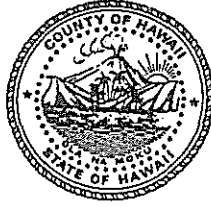


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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

November 6, 2003

Mr. Eric Schatz, Project Manager
Crown Castle International
99-115 Aiea Heights Drive, Suite 253
Aiea, HI 96701

Dear Mr. Schatz:

Special Permit Application (SPP 03-016).
Applicant: Crown Castle International
Request: Telecommunication Antenna Facility (Existing)
Within a 150-Foot Monopole, Antennas and Related Improvements
Tax Map Key: 1-1-4:38

The Planning Commission at its duly held public hearing on October 17, 2003, voted to approve the above-referenced application. Special Permit No. 1224 is hereby issued to allow the retention of an existing telecommunication antenna facility within a 150-foot monopole, antennas, and related improvements on a 5,001 square foot area situated within the State Land Use Agricultural District. The property is located along the south side of the Volcano Village Road, between Haunani Road and Wright Road, across from the Volcano Village Center, Volcano Village, Puna, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Judge J. Nakayama of the State of Hawaii Supreme Court filed a ruling on May 20, 1999, and affirmed the circuit court's reversal of the Board of Appeals order that HRS, Section 205-4.5(1) permits

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telecommunication towers as of right in the State Land Use Agricultural District. Therefore, a Special Permit is now required to establish a telecommunication tower on State Land Use Agricultural lands. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use under Section 205-4.5(a)(7) which states "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings . . ." The applicant is requesting the Special Permit to allow an existing unmanned telecommunication antenna facility with a 150-foot monopole, appurtenant equipment shelters, chain link fence enclosure, antennas and related improvements on a approximately 1,800-square foot area of a 5,001-square foot property. Currently, there is very limited wireless telephone service in the area. The telecommunication facility will continue to provide coverage to the Volcano community and surrounding areas. The applicant requests that co-location be permitted at this site. Currently, Verizon and T-Mobile occupy the tower, and discussions are on-going for ATT Wireless Services and another carrier to co-locate on the tower.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. The project site is located in Volcano Village, at approximately the 3,500 to 3,800-foot elevation. The request is to allow the current use of the site as a telecommunication facility; thus, it is unlikely that any archaeological features or threatened species of flora or fauna are present on the property. Since there is an existing tower and related improvements on the site, the probability of any archaeological or historic sites is unlikely. In a memo dated September 29, 2003, the State Department of Land and Natural Resources Historic Preservation Division has indicated that they believe there are no historic properties present because previous grubbing/grading has altered the land; therefore, no historic properties will be affected by this undertaking. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not be impacted by coastal hazard and beach erosion. The project will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

The desired use will not adversely affect the surrounding properties. The surrounding area is characterized by single family residences, vacant properties and commercial uses. Ace Hardware is located across the street and zoned CV-20 and there are commercial properties zoned CV-10 northeast of the site along New Volcano Road. Properties located southeast of the property are zoned A-20a. The property is located on New Volcano Road, which runs parallel to Highway 11 in Volcano Village. The tower site is fenced and self-contained, with requires periodic maintenance and repair. The existing vegetation provides a visual barrier of the lower portion of the tower from the adjoining streets. The tower is painted dark green to approximately 80 feet, or top of the

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tree line, and a non-reflective gray above the tree line. This two-color scheme has helped to camouflage the site into the surrounding vegetation. Furthermore, the Telecommunications Act of 1996 prohibits local authorities from regulating the placement of communication towers based on health effects as long as those towers comply with the Federal Communication Commission's guidelines. The microwave tower has been designed to and complies with the FCC's guidelines. In addition, no objections or concerns have been received from the community.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The development will not require additional services. Only telephone and electricity is required for the use. Access to the site is via Highway 11 to New Volcano Road. Highway 11 has an approximate 60-foot right-of-way. The facility will continue to provide much needed communication services in the Volcano area.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August, 1964. At that time, the predominant means of audio communication was by traditional telephone service, and public, private and quasi-public utility lines and roadways including communication equipment buildings were permitted uses within the State Land Use Agricultural District. However, changes in technology in recent years have advanced beyond what the Land Use Law had envisioned for radio and telecommunications. While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within the Agricultural districts, Section 205-4.5 does not specifically permit telecommunication towers on Agricultural designated lands. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish a telecommunication tower within the State Land Use Agricultural District.

The use will not substantially alter or change the essential character of the land and the present use. The tower and equipment shelter is an existing use. However, because the application is for a use established without the necessary permit, the fact that it already exists must not be considered as a point in its favor. Before the tower was erected, the site was part of a vacant 14-acre parcel. After the tower was approved, the larger parcel was subdivided to create two tower sites, one consisting of the present 5,001-square foot parcel, and the other being 10,000 square feet, with a remainder lot of 13.716 acres zoned A-20a. The present application only changes a small portion of the previous 14-acre parcel, which remains available for agricultural use. There is no record

of a designated public access to the shoreline or mountain areas traversing the property. Further, there is no evidence of valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

The lands upon which the use is sought is not unsuitable for the uses permitted in the district, however, the uses will not interfere with permitted uses. The property is zoned Agricultural (A-20a) and falls within the State Land Use designation of Agricultural. As such, a Special Permit is necessary to establish the telecommunication facility, to allow for uses other than agricultural uses on the subject property. The property, as well as surrounding properties, are currently not in agricultural use. Therefore, no active agricultural activities will be diminished. As the existing compound area is approximately 1,800-square feet, no lands will be removed from agricultural use and the request would not be contrary to the objectives of the State Land Use Law for the Agricultural District. The property is identified as Other Important Agricultural Land (OIAL) by the ALISH map. The OIAL designation includes land other than Prime or Unique Agricultural land that is also of statewide or local importance for agricultural use. The Land Study Bureau's Overall Master Productivity soil rating for the property is "D" or "Poor." The tower will not interfere with potential agricultural uses on the 13.76-acre property.

The use is consistent with the goals, policies and standards of the General Plan. The General Plan LUPAG Map designation for the property is Intensive Agricultural, lands which include sugar, orchard, diversified agriculture, and floriculture. Although a portion of the property is used for the project, the majority of the 5,001-square foot parcel will continue to be vacant. Finally, the request would complement and be consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

Based on the above considerations, the request to allow an unmanned, 150-foot monopole, appurtenant equipment shelters, chain link fence enclosure, antennas and related uses would be an unusual and reasonable use of land within the State Land Use Agricultural District, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

This request is approved subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.

2. Final Plan Approval by the Planning Director in accordance with the Zoning Code Sections 25-2-71(c)(3), 25-2-72, 25-2-74 and 25-4-12 shall be secured prior to any commencement of construction. Development plans shall identify existing and proposed structures, fire protection measures, roadways, driveway and parking areas, fencing and any landscaping associated with the proposed uses. Tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the tower and antennae shall be allowed within the parameters of the building height and envelope as represented.
4. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the microwave tower, antenna and accessory structures, with the exception of the concrete foundation. The applicant shall provide written notification to the Planning Director of such removal.
5. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
6. Comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the Federal Aviation Administration and Federal Communications Commission.
7. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
8. An 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, successors or assigns, 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.

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- 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).

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.

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu