ACT 49 H.B. NO. 2651

A Bill for an Act Relating to Wireless Broadband Facilities.

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

SECTION 1. The legislature finds that encouraging the development of a robust broadband network throughout the State is integral to Hawaii's global economic competitiveness and a matter of statewide concern. This Act is essential to establishing the policy framework to foster the installation of a robust, reliable, and technologically advanced broadband infrastructure throughout the State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

"CHAPTER
WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

§ -1 **Applicability.** (a) Subject to subsection (b), this chapter shall apply only to activities of a communications service provider to deploy small wireless facilities and to modified or replaced state or county utility poles associated with small wireless facilities.

Except as to the state or county permitting authority related to utility poles, this chapter shall not be construed to apply to:

(1) Utility poles or other utility infrastructure solely owned by investor-owned utility companies;
(2) Investor owned utility companies' utility poles in which the State or county has an ownership interest;
(3) Airport buildings; or
(4) Buildings whose use is principally for public safety purposes.

(b) Notwithstanding any other provision to the contrary, small wireless facilities shall not interfere with public safety, law enforcement, or emergency communications. To the extent an interference is identified by the State, county, or a communications service provider, it shall be resolved pursuant to the applicable requirements and procedures of the Federal Communications Commission following written notification of an interference.

§ -2 **Definitions.** As used in this chapter:

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of services using small wireless facilities.

"Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes.

"Applicant" means any person who submits an application and is a communications service provider.

"Application" means a request submitted by an applicant to the State or county for a permit to collocate small wireless facilities or to approve the replacement or modification of a utility pole.

"Collocate" means to install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning.

"Communications service" means cable service, as defined in section 440G-3 or title 47 United States Code section 522(6), as amended; information service, as defined in title 47 United States Code section 153(24), as amended; telecommunications service, as defined in section 269-1 or title 47 United States Code section 153(53), as amended; mobile service, as defined in title 47 United States Code section 153(33), as amended; or wireless service other than mobile service.

"Communications service provider" means a cable operator, as defined in section 440G-3 or title 47 United States Code section 522(5); a provider of information service, as defined in title 47 United States Code section 153(24); a telecommunications carrier, as defined in section 269-1 or title 47 United States Code section 153(51); or a wireless provider.

"Decorative pole" means a state or county pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a wireless facility attachment, specially designed informational and directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory state or county rules or codes.

"Feasible design and collocation standards" means reasonable, objective, and nondiscriminatory specifications concerning the physical structure, construction, location, and appearance of small wireless facilities; provided that those specifications facilitate the installation of the small wireless facilities and may be waived by the State or county.

"Historic district" means a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or as determined by the state historic preservation program in accordance with chapter 6E.

"Micro wireless facilities" means a small wireless facility having a dimension no larger than twenty-four inches in height, fifteen inches in width, and twelve inches in depth; provided that the exterior antenna, if any, does not exceed eleven inches in length.

"Right of way" means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property.

"Small wireless facilities" means a wireless facility or other facility providing communications service that meets one or both of the following qualifications:

(1) Each communications service provider's antenna can fit within an enclosure of no more than six cubic feet in volume; or

(2) All other equipment associated with the communications service facility, whether ground- or pole-mounted, that is cumulatively no more than twenty-eight cubic feet in volume; provided that the fol-

lowing types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"State or county pole" means a utility pole, which may be managed or operated by, or on behalf of, the State or a county in the State.

"Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location can be implemented without a reduction in the functionality of the wireless facility.

"Toll" means to stop or suspend the running of a time period.

"Utility pole" means a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities. "Utility pole" shall not include wireless support structures.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(1) Equipment associated with wireless communications; and

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless facility" includes small wireless facilities but shall not include:

(1) Wireline backhaul facilities; and

(2) Coaxial or fiber-optic cable between utility poles or communications facilities that are otherwise not immediately adjacent to and directly associated with a particular antenna.

"Wireless provider" means an individual, corporation, company, association, trust, or other entity or organization who:

(1) Provides services, including wireless broadband services, whether at a fixed location or mobile, to the public using wireless facilities; or

(2) Builds or installs wireless communication transmission equipment or wireless facilities, including an individual authorized to provide telecommunications service in the State.

"Wireless support structure" means a structure, such as a monopole; tower, either guyed or self-supporting building; or other existing or proposed structure designed to support or capable of supporting broadband or small wireless facilities, other than a structure designed solely for the collocation of wireless facilities. "Wireless support structure" shall not include a utility pole.

"Wireline backhaul" means the transport of communications data or other electronic information by wire from wireless facilities to a communications network. Wireline backhaul shall not include wire connecting the wireless facility to the backhaul.

§ -3 **General.** Except as provided in this chapter, the State or any county shall not prohibit or regulate the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities. The State or a county may charge for the attachment of small wireless facilities on solely-owned state or county utility poles used for the collation of small wireless facilities. Nothing in this chapter shall adversely impact the State's fiscal funding.

§ -4 **Zoning.** Small wireless facilities and associated modified or replaced utility poles subject to the height limits in section -5(c), shall be classified as permitted uses and shall not be subject to zoning review or zoning approval if they are deployed:

(1) In the right of way in any zone; or

(2) Outside the right of way in property not zoned exclusively for conservation.

Nothing in this chapter shall be construed to modify existing permitting processes for the placement of wireline backhaul in the right of way.

§ -5 **Use of the right of way for small wireless facilities and utility poles.** (a) The State or county shall not enter into an exclusive arrangement with any person for use of the right of way for the construction, operation, marketing, or maintenance of small wireless facilities or for small wireless facilities collocation.

(b) Subject to this section, the construction or modification of small wireless facilities in the right of way shall be a permitted use not subject to zoning review or other discretionary approval; provided that such facilities shall be constructed and maintained so as not to obstruct the usual travel, public safety, on such right of way or obstruct the legal use of such right of way by utilities or authorized parties.

The State or county shall have the authority to condition the approval of an application upon compliance with pre-established nondiscriminatory feasible design and collocation standards on small wireless facilities to be installed on property solely owned by the State or county. As part of a feasible design and collocation standard, the State or county may require the communications service provider to pay the State or county for the electricity that is used by the small wireless facilities and to place an appropriately sized fuse on the small cell to control the amount of electricity used by the communications service provider. To the extent the State or county establishes feasible design and collocation standards, they shall be made available in published guidelines and apply ninety calendar days after their publication. Nothing in this section requires the State or county to establish feasible design and collocation standards.

Modified or replaced utility poles associated with a small wireless facility that meet the requirements of this section are permitted uses subject to the permitting process in section -6.

No additional discretionary permit shall be required to maintain, operate, modify, or replace small wireless facilities and associated utility poles along, across, upon, and under the right of way. The grant of a permit for a small wireless facility does not authorize the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right of way, and shall not otherwise be a general authorization to occupy and use the right of way.

(c) Each modified or replaced utility pole installed in the right of way for the collocation of small wireless facilities shall not exceed the greater of:

(1) Ten feet in height above the tallest existing utility pole in place as of July 1, 2018, located within five hundred feet of the modified or replaced pole in the same right of way; or

(2) Fifty feet above ground level.

New small wireless facilities in the right of way shall not extend more than ten feet above an existing utility pole in place as of July 1, 2018. Subject to this section and section -6, a communications service provider or wireless provider may modify, replace, and maintain a utility pole or small wireless facil-

ity that exceeds these height limits along, across, upon, and under the right of way, subject to applicable zoning regulations.

(d) A communications service provider may replace a decorative pole, when necessary to collocate a small wireless facility, if the replacement pole reasonably conforms to the design aesthetics of the decorative pole or poles being replaced.

(e) Subject to section -6, and except for facilities excluded from evaluation for effects on historic properties under title 47 Code of Federal Regulations section 1.1307(a)(4), a State or county may require reasonable, technically feasible, non-discriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures shall not have the effect of prohibiting any provider's technology, nor shall any such measures be considered a part of the small wireless facility for purposes of the size restrictions.

(f) The State or county shall:

(1) Be competitively neutral in the exercise of its administration and regulation related to the management of the right of way and with regard to other users of the right of way; and

(2) Not impose any conditions that are unreasonable or discriminatory.

(g) The State or county may require a communications service provider to repair all damage to the right of way directly caused by the activities of the communications service provider in the right of way and to return the right of way to the same or better condition before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the State or county within thirty calendar days. If the communications service provider fails to make the repairs required by the State or county within thirty calendar days after written notice, the State or county may complete those repairs and charge the applicable party the reasonable, documented cost of the repairs.

§ -6 **Permitting process in the right of way.** The State or county may require an applicant to obtain one or more permits to collocate a small wireless facility or install a modified or replaced utility pole associated with a small wireless facility as provided in section -5; provided that the permits are of general applicability and do not apply exclusively to small wireless facilities. The State or county shall receive permit applications and process and issue permits subject to the following requirements:

(1) The applicant shall provide a geographical description of the project area, if required by the State or county;

(2) The applicant shall provide a listing and description of the condition of utility poles, light standards, buildings, and wireless support structures included in the project for the installation, mounting, operation, and placement of small wireless facilities, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures, if required by the State or county;

(3) The applicant shall provide a description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure, if required by the State or county;

(4) The State or county shall not require, but may negotiate, an agreement with a communications service provider to provide in-kind contributions of goods or services in lieu of or in addition to any

rates, charges, terms, and conditions governing the installation of small wireless facilities on State- or county-owned property, such as an agreement to reserve fiber, conduit, or pole space for State or county use;

(5) The State or county shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(6) The State or county shall not limit the placement of small wireless facilities by minimum separation distances; provided that the State or county may limit the number of small wireless facilities placed on a single utility pole;

(7) The State or county may require an applicant to include an attestation that the small wireless facilities will be operational for use by a communications service provider within one year after the permit issuance date; provided that the State or county and the applicant may agree to extend this period or the period may be tolled if there is a delay caused by lack of commercial power or communications transport facilities to the site; provided further that the State or county may rescind a permit if the small wireless facility is not operational within one year or any agreed-to time beyond one year;

(8) Within thirty calendar days of receiving an application, the State or county shall notify the applicant in writing whether the application is complete. If an application is incomplete, the State or county shall specifically identify all missing information in writing. The processing deadline in paragraph (9) shall be tolled from the date the State or county sends the notice of incompleteness until the date the applicant provides the missing information;

(9) An application shall be processed on a nondiscriminatory basis and deemed approved if the State or county fails to approve or deny the application within ninety calendar days of receipt of the application. The processing deadline may be tolled in accordance with paragraph (8) or by agreement of the applicant and the State or county; provided that until December 31, 2019, if an applicant submits to the State or to the same county fifty or more applications within any thirty-calendar-day period to collocate small wireless facilities, then the State or county may, upon notice to the applicant, extend the period for reviewing the applications to one hundred and twenty calendar days;

(10) The State or county may deny a proposed collocation of a small wireless facility or the modification of a modified or replaced utility pole that meets the requirements in section -5(c) only if the proposed collocation:

(A) Interferes with the safe operation of public safety equipment;

(B) Interferes with sight lines or clear zones for transportation or pedestrians;

(C) Interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of ground-mounted equipment. Such spacing requirements shall not prevent a small wireless facility from serving any location;

(E) Fails to comply with building or other applicable codes;

(F) Causes the utility pole to be unable to bear the additional weight of the facilities, taking into account any state or county reservation of capacity authorized by this chapter; provided that a denial shall include a condition that the installation will be approved if the communications service provider agrees to replace, at its own cost, the utility pole with one that can bear the additional weight; or

(G) Causes the load-carrying capacity of the State- or county-owned utility pole, building, or structure, to exceed seventy per cent as determined by the appropriate state or county agency;

(11) The State or county shall document the basis for a denial, including the specific provisions of law on which the denial was based, and send the documentation to the applicant on or before the day the State or county denies an application. The applicant may address the deficiencies identified by the State or county in its written denial and resubmit a revised application within thirty calendar days of the written notice of denial without paying an additional application fee. The State or county shall have ninety calendar days from the date of receipt of the revised application to approve or deny the application. Any subsequent review of additional revisions to a revised application shall be limited to the deficiencies cited in the documentation noting the basis for denial of the revised application; provided, however, that the State or a county may address deficiencies in the original or subsequent revised versions of the application that were missed in good faith and that were not documented in a written denial;

(12) An applicant seeking to collocate multiple small wireless facilities within a three-mile radius may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than twenty-five small wireless facilities; provided that the denial of the collocation of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch; provided further that within ten calendar days of receiving a permit for a consolidated application, the applicant shall publish notice of the permit in a newspaper of general circulation in the county where the small wireless facility is to be located; provided further that the notice shall include a phone number for the communications service provider that the public may contact;

(13) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year of the permit issuance date; provided that the State or county and the applicant may agree to extend this period or the period may be tolled if a delay is caused by lack of commercial power or communications transport facilities to the site; provided further that the State or county may rescind a permit if the small wireless facility is not operational within one year or any agreed-to time beyond one year. Approval of an application authorizes the applicant to:

(A) Undertake the installation or collocation; and

(B) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of not less than twenty years, which shall be renewed for equivalent durations so long as the facili-

ties and pole comply with the criteria set forth in this subsection; provided that the State or a county may remove a utility pole if it decides to do so;

(14) The State or county shall not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation or modification of utility poles to support small wireless facilities; provided that this paragraph shall not be construed to apply to existing moratoria on applications to trench or excavate newly repaved streets;

(15) The State or county shall not require an application or permit, or charge any rate, fees, or compensation for:

(A) Routine maintenance;

(B) Replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size and weight or smaller; provided that the communications service provider shall notify the state or county department by which the small wireless facility was originally approved at least ten calendar days, but no more than sixty calendar days, prior to commencing the replacement; or

(C) Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with the national electrical safety code.

§ -7 Access to state or county utility poles within the right of way. (a) This section shall apply to activities of the communications service provider within the right of way. The State and counties shall permit the collocation of small wireless facilities on utility poles pursuant to the process set forth in section -6.

(b) A person owning, managing, or controlling state or county utility poles in the right of way shall not enter into an exclusive arrangement with any person for the right to attach to such poles.

(c) The rates to collocate on state or county poles shall be nondiscriminatory regardless of the communications services provided by the collocating person.

(d) The rates, fees, and terms and conditions for the make-ready work to collocate on the state or county pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this chapter.

(e) The State or county shall provide a good faith estimate for any make-ready work to be performed by a communications service provider and that is necessary to enable the pole to support the requested collocation by a communications service provider, including pole replacement if necessary, within sixty calendar days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed by the State or county or the communications service provider within one hundred and twenty calendar days of written acceptance of the good faith estimate by the applicant. The State or county shall have the discretion to designate whether it or the communications service provider will perform the make-ready work.

(f) The person owning, managing, or controlling the state or county pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other commu-

nications service providers for similar work and shall not include any consultant fees or expenses.

§ -8 **Local authority.** (a) Subject to this chapter and applicable federal law, the State or county may continue to exercise zoning, land use, planning, and permitting authority within its jurisdictional boundaries, including with respect to utility poles; except that neither the State nor a county shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the State or county, other than to comply with applicable codes. Nothing in this chapter authorizes the State or a county to require wireless facility deployment or to regulate broadband or wireless services.

(b) Except as provided in this chapter with respect to the wireless facilities subject to the permitting, rate, and fee requirements established herein, the State and each county shall not adopt or enforce any regulations or requirements or charge additional rates or fees on an entity's placement or operation of communications facilities in the right of way where the entity is already authorized by a cable television franchise to operate throughout the right of way. The State and each county shall not regulate or charge fees for the provision of additional communications services over a cable system authorized under such franchise, unless expressly authorized by applicable law.

§ -9 **Implementation.** No later than July 1, 2019, the State and each county shall adopt or modify laws, regulations, and agreements for lands within its jurisdiction that make available rates, fees, and other terms that comply with this chapter to communications service providers. In the absence of laws, regulations, and agreements that fully comply with this chapter and until such laws, regulations, or agreements are adopted, communications service providers may install and operate small wireless facilities and utility poles pursuant to this chapter.

§ -10 **Indemnification, insurance, and bonding.** (a) The State or county may adopt indemnification, insurance, and bonding requirements related to small wireless facility permits subject to this section.

(b) The State or county may require a communications service provider to indemnify and hold the State or county and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees resulting from the communications service provider's actions in installing, repairing, operating, or maintaining any small wireless facilities or utility poles.

(c) The State or county may require a communications service provider to have in effect insurance coverage consistent with this subsection and requirements for other right of way users, if such requirements are reasonable and nondiscriminatory. If insurance coverage is required, the State or county may require a communications service provider to furnish proof of insurance prior to the effective date of any permit issued for a small wireless facility.

(d) The State or county may adopt bonding requirements for small wireless facilities if the State or county imposes similar requirements in connection with permits issued for other right of way users.

The purpose of such bonds shall be to:

(1) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those for which the State or county determines a need for the small wireless facilities to be removed to protect public health, safety, or welfare;

(2) Restoration of the right of way; or
(3) Recoupment of past due rates or fees that have not been paid by a communications service provider in over twelve months; provided that the communications service provider has received reasonable notice from the State or county of the non-compliance listed and an opportunity to cure the delinquency of the rates or fees.

Bonding requirements shall not exceed $200 per small wireless facility.

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, and construction and operation of wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses."

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
(2) Game and fish propagation;
(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
(5) Public institutions and buildings that are necessary for agricultural practices;
(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not includ-

ing dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Agricultural-based commercial operations as described in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;

(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

(C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona

fide agricultural activity" means a farming operation as defined in section 165-2;

(15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

(17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

(18) Construction and operation of wireless communication antennas[;], including small wireless facilities; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all

types of wireless communications services; provided further that "small wireless facilities" shall have the same meaning as in section -2; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

(19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this paragraph, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2;

(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

(A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;

(B) Placed in a manner that still allows vehicular traffic to use the road; and

(C) Granted a special use permit by the commission pursuant to section 205-6;

(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:

(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or

(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

(A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:

(i) Impoundment facilities using a dam to store water in a reservoir;

(ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower elevation to be released to turn a turbine to generate electricity;

(B) Comply with the state water code, chapter 174C;

(C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and

(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2018; provided that:

(1) The amendment made to section 205-4.5, Hawaii Revised Statutes, by this Act shall not be repealed when section 205-4.5, Hawaii Revised Statutes, is reenacted on June 30, 2019, by section 3 of Act 52, Session Laws of Hawaii 2014; and

(2) This Act shall apply to permit applications filed with the State or county after December 31, 2018.

(Approved June 21, 2018.)