

RECOMMENDATIONS

COMMUNITY PLANNING GROUP /STAFF'S /PLANNING COMMISSION

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

CASE NO. 92067

STAFF'S

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

Deny CUP No. 296127 and PDP No. 453612

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. 296127 and PDP No. 453612.

COMMUNITY PLANNING GROUP (choose one)

LIST NAME OF GROUP:

- 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:

Opposed:

By Karen Lynch-Ashcraft
Project Manager



000595

THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

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 monopoles 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 monopoles 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?

Staff Recommendation:

1. **Deny** the appeal and **Uphold** the Hearing Officer's decision to **Deny** Conditional Use Permit No. 289921 (Verus Street – PTS No. 90455).
2. **Deny** the appeal and **Uphold** the Hearing Officer's decision to **Deny** Conditional Use Permit No. 289973 (Yolanda Avenue – PTS No. 90475).
3. **Deny** the appeal and **Uphold** the Hearing Officer's decision to **Deny** Conditional Use Permit No. 290030 (Kearny Villa – PTS No. 90486).
4. **Deny** the appeal and **Uphold** the Hearing Officer's decision to **Deny** Conditional Use Permit No. 292612 (Federal Boulevard – PTS No. 91175).
5. **Deny** the appeal and **Uphold** the Hearing Officer's decision to **Deny** Conditional Use Permit No. 357727 (Mini Storage – PTS No. 107501).
6. **Deny** Conditional Use Permit No. 296127 and Site Development Permit No. 452327 (30th Place – PTS No. 92067).
7. **Deny** Conditional Use Permit No. 296155 and Planned Development Permit No. 296156 (Aviation – PTS No. 92076).
8. **Recommend** that the City Council **Deny** Conditional Use Permit No. 292627 and Site Development Permit No. 450714 (Mt. Ada – PTS No. 91178).

Community Planning Group Recommendation:

1. On March 8, 2006, the Otay Mesa-Nestor Community Planning Committee voted 14-0-0 to recommend approval of Project No. 90455 for **Verus** (Attachment A-7).
2. On February 15, 2006, the Kearny Mesa Community Planning Group voted 10-0-1 to recommend approval of Project No. 90475 for **Yolanda** (Attachment B-7). Additionally, due to the location of the project site on the border of Serra Mesa, the Serra Mesa Planning Group submitted a letter recommending approval of the project if the facility is redesigned to comply with the Land Development Code (Attachment B-8).
3. On April 19, 2006, the Kearny Mesa Community Planning Group voted 10-0-0 to recommend approval of Project No. 90486 for **Kearny Villa** (Attachment C-7).

4. On March 6, 2006, the City Heights Area Planning Committee voted 10-2-0 to recommend approval of Project No. 91175 for **Federal**. Their vote included a recommendation to improve the landscape on site and also to provide suitably located street trees (Attachment D-7).
5. The applicant has not yet presented **Mini Storage** to the City Heights Area Planning Committee for a recommendation.
6. On March 27, 2006, American Tower met with the Technical Subcommittee of the Southeastern San Diego Planning Committee on **30th Place**. They requested additional information on landscape and replacement of the existing chain link fence with wrought iron. American Tower has not been able to present to the Southeastern San Diego Planning Committee to date.
7. American Tower has not yet presented **Aviation** to the Skyline Paradise Hills Community Planning Committee for a recommendation.
8. On March 21, 2006, the Clairemont Mesa Planning Committee voted 14-0-0 to recommend denial of Project No. 91178 for **Mt. Ada** (Attachment X).

Environmental Review:

1. Project No. 90455 (Verus Street) was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15301 on January 13, 2006.
2. Project No. 90475 (Yolanda Avenue) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on February 13, 2007.
3. Project No. 90486 (Kearny Villa Road) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on March 1, 2007.
4. Project No. 91175 (Federal Boulevard) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on February 22, 2007.
5. Project No. 107501 (Mini Storage) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on August 15, 2006.
6. Project No. 92067 (30th Place) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on February 8, 2006.
7. Project No. 92076 (Aviation) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on March 1, 2007.

8. Project No. 91178 (Mt. Ada) was determined to be categorically exempt from CEQA pursuant to Article 19 Section 15301 on January 23, 2006.

Fiscal Impact Statement: All costs associated with the processing of this project are paid from deposit accounts maintained by the applicant.

Code Enforcement Impact: Neighborhood Code Compliance was notified of the expired permits and has been monitoring their progress through the discretionary process over the past couple of years.

Housing Impact Statement: None associated with this project.

BACKGROUND

These wireless communication facilities are all existing and were approved more than ten years ago by either the Planning Commission or the City Council. The permits were issued to a specific wireless carrier for a period of ten years, but during that time frame the facilities were sold to a pole manager. American Tower Corporation (ATC) is now the owner and is attempting to obtain approval of new permits for each of these sites.

The original CUP's for these projects approved some of the last monopolies in the City. These projects include five Process 3's that were denied by the Hearing Officer and have been appealed by American Tower, two Process 4's and one Process 5, requiring a recommendation from Planning Commission. The eight projects are described in more detail as follows:

Process 3 – Appealed Projects

Verus Street – CUP No. 289921. The 90 foot high pole and 200 square-foot equipment shelter is located at 2222 Verus Street (Attachments A-1,2). The property is zoned IL-2-1 and it is designated for industrial use in the Otay Mesa-Nestor Community Plan (Attachment A-3). The pole currently has one tenant, Sprint Nextel, whose nine panel antennas are situated at 67 feet, leaving the upper 23 feet unused (Attachment A-6). The original CUP/CDP (94-0471) permitted up to three omni antennas and 12 panel antennas when it was approved on July 27, 1995 by the Planning Commission (Attachment A-9). The facility, as it exists, complies with the development regulations for the IL-2-1 zone. The existing tower would not require a Coastal Development Permit, however, if the project is redesigned, it will be subject to the coastal development regulations. Surrounding uses include industrial to the north, east and south. Interstate-5 is to the west with the San Diego Swiss Club beyond (Attachment A-1). This project, as proposed, is classified as a major telecommunication facility and requires a Conditional Use Permit due to the fact that it does not comply with the Communication Antenna regulations (Section 141.0405 of the LDC-Attachment I). On April 4, 2007, the Hearing Officer denied this project based on the inability to make the appropriate

findings in the affirmative.

Yolanda Avenue – CUP No. 289973. This project includes a 200 square-foot equipment shelter straddled with seven antennas mounted above the shelter on poles at approximately 15 feet in height located at the terminus of Yolanda Avenue above Interstate-15 in the Kearny Mesa Community Plan area (Attachments B-1,2). The property is zoned RS-1-1 and IL-2-1 and it contains steep slopes, sensitive vegetation and a portion is mapped MHPA. The Kearny Mesa Community Plan designates the site for Open Space (Attachment B-3). The original CUP (94-0527) permitted up to three omni antennas and 12 panel antennas when it was approved July 27, 1995 by the Planning Commission (Attachment B-10). The facility, as it exists, complies with the development regulations for the RS-1-1 zone, where the actual facility is located. Surrounding uses include single unit residential to the west, vacant residentially and industrially zoned properties to the north, south and east with the Southern Pacific Pipeline oil tanks at the bottom of the slope adjacent to Interstate-15 (Attachment B-1). This project poses a significant visual impact on the horizon when viewed from below or from across the canyon, therefore, it is classified as a major telecommunication facility and requires a Conditional Use Permit (Section 141.0405 of the LDC-Attachment I). The site also contains steep slopes and sensitive vegetation. The existing facility would not require an SDP, however if the project is redesigned, it would be subject to the Environmentally Sensitive Lands regulations and an SDP would be required. Additionally, the Communication Antenna regulations also prohibit major telecommunication facilities within one-half mile of another major telecommunication facility. There are two other major telecommunication facilities adjacent to this one. On April 4, 2007, the Hearing Officer denied this project based on the inability to make the appropriate findings in the affirmative.

Kearny Villa Road – CUP No. 290030. The 120 foot high monopole and 200 square-foot equipment shelter is located at 5571 Kearny Villa Road (Attachment C-1,2). The property is zoned IL-2-1 and is designated for industrial use in the Kearny Mesa Community Plan (Attachment C-3). The pole currently supports nine panel antennas at approximately 75 feet. What appears to be another tenant with three panel antennas exists at approximately 62 feet. The upper (approximate) 41 feet of the pole is not being used, although there are two empty antenna racks currently situated on the pole (Attachment C-6). The facility was built under the M-1B zone (previous Code), which had different setback requirements from those of the IL-2-1 zone. As a result, the pole encroaches into the side yard setback approximately three and a half feet and the equipment enclosure encroaches six feet (Attachment C-5). If this project were approved, a Planned Development Permit would be required. The original CUP (94-0479) permitted up to three omni antennas and 12 panel antennas for Nextel and the same number of antennas for another carrier as a way to encourage collocation. The CUP was approved on January 26, 1995 by the Planning Commission (Attachment C-9). Surrounding uses are completely industrial and heavy commercial (Attachment C-3). This project poses a significant visual impact in the community and can be viewed from Highway-163, therefore, it is classified as a major telecommunication facility and requires a Conditional Use Permit (Section 141.0405-Attachment I). Several other towers dot the

Kearny Mesa community, but most are government communication towers and broadcast towers, both of which are regulated differently and a couple of major switch stations for two different wireless companies. On April 4, 2007, the Hearing Officer denied this project based on the inability to make the appropriate findings in the affirmative.

Federal Boulevard – CUP No. 292612. The 100 foot high monopole and 450 square-foot equipment shelter is located at 4586 Federal Boulevard (Attachments D-1,2). The property is zoned IL-3-1 and is designated for industrial use in the Mid-Cities Community Plan (Attachment D-3). The monopole currently has one tenant, Verizon, which has approximately 15 panel antennas (Attachment D-6). The original CUP (94-0627) permitted up to four dish antennas, six omni antennas and 30 panel antennas. The CUP was approved February 2, 1995 by the Planning Commission (Attachment D-9). The facility, as it exists, complies with the development regulations for the IL-3-1 zone. The project site is surrounded by industrial and heavy commercial uses (Attachment D-1). This project poses a significant visual impact in the community and can be viewed from Federal Boulevard and Highway-94, therefore, it is classified as a major telecommunication facility and requires a Conditional Use Permit due to the fact that it does not comply with the Communication Antenna regulations (Section 141.0405 of the LDC-Attachment I). On April 4, 2007, the Hearing Officer denied this project based on the inability to make the appropriate findings in the affirmative.

Mini Storage – CUP No. 357727. The 60 foot high monopole and 150 square-foot equipment room is located at 1529 38th Street (Attachment E-1,2). The property is zoned IL-2-1 and is designated for industrial use in the Mid-Cities Community Plan (Attachment E-3). The monopole currently has one tenant, Sprint Nextel, with Nextel at the top of the pole with nine panel antennas and Sprint at about the 35 foot height with six panel antennas (Attachment E-6). This site is a little different from the others in that there are multiple permits issued for various components and to different carriers. The original CUP (94-0330-12) for the monopole was issued to Nextel and permitted up to three omni antennas and 12 panel antennas and a 150 square-foot equipment room and was approved February 1, 1996 by the Planning Commission (Attachment E-8). Sprint, later was approved for nine panel antennas at approximately the 48 foot height and a 94 square-foot area for the equipment cabinets. This approval was issued administratively to Sprint on February 1, 2000. Now that Sprint Nextel has merged, this facility could be evaluated by the company for consolidation. The facility, as it exists, complies with the development regulations for the IL-2-1 zone. South of the property are industrial uses, to the west is industrial and single unit residential, to the north is an elementary school and single unit residential and to the east it is vacant with industrial uses below (Attachment E-1). This project, as proposed, is classified as a major telecommunication facility and requires a Conditional Use Permit due to the fact that it does not comply with the Communication Antenna regulations (Section 141.0405 of the LDC-Attachment I). On April 4, 2007, the Hearing Officer denied this project based on the inability to make the appropriate findings in the affirmative.

American Tower Corporation Appeal

ATC appealed the decision of the Hearing Officer on April 11, 2007 based on factual error and findings not supported (Attachment K). ATC claims that the CUP findings made in the negative were based on the unsupported assertion that the City imposed ten year time limits in order to require replacement of existing facilities. The claim goes on to cite that the City was assuming that carriers should have designed their networks to accommodate the removal or replacement of these towers. ATC believes they had a reasonable expectation that their CUP's would be renewed subject to compliance with conditions. Furthermore, ATC believes their tenants relied on the expectation that the permits would be renewed when they originally constructed their networks.

Staff Response

Please review attachment K to read the four different expiration conditions found in the permits that are the subject of this report. It is difficult to understand how these conditions could be misinterpreted to mean or imply that any of the applicants had reasonable expectations that a permit could be extended or that a facility could remain without legally obtaining the appropriate permits in compliance with current regulations. The whole point of the expiration was to allow a facility to operate with the express intent that if the tower became obsolete, it would be removed and that if technology or legislative changes were made, then these facilities would be modified to accommodate these changes. Each of the carriers signed the CUP's acknowledging that they agreed with the conditions of the permits. The Planning Commission imposed the expiration date in order to have the ability to reassess the facility according to any changes that would occur in the future that could reduce existing impacts to the communities where these facilities are located.

Since these towers were constructed between 10 and 20 years ago, the technology has evolved so that monopoles are no longer necessary as support structures. Due to the demand by many California jurisdictions, design companies have responded by developing many different stealth support structures that blend in to landscapes and environments to ensure that these facilities do not detract from communities. Some design options include clock towers, community identification signs, and water tanks. See Kramer.Firm's Wireless Site Gallery at <http://www.kramerfirm.com/cells/> for additional examples of how far the design industry has come in the last 10 years.

The towers in question were built as network backbones for either Pac Tel Mobile or Nextel. Slightly more than 20 years ago, Pac Tel Mobile (now Verizon) was one of two carriers in San Diego and they had only a handful of sites. The technology was still new and decision makers were unsure of what the future held for this technology. Today, Verizon has approximately 230 sites within the City. Technicians are continuously making adjustments to networks to accommodate new on-air sites, as well as changes in technology and consumer demands. Height reductions at these sites may require additional sites in order to avoid reduced coverage, but a carrier is not going to spend the money on new sites if adjustments to existing facilities can be made.

Nextel entered the San Diego market in 1994. They too, began with a handful of "high" sites and over the years, they have built approximately 235 sites in San Diego. In 2005, Sprint (who has approximately 230 sites) and Nextel merged, and although they each have different technologies (CDMA-Sprint, IDEN-Nextel) with different size needs, they do have opportunities to consolidate and make adjustments to compensate for height reductions.

ATC, on the other hand, is not a carrier, but rather a pole or site manager. Their business model is to acquire or permit facilities and market them as collocation sites. Out of all the towers that are the subject of this report, only two support more than one tenant.

When purchasing these portfolios from the previous tower owners, part of ATC's due diligence would have uncovered the CUP's and the expiration dates. None of the applications for these expired CUP's were submitted to the City until after the expiration date when they were notified by the City. ATC submitted the applications requesting that they be treated as an extension to the original permit. The Land Development Code does not contain provisions for extending permits and these permits all had specific expiration dates expressly included for the reasons stated above.

It is important to note that the City is not requesting that the facilities be removed, but instead that they be redesigned to address the current regulations requiring architectural integration. If these facilities are redesigned to architecturally blend with the landscape, the applicant would be able to utilize the facilities as a collocation site that would provide siting opportunities for other carriers and additional revenue stream for ATC. Reasonable height increases could be considered as part of the review for the new facilities. However, the upper portions of some of these poles are already not being utilized, which substantiates that they can be reduced in height.

Finally, staff has worked very closely with the industry over the past 17 years and more particularly over the past seven years with industry representatives on the Telecommunication Issues Committees (TIC) 1 and 2. Those participating representatives were selected by the industry and although not all carriers were represented at the table, the TIC representatives conducted periodic informational meetings to discuss and update the non-participating carriers on the dialogue between the public, staff and the industry. It is well known that San Diego has not permitted monopolies in at least 10 years. Staff has been very clear with all of the carriers that monopolies were being phased out. Sprint Nextel and Verizon are both experienced with the City policies and regulations pertaining to wireless communication facilities and neither company has proposed a monopoly in the past 10 years. The previous Communication Antenna regulations (141.0405-Attachment I) were in effect for more than seven years and architectural integration was the basis upon which they were developed.

Process 4 – Planning Commission Decision

→ 30th Place – CUP No. 296127/PPD No. 452327. The 130 foot high monopole and 500 square foot equipment shelter is located at 797 1/3 30th Place (Attachments F-1,2). The property is zoned MF-3000 and is within the Southeastern San Diego Community Plan (Attachment F-3). The monopole currently has one tenant, Verizon, which has 15 panel

antennas, an omni antenna and eight microwave dishes (Attachment X). The original CUP (84-0469) was approved November 20, 1984 by the City Council and did not specify the number of allowed antennas (Attachment F-8). The facility, as it exists, complies with the development regulations for the MF-3000 zone with the exception of the 30 foot height limit, thus the requirement for the SDP. To the south, east and west, there are single unit residential uses and Highway-94 is immediately to the north (Attachment F-1). This project poses a significant visual impact to the heavily traveled Highway-94 and to the surrounding communities of Southeastern San Diego and Golden Hill as it is the highest feature on the horizon. As such, the project is classified as a major telecommunication facility and requires a CUP.

Aviation – CUP No. 296155/PDP No. 296156. The 130 foot high monopole and 550 square foot equipment shelter is located at 6770 Aviation Drive (Attachments G-1,2). The property is zoned RS-1-7 and is designated for Low-Density Residential in the Skyline Paradise Hills Community Plan (Attachment G-3). The monopole currently has one tenant, Verizon, which has 28 antennas and seven microwave dishes. The CUP (84-0472) was approved on November 20, 1984 by the City Council (Attachment G-8). The facility, as it exists, complies with the development regulations for the RS-1-7 zone with the exception of the 30 foot height limit, thus the requirement for the PDP. The site is situated prominently on a hilltop surrounded by single unit residential homes (Attachment G-1). The site supported a City water tank at one time, but now is home to three monopoles, including the American Tower facility (Attachment G-6). The City currently has a 105 foot high monopole supporting city communication equipment and also, T-Mobile as a tenant. The third monopole belongs to Nextel and it is 90 feet high. It expired on June 1, 2005. Nextel is currently in the review process with a proposal to replace the tower with a 50 foot high faux tree, which will be used as a collocation facility with Sprint.

During the review of this project, staff requested ATC to collaborate with the other carriers, as well as the City to develop a collocation facility that complied with current regulations. The solution American Tower devised consisted of a 180 foot high steel lattice tower, which would support all of the existing carriers as well as any new carriers. After reviewing the design, staff decided separate facilities at a lower scale would be more appropriately sited and better able to integrate into this hilltop site. All three existing monopoles are visible to the surrounding community. This project, like the other two towers, is classified as a major telecommunication facility and does not conform to the Communication Antenna regulations due to the lack of integration into the environment and the proximity to the other two major telecommunication facilities.

The intent of a PDP is to encourage imaginative and innovative planning and to assure that the development achieves the purpose and intent of the applicable land use plan and that it would be preferable to what would be achieved by strict conformance with the regulations. These two monopoles do not meet the purpose or the intent of the PDP regulations. Similar to the other five appealed monopoles, these monopoles do not comply with the Communication Antenna regulations.

Process 5 – Planning Commission Recommendation to City Council

→ **Mt. Ada – CUP No. 292627/SDP No. 450714.** The 145 foot high monopole and 572 square foot equipment shelter is located at 6426 Mt. Ada Road (Attachments H-1,2). The property is zoned CC-1-3 and is designated for Commercial Community Core in the Clairemont Mesa Community Plan (Attachment H-3). The monopole currently has one tenant, Verizon, and supports two separate racks of antennas totaling 30 panel antennas and three microwave dishes (Attachment H-6). The site also contains a generator. The original CUP (83-0629), issued to Pac Tel Mobile, permitted a 145 foot high pole and a 572 square foot equipment shelter, but did not specify the number of antennas. It was approved by the City Council on November 20, 1984 (Attachment H-9). Surrounding uses include multi-unit residential units to the south and commercial uses to the east, west and north. Large residential subdivisions exist beyond the multi-unit residential to the south and there is an elementary school approximately 500 feet to the east of the project site (Attachment H-1). The tower poses a significant visual impact to travelers along Balboa Avenue and to the residential areas surrounding the facility. Because of the flat topography, it can be viewed from great distances around the community and is therefore classified as a major telecommunication facility.

The Clairemont Height Limitation Overlay zone does not permit structures over 30 feet in height without City Council approval of an SDP. This overlay zone was originally applied to the bay view areas in Clairemont, but in 1997, it was extended to cover all of the Clairemont Mesa community. An SDP is a special permit used when a proposed development would have a significant impact on the surrounding area. The intent is to ensure that the development would not adversely affect the community plan and to ensure that all development regulations are met. Neither the SDP findings nor the supplemental findings that pertain specifically to Clairemont Mesa can be made in the affirmative.

DISCUSSION

Ten years ago, the City imposed expirations with most CUP's including telecom CUP's in order to reassess the technology and other changing circumstances that would occur over the ensuing years. Since the original approvals of these CUP's, many changes have taken place with regard to wireless facilities within the City of San Diego. In 1994, the City adopted Council Policy 600-43, which identified the general policies relevant to the aesthetics of this new emerging technology. In 2000, the language in Council Policy 600-43 regarding aesthetics, was codified when the Land Development Code was adopted. During that time, the City Council appointed a task force, the Telecommunication Issues Committee (TIC) comprised of three industry representatives and three community members to analyze issues associated with wireless facilities and report back with recommendations to address concerns over location and aesthetics. No sooner did the report come out and the City Council requested TIC2 to reconvene to analyze existing nationwide wireless policies to address specific controversial issues identified by a local activist group. Altogether, TIC

1 and 2 met over a period of five years. During that time, they rewrote Council Policy and the City's wireless ordinance to address the major controversial issues associated with these types of facilities. They reported to Land Use and Housing four times, twice to Planning Commission and altogether, four reports were made to City Council. The new regulations recently received Coastal Commission certification and became effective for new projects submitted after April 11, 2007.

These projects fall under the previous regulations, Section 141.0405, Communication Antennas, which also require architectural and visual integration of wireless facilities (Attachment I). Assessment letters were provided to the applicant explaining that the project sites needed to be redesigned in order to comply with these regulations. Revisions were not submitted and the applicant has agreed to go forward to a public hearing to present technical evidence demonstrating why the facility could not be modified.

These monopoles were established as the foundation for the development of the carriers' networks. Subsequent sites were developed based on these locations and the technological contributions these sites provided to the network. The decision makers were concerned about the unsightly visual impacts these facilities had on the landscape of the city, but at the time the technology was too new and neither the decision makers, staff, nor the industry were aware of design opportunities that could be employed to mitigate the appearance. As a consequence, the decision makers inserted a ten or twenty-year expiration into the permits to coincide with the anticipated changes in technology so that the facilities could be redesigned to comply with the current regulations in effect. Those CUP contracts were signed by each of the permittees and although the permittees have changed, the CUP runs with the land and ATC is subject to the original CUP contract. The permits contained conditions regarding removal of the facilities upon expiration unless a new application in compliance with current regulations

Since submitting these applications, ATC, along with other representatives of the wireless industry, met with the Mayor's Office to address several significant issues, including developing design guidelines, ensuring consistent processing and developing a renewal process for towers as well as building collocations. The industry was told that the Code does not have provisions for extensions and that was not something that could be pursued at this point since the new wireless ordinance was still not in effect. Consideration of such a measure would be analyzed one year after the effective date of the ordinance at which time staff is scheduled to report back to the City Council, therefore, it would not have a bearing on the outcome of these permits. Additionally, staff along with industry input did develop design guidelines that are now posted to the City's website at <http://www.sandiego.gov/development-services/industry/pdf/telecomguide.pdf>.

ATC has indicated that in order to accommodate any reductions in height to their facilities, they would be forced to install additional sites in residential areas. The reality is that Council Policy 600-43 requires an applicant to demonstrate that a facility could not be located in one of three preferred land use categories that are more favorable for these types of uses. Residentially used properties are the least preferred and as such it would be difficult to establish that there are not any non-residentially used sites available for their use. The uses of non-residentially used property as well as

the public right-of-way are both options that would have to be explored before residential property would be considered. Additionally, Kearny Villa and Verus Street do not utilize the upper portions of their poles, demonstrating that those facilities, in particular, could be reduced in height.

Community Plan Analysis:

With the exception of the Mid-City Communities Plan, which recommends using all available means to conceal communication antennas from view, neither the City of San Diego Progress Guide and General Plan nor any of the other effected community plans contain goals, objectives, or recommendations that specifically address wireless telecommunications facilities and their placement within the respective communities. Many of the Plans do, however, contain other elements such as Urban Design that address the enhancement of the physical environment, visual appearance and identity through aesthetic improvements. Monopoles and other non-integrated structures do not comply with these policies and would therefore adversely affect the goals, objectives and recommendations contained within the specific plans.

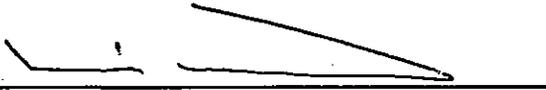
Conclusion:

Staff has reviewed each of the requests for these expired facilities and has determined that none of them comply with the Communication Antenna regulations, the SDP or PDP regulations or with Council Policy 600-43. Each of these facilities contributes to a significant visual impact in the community in which it is located. American Tower has declined to modify any of the projects to comply with the regulations to minimize visibility by integrating the facilities into the landscape and as such, the findings to support the projects cannot be made and staff is unable to recommend approval of the projects. Therefore staff recommends that the Planning Commission uphold the decision of the Hearing Officer and deny the five Process 3 CUP's; deny the two Process 4 CUP/PDP's; and recommend denial to the City Council of the one Process 5 CUP/SDP.

ALTERNATIVE

Continue these projects for a period of four weeks in order to allow staff time to prepare draft permits to Approve CUP No.'s 289921 (Verus Street), 289973 (Yolanda Avenue), 290030 (Kearny Villa), 292612 (Federal Boulevard), and 357727 (Mini Storage), and CUP No. 296127/PDP No. 453612 (30th Place), and CUP No. 296155/PDP No. 296156 (Aviation), and CUP No. 292627/SDP No. 450714 (Mt. Ada), with or without modifications.

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



Karen Lynch-Ashcraft
Project Manager
Development Services Department

ESCOBAR-ECK/KLA

Attachments:

- A. Verus Street, PTS No. 90455
 - 1. Aerial Photo
 - 2. Project Location Map
 - 3. Community Plan Land Use Map
 - 4. Project Data Sheet
 - 5. Project Plans
 - 6. Photos
 - 7. Otay Mesa Nestor Community Planning Committee Recommendation
 - 8. Draft Resolution (CUP Denial)
 - 9. CUP 94-0471
 - 10. Notice of Public Hearing
 - 11. Appeal Application
 - 12. Ownership Disclosure Statement

- B. Yolanda Avenue, PTS No. 90475
 - 1. Aerial Photo
 - 2. Project Location Map

3. Community Plan Land Use Map
4. Project Data Sheet
5. Project Plans
6. Photos
7. Kearny Mesa Community Planning Group Recommendation
8. Serra Mesa Planning Group Recommendation
9. Draft Resolution (CUP Denial)
10. CUP 94-0527
11. Notice of Public Hearing
12. Appeal Application
13. Ownership Disclosure Statement

C. Kearny Villa, PTS No. 90486

1. Aerial Photo
2. Project Location Map
3. Community Plan Land Use Map
4. Project Data Sheet
5. Project Plans
6. Photos
7. Kearny Mesa Community Planning Group Recommendation
8. Draft Resolution (CUP Denial)
9. CUP 94-0479
10. Notice of Public Hearing
11. Appeal Application
12. Ownership Disclosure Statement

D. Federal Boulevard, PTS No. 91175

1. Aerial Photo
2. Project Location Map
3. Community Plan Land Use Map
4. Project Data Sheet
5. Project Plans
6. Photos
7. City Heights Area Planning Committee Recommendation
8. Draft Resolution (CUP Denial)
9. CUP 94-0627
10. Notice of Public Hearing
11. Appeal Application
12. Ownership Disclosure Statement

E. Mini Storage, PTS No. 107501

1. Aerial Photo
2. Project Location Map

3. Community Plan Land Use Map
4. Project Data Sheet
5. Project Plans
6. Photos
7. Draft Resolution (CUP Denial)
8. CUP 94-0330-12
9. Notice of Public Hearing
10. Appeal Application
11. Ownership Disclosure Statement

- F. 30th Place, PTS No. 92067
1. Aerial Photo
 2. Project Location Map
 3. Community Plan Land Use Map
 4. Project Data Sheet
 5. Project Plans
 6. Photos
 7. Draft Resolution (CUP Denial)
 8. CUP 84-0469
 9. Notice of Public Hearing
 10. Ownership Disclosure Statement

- G. Aviation, PTS No. 92076
1. Aerial Photo
 2. Project Location Map
 3. Community Plan Land Use Map
 4. Project Data Sheet
 5. Project Plans
 6. Photos
 7. Draft Resolution (CUP Denial)
 8. CUP 84-0472
 9. Notice of Public Hearing
 10. Ownership Disclosure Statement

- H. Mt. Ada, PTS No. 91178
1. Aerial Photo
 2. Project Location Map
 3. Community Plan Land Use Map
 4. Project Data Sheet
 5. Project Plans
 6. Photos
 7. Clairemont Mesa Planning Committee Recommendation
 8. Draft Resolution (CUP Denial)

- 9. CUP 83-0629
- 10. Notice of Public Hearing
- 11. Ownership Disclosure Statement

- I. SDMC Section 101.0405
- J. SDMC Section 101.0510
- K. Expiration Conditions
- L. ATC/Verizon/Sprint Nextel Corporate Listing
- M. Quick Glance Project Description

Rev 01-04-07/rh

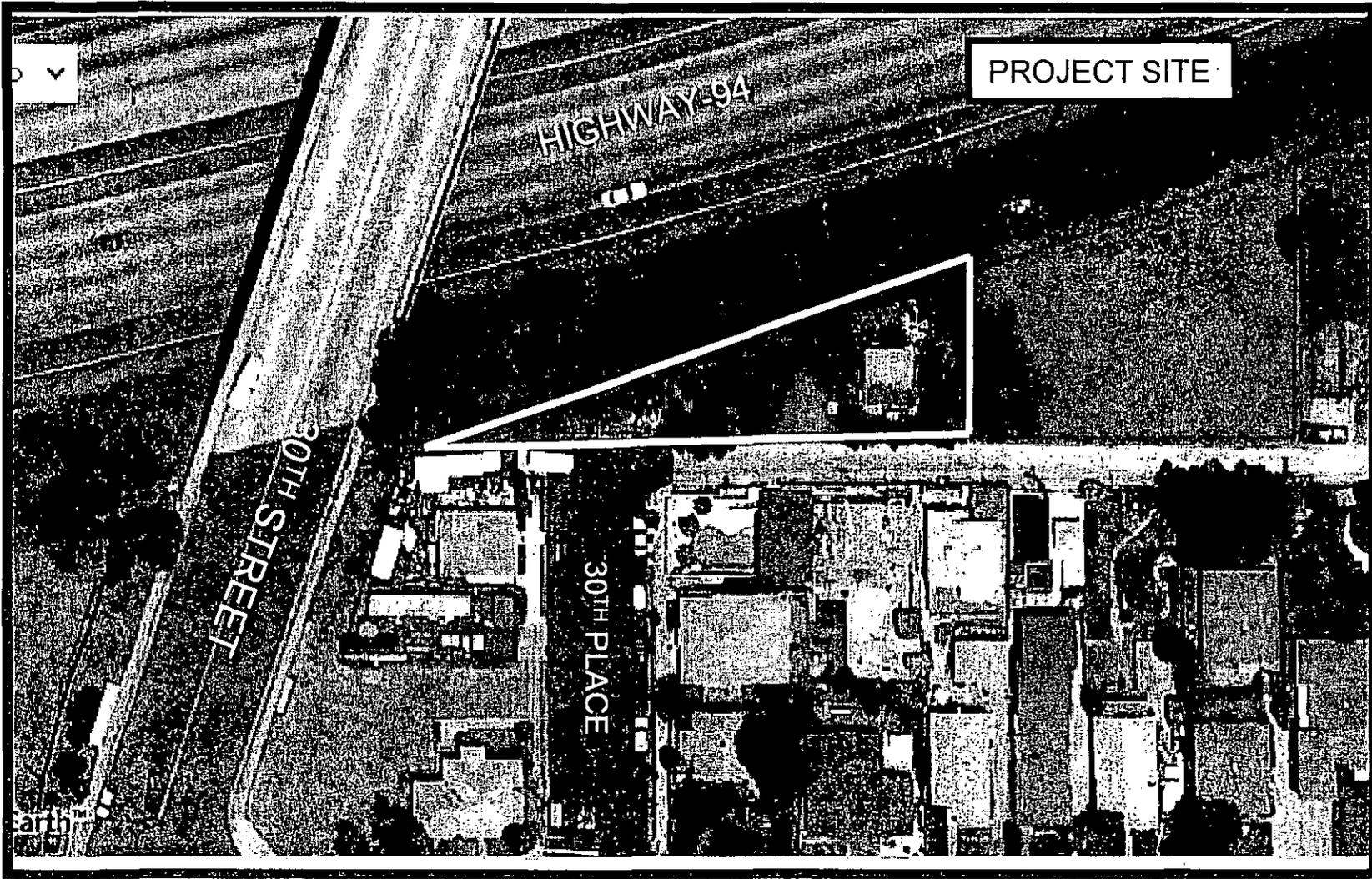
000611

NOTE: To avoid unnecessary duplication, the entire Report to the Planning Commission, Report No. PC-07-079 is not duplicated here but can be found in the back-up materials for companion item American Tower-Mt. Ada.

009613

ATTACHMENT F

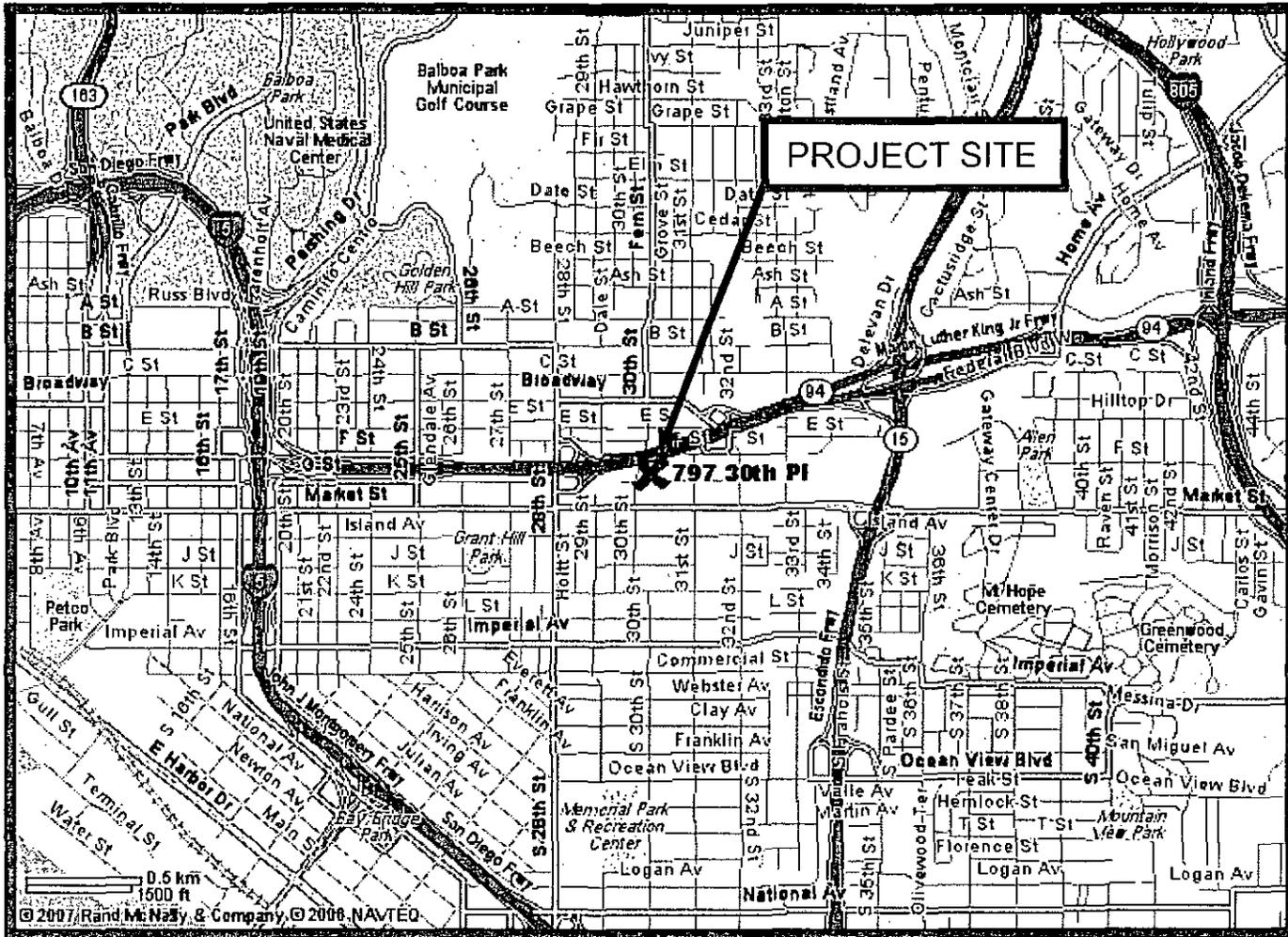
American Tower
Corporation – 30th Place
(CUP/PDP)
Verizon
Project No. 92067



Aerial Photo
AMERICAN TOWER – 30TH PLACE – PROJECT NUMBER 92067

797 30TH PLACE

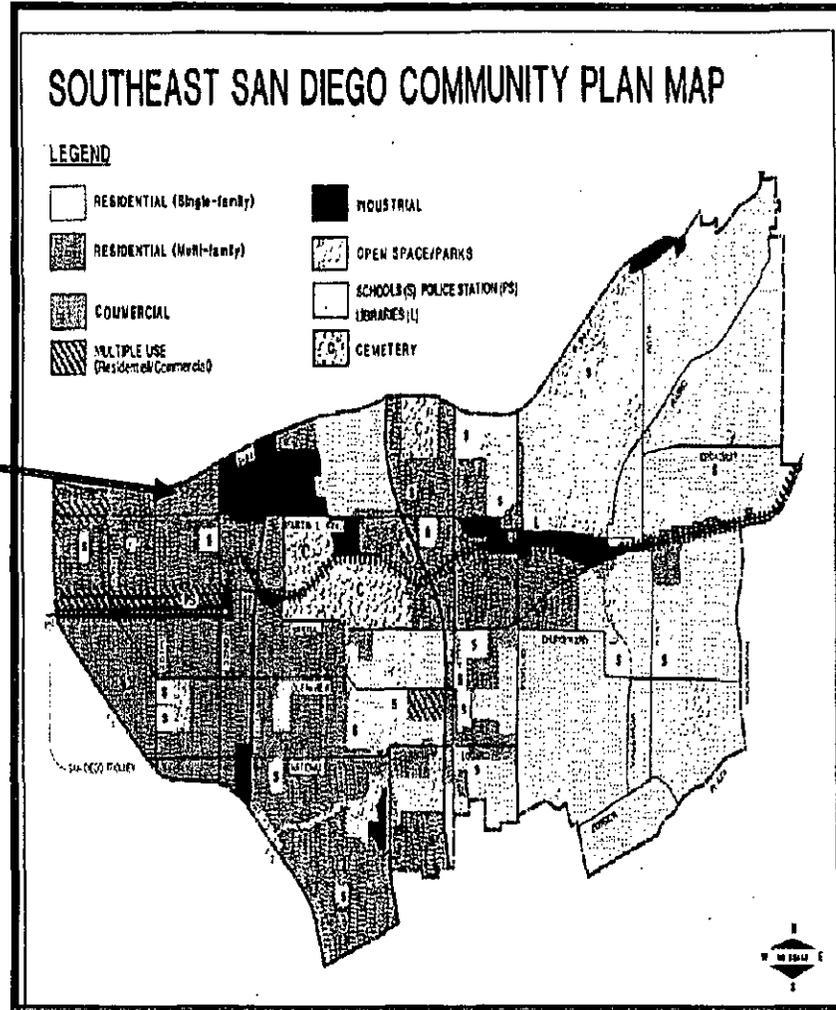




Project Location Map

AMERICAN TOWER – 30TH PLACE – PROJECT NUMBER 92067
797 30TH PLACE





PROJECT SITE

SOUTHEASTERN SAN DIEGO COMMUNITY PLAN MAP

AMERICAN TOWER – 30TH PLACE – PROJECT NUMBER 92067

797 1/3 30TH PLACE



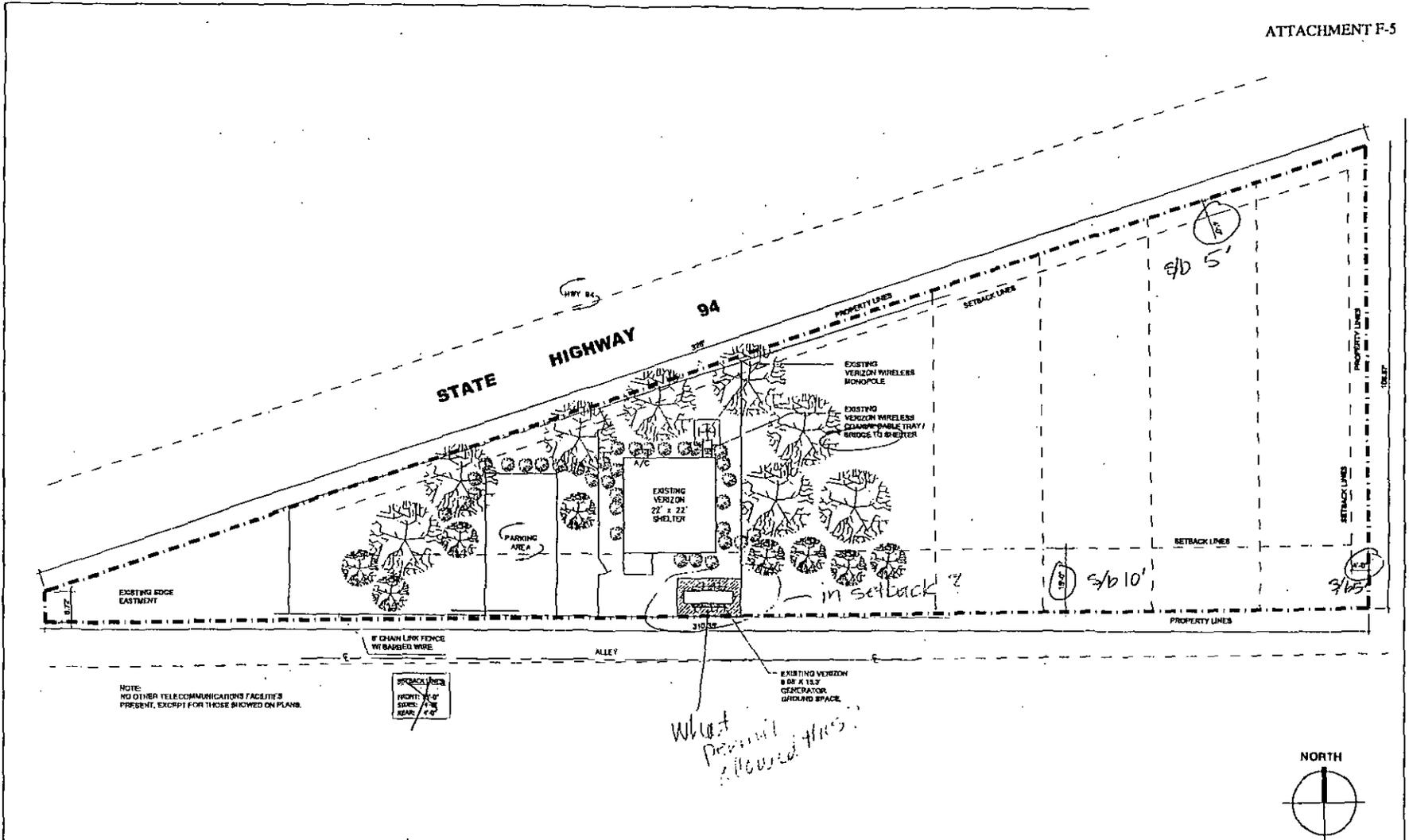
PROJECT DATA SHEET		
PROJECT NAME:	American Tower – 30 th Place	
PROJECT DESCRIPTION:	A wireless communication facility consisting of an existing 130 foot high monopole and a 500 square foot equipment shelter.	
COMMUNITY PLAN AREA:	Southeast San Diego	
DISCRETIONARY ACTIONS:	Conditional Use Permit, Planned Development Permit	
COMMUNITY PLAN LAND USE DESIGNATION:	Residential (Allows residential development of 10-15 dwelling units per acre).	
<u>ZONING INFORMATION:</u>		
ZONE: MF-3000: (A multi-unit residential zone that permits 14.52 dwelling unit per acre) HEIGHT LIMIT: 30-Foot maximum height limit. FRONT SETBACK: 10 feet. SIDE SETBACK: 5 feet. REAR SETBACK: 5 feet.		
<u>ADJACENT PROPERTIES:</u>	LAND USE DESIGNATION & ZONE	EXISTING LAND USE
NORTH:	Highway-94	Highway-94
SOUTH:	Residential 10-15 du/ac; MF-3000.	Single Unit Residential
EAST:	Residential 10-15 du/ac; MF-3000.	Vacant
WEST:	Residential 10-15 du/ac; MF-3000.	Single Unit Residential
DEVIATIONS OR VARIANCES REQUESTED:	Deviation to allow a 130 foot high monopole within a 30 foot height limit.	
COMMUNITY PLANNING GROUP RECOMMENDATION:	On March 27, 2006, ATC met with the Technical Subcommittee of the Southeastern San Diego Planning Committee. They requested additional information on landscape and replacement of the chain link fence. ATC has not yet presented the project to the Southeastern San Diego Planning Committee.	



**SITE NAME: CA 0037 30TH PLACE / ATC 300618
CUP AND PDP APPLICATION**

<p>DRAWING INDEX</p> <table border="1"> <tr><th>REV.</th><th></th></tr> <tr><td>T-1</td><td>TITLE SHEET</td></tr> <tr><td>A-1</td><td>SITE PLAN</td></tr> <tr><td>A-2</td><td>ENLARGED SITE PLAN</td></tr> <tr><td>A-3</td><td>EXTERIOR ELEVATIONS</td></tr> <tr><td>A-4</td><td>EXTERIOR ELEVATIONS</td></tr> <tr><td>L-1</td><td>LANDSCAPE DRAWING</td></tr> <tr><td>S-1</td><td>SURVEY FOR REFERENCE ONLY</td></tr> </table>	REV.		T-1	TITLE SHEET	A-1	SITE PLAN	A-2	ENLARGED SITE PLAN	A-3	EXTERIOR ELEVATIONS	A-4	EXTERIOR ELEVATIONS	L-1	LANDSCAPE DRAWING	S-1	SURVEY FOR REFERENCE ONLY	<p>VICINITY MAP</p> <p>N.T.S.</p>	<p>PROJECT INFORMATION</p> <p>SITE ADDRESS: 700 30TH PLACE SAN DIEGO, CA 92102</p> <p>PROPERTY OWNER: VERIZON FORMERLY AIR TOUCH CELLULAR / PACTEL</p> <p>APPLICANT: AMERICAN TOWER CORPORATION, INC. 2201 DUPONT DR., # 340 IRVINE, CA 92612 Tel: (949) 442-8400</p> <p>APPLICANT CONTACT: DOUGLAS KEARNEY ZONING SPECIALIST PH: (949) 442-8400</p>
REV.																		
T-1	TITLE SHEET																	
A-1	SITE PLAN																	
A-2	ENLARGED SITE PLAN																	
A-3	EXTERIOR ELEVATIONS																	
A-4	EXTERIOR ELEVATIONS																	
L-1	LANDSCAPE DRAWING																	
S-1	SURVEY FOR REFERENCE ONLY																	
<p>LEGAL DESCRIPTION</p> <p>LOT 2, HILL TOP SUBDIVISION, BY THE CITY OF SAN DIEGO, ACCORDING TO MAP THEREOF No. 527, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 8, 1994</p>		<p>JURISDICTION: CITY OF SAN DIEGO</p> <p>OCCUPANCY: U-1</p> <p>APN NUMBER: 545-031-33</p> <p>CURRENT USE: UNMANNED TELECOMMUNICATIONS FACILITY</p> <p>PROPOSED USE: UNMANNED TELECOMMUNICATIONS FACILITY</p> <p>ZONING: CC COMMUNITY COMMERCIAL <i>MF-7-000</i></p> <p>SETBACK NOTE: CURRENT ZONING FOR THIS PROPERTY IS AS FOLLOWS: APN 545-031-33 ZONE U-2 SETBACKS: FRONT: 15', SIDE & REAR: 4' APN 545-031-33 ZONE CC SETBACKS: FRONT: 0', SIDE: 4' & REAR: 15'</p>																
<p>DEVELOPMENT SUMMARY</p> <p>AMERICAN TOWER CORPORATION IS REQUESTING APPROVAL FOR THE FOLLOWING PROJECT: CONDITIONAL USE PERMIT (CUP) AND PLANNED DEVELOPMENT PERMIT (PDP) THE PROJECT REQUIRES THE RENEWAL OF EXPIRED CUP NO. 84-6488 ISSUED BY THE CITY OF SAN DIEGO FOR A WIRELESS TELECOMMUNICATIONS FACILITY. THIS APPLICATION REQUESTS THE CONTINUED OPERATION AND MAINTENANCE OF THE VERIZON WIRELESS FACILITY LOCATED AT 700 30TH PLACE. THE FACILITY (AS IT PRESENTLY EXISTS) CONSISTS OF A 900 SQUARE FOOT UNMANNED EQUIPMENT BUILDING WITH FIFTEEN (15) PANEL ANTENNAS, ONE (1) EIGHT FOOT LONG DIRECTIONAL WIND-TYPE ANTENNA, THREE (3) 4 FOOT DIAMETER MICROWAVE DISHS AND FIVE (5) 2-FOOT DIAMETER MICROWAVE DISHS MOUNTED ONTO A 130 FOOT TALL STEEL MONOPOLE STRUCTURE. AMERICAN TOWER IS REQUESTING THE CUP AND PDP IN ORDER TO ALLOW VERIZON WIRELESS AND ITS CUSTOMERS UNINTERRUPTED WIRELESS TELEPHONE SERVICE, ALSO THERE IS ON SITE AN EMERGENCY ELECTRICAL GENERATOR.</p>		<p>SITE QUALIFICATION PARTICIPANTS</p> <table border="1"> <thead> <tr> <th>NAME</th> <th>COMPANY</th> <th>NUMBER</th> </tr> </thead> <tbody> <tr> <td>ARCHITECT: JORGE BASILIO, AIA</td> <td>BASILIO ASSOCIATES, INC.</td> <td>(949) 727-4700</td> </tr> <tr> <td>ZONING: DOUG KEARNEY</td> <td>AMERICAN TOWER CORPORATION</td> <td>(949) 442-8402</td> </tr> </tbody> </table>	NAME	COMPANY	NUMBER	ARCHITECT: JORGE BASILIO, AIA	BASILIO ASSOCIATES, INC.	(949) 727-4700	ZONING: DOUG KEARNEY	AMERICAN TOWER CORPORATION	(949) 442-8402							
NAME	COMPANY	NUMBER																
ARCHITECT: JORGE BASILIO, AIA	BASILIO ASSOCIATES, INC.	(949) 727-4700																
ZONING: DOUG KEARNEY	AMERICAN TOWER CORPORATION	(949) 442-8402																

	<p>Basilio Associates, Inc. Architecture + Planning + Design 151 BALBOA ST., SUITE 100, IRVINE, CA 92614 PHONE: (949) 227-1100 FAX: (949) 227-0271</p>	<p>SITE: 300618 ID: CA 0037 700 30TH PLACE SAN DIEGO, CA 92104</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>REVISIONS</th> <th>BY</th> <th>CHK</th> <th>APP'D</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> <p>SCALE: AS SHOWN REVISIONS: - DRAWN: JH</p>	NO.	DATE	REVISIONS	BY	CHK	APP'D							<table border="1"> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>													<p>TITLE SHEET</p> <table border="1"> <tr> <th>PROJECT NUMBER</th> <th>DRAWING NUMBER</th> </tr> <tr> <td> </td> <td>1-1</td> </tr> </table>	PROJECT NUMBER	DRAWING NUMBER		1-1
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PROJECT NUMBER	DRAWING NUMBER																																
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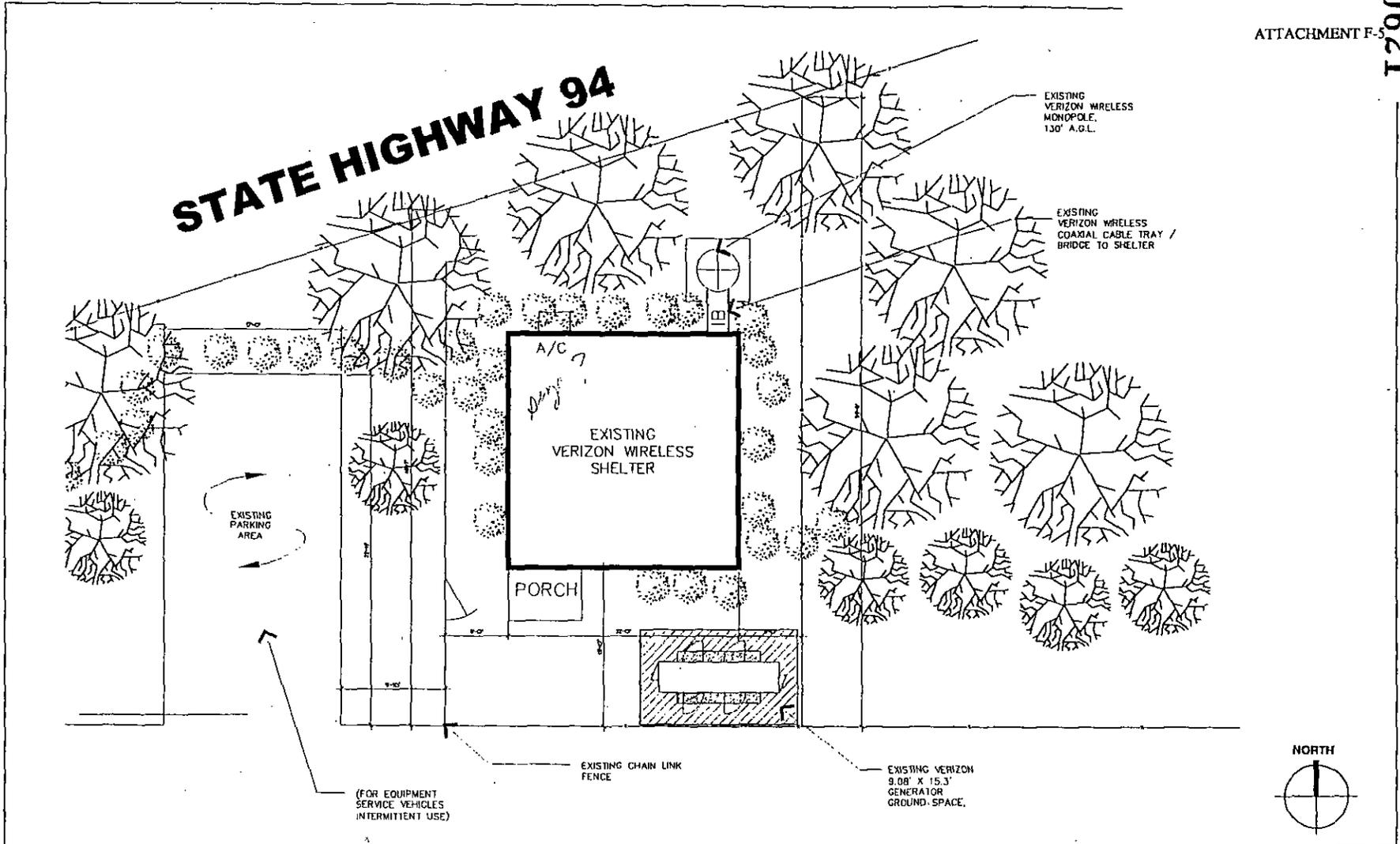
NOTE:
NO OTHER TELECOMMUNICATIONS FACILITIES
PRESENT, EXCEPT FOR THOSE SHOWN ON PLANS.



What permit allowed this?



SITE PLAN		SCALE: 1" = 10'													
	<p>Basilio Associates, Inc. Architects & Planning & Design 12 JAVELIN BLVD, SAN DIEGO, CA 92161 PHONE: 619-770-2222 FAX: 619-770-2223</p>	<p>SITE: 300618 ID: CA 0037 700 30TH PLACE SAN DIEGO, CA 92194</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>REVISIONS</th> <th>BY</th> <th>CHK.</th> <th>APP'D.</th> </tr> <tr> <td>A</td> <td>12-19-05</td> <td>DESIGNED FOR DUP APPLICATION</td> <td></td> <td></td> <td></td> </tr> </table>	NO.	DATE	REVISIONS	BY	CHK.	APP'D.	A	12-19-05	DESIGNED FOR DUP APPLICATION			
			NO.	DATE	REVISIONS	BY	CHK.	APP'D.							
A	12-19-05	DESIGNED FOR DUP APPLICATION													
		<p>SITE PLAN</p> <p>PROJECT NUMBER: _____ DRAWING NUMBER: A-1</p>													



ENLARGED SITE PLAN

SCALE: 1" = 10' 1



Basilio Associates, Inc.
 Architecture & Planning & Design
 11400 VIA VALERIO, SUITE 100
 SAN DIEGO, CA 92126

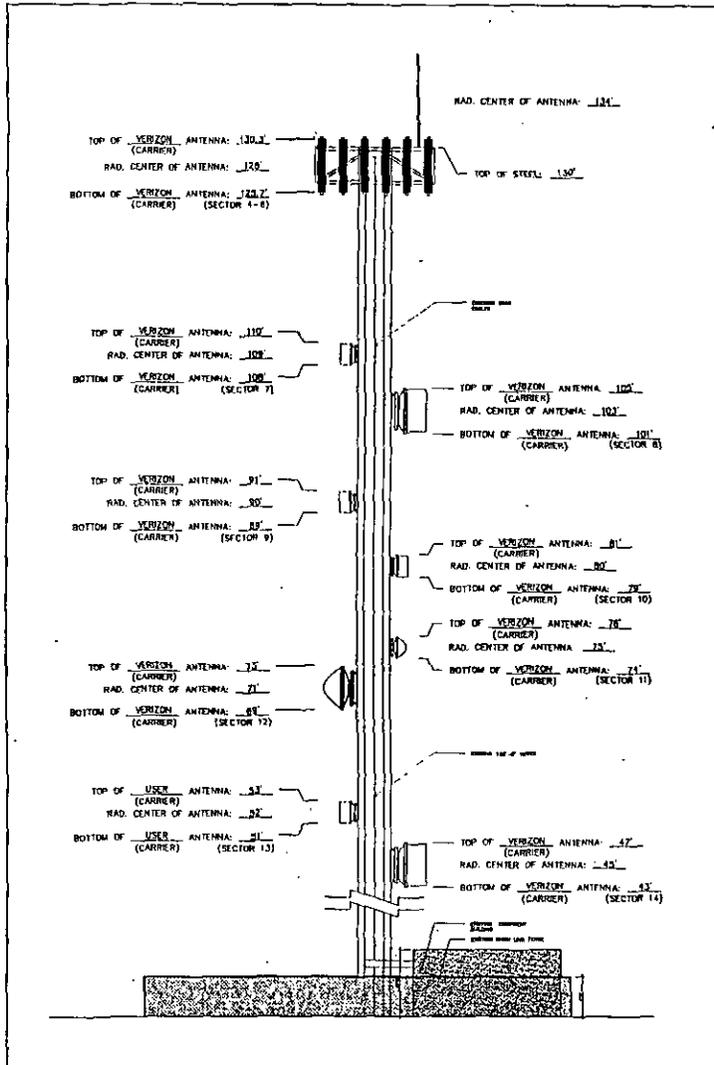
SITE: 300618
ID: CA 0037
 700 30TH PLACE
 SAN DIEGO, CA 91914

NO.	DATE	REVISIONS	BY	CHK.	APP'D.
1	12-18-08	ISSUED FOR CUP APPLICATION			
SCALE:	AS SHOWN	DESIGNED:		DRAWN:	JB

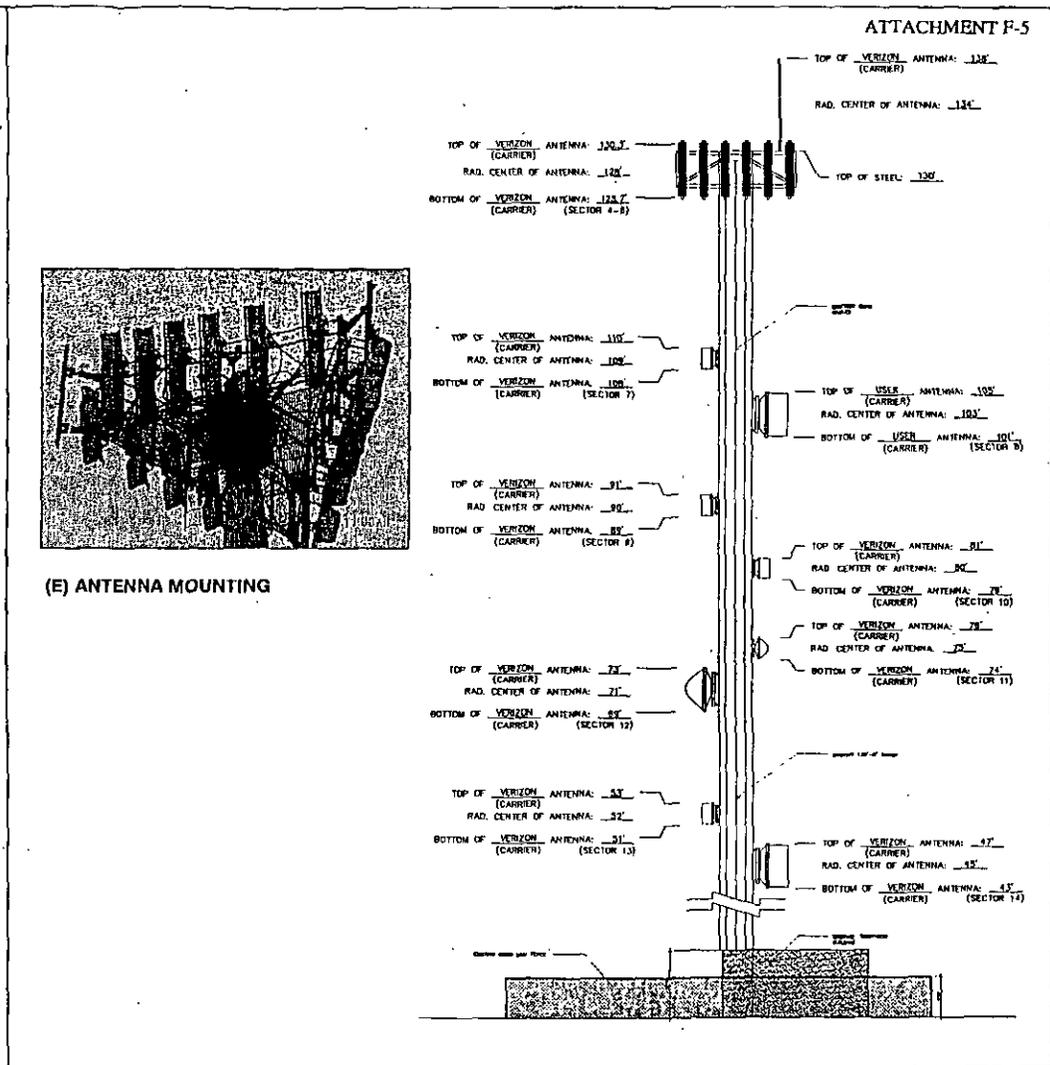
ENLARGED SITE PLAN

PROJECT NUMBER: _____
 DRAWING NUMBER: **A-2**

ATTACHMENT F-5

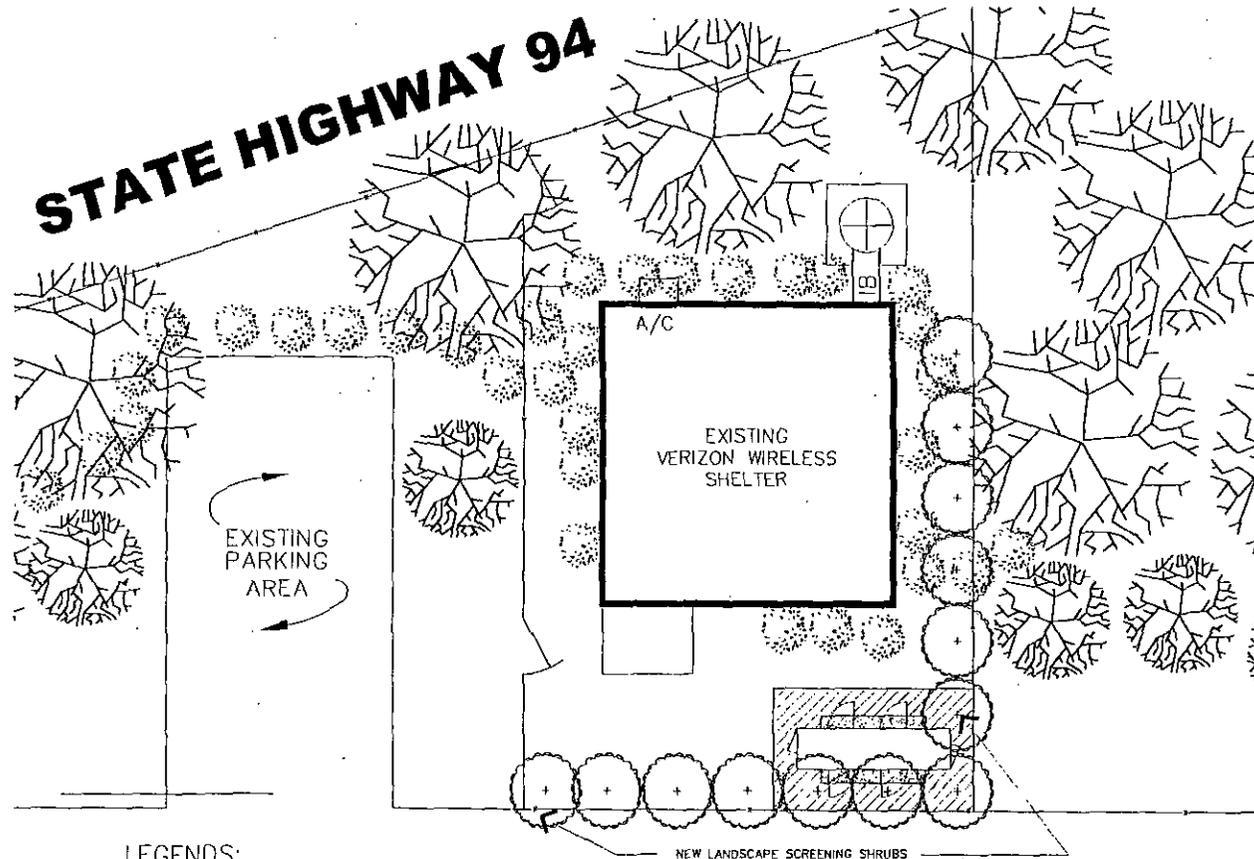


(E) ANTENNA MOUNTING



	<p>Bastio Associates, Inc. Architecture • Planning • Design 12 SANDELL DRIVE, SAN DIEGO, CA 92108 PHONE 619-594-7700 FAX 619-594-7700</p>	<p>SITE: 300618 ID: CA 0037 700 30TH PLACE SAN DIEGO, CA 92104</p>	<p>SCALE: AS SHOWN DESIGNED BY: DRAWN BY: JG</p>		<p>EXTERIOR ELEVATIONS</p> <p>PROJECT NUMBER: SHEET NUMBER: A-4</p>
			<p>DATE: 12-18-00 ISSUED FOR CUP APPLICATION</p> <p>REVISIONS: BY: CHK: APP'D:</p>	<p>SCALE: AS SHOWN DESIGNED BY: DRAWN BY: JG</p>	

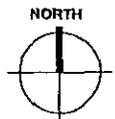
STATE HIGHWAY 94



LEGENDS:

- 13 CUPRESSUS SEMPERVIRENS (ITALIAN CYPRESS)
15 GALLONS
-

IRRIGATION NOTES:
HAND WATER WITH WATERING TRUCK
FOR FIRST YEAR UNTIL ESTABLISHED



ENLARGED SITE PLAN



BASILIO ASSOCIATES, INC.
Architecture + Planning + Design
12 JEFFERSON STREET, SAN DIEGO, CA 92161
PHONE: 619-722-4222 FAX: 619-722-4222

**SITE: 300618
ID: CA 0037
700 30TH PLACE
SAN DIEGO, CA 92114**

NO.	DATE	ISSUED FOR	REVISIONS	BY	CHK	APP'D
1	12-18-20	ISSUED FOR CUP APPLICATION				
SCALE:	AS SHOWN	DRAWN:		DATE:		

SCALE: 1" = 10' - 0"

LANDSCAPE PLAN

PROJECT NUMBER:
 DRAWING NUMBER: **L-1**

000626

ATTACHMENT F-6





PLANNING COMMISSION
RESOLUTION NO.
CONDITIONAL USE PERMIT NO. 296127
PLANNED DEVELOPMENT PERMIT NO. 453612
AMERICAN TOWER – 30TH PLACE
PROJECT NO. 92067

WHEREAS, Verizon Wireless (VAW) LLC dba Verizon Wireless, 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. 296127 and Planned Development Permit No. 453612, on portions of an .19 acre site;

WHEREAS, the project site is located at 797 1/3 30th Place in the MF-3000 zone of the Southeastern San Diego Community Plan;

WHEREAS, the project site is legally described as Lot 2 of Hilltop Subdivision in the City of San Diego, according to map thereof No. 5357, filed in the Office of the County Recorder of San Diego County, March 6, 1964;

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 296127 and Planned Development Permit No. 453612, 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 Southeastern San Diego 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/PDP.

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 situated prominently along Highway-94, which serves as a major east west transportation corridor and it poses an unsightly visual impact for commuters that utilize this corridor as well as for residents of the surrounding communities.

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 30th Place project does not conform to this code requirement. As it exists, it is a significant visual impact along Highway-94, which serves as a major transportation corridor through the city. Many commuters pass through this section of the city on a daily basis and are subjected to the unsightliness associated with this project.

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 these types of facilities. Due to the fact that the existing facility does not comply with current regulations and policies, this finding cannot be affirmed. A facility that better integrates into the property and takes into consideration the surroundings and the proximity to Highway-94 would be more appropriately located on this property.

Planned Development Permit - Section 126. 0604

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 Southeastern San Diego 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.

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 MF-3000 zone except for the height limit of 30 feet. The monopole is 130 feet tall and is situated at a high point prominently alongside of Highway-94. Development in the area is low in scale and primarily residential in nature with commercial uses further away from the freeway. The existing tower exceeds the MF-3000 zone height limit by 100 feet. Deviations to the development regulations require a Planned Development Permit, which is a mechanism to encourage imaginative and innovative planning and to assure that the project achieves the purpose and intent of the applicable land use plan and that it would be preferable to what would be achieved by strict conformance with the regulations.

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 branched out to building collocations later. Typically, carriers initially built tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP84-0469) 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.

4. The proposed development, when considered as a whole, will be beneficial to the community; and

The monopole serves Verizon subscribers in the surrounding communities, as well as commuters passing through the area and as such, is a beneficial service. Conversely, the significant visual impacts that the pole creates are detrimental to the surrounding communities as well as to the City of San Diego. The pole sits on a hill at an elevation of 170 feet. The pole is 130 feet tall. Just .24 miles to the west, the elevation drops 30 feet. Approximately .19 miles to the east, the elevation drops 30 feet and .29 miles to the southeast, the elevation drops a dramatic 95 feet. The monopole is a negative visual community landmark that can be seen from miles away. The original design of this tower was developed 20 years ago when the technology was at its infancy. The CUP was conditioned to expire in 20 years and the owner and operator of the facility, Verizon and American Tower Corporation had the responsibility of making preparations within their network to comply with any new regulations or policies in effect, which would have included a required reduction in height as well as adjustments to other existing facilities and development of new facilities.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The applicant, American Tower Corporation, is requesting to deviate from the RS-1-7 height limitation of 30 feet. The existing tower is 130 feet tall and can be viewed from miles away. It sits on an elevated hill within the Southeastern San Diego community, prominently along side of Highway-94 and is a significant visual impact within San Diego. The project, as it exists, does not result in a visually desirable project. If redesigned to comply with the 30 foot height limit, Verizon services to the community and passing commuters would be significantly reduced. However, Verizon has the responsibility of exploring available alternatives that would address legal requirements as well as reduce the negative impact on their existing network. Section 141.0405 of the Land Development Code requires telecommunication facilities to integrate into the landscape in which they are proposed. If this facility were to be redesigned to comply with this section of the Code, a reasonable height deviation may be considered. The existing tower does not result in an acceptable project.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 296127 and Planned Development Permit No. 453612 is hereby DENIED by the Planning Commission.

Karen Lynch-Ashcraft
Development Project Manager
Development Services

Adopted on: June 28, 2007

Job Order No. 42-5781

000633 ORIGINAL

1684

CONDITIONAL USE PERMIT
NO. 84-0469
CITY COUNCIL.

This Conditional Use Permit is granted by the City Council of The City of San Diego to PACTEL MOBILE ACCESS, a Delaware Corporation, Owner/Permittee, under the conditions in Section 101.0507 of the Municipal Code of The City of San Diego.

1. Permission is granted to Owner/Permittee to construct and operate a communication facility consisting of an equipment building and antenna tower located on the south side of State Highway 94 at 30th Place, more particularly described as Lot 2, Hilltop, Map 5357 and Lots 15 to 18, Block 97, E.W. Morse Subdivision, Map 547, in the CC and R-3000 Zones.
2. The facility shall consist of the following:
 - a. A 26-foot by 22-foot equipment building and a 145-foot-high antenna tower for frequency reception and transmission. The color of the pole shall be cool medium-light grey;
 - b. Off-street parking for service personnel; and
 - c. Accessory uses as may be determined incidental and approved by the Planning Director.
3. Not less than two off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.
4. No permit for construction of the expanded facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the amended permit to the Planning Department; and
 - b. The Conditional Use Permit is recorded in the office of the County Recorder.

RECORDED
FEB 20 1985
COUNTY CLERK
69

000634

5. Before issuance of any building permits, complete building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.
6. Before issuance of any building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended. Specific plant species shall be identified on final landscaping plans and shall be subject to Planning Director approval.
7. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located and not reflect onto adjacent properties.
8. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0506 and 101.0507 of the Municipal Code. Such extension of time shall be subject to all regulations in force at the time of the extension.
9. After establishment of the amended project, the property shall not be used for any other purposes unless:
- a. Authorized by the City Council; or
 - b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
 - c. The permit has been revoked by the City.
10. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.
11. This Conditional Use Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

000635

12. This permit shall expire 20 years from the date of approval. If an extension is requested, the operation and conditions shall be reviewed at public hearings by the Planning Commission and City Council.

13. In the event that additional cellular mobile phone communication systems are needed in the future that would require a transmitting tower or towers in the vicinity of this approved facility, the permittee shall allow the installation of antennas on the tower authorized by this permit and the installation of necessary support equipment on the premises if the applicant for such additional antennae and support equipment shows that the operation thereof would not interfere with the operation of the permittee's antennae and support equipment and the co-location of such antennae and support equipment are otherwise technically feasible and compatible, and such additional antennae and support equipment are approved by The City of San Diego following a noticed public hearing on the matter.

14. The existing billboards shall be removed no later than October 1986 from the site.

ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO ON NOVEMBER 20, 1984.

000636

AUTHENTICATED BY:

Roger Hedgecock
 Roger Hedgecock
 Mayor of The City of San Diego

Charles G. Abdelnour
 City Clerk of The City of San Diego

STATE OF CALIFORNIA)
)
 COUNTY OF SAN DIEGO)

On this 13th day of February 1985, before me, the undersigned, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ROGER HEDGECOCK, known to me to be the Mayor, and CHARLES G. ABDELNOUR, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in which certificate first above written.

 RUTH E. KLAUER
 NOTARY PUBLIC - CALIFORNIA
 PRINCIPAL OFFICE IN
 SAN DIEGO COUNTY
 My Commission Expires May 23, 1985

Ruth E. Klauer
 Notary Public in and for the County
 of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Conditional Use Permit and promises to perform each and every obligation of Permittee hereunder.

PACTEL MOBILE ACCESS, INC.
 a Delaware corporation

By *[Signature]*

NOTE: NOTARY ACKNOWLEDGEMENTS MUST BE ATTACHED PER CIVIL CODE, SEC. 1180 et seq.

009637

CORPORATE ACKNOWLEDGMENT

1683

NO. 20

State of California }
County of Orange } ss.

On this the 31st day of January 19 85, before me.

Katherine A. Linn
the undersigned Notary Public, personally appeared

Donn A. Winslow



personally known to me
 ~~proved to me on the basis of satisfactory evidence~~
to be the person(s) who executed the within instrument as
 on behalf of the corporation therein
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

Donn A. Winslow
Notary's Signature

7120 122

Conditional Use Permit - 84-0469

NATIONAL NOTARY ASSOCIATION • 23012 Vermont Blvd. • P.O. Box 4623 • Woodland Hills, CA 91364



000638

THE CITY OF SAN DIEGO

DATE OF NOTICE: June 14, 2007

NOTICE OF PUBLIC HEARING PLANNING COMMISSION

DATE OF HEARING: June 28, 2007
TIME OF HEARING: 9:00 A.M.
LOCATION OF HEARING: Council Chambers, 12th Floor, City Administration Building,
202 C Street, San Diego, California 92101

PROJECT TYPE: Conditional Use Permit/Planned Development Permit
PROJECT NUMBER: 92067
PROJECT NAME: AMERICAN TOWER – 30TH PLACE
APPLICANT: Jim Kelly, American Tower Corporation

COMMUNITY PLAN AREA: Southeastern San Diego
COUNCIL DISTRICT: District 8

CITY PROJECT MANAGER: Karen Lynch-Ashcraft, Development Project Manager
PHONE NUMBER: (619) 446-5351

As a property owner, tenant or person who has requested notice, you should know that the Planning Commission will hold a public hearing to approve, conditionally approve, or deny an application for a wireless communication facility consisting of an existing 130 foot high monopole and a 500 square foot equipment shelter, originally approved by CUP No. 84-0469, which expired on November 20, 2004. The facility is located at 797 1/3 30th Place between Highway-94 and G Street.

The decision of the Planning Commission is final unless the project is appealed to the City Council. In order to appeal the decision of the Planning Commission you must be present at the public hearing and file a speaker slip concerning the application or have expressed interest by writing to the Planning Commission before the close of the public hearing. To file an appeal, contact the City Clerk at 202 "C" Street, Second Floor. The appeal must be made within 10 working days of the Planning Commission decision. If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written in correspondence to the City at or before the public hearing.

000639

ATTACHMENT F-9

This project was determined to be categorically exempt from the California Environmental Quality Act on January 23, 2006 and the opportunity to appeal that determination ended February 7, 2006.

If you have any questions after reviewing this information, you can contact the City Project Manager listed above.

This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call the Disability Services Program Coordinator at 236-5979 at least five working days prior to the meeting to insure availability. Assistive Listening Devices (ALD's) are available for the meeting upon request.

Job Order No. 42-5781

Revised 02/08/07/hmd



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment Other

Project Title Project No. For City Use Only

EXISTING WIRELESS TELECOMMUNICATIONS FACILITY - 30TH PL.

Project Address:

700 30TH PL

APN 545-031-83 + 545-031-031

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Project Title: EXISTING WIRELESS TELECOM FACILITY - 30TH PL. Project No. (For City Use Only)

Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

Corporation Limited Liability -or- General) What State? _____ Corporate Identification No. _____
 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. Additional pages attached Yes No

Corporate/Partnership Name (type or print):

VERIZON WIRELESS (VAW) LLC

Owner Tenant/Lessee

15505 Sand Canyon Bldg D / Real Estate

Street Address:
UNIVERSITY CA 92018

City/State/Zip:
949/286 8716 949 286 8010

Phone No: Keith A. Surratt Fax No:

Name of Corporate Officer/Partner (type or print):
Walt Perea Vice President, Network

Title (type or print):
Keith A. Surratt

Signature : Keith A. Surratt Date: 01/05/06

Corporate/Partnership Name (type or print):

Verizon Wireless

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

Owner Tenant/Lessee

Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

000643

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: Appeal of Planning Commission Decision - American Tower Corporation-30th Place - Project No. 92067, Process 4
COUNCIL DISTRICT(S): 8
CONTACT/PHONE NUMBER: Karen Lynch-Ashcraft/(619) 446-5351 or klynchashcraft@sandiego.gov

REQUESTED ACTION: Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Planned Development Permit for a 130 foot high monopole and a 500 square foot equipment building located at 797 1/3 30th Place in the Southeastern San Diego Community Planning area.

STAFF RECOMMENDATION: **DENY** the appeal and **UPHOLD** the Planning Commission's decision to deny Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

EXECUTIVE SUMMARY: On November 20, 1984, the City Council approved a Conditional Use Permit (CUP) for a 130 foot high monopole and a 500 square-foot equipment shelter on the south side of Highway 94 at 797 1/3 30th Place. 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.

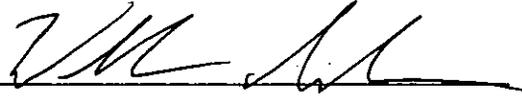
The 130 foot tall monopole is situated at a high point along Highway 94 in a residential neighborhood and exceeds the MF-3000 height limit by 100 feet. Deviations to the development regulations require a PDP, which is a mechanism to encourage imaginative and innovative planning. Section 141.0405 of the 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 Highway 94 and the surrounding communities. Neither the findings for the CUP nor the findings for the PDP could be made in the affirmative; therefore staff recommended denial of the project to the Planning Commission.

On June 28, 2007, the Planning Commission considered the 30th Place monopole and voted unanimously (5-0) to deny the CUP because the facility is not camouflaged from public view and because it is not integrated into the environmental setting.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Compliance with the Communication Antenna regulations 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.



Patti Boekamp KGB
Interim Director
Development Services Department



William Anderson
Interim Deputy Chief of Land Use and
Economic Development



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

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CLERK'S OFFICE
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Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
MARCH 2007

SAN DIEGO, CALIF.

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Four Decision - Appeal to City Council
- Environmental Determination - Appeal to City Council
- Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name
Robert Jystad, Channel Law Group, LLP on behalf of applicant American Tower Corporation

Address	City	State	Zip Code	Telephone
100 Oceangate, Suite 1400	Long Beach	CA	90802	(310) 209-8515

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Doug Kearney, American Tower Corporation

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
CUP No. 296127/SDP No. 452327 (PTS No. 92067)	June 28, 2007	Karen Lynch Ashcraft

Decision (describe the permit/approval decision):

Deny Conditional Use Permit No. 296127 and Site Development Permit No. 452327

5. Grounds for Appeal (Please check all that apply)

- Factual Error (Process Three and Four decisions only)
- Conflict with other matters (Process Three and Four decisions only)
- Findings Not Supported (Process Three and Four decisions only)
- New Information (Process Three and Four decisions only)
- City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Planning Commission adopted motion to deny CUP and SDP on grounds that the Commission could not make Finding No. 3 in the affirmative because application does not comply to the maximum extent feasible with the Land Development Code.

This determination is based on the unsupported assertion that the facility does not satisfy the requirements of the Code to "conceal from public view or integrate into the architecture or surrounding environment." Applicant disputes the application of the revised Land Development Code to this site and asserts vested rights to renewal and/or approval of this application on the grounds, among others, that applicant and its client relied on the underlying approval to construct utility telephone networks around this backbone facility. Staff has indicated, moreover, that any attempt to conceal this facility, even if undertaken by the applicant, will require a substantial reduction in height that will have significant impacts on a highly trafficked network, impacts that outweigh the public benefit, if any, of replacing the pole with an ornamental structure that exceeds the bulk, mass and density of the existing pole. Applicant reserves right to supplement these grounds for appeal.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:

Date:

July 7, 2007

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

000647

PLANNING COMMISSION
RESOLUTION NO. 4280-PC
CONDITIONAL USE PERMIT NO. 296127
PLANNED DEVELOPMENT PERMIT NO. 453612
AMERICAN TOWER – 30TH PLACE
PROJECT NO. 92067

WHEREAS, Verizon Wireless (VAW) LLC dba Verizon Wireless, 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. 296127 and Planned Development Permit No. 453612, on portions of an .19 acre site;

WHEREAS, the project site is located at 797 1/3 30th Place in the MF-3000 zone of the Southeastern San Diego Community Plan;

WHEREAS, the project site is legally described as Lot 2 of Hilltop Subdivision in the City of San Diego, according to map thereof No. 5357, filed in the Office of the County Recorder of San Diego County, March 6, 1964;

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 296127 and Planned Development Permit No. 453612, 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 Southeastern San Diego 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/PDP.

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 twenty 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 prominently along Highway-94, which serves as a major east west transportation corridor and it poses an unsightly visual impact for commuters that utilize this corridor as well as for residents of the surrounding communities.

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 30th Place project does not conform to this code requirement due to its height, design, color and the visual clutter it creates. As it exists, it is a significant visual impact along Highway-94, which serves as a major transportation corridor through the city. Many commuters pass through this section of the city on a daily basis and are subjected to the unsightliness associated with this project.

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 these types of facilities.

Planned Development Permit - Section 126. 0604

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 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 Southeastern San Diego 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.

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 MF-3000 zone except for the height limit of 30 feet. The monopole is 130 feet tall and is situated at a high point prominently alongside of Highway-94. Development in the area is low in scale and primarily residential in nature with commercial uses further away from the freeway. The existing tower exceeds the MF-3000 zone height limit by 100 feet. Deviations to the development regulations require a Planned Development Permit, which is a mechanism to encourage imaginative and innovative planning and to assure that the project achieves the purpose and intent of the applicable land use plan and that it would be preferable to what would be achieved by strict conformance with the regulations.

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 branched out to building collocations later. Typically, carriers initially built tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP84-0469) 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.

4. The proposed development, when considered as a whole, will be beneficial to the community; and

The monopole serves Verizon subscribers in the surrounding communities, as well as commuters passing through the area and as such, is a beneficial service. Conversely, the significant visual impacts that the pole creates are detrimental to the surrounding communities as well as to the City of San Diego. The pole sits on a hill at an elevation of 170 feet. The pole is 130 feet tall. Just .24 miles to the west, the elevation drops 30 feet. Approximately .19 miles to the east, the elevation drops 30 feet and .29 miles to the southeast, the elevation drops a dramatic 95 feet. The monopole is a negative visual community landmark that can be seen from miles away. The original design of this tower was developed 20 years ago when the technology was at its infancy. The CUP was conditioned to expire in 20 years and the owner and operator of the facility, Verizon and American Tower Corporation had the responsibility of making preparations within their network to comply with any new regulations or policies in effect, which would have included a required reduction in height as well as adjustments to other existing facilities and development of new facilities.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The applicant, American Tower Corporation, is requesting to deviate from the RS-1-7 height limitation of 30 feet. The existing tower is 130 feet tall and can be viewed from miles away. It sits on an elevated hill within the Southeastern San Diego community, prominently along side of Highway-94 and is a significant visual impact within San Diego. The project, as it exists, does not result in a visually desirable project. If redesigned to comply with the 30 foot height limit, Verizon services to the community and passing commuters would be significantly reduced. However, Verizon has the responsibility of exploring available alternatives that would address legal requirements as well as reduce the negative impact on their existing network. Section 141.0405 of the Land Development Code requires telecommunication facilities to integrate into the landscape in which they are proposed. If this facility were to be redesigned to comply with this section of the Code, a reasonable height deviation may be considered. The existing tower does not result in an acceptable project.



000651

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 296127 and Planned Development Permit No. 453612 is hereby DENIED by the Planning Commission.

Karen Lynch-Ashcraft
Development Project Manager
Development Services

Adopted on: June 28, 2007

Job Order No. 42-5781

00-0632

NOTE: At the time of assembly of these back-up materials, Planning Commission minutes for 6/28/2007 were not available.

Channel Law Group, LLP

100 OCEANGATE
SUITE 1400
LONG BEACH, CA 90802-4323

Fax: (562) 216-5090
www.channellawgroup.com

ROBERT JYSTAD
JULIAN K. QUATTLEBAUM, III *
JAMIE T. HALL **
MARTHA HUDAK, Special Counsel***

Writer's Direct Line: (310) 209-8515
rjystad@channellawgroup.com

*ALSO Admitted in Colorado
**ALSO Admitted in Texas
***Admitted only in New York and New Jersey

VIA OVERNITE EXPRESS DELIVERY

November 14, 2007

Council President Scott Peters and
Members of the San Diego City Council
City Administration Building
Council Chambers- 12th Floor
202 "C" Street
San Diego, CA 92101

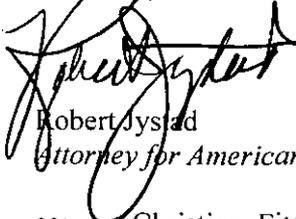
RE: American Tower Corporation Request for CUP No. 296127/PDP No. 452327 (30th Place – PTS No. 90455) and CUP No. 292627/SDP No. 450714 (Mount Ada – PTS No. 91178)

Dear Council President Peters and Council Members:

Attached please find one original plus 14 copies of the Declaration of Jason Allen, Microwave Engineer ("Allen Declaration"). American Tower Corporation ("ATC") and Verizon Wireless request that the City replace the previously submitted Declaration of Marco Murillo with the attached Allen Declaration. ATC's requests originally appeared on the Council's agenda for November 6, 2007 as Items 332 and 333. Those items were continued by Council to January 7, 2008.

Please do not hesitate to contact me at 310-209-8515 should you need further information.

Sincerely,



Robert Jystad
Attorney for American Tower Corporation

cc: Christine, Fitzgerald, Chief Deputy City Attorney, City of San Diego
Karen Lynch Ashcraft, Development Services Department
Elizabeth Hill, Esq., American Tower Corporation
Mr. James Kelly, American Tower Corporation
SuZanne Toller, Esq., Davis Wright Tremaine LLP
Leslie Vartanian, Verizon Wireless

10/25/07 Declaration of Jason Allen (Microwave Engineer)

November 6, 2007 San Diego City Council Meeting

Mt. Ada and 30th Place Cell Sites

I, Jason Allen, hereby declare as follows:

1. I am employed by Verizon Wireless as the Senior Transport Network Engineer for Southern California. In that capacity, I design the interconnect medium for VZW cell sites. My business address is 15505 Sand Canyon Avenue, Bldg. D-1, Irvine, CA 92618.
2. The purpose of my declaration is to explain the impact on Verizon Wireless' microwave network if the height of the Mt. Ada and 30th Place sites were reduced to the level proposed by staff.
3. In addition to the wireless antennas (panel and omni directional antennas) that are used to transmit and receive calls, both Mt. Ada and 30th Place support a number of microwave dishes that are used to connect these and other sites to Verizon Wireless' mobile switching center (MSC).

Background Re Microwave Networks

4. In order for wireless telephone calls to be completed, the individual cell sites in a wireless network (like Mt. Ada and 30th Place) need to be connected to the wireless carrier's MSC. Wireless carriers do not connect their cell sites to their switches using their commercial mobile radio service (CMRS) spectrum as that spectrum is too limited. Instead they use landline facilities or microwave.
5. If Verizon Wireless chooses to use landline facilities to connect its cell sites, it obtains those facilities from a third party provider, usually the incumbent local exchange carrier (ILEC) which in San Diego is AT&T. The landline facilities consist of physical fiber and copper that is either buried underground or strung overhead on poles. The fiber or copper goes from the cell site to the MSC, often through one or more of the ILEC central offices.
6. If Verizon chooses to use microwave to connect its cell sites, it can self-provision those facilities, since the company holds its own Federal Communication Commission (FCC) microwave radio licenses. Microwave is a point to point technology. In order to connect a cell site with an MSC, Verizon Wireless installs one microwave dish on the cell site and a second one on the MSC. In some cases where the cell site does not have line of site to the MSC or is too far away, Verizon sends the microwave signal first to a "hub" cell site that takes the microwave signal and relays it to the MSC.
7. There are a number of advantages to using microwave as opposed to landline facilities to connect cell sites to switches – both from network reliability and a business perspective.
8. First and foremost, microwave networks are inherently more reliable than landline networks. Because landline networks rely on physical lines as their transmission

medium, they are subject to being cut, burned or broken in a way microwaves networks simply are not. In addition since the routing of the landline facilities are controlled by one or more central offices, the landline facilities can also go out of service if the landline carrier's central office is damaged or otherwise inoperable.

9. Second, because the microwave transmission facilities are owned and controlled by Verizon Wireless, any repair or replacement of those facilities is wholly within Verizon Wireless's control. This is in contrast to wireline facilities which must be repaired by the landline carriers. Landline facility outages can be very protracted – particularly in the case of natural disasters or other large scale landline network outages. In many instances VZW has to wait weeks or even months to get its landline facilities repaired.
10. The vulnerability of landline networks is not theoretical. Verizon Wireless' entire wireless system went off air in New Orleans after hurricane Katrina – not because of downed towers – but because the company leased all of its circuits from the telephone company. Because the estimated landline repair times were so lengthy, Verizon Wireless sent its microwave engineers to Louisiana to install a multiple hub microwave site to get a core portion of its system in downtown New Orleans up and operating.
11. In the recent fires in Southern California, Verizon Wireless lost nine (9) of its wireless sites in San Diego alone due to outages of the landline interconnection facilities. AT&T told us it could take days or weeks to get those facilities repaired and as of the date of this declaration two (2) sites have still not had their landlines restored.
12. For these reasons Verizon Wireless tries to connect its strategic sites via microwave when feasible. This allows key portions of the Verizon Wireless network to remain operational, even during outages of the landline network.
13. In San Diego, Verizon Wireless has approximately one-hundred ten (110) of its sites interconnected through microwave; attached as Exhibit A is a diagram showing the southwestern portion of the current microwave paths.

Mt. Ada

14. Verizon Wireless has two (2) active microwave dishes on the Mt Ada site – one pointing towards the San Diego MSC and a second one pointing to another cell site named Padre Gold. Attached as Exhibit B is a diagram showing the microwave paths from the Mt. Ada site.
15. I understand that the Planning staff has recommended that the height of the tower at the Mt. Ada site be reduced to 30 feet. Verizon Wireless does not have line of sight to either the MSC or the Padre Gold site at a 30 foot height. This means that Verizon Wireless would have to remove its microwave dishes from this site and replace the connections to the MSC for both this site and its Padre Gold site with landline facilities. If those landline facilities fail, both sites would be off air until the landline facilities were fixed.

30th Place

16. Verizon Wireless has five (5) active microwave dishes on the 30th Place site that interconnect 30th Place and the following six (6) additional sites: Courthouse, Downtown SD, Harrington Sound, Robledo Ridge, Southport and Coronado. Signals from the 30th Place site are then transmitted to the Aviation site (a hub site) which in turn transmits the signals to the San Diego MSC. Attached as Exhibit C is a diagram showing the microwave paths from the 30th Place site.

17. I understand that the Planning staff has recommended that the height of the tower at the 30th Place site be reduced to 30 feet. Verizon Wireless does not have line of sight to any of the interconnected sites at a 30 foot height. This means that Verizon Wireless would have to remove all of its microwave dishes from this site and replace the connections between 30th Place and the other six (6) sites to its MSC with landline facilities. If those landline facilities fail, 30th Place and the other six (6) sites would be off air until the landline facilities were fixed.

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 6, November, 2007 at San Diego, California.

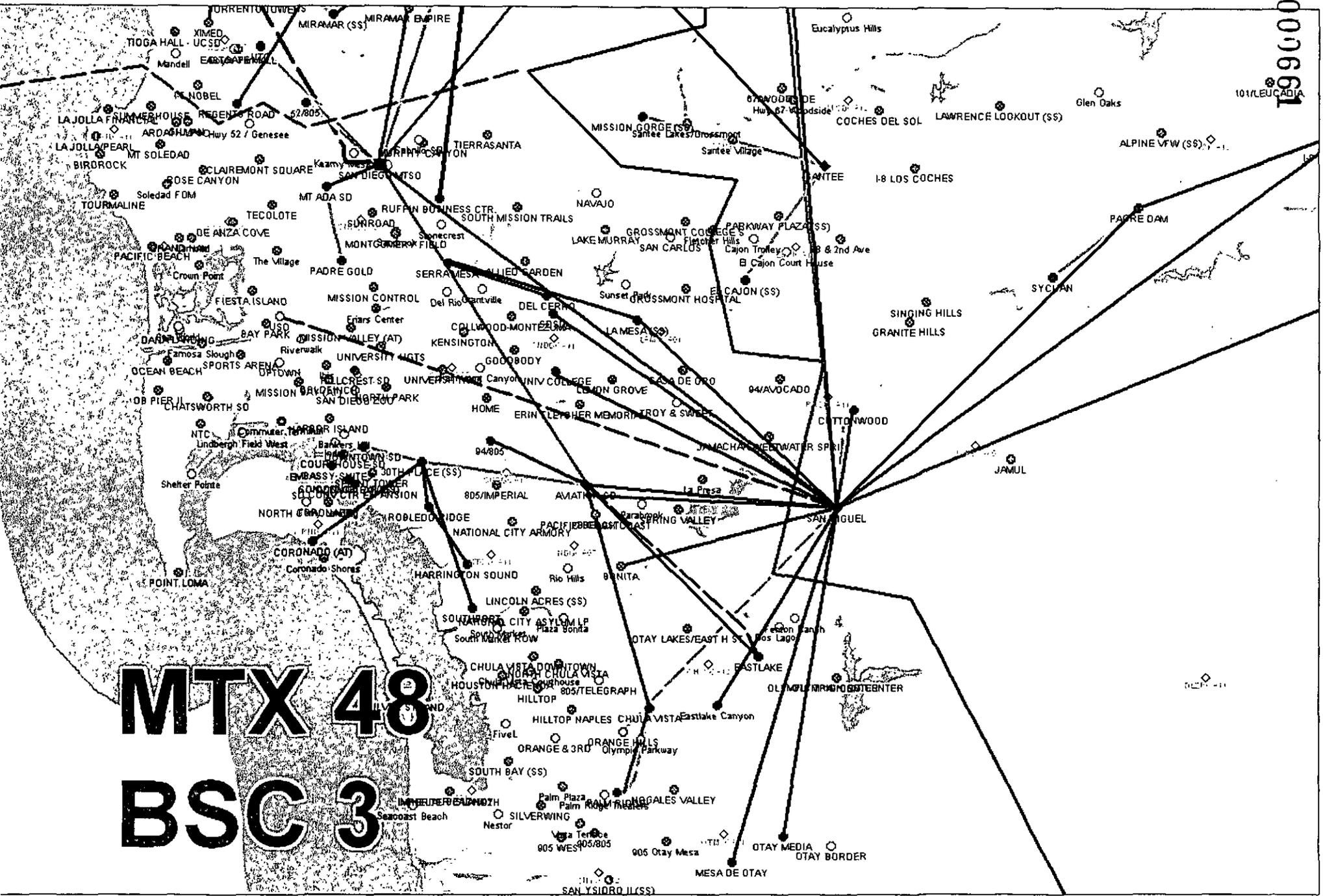


Jason Allen

000659

Attachment A

000661



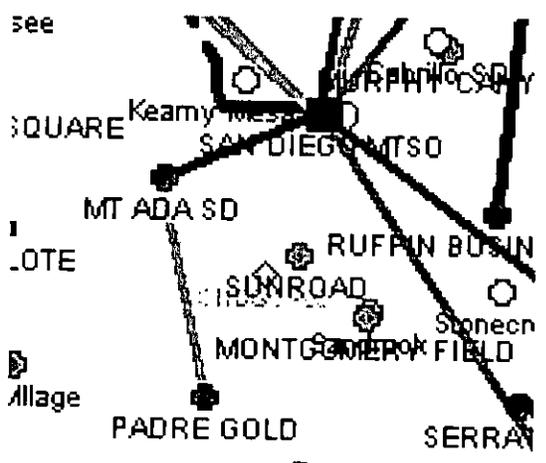
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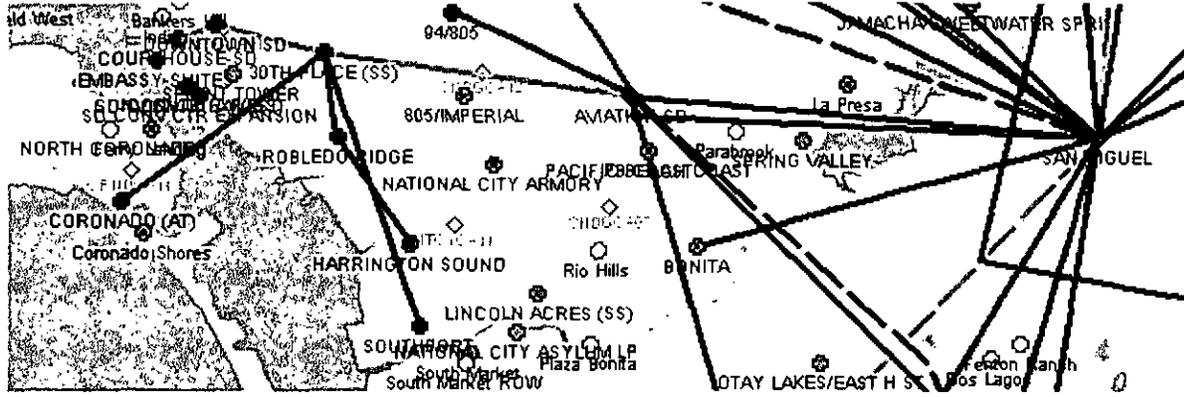
Attachment B



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000667

Attachment C



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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. 296127/PDP No. 452327 (30th Place – PTS No. 90455)

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") grant the referenced Conditional Use Permit ("CUP") and, if necessary, a 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 (20) 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 communication facility at 797 1/3 30th Place ("Facility") consists of a of a 130-foot monopole with seven (7) microwave antennas, one (1) 8-foot omni-directional cellular antenna,

and eighteen (18) four-foot directional cellular antennas. A 484-square foot communications equipment building is located adjacent to the monopole support structure. Both structures are surrounded by a six-foot-high chain link security fence. American Tower is requesting the extension of the CUP and/or such other Development Permit (including but not limited to a Site Development Permit ("SDP") or a Planned Development Permit ("PDP")) as may be required in order that Lessee, Verizon Wireless, may continue to provide uninterrupted and seamless wireless service to its customers.

The original 20-year 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); *Qwest 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. The Hearing Officer's Findings Are Not Supported By Substantial Evidence; 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 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 as demonstrated below.

A. Findings Required for a Conditional Use Permit

Contrary to staff's assertions, the City can make the findings necessary to approve the requested permit for this Facility at its present height, location, and configuration.

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

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.

Staff correctly acknowledges that 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.

- Area zoned MF-3000 (multiple-Family Residential). The Facility is not located in a zone that prohibits wireless telecommunications facilities
- The Facility has single family residential units on three sides and Highway 94 is immediately to the North.
- Utility facilities for electricity, natural gas, and telecommunications are located in adjacent properties.
- 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.

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

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.

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

As demonstrated below, the Facility complies with the applicable regulations of the Land Development Code.

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 ATC is committed to adhering to any reasonable requirements. 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.

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.

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

The Facility is in compliance with the provisions of § 141.0405. The Facility does not violate any of the prohibitions in subsection (f)(1) since it is not (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.

The Facility also 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. It has been partly concealed from public view and integrated into the surrounding environment. The alternative suggested by staff, namely a new structure that would enclose the facility, would, by definition, be larger and thus not "minimally visible."

Finally, as required by § 141.0405(f)(3), the Facility uses the smallest and least visually

intrusive antennas and components that meet the requirements of the Facility.

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.

Therefore, the Facility complies with the regulations in the Land Development Code *to the maximum extent feasible*. There is no basis for the Commission not to make this finding. The Facility already employs adequate screening, landscaping and other features that make it minimally visible and complements the scale, texture, color, and style of the surrounding architecture and environment. ATC has repeatedly expressed a willingness to provide additional screening and landscaping where feasible. Landscape Plans are forthcoming.

Furthermore, the Facility was originally permitted with a CDP/CUP in its current location and at its current height. ATC is proposing no modifications to the Facility that would alter the findings that supported the original permits.

Staff has mentioned that expirations were inserted into subsequent CDP/CUPs "to coincide with the anticipated changes in technology so that the facilities could be redesigned at that time." ATC does not concede that this assertion is true. Even if it were true, no evidence has been introduced of any changes in technology that obviate the need for the Facility, such as, the availability of smaller antennas that could meet the requirements of the sites.

Staff erroneously claims that the Facility "poses a significant visual impact to travelers along 30th Place 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. The alternative suggested by staff, namely a new structure that would enclose the facility would, by definition, be larger and thus not "minimally" visible.

This project involves no change to the familiar visual environment in this largely industrial and commercial area adjacent to major highways, including Highway 94. Given the complete absence of problems or complaints with the projects over the past twenty (20) years, it represents a solution to the City's need to provide wireless communication service and has proven to be effective in avoiding any significant visual or other negative impacts. To abandon such a proven solution, to be replaced with an unfamiliar and necessarily bulkier structure, which, given the setting, with which the existing structure currently integrates quite appropriately, would not be consistent with either the spirit or the letter of the City's Code. Staff's recommendation could actually have a much greater impact on the neighborhood.

Therefore, the Commission should find that the Facility complies, to the maximum extent feasible, with the applicable regulations of the Land Development Code for the above-mentioned reasons.

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

The proposed use is appropriate at the proposed location for the following reasons. First, the City has already determined that the Facility was appropriate at this location by granting the original CUP. Nothing has been entered into the record that suggests changes to the area now render the location inappropriate. In addition, the wireless signal coverage in this location is needed to provide service to the adjacent highways, thoroughfares, and surrounding neighborhoods. Unlike other land uses, which can be spatially determined through the General Plan or other land use plans, the location of wireless telecommunications facilities is based on technical requirements which include service area, geographical elevations, alignment with neighboring sites, customer demand components, and other key criteria that include, but are not limited to: accessibility, utility connections, liability and risk assessment, site acquisition, maintenance, and construction costs. Placement within the urban geography is dependent on these requirements. WCFs have been located adjacent to and within all major land use categories, including residential, commercial, industrial, open space, etc., proving to be not only appropriate but necessary in all such locations.

B. Findings Required for a Planned Development Permit

Even if the Facility does not comply, to the maximum extent feasible, with the applicable regulations of the Land Development Code, the project is still permitted under the Code with a Planned Development Permit. The purpose of such a permit, as stated in §126.0601 of the Land Development Code is to allow “applicants greater flexibility from the strict application of the regulations” and to “encourage imaginative and innovative planning.” Under §126.0602(b)(1), a “[d]evelopment that does not comply with all base zone regulations or all development regulations ...” may be requested with a PDP. The intent of the PDP regulations, according to §143.0401, is “to accommodate, to the greatest extent possible, an equitable balance of development types, intensities, styles, site constraints, project amenities, public improvements, and community and City benefits.” Thus, even if the findings for a CUP could not be made, the City must also consider the applicability, as requested by ATC, of a Planned Development Permit. The five findings for a PDP should also be made in the affirmative with respect to the Facility:

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

This is the identical finding as finding number one for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

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

This is the identical finding as finding number two for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

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

This is the identical finding as finding number three for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

4. *The proposed development, when considered as a whole, will be beneficial to the community.*

The Facility has benefited, and will continue to benefit, the community in numerous ways including the following:

- It will continue to allow commuters, businesses, and residents within the coverage area wireless access to the rapidly expanding communication infrastructure and to voice and data transmission services not currently available.
- The existing Facility provides co-location possibilities, reducing the need for other wireless facilities in the area.
- Wireless communications systems supported by the Facility service a critical need in the event of public emergency, including traffic accidents and other freeway incidents. In a recent survey by the Pew Internet & American Life Project, of the 66% of American adults who have cell phones, nearly 74% of those cell phone owners say they have used their mobile phone in an emergency and gained valuable help.² The media has included many recent examples of the critical role wireless telephony has played in recovering kidnapping victims.
- Wireless systems are an economical alternative to wired networks. According to recent surveys, 11% of American adults rely solely on cell phones³ with an additional 23% who currently have a landline phone indicating they were very likely or somewhat likely to convert to being only cell phone users.⁴ Without the reliable wireless coverage provided by this Facility, in addition to the normal inconveniences incident to an absence of telephone service in any location, such residents would be unable to call for police, fire or ambulance services in the event of an emergency at home, nor would school officials be able to contact them in the event of emergencies affecting their children at school. Also, see discussion above in Section II C regarding the role of wireless in emergency services.

The Commission should find that the Facility, when considered as a whole, will be beneficial to the community. These startling statistics further demonstrate the benefit, if not the need, of the local residents and businesses having adequate and reliable cell phone service throughout the City.

5. *Any proposed deviations pursuant to § 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.*

² Pew Internet & American Life Project, "Pew Internet Project Data Memo" (April 2006)

³ Hill, *Survey: 11% of callers use only cellphones*, RCRWireless News (June 8, 2007)

⁴ Pew Internet & American Life Project, "Pew Internet Project Data Memo" (April 2006)

-
- The Facility, at its current height, reduces the need for other wireless facilities in the area by providing the opportunity for co-location in conformance with State policy as discussed above.
 - Allowing the Facility to continue to serve the community in its current configuration avoids expensive construction, the costs of which would have to be ultimately passed on to wireless subscribers making service less affordable and in some cases unaffordable, for those most in need of the cost savings wireless service provides. As explained above, this is contrary to the express State policies in favor of “assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians,” “encourage[ing] 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,” “bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians,” and many of the other State policies outlined in Section 709 of the Public Utilities Code.⁵
 - Moreover, reduction in the height of a Facility to the zone 30-foot limitation would seriously impact the quality and scope of coverage provided by ATC’s carrier customers from these sites. There is a necessary and logical interrelationship between each proposed site. Eliminating or relocating a single cell site can lead to gaps in the system and prohibit the carrier from providing service to customers in a defined coverage area. Further, the elimination or relocation of a cell site will most often have a “domino” effect on other cell site locations and necessitate significant design changes or modifications to the network. Staff has acknowledged that ATC facilities are part of the “backbone” of the wireless network in San Diego. The project therefore is more desirable in its present configuration than it would be if the City strictly enforced the development regulations that would limit the height of the Facility. Additionally, any reduction in height would severely limit, if not extinguish, any possibility of additional co-location facilities and therefore result in the need for additional poles or towers in the immediate vicinity. Attached is a report prepared by Hammett & Edison which details these impacts.

D. Findings Required for a Site Development Permit

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

This is the identical finding as finding number one for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

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

This is the identical finding as finding number two for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

⁵ Pub. Util. Code § 709.

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

This is the identical finding as finding number three for a CUP, and ATC therefore incorporates by reference the discussion above with respect to such finding.

D. New Coastal Development Permits not Required

As acknowledged by staff and the Hearing Officer, new Coastal Development Permits pursuant to San Diego Mun. Code § 126.0704 are not required. The Facility is an existing structure, and ATC is proposing no modifications.

IV. Conclusion

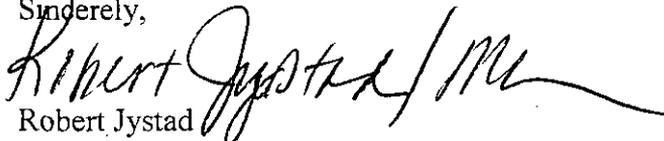
Accordingly, there is no lawful basis for the Planning Commission to deny the CUP for ATC's Facility. ATC respectfully requests that the Planning Commission approve the CUP.

ATC provides the information contained herein without waiving its rights under applicable federal and state laws. ATC does not concede that the City has the authority to deny or refuse to renew ATC's applications on the grounds that such findings cannot be made or do not support a grant of approval by the City. ATC offers the above information to facilitate the City's review of these applications, but in doing so reserves all rights and does not waive any right to any claim or defense, including federal preemption.

Moreover, the failure to include additional findings or make additional legal or technical arguments in support of these facilities shall not be construed as an admission and shall not be construed as a waiver of any findings and arguments. ATC hereby reserves the right to supplement this letter with additional evidence to be presented at or prior to the hearing in this appeal.

I can be reached at 310-209-8515 should you have any questions.

Sincerely,



Robert Jystad

Attorney for American Tower Corporation

cc: Christine, Fitzgerald, Chief Deputy City Attorney, City of San Diego
Elizabeth Hill, Esq., American Tower Corporation
Mr. James Kelly, American Tower Corporation
Mr. Douglas Kearney, American Tower Corporation

**American Tower Corporation • San Diego, California
Potential Impacts of Reduced Tower Height**

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of American Tower Corporation to prepare an engineering analysis of the potential effects of reducing antenna structure heights from 60–140 feet to 35 feet.

Summary

Reductions in antenna structure height typically result in reductions in coverage and decreased opportunities for collocation of wireless base station facilities. The result of these factors is likely to be decreased service quality for subscribers in the short-term, and require construction of additional base station facilities in the longer term.

As an example, reduction of a 105-foot structure to 35 feet may result in reduction by half in coverage area and a significantly reduced ability to collocate wireless carriers. The number of additional sites required to offset these factors would vary, but could be significant.

Structure Height Directly Affects Coverage Area

Radio signals transmitted from a base station (*i.e.*, a cell site) are not only subject to the same significant propagation-path losses that are encountered in other types of atmospheric propagation (*i.e.*, inverse-distance losses) but are also subject to the path-loss effects of terrain. While terrain losses are greatly affected by the general topography of an area, the simplest case to analyze is one of smooth terrain. The low subscriber antenna height contributes to this additional propagation-path loss by reducing the “radio horizon” within which it can communicate. The small distance to the radio horizon associated with a portable or mobile subscriber must be compensated for by a larger horizon distance for the base station, in order to allow communication over the same distance.

The maximum range for a mobile-radio propagation path depends upon the heights of the base and mobile antennas. Transmissions at cellular and PCS frequencies (850 and 1,900 MHz) are “line of sight,” meaning that they generally do not extend beyond the horizon. Since the height of the mobile station antenna, h_M , is usually fixed at 4–6 feet above ground, the maximum range is completely determined by the height of the base station antenna, h_B . In English units (miles and feet), the distance to the horizon for the base station antenna, d_B , is approximately:¹

$$d_B \approx \sqrt{2h_B} \quad (1)$$

¹ W.C.Y. Lee, Mobile Communications Engineering, (McGraw-Hill, 1997), p. 102.



American Tower Corporation • San Diego, California
Potential Impacts of Reduced Tower Height

The diagram below illustrates the base-mobile propagation scenario, where d_B and d_M are the distances to the radio horizon for the base and mobile antennas, respectively.

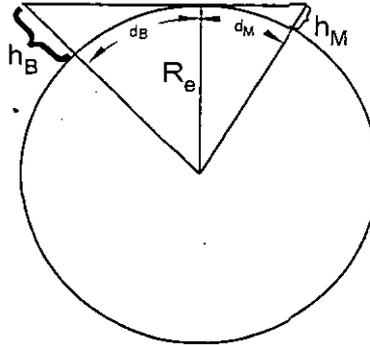


Figure 1. Geometry of propagation over curved, smooth Earth.

Thus, the maximum distance covered by a base station is proportional to the square root of the antenna height of the base station. Halving the antenna height reduces the coverage distance by 1.414 times. Since the coverage *area* is proportional to the square of this distance, halving the antenna height also halves the coverage area.

For example, if the height of a base station antenna is reduced from 105 feet to 35 feet, the maximum coverage area is reduced from 660 square miles to 220 square miles. Often, sites are designed to cover less than this maximum range, in order to provide useful signal level and achieve practical call volumes, but the reduction in coverage with antenna height remains similarly significant.

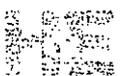
The Federal Communications Commission (FCC) offers an empirically-derived formula for determining the maximum distance served by a base station,² namely:

$$d = 2.531 \times h_B^{0.34} \times p^{0.17} \quad (2)$$

where d is the maximum coverage distance in kilometers, p is the effective radiated power of the base station in watts, and h_B is the effective height of the base station antenna in meters. Using this relation,³ the coverage distance resulting from antennas with heights of 105 and 35 feet (32.0 and 10.7 meters) would be 18 to 12.4 kilometers (11.2 to 7.7 miles), respectively. Assuming a circular coverage area about the base station, the coverage area would be reduced from 1,017 to 482 square kilometers (393 to 186 square miles), a reduction of slightly greater than one-half. Thus, the empirical FCC method provides results that are nearly identical to the theoretical.

² 47 CFR §22.911(a)(1)

³ The ERP is taken to be 100 watts per channel, a typical value for cell sites.



**American Tower Corporation • San Diego, California
Potential Impacts of Reduced Tower Height**

Structure Height Directly Affects the Ability to Collocate

Collocation by several wireless carriers on a particular structure is encouraged by the City of San Diego⁴ and by many other jurisdictions, because that minimizes the number of individual sites that must be developed to cover a geographic area. Wireless carriers, especially those using different technologies and frequencies, generally cannot share antennas, so each carrier installs its own antenna array, with some vertical spacing required between the arrays. Some minimum inter-antenna spacing is required in order to mitigate the potential for inter-system interference. Most carriers recommend a "bottom to top" separation of 15 feet,⁵ although lesser separation can sometimes be accommodated, based upon the results of a detailed interference analysis.

For typical four-foot panel antennas, the 15-foot "bottom to top" separation requirement means that the effective (center) height of each carrier's antennas must be separated by 19 feet. Assuming a structure having an overall height of 105 feet, the uppermost antenna array would be at an effective height of 103 feet, the next antenna array would be at an effective height of 84 feet, and the third array would be at 65 feet. Of course, the maximum coverage areas of the lower antenna arrays would be less than the upper one. In contrast, for a 35-foot structure, the effective height of the uppermost antennas would be at 33 feet, the next array would be at 14 feet, and collocation of a third wireless carrier would not be possible with the standard antenna separation.

The impact of reduced structure height on lower-placed carrier antennas is also disproportionate. For example, if the structure height is decreased from 105 to 35 feet, corresponding to effective antenna heights of 84 and 14 feet for the second carrier (the middle set of antennas on the 105-foot structure), the coverage area would decrease by a factor of six times (rather than a reduction of two times for the upper antenna array).

Decreased Structure Height Increases Number of Sites Required

Because of the reduction in maximum coverage distance, a reduction in structure height will likely create coverage gaps in a mature wireless system. Because the system is mature, the locations of the neighboring sites are fixed, and many of the gaps can be filled only by the addition of new sites. It is generally not practical or even possible to relocate the existing sites to "fill in" the coverage gaps, because those existing sites are "locked-in" by long-term leases. While some reconfiguration of existing sites can be expected to fill in some of the coverage gaps resulting from a lower structure height, mature wireless systems often already operate near peak call capacity. This means that, during peak usage

⁴ See San Diego Municipal Code, Section 141.0405(e)(2).

⁵ Mawrey, Robert, "Radio Frequency Interference and Antenna Sites," (Unisite: 1998)



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1/7/08

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December 21, 2007

VIA OVERNIGHT EXPRESS

Council President Scott Peters and
Members of the City Council
C/o City Clerk
CITY OF SAN DIEGO
City Administration Building
202 "C" Street, 2nd Floor
San Diego, CA 92101

Re: American Tower Corporation Request for CUP No. 296127/PDP No. 452327 (30th Place – PTS No. 90455) and CUP No. 292627/SDP No. 450714 (Mount Ada – PTS No. 91178)

Dear Council President Peters and Council Members:

In light of recent communications with Council offices and requests from Council for additional information, American Tower and Verizon Wireless are submitting the attached updated photographic simulations ("sims") and coverage maps for consideration by Council at the January 7, 2008 hearings on the above identified permits.

Please note that attached sims are subject to final approval by American Tower engineers, who have concluded on a preliminary basis that the designs as presented are technically feasible:

- Exhibit 1: Original banner design – 30th Place
- Exhibit 2: Revised banner design – 30th Place
- Exhibit 3: Original banner design – Mt. Ada
- Exhibit 4: Revised banner design – Mt. Ada

In addition to these sims, American Tower and Verizon Wireless also submit additional coverage maps for the 30th Place and Mt. Ada sites. The coverage maps depict the radio

frequency coverage gaps created by lowering the facilities to 30 feet and demonstrate that the gaps in coverage are not filled by the wireless signals from adjacent existing sites. It should be noted that maps are generated using theoretical computer modeling software. As such, they are not depictions of actual impacts which could be substantially greater in light of existing structures, grading and/or vegetation. In addition, the signal strength depicted is not the full signal strength for the network and shows only the level of coverage suitable for in vehicle coverage, not in-building coverage, and as such understates the negative impact of the reduction of height of these towers.

Exhibit 5: Coverage Map -- Existing -- 30th Place
Exhibit 6: Coverage Map -- Expected -- 30th Place
Exhibit 7: Coverage Map -- Existing -- Mt. Ada
Exhibit 8: Coverage Map -- Expected -- Mt. Ada

As indicated in prior correspondence, ATC reserves the right to continue to supplement the record with additional evidence to be presented at or prior to the hearing in these appeals.

I can be reached at 310-871-8189 should you have any questions.

Sincerely,



Robert Jystad

Attorney for American Tower Corporation

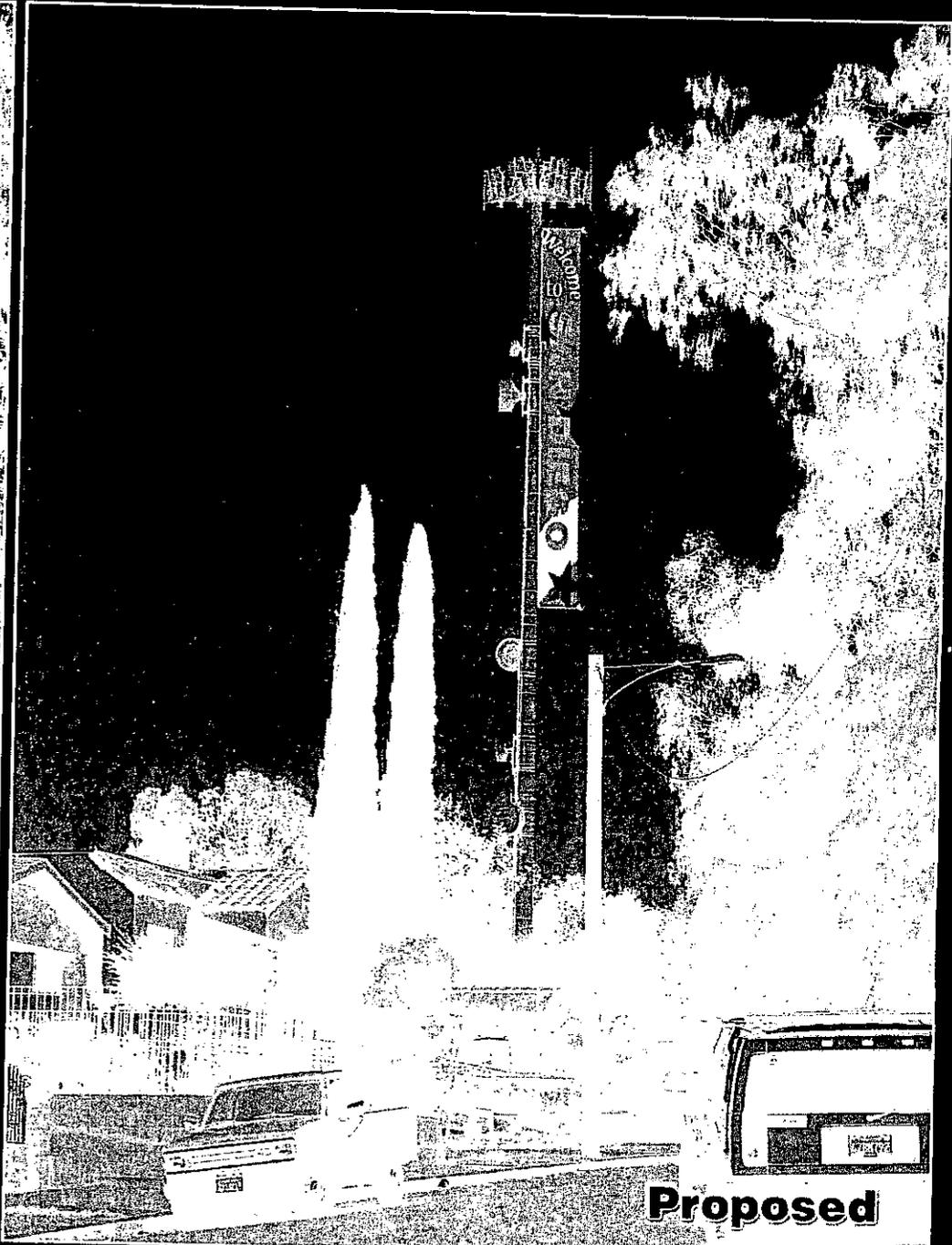
RJ:rj

attachments

c: Christine, Fitzgerald, Chief Deputy City Attorney, City of San Diego
Karen Lynch Ashcraft, Development Services Department
Elizabeth Hill, Esq., American Tower Corporation
James Kelly, American Tower Corporation
Suzanne Toller, Esq., Davis Wright Tremaine LLP
Leslie Vartanian, Verizon Wireless

EXHIBIT 1

Photosimulation of proposed banner concept.



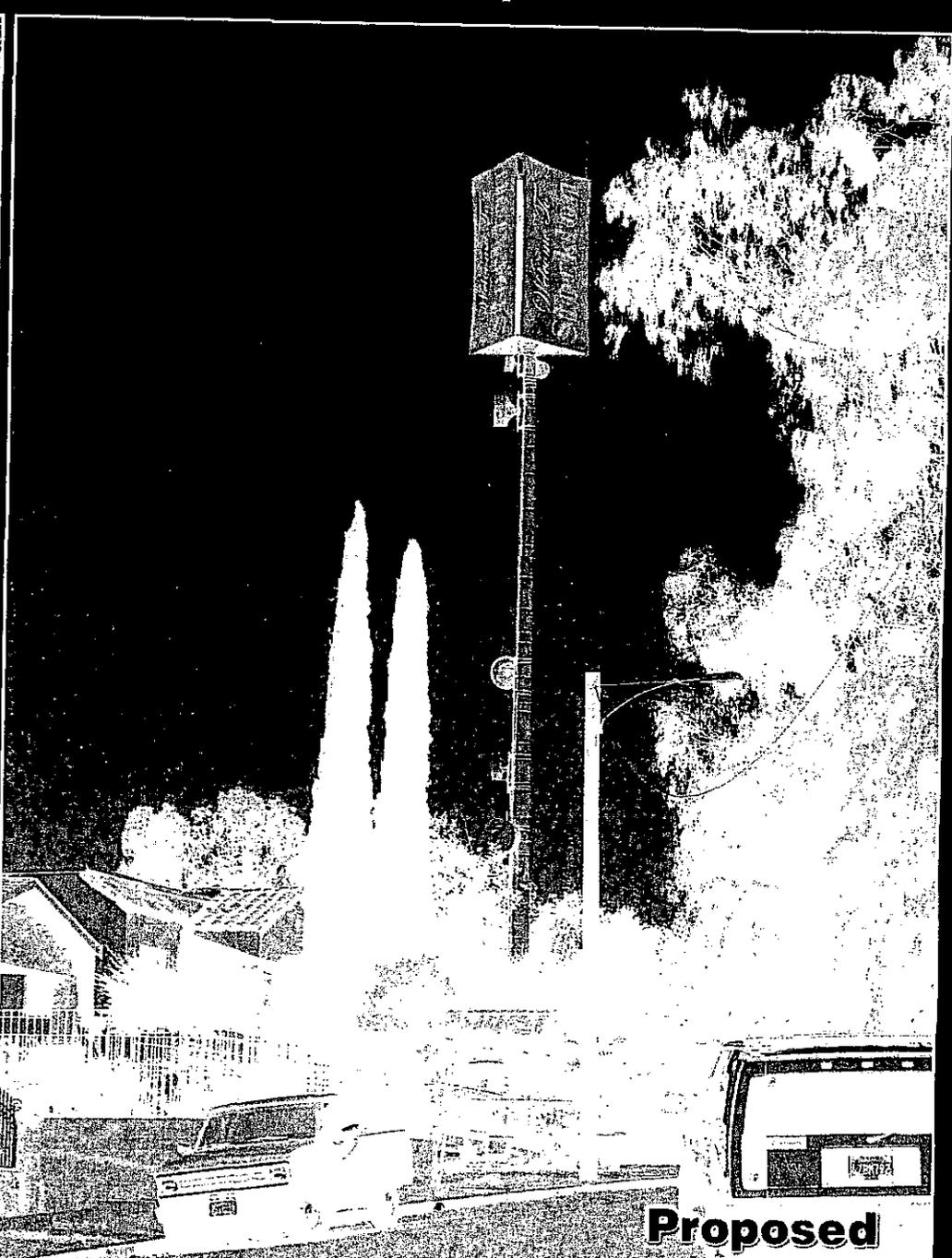
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EXHIBIT 2

Photosimulation of proposed banner sleeve concept.



Existing

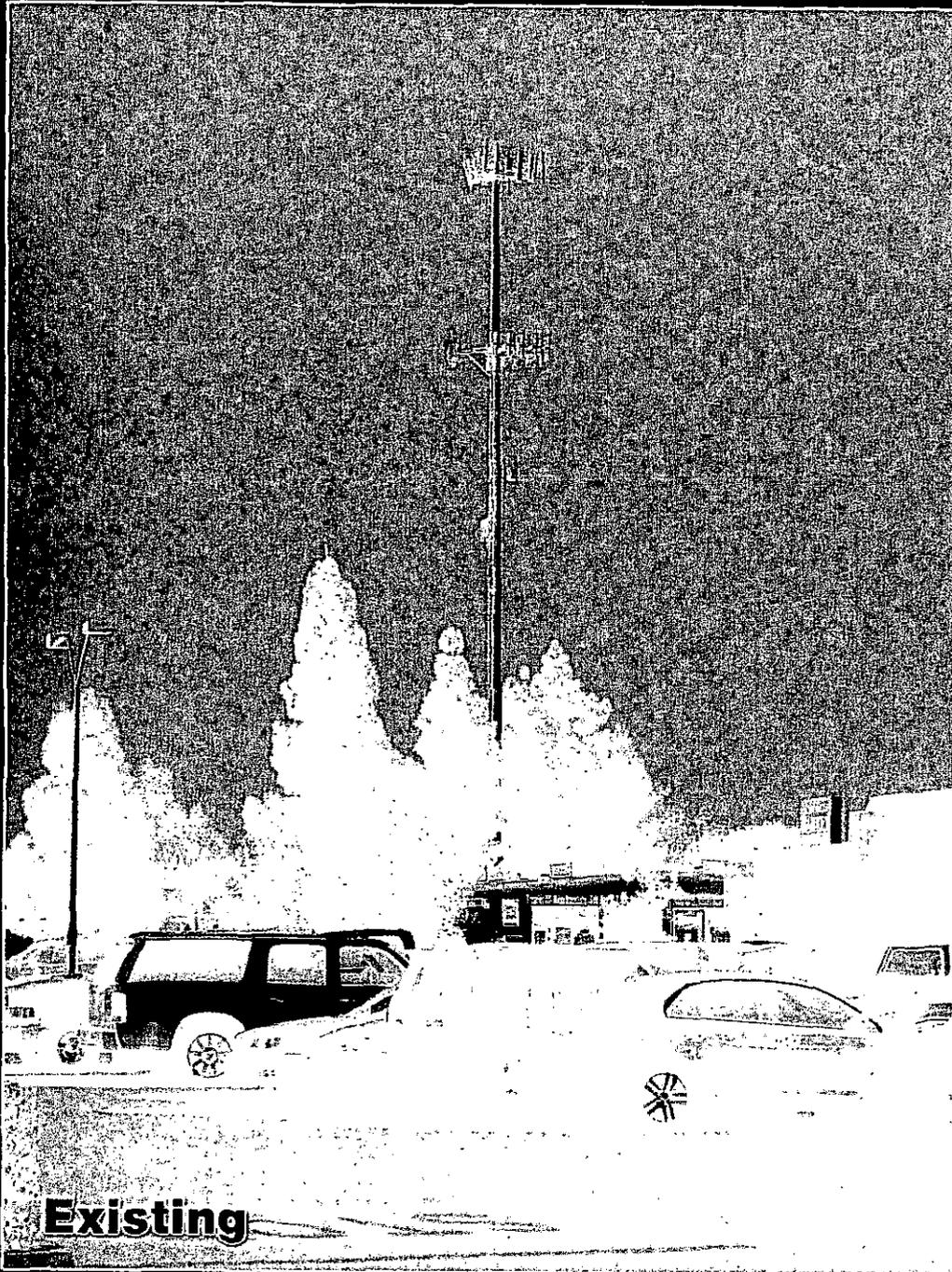


Proposed

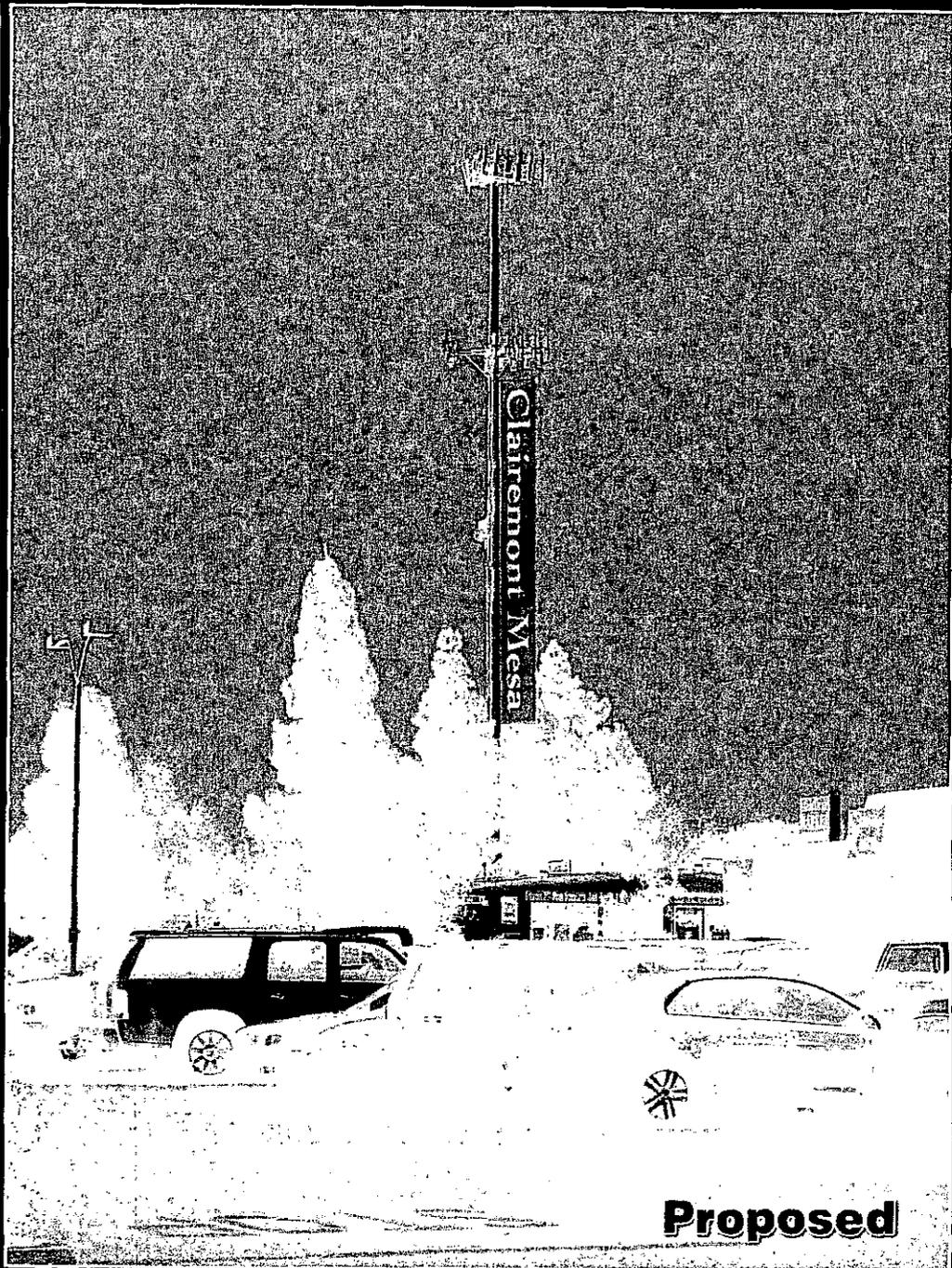
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EXHIBIT 3

Photosimulation of proposed banner concept.



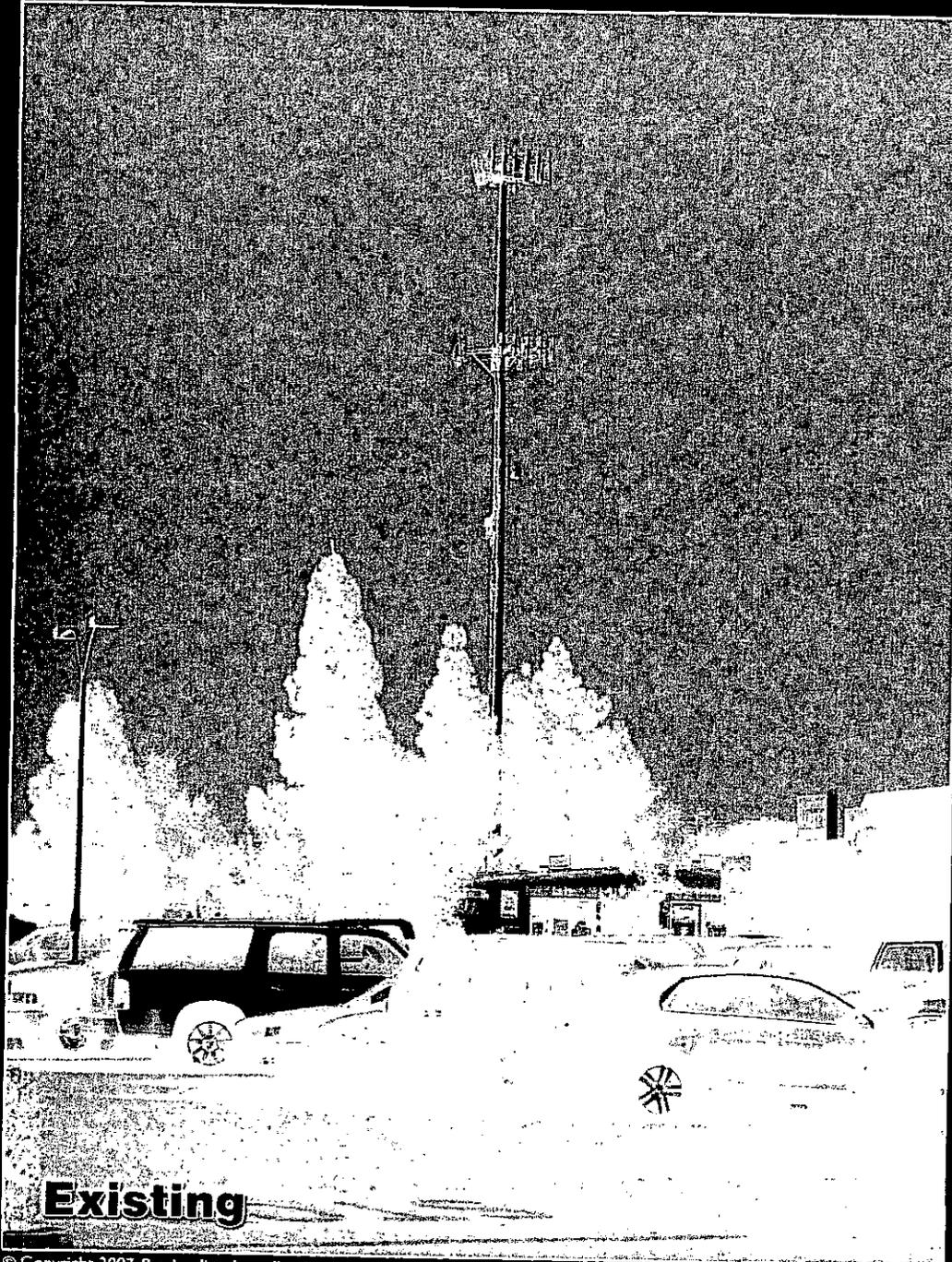
Existing



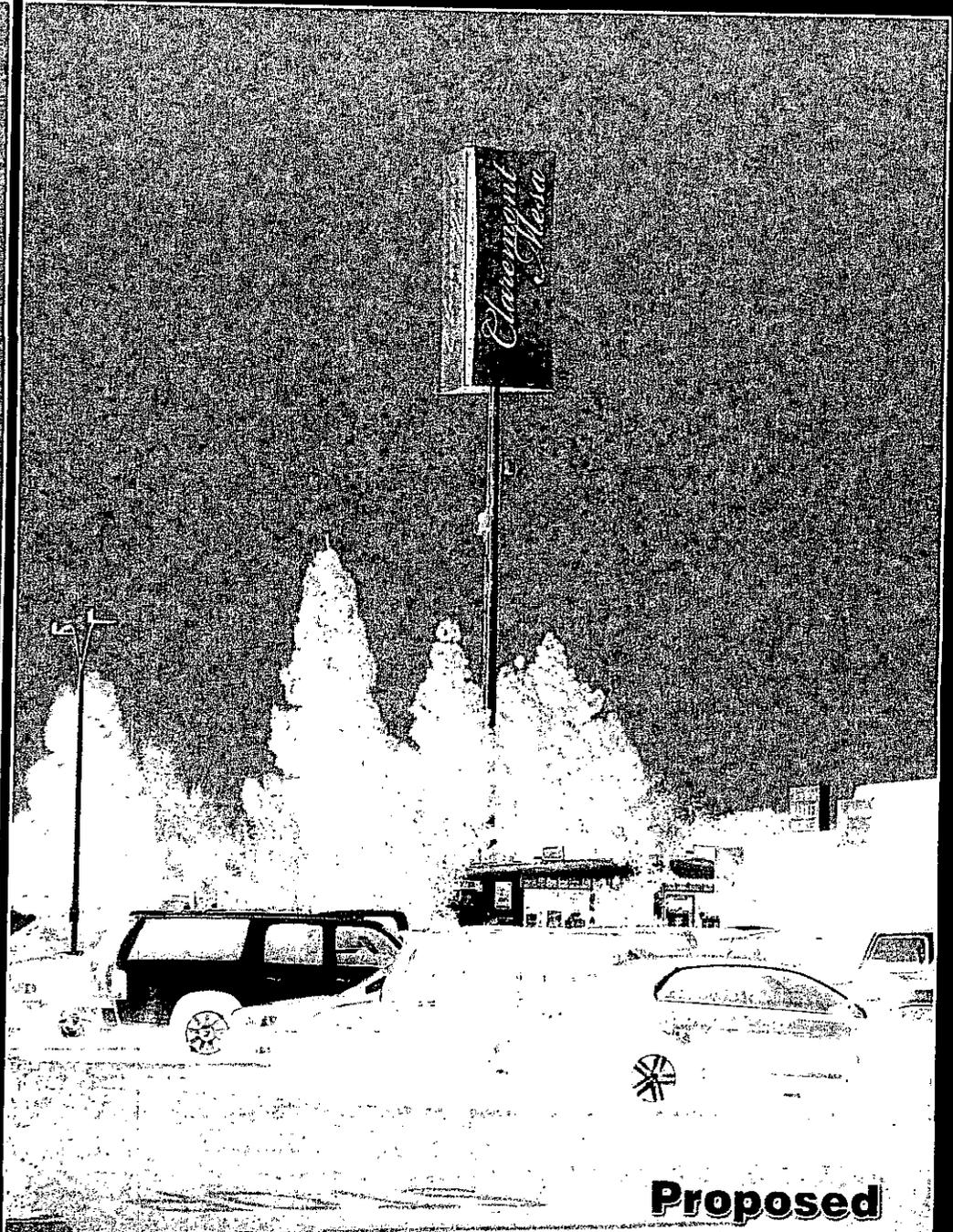
Proposed

EXHIBIT 4

Photosimulation of proposed banner concept.



Existing



Proposed

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EXHIBIT 5

30th Place Current Coverage

-  30th Place Current Height Coverage
-  Surrounding Sites Coverage
-  30th Place Cell Site
-  Surrounding Sites



City of San Diego | Issue 1

EXHIBIT 6

30th Place Lowered Height Coverage

- 30th Place Lowered Height Coverage
- Surrounding Sites Coverage
- 30th Place Cell Site
- Surrounding Sites



City of San Diego | URS |

EXHIBIT 7

Mt Ada Current Coverage

-  Mt Ada Current Height Coverage
-  Surrounding Sites Coverage
-  Mt Ada Cell Site
-  Surrounding Sites



City of San Diego Business

EXHIBIT 8

Mt Ada Lowered Height Coverage

-  Mt Ada Lowered Height Coverage
-  Surrounding Sites Coverage
-  Mt Ada Cell Site
-  Surrounding Sites



City of San Diego Issue

