



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

PLANNING COMMISSION STAFF REPORT

Meeting Date: March 28, 2023

SUBJECT

Consider renewal of a Conditional Use Permit and CEQA exemption for an existing mono-pine wireless communications facility (U-2011-07). (Application No: U-2023-001; Applicant: John Merritt; 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-2023-001) (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/Required	Existing
Height of Panel Antennas	55 feet	50 feet (top of antenna)
Height of Aerial (Mono-Pine Trunk)	55 feet	70 feet (Exception granted in 2011)
Distance to Nearest Residential Use	75 feet	Approximately 8 feet (Variance granted in 2011)
Complies with:		
General Plan	Yes	
Zoning	Yes	

Background:

The applicant, John Merritt, Empire Media Corp, is requesting a renewal of a Conditional Use Permit (U-2011-07), which expired on October 25, 2021 per the conditions of the

permit. The facility has been operational without a valid permit since that time and this application is to bring the facility in compliance with the zoning ordinance. No code enforcement actions have started as the applicant has been proactive in renewing their Use Permit.

The existing wireless facility is 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 2011¹, the existing ATC Sequoia LLC (formerly 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. See Planning Commission Resolution 6674 (Attachment 4). The site plan is also attached to show the exact location of the mono-pine on the site. (Attachment 6)²

The proposed project does not propose physical alterations to the mono-pine or associated base equipment for the use permit renewal application (U-2023-001). The Conditional Use Permit, originally approved in 2011 (U-2011-07), expired ten years after

¹ At the same hearing, a collocated AT&T wireless facility with twelve panels was approved 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). Their renewal was approved under U-2022-002 by the Planning Commission at its hearing on June 14, 2022.

² Due to limitations of state law ((Government Code § 65103.5 (SB 1214)), the distribution of copyrighted material associated with the review of development projects is limited. Plans have been emailed under separate cover to allow the Commissioners to review the proposed plans. Commissioners and Councilmembers cannot share plans with outside parties, including community members. The public is able to make an appointment with the Planning Division to view these plans at City Hall.

the effective date of the permit and renewal of the permit is required to be applied for by the applicant per Condition No. 6 of Planning Commission Resolution 6674. The current application request is limited to ten-year renewal of the expired use permit for the existing wireless facility³. The Architectural & Site Approval, Height Exception, Variance, and Tree Removal permit (ASA-2011-09, EXC-2011-07, V-2011-01, TR-2011-012) that were associated with the development of the mono-pine do not have a similar condition therefore do not require renewal.

Findings:

To approve the Use Permit for the proposed development, the Planning Commission must make the following findings, set forth in CMC section 19.156.040:

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;
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).

Telecommunications Act of 1996:

The proposed development is a wireless facility regulated under the federal Telecommunications Act of 1996. Under the Telecommunications Act and Federal Communications Commission (“FCC”) regulations, the Planning Commission retains discretion to apply reasonable, non-discriminatory aesthetic standards in considering the Use Permit application. (FCC 18-133, ¶¶ 12, 17.) However, the Telecommunications Act prohibits the City from denying the Use Permit application if doing so would materially inhibit the provision of wireless services. (*Id.*, ¶¶ 35, 37.) A regulation may materially inhibit the provision of wireless service “not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities,” (*Id.*, ¶ 37.)

Analysis:

This discussion section discusses how the project proposal complies with the findings required to be made for this project in accordance with CMC 19.156.040: Use Permit.

³ BLD-2022-1777 was approved on September 23, 2022 to replace the six (6) existing antenna with nine (9) antenna. No increase in height in the location of the antenna and no modifications to the monopole were included in this approval.

A. General Plan and Zoning Conformance

The General Plan prioritizes the provision and expansion of wireless communications within the City. The existing wireless facility follows the Wireless Facilities Master Plan and the Zoning Ordinance. The Zoning Ordinance allows the location of wireless facilities in the common open space for residential developments, where this facility is located.

B. Visibility and Screening of Wireless Facility

Pursuant to the original approval in 2011, 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 wireless facility nor 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 proposed conditions 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-pine tree design.

C. Radio Frequency (RF) Study

Under the Telecommunications Act, the FCC has exclusive authority to prescribe and make effective rules regarding the environmental effects of RF emissions. (47 U.S.C. § 332(c)(7).) However, local governments may determine a wireless carrier's compliance with federal rules regarding the environmental effects of RF emissions.

An updated Radio Frequency (RF) Emissions Compliance Report, dated August 27, 2022, was prepared by a Registered Professional Engineer from Tower Engineering Professionals (Attachment 3). The report evaluated the current operation of the facility, including the cumulative RF emissions, and compliance with FCC and the Occupational Safety and Health Administration (OSHA) about Human Exposure to Radio Frequency

Radiation. The RF study finds that the proposed project will comply with FCC Rules and Regulations and will not be detrimental to public health, safety, or welfare.

D. Material Inhibition of Wireless Services

The City may not deny the project or impose any condition that would materially inhibit the provision of wireless services. Because the proposed development is an existing wireless facility, the Planning Commission must consider service impacts of any restrictions on operation of the facility and cannot deny the permit application, if doing so would impair the operation of the wireless network.

E. Expiration of Permit

A proposed 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 March 14, 2033.

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.

Noticing

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

Public Comment

One member of the public submitted a comment concerned about the health and safety of the neighbors that live within the community (see Attachment 5).

Conclusion and Support of Findings

The mono-pine is an existing facility with 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 continues to be screened with artificial branches, and other screening materials to obscure equipment from public view. The mono-pine had been approved within the limitations for wireless facilities in CMC 19.136: Wireless Communications Facilities, as well as being consistent with 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. Staff recommends approval of the Conditional Use Permit).

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.

Prepared by: Gian Paolo Martire, Senior Planner
Reviewed by: Piu Ghosh, Planning Manager
Michael Woo, Assistant City Attorney
Luke Connolly, Interim Assistant Director of Community Development
Approved by: Benjamin Fu, Director of Community Development

ATTACHMENTS

1. Draft Resolution for U-2023-001
2. Existing Site Photos
3. Non-Ionizing Electromagnetic Radiation (NIER) Study
4. Planning Commission Resolution 6674
5. Public Comment
6. Plan Set (abridged due to limitations of state law pursuant to SB1214)