

RESOLUTION NUMBER R-305098

DATE OF FINAL PASSAGE JULY 14, 2009

RESOLUTION DENYING THE APPEAL, AND UPHOLDING
THE PLANNING COMMISSION DECISION TO DENY
CONDITIONAL USE PERMIT NO. 351227/PLANNED
DEVELOPMENT PERMIT NO. 610984/SITE DEVELOPMENT
PERMIT NO. 610385, FOR THE CROWN CASTLE – MISSION
GORGE PROJECT, PROJECT NO. 105832.

WHEREAS, Navajo Properties, LLC, a limited liability company, Owner, and Crown Castle, International, Permittee filed an application with the City of San Diego for a conditional use permit/planned development permit/site development permit for a wireless communication facility, known as the Crown Castle – Mission Gorge project, located at 7189 Navajo Road, and legally described as the southeast quarter of the northeast quarter of Section 18, Township 14 South, Range 3 West, San Bernardino Meridian, in the City of San Diego, State of California, according to official plat thereof, in the Navajo Community Plan area, in the CC-1-3 zone; and

WHEREAS, on May 10, 2007, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act [CEQA] (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15301 and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code section 112.0520; and

WHEREAS, on May 14, 2009, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] No. 351227/Planned Development Permit [PDP] No. 610384/Site Development Permit [SDP] No. 610385, and pursuant to Resolution No. 4508-PC voted to deny the aforementioned permits; and

WHEREAS, On May 28, 2009, Jonathan Dohm, Zoning Manager for Crown Castle, International, appealed the Planning Commission 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 JUL 14 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; 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. 351227/Planned Development Permit No. 610384/Site Development Permit No. 610385:

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 Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the Planning Commission imposed a 10-year limit in order to reevaluate 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 Crown Castle is now seeking to obtain another CUP/PDP/SDP to maintain the facility as is.

The Navajo Community Plan does not address Wireless Communication Facilities as a specific land use recommendation, however, Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses wireless communication 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. In addition to the General Plan, the Mission Trails Design District requires that wireless communication facilities be fully screened from public view.

This project is existing and was designed in accordance with the standards in place at the time of original approval in 1994. The regulations and policies addressing wireless communication facilities have changed over the past fifteen years and the existing monopole does not observe these statutes.

Based on the project's noncompliance with the City of San Diego's General Plan and the Mission Trails Design District Manual as it relates to Wireless Facilities, this project would adversely affect the land use plans.

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's) standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require Crown Castle to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within sixty days of approval of the CUP.

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 Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City imposed a 10-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 Crown Castle is now seeking to obtain another CUP/PDP/SDP 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. New residential development has been built recently and the monopole is a major visual impact for tenants in those units as well as all the other multi-unit residential complexes surrounding the project site. The tower poses an unsightly visual impact on the Navajo community.

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 Mission Gorge 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 Navajo.

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 on this property may be an appropriate use subject to compliance with the ordinances and policies that regulate telecommunication facilities. Due to the fact that the existing facility does not comply with current regulations and policies, this finding cannot be affirmed. A facility that better integrates into the property and takes into consideration the surroundings including the proximity to the existing residential uses that exist around the facility, would be more appropriately located on this property.

B. PLANNED DEVELOPMENT PERMIT – SDMC SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the Planning Commission imposed a 10-year limit in order to reevaluate 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 Crown Castle is now seeking to obtain another CUP/PDP/SDP to maintain the facility as is.

The Navajo Community Plan does not address Wireless Communication Facilities as a specific land use recommendation; however, Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses wireless communication 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. In addition to the General Plan, the Mission Trails Design District requires that wireless communication facilities be fully screened from public view.

This project is existing and was designed in accordance with the standards in place at the time of the original approval in 1994. The regulations and policies addressing wireless communication facilities have changed over the past fifteen years and the existing monopole does not observe these statutes.

Based on the project's noncompliance with the City of San Diego's General Plan and the Mission Trails Design District Manual as it relates to Wireless Facilities, this project would adversely affect the land use plans.

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 Crown Castle to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within sixty days of approval of the CUP.

3. The proposed development will comply with the regulations of the Land Development Code. This project does not comply with all the development regulations of the CC-1-3 zone. The monopole exceeds the maximum height limit of 45-feet by 20-feet and it also encroaches into the rear yard setback by approximately 1 1/2 feet. This facility was originally approved by the Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the CUP regulations allowed deviations. The project exists as it did after initial construction and Crown Castle is now seeking to obtain another CUP/PDP/SDP 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. New residential development has been built recently and the monopole is a major visual impact for tenants in those units as well as all the other multi unit residential complexes surrounding the project site. The tower poses an unsightly visual impact on the Navajo community.

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 Mission Gorge 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 Navajo.

Therefore, the project does not 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 monopole serves AT&T subscribers in the surrounding community, as well as commuters passing through the area and as such, is a beneficial service. Conversely, the significant visual impacts that the pole creates are detrimental to the Navajo community as well as to the City of San Diego. The pole is situated at the rear of a commercial complex surrounded by residential uses. It is 65-feet tall and is taller than any other structure in the immediate vicinity. The monopole is a negative visual impact to the community as well as to the adjacent properties. The original design of this tower was developed ten years ago when design technology was not as advanced as it is today. The CUP was conditioned to expire in ten years and the owner and operator of the facility, AT&T and Crown Castle had the responsibility of making preparations within their network to comply with any new regulations or policies in effect, which would have included a required reduction in height as well as adjustments to other existing facilities and development of new facilities.

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.** The applicant, Crown Castle, is requesting to deviate from the CC-1-3 zone height limitation of 45-feet as well as the rear yard setback of 16-feet. The existing tower is 65-feet tall. It sits at the rear of a commercial complex that is surrounded by residential units. The project, as it exists, does not result in a visually desirable project. The facility could be relocated to the front of the property, maintain the height if technologically required and be redesigned as an obelisk, sign structure, clock tower or some other vertical element that would integrate with the complex. Moreover, Crown has the responsibility of exploring available alternatives that would address legal requirements as well as reduce the negative impact on their existing network. Section 141.0405 of the Land Development Code requires telecommunication facilities to integrate into the landscape in which they are proposed. If this facility were to be redesigned to comply with this section of the Code, a reasonable height deviation may be considered. The existing tower does not result in an acceptable project.

C. **SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504**

1. **Findings for all Site Development Permits SDMC section 126.0504(a)**

a. **The proposed development will not adversely affect the applicable land use plan.** This facility was originally approved by the Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the Planning Commission imposed a 10-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 Crown Castle is now seeking to obtain another CUP/PDP/SDP to maintain the facility as is.

The Navajo Community Plan does not address Wireless Communication Facilities as a specific land use recommendation; however, Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses wireless communication 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. In addition to the General Plan, the Mission Trails Design District requires that wireless communication facilities be fully screened from public view.

This project is existing and was designed in accordance with the standards in place at the time of the original approval in 1994. The regulations and policies addressing wireless communication facilities have changed over the past fifteen years and the existing monopole does not observe these statutes.

Based on the project's noncompliance with the City of San Diego's General Plan and the Mission Trails Design District Manual as it relates to Wireless Facilities, this project would adversely affect the land use plans.

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 Radio Frequency (RF) emission to the extent that such facilities comply with the Federal Communications 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 Crown Castle to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within sixty days of approval of the CUP.

c. The proposed development will comply with the applicable regulations of the Land Development Code. This project does not comply with all the development regulations of the CC-1-3 zone. The monopole exceeds the maximum height limit of 45-feet by 20-feet and it also encroaches into the rear yard setback by approximately 1 1/2 feet. This facility was originally approved by the Planning Commission on December 6, 1994. The CUP included a 10-year expiration. At the time of approval, the CUP regulations allowed deviations. The project exists as it did after initial construction and Crown Castle is now seeking to obtain another CUP/PDP/SDP 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. New residential development has been built recently and the monopole is a major visual impact for tenants in those units as well as all the other multi-unit residential complexes surrounding the project site. The tower poses an unsightly visual impact on the Navajo community.

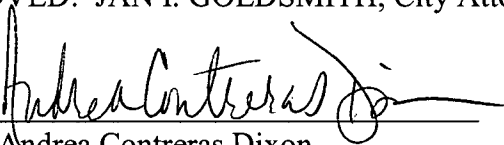
Section 141.0405 of the Land Development Code differentiates between minor and major telecommunication facilities. Minor telecommunication facilities include those that are concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements 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 Mission Gorge 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 Navajo.

Therefore, the project does not comply to the maximum extent feasible with the regulations of the LDC.

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

BE IT FURTHER RESOLVED, that the appeal of Jonathan Dohm, Zoning Manager for Crown Castle, International is denied, the decision of the Planning Commission is sustained; and Conditional Use Permit No. 351227/Planned Development Permit No. 610384/Site Development Permit No. 610385 are denied.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
07/29/09
Or.Dept:DSD
R-2010-69
MMS# 9357