

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113

Hearing Date/Agenda Number  
P.C. 05-16-07                      Item: 3.a.

File Number CP07-014

Application Type Conditional Use Permit

Council District 4                      SNI: None.

Planning Area North san Jose

Assessor's Parcel Number(s)  
137-10-229

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Suparna Saha

Location: easterly side of O'Toole Avenue approximately 200 feet southerly of Rincon Circle (2170 O'Toole Avenue

Gross Acreage: 3.88

Net Acreage: 3.88

Net Density: n/a

Existing Zoning: HI Heavy Industrial

Existing Use: 60-foot high monopole with Wireless Communication Antennae  
with ancillary equipment cabinets

Proposed Zoning: No change

Proposed Use: Continue to operate the 60-foot high monopole with Wireless  
Communication Antennae w/ancillary equipment cabinets

### GENERAL PLAN

Completed by: SS

Land Use/Transportation Diagram Designation  
Industrial Park

Project Conformance:  
 Yes     No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: SS

North: Industrial

IP- Industrial Park

East: Interstate 880

N/A

South: Industrial

HI – Heavy Industrial & IP- Industrial Park

West: Industrial

HI - Light Industrial & IP- Industrial Park

### ENVIRONMENTAL STATUS

Completed by: SS

Environmental Impact Report found complete  
 Negative Declaration  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: SS

Annexation Title: Orchard No. 20B

Date: August 21, 1958

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

### APPLICANT/DEVELOPER

Crown Castle International  
Attn: Matthew Yergovich  
367 Civic Drive, Suite 7  
Pleasant Hill, CA 94523

### OWNER

DCG Investors 1993 LP  
Attn: John Pedicini, President  
2170 O'Toole Avenue  
San Jose, CA 95131

### ARCHITECT

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: SS

None

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**Other Departments and Agencies**

See attached memorandum from Fire Department

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**GENERAL CORRESPONDENCE**

None

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Crown Castle International, is requesting a Conditional Use Permit to allow the continuation of the use of an existing 60-foot tall wireless communication monopole with an ancillary equipment shelter. The application was filed February 12, 2007, approximately 60 days prior to the expiration date of the previous permit. To be considered a "timely renewal" under the Zoning Code, the application should have been submitted between 90 to 180 days prior to the expiration of the permit. The previous permit (File No. CP01-072) expired on April 10, 2007. The subject site 3.8 acre parcel is designated Industrial Park on the General Plan Land Use/Transportation Diagram and is located in the HI-Heavy Industrial Zoning District. Wireless communication antennas are a conditional use in the HI-Heavy Industrial Zoning District.

The project site is located at 2170 O'Toole Avenue, and is adjacent to industrial and warehouse uses and Interstate 880. Currently, a mini-storage facility is operating on site. Crown Castle leases a mini-storage space at the end of a storage building row to house the associated computer and electrical equipment. The existing 60-foot monopole, as indicated on the plans, stands directly outside this storage unit at the easternmost property line along the freeway and is visible from the freeway. The permit for the existing 60-foot high monopole, (File No. CP01-072), was approved by the Planning Commission on April 07, 2002, with a 5-year time limit, and as noted above, has expired. If approved, the proposed Conditional Use Permit would replace this expired permit.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project, as conditioned, is exempt from further environmental review under the provisions of the California Environmental Quality Act, specifically under Section 15301 (Existing Facilities) of the State Guidelines for Implementation.

## GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park, and the 60-foot high, freestanding monopole is within the General Plan 90-foot height limit for the subject site.

## ANALYSIS

The primary issue associated with this proposal is consistency with the City Council Policy 6-20 on Wireless Communication Facilities.

### **City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities**

As part of its Criteria for Siting Wireless Communication Antennas, *the Land Use Policy for Wireless Communication Facilities* states that freestanding monopoles should be located and designed to minimize public visibility. Where visibility cannot be avoided, additional landscaping or other visual amenities should be provided to compensate for the visual impact of the use. As a condition of approval of the previous permit (CP01-072), four evergreen trees were planted and the applicant has provided photographic documentation to show that some of the visual impact of the use has been offset by the maturing trees. Staff notes that over a period of time there will be further improvement in screening and visual offset of the monopole as the trees grow in height. Since this is an existing project with no changes or modifications proposed to the existing monopole, the plans do not include any new landscaping.

The proposal is consistent with the Council policy in that:

- a. The proposed monopole is set back from O'Toole Avenue by approximately 700 feet. This setback minimizes public visibility from O'Toole.
- b. The proposed monopole is located no closer than the minimum required 50-foot set back from any residentially-designated parcel.
- c. The overall height of the monopole, including antennae, does not exceed 60 feet. The HI-Heavy Industrial Zoning District allows a maximum height of 45 feet, or allows a greater height subject to General Plan height policies. As previously stated, the General Plan height policies relevant to the subject site allow a maximum height of 90 feet.
- d. The project will not eliminate any required parking.

The City of San Jose may allow the existing wireless communications antennae with a Conditional Use Permit to operate with no change or modifications proposed at this time. Per California Government Code Section 65964, a ten-year (10) time limit is now recommended as a condition of permit approval to allow reassessment of changes in technology that permit a reduction in the height of the proposed monopole, the "slimming" of an existing monopole, or the relocation of antennae to a more discreet building-mounted arrangement on a nearby commercial structure or a radome enclosure. Staff has included this 10 year time condition in the attached Permit resolution.

## **PUBLIC OUTREACH**

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit to allow the wireless communication facility with ancillary equipment shelter to operate with no changes or modifications to the existing structure or cabinets and include the findings and conditions included in the attached draft resolution.

### **Attachments:**

Draft Resolution

Location Map

Plans

cc: Building Division (2); Engineering Services

DCG Investors 1993 L.P., Attn: John Pedicini, 2170 O'Toole Avenue., San Jose, CA 95131

Matthew Yergovich, 367 Civic Drive, Suite 7, Pleasant Hill, CA 94523

**DRAFT RESOLUTION NO.**

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of the (1) continued use of an existing 60-foot tall telecommunications monopole with associated ancillary equipment cabinets.

**FILE NO. CP07-014**

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:**

WHEREAS, pursuant to the provisions of Chapter 20.44 of Title 20 of the San Jose Municipal Code, on February 2, 2007, an application (File No. CP07-014) was filed for a Conditional Use Permit for the purpose of the continued use of an existing 60-foot tall telecommunications monopole with associated ancillary equipment cabinets, on that certain real property (hereinafter referred to as "subject property"), situate in the HI Light Industrial Zoning District, located at the easterly side of O'Toole Avenue approximately, 200 feet southerly of Rincon Circle, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "880 & Montague, 2170 O'Toole Avenue, San Jose, CA 95131," dated March 24, 2007. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

**NOW, THEREFORE:**

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the HI-Heavy Industrial Zoning District.
3. The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA).
4. The project requests to allow the 60-foot tall monopole with wireless communication antennae and equipment cabinets continue to operate without any change to the existing facility.
5. The City Council Wireless Communication Facilities Policy permits freestanding monopoles in areas designated Industrial Park on the General Plan.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project complies with all applicable provisions of the Zoning Ordinance.
2. The proposed project is in compliance with the California Environmental Quality Act.
3. The location of this monopole has been determined to be appropriate per the Wireless Communications Facilities Policy based on the limited options in this area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The existing use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The existing site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The existing site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to allow continuation of use on the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant.
  - a. Acceptance of the Permit; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Previous Permits.** This Permit replaces Permit File No. CP 01-072.
3. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment is approved with this plan.
6. **Construction Hours.** Construction ( if any) shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
7. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
8. **Lighting.** This permit allows no on-site lighting except as specified on the approved plan set.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Colors and Materials.** All wireless communications antennae colors and materials are to be those specified on the previously approved plan set (CP01-072).
14. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.

15. **Enclosures/Screening.** The equipment shall be enclosed and maintained per the approved plan set to the satisfaction of the Director of Planning.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
17. **Temporary Portable Generator Maximum Allowed Power Rating.** No temporary portable generator with a power rating greater than 50 horsepower shall be allowed on the subject site.
18. **Temporary Portable Generator Usage.** The hours of operation of the temporary portable generator shall be limited to a maximum of 100 hours per year.
19. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning, Building, and Code Enforcement of any proposals by other wireless communications providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this permit.
20. **Monopole Removal.** The applicant shall remove the monopole and associated equipment and enclosure from the site at such time as the pole is no longer used to support a wireless communication antenna.
21. **Maximum Height.** The monopole including wireless communication antennae shall not exceed sixty (60) feet in height.

## CONDITIONS SUBSEQUENT

1. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect ten (10) years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the monopole is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this Conditional Use Permit has been granted for a period of 10 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

ADOPTED and issued this 16<sup>th</sup> day of May 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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Chairperson

ATTEST:

Joseph Horwedel, Secretary

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Deputy

### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*