

RESOLUTION NUMBER R- **311520**

DATE OF FINAL PASSAGE **JAN 23 2018**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO REVERSING THE PLANNING COMMISSION'S DECISION TO DENY THE PROJECT, GRANTING THE APPEAL, AND APPROVING CONDITIONAL USE PERMIT NO. 1980526 AND SITE DEVELOPMENT PERMIT NO. 1980528 FOR A WIRELESS COMMUNICATION FACILITY LOCATED AT 6365 EIDER STREET- PROJECT NO. 413097.

WHEREAS, ROBERT N. MILLER, Owner and T-MOBILE, Permittee, filed an application with the City of San Diego for a permit for a Wireless Communication Facility (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 1980526 and 1980528), on portions of a .43-acre site; and

WHEREAS, the project site is located at 6365 Eider Street in the RS-1-3 zone of the Encanto Neighborhoods Community Plan area; and

WHEREAS, the project site is legally described as:

All that portion of Lot 40 of the Resubdivision of a portion of Rosemont Addition to Encanto Heights, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 1240, filed in the Office of the County Recorder of said San Diego County, March 11, 1910, lying northerly of a line described as follows:

Commencing at the northeasterly corner of Lot 41 of said Resubdivision; thence south 13°24' east along the easterly line of said Lot, a distance of 172.3 feet; thence at right angles, south 76°36' west a distance of 100.76 feet to a point on the easterly line of said Lot 40, being the true point of beginning; thence continuing south 76°36' west, 100.76 feet to the westerly line of said Lot 40; and

WHEREAS, on June 26, 2017, 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 15303 (New Construction or Conversion of Small Structures) 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, the project was presented to Planning Commission on August 31, 2017 and the Planning Commission, with a vote of 6-1-0, denied the project on the basis that the Wireless Communication Facility, specifically the equipment enclosure, would pose an impediment to the future development of a single-family home; and

WHEREAS, T-Mobile filed an appeal of the Planning Commission decision and submitted two separate conceptual design options illustrating the future placement of a 1,200 square-foot single-family home on the project site; and

WHEREAS, staff reviewed the conceptual design options and found it would be feasible for the property owner to construct a home on the project site with the Wireless Communication Facility and that the construction of the Wireless Communication Facility with the equipment enclosure would not interfere with future development of single-family home on the site; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body 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, on January 23, 2018, the City Council of the City of San Diego considered the appeal and Conditional Use Permit (CUP) No. 1980526 and Site Development Permit (SDP) No. 1980528, pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Planning Commission's decision to deny the project is reversed and the appeal is granted; and

BE IT FURTHER RESOLVED, by the City Council of the City of San Diego, that it adopts the following findings for CUP No. 1980526 and SDP No. 1980528:

A. **CONDITIONAL USE PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)
SECTION 126.0305**

1. **Findings for all Conditional Use Permits:**

a. **The proposed development will not adversely affect the applicable land use plan.** The Encanto Neighborhoods Community Plan (Community Plan) refers to Land Development Code (LDC) Section 141.0420 (Wireless Communication Facilities (WCF) regulations) and the WCF Design Guidelines for development of WCFs for the City of San Diego.

Additionally, the City's General Plan addresses WCFs in the Urban Design Element (UD-A.15), which requires the visual impact of wireless facilities to be minimized by concealing wireless facilities in existing structures or by 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 wireless facilities shall be concealed from view.

This project consists of a new 30-foot tall faux eucalyptus tree supporting a total of eight antennas and two Tower Mounted Amplifiers (TMAs) with associated equipment located within a 192-square-foot enclosure on a vacant residential property. A new driveway will provide access from Eider Street. The project site is zoned RS-1-3. WCFs are permitted in this zone with a Conditional Use Permit (CUP) pursuant to compliance with the underlying zone development regulations and the WCF regulations. The site is covered primarily with non-native grasslands and contains Environmentally Sensitive Lands (ESL) in the form of steep slopes, which requires a Site Development Permit (SDP). A 26-foot tall California Pepper tree exists immediately adjacent to Eider Street on the east side of where the new driveway will be located. A large mass of mature shrubs (Lemonade Berry, Laurel Sumac and Toyon) exists just to the south of the pepper tree. Another 38-foot tall California Pepper tree exists on the property to the east, adjacent to where the faux eucalyptus tree is proposed. All of these elements will help integrate the faux tree from some vantage points. To further integrate the WCF, T-Mobile is proposing to add four 15-gallon Red Iron Eucalyptus trees and three 24-inch box California Pepper trees around the faux tree as well as at the drive entrance. Lemonade Berry shrubs (5-gallon) will be planted on the west side of the equipment enclosure and a 1-gallon Coyote Brush will be planted on all three sides of the new driveway and behind the equipment enclosure.

The Community Plan also contains policies regarding Communication Infrastructure. The Public Facilities, Services and Safety Element recommends infrastructure to be provided to ensure seamless communications and universally available access to data for all groups in addition to maintaining an integrated information infrastructure system. Based on coverage maps submitted by T-Mobile, coverage is currently poor in the area and the addition of Eider Street improves coverage significantly. Finally, the Community Plan contains policies for hillside development. The Conservation and Sustainability Element recommends that hillside development complement the natural character including disturbance to topography and biological resources. It also recommends graded areas to be revegetated with native vegetation to minimize erosion and soil instability. The T-Mobile Eider Street project proposes minimal grading in order to provide access to the site and a level foundation for the equipment and faux tree. The slopes on both sides of the driveway and around the equipment enclosure are proposed to be revegetated with Lemonade Berry shrubs and Dwarf Coyote Brush.

The proposed WCF complies with SDMC 141.0420, Wireless Communication Facilities, as well as the policies contained within the Encanto Neighborhoods Community Plan and the design and location requirements of the City's General Plan. The proposed WCF will not adversely affect the applicable land use plan or the City's General Plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The project is located at 6365 Eider Street in the Encanto Neighborhoods Community Plan area. The project site is a vacant residential lot containing steep hillsides. The project consists of a new 30-foot-tall faux eucalyptus tree supporting eight panel antennas and two Tower Mounted Amplifiers (TMAs). The associated equipment is located in a 192-square-foot concrete block enclosure with a pitched roof.

The project was determined to be exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures). 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 improvement 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.

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.” An Electromagnetic Energy Exposure Report was prepared, which concluded that the project will be in compliance with FCC standards for RF emissions. Therefore, the project will not result in any significant health or safety risks to the surrounding area within matters of the City's jurisdiction.

c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. Wireless Communication Facilities (WCFs) are required to comply with Land Development Code (LDC) Section 141.0420, which includes design requirements that supplement the purpose and intent of the City's General Plan for wireless facilities. Similar to the City's General Plan, LDC Section 141.0420 requires all WCF to utilize the smallest, least visually intrusive antennas, components and other necessary devices. The applicant shall use all reasonable means to conceal or minimize the visual impacts of WCF through integration. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape and siting solutions.

The T-Mobile Eider Street project consists of a 30-foot tall faux eucalyptus tree supporting eight panel antennas and two Tower Mounted Amplifiers (TMAs). The tree is proposed to be located on the east side of the steeply sloped lot, south of a large mass of mature shrubs (Lemonade Berry, Laurel Sumac and Toyon) and adjacent to a 38-foot tall California Pepper tree located on the adjoining property. A combination of three 24-inch box California Pepper trees and four 15-gallon Red Iron Bark Eucalyptus trees are proposed around the faux tree and on the west side of the equipment enclosure to help provide camouflage for the WCF. The equipment enclosure will be screened from the east by the existing large mass of shrubs and from the west with proposed 5-gallon Lemonade Berry shrubs. The slopes on both sides of the driveway will be planted with 1-gallon Dwarf Coyote Brush planted 48-inches on center.

The project site contains Environmentally Sensitive Lands (ESL) in the form of steep slopes. Approximately 42.5 percent of the .43-acre lot is considered steep slopes (25 percent or greater). The steep slopes are located along the front of the property adjacent to Eider Street with a small area on the east side of the property and a larger area mid-lot that transects the property from northeast to southwest. Encroachment into the steep slopes is limited to 498.40 square feet (0.01144 acres), which includes the cut for the driveway entrance and very small areas for proposed revegetation.

There are no deviations from the WCF regulations proposed with this application, therefore, the project is in full compliance with the applicable regulations of the LDC.

d. The proposed use is appropriate at the proposed location. The proposed Wireless Communication Facility (WCF) is located in a Preference Four location as outlined in Council Policy 600-43. The Policy sets forth locational categories that correspond to the process levels contained within Land Development Code (LDC) Section 141.0420, WCF Regulations. These guidelines establish a hierarchy from the most preferred location (Preference 1) to the least preferred location (Preference 4). Applications for sites either in Preference 2, 3 or 4 locations should include additional information from the applicant substantiating why a lower preference location was not used. In this case, T-Mobile's search ring is in an exclusively residential area. Within the search ring, there are some vacant lots and paper streets, but no other higher preference sites exist. The faux eucalyptus tree is proposed at approximately 443 feet Above Mean Sea Level (AMSL), which is one of the highest elevations within the search ring. T-Mobile's coverage objective is primarily the residential areas to the north and northeast of the project site. The site justification submitted with the project indicates that T-Mobile explored

nine other sites within the vicinity, but because of low elevation or locations too far from the search ring, none of the sites provided the same technical benefits to meet their coverage objective. Crown Castle recently installed small cells for T-Mobile on SDG&E utility poles within the area. These antennas will help to offload some of the traffic that is anticipated to be associated with the T-Mobile Eider Street project as well as other nearby sites. The small cells alone would not be able to provide the coverage as the proposed project site.

The .43-acre project site is located in a single-unit residential neighborhood consisting of rolling hills with a rural development pattern. The south side of Eider Street slopes up from the street with many houses set back from the road, while the north side slopes downhill where many of the homes are closer to the street. The T-Mobile faux tree is set back from Eider Street approximately 52 feet and is proposed behind (to the south of) the large mass of existing shrubs directly above Eider Street. A new 24-foot long driveway is proposed from Eider Street to provide access to the new 192-square-foot equipment enclosure designed to have the appearance of a small garage or shed. A 6-foot tall, 8-foot long horizontal wood fence will be located directly in front of the equipment enclosure to conceal the electric meter, the metal access door and the Radio Frequency (RF) signage. Therefore, the use is appropriate at this location because it is sensitively designed and integrates with the residential nature of the area.

**B. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)
SECTION 126.0504**

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. Please see CUP Finding No. 1 above for facts supporting this Finding. For the reasons described in that Finding, which are hereby incorporated into this Finding by reference, the proposed development will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. Please see CUP Finding, No. 2, above for facts supporting this Finding. For the reasons described in that Finding, which are hereby incorporated into this Finding by reference, the proposed development will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. Please see CUP Finding No. 3 above for facts supporting this Finding. For the reasons described in that Finding, which are hereby incorporated into this Finding by reference, the proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

2. Supplemental Findings for Site Development Permits:

a. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The T-Mobile Eider Street project is a Wireless Communication Facility (WCF) consisting of a 30-foot tall faux eucalyptus tree supporting eight panel antennas and two Tower

Mounted Amplifiers (TMAs) with a new driveway providing access to an associated 192-square-foot equipment enclosure. The WCF is proposed on a vacant lot zoned for residential use in the Encanto Neighborhoods Community Plan area. The residentially zoned lot is vacant and is sloped steeply from Eider Street, approximately 35 feet to the highest point at the back of the lot. Non-native grasslands cover much of the property, however, an approximately 26-foot-tall California Pepper tree exists on the property immediately adjacent to Eider Street and a large mass of mature shrubs (Lemonade Berry, Laurel Sumac and Toyon) exist just to the south of the pepper tree. Another 38-foot tall California Pepper tree exists on the property to the east, adjacent to where the faux eucalyptus tree is proposed. These elements will provide a backdrop to help integrate the faux tree.

Approximately 42.5 percent of the .43-acre lot is considered steep slopes (25 percent or greater). The steep slopes are located along the front of the property adjacent to Eider Street with a small area on the east side of the property and a larger area mid-lot that transects the property from northeast to southwest. Encroachment into the steep slopes is limited to 498.40 square feet (0.01144 acres), which includes the cut for the driveway entrance and very small areas for proposed revegetation. Therefore, the site is physically suitable for the design and siting of the WCF and the project will result in minimal disturbance to environmentally sensitive lands.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The lot where the T-Mobile Eider Street project is proposed is steeply sloped from Eider Street to the rear of the property which has an elevation difference of almost 35 feet. T-Mobile is proposing a 12-foot wide driveway up to the equipment enclosure which is set back from Eider Street 24 feet. The proposed location of the faux eucalyptus tree is to the south east of the equipment enclosure, approximately 17 feet above Eider Street. Grading for the facility will be limited to creating the driveway and pad area for the equipment enclosure and trenching for the telco between the equipment and faux tree (2,037 square feet) and for the footings for the faux tree (423 square feet). The total area of encroachment into steep slopes is 498 square feet. A total of 240 cubic yards of soil are proposed to be exported. The cuts for the driveway will use grading techniques designed to blend the edges of the slope and minimize erosion and geological impacts. The area around the equipment enclosure and the driveway will be revegetated with 1-gallon Dwarf Coyote Brush planted 48-inches on center. Therefore, there will be minimal alteration of land forms, which will not result in undue risk from geologic and erosional forces, flood hazards or fire hazards.

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The T-Mobile Wireless Communication Facility (WCF) is located in areas of the lot that are less than 25 percent grade, however, the entire lot frontage (approximately 5-8 feet in width) is located in steep slopes. In order to provide access to the site, encroachment into the steep slope is required. Grading for the driveway will require approximately 409 square feet of encroachment into the steep slopes and an additional 1,500 square feet (\leq 25 percent slopes) for the remainder of the driveway, which includes contouring to blend the existing slopes into the newly created slopes. Minor encroachment into small areas of steep slopes (89 square feet) will take place behind the equipment enclosure and on both sides of the faux tree to blend the slopes and minimize erosion

impacts. The project will not impact the existing large mass of shrubs on site nor the existing California Pepper tree at the front of the lot. The proposed WCF is sited and designed to prevent adverse impacts on the adjacent steep slopes.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The .43-acre site is not located within or adjacent to the City's Multi-Habitat Planning Area (MHPA) and therefore, is not subject to the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.


e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The proposed project is located more than six miles from the Pacific Ocean, however the project will implement on-site Storm Water Standards in addition to any construction and permanent Best Management Practices so as not to contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The construction plans shall be reviewed and permitted and the project will be required to be inspected by the City for compliance with all applicable building, mechanical, electrical, fire code, and development regulations. The permit for the project includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the San Diego Municipal Code (SDMC) in effect for this project. Such conditions are necessary to avoid adverse impacts to the health, safety and general welfare of persons residing or working in the surrounding area. The project shall comply with the development conditions in effect for the subject property as described in Site Development Permit No. 1980528 and Conditional Use Permit No. 1980526 and other regulations and guidelines pertaining to the subject property per the SDMC. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. 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 based on the findings hereinbefore adopted by the City Council, Conditional Use Permit No. 1980526 and Site Development Permit No. 1980528 are hereby GRANTED to Robert N. Miller, Owner and T-Mobile, Permittee, under the terms and conditions as set forth in the attached permit which is made a part of this resolution and with the understanding that the Owner agrees to include a deed restriction permitting leasing to only one

wireless facility carrier on the site as a project feature, which will be substantiated prior to the issuance of construction permits.

APPROVED: MARA W. ELLIOTT, City Attorney

By 

Corrine L. Neuffer
Deputy City Attorney

CLN:als
01/29/2018
Or. Dept:DSD
Doc. No. 1641337

Attachment: Conditional Use Permit No. 1980526 and Site Development Permit No. 1980528

Passed by the Council of The City of San Diego on JAN 23 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 23 2018.

(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 *Aty Moody*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311520

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

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

INTERNAL ORDER NUMBER: 24005677SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONDITIONAL USE PERMIT NO. 1980526
SITE DEVELOPMENT PERMIT NO. 1980528
T-MOBILE EIDER STREET PROJECT NO. 413097
CITY COUNCIL**

This Conditional Use Permit No. 1980526 and Site Development Permit No. 1980528 are granted by the City Council of the City of San Diego to Robert N. Miller, Owner, and T-Mobile, Permittee, pursuant to San Diego Municipal Code (SDMC) sections 126.0303 and 126.0502. The .43-acre site is located on the south side of Eider Street, northeast of Scimitar Drive and addressed at 6365 Eider Street in the RS-1-3 zone of the Encanto Community Plan area. The project site is legally described as:

All that portion of Lot 40 of the Resubdivision of a portion of Rosemont Addition to Encanto Heights, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 1240, filed in the Office of the County Recorder of said San Diego County, March 11, 1910, lying northerly of a line described as follows:

Commencing at the northeasterly corner of Lot 41 of said Resubdivision; thence south 13°24' east along the easterly line of said Lot, a distance of 172.3 feet; thence at right angles, south 76°36' west a distance of 100.76 feet to a point on the easterly line of said Lot 40, being the true point of beginning; thence continuing south 76°36' west, 100.76 feet to the westerly line of said Lot 40.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for a Wireless Communication Facility (WCF) described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 23, 2018, on file in the Development Services Department.

The project shall include:

- a. A 30-foot tall faux eucalyptus tree supporting eight panel antennas and two Tower Mounted Amplifiers. Four panel antennas measure 56" x 12" x 7.9" and four panel antennas measure 50.9' x 12" x 6.5";

- b. A deed restriction on the property restricting the leasing of the property to only one wireless facility carrier on the site, which will be substantiated prior to the issuance of construction permits.
- c. A 192-square-foot equipment enclosure containing four outdoor equipment cabinets with a 6-foot tall, 8-foot long horizontal wood fence in front of the enclosure to screen the electric meter and Radio Frequency (RF) signage;
- d. Landscaping (planting, irrigation and landscape related improvements); and
- e. 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.

Every aspect of this project is considered an element of concealment including (but not limited to) the dimensions, build and scale, color, materials and texture. Any future modifications to this permit/project must not defeat concealment.

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 January 23, 2021.
2. This permit and corresponding use of this site shall expire **January 23, 2028**. 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 250 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"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

15. The applicant shall obtain a Non-exclusive Right-of-Way Use Agreement from the City of San Diego for the proposed work in the Eider Street Right-of-Way.

16. The applicant shall obtain a Public Right-of-Way permit for the proposed work in the Eider Street Right-of-Way.

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

18. 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:

19. Prior to issuance of any building permit, the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape

Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department.

20. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another approved entity. All required landscape shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

21. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

22. The WCF shall conform to the approved construction plans.

23. The Owner/Permittee shall print photo simulations on the construction plans.

24. The City may require the Owner/Permittee to provide a topographical survey conforming to the provisions of the SDMC if the City determines 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.

25. 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.

26. The accuracy and validity of the RF Compliance Report, submitted by the Owner/Permittee, shall be assured while the WCF is in operation. If requested by the City, Owner/Permittee shall provide an updated RF Compliance Report to address any issues associated with the emitting components of the WCF.

27. All equipment, including transformers, emergency generators and air conditioners belonging to the Owner/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.

28. All facilities and related equipment shall be maintained in good working order. Any damaged equipment shall be repaired or replaced by the Owner/Permittee within thirty (30) calendar days of notification by the City of San Diego.

29. The Owner/Permittee shall notify the City within 30 days of the sale or transfer of this site to any other provider.

Faux Trees

30. All proposed hand-holes shall be covered with bark material to match the monoecalyptus trunk to the satisfaction of the Development Services Department.
31. PVC plastic may not be used in the manufacturing of the faux eucalyptus tree branches or foliage.
32. To ensure a natural tree appearance, branches must be natural in appearance and may not be flat or straight. Branches shall be long enough to enable concealment and each branch shall maintain a minimum of 120 tips, unless a lower tip total is approved by the Development Services Department.
33. The faux tree shall be maintained for the life of the permit and the Permittee shall ensure that all aspects of the tree are preserved in a state that does not impact the overall appearance/silhouette including but not limited to color, branching, leaves, socks and antlers. Any time an application to modify the WCF is submitted, the Permittee will be required to restore any failing features mentioned above, regardless of the application scope of work.
34. 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.
35. 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. All antennas must be concealed by the branches. Antenna support arms shall be designed to be minimal in length so as not to alter the overall silhouette/appearance of the tree. One-dimensional antenna sectors are not permitted. The antennas must be concealed by the branches. Antenna socks do not qualify as branch extensions.
36. Starting branch height shall be no higher than 10-feet, as illustrated on the stamped, approved Exhibit "A."
37. All exposed cables, brackets and supports shall be painted to match the faux tree foliage to the satisfaction of the Development Services Department. Ninety degree connectors shall be used unless technically infeasible. Such exposures shall be minimized; bunched or looped cables are not permitted, even if painted.
38. RF socks fully covering the front and back of the antennas (and any other components) shall be used. Such socks are complementary to the concealment provided by branches and are not intended as concealment by themselves.
39. The applicant shall provide color samples of the monoecalyptus 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 moneucalyptus.

40. 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.

INFORMATION ONLY:

- Please note that a Telecom Planning Inspection Issue will be placed on the project prior to Final Clearance from the City's Building Inspector to ensure compliance with the approved plans and associated conditions. Prior to calling for your Final Inspection from your building inspection official, please contact the Project Manager listed below at (619) 446-5351 to schedule an inspection of the completed facility. Please schedule this administrative inspection at least five working days ahead of the requested Final Inspection date.
- The issuance of this development permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary 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 January 23, 2018, by Resolution No. ~~311520~~ **311520**

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Karen Lynch
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.**

Owner

By _____
Name: Robert N. Miller
Title: Owner

T-MOBILE
Permittee

By _____
Name: Joseph Rose
Title: Site Development/Real Estate Manager

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