

**CITY OF OJAI
CITY COUNCIL RESOLUTION NO. 22-50**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OJAI, CALIFORNIA,
APPROVING CONDITIONAL USE PERMIT (CUP 20-005)
AND DESIGN REVIEW PERMIT (DRP 20-004) FOR THE
INSTALLATION OF A ROOFTOP WIRELESS TELECOMMUNICATIONS FACILITY
INCLUDING NINE ANTENNAS AND SUPPORTING EQUIPMENT BEHIND
SCREENING, AND AN INCREASE IN HEIGHT OF THE SCREENING (OVERALL
BUILDING HEIGHT 35'-0") LOCATED AT 202 W. OJAI AVENUE
(ASSESSOR'S PARCEL NUMBER: 021-0-104-070);
THE PROJECT HAS BEEN DETERMINED TO BE
CATEGORICALLY EXEMPT FROM CEQA**

WHEREAS, On November 20, 2020, the applicant, Chris Doheny, for Smart Link, and for property owner, Pacific Bell Telephone Company, submitted an application requesting a Conditional Use Permit (CUP 20-005) and Design Review Permit (DRP 20-004) for installation of a rooftop wireless facility including nine antennas and supporting equipment behind screening; and

WHEREAS, on December 1, 2020 City staff completed review of the application and associated information and determined the application was deemed incomplete and a corrections letter was issued to the applicant; and

WHEREAS, on June 21, 2021 the applicant resubmitted information related to the corrections letter issued; and

WHEREAS, on July 7, 2021 City Staff completed review of the submitted information and determined the application was deemed incomplete and a second incomplete letter was issued to the applicant; and

WHEREAS, on August 2, 2021 the applicant resubmitted information related to the correction letter issued; and

WHEREAS, on August 3, 2021 the City Staff received mailing labels from the applicant as requested; and

WHEREAS, on August 10, 2021 City Staff contacted the applicant stating the Letter of Authorization for the applicant expired; and

WHEREAS, on September 21, 2021 the applicant submitted an updated Letter of Authorization and the Community Development Department found the application to be complete; and

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WHEREAS, on November 29, 2021 Staff notified the applicant of additional information necessary for the project to move forward which included a historic resources report as the site is included within the boundaries of a State designated Historic Downtown District; and

WHEREAS, on January 20, 2022 the City of Ojai entered into a contract with GPA Consulting for preparation of a Historic Resources Report; and

WHEREAS, on April 11, 2022 a Draft Historic Resources Report was submitted to City Staff; and

WHEREAS, on June 9, 2022 a public hearing was held by the Historic Preservation Commission, for review and comment to the Planning Commission for the requested Conditional Use Permit (CUP 20-005) and Design Review Permit application (DRP 20-004) regarding the above referenced proposal located at 202 West Ojai Avenue; and

WHEREAS, a public hearing was held by the Planning Commission on June 15, 2022, for Conditional Use Permit (CUP 20-005) and Design Review Permit application (DRP 20-004) regarding the above referenced proposal located at 202 West Ojai Avenue; and

WHEREAS, a public hearing was held by the Planning Commission on July 20, 2022, for Conditional Use Permit (CUP 20-005) and Design Review Permit application (DRP 20-004) regarding the above referenced proposal located at 202 West Ojai Avenue; and

WHEREAS, pursuant to Section 10-2.2406 of the Ojai Municipal Code, the City Council may approve a conditional use permit (or minor conditional use permit) application in whole or in part, with conditions, only if all of the following findings are made:

- a) the proposed wireless facility is conditionally allowed within the General Commercial zone (C-1) and would not impair the integrity and character of the zoning district and complies with all of the applicable provisions of the zoning regulations as it is proposed to be within an existing rooftop mechanical equipment area and although the mechanical equipment area is proposed to be enlarged, it will continue to meet the height requirements set forth in the zone district. Additionally, the project will not have an adverse effect upon adjacent or abutting properties as it is a concealed facility design that will blend naturally with the subject property and the surrounding community; and
- b) the proposed use is consistent with the General Plan in that the General Plan's Land Use Element considers typical uses in the Downtown Commercial (DC) designation as commercial services and professional offices as permitted land uses. the wireless facility will improve communication service and is proposed to be on the roof of an existing office building; and
- c) the design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses and would not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental

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to other allowed uses operating nearby or adverse to the public interest, health, safety, convenience, or welfare of the City. The wireless facility is proposed to be a state of the is a fully concealed structure on the roof of an existing office building for AT&T which currently operates as a switching station within an existing screened mechanical equipment area. The screening is proposed to be enlarged to accommodate the wireless facility. The wireless facility is proposed to be unmanned therefore not contributing to commuter traffic. A noise study was submitted indicating compatibility with the surrounding area. A radio frequency emissions study was submitted indicating less than harmful impacts to the public and rooftop signage for distance warning to facility professionals; and

- d) the subject site is physically suitable for the type and density and intensity of use being proposed. The wireless facility is proposed to be a fully concealed structure on the roof of an existing office building within an existing screened mechanical equipment area. The existing screening is proposed to be enlarged to accommodate the wireless facility however will not exceed the height limit standards of the Ojai Municipal Code Section 10-2.504 (Commercial and manufacturing district general development standards) (Table 2-5). The wireless facility is proposed to be unmanned; and
- e) there are adequate provisions for public access, water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety as the proposed wireless facility is unmanned and proposed to be added to an existing structure therefore no additional utilities or services are required; and
- f) the proposed project has been reviewed in compliance with the provisions of CEQA and the City's environmental review procedures and it has determined that the project is categorically exempt pursuant to Section 15331, Class 31 of California Environmental Quality Act (CEQA). Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitations, Restoring, and Reconstructing Historic Buildings. The proposal is also categorically exemption pursuant to Section 15301 Class 1 of CEQA. Class one consists of the operation, repair, and maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, involving negligible or no expansion of existing or former use. Therefore no further environmental review is necessary; and

WHEREAS, pursuant to Section 10-2.2009 of the Ojai Municipal Code, the City Council may approve a design review permit application in whole or in part, with conditions, only if all of the following findings are made:

- a) the General Commercial (C-1) Zoning District is applied to areas appropriate for a range of community and tourist serving retail and service land uses. Typical land uses include general retail and personal services, hotels and motels, etc. pursuant to Ojai

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Municipal Code Section 10-2.502 (Purposes of commercial and manufacturing zoning districts). The wireless facility is proposed to be fully concealed and unmanned on the roof of an existing office building provided to improve communications services for residents and Ojai visitors; and

- b) the two-story building with rooftop mechanical screening are existing and the proposed enlargement to the rooftop screening to accommodate the wireless facility is so designed and arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are provided and no adverse effect of any type on surrounding property will result. Although the rooftop screening will be enlarged, the height will not exceed the maximum 35 feet set by the municipal code; and
- c) no additional lighting is proposed as part of this project; and
- d) all proposed signs shall not, by size, location, color or lighting, interfere with traffic, limit visibility or be so directed as to adversely affect surrounding properties or be in conflict with any provision of these Zoning Regulations as they are all rooftop safety signs mounted to the proposed wireless equipment; and
- e) per the City of Ojai Municipal Code, in approving a design review permit for a development with direct access to a State highway as shown on the circulation element of the Ojai General Plan or any applicable and adopted specific plan, the Commission shall make the supplemental findings listed below:

- (1) That existing open space which can be viewed from State highways is protected to the extent feasible and consistent with the proposed land use,

The unmanned wireless facility is proposed to be located on the roof of an existing two-story building within existing mechanical equipment screening which is to be enlarged while not exceeding the maximum height limit and therefore will not impact existing open space which can be viewed from State highway 33.

- (2) That existing scenic vistas are protected to the extent feasible and consistent with the proposed land use,

The unmanned wireless facility is proposed to be located within an existing mechanical equipment screening area which is to be enlarged on the roof of an existing two-story building while not exceeding the maximum height limit and therefore will not impact existing scenic vistas.

- (3) That the performance standards of this article are complied with,

An existing rooftop mechanical equipment screen is proposed to be enlarged to accommodate the proposed unmanned wireless facility. The project is conditioned to meet the Building and Fire Codes to ensure compliance with performance standards.

- (4) That the site design and development of the proposed use is consistent with the General Plan and any applicable and adopted specific plan,

The site is developed with a two-story commercial building. The existing rooftop mechanical screen is proposed to be enlarged to accommodate the wireless facility. The design and materials of the enlarged mechanical equipment area are proposed to remain consistent with the existing design, color and materials of the existing building.

- (5) That the proposed development will not cause existing State highways which are functioning at an acceptable level of service to function below an acceptable service level,

The proposal is an unmanned wireless facility on the roof of an existing commercial building. The project site is in the downtown area and all the roadways and access ways within the facility are in compliance with local, state and federal regulations concerning width and grading. The proposal is not expected to affect State highways.

- (6) That the proposed development will not worsen traffic conditions on existing State highways which are currently functioning below an acceptable service level,

The proposal is an unmanned wireless facility on the roof of an existing commercial building. The project site is in the downtown area and all the roadways and access ways within the facility are in compliance with local, state and federal regulations concerning width and grading. The proposal is not expected to affect State highways

- (7) That the proposed development will not cause future State highways to function below an acceptable service level,

The proposal is an unmanned wireless facility on the roof of an existing commercial building. The project site is in the downtown area and all the roadways and access ways within the facility are in compliance with local, state and federal regulations concerning width and grading. The proposal is not expected to affect State highways

WHEREAS, Public Notice of said hearing was sent to all property owners within a 500-foot radius of the subject property and published in the *Ojai Valley News* at least 10 days prior to the public hearing; and

WHEREAS, after taking public testimony and hearing evidence from the City staff and the applicant, the City Council finds, pursuant to the findings and conditions of approval, the above-referenced application and project are consistent with the City's General Plan and City's Municipal Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Council determines that the above set forth findings are true and correct in regards to Conditional Use Permit (CUP 20-005) and Design Review Permit application (DRP 20-004) which findings are incorporated herein.

SECTION 2. The City Council hereby approves Conditional Use Permit (CUP 20-005) and Design Review Permit application (DRP 20-004) subject to the following conditions. The decision of the City Council is final.

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL

Community Development/Public Works Standard Conditions

1. The approved project shall be substantially consistent with the approved architectural plans on file with the Community Development Department.
2. The project approval constitutes the City's authorization to expand an existing rooftop mechanical equipment enclosure on a two-story commercial building. The expansion is for installation of an unmanned rooftop wireless facility including nine antennas and supporting equipment. The existing 686.4 square foot rooftop screened area is approved to be enlarged by 133 square feet for a total of 819.4 square feet. The height is approved to be increased by three-feet for a total of nine-feet. Including the screened mechanical area the building is currently 32-feet in height. The approved enlargement increases the overall height to 35-feet.
3. Discretionary conditions of approval shall be included on the first page of the building plans submitted to the Building Department for the project's building permit.
4. Within one (1) year of design review permit approval, the permit shall be exercised in compliance with Ojai Municipal Code Title 10, Chapter 2, Article 32 (Time Limits and Extension) or the permit shall be deemed void, unless such approval is extended by the Commission for good cause either before or after the expiration of such time limit.
5. Prior to commencing construction, a building permit shall be obtained from the building department. All conditions of the building department shall be met in conformance with Title 9 (Building Regulations) of the Ojai Municipal Code.
6. All conditions of the public works department shall be met in conformance with Title 7 (Public Works) of the Ojai Municipal Code.
7. Any proposed outdoor lighting shall comply with Ojai Municipal Code Title 10, Chapter 2, Article 16.5 (Exterior Lighting Standards).
8. To reduce potential short-term, construction-related noise impacts associated with this project, construction work shall be limited to occur between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday and prohibited on weekends and holidays.

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9. All rubbish, trash and garbage shall be regularly removed from the property and shall not be allowed to accumulate thereon. Applicant/property owner shall take advantage of all recycling programs offered by the City's contract rubbish hauler and shall provide space for storage of containers for this purpose.
10. No structure of a temporary or permanent character, trailer, camper, boat or equipment, or materials, supplies, inventory or work in progress or any similar property shall be permitted to remain upon the exterior portion of the lot after completion of construction/final inspection.
11. The design review permit (DRP 20-04) and the Conditional Use Permit (CUP 20-05) are issued for a period of ten (10) years, but may be reduced for public safety reasons or substantial land use reasons pursuant to California Government Code Section 65964(b). At the end of the 10-year term, the permit shall automatically expire unless a written request for renewal is submitted by the applicant, prior to expiration, to the director of community development department. Upon the expiration of any required permits for the facility, it shall be removed in accordance with the requirement of Section 10-14.090 (Removal of abandoned facilities) of the Ojai Municipal Code.

If a request for renewal of the required permit(s) is received, the permit shall remain in effect until a decision on the renewal is made. The renewal request shall be reviewed in a similar manner as the original approval. The review is to insure that the facility is still in operation, that it has been properly maintained, that the original conditions of approval have been adhered to and whether they are to remain the same or need to be modified, and to determine if new means exist to upgrade the facility to better meet the purpose, intent, goals and provisions of Title 10, Chapter 14 (Wireless Communications Facilities) of the Ojai Municipal Code. If new means exist that will allow the redesign or relocation of the facility to better meet the purpose, intent, goals and provisions of Title 10, Chapter 14, then the facility must be redesigned and/or relocated accordingly. Failure to comply with this requirement may be considered grounds for denial of a new permit.

The City may add conditions to any new permits as necessary to advance a governmental interest related to health, safety, or welfare, provided, however, that any condition shall comply with applicable Federal Communications Commission (FCC) and California Public Utility Commission (CPUC) regulations and standards, and that reasonable advance notice thereof has been provided to all affected parties. If an entitlement is not renewed, the City shall give the applicant written notice thereof together with the rationale on which the City's decision was made. Any applicant that is dissatisfied with a decision to renew or not to renew their permit may appeal the decision in accordance with the provisions of the section(s) under which the original approval was issued.

Fire Department Standard Conditions

12. All conditions of the Ventura County Fire Prevention Division of the Ventura County Fire District shall be met only to the extent these standards apply in the City of Ojai.

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13. Applicant/property owner shall obtain VCFD Form #610B "Requirements for Construction" prior to obtaining a building permit for any new structures or additions to existing structures.
14. Compliance with the Ventura County Fire Department Standards.
15. Legal requirements:
 - a. The owner/applicant, on behalf of itself and its successors and assigns, shall defend and hold harmless the City of Ojai, its officers, boards, commissions, agents and employees, and each of them from and against any claims, demands, actions, suits, liabilities and judgments of every kind and nature regardless of the merit of the same arising out of or related to the exercise and enjoyment of the approval of the City of the development permits necessary to the project including costs of investigations, attorney fees and court costs in the defense of any actions.
 - b. If the City believes that it is entitled to indemnification pursuant to this Condition, the City shall give the applicant prompt and written notice thereof. Any such notice shall set forth in reasonable detail and to the extent then known the basis for such claim for indemnification. Each such claim for indemnification shall expressly state that the applicant shall have only the thirty (30)-day period referred to in the next sentence to dispute or deny such a claim. The applicant shall have thirty (30) days following its receipt of such notice either to (I) acquiesce in such claim and its responsibilities to indemnify the City in respect thereof in accordance with the terms of this Condition by giving the City written notice of such acquiescence or (ii) object to the claim by giving the City written notice of the objection. If the applicant does not object to such claim for indemnification within such thirty (30)-day period, the applicant shall be deemed to have acquiesced in such claim and its responsibilities to indemnify the City in respect thereof in accordance with the terms of this Condition. If the applicant objects to such claim for indemnification within such thirty (30)-day period but it is subsequently determined that the City is entitled to indemnification from the applicant, interest shall be deemed to have accrued on the unpaid amount of such indemnification, including cost to defend, from the date on which the judgment or other final order is entered against the City until full payment of the amount of such indemnification at a rate of ten percent (10 percent) per annum and the City shall be entitled to payment of such interest from the applicant.
 - c. In connection with any claim which may give rise to indemnity under this Condition resulting from or arising out of any claim or proceeding against the City, the applicant shall (unless the City elects not to seek indemnity hereunder for such claim) assume the defense of such claim or proceeding if the applicant acknowledges to the City the City's right to indemnity pursuant hereto in respect to the entirety of such claim or proceeding if the applicant acknowledges to the City the City's right to indemnity pursuant hereto in respect of the entirety of such claim and provide assurances reasonably satisfactory to the City, that the applicant will be financially able to satisfy the amount of such claim in full if such claim or proceeding is decided adversely.

If the applicant assumes the defense of any such claim or proceeding, the applicant shall select counsel reasonably acceptable to the City to conduct the defense of such claim or proceeding, or shall pay for the defense of such claim or proceeding by the City's attorneys, shall take all steps reasonably necessary in the defense or settlement thereof, shall at all times diligently and promptly pursue the resolution thereof and shall bear all costs and expenses in connection with defending against such claim or proceeding.

If the applicant shall have assumed the defense of any claim or proceeding in accordance with this Condition, the applicant may consent to a settlement of, or the entry of any judgment arising from, any such claim or proceeding only with the prior written consent of the City; provided, that the applicant shall pay or cause to be paid all amounts arising out of such settlement or judgment either concurrently with the effectiveness thereof or shall obtain and deliver to the City prior to the execution of such settlement a general release executed by the person not a party hereto, which general release shall release the City from any liability in such matter; provided, further, that the applicant shall not be authorized to encumber any of the assets of the city or to agree any restriction that would apply to the City or to its conduct of business; provided, further, that a condition to any such settlement shall be a complete release of the City, its council, board, commissions, officers, employees, consultants and agents with respect to such claim. The City shall be entitled to participate in (but not control) the defense of any such action, with its own counsel and at its own expense. The City shall, and shall cause each of its officers, employees, consultants and agents to cooperate fully with the applicant in the defense of any claim or proceeding being defended by the applicant pursuant to this Condition.

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PASSED, APPROVED and ADOPTED this 23rd day of August, 2022 by the following vote:

AYES: Blatz, Francina, Haney, Stix, Weirick

NOES: None

ABSTAIN: None

ABSENT: None

CITY OF OJAI, CALIFORNIA

By:

Betsy Stix

Betsy Stix, Mayor

August 31, 2022

Date signed

ATTEST:

Gail Davis

Gail Davis, Deputy City Clerk

APPROVED AS TO FORM:

Matthew T. Summers

Matthew T. Summers, City Attorney