

COUNCIL OF THE COUNTY OF MAUI

HUMAN SERVICES AND ECONOMIC DEVELOPMENT COMMITTEE

November 1, 2002

Committee

Report No. 02-152

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Human Services and Economic Development Committee, having met on January 10, 2002, March 14, 2002, October 3, 2002, and October 17, 2002, makes reference to County Communication No. 00-245, from Councilmembers G. Riki Hokama and J. Kalani English, proposing that a Subcommittee on Communications Infrastructure be created.

Your Committee notes that County Communication No. 00-245 was referred to the prior Council's Economic Development Committee at the Council meeting of September 15, 2000.

By correspondence dated October 4, 2000, Raynard C. Soon, Chair of the Hawaiian Homes Commission, State Department of Hawaiian Home Lands, requested representation on the subcommittee.

By correspondence dated October 5, 2000, Paris K. Chai, Specialist-Regulatory & Governmental Affairs, Verizon Hawaii, provided written testimony on the establishment of the subcommittee.

Your Committee notes that at its October 5, 2000 Committee meeting, the Economic Development Committee established a Subcommittee on Communications Infrastructure. The objectives of the Subcommittee were as follows:

1. Propose a comprehensive County telecommunications ordinance;
2. Study relevant Federal, State, County and private regulations and agreements; including joint pole and franchise agreements, antenna siting policies, and institutional network planning;
3. Discuss the use, regulation, and management of public rights-of-way in order to mitigate negative impacts and maximize public benefits;

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4. Research options to amend or re-negotiate the use, regulation, and management of public rights-of-way to assess the public service benefits relating to communications infrastructure; and
5. Transmit recommendations to the Human Services and Economic Development Committee for further deliberation.

Membership on the Subcommittee included 7 voting members and 12 non-voting members. The Subcommittee's term was for two months, ending on December 4, 2000.

Your Committee received written testimony dated October 19, 2000, from Winston Tyau, in opposition to the establishment of a subcommittee.

By correspondence dated October 19, 2000, Paul Oshiro, Director of Governmental Affairs, Verizon Hawaii, provided written testimony on the establishment of the subcommittee.

Your Committee further notes that at its October 19, 2000 Committee meeting, the Economic Development Committee reconfirmed the membership of the Subcommittee and named Councilmembers G. Riki Hokama and Michael A. Davis as Chair and Vice-Chair, respectively.

By correspondence dated October 19, 2000, the Chair of the Economic Development Committee notified the Chair and Members of the Subcommittee of its membership, objectives, and term.

By correspondence dated November 20, 2000, the Chair of the Economic Development Committee informed the Chair and Members of the Subcommittee that Councilmember Robert Carroll will be replacing J. Kalani English as an ex-officio member of the Subcommittee.

By correspondence dated November 20, 2000, the Chair of the Subcommittee recommended that the Subcommittee be reestablished in the 2001-2003 Council term.

At its meeting of November 28, 2000, the Economic Development Committee recommended that County Communication No. 00-245 be referred to

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the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

By correspondence dated December 14, 2001, Councilmember Michael J. Molina transmitted a letter dated December 5, 2001, from Jeanne Unemori Skog and Sean McLaughlin, encouraging the Council to revisit a proposal made by the previous Council for the establishment of a subcommittee on communications infrastructure.

At its meeting of January 12, 2001, the Council referred County Communication No. 00-245 to your Human Services and Economic Development Committee (County Communication No. 01-16).

By correspondence dated January 8, 2002, Councilmember Michael J. Molina requested the establishment of the subcommittee and suggested its objectives, term, and membership.

By correspondence dated January 10, 2002, Paul Oshiro, Director of Governmental Affairs for Verizon Hawaii, provided written testimony regarding the establishment of the subcommittee.

At its meeting of January 10, 2002, your Committee met with a Deputy Corporation Counsel.

Your Committee received testimony from three members of the public expressing support for the establishment of a subcommittee.

Your Committee received the following documents:

1. Correspondence dated January 9, 2002 from Gil Tam, Vice-President of Sandwich Isles Communications, Inc., requesting designation of Devon Nekoba as the representative for Sandwich Isles Communications; and
2. Correspondence dated January 10, 2002 from Councilmember Michael J. Molina, requesting nomination of a substitute for Marlon

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Wedemeyer, who he is unable to serve on the proposed subcommittee.

After a brief discussion, your Committee voted to establish a Subcommittee on Communications Infrastructure with the following objectives:

1. Propose a comprehensive County telecommunications ordinance;
2. Study relevant Federal, State, County and private regulations and agreements; including joint pole and franchise agreements, antenna siting policies, and institutional network planning;
3. Discuss the use, regulation, and management of public rights-of-way in order to mitigate negative impacts and maximize public benefits;
4. Research options to amend or re-negotiate the use, regulation, and management of public rights-of-way to assess the public service benefits relating to communications infrastructure; and
5. Transmit recommendations to the Human Services and Economic Development Committee for further deliberation.

The Subcommittee members are as follows:

1. Councilmember Michael J. Molina, Chair
2. Jeanne Unemori Skog, Vice-Chair
3. Sean McLaughlin
4. Jennifer Sabas
5. Jocelyn Perreira
6. Lynne Woods
7. Kathryn Matayoshi
8. Councilmember G. Riki Hokama (ex-officio member)

Subcommittee meetings will commence in February 2002 and will end on April 10, 2002.

By correspondence dated January 17, 2002, your Committee Chair informed the Chair and Members of the Subcommittee of its membership, objectives, and duration.

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By correspondence dated March 7, 2002, the Chair of the Subcommittee requested that the term of the Subcommittee be extended from April 10, 2002 to May 31, 2002.

At its meeting of March 14, 2002, your Committee met with a Deputy Corporation Counsel.

The Chair of the Subcommittee requested an extension of the term of the Subcommittee from April 10, 2002 to May 31, 2002. He stated that the Subcommittee needed an extension for the following reasons: 1) scheduling difficulties will occur during the Budget Session; 2) additional time is needed for staff and Corporation Counsel to develop the draft ordinance the Subcommittee is working towards; and 3) additional meetings are needed in May in order to submit the draft ordinance and recommendations to this Committee for review.

Your Committee recommended extending the term of the Subcommittee to May 31, 2002.

By correspondence dated March 15, 2002, your Committee Chair informed the Chair of the Subcommittee that the term of the Subcommittee was extended from April 10, 2002 to May 31, 2002.

Your Committee is in receipt of the Subcommittee's report, dated September 12, 2002, referring a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26 AND TITLE 19, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES", and requesting consideration of various issues relating to the draft bill.

The purpose of the bill is to amend Chapter 16.26 and Title 19 of the Maui County Code to: (1) minimize the number of transmission towers throughout the County; (2) encourage the collocation of telecommunication facilities; (3) encourage the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers; (4) recognize the need of telecommunication providers to build out their systems over time; and (5) ensure that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the

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immediate surroundings and throughout the County, and minimize public inconvenience and disruption.

At its meeting of October 3, 2002, your Committee met with the Director of Public Works and Waste Management, a Staff Planner from the Department of Planning, a Police Captain from the Department of Police, and a Deputy Corporation Counsel.

Your Committee received testimony from the Vice Chair of the Subcommittee, requesting your Committee's support of the recommendations of the Subcommittee.

The Deputy Corporation Counsel provided an overview of the draft bill including a history on the overriding legislation, the 1996 Telecommunications Act ("Act"). He stated that State law preempts the County in all areas of communication services except wireless communications. Further, the Act states that no local statute may prohibit the ability of any entity to provide an interstate or intrastate telecommunications service. He pointed out that the local ordinance would violate the Act if the requirements for cellular tower siting are so restrictive that the industry says it is not technically feasible.

Your Committee was informed that the draft bill is tailored after the Eugene, Oregon ordinance, which has been modified for Maui County purposes. He stated that the ordinance is based on a permitting procedure for zoning districts. He indicated that there are several areas in the draft that will require additional work, specifically in determining tower heights, frequency of towers, and view planes that should be protected.

Your Committee deferred this matter pending further discussion.

By correspondence dated October 8, 2002, the Chair of your Committee requested that Brian Kageyama of the Public Utilities Commission, provide a written response to the draft bill, and invited him or a representative to attend the October 17, 2002 Committee meeting.

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By correspondence dated October 8, 2002, the Chief of Police transmitted recommendations relative to protecting Maui County's emergency communications system.

By correspondence dated October 9, 2002, your Committee Chair transmitted a copy of an opinion dated May 22, 2002, from the Department of the Corporation Counsel, relating to guidance on the County's role in franchise agreements, rights-of-way management, telecommunications facilities siting, and a draft ordinance.

By correspondence dated October 9, 2002, your Committee Chair requested that the Department of the Corporation Counsel separate the draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26 AND TITLE 19, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES" into two draft bills, one to amend Chapter 16.26 and the other to amend Title 19 because only the bill amending Title 19 must be referred to the Planning Commission pursuant to Section 8-8.6 of the Charter.

By correspondence dated October 10, 2002, your Committee Chair transmitted a copy of a proposed resolution entitled "URGING THE ADMINISTRATION TO ADOPT A VISION STATEMENT AND POLICY GOALS RELATING TO COMMUNICATIONS INFRASTRUCTURE".

By correspondence dated October 16, 2002, the Department of the Corporation Counsel transmitted two draft bills in response to a request from your Committee as follows:

1. "A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES".

The purpose of the draft bill is to amend Section 16.26.106 of the Maui County Code to delete Section 106.6, relating to wireless telecommunication towers and related facilities in interim zoning districts.

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2. "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES".

The purpose of the draft bill is to amend Title 19 of the Maui County Code to add a new chapter relating to telecommunication facilities siting requirements and procedures.

At its meeting of October 17, 2002, your Committee met with the Deputy Director of Public Works and Waste Management, the Program Administrator of the Long-Range Planning Division in the Department of Planning, a Captain from the Department of Police, and a Deputy Corporation Counsel.

Your Committee received testimony from three members of the public providing comments on the draft bill, which was attached to the Subcommittee report. One testifier, representing the Maui Amateur Radio Club, Inc., spoke in favor of the resolution with a suggested change to include the services of amateur radio operators who have Federal Communications Commission (FCC) licenses in the second "Be It Resolved" clause. The second testifier spoke in support of the Subcommittee's recommendations including the draft bill and the proposed resolution. The third testifier, representing AT&T, provided some general comments on the draft bill and indicated that written comments would be submitted at a later date, regarding amendments to Title 19.

The Police Captain provided an overview of his Department's concerns regarding sections of the draft bill relating to Title 19 that might have an impact on the emergency communications system.

The Deputy Corporation Counsel stated that the suggestions were reasonable and would not restrict competition in accordance with the Federal guidelines. He stated that he would like to study further the suggestion on collocation and how to implement the suggestion within the draft bill relating to Title 19.

Your Committee discussed the recommendation from the Subcommittee to consider interim legislation relating to telecommunications siting until your Committee has completed its review of the draft bill. As such, your Committee

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requested that the Department of the Corporation Counsel revise the draft bill relating to Chapter 16.26 to (1) retain the language in Section 16.26.106.6. of the Maui County Code regarding a moratorium on the siting of communications towers in interim-zoned areas; (2) change the sunset date from December 31, 2000 to July 1, 2003 in Subsection 16.26.106.6.2.a; (3) revise the title of the draft bill to be specific enough to distinguish it from other legislation on similar matters; and (4) approve the bill as to form and legality.

After discussion, your Committee voted to recommend adoption of the proposed resolution incorporating the comments by one of the testifiers to include services by amateur radio operators, and adding the Director of the FCC, Hawaii's Congressional Delegation and the Maui Amateur Radio Club, Inc. as recipients of the resolution.

Your Human Services and Economic Development Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "URGING THE ADMINISTRATION TO ADOPT A VISION STATEMENT AND POLICY GOALS FOR THE COUNTY OF MAUI RELATING TO COMMUNICATIONS INFRASTRUCTURE" be ADOPTED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL Chair

DANNY A. MATEO Member

JO ANNE JOHNSON Vice-Chair

MICHAEL J. MOLINA Member

G. RIKI HOKAMA Member