



County of Hawai'i

PLANNING COMMISSION

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May 27, 2008

Mr. Charles Fortner
Cascadia PM, LLC
1130 N. Nimitz Highway, Suite A-200
Honolulu, HI 96817

Dear Mr. Fortner:

Special Permit Application (SPP 08-000050)
Applicant: Crown Castle USA
Request: Retain Existing Telecommunication Tower, Antenna,
Buildings, and Accessory Uses
Tax Map Key: 4-2-8:por. 21

The Planning Commission at its duly held public hearing on May 8, 2008, voted to approve the above-referenced application to allow the retention of an existing telecommunication tower, antenna and accessory buildings and uses on approximately 1,600 square feet of land situated within the State Land Use Agricultural District. The property is located at the Iolehaehae Crater, Kukaiau Ranch, Kukaiau, Hamakua, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the retention of an existing non-manned telecommunication facility on approximately 1,600 square feet of land area. The facility was constructed in 1992 by Motorola. The facility includes an unmanned, 80-foot self-supporting tower with omni, dish and panel antennas, one prefabricated building that houses ancillary communication equipment, two generators housed in a prefabricated building, a fuel tank and concrete pads. The applicant is also requesting to add three 6-foot panel antennas, two equipment cabinets and to upgrade the existing generators.

The tower is located on a 1,600 square foot portion of a 1,935-acre property called Kukaiau Ranch. The majority of the land is used for pasture. There are other existing towers located in the same area, including an 80-foot U.S. Cellular tower, an 80-foot

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Mobile Telephone and Paging tower, the Hawaii County Police, Fire and Civil Defense 50-foot tower located on an adjacent state-owned property on TMK 4-1-6: 7 and a HELCO microwave reflector on TMK 4-2-8: 13.

The facility currently provides cellular coverage from Waimea to Papaikolu and on Mamalahoa Highway along the Hamakua Coast between Waimea and Honokaa. It also provides a critical microwave repeater location from the site to Hilo and a public safety radio service. Lastly, the tower enables Sprint-Nextel to provide wireless service to fisherman and boaters in the ocean covering about 1,255 square miles of ocean from Hilo Bay to Kauhola Bay.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The project site is a 1,600 square foot portion of an approximate 1,945-acre parcel. The tower has been operational since 1992, at a time when telecommunication towers were permitted in Agricultural districts. Based on the minimal use of land for the proposed request and the minimal impacts to existing or potential agricultural activities, the subject request is considered an unusual and reasonable use of agricultural land.

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. On May 20, 1999, Judge J. Nakayama of the State of Hawaii Supreme Court affirmed the circuit court's order reversing the Board of Appeals conclusion that HRS, Section 205-4.5(1) permits cellular telephone towers as of right in the State Land Use Agricultural District. Therefore, a Special Permit is now required in order 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 falling 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 retention of an 80-foot high communications tower and related uses on the site. The project site covers 1,600 square feet of a 1,945-acre parcel owned by Kukaiau Ranch. Although the bulk of the property is used for ranching, several existing towers, including Mobile Telephone and Paging, U.S. Cellular, and the Hawaii County Police, Fire and Civil Defense tower dot the site on Iolehaehae Hill. The subject property is classified as Other Important Agricultural Lands under the ALISH designation, and soils are classified as "E" or Very Poor. No active agricultural activities will be diminished, as only a very small portion of the 1,945-acre property will be used for the existing communications towers with the remaining area continuing to be used for ranching. Therefore, the proposed use would not remove significant lands from agricultural use and would not be contrary to the objectives of the State Land Use Law for the Agricultural District.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The subject property is approximately 1,945 acres in size and is primarily used for ranching. Surrounding properties to the east, west and north are zoned A-40a and are also used for ranching. The Mauna Kea Forest Reserve is located immediately south and mauka of the property. There are no dwellings near the subject property, as the site is in a remote area above the cloud layer on the flanks of Mauna Kea at the 8,000-foot elevation approximately three miles from the "main" Keanakolu Road. The location is already used as a site for other telecommunication facilities including Mobile Telephone and Paging, U.S. Cellular, and the Hawaii County Public Safety facility, which is located on the adjacent state-owned parcel on TMK: 4-1-6:7. The site of this communications tower is fenced and gated to control access, and the tower will be periodically maintained as necessary. Due to its remote location, the tower will not be visible from any major roadways, and will not affect the view plane. In addition, no objections or concerns were received from the community and no complaints have been received since 1992 when this tower was constructed. Based on the above information, the applicant has met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The existing communication tower and related improvements will not require additional services. Access to the site is via Mana and Keanakolu Roads, which are unimproved one-lane dirt roads in fair to poor condition. Final access to the site is via an established unimproved "jeep" trail accessible only by 4-wheel drive. These roads are currently being used by the other tower facilities established at this location. Traffic is expected to be minimal as the tower will only require periodic maintenance and repair. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960s and 1970s, when the State's agricultural district boundaries and regulations were first established pursuant to Chapter 205, Land Use Commission, Hawaii Revised Statutes, cellular telephone service was unknown and not available, and the predominant means of audio communication was by traditional telephone service, relying on telephone and power poles and lines. Section 205-4.5 of Chapter 205 lists permitted uses within the agricultural districts. Among others, the permitted uses include "Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment building, 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, or treatment plants, or corporation yards, or other like structures." While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within agricultural districts, Section 205-4.5 does not specifically permit telecommunication towers. In recent years, however, technological advances in the telecommunications industry have grown considerably and services to the general public have become widespread. This is especially true in rural areas where traditional land-line telephone service is sometimes unavailable due to the high cost of installing power poles and lines. The growth of the cellular telecommunications industry is a worldwide phenomenon and has generated a need for increased telecommunication infrastructure including telecommunication towers and antennas. On the Big Island, it has become a service to communities where telephone service was previously not available. The applicant currently has transmitter sites in Hilo and Waimea, and proposes to continue covering the gap in the Hamakua area with the retention of the existing tower. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish (or continue) a telecommunications tower within the State Land Use Agricultural District.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The project site is classified as "E" or "Very Poor" by the

Land Study Bureau's Overall Master Productivity Rating and is "Other Important Agricultural Land" by the Department of Agriculture's ALISH Map. Based on the poor soil classification for the property and the proportionately insignificant area relative to the size of the property being utilized for this request, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The tower and related structures have been established on the project site since 1992. The immediate area is also used for tower sites by other communications companies and by the County. The remaining area of the 1,945-acre property has been used for and will continue to be used for grazing purposes. Therefore, based on the proportionately insignificant area of the project site compared to the size of the property, the proposed use will not substantially alter or change the essential character of the land and its present use.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in area identified as Extensive Agriculture in the General Plan. The request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, the approval of the subject request would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Economic development and improvement shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The Northeast Hawaii Community Development Plan (CDP) was adopted by the County Council by Ordinance No. 445, effective June 26, 1979. Under Public Utilities, the CDP recommends that “The County should encourage the telephone company to provide better telephone service in the North Hilo and Hamakua Districts” and that “telephone facilities, such as lines, poles and substations, shall enhance rather than detract from scenic vistas and views.” There is no specific discussion on telecommunication towers and antennas within said document. Further, the subject location is not listed as a Natural Beauty Area.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Although there were no professional surveys conducted of the site, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the property. The area has not been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

In view of the recent Hawaii State Supreme Court’s “PASH” and “*Ka Pa’akai O Ka’Aina*” decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An archaeological survey report dated April 16, 2000, by Robert B. Rechtman, Ph.D. Inc., was submitted with the application. Additionally, a botanical survey report dated March 14, 2000, prepared by Phillip Conley, was referenced in the report.

The valuable cultural, historical, and natural resources found in the permit area: There were two previous field inspections conducted of the site. The archaeological survey report by Robert B. Rechtman, Ph.D. Inc., reported that “no archaeological resources were observed within the project area and none have been previously identified

in the immediate vicinity. Also no such resources were observed within or along the existing ranch access road.” Additionally, a comment letter from the Department of Land and Natural Resources-State Historic Preservation Division dated March 4, 2008 stated that DLNR-SHPD has determined that no historic properties will be affected by this undertaking because the applicant is requesting a change to permit type due to a law change and there is no issue of land alteration being discussed at this time.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue. Additionally, the property is being utilized for agricultural purposes and has been developed several structures.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Lastly, a letter was received from the United States Department of the Interior-Fish and Wildlife Service stating that the service was not consulted when the tower was built and they recommend that the County of Hawaii deny the Special Permit application until their process is completed. US Fish and Wildlife Service states that several species are known to occur near the site and states that the facility has the potential to adversely affect federally listed specie. US Fish and Wildlife Service comments that the applicant should apply for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act. (ESA). Based on the fact that the tower has existed on the site since 1992 and that other towers were approved since 2000 without incident, the Planning Director is adding a condition of approval requiring that the applicant apply for the Section 10 permit from the US Fish and Wildlife Service to define measures to minimize and mitigate any adverse affects the tower may have to endangered species in the area.

Based on the above, the request to allow the retention of an existing 80-foot high telecommunication tower facility would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

Approved of this request is subject to the following conditions:

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

2. Final Plan Approval for the 80-foot high telecommunication tower, antennas and related improvements shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-71 (c)(3), 25-2-72 and 25-2-74 and 25-4-12 within one (1) year from the effective date of this permit. Plans shall identify existing and proposed structures, fire protection measures, roadway easements, driveway and parking areas and any fencing associated with the uses. Tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the existing tower and antennae shall be allowed within the parameters of the building height and envelope as represented.
4. The applicant shall apply for a Section 10 permit from the US Fish and Wildlife Service to define measures to minimize and mitigate any adverse affects the tower may have to endangered species in the area.
5. Within 120 days of the permanent abandonment of the tower, the applicant shall remove the 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.
6. 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.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. 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.
9. 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.

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- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- 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).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate the revocation of the permit.

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, x205.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lcrowncastlespp08-000050PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD