft, pgs. 88, 91, 97-99 [The County of Hawai'i General Plan Introduction \(hawaiicounty.gov\)](https://www.hawaiicounty.gov/planning/2045-general-plan-introduction).

Oda, Michelle

From: Putt, Kathy <Kathy.Putt@crowncastle.com>
Sent: Friday, July 26, 2024 1:22 PM
To: Planning Internet Mail
Cc: Cornwall, Amanda; Eiselin, Kanoë; Catalan, Adrian; Melissa Pavlicek
Subject: Chapter 25 amendments
Attachments: Outlook-http__int; HI Co. Chapter 25 letter (7.26.24).pdf; County of Hawaii Telecom Zoning Determination.pdf

 [County of Hawaii Proposed Telecom Ordinance Crown External Redlines 7-26-24.pdf](#)



Good afternoon - please find attached a summary letter, proposed redlines to the proposed ordinance updating Chapter 25, related to telecom antennas and towers as well as a copy of the County's Zoning Determination.

Thank you for the opportunity to provide comments on the proposed ordinance - we look forward to working with you at your earliest convenience.

Kathy Putt
External Affairs - PNW
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CROWN CASTLE USA

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Crown Castle
150 Hamakua Drive, #703
Kailua, HI 96734

July 26, 2024

Tracie-Lee Camero
Planning Department
East Hawai'i Office
101 Pauahi St., Ste 3
Hilo, HI 96720

Dear Ms. Lee Camero,

Thank you for including Crown Castle Inc. ("Crown Castle") as the County reviews its telecommunications ordinance (the "Ordinance") for prospective revisions. We commend the County for its efforts to provide the HI County community with better access to connectivity. If the Covid-19 pandemic over the last few years have taught us anything, it's that connectivity is more important than ever. People and businesses rely on a strong wireless connection for so many facets of their daily lives, from basic phones calls, telehealth appointments to emergency situations where every minute counts.

Crown Castle Background

Crown Castle is the nation's leading provider of shared wireless infrastructure. Crown Castle owns and manages approximately 40,000 macrocell communications facilities in the United States and approximately 90,000 route miles of fiber optic cable supporting small cell and fiber solutions. This diverse, shared infrastructure allows Crown Castle to partner with wireless carriers to deliver critical broadband services throughout the United States.

Crown Castle also provides professional zoning and permitting services for our wireless customers. This broad range of expertise, both as a communications facility owner and manager, and as a service provider working for wireless carrier providers, gives Crown a unique perspective when reviewing public policy that affects wireless deployment. To that end, Crown Castle provides the following comments on the proposed amendments to Chapter 25, relating to telecommunication towers and antennas.

Federal Law Considerations

Federal law contains several important provisions that impact state and local review and approval of wireless infrastructure. These are Sections 332 and 253 of the Telecommunications Act of 1996 (47 U.S.C. §§ 253 & 332) and Section 6409 of the Middle Class Tax Relief and Jobs Creation Act of 2012 (47 U.S.C. 1455(a)). The Federal

Communications Commission has also issued orders and regulations under the authority of these statutes.¹ All three of these provisions create and implement important federal policy for wireless deployments. In aligning the County's policy with these federal frameworks, Crown Castle recommends that the County distinguish between new wireless infrastructure review and approval (the focus of Section 332 and 253) and collocation and modification of existing wireless infrastructure (the focus of Section 6409).

Both Sections 332 and 253 prohibit a state and local government from creating an "effective prohibition" of wireless service.² The Ninth Circuit has recently approved the FCC's adoption of the "material inhibition" standard in assessing when a state or local government's action have created an effective prohibition of wireless service.³ Crown Castle respectfully submits that certain sections of the proposed Ordinance will limit new wireless infrastructure and will create barriers to the provision of wireless service in the County which may rise to the level of an effective prohibition of that service.

In 2012, Congress passed Section 6409 of the Spectrum Act and the President signed it into law. The Federal Communications Commission then promulgated regulations implementing the law. The statute⁴, regulations⁵, FCC Orders⁶ and court decision⁷ establish a clear, national policy in favor of collocation on existing wireless infrastructure. Section 6409 states "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."⁸ The FCC's related regulations and orders provide guidance to interpret and implement Section 6409. We strongly encourage the County to continue to harmonize its ordinance with Section 6409 to reduce ambiguity and conflict with these federal standards.

¹ See generally, Acceleration of Broadband Deployment by Improving Wireless Facility Siting Policies, 80 Fed. Reg. 1238-01 (Jan. 8, 2015) (the "2014 Infrastructure Order"); Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 83 Fed. Reg. 51867 (October 15, 2018) (the "2018 Small Cell Order"); Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 85 Fed. Reg. 45126 (July 27, 2020) (the "5G Upgrade Order"); and Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications, 85 Fed. Reg. 78069 (Dec. 3 2020) (the "Compound Expansion Order").

² Telecommunications Act of 1996, 47 U.S.C. §§253(a), 332(c)(7) (2018)

³ City of Portland v. FCC, 969 F.3d 1020 (9th Cir. 2020).

⁴ 47 U.S.C. § 1455.

⁵ 47 CFR § 1.6000, et seq.

⁶ 2014 Infrastructure Order; 5G Upgrade Order; and Compound Expansion Order.

⁷ Montgomery County Maryland v. FCC, 811 F.3d 121 (4th Cir. 2015).

⁸ 47 U.S.C. §1455(a)(1).

Chapter 25 Relating to Telecommunication Antennas and Towers

Based on distinctions made in federal law, we strongly recommend that the County distinguish between modifications to existing infrastructure and proposed new builds. The requirement that new wireless projects not covered by Section 6409 conform to the standards set forth in the Ordinance will make new site development extremely challenging. While strict compliance with any one of the proposed standards could be challenging, requiring strict compliance with all standards including minimum lot size, setbacks, and stealthing requirements could be nearly impossible. Collectively, these standards will make new site development very difficult, if not impossible in some cases. The cumulative effect of these requirements on new wireless facilities risks creating a “material inhibition”⁹ of wireless service in violation of the applicable provisions of the Telecommunications Act and the relevant FCC rules and orders.

Crown Castle recommends the County provide guidance to staff and applicants and also offer flexibility to depart from the guidelines when necessary. It is important to empower staff to make informed, common-sense decisions and to balance these guidelines with the connectivity needs of the County.

Sec. 25-2-74. Plan approval application requirements for telecommunication antennas.

Crown Castle appreciates and supports various provisions designed to encourage collocation by the County in its consideration of new tower builds. However, Crown Castle recommends the County to revise certain provisions and adopt a County policy of a preference for collocation, rather than a mandate. For example, subsection 6(D) requires a minimum of two (2) tenants for collocation. The “collocatability” of any tower depends on numerous factors, including the height of the tower, structural capacity of the tower, available ground space for supporting equipment, and of course, the needs and demands of a wireless carrier’s network. The County is asking for an applicant to accurately predict the future and will unnecessarily limit the ability of infrastructure providers to meet the County’s wireless needs. Instead, the County should adopt a policy of a preference for collocation, requiring applicants to demonstrate that collocation has been attempted and why it is not a sufficient option if that is the case.

Furthermore, in accordance with the County of Hawaii Zoning Determination for Modification Work in Telecommunication Facilities (“Zoning Determination”) (attached for reference), it is Crown Castle’s understanding that the proposed plan approval application requirements of this section would not apply to

⁹ 47 U.S.C. § 332(c)(7)(B).

modifications and groundwork on existing sites. However, the ordinance as proposed does not carve out such an exemption. Crown Castle recommends that the Zoning Determination provisions be added to the ordinance to codify the exemption. Additionally, please see below for additional edits/suggestions.

- Sec. 25-2-74(2): The County requires building plans for a tower be “stamped by a licensed structural engineer, verifying that the tower at full build out with all future antennas and equipment, will have a hard survivability for sustained winds of one hundred thirty miles per hour”. We strongly encourage the County to remove the addition of “at full build out with all future antennas and equipment” and suggest retaining the original language. It is impossible for a carrier, structural engineer, or tower operator to predict the future needs of a carrier’s equipment. With the ever-evolving changes in technology, the equipment specifications are constantly in flux. Additionally, a carrier’s equipment needs will vary based on their goals for a specific location. This is an insurmountable barrier that no applicant will be able to accurately provide.

Furthermore, we recommend that the County adopt the use of the widely used and accepted TIA/ANSI standard in place of the one hundred and thirty mile per hour wind gust requirement. The telecommunications industry adheres to the ANSI/TIA¹⁰ standard for determining the minimum loading requirements for new and existing structures. The structural standard defines the requirements for antenna supporting structures to ensure they meet the needs of communications systems under various environmental conditions like wind, ice and snow.¹¹

- Sec. 25-2-74(4): While this section is not a new addition to the Ordinance, it is ambiguous, and Crown Castle recommends this section be revised. This Section requires “a statement from the FCC that the application complies with the regulations of the Commission.” Crown Castle is not aware of any such generalized “statement from the FCC” to which this provision refers and moreover would be unable to produce a statement that “no such compliance is needed” from the FCC. Crown Castle does not believe the FCC makes any such representations and would be unable to comply with this section. In the alternative, Crown Castle recommends that the County require that applicants attest that the project will comply with applicable state and federal law.

¹⁰ The Telecommunication Industry Association (“TIA”) is accredited by the American Nation Standards Institute (“ANSI”) as a standards developing organization. TIA creates standards and technical documents based on guidelines in accordance with ANSI requirements.

¹¹ *Telecommunications Industry Association*, <https://TIAonline.org>

- Sec. 25-2-74(6)-(8): These sections are extensive, burdensome, and there is no cap to what an applicant may be required to provide. They fail to take into consideration the financial implications these application requirements have on the applicant, thus making it cost prohibitive which could potentially amount to an inhibition of service. We recommend revising these sections to comply with FCC regulations and federal law. For example, subsection (7) requires “efforts made to meet with the adjacent landowners and/or community regarding the development”. This requirement lacks clarity about how to satisfy the obligation. Crown Castle recommends simplifying the requirement to providing notice to landowners and defining “adjacent” to ensure notification requirements are met. Subsection 8(C) is subjective, excessive and cost prohibitive. Crown Castle recommends providing an objective list of requirements that are required for approval. Furthermore, stealthing requirements cannot be enforced on existing sites where stealthing is not already implemented.

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

In subsection (a) of this section the Ordinance references collocation and the FCC’s “substantial change criteria” but fails to distinguish between existing and proposed wireless facilities throughout the remainder of Section 25-4-12. While we support the County encouraging collocation, we recommend the County make this distinction and to adopt a streamlined process for eligible facilities requests (EFRs) under Section 6409. Failing to do so will create ambiguity and tension between the County’s standards and federal law which recognizes the distinction between the construction of new infrastructure and collocation on existing infrastructure.

Furthermore, as previously mentioned in the prior sections, extensive and burdensome requirements brush up against federal law and FCC requirements. This will be further expanded upon below. Crown Castle recommends aligning these sections with said requirements.

- Section 25-4-12(b)-(c): These sections require a minimum lots size of five acres and large setbacks. Meeting these requirements will be particularly cumbersome. Imposing a large lot size requirements will limit the number of feasible sites, hindering efforts to improve network coverage and capacity and potentially resulting in an inhibition of service. Similarly, having a large setback requirement will significantly reduce the usable area of a parcel, especially in densely populated areas. It will also impose design constraints, making it difficult to optimize the placement of the site for effective network performance. Crown Castle recommends providing for flexibility and reduction in the lot size and retaining the existing language pertaining to setbacks.

- Section 25-4-12(e): This section requires compliance with FAA standards but also requires that “all exterior lighting shall be shielded.” This language creates unnecessary ambiguity regarding the lighting of towers. Crown Castle submits that the FAA is the appropriate authority on this subject and recommends adding to the last sentence, “unless required by the FAA”.
- Section 25-4-12(h): As with Sec. 25-2-74(6)-(8) mentioned above, this section is extensive, burdensome, and there is no cap to what an applicant may be required to provide. The unlimited discretion of the director coupled with the requirements of (b) and (c) could make construction of a site impossible. Crown Castle recommends providing a list of objective options that may be implemented by the applicant to mitigate visual impacts. For example, the current proposed revision permits discretion over the “design of telecommunication antennas”, this is ambiguous. An objective solution to this requirement would be requiring painting antennas to match.

Crown Castle appreciates the County’s efforts. An initiative like the one that the County is undertaking takes significant time and resources. But it is also important. We commend the County for its efforts to facilitate wireless connectivity to meet the needs of the citizens of Hawai’i County and hope that you will receive our recommendations in the spirit of making that connectivity a reality. We would welcome the opportunity to further discuss these issues with you and we look forward to partnering with you throughout this process. If you have any questions or concerns regarding the issues described above or the attached redlined document, please reach out at your earliest convenience to 425.236.5677.

Sincerely,

Kathy Putt

Kathy Putt

External Affairs – PNW

Crown Castle Fiber

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

June 14, 2016

Ms. Kanoe Eiselin
Real Estate Specialist
Crown Castle
150 Hāmākua Drive, #703
Kailua, HI 96734

Dear Ms. Eiselin:

**SUBJECT: Request for Zoning Determination for Modification Work on
Telecommunication Facilities**

Thank you for your email dated March 17, 2016, requesting confirmation from this office of land use applicability and permissibility for modification work on previously County-approved telecommunication towers that could be used for due diligence purposes/zoning compliance in lieu of parcel-specific inquiries each time modification work on a facility is proposed. We apologize for the delay in considering your request.

As indicated in your email, the typical scope of modification work prompting the need for a zoning determination is limited to an existing and previously approved telecommunication tower and associated ground equipment that result in no increase to the approved height of the tower nor an expansion of its approved and occupied ground space.

With this limited scope in mind, such typical modification work to an existing approved tower and its associated ground equipment is typically permitted within any zoning district provided that:

1. It does not exceed the original parameters for tower height specified through the issuance of Plan Approval by the Planning Department for the tower itself; and
2. It does not exceed (expand) the original area of the compound accommodating the telecommunication tower and support equipment as specified through the issuance of Plan Approval by the Planning Department.

JUN 14 2016

Ms. Kanoe Eiselin
Real Estate Specialist
Crown Castle
Page 2
June 14, 2016

3. Such modifications or improvements do not negate or adversely impact mitigative measures required by Plan Approval of the initial tower/facility installation or contrary to conditions set forth in land use permits issued by the Planning Commission (i.e., does not remove required landscaping to install new cabinet or change from monopine to lattice tower).

In the end, it will be the sole discretion of your company to determine whether this response adequately satisfies your due diligence obligations. We are always willing to respond to any parcel-specific confirmation requests submitted to this office, but offering this option to you in the hopes it can facilitate matters between us.

Should you require additional information or support, please feel free to contact us.

Sincerely,



DUANE KANUHA
Planning Director

DSA:mad
P:\wpwin60\DSA\2016\LKanoeEiselinCrownCastle

From: [SONGVILAY CLEMENTS, ELIZABETH](#)
To: [Kern, Zendo](#); [Jackson, Maija](#); [Camero, Tracie-Lee](#); [Darrow, Jeff](#)
Cc: [TOMLINSON, ANDREW](#)
Subject: AT&T follow up: Comments to proposed code changes
Date: Wednesday, August 7, 2024 4:08:18 PM

Aloha Zendo, Jeff, Maija, and Tracie,

Mahalo for taking the time last week to discuss the Department's proposed amendments to the County's zoning code! We really appreciated the discussion. As you know, we have quite a bit of work to do on the Big Island to improve and expand wireless services and hope that any changes made to the Hawaii County Code will facilitate these efforts.

Just to add a bit of context, AT&T has seen over 1,000,000% increase in the demand on AT&T's wireless network between 2007 and 2022 nationwide, and this level of increased demand is a trend we see in every jurisdiction across the country. In response to this demand, AT&T must continue to upgrade existing facilities as well as build new facilities in well-populated areas and rural areas in order to maintain the reliability of our current network as well as expand services to new areas.

Below are the initial comments/suggestions our team compiled for your consideration.

ELIGIBLE FACILITIES REQUESTS AND INCORPORATION OF FEDERAL LAW (SECTION 6409)

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AT&T supports the County's intention to align county code with the federal regulations. We suggest the following clarifications to *Chapter 25, article 4, division 1, subsection 25-4-12(a)*:

- **Add "in 47 C.F.R. § 1.6100" after "...as defined by the Federal Communications Commission".** This will direct both applicants and planning staff to the correct criteria.
- **Reference "eligible facilities requests," as defined by the federal code.** "Eligible facilities requests" includes collocations as well as other projects. The term "substantial change" covers all eligible facilities requests.
- **Add "or base station" or "or other antenna support structure" after "... an existing tower."** Section 6409 applies to both towers *and other support structures* such as buildings. These other support structures are defined as "base stations" by the FCC (47 C.F.R. §1.6100(b)(1)).
- **Add ", use permit or other relevant approval" after "...provided the director issued plan approval[.]"** Under Section 6409, the existing facility must have been approved under the zoning or siting approval process in effect at the time of the approval (47 C.F.R. §1.6100(b)(5)). This revision addresses the County's prior approval of the existing tower or support structure under a use permit approval rather than a plan approval.

WIRELESS FACILITIES ON NON-TOWER STRUCTURES

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The proposed code amendments focus on towers, but there are references to "antennas" instead of towers. Some requirements (e.g. minimum 5-acre lot size and 1200-foot setback) are not possible

on non-tower structures. A separate section addressing the specific requirements for permitting non-tower structures or “base stations” may be appropriate.

PROPOSED DEVELOPMENT REGULATIONS FOR TOWERS – Chapter 25, Article 4, Division 1, Subsection 25-4-12(B), et seq.

-

- **Setbacks and minimum lot sizes.** We hope the Department might reevaluate these requirements and discuss this further with us. Wireless technology requires that antennas be placed in or near the areas served. AT&T only builds new sites when necessary and we aim to create the largest benefit to our customers possible with each site. We understand that mitigating visual impacts on the Island of Hawaii is a high priority, and suggest alternatives for the Department’s consideration to achieve this goal:
 - Aesthetic requirements. Many jurisdictions require stealth design in certain sensitive areas, such as in designated scenic corridors or dense residential zones. Laying out objective design standards can be helpful for both applicants and permit reviewers.
 - Setback variance. Some jurisdictions provide a setback variance for instances in which aesthetic impacts are reduced, e.g. a monopole near residences may require a stealth design, but not if it is further away from residences.
 - You may also find this New Jersey case regarding a 1,000-foot setback requirement for wireless facilities informative as well: *Sprint Spectrum L.P. vs. Ringwood Zoning Board*, 898 A.2d 1054 (2005).
- **Qualify Shielded Lighting with “except as required by the Federal Aviation Administration.”**
- **Incorporate Wind speed standards by reference.** AT&T suggests using the same approach the County used in its 2019 proposed code change.

PROPOSED SUBMITTAL REQUIREMENTS - Chapter 25, article 2, division 7, section 25-2-74

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- **Change “shall” to “may” or revise to “shall, to the extent relevant”.** Not all elements in subsection 25-2-74(6)(A)-(D) this section will be relevant in every case.
- **Remove additional materials showing visual impacts.** Since the availability of quality photo simulations, which can illustrate expected views in detail, we feel scaled models, field mock-ups, or balloon tests may not be necessary. In fact, many jurisdictions have stopped requiring such items. AT&T suggests simplifying Section 25-2-74(8) to only require photo simulations for the visual impact analysis.
- **Remove Section 106 documentation requirement.** Federal compliance for a new tower is completed separately from local zoning, and it may be completed after a zoning permit is obtained. AT&T suggests deleting this submittal item.
- **Incorporate Wind Speed Standards by reference.**
- **Delete Subsections 25-2-74(3) and (4) “Statements” from federal agencies.** The FCC does not provide a site-specific statement for compliance with its regulations, and a determination of no hazard from the Federal Aviation Administration may not be required for a proposed

tower.

- **AT&T may have additional comments.** Generally, AT&T does not oppose providing rationale for a candidate selection for new sites, but there are limitations we hope the Department will keep in mind that make meeting some of the proposed requirements difficult. When siting new wireless facilities, certain factors are outside our control. These include: coverage objective, willing landlords, landlord preferences for the site (aesthetics, location, etc.), available space, and county code requirements. We would appreciate the Department's consideration of these various limitations in this section.

DIRECTOR'S DISCRETION

We noted several areas where the Director may have discretion. Some room for discretion is appreciated to account for unique scenarios that may be difficult to anticipate today. As a general note, we are hoping that the scope of the Director's discretion can be defined further so that it might be clearer when the discretion may be applicable and to what extent. We do not have specific suggestions at the moment, but would appreciate continued discussions on this topic as the proposed amendments evolve.

HONOLULU BILL 64

Per our discussion, here is a link to the latest version of Honolulu City Council's Bill 64 (updated 6/27/24, the date of the last committee meeting): <https://hnlidoc.ehawaii.gov/hnlidoc/document-download?id=21853>. Although there are major differences between O'ahu and the Big Island, based on our discussion, we thought you might be especially interested in how Honolulu City Council and DPP addressed setbacks and visual impact mitigation, and distinguished tower structures from non-tower structures. The Communications section begins on page 32 of the bill or page 55 of the PDF. The wireless industry (including AT&T) worked closely with the Dept of Planning and Permitting's Land Use Division as well as the Honolulu City Council Planning & Economy Committee on the current language.

Please don't hesitate to let us know if you have any questions and/or would like to discuss anything further. We're grateful for the opportunity to discuss the proposed amendments and look forward to continued discussions.

Mahalo!
Elizabeth

Elizabeth Songvilay

Director, External Affairs – Hawai'i, Alaska
AT&T External & Legislative Affairs

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