



## Legislation Details (With Text)

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**Title:** Consideration of Conditional Use Permit Application P18-02742 at 75 E Pinedale Avenue C/T, located on the southern side of East Pinedale Avenue, between North Blackstone Avenue and North Abby Street (Council District 6) - Development and Resource Management Department.

1. ADOPT Environmental Assessment No. P18-02742 dated January 14, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,

2. DENY the applicant's appeal and UPHOLD the Director's Approval of Conditional Use Permit Application No. P18-02742 to authorize the construction of an 80-foot high wireless telecommunication facility, subject to compliance with the Conditions of Approval dated January 14, 2019.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use, 4. Exhibit D - Zoning Map, 5. Exhibit E - Noticing Map, 6. Exhibit F - Operational Statement, 7. Exhibit G - Application Exhibits, 8. Exhibit H - Conditions of Approval dated January 14, 2019, 9. Exhibit I - Fresno Municipal Code Findings, 10. Exhibit J - Environmental Assessment, 11. Exhibit K - Request for Waiver of Public Improvements and Appeal Letter, 12. Exhibit L - Project Information Tables

Date	Ver.	Action By	Action	Result
3/20/2019	1	Planning Commission	approved as amended	Pass

## REPORT TO THE PLANNING COMMISSION

**MARCH 20, 2019**

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**THROUGH:** BONIQUE EMERSON, Planning Manager  
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Development Services Division

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## SUBJECT

Consideration of Conditional Use Permit Application P18-02742 at 75 E Pinedale Avenue C/T, located on the southern side of East Pinedale Avenue, between North Blackstone Avenue and North Abby Street (Council District 6) - Development and Resource Management Department.

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## EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-02742 was filed by Casey Ogata-Tran of SAC Wireless (on behalf of Verizon Wireless) and pertains to  $\pm 0.14$  acres of property located at 75 E Pinedale Avenue C/T. The applicant requests authorization to construct an 80-foot high wireless telecommunications facility (WTF) with space for future co-location, as well as the installation of ancillary outdoor cabinet equipment within a secured 25'x25' lease area on the vacant parcel.

On January 14, 2019 Conditional Use Permit Application No. P18-02742 was conditionally approved, subject to conditions that public frontage improvements and aesthetic upgrades are made prior to construction of the WTF, pursuant to the requirements of the Fresno Municipal Code (FMC). The decision was appealed by the applicant on January 29, 2019. Staff recommends upholding the approval based on substantial evidence detailed in this staff report that should these requirements be waived or removed, Findings A, B, & C contained in Section 15-5306 of the Fresno Municipal Code cannot be made and, therefore, the Conditional Use Permit cannot be approved.

## BACKGROUND

Conditional Use Permit Application No. P18-02742 was filed by Casey Ogata-Tran of SAC Wireless pertaining to  $\pm 0.14$  acres of property located at 75 E Pinedale Avenue C/T. The applicant requests authorization to construct an 80-foot high WTF with space for future collocation, as well as the installation of ancillary outdoor cabinet equipment within a secured lease area on the subject property.

The subject property is zoned CMX (*Corridor/Center Mixed Use*). Pursuant to Table 15-1102 of the FMC, Antenna and Transmission Towers are permitted in accordance with Section 15-2759, whereby telecommunications and wireless facilities shall comply with the City's policy pertaining to said uses (i.e., Wireless Telecommunication Policy and Procedures Issue No. 33 dated June 20, 2006). These regulations are intended to provide for the appropriate development of wireless telecommunication facilities within the city to meet the needs of residents, business-owners, and visitors while protecting public health and safety and preventing visual blight and degradation of the community's aesthetic character.

The FMC provides the CMX district is intended to allow for mixed use development along key circulation corridors in the city where height and density can be easily accommodated. Ground-floor retail and upper-floor residential or offices are the primary uses, with residential uses, personal and business services, and public and institutional space as supportive uses. Development will facilitate the transformation of existing transportation corridors into vibrant, highly walkable areas with broad, pedestrian-friendly sidewalks, trees, landscaping, and local-serving uses with new buildings that step down in relationship to the scale and character of adjacent neighborhoods.

The subject property is one of several remaining vacant and unimproved parcels, which have been entirely surrounded by urban development. Accordingly, public improvements have not been completed along the frontage of the subject property (or the adjacent unimproved parcels located to the west towards N Blackstone Ave.) resulting in a lack of continuity for completion of an accessible and safe street network, as necessary to meet the quality-of-life goals of the Fresno General Plan and to support incremental transformation with development in accordance with the intent of the CMX zone district.

Therefore, the City of Fresno Public Works Department is conditioning the project with requirements which include but are not limited to (1) The dedication of two feet of property along the East Pinedale Avenue frontage for pedestrian purposes in order to accommodate the minimum 12-foot wide sidewalk standards of the Mixed Use zone districts (ref. §15-1104-G-2 of the FMC); (2) The construction of necessary off-site public improvements (i.e., curb, gutter, sidewalk, streetlights, etc.) within the adjacent street rights-of-way; and, (3) The construction of alley paving per Public Works Standards.

Finally, the subject property is a Housing Element site of 0.14 acres with a minimum density of 16 dwelling units per acre. The 625 S.F. (0.014 acres) lease area is small enough that it does not reduce the residential capacity of the site, and therefore findings for the Housing Element are not required to be made. The remaining 0.126 acres can still accommodate up to 25 units (the maximum is 30 units). Therefore, in the interest of the City's urban form, appropriate landscaping and screening in accordance with the FMC requirements and WTF Policy would prevent aesthetic degradation should multifamily housing be proposed on this site in the future.

## **Council District 6 Project Review Committee**

On November 5, 2018 the Council District 6 Project Review Committee recommended to approve the project with a vote of 3 to 0. The Committee made no special or specific recommendations with respect to conditioning the proposed project.

## **Fresno General Plan**

The Fresno General Plan designates the subject site for Corridor/Center Mixed Use planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. P18-02742, as conditioned, meets all applicable policies and objectives of the Fresno General Plan.

## **Notice of Intent to Take Action**

The Development and Resource Management Department mailed notices of the Intent to Take Action on this project to surrounding property owners within 1,000 feet of the subject properties (Exhibit E), pursuant to Sections 15-5007 and 15-5305 of the FMC on December 21, 2018. No protests were received. Three phone calls were received asking to clarify the address, including one person who requested to be notified when action was taken. This person was sent a Notice of Action on January 15, 2019.

## **Notice of Planning Commission Hearing**

The Development and Resource Management Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit E). Staff also sent notices, via U.S. mail and email, to individuals who requested notification.

## **Fresno County Airport Land Use Compatibility Plan**

The project, as originally approved, complied with the Fresno Yosemite International Airport Land Use Master Plan. However, the vested rights under this approval were lost when the project was appealed. Therefore, the project was reviewed by the Fresno County Airport Land Use Commission on March 4, 2019 and a Finding of Consistency was made.

## **ANALYSIS OF THE APPEAL LETTER**

A request for waiver of public improvement requirements was received on September 28, 2018 and an appeal of the Conditions of Approval was received from the project applicant on January 29, 2019. Below is an analysis of the issues raised in the waiver request and appeal letter (Exhibit K):

It should be noted that while discretionary conditions of approval may be appealed, all statutory municipal code requirements are mandatory and may only be modified through approval of a Variance application, provided the required findings pursuant to the Fresno Municipal Code can be made. An application for a Variance request has not been submitted to the City of Fresno by the project applicant.

## **Wireless Telecommunication Equipment Design**

Wireless Telecommunication Facilities Policy and Procedure Issue No. 33 requires a monopole diameter not to exceed 24" when there is co-location on a single mast. The applicant claims that this would not structurally support more than one carrier. The WTF policy also provides that the Director may condition additional architectural features (monopine, monopalm, horizontal installation, application of color) to a mast or facility structure to ensure compatibility with the surrounding physical environment and conformity to the policy guidelines. The proposed WTF includes a monopine design. Therefore, the Development and Resource Management Department supports a waiver of the 24" pole diameter limitation in favor of the proposed design width, which will provide adequate structural support for both the monopine elements and co-location while also providing a more proportionate width to better replicate a natural pine tree of equal height.

Policies and Procedures Issue No. 33 requires GPS antenna to be out of the line of sight from public views of the facility and indicates that a GPS antenna unit in the line of sight is not permissible. The application exhibits (Exhibit G) show the GPS equipment approximately 3' above the proposed 8' fence. Although the proposed lease area is located at the rear of the subject property, the balance of the property will remain vacant. Therefore, the GPS equipment is proposed to be located within the line of sight of passersby along the East Pinedale Avenue and North Abby Street public rights-of-way. There is some potential for additional adequate screening with the installation of required landscaping. However, to date, no landscaping plans have been submitted by the applicant for review. Although it is unclear as to the extent of the improvements proposed, the appeal letter received from the applicant makes general reference to landscape requirements (see subsection herein below for further information regarding landscape requirements and fencing/screening).

## **Landscaping and Fencing**

Wireless Telecommunication Facilities Policy and Procedure Issue No. 33 requires new WTFs to install a 3' landscaping buffer along the exterior perimeter of any facility compound which fronts onto a street and is visible from the public right of way as well as a 6' high solid wall or approved architecturally-designed fence (e.g., veneer or synthetic materials simulating natural materials such as brick or stone veneer in place of actual brick or stone) installed surrounding the equipment compound. Slatted chain-link fencing will only be considered when the equipment facility is substantially masked from public view, or is located in a commercial or industrial zone district. The subject property is located within a Mixed-Use zone district. Furthermore, the equipment facility will not be substantially masked from public view and chain link fencing may not be used in the Mixed-Use Districts when visible from a public street as determined by the Review Authority. The proposed project has been conditioned in accordance with these WTF Policy standards and FMC requirements. The Applicant has proposed a wood fence for purposes of the proposed project. Although it is unclear as to the extent of the conditions proposed, the appeal letter received from the applicant makes general reference to fence and wall requirements. The currently proposed wood fence does not comply with the project conditions of approval and therefore it is staff's recommendation that it be modified to meet City requirements.

There is an existing fabricated pipe/bollard type barricade, which is under 3' in height along the E Pinedale Ave. frontage of the subject property. There is also an existing chain link fence with barbed wire that runs along three adjacent properties including the subject property on the side of the alley. It appears to be about 4' in height or more, not including the barbed wire. Front yard fence materials within the Mixed-Use zone districts shall consist only of wood, tubular steel, wrought iron or other decorative metal. The project conditions of approval included requirements that the barbed wire be removed unless a Security Wire Permit is approved, and that all fences on the subject property must meet the requirements of the Fresno Municipal Code. Although the Applicant has appealed these conditions, as indicated herein above, the existing fences do not comply with the codified requirements of the Fresno Municipal Code; and, the unpermitted barbed wire on the subject property represents a hazard to both the public and the City without proper approvals. Illegal conditions such as this must be remediated prior to, or in conjunction with, new land use and development approvals.

## **Parking and Site Access**

Section 15-2417 of the FMC provides that driveways providing site access shall be from an improved street, alley or other public and/or private right-of-way.

The application proposes access from the alley at the rear of the subject property. Therefore, the Public Works Department has conditioned the project with a requirement to construct alley paving per Public Works Standards to meet the minimum improvement requirements of the FMC for access. In addition, the project has been conditioned to provide one off-street parking space for WTF attendees or crews and that the required parking spaces and driveway access onto the site be paved in accordance with Section 15-2419 of the FMC and approved by the City Engineer. The purpose of the parking space is to assure an appropriate, safe and devoted place for maintenance staff to the WTF to park vehicles without obstructing the alley which does not allow for parking. Surface and paving requirements are applicable to assure that particulates from undeveloped land are not spread to the public roadways and then conveyed in a manner which could potentially impact the storm drain system or air quality. The applicant has appealed the parking space and paving requirements as well as all improvements requirements conditioned for the alley.

Driveway access onto the site from the alley has also been proposed to occur through an existing gate that is located on both the subject property and the adjacent property, which are owned by the same entity. Development and Resource Management Department staff considers this an unnecessary situation and proposal that could complicate or impede future development on either parcel in conflict with General Plan Goals, Objectives and Policies. Therefore, access to the site was conditioned to occur exclusively from the same parcel that the lease area is located on.

It must be noted that regardless of ownership, mutual easements and reciprocal use agreements/covenants are legally required to be recorded in order to establish and memorialize agreements for provision, retention and maintenance of cross-access, improvements, services, and/or uses over property lines; unless, respective property lines are either relocated through lot line adjustment or removed through voluntary parcel merger. If access from the adjacent property is permitted by the Review Authority, then the project must be conditioned with a requirement for compliance with one of these alternatives.

## **Public Works Department, Traffic Planning**

The project was required to bring its frontage into compliance with today's standards, which includes constructing the necessary street improvements, such as sidewalk, streetlights, curb, and gutter, undergrounding existing utilities, and to dedicate the land where those improvements are on to the City. The applicant states that this requirement is not reasonably related to the proposed project, and conflicts with California Government Code Section 65909.

California Government Code 65909 states, "no local governmental body, or any agency thereof, may condition the issuance of any building or use permit or zone variance on any or all of the following:

- (a) The dedication of land for any purpose not reasonably related to the use of the property for which the variance, building, or use permit is requested.
- (b) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which the variance, building, or use permit is requested.”

Requiring street frontage improvements, underground utilities, and dedication of property for right of way purposes does not conflict with Government Code Section 65909 because the subject property’s frontage is unimproved in that it lacks the appropriate curb, gutter, sidewalk and street lights. These improvements protect and preserve the investments that the applicant is proposing. Curbs, for examples, prevent vehicles from entering and damaging private property and protect pedestrians providing safe routes of travel and alternative modes of transportation. Paved streets allow for vehicles to safely traverse in and out of the property. Gutters prevent stormwater from entering and damaging private property. Sidewalks allow for persons to enter private property, especially when roads are under construction. Streetlights allow for pedestrians and vehicles to see where they are going. These improvements are therefore reasonably related to the use permit that is being requested.

Furthermore, in order to conform with the Wireless Telecommunication Facilities Policy and Procedure Issue No. 33 pursuant to Section 15-2759 of the FMC, all required improvements shall be in accordance with FMC Section 12-405-B, and constructed in accordance with the Standard Specifications and Standard Drawings of the City of Fresno, Public Works Department. While Section 12-405-B of FMC was repealed/rescinded with the adoption of the Citywide Development Code in December of 2016, its inherent applicability remains due to its continued inclusion within the WTF Policy. The provisions of Section 12-405- B provided that the issuance of any special permit may be subject to such conditions a may be deemed to be appropriate or necessary to assure o compliance with the intent and purpose of the Zoning Ordinance and established general and specific plans and policies of the city or to protect the public health, safety, or welfare. Furthermore, Section 12-405-B provided that dedication and improvement of easements for public utility, landscaping, rights-of-way for streets determined by the City Engineer to be necessary for adequate access to the property shall be required as a condition of the exercise of special permit (CUP). Dedication requirements shall include those dedications determined by the City Engineer to be necessary to service public infrastructure needs as a consequence of the entitlement; except under special circumstances.

These requirements represent fair individual development contributions and necessary costs to support Fresno General Plan goals, objectives and policies as well as designated zoning for the area surrounding the subject property which are directed toward: fostering investment in improvements to resolve existing infrastructure deficiencies; facilitating the transformation of established neighborhoods into vibrant, highly walkable areas with broad, pedestrian-friendly sidewalks; and, completion of an accessible and safe street network that meets quality-of-life goals.

Government Code Section 65909 precludes bonding for public improvements not related to the project as a condition of a use permit. Bonding was not made a condition. Secondly, the City's requirement that parcels that have development projects being proposed have the curb, gutter and sidewalk constructed along the street frontage of the parcel where the development project is proposed, is a directly-related requirement to the project. The argument the applicant made could possibly be valid if the City, for example, requested that the curb, gutter and sidewalk be installed

along the entire block, or across the street. Such conditions were not imposed.

FMC Section 13-208(c) prohibits building permits from being issued when a structure proposed to be erected exceeds 50% of the replacement cost of buildings on the site, unless dedicated and street improvements thereon have been provided for.

The subject property remains vacant. Therefore, the Fresno County Assessor's Office does not assign any improvement value to the value of land.

FMC Section 13-208(h) allows the Public Works Director to waive the improvement requirements when the waiver:

1. would not be detrimental to the public safety and welfare; and,
2. when the purpose for the requested building permit is the reconstruction of a building destroyed or partially destroyed due to an Act of God; and,
3. when no development or expansion other than such reconstruction is to be undertaken.

A request to waive these frontage improvements could not be granted because these findings cannot be made.

Undergrounding utilities and streetlights are a requirement of FMC Section 15-2017, and Resolution 78-522, as amended by Resolution 88-229. The Public Works Director may waive the requirement to underground existing overhead services to street lighting or other utility systems if the property owner executes a Covenant, which shall be recorded and run with the land, agreeing to participate in and support any improvement district or underground utility district formed for the purpose of undergrounding the existing overhead utilities.

## **ENVIRONMENTAL FINDINGS**

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA. A determination of Categorical Exemption, Section 15303/Class 3 of the California Environmental Quality Act (CEQA) Guidelines was completed for this project on January 14, 2019 (Exhibit J).

Projects are exempt under Class 3 if they consist 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 communication facility is comprised of one 80-foot telecommunications tower, with outdoor cabinet equipment within a secured area and which due to placement and screening should have minimal visual effect.

## **FRESNO MUNICIPAL CODE FINDINGS**

The required findings under Section 15-5306 of the Fresno Municipal Code are as follows:

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,



- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and,
- d. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record to make these findings.

Staff believes the following findings can be met, subject to the Conditions of Approval, however should the appeal be approved, they cannot be made.

**Finding A: The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,**

The proposed use, communication facility, is a permitted use throughout the City when found in compliance with the code and therefore City of Fresno Policies and Procedures Issue No. 33 - Wireless Telecommunications Facilities. The conditions of approval would bring this project into compliance.

Approving the appeal would require the Planning Commission to make the determination that this finding can still be made.

**Finding B: The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,**

The proposed project, subject to the Conditions of Approval, is considered to be in compliance with the Fresno General Plan.

Approving the appeal would require the Planning Commission to make the determination that this finding can still be made.

**Finding C: The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;**

Subject to compliance with the conditions of approval the proposed project and use will comply with the regulations of Policies and Procedures Issue No. 33, which establishes regulations to promote quality and consistency in approval of communication facilities. These conditions of approval, include but are not limited to requirements for public improvements such as sidewalks and street lighting intended to benefit public health and safety.

The provision of a WTF will not create a safety hazard to Fresno-Yosemite International Airport, and the WTF will be required to comply with all FCC regulations. Therefore, this finding can be made.

Approving the appeal would require the Planning Commission to make the determination that this finding can still be made.

**Finding D: The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,**

The design, location, size, and operating characteristics of the proposed activity are compatible with the existing land uses in the area which are currently predominantly heavy commercial and will remain so for the foreseeable future.

**Finding E: The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.**

The type, density, and intensity of the proposal are suitable for the site. The communication facility is comprised of a 625 square-foot lease area on a vacant 0.14 acre parcel. The lease area may be adequately served by emergency access, utilities and services.

## **CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Woodward Park Community Plan and Fresno General Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the proposed Conditional Use Permit Application No. P18-02742 is appropriate for the project site subject to compliance with the Conditions of Approval dated January 14, 2019.

### **Attachments:**

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
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