

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO.

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
APPROVING A CONDITIONAL USE PERMIT (U-2023-001) TO ALLOW  
THE RENEWAL OF AN EXISTING MONO-PINE WIRELESS  
COMMUNICATIONS FACILITY (U-2011-07)  
LOCATED AT 22475 RANCHO DEEP CLIFF DRIVE

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2023-001  
Applicant: John Merritt  
Location: 22475 Rancho Deep Cliff Drive; APN: 356 02 999

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for a Conditional Use Permit (U-2023-001) to consider renewal of an existing mono-pine wireless communications facility;

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the application; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15301 for the reasons set forth in the staff report dated March 14, 2023 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Planning Commission finds that:

1. The proposed development and/or use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*The mono-pine is an existing facility. There are no proposed improvements as part of this application other than to renew the facility in accordance with the use permit conditions. Further, the RF limits of the antenna at the facility are well within the limits established by the FCC. The mono-pine is adequately screened from Stevens Canyon Road, and the antenna continue to be screened with artificial branches, and other screening materials to obscure equipment from public view.*

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

*The mono-pine had been approved within the limitations for wireless facilities in CMC 19.136: Wireless Communications Facilities, as well as the City's Wireless Master Plan. Any deviations from standards were also approved with a variance for setback (V-2011-01), as well as an exception for height (EXC-2011-07). The project is exempt from CEQA pursuant to CEQA Guidelines section 15301, which applies to existing facilities that involve negligible or no expansion of existing or former use.*

WHEREAS, the Planning Commission is the approval authority for this project and is granted the authority by the Municipal Code to exercise its independent judgment, based on the record before it, for purposes of the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15301. The Class 1 exemption applies to existing facilities that involve negligible or no expansion of existing or former use. The proposed project does not include alterations or modifications to the existing wireless communication facility or associated equipment. Therefore, the proposed project would not involve the expansion of the former use (Section 15301, Class 1), will not significantly expand the use beyond the current use that already exists or previously existed, and will not have a significant effect on the environment.

2. Approves the application for a Conditional Use Permit, Application no. U-2023-001 subject to conditions which are enumerated in this Resolution beginning on

PAGE 3 thereof. The conclusions and sub conclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. U-2023-001 as set forth in the Minutes of Planning Commission Meeting of March 28, 2023, are hereby incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

Approval is based on the plan set and documentation entitled "Site Number: 416967" prepared for American Tower by ATC Tower Services, consisting of 4 sheets, G-001, C-101, C-102 and C-501, showing the existing site plan and elevations and "Non-Ionizing Electromagnetic Radiation (NIER) Study" prepared by Tower Engineering Professionals and dated August 27, 2022 consisting of 15 sheets, except as may be amended by conditions in this resolution.

2. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

3. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

4. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval, in accordance with U-2011-07 shall remain in effect except as may be amended by conditions contained in this resolution.

5. EXPIRATION DATE

This use permit shall expire ten (10) years after the effective date of the permit. The applicant may apply for a renewal of the use permit at which time the Planning Commission may review the state of wireless communication technologies, camouflage techniques and maintenance to determine if the visual impact of the aerial facility can be reduced.

6. TREE POLE APPEARANCE AND MAINTENANCE

The applicant shall use a sufficient number of artificial branches to obscure the appearance of the panel antennas and any associated mounting framework. Panel

antennas mounted away from the mast shall be covered with leaf socks to blend with the mottled foliage of the artificial branches. Any antenna mounted close to the mast shall be painted to mimic the tree trunk. The foliage shall have a mottled green/brown coloration.

The building permit shall be reviewed and approved to the satisfaction of the Community Development Director to ensure the above condition is met. The applicant shall perform regular maintenance of the tree pole to maintain its appearance and obscure the panel antennas from public view.

7. NOISE CONTROL

Base equipment stations are subject the Community Noise Control Ordinance, Chapter 10.48. Noise levels shall not exceed those as listed in the Community Noise Control Ordinance, Cupertino Municipal Code Chapter 10.48. If there are documented violations of the Community Noise Control Ordinance, the Director of Community Development has the discretion to require noise attenuation measures to comply with the ordinance.

8. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether

incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

10. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

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PASSED AND ADOPTED this 28<sup>th</sup> day of March, 2023 at a noticed Public Hearing of the Planning Commission of the City of Cupertino, State of California, held by the Director of Community Development, or his or her designee, pursuant to Cupertino Municipal Code Section 19.12.120.

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Piu Ghosh  
Planning Manager

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Steven Scharf  
Chair, Planning Commission