

**RESOLUTION NO. 20-14**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF MORGAN HILL APPROVING A  
CONDITIONAL USE PERMIT FOR A CELL TOWER TO BE  
LOCATED AT THE MORGAN HILL SPORTS CENTER,  
16500 CONDIT ROAD. (APN: 817-13-001)**

**WHEREAS**, on August 27, 2020, TSJ Consulting Inc., on behalf of AT&T Mobility, submitted an application for a Conditional Use Permit to allow for the installation of a new 71-foot tall light pole at the Morgan Hill Outdoor Sports Center (Sports Center) that will include nine panel antennas, 18 remote radio units, four DC-9 surge suppressors, equipment cabinets and a 30KW generator;

**WHEREAS**, the Director of Community Development has determined that the Project is exempt from the California Environmental Quality Act (CEQA) under Section 15303 Class 3 of the CEQA Guidelines as the Project consists of construction and installation of new, small facilities and structures, and equipment in small structures; and has further determined that none of the exceptions to the exemption apply;

**WHEREAS**, such request was considered by the Planning Commission at their regular meeting of November 10, 2020; and

**WHEREAS**, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1.** The approved conditional use is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** The approved cell tower use has been found consistent with the criteria for Wireless Communications Facilities approval contained in Section 18.96.050 E of the Zoning Code and hereby adopted:

1. The facility is consistent with the requirements of Chapter 18.96 Wireless Communications Facilities.
2. The facility is sited and located in the most preferred manner possible, as described in Section 18.96.070 (Preferred Siting and Location), while meeting the applicant's wireless service objectives; and
3. All the findings required for the conditional use as specified in Chapter 18.108 (Specific Permit Requirements) can be made for the proposed facility.

**SECTION 3.** The approved conditional use has been found consistent with the criteria

for Conditional Use Permit approval contained in Section 18.108.030 of the Zoning Code and hereby adopted:

**a. The proposed use is allowed in the applicable district.**

The Sports Center site is zoned Public Facilities (PF). Wireless Communications Facilities consistent with the requirements of Chapter 18.96 Wireless Communications Facilities are a conditional use in the PF zoning district.

**b. The proposed use is consistent with the General Plan, Zoning Code, and any applicable specific plan or area plan adopted by the City Council.**

The proposed telecommunications facility is considered a utility, which is consistent with the Public Facilities General Plan land use and zoning designation. The proposed telecommunication use is consistent with the Economic Development Goal (ED-9) by providing infrastructure that will help make Morgan Hill a competitive business location. The current proposal also advances the Telecommunications Goal (SSI-18) and policies by siting the facility on City-owned property, by upgrading the City's telecommunications system to allow increased coverage, eliminating existing weak spots, and offering future collocation opportunity.

**c. The site is suitable and adequate for the proposed use.**

The proposed telecommunications facility fits within an existing storage area and does not require modification to the Sports Center parking or circulation. The proposed location provides a 225-foot buffer to the nearest residential use. The Sports Center site also provides an ideal location for the telecommunication facility based on the needed coverage area, topography, and the heights of nearby structures.

**d. 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 property.**

The Sports Center is adjacent to existing commercial development to the west, existing residential development to the north, the City's Aquatic Center to the south and unincorporated County properties to the east.

The installation of the telecommunications facility at the Sports Center will cause minimal disruption during the construction but no long-term disruptions since the facility is unmanned, fully secured, and does not emit any noise or odor.

- e. The proposed use will not be detrimental to the public health, safety, and welfare.**

Pursuant to the Federal Telecommunications Act of 1996, the City may not deny an application for a wireless telecommunications facility due to perceived health risks if the proposed facility complies with Federal RF exposure standards. The project complies with the stated requirements. In addition, the project includes a diesel-powered back-up generator that will only operate after the 6-8-hour battery back-up is depleted. The nearest residential use is 225 feet to the north of the generator location. Noise levels will result in a 46 dBA noise level at the exterior of the residences. The 46 dBA level is significantly below the General Plan outdoor noise exposure limitation of 60dBA. As a tertiary power source, use of the generator would be infrequent and given the considerable distance to the nearest residence should not be detrimental to the surrounding public health, safety and welfare.

- f. The proposed use would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system.**

The wireless telecommunication facility would be unmanned. It is anticipated a technician will visit the site approximately once a month. A 13 x 18-foot access and parking area is provided on the north side of the proposed enclosure. With less than two vehicle trips per month, the use is not anticipated to have an adverse effect on traffic or circulation.

- g. The proposed use is properly located within the city and adequately served by the existing and planned services and infrastructure.**

The proposed wireless telecommunication facility is located within the City limits and on City property. The Sports Center is currently served by PG & E, City water and sewer. The proposed use will utilize the existing PG & E power source and connection to City water or sewer is not needed. The proposed antenna project will be adequately served by the existing and planned services and infrastructure.

**SECTION 4.** The cell tower shall be expressly conditioned to operate in conformance with statement of operations incorporated herein and as attached as Exhibit "A-Project Description". Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon amendment of this Conditional Use Permit or approval of a separate Conditional Use Permit application.

**SECTION 5** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

**SECTION 6.** The approved project shall be conducted in a manner consistent with the following conditions of approval:

**1. TIME LIMITS**

The Conditional Use Permit approval shall remain in effect for 24 months to November 10, 2022. Failure to exercise the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.104.210)**

**2. LENGTH OF APPROVAL**

This approval is valid for an initial maximum period of ten years to November 10, 2030. The approval may be extended by the community development director from the initial approval date for a subsequent five years and may be extended by the director every five years thereafter upon the verification of the wireless communications provider's continued compliance with this chapter and with the findings and conditions of approval under which the application was originally approved. **(MHMC 18.96.050)**

**3. CESSATION OF OPERATIONS**

A new permit shall be required if a site is to be used again for the same purpose as permitted under the original permit if a consecutive period of six months have lapsed since cessation of operations. **(MHMC 18.96.050)**

**4. TRANSFER OF OWNERSHIP**

In the event that the original permit holder sells its interest in a wireless communication facility, the succeeding carrier shall assume all project responsibilities and shall be held responsible for maintaining consistency with all permit requirements and conditions of approval. **(MHMC 18.96.050)**

## 5. PRIOR TO COMMENCEMENT OF THE CELL TOWER USE:

- a. Prior to the commencement of the cell tower use, a method of concealment shall be reviewed and approved by the Community Development Director as part of a Design Permit application. Priority for the method of concealment shall be; 1) A banner like shroud; or 2) Paint to match the light pole color if banner like shroud proves unfeasible.
- b. Prior to the issuance of a building permit, a landscape plan (with irrigation) shall be reviewed and approved by the Community Development Director that addresses the following areas:
  - 1) The planter area along the fence line of the play field to the east of the enclosure entry; and
  - 2) The planter island on the west side of the enclosure entry; and
  - 3) The planter area behind the utility boxed along San Pedro, east of the Sports Center sign.
- c. All improvements as shown on the plans plan set titled "CCL03716B MORGAN HILL SPORTS CENTER" dated July 1, 2020, on file with the Planning Division, in application UP2020-0005: Condit-AT&T, shall be completed to the satisfaction of the Community Development Director.
- d. All applicable City, County, State and Federal regulations and documentation shall be completed and in place for the cell tower prior to the commencement of the use.
- e. Prior to the issuance of a building permit:
  - 1) Project shall obtain an encroachment permit if working within the City's easements, or right-of-ways.
  - 2) Project shall enter into agreement with the City for lease area and maintenance of all appurtenant facilities of the cell tower.
  - 3) Project shall provide calculations proving existing light post, which applicant proposes to attach their equipment to, is able to withstand the additional load.
  - 4) Project shall satisfy all stormwater requirements, if applicable.

## 6. OPERATIONS AND MAINTENANCE REQUIREMENTS

- a. Inspections and Emergencies. The city or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permit holder. The permit holder shall cooperate with all inspections. The city or its designee may enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. **(MHMC 18.96.090)**

- b. Contact Information for Responsible Parties. The permit holder shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the community development director upon the community development director's written or verbal request. **(MHMC 18.96.090)**
- c. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved permits and conditions of approval. **(MHMC 18.96.090)**
- d. Removal of Discontinued Equipment. All equipment and improvements associated with a wireless communications facility shall be removed within 30 days of the discontinuation of the use, and the site shall be restored to its original pre-construction condition. If a permit holder fails to remove a discontinued facility, the city may remove or cause to remove the facility at the permit holder's sole expense. **(MHMC 18.96.090)**
- e. Change in Federal or State Regulations. All facilities shall meet the current standards and regulations of the FCC, the California Public Utilities Commission, and any other agency of the federal or state government with the authority to regulate wireless communications providers. If such standards and/or regulations are changed, the wireless communications provider shall bring its facilities into compliance with such revised standards and regulations within ninety days of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal or state agency. Failure to a bring wireless communications facility into compliance with revised standards and regulations shall constitute grounds for the immediate removal of the facility at the wireless communications provider's expense. **(MHMC 18.96.090)**
- f. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate radio frequency (RF) exposure standards. **(MHMC 18.96.090)**
- g. Within the first year of operation, a Radio Frequency report shall be submitted to the City documenting the actual Radio Frequency Electro-Magnetic Energy generated from the facility. The report shall specify any actions necessary to bring the facility into compliance with FCC occupational and general public exposure limits.

## 7. OTHER CONDITIONS

- a. Future collocation with another service provider shall be allowed on the tower. Should the collocation require an increase to the tower height or diameter, an amendment to the use permit is required.
- b. Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this discretionary project or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- c. Submit two (2) signed copies of Resolution No.20-14 to the Planning Division prior to issuance of building permits.

**PASSED AND ADOPTED THIS 10<sup>TH</sup> DAY OF NOVEMBER 2020, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

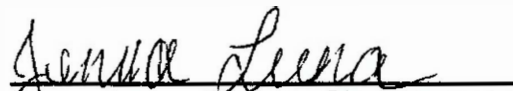
**AYES:**                      **COMMISSIONERS:**                      **HABIB, KUMAR, MUELLER, TANDA,  
GONZALEZ-ESCOTO, DOWNEY, MUNOZ-  
MORRIS**

**NOES: COMMISSIONERS: NONE**

**ABSTAIN: COMMISSIONERS: NONE**

**ABSENT: COMMISSIONERS: NONE**

**ATTEST:**

  
\_\_\_\_\_  
Jenna Luna, Deputy City Clerk

**APPROVED:**

  
\_\_\_\_\_  
Mohammad Habib, Chair

**A F F I D A V I T**

We, Bradley Head, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By:   
\_\_\_\_\_

Date: 11/5/21



**Exhibit A**

# Wireless Telecommunication Facility

SITE: AT&T Site CCL03716

Morgan Hill Outdoor Sports Center



**Address:**

16500 Condit Road

Morgan Hill, CA. 95037

**REPRESENTATIVE:**

*Tom Johnson  
TSJ Consulting Inc.*

*30767 Gateway Place #194  
Rancho Mission Viejo, CA. 92694*

*Phone: 925-785-3727*

*tom@tsjconsultinginc.com*

**Introduction:**

New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (“AT&T”) is a registered public utility, licensed and regulated by the California Public Utilities Commission and the Federal Communications Commission (“FCC”). As a public utility, AT&T Mobility is mandated by the FCC to provide wireless communication services throughout California. AT&T is dedicated to providing customers with wireless technology designed to enrich their lives as their mobility is increasing. AT&T’s vision is to simplify the wireless experience for its consumer and business customers by offering easy-to-understand, affordable rate plans and excellent customer service. AT&T is bringing next-generation wireless data products - from corporate e-mail to downloadable ringtones - to customers nationwide through its advanced networks. The network performance goals include providing the best quality, lowest level of blocking, easy access to the network and continuous drop-free connections.

AT&T's wireless network is based on LTE technology. These technologies are wireless communication standards that require reusing specific frequencies across defined frequency bands. Due to the need for frequency reuse, LTE require numerous sites to provide customers with suitable signal strength to deliver services. These sites are typically built on existing buildings, lattice towers and freestanding poles in order to provide a network of sites that provide seamless coverage over an area.

In addition to these 4G wireless service gap issues; AT&T is in the process of deploying its 4G & 5G LTE service in the County of Santa Clara with the goal of providing the most advanced personal wireless experience available to residents of the Cities. AT&T holds a license with the FCC and has a responsibility to utilize this spectrum to provide personal wireless services in the City. 4G LTE is capable of delivering speeds up to 10 times faster than industry-average 3G speeds. LTE technology also offers lower latency, or the processing time it takes to move data through a network, such as how long it takes to start downloading a webpage or file once you’ve sent the request. Lower latency helps to improve the quality of personal wireless services. What’s more, LTE uses spectrum more efficiently than other technologies, creating more space to carry data traffic and services and to deliver a better overall network experience. This is particularly important in the City of Morgan Hill because of the likely high penetration of the new 5G devices.

Efforts are currently underway in the County to establish the required infrastructure. AT&T is currently seeking the review and approval of a Conditional Use Permit to allow the construction, operation, and maintenance of an unmanned wireless telecommunications facility in this Public Facility zoned property (“Proposed Facility”).

**Background:**

AT&T serves millions of voice and data customers across the United States. Wireless communications continue to change the future of telecommunications with easy-to-use, lightweight and highly mobile communications devices including: smartphones, tablets, e-readers and notebook computers. Wireless communications provide voice, e-mail, texting and high-speed Internet access capabilities for customer’s communications needs virtually anywhere and at any time.

The wireless network being developed by AT&T uses state of the art digital technology. The benefits include call privacy and security, improved voice quality, high-speed data, texting, video conferencing, visual voicemail, and an expanded menu of affordable products and services for personal and professional communications needs.

The Proposed Facility will enhance the area's public safety infrastructure by providing wireless communication services to the surrounding neighborhood and local community. The general public, police, fire fighters, and other emergency personnel rely heavily on wireless communications for fast and dependable communications at all times, but especially during natural disasters or other emergencies, such as earthquakes and fires.

Like other carriers in the industry, AT&T is working diligently to respond to the customer demand for mobile services, by expanding services to its customers from where they have historically used mobile phones, while traveling in the vehicle at their offices to where they are demanding more and more service in the residential communities, in-building coverage in their homes.

AT&T is requesting the review and the approval of a permit to allow the construction, operation, and maintenance of an unmanned wireless telecommunications facility ("WTF"). The project is proposed to close a significant service coverage gap and enhance personal wireless services in the area surrounding the site. AT&T's service coverage area in the city must be improved to handle the growing number of voice calls and wireless data usage. To remain competitive, AT&T must improve services in the areas where consumers are increasingly using their phones and data services.

**The project consists of:**

Installation of up to nine (9) panel antennas which will be located on a replaced light pole of equal height. Also proposed are (18) remote radio units (RRUs), and (4) surge suppressors. As part of this installation there will be a new equipment shelter placed within a fenced compound adjacent to this tower. The subject site is located in an area of the ball field that is out of the daily use and will not be an impact to standard operations.

Once constructed and operational, the Proposed Facility will provide 24-hour service to customers seven (7) days a week. Apart from initial construction activity, an AT&T technician will service the facility on a periodic basis. It is reasonable to expect that routine maintenance/inspection of the facility will occur about once a month during normal working hours. Beyond this intermittent service, AT&T requires 24-hour access to the Proposed Facility to ensure that technical support is immediately available if and when warranted.

**Overview of Site Design/Location Criteria**

The network of AT&T cell sites throughout the region is "location dependent," meaning that there is a necessary and logical interrelationship between each proposed site. Eliminating or relocating a single cell site can lead to gaps in the system and prohibit AT&T from providing uninterrupted or reliable service to customers in a defined coverage area. Further, the elimination or relocation

of a cell site will most often have a “domino” effect on other cell site locations and necessitate significant design changes or modifications to the network.

In identifying the proposed location, AT&T network deployment personnel have selected the Proposed Facility because it meets the technical objectives of RF engineering and provides the best site option with regard to other key criteria including, but not limited to, accessibility, utility connections, zoning compatibility, minimal or no visual impact, liability and risk assessment, site acquisition, maintenance and construction costs.

### **Description of Coverage Area**

AT&T’s objective in locating a WCF at this site is to provide improved in-building and in-transit wireless coverage. The Proposed Facility is needed to close a significant service coverage gap in personal wireless service and provide improved coverage in an area along near E Main Ave and the surrounding residential community. The Proposed Facility will improve coverage to the surrounding residential areas, including the agricultural areas that are present within this zone.

### **Site Development Standards and General Plan**

The location, size, design, and operating characteristics of the Proposed Facility will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental or incompatible with the surrounding land uses. The proposed use is consistent with this finding in that:

The proposed equipment associated with the telecommunication structure operates quietly or virtually noise free.

The equipment does not emit fumes, smoke, or odors that could be considered objectionable.

The Proposed Facility will be unmanned and only requires periodic maintenance, which equates to approximately one trip per month. The Proposed Facility will not result in conditions or circumstances contrary to the public health, safety and the general welfare. The proposed use is consistent with this finding in that:

Unlike other land uses, which can be spatially determined through the General Plan or other land use plans, the location of WTFs are based on technical requirements such as network design criteria, service area, elevations, topography, heights of nearby structures, alignment with neighboring sites and customer demand.

The Proposed Facility will be unmanned, have no impact on circulation systems, and generate no noise, odor, smoke, or any other adverse impacts to adjacent land uses. The proposed facility will allow commuters and residents within the coverage area wireless access to the rapidly expanding communications infrastructure by providing voice and data transmission services not currently available. The installation of antenna sectors and transmission equipment will not result in any material changes to the character of the local community. This Proposed Facility will operate in

full compliance with applicable state and federal laws, including the Telecommunications Act of 1996.

**Regulating Agencies**

AT&T is regulated by the FCC and is authorized to operate in the frequencies established for PCS operators. AT&T's WTFs operate at the lowest possible power levels and are well below established standards used by the FCC for safe human exposure to radio frequency electromagnetic fields. These standards have been tested and proved safe by the American National standards Institute (ANSI) and the Institute of Electrical and Electronics Engineers (IEEE). As explained in the RF engineering analysis provided by Hammett & Edison, Inc., Consulting Engineers, submitted with this Application, the Proposed Facility will operate well within all applicable FCC public exposure limits.

**Alternative Analysis-** The following locations were pursued prior to the selection of this current candidate. There were numerous attempts to obtain landlord interest and for varying reasons each location was either unresponsive or had no interest. Candidate 8 below was the only one that had prior interest and a zoning application was filed with the County of Santa Clara. Unfortunately, AT&T and the Landlord were unable to comes to terms on a lease agreement and this location was cancelled.

<b>Option</b>	<b>Address</b>	<b>Type of Build</b>	<b>Notes</b>
<b>1</b>	<b>1250 Condit Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>2</b>	<b>16715 Condit Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>3</b>	<b>16725 Condit Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>4</b>	<b>16695 Condit Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>5</b>	<b>1320 Diana Ave</b>	<b>Stealth Tower</b>	<b>Landlord was not interested.</b>
<b>6</b>	<b>1170 Diana Ave</b>	<b>Stealth Tower</b>	<b>Landlord was not interested.</b>
<b>7</b>	<b>17045 Condit Road</b>	<b>Stealth Tower</b>	<b>Landlord was not interested.</b>
<b>8</b>	<b>1480 E. Main Ave</b>	<b>Stealth Tower</b>	<b>This project had an application filed with the County of Santa Clara and was ultimately withdrawn as AT&amp;T was unable to obtain a lease agreement with the landlord.</b>
<b>9</b>	<b>1155 Diana Ave</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>10</b>	<b>17025 Condit Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>
<b>11</b>	<b>17100 Laurel Road</b>	<b>Stealth Tower</b>	<b>Unable to obtain interest from Landlord</b>

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Please feel free to contact me if you have any questions.

Regards,

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tom@tsjconsultinginc.com