



COUNCIL AGENDA: January 23, 2007

ITEM: 11.6

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** January 3, 2007

Approved:

Date:

1-9-07

COUNCIL DISTRICT: 7

SNI: None

**SUBJECT: CP06-021 & V06-012. APPEAL OF THE PLANNING COMMISSION'S DECISION TO CONDITIONALLY APPROVE A CONDITIONAL USE PERMIT TO ALLOW WIRELESS MONOPOLE ANTENNA FACILITY NOT TO EXCEED 65 FEET IN HEIGHT WITH ASSOCIATED EQUIPMENT AND DENY A DEVELOPMENT EXCEPTION PERMIT LOCATED ON THE SOUTH SIDE OF TULLY ROAD, APPROXIMATELY 290 FEET NORTH OF LANAI ROAD ON A 0.017 GROSS ACRE SITE IN THE CG COMMERCIAL GENERAL ZONING DISTRICT**

## RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decisions to conditionally approve a Conditional Use Permit (File no. CP06-021) permit to allow wireless monopole antenna facility not to exceed 65 feet in height with associated equipment and to deny a development exception permit (V06-012) requested to allow the subject monopole to be in excess of the zoning ordinance height restrictions.

## OUTCOME

Adopt a resolution approving the subject Conditional Use Permit with conditions as approved by the Planning Commission.

## BACKGROUND

The project developer, Crown Castle filed a Conditional Use Permit on March 24, 2006 in order to allow the continued use of an existing wireless monopole 80 feet in height with antennas for two carriers (Nextel and Verizon) having a total of nine (9) antennas on the monopole, associated equipment cabinets, and an emergency standby generator. The application was subsequently modified prior to the Planning Commission hearing, to include five (5) wireless carriers (T-Mobile, Cingular, & Modeo in addition to the existing Nextel and Verizon). The proposal includes a total of 12 wireless antennas and one omni antenna to be located on the 80 foot monopole, a satellite dish and

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GPS antenna to be mounted on an adjacent ten-foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator.

The subject wireless monopole was originally approved to be 45 feet in height in 1990 (CP90-042). The San Jose General Plan was amended in 1994 to allow wireless monopoles to go up to a height of 100 feet in areas designated for nonresidential uses. The subject monopole benefited from this Amendment to the General Plan. Through a subsequent Conditional Use Permit (CP94-015), the subject monopole was increased in height to 80 feet. CP94-015 had an expiration date of July 13, 1996 and another Conditional Use Permit (CP96-033) was filed prior to its expiration to extend the permit life an additional two years. No timely application for a further extension was applied for and CP96-033 expired on May 22, 2001.

The existing 80 foot tall monopole was approved and its original Conditional Use Permit was extended prior to the adoption of the updated and current City Council Policy for Wireless Communication Facilities in 2003. The policy stipulates that all monopoles can be increased beyond the maximum height in the corresponding Zoning District to be no be increased to no greater than 60 feet in height; therefore the subject monopole at 80 feet in height does not conform with this aspect of the policy. In addition, the existing monopole is not in conformance with the maximum height of 65 feet permissible in the CG Commercial General Zoning District in which the subject pole is situated.

On September 27, 2006, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (CUP) and Development Permit. The Director of Planning recommended approval of the Conditional Use Permit with special conditions and denial of the Development Exception Permit for reasons stated in the original staff report (see attached).

At the Planning Commission Hearing, Mathew Yergovich, a consultant representing Crown Castle spoke on behalf of the project specifically noting that the pole height of 80 feet was approved in 1994. He provided an overview of the permit history of the monopole and a summary of key points with respect to Crown Castle's interpretation of the zoning ordinance and policies as it pertains to the current proposal. He noted that his client is willing to flush-mount the antennas but recognized that this would require cooperation from the other providers, which may be difficult to achieve. Staff clarified that the Conditional Use Permit (CUP) had a 5-year expiration period, but was subsequently extended. However, the term of the extensions expired 5 years ago and the monopole has continued to operate without benefit of permit. The City Attorney provided clarification on the timeline of the renewals.

Torianna Henderson, of T-Mobile, expressed support of the project and noted that they had received a Permit Adjustment to co-locate antennas on the monopole earlier this year. Staff noted that the permit was issued in error since the monopole had an expired CUP. The error was discovered when the T-Mobile attempted to apply for a building permit. Staff was therefore obliged to revoke the Permit Adjustment.

Steve LoDue, a representative for the applicant spoke in behalf of the project and noted there was no one from the public present to speak against the proposal.

Commissioner Campos noted that he was very familiar with this area and felt that the barbed wire on the equipment enclosure fence was very unattractive. Commissioner Kamkar concurred and asked if landscaping could be provided to screen the equipment fence. He also asked whether the reduction in height would result in the loss of a co-location opportunity. The applicant responded that co-location opportunities would be diminished and that landscaping was not possible since the lease area is not large enough to accommodate landscaping. Further, he noted that the adjacent Post Office perimeter fence has barbed wire consistent with this proposal. He noted that the Zoning Ordinance does not preclude barbed wire except on residential properties. Staff clarified that although the Code doesn't address barbed wire on commercial properties, the Commercial Design Guidelines do discourage its use.

John Croan, of Crown Castle, apologized for their administrative mistake in not filing for a timely renewal of their CUP, but noted that he disagreed about the appropriateness of a time condition for the Permit. The City Attorney clarified that Crown Castle did not appeal this original permit to the City Council in an attempt to remove the time condition, but also signed an acceptance to the permit conditions. Staff noted that there have been significant difficulties in getting Crown Castle to be cooperative and bring the monopole into conformance with the Zoning Ordinance and the permit over the past 5 years.

Commissioner Platten acknowledged that although the City Council modifies policies and code requirements over time that the Planning Commission should abide by these in making decisions on such permits.

No one from the public spoke in favor or opposition. The Planning Commission approved the proposed Conditional Use Permit and denied the Development Exception as recommended by Staff by a unanimous vote of 5-0-2 (Zito and Pham absent). The Planning Commission's resolution is attached.

Subsequent to the hearing, on October 12, 2006, Crown Castle, appealed the Planning Commission's decision to conditionally approve the subject proposal.

## **ANALYSIS**

The appellant believes the City Council should consider approving the Conditional Use Permit without the special height restriction condition approved by the Planning Commission and should consider and approve the Development Exception permit to allow the subject monopole to exceed the height prescribed by the Zoning Ordinance. The key points raised in the appeal are that the Planning Commission erroneously determined that it could not make the appropriate findings for granting Crown Castle a Development Exception Permit and that reducing Crown Castle's existing 80 foot in height monopole to 65 feet will require that more monopoles be built to provide equivalent levels of wireless coverage.

### **Conformance of Existing Pole to City Ordinances and Policies**

The original staff report (attached) provides a full analysis of this project with respect to the conformance of the existing pole to all applicable City ordinances and policies, and it specifies the conditions required by Staff to bring the existing height of the monopole from 80 feet in height to 65 feet in height. In summary, the existing monopole is not a legal structure because Conditional Use

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Permit which approved the subject monopole with its existing height was time conditioned and expired on May 22, 2001. The monopole has been illegally operating since that date. The pole does not conform to current City policies and codes for several reasons, as detailed below. As part of legalizing the existing wireless facility and considering additional proposed antennas to be collocated on the pole, it is the position of the Director and the Planning Commission that special conditions should be imposed to bring the current situation into better compliance with Title 20 of the San Jose Municipal Code and the Land Use Policy for Wireless Communication Facilities, City Council Policy 6-20. The pole as existing does not conform to the current Zoning Ordinance nor the City Council Policy for Wireless Communication in regards to height and visual impacts.

**Height.** The maximum height allowed within the CG Commercial General Zoning District is 65 feet. The applicant has proposed to retain the height of the existing antenna, which is 80 feet tall. Given that all planning permits on this existing monopole have expired, the existing monopole has lost its legal nonconforming status in regards to its height. The City must analyze this permit with all regulations applicable today. Therefore, the applicant's proposal does not conform to the height requirements of the CG Commercial General Zoning District. Staff has recommended conditional approval of the project with inclusion of a condition that the height of the wireless antenna be brought to a maximum of 65 feet in height, which would therefore make it in conformance to the height standards of the Zoning Ordinance.

**Required Findings for Development Exceptions:** The applicant has filed a Development Exception in order to allow the subject monopole to be a height of 80 feet, which is in excess of the Zoning Ordinance height restrictions.

Per section 20.100.1320 (C) of the Zoning Ordinance, the Planning Commission can only grant a Development Exception if two specific findings can be made. These findings are listed below.

That granting the Development Exception will not impair:

1. the utility or value of adjacent property or general welfare of the neighborhood; and
2. the integrity and character of the zoning district in which the subject property is situated

As will be discussed further below, Staff believes that neither of the two findings can be made to grant a Development Exception Permit as requested by Crown Castle.

**Visual Impacts.** The intent of City Council Policy 6-20 is to minimize visual impacts of wireless facilities. The policy identifies building mounted antennas as the preferred means of locating wireless antennas in the City and calls for an alternative analysis when free standing monopoles are proposed to identify if opportunities exist that have not been explored.

The applicant has indicated in the submitted alternative sites analysis the existing height of 80 feet affords a range of coverage that could not be achieved through use of any single alternative site. Staff recognizes that multiple antenna locations may be necessary to achieve this range of coverage and that any one site may not accomplish this. Staff believes the retention of the existing 80 foot tall monopole will contribute to visual clutter than multiple, shorter building mounted antennas.

Reasons for Appeal

1. The appellant claims that the Commission erred in its finding that granting a Development Exception will impair the utility or value of the adjacent property or general welfare of the neighborhood, and will further impair the integrity and character of the zoning district. The applicants state that no material evidence was submitted by Staff or the public to support the conclusion that the findings for the Development Exception could not be made.

*Staff Response:* There is sufficient evidence to conclude that neither of the two mandatory findings for granting a Development Permit exception. The subject 80-foot tall monopole is highly visible from surrounding neighborhood which reduces the attractiveness of these areas and thus negatively affects general welfare of the commercial and residential districts that are adjacent to the subject monopole. In particular, the photos provided by the appellant reveal the high visibility the 80 foot monopole from even 1,000 feet away from its location. Although Crown Castle is proposing to remove the wagon wheel configuration of the wireless antennas, the height of 80 feet means that this monopole is taller than any structure for several miles. As a result, it is fair to conclude that granting the Development Exception Permit to allow the monopole to have a height of 80 feet will indeed impair utility or value of adjacent property or general welfare of the neighborhood.

In addition granting the Development Exception Permit to allow a height of 80 feet for the subject monopole will impair the integrity and character of the CG Commercial General Zoning District in which it is situated. The Commercial General Zoning District's purpose is to provide for a variety of retail needs that serve the regional and local market, and as such, exclusive of the Downtown Core, the CG Commercial General Zoning District allows for the tallest buildings in the City. Given that the maximum height limit in the CG Commercial General Zoning District is 65 feet, which is substantially under the proposed 80 foot antenna height, the proposed antenna will continue to be the tallest structure in the area, even in the unlikely event that all the buildings in the CG Commercial General Zoning District build out to the maximum 65 feet in height. The proposed 80-foot antenna does not fit in with the character of the CG Commercial Zoning District.

2. The appellant claims that T-Mobile has relied upon approval from the City to co-locate its antennas on the Crown Castle Monopole and it is unfair that T-Mobile will need to find another location to co-locate or seek out other locations for a monopole.

*Staff Response:* A Permit Adjustment was issued erroneously to T-Mobile to co-locate on the subject Crown Castle monopole. The Permit Adjustment was not valid as permits cannot be authorized for additional antennas on unpermitted structures or buildings. While the City regrets for this error and inconvenience to T-Mobile, it was the responsibility of Crown Castle to inform T-Mobile or any other carriers of its current unpermitted status.

3. The appellant claims that by requiring the reduction in height of their existing 80 foot pole to 65 feet in height, there will be fewer opportunities for co-location on their monopole, and the City in turn, will increase the visual impact of wireless facilities through out the City. Specifically, the applicant states that requiring their subject monopole to be reduced to 65 feet will require T-Mobile and Cingular will need to construct additional monopoles.

*Staff Response:* Staff acknowledges that additional wireless sites will be required if the existing monopole is reduced in height to 65 feet; however Staff believes that additional sites does not mean there will be an increase in visual clutter compared to the visual impact of an, 80 foot in height monopole. There are several opportunities for building mounted antennas exist within the area. Albeit, more sites will be required to achieve the coverage that one extremely tall site could provide, however building mounted wireless facilities are typically unnoticeable as they are camouflaged through paint and roof parapet walls. In addition, a height of 80 feet prohibits any type of plausible camouflaging that is available to monopoles of shorter heights. For instance, it is common to have monopoles that are designed to resemble trees or flagpoles. If additional monopoles must be built of shorter heights to accommodate the equivalent coverage assumed to be diminished through a reduced Crown Castle monopole, those monopoles could indeed utilize design and technology advances to minimize their visibility.

In the Appellant's appeal package, Sheet A-2& A-3 displays the elevation of the existing and proposed monopoles, both at 80 feet in height. The elevation reveals that only Verizon's proposed antennas would be severely impacted and T-Mobile's proposed antennas would be moderately affected if the height of the monopole is reduced to 65 feet in height. Contrary to the applicant's claim, Cingular's antenna, located at 57 feet in height would not be affected by the reduced height of the monopole. In addition, it appears that there may be opportunities to locate the antennas closer in vertical distance to each other and still potentially accommodate the location of the all of the proposed antennas under 65 feet in height with some coverage implications.

4. The appellant states that Policy 6-20 declares that San Jose "should have a high level of wireless service available to its residents and businesses in order to meet increasing demands for new and better services." The appellants believe that their application for continued and enhanced use of their monopole, retaining its height of 80 feet will bring additional, enhanced wireless services to the Tully Road area which has experienced significant growth and demand for wireless services.

*Staff Response:* Several opportunities for building mounted wireless facilities exist on rooftops of commercial centers along Tully Road. If additional monopoles need to be explored, any new monopole will be limited in height to 65 feet as that is the maximum height of any zoning district in the City. Wireless coverage and service need not be diminished if these wireless carriers pursue multiple locations.

### Conclusion

The existing monopole is unsightly, out-dated, and highly visible in the Tully Commercial Neighborhood. Neither of the two required findings can be made to grant a Development Exception Permit to allow the monopole to exceed the maximum height of 65 feet in the CG Commercial General Zoning District. The Planning Commission's condition of approval for the project, which requires reducing the height of the existing monopole to 65 feet, will bring the project into conformance with the City's Zoning Ordinance. The Director recommends that the City Council uphold the Planning Commission's decision to conditionally approve the subject Conditional Use permit and deny the Development Exception Permit.

### POLICY ALTERNATIVES

Not applicable.

### PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

### COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

### FISCAL/POLICY ALIGNMENT

The proposed project is aligned with applicable General Plan and development policies.

### COST SUMMARY/IMPLICATIONS

Not applicable.

### BUDGET REFERENCE

Not applicable.

### ENVIRONMENTAL REVIEW

Under the provisions of Section 15301(a), Existing Facilities, 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

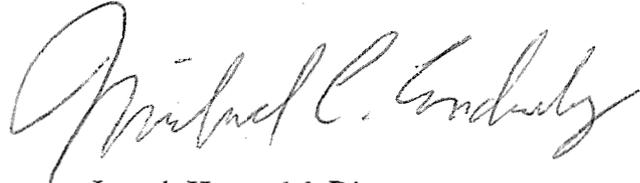
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the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.

A handwritten signature in black ink, appearing to read "Joseph Horwedel". The signature is fluid and cursive, written in a professional style.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

For questions, please contact Mike Enderby at (408) 535-7806.

Attachments:

- Planning Commission Staff Report & Attachments
- Appeal Application

cc: Applicant/Appellant

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San José, California 95113

Hearing Date/Agenda Number  
p.c. 9/27/06 , Item# 4g

File Number  
CP06-021 & V06-012

Application Type  
Conditional Use Permit & Development  
Exception

Council District  
7

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
670-02-061

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Reena Mathew

Location: South side of Tully Road, approximately 290 feet north of Lanai Road

Gross Acreage: 0.017

Net Acreage: 0.017

Net Density: N/A

Existing Zoning: CG Commercial  
General

Existing Use: Wireless communications monopole with antennas  
operating without valid permits from the City

Proposed Zoning: No change

Proposed Use: Legitimize monopole, add addition antennas

### GENERAL PLAN

Completed by: RVM

Land Use/Transportation Diagram Designation  
General Commercial

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: RVM

North: Commercial

CN Commercial Neighborhood & A(PD)Planned Development

East: Commercial

CG Commercial General

South: Post Office

CG Commercial General

West: Commercial

CG Commercial General

### ENVIRONMENTAL STATUS

Completed by: RVM

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

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: RVM

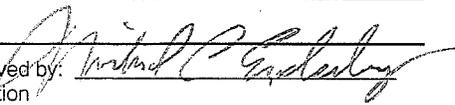
Annexation Title: Hillview No. 50

Date: 4/30/65

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval of CP06-021  
 Denial of V06-012  
 Uphold Director's Decision

Date: September 12, 2006

Approved by:   
 Action  
 Recommendation

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**APPLICANT/OWNER/DEVELOPER**

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Crown Castle USA  
6601 Owens Drive  
Pleasanton, CA 94588  
C/O Victoria Peters

Crown Castle USA  
6601 Owens Drive  
Pleasanton, CA 94588  
C/O Victoria Peters

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: RVM

Department of Public Works

No comments

Other Departments and Agencies

No comments

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**GENERAL CORRESPONDENCE**

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Letter of support from T-Mobile

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Crown Castle, filed a Conditional Use Permit on March 24, 2006 in order to allow the continued use of an existing wireless monopole 80 feet in height with antennas for two carriers (Nextel and Verizon) having a total of nine (9) antennas on the monopole, associated equipment cabinets, and an emergency standby generator. The application has been subsequently modified, as noted in the "Project Description" section below. The subject wireless monopole was originally approved to be 45 feet in height in 1990 (CP90-042). The San Jose General Plan was amended in 1994 to allow wireless monopoles to go up to a height of 100 feet in areas designated for nonresidential uses. The subject monopole benefited from this Amendment to the General Plan. Through a Conditional Use Permit (CP94-015), the subject monopole was able to increase in height to 80 feet. CP94-015 had an expiration date of July 13, 1996 and another Conditional Use Permit (CP96-033) was filed prior to its expiration to extend the permit life an additional two years. No timely application for a further extension was applied for and CP96-033 expired on May 22, 2001.

In recognizing that technologies are available today that allow for wireless coverage that no longer necessitate these extremely tall, unsightly poles, the text in the General Plan that allowed for such height extensions has been removed. As a result, there is not available recourse for supporting additional height for wireless antennas beyond the height restrictions and allowances listed in the Zoning Ordinance.

Given that the proposed antenna exceeds 65 feet in height, which is the maximum height allowed in the respective CG Commercial General Zoning District, the only means in which the Planning

Commission can approve the Conditional Use Permit with the height of 80 feet proposed by the applicant would be to also grant a Development Exception (V06-012), which was filed by the applicant on September 5, 2006.

The project site is a landlocked, 900 square foot parcel, within the context of a larger shopping center on the south side of Tully Road, approximately 290 feet north of Lanai. The project site is immediately adjacent to parking spaces that serve the shopping center. A U.S. Post Office is location just south of the site. Commercial uses exist on parcels to the north, east, and west.

### Project Description

The applicant recently modified their filed Conditional Use Permit proposal to now include five (5) wireless carriers (T-Mobile, Cingular, & Modeo in addition to the existing Nextel and Verizon). The proposal includes a total of 12 wireless antennas and one omni antenna to be located on the 80 foot monopole, a satellite dish and GPS antenna to be mounted on an adjacent ten-foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator.

The applicant proposes to remove the wagon wheel configuration that exists and to flush mount all the proposed antennas. The existing climbing pegs on the monopole are also proposed for removal, and the monopole and antennas are proposed to be painted light gray. The revised project description, plans, and photo simulations are attached.

## **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. This proposal is consistent with the limitation noted in the above description.

## **GENERAL PLAN CONFORMANCE**

The proposed use, with design modifications recommended by staff, is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the proposed monopole, equipment cabinets, and emergency back up generator do not impair the use of the existing shopping center.

The structure as proposed by the applicant, does not however, further the General Plan Urban Design Policy in that the use of an 80 foot tall freestanding monopole will be very visible. See the "Analysis" section below for additional discussion.

## **ANALYSIS**

The primary issues analyzed for the project include; 1) conformance to the Zoning Ordinance, 2) conformance to Council Policy 6-20, *Land Use Policy for Wireless Communications Antennas*, and 3) required findings for Development Exceptions.

### Conformance to the Zoning Ordinance

**Setbacks.** Section 20.200.700 of the Zoning Ordinance defines front lot lines as the boundary line of a lot that abuts a public street. The project site is land-locked within a shopping center, approximately 150 feet east of Tully Road. As a result, there is no lot line that corresponds to the project site that abuts a public street and meets the Zoning Code's definition of a front lot line. As such, the Commercial General Zoning District's front setback of 25 feet, which is to be measured from the front lot line, is not an applicable requirement to this parcel. Since there are no side or rear setbacks for interior lots in the CG Commercial General Zoning District, the proposal conforms to the Zoning Ordinance in regards to setbacks.

**Height.** The maximum height allowed within the CG Commercial General Zoning District is 65 feet. The applicant has proposed to retain the height of the existing antenna, which is 80 feet tall. Given that all planning permits on this existing monopole have expired, the existing monopole has lost its legal nonconforming status in regards to its height. The City must analyze this permit with all regulations applicable today. Therefore, the applicant's proposal does not conform to the height requirements of the CG Commercial General Zoning District. Staff has recommended conditional approval of the project based on the condition that the height of the wireless antenna be brought to a maximum of 65 feet in height, which would therefore make it in conformance to the height standards of the Zoning Ordinance.

The applicant has expressed an unwillingness to reduce the height of the existing antenna and has filed a Development Exception. For reasons elaborated further below, Staff does not support granting a Development Exception.

**Issues related to the Back-up Generator.** The Zoning Ordinance allows stand-by/backup generators by right in the CG Commercial General Zoning District that meet the City's noise and air standards. The proposed John Deere, 96 hp emergency standby generator has received an operating permit from the Bay Air Quality Management District. The noise level produced from the back up generator shall be 65 dBA, twenty feet away from the generator. This level of noise exceeds the Zoning Ordinance's maximum noise level of 60 dBA for commercially zoned properties, which is to be measured at all property lines not abutting residential uses. Any emergency standby generators that do not meet the City's noise or air standards may be approved through a Conditional Use Permit. Although the project site is approximately only 900 square feet in size, it is located within the context of a larger shopping center. The proposed generator would be inaudible at the nearest residential area, over 200 feet away, on the other side of Tully Road. Staff is recommending the approval of the emergency generator since it is a back up generator only to be used for emergency situations when power is not available off the grid. Staff has added conditions to this permit that limit the testing hours and the total length of time the back up generator can operate.

**Barbed Wire Fencing.** The existing wireless facility includes barbed wire fencing around the perimeter of some equipment cabinets. Per Section 20.30.640 of the Zoning Ordinance, all barbed wire fences are prohibited in the City of San Jose. Staff has included as a condition of this permit, the removal of all barbed wire fencing.

**Slimline Monopole.** The applicant has not provided information related to the diameter of the proposed monopole. The Zoning Ordinance defines Slimline Monopoles as having a diameter of 1.5 feet at the base and a diameter of 3 feet with the attached antennas. This permit will be

conditioned so that the proposed pole meets the dimension of a slimline monopole and require further review through a Permit Adjustment to ensure that the proposed monopole and associated antennas are as narrow as possible.

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

**Visual Impacts.** The intent of the policy is to minimize visual impacts of wireless facilities. The policy identifies building mounted antennas as the preferred means of locating wireless antennas in the City and calls for an alternative analysis when free standing monopoles are proposed to identify if opportunities exists that have not been explored.

An alternatives analysis was supplied to the Planning Department along with the filed application. Included in the alternatives analysis was a shopping Mall located on Tully Road, between King and Quimby Roads, a billboard sign at 1648 Tully Road, the Tafatolu Congregation Church of Samoa, a monopole located at the Chucky Cheese Factory at 2445 Fontaine Road, and the Sears store at the Eastridge Shopping Center. These sites were eliminated by the applicant as feasible sites due to height constraints of the existing structures, ground space or utilities availability, or distinct technological requirements specific to the proposed wireless carriers.

The applicant has indicated in the alternative sites analysis the existing height of 80 feet affords a range of coverage that could not be achieved through use of the alternative sites. Staff recognizes that multiple antenna locations may be necessary to achieve this range of coverage and that any one site may not accomplish this.

There are few buildings over 40 feet in height in the neighborhood in which the existing monopole is located. As a photo exhibit provided by the applicant demonstrates, the existing 80 foot tall monopole is extremely obtrusive in the skyline and is visible from over a mile away. While the applicant is proposing to flush mount all the proposed antennas and paint the monopole grey, the 80 foot in height pole will still be highly visible. While increasing the number of street trees or front setback trees on nearby parcels could help soften the appearance, a monopole of this height would still be difficult to completely screen from view.

The applicant has made a case that by adding multiple carriers to this monopole, the proposed antenna at 80 feet would help to reduce visual clutter in the neighborhood by concentrating several of the necessary antennas in this one area. Staff believes that this logic is faulty in that given there may be a necessity for more wireless facilities as a result of reducing the height of this existing monopole, those additional sites could very potentially be achieved through several building mounted antenna, or co-location opportunities of much shorter, existing monopoles, and therefore would not create as substantial a visual impact cumulatively than this one 80-foot tall monopole creates.

In addition, the plan set shows the existing Verizon and the new T-Mobile antennas as being the only antennas mounted on the pole above 65 feet in height and that the antennas are to be separated by between 2-5 feet of vertical distance from each other. It appears that there may be opportunities to locate the antennas closer in vertical distance to each other and still potentially accommodate the location of the all of the proposed antennas under 65 feet in height, albeit with range coverage implications.

Staff believes the retention of the existing 80 foot tall monopole will contribute to visual clutter and for the reasons listed above is recommending the conditional approval of this permit based on the condition that the height of the monopole be reduced to a height of 65 feet.

***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. The applicant's proposal is consistent with the Council policy in that the existing monopole as proposed would be 80 feet in height and would be located over 200 feet from the nearest residential uses on Dixie Drive, on the other side of Tully Road.

***Permit Expirations.*** The policy recommends that antenna installations requiring use permits include time limit conditions to provide for the future review of some antenna installations. The policy speaks to the usefulness of permit expirations so that the City can re-evaluate the permits at that time and so that if an applicant has failed to file for a renewal of that permit, the antenna developed under the permit no longer has legal status and should be removed by the property owner. In addition, the intent of this section of the policy is to make sure that expired permits be held accountable to the code requirements of the day and utilize technology to improve upon the existing situation, particularly aesthetics.

#### Required Findings for Development Exceptions

The applicant has filed a Development Exception in order to allow the subject monopole to be a height of 80 feet, which is in excess of the Zoning Ordinance height restrictions.

Per section 20.100.1320 (C) of the Zoning Ordinance, the Planning Commission can only grant a Development Exception if two specific findings can be made. These findings are listed below.

That granting the Development Exception will not impair:

1. the utility or value of adjacent property or general welfare of the neighborhood; and
2. the integrity and character of the zoning district in which the subject property is situate

The subject 80-foot tall monopole is highly visible from surrounding neighborhood including many residential properties, thus there are some visual impacts which reduce the attractiveness of these areas. Arguably, a lower monopole would have reduced visibility from off-site and would have less of a visual impact. A monopole of 65 feet or less, is not subject to the Development Exception process, hence strict adherence to the above findings would not be applicable.

Additionally, Staff believes that the second finding listed above cannot be made in order to allow the proposed height of 80 feet for the wireless monopole. The project site is located in the larger Tully and King Road neighborhood, where the Commercial General Zoning District is the most predominant zoning district. The Commercial General Zoning District's purpose is to provide for a variety of retail needs that serve the regional and local market, and as such, exclusive of the Downtown Core, the CG Commercial General Zoning District allows for the tallest buildings in the City. Given that the maximum height limit in the CG Commercial General Zoning District is 65 feet, which is substantially under the proposed 80 foot antenna height, the proposed antenna will continue to be the tallest structure in the area, even in the unlikely event that all the buildings in the CG Commercial General Zoning District build out to the maximum 65 feet in

height. The proposed 80-foot antenna does not fit in with the character of the CG Commercial Zoning District.

## **PUBLIC OUTREACH**

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

## **CONCLUSION**

Staff believes that there is significant value gained to support some sort of wireless facility on the project site if the height is reduced slightly and the existing antennas are flush-mounted on the pole to reduce the visual clutter. With the modified provisions of the General Plan that no longer support height extensions beyond the limitation in the Zoning Code, this antenna should utilize available technology on this site and additional sites to meet the coverage needs of their clients without the excessive height of 80 feet. For these reasons, Staff is recommending conditional approval of this conditional use permit based on the height of the monopole being limited to 65 feet.

In addition, staff believes that the required findings for the Development Exception cannot be made, therefore, staff is recommending denial of the Development Exception. Other options should be employed, if necessary, that will facilitate the needs of other wireless providers in a less visually obtrusive manner consistent with other proposals that have been approved by the City.

## **RECOMMENDATION**

### Conditional Use Permit

The Planning staff recommends that the Planning Commission approve a Conditional Use Permit for a reduced height monopole not to exceed 65 feet in height and include the following facts, 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 General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG Commercial General Zoning District.
3. The subject site is approximately 900 square feet in size.
4. The existing monopole is operating without the benefit of all necessary permits. The Conditional Use Permit for the existing monopole, file number CP96-033, expired on May 22, 2001.
5. The proposed project includes installation of 12 wireless antennas and one omni antenna to be

located on the 80 foot monopole, a satellite dish and GPS antenna to be mounted on an adjacent ten foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator.

6. This permit is conditioned to restrict the height of the proposed monopole to a maximum of 65 feet.
7. The subject Zoning District, CG Commercial General, has a height limit of 65 feet.
8. The closest residential use is located on Dixie Way, approximately 200 feet from the proposed monopole.
9. The project site is located in the CG Commercial General zoning district, which establishes front, rear and side setbacks of 25, 0 and 0 feet, respectively.
10. There is no "front lot line" on the subject site as defined by Section 20.200.700 of the Zoning Ordinance. As such, the Commercial General Zoning District's front setback of 25 feet, which is to be measured from the front lot line, is not an applicable requirement to this parcel.
11. This permit is conditioned to remove all barbed wire fencing on the subject property.
12. The City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities 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. The proposed monopole would be 80 feet in height and would be located over 200 feet from the nearest residential uses on Dixie Drive.
13. 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.
14. The proposed project includes an emergency back-up generator, which has obtained a BAAQMD permit to operate. Conditions of approval will limit the operational criteria for the generator.

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

1. The proposed project conforms to the site's General Plan Land Use Transportation Diagram designation of General Commercial.
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 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. **Major Permit Adjustment.** Prior to the issuance of a building permit and commencement of construction, the applicant shall file a Major Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement to address the following changes to the project plans:
  - a. Show the diameter of the monopole with the antennas flush-mounted or mounted as close to the pole as possible to the satisfaction of the Director of Planning, Building, and Code Enforcement.
  - b. Show the pole height at a maximum of 65 feet.
  - c. Show the site plan with all property lines and in the context of adjacent properties.
  - d. Demonstrate removal of the barbed wire fencing to the satisfaction of the Director of Planning, Building, and Code Enforcement. At minimum evidence shall include, removing it from the adjustment plan set and photo documentation that demonstrates that the barbed wired fence as been removed.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Structure Permit and/or Certificate of Occupancy from the Structure 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 Structure 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.

### 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.** Except, as noted under condition #2 under Conditions Precedent, construction and development shall conform to approved development plans entitled, "Crown Castle, Highway 101, aka Tully" dated September 7, 2006 on file with the Department of Planning, Structure and Code Enforcement.
2. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **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.
5. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Director of Planning, Building,

and Code Enforcement:

- a. **Construction Plans.** The permit file number, **CP06-021** 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
  - c. **Plan Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check 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. The subject permit shall be incorporated into all construction plans submitted to the Building Division as follows
    - 1) Index Sheet and all construction plans shall reference the approved permit, CP06-021, any subsequent Amendments, or Adjustments to the approved permit, and applicable sheets.
    - 2) The approved subject permit (with signature) shall be copied in its entirety onto plans set sheets.
    - 3) Construction plans shall also incorporate all elements of the approved permit included in the plan set.
- 6. Generator.** This permit includes the use of a John Deere, 96 hp emergency standby generator.
- 7. Generator Operation.** The Stand-by or Backup Electrical Power Generation Facility shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator's control.
- a. **Disturbance Coordinator.** Applicant shall post on the site the name and phone number for a disturbance coordinator who shall be available to answer questions and respond to complaints from the neighborhood.
  - b. **Equipment Testing.** Testing of emergency power equipment shall be limited to two (2) hours per month not exceed a maximum of four (4) consecutive months in any 12 month period. Testing of the generator is limited to 7A.M to 7P.M Monday through Friday.
  - c. **Record of Operation.** The generator shall include a non-resettable totalizing counter to record all hours of operation. The applicant shall maintain an accurate record of the operation of the standby/back-up generator to the satisfaction of the Director of Planning of the City of San José and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
    1. Hours of operation for testing and maintenance.

2. Dates and hours of operation for discretionary use in the event of a power failure.
3. Operational problems, complaints, and difficulties.
4. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
5. Dust and litter control efforts and results.
6. Description of materials received, identified by source and material.

The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours.

8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.
9. **Bay Area Air Quality Management District Permit.** Applicant must operate the backup/standby generator in compliance with a Bay Area Air Quality Management District (BAAQMD) permit.
10. **Nuisance.** The power generation facility shall be maintained in a manner that does not create a public or private nuisance. For purposes of this Permit, a nuisance shall mean any act or omission that obstructs or causes substantial inconvenience or damage to the public or any member thereof, in the course of, or by the manner of, the exercise of rights created by the granting of the permit.
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 structures 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. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.
13. **Lighting.** This permit allows no new on-site lighting.
14. **Outside Storage.** No outside storage is permitted.

15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.
17. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements and related equipment/enclosures associated with this permit within 30 days.
18. **Collocation.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. Other wireless providers shall also be allowed to add on to existing at grade equipment enclosures.

### CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) 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 structures 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.

### Development Exception

The Planning staff recommends that the Planning Commission deny the requested Development Exception and include the following facts and findings 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 General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

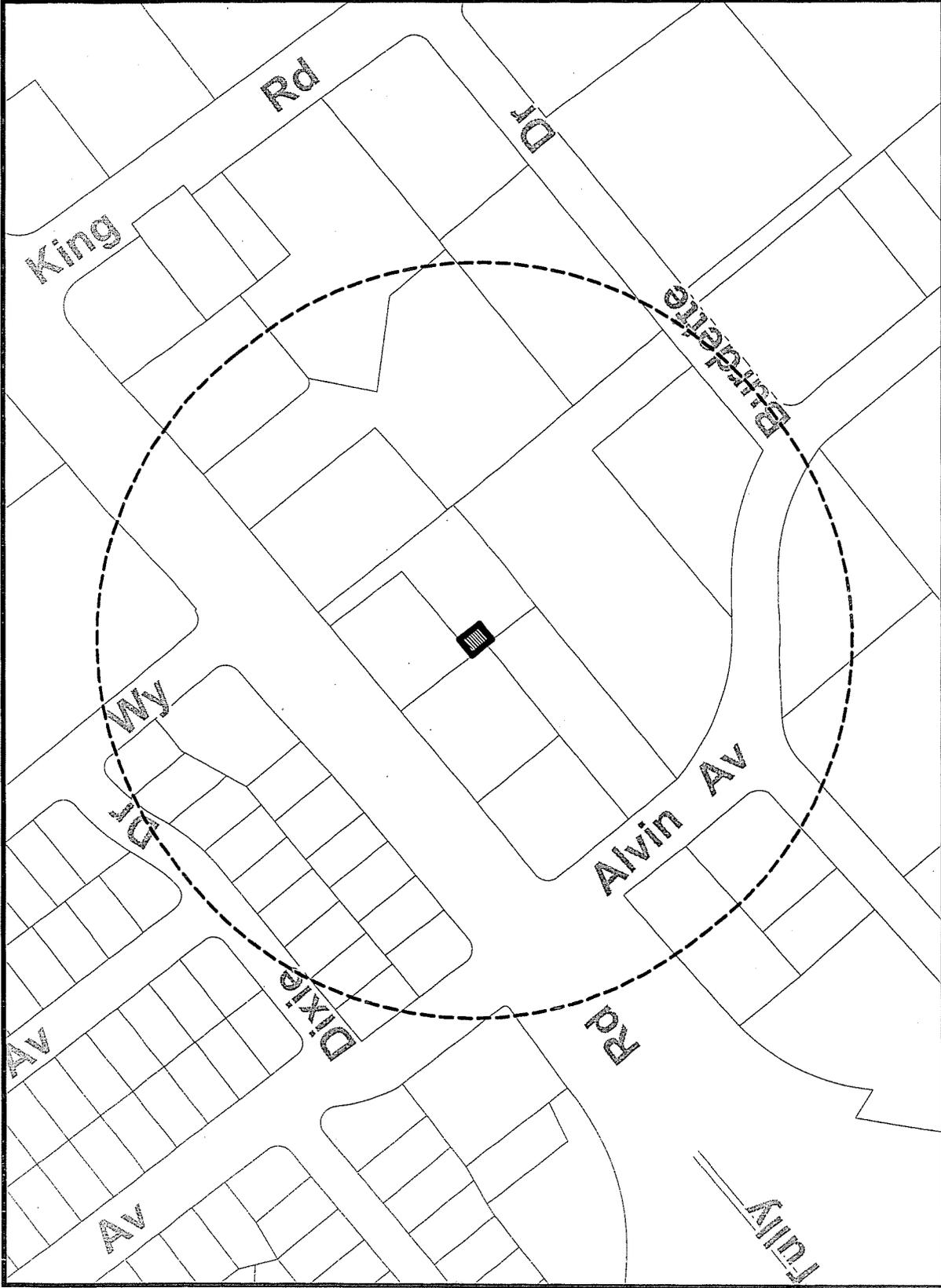
2. The project site is located in the CG Commercial General Zoning District.
3. The subject site is approximately 900 square feet in size.
4. The existing monopole is operating without the benefit of all necessary permits. The Conditional Use Permit for the existing monopole, file number CP96-033, expired on May 22, 2001.
5. The proposed project includes installation of 12 wireless antennas and one omni antenna to be located on the 80 foot monopole, a satellite dish and GPS antenna to be mounted on an adjacent ten foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator
6. The project site is located in the larger Tully and King Road neighborhood where the Commercial General Zoning District is the most predominant zoning district.
7. The subject Zoning District, CG Commercial General, has a height limit of 65 feet.
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.
9. The Commercial General Zoning District's purpose is to provide for a variety of retail needs that serve the regional and local market.
10. The maximum height limit in the CG Commercial General Zoning District is 65 feet, which substantially under the proposed 80 foot antenna height. The proposed antenna will continue to be the tallest structure in the area.
11. The subject antenna is highly visible from surrounding properties including residential properties.
12. By diminishing the aesthetics in the area, rather than promoting the local and regional draw of the retail centers in this Zoning District, the obtrusive height of the monopole at 80 feet will not further the purpose of the CG Commercial General Zoning District.

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

1. That granting the Development Exception **will impair** the utility or value of adjacent property or general welfare of the neighborhood; and
2. That granting the Development Exception **will impair** the integrity and character of the zoning district in which the subject property is situate.

Based on the above stated facts and findings, the Planning Commission hereby **denies** the subject Development Exception.

Attachments: Location Map  
Environmental Clearance  
Photo Exhibit  
Revised Project Description from Applicant  
Letter of Support from T-Mobile  
Partial Plan Set



File No: CP06-021

District: 7

Quad No: 84

Scale: 1"= 200'  
Noticing Radius: 500 feet



Map Created On:  
09/18/2006

**CITY OF SAN JOSÉ, CALIFORNIA**  
**DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT**  
**STATEMENT OF EXEMPTION**

**FILE NO.** CP06-021 & V06-012

**LOCATION OF PROPERTY** south side of Tully Road approximately 190 feet  
northeasterly of Lanai Avenue (1632 TULLY RD)

**PROJECT DESCRIPTION** Wireless-Conditional Use Permit to allow construction of  
an 80 foot in height existing monopole and associated  
ground equipment, including a power generator,  
operating without necessary permits on a 0.56 gross acre  
site & Development Exception to allow an 80 foot in  
height antenna system which exceeds the height limit of  
65 feet in the CG Commercial General Zoning District  
on a 0.56 gross acre site

**ASSESSOR'S PARCEL NUMBER** 670-02-004

**CERTIFICATION**

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.

**15301. Existing Facilities**

Class 1 consists 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 types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Wireless monopoles are considered minor alterations to land. The main use of the property as a commercial shopping center is not affected by the appurtenant monopole use.

The addition of height of the proposed monopole to 80 feet, which is beyond the CG Commercial General Zoning District's maximum height limit of 65 feet is not considered a significant impact under CEQA and is appurtenant to the proposed monopole.

The standby emergency back up generator has obtained a BAAQMD permit. However the noise produced by the generator would exceed (65dBA at 20 feet from the generator) the performance standards (standard being 60 dBA at all property lines) required for Commercial Zoning Districts in the City. The emergency back up generator is located over 200 feet away from the nearest sensitive receptors, which are residences on Dixie Street. The backup generator is to be used only for emergency purposes when power is not available off the electrical grid. The permit has been conditioned to limit the testing hours and the total length of time the back up generator can operate. With these conditions in the Conditional Use Permit, the back up generator will not create a negative impact to adjacent uses.

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

Date September 14, 2006

\_\_\_\_\_  
Deputy

**CROWN CASTLE'S USE PERMIT RENEWAL**  
**REVISED PROJECT DESCRIPTION FOR CP06-021**

**Multi-Carrier Telecommunications Facility**  
**1632 Tully Rd.**  
**San Jose, CA**

**EXISTING TELECOMMUNICATION INSTALLATION**

Currently, the existing multi-carrier telecommunications facility located at 1632 Tully Road, San Jose, CA ("the Site") was approved at height of eighty (80) feet. This telecommunication facility has two existing collocation facilities mounted on the existing tower.

The first collocation facility consists of Verizon Wireless who currently has three (3) antennas measuring approximately eight foot in length mounted to the tower with arm mounts. The centerline of these antennas are at approximately 76 feet. Verizon Wireless' associated ground equipment is located in an existing equipment shelter.

The second existing collocation facility is Nextel who currently has six (6) antennas measuring approximately four foot antennas attached to the tower with arm mounts. The centerline for these antennas at approximately 51 feet. Nextel's associated ground equipment is located in an existing equipment shelter.

In September of 2005, the City issued an over the counter permit to T-Mobile (AD 05-980) to collocate at the Tully Road site. T-Mobile's installation consisted of three (3) antennas measuring approximately four feet in length. The centerline for these antennas were approved at approximately 65 feet. This project was approved for the installation of four equipment cabinets measuring approximately 5'(h) x 4'(w) x 3'(d). These equipment cabinets were located within Crown Castle's existing compound. Unfortunately, this facility cannot be installed until service this conditional use permit is re-issued.

**PROPOSED TELCOMMUNICATION INSTALLATION**

For the Verizon Wireless installation the proposed revision would be to remove the arm mounts and flush mount the three (3) existing eight foot antennas. The centerline would remain at approximately 76 feet and the associated ground equipment would remain in the existing equipment shelter.

For the Nextel installation the proposed revision would be to remove the arm mounts and reduce the number of antennas from six (6) to three (3) antennas, these antennas will be

flush mounted to the tower. The centerline would remain at approximately 51 feet and the associated ground equipment would remain in the existing equipment shelter.

T-Mobile's installation would be consistent with their previously approved over the counter permit as discussed above. This installation would allow for three (3) antennas measuring approximately four feet in length. The centerline for these antennas was approved at approximately 65 feet. There would be four equipment cabinets measuring approximately 5'(h) x 4'(w) x 3'(d). These equipment cabinets were approved to be located within Crown Castle's existing compound.

Cingular's proposed installation would consist of three (3) antennas measuring approximately four feet in height. These antennas will be flush mounted to the existing tower. There would be five equipment cabinets measuring approximately 5'(h) x 4'(w) x 3'(d). These equipment cabinets will be enclosed by a CMU wall measuring approximately six (6) feet in height with a chain link and barb wire above the fence. This equipment enclosure would match the existing enclosure.

Modeo's proposed installation would consist of one (1) eight foot omni antenna mounted to the existing tower. The centerline of this antenna would be at approximately 40 feet. There would be one (1) equipment cabinet measuring approximately 7'(h) x 2'-10"(w) x 3'-11"(d). In addition there would be a 10 ft. pole mount located on the equipment pad next to the equipment cabinet. One (1) satellite dish and one small GPS antenna would be attached to the 10 foot pole mount.

In addition, the climbing pegs would be removed from the existing 80 foot monopole and existing pole would be painted light gray.

## **CONCLUSION**

In conclusion the approval of this project as proposed would result in Cingular Wireless' ability to relocate their existing antennas located at Highway 101 and Tully Road to the Crown Castle's existing tower located 1632 Tully Road San Jose.

# ••••• T-Mobile®

June 1, 2006

Joanne Gundermann  
Crown Castle  
6601 Owens Drive, Suite 250  
Pleasanton, CA 94588

Re: 1632 Tully Road Monopole

Dear Joanne:

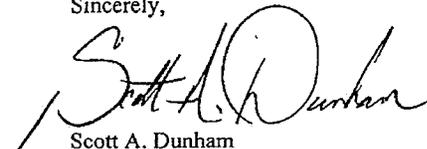
I am writing this letter on behalf of T-Mobile to express our interest in the above referenced telecommunication facility, and in particular, to express our interest that the height of the pole remains as-is at this location.

I have discussed this location with our internal Radio Frequency (RF) Engineers, and it is their opinion that if this location were to be lowered, then it would most likely be unusable for our purposes, and would require us to seek an alternate site. In addition, due to the overall lack of height of the existing buildings in the surrounding area, it is the opinion of T-Mobile RF Engineers that we would need at least two sites to replace this facility, most likely three.

If it is the jurisdiction's goal to minimize the impact of future telecommunication facilities in the area, then it would certainly make sense to keep this monopole at its present height, thus making it useful to other carriers. Should you my support for this facility in person when approaching the jurisdiction, or to be present at a hearing, I will gladly convey this information to whomever is necessary.

Thank you for your efforts in resolving this matter.

Sincerely,



Scott A. Dunham  
Development Manager, Engineering  
T-Mobile USA

T-Mobile USA, Inc.  
Office: (925) 521-5500  
Fax: (925) 521-5501  
1855 Gateway Blvd., Suite 900  
Concord, CA 94520



**CITY OF SAN JOSE**  
 Planning, Building and Code Enforcement  
 200 East Santa Clara Street  
 San José, CA 95113-1905  
 tel (408) 535-3555 fax (408) 292-6055  
 Website: www.sanjoseca.gov/planning

**NOTICE OF PERMIT APPEAL**

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER 106-012 & CP06-021	RECEIPT # 429220
PROJECT LOCATION	AMOUNT 2086 <sup>00</sup> <del>00</del>
	DATE 10-12-2006
	BY <i>DN</i>

TO BE COMPLETED BY PERSON FILING APPEAL
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT: 1632 Tully Road (Crown Castle Telecommunication Monopole)
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): The Applicant, Crown Castle USA, hereby appeals the Planning Commission's Resolution (No. 05-12811) denying a proposed Development Exception. Please see the attached Permit Appeal Brief in support.

PERSON FILING APPEAL	
NAME Matthew Yergovich, FMHC Corporation (for Crown Castle USA)	DAYTIME TELEPHONE (925) -798-6100
ADDRESS 367 Civic Drive, Suite 7	CITY Pleasant Hill STATE CA ZIP CODE 94523
SIGNATURE <i>Matthew A. Yergovich</i>	DATE 10/12/06
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) Crown Castle is the Applicant and Owner/Manager of the monopole	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)		
NAME		
ADDRESS CITY STATE ZIP CODE		
DAYTIME TELEPHONE ( )	FAX NUMBER ( )	E-MAIL ADDRESS myergovich@fmhc.com

PROPERTY OWNER	
NAME Dawn Hill	DATE 10/12/06
ADDRESS 266 N 28 <sup>th</sup> Street	CITY San Jose STATE CA ZIP CODE 95116

**PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.**