

RESOLUTION NUMBER R- 314695

DATE OF FINAL PASSAGE APR 10 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO DENYING THE APPEAL AND AFFIRMING THE
PLANNING COMMISSION'S DECISION TO APPROVE
CONDITIONAL USE PERMIT NO. 2591714 AND
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2606145
FOR VERIZON SAN DIEGO ZOO – PROJECT NO. 699293.

WHEREAS, 666 UPAS Homeowners Association Corp., Owner, and Verizon Wireless, 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 No. 2591714 and 2606145); and

WHEREAS, the project site is located at 666 Upas Street in the RM-4-10 Zone of the Uptown Community Plan area; and

WHEREAS, the project site is legally described as Lots 1, 2 and 3 in Park Upas, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 5161, filed in the Office of the County Recorder of San Diego County, April 22, 1963. Excepting therefrom all units as shown on the amended Del Prado Condominium Plan recorded in the Office of the County Recorder of San Diego County, August 16, 1972 as Document No. 216496 of Official Records; and

WHEREAS, on November 9, 2022, 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) (California Public Resources Code section 21000, *et seq.*) under CEQA Guideline Section 15302 (Replacement or Reconstruction); 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 December 15, 2022, the Planning Commission of the City of San Diego considered Conditional Use Permit (CUP) No. 2591714 and Neighborhood Development Permit (NDP) No. 2606145 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, on December 19, 2022, Andrea Myers on behalf of Bessemer Trust Company, N.A., the Trustee of The Sachs Family 1983 Trust, submitted an appeal of the Planning Commission's approval of CUP No. 2591714 and NDP No. 2606145 (Appeal); and

WHEREAS, on April 10, 2023, the City Council of the City of San Diego (City Council) considered the Appeal and CUP No. 2591714 and NDP No. 2606145, pursuant to the Land Development Code of the City of San Diego, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego 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 City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the City Council denies the Appeal and adopts the following findings with respect to CUP No. 2591714 and NDP No. 2606145:

A. CONDITIONAL USE PERMIT [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 Verizon San Diego Zoo (Project) proposes the continued use of a Wireless Communication Facility (WCF) by Verizon. The existing WCF will consist of modifications to the project and comprises eight (8) antennas to be mounted on the outside wall of an existing condominium complex and enclosed behind Fiberglass Reinforced Plastic (FRP) screen boxes, painted and textured to match the existing building. There will be four antennas on the eastern wall of the penthouse and four antennas on the southern wall.

The Uptown Community Plan does not address communication antennas as a specific land use. However, the City of San Diego's General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing them inside 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 wireless facilities shall be concealed from view. Pursuant to the San Diego Land Development Code, communication antennas are permitted in all zones citywide with the appropriate permit process. 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 eight (8) panel antennas will be screened behind FRP screen boxes painted and textured to match the existing façade. The associated equipment area is located on the upper rooftop. As designed, the project complies with the WCF regulations, by integrating the Project into the condominium complex, thereby reducing any potential visual impacts. Therefore, 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. The Project is determined to be exempt from CEQA pursuant to Section 15302 (Replacement or Reconstruction). 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 to include, but not limited to setback limitation, concealment requirements, and electromagnetic fields controls. 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 existing WCF provides critical voice and data service throughout the surrounding area. Continued operation of this site is necessary to maintain the existing levels of service to the area for Verizon. The site is an integral part of telecommunication networks, as the site's operation is closely coordinated with other sites in the area. Coverage maps demonstrate the existing coverage provided on the property and the predicted loss of coverage without the continuing of the WCF. A degradation of the existing service could have a significant impact on customers and essential emergency communication services.

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." An RFE-EME Compliance Report (Report) dated September 14, 2021 from Pramira was submitted to the City verifying that the proposed Project meets or exceeds the requirements of the FCC. The Report will be stamped as Exhibit "A" and provided within the Project file. Therefore, 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 Land Development Code. The existing WCF will consist of modifications to the project and comprises eight (8) antennas to be mounted on the outside wall of an existing condominium complex and enclosed behind Fiberglass Reinforced Plastic (FRP) screen boxes, painted and textured to match the existing building. The project does not contain any deviations from the Land Development Code. Per SDMC Section 141.0420(e)(3), if the project contains an equipment enclosure that is greater than 250-square-feet, then an NDP is required. The equipment area is 332 -square-feet, located on the upper roof.

The existing WCF provides critical voice and data service throughout the surrounding area. Continued operation of this site is necessary to maintain the existing levels of service to the area for Verizon. The site is an integral part of telecommunication networks, as the site's operation is closely coordinated with other sites in the area. Coverage maps demonstrate the existing coverage provided on the property and the predicted loss of coverage without the project. A degradation of the existing service could have a significant impact on customers and essential emergency communication services.

The City's WCF regulations, SDMC section 141.0420, allow these facilities in a residential zone with residential use with the approval of a Process Four, Conditional Use Permit when the antennas are located on a premise that contains residential development. The proposed WCF will include FRP screen boxes painted and textured to match the existing building design implementing the intent of the WCF ordinance which is to integrate and camouflage WCFs within the existing environment. Based on these considerations, this Project complies with the permit and design requirements for WCF's as identified in the SDMC. Therefore, the proposed development will comply with the regulations of the Land Development Code and no deviations are required.

d. The proposed use is appropriate at the proposed location. The existing Verizon WCF was previously approved on December 10, 2009 with a 10-year term and contained a total of twelve (12) panel antennas. The City of San Diego encourages wireless carriers to locate on non-residential properties. In this case, the height of the existing condominium complex meets Verizon's coverage objective. No other sites within the search ring, with a non-residential use, are available at the required height.

The Project site location is the tallest existing structure in the surrounding area. The surrounding properties in all directions are mostly residential. There are some non-residential properties to the west, but they are smaller structures. In order to make up for the loss in height, a wireless facility at one of these locations would require a new standalone tower, whose height would far exceed the height of any existing structures in the area. This would result in a facility that is less integrated in the overall aesthetics of the community. In addition, the relocation of an existing wireless facility could have negative impacts on the overall performance of the network in the area, resulting in possible coverage gaps between sites. For these reasons, the existing site is preferred, and no other properties are suitable candidates.

The condominium houses other communication antennas and is viewed as a "collocation site." The proposed antennas will be concealed with screen boxes and painted and textured to match the existing building. This will allow the communication antennas to blend in with the building and be more visually appealing. Therefore, the proposed use is appropriate at the proposed location.

B. NEIGHBORHOOD DEVELOPMENT PERMIT [SDMC Section 126.0404]

1. Findings for all Neighborhood Development Permits:

a. **The proposed development will not adversely affect the applicable land use plan.** As outlined in CUP Finding No. A.1.a. listed above, 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.** As outlined in CUP Finding No. A.1.b. listed above, the proposed development will not adversely affect the applicable land use plan.

c. **The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.** As outlined in CUP Finding No. A.1.c. listed above, the proposed development will not adversely affect the applicable land use plan.

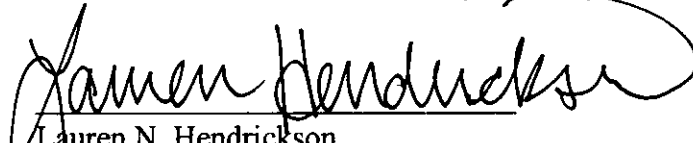
The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the Appeal is denied and the decision of the Planning Commission is affirmed; and

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City Council, CUP No. 2591714 and NDP No. 2606145 is hereby GRANTED by the City Council to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 2591714 and 2606145, a copy of which is attached hereto and made a part hereof.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Lauren N. Hendrickson
Deputy City Attorney

LNH:cm
April 11, 2023
Or.Dept: Planning
Doc. No. 3275194

Attachment: Conditional Use Permit No. 2591714 and Neighborhood Development Permit
No. 2606145

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: 11003679 SPACE ABOVE THIS LINE FOR RECORDER'S
USE

CONDITIONAL USE PERMIT NO. 2591714
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2606145
VERIZON SAN DIEGO ZOO PROJECT NO. 699293
CITY COUNCIL

This Conditional Use Permit (CUP) No. 2591714 and Neighborhood Development Permit (NDP) No. 2606145 is granted by the City Council of the City of San Diego to 666 Upas Homeowners Association Corporation, Owner, and Verizon Wireless, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0303, 126.0402, and 141.0420. The site is located at 666 Upas Street in the RM-4-10 Zone of the Uptown Community Plan. The project site is legally described as Lots 1, 2 and 3 in Park Upas, in the City of San Diego, County of San Diego, State of California, according to map thereof no. 5161, filed in the office of the County Recorder of San Diego County, April 22, 1963. Excepting therefrom all units as shown on the amended Del Prado Condominium Plan recorded in the Office of the County Recorder of San Diego County, August 16, 1972 as Document no. 216496 of Official Records.

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 April 10, 2023, on file in the Development Services Department.

The project shall include:

- a. A WCF consisting of eight (8) antennas and four (4) Remote Radio Units (RRUs), to be mounted on the outside wall of an existing condominium complex and enclosed behind Fiberglass Reinforced Plastic (FRP) screen boxes painted and textured to match the existing building;
- b. Associated 332-square-foot equipment area located on the upper roof;
- c. 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 April 10, 2026.
2. The above utilization date notwithstanding, the granting of this discretionary permit does not entitle the continued operation of the existing, expired facility. Within 60 days of permit approval, applications must be made for all required construction permits. Within 90 days of application, all required construction permits must be issued. Within 90 days of permit issuance, final inspection must be obtained.
3. This Permit and corresponding use of this site shall expire on April 10, 2033. 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.

12. 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.

13. 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.

14. 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 the 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 the Owner/Permittee.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
10. 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.).
11. 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.

LANDSCAPE REQUIREMENTS:

15. 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 entity approved by the Development Services Department. 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.

16. Any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged, removed or significantly trimmed for the operation of the wireless communication facility, 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:

17. 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.

18. No overhead cabling is permitted.

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

20. Photo simulations shall be printed in color on the construction plans.

21. The City may require the Owner/Permittee to provide a topographical survey conforming to the provisions of the SDMC may be required 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.

22. The Owner/Permittee shall install and maintain appropriate warning signage and barriers on the WCF as required by State and Federal regulations. The Owner/Permittee shall be responsible for complying with all State and Federal regulations.

23. Antennas and associated components, such as, but not limited to, remote radio units (RRUs), surge suppressors, etc., shall not exceed the height of any existing or proposed screen walls.

24. Use of or replacement of any building façade or mechanical screen with RF-transparent material for purposes of concealing antennas shall not result in any noticeable lines or edges in the transition to the original building. All RF-transparent material shall be painted and textured to match the original building and adjacent building surfaces.

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

26. 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.

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

28. The Owner/Permittee shall notify the City within 30 days of the sale or transfer of this site to any other provider or if the site is no longer operational, in which case, the removal and the restoration of this site to its original condition is required.

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 Development Services Department Wireless Communication Facilities staff listed on City webpage, <https://www.sandiego.gov/development->

services/codes-regulations/wireless-communication-facilities, 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 April 10, 2023.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Ian Heacox
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.

666 Upas, Homeowners Association Corp.
Owner

By _____
NAME:
TITLE:

Verizon Wireless
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 APR 10 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 10 2023.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristel Medina*, Deputy

Office of the City Clerk, San Diego, California

314695

Resolution Number R-_____