

From: [Brandy Camacho](#)
To: [Steen, Raimee](#)
Cc: [Kay, Christian](#); [Danette Martin](#); [Darrow, Jeffrey W.](#); [Ahn, Michelle](#); [Campbell, Jean K](#); [Lactaoen, Kawehilani S](#); [Lev, Rachelle](#); [Dacayanan, Melissa](#); [Brian Devine](#); [Noah Grodzin](#)
Subject: Re: WPC Item #2 Link to WPC Hearing Materials for Petitioner: Brandy Camacho, Petition for Declaratory Ruling Regarding Use Permit No. 15-000056 on TMKs: (3) 1-5-017:084 & 1-5-017:118
Date: Tuesday, March 3, 2026 11:21:10 AM
Attachments: [TESTIMONY OF BRANDY CAMACHO \(PETITIONER\) - Item #2 Testimony & Exhibits.pdf](#)

Aloha Ms. Steen,

Please find the attached Written Testimony and Master Exhibit Index (Exhibits A-E) for **Item #2** of the March 5, 2026, Windward Planning Commission hearing.

I am submitting this comprehensive "Administrative Audit" today to ensure it is included in the **Digital Board Packet** for the Commissioners' review prior to Thursday's hearing. This packet contains critical new evidence, including:

- **Certified UIPA Admissions (Exhibit D):** Official confirmation from the Planning Department that no written authorization was ever provided for construction to proceed following the discovery of the permit breach in December 2025.
- **Safety & Setback Analysis (Exhibit E):** Documentation of the catastrophic fall-zone risk (120-foot radius) and the 500-foot deficit in residential setbacks mandated by **Ordinance 25-55 (Bill 24)**.
- **Procedural Bar (Section V):** Legal analysis showing that the Applicant's Petition for Standing is procedurally barred by the repeal of the Use Permit process under current County Law.

Please confirm receipt of this filing and verify that all exhibits have been successfully uploaded to the Commission's digital folder for Item #2.

Mahalo for your assistance in ensuring a complete and transparent record for this hearing.

Best regards,

/s/ Brandy Camacho
Petitioner

On Thu, Feb 19, 2026 at 3:37 PM Brandy Camacho <[REDACTED]> wrote:
Aloha Raimee,

Thank you for providing the Board Packet materials for Item #2. Please accept this email as formal acknowledgment of receipt.

I am writing to provide a Notice of Intent to Supplement Testimony regarding this item. A preliminary review of the Background Report (Page 5, Point 29) confirms a material fact that requires additional discovery: the mandatory easement required by Condition 3 was not recorded until January 30, 2026, which is significantly after the building permit was issued

in May 2025.

Because this "after-the-fact" recordation confirms a material breach of the permit's mandatory conditions, I have initiated a UIPA Records Request (sent today to Director Darrow at the corrected address: Jeff.Darrow@hawaiicounty.gov) to secure the internal communications regarding this non-compliance. I reserve the right to submit these records as a supplemental exhibit for the Commission's review immediately upon receipt.

Please ensure this notice and the corrected service address for the Planning Director are included in the official record for the March 5, 2026, hearing.

Mahalo,

Brandy Camacho
Petitioner

On Thu, Feb 19, 2026 at 1:56 PM Steen, Raimee <Raimee.Steen@hawaiicounty.gov> wrote:

Good afternoon, Brandy Camacho,

Please use [this link to access all the Board Packet materials for Item #2 of the upcoming March 5, 2026, WPC Hearing](#) via the County's Laserfiche Public Documents Repository.

Currently available for your review is:

Item #2 Petitioner: Brandy Camacho, Petition for Declaratory Ruling Regarding Use Permit No. 15-000056

- **Planning Department Background Report**

Due to the large file size, it may take some time for the document to load.

Additional documents (i.e., Background & Recommendation reports for other items, public testimonies, etc.) received for this hearing will be uploaded to the Board Packet folder. You will be notified via email as any additional materials for this agenda item become available.

Please note: No hard copy will follow.

Should you have any questions regarding Item #2 please contact Planner Christian Kay (cc'd herein) at 808-961-8136.

(via USPS: Hawai'i Pacific District Church of the Nazarene)

Thank you.

Raimee Steen

Clerk II | Planning Division

County of Hawaii Planning Department

101 Pauahi Street, Suite 3 | Hilo, HI 96720

Direct: (808)-961-8038 | Main: (808)-961-8288

raimee.steen@hawaiicounty.gov

TESTIMONY OF BRANDY CAMACHO (PETITIONER)

REGARDING: ITEM #2 - PETITION FOR DECLARATORY RULING (USE PERMIT NO. 15-000056)

HEARING DATE: MARCH 5, 2026

Per my Notice of Intent to Supplement filed February 19th, this testimony provides the internal agency records and legal analysis regarding the Void Ab Initio status of Use Permit 15-000056.

I. Opening: The Fallacy of Grandfathering

Grandfathering is not a "get out of jail free" card for active permit violations. Because the Applicant breached **Condition 3** of their original 2015 permit, failing to record a mandatory easement "for the life of the facility" prior to the issuance of a building permit; the project was **Void Ab Initio** (invalid from the start).

The Applicant operated in a state of material breach for **251 days**. If the foundation of the permit is void, the project is no longer "grandfathered" and must undergo a **Safety Reset** to comply with the modern 600-foot school/residential setbacks mandated by **Bill 24 (Ordinance 25-55)**.

II. Table of Administrative Failures (The "System Audit")

Date	Event / Action	Administrative Status	Legal Consequence
May 2025	Building Permit Issued	Dependency Failure	Issued without the mandatory recorded easement required by Condition 3.
Dec 3, 2025	Director Made Aware of Breach	Actual Notice	Planning Director acknowledges in writing that Condition 3 was not satisfied.
Dec 4, 2025	Applicant Inquiry	System Silence	Applicant asks for "OK" to proceed; County provides zero written authorization .

Feb 26, 2026	Standing Petition Filed	Strategic Delay	Horizon attempts to trigger a Contested Case Hearing (CCH) prohibited by HRS § 46-89 and Bill 24 .
Feb 27, 2026	UIPA Certification	Official Admission	The County admits it never sent a formal notice of breach or authorization to proceed.
Feb 14 - Mar 2, 2026	"Race to Finish"	Site Violation	The contractor continues heavy excavation and jackhammering to outrun this Commission's oversight.

III. The "Race to Completion" and Bad Faith

February 14, 2026 observation of active drilling for structural poles commenced.

On the morning of **February 27, 2026**, the same day the County certified they had no record of authorizing work after the December breach, the Applicant launched a physical surge on-site. This heavy excavation and jackhammering, occurring merely **80–100 feet** from my children's bedroom window, is a bad-faith attempt to establish **"Vested Rights"** through **Tactical Site Alteration** before this Commission can rule. Expenditures made with full knowledge of a legal challenge and a total lack of agency authorization are "at-risk" investments, not a shield against the law.

IV. Critical Safety Risk: The Fall Zone Deficit

The tower is positioned only approximately **30 feet** from my property line and **80–100 feet** from my home. A 150-foot tower has a structural fall radius that would encroach over **50 feet** into my home's interior in a collapse, with **120 feet of the total fall radius** covering my private property. Under **Ordinance 25-55, Section 7(d)**, the mandatory setback is **120% of tower height (180 feet)** and **600 feet from any residence or school**. A structural failure would encroach **50 feet into my home**. The Applicant's 251-day breach has forfeited any claim to 2015-era "discretionary" setbacks.

V. Opposition to Standing: Legally Preempted Process

The Petition for Standing filed by Horizon Tower III is procedurally barred. **Ordinance 25-55** repealed the Use Permit requirement for towers to comply with the 60-day "shot clock" in **HRS § 46-89**. The Commission cannot grant a process that state and county law have officially deprecated to delay a ruling on a void permit.

VI. Evidence of Admission: The "After-the-Fact" Filing

On **January 30, 2026**, the Applicant recorded an easement. This filing, occurring only after court hearings and this Petition, is a **functional admission** of the prior 251-day breach. A condition precedent cannot be "patched" after the fact to revive a void permit.

VII. Conclusion and Requested Action

The County of Hawai'i has now admitted in writing (UIPA Response, Feb 27, 2026) that despite the discovery of the breach on December 3, 2025, no formal letter was ever produced and no written confirmation was ever provided to the Applicant regarding compliance. This silence constitutes a de facto unauthorized waiver of a Commission-mandated condition. I respectfully request that the Commission:

1. **Declare Use Permit 15-000056 Void** for failure to satisfy a condition precedent.
2. **Deny Horizon's Petition for Standing** as it is legally preempted and procedurally barred.
3. **Issue an Immediate Stay** on all construction activity to protect public safety and household property rights.

Submitted 3rd day of March, 2026.

/s/ Brandy Camacho
Petitioner

MASTER EXHIBIT INDEX

Petitioner: Brandy Camacho

Item #2: Petition for Declaratory Ruling (Use Permit No. 15-000056)

Exhibit	Title	Description / Key Fact
A	Use Permit No. 15-000056	Original 2015 authorization establishing the mandatory "Condition Precedent" (Condition 3) for easement recordation.
B	Bureau of Conveyances Recordation	Certified record of the Jan 30, 2026 easement filing, documenting the 251-day material breach of Condition 3.
C	Site Surge Photo/Drone Logs	Photographic evidence of active drilling (Feb 14) and heavy excavation (Feb 27–Mar 2) within the household fall zone.
D	Certified UIPA Response (Feb 27)	Official County certification confirming a total lack of written authorization for construction following the discovered breach.
E	Ordinance 25-55 (Bill 24)	Current County Law establishing the 600-foot residential setback and the 120% tower height fall zone standard.

EXHIBIT A: THE ORIGINAL MANDATE

Document: Use Permit No. 15-000056

Key Evidence: * **Condition 3:** Explicitly requires the recordation of a perpetual access easement **prior to the issuance of any building permit.**

- **Purpose:** This exhibit establishes the "Condition Precedent" that the Applicant failed to satisfy, rendering all subsequent permits **Void Ab Initio.**

Ms. Danette Martin
General Dynamics
Page 2

3. The applicant shall execute and record an easement over Parcel 84 to provide access to the telecommunication site on Parcel 118 for the duration of the life of the telecommunication facility. A copy of the recorded easement shall be provided to the Planning Department prior to issuance of a building permit for construction of the telecommunication facility.

Source: **Page 122 - PD Background Report** (Petitioner Brandy Camacho - Petition for a Declaratory Ruling).pdf

EXHIBIT B: DOCUMENTATION OF BREACH

Document: Bureau of Conveyances Recorded Instrument (Recorded Jan 30, 2026)

Key Evidence:

- **Date of Compliance:** January 30, 2026.
- **The Gap:** The Building Permit was issued in May 2025. This document proves a **251-day delay** in satisfying a mandatory permit condition.
- **Legal Impact:** Confirms the Applicant operated in a state of material breach for nearly nine months.



STATE OF HAWAII
OFFICE OF THE ASSISTANT REGISTRAR
RECORDED

January 30, 2026 1:43 PM
Doc No(s) T - 13178213
on Cert(s) 187072, 802364
Issuance of Cert(s)

Doc 1 of 1
Pkg 12666265 YH

/s/ MIKE H. IMANAKA
ASSISTANT REGISTRAR

LAND COURT SYSTEM REGULAR SYSTEM
AFTER RECORDATION: RETURN BY MAIL (X) PICK UP ()

Starn O'Toole Marcus & Fisher (CJT)
733 Bishop Street, Suite 1900
Honolulu, Hawaii 96813

THIS DOCUMENT CONTAINS PAGES

TITLE OF DOCUMENT:

GRANT OF EASEMENT

PARTIES TO DOCUMENT:

Grantor: **HAWAII PACIFIC DISTRICT CHURCH OF THE NAZARENE**, a
Hawaii non-profit corporation

1102 Kukila Place
Honolulu, Hawaii 96818

Grantee: **HORIZON TOWER LIMITED PARTNERSHIP-III**, a Kansas limited
partnership

7240 W. 98th Terrace
Overland Park, Kansas 66212

Burdened Property: 31st Avenue, Keaau, Hawaii 96749
TMK No.: (3) 1-5-017-084
TCT No.: 802,364

Benefitted Property: 15-1839 32nd Avenue, Keaau, Hawaii 96749
TMK No.: (3) 1-5-017-118
TCT No.: 187,072

3395668

Source: **Page 410 - PD Background Report** (Petitioner Brandy Camacho - Petition for a Declaratory Ruling).pdf

EXHIBIT C: THE "RACE TO COMPLETION" EVIDENCE

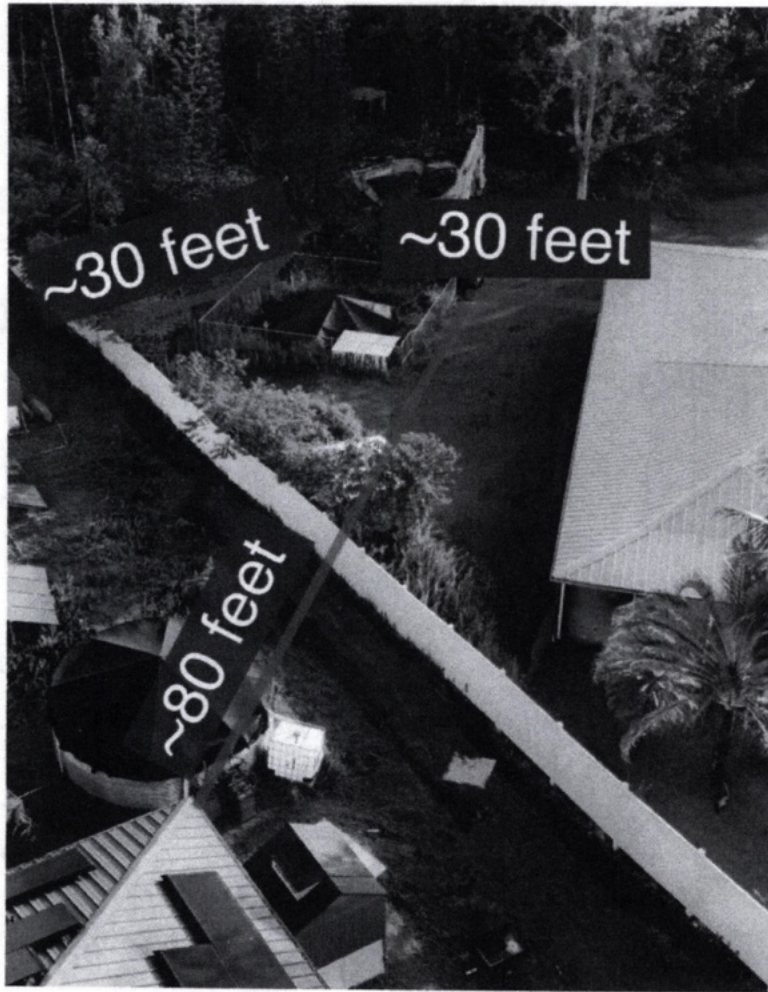
Document: Chronological Site Photo/Drone Log (Feb 14, 2026 – March 3, 2026)

Key Evidence:

- **Proximity:** Visual proof of heavy equipment operating ~**80–100 feet** from the Petitioner's children's bedroom window.
- **Bad Faith:** Documentation of an accelerated "surge" in excavation and jackhammering immediately following legal challenges and the filing for standing.
- **Safety Risk:** Demonstrates the physical reality of the **120-foot fall radius** over the Petitioner's private property.

Attached Material

- Aerial photograph with annotated distance approximations



Source: **Page 400 - PD Background Report** (Petitioner Brandy Camacho - Petition for a Declaratory Ruling).pdf

Feb 14, 2026 - Drilling holes for electric poles



March 1, 2026 - Heavy excavation



March 3, 2026 - Installing a new utility pole



EXHIBIT D: OFFICIAL ADMISSION OF INACTION

Document: Certified UIPA Response (Planning Department, Feb 27, 2026)

Key Evidence:

- **Administrative Silence:** Formal certification that the Planning Director provided **zero written authorization** for the project to proceed after the breach was identified on Dec 3, 2025.
- **Non-Enforcement:** Admission that no formal notice of breach or stop-work order was produced despite the confirmed violation.



Brandy Camacho <[REDACTED]>

UIPA Request Response

Kay, Christian <Christian.Kay@hawaiicounty.gov>

Fri, Feb 27, 2026 at 12:48 PM

To: Brandy Camacho <[REDACTED]>

Cc: "Steen, Raimee" <Raimee.Steen@hawaiicounty.gov>, "Lametti, Demetri" <Demetri.Lametti@hawaiicounty.gov>, "Ahn, Michelle" <Michelle.Ahn@hawaiicounty.gov>, "Ley, Rachelle" <Rachelle.Ley@hawaiicounty.gov>, "Darrow, Jeffrey W." <Jeff.Darrow@hawaiicounty.gov>

Aloha Brandy Camacho,

Thanks for your email. Please see my responses below in red:

- **The Director's Confirmation (Dec 4, 2025):** The production includes an email from Danette Martin to Director Darrow at 11:18 a.m. explicitly asking for confirmation that the "Memorandum of License" was "sufficient to comply with the conditions of the permit." Please provide the Director's response to this inquiry or certify that no such response exists.
 - No such response exists.
- **The Formal Notice of Breach (Dec 3, 2025):** In an email dated December 3, 2025, Director Darrow stated: "I will be sending out a letter requesting this [the easement] to be submitted as required by Condition No. 3." Please provide a copy of this formal letter and any subsequent response from the Applicant.
 - No letter was ever produced.
- **Missing Mayor's Office Records:** The production includes an "FYI" email from Director Darrow to the Mayor's staff on Dec 3, 2025, but contains zero replies. Provide all responsive communications from the Mayor's office (Alameda, Nishimoto, or Brilhante) following that notification.
 - No responses were received.
- **Missing Legal and Building Division Records:** Provide all records showing coordination with Corporation Counsel or the Building Division regarding the Director's December 3rd discovery of the Condition 3 breach and the decision to allow construction to continue.
 - We have provided you with all available records under our custody related to this request. The Planning Department has no custody of Department of Public Works, Building Division records. Any request for DPW, Building Division records should be directed to them accordingly.
 - Pursuant to the UIPA Notice form that we provided you on February 26, 2026, any communications between the Department and Corporation Counsel are covered under attorney/client privilege, and thus are exempt under HRS 92F-13(2).
- **EPIC Case Logic & Rule 3-1 Delay:** Provide all internal communications or work orders regarding the creation of the Declaratory Ruling case type in the EPIC system, specifically those explaining the 51-day delay in processing the administrative roadmap between Dec 3, 2025, and Jan 23, 2026.
 - We have provided you with all available records related to this request.

Please let me know if you have any questions.

Mahalo,

Christian

EXHIBIT E: THE CURRENT SAFETY STANDARD

Document: Ordinance 25-55 (Bill 24, Draft 6) **Key Evidence:**

- **Setback Requirement:** Section 7(d) mandates a setback of **not less than 600 feet** from any residence or school.
- **Fall Zone Standard:** Section 7(d) mandates a setback of **not less than 120% of the tower height** (180 feet for this 150-foot structure).
- **Procedural Change:** Section 4 repealed the Use Permit requirement for towers to comply with **HRS § 46-89**, thereby removing the Contested Case option.

1. Setback Requirement

Section 7(d) establishes mandatory safety setbacks:

- A minimum 600-foot setback from any residence or school.
- A minimum setback equal to 120% of the tower height measured from ground level.

For a 150-foot tower, this creates a required fall zone setback of 180 feet.

Section 7(d) provides:

“A telecommunication tower shall be set back from every property line by a distance not less than one hundred and twenty percent of the tower height as measured from the ground level and not less than six hundred feet from any residence or school.”

2. Repeal of the Use Permit Requirement

(Page 2, Section 4)

Ordinance 25-55 repealed the County Code provision requiring a Use Permit for telecommunications towers.

The deleted code provision is shown in the ordinance with strike-through brackets:

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

The removal of this provision eliminated the discretionary Use Permit approval process previously required for tower installations.

Because Contested Case hearings are tied to discretionary permit processes, the repeal of the Use Permit requirement effectively removed the procedural mechanism that previously allowed for Contested Case proceedings.

3. Mandatory 60-Day State “Shot Clock”

(Page 5, Section 6)

The ordinance also requires the Planning Director to issue a decision on a telecommunications tower application within 60 days, consistent with HRS §46-89.

The ordinance states:

“For a telecommunication antenna or tower, the director shall render a decision to either approve or deny the plan approval application within sixty days... in accordance with Hawai‘i Revised Statutes, Chapter 46-89.”

This statutory timeline requires an administrative decision within a fixed timeframe, further confirming that the discretionary Use Permit process, and its associated Contested Case procedures, no longer applies to tower approvals under the current ordinance.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 24
(DRAFT 6)

ORDINANCE NO. _____

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

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

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

“~~“[Telecommunications]~~ Telecommunication antenna” means an antenna, ~~[tower]~~ repeater, equipment, wireless or broadband-related infrastructure, and other accessory structures [for] used to transmit and receive radio frequency (RF) [transmissions] signals for communication purposes, including those intended for specific users who must have special equipment for transmission and/or reception. [Also included are broadcasting]
This definition:

(1) Includes:

- (A) Broadcasting facilities, such as low power television stations, regulated by the Federal [Communication] Communications Commission (FCC) under Title 47 of the Code of Federal Regulations, [par.] part 74[-which includes low power television. Included are land mobile];
- (B) Land-mobile or two-way radio, and one-way radio paging service broadcasting[-Also included are independent]; and
- (C) Independent receiving facilities which do not qualify as accessory uses[-Not included are portable, hand-held]; and

(2) Does not include:

- (A) Portable, handheld, and vehicular transceivers or radios; [industrial]
- (B) Industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the Federal Communications Commission (FCC); [marketed]
- (C) Marketed consumer products, such as microwave ovens, citizens band radios, ham radios [and remote control toys;], or remote-controlled devices; [and facilities]

- (D) Facilities solely for the [receiving] personal reception of these transmissions, [including individual] such as radio and television appliances[-];
- (E) Small wireless facilities, as defined by the Hawai'i Revised Statutes, section 206N-1; and
- (F) Broadband services delivered through wireline technologies, such as digital subscriber line, cable, and fiber-to-the-premises."

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

"Telecommunication tower" or "tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed and primarily used to support telecommunication antennas and any related equipment, shelters, or cabinets necessary for the operation of the antennas."

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

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

- RS, RD, RM, RCX, RA, FA, A, and V districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, RCX and RA districts.
- (8) Major outdoor amusement and recreation facilities in RCX, RA, A, CN, CG, CV, MCX, ML, MG and O districts.
 - (9) Medical clinics in RS, RD, RM, RA, FA, and A districts.
 - (10) Schools in RS, RD, RM, RA, FA, A, V, MCX, ML, and MG districts, provided that a minimum building site area of ten thousand square feet shall be required within the RS, RD, RM, and RA districts.
 - ~~[(11) Telecommunication antennas and towers in RS, RD, RM, RCX, RA, FA, A, IA and O districts.]~~
 - ~~[(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."

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

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

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 a submittal checklist consistent with this section and 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 miles per hour~~;~~ or meet the requirements set forth in the building code, whichever is greater;
- (3) A statement from the applicant that the proposed use will not interfere with the County's land mobile radio system and other public emergency communications systems;
- ~~[(3)]~~ (4) A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation; ~~[and]~~
- ~~[(4)]~~ (5) A statement from the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary~~[-];~~
- (6) Documentation demonstrating that the National Historic Preservation Act of

- 1966 Section 106 review has been completed;
- (7) A report indicating whether the facility could be co-located elsewhere, which shall include:
- (A) Documentation of efforts to install, construct, or co-locate the proposed facility on or within:
 - (i) Existing towers or feasible antenna support structures;
 - (ii) Sites that do not adversely impact significant public views, such as beaches, shorelines, oceans, and natural areas;
 - (iii) Industrial or commercial zoning districts;
 - (iv) Locations that are not highly visible from adjacent roadways, public spaces, parks, schools, greenbelts, or other visually sensitive areas; and
 - (v) Areas unserved or underserved with respect to broadband access and infrastructure;
 - (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) Maps showing the coverage areas of existing towers within a two mile radius of the proposed tower;
 - (D) A letter from the nearby tower owners indicating the tower is not feasible for co-locating antennas;
 - (E) A statement that the wireless telecommunications provider commits to allow a minimum of two other wireless telecommunications providers to co-locate antennas on its proposed tower facilities wherever structurally and technically feasible; and
 - (F) A statement providing the reason for the location, design, and height of the proposed tower or antennas;
- (8) Documentation of proactive efforts made to notify, meet with, inform, and engage adjacent landowners and the affected community regarding the proposed use;
- (9) Verification that the applicant has sent notification letters to all owners and lessees of record of properties of which any portion is within five hundred feet of any point along the perimeter boundary of the building site for the proposed telecommunication installation; provided that the notification letters must:
- (A) Describe the nature of the proposed installation, including its dimensions and location on the building site; and
 - (B) Provide the anticipated timeline for construction;
- (10) Documentation demonstrating compliance with the Hawai'i State Fire Code and Standard No. 76, relating to the fire protection of telecommunications facilities, of the National Fire Protection Association, which documentation must be submitted to the Hawai'i fire department;
- (11) A maintenance plan detailing how the safety, functionality, and service of the proposed use will be maintained until the use is discontinued; and
- (12) A visual impact analysis, which shall include:
- (A) Mitigation measures to minimize the visual impacts of the tower, including a description of any vegetation to be used for such purposes;

(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 visual impact analysis 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 6. Chapter 25, article 2, division 7, 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 [øf], 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 7. Chapter 25, article 4, division 1, section 25-4-12, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

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

- (a) A telecommunication antenna or tower shall be permitted in [~~the V, CN, CG, CV, MCX, ML, MG and CDH~~] 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 provided, the director issued plan approval or other relevant approval for the existing tower, base station, or other antenna support structure. 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 in Title 47 of the Code of Federal Regulations, section 1.6100. 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 by government agencies 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 antenna and tower requirements provided in this chapter.
- (c) The minimum lot size requirements for telecommunication towers are as follows:
- (1) The minimum lot size for the placement of any telecommunication tower within the A, FA, IA and O zoning districts shall be five 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 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 properties.

(d) Except when located within the V, CN, CG, CV, MCX, ML, MG, or CDH districts, a telecommunication tower shall be set back from every property line by a distance not less than one hundred and twenty percent of the tower height as measured from the ground level and not less than six hundred feet from any residence or school.

(e) Fencing and Safety Measures. Telecommunication towers must be enclosed by fencing a minimum of six 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 miles per hour];~~

(1) Comply with the building code; and

(2) Where feasible, be equipped with:

(A) A redundant power supply capable of providing sufficient power for no less than twenty-four hours; and

(B) Secondary data transmission capabilities that can support mass notification messaging during a disaster.

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

(1) Fully shielded so that the bulb is not visible from any point above the height of the bulb; and

(2) Turned off when human activity is not occurring in the lighted area.

(h) 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.

(i) Within one hundred twenty 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.

(j) The director may require any conditions or changes in the location and design of telecommunication antennas and towers necessary to carry out the purposes of this chapter and the natural beauty chapter of the general plan. These conditions or changes may 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 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 to mitigate visual impacts.”

SECTION 8. Chapter 25, article 5, division 1, section 25-5-3, division 2, section 25-5-22, division 3, section 25-5-32, division 4, section 25-5-42, division 5, section 25-5-52, division 6, section 25-5-62, and division 7, section 25-5-72 of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by repealing each paragraph reading “Telecommunication antennas and towers.” in the respective subsection (b) thereof and appropriately renumbering all subsequent paragraphs.

SECTION 9. Chapter 25, article 5, division 1, section 25-5-3, division 2, section 25-5-22, division 3, section 25-5-32, division 4, section 25-5-42, division 5, section 25-5-52, division 6, section 25-5-62, and division 7, section 25-5-72 of the Hawai‘i County Code 1983 (2016 Edition, as amended) are amended by adding a paragraph to be appropriately inserted in the respective subsections (a) thereof and to read “Telecommunication antenna and towers, as permitted under section 25-4-12.” and by appropriately renumbering all subsequent paragraphs.

SECTION 10. 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) Apiaries.
- (5) Aquaculture.
- (6) Cemeteries, as permitted under chapter 6, article 1 of this Code.
- (7) Crop production.
- (8) Farm dwellings, as permitted under sections 25-5-87(b) and (c).
- (9) Forestry.
- (10) 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.
- (11) Public uses and structures which are necessary for agricultural practices.
- (12) Telecommunication antennas and towers, as permitted under section 25-4-12.
- [(12)] (13) 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:
 - (12) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (13) Churches, temples, or synagogues.
 - (14) Community buildings as permitted under section 25-4-11.
 - (15) Day care centers.
 - (16) Hospitals.
 - (17) Public uses and structures, other than those necessary for agricultural purposes, as permitted under section 25-4-11.
 - (18) 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 11. 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) Apiaries.
 - (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) Existing churches and temples of historical significance.
 - (6) Forestry.
 - (7) Game preserves.
 - (8) Growing of plants provided such growth does not impair a view intended to be preserved in the O district.
 - (9) Heiaus, historical areas, structures, and monuments.
 - (10) Natural features, phenomena, and vistas as tourist attractions.
 - (11) Private recreational uses involving no aboveground structure except dressing rooms and comfort stations.
 - (12) Public parks.
 - (13) Public uses and structures, as permitted under section 25-4-11.
 - (14) Telecommunication antennas and towers, as permitted under section 25-4-12.
 - ~~[(14)]~~ (15) 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.

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- (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.]~~
 - (c) Uses considered directly accessory to the uses permitted in this section shall also be permitted in the O district.”

SECTION 12. Chapter 25, article 5, division 9, section 25-5-92, division 10, section 25-5-102, division 11, section 25-5-112, division 12, section 25-5-122, division 14, section 25-5-142, division 15, section 25-5-152 and article 7, division 2, section 25-7-22 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking “Telecommunication antennas, as permitted under section 25-4-12.” and inserting “Telecommunication antennas and towers, as permitted under section 25-4-12.” in lieu thereof.

SECTION 13. Chapter 25, article 5, division 13, section 25-5-132 of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended by striking “Telecommunications antennas, as permitted under section 25-4-12.” and inserting “Telecommunication antennas and towers, as permitted under section 25-4-12.” in lieu thereof.

SECTION 14. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 15. 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 16. This ordinance shall take effect upon approval.

INTRODUCED BY:

KJ for  B/R

COUNCIL MEMBER, COUNTY OF HAWAII

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

REFERENCE Comm. 110.154