

RESOLUTION NUMBER R- 310863

DATE OF FINAL PASSAGE DEC 06 2016

A RESOLUTION APPROVING NEIGHBORHOOD USE
PERMIT NO. 1659655 T-MOBILE AVENIDA VENUSTO
PROJECT – PROJECT NO. 420129.

WHEREAS, Community Association of Bernardo Heights, Owner, and T-Mobile West LLC, Permittee, filed an application with the City of San Diego for a Neighborhood Use Permit for a Wireless Communication Facility on portions of a 12.38-acre site. The project is known as T-Mobile Avenida Venusto, located at 16150 Bernardo Heights Parkway, and legally described as all that certain real property situated in the County of San Diego, State of California, described as follows: Lot 1 of Bernardo Heights Unit No. 15, in the City of San Diego, County of San Diego, State of California, according to Map No. 11011, filed in the Office of the County recorder of San Diego County, August 9, 1984, in the Rancho Bernardo Community Plan area, in the AR-1-1 zone; 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 December 6, 2016, 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 Neighborhood Use Permit No. 1659655:

Neighborhood Use Permit – SDMC Section 126.0205

1. The proposed development will not adversely affect the applicable land use plan.

The Rancho Bernardo Community Plan does not address Wireless Communication Facility (WCF) use but the City of San Diego's General Plan (Section UD-A.15) requires that the visual impact of wireless facilities be minimized by concealing them in existing structures or using screening techniques to hide or blend them into the surrounding area. The plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the plan states that equipment associated with the WCF should be located in underground vaults or unobtrusive structures and concealed from view.

The project consists of a 60-foot-tall mono-eucalyptus tree supporting twelve antennas, two RayCaps, and six tower mounted amplifiers. The mono-eucalyptus tree has been designed to appropriately conceal the antennas, equipment and the associated mounting apparatus from view to minimize visual impacts. The ground mounted equipment will be located inside and behind a 240-square-foot enclosure. The enclosure features a 6-foot high wall for concealment and the enclosure will be painted and coated with anti-graffiti paint. Landscaping is also being proposed to further screen and integrate the mono-eucalyptus tree with the surrounding setting. The proposed design will result in a WCF that is aesthetically pleasing and respectful of the neighborhood context. The proposed WCF complies with the City's Land Development Code Section 141.0420, Wireless Communication Facilities, as well as the City's General Plan. The proposed WCF will not adversely affect the General Plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project consists of a new 60-foot-tall mono-eucalyptus tree supporting twelve antennas, two Raycaps, and six tower mounted amplifiers. The associated equipment will be located inside a 240-square-foot equipment enclosure adjacent to the faux tree. The mono-eucalyptus tree and the equipment enclosure are proposed on a vacant lot owned by the Community Association of Bernardo Heights. The original Bernardo Heights Unit No. 15 subdivision included an open space easement on the lot. Using the lot for the proposed WCF within the open space requires that the easement be vacated over the portion where the WCF is proposed as well as the access road from Avenida Venusto.

The project was determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction). The conditions of approval for the project will require compliance with several operational constraints and development controls

intended to assure the continued public health, safety, and welfare. All proposed improvements plans associated with the project will be reviewed prior to issuance of construction permits and inspected during construction to assure the project will meet or exceed all relevant and applicable building, electrical, mechanical, plumbing, and fire codes.

Additionally, 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." Sprint submitted an Electro -Magnetic Emission Analysis, which concluded that the project complies with FCC RF standards. Therefore, the project will not result in any significant health or safety risks to the surrounding area within matters of the City's jurisdiction. In conclusion, the proposed project will not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

WCFs are permitted in agricultural zones with a Conditional Use Permit (CUP), Process 3, except where it can be demonstrated that the antennas are more than 100-feet from the property line of residential uses, day cares, elementary, or middle schools, in which case an NUP, Process 2 is required. The antennas associated with this project are more than 100-feet away from the nearest residential property line, therefore, an NUP is the appropriate permit. The WCF Design Requirements [LDC Section 141.0420(g)(2)] state that WCFs "shall utilize all reasonable means to conceal or minimize the visual impacts of the WCF through integration. Integration with existing structures or with existing uses shall be accomplished through the use of architecture, landscape, and siting solutions." In this case, T-Mobile's WCF will be integrated on a 60-foot-tall mono-eucalyptus tree and associated equipment located inside a 240-square-foot enclosure, both designed to minimize and reduce visual impacts to the surrounding neighborhood. The WCF complies with the AR-1-1 development regulations.

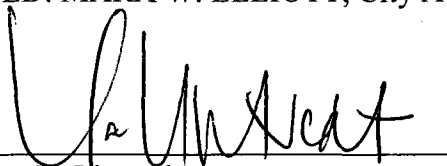
In 1984, a parcel map was approved for the Unit No. 15 subdivision, which this project is located within. The map includes an open space easement upon and across lot 1 and lot 5. This application is requesting an open space easement vacation only over that portion of the lot where the WCF and access road are located. No deviations are proposed with this project. With the approval of the open space easement vacation, construction of the mono-eucalypts tree and equipment enclosure for the purposes of concealing this WCF will comply with the regulations of the Land Development Code.

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

BE IT FURTHER RESOLVED, that Neighborhood Use Permit No. 1659655, attached as Exhibit A hereto and made a part of this resolution, is granted to Community Association of Bernardo Heights, Owner, and T-Mobile West LLC, Permittee, under the terms and conditions set forth therein.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Inga B. Lintvedt
Deputy City Attorney

IBL:mcm
November 14, 2016
January 5, 2017 COR. COPY
Or.Dept: Planning Dept.
Doc. No.: 1417969

Attachment: Exhibit A, Neighborhood Use Permit No. 1659655

EXHIBIT A

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

WHEN RECORDED MAIL TO

**WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501**

INTERNAL ORDER NUMBER: 24005799

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NEIGHBORHOOD USE PERMIT NO. 1659655

PROJECT NO. 420129

T-MOBILE AVENIDA VENUSTO

CITY COUNCIL

This Neighborhood Use Permit(NUP) No. 1659655 is granted by the City Council of the City of San Diego to Community Association of Bernardo Heights, Owner, and T-Mobile West LLC, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 125.1001, 126.0201, 131.0301 and, 141.0420. The 12.38-acre site is located at 16150 Bernardo Heights Parkway in the AR-1-1 zone of the Rancho Bernardo Community Plan area. The project site is legally described as: All that certain real property situated in the County of San Diego, State of California, described as follows: Lot 1 of Bernardo Heights Unit No. 15, in the City of San Diego, County of San Diego, State of California, according to Map No. 11011, filed in the Office of the County recorder of San Diego County, August 9, 1984.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for a Wireless Communication Facility (WCF), described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 6, 2016, on file in the Development Services Department.

The project shall include:

- a. A 60-foot-tall mono-eucalyptus tree (designed by SCI) supporting twelve (12) antennas, six (6) tower mounted amplifiers and two Raycaps. The associated equipment will be located inside a 240-squate-foot Concrete Masonry Unit (CMU) enclosure immediately adjacent to the faux tree;
- b. This permit is contingent upon approval of the associated Open Space Vacation No. 420129.
- c. Every aspect of this project is considered an element of concealment including but not limited to the dimensions, bulk and scale, color, materials and texture. Any future modifications to this permit must not defeat concealment.

- d. In addition to the tree planting included on the landscape plans, the landscaping shall be expanded to include replacing the two dead trees on site with two 15-gallon Toyon specimens.
- e. The top of the mono-eucalyptus tree shall maintain a five foot clearance above the top of the antennas and associated equipment. The antennas, equipment, and the associated mounting apparatus shall be concealed at all times behind antenna-socks and branches.
- f. Landscaping (planting, irrigation and landscape related improvements);
- g. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by December 6, 2019.
2. This approval and corresponding use of this site shall expire on December 6, 2026. Upon expiration of this approval, 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.
3. No later than ninety (90) days prior to the expiration of this approval, the Owner/Permittee may submit a new application to the Development Services Department for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for enforcement for noncompliance, which may include penalties and fines.
4. Under no circumstances, does approval of this permit authorize the Owner/Permittee to utilize this site for WCF purposes beyond the permit expiration date. Use of this permit approval beyond the expiration date of this permit is prohibited.
5. 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 Owner/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.
6. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
7. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
8. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
9. Issuance of this Permit by the City of San Diego does not authorize the Owner/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.).
10. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
11. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
12. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
- If 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.
13. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge,

or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

14. The project proposes to export 7 cubic yards of material from the project site. All excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2009 edition and Regional Supplement Amendments adopted by Regional Standards Committee.
15. Prior to the issuance of any construction permit, the Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
16. Prior to the issuance of any construction permit the 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.

LANDSCAPE REQUIREMENTS:

17. Prior to issuance of any construction permits for the telecom facility and associated structures, complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance to Exhibit 'A,' Landscape Development Plan, on file in the Office of the Development Services Department. Construction plans shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.
18. Prior to Final Inspection, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections.
19. All required landscape shall be maintained by the Owner in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees shall not be permitted.
20. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the

approved documents to the satisfaction of the Development Services Department within 30 days of damage or Final Inspection.

WCF-TELECOM DESIGN REQUIREMENTS:

21. 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.
22. All private outdoor lighting 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.
23. The approved antenna dimensions include: six – 55” by 12” by 7.9” and six - 96.6” by 11.9” by 7.9” as illustrated on the Exhibit “A” dated December 6, 2016. Any future modifications to the antennas must be approved by Development Services. Antennas deviating up to the approved size (length, width, or height), must include screening designed to create the appearance of uniformity among the antennas to the satisfaction of the Development Services Department. The Permittee shall provide evidence demonstrating compliance with Federal standards for radio frequency emissions in accordance with the Telecommunications Act of 1996 and any subsequent amendments.
24. No overhead cabling is permitted.
25. The WCF shall conform to Exhibit “A” (consisting of the stamped approved plans and approved photo simulations) prior to receiving final inspection approval.
26. Photo simulations in color shall be printed on the construction plans.
27. The Owner/Permittee shall install and maintain appropriate warning signage on the WCF as required by State and Federal regulations. The Owner/Permittee shall be responsible for complying with all State and Federal regulations.
28. The accuracy and validity of the RF Compliance Report, submitted by the Permittee, shall be assured while the WCF is in operation.
29. All equipment, including transformers, emergency generators and air conditioners belonging to the Permittee 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 operating equipment in the equipment enclosures shall be eliminated.
30. All facilities and related equipment shall be maintained in good working order and free from trash, debris, graffiti and designed to discourage vandalism. Any damaged equipment shall be repaired or replaced within thirty (30) calendar days of notification by the City of San Diego.

31. All proposed hand-holes shall be covered with bark material to match the mono-eucalyptus trunk to the satisfaction of the Development Services Department.
32. All coaxial conduits shall be routed up through the caisson and into the tree to the satisfaction of the Development Services Department. "Doghouse" cable housings are not permitted.
33. All branches at the antenna level shall extend a minimum of 24-inches beyond the entire vertical face of the proposed antennas to the satisfaction of the Development Services Department.
34. Starting branch height shall be no lower than 13-feet, as illustrated on the stamped, approved Exhibit "A."
35. All exposed cables, brackets and supports shall be painted to match the faux tree foliage to the satisfaction of the Development Services Department.
36. RF socks fully covering the front and back of the antennas (and any other components) shall be used.
37. The applicant shall provide color samples of the mono-eucalyptus branches, and bark prior to Building Permit issuance. This is to ensure that the proposed components integrate with the surrounding landscape. Staff will pre-approve the color sample prior to Building Permit issuance. The exact samples shall be used during the FINAL INSPECTION. The color approved by Planning Staff must be identical to the as-built mono-eucalyptus.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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 construction permit issuance.

APPROVED by the City Council of the City of San Diego on December 6, 2016 by Resolution No.

R-310863.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Simon Tse
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

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.

Community Association of Bernardo Heights
Owner

By _____
NAME
TITLE

T-Mobile West LLC
Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

Passed by the Council of The City of San Diego on DEC 06 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 3 - (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 06 2016.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Linda Arwin*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310863