

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. 5/2/05 Item:

File Number  
CP04-107

Application Type  
Conditional Use Permit

Council District  
4

Planning Area  
Berryessa

Assessor's Parcel Number(s)  
591-17-001

# STAFF REPORT

## PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: Southwest corner of Piedmont Road and Flanders Drive

Gross Acreage: 21.72                      Net Acreage: 21.72                      Net Density: n/a

Existing Zoning: R-1-8 Residential                      Existing Use: Berryessa School District Bus Maintenance Yard

Proposed Zoning: No change                      Proposed Use: Collocation of three wireless communications antennas on an existing  
slimline monopole

## GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation  
Public/Quasi-Public

Project Conformance:  
 Yes     No  
 See Analysis and Recommendations

## SURROUNDING LAND USES AND ZONING

Completed by: SM

North: Single-family detached residential and public school                      R-1-8 Residence

East: Single-family detached residential and commercial                      R-1-8 Residence/R-1-8 PD/CP Commercial  
Pedestrian

South: Public Park                      A Agricultural

West: Public Park                      A Agricultural

## ENVIRONMENTAL STATUS

Completed by: SM

Environmental Impact Report found complete  
 Negative Declaration circulated on July 19, 2001  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

## FILE HISTORY

Completed by: SM

Annexation Title: Penitencia No. 3

Date: March 20, 1978

## PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

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

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

## CONTACT

Telle Presley  
Peacock Associates  
5855 Doyle Drive, Suite 108  
Emeryville CA 94608

## DEVELOPER

Kersten Rutherford  
Metro PCS  
1080 Marina Village Parkway  
Alameda CA 94501

## OWNER

Sprint Spectrum,  
4683 Chabot Dr.  
Pleasanton CA 94588

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: SM

Department of Public Works

No comments

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Other Departments and Agencies

See attached memorandum from Fire Department

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GENERAL CORRESPONDENCE

None received

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ANALYSIS AND RECOMMENDATIONS

## **BACKGROUND**

The applicant, Metro PCS, is requesting a Conditional Use Permit to allow installation of three (3) wireless communications antennas on one(1) existing 45 foot high slimline monopole, and placement of associated equipment cabinets within an existing equipment enclosure adjacent to the base of the building. The project also proposes to increase the height of the existing monopole to 57 feet. The Zoning Ordinance requires a Conditional Use Permit for installation of wireless communications antennas in R-1-8 Residence zoning district.

The existing slimline monopole was permitted through a Conditional Use Permit, File Number CP01-004, approved by the Planning Commission on August 8, 2001.

The project site is the Berryessa School District bus maintenance yard located on the southwest corner of Piedmont Road and Flanders Drive. Surrounding land uses include single-family detached residences to the north, commercial and single-family residences to the east and public park and the Penitencia Creek to the south and west.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded that there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

## **Project Description**

The proposed project will install three wireless communications antennas on a slimline monopole. Presently, the height of the monopole is 45 feet. Installation of the antennae to the top of the monopole will result in an addition of 12 feet to the height of the existing monopole, giving it a total height of 57

feet. The diameter of the monopole will remain 16 inches consistently and the color will remain the same environmental-green color to blend in with the surroundings. Four associated ground-mounted equipment cabinets are proposed to be located within an existing, approximately 300 square foot, equipment shelter already enclosed by a 7 foot high wooden fence. The antenna and the equipment cabinet are placed on the west side of an existing maintenance building and south of the proposed monopole.

Additional screening of the slimline pole will be provided by planting Redwood trees on the school grounds to the south-west of the existing monopole. Attached photosimulations show the screening effect of the trees. The number and size of trees will be determined in consultation with the Planning Staff and the School District representative. To provide an additional buffer for the residential uses located north of the project site, planting of Redwood trees was proposed at the time of approval of the existing monopole. All of those trees were 24 inches box Redwood trees, to match the trees in the surroundings. Three trees were proposed along Piedmont Road and four along Flanders Street.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be 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. Section 15301 defines Class 1 as consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

The project falls under Class 1 described above in that the project involves only the co-location of wireless communications antennae, and placing of equipments in an existing equipment shelter.

## **GENERAL PLAN CONFORMANCE**

The San José 2020 General Plan Land Use/Transportation Diagram designation of the subject site is Public/Quasi Public. The proposed project conforms to this designation in that wireless communication antennae/ monopoles that are in conformance with the development standards stipulated in the City's Zoning Ordinance and applicable City policy, are allowed on parcels with this designation.

Additionally, the City Council Policy 6-20 states that antennas located on residentially-designated properties developed solely with non-residential uses, such as public/Quasi Public facility like a public school, may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The proposed project is for co-location of antenna on an existing slimline pole within the premises of a public school. Therefore the project is found to be conforming to the policy.

## ANALYSIS

The primary issue analyzed for the proposed project is conformance with: 1) the Zoning Ordinance, and 2) City Council Policy 6-20 for Wireless Communication Facilities.

### **Conformance to the Zoning Regulations**

The proposed project is co-location of antennas on an existing monopole. The parcel on which the project is proposed is located in R-1-8 Residence Zoning District. Installation of monopoles for wireless antennas is permissible in the R-1-8 Residence Zoning District with a Conditional Use Permit. The co-location project does not affect the setbacks of the existing monopole and the equipment enclosure.

The maximum building height allowed in the R-1-8 Residence Zoning district is 35 feet. However, the Zoning Ordinance provides that, the maximum height of a wireless communications antenna may be increased up to a maximum overall height of sixty (60) feet in height, provided that the design of the antenna is a *slim* pole design. The applicant proposes a slim pole fifty-seven (57) feet in height. Therefore the proposed antenna meets the criterion for the maximum height exception of wireless antenna.

Based on the above analysis, staff concludes that the project is in conformance with the Zoning Regulations.

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

The attached Council Policy provide direction for appropriate land use designations for wireless communication antennas, and criteria for locating such facilities including location, height, setbacks from residential uses, and parking.

**Appropriate Land Use Designations for Wireless Communications Antennas.** The Council policy discourages wireless communications facilities from all residential designations except Residential Support for the Core. However, the Council Policy states that antennae located on residentially-designated properties developed solely with non-residential uses, like a public/quasi public facility such as public school may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The proposed project is for co-location of antenna on an existing monopole, within the premises of an existing school, and thus conforms to the Council policy.

**Reduction of Visual Clutter.** The Council Policy states that new wireless communication antennas should be sited so as to minimize visual impacts. The proposed slim pole has been designed and placed to have a minimal degree of visibility, and will not create visual clutter on the site. The diameter of the extended portion of the monopole will remain same as the existing portion, and the color will remain the same environmental-green color that blends with the surroundings. Additionally, trees matching with the existing trees will be planted to the south of the antenna to further screen the antenna from view. All of the above measures will reduce the overall visual impact of the monopole.

The Council Policy also requires ancillary equipment to be screened. The proposed equipment cabinets will be effectively screened since they are located within an existing equipment shelter that is screened by an existing seven foot tall wooden fence.

**Height.** The maximum building height allowed in the R-1-8 Zoning district is 35 feet. However, the Zoning Ordinance allows a height exception for wireless communications antenna for a maximum overall height of sixty (60) feet, provided that the design of the antenna is a “slim” pole design. The applicant proposes a slim pole fifty-seven (57) feet in height. Therefore the proposed antenna meets the criterion for the maximum height exception of a wireless antenna.

**Setbacks from Residential Uses.** As part of the criteria for siting Wireless Communication Antennas, the Land Use Policy for Wireless Communication Facilities requires that new wireless communications antenna (monopoles) should be located no closer than 35 feet from any property with a residential use or one foot for every foot in height of the proposed structure, whichever is greater. The height of the pole is 57 feet. Therefore, with the increased height, this monopole should be located no closer than 114 feet from residential structure. The antenna is approximately 600 feet away from the nearest residential structures located across Penitencia Creek Road to the south-east of the site. Therefore, the proposal is consistent with the Council Policy.

**Parking.** Wireless communication facilities should not reduce existing parking on the site unless the zoning district parking requirements can be met. The current project does not reduce any existing on-site parking.

## 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.

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

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. The site is surrounded by single-family residences and parks.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
5. The project proposes the installation of up to 3 wireless communications antennas to collocate on an existing “slim” pole, increasing its height to 57 feet. The structure is located a minimum of 114 feet horizontally from residential parcels.

6. The proposed equipment cabinets will be located within an existing equipment shelter measuring approximately 300 square feet.
7. The cabinets will be screened from view by an existing wooden fence.
8. The project proposes to plant Redwood trees matching with the existing trees on the school ground to the south-west of the existing monopole to further screen the antenna from view. The number and size of trees will be determined in consultation with the Planning Staff and the School District representative.
9. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.

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

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
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 complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities.
5. The proposed project contains adequate setbacks of at least 114 feet horizontally from residential uses.
6. The project proposes a structure with an overall height 57 feet, under the maximum allowed of 60 feet.
7. The proposed project adequately screens ancillary equipment cabinets.
8. The proposed project will not eliminate required parking.

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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
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.
3. **Revised Landscape Plan.** Before the issuance of the building permit, applicant shall submit a revised landscape plan showing exact size, number and location of all Redwood trees proposed

for screening the monopole and associated equipment cabinets, to the satisfaction of the Director of Planning. The exact location, number and size of trees will be determined in consultation with the Planning Staff.

## 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, "DSA Berryessa Union School District, SF06410A, 945 Piedmont Road, San Jose CA, 95132," dated July 2, 2004, and last revised on November 1, 2004, 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, except as specified on the approved plan set. All on-site lighting shall conform to the City of San Jose's Outdoor Lighting Policy. All lights shall utilize low sodium fixtures and permit no uplighting.
5. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
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. **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. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
9. **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. *Construction Plans.* This permit file number, CP01-01-004, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
  12. **Fire Flow.** Required fire flow for the site is 2000 gpm, or as otherwise approved in writing by the Fire Chief.
  13. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
  14. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
  15. **Fire Lanes.** Fire lanes, suitably designated “FIRE LANE – NO PARKING,” shall be provided to the satisfaction of the Fire Chief.
  16. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
  17. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning
  18. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City’s Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.
  19. **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.

## 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: Building Division (2)  
Engineering Services

207-10/SM:yt