



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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PLANNING COMMISSION STAFF REPORT

Meeting Date: June 14, 2022

SUBJECT

Consider renewal of a Conditional Use Permit for an existing mono-pine wireless communications facility (U-2011-02). (Application No: U-2022-002; Applicant: Kathryn Leal; Location: 22475 Rancho Deep Cliff Drive; APN: 356-02-999)

RECOMMENDED ACTIONS

That the Planning Commission adopt the proposed draft resolution to:

1. Find that the approval of the project is exempt from CEQA;
2. Approve the Use Permit (U-2022-002 (Attachment 1))

DISCUSSION:

Project Data:

General Plan Designation:	Residential - Very Low Density (Slope Density Formula)	
Neighborhood:	North Monta Vista	
Zoning Designation:	P (R1C) / Planned Development	
	Allowed	Existing
Height of Panel Antennas	55 feet	50 feet (top of antenna)
Height of Aerial (Mono-Pine Trunk)	55 feet	70 feet ¹
Distance to Nearest Residential Use	75 feet	Approximately 8 feet
Complies with:		
General Plan	Yes	
Zoning	Yes	

1. Aerial height and location were originally approved under U-2011-07, ASA-2011-09, EXC-2011-07, V-2011-01.

Background:

The applicant, Kathryn Leal, Epic Wireless Group LLC, is requesting a renewal of a Conditional Use Permit (U-2011-02), which expired on October 25, 2021. The City can impose a 10-year limit on approval of wireless communication technologies which allows the City an opportunity to review the condition of the wireless communication technologies, upgrade to newer camouflage techniques, and improve maintenance to determine if the visual impact of the aerial facility can be further reduced.

The existing wireless facility is located in the common area of the Rancho Deep Cliff community. The subject site is bounded by the apartments to the north, a Rancho Deep Cliff single family residence to the east, a single-family residence to the south, and Stevens Canyon Road to the west. See Figure 1.



Figure 1: Site Aerial (Site location outlined in red)

In 2011, the existing Verizon wireless facility was approved with a Conditional Use Permit, Architectural & Site Approval, Height Exception, Variance, and Tree Removal Permit (U-2011-07, ASA-2011-09, EXC-2011-07, V-2011-01, TR-2011-012) which allowed for the demolition of an existing 58-foot-tall lattice tower approved under U-1977-06, the construction of a 70-foot-tall mono-pine with associated base equipment and six mounted 64-foot tall panel antennas, reduced setback of eight feet from an abutting residential property line, and tree removal.

In addition, the colocation of an AT&T wireless facility with twelve panels was also approved in 2011 through a separate submittal of a Conditional Use Permit, Architectural and Site Permit, Variance, and Tree Removal permit (U-2011-02, ASA-2011-18, V-2011-02, TR-2011-65).

The proposed project does not propose physical alterations to the mono-pine or associated base equipment for the use permit renewal application (U-2022-002). The Conditional Use Permit, originally approved in 2011 (U-2011-02), expired ten years after the effective date of the permit and renewal of the permit is required to be applied for by the applicant per Condition No. 6 (see Attachment 5). The current application request is limited to ten year renewal of the expired use permit for the existing wireless facility.

Analysis:

Visibility and Screening of Wireless Facility

The wireless facility is located on a moderately sloped area with landscaping to screen a portion of the existing antennas and pole mounted equipment. Due to the height of the existing vegetation as well as the topography of the site, the lower portion of the mono-pine and the equipment enclosure is substantially screened from public views from Stevens Canyon Road. Private residences block public views of the lower portion of the mono-pine and the equipment enclosure as seen from Riverside Drive. The upper part of the mono-pine, including some panel antenna, is visible from certain public views (see Attachment 3). No changes are proposed to the landscaping at the subject site. All trees on site are considered protected trees pursuant to the City's Protected Tree Ordinance (CMC Chapter 14.18). In the event any of the trees die, they must be replaced pursuant to the City's Protected Tree Ordinance.

Staff has conditioned the project to maintain the tree pole appearance and continue ongoing maintenance, which includes providing artificial branches to obscure the appearance of the panel antennas and any associated mounting framework that may be visible, panel antennas must be covered with leaf socks to blend with the mottled foliage of the branches, and colors shall be consistent with the mono-eucalyptus tree design.

Radio Frequency (RF) Study & Telecommunications Act

The FCC is required to prescribe and make effective rules regarding the environmental effects of RF emissions pursuant to the Telecommunications Act of 1996. While, local governments cannot regulate the placement of wireless facilities based on the environmental effects of radio frequency (RF) emissions, the FCC permits local governments to determine a wireless carrier's compliance with federal rules regarding the environmental effects of RF emissions.

The proposed use permit renewal is asking for approval for use an existing tower and qualifies as an eligible facilities request under 47 CFR 1.6100(b)(4). (See also 47 CFR 1.6100(b)(5); FCC 14-153 ¶ 174.) A state or local government must approve any eligible facilities request that does not substantially change the physical dimensions of an existing support structure. (47 CFR 1.6100(c).) Accordingly, the Planning Commission lacks discretion to deny the use permit.

The original use permit for AT&T operations, U-2011-02, was approved with twelve antennae. There are no changes to the number of antennae proposed with this project. An updated Radio Frequency (RF) Emissions Compliance Report, dated October 21, 2021,

was prepared by a Registered Professional Engineer from Waterford Consultants, LLC. The report evaluated the current operation of the facility, including the cumulative RF emissions, and compliance with Federal Communications Commissions (FCC) and the Occupational Safety and Health Administration (OSHA) with regard to Human Exposure to Radio Frequency Radiation. The RF study finds that the proposed project will comply with FCC Rules and Regulations and not be detrimental to public health, safety, or welfare.

Expiration of Permit

A condition of approval has been added to require the applicant to apply for a renewal of the use permit after ten years, at which time the City may review the state of the wireless communication technologies, camouflage techniques, and maintenance to determine if the visual impact of the aerial facility can be reduced. The permit will expire ten years following the approval of the Conditional Use permit. In this case, should the Planning Commission approve this Conditional Use Permit, the permit will be valid until June 14, 2032.

Environmental Assessment

The conditional use permit is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15301 (Existing Facilities) of the CEQA Guidelines because the operation involves negligible or no expansion of existing or former use of the wireless communications facility.

Other Department/Agency Review:

The City's Public Works Department and Building Department reviewed the project and have no comments or objections.

PUBLIC NOTICING AND COMMUNITY OUTREACH

The following table is a brief summary of the noticing done for this project:

Public Notice	Agenda
<ul style="list-style-type: none">▪ Site Signage (<i>14 days prior to the hearing</i>)▪ Legal ad placed in newspaper (<i>at least 10 days prior to the hearing</i>)▪ 140 public hearing notices mailed to property owners within 300 feet of the project site (<i>10 days prior to the hearing</i>). Staff received one public comment in support of the project and	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>one week prior to the hearing</i>)▪ Posted on the City of Cupertino's website (<i>one week prior to the hearing</i>)

is provided to the Commission as written communication.	
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CONCLUSION

Staff recommends approval of the Conditional Use Permit pursuant to 47 CFR 1.6100(c).

NEXT STEPS

Should the project be approved, the Planning Commission's decision on this project is final unless an appeal is filed within 14 calendar days of the date of the decision. All approvals granted by the Planning Commission shall go into effect after 14 days.

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Reviewed by: Piu Ghosh, Planning Manager
Michael Woo, Assistant City Attorney
Approved by: Benjamin Fu, Director of Community Development

ATTACHMENTS

1. Draft Resolution for U-2022-002
2. 2018 Plan Set for Reference
3. Existing Site Photos
4. Updated EME-RF Study
5. U-20211-02 Resolution