

(R-2008-188)

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4/14/08

RESOLUTION NUMBER R- 303580

DATE OF FINAL PASSAGE APR 14 2008

WHEREAS, Buckel Trust, Owner/American Tower Corporation, Permittee, filed an application with the City of San Diego for a permit for a wireless communication facility to be known as the American Tower – Mt. Ada project, located at 6426 Mt. Ada Road, and legally described as a portion of Parcel “B” of Parcel Map No. 227, in the City of San Diego, County of San Diego, State of California, filed April 7, 1970 in the Office of the County Recorder of San Diego, California, in the Clairemont Mesa Community Plan area, in the CC-1-3 zone; and

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] No. 292627/Site Development Permit [SDP] No. 450714, and pursuant to Resolution No. 4283-PC voted to recommend City Council disapproval of the Permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

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WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 292627/Site Development Permit No. 450714:

**A. CONDITIONAL USE PERMIT SAN DIEGO MUNICIPAL CODE [SDMC]
SECTION 126.0305**

1. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit [CUP] included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a 20 year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency [RF] emission to the extent that such facilities comply with the Federal Communication Commission's [FCC] standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP/SDP.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code. This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City imposed a 20 year time limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Since 2000, the City has had a Communication Antenna ordinance that requires architectural or environmental integration with the project site. Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permits. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. In this case, the monopole is the tallest structure in and around the area in which it is located and as such, it has an incongruous effect on the community's landscape. It is not camouflaged from public view nor is it architecturally integrated into the architectural or environmental setting. It is situated on the edge of a commercial area directly across the street from multi-unit residential with a large

single unit residential subdivision beyond. Additionally, the tower is located in a commercial core area of the community, adjacent to a major east west thoroughfare. The tower poses an unsightly visual impact that can be seen from the surrounding residential communities and major thoroughfares.

Section 141.0405 of the Land Development Code differentiates between minor and major telecommunication facilities. Minor telecommunication facilities include those that are concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color and style) unique design solutions, or accessory use structures. Major telecommunication facilities are antenna facilities that do not meet the criteria for minor telecommunication facilities or they are located in residential zones containing residential uses. Similar to minor facilities, they also need to be designed to be minimally visible through the use of architecture, landscape architecture and siting solutions. The Mt. Ada project does not conform to this code requirement due to its height, design, color and the visual clutter it creates. As it exists, the tower is a significant visual impact to the community of Clairemont.

Therefore, the project does not comply to the maximum extent feasible with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location. A wireless communication facility at this location is an appropriate use subject to compliance with the ordinances and policies that regulate telecommunication facilities.

B. SITE DEVELOPMENT PERMIT SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a 20 year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect, The project exists as it did after initial construction and the new owner, American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of RF emission to the extent that such facilities comply with the FCC's standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP/SDP.

c. The proposed development will comply with the applicable regulations of the Land Development Code. The monopole complies with all the development regulations of the CC-1-3 zone, but does not comply with the Clairemont Mesa Height Limitation Overlay Zone of 30 feet. The monopole is 145 feet tall and is extremely visible to the Balboa Avenue corridor and the surrounding residential community. Development in the area is low in scale. The tower is located in a commercial zone that is immediately adjacent to a multi-unit residential complex. The existing tower exceeds the height limit by 115 feet. Deviations to the Clairemont Mesa Height Limitation Overlay Zone require a Site Development Permit.

This project was originally constructed in the mid-1980's when Pac Tel Mobile (now Verizon) was only one of two wireless carriers in San Diego. Their network was being established with tower structures and later branched out to building collocations. Initially, carriers built tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP 83-0629) acknowledging the 20 year time limit on the facility. In order to maintain a facility at this site, a new application in compliance with the current regulations and policies would be required.

2. Supplemental Findings – Clairemont Mesa Height Limit – SDMC
Section 126.0504(i)

a. The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area. The Mt. Ada project is not located near Mission Bay or the surrounding areas and as a result, it will not interfere with public views to these areas. It is located east of Mission Bay in the Balboa Genesee commercial corridor and it creates a significant visual impact to the community surrounding this area.

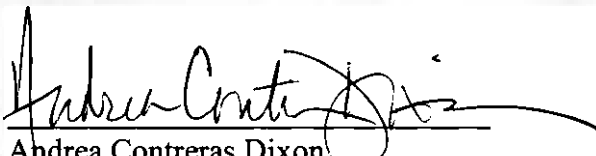
b. The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure. The topography is flat along the Balboa Genesee commercial corridor and the majority of structures in the area are low scale and do not exceed the 30 foot height limit. This tower is 115 feet above the 30 foot height limit and as such, poses a significant visual impact to the surrounding community. It stands out against the existing landscape and is therefore incompatible with the surrounding development. The only other structure of this stature is a 10-story building approximately .62 miles to the west of this site with a roof top full of antennas managed by American Tower Corporation. Therefore, granting an exception to the Clairemont Mesa Height Limitation Overlay Zone is inappropriate.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

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BE IT FURTHER RESOLVED, that Conditional Use Permit No. 292627/Site
Development Permit No. 450714 is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

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