

**CITY OF MERCED
Planning Commission**

Resolution #4137

WHEREAS, the Merced City Planning Commission at its regular meeting of, September 18, 2024, held a public hearing and considered Conditional Use Permit #1277, initiated by AT&T Mobility, on behalf of The Church of the Nazarene of Merced, California, property owners. This application involves a request to allow a construction of 55-foot-tall wireless communication tower in the form of a stealth mono-pine tree at 1717 E. Olive Avenue, generally located at the northeast corner of E. Olive Avenue and Parsons Avenue with a General Plan designation of Low Density (LD), and a Zoning classification of R-1-6, and also known as Assessor's Parcel Number (APN) 008-060-057; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through M of Staff Report #24-783; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #24-10, and approve Conditional Use Permit #1277, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION #4137

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September 18, 2024

Adopted this 18th day of September 2024

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B - Findings

**Conditions of Approval
Planning Commission Resolution #4137
Conditional Use Permit #1277**

1. The proposed project shall be constructed/designed as shown on Attachment C (site plan) and Attachment D (elevations) of Staff Report #24-783, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval

of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. In coordination with the Police Department and Fire Department, a frequency/inter-modulation study shall be prepared. Service may not be initiated until these departments have reviewed and have found the study to be acceptable.
8. At the time of building permit submittal, the applicant shall provide certification by a Radio Frequency Engineer, stating the RFR measurements and that they meet FCC radio frequency radiation standards.
9. The applicant shall work with the Merced Regional Airport and comply with all of their requirements for this type of structure and obtain all proper permits. Said requirements may include, but are not limited to, obtaining approval from the Airport Land Use Commission, or showing proof of submitting an FAA Form 7460-1 to the FAA.
10. The maximum overall height of the "Mono-Pine" stealth facility shall not exceed 55 feet. Antennas mounted to the stealth facility shall not be mounted higher than 60 feet in height.
11. The design of the mono-pine shall closely resemble the appearance of a real pine tree. At a minimum, the branch pattern on the "Mono-Pine" stealth facility shall have a maximum of 18 inches of height between each other and the lowest branch on the "tree" shall be a maximum of 20 feet above the ground.
12. The "Mono-Pine" stealth facility shall not have any form of steps, ladder, or pegs protruding from its side.

13. The color of the Mono-Pine shall match that of a real pine tree. These colors tend to be green (leaves) and brown (bark) and shall be consistently maintained. The antennas and any mounting equipment shall be painted to match the colors of the “tree.”
14. The Mono-Pine stealth facility shall be maintained at all times. At no time shall the Mono-Pine be faded or worn down to a state that would be considered unacceptable to City standards for a Stealth Facility. Should the natural weather elements (wind, rain, etc.) deteriorate any portion of the tree, new items of similar likeness shall be installed, replacing the deteriorated items.
15. No signs, other than warning and safety signage, shall be located on a support tower or ancillary facility.
16. Other than lighting required by the FAA or other regulatory agency for the purpose of safety, lights are not permitted on the “Mono-Pine” pole. Any lighting used on the equipment shelter shall be appropriately “down-shielded” to keep light within the boundaries of the site and not impact surrounding properties.
17. Projections or appendages of any sort are not permitted, except for those related to a common Stealth Telecommunications Tower. If there are antennas projecting outward, they shall be screened behind the branches and shall be painted a color similar to the branches (green).
18. All ancillary equipment shall be contained inside the area enclosed by a solid fence. All ancillary equipment shall be screened from view from the public right-of-way.
19. The proposed 6-foot-tall soundproof wall proposed to enclose the cell facility and ancillary equipment is approved as proposed. The gate providing access to the facility shall be of solid material or other approved material that would screen the equipment inside the facility from public view. The soundproof wall shall be integrated into the site with landscaping consistent with other landscaping on the site.
20. The site shall be provided with landscaping consistent with the other developments on the site. If the other developments on the site have not been landscaped at the time the cell facility is complete, landscaping for the cell facility may be deferred for a period not to exceed 6 months unless an extension of time is granted by the Development Services Director.

21. Any noise generated by the facility from the equipment or the tower shall be kept to a minimum, so as not to cause a nuisance to the neighborhood.
22. All equipment, fencing, and other surfaces shall be maintained free of graffiti.

n:shared:planning:PC Resolutions: CUP#1277 Exhibit A

**Findings and Considerations
Planning Commission Resolution #4137
Conditional Use Permit #1277**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The project site has a General Plan designation of Low Density Residential (LD), and the zoning classification of Low Density Residential (R-1-6) and meets the requirements of those designations with approval of this conditional use permit. Per Merced Municipal Code Land Use Table 20.58-2 – Review Procedures for Support Towers for Wireless Communication Facilities, a site plan review permit is required for stealth facilities within an R-1-6 Zone that are over 140% of the maximum height allowed within this zone. However, because the Site Plan Review Committee is referring this request to the Planning Commission, the land use permit required is now a conditional use permit per Merced Municipal Code Section 20.58.050(A)(4).

Traffic/Circulation

- B) The installation of the telecommunications tower would not increase traffic to the site or change the circulation on the site. Other than traffic during the construction/installation period, there would only be additional traffic to the site when maintenance is required and that would generally be by a single truck.

Parking

- C) No additional parking spaces are required with this use as there will be no employees or customers onsite on a regular basis. The installation of the telecommunication tower does not affect the parking on the site for the existing church.

Tower Design

- D) The proposed tower would be constructed to look like a pine tree, which would be compatible with other trees in the surrounding area. The overall height of the “tree” would be 55 feet with the antennas being mounted no higher than 60 feet (Attachment D of Planning Commission Staff Report #24-783). The mechanical equipment for the tower would be enclosed by the proposed 6-foot-tall sound-proof wall within a 25-foot by 25-foot area. Photo simulations showing the tower and the surrounding area are provided at Attachment E of

Planning Commission Staff Report #24-783. The photo simulation compares the existing conditions to the existing conditions with the tower from all four directions.

As proposed, the tree branches would start at a height of approximately 30 feet above the ground. In order to give the tree a more natural appearance, Condition #11 requires the lowest branches to be a maximum of 20 feet above the ground. In addition, this Condition requires the spacing of the branches be a maximum of 18 inches apart.

Site Design

- E) The wireless facility would be located within the northeast quadrant of the site. The tower and all equipment would be located within an approximately 625-square-foot area enclosed by a 6 ft-foot-tall soundproof fence. Access to the facility would be provided through a gate on the south side of the facility.

The tower would be approximately 245 feet from Parsons Avenue and approximately 379 feet from E. Olive Avenue. According to the applicants, the site is designed for AT&T to improve the LTE coverage in the area and provide new service on Band 14, which is a dedicated public safety network for first responders nationwide. The proposed facility is designed to be part of FirstNet and will provide coverage and capacity for the development of the FirstNet platform on AT&T LTE network. Deployment of FirstNet in the subject area will improve public safety by providing advanced communications capabilities to assist public safety agencies and first responders.

Federal Regulations

- F) According to Section 332 (C) (7) of the Federal Telecommunication Act, local governments may not: (1) prohibit or effectively prohibit personal wireless service; (2) unreasonably discriminate among providers of functionally equivalent service providers; or (3) regulate personal wireless service facilities based on the environmental effects from radio frequency emission to the extent such emission meets FCC Guidelines.

In addition, the radio frequency emission of the proposed cell tower will meet FCC guidelines (Attachment G of Planning Commission Staff Report #24-783).

First Responder Communication Services

- G) The applicant has provided a map of existing and proposed wireless facilities within the 3-mile radius to illustrate service for local area and first responders (First Net Program) also known as First Responders Network (Attachment F of Planning Commission Staff Report #24-783).

Development Standards

- H) Per Merced Municipal Code Section 20.92.060, all wireless communication facilities shall comply with the following development standards and requirements in addition to complying with all other applicable provisions of the Merced Municipal Code and the *Merced Vision 2030 General Plan*.

Color: Support towers shall be provided in a color that best allows it to blend into the surroundings. Antennas shall be placed and colored to blend into the architectural detail and coloring of the host structure.

Compliance with Standard: The color of the mono-pine tower will be compatible with the surrounding trees and landscaping. There are also pine trees along E. Olive Avenue and Parsons Avenue. The colors used for the mono-pine tree would be consistent with a real tree. Condition #13 requires the colors of the tower and antenna to match the colors of a real pine tree.

Display (Signs): No signs or display shall be located on a support tower or ancillary facilities except for warning and safety signage.

Compliance with Standard: The applicant has not proposed any signing to be attached to the tower. Condition #15 prohibits all signs other than warning and safety signing.

Equipment Shelters: The following guideline are to be used to ensure that equipment shelters are compatible with their surroundings: (1) equipment shelters located in underground vaults, or (2) equipment shelters designed consistent with the architectural features of the building immediately surrounding the site locations; or (3) equipment shelters camouflaged behind an effective year-round landscape buffer.

Compliance with Standard: All the equipment would be located within the fenced area and screened from public view by the 6-foot-tall fence (Condition #18).

Interference: Wireless communication facilities shall not cause interference with public communication equipment.

Compliance with Standard: Condition #7 requires the applicant to work with the Police and Fire Departments to prepare a frequency/inter-modular study to ensure the proposed telecommunications facility does not interfere with the City's communication equipment.

Landscaping and fencing: The following guideline is to be used to ensure that wireless communications facilities are compatible with their surroundings: Installation of landscaping, served with an automatic underground irrigation system, that effectively screens the view of the tower site from adjacent properties. The standard buffer shall consist of a landscaped strip at least four (4) feet wide at the site perimeter, and fencing. Vines shall be used to cover the fence. Use of barbed wire is prohibited. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

Compliance with Standard: The proposed project includes the construction of a 6-foot-tall sound-proof fence to surround the entire facility. The fence would be finished with texture and color to match the future buildings on the site. Landscaping would be provided around the perimeter of the fencing as required by Conditions #19 and #20.

Lighting: Except as specifically required by the Federal Aviation Administration (FAA) or other applicable authority, support towers shall not be artificially lighted. In order to reduce glare, such lighting shall be shielded from the community to the extent allowed by the FAA. Equipment shelters may use security lighting that is appropriately down shielded to keep light within the boundaries of the site and not impact surrounding properties.

Compliance with Standard: All lighting shall be in compliance with FAA regulations. Any lighting for the equipment area shall be down shielded to protect prevent light from spilling over onto the adjacent properties. Condition #16 addresses lighting on the site and requires compliance with this standard.

Radio frequency radiation (RFR): Upon request to construct a wireless communications facility or to mount wireless communication antennas to an existing wireless communication facility, the applicant shall provide

certification by a Radio Frequency Engineer, stating the RFR measurements and that they meet FCC radio frequency radiation standards.

Compliance with Standard: Condition #8 requires this certification be submitted during the building permit stage.

Setbacks and siting:

- 1. All equipment shelters, or other on-the-ground ancillary equipment shall meet the setback requirements of the zone in which they are located.*
- 2. Antenna and antenna arrays are exempt from the setback standard of this section and from the setbacks for the zone in which they are located.*
- 3. Support towers that do not exceed 125% of the height limit of the zone in which they are located need only meet the setback requirements for that zone.*
- 4. Support towers that exceed 125% of the height limit of the zone in which they are located shall be set back from all property lines as required by that zone or one foot for every 10 feet of total tower height, whichever produces the greater setback.*
- 5. To the greatest extent possible, support towers should be placed to the rear or side of buildings.*

Compliance with Standard: The site is located within the Low Density Residential (R-1-6) Zone. Based on Standard #4 above, a 55-foot-tall tower would need to have a setback of at least 5.5 feet. The tower is approximately 245 feet from Parsons Avenue and 379 feet from E. Olive Avenue, which are both greater than the minimum setback required by this standard.

The tower is located near the northeast corner of the site. Because the site has streets on both west and south sides, this location seems appropriate for the site. The proposed location places the tower behind the existing Church on the site and away from E. Olive Avenue.

Heights: *No support tower, other than a stealth facility, may exceed the following heights:*

- 1. Within a Low Density Residential (R-1) zone and a High Medium Density (R-3) zone: 55 feet; and,*
- 2. Within a Central Commercial (C-C) zone, a Thoroughfare Commercial (CT) zone, and a General Commercial (C-G) zone: 120 feet; and,*
- 3. Within an Industrial zone: 150 feet, and,*

4. *Within a Planned Development: as permitted by the site utilization plan.*

Compliance with Standard: The proposed tower would be 55 feet tall and is considered a stealth facility with its pine tree design. Therefore, with Conditional Use Permit approval, the tower could exceed the above height limits. The Low Density Residential (R-1-6) Zone allows a maximum height of 55 feet. Therefore, the height is subject to approval by the Planning Commission. The existing buildings on-site are approximately 30 feet tall. There are 3 trees in back of the subject site that are approximately 20-25 feet tall.

Neighborhood Impact/Interface

- I) The project site is located at the northeast corner of Olive Avenue and Parsons Avenue. The subject site is primarily surrounded by single-family residential homes.

A stealth facility decreases the impact on the surrounding area by helping to integrate the tower with the surrounding natural landscape. The requirement to provide a landscaping combined with the conditions of approval addressing lighting, noise, etc. reduces the impacts to the area.

As required by State law and the Merced Municipal Code, public hearing notices were sent to all property owners within 300 feet of the site (Attachment K of Planning Commission Staff Report #24-783), and in addition, to any residents who spoke for this item during the Site Plan Review Committee Meeting of April 25, 2024.

Staff received 3 emails and 2 voicemails in opposition and 1 email in favor after the Staff Report #24-552 was prepared. Those emails and voicemail were provided to the Planning Commission via email prior to the meeting and posted on the City website. At the Planning Commission Meeting of July 3, 2024, there were 14 residents that testified in opposition and cited their concerns about the impacts on property values, the potential health effects of the radiation from the cell towers on their neighborhood and school children, and the aesthetics of the stealth “monopine.” At the Planning Commission Meeting of August 7, 2024, there was 1 resident that testified in opposition. As of the time that this staff report was prepared, staff has not received any additional comments from the public for this proposal other than those provided during the Site Plan Review and Planning Commission Meeting of

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July 3, 2024, as shown at Attachment J of Planning Commission Staff Report #24-783. If additional comments are received prior to the Planning Commission Staff Report being published, those comments will be added to the report. Any comments submitted after the publication of the staff report and by 1:00 p.m. on the day of the Planning Commission hearing will be forwarded to the Planning Commission and posted to the City's website.

Mandatory Findings for Conditional Use Permits

J) Merced Municipal Code (MMC) Section 20.68.020 requires that the following findings be made by the Planning Commission in order to approve a Conditional Use Permit:

- 1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

As described in Finding A, the proposed land use is consistent with the General Plan designation of Low Density Residential (LD). The Zoning Ordinance was updated in 2016, to allow stealth wireless communication facility and antennas within a residential zone with a Site Plan Review Permit rather than a Conditional Use Permit. However, the Site Plan Review Committee heard this item at their meeting of April 25, 2024, and voted to refer this application to the Planning Commission (Attachment I of Planning Commission Staff Report #24-783).

- 2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

The wireless communication tower would be disguised as a pine tree (55-foot-tall stealth mono-pine) and would be located on the northern portion of the parcel. According to the applicants, the height of the stealth mono-pine is necessary to close an LTE service coverage gap in the area.

The location is adjacent to single-family homes on Vickie Court, visible from the homes on Teak Ave., Parsons Ave., and Evette Court including the south side of East Olive Ave. The homes on Vickie Court will have the most impact because of visibility in the backyard. Only

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three (3) other trees are on this property, so the antenna will be higher, visible, and taller than others in the area.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. Implementation of the conditions of approval and adherence to all applicable Building Codes, Fire Codes, and Federal and City Standards would prevent the project from having any detrimental effect on the health, safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The project site is located within a developed area that is adequately served by infrastructure.

Wireless Communication Facilities Findings

- K) To approve a wireless communication facility requiring a Site Plan Review or Conditional Use Permit, the review authority must make the following findings (if applicable) in addition to the findings required by Chapter 20.68 (Permit Requirements) for the applicable permit:

1. *For a proposed lattice tower located in other than an industrial district, the applicant has demonstrated that there is no feasible alternative to use of a lattice tower at the proposed site or within the search ring.*

The proposed wireless communication tower is a stealth mono-pine located in a zoning classification of Low Density Residential (R-1-6). The applicant provided an alternative site analysis at Attachment H of Planning Commission Staff Report #24-783 showing that AT&T searched for, but did not find, feasible collocation opportunities in and around the coverage objective area. The applicant also considered alternative sites and did not find any that suited their needs as well as this site.

2. *The proposed wireless communication facility is designed at the minimal functional height.*

The wireless communication tower would be disguised as a pine tree (55-foot-tall stealth mono-pine) located on the northern portion of the parcel. Ancillary cabinet ground equipment would be enclosed by a 6-foot-tall fence. According to the applicants, the proposed height of this wireless communication is necessary to provide coverage to service the area.

3. The location for the wireless communication facility minimizes the visibility of the facility from residentially zoned property and minimizes the obstruction of scenic views from residentially zoned property.

The location for the wireless tower is adjacent to single-family homes on Vickie Court, visible from the homes on Teak Ave., Parsons Ave., and Evette Court, including the south side of East Olive Ave. The homes on Vickie Court will have the most impact because of visibility in the backyard. Only three (3) other trees are on this property, so the antenna will be higher, and more visible. The proposed stealth facility helps the facility blend in with the surrounding trees on-site and throughout the neighborhood. However, the Planning Commission heard public comments from several neighbors in opposition to the tower's location and aesthetics, despite it meeting the City's standards for such facilities as spelled out in the Municipal Code.

4. Projection of the antenna or antenna array has been minimized to the greatest extent possible.

Based on elevations provided, the large cellmax antennas located on the site plan protrudes 4 feet more than the limbs of the tree/tower. There are smaller antennas that do not project out as much. In order to minimize the visibility, the antennas will need to be painted green (Condition #13).

5. In the case of an application for use of a new site for wireless communication facilities, all reasonable opportunities to locate the facility or to co-locate the facility on an existing structure have been exhausted by the applicant and are not feasible.

The Applicant has provided an alternative site analysis for co-locations; however, the conclusion is that there are no viable or available

alternative locations (Attachment H of Planning Commission Staff Report #24-783).

6. Support towers located in an agricultural zoning district are located and designed to minimize dangers to aerial sprayers.

The subject site is not located in an agricultural zoning district, but in a zoning district of Low Density Residential (R-1-6).

7. Sites near the project area, which are poorly suited for other forms of development, are unavailable for use by the wireless communication facility.

The majority of the surrounding parcels are fully developed and standard in size for residential development. There is an undeveloped parcel directly to the north (1712 Teak Avenue) zoned residential that could be developed as infill development for a single-family home. Besides that parcel and the nearby Chenoweth Elementary School (180-foot north of the subject site), all other parcels within a 1/4-mile radius are fully developed. There are no sites nearby that are available and poorly suited for other forms of development.

8. For planned developments, the underlying land use designation permits and would not be adversely affected by the proposed type of wireless communication facility. For example: in an industrial planned development, a lattice tower may be found to be acceptable while in a residential planned development, a stealth facility or monopole may be found to be acceptable, but a lattice tower would not. To determine the effect of the proposed wireless communication facility on the land use designation and the permit process required, use Table 20.58-2.

The subject site is not located within a zoning classification of Planned Development. The subject site has a zoning classification of Low Density Residential (R-1-6). Table 20.58-2 prohibits wireless communication facilities with a guyed tower or lattice tower design. However, this table allows stealth wireless communication facilities with a site plan review permit and is considered appropriate in residential zones as stealth facilities are allowed in residential zones as

the they are designed to blend in with the existing physical environment. Stealth facilities may come in the form of flagpoles, water tanks, free standing signs, or more natural features such as a tree, as is being proposed by the applicant.

Environmental Clearance

- L) Planning staff has conducted an environmental review (Environmental Review #24-10) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends a Categorical Exemption with no further documentation required (Attachment L of Planning Commission Staff Report #24-783).