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204
10/15

CITY OF SAN DIEGO
OFFICE OF THE CITY CLERK

RECOMMENDATIONS

COMMUNITY PLANNING GROUP /STAFF'S /PLANNING COMMISSION

Project Manager **must** complete the following information for the Council docket:

CASE NO. 91178

STAFF'S

Please indicate recommendation for each action. (ie: Resolution / Ordinance)

Deny CUP No. 296627 and SDP No. 450714

PLANNING COMMISSION (List names of Commissioners voting yea or nay)

YEAS: Schultz, Garcia, Naslund, Ontai, Otsuji

NAYS: 0

ABSTAINING: 0

TO: (List recommendation or action)

Deny CUP No. 296627 and SDP No. 450714.

COMMUNITY PLANNING GROUP (choose one)

LIST NAME OF GROUP: Clairemont Mesa Planning Committee

- No officially recognized community planning group for this area.
- Community Planning Group has been notified of this project and has not submitted a recommendation.
- Community Planning Group has been notified of this project and has not taken a position.
- Community Planning Group has recommended approval of this project.
- Community Planning Group has recommended denial of this project.
- This is a matter of City-wide effect. The following community group(s) have taken a position on the item:

In favor: 14

Opposed: 0

By Karen Lynch-Ashcraft
Project Manager

000361

NOTE: To save space and avoid duplication, Planning Commission Report No. PC-07-079 is not provided here and can be found in the back-up material of the prior companion item to this item (American Tower Corporation-30th Place).



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THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

(not provided here)
see companion item:
American Tower Corporation -
30th Place

DATE ISSUED: June 21, 2007 **REPORT NO.** PC-07-079

ATTENTION: Planning Commission, Agenda of June 28, 2007

SUBJECT: AMERICAN TOWER CUP'S - PROJECT NO.'S 90455, 90475, 90486,
91175, 107501 - **PROCESS: 3 (ON APPEAL)** AND
PROJECT NO.'S 92067, 92076 - **PROCESS: 4** AND PROJECT NO. 91178
- **PROCESS 5 (RECOMMENDATION)**

OWNERS: Various (See Ownership Disclosures in Attachments A-H. Updated versions
will be distributed at the Planning Commission Hearing)

APPLICANT: American Tower Corporation

SUMMARY

Issue(s):

1. Should the Planning Commission approve or deny an appeal of five Conditional Use Permits for expired major telecommunication facilities (four different monopolies and one shelter with roof top antennas in addition to associated ground equipment)?
2. Should the Planning Commission approve or deny two additional Conditional Use Permits that have accompanying Planned Development Permits (for height deviations) for existing expired major telecommunication facilities (two different monopolies with associated ground equipment)?
3. Should the Planning Commission recommend denial to the City Council of a Conditional Use Permit and a Site Development Permit (for Clairemont Mesa Height Limitation Overlay deviation) for an existing, expired 136 foot high monopole located at 6426 Mt. Ada Drive within the Clairemont Mesa Community Planning area?

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REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Development Services			3. DATE: 9/6/2007		
4. SUBJECT: American Tower Corporation - Mt. Ada - CUP/SDP							
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Karen Lynch-Ashcraft (619) 446-5351 MS 501				6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): Alex Hempton (619) 446-5349		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:		
DEPT.	1300						
ORGANIZATION	1671						
OBJECT ACCOUNT							
JOB ORDER	42-5718						
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	MIKE WESTLAKE <i>KG B/for</i>	9/6/07	8	DEPUTY CHIEF	WILLIAM ANBERSON <i>[Signature]</i>	9/7/07
2	EAS	MARTHA BLAKE <i>[Signature]</i>	9/6/07	9	COO	JAY GOLDSTONE <i>[Signature]</i>	9/6/07
3	DSD	<i>[Signature]</i>	9/6/07	10	CITY ATTORNEY	ANDREA DIXON <i>[Signature]</i>	9/7/07
4	LIAISON OFFICE	N/A		11	ORIGINATING DEPARTMENT	KELLY BROUGHTON <i>[Signature]</i>	9/6/07
5				DOCKET COORD: _____ COUNCIL LIAISON: _____			
6				✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/>		
7					REFER TO: _____ COUNCIL DATE: _____		
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
Resolution of denial of Conditional Use Permit No. 292627 and Site Development Permit No. 450714.							
11A. STAFF RECOMMENDATIONS: Deny Conditional Use Permit No. 292627 and Site Development Permit No. 450714							
12. SPECIAL CONDITIONS:							
<u>COUNCIL DISTRICT(S):</u>		6					
<u>COMMUNITY AREA(S):</u>		Clairemont Mesa					
<u>ENVIRONMENTAL IMPACT:</u>		This project is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301.					
<u>HOUSING IMPACT:</u>		None					
<u>OTHER ISSUES:</u>		None					

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EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: REPORT NO: PC-07-079
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Development Services Department
SUBJECT: American Tower Corporation-Mt. Ada - Project No. 91178
Process 5
COUNCIL DISTRICT(S): 6
CONTACT/PHONE NUMBER: Karen Lynch-Ashcraft/(619) 446-5351 or
klynchashcraft@sandiego.gov

REQUESTED ACTION: Conditional Use Permit and Site Development Permit for an existing 145 foot high monopole and a 572 square foot equipment building located at 6426 Mt. Ada in the Clairemont Mesa Community Planning area.

STAFF RECOMMENDATION: **DENY** Conditional Use Permit No. 296627 and Site Development Permit No. 450714.

EXECUTIVE SUMMARY: On November 20, 1984, the City Council approved a Conditional Use Permit (CUP) for a 145 foot high monopole and a 572 square-foot equipment shelter on the south side of Balboa Avenue between Mt. Rias Place and Mt. Albertine Avenue at 6426 Mt. Ada Road. This was one of the first telecommunication facilities within the City. Since wireless communications was in its infancy, the Council imposed a 20 year limit on the life of the CUP in order to allow the facility to be constructed, the technology to be implemented and a review to occur in the future when technology and/or regulations changed. The condition included language regarding an extension to the permit, which would be required to be reviewed at a Planning Commission and City Council public hearing prior to November 20, 2004. The Land Development Code does not have provisions to extend discretionary permits.

The 145 foot tall monopole is situated along the Balboa Avenue corridor in a commercial zone (CC-1-3) that borders multi-unit residential development with a large residential subdivision beyond. The Clairemont Mesa Height Limitation Overlay zone does not permit structures over 30 feet in height without City Council approval of a Site Development Permit (SDP). A SDP is a special permit used when a proposed development would have a significant impact on the surrounding area. Section 141.0405 of the Land Development Code (Communication Antennas) requires wireless facilities to be integrated into the landscape or camouflaged from public view. This monopole is a significant visual impact on the horizon along Balboa Avenue and the surrounding residential community. Neither the findings for the CUP nor the findings for the SDP could be made in the affirmative; therefore staff recommended denial of the permits to the Planning Commission.

On June 28, 2007, the Planning Commission considered the Mt. Ada monopole and voted unanimously (5-0) to recommend denial of the CUP/SDP because the facility is not camouflaged from public view and because it is not integrated into the environmental setting.

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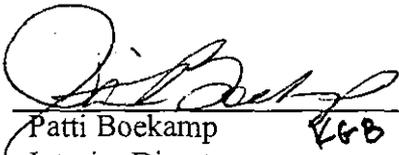
FISCAL CONSIDERATIONS: All costs associated with the processing of this appeal are paid by the applicant.

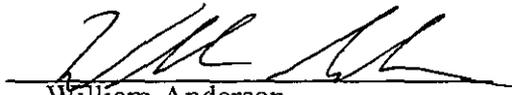
PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

PLANNING COMMISSION RECOMMENDATION: The Planning Commission voted 5-0 to recommend **DENIAL** of Conditional Use Permit No. 296627 and Site Development Permit No. 450714.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On March 21, 2006, the Clairemont Mesa Planning Committee voted 14-0-0 to recommend denial of Project No. 91178.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Denial of the project will require American Tower Corporation and their tenant Verizon Wireless to expend funds to upgrade their facility and make modifications to other facilities to accommodate the reduction in height in order to comply with the regulations.


Patti Boekamp
Interim Director
Development Services Department


William Anderson
Interim Deputy Chief of Land Use and
Economic Development

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NOTE: The minutes for the Planning Commission meeting of June 28, 2007 were not available at the time of assembly of this exhibit pac. The vote is provided in the back –up materials for this item.

DETERMINATION OF: ENVIRONMENTAL EXEMPTION

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Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

DATE: January 23, 2006

Action/Permit(s): Site Development Permit / Conditional Use Permit

Permit No. 91178

Description of Activity: Verizon Mount Ada. Site Development Permit and Conditional Use Permit for a telecommunication facility consisting of an existing 136-foot tall monopole supporting 30 antennas and adjacent equipment shelter previously approved by CUP 83-0629 in the CC-1-3 zone of the Clairemont Mesa Plan area.

Location of Activity: 6426 Mount Ada Road in the Clairemont Mesa Community Planning area.

1. This activity is EXEMPT FROM CEQA pursuant to:
- Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
 - Section 15061(b)(3) of the state CEQA Guidelines ("General Rule").
2. This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

**ARTICLE 19 of GUIDELINES
CATEGORICAL EXEMPTIONS
(Incomplete list)**

**ARTICLE 18 of GUIDELINES
STATUTORY EXEMPTIONS
(Incomplete list)**

Sec.	Short Name
<input checked="" type="checkbox"/> 15301	1 Existing Facilities
<input type="checkbox"/> 15302	2 Replacement or Reconstruction
<input type="checkbox"/> 15303	3 New Construction or Conversion of Small Structures
<input type="checkbox"/> 15304	4 Minor Alterations to Land
<input type="checkbox"/> 15305	5 Minor Alterations in Land Use Limitations
<input type="checkbox"/> 15306	6 Information Collection
<input type="checkbox"/> 15311	11 Accessory Structures
<input type="checkbox"/> 15312	12 Surplus Government Property Sales
<input type="checkbox"/> 15315	15 Minor Land Divisions
<input type="checkbox"/> 15317	17 Open Space Contracts or Easements
<input type="checkbox"/> 15319	19 Annexation of Existing Facilities and Lots for Exempt Facilities
<input type="checkbox"/> 15325	25 Transfer of Ownership of Interest in Land to Preserve Open Space
<input type="checkbox"/> other	

Sec.	Short Name
<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15265	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> Other	

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution:
Karen Lynch-Ashcraft, Dev. Project Manager
File

Kenneth Teasley
Kenneth Teasley, Senior Planner
Environmental Analysis Section

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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

WHEREAS, Buckel Trust, Owner/American Tower Corporation, Permittee, filed an application with the City of San Diego for a permit for a wireless communication facility to be known as the American Tower – Mt. Ada project, located at 6426 Mt. Ada Road, and legally described as a portion of Parcel “B” of Parcel Map No. 227, in the City of San Diego, County of San Diego, State of California, filed April 7, 1970 in the Office of the County Recorder of San Diego, California, in the Clairemont Mesa Community Plan area, in the CC-1-3 zone; and

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] No. 292627/Site Development Permit [SDP] No. 450714, and pursuant to Resolution No. 4283-PC voted to recommend City Council disapproval of the Permit; 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 _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 292627/Site Development Permit No. 450714:

A. CONDITIONAL USE PERMIT SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0305

1. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit [CUP] included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a 20 year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency [RF] emission to the extent that such facilities comply with the Federal Communication Commission’s [FCC] standards for such emissions.” If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP/SDP.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code. This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City imposed a 20 year time limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Since 2000, the City has had a Communication Antenna ordinance that requires architectural or environmental integration with the project site. Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permits. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. In this case, the monopole is the tallest structure in and around the area in which it is located and as such, it has an incongruous effect on the community’s landscape. It is not camouflaged from public view nor is it architecturally integrated into the architectural or environmental setting. It is situated on the edge of a commercial area directly across the street from multi-unit residential with a large

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single unit residential subdivision beyond. Additionally, the tower is located in a commercial core area of the community, adjacent to a major east west thoroughfare. The tower poses an unsightly visual impact that can be seen from the surrounding residential communities and major thoroughfares.

Section 141.0405 of the Land Development Code differentiates between minor and major telecommunication facilities. Minor telecommunication facilities include those that are concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color and style) unique design solutions, or accessory use structures. Major telecommunication facilities are antenna facilities that do not meet the criteria for minor telecommunication facilities or they are located in residential zones containing residential uses. Similar to minor facilities, they also need to be designed to be minimally visible through the use of architecture, landscape architecture and siting solutions. The Mt. Ada project does not conform to this code requirement due to its height, design, color and the visual clutter it creates. As it exists, the tower is a significant visual impact to the community of Clairemont.

Therefore, the project does not comply to the maximum extent feasible with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location. A wireless communication facility at this location is an appropriate use subject to compliance with the ordinances and policies that regulate telecommunication facilities.

B. SITE DEVELOPMENT PERMIT SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a 20 year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect, The project exists as it did after initial construction and the new owner, American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of RF emission to the extent that such facilities comply with the FCC's standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP/SDP.

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c. **The proposed development will comply with the applicable regulations of the Land Development Code.** The monopole complies with all the development regulations of the CC-1-3 zone, but does not comply with the Clairemont Mesa Height Limitation Overlay Zone of 30 feet. The monopole is 145 feet tall and is extremely visible to the Balboa Avenue corridor and the surrounding residential community. Development in the area is low in scale. The tower is located in a commercial zone that is immediately adjacent to a multi-unit residential complex. The existing tower exceeds the height limit by 115 feet. Deviations to the Clairemont Mesa Height Limitation Overlay Zone require a Site Development Permit.

This project was originally constructed in the mid-1980's when Pac Tel Mobile (now Verizon) was only one of two wireless carriers in San Diego. Their network was being established with tower structures and later branched out to building collocations. Initially, carriers built tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP 83-0629) acknowledging the 20 year time limit on the facility. In order to maintain a facility at this site, a new application in compliance with the current regulations and policies would be required.

2. Supplemental Findings – Clairemont Mesa Height Limit – SDMC
Section 126.0504(j)

a. **The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area.** The Mt. Ada project is not located near Mission Bay or the surrounding areas and as a result, it will not interfere with public views to these areas. It is located east of Mission Bay in the Balboa Genesee commercial corridor and it creates a significant visual impact to the community surrounding this area.

b. **The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure.** The topography is flat along the Balboa Genesee commercial corridor and the majority of structures in the area are low scale and do not exceed the 30 foot height limit. This tower is 115 feet above the 30 foot height limit and as such, poses a significant visual impact to the surrounding community. It stands out against the existing landscape and is therefore incompatible with the surrounding development. The only other structure of this stature is a 10-story building approximately .62 miles to the west of this site with a roof top full of antennas managed by American Tower Corporation. Therefore, granting an exception to the Clairemont Mesa Height Limitation Overlay Zone is inappropriate.

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

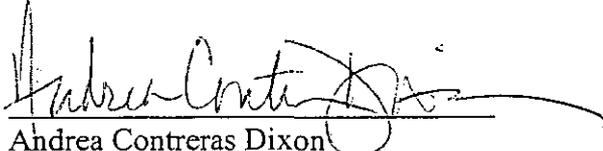
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IT FURTHER RESOLVED, that Conditional Use Permit No. 292627/Site

Development Permit No. 450714 is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Andrea Contreras Dixon
Deputy City Attorney

ACD:pev

09/06/07

Or.Dept:DSD

R-2008-188

MMS #5271

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PLANNING COMMISSION
RESOLUTION NO. 4283-PC
CONDITIONAL USE PERMIT NO. 292627
SITE DEVELOPMENT PERMIT NO. 450714
AMERICAN TOWER – MT. ADA
PROJECT NO. 91178

WHEREAS, Buckel Trust, Owner and American Tower Corporation, 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 Conditional Use Permit No. 292627 and Site Development Permit No. 450714, on portions of a .19 acre site;

WHEREAS, the project site is located at 6426 Mt. Ada Road in the CC-1-3 zone of the Clairemont Mesa Community Plan;

WHEREAS, the project site is legally described as a portion of Parcel "B" of Parcel Map No. 227, in the City of San Diego, County of San Diego, State of California, filed April 7, 1970 in the Office of the County Recorder of San Diego, California;

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 292627 and Site Development Permit No. 450714, pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated June 28, 2007.

FINDINGS:

Conditional Use Permit - Section 126.0305

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

This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit (CUP) included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a twenty year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

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

The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emission to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within 90 days of approval of the CUP/SDP.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code; and

This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit (CUP) included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City imposed a ten year time limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Since 2000, the City has had a Communication Antenna ordinance that requires architectural or environmental integration with the project site. Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permits. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. In this case, the monopole is the tallest structure in and around the area in which it is located and as such, it has an incongruous effect on the community's landscape. It is not camouflaged from public view nor is it architecturally integrated into the architectural or environmental setting. It is situated on the edge of a commercial area directly across the street from multi-unit residential with a large single unit residential subdivision beyond. Additionally, the tower is located in a commercial core area of the community, adjacent to a major east west thoroughfare. The tower poses an unsightly visual impact that can be seen from the surrounding residential communities and major thoroughfares.

Section 141.0405 of the Land Development Code differentiates between minor and major telecommunication facilities. Minor telecommunication facilities include those that are concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color and style) unique design solutions, or accessory use structures. Major telecommunication facilities are antenna facilities that do not meet the criteria for minor telecommunication facilities or they are located in residential zones containing residential uses. Similar to minor facilities, they also need to be designed to be minimally visible through the use of architecture, landscape architecture and siting solutions. The Mt. Ada project does not conform to this code requirement due to its height, design, color and the visual clutter it creates. As it exists, the tower is a significant visual impact to the community of Clairemont.

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Therefore, the project does not comply to the maximum extent feasible with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

A wireless communication facility at this location is an appropriate use subject to compliance with the ordinances and policies that regulate telecommunication facilities.

Site Development Permit - Section 126.0504

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

This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit (CUP) included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a ten year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect, The project exists as it did after initial construction and the new owner, American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Clairemont Mesa Community Plan addresses wireless communication facilities as a specific land use.

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

The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emission to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within 90 days of approval of the CUP/SDP.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The monopole complies with all the development regulations of the CC-1-3 zone, but does not comply with the Clairemont Mesa Height Limitation Overlay Zone of 30 feet. The monopole is 145 feet tall and is extremely visible to the Balboa Avenue corridor and the surrounding residential community. Development in the area is low in scale. The tower is located in a commercial zone that is immediately adjacent to a multi-unit residential complex. The existing tower exceeds the height limit by 115 feet. Deviations to the Clairemont Mesa Height Limitation Overlay Zone require a Site Development Permit.

This project was originally constructed in the mid-1980's when Pac Tel Mobile (now Verizon) was only one of two wireless carriers in San Diego. Their network was being established with tower structures and later branched out to building collocations. Initially, carriers built

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tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP 83-0629) acknowledging the 20 year time limit on the facility. In order to maintain a facility at this site, a new application in compliance with the current regulations and policies would be required.

Supplemental Site Development Findings – Section 126.0504(j)

- 1. The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area; and**

The Mt. Ada project is not located near Mission Bay or the surrounding areas and as a result, it will not interfere with public views to these areas. It is located east of Mission Bay in the Balboa Genesee commercial corridor and it creates a significant visual impact to the community surrounding this area.

- 2. The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure.**

The topography is flat along the Balboa Genesee commercial corridor and the majority of structures in the area are low scale and do not exceed the 30 foot height limit. This tower is 115 feet above the 30 foot height limit and as such, poses a significant visual impact to the surrounding community. It stands out against the existing landscape and is therefore incompatible with the surrounding development. The only other structure of this stature is a 10 story building approximately .62 miles to the west of this site with a roof top full of antennas managed by American Tower Corporation. Therefore, granting an exception to the Clairemont Mesa Height Limitation Overlay Zone is inappropriate.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 292627 and Site Development Permit No. 450714 is hereby DENIED by the Planning Commission.



Karen Lynch-Ashcraft
Development Project Manager
Development Services

Adopted on: June 28, 2007
Job Order No. 42-5718

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June 25, 2007

VIA OVERNIGHT DELIVERY

Planning Commission
City of San Diego
202 C Street, 12th Floor
San Diego, CA 92101

**Re: American Tower Corporation ("ATC") CUP No. 292627/SDP No. 450714
(Mount Ada – PTS No. 91178)**

Dear Chairman Schultz and Commissioners:

I am writing this letter on behalf of American Tower Corporation ("ATC") which respectfully requests that the City of San Diego's Planning Commission ("Commission") approve the above referenced Conditional Use Permit ("CUP"). In the event that the Planning Commission determines that they only have the authority to recommend a decision to the City Council, ATC requests that the Commission recommend approval of the above referenced CUP and, if necessary, Site Development Permit ("SDP").

The City Attorney's Office undoubtedly has made the Commission aware that ATC filed suit against the City of San Diego ("City") in federal court on grounds, *inter alia*, that the City's permitting process is unlawful. ATC filed this request for a permit under protest and is pursuing this permit concurrently as it seeks the Court's review of the permitting process. ATC's decision to pursue a permit through this process should not be construed as a waiver of ATC's rights under federal and state law, and ATC reserves all rights accordingly.

I. Background

ATC hereby requests that the City of San Diego ("City") permit the continued use of this wireless communications facility ("WCF"), which has been operational for over twenty years without creating any adverse impacts on the surrounding areas and that during this period has been continuously serving the City's vital public and private communications needs.

The existing wireless communications facility located at 6426 Mt. Ada Road consists of a 26' x-22' equipment building and a 145-foot-high antenna tower with 30 panel antennas and three microwave dish antennas for radio frequency reception and transmission. The site also contains a generator. The property is zoned CC-1-3 and is designated for Commercial Community Core in the Clairemont Mesa Community Plan. The Facility is adjacent to a major transportation corridor in the rear of a commercial outlet. The monopole and antennas are painted sky blue and the equipment buildings shrouded in vegetation and blend with the surrounding area. The monopole is partially screened from view by existing mature landscaping. ATC is requesting the extension of Conditional Use Permit Number 83-0629 and /or such other Development Permit (including but not limited to a Site Development Permit ("SDP") as may be required in order that Lessee, Verizon Wireless, can continue to provide uninterrupted and seamless wireless service to its customers.

As discussed below, ATC contends that neither a Site Development Permit nor a Planned Development Permit is required for this Facility. That said, the findings for both a SDP and a PDP can be made in the affirmative with regard to this Facility.

The original Coastal Development/Conditional Use Permit ("CDP/CUP") was issued on November 20, 1984 and the Facility has continued to exist without controversy since it was first approved. ATC has met with and has maintained contact with the City since May 2005 and expedited its own internal processes in order to be able to file and facilitate the processing of the application in a timely manner consistent with the requests of City Staff.

II. The Commission's Scope of Review is Limited

It should be noted that the Commission's ability to regulate WCFs is restricted by both state and federal law. Specifically, § 253(a) of the Telecommunications Act of 1996 ("Telecom Act") states the following:

"No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

47 U.S.C. 253(a) (2007). The federal courts, including the courts of the Ninth Circuit, have interpreted § 253(a) to strictly limit the authority of municipalities over the installation of WCFs. Specifically, federal courts within the Ninth Circuit have held that California municipalities are prohibited by § 253(a) from adopting and implementing wireless communications ordinances that allow for the exercise of unfettered discretion over decisions to approve, deny or condition permits for the placement of WCFs. *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1175 (9th Cir. 2001) (holding that § 253 preemption of local authority is "virtually absolute"); *Sprint Telephony PCS, L.P. v. County of San Diego*, 2007 U.S. App. LEXIS 13811, *50-51 (9th Cir., June 13, 2007) (Denying en banc review and holding that County's ordinance was preempted because permitting structure and design requirements presented barriers to wireless telecommunications); *Quest Communications Inc. v. Berkeley*, 433 F.3d 1253, 1257-58 (9th Cir. 2006) (burdensome ordinance that gives municipality significant discretion to deny telecommunication companies the ability to provide services violates § 253).

A. Cities Do Not Have Authority to Regulate Visual Impact of WCFs

The Commission should be aware that the Ninth Circuit – the jurisdiction of which includes California - has stated that regulations requiring a facility to be appropriately “camouflaged” are **unlawful** pursuant to § 253(a) of the Telecom Act. *Sprint Telephony PCS, L.P. v. County of San Diego*, 2007 U.S. App. LEXIS 13811 (9th Cir., June 13, 2007). Significantly, the Ninth Circuit recently **denied** the County of San Diego’s petition for *en banc* review in this case. In *Sprint*, the court critiqued the County of San Diego’s ordinance as follows:

“The WTO itself explicitly allows the decision maker to determine whether a facility is appropriately “camouflaged,” “consistent with community character,” and designed to have minimum “**visual impact**.” ... We conclude that the WTO imposes a permitting structure and design requirements that present barriers to wireless telecommunications within the County, and is therefore preempted by § 253(a).” (emphasis added).

2007 U.S. App. LEXIS 13811, at 43-44. The City may not impose unreasonable permitting burdens on ATC. *Id.* City regulations that purport to regulate the “visual impact” of wireless facilities are unreasonable and run afoul of federal law.

B. Substantial Evidence Exists to Renew the Existing Permit; the Facility is an Appropriate Use and Complies with Regulations to the Maximum Extent Feasible

Even if the City could require ATC to remove and replace the existing Facility, such a decision must be supported by substantial evidence. Section 332(c)(7)(B)(iii) of the Telecom Act states the following: “[A]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by **substantial evidence** contained in a written record” 47 U.S.C. § 332(c)(7)(B)(iii). For this reason, zoning boards cannot rely on conclusory or generalized concerns. *Ill. RSA No. 3 v. County of Peoria*, 963 F. Supp. 732, 745 (C.D. Ill. 1997) (“generalized concerns do not constitute substantial evidence [citation omitted]”). Dozens of cases have analyzed this restriction and there is no dispute that generalized concerns, speculation and conjecture do not constitute substantial evidence. *Prime Co Pers. Communs. v. City of Mequon*, 352 F.3d 1147, 1150 (7th Cir. 2003) (“It is not sufficient evidence, as the cases make clear by saying that “**generalized**” aesthetic concerns do not justify the denial of a permit”); *New Par v. City of Saginaw*, 301 F.3d 390, 399 (6th Cir. 2002) (“If, however, the concerns expressed by the community are objectively unreasonable, such as concerns based upon conjecture or speculation, then they lack probative value and will not amount to substantial evidence”). Furthermore, “in applying the substantial evidence standard, the court applies common sense and need not accept as substantial evidence impossible, incredible, unfeasible, or implausible testimony.” *AT&T Wireless Servs. of Cal., LLC, v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1159 (S.D. Cal. 2003) citing *Airtouch Cellular v. City of El Cajon*, 83 F. Supp. 2d 1158, 1164 (S.D. Cal. 2000) (internal quotations omitted).

The record in this case clearly indicates that ATC’s Facility is an appropriate use and consistent with the surrounding environment. See Section III discussion below. This said, ATC has proposed to add landscaping to the Facility as a demonstration of good faith to further

enhance the Facility. Landscape Plans are forthcoming. The evidence strongly supports the conclusion that the Facility meets all the requirements of the City's Land Development Code.

Section 332 of the Telecom Act sets additional limits on local zoning authority over the placement, construction and modification of wireless communications facilities. Those limits are as follows: (1) "The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services" § 332(c)(7)(B)(i); (2) "A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request" § 332(c)(7)(B)(ii); (3) "Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record" § 332(c)(7)(B)(iii); and (4) "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions" § 332(c)(7)(B)(iv).

Thus, the City may not unreasonably discriminate in any decision to deny a permit for a WCF. It also may not deny a permit for a WCF if that denial would constitute actual or effective prohibition of services. Where there is a "significant gap" in a provider's service and "the manner in which it proposes to fill the significant gap in service is the *least intrusive on the values that the denial sought to serve*, a local jurisdiction's denial would constitute effective prohibition. *MetroPCS, Inc. v. City & County of San Francisco*, 400 F.3d 715, 734 (9th Cir. 2005) (internal citations omitted.).

C. California Has Adopted a Clear State Policy Promoting the Deployment of Wireless Technology and Co-Location Facilities

The State of California has adopted a policy promoting the wide and efficient deployment of wireless technology. For example, Public Utilities Code § 709(c), provides:

The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.

...

(c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

...

In this case, the forced removal of the Facility would have a severe impact on the ability of customer-carriers to provide affordable and widely available wireless services in the affected areas. Costly visual mitigation measures will be born by the citizens of the City in the form of higher bills and consequently fewer individuals will be able to afford wireless services. This, in turn, will affect the state of emergency communications for the State of California. Both the federal and state governments are in the process of overhauling the broadcast-based Emergency Alert System ("EAS") to incorporate wireless devices. In October 2006, Congress passed the Warning, Alert, and Response Network Act. The Act calls for the development of a nationwide wireless alert platform that can be used to transmit geographically targeted emergency messages to the public. For its part, California has proposed to jump start the federal government's emergency initiative, announcing plans to develop and launch a statewide wireless alert system within 12 to 14 months.¹ For such services to function, the continued operation of wireless infrastructure (such as the Facility) is critical. The forced removal of the Facility will undermine these efforts and subject affected residents to substandard emergency services. Also see discussion below pertaining to finding number four for a PDP and/or SDP.

Further, California's newly adopted state co-location law, referred to as "SB 1627," establishes a clear state policy favoring wireless facilities that are potential co-location candidates. *See* Cal. Gov. Code § 65850.6(a) (stating a "collocation facility shall be a permitted use not subject to a city or county discretionary permit" provided the facility complies with are lawfully required conditions). The approval of the application currently before the Commission will conform to the spirit and purpose of SB 1627. Also see discussion below addressing finding number five for a PDP and/or SDP regarding co-location opportunities for the Facility.

III. The Facility Meets All the Requirements of the San Diego Land Development Code for Issuance of the Requested Permits

As demonstrated below, the Facility meets all of the City's requirements for approval of the requested permit as outlined in the City's Land Development Code and complies with the findings necessary for not only a Conditional Use Permit, but also either a Planned Development Permit or a Site Development Permit.

¹ Kapko, *California plans statewide wireless alert system*, RCRWireless News (May 21, 2007) p. 14.

A. Findings Required for a Conditional Use Permit

The City can make the findings necessary to approve the requested permit for this Facility at its present height, location, and configuration.

Section 126.0305 of the Land Development Code sets forth four findings for issuance of a CUP, all of which can be made with respect to this project:

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

The Facility would not adversely affect the applicable land use plan. The Facility has existed on this site for over twenty (20) years without controversy and without creating any adverse impacts on the surrounding areas, land uses or residents. The location, size, design, and operating characteristics of this Facility are such that it does not create noise, traffic, emissions, fumes, smoke, odors, dust or other conditions that may be harmful, dangerous, objectionable, detrimental or incompatible with other permitted uses in the vicinity. Indeed, in most respects it is among the least impactful of all land uses, and is certainly at or below the level of impacts created by other public utility facilities. The following supports ATC's position that the Facility does not adversely affect the applicable land use plan.

- The facility is located adjacent to Balboa Boulevard in a site zoned for commercial use.
- The equipment associated with the facility operates virtually noise-free.
- The equipment does not emit fumes, smoke, dust, or odors that could be considered objectionable.
- The communications facility is unmanned and requires only periodic maintenance.
- The facility is located adjacent to Balboa Boulevard in a site zone for commercial use.
- The equipment associated with the facility operates virtually noise-free.

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

As acknowledged by staff, the Facility has not created conditions or circumstances contrary to the public health, safety, and general welfare in that:

- The Facility operates in full compliance with the regulations and licensing requirements of the FCC, FAA, CPUC and other applicable federal, state and local regulations designed to address health and safety concerns.
- The Facility was professionally designed, and constructed, and continues to be inspected at regular intervals to insure its continuing safety.
- The Facility has operated for many years without incident, controversy, or complaint.
- Given the benefits provided by the wireless systems served by the Facility as outlined below, the insignificant tradeoffs necessary to ensure the reliable availability of these benefits cannot be said to have created circumstances that are contrary to the public welfare.
- Advanced wireless technologies are a use now required by local businesses, homes, and schools.

- Digital wireless systems are an economical alternative to wired networks.
 - The existing pole provides an opportunity for co-location, reducing the need for other wireless facilities in the area.
 - Wireless communications service a critical need in the event of public emergency, including traffic accidents and other freeway incidents.
3. *The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code;*

The Facility at issue complies with the applicable regulations of the Land Development Code. It was permitted with a Conditional Use Permit in its current location and at its current height. ATC is proposing no modifications to the Facility that would alter this finding. Moreover, the City cannot lawfully deny a CUP/PDP on the grounds that the City has changed its Land Development Code to require that such facilities be "camouflaged" or have "minimal visual impact." Notwithstanding that legal prohibition, there are appropriate means to camouflage the Facility short of removing and replacing the existing facility. Any refusal to discuss this option is an abuse of discretion. Even if the Facility cannot be brought into "satisfactory" conformity with the current Land Development Code, the Facility is a legal nonconforming use and has a grandfathered and vested right to its continued existence.

That said, the Facility complies with the applicable regulations of the Land Development Code. The staff report prepared in connection with this hearing states that this project requires a CUP due to the fact that it does not comply with the communication antenna regulations (Section 141.0405 of the LDC). However, the Facility does, in fact, comply with § 141.0405. The staff has simply failed to properly apply that section as indicated below.

Subsection (a) of § 141.0405 is merely a definitional provision that delineates the scope of the section's coverage and spells out the difference between minor telecommunication facilities, major telecommunication facilities, and satellite antennas. It contains no requirements.

Subsection (b) contains the "General Rules for Telecommunication Facilities." Subsection (b)(1) requires facilities to comply with Federal standards for radio frequency radiation. ATC has previously submitted evidence establishing that the Facility meets this requirement. Subsection (b)(2) relates to routine maintenance and inspection located on residentially zoned premises and is thus irrelevant to this Facility as it is in a Commercial Zone. Subsections (b)(3) and (4) relate to antennas and associated equipment located in the public right of way and thus are inapplicable to the Facility.

Section 141.0405(c) relates to temporary facilities and is also inapplicable.

Subsection (d) relates to facilities that are required to obtain encroachment authorization to locate on city-owned dedicated or designated parkland or open space areas and is inapplicable to this Facility.

Subsection (e) sets forth the rules for minor telecommunication facilities. It is ATC's position that the Facility falls within the definition of a minor telecommunication facility set

forth in § 141.0405(a)(1) because it is an antenna facility used for wireless telephone services that complies with all development regulations of the underlying zone (as acknowledged by staff) and meets the criteria in § 141.0405(e)(1). The Facility meets the requirements of § 141.0405(e)(1) because it is partly concealed from public view and integrated into the architecture and surrounding environment through enhancements that complement the scale, texture, color, and style of the surrounding architecture and environment. Large industrial warehouses surround the existing facility on the north, south and east. Directly west of the site is the I-5 Freeway. The upper part of the monopole is painted light blue and surrounded by existing mature landscaping that serves to conceal the monopole.

Subsection (e)(2) is an alternative to subsection (e)(1) that is inapplicable.

The Facility does not violate any of the prohibitions in subsection (e)(3) in that it is not (A) on premises that are developed with residential uses in residential zones, (B) on vacant premises zoned for residential development, (C) on premises that have been designated as historical resources, (D) on premises that have been designated or mapped as containing sensitive resources, (E) on premises within the MHPA, or (F) on premises that are leased for billboard use.

Even if the Facility is a major telecommunication facility, the Facility would still be in compliance with the provisions of § 141.0405. It would not violate any of the prohibitions in subsection (f)(1) since it would not be (A) on premises containing designated historical resources, (B) within viewsheds of designated and recommended State Scenic Highways and City Scenic Routes, (C) within ½ mile of another major telecommunication facility (and in any case it is partly concealed from public view and integrated into the architecture and surrounding environment through enhancements that complement the scale, texture, color and style of the surrounding architecture and environment as indicated above), or (D) within the Coastal Overlay Zone, on premises within a MHPA and/or containing steep hillsides with sensitive biological resources, or within public view corridors or view sheds identified in applicable land use plans.

Staff erroneously claims that this Facility "poses a significant visual impact to travelers along Balboa Avenue and to the residential areas surrounding the facility." As discussed above, the City has no authority to base any part of its decision regarding this permit on the visual impact of the Facility. That said, the Facility is in compliance with subsection (f)(2) in that it is designed to be *minimally visible through the use of architecture, landscape architecture, and siting solutions*. The Facility is adjacent to a major transportation corridor in the rear of a commercial outlet. The monopole and antennas are painted sky blue and the equipment buildings shrouded in vegetation and blend with the surrounding area. The monopole is partially screened from view by existing mature landscaping. The alternative suggested by staff, namely a new structure that would enclose the facility, would, by definition, be larger and thus not "minimally visible."

The only portion of §141.0405 that has not been addressed in the above discussion is subsection (g), which deals in its entirety with satellite antennas and is thus irrelevant.

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January 10, 2006

Robert Jystad
The City of San Diego
Development Services
1222 First Ave., MS 302
San Diego, CA 92101-3864

Re: Opposition of Verizon - Mount ADA; Project No. 91178

Dear Mr. Jystad,

We oppose the request for the application for a Conditional Use Permit/Planned Development Permit for a telecommunication facility. This is an area that should be beautified by the City. Allowing the installation of an unsightly pole with thirty antennas attached thereto will just add to some of the existing blighted areas in the surrounding community.

Sincerely,



By: Gleich Properties, LLC, general partner
By: Randy K. Lang, Vice President

RKL/jrf