

File Number  
 CP04-029

Application Type  
 Conditional Use Permit

Council District  
 5

Planning Area  
 East San Jose

Assessor's Parcel Number(s)  
 486-39-029

# STAFF REPORT

**PROJECT DESCRIPTION**

Completed by: Richard Buikema

Location: West side of Silverstone Place, between Whitestone Court and Bluestone Court

Gross Acreage: 1.7                      Net Acreage: 1.7                      Net Density: n/a

Existing Zoning: R-1-8 Residential                      Existing Use: Utility Structure with Wireless Communications Facility

Proposed Zoning: No change                      Proposed Use: Conditional Use Permit to allow three (3) wireless communication antennas on an existing 105-foot tall PG&E utility structure and associated 60-square-foot equipment shelter.

**GENERAL PLAN**

Completed by: RB

Land Use/Transportation Diagram Designation  
 Medium Low Density Residential (8 DU/AC)

Project Conformance:  
 Yes     No  
 See Analysis and Recommendations

**SURROUNDING LAND USES AND ZONING**

Completed by: RB

North: Single Family Residential                      R-1-8 Single Family Residential

East: Single Family Residential                      R-1-8 Single Family Residential

South: Single Family Residential                      R-1-8 Single Family Residential

West: Single Family Residential                      R-1-8 Single Family Residential

**ENVIRONMENTAL STATUS**

Completed by: RB

Environmental Impact Report adopted  
 Negative Declaration circulated on  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

**FILE HISTORY**

Completed by: RB

Annexation Title: Amos #1

Date: December 12, 1958

**PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION**

Approval  
 Approval with Conditions  
 Denial

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

CONTACT	APPLICANT/OWNER	
The Alaris Group Attn: Kristina Woerner 185 Berry Street, Suite 5300 San Francisco, CA 94107	PG&E Attn: Ben Hilderbrand 77 Beale Street San Francisco, CA 94105	

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: RB

Department of Public Works

See attached memorandum

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Other Departments and Agencies

None.

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GENERAL CORRESPONDENCE

None.

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ANALYSIS AND RECOMMENDATIONS

## **BACKGROUND**

This is a Conditional Use Permit to allow the addition of three wireless communication antennas on a existing 105-foot tall PG&E utility structure and to construct an associated 200 square foot equipment shelter within an PG& E utility corridor. No increase in height is proposed. The Zoning Ordinance requires a Conditional Use Permit for wireless communication facilities in the RM Residence zoning district.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act, in that the project consists of a minor alteration to an existing facility involving a negligible expansion of use.

## **GENERAL PLAN CONFORMANCE**

The subject site is designated Medium Low Density Residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed project conforms to the General Plan in that the 0.25 gross acre site contains an existing public utility facility and any developed parcel of two acres or less is deemed to conform to the General Plan regardless of how it is designated on the Land Use/Transportation Diagram. The subject site is deemed to be a Public/Quasi Public Use.

## **ANALYSIS**

The primary issue is conformance with Council Policy 6-20, *Land Use Policy for Wireless Communications Antennas*, which provides criteria for siting such facilities including location, setbacks from residential uses

### **City Council Policy (6-20): Land Use Policy for Wireless Communication Facilities**

The proposed project complies with the *Council's Land Use Policy for Wireless Communication Facilities*. The Policy recognizes the importance of wireless communication facilities, but also the potential for related land use impacts, including visual clutter. The *Land Use Policy for Wireless*

*Communication Facilities* was revised in September 2003, to include siting criteria for wireless antennas that are mounted on utility structures. These types of installations are identified as a way to reduce the overall visual impact of the development of the wireless antenna networks in San José.

The Policy generally discourages wireless communications facilities from properties with residential land use designations except Residential Support for the Core, High-Density Residential, or Transit Corridor Residential. Although the site is designated for single-family residential, the project conforms to the General Plan because the 1.7 gross acre site contains an existing public utility tower with an existing wireless communication facility.

The Council Policy specifies that antennas may be mounted on an existing utility structure within a utility corridor, such as a PG&E high-tension line corridor, where the antenna would be located at least 20 feet horizontally from any property with a residential use or General Plan designation. The base of the existing utility structure is approximately 12.5 feet away from the nearest residential property line to the west. The actual antennas will be mounted at the top of the existing utility structure and be located approximately 20 feet horizontally from the nearest residential property line and approximately 38 feet to the nearest residence to the west. No increase in the height of the tower is proposed.

The placement of the proposed antennas at the top of an existing 105-foot tall PG&E tower provides additional vertical separation between the antennas and adjacent houses which meets the intent of the Council Policy for appropriate residential separation. The proposed project will also reduce the need for additional freestanding and building-mounted wireless antennas in the area .

The Council Policy requires building-mounted or utility-mounted antennas to be located to minimize visual impacts and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennas are collocated on an existing PG&E tower that has existing overhead service lines. (see below). Although visible, the antennas will be painted to match the existing color of the utility tower and will not significantly add to the visual impacts created by the existing antennas, tower and overhead service lines on the site.

In conformance with the Policy, additional landscaping, is being proposed to screen the visibility of the equipment enclosure which would otherwise be visible from Silverstone Place. The proposed equipment shelter will be placed under the existing utility structure to further minimize its visibility.

## **PUBLIC OUTREACH**

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to answer questions on the project from the public.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. Although the site is designated for single-family residential, the project conforms to the General Plan because the 0.25-acre site contains an existing public utility structure. Further, any developed parcel of two acres or less is deemed to conform to the General Plan regardless of how it is designated on the Land Use/Transportation Diagram.
3. The project site is located in the R-1-8 Residence Zoning District.
4. Three antennas are proposed on an existing 105-foot steel utility line tower, but do not increase the height of the structure.
5. The proposed antennas will have a minimum horizontal separation of 20 feet from the nearest residential property line.
6. The proposed antennas will have a horizontal separation of 38 feet from the nearest residential structure.
7. The antennas will be painted to match the existing structure to minimize the visual impacts created by existing utility poles and overhead service lines on the site.
8. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. Although the site is designated Medium Low Density Residential (8 DU/AC), the project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram in that the site contains an existing public utility facility or structure. Any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated on the Land Use/Transportation Diagram.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. 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
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission 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.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, Sprint Silverstone PG&E, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **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.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
9. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
10. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
11. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

13. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
14. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PSC antennas for other providers.
15. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
  2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council 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 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
    - a. A violation of any conditions of the Conditional 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.
- c: Kristina Woerner, The Alaris Group, 185 Berry Street, Suite 5300, San Francisco, CA 94107  
Ben Hildebrand, PG&E, 77 Beale Street, RM2661B San Francisco, CA, 94105