

## SPECIAL USE PERMIT

<b>FILE NO.</b>	<b>SP17-044</b>
<b>LOCATION OF PROPERTY</b>	<b>Northeast corner of Prevost Street and Jerome Street</b>
<b>ZONING DISTRICT</b>	<b>R-2 Two-Family Residence Zoning District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Residential Neighborhood</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow a new 50-foot tall Wireless Communication Antenna Slimline Monopole within a new 6-foot tall block wall compound along the perimeter with landscaping on a 0.45-gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt pursuant to CEQA Guidelines Section 15303(c) for New Construction or Conversion of Small Structures as the project is for construction of a structure not exceeding 2,500 square feet.</b>
<b>OWNER ADDRESS</b>	<b>Caltrans 111 Grand Avenue 13<sup>th</sup> Floor Oakland, CA 94612</b>
<b>APPLICANT ADDRESS</b>	<b>Tom Johnson 31878 Del Obispo St. #118-454 San Juan Capistrano, CA 92675</b>

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

- 1. Site Description and Surrounding Uses.** The subject site is a vacant parcel of approximately 0.45 gross-acres in an existing residential neighborhood. The subject site has an irregular triangle shape bounded by the Guadalupe Freeway on the east, single-family/duplex across Prevost Street on the west and single-family residences on the south. The nearest residentially used or residentially designated property is approximately 80 feet west of the monopole.
- 2. Project Description.** The proposed wireless communication antenna is a slimline monopole approximately 3 feet in diameter and 50 feet in height. The base of the monopole is approximately 18 feet in diameter. The proposed wireless communication antennae would include cabinets and ancillary equipment that would be screened by a 6 foot masonry wall and additional landscaping.

3. **General Plan Conformance.** The project is consistent with the Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Residential Neighborhood, in that the designation allows for the development of new commercial uses within established residential neighborhoods if located on busier streets or at street intersections, and provided such development does not negatively impact the surrounding neighborhood.

**Compatibility Goal CD-4.12** For structures other than buildings, and including structures on top of buildings, such as solar panels, other energy-saving or generating devices, roof landscaping, steeples, bell towers, and wireless communication antennae, where substantial height is intrinsic to the function of the structures, consider heights above those established for structures in the area. Locate such structures to minimize public visibility and avoid significant adverse effects on adjacent properties. Incorporate visual amenities, such as landscaping, to offset potential adverse visual impacts.

*The proposed project is located and designed to reduce visual impacts. The slimline monopole is less obtrusive visually than a traditional wireless antennae and incorporates a CMU-wall at the base with additional landscaping to reduce visual impact.*

**Noise and Vibration EC-1.1** Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include:

**Noise and Vibration EC-1.3** Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

*The proposed project would not generate noise levels above the dBA DNL standard and no back-up generator is proposed. As reported in the technical equipment document, the acoustic emissions from the proposed ancillary equipment would be 40 dBA 15.6 feet from the equipment. Further, the proposed equipment is enclosed by a CMU wall and landscaping. The back of the cabinets which are located approximately 15 feet from the property line would be 40 dBA*

**High Quality Living Environments LU-9.16** Do not locate freestanding communications structures such as towers, antennae and monopoles on sites designated for residential land use unless such sites are occupied by a PG&E substation or corridor for high-tension lines exceeding 200 KV.

*The parcel is designated for residential land use, however it is owned by Caltrans, a public agency, and is not attractive for residential development due to its irregular shape and immediate proximity to the Guadalupe Freeway corridor, with its associated noise and air quality impacts. In this respect, the parcel is similar to properties with residential designations that are occupied by PG&E substations or within high-tension line corridors, in that these parcels are also not attractive for residential development due to the incompatible electrical utility uses occupying a corridor. The undesirable nature of these properties for residential development makes them appropriate for other types of development that are not impacted by the aforementioned corridor facilities, including wireless communication antennas. The project is therefore consistent with the intent of this policy to reserve viable residential land for residential development, and allow wireless communication antennas on residential land that is not viable or attractive for residential development.*

*Furthermore, the General Plan supports the provision of wireless telecommunication services throughout the city, in accordance with the following policies:*

**Telecommunications Goal IN-6** Support the provision of state-of-the-art telecommunication services for households, businesses, institutions, and public agencies throughout the city to foster fiscal sustainability, an innovative economy, support environmental leadership, meet the needs of quality neighborhoods and advance other *Envision General Plan* goals.

**Telecommunications IN-6.1** Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.

The alternative analysis provided by the applicants indicates a coverage gap in the area, that cannot be filled by any other technically feasible location. The analysis identifies potential alternative sites for collocation and building-mounted antennas within a quarter mile of the proposed site, and provides an explanation as to why they are not feasible. The report concludes that there are no viable commercial structures of the necessary height that could accommodate this facility for building-mounted wireless; no opportunities for collocation on existing monopoles; and no other available vacant land that is feasible for a freestanding monopole and related equipment

On balance, therefore, the project is consistent with General Plan policies allowing wireless communication facilities on residentially-designated lands that are not viable for residential development; and the provision of a wide range of telecommunication services throughout the city.

4. **Zoning Ordinance Compliance.** The subject site is located in the R-2 Zoning District. This district provides for use and occupancy of single-family and two-family homes and a limited number of other uses including wireless communication antenna. The project is consistent with the regulations of the Zoning Ordinance in the following manner:

a. *Setbacks.*

- i. Front: 15 feet
- ii. Side corner: 10 feet
- iii. Rear corner: 25 feet

*The property is shaped as a triangle with the shortest property line as the front, two longest property lines as the side, and the narrow angle point as the rear property line. All ancillary equipment and the slimline monopole are within the setback limitations of the R-2 Zoning District. Therefore, the proposed project conforms to the setback requirements of the R-2 Zoning District.*

b. *Height.*

- i. A maximum height of 60 feet is permitted for slimline monopoles.

- c. *Parking.* Per table 20-140 of the Zoning Ordinance, one on-site parking space is required for maintenance. The project site allows for adequate on-site parking during maintenance.

d. *Use.*

- i. Wireless communication antenna, slimline monopoles are permitted with a Special Use Permit

- ii. Further – Wireless communications antennae are allowed on residentially-zoned parcels with a non-residential use only if the following criteria are met:
  - 1) The proposed antenna is located either;
    - a) More than thirty-five feet away from the nearest residential use; or at least one foot away from the nearest residential use for every foot of the monopole height, whichever distance is greater;

*The proposed slimline monopole is 50 feet in height and would be required to be setback 650 feet. The proposed project is approximately 80 feet from the nearest residential use. Therefore, the project conforms to the allowed uses of the R-2 Zoning District.*

e. *Performance Standards*

- i. Noise: Noise. The sound pressure level generated by any use or combination of uses on a property shall not exceed the 55 decibels at any property line, except upon issuance and in compliance with a special use permit.

*As discussed above, the proposed project would not generate noise above the decibel levels at any property line because the equipment cabinets perform below the allowable decibel level and are further insulated by landscaping and a CMU wall.*

5. **City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities**

**Conformance.** The proposed project is subject to City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities. The proposed project meets the policy on siting wireless communication antennas, in that the applicant has included an alternative analysis that explores all technically feasible potential locations and sites which reasonably meet the service provider's radio frequency coverage objective. The analysis identifies areas within a quarter mile of the proposed site and provides an explanation as to why collocation and building-mounted alternatives were not feasible. The report concludes that there are no viable commercial uses of the necessary height that could accommodate this facility either for building-mounted wireless or collocation. Further, the project conforms to the policy by incorporating an overall stealth design and abides by the height and setback requirement of the Municipal Code.

- a. **Setback:** The policy requires a 35-foot setback from any residential use or a distance equal to 1 foot for every 1 foot of structure height. The proposed project is 50-feet in height and is setback approximately 80 feet from the nearest residential use.
- b. **Height:** The height of the proposed project conforms to the Zoning Ordinance height restriction of 60-feet.
- c. **Performance Standards:** The proposed project conforms to the performance standards of the R-2 Residential District and does not include a backup generator or noise generating equipment.

- 6. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

- a. Under the provisions of 15303 (c) New Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
7. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-state findings related to General Plan, Zoning and CEQA conformance and for the reasons state below, and subject to the conditions set forth in this permit.
- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and  
*As described above, the project is consistent with and will further the policies of the General Plan. The proposed project is designed to be less obtrusive and incorporates landscaping to reduce visual impacts. The parcel is designated for residential use, however it is not attractive for residential development because of the configuration, required setbacks, and proximity to the adjacent freeway. Therefore the finding can be made.*
  - b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and  
*As further described in the Zoning Ordinance compliance section above, the project complies with the Zoning Code with respect to setback requirements, off-street parking requirements, height requirements, and performance standards. Therefore this finding can be made.*
  - c. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and  
The project is consistent with the City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities Conformance.  
*As discussed above the proposed project meets the policy on siting wireless communication antennas, in that the applicant has included an alternative analysis that explores all technically feasible potential locations and sites which reasonably meet the service provider's radio frequency coverage objective. The analysis identifies areas within a quarter mile of the proposed site and provides an explanation as to why collocation and building-mounted alternatives were not feasible. The report concludes that there are no viable commercial uses of the necessary height that could accommodate this facility either for building-mounted wireless or collocation. Therefore this finding can be made.*
  - d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*The proposed project wall and structures are located and oriented to be compatible with the existing neighborhood and to reduce any visual impacts, and are mutually compatible. Therefore this finding can be made.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*While the project is located in a residential neighborhood, the design and aesthetics of the proposed project would be compatible with the existing character. The project utilizes a slimline design and would have a sleek profile compared to traditional wireless antennas. Further, all associated equipment would not be visible from the public right of way and would be landscaped to better integrate into the character of the neighborhood. Therefore, this finding can be made.*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Under the provisions of 15303(c) for Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The temporary construction of the proposed project will not have an unacceptable negative affect on adjacent property or properties because of City limitations on construction hours. The proposed project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment. Therefore this finding can be made.*

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*The existing site is vacant and does not contribute to the appearance of the neighborhood. The proposed project would incorporate attractive, functional landscaping to sufficiently screen the equipment and upgrade the appearance of the neighborhood. Therefore this finding can be made.*

- h. Traffic access, pedestrian access and parking are adequate.

*The project is proposing a new curb cut on Prevost Street and would have adequate access and parking for routine maintenance. Therefore this finding can be made.*

- 8. **Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies; and

*As described above, the project is consistent with and will further the policies of the General Plan. The proposed project is designed to be less obtrusive and incorporates landscaping to reduce visual impacts. The parcel is designated for residential use, however it is not feasible to develop a residential use because of the size, required setback, noise and proximity to the freeway. Therefore the finding **can** be made.*

- b. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*The Special Use Permit conforms to the Zoning Ordinance in regards to setbacks, height, use, parking, and performance standards as stated in the Zoning Ordinance Conformance section above. Therefore the finding **can** be made.*

- c. The Special Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*The Special Use Permit meets the City Council Policy on Wireless Communication Facilities (as discussed above). Therefore the finding **can** be made.*

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare; and

*In 1996 the Federal Communications Commission (FCC) adopted the Federal Telecommunications Act of 1996, which adopted guidelines for human exposure to RF fields to better protect public health and safety. These guidelines apply to all transmitters licensed or authorized by the FCC, including antennae licensed to wireless service providers and cell phones used by subscribers to the service. The guidelines are based upon recommendations of federal agencies with expertise in health and safety issues. Therefore, the proposed project would not impact health, safety, moral or welfare of persons residing or working in the surrounding area.*

*As discussed above, the proposed project is setback 80 feet from the nearest residential use and abides by the performance standards of the Zoning District. Further, the project is a slimline design to minimize the visual impacts and includes a CMU wall and landscaping to screen the project. Therefore, the project would not impair the utility or value of property of other persons located in the vicinity of the site or be detrimental to public health, safety or general welfare. Therefore the finding **can** be made.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas, and

The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- ii. By other public or private service facilities as are required

*The subject site is adequately served by the adjacent public streets and can be directly accessed from Prevost Street. A driveway with access and sufficient parking for maintenance is located on the site. Therefore, this finding **can** be made.*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Under the provisions of 15303(c) for Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The temporary construction of the proposed project will not have an unacceptable negative affect on adjacent property or properties because of City limitations on construction hours. The proposed project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment. Therefore this finding **can** be made.*

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance with Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Mobilitie Highway 87" dated received April 11, 2018 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Use Authorization.** This Special Use Permit authorizes a new 50-foot tall Wireless Communication Antenna Slimline Monopole and associated ground equipment within a new 6-foot tall block wall compound along the perimeter with landscaping on a 0.45-gross acre site.
7. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
  - a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. **Flood: Zones AO, depth 2' & AH, Elevation 97.00' North American Vertical Datum of 1988 (NAVD88)**

Elevate the bottom of all proposed cabinets 2' above highest adjacent grade or above 97.00' NAVD88, whichever is higher.

An Elevation Certificate (FEMA Form 086-0-33), based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate, based on finished construction will be required prior to issuance of an occupancy permit/Building Final.

- c. **General:** The 50-foot tall pole is located inside an island owned and maintained by the State of California. This project must contact the State of California to obtain the necessary encroachment permit.
- d. **Revocable Encroachment Permit:** A revocable encroachment permit may be required if the project proposes any work or traffic control devices in the City right-of-way.
- e. **Street Improvements:**

Proposed driveway width to be 12'

Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

- 8. **Compliance with All Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
- 9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- 10. **Outdoor Storage.** No outdoor storage shall be allowed or permitted.
- 11. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
- 12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
- 13. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
- 14. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- 15. **Building and Property Maintenance.** The property owner shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, and lighting and landscaping.
- 16. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 1, Section 20.100.350, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **15<sup>th</sup> day of August, 2018.**

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement

Deputy

DRAFT