

REQUEST FOR LEGAL SERVICES

Date: November 5, 2018
From: Robert Carroll, Chair
Land Use Committee

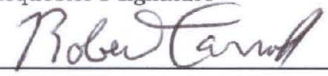
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: CONDITIONAL PERMIT FOR SPRINT WIRELESS TELECOMMUNICATION FACILITY AT 3740 LOWER HONOAPIILANI ROAD (LAHAINA) (LU-67)

Background Data: Please review attached mark-up and clean versions of revised proposed bill. If appropriate, please approve the clean version as to form and legality. A hard copy is requested with your response.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Robert Carroll	Contact Person Carla Nakata or James Krueger (Telephone Extension: 7659 or 7761, respectively)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 7, 2018
REASON: To submit for posting on the November 15, 2018 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

lu:ltr:067acc02:cmn

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE GRANTING SPRINT WIRELESS A CONDITIONAL PERMIT TO ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATION FACILITY CONSISTING OF A THIRTY-FIVE (35) FOOT MONOPALM TOWER WITH AN ADDITIONAL FIVE (5) FEET OF PALM FRONDS AT THE TOP, AND A 200 SQUARE-FOOT LEASE AREA TO CONTAIN EQUIPMENT ON THE GROUND; LOCATED IN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 3740 LOWER HONOAPIILANI ROAD AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 4-3-006:004, LAHAINA, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Sprint Wireless, to allow the installation of a wireless telecommunication facility consisting of a thirty-five (35) foot monopalm tower with an additional five (5) feet of palm fronds at the top, and a 200 square-foot lease area to contain equipment on the ground within the A-2 Apartment District. The site is identified for real property tax purposes as tax map key number (2) 4-3-006:004, comprising approximately 440 square feet of the 4.117-acre parcel of land situated at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided,

that an extension of this permit beyond this five (5) year period may be granted pursuant to Section 19.40.090, MCC.

2. That the Conditional Permit shall be nontransferable unless approved by the Planning Director or Maui Planning Commission.
3. That Sprint Wireless and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Sprint Wireless and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Sprint Wireless of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of approval of this Conditional Permit. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable tax map key and permit numbers.
4. That Sprint Wireless shall develop the property in substantial compliance with the representations made to the Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, MCC.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That Sprint Wireless shall submit for the Department's review and approval a preliminary compliance report and final

compliance report, addressing its compliance with the conditions established with the subject Conditional Permit. Sprint Wireless shall not submit a building permit application until the Department has approved the preliminary compliance report, and shall not seek final inspection or certificate of occupancy until the Department has approved the final compliance report. Any request for a time extension by Sprint Wireless shall be submitted to the Department with a compliance report.

7. That Sprint Wireless shall develop the property in substantial compliance with the plans, titled "Sprint Local Ask New Site Build, Site Name: South Kahana Maui, Site ID: HI80XC017," prepared by State 48 Development Consulting and dated November 13, 2017, and attached as Exhibit "3" to the "Maui County Planning Department's Report to the Maui Planning Commission June 26, 2018, Meeting"; and representations made to the Council in obtaining the Conditional Permit. As set forth in Sprint Wireless' presentation to the Council, the facility shall be limited to six panel antennas rather than the twelve indicated on its plans. Failure to so develop the property may result in the revocation of the permit.
8. That to the satisfaction of the Planning Director, the new wireless telecommunications facility shall be painted to match the surrounding buildings on the parcel on which it will be placed. The fenced compound shall include slats painted to match the facility and surrounding buildings. Evidence of how this condition will be fulfilled shall be submitted with the preliminary compliance report.
9. That Sprint Wireless shall notify the Communications Coordinator with the Department of Police of installation of equipment operating in the 700/800MHz band, system expansion, or shared location with other wireless carriers at this site prior to these changes being made to ensure that there is no potential degradation of the Maui County Public Safety Radio System.
10. That Sprint Wireless shall obtain a Federal Communications Commission permit, if required. Evidence of meeting this condition shall be submitted with the final compliance report.
11. That Sprint Wireless shall comply with the guidelines provided by the Department of Police.

12. That Sprint Wireless shall coordinate the turn-up date with the Department of Police Communications Coordinator to verify that there is no adverse impact on the Maui County Public Safety Radio System in the area surrounding this site.
13. That Sprint Wireless shall strive to meet the recommendations of the "Best Practices Guide" as they relate to reducing interference with Public Safety radio systems, as recommended by the Federal Communications Commission.
14. That, if Sprint Wireless' equipment causes the radio frequency noise floor to rise, resulting in interference which adversely affects the Maui County Public Safety Radio System, or degrades system performance, Sprint Wireless shall be responsible for restoring the use of the Maui County Public Safety Radio System by whatever means available and agreeable to the Department of Police Communications Coordinator. These remedies may include, but are not limited to, changing operational frequencies, and filtering and controlling radio frequency output. Costs incurred shall be the responsibility of Sprint Wireless.
15. That any changes to the operational frequencies at this site, through returning or dynamic reassignment, shall be coordinated with the Department of Police Communications Coordinator to ensure that there is no potential degradation of the Maui County Public Safety Radio System.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

lu:misc:067abill02

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE GRANTING SPRINT WIRELESS A CONDITIONAL PERMIT TO ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATION FACILITY CONSISTING OF A THIRTY-FIVE (35) FOOT MONOPALM TOWER WITH AN ADDITIONAL FIVE (5) FEET OF PALM FRONDS AT THE TOP, AND A 200 SQUARE-FOOT LEASE AREA TO CONTAIN EQUIPMENT ON THE GROUND; LOCATED IN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 3740 LOWER HONOAPIILANI ROAD AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 4-3-006:004, LAHAINA, MAUI, HAWAII

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SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Sprint Wireless, to allow the installation of a wireless telecommunication facility consisting of a thirty-five (35) foot monopalm tower with an additional five (5) feet of palm fronds at the top, and a 200 square-foot lease area to contain equipment on the ground within the A-2 Apartment District. The site is identified for real property tax purposes as tax map key number (2) 4-3-006:004, comprising approximately 440 square feet of the 4.117-acre parcel of land situated at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That the Conditional Permit shall be valid for a period of ~~ten~~ five (105) years from the effective date of this ordinance;

provided, that an extension of this permit beyond this ~~ten-five~~ (105) year period may be granted pursuant to Section 19.40.090, MCC.

2. That the Conditional Permit shall be nontransferable unless approved by the Planning Director or Maui Planning Commission.
3. That Sprint Wireless and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Sprint Wireless and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this Conditional Permit, including, but not limited to: (1) -claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Sprint Wireless of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non--observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of approval of this Conditional Permit. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable TMK-tax map key and permit numbers.
4. That Sprint Wireless shall develop the property in substantial compliance with the representations made to the Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, MCC.
5. That full compliance with all applicable governmental requirements shall be rendered.

6. That ~~the Applicant~~Sprint Wireless shall submit for the Department's review and approval a preliminary compliance report and final compliance report₁, addressing its compliance with the ~~Conditional Use Permit's~~ conditions established with the subject Conditional ~~Use~~ Permit. ~~The applicant~~Sprint Wireless shall not submit a building permit application until the Department has approved the preliminary compliance report₁, and shall not seek final inspection or certificate of occupancy until the Department has approved the final compliance report. Any request for a time extension by ~~the Applicant~~Sprint Wireless shall be submitted to the Department with a compliance report.
7. That ~~the Applicant~~Sprint Wireless shall develop the property in substantial compliance with the plans₁, titled: "Sprint Local Ask New Site Build, Site Name: South Kahana Maui, Site ID: HI80XC017₁"; prepared by State 48 Development Consulting and dated November 13, 2017, and attached as Exhibit "3" to the "Maui County Planning Department's Report to the Maui Planning Commission June 26, 2018, Meeting"; and representations made to the ~~Commission~~ Council in obtaining the Conditional Permit. As set forth in Sprint Wireless' presentation to the Council, the facility shall be limited to six panel antennas rather than the twelve indicated on its plans. Failure to so develop the property may result in the revocation of the permit.
8. That to the satisfaction of the ~~Planning Director of Planning~~, the new wireless telecommunications facility shall be painted to match the surrounding buildings on the parcel on which it will be placed. The fenced compound shall include slats painted to match the facility and surrounding buildings. Evidence of how this condition will be fulfilled shall be submitted with the preliminary compliance report.
9. That ~~the Applicant~~Sprint Wireless shall notify the MPD Communications Coordinator with the Department of Police of system expansion, installation of equipment operating in the 700/800MHz band, system expansion, or shared location with other wireless carriers at this site prior to these changes being made to ensure that there is no potential degradation of the Maui County Public Safety Radio System.
10. That ~~the applicant~~Sprint Wireless shall obtain a Federal Communications Commission permit, if required. Evidence of

meeting this condition shall be submitted with the final compliance report.

11. That Sprint Wireless shall comply with the guidelines provided by the Department of Police.
12. That Sprint Wireless shall coordinate the turn-up date with the Department of Police Communications Coordinator to verify that there is no adverse impact on the Maui County Public Safety Radio System in the area surrounding this site.
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- ~~10.15.~~ That any changes to the operational frequencies at this site, through returning or dynamic reassignment, shall be coordinated with the Department of Police Communications Coordinator to ensure that there is no potential degradation of the Maui County Public Safety Radio System.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

MICHAEL J. HOPPERDAVID GALAZIN

Deputy Corporation Counsel
County of Maui

LF 2018-1010

2018-08-15 Ordinancelu:misc:067abill02