

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 11/09/05 Item #:

File Number  
CP05-040

Application Type  
Conditional Use Permit

Council District  
10

Planning Area  
Edenvale

Assessor's Parcel Number(s)  
696-04-004

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: David Tymn

Location: Located uphill from Colleen Drive approximately 500 feet southwesterly from the terminus of Valley Glen Court

Gross Acreage: 3.62

Net Acreage: 3.62

Net Density: n/a

Existing Zoning: [R-1-1 Single-Family Residence](#) Zoning District

Existing Use: Water Tank, Utility facility (San José Waterworks)

Proposed Zoning: no change

Proposed Use: Same, plus 20-foot-high free-standing wireless communications monopole and an associated equipment enclosure

### GENERAL PLAN

Completed by: DT

Land Use/Transportation Diagram Designation  
Non-Urban Hillside

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: DT

North: Open Space

A - Agriculture

East: Open Space

A - Agriculture

South: Open Space

A - Agriculture

West: Open Space

A - Agriculture

### ENVIRONMENTAL STATUS

Completed by: DT

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

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: DT

Annexation Title: Alamos No. 11

Date: March 23, 1966

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

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

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

OWNER	CONTACT	APPLICANT/DEVELOPER
San José Waterworks Attn: Bob Loehr 374 W. Santa Clara Street San José, CA 95113	Sprint, PCS, Inc Attn: Nick Kukulica 1729 Rutan Drive Livermore, CA 94551	AFI Telecommunications Attn.: Rich Rolita 3420 Fostria Way Suite A-100 San Ramon CA 94583

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DT

Department of Public Works

See Attached

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Other Departments and Agencies

See the attached Fire Department memo.

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GENERAL CORRESPONDENCE

None received

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ANALYSIS AND RECOMMENDATIONS

## BACKGROUND

The applicant, Sprint PCS, is requesting a Conditional Use Permit (CUP) to allow a 20 foot tall free-standing wireless communications monopole and associated equipment enclosure located next to a San Jose Waterworks water tank located uphill from Colleen Drive approximately 500 feet southwesterly from the terminus of Valley Glen Court. The Zoning Ordinance requires a CUP for a wireless telecommunications facility in the [R-1-1 Single-Family Residence](#) Zoning District. The 3.62-acre parcel, owned by San Jose Waterworks, includes a 12-foot by 25-foot enclosure for equipment. The locations for the monopole and the enclosure are on flat areas next to the existing water tank. Other nearby land uses include single-family detached homes to the north across Colleen Drive. The nearest parcel developed with a residential unit is more than 400 feet away from the proposed monopole.

## Project Description

The project proposal would allow a 20-foot tall freestanding wireless communications monopole on the northern portion of the site. The proposed monopole would be placed near the existing water tank located on the subject site. Equipment cabinets mounted on a concrete slab, are proposed within a 12 x 25 foot lease area, and are enclosed by a six-foot tall concrete masonry wall. There is existing landscaping on the northern side of the water tank where the monopole is proposed to be located.

## ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA). The CEQA guidelines include an exemption (section 15303) for new construction or conversion of small structures. The CEQA guidelines do not specifically address monopoles per se.

However, 15303c allows an exemption for “a store, motel, office, restaurant or similar “structure” not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive”. It is staff’s opinion that the proposed project adequately conforms to the provisions of this section because of the nature and size of the structure.

## **GENERAL PLAN CONFORMANCE**

The proposed land use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Non-Urban Hillside. The lands within this designation are above the 15% slope line. Very low intensity uses, such as grazing, tree farming, or very large lot residential estates (20 to 160 acres), are potential uses under this category. The site is owned by the San José Waterworks. The water tank is an existing facility and the proposed monopole is considered a minor addition to the existing use, and does not alter or intensify the use, and as such, does not create further intrusion into the Non-Urban Hillside designation. The parcel is surrounded on three sides by open hillsides, and is an appropriate use for this designation.

## **ANALYSIS**

The primary issues analyzed in this report are the project’s conformance to the following: 1) Zoning Ordinance, and 2) City Council Policy 6-20, Land Use Policy for Wireless Communication Antennas. As described in greater detail below, the proposed project conforms to the Zoning Ordinance and is consistent with the provisions of the City’s Wireless Communications Policy.

### **Conformance to the Zoning Ordinance**

#### *Height*

The project site is located in the R-1-1 Residence Zoning District. This district has a maximum height limit of 35 feet. Even though the Zoning Ordinance allows for the increase in the height of telecommunication facilities (monopoles) to a maximum of 60 feet in the R-1-1 Residence Zoning District, the overall height of the proposed monopole will be 20 feet.

#### *Setbacks*

The setbacks for the proposed monopole and enclosure exceed the minimum requirements for the R-1-1 zoning district of 30 feet for the front, 25 feet for the rear and 15 feet for the interior side setbacks.

### **Conformance to City Council Policy 6-20 for Wireless Communications Facilities**

#### *Visual Impacts*

The intent of the policy is to minimize any impacts of wireless communications facilities. New

freestanding monopoles should not be implemented where building mounted or collocated facilities are feasible and would reduce visual impacts. Building-mounted (for example, rooftop) antennas are generally preferable to new monopoles and the current policy encourages such installations. Building-mounted antennas are not feasible since only a water tank exists at this site. The applicant is proposing a monopole that is 15 feet lower in height than the existing 35-foot tall water tank and as such should be less of an impact than the existing tank structure. There is existing landscaping and trees in the area where the monopole is proposed. Additional landscaping will be added near the monopole, as well as around the proposed equipment enclosure.

#### *Setbacks from Residential Uses*

The policy recommends that freestanding monopoles be located no closer than a distance equal to one foot for every one foot of structure height from any parcel developed for use as a single-family or multi-family residence. Also, substantial landscaping (10 feet minimum), generally including trees, should be provided adjacent to the residential property line, to buffer the adjoining residential uses. The applicant's proposal is consistent with the Council Policy in that the existing monopole would be located in excess of 400 feet from the nearest residential uses located to the north of the site across Colleen Drive.

#### *Performance Standards*

This project does not include the installation of power-generating equipment and will therefore easily comply with the noise level performance standards identified in the Zoning Ordinance. Should the applicant wish to include such equipment in the future a development permit would be required and the equipment would be required to meet the performance standards for the Zoning District.

#### *Parking*

The project does not impact any parking spaces. Adequate parking is provided for the primary water tank facility.

### **CONCLUSION**

The proposed project will accomplish all of the key design objectives of the City's policy for such structures. In anticipation of further on-going improvements in technology related to the wireless communications industry, it may be very likely that service providers will be able to maintain, improve or expand their service network by way of antenna facilities that are even less obtrusive than typically accomplished today. This permit is proposed to include a five (5) year time limit so that the City can re-evaluate the appropriateness of the facility in the context of future improvements to antenna technology.

### **RECOMMENDATION**

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

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

1. The project site has a designation of Non-Urban Hillside on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The project site located uphill from Colleen Drive approximately 500 feet southwesterly from the terminus of Valley Glen Court is in the R-1-1 Residence Zoning District.
3. Wireless communications monopoles are a conditional use in the R-1-1 Residence Zoning District.
4. The subject site or lot is located adjacent to a residentially zoned property and is located across Colleen Drive from a residential use.
5. The proposed antennas and equipment enclosure will be located approximately 400 feet from the nearest residential use.
6. Existing development on the subject site including a water tank.
7. A 300 square foot equipment enclosure is proposed.
8. The proposed project conforms to the required setbacks from property lines as prescribed in the R-1-1 Residence Zoning District.
9. The proposed monopole is 20 feet in height.
10. The maximum height limit of the R-1-2 Residence Zoning District is 35 feet. The proposed monopole is 20 feet in height
11. The proposed monopole has been located and designed to visually blend with existing surroundings.
12. The proposed monopole will not eliminate required parking.
13. The proposed monopole is time-conditioned to expire in five years.
14. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.
15. Under the provisions of Section 15303 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. The project will not have a significant adverse effect on the environment.

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

1. The project is consistent with the General Plan Land Use /Transportation Diagram designation of Non-Urban Hillside.
2. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
3. The project complies with the applicable provisions of the Zoning Ordinance, Title 20 of the Municipal Code.
4. The proposed project conforms to the City Council's 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. As conditioned, 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 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. **Adjustment Required for Landscaping.** Prior to the issuance of a Building Permit, the developer shall secure and agree to implement an adjustment to: 1) plant landscaping around the proposed equipment enclosure to the satisfaction of the Director of Planning, Building and Code Enforcement.
2. **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.

### 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 “Chesboro Water Tank SF60XC838-C, 0 Colleen Drive, San Jose, CA 95120” dated April 8, 2005, last revised November 30, 200, 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. The applicant must abate any such nuisance immediately upon notice by the City.
3. **Construction Hours.** Construction activities shall conform to Title 20, as amended.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
6. **Colors and Materials.** All wireless communications building-mounted antennas colors and materials are to be those specified on the approved plan set.
7. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Adjustment Required.* The developer shall comply with Condition Precedent #3.
  - b. *Construction Plans.* This permit file number, CP05-040, shall be printed on all construction plans submitted to the Building Division.
  - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the

initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

- d. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
  - 1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement verifying that the required monitoring occurred and that no further mitigation is necessary.
  - 2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
  - 3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
    - a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendant of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
    - b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

8. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
9. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set as adjusted/amended per Condition Precedent #3. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
10. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
11. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this tower and additions to the at-grade equipment enclosure. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
12. **Generators.** This permit does not include approval for an emergency back-up generator. Any such improvement would require additional approvals by the City.
13. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.

## 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/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.
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.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.
  4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.