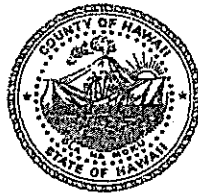


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

May 19, 2003

Mr. Eric Schatz  
c/o CROWN CASTLE INTERNATIONAL  
99-115 Aiea Heights Drive, Suite 253  
Aiea, HI 96701

Dear Mr. Schatz:

**VARIANCE PERMIT NO. 1359 WH (VAR 03-014)**  
**Applicant: ERIC SCHATZ, PROJECT MANAGER**  
**Owner: CROWN CASTLE INTERNATIONAL**  
**Request: Variance from Hawaii County Code,**  
**Chapter 25, Zoning, Minimum Yards**  
**Tax Map Key: 5-4-002:002 Portion, (SPP 1191)**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1359 allows the "AS BUILT" position of the wooden monopole and permits the proposed telecommunication antennas-main buildings, accessory buildings, and supporting structures located within a leased area (10,000 square feet) within the subject TMK property. The telecommunication use within the 10,000 square feet leased area pursuant to Special Permit No. 1191 (SPP 1191) and reference is made to the variance site plan map dated "November 12, 2002" and "PARTIAL SITE PLAN" dated "FEBRUARY 5, 2003". The SPP allows the existing 80-foot high wooden utility monopole telecommunication tower and accessory structures, co-location antennas, related equipment buildings and accessory structures, and future replacement of 80-foot high monopole tower within the same parameters. The proposed telecommunications project is subject to Plan Approval and other requirements pursuant to Chapter 25-Hawaii County Zoning Code. The approval of the variance will permit the wooden monopole (supported by guy-wires) and accessory co-location antennas (93 feet-Overall Height) to be constructed within the leased area within the subject TMK property with minimum 51 feet 5 7/16 inches and 56 feet 8 9/16 inches yards, respectively, subject to variance conditions. The variance is from the Hawaii County Zoning Code, Chapter 25, Article 4, Division 4, Section 25-4-12, Telecommunications antennas.  
(b) (2).

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## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property (leased area), is located within Lot G containing 143.861 acres or land situated at Honomakau, Puehuehu, and Hanaula, North Kohala, Hawaii. The TMK property (Lot G), containing 143.861 acres, was created by SUB 6909 on December 2, 1997.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The applicant (Crown Castle International) leases a 10,000 square feet portion of Lot G with frontage along Kynnersley Road. The project site is on the north side of Kynnersley Road and approximately 1.3 miles south of an intersection of Kynnersley Road and Akoni Pule Highway.

2. **Variance Application-Site Plan.** The variance application, attachments, and filing fee were deemed complete on March 12, 2003. The applicant's site plan drawings identify the affected TMK and location of the wooden monopole antenna and support building positions, "AS BUILT", within the leased area upon the subject TMK property. The variance application includes a "PARTIAL SITE PLAN" dated "FEBRUARY 5, 2003" identifying proposed guy wire and additional building improvements. This site plan identifies the location of the monopole-proposed antenna and distances from all boundary lines.

3. **Agency Comments and Requirements WH (VAR 03-014):**

- a. The Department of Public Works (DPW) memorandum dated March 27, 2003, states:

"We have reviewed the subject application and have no comments or objections."

- b. The State Department of Health (DOH) memorandum dated April 1, 2003, states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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3. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice to surrounding property owners was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on February 24, 2003 and April 10, 2003, respectively, by the applicant (Crown Castle International).
  
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objection letters from the surrounding property owners or the public were received. However, copy(s) of a letter sent to the applicant from Philip Michael Luce dated February 26, 2003 and April 24, 2003 were received for the record (Refer to variance file). These letters remind the applicant of compliance with SPP 1191 conditions with emphasis on the specific fencing locations and sensitive landscape buffer requirements.

**Note:** The applicant will be required to submit further plans pursuant to Plan Approval of the Zoning Code and comply with specific fencing and landscaping requirements stipulated by SPP 1191 conditions and variance conditions cited below. Boundary markers to identify the 10,000 square feet (leased) area will be required to be installed and permanently maintained.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant (Crown Castle International) is trying to resolve building position issues created by the telecommunication (use) and additional improvements to the wooden monopole. The variance application's site plan(s) show the monopole and other site improvements position, "AS BUILT" and other proposed improvements. The applicant became aware of the antenna (guy wire) encroachment issues after the approval of SPP 1191 by the Planning Commission and further review of the proposed telecommunication site and additional antenna improvements under Plan Approval of the Zoning Code. No evidence has been found to show indifference or premeditation by applicant or past builders/users to ignore any County Code requirements during construction of the present monopole antenna or allow the building encroachment issues or problems to occur.

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### **ALTERNATIVES**

Alternatives available to the applicant or owner(s) to address and correct the existing building encroachments include the following actions:

1. Reducing the existing monopole height or redesigning or relocating the antenna and support buildings to fit within a revised leased area within the property or building envelope prescribed by the Zoning Code, etc.
2. Consolidation and resubdivision of the existing TMK property with adjoining TMK property to increase property size or modify property lines and adjust minimum yards to meet minimum yard requirements for the use and position of all tower and related building improvements, etc.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines. The telecommunication use is further subject to the conditions stipulated by SPP 1191.

It appears that the location of the 80 feet high wooden monopole and other telecommunication uses/proposed building/antenna improvements (SPP 1191) within the affected lease area are not physically and visually obtrusive from adjacent property(s) or the existing right-of-way. Pursuant to SPP 1191, it appears that telecommunication use and proposed guy wire improvements will not depreciate or detract from the character of the surrounding agricultural uses and surrounding land patterns. Therefore, it is felt that the antenna improvements to allow the 93 feet antenna height/necessary support buildings and guy wire location(s) within the affected yards will not detract from the character of the immediate neighborhood or the subdivision. Furthermore, SPP 1191 conditions require the applicant to locate and install specific fencing and landscape buffers commensurate with site plan approved by the SPP1191 and other conditions stipulated by Plan Approval of the Zoning Code.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

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### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), their assigns or successors shall comply with SPP 1191 conditions and any further conditions required by Plan Approval of the Hawaii County Zoning Code.
3. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
4. The proposed 93 feet high monopole guy wire antenna improvements located on the subject property will not meet Chapter 25, the Zoning Code's minimum yard space requirements. The approval of this variance allows the monopole antenna, guy wires, accessory support buildings, appurtenances, allowed pursuant to SPP 1191 and within the specific 10,000 square feet (leased) area located on the subject TMK property and identified on the variance application's "PARTIAL SITE PLAN" dated "FEBRUARY 5, 2003", to be constructed. The specific fencing improvements and landscape buffer requirements shall be installed in accordance with SPP 1191. The 10,000 square feet lease area shall be staked out and appropriate boundary markers to permanently identify the 10,000 square feet project site shall be visible prior to the installation of the guy wires and other site improvements. Perimeter fencing of the leased area will not be permitted and no guy wire or antenna supports will be permitted outside the 10,000 square feet leased area. Additional landscaping buffers within the project site shall be installed in accordance with SPP 1191 and maintained in a healthy and attractive state.

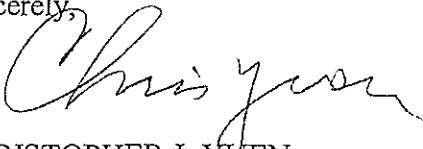
Confer with the DPW-Engineering Division to discuss building permit requirements for guy wire monopole antenna and any additional building improvements within the project site. New

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building construction within the subject TMK property shall be subject or conform to current State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: SPP 1191  
Real Property Tax Office - Kona  
Planning Dept. - Kona  
Mr. Philip Michael Luce