

RESOLUTION NO. 2023-14

RESOLUTION OF THE CITY OF CHULA VISTA PLANNING COMMISSION  
APPROVING CONDITIONAL USE PERMIT CUP22-0044 FOR A NEW  
WIRELESS TELECOMMUNICATIONS FACILITY LOCATED AT 740  
HILLTOP DRIVE ON 2.76 ACRES WITHIN THE R-1 ZONE

WHEREAS, on December 29, 2022, a duly verified application for a Conditional Use Permit (“CUP”) was filed with the City of Chula Vista Development Services Department by AT&T Wireless (“Applicant”); Hilltop Baptist Church of Chula Vista California, Inc. is the property owner (“Property Owner”); and

WHEREAS the area leased by the Applicant, which is the subject of this Resolution, is a portion of an existing 2.76-acre parcel, located at 740 Hilltop Drive, on the west side of Hilltop Drive, between J Street and Telegraph Canyon Road (“Project Site”); and

WHEREAS the Applicant requests approval of a CUP to install a new wireless telecommunications facility (“WTF”), consisting of a 55-foot mono-broadleaf tree along with enclosed associated equipment (“Project”) within the R-1 zone; and

WHEREAS, in accordance with Chula Vista Municipal Code (“CVMC”) section 19.89.060, WTFs are subject to the height limitation stipulated in the underlying zone; and

WHEREAS the R-1 zone has a maximum building height of 28 feet; and

WHEREAS, in accordance with CVMC section 19.89.050, any WTF that exceeds the maximum building height allowed in a particular zone shall require a CUP approved following a public hearing before the Chula Vista Planning Commission; and

WHEREAS the Director of Development Services has reviewed the proposed Project for compliance with the California Environmental Quality Act (“CEQA”) and determined that the Project qualifies for a Class 3 Categorical Exemption pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines; and

WHEREAS the Director of Development Services set the time and place for a hearing before the Planning Commission for consideration of CUP22-0044, and notice of the hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City and its mailing to property owners and residents within 500 feet of the exterior boundaries of the property at least 10 days prior to the hearing; and

WHEREAS the Chula Vista Planning Commission has reviewed and considered all materials for CUP22-0044 and the Project, as well as having considered such oral testimony and documentary evidence submitted related to CUP22-0044 and this Project; and

WHEREAS the hearing was held at the time and place as advertised in the Council Chambers, 276 Fourth Avenue, before the Planning Commission, and the hearing was thereafter closed;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Chula Vista pursuant to CVMC section 19.14.080, does hereby makes the following findings:

- 1. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.**

The proposed use will provide expanded wireless communication services to the Chula Vista community, including for individual residents and for maintenance and operation of public facilities. The proposed use will include facilities (i.e., a tower with antennas attached) that will exceed 28 feet in height; however, the proposed height is the only technologically feasible option for providing service to the area. The proposed use will improve and ensure the availability of wireless communication as a public convenience by providing essential communication and improved service in the surrounding area of its location. In the event of an emergency or natural disaster, the use will continue to function, which supports the general health, safety, and welfare of the citizens of Chula Vista.

- 2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.**

To minimize the visual impacts of the use, the proposed facility and all associated equipment will be located in the southwestern portion of the Project Site and utilize a stealth design to be visually unobtrusive. The antennas will be painted to match the mono-tree, and faux branches will obscure the antennas. Existing mature trees which are of the same relative height as the proposed facility will aid in further blending the Project into the surrounding area.

- 3. That the proposed use will comply with the regulations and conditions specified in Title 19 of the CVMC for such use.**

As proposed, the use is compliant with the City's applicable development criteria, particularly those outlined in CVMC Chapter 19.89, and all other City zoning regulations.

- 4. That the granting of this conditional use will not adversely affect the General Plan of the City or the adopted plan of any governmental agency.**

The integration of wireless facilities with existing uses is encouraged by the Public Facilities and Services Element of the General Plan, including Policy PFS 24.1, regarding the installation of state-of-the-art wireless facilities, and Policy PFS 24.2, regarding the review of new telecommunications facilities and utilizing siting and design techniques that minimize community impacts.

BE IT FURTHER RESOLVED that the Planning Commission, based on the findings above, does hereby approve Conditional Use Permit CUP22-0044, subject to the following conditions. The following ongoing conditions shall apply to the Project Site for as long as it relies upon this approval:

## **Planning**

1. The Applicant shall maintain the Project in accordance with the approved plans for CUP22-0044, which include a site plan, equipment plan, and photo simulations on file in the Development Services Department. The Project shall also maintain compliance with the conditions contained herein and Title 19 of the CVMC.
2. This permit shall be reviewed 10 years from the date of approval (September 27, 2033) at which time the Zoning Administrator shall review this use for compliance with the conditions of approval and any applicable codes and regulations and shall determine, in consultation with the Applicant, whether the Project shall be modified from its original approval, or revoked, and whether another review shall be necessary for the Project and, if so, in what period of time.
3. The Applicant and Property Owner shall execute this permit acknowledging that the approved use is the only use that has been approved under this permit. Any new use or modification/expansion of uses shall be subject to review and approval by the Zoning Administrator.
4. The Applicant shall cooperate with telecommunications companies in collocating additional antennas on the subject property, provided said co-locators have received a CUP from the City for such use. The Applicant shall exercise good faith in collocating with other communications companies and sharing the permitted site, provided such shared use does not give rise to a substantial technical-level or quality-of-service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether the Applicant has exercised good faith in accommodating other users, the City may require a third-party technical study at the expense of the Applicant.
5. Within 90 days of cessation of the business operations and use of the antennas, the Applicant shall submit a substitute user to the satisfaction of the Director of Development Services or their designee and/or remove the Project and all associated equipment from the Project Site. If the facility is removed, the Applicant shall restore the Project Site to its original condition. Any changes to this permit shall require a modification to be reviewed by the Zoning Administrator.
6. The Applicant and Property Owner shall and do hereby agree to timely indemnify, protect, defend, and hold harmless the City, its City Council members, officers, employees, and representatives from and against any and all liabilities, losses, damages, demands, claims, and costs, including court costs and attorney fees (collectively, "liabilities") incurred by the City arising, directly or indirectly, from (a) the City's approval and issuance of this permit and (b) the City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated herein, and the Applicant shall acknowledge their agreement to this provision by executing a copy of this permit where indicated below. The Applicant and

Property Owner's compliance with this provision is an express condition of this permit and shall be binding on any and all of the Applicant/operator's successors and assigns.

7. The conditions of approval for this permit shall be applied to the Project Site until such time as the approval may be revoked, and the existence of this approval with conditions shall be recorded with the title of the property.
8. Any violations of the terms and conditions of this permit may result in the imposition of civil or criminal penalties and/or the revocation or modification of this permit.
9. This CUP shall become void and ineffective if not utilized within three (3) years from the effective date thereof (September 27, 2026), in accordance with CVMC section 19.14.260. Failure to comply with any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

### **Landscape Architecture**

10. The Applicant's contractor shall ensure that any existing plant material noted within the area of construction or adjacent to the area of construction is protected in place and receives sufficient irrigation to flourish during construction. If any existing planting material experiences a decline in health as a result of construction activity, the contractor shall replace the existing material in kind to the satisfaction of the Director of Development Services.
11. The Applicant's contractor shall ensure that any existing landscape irrigation within the area of construction or adjacent to the area of construction is protected in place. If any existing irrigation is damaged, the contractor shall replace the existing irrigation equipment in kind to the satisfaction of the Director of Development Services.

### **I. GOVERNMENT CODE SECTION 66020(d)(1) NOTICE**

Pursuant to Government Code section 66020(d) (1), NOTICE IS HEREBY GIVEN that the 90-day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution, and any such protest must be in a manner that complies with Government Code section 66020(a), and failure to timely follow this procedure will bar any subsequent legal action to attack, review, set aside, void or annul imposition. The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with this project, and it does not apply to any fees, dedication, reservations, or other exactions which have been given notice similar to this, nor does it revive challenges to any fees for which the statute of limitations has previously expired.

### **II. EXECUTION OF RESOLUTION OF APPROVAL**

The Property Owner and Applicant shall execute this document by signing on the lines below, indicating that the Property Owner and Applicant have each read, understood, and

agreed to the conditions contained herein and will implement same. Upon execution, this document shall be signed and returned to the City’s Development Services Department.

\_\_\_\_\_  
Dwight Darbins  
*for* Hilltop Baptist Church of  
Chula Vista California, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tara Carmichael  
*for* AT&T Wireless

\_\_\_\_\_  
Date

**III. CONSEQUENCE OF FAILURE OF CONDITIONS**

If any of the foregoing conditions fails to be met, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fails to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted; institute and prosecute litigation to compel their compliance with said conditions; or seek damages for their violation. Neither the Applicant nor a successor in interest gains any vested rights by the City’s approval of this permit.

**IV. INVALIDITY; AUTOMATIC REVOCATION**

It is the intention of the Planning Commission that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision, and condition herein stated, and that in the event that any one or more terms, provisions, or conditions are determined by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, this Resolution and the permit shall be deemed to be automatically revoked and of no further force and effect.

Presented by:

Approved as to form by:

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Laura C. Black, AICP  
Director of Development Services

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*for* Jill D.S. Maland  
Lounsbury Ferguson Altona & Peak  
Acting City Attorney

PASSED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF  
CHULA VISTA, CALIFORNIA, this 27<sup>th</sup> day of September 2023, by the following vote, to-wit;

AYES:

NOES:

ABSENT:

ABSTAIN:

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Max Zaker, Chair

ATTEST:

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Mariluz Zepeda, Secretary