

RESOLUTION NUMBER R-304584

DATE OF FINAL PASSAGE JANUARY 12, 2009

RESOLUTION DENYING THE APPEAL AND GRANTING  
CONDITIONAL USE PERMIT NO. 379109/PLANNED  
DEVELOPMENT PERMIT NO. 542264  
VERIZON – MURPHY CANYON PROJECT.

WHEREAS, RREEF America Reit II Corp. JJ, Owner and Verizon Wireless, Permittee, filed an application with the City of San Diego for a conditional use permit/planned development permit to operate and maintain a Wireless Communication Facility consisting of a 55-foot tall antenna structure, with six antennas reaching a maximum height of 65 feet tall known as the Verizon – Murphy Canyon project, located at 9323 Chesapeake Drive, and legally described as Lot 21, Map 8503, in the Kearny Mesa Community Plan area, in the IL-2-1 zone; and

WHEREAS, on June 5, 2008, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] No. 379109/Planned Development Permit [PDP] No. 542264 pursuant to the Land Development Code [LDC] of the City of San Diego and continued the project to July 10, 2008 in order to allow Verizon time to comply with the LDC regulations; and

WHEREAS, on July 10, 2008, the Planning Commission of the City of San Diego considered CUP No. 379109/PDP No. 542264 and pursuant to Resolution No. 4422-PC, voted to approve the permit with the condition that the monopole be retrofitted as a monopalm; and

WHEREAS, John Bitterly on behalf of Permittee, appealed the Planning Commission's decision to the Council of the City of San Diego; 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

WHEREAS, the matter was set for public hearing on January 12, 2009, testimony having been heard, evidence having been submitted and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, after approval of the above referenced project by City Council, RREEF America Reit Corp. JJ, Owner, transferred the property to Abbey III – San Diego, LLC, thereby making Abbey III – San Diego, LLC, the new Owner of the Verizon-Murphy Canyon Project; 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. 379109/Planned Development Permit No. 542264:

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.** Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses Wireless Facilities. The intent is to minimize the visual impact of wireless facilities. The General Plan states that wireless facilities should be concealed in existing structures when possible, or otherwise use camouflage and screening techniques to hide or blend the facilities into the surrounding area. With the condition that the project be redesigned to replace the existing monopole with a new pole resembling a faux palm tree, or monopalm, the facility will camouflage with the surroundings and meet the intent of the City's General Plan and the Wireless Communication Facility regulations. Therefore, the proposed development would not adversely affect the applicable land use plan.

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] emissions to the extent that such facilities comply with the Federal Communication Commission's [FCC] standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that Verizon Wireless perform a model RF study and submit the findings in a report to the City of San Diego prior to building permit issuance. Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area within matters of the City's jurisdiction.

3. **The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.** With the condition that the project be redesigned to replace the existing monopole with a new pole resembling a faux palm tree, or monopalm, the facility will camouflage and blend with the surroundings. As a result, the project's removal of the existing monopole and replacement with a new pole designed to resemble a faux palm tree does comply to the maximum extent feasible with the regulations of the Land Development Code.

4. **The proposed use is appropriate at the proposed location.** The City of San Diego encourages wireless carriers to locate on non-residential properties. In this case, the carrier was able to locate in such a location, which is preferable to locating in a residential zone with a residential use. The proposed use is appropriate at the proposed location.

**B. PLANNED DEVELOPMENT PERMIT - SDMC SECTION 126.0604**

1. **The proposed development will not adversely affect the applicable land use plan.** Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses Wireless Facilities. The intent is to minimize the visual impact of wireless facilities. The General Plan states that wireless facilities should be concealed in existing structures when possible, or otherwise use camouflage and screening techniques to hide or blend the facilities into the surrounding area. With the condition that the project be redesigned to replace the existing monopole with a new pole resembling a faux palm tree, or monopalm, the facility will camouflage with the surroundings and meet the intent of the City's General Plan and the Wireless Communication Facility regulations. Therefore, the proposed development would not adversely affect the applicable land use plan.

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 RF emissions to the extent that such facilities comply with the FCC standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that Verizon Wireless perform a model RF study and submit the findings in a report to the City of San Diego prior to building permit issuance.

Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area within matters of the City's jurisdiction.

**3. The proposed development will comply with the regulations of the Land Development Code.** With the condition that the project be redesigned to replace the existing monopole with a new pole resembling a faux palm tree, or monopalm, the facility will camouflage and blend with the surroundings. As a result, the project's removal of the existing monopole and replacement with a new pole designed to resemble a faux palm tree does comply to the maximum extent feasible with the regulations of the Land Development Code.

**4. The proposed development, when considered as a whole, will be beneficial to the community.** The wireless communications service made possible by this facility will be beneficial to the community. With the proposed replacement and monopalm redesign, which will camouflage or screen the facility to allow it to blend into the surrounding area, the proposed design of this facility is consistent with the Land Development Code and the City's General Plan. Because this facility was redesigned to be less visible and to comply with the Land Development Code and General Plan, the development, when considered as a whole, would be beneficial to the community.

**5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** Even though this project proposes to encroach into the side-yard setback, it will result in a more desirable project because by removing the existing pole and replacing the pole with a pole designed to resemble a monopalm, or faux palm tree, a more desirable project will be achieved than would be achieved than if designed in strict conformance with the development regulations of the applicable zone.

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

BE IT FURTHER RESOLVED, that the appeal by John Bitterly is denied, and that the Council of the City of San Diego approves the project with the modification that the project approval be conditioned on Verizon's replacement of the existing monopole with a new monopalm pole, rather than a retrofitting the existing pole, said monopalm to be installed by Permittee and inspected by the City by June 12, 2009, and that CUP No. 379109/PDP No. 542264 is granted to Abbey III – San Diego, LLC, Owner, and Verizon Wireless, Permittee,

under the terms and conditions set forth in the attached permit which is made a part of this  
resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon Thomas  
Shannon Thomas  
Deputy City Attorney

AW:ST:hm:pev  
01/30/09  
03/19/09 COR.COPY  
Or.Dept:DSD  
R-2009-805  
MMS#7564

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT  
PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
CITY CLERK  
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-6938

CONDITIONAL USE PERMIT NO. 379109  
PLANNED DEVELOPMENT PERMIT NO. 542264  
**VERIZON – MURPHY CANYON**  
PROJECT NO. 112854

CITY COUNCIL

This Conditional use Permit No. 379109/Planned Development Permit No. 542264 is granted by the City Council of the City of San Diego to Abbey III – San Diego, LLC, Owner, and Verizon Wireless, Permittee, pursuant to San Diego Municipal Code [SDMC] Chapter 12, Article 6, Division 2 and section 141.0405. The site is located at 9323 Chesapeake in the IL-2-1 zone of the Kearny Mesa Community Plan area. The project site is legally described as Lot 21, Map 8503.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate and maintain a Communication Antenna Facility, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 12, 2009, on file in the Development Services Department.

The project or facility shall include:

- a. Removal of the existing 55-foot tall antenna support structure and replacement with a Communication Antenna Facility consisting of a 55-foot tall monopalm (faux palm tree). The facility may contain a maximum of fifteen directional cellular antennas, six omni-directional antennas, and two digital dish antennas. Associated equipment is located within the adjacent office building;
- b. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the

adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

**STANDARD REQUIREMENTS:**

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

10. In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. This Conditional Use Permit [CUP]/Planned Development Permit [PDP] and corresponding use of this site shall **expire on January 12, 2019**. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit, unless the applicant of record files a new application for a facility which will be subject to compliance with all regulations in effect at the time.

12. No later than ninety days prior to the expiration date of this CUP and PDP, the Owner/Permittee may submit a new permit application to the City for consideration with review and a decision by the appropriate decision maker at that time.

13. Under no circumstances, does approval of this permit authorize Verizon Wireless or subsequent Permittee or Owner to utilize the communication antenna structure or site for wireless communication purposes beyond the permit expiration date. Implicit use of this Permit beyond the effective date of this Permit is prohibited.

14. All equipment, including transformers, emergency generators and air conditioners shall be designed and operated consistent with the City noise ordinance. Ventilation openings shall be baffled and directed away from residential areas. Vibration resonance of operation equipment in the equipment enclosure shall be eliminated.



**ENGINEERING REQUIREMENTS:**

15. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.

16. Prior to the issuance of any construction permits, the Owner/Permittee shall submit a Water Pollution Control Plan [WPCP]. The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

17. Any party on whom fees, dedications, reservations or other exactions have been imposed as conditions of approval of this development permit may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

**PLANNING/DESIGN REQUIREMENTS:**

18. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

19. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

20. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

21. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

22. This project proposes to encroach into the side-yard setback. The antennas and fronds mounted on the monopalm may encroach approximately 3.5 feet into the side-yard setback. This deviation is permitted with the approval of this Planned Development Permit.

23. No mechanical equipment, tank, duct, elevator, cooling tower, mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.
24. The existing monopole shall be removed within six months, by June 12, 2009. Failure to remove the existing monopole will result in enforcement action by Neighborhood Code Compliance, which may include fines in addition to the removal of the pole by the City at the Owner/Permittee's expense.
25. As imposed by the City Council, a building permit application for a monopalm pole shall be submitted and deemed complete by the Development Services Department within sixty days, by March 12, 2009.
26. The Permittee shall submit color and material samples during the building permit plan review. The materials proposed shall be approved to the satisfaction of the Development Services Department.
27. Palm fronds shall extend a minimum of 24-inches in front and on top of the antennas, to the satisfaction of the Development Services Department.
28. Pipe mounts absent antennas are not permitted; any antennas removed shall have their corresponding pipe mount concurrently removed. Pipes may not extend beyond the length of the antennas.
29. Antennas and microwave dishes shall be painted to match the design of the monopalm, to the satisfaction of the Development Services Department.
30. A "growth pod" shall be provided to integrate the microwave dishes with the design of the monopalm. The design of this element shall be detailed on the building construction documents.
31. Prior to building permit issuance, the telecommunication provider shall provide a model Radio Frequency [RF] report providing evidence that the cumulative field measurements of radio frequency power densities for all antennas installed on the premises will be below the federal standards.
32. Prior to obtaining a Construction Permit the following items must be illustrated on the construction drawings; coax cable tray, meters, telco, A/C units, generator receptacles, cable runs, bridges, dog houses and external ports. These appurtenances must be minimized visually so as to avoid the effect of changing the outward appearance of the project from what was approved on the exhibits.
33. The applicant of record is responsible for notifying the city prior to the sale or takeover of this site to any other provider.

34. All private outdoor lighting installed by the permittee shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

35. All antenna cabling shall be routed underground and internally within the antenna support structure. No cables shall be visible.

**INFORMATION ONLY:**

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- This development may be subject to impact fees at the time of building/engineering permit issuance

APPROVED by the City Council of the City of San Diego on January 12, 2009 by Resolution No. R-304584.

AUTHENTICATED BY THE CITY MANAGER

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

\_\_\_\_\_  
The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**ABBEY III – SAN DIEGO, LLC**  
Owner

By \_\_\_\_\_

**VERIZON WIRELESS**  
Permittee

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.**