

**RESOLUTION NO. 14-027**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UP14-0009 FOR THE INSTALLATION OF THREE NEW ANTENNAS TO AN EXISTING THREE ANTENNA ARRAY MOUNTED TO A PG&E TRANSMISSION TOWER LOCATED AT 440 SOUTH HILLVIEW DRIVE**

**WHEREAS**, on May 1, 2014, an application was submitted by Alex Orner, representing Sprint C/O Cortel Inc. at 264 11<sup>th</sup> Ave, San Francisco, CA 94118 to add three new wireless antennas to an existing three antenna array mounted to a PG&E transmission tower at 440 South Hillview Drive. The property is located within the Heavy Industrial (M2) Zoning District with a Site and Architectural Overlay (APN: 86-38-038).

**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 CEQA. The project is categorically exempt from further CEQA review under Section 15301 (Existing Facilities).

**WHEREAS**, Sprint C/O Cortel Inc. has provided the City with a copy of its Radio Frequency Electromagnetic Energy Compliance Report (RF-EME) prepared by Herber J. Stockinger of EBI Consulting dated March 10, 2014, attached as part of the agenda item and is incorporated by reference fully herein. According RF-EME Compliance Report, the maximum power density is 3.7 percent of the FCC's general public limit and 0.74 percent of the FCC's occupational limit at the nearest walking or working surface to the proposed Sprint antennas. The FCC has established an occupational maximum permissible exposure (MPE) of 5 milliwatts per square centimeter and an uncontrolled MPE of 1 mW/cm<sup>2</sup> in the 1900 MHz and 250 MHz frequency ranges. Therefore, this project would operate within the FCC's limits for Radiofrequency Electromagnetic (RF-EME) energy fields.

**WHEREAS**, on June 25, 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 (Existing Facilities) of the CEQA Guidelines because the project site is an existing facility used to provide a public utility service.

**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 Conditional Use Permit No. UP14-0009:**

1. *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; and*

The project is consistent with this finding because the wireless communication facility is in compliance with FCC rules and regulations. The FCC has established an Occupational Maximum Permissible Exposure (MPE) of 5.00mW/cm<sup>2</sup> and an uncontrolled (General Public) MPE of 1 mW/cm<sup>2</sup>. Based on the RF-EME Compliance Report provided, the wireless communication facility is proposing a maximum power density of 0.74 percent of the FCC's Occupational limit and 3.7 percent for the FCC's general public limit. These percentages are within with limits established by the FCC, therefore, the wireless communication facility 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.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with this finding because wireless communication facilities are conditionally permitted uses in all zoning districts and conforms to all applicable standards set forth in Section XI-10-13.09 (Wireless Communications Facilities) of the Zoning Ordinance. The project is exempt from the maximum height allowed as per Section XI-10-55.02. Lastly, the screened equipment cabinets located at the base of the transmission tower is in compliance with the Zoning Ordinance.

3. *The project is consistent with the Milpitas General Plan.*

This project is consistent with the General Plan, specifically:

- Policy 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Policy 2.a-I-7: Provide opportunities to expand employment, participate in partnerships with local businesses to facilitate communication, and promote business retention.
- Principle 2.d-G-1: Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.

The project is consistent with above mentioned policies and principles because by adding three new antennas and RRU's in an industrial area of low visual and aesthetic impact, the service provider is better serving Milpitas businesses and residents by providing an increase in speed for data capacity. Providing an increased level of service encourages economic pursuits, provides

opportunities to expand employment, participate in partnerships with local businesses and promotes business retention by allowing the business to better serve their customers with the help of the proposed project.

**Section 6:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-027 approving Conditional Use Permit Amendment No. UP14-0009 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on June 25, 2014.

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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 June 25, 2014, and carried by the following roll call vote:

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

**EXHIBIT 1****CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP14-0009****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. This Conditional Use Permit Amendment No. UP14-0009 (“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
  - b. 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 two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. 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. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. 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 at least twenty-five percent (25%) of the required initial deposit.

7. 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).
8. 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.
9. 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.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all conditions of Conditional Use Permit No. 1524, and any other previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. This Permit shall govern if there is any conflict between this Permit and any prior permits, approvals, or requirements.
12. 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, use, or related activity 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.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. 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.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on June 25, 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 Permittee 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Permittee shall fully pay all applicable fees and charges at the time they are due to City based on the rate schedule in effect at the time the fees or charges are due and payable to City.

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