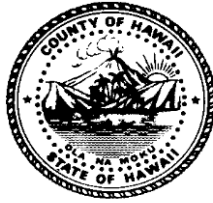


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## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

June 2, 2023

Danette Martin  
General Dynamics  
76-6357 Kololia Street  
Kailua-Kona, HI 96740  
VIA EMAIL

Dear Ms. Martin:

**SUBJECT: Use Permit Application (PL-USE-2022-000006)**  
**Applicant: Renegade Towers, LLC**  
**Request: To Establish a Telecommunication Facility with an 85-Foot-Tall Monopine Tower and Related Equipment and Improvements**  
**Tax Map Key: (3) 7-3-002:010 (por.); North Kona, Hawai'i**

The Leeward Planning Commission, at its duly held public hearing on May 19, 2023, voted to approve the above-referenced application to allow the establishment of a telecommunication facility with an 85-foot-tall 'monopine' tower and related equipment and improvements within a 2,712-square foot portion of a larger 14.89-acre parcel. The subject property is located at 73-4189 Hawai'i Belt Road, on the southeast corner of its intersection with Donahue Road, Makaula-Kalaoa 4<sup>th</sup>, North Kona District, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successors, or assigns ("Applicant") shall be responsible for complying with all stated conditions of approval.
2. Construction and operation of the telecommunication facility shall be conducted in a manner that is substantially representative of plans and details as contained within the Use Permit application dated March 15, 2023, and representations made to the Leeward Planning Commission.
3. Construction of the telecommunication facility shall be completed within five (5) years from the effective date of this permit. Prior to construction, the Applicant shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-71(c)(3), 25-2-72, 25-2-74 and 25-4-12,

Chapter 25 (Zoning Code), Hawai‘i County Code. Plans shall identify proposed structures, fire protection measures, access easements and any fencing associated with the use. The tower/antenna plans shall be stamped by a licensed structural engineer.

4. Prior to commencement of operation of the facility, the Applicant shall secure and finalize any building permits for the proposed use required by the Department of Public Works - Building Division.
5. Co-location of antennas upon the proposed tower and the addition of related support and ground equipment is required within the parameters of the tower height and ground lease area as approved by the Leeward Planning Commission without amendment of this permit or further Plan Approval. Co-location beyond the parameters approved by this permit but that results in less than a ‘substantial change’ to the tower height and ground lease area, as defined by the Federal Communication Commission, is allowed without amendment of this permit, provided Plan Approval has been issued by the Planning Director for the co-location. Co-location that results in a ‘substantial change’ to the tower height and ground lease area, as defined by the Federal Communication Commission, requires an amendment of this permit.
6. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over fifteen (15) feet in height shall not be disturbed, trimmed, or removed during bat birthing and pup rearing season of June 1<sup>st</sup> to September 15<sup>th</sup> without first conducting surveys for bat nests and coordinating with U.S. Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist.
7. To protect any seabirds (Hawaiian petrels, Newell’s shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
8. To protect any Hawaiian hawks in the vicinity of the property, ground clearing, grubbing activities and construction shall not occur in the permit area during hawk breeding season of March to September without first conducting surveys for hawk nests and coordinating with the U.S. Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist.
9. To prevent the spread of Rapid ‘Ōhi‘a Death, a survey of the proposed site shall be conducted two weeks prior to any tree cutting to determine if there are any infected ‘ōhi‘a trees. If infected ‘ōhi‘a are suspected at the site, the Applicant shall contact the appropriate agencies at University of Hawai‘i - Hilo and the U.S. Department of Agriculture (USDA) for further guidance. If ‘ōhi‘a trees will be cut

during construction, the Applicant shall follow procedures as determined by the USDA.

10. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
11. The Applicant shall comply with all applicable rules, regulations, and requirements of the affected agencies for the proposed development, including the Federal Aviation Administration and Federal Communications Commission. All exterior lighting shall be shielded.
12. Within 120 days of the permanent abandonment of the tower, the Applicant shall remove the tower and its antenna and accessory structures (including the equipment building and the fence) down to, but not including, the concrete foundation. The Applicant shall immediately provide written notification to the Planning Director of the termination of the telecommunication tower and related improvements and the removal of all structures.
13. An initial extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
  - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicant and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
  - C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
14. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

Danette Martin  
General Dynamics  
June 2, 2023  
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Clinton Mercado of this department at (808) 961-8038 or by email at [Clinton.Mercado@hawaiicounty.gov](mailto:Clinton.Mercado@hawaiicounty.gov).

Sincerely,



[Barbara DeFranco \(Jun 2, 2023 17:30 HST\)](#)

Barbara DeFranco, Chairperson  
Leeward Planning Commission

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Attachment: Planning Commission Findings Report

cc via email w/att.: Mr. Michael Miller, Renegade Towers, LLC  
Department of Finance, Real Property Tax Division  
Planning Department, GIS Section

**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**RENEGADE TOWERS, LLC**  
**USE PERMIT APPLICATION (PL-USE-2022-000006)**

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Based on the following findings, Use Permit No. PL-USE-2022-000006 is hereby approved to allow the establishment of a telecommunication facility with an 85-foot-tall stealth monopine tower and related equipment and improvements within a 2,712 square foot portion of a larger 14.89-acre parcel. The subject property is located at 73-4189 Hawai‘i Belt Road, on the southeast corner of its intersection with Donahue Road, Makaula-Kalaoa 4<sup>th</sup>, North Kona, Hawai‘i, TMK: (3) 7-3-002:010 (por.).

The applicant is requesting a Use Permit to construct a new, non-manned telecommunication facility, consisting of an 85-foot-tall stealth ‘monopine’ tower (adorned to resemble a pine tree), an antenna array consisting of 2 tri-sectors with 12 antennas per tri-sector for a total of 24 antennas, 4 surge suppressors mounted on sector stand-off arms, 5 equipment cabinets, 2 emergency generators, 2 GPS antenna, 1 fiber distribution box, 2 automatic transfer switches, and 2 power protection cabinets (PPC) cabinets. All ground equipment and monopine tower will be mounted on a raised concrete pad. No exterior lighting is proposed on the tower and only security lighting, meeting with the County’s lighting ordinance, will be mounted somewhere near the ground equipment. The 2,112-square foot (36’ x 58’-8”) equipment leased area will be enclosed with a 6-foot-high chain-link fence with woven green privacy slats. The lease area will be accessed via a 50-foot long by 12-foot wide (600 square foot) compacted gravel ingress/egress road from Donahue Road. The proposed facility will be unmanned, however, maintenance and repair activities will be performed by a technician on a periodic basis, typically once a month within normal working hours.

The Telecommunications Act of 1996, Section 704, as amended, recognizes the absence of health hazards from wireless radio wave transmissions and prohibits local authorities from regulating the placement of such towers based on environmental effects, so long as the towers comply with the Federal Communication Commission’s (FCC) guidelines. The applicant and subsequent tenant telecommunication service providers will comply with all Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) rules.

The objective of the new facility is to improve the existing cell phone coverage by filling spotty coverage in the nearby residential neighborhoods as well as coverage on Hawai‘i Belt Road. The proposed facility enhances police and fire protection by extending wireless voice and data services to remote land areas so that emergency and public safety officials can be contacted in the event of an emergency. The new facility will also provide the area with high-speed wireless broadband.

The monopine tower will be designed to accommodate the co-location of up to four (4) telecommunication carriers. According to the applicant, in addition to Verizon Wireless (anchor tenant), T-Mobile has expressed interest in co-locating in the future to provide expanded coverage to the surrounding area. Verizon Wireless has also reached out to AT&T but has not yet received confirmation of interest. Further, Verizon Wireless has made diligent effort to co-locate on a nearby tower, but it could not provide them with the necessary coverage needed.

There are no other existing telecommunication facilities or tall structures available for co-location around the proposed facility.

According to the applicant, the proposed 85-foot-tall tower height is necessary to overcome topography and tall trees. The tower height will ensure the proper line of sight needed to extend service to the surrounding area and as far along Hawai'i Belt Road as possible. If the tower height were reduced, it would reduce the coverage footprint of Verizon Wireless and other carriers who would co-locate on the tower.

The Zoning Code requires a Use Permit for telecommunication antennas and towers in the County's Agricultural-20 Acres (A-20a) zoning district. In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission Rules of Practice and Procedure, relating to Use Permits, requires that such action conform to the following guidelines:

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

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

**The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan.** The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and policies of the General Plan.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The General Plan designation for this property is Extensive Agriculture, which includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine till ability, and climate. Allowable uses within these areas may include community and public facilities. The request is also consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

The telephone is an essential means of voice communication for the majority of residents in Hawai'i County. However, over the last decade, the County has seen acceleration in the development of telecommunication technology and a transformation of the telecommunications industry. In addition to traditional phone communication, the telecommunications industry now includes technologies such as wireless cellular, digital mobile phones, and the internet. During the last decade, wireless telecommunications has experienced a dramatic decrease in cost and a phenomenal increase in availability. Changes in technology and competition in the industry have made wireless communication more affordable to the general public.

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

A standard in the Public Utilities element of the General Plan states that in the development and placement of telephone facilities, such as lines, telecommunications and cellular towers, poles, and substations, the design of the facilities shall consider the existing environment, and scenic view and vistas shall be considered and preserved where possible. To lessen any adverse visual impacts on surrounding properties, the proposed facility is set back approximately 58 feet from Donahue Road and approximately 330 feet from Hawai'i Belt Road. Additionally, the applicant is proposing to develop a stealth 'monopine' tower which will be disguised as a pine tree to blend with the surrounding environment. There are no General Plan designated natural beauty sites or vistas located in the vicinity of the subject property. The applicant included a viewshed analysis and photo simulations showing the proposed tower in relation to the vegetation and dwellings from various locations surrounding the subject property.

The Kona Community Development Plan (KCDP), adopted by the Hawai'i County Council on September 25, 2008, and most recently amended on September 18, 2019, identifies the preferred land use pattern for the Kona districts. The subject property is located outside of the Kona Urban Area and outside of any Rural Town Areas.

Based on the preceding, the request is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County of Hawai'i General Plan.

**The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.** The proposed facility will be located in a 2,112-square foot lease area situated in the northwest corner of the property located approximately 58 feet from the nearest edge of Donahue Road. The closest structure on the neighboring property is a dwelling located over 200 feet towards the northeast. On the subject property the closest structure is a single-family dwelling that is located approximately 200 feet towards the southwest.

Properties situated immediately to the north, east, and south are zoned Agricultural (A-1a, A-8a, and A-20a). These properties range in size from about 1 acre to 21 acres. Properties to the west, across Hawai'i Belt Road, are zoned Agricultural-5 acres (A-5a) and Single-Family Residential-20,000 square feet (RS-20). These properties range in size from about .17 acres to 3 acres. The properties surrounding the subject property are being used for churches, dwellings, and agriculture.

According to the applicant, the facility operates virtually noise-free beyond 100 feet from the project area, and the operation of the antenna does not present health hazards or cause

interference with other electronic appliances and equipment. Furthermore, traffic to the project will be consistent with routine maintenance and repair activities, performed by a technician on a periodic basis, typically once a month within normal working hours.

As discussed above, the main impact on the surrounding community will be visual, however, that impact will be mitigated with the development of a stealth 'monopine' tower. No exterior lighting is proposed on the tower and only security lighting, meeting with the County's lighting ordinance, will be mounted somewhere near the ground equipment, which given the distance from the nearest dwelling, site vegetation, and topography of the area, should not negatively impact the surrounding community.

It is anticipated that the surrounding community will benefit from improved cell phone coverage as the proposed telecommunication facility will address spotty coverage in nearby residential neighborhoods including, but not limited to, Kona Palisades, Kona Highlands, Kona Coast View, Kaiulani Estates, and along Hawai'i Belt Road. Further, it will enhance police and fire protection by extending wireless voice and data services to remote land areas so that emergency and public safety officials can be contacted in the event of an emergency.

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

**The granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure.** Access to the facility will be off Donahue Road which extends mauka of Hawai'i Belt Road. The proposed access driveway will be compacted dirt 12 feet wide and approximately 50 feet long. The proposed use will require fiber optics and electricity. Electricity is located on the overhead utility poles at Mamalahoa Highway adjacent to the subject parcel. No public expenditures for road, street, sewer, water, drainage, school, or increased police or fire protection are required.

Finally, the applicant and/or any telecommunication service provider tenant will be required to meet all applicable agency requirements, including the Federal Communications Commission and the Federal Aviation Administration.

**In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area.** The subject property is located about 4.7 miles from the nearest shoreline and is not located in the Special Management Area, and therefore will not be impacted by coastal hazards and beach erosion. There are no identified coastal recreational resources, coastal scenic and open space resources, coastal ecosystems, and beach or marine resources in the area, thus the proposed request will not adversely impact coastal resources. Additionally, there is no record of a designated public access to the shoreline or mountain areas that traverses the property and no gathering or other traditional practices have been documented.

**The request will not have a significant adverse impact to traditional and customary Hawaiian Rights.** In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: A cultural resources review, field inspection, and consultation with native Hawaiian organizations was completed in an Archaeological Inventory



Survey (AIS) by Scientific Consultant Services (SCS) and included in a report dated July 11, 2022.

The valued cultural, historical, and natural resources found in the area: The AIS indicated that there are four sites that are eligible for listing on the National Register of Historic Places and/or on the Hawai'i Register of Historic Places located within the 0.5-mile radius of the area of potential effects (APE). The sites include three churches and the ruins of a fourth church. The report also indicates that there are historic properties documented within a 0.25-mile radius of the proposed facility site. Site 50-10-28-31352 is documented in the AIS and consists of an agricultural complex comprised of five features (3 terraces and 2 rock mounds). However, there were no historic subsurface remains identified after completing a single test unit and 3 stratigraphic trenches. Site 50-10-28-31352 was interpreted as a late pre-Contact to early post-Contact era agricultural site. It was assessed as significant under Criterion d, pursuant to HAR § 13-284-6, and as adequately documented.

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted due to the already impacted residential development. However, an inadvertent finding condition will be added in the unlikely event resources are discovered on the property during construction activities.

Feasible actions to protect native Hawaiian rights: According to the applicant, no gathering is taking place on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. An inadvertent finding condition will be added in the unlikely event resources are discovered on the property during construction activities.

In a letter dated February 28, 2023, the Department of Land and Natural Resources-State Historic Preservation Division (SHPD) and State Historic Preservation Officer's (SHPO) concurred that no historic properties will be affected by the proposed project and that preservation of Site 50-10-28-31352 is not recommended.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.