

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE RE-PERMITTING OF AN EXISTING 63-FOOT HIGH MONOPOLE WITH NINE (9) PANEL ANTENNAS, NINE (9) RADIOS, AN EQUIPMENT ENCLOSURE, AND ASSOCIATED EQUIPMENT AND A SPECIAL USE PERMIT TO ALLOW THE CONTINUATION OF THE ASSEMBLY (CHURCH) USE ON AN APPROXIMATELY 3.49-GROSS ACRE SITE LOCATED ON THE EAST SIDE OF SENTER ROAD APPROXIMATELY 415 FEET SOUTHERLY OF EAST CAPITAL EXPRESSWAY (3195 SENTER ROAD) (APN 494-01-017)

FILE NO. CP20-012

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 1, 2020, an application (File No. CP20-012) was filed by the applicant's representative, Jacob Hamilton, of Crown Castle International, on behalf of Seven Trees Baptist Church, for a Conditional Use Permit to allow the re-permitting of an expired permit for an existing 63-foot high monopole with nine (9) panel antennas, nine (9) radios, an equipment enclosure, associated equipment, and a Special Use Permit to allow the continuation of the assembly (church) use on an approximately 3.49-gross acre site, on that certain real property situated in the PQP Public/Quasi Public Zoning District on the east side of Senter Road approximately 415 feet southerly of East Capital Expressway (3195 Senter Road, San José, which real property is sometimes referred to herein as the "subject property"); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled "Legal Description," and depicted in Exhibit "B," entitled "Plat Map," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a virtual public hearing on said application on April 28, 2021, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a virtual public hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Crown Castle Hope Church 3195 Senter Road, San José, CA 95111, 877194" received on February 25, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this project:

1. **Site Description and Surrounding Uses.** The project is located on an approximately 3.49-gross acre site located on the East side of Senter Road approximately 415 feet southerly of East Capital Expressway. Access to the site is from two (2) driveways off of Senter Road. The site is developed with an existing religious building and accessory buildings, and an existing 63-foot high monopole with nine (9) panel antennas, nine (9) radios, an equipment enclosure, and associated equipment. The project site is surrounded by schools to the north, and east, and residential uses to the south and west.

The existing monopole was originally approved under File Nos. CP96-052 and V96-032 on May 7, 1997 and expired on May 7, 2000. Subsequent File Nos. CP01-025 and V02-012 allowed for colocation and a reduced setback, which were approved on June 12, 2002 and expired on June 12, 2007. File Nos. CPA01-025-01 and V02-012 were approved to allow for the continued use of the wireless facility on June 11, 2007 and expired on June 11, 2017. Subsequently, Permit Adjustments AD09-444, AD09-1015, AD12-1049, AD12-1083, and AD15-871 were approved between 2009 and 2015 to allow for equipment upgrades. Due to the expiration of the original permits, a new Conditional Use Permit is required.

2. **Project Description.** Conditional Use Permit application, File No. CP20-012 would allow the re-permitting of an expired permit for an existing 63-foot high monopole with nine (9) panel antennas, (9) radios, an equipment enclosure, and associated equipment and the continuation of the assembly (church) use on the on the approximately 3.49-gross acre site. There is no additional equipment or expansion of the use under this new CUP.

The rezoning is requested so that the minimum lot size, monopole height, and setbacks will be consistent with the zoning district. With this rezoning to the PQP Public/Quasi Public Zoning District, the project also requires a special use permit for

the Assembly use (i.e., church) on the site.

3. **General Plan Conformance.**

Land Use Designation

The subject site is designated **Public-Quasi/Public** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan.

Density: FAR N/A

This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, supportive housing for the homeless, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. Joint development projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. Private community gathering facilities, including those used for assembly or other comparable assembly activity, are also appropriate on lands with this designation. The appropriate intensity of development can vary considerably depending on potential impacts on surrounding uses and the particular Public/Quasi-Public use developed on the site.

Analysis: The project includes a rezoning from the (A) Agricultural Zoning District to the P/QP Public/Quasi-Public Zoning District and a conditional use permit to re-permit an existing wireless facility and the continuation of the assembly (church) use on the project site. The conditional use permit for the wireless communication facility is consistent with the General Plan Designation of Public-Quasi/Public. There is no FAR requirement in the Public-Quasi Public General Plan designation, so FAR is not applicable to the monopole and also does not apply to the existing assembly use. The assembly building and wireless facility are both existing and there is no change to the square footage, building footprint, or height of the building. Since no FAR standard applies, the project is consistent with the General Plan Designation.

The project is consistent with the following goals and polices of the Envision San José 2040 General Plan:

- a. Goal IN-6 - Support the provision of state-of-the-art telecommunication services for households, businesses, institutions, and public agencies throughout the city to foster fiscal sustainability, an innovative economy, support environmental leadership, meet the needs of quality neighborhoods and advance other Envision General Plan goals.

Analysis: While there are no new antennas with this application, as noted above, there have been upgrades to the facility. Permit Adjustments AD09-444, AD09-1015, AD12-1049, AD12-1083, and AD15-871 were approved between 2009 and 2015 to allow for equipment upgrades.

- b. Goal IN-6.1 - Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.
- c. Policy CD-4.9 – Ensure the design of new structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to the prevalent scale and materials).
- d. Policy CD-4.12 - Visual amenities should be incorporated when structures such as wireless communication antennae are constructed. This includes landscaping measures to offset potential adverse visual impacts.

Analysis: The wireless facility already exists on the site. The wireless facility allows for wireless communications coverage for residents, businesses, and commuters. A new tree will be planted on the southwest side of the monopole and there is a radome on the monopole for additional screening of the facility from public view. Both the monopole and radome are required to be painted light grey.

- e. Policy IP-8.2 Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use / Transportation Diagram.

Analysis: Rezoning of the site from the (A) Agriculture Zoning District to the P/QP Public/Quasi-Public Zoning District would allow the site to be consistent with the minimum lot size, and the existing monopole to be consistent with the height and setbacks of the development standards of the zoning district.

Wireless communication facilities requires a Conditional Use Permit, and Assembly uses require a Special Use Permit in the P/QP Zoning District pursuant to Section 20.40.100. Conformance with the development standards for the issuance of the CUP and SUP are discussed below.

4. Zoning Ordinance Compliance.

Land Use

The project site is located in the P/QP Public/Quasi-Public Zoning District. The site was originally zoned (A) Agriculture for which Assembly was a permitted use. The site includes an Assembly use (church). The wireless communications facility was a conditionally permitted use under the (A) Agriculture Zoning District.

In May 2021, the site was rezoned to P/QP Public/Quasi-Public Zoning District to accommodate the existing monopole and bring into conformance with the new permit. Wireless facility use requires a conditional use permit in the P/QP Public/Quasi-Public Zoning District. Assembly use requires a special use permit in the P/QP Public/Quasi-Public Zoning District.

Development Standards

P/QP Public Quasi-Public Zoning District– Minimum Setbacks and Height

	P/QP Required	Existing/Project Monopole	Existing/Project Enclosure	Existing Assembly Building	Existing Accessory Buildings
Minimum lot size	6,000 SF minimum	---	---	---	---
Maximum Height	65 feet minimum	63 feet	6 feet	30 feet	12 feet
P/QP Setbacks					
Front (E. Capitol Expressway)	10 feet minimum	68.46 feet	71.5 feet	420.23 feet	Varies 104.33 feet-302.45 feet
Front (Senter Road)		637.5 feet	604.28 feet	163.58 feet	Varies 338.80 feet - 522.40 feet
Left, side interior (South)	None	145.42 feet	123.68 feet	89.21 feet	Varies 119 feet-183.86 feet
Right, side interior (North)	None	61.26 feet	51.22 feet	35.11 feet	Varies 1.05 feet - 15.33 feet

Analysis: As discussed above, the use, minimum lot size setbacks, and height are consistent with the P/QP Public/Quasi-Public Zoning District development standards.

- a. Parking: Pursuant to San José Municipal Code Section 20.90.060, one vehicle parking space and one bicycle parking space are required for the wireless facility and assembly requires 1 vehicle parking space per 4 fixed seats, or 1 per 6 linear feet of seating, or 1 per 30 sq. ft. of area designed for assembly, used together or separately for worship. One bicycle parking space is required for the wireless facility.

Analysis: All vehicle parking is existing, and there would be no change from the project for either the church or wireless facility. There is one existing vehicle parking space provided for the wireless facility. Additionally, one bicycle parking

space is shown within the equipment enclosure. Therefore, the project meets the required parking requirements.

- b. Performance Standards: Noise. The sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in Table 20-105 at any property line, except upon issuance and in compliance with a special use permit as provided in Chapter 20.100.

Land Use	Maximum Noise Level in Decibels at Property Line
Commercial or PQP use adjacent to a property used or zoned for residential purposes	55
Commercial or PQP use adjacent to a property used or zoned for commercial or other non-residential purposes	60

Analysis: The acoustical report for the wireless facility prepared by Aspectus, Inc. dated August 14, 2020 indicates that the noise level at the nearest residential property line would be 34 dBA, and the noise levels would be reduced to 37 dBA or lower at the commercial property line. The noise levels are below the allowed decibel levels and the project is consistent with the performance standards of the P/QP Public/Quasi-Public Zoning District.

Additionally, the project applicant is required to comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation.

5. Council Policies.

Wireless Communications Facilities Policy

As stated in the City Council's Land Use Policy for Wireless Communication Facilities (Council Policy 6-20), San José has a strong interest in achieving and maintaining a high level of wireless communication service availability for businesses and residents. However, visual impacts and residential interface concerns can result from the development of wireless communication facilities. The purpose of the policy is to identify criteria to minimize and appropriately locate wireless communications antenna facilities.

a. **Criteria for Siting Wireless Communication Antennas**

i. **Visual Impacts.**

Alternatives Analysis: Prior to the construction of a new wireless communication facility, an alternative analysis should be prepared to identify alternatives that reduce visual impacts.

Analysis: The monopole already exists and is shrouded by a radome. A tree is conditioned to be planted adjacent to the wireless facility and maintained to screen the wireless facility from public views. Therefore, the project is consistent with the policy.

Collocation of Facilities on a Single Monopole and Utility Structure Mounted Antennas: Sharing of a single monopole by two or more communication companies or placement of new antenna on existing utility structures within or outside of the public right-of-way or on a Joint Pole Authority (JPA) structure (including 60kV power line poles) can reduce the overall visual impact of the development of wireless antenna networks.

Analysis: Pursuant to a letter dated 3/17/20 from the applicant to the City, there are three carriers who are co-located on the same monopole. Consistent with the policy, the collocation improves site aesthetics as less monopoles are needed.

Equipment Enclosures: Equipment areas should be screened as appropriate based upon site conditions by new or existing landscape materials or built structures.

Analysis: The existing equipment area is enclosed and is located in an area behind the assembly building and is not visible from Senter Road. Additionally, the enclosure is screened from public views by existing landscaping along Capitol Expressway.

Lighting: No lighting of antennas is allowed except during maintenance activities or as required for safety by the FAA or other regulatory agency.

Analysis: No lighting would be installed; therefore, the project is consistent with the policy.

Landscaping: New landscaping or other visual amenities should be considered to offset the overall visual impact of new freestanding monopole and collocation projects.

Analysis: As identified above, the existing monopole has a radome for shrouding. Additionally, a tree is to be planted on the southwest side of the monopole and maintained for screening from public view, showing consistency with the policy.

- ii. **Height.** Antenna installations should conform to the San José 2020 General Plan and Zoning Ordinance height restrictions.

Analysis: As referenced above, the maximum height is 65 feet within the P/QP district. The monopole is a maximum of 63 feet and the height is consistent with the policy.

- iii. **Setbacks from Residential Uses.** Freestanding monopoles should be located no closer to a parcel developed for use as a single-family or multi-family residence than 35 feet or a distance equal to 1 foot for every 1 foot of structure height, whichever is greater.

Analysis: The monopole is located approximately 145.42 feet north of the nearest residential use. Because the monopole is a maximum of 63 feet tall, the monopole is consistent with the distance from the adjacent residential use.

- iv. **Performance Standards.** Antenna installations should conform to the performance standards of the underlying zoning district. In particular, associated equipment, including power-generating equipment, will need to meet the pertaining noise and air-quality standards and permitting requirements established within the City's Zoning Ordinance.

Analysis: As described above, the acoustical report dated August 14, 2020 indicates that the noise level at the nearest residential property line would be 34 dBA, and the noise levels would be reduced to 37 dBA or lower at the commercial property line. The noise levels are below the allowable 60 decibels at non-residential property lines and the project is consistent with the performance standards of the district. Additionally, there are no generators on site. Given that there will only be one maintenance vehicle there are minimal emissions for the wireless facility.

- v. **Parking.** Wireless communication facilities should not reduce existing parking on the site unless the zoning district parking requirements can still be met.

Analysis: There is one existing vehicle and one existing bicycle parking space. There is no change to the existing on-site parking; the project is consistent with the policy.

- vi. **Vacant Sites.** Monopoles developed on vacant sites should be removed and where possible should be replaced with building-mounted antennas when the site is developed provided that the new development would allow relocation of the existing antennas at a similar height and disposition.

Analysis: This is not applicable because the site is not vacant. The site is developed with an already existing assembly use, accessory buildings, and a wireless facility.

- vii. **Environmental Review an Application for Environmental Clearance.** An Application for Environmental Clearance is required for wireless communication antennas that are determined not to be exempt from environmental review.

Analysis: As stated above, the monopole is an existing feature on the site. The project has been found to be exempt from CEQA pursuant to the state CEQA Guidelines Section 15301 for Existing Facilities since the project involves

negligible or no expansion of the existing use.

- viii. **Permit Expirations:** The City may include a time limit condition in use Permits to provide for the future review of the subject antenna installation. The typical time limit duration is for a five-year period. An extended permit duration of up to ten years can be considered appropriate for smooth taper monopoles placed in light or heavy industrial areas.

Analysis: Consistent with the policy, the project conditions of approval includes a five-year time limit to allow for future review.

Based on the above analysis, the existing wireless facility conforms to the Council Policy 6-20 requirements.

Public Outreach Council Policy

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered a standard development proposal. Following City Council Policy 6-30, the applicant has posted the on-site sign to inform the neighborhood of the proposed project. No public comments have been received. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

6. California Environmental Quality Act.

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Conditional Use Permit and Rezoning is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301, Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The project is to re-permit an existing wireless communication antenna and the continuation of the assembly (church) use on the site without new construction. The operation of the use is consistent with the existing use and therefore would not result in new impacts. Furthermore, there will be no new construction on the site as part of this project and would not result in a detriment to public health, safety or general welfare.

7. Required Findings for Conditional Use Permit

Section 20.100.720 of the Zoning Ordinance specifies the required findings for approval of a Conditional Use Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance

and subject to the conditions set forth in the Permit:

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As described above in the General Plan Conformance section, the wireless facility use project is consistent with the site's Public/Quasi-Public Land Use designation, as well as Telecommunication Goal IN-6 and Policy IN-6.1, and the subject site is not located within an Urban Village. Additionally, the existing Assembly use is also consistent with the Public/Quasi-Public Land Use Designation as private community gathering facilities are appropriate for this designation.

- b. The Conditional Use Permit, as approved, conforms with the Zoning Code and all other Provisions of the San José Municipal Code applicable to the project; and

Analysis: As described above in the Zoning section, both the wireless facility and the Assembly uses are consistent with the setback, height, and parking development standards of the Public/Quasi-Public Zoning District.

- c. The Conditional Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As identified above, the project includes a re-permitting of an existing wireless facility and assembly use. There is no new equipment or construction with the project, and the project is consistent with the City Council's Land Use Policy for Wireless Communication Facilities (Council Policy 6-20).

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare; and

Analysis: As noted above, File Nos. CP01-025 and File No. V02-012 for the existing wireless facility expired on June 12, 2017. The monopole is located approximately 145.42 feet north of the nearest residential use, and a tree is to be planted on the southwest side of the monopole and maintained for screening of the facility from public views. The tree planting is a project condition of approval.

The project would operate within the allowed maximum RF limits per the FCC standards as stated in the Radio Frequency (RF) Site Compliance Report, dated March 6, 2020. The wireless communication facility would be required to comply with all applicable Federal Communication Commission (FCC) standards, including the Telecommunications Act of 1996 with regards to the emission of

electromagnetic frequency radiation, and the project is consistent with the health and safety finding.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The wireless facility and assembly uses already exist. The wireless facility, including the enclosure, monopole, parking, are towards the northwest portion of the property and the church building is located towards the eastern portion of the approximately 3.49-gross acre site. Therefore, the site is adequate in size and shape to accommodate the facilities.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.

Analysis: The site is accessible from two driveways off of Senter Road. The monopole, equipment enclosure, and assembly buildings exist on the site which is currently served by all necessary private and public facilities.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: Both the wireless facility and the assembly use are existing and there are no physical changes with the project. The antennas would not have an unacceptable negative effect from vibration, dust, drainage, erosion, stormwater runoff and odor on adjacent property or properties.

The Telecommunications Act of 1996 contains provisions concerning the placement of antenna structures and other facilities for use in providing personal wireless services. As required by this law, the Federal Communications Commission (FCC) adopted guidelines for environmental RF emissions. These guidelines apply to all transmitters licensed or authorized by the FCC, including antennas licensed to wireless service providers and the cellular telephones used by subscribers to the service. The guidelines are based upon recommendations of federal agencies with expertise in health and safety issues. The FCC has created guidelines for human exposure to RF fields. Specifically, the Act states, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on

the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.”

In summary, the wireless communication facility would comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation.

8. Required Findings for Special Use Permit

Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. Pursuant to the City's Municipal Code Section 20.40.100 a Special Use Permit is required for Assembly use in the Public/Quasi-Public Zoning District.

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and
- b. The Special Use Permit, as approved, conforms with the Zoning code and all other provisions of the San José Municipal Code applicable to the project; and
- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed above, the project rezoned the subject site from (A) Agriculture Zoning District to P/QP Public/Quasi-Public Zoning District in order to re-permit the existing wireless facility. The rezoning of the site to P/QP eliminated the need for a setback variance and the required minimum lot size standard was met. Additionally, assembly is an allowed use with a Special Use Permit in P/QP, and PQP is a conforming district to the Public/Quasi-Public General Plan Designation. Therefore, the project is consistent with the General Plan designations and conforms to the Zoning

- d. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: As noted above, the project would not have a detrimental effect on the surrounding community as both uses are already existing, and no physical changes would be made to the existing site.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As discussed above, the wireless facility and assembly buildings exist on the site, and the subject site is adequate in size to accommodate the project.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.

Analysis: As stated above, the site is accessible from two driveways off of Senter Road. The monopole, equipment enclosure, and assembly buildings exist on the site which is currently served by all necessary private and public facilities.

In accordance with the findings set forth above, a Conditional Use Permit and Special Use Permit to use the subject property for the said purpose specified herein and subject to each and all the conditions hereinafter set forth, are hereby conditionally **granted**. This City Council expressly declares that it would not have approved these Permits except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Special Use Permit (collectively referred to as "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in

accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Conditional Use Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Use Authorization.** Subject to all conditions herein, this Permit allows for the re-permitting of a monopole and associated equipment and allows the operation of the site as a Wireless Communication Facility and Church.
5. **Permit Adjustment Required.** This Permit shall not be effective unless prior to the issuance of any Building Permit or any certificate of occupancy, Permittee obtains a Permit Adjustment which addresses the following items to the satisfaction of the Director of Planning, Building and Code Enforcement: a permit adjustment for the installation and maintenance of a tree for screening of the monopole. A tree as identified on the subject plan shall be planted and maintained for the life of the project in conformance with Title 15.11.
6. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system

imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Permit plans entitled, "Crown Castle Hope Church 3195 Senter Road, San José, CA 95111, 877194" received on February 25, 2021", on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set".
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Discontinuation of Wireless Use.** Upon discontinuation of the use of the subject antennas, the permittee shall remove all antenna improvements and related equipment/enclosures associated with this Permit within thirty (30) days and restore the site to its original condition.
12. **Compliance with Federal Communication Commission Standards.** The wireless communication facility shall comply with all applicable Federal Communications Commission (FCC) standards with regards to the emission of electromagnetic frequency radiation.
13. **Noise Control.** Maximum noise levels emanating from any equipment or the wireless facility shall not exceed 55 decibels at the adjacent residential property lines and 60 decibels at the commercial property lines.
14. **Performance Standards.** The project is to conform with all Performance Standards of the zoning district.
15. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
17. **Colors.** The monopole and radome are to be painted light gray.

18. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
19. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
20. **Screening.** A live oak tree is to be planted on the southwest side of the monopole and maintained for the life of the project. Should the tree become ill (to the point where rehabilitation is infeasible) or die, a replacement live oak tree is to be planted and maintained.
21. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
22. **Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
23. **Lighting.** No new on-site lighting is approved with this permit.
24. **Time Limit.** The use of the wireless facility is valid for five (5) years from the date of approval of this permit. There is no time limit use on the church other than what is otherwise specified by the City's Zoning Code.
25. **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San José General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San José.

The City has adopted a Commercial Linkage Fee Ordinance (San Jose Municipal Code Chapter 5.10) and Resolution, which may apply to this project. The City is also in the process of developing financing plans to help fund affordable housing and related amenities and services. Other financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); and/or (v) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable

housing, as may be amended, which may include one or more of the financing mechanisms identified above.

26. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the “NO DUMPING - FLOWS TO BAY,” applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
27. **Collocation.** The permittee and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this monopole. The permittee and wireless communication facility operator shall notify the Director of Planning, Building and Code Enforcement of any proposals by other wireless communications providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this permit.
28. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code.
29. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
30. **Revocation, Suspension, Modification.** This Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

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ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT "A"

SITUATE IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA:

BEGINNING AT A POINT IN THE CENTER LINE OF SENTER ROAD AT THE MOST EASTERLY CORNER OF THE LAND CONVEYED TO FRANK A. GARBUTT, ET AL, BY DEED RECORDED AUGUST 14, 1943 IN BOOK 1154, PAGE 325 OF OFFICIAL RECORDS OF SAID SANTA CLARA.

THENCE SOUTH 49 DEGREES 56' 20" WEST ALONG THE SOUTHEASTERLY LINE OF SAID LAND CONVEYED TO FRANK A. GARBUTT, A DISTANCE OF 883.67 FEET TO A POINT OF INTERSECTION THEREOF WITH THE EASTERLY LINE OF PARCEL NO. 1 OF THE LAND CONVEYED TO THE COUNTY OF SANTA CLARA BY DEED RECORDED NOVEMBER 27, 1964 IN BOOK 6758, PAGE 88 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE NORTH 0 DEGREE 18' 00" WEST ALONG LAST MENTIONED EASTERLY LINE, A DISTANCE OF 213.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1333.00 FEET; THENCE NORTHERLY ALONG LAST MENTIONED CURVE AND EASTERLY LINE OF SAID PARCEL NO. 1 THROUGH A CENTRAL ANGLE OF 02 DEGREES 20' 00", AN ARC DISTANCE OF 54.29 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID LAND COMPANY TO FRANK A. GARBUTT; THENCE NORTH 49 DEGREES 56' 20" EASTERLY ALONG LAST MENTIONED NORTHWESTERLY LINE, DISTANCE OF 714.97 FEET TO A POINT IN THE CENTERLINE OF SENTER ROAD; THENCE SOUTH 39° DEGREES 02' 50" EAST ALONG THE CENTERLINE OF SENTER ROAD, A DISTANCE OF 205.79 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY DEED RECORDED MARCH 13, 1972 IN BOOK 9741 OF OFFICIAL RECORDS, PAGE 45,

DESCRIBED AS FOLLOWS:

A STRIP OF LAND 45.00 FEET WIDTH TO BE DEDICATED TO THE CITY OF SAN JOSE FOR STREET PURPOSES, THE NORTHEASTERLY LINE BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF SENTER ROAD AT THE MOST EASTERLY CORNER OF THE LAND CONVEYED TO FRANK A. GARBUTT, ET AL, BY DEED RECORDED AUGUST 14, 1943 IN BOOK 1154, PAGE 325 OF OFFICIAL RECORDS IN THE COUNTY OF SANTA CLARA; THENCE ALONG SAID CENTER LINE NORTH 39 DEGREES 02' 50" WEST 205.79 FEET TO THE TERMINUS OF THE DESCRIPTION; SAID STRIP OF LAND BOUNDED ON THE TERMINUS OF THE DESCRIPTION; SAID STRIP OF LAND BOUNDED ON THE SOUTH BY THE SOUTHEASTERLY LINE AND ON THE NORTH BY NORTHWESTERLY LINE OF SAID LANDS OF FRANK A. GARBUTT.

APN: 494-01-017


LS 7900



