

RESOLUTION NO. 15-033

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP15-0011 TO ADD THREE PANEL ANTENNAS AND ASSOCIATED EQUIPMENT TO AN EXISTING WIRELESS TELECOMMUNICATION FACILITY AT 990 AMES AVENUE (APN: 86-31-050)

WHEREAS, On January 28, 1998, the Planning Commission approved installation of a wireless communication facility for Nextel Communications on the facade of an existing 73-foot tall mixing silo. The wireless telecommunication facility consisted of 12 panel antennas mounted on the east, west, and south sides of the building and a 200 square foot equipment enclosure located at the rear of the lot; and

WHEREAS, On October 13, 2010, the Planning Commission approved a conditional use permit and site development permit amendment application to install three new panel antennas, six microwave satellite dishes, and one GPS antenna for Clear Wireless on an existing building, and installation of a new equipment cabinet within an existing enclosure; and

WHEREAS, on June 25, 2015, T-Mobile submitted a Conditional Use Permit application to add three new wall mounted panel antennas and associated equipment to the existing wireless telecommunication facility at 990 Ames Avenue. The project 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 categorically exempt under CEQA; and

WHEREAS, on October 28, 2015, 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 environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act in that the project entails installation of three additional panel antennas on an existing wireless telecommunication facility, six Dual Tower Mounted Amplifiers, three radio return units, and six duplexers, as well as a single new equipment cabinet. The silo already hosts other

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wireless telecommunication facilities and the new equipment cabinet would be placed inside an existing communications and industrial equipment enclosure area.

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. UP15-0011:

Conditional Use Permit (Section XI-10-57.04(F))

- 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;*

Based on staff's review, the project is consistent with this finding. The project shall be required to install Radio Frequency alert signs and provide the appropriate safeguards to reduce exposure to RF emission. Furthermore, the RF Site Compliance Report provides that the maximum power density of the facility is within the FCC's Occupational limit and general public limit thresholds. As such, 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.

- b. *The project is consistent with the Milpitas General Plan; and*

The project is consistent with the Milpitas General Plan in that the project improves the existing capacity for wireless service to the surrounding Milpitas area and facilitates communication and economic pursuits. The project proposed three new panel antennas and associated equipment that enhances the capacity for T-mobiles wireless services. The proposed co-location on an existing wireless facility allows customers to conduct commercial and personal business without creating aesthetic disharmony at the site, or adverse impacts on surrounding development. This project is consistent with the below General Plan policies:

- 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.

- c. *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 it 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

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screened equipment cabinet located at the base of the transmission tower is in compliance with the Zoning Ordinance XI-10-57.03-1.

Section 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 15-033 approving Conditional Use Permit No. UP15-0011, based on the above Findings and Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 28, 2015.

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 October 28, 2015, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Rajeev Madnawat				
Hon Lien				
Larry Ciardella				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR
T-MOBILE WIRELESS TELECOMMUNICATION FACILITY
CONDITIONAL USE PERMIT AMENDMENT NO. UP15-0011
AT 990 AMES AVE (APN: 86-31-050)**

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. UP15-0011 (“Permit”) shall have no force or effect unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
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:
 1. Acceptance of this Permit by Permittee; and
 2. 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)

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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. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
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. 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

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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 October 28, 2015, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, project description, or other approved submittal shall require that, prior to the issuance of planning approval, 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)

Project Specific Conditions

16. Approval is based on and shall be in accord with information contained in the project file and presented to the Planning Commission with plans stamped "Approved October 28, 2015," except as they may be revised by the following conditions. The project includes three 8' x 1' antenna panels to be mounted on a frame that projects approximately 1-3/4", six Dual Tower Mounted Amplifiers each measuring 5.60" by 7.60", three radio return units each measuring 7.32" by 18.50", and six diplexers (4" by 4"), as well as a single new equipment cabinet. The equipment cabinet will be placed within the existing 200 square foot equipment enclosure, which is surrounded by a 6' tall chain link fence. The antenna panels will be installed at a maximum height of 72', as measured from finished grade to the top of the panels.
17. Façade mounted panel antennas and microwave dishes shall be painted to match the building. Building permit plans shall indicate the existing building materials and colors to ensure consistency and compatibility with proposed materials and colors.
18. Associated mechanical equipment shall be fully shielded behind a screen wall and shall not be visible from any surrounding worst-case viewpoints.
19. Prior to building permit issuance, the applicant shall submit a revised roof plan indicating all existing telecommunication antennas located on or within the building and indicate which

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antennas are operating, who is the carrier, and which ones have been abandoned. All abandoned antennas shall be removed prior to certificate of occupancy.

20. Signage shall be installed and maintained at the facility identifying all wireless telecommunications facility equipment and safety precautions for individuals nearing the equipment as may be required by any applicable FCC-adopted standards, including the RF radiation hazard warning symbol identified in ANSI C95.2-1982.
21. Absolute compliance with FCC Office of Engineering Technology (OET) Bulletin 65, as the same may be amended from time to time, is mandatory, and any violation of this section shall be grounds for the City to immediately terminate any permit granted hereunder, or to order the immediate service termination of any non-permitted, non-complying facility constructed within the City of Milpitas.

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(PD) = Police