

RESOLUTION NO. 2021-21

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2021-17 AS CONDITIONED TO RENEW THE ENTITLEMENTS OF AN EXISTING 60-FOOT TALL MAJOR WIRELESS COMMUNICATION FACILITY LOCATED AT 601 SOUTH SANTA FE STREET

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Nicole Comach with Virtual Site Walk, LLC, on behalf of SBA 2012 TC Assets, LLC (Applicant) and The Maxine E. Findley Trust (Property Owner), is requesting approval of Conditional Use Permit (CUP) No. 2021-17 to renew the entitlements of an existing 60-foot high major wireless (“mono-pine”) communications facility located at 601 South Santa Fe Street.
- B. On June 27, 2011, the Planning Commission approved CUP No. 2011-14, allowing the construction of the subject major wireless communication facility.
- C. Pursuant to Santa Ana Municipal Code (“SAMC”) Section 41-198.3(b), a Conditional Use Permit is required for major wireless communication facilities established in the City of Santa Ana.
- D. In addition, SAMC Section 41-198.13 states that major wireless communications facilities shall be approved for a period not to exceed ten (10) years.
- E. As the current facility has reached its ten-year term, the applicant is required to apply for a new CUP in order to maintain the entitlements for the current facility.
- F. On November 8, 2021, the Planning Commission held a duly noticed public hearing on CUP No. 2021-17.
- G. The Planning Commission determines that the following findings, which must be established in order to grant this CUP pursuant to SAMC Section 41-638, have been established for CUP No. 2021-17 to renew the entitlements of an existing 60-foot tall major wireless communication facility:

1. That the proposed use will provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

The major wireless communication facility will continue to provide a service to Santa Ana residents, businesses and motorists who subscribe to cellular services by providing cellular service and data coverage for its users within the vicinity. The issuance of a new CUP will allow the provider to continue to provide a service to the surrounding community.

2. That the proposed use under the circumstances of the particular case will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The issuance of a new CUP to maintain a wireless facility at this location will not be detrimental to persons residing or working in the area as the facility will remain in compliance with Federal law that governs health related issues for wireless facilities, including safety regulations from the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA).

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The facility is compatible with the surrounding area and will not adversely affect the economic viability in the area. The stealthing provided by the facility's location at the rear of the site will maintain and increase the economic stability of the area by providing an additional service for business owners, workers, and residents in the area.

4. That the proposed use shall comply with the regulations and conditions specified in Chapter 41 for such use.

The use will continue to comply with all provisions pertaining to the continuation of existing wireless facilities identified in Chapter 41 (Zoning Code) of the SAMC. The facility will continue to be stealthed by its design and surrounding landscape and will comply with other standards outlined in the SAMC.

5. That the proposed use will not adversely affect the General Plan or any specific plan of the City.

The major wireless communication facility will not adversely affect the General Plan, as cellular facilities that are designed to be compatible with the surrounding environment are consistent with the goals and objectives of the Land Use Element. Goal 1 promotes a balance of land uses to address

community needs, which includes means of communication that will be served by the facility. In addition, Goals 3 and 5 require preservation of neighborhood character and integrity as well as mitigation of developments' impacts. The monopine's location minimizes visual impact on the area and assists with the stealthing of the equipment. Furthermore, Policy 2.2 encourages land uses that accommodate the City's needs for services. Maintaining cellular coverage in the area maintains the services that are already available for business owners, workers, visitors and residents in the immediate vicinity.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to 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 existing or former use. Based on this analysis, a Notice of Exemption for Environmental Review No. 2021-98 will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting a public hearing hereby approves Conditional Use Permit No. 2021-17, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 601 South Santa Fe Street. CUP No. 2021-17 expires 10 years from the date of the Planning Commission approval. This decision is based upon the evidence submitted at the above

hearing, which includes, but is not limited to: The Request for Planning Commission Action dated November 8, 2021, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this referenced.

ADOPTED this 8th day of November, 2021

AYES: Commissioners: CALDERON, MCLOUGHLIN, MORRISSEY, PHAM,
RAMOS, WOO
(6)
NOES: Commissioners:
ABSENT: Commissioners: ALDERETE (1)
ABSTENTIONS: Commissioners:



Thomas Morrissey
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: 
John M. Funk
Senior Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, CHRISTINA LEONARD, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2021-21 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on November 8, 2021.

Date: 1/10/22


Recording Secretary

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2021-17

Conditional Use Permit (CUP) No. 2021-17 is approved subject to compliance, to the reasonable satisfaction of the Executive Director of Planning and Building Agency, with all applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code and all other applicable regulations.

The Applicant must comply in full with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. All site improvements must conform to Development Project Review (DP Nos. 2004-53 and 2021-14) and in accordance with the plans attached to the staff report documenting the approved scope of the project.
2. The Applicant shall provide a 24-hour phone number to which interference problems may be reported.
3. The Applicant will provide a "single point of contact" in its Engineering and Maintenance Departments to insure continuity on all interference issues. The name, telephone number, fax number and e-mail address of that person shall be provided to the City's designated representative after approval of the new CUP.
4. The Applicant shall ensure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of permit Applicant to comply.
5. The Applicant of the facility shall submit and maintain current contact information at all times. The Applicant shall notify the City of any changes to the information submitted within 30 days of any change, including change of the name or legal status of the owner or operator. This information shall include the following:
 - (a) Identity, including name, address, and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and if different from the owner, the identity and legal status of the person or entity responsible for operating the facility.
 - (b) Name address and telephone number of a local contact person for emergencies.
 - (c) Identification signs, including emergency phone numbers of the utility

provider, shall be posted at the communication facility site.

All wireless telecommunication facilities shall comply at all times with all FCC regulations rules and standards.

6. CUP No. 2021-17 expires 10 years from the date of Planning Commission approval.
7. The Applicant of the wireless facility shall remove the facility and all associated equipment and restore the property to its original condition within ninety (90) days after the abandonment, expiration or termination of the conditional use permit.
8. Within 90 days of adoption of this resolution, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions, and restrictions relating to the following:
 - a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
 - b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
 - c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
 - d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about and immediately adjacent to the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and

fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);

- e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
- f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of this resolution.