

Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: April 12, 2006

Approved

Ray Winer

Date

4/18/06

COUNCIL DISTRICT: 10

SNI AREA: None

SUBJECT: CP04-076. APPEAL OF A PLANNING COMMISSION ACTION TO APPROVE A CONDITIONAL USE PERMIT FOR WIRELESS COMMUNICATIONS ANTENNAS LOCATED ON THE EAST SIDE OF HIGHWAY 87 APPROXIMATELY 500 NORTH OF BRANHAM LANE

RECOMMENDATION

Adoption of a resolution to approve a Conditional Use Permit to allow a slim design monopole, 60-feet in height, with three wireless communication panel antennas within a cylinder ray dome, and placement of a new 220 square foot equipment shelter on a 0.1 gross acre site in the R-1-8 Single-Family Residence Zoning District, located at northwest corner of Narvaez Avenue and Branham Lane

OUTCOME

Uphold the Planning Commission's decision and adopt a resolution to approve the Conditional Use Permit that will allow the construction of a slim design monopole, 60-feet in height, with three wireless communication panel antennas within a cylinder ray dome and placement of a new 220 square foot equipment shelter adjacent to the northern end of a Valley Transportation Authority (VTA) parking lot.

BACKGROUND

On March 8, 2006, the Planning Commission voted 7-0-0 to approve the subject Conditional Use Permit for a new slim design monopole, 60-feet in height, with three wireless communication panel antennas within a cylinder ray dome and the placement of a new 220 square foot equipment shelter (see attached staff report and Planning Commission resolution). The subject site is located adjacent to the surface parking lot of the Valley Transportation Authority's (VTA) transit station at the northeast corner of Highway 87 and Branham Lane.

On March 15, 2006, William J. Garbett, President of the Meadows Association, filed a timely appeal of the Planning Commission action to approve the Conditional Use Permit.

As stated in his appeal letter, Mr. Garbett's reasons for appealing the project were (1) inadequate project description on the public hearing notice, (2) a discrepancy in the property's ownership, (3) files not being available for public review, (4) refusal of access to the file, (5) and that the City keeps different sets file.

ANALYSIS

On the public hearing notice, an overview description of the project stated that the project being considered was a, "Conditional Use Permit to allow a wireless communications antenna and associated equipment building on a 0.1 gross acre site in the R-1-8 Single-Family Residence Zoning District, located at northwest corner of Narvaez Avenue and Branham Lane." (See attached.) The notice also states the comments and questions are welcome and the project managers e-mail address as well as the departments phone number were listed on the notice. The owner of the property was shown as the VTA, of which Mr. Rajwinder Sehdev was the contact for. The file has always been available for public review and staff has met with the appellant and presented the file for his review.

None of the reasons in the appellant's letter relates to the projects conformance with City Council Policy 6-20 for Wireless Communication Antennas, the San Jose 2020 General Plan, or the Zoning Ordinance.

ALTERNATIVES

The City Council in there review of the project can take the following actions:

1. Find that the public review process for the Planning Commission Hearing for Conditional Use Permit, File No. CP04-076, was flawed; however, find that the public review process associated with the appeal of the proposed Conditional Use Permit provided adequate additional opportunity for the public to review the project and that the necessary findings for the Conditional Use Permit can be made and adopt a resolution approving the Conditional Use Permit.
2. Find that the public review process associated with the appeal of the proposed Conditional Use Permit, File No. CP04-076, did provide adequate additional opportunity for the public to review the project, but find that the necessary findings to support the proposed Conditional Use Permit cannot be made and adopt a resolution denying the Conditional Use Permit.

PUBLIC OUTREACH

Notices of the public hearings for both the Planning Commission and the City Council were distributed to the owners and tenants of all properties located within 500 feet of the subject site.

Honorable Mayor and City Council
April 12, 2006
Subject: CP04-076
Page 3

Both the Planning Commission and City Council Agendas are posted on the City of San José website, which includes a copy of the staff reports. Staff is available to discuss the project with interested members of the public at any time.

COORDINATION

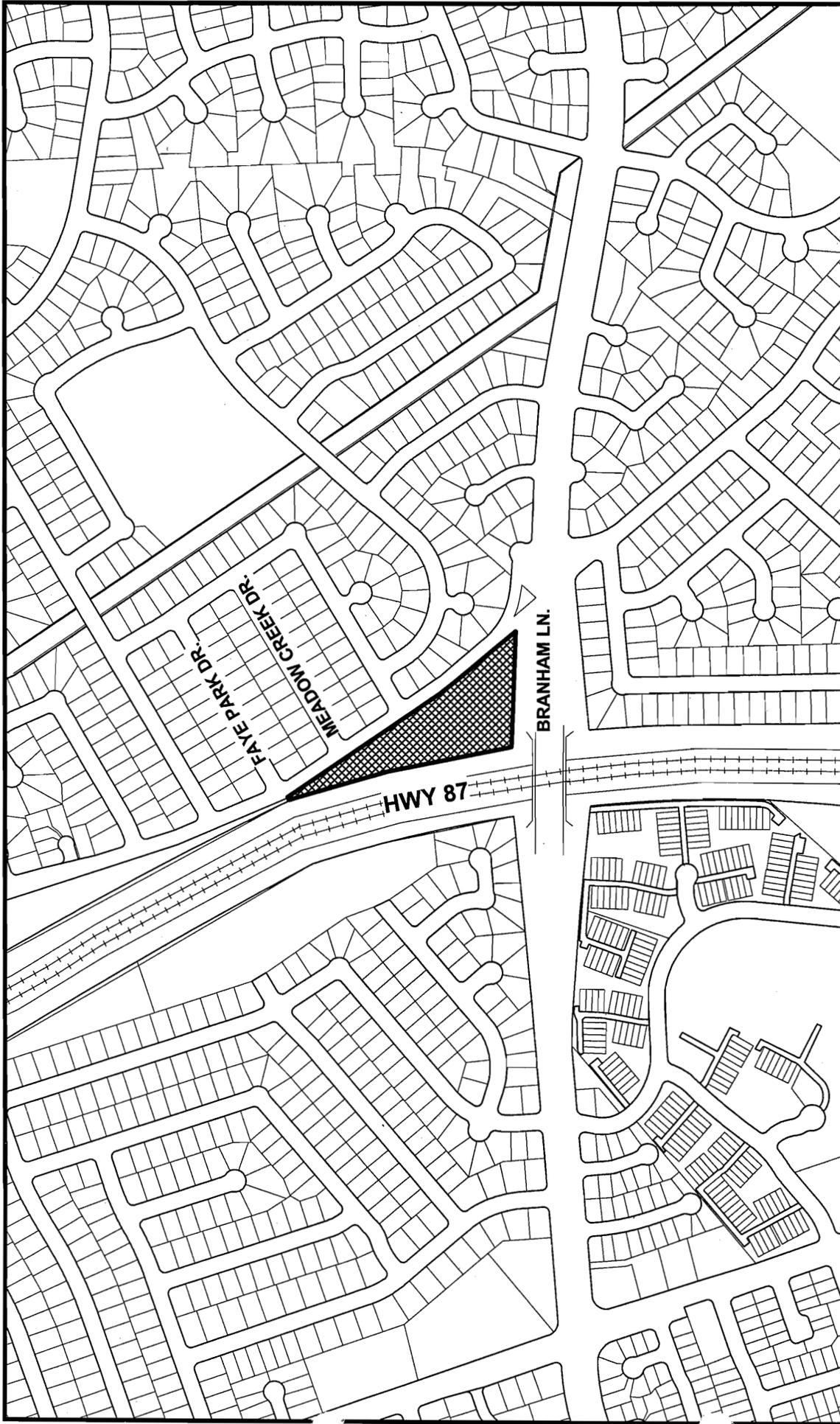
Planning staff has coordinated the preparation of this memorandum and resolution with the City Attorney's office.

CEQA

Exempt, CP04-076


JOSEPH HORWEDEL
Acting Director
Planning, Building and Code Enforcement

JH:JMH:lx
Attachments

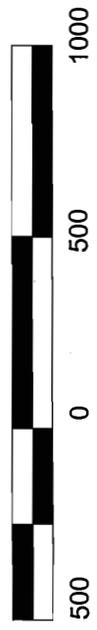


File No: CP04-076

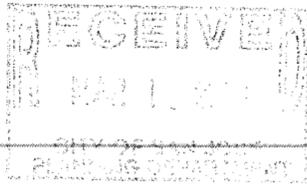
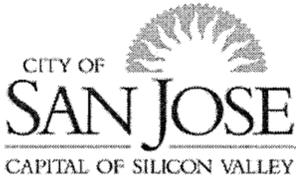
District: 10

Quad No: 114

Scale: 1" = 500'



Map Created On:
07/29/2004



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 <i>CPO4 - 0710</i>	RECEIPT # <i>403860</i>
PROJECT LOCATION <i>NW CORNER OF NAVAEZ AVE. + BRANTHAM LANE (APN 46202-002)</i>	AMOUNT <i>100.00</i>
	DATE <i>3/16/06</i>
	BY <i>J. BORREUM</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:
NW Narvaez Avenue and Branham Lane

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
See Attached

PERSON FILING APPEAL

NAME <i>Meadows Association</i>	DAYTIME TELEPHONE () --
ADDRESS <i>P. O. Box 36132 San Jose, CA 95158-6132</i>	STATE ZIP CODE
SIGNATURE <i>William J. Garbett, President</i>	DATE <i>3-16-6</i>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <i>Adjacent Homeowner's Association</i>	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME <i>William J. Garbett</i>		
ADDRESS <i>P. O. Box 36132 San Jose, Ca 95158-6132</i>		
DAYTIME TELEPHONE () --	FAX NUMBER () --	E-MAIL ADDRESS --

PROPERTY OWNER

NAME <i>William J. Garbett</i>	DATE <i>3-16-6</i>
ADDRESS <i>683 Faye Park Drive San Jose, CA 95136-1933</i>	

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

Permit Appeal Form 65/Applications Rev. 8/19/2005

Meadows Association
P. O. Box 36132
San Jose, CA 95158-6132

March 15, 2006

City of San Jose
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113-1905

Subject Appeal of Resolution No. 05-085; File No. CP04-076

The Public Notice was received February 15, 2006 in the neighborhood via U. S. Mail. The Planning Department was thus contacted 7 days prior to the noticed hearing of February 22, 2006. The file was not available. On February 22, 2006 photographs or simulations were allowed to be briefly viewed showing the location of the physical building. At this time we had already received the notice of the hearing of March 8, 2006. We tried to view the file again March 7, 2006 and were refused in the same manner of March 8, 2006 at the Planning Department. At the hearing, March 8, 2006, the file was not in the PUBLIC BINDER at the council chambers. After the hearing the applicant was contacted for a brief conversation and did not have the file in his possession. On March 9, 2006 no form for appeal was available, and on March 10, 2006 a new form was fabricated from scratch that increased fees (per August 15, 2005) and listed the new city hall address. A continuing request for the file was made March 13, 2006 in writing. It was to be delayed another 7 days to exclude any chance of timely appeal. The city attorney was contacted and on March 15, 2006, the file was made available for \$27.30. It is different from the portion of the file briefly seen February 22, 2006, and it is certain that the City of San Jose has different sets of files that it makes selectively available to continue to frustrate public participation, and by withholding of evidence after formal information requests.

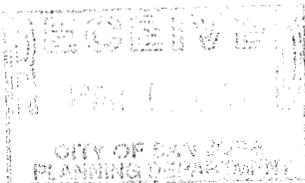
At the hearing, notice was given that construction had already started with power being 'scabbed' from streetlight 17N136, with wires left exposed as a health and safety hazard. The project site ownership was questioned because in public records the Joint Powers Board still is listed as the legal owner of record. No successor owner has been legally established. The owner was represented to be Vta Rajwinder Sehdev. Upon contacting Mr. Sehdev, he stated that his first name was Rajwinder and not Vta, and that he knew nothing about the project and certainly was not the owner. Mr. Sehdev is employed by the Valley Transportation Authority. Although the public notice stated one antenna, not 3 and a radome, and during the Planning Commission hearing and with testimony given by applicant and staff and commissioners, the final resolution for the file was different than the public record heard.

Because of known false statements made in the public notice regarding metes and bounds, ownership, and true project description and further with holding of public record requests, a hearing de novo is hereby requested after additional secret files are publicly disclosed.

Respectfully,



William J. Garbett,
President, Meadows Association





Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, ACTING DIRECTOR

PUBLIC HEARING NOTICE

The Planning Commission of the City of San José will consider a **Conditional Use Permit** at a public hearing in accordance with Title 20 of the San José Municipal Code on:

Wednesday, February 22, 2006

6:30 p.m.

City Council Chambers

City Hall

200 East Santa Clara Street

San Jose, CA 95113

The project being considered is:

CP04-076. Conditional Use Permit to allow a wireless communications antenna and associated equipment building on a 0.01 gross acre site in the R-1-8 Single-Family Residence Zoning District, located at northwest corner of Narvaez Avenue and Branham Lane (Vta Mr Rajwinder Sehdev, Owner; Nextel Of California Mr David Nay, Developer). Council District 10. SNI: None. CEQA: Exempt.

Reports, drawings, and documents for this project are on file and available for review, and a permit with recommendations will be available for your review during the week of the public hearing from **9:00 a.m. to 5:00 p.m.**, Monday through Friday at:

Department of Planning, Building and Code Enforcement

200 East Santa Clara Street

San José, CA 95113

(408) 535-7800

<http://www.sanjoseca.gov/planning/hearings/>

You are welcome to attend and to speak on this issue. To arrange an accommodation under the Americans with Disabilities Act to participate in this meeting, please call (408) 535-7800 (Voice)/TTY (408) 294-9337 at least 48 hours before the meeting. Muốn biết tin tức bằng tiếng Việt Nam về đơn xin giấy phép này, xin quý vị liên lạc Hai Pham tại số 277-8462. Para información en Español acerca de esta solicitud, comuníquese con Juan Borrelli al (408) 535-3555. The decision of the Planning Commission may be appealed in accordance with the requirements of the San José Municipal Code. Instructions for filing a permit appeal are available from the Department of Planning, Building and Code Enforcement.

** If you choose to challenge this land use decision in court, you may be limited to only those issues you, or someone else, raised and discussed at the public hearing or in written correspondence delivered to the City at or prior to the public hearing.*

Comments and questions are welcome and should be referred to the **Project Manager, Lesley Xavier**, at the e-mail address: lesley.xavier@sanjoseca.gov in the Department of Planning, Building and Code Enforcement. Please refer to the above file number for further information on this project.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Dated: January 13, 2006

Noticing Radius: 500 ft

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. 03/08/06 Item: **3c**

File Number
CP04-076

Application Type
Conditional Use Permit

Council District
10

Planning Area
Edenvale

Assessor's Parcel Number(s)
462-02-002

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: Northwest corner of Narvaez Avenue and Branham Lane

Gross Acreage: 0.1

Net Acreage: 0.1

Net Density: n/a

Existing Zoning: R-1-8 Single-Family Residence

Existing Use: VTA transit station parking lot

Proposed Zoning: No change

Proposed Use: Conditional Use Permit for a slim design monopole with 3 wireless communication panel antennas with a cylinder ray dome and placement of a new 220 square foot equipment shelter.

GENERAL PLAN

Completed by: LX

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

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Single-Family Detached Residential

R-1-8 Single-Family Residence

East: Single-Family Detached Residential

R-1-8 Single-Family Residence

South: VTA Parking Lot

A Agriculture

West: Highway 87

State Right-of-Way

ENVIRONMENTAL STATUS

Completed by: LX

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: LX

Annexation Title: Robertsville No_40

Date: January 8, 1975

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 2-27-06

Approved by: 
 Action
 Recommendation

CONTACT/ APPLICANT	OWNER	DEVELOPER
Cal Com Systems Attn: James Singleton 2001 Omega Road, # 100 San Ramon, CA 94583	Santa Clara County Valley Transportation Authority Attn: Rajwinder Sehdev 3331 N. 1 st Street, Building B San Jose, CA 95134	Nextel of California, Inc. Attn: Mike Stafford 1255 Treat Boulevard #800 Walnut Creek, CA 94596

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LX

Department of Public Works

- See attached.

Other Departments and Agencies

- San Jose Fire Department, see attached.

GENERAL CORRESPONDENCE

- Response letter regarding an alternatives analysis from the applicant's contact James Singleton.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Nextel Communications, is requesting a Conditional Use Permit (CUP) to allow the installation of a new slimline monopole, 60 feet in height, with three wireless communication panel antennas with a cylinder ray dome located adjacent to the surface parking lot of a Valley Transportation Authority (VTA) transit station. Single-family detached residential uses adjoin the site to the north and east. A VTA surface parking lot adjoins the site to the south, and Highway 87 forms the western border. The request also includes the placement of a 220 square foot equipment shelter that will be located adjacent to the monopole. This request is being made because at the time the application was submitted the Zoning Ordinance required a Conditional Use Permit for wireless communication antennas in the R-1-8 Single-Family Residence Zoning District.

GENERAL PLAN CONFORMANCE

The subject site is designated Medium Low Density Residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram. This category is used to designate lands for single-family residences and is typified by 6,000 square foot lots. The proposed project is for a new slimline monopole located adjacent to the parking lot of a VTA transit station. The Discretionary Alternate Use Policy for New Public/Quasi-Public Uses allows for sites without the Public/Quasi-Public land use designation to be in conformance with the General Plan on the basis of the applicable General Plan goals and policies and a demonstrated need for the facility. New public/quasi-public uses are discouraged on sites designated for residential densities exceeding 12 DU/AC, except in the Downtown Core Area, and on industrially designated lands without a Mixed Industrial Overlay.

The subject site's Medium Low Density Residential (8 DU/AC) land use designation is not one that the Discretionary Alternate Use Policy for New Public/Quasi-Public Uses discourages and the proposed project will provide a telecommunication service to the public. The site is a part of the network that will allow improved coverage for Nextel customers in the City of San Jose. Therefore, it conforms to the General Plan.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under Section 15303 of the provisions of the California Environmental Quality Act (CEQA). Under Section 15303, consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project is exempt in that it consists of one new slimline monopole, 60 feet in height, and a small equipment enclosure.

ANALYSIS

The project was analyzed to determine its conformance to the Zoning Ordinance and to City Council Policy 6-20, Land Use Policy for Wireless Communications Antennas, which provides criteria for siting such facilities.

Conformance to the Zoning Ordinance

The R-1-8 Single-Family Residence zoning district establishes front, rear and side setbacks of 25, 20 and 5, respectively. The subject parcel is of a triangular shape, having two front lot lines. A front lot line is the boundary line of a lot which abuts a public street and one side lot line. The location of the proposed slim design monopole and equipment cabinet conform to the setback requirements of the zoning district in that they are setback 10 feet from the side lot line and 60 feet from the nearest front lot line at Narvaez Avenue.

In addition, under the Zoning Ordinance section 20.30.130 Wireless Communications Antennae are allowed in Residential Districts only if all of the following criteria are met:

1. The proposed antenna is located upon a parcel with a non-residential use; and
2. The proposed antenna is located either:
 - a. More than thirty-five (35) feet away from the nearest residential use; or at least one (1) foot away from the nearest residential use for every foot of monopole height, whichever distance is greater; or
 - b. More than twenty (20) feet away from the nearest residential use if the proposed antenna is mounted on an existing utility structure within a utility corridor.

The proposed slimline monopole conforms to the aforementioned Zoning Ordinance section in that it will be located adjacent to an existing valley Transportation Authority (VTA) parking lot, a non-residential use and the closest residential use is located across Narvaez Avenue, approximately 139 feet from the new slim design monopole location.

The maximum height of the R-1-8 Single-Family Residence zoning district is 35 feet. Under Zoning Ordinance Section 20.80.1900, specifically related to wireless communication antennas, the maximum height of a wireless communication antenna may be increased over the required maximum height of

the zoning district in which it is located up to a maximum of 60 feet provided that the design of the antenna is a "slim" design monopole. In this case, a new slim design monopole with three panel antennas will be erected adjacent to the parking lot of a VTA transit station. The new monopole will be 60 feet in height. Therefore, the proposed project meets the above stated criteria and therefore is in compliance with the Zoning Code.

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

The Council policy requires freestanding monopoles to be located a minimum of 35 feet or one foot for every one foot of structure height, whichever is greater, horizontally from any property with a residential use or residential General Plan designation. The antennas are located approximately 139 feet from the nearest adjacent residential use and the closest residentially designated property as shown on the General Plan Land Use/Transportation Diagram. The project is consistent with the Council policy because the height of the monopole is less than the horizontal distance from the nearest residential use.

The Council Policy requires that new freestanding monopoles be "stealth" poles accommodating flush mounted antennas to minimize public visibility, and that ancillary equipment be adequately screened. The proposed antennas will be flush mounted to the pole and surrounded by a cylindrical ray dome (see attached photo simulations). The ancillary equipment will be located in a new enclosed equipment area that will be 12 feet high and pre-fabricated with an aggregate finish. In conformance with the Wireless Policy, landscaping, including trees, will be placed in front of the structure to offset the overall visual impact of the equipment enclosure and the monopole.

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.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit 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 Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Single-Family Residence Zoning District.
3. The subject site is 0.1-acres in size and is developed with the Santa Clara County Valley Transportation Authority transit station surface parking lot.
4. The proposed project includes installation of three wireless communication panel antennas located on

a new slimline monopole located in a surface parking lot.

5. The subject Zoning District, R-1-8 Single-Family Residence, establishes front, rear and side setbacks of 25, 20, and 5 feet, respectively.
6. The subject parcel is of a triangular shape, having two front lot lines and one side lot line.
7. The location of the proposed antennas and equipment cabinet are setback 10 feet from the side lot line and 60 feet from the closest front lot line, Narvaez Avenue, respectively.
8. The subject Zoning District, R-1-8 Single-Family Residence, has a height limit of 35-feet.
9. Section 20.80.1900 the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty-feet provided that the antenna is a Wireless Communications Antenna slimline monopole.
10. The proposed slimline monopole will have a height of sixty feet.
11. The City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities requires freestanding monopoles to be located a minimum of 35 feet or one foot for every one foot of structure height, which ever is greater, horizontally from any property with a residential use or residential General Plan designation.
12. The proposed monopole will be located on a surface parking lot in a residential neighborhood. The closest residential use is located across Narvaez Avenue, approximately 139 feet from the new monopole.
13. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
14. The proposed equipment enclosure and landscaping will effectively screen the equipment.
15. The project does not reduce the existing on-site parking.
16. The proposed project does not include an emergency back-up generator.

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

1. The proposed project conforms to the San Jose 2020 General Plan.
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, in that the applicant has provided wireless antennas that are in

conformance with the Zoning Ordinance (with the above noted exception) and are of a slimline design.

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. **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.

CONCURRENT CONDITIONS

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

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 construction 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. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Nextel Communications HWY 87 & Branham Lane Site No. CA-2339-B" dated January 17, 2006, on file with the Department of Planning, Building and Code Enforcement.
3. **Colors and Materials.** All building, structures and fencing colors and materials are to be those specified on the approved plan set.
4. **Equipment Enclosure/Shelter.** The equipment enclosure/ shelter shall be painted an earth tone color that blends with the adjacent sound wall.
5. **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.

6. **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.
7. **Generators.** This project does not permit the use temporary or permanent emergency back-up generators unless otherwise approved by the Director of Planning.
8. **Lighting.** This permit allows no new on-site lighting.
9. **Outside Storage.** No outside storage is permitted.
10. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
11. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
12. **Landscaping.** Landscaping shall be provided as shown on the approved plan set, with the exception of the proposed cypress trees, which shall be replaced with five, 24" box London Plane Trees.
13. **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, CP04-076 shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan 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.
14. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
15. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
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. **Co-location.** 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. **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.

Photosimulation of view northwest from the VTA parking lot.

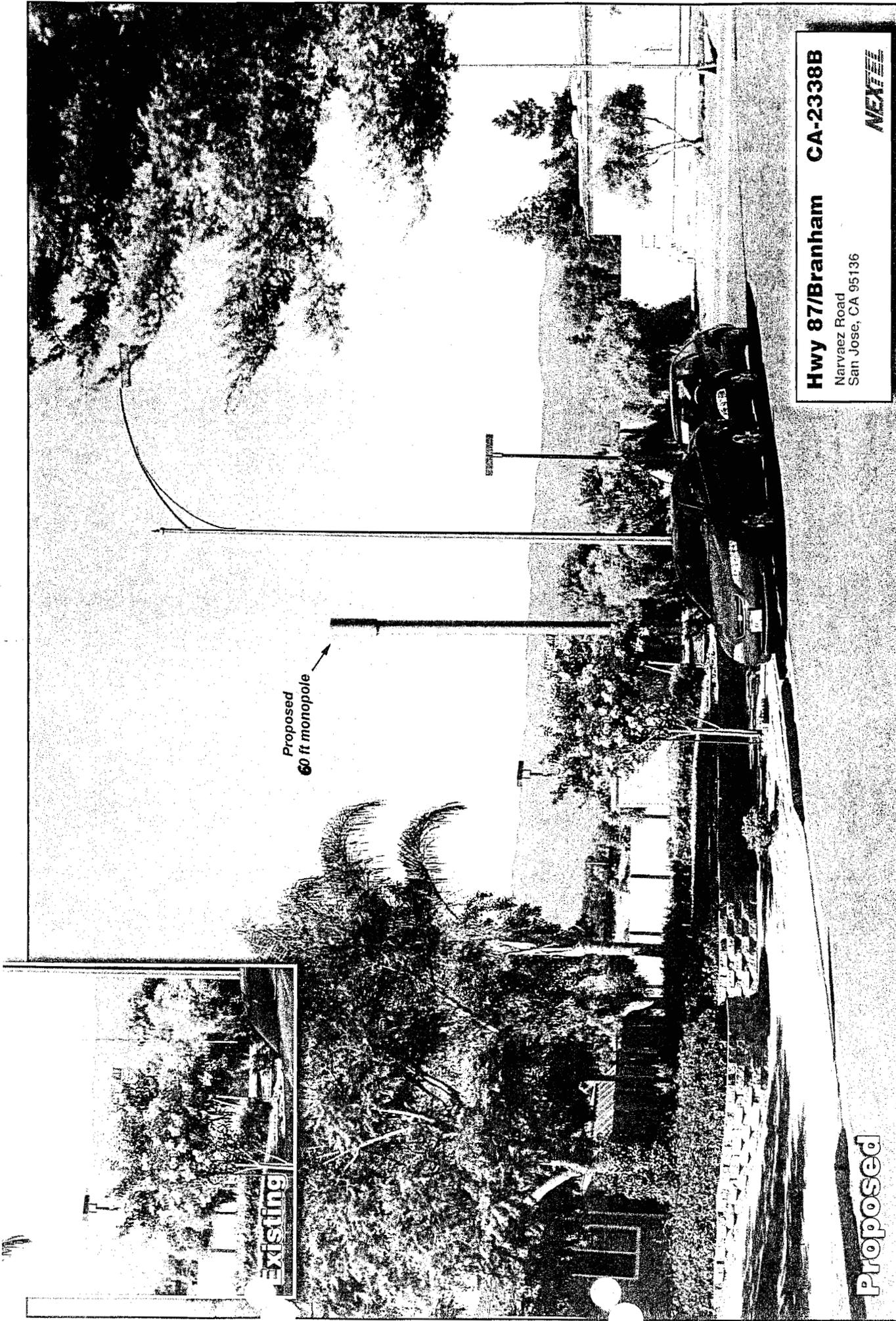


Hwy 87/Branham CA-2338B
 Narvaez Road
 San Jose, CA 95136

Proposed



Photosimulation of view southwest from Meadow Creek Drive, across Narvaez Ave.

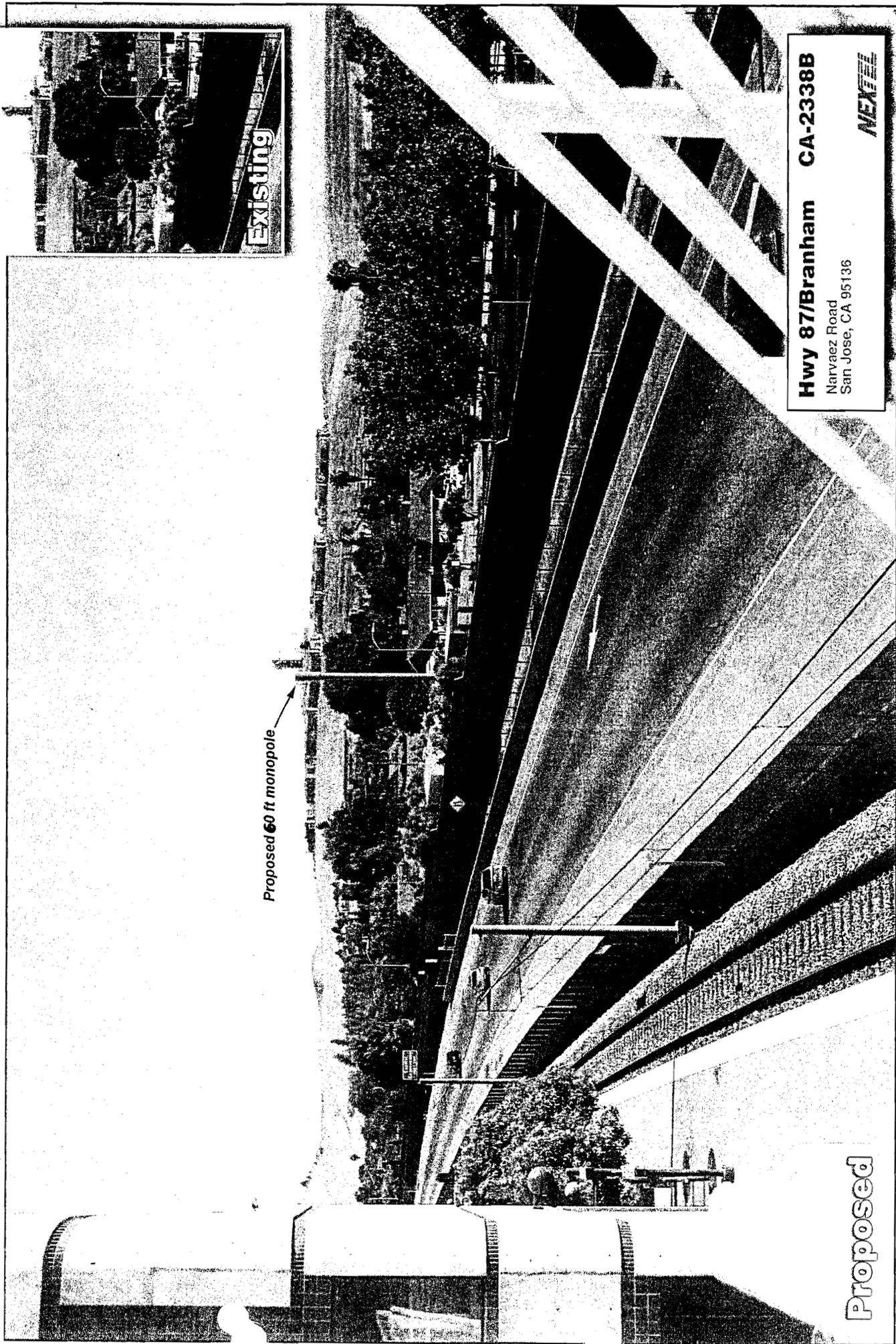


Hwy 87/Branham CA-2338B
 Narvaez Road
 San Jose, CA 95136

Proposed



Photosimulation of view north from the VTA platform on the Branham Lane overcrossing.



Proposed 60 ft monopole

Proposed

Hwy 87/Branham CA-2338B
 Narvaez Road
 San Jose, CA 95136



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

FILE NO. CP04-076

LOCATION OF PROPERTY Northwest corner of Narvaez Avenue and Branham Lane

PROJECT DESCRIPTION Conditional Use Permit to allow a wireless communications antenna and an ancillary equipment building on a 0.01 gross acre site.

ASSESSOR'S PARCEL NUMBER 462-02-002

CERTIFICATION

Under the provisions of Section 15303 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.

- **15303. New Construction or Conversion of Small Structures:** consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.

Joseph Horwedel, Acting Director
Director, Planning, Building and Code Enforcement



Date January 18, 2006

Deputy

Project Manager: Lesley Xavier

(Rev. 10/23/02)



Memorandum

TO: Lesley Xavier
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

**SUBJECT: FINAL RESPONSE TO
DEVELOPMENT APPLICATION**

DATE: 08/23/04

PLANNING NO.: CP04-076
DESCRIPTION: Conditional Use Permit to allow a wireless communications mono pole and associated ancillary equipment building on a 0.01 gross acre site.
LOCATION: northwest corner of Narvaez Avenue and Branham Lane
P.W. NUMBER: 3-16764

Public Works received the subject project on 08/03/04. We have no comments or requirements.

Please contact the Project Engineer, Mirabel Aguilar, at (408) 277-5161 if you have any questions.

Ebrahim Sohrabi
Senior Civil Engineer
Transportation and Development Services Division

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RECEIVED
AUG 19 2004
CITY OF SAN JOSE
FIRE DEPARTMENT

18

Memorandum

TO: Lesley Xavier
Planning and Building

FROM: Nadia Naum-Stoian,
Fire Prevention Engineer
San Jose Fire Department

SUBJECT: INITIAL RESPONSE TO
DEVELOPMENT APPLICATION

DATE: 08/12/04

Approved

Date

PLANNING NO.: CP04-076
DESCRIPTION: Wireless - Conditional Use Permit to allow a wireless communications mono pole and associated ancillary equipment building on a 0.01 gross acre site.
LOCATION: northwest corner of Narvaez Avenue and Branham Lane
ADDRESS: northwest corner of Narvaez Avenue and Branham Lane
FOLDER #: 04 121259 AO

The San Jose Fire Department has reviewed the related plans as submitted and has the following comments and requirements.

- These comments are based on the following information:
- Minimum site fire flow requirement per San Jose City ordinance: 2,000 G.P.M.
- Average hydrant(s) spacing: 500 feet - Subject to Fire Department approval
- Comply with comments from the Building/Fire Departments at the plan review stage.
- A permit must be obtained from the Building and Fire Departments. Submit three (3) sets of construction plans to the Building Department, one (1) of those sets of plans will be routed to the San Jose Fire Department for review and comments.

THE FOLLOWING CORRECTIONS SHALL APPLY TO THE SUBJECT APPLICATION:

1. The needed fire flow noted above shall be provided from a minimum of 2 hydrants and shall be spaced apart on average 500 feet from the proposed project. Fire flow may be reduced upon construction of a four-hour wall, without openings, as per the adopted fire code. Construction of the area separation wall(s) is subject to review by the Fire Department. NOTE Verify existing w. the water company.

- Each locked gate on site shall have an approved device with unlocking capability. Contact the Fire Department's Bureau of Fire Prevention at (408) 277-4656 for approved devices. Provide a manual means of opening gate if there is a power failure.

VERIFY EXISTING

- Public (off-site) and private (on-site) fire hydrants shall be provided. All hydrants must meet the specifications for the City of San Jose's Fire Department. For hydrant locations please contact the San Jose Fire Department's Fire Protection Engineering Division at (408) 277-5357.
- All existing and new fire hydrants shall be at least 10 feet from all driveways.
- All structures shall be located wholly within 450 feet (road distance) of an accessible standard street hydrant.
- All dead-end streets or roads shall have a hydrant within 175 feet from the most remote end of the rear lot as per the Uniform Fire Code.
- Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials.
- The Hazardous Materials process can be lengthy and complex. The applicant should contact the Hazardous Materials Division at (408) 277-4659 as soon as possible to initiate the process.

Use or storage of hazardous materials, liquids, gases and/or chemicals will be subject to meeting the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, the applicable sections of the San Jose Fire Code, and the National Fire Codes. Submit names and amount of any hazardous materials, if they are to be stored or used, to the Bureau of Fire Prevention for review and approval.

- A permit and applicable fees must be obtained prior to the use, storage, or handling of hazardous materials, liquids, gases, and/or chemicals.
- Obtain permit and pay applicable fees prior to the installation, repair, alteration, abandonment, or place temporarily out-of-service tanks, piping or equipment in connection with the storage, use or handling flammable/combustible liquids, toxic gases, or other chemicals, and meet the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, and applicable sections of the San Jose Fire Code and National Fire Codes.
- Contact the Hazardous Materials Division at (408) 277-4659 regarding storage requirements for construction site use and storage of regulated materials.

Planning and Building

8/12/04

Subject: CP04-076

Page 3 of 3

- We reserve the right to make comments at a future date.

If you have any questions regarding these items, please contact me at (408) 277-8754.



BY: Nadia Naum-Stoian, FPE
Bureau of Fire Prevention
San Jose Fire Department

Fire Site Memo to Planning Application