

RESOLUTION NO. 14-015**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING TIME EXTENSION NO. TE14-0002 TO ALLOW FOR A ONE-TIME EIGHTEEN MONTH TIME EXTENSION FOR PREVIOUSLY APPROVED CONDITIONAL USE PERMIT AMENDMENT NO. UA12-0003 FOR MODIFICATIONS TO AN EXISTING TELECOMMUNICATION WIRELESS FACILITY LOCATED AT 1220 PECTEN COURT LOCATED IN THE HEAVY INDUSTRIAL ZONING DISTRICT**

WHEREAS, on December 13, 1996, the Planning Commission approved Conditional Use Permit No. UP1379 for co-location of nine panel antennas on a 50-foot tall monopole structure and installation of a 560 square foot chain link equipment enclosure located at 1220 Pecten Court (APN 92-08-018), zoned Heavy Industrial with Site and Architectural Overlay.

WHEREAS, on February 15, 2012, Liz Johnson with Black Dot Wireless submitted a Conditional Use Permit Amendment No. UA12-0003 to remove and replace three existing panel antennas and co-location for three future panels. The project proposal also includes replacement of ground mounted equipment cabinets within an existing chain-link equipment enclosure.

WHEREAS, on April 11, 2012, the Planning Commission approved Conditional Use Permit Amendment No. UA12-0003 that allowed for the modifications to an existing wireless telecommunication facility consisting of a 50-foot tall monopole with nine existing panels and co-location for three future panels as well as installation of associated ground mounted equipment. A copy of Resolution No. 12-017 and Conditional Use Permit Amendment No. UA11-003 approved by the Planning Commission on April 11, 2012 is attached to this Resolution as **Exhibit 2** and incorporated fully herein.

WHEREAS, on April 2, 2014, Liz Johnson representing Sprint Nextel submitted an application pursuant to Section 64 of the Milpitas Zoning Code for a one-time, eighteen month Time Extension for previously approved Conditional Use Permit Amendment No. UA12-0003 for modifications to an existing wireless telecommunication facility.

WHEREAS, Sprint Nextel, C/O Black Dot Wireless has provide the City a copy of its Radio Frequency – Electromagnetic Energy (RF-EME) Compliance Report prepared by EBI Consulting dated December 19, 2011 attached as part of the agenda item and is incorporated by reference fully herein. According to the report, the composite exposure level from all other carrier existing on this site combined with Sprint’s proposed antennas is 6.30 of the FCC’s general public limit (1.26 percent of the FCC occupational limit at the nearest walking/work surface to each antenna. The project would operate within the FCC limits for RF emissions;

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under Section 15301 of the CEQA Guidelines, Existing Facilities. The project entails a time extension for previously approved modifications to an existing 50-foot tall wireless telecommunication monopole facility.

WHEREAS, on May 14, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities since the project involves a time extension for previously approved modifications to an existing 50-foot tall wireless telecommunication monopole facility.

Section 3: Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Time Extension No. TE14-0002:

- a) *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The City is prohibited by federal law from regulating the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of RF emissions to the extent the facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions. (47 U.S.C. 332(c)(7)(B)(iv).

The FCC has established guidelines that place limits on human exposure to RF fields generated by personal wireless service facilities. These guidelines have been endorsed by the U.S. Environmental Protection Agency and the Food and Drug Administration. The FCC requires all personal wireless facilities to comply with these guidelines.

The project is not anticipated to create any negative impacts to public health, safety and general welfare because the anticipated radio frequency emissions is within the Federal Communications Commission (FCC) established guidelines for human exposure to Radio Frequency (RF) fields generated by personal wireless service facilities. Sprint is licensed by the FCC to operate specifically within the 800 MHz to 1900 MHz frequency bands. The effective radiate power (ERP) for various frequency bands are as follows:

- 800 MHz transmitter combined on site is 662 watts
- 1600 MHz transmitter combined on site is 895 watts
- 1900 MHz transmitter combined on site it 6,929 watts

The emission from the proposed facility including other existing carriers is 6.30 % of the FCC's general public limit (1.12 percent of the FCC's occupational limit). The project fall below the most conservative standard for such radio frequency emissions and therefore complies with current FCC regulations. As previously conditioned, the applicant shall install signs to make people aware of the presence and locations of antennas and their associated fields.

The proposed facility will have minimal visual impacts in that the facility would be painted brown blend with the surrounding area and the associated equipment would be screened behind slatted fencing.

b) The proposed use is consistent with the Milpitas General Plan, specifically Implementing Policies 2.a-I-7.

The project is consistent with this policy because telecommunication facilities are public utilities which provide communication systems to meet the needs of residents and businesses in Milpitas. Furthermore, wireless telecommunications facility would benefit public safety by enabling emergency calls from cellular phones.

c) The proposed use is consistent with the Milpitas Zoning Ordinance:

The previously approved wireless telecommunication facility is in conformance with the Milpitas Zoning Ordinance in terms of land use and development standards. Wireless telecommunication facilities are conditionally permitted uses in the Heavy Industrial Zoning District. The project does not propose any changes from the previous approval and complies setback requirements. The associated ground mounted equipment shall be fully screened behind a slatted chain link fence enclosure.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-015 approving (Sprint Nextel - TE14-0002) based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and Exhibit 2 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 14, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 14, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

EXHIBIT 1**CONDITIONS OF APPROVALS
SPRINT NEXTEL – TE14-0002****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this permit and all Conditions of Approval in Conditional Use Permit Amendment No. UA12-0003. In the event of any conflict between the provisions or any of Conditions of Approval set forth in this Resolution and the provisions or Conditions of Approval in Conditional Use Permit Amendment No. UA12-0003, the provisions or conditions of this Resolution shall prevail. This (Sprint Nextel – TE14-0002) (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - a. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within eighteen months from the date of approval (November 14, 2015). Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable,

Permittee shall pay in full the project account balance and establish a remaining balance of twenty-five percent (25%) of the initial deposit.

6. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
7. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
8. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
9. Compliance with Laws. The construction and use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
10. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, business or use under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

12. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
13. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
14. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on May 14, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Code. (P)

15. Condition No. 4 on Exhibit 2 shall be modified and restated as the following: The existing chain link fencing for the equipment enclosure shall be replaced with a solid decorative fencing consisting of durable materials such as but not limited to wood, metal, and/or concrete masonry panel walls.

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney

RESOLUTION NO. 12-017

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UA12-0003, BLACK DOT WIRELESS, A REQUEST TO REMOVE AND REPLACE PANEL ANTENNAS AND ASSOCIATED GROUND-MOUNTED EQUIPMENT FOR AN EXISTING WIRELESS TELECOMMUNICATION FACILITY LOCATED AT 1220 PECTEN COURT.

WHEREAS, on February 15, 2012, a conditional use permit amendment application was submitted by Liz Johnson with Black Dot Wireless Inc., to remove and replace existing panel antennas and associated ground mounted equipment located at 1220 Pecten Court (APN 9208-018). The property is located within the Heavy Industrial Zoning District; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is categorically exempt; and

WHEREAS, on April 11, 2012, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) and Class 3, Section 15303 (New Construction) in that the project entails the removal of three existing panel antennas and installation of three new panel antennas and associated ground mounted equipment. The project also proposes co-location for three future panel antennas that would be installed at a later date.

Section 3: The project is consistent with the Milpitas General Plan in that the project provides updated technology that improves wireless service that supports surrounding businesses, residents, and facilitates communication.

Section 4: The project conforms to the Milpitas Zoning Ordinance in that the project is permitted in the Heavy Industrial Zoning District with a conditional use permit. The project complies with the development standards in terms setbacks, lot coverage, and height. No additional parking is required considering the facility will be unmanned.

Section 5: The project will not be injurious or detrimental to property, improvements or to public health and safety in that it will not generate noise, odors, and will be within the

allowable radio frequency emissions threshold under federal law. As conditioned, the proposed facility will not create a negative visual impact or detract from the existing architecture in that the proposed wireless telecommunication facility will painted to blend with surrounding landscaping. Associated equipment will be completed screen by a slatted chain line fence. .

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UA12-0003, Black Dot Wireless Inc., subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 11, 2012.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on April 11, 2012, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella			X	
John Luk	X			
Rajeev Madnawat	X			
Sudhir Mandal	X			
Zeya Mohsin			X	
Gurdev Sandhu	X			
Steve Tao	X			
Garry Barbadillo			X	

EXHIBIT 1

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA12-0003, Black Dot Wireless Inc.
1220 PECTEN COURT (APN 92-08-018)
(Restated and revised original conditions)

Planning Division

1. The owner or designee shall develop the approved project in conformance with the plans approved by the Planning Commission on April 11, 2012, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

2. Conditional Use Permit No. UA12-0003 shall become null and void if the project is not commenced within 18 months from the date of approval, pursuant to Section 64.06(2) of the Zoning Ordinance of the City of Milpitas. If the project requires the issuance of a building permit, the project shall be deemed to have commenced when the date of the building permit is issued and/or a foundation is completed, if a foundation is a part of the project. If the project does not require the issuance of a building permit, the project shall be deemed to have commenced when dedication of any land or easement is required or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. **(P)**

Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit No. UA12-0003 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

3. The project shall be operated in accordance with all appropriate local, state and federal regulations and in conformance with the approved plans. **(P)**
4. The fencing of the equipment area shall include brown slats.
5. The color of the monopole and all existing and proposed antennas shall be painted a dark brown color. Paint colors shall be reviewed and approved by the Planning Division prior to installation of the structures, or prior to repainting of the structures. **(P)**

6. Prior to building permit issuance, the applicant/developer shall provide a landscaping and irrigation plan to allow for two trees and shrubbery to be planted around the equipment enclosure. (P)
7. The applicant shall perform annual inspections and perform necessary maintenance to ensure that the project maintains an aesthetic appearance in perpetuity. (P)
8. The applicant shall install appropriate signage or placard to inform workers and the general public about the presence and location of antennas and their associated fields. (P)
9. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full and there is at least 25% of the initial account balance maintained. (P)

Planning = (P)

Engineering = (E)

Fire = (F)

Building = (B)