

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, JANUARY 7, 2008  
AT 2:00 P.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

**Table of Contents**

CHRONOLOGY OF THE MEETING.....	3
ATTENDANCE DURING THE MEETING .....	3
ITEM-1: ROLL CALL.....	4
ITEM-10: INVOCATION .....	4
ITEM-20: PLEDGE OF ALLEGIANCE.....	4
CLOSED SESSION ITEMS.....	5
ITEM-150: Three actions related to Urban Runoff Management Plans and Storm Water Ordinance Amendment Regarding Storm Water Drain Discharges by Updating the List of Exceptions to Prohibited Discharges.....	11
ITEM-200: Thirteenth Lease Amendment to Add Space to City’s Existing Lease at Civic Center Plaza .....	15
ITEM-201: Soledad Mountain Road Undergrounding Utility District. In the matter of the formation of an <i>Underground Utility District</i> , Council’s action is on a resolution setting the date and time for a public hearing.....	17
ITEM-202: FY 2008 Small Business Enhancement Program Agreement with the Business Improvement District Council .....	20
ITEM-203: Shaw Lorenz, application to terminate the stay of expiration for Shaw Lorenz Project Approvals, Resolution No.R-302995, dated September 17, 2007, for the residential development within the Del Mar Mesa Specific Plan located on the southwest quadrant of Del Mar Mesa Road and Carmel Mountain Road within the Del Mar Mesa Community Plan .....	23
ITEM-204: American Tower Corporation-Mount Ada. An application for a wireless communication facility located at 6426 Mount Ada Road between Mount Rias Place and Mount Albertine Avenue.....	27

ITEM-205:	American Tower Corporation-30 <sup>th</sup> Place. Appeal of Planning Commission’s decision denying an application for a wireless communication facility located at 700 30 <sup>th</sup> Place.....	31
ITEM-250:	SUBMISSION OF BALLOT PROPOSALS.....	35
ITEM-251:	<b>Notice</b> of Pending Final Map Approval – La Palma .....	36
ITEM-252:	<b>Notice</b> of Pending Final Map Approval – Carmel Valley Neighborhood 10 Units 5B and 12B South.....	37
ITEM-253:	<b>Notice</b> of Pending Final Map Approval – Black Mountain Ranch East Clusters Unit No. 1.....	38
ITEM-254:	<b>Notice</b> of Pending Final Map Approval – Carmel Valley Neighborhood 10 Unit 9 South.....	39
ITEM-255:	<b>Notice</b> of Pending Final Map Approval – 7538 Draper Avenue.....	40
ITEM-256:	<b>Notice</b> of Pending Final Map Approval – Stella Condominiums.....	40
ITEM-257:	<b>Notice</b> of Pending Final Map Approval – Carmel Valley Neighborhood 10 Unit 2A South.....	41
	REPORT OUT OF CLOSED SESSION .....	42
	NON-DOCKET ITEMS .....	42
	ADJOURNMENT.....	42

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:05 p.m. Council President Peters recessed the meeting at 2:41 p.m. for the purpose of a break. Council President Pro Tem Madaffer reconvened the meeting at 2:53 p.m. with Council President Peters not present. The meeting was adjourned by Council President Pro Tem Madaffer at 4:36 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-present
  - (2) Council Member Faulconer-present
  - (3) Council Member Atkins-present
  - (4) Council Member Young-present
  - (5) Council Member Maienschein-present
  - (6) Council Member Frye-present
  - (7) Council Member Madaffer-present
  - (8) Council Member Hueso-present
- Clerk-Maland (sr)

FILE LOCATION:            MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-not present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-not present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Dr. Donald K. Barrett of Gospel Center Church of God in Christ.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Atkins.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

**Conference with Legal Counsel - anticipated litigation - significant exposure to litigation, pursuant to California Government Code Section 54956.9(b):**

**CS-1 *In the matter of Internal Revenue Service Voluntary Correction Program Compliance Statement***

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

CA: Michael Aguirre

As a result of submission to the Internal Revenue Service Voluntary Correction Program, the City of San Diego (as the Plan Sponsor) and SDCERS have received a final Internal Revenue Service approved Voluntary Correction Program Compliance Statement. In Closed Session, the City Attorney will discuss the confidential aspects of the Voluntary Correction Program Compliance Statement with City Council including hiring a tax attorney.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:**

**CS-2 Agency Negotiator:** Steven Berliner, Richard Kreisler, Lisa Briggs, Scott Chadwick, Tanya Tomlinson, Thom Harpole, Abby Jarl, Hadi Dehghani, Val VanDeweghe, Jessica Falk Michelli, William Gersten, and Nooria Faizi

**Employee Organizations:** Local 145 International Association of Firefighters  
AFL-CIO, San Diego Police Officers Association,  
Municipal Employees Association, AFSCME Local 127  
AFL-CIO and Deputy City Attorney Association

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA's Assigned: W. Gersten/J. Falk Michelli/N. Faizi

Discuss with Council pending contract negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, Municipal Employees Association, AFSCME Local 127 and the Deputy City Attorney's Association), including the Internal Revenue Service Voluntary Correction Program Compliance Statement as it relates to labor negotiations (see materials for Item CS-1).

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**Conference with Legal Counsel - existing litigation, pursuant to California Government Code Section 54956.9(a):**

**CS-3 *City of San Diego v. Willkie Farr and Gallagher, LLP*  
San Diego Superior Court Case No. 37-2007-00072584-CU-BT-CTL**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

EACA Assigned: D. McGrath

This is a lawsuit filed by the City of San Diego against Willkie Farr and Gallagher, LLP. In Closed Session, the City Council will meet with Executive Assistant City Attorney Don McGrath, II, and Bryan Vess regarding the prosecution of the lawsuit.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**CS-4 *La Jolla Alta Master Council v. City of San Diego***

**San Diego Superior Court Case No. GIC 822281**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA Assigned: J. Boardman

This matter is a lawsuit filed by the La Jolla Alta Master Council for inverse condemnation and declaratory and injunctive relief. In Closed Session, the City Attorney will brief the Council on the status of the litigation and proposed settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**CS-5 *Philip Paulson v. City of San Diego***

**United States District Court Case No. 89cv00820 GT (LSP); United States Court of Appeals for the Ninth Circuit Case No. 07-56020**

***Steve Trunk and Philip Paulson v. City of San Diego, et al.***

**United States District Court Case No. 06cv1597 LAB (WMc)**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA Assigned: G. Schaefer

The Plaintiff in the first case (the *Paulson* case) obtained an injunction requiring the City of San Diego to remove the Mt. Soledad cross from City property. On June 15, 2007, the federal district court awarded the Plaintiff's counsel attorneys' fees and costs. The City has a pending appeal of that award. The City Attorney needs to consult with the Mayor and Council in closed session on the City's response to the Plaintiff's pending settlement offer. The City Attorney also needs to update the Council and Mayor regarding the status of the related Mt. Soledad litigation in the second case (the *Trunk* case).

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**CS-6 *Leslie Beebe v. City of San Diego, et al.*  
San Diego Superior Court Case No. GIC 8730820**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA Assigned: M. Herrin

This matter involves a trip and fall at the intersection of 8th Avenue and Robinson Avenue. The City Attorney requests that the Mayor and City Council consider a possible settlement of the case in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**CS-7 *Citizens for Responsible Equitable Environmental Development v. City of San Diego*  
San Diego Superior Court Case No. GIC871259;**

***Citizens for Responsible Equitable Environmental Development, et al. v. City of San Diego*  
San Diego Superior Court Case No. GIC876017**

***Affordable Housing Coalition of San Diego County, et al. v. City of San Diego, et al.*  
Court of Appeal Case No. D049665 (San Diego Superior Court Case No. 857723)**

***Citizens for Responsible Equitable Environmental Development, et al. v. City of San Diego, et al.*  
Court of Appeal Case No. D049637 (San Diego Superior Court Case No. GIC858098);**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA Assigned: M. Dickenson

These matters involve California Environmental Quality Act challenges to the City Council's approvals of condominium conversions. The City Attorney will update the Mayor and the City Council on the status of litigation and communicate a settlement offer in closed session.

Closed Session Comment 1:

Chris Christensen commented on the need for resolution of this item relating to condominium conversions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:21 p.m. - 2:23 p.m.)

**Council President Peters closed the hearing.**

**CS-8 *Friends of Rose Canyon et al v. City of San Diego*  
San Diego Superior Court Case No. GIC 874140 and  
San Diego Superior Court Case No.37-2007-00082383-CU-WM-CTL**

***Las Palmas Condominium Owners' Association et al v. City of San Diego*  
San Diego Superior Court Case No GIC 872000**

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

DCA Assigned: C. Brock

The above consolidated lawsuits arises from the City Council's certification of the Environmental Impact Report ("EIR") for the University City North/South Transpiration Corridor Study, Project No. 27445 ("Project") and the Council's legislative decision to approve the implementation of the Regents Road Bridge Alternative and initiate an amendment to the University City Community Plan. The City Council adopted clarifying

resolution R-302497 in March 2007. The Court recently awarded Petitioners attorneys fees in the amount of \$450,000. City Attorney's office and outside counsel, Kevin P. Sullivan, Esq., will discuss the fee award and efficacy of filing an appeal contesting the Court's fee award.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**

**Conference with Legal Counsel - existing litigation, pursuant to California Government Code Section 54956.9(a):**

**CS-9 Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes v. City of San Diego**  
San Diego Superior Court Case No. 37-2007-00075629-CU-TT-CTL

**REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 8, 2008**

This matter is a lawsuit filed by the above Petitioners seeking to invalidate the City's certification of the EIR Addendum and related actions and approvals with respect to the City of San Diego Housing Element 2005-2010. In Closed Session the Mayor will request the retention of outside legal counsel to assist in these actions and discuss related issues.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:21 p.m.)

**Council President Peters closed the hearing.**



ITEM-150: Three actions related to Urban Runoff Management Plans and Storm Water Ordinance Amendment Regarding Storm Water Drain Discharges by Updating the List of Exceptions to Prohibited Discharges.

(See Report to the City Council No. 07-187; Storm Water Department's Power Point, dated 11/14/2007; letters from Diana Spyridonidis dated 10/19/2007; Report to the City Council 07-205 [not available at Committee].)

**TODAY'S ACTION IS:**

Introduce the ordinance in Subitem A and adopt the resolutions in Subitems B and C:

Subitem-A: (O-2008-59) CONTINUED TO TUESDAY, JANUARY 22, 2008

Introduction of an ordinance Amending Chapter 4, Article 3, Division 3 by amending Section 43.0305(b) of the San Diego Municipal Code regarding Storm Drain Discharge;

Amending the Municipal Code to conform to requirements of the San Diego Regional Water Quality Control Board Order Number R9-2007-0001 regarding storm water discharges by updating the list of exceptions to prohibited discharges.

Subitem-B: (R-2008-500) CONTINUED TO TUESDAY, JANUARY 22, 2008

Adopting and enacting the Jurisdictional Urban Runoff Management Plan (JURMP), except those portions relating to amendments to the Storm Water Standards of the Land Development Manual

Adopting and enacting the Mission Bay & La Jolla Watershed Urban Runoff Management Plan;

Adopting and enacting the San Dieguito River Watershed Urban Runoff Management Plan;

Adopting and enacting the Los Peñasquitos Watershed Urban Runoff Management Plan;

Adopting and enacting the San Diego River Watershed Urban Runoff Management Plan;

Adopting and enacting the San Diego Bay Watershed Urban Runoff Management Plan;

Adopting and enacting the Tijuana River Watershed Urban Runoff Management Plan;

Adopting and enacting the new Regional Urban Runoff Management Plan;

Authorizing the Mayor, or his designee, to implement activities identified in the above management plans.

Subitem-C: (R-2008-501) CONTINUED TO TUESDAY, JANUARY 22, 2008

Certifying that Mitigated Negative Declaration Project No. 134590, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State Guidelines thereto (California Code of Regulations Section 15000 et seq.); that the declaration reflects the independent judgment of the City of San Diego as Lead Agency; and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the City's Urban Runoff Management Plans and Storm Water Standards Manual;

Declaring that pursuant to California Public Resources Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment and incorporated herein by reference;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 11/14/2007, NR&C voted 3 to 0 to approve the recommendations and forward to the full City Council, with direction that staff provide additional information regarding the benefits of over-irrigation. (Councilmembers Faulconer, Maienschein, and Frye voted yea. Councilmember Hueso not present.)

**SUPPORTING INFORMATION:**

The plans identify and describe the activities that the City commits to implementing to protect and improve water quality and comply with the regulatory requirements outlined the 2007 Municipal Permit. New requirements in the 2007 Municipal Permit has prompted the incorporation of significant revisions into the plans, including the identification of new activities to implement in Fiscal Years 2008 through 2013.

The Jurisdictional URMP serves two primary purposes. First, it outlines the BMPs that each department will implement to prevent or reduce urban runoff pollution. Each department will be responsible for financing and implementing the BMPs and tracking their activities. Second, the plan identifies the programs and minimum BMP requirements that the Storm Water Division will implement and enforce over the life of the 2007 Municipal Permit.

The Watershed URMPs identify the high priority pollutants and sources within the watersheds that the City has jurisdiction in and outline activities to address those pollutants and sources. The City has identified at least two education and two water quality activities to implement annually for each of its watersheds during the Five-Year 2007 Municipal Permit cycle. The City is the sole jurisdiction within the Mission Bay & La Jolla Watershed; it is a participating jurisdiction in the following five watersheds: San Dieguito River, Los Peñasquitos, San Diego River, San Diego Bay, and Tijuana River.

The Regional URMP will serve as a framework to implement coordinated regional strategies across multiple jurisdictional boundaries. Under this plan, jurisdictions will integrate activities at a regional scale when efficient and appropriate, such as education and outreach campaigns. The County of San Diego is leading the development of this regional plan with input from the City and other jurisdictions.

The Regional and five (5) Watershed URMPs, for which the City is not the lead agency, are being developed in cooperation with other jurisdictions and will not be completed prior to Council consideration. However, the Storm Water Division has prepared for Council consideration the lists of wholly or partially City-sponsored activities to be incorporated into the plans. The Storm Water Division will begin implementation and submit final versions of all the plans to the San Diego Regional Water Quality Control Board by March 24, 2008.

The amendment to the Storm Water Ordinance will involve two groups of changes. First, the list of allowable non-storm water discharges will be updated consistent with the list from the 2007 Municipal Permit. Specifically, non-emergency fire fighting flows, diverted stream flows, and uncontaminated groundwater infiltration will be added to the list of allowable non-storm water

discharges, and non-commercial car washing (e.g., charity car washing) will be removed from the list of allowable discharges to conform with the 2007 Municipal Permit (note that, although non-commercial car washing is currently listed in the City's Storm Water Ordinance, the Storm Water Division does not allow discharges from this class of activities). Certain allowable non-storm water discharges will also be modified to be permissible only if the City's minimum BMPs are implemented. The discharge categories with this condition include: three types of excess irrigation runoff (irrigation water, lawn watering, and landscape irrigation), dechlorinated swimming pool discharges, residential car washing, air conditioning condensation, water line flushing, and non-emergency fire fighting flows.

FISCAL CONSIDERATIONS:

City-wide Fiscal Year 2008 costs are estimated to be \$43 million. This estimate is derived from the Street Division's storm drain cleaning and street sweeping (\$19,966,859) and the Storm Water Division's (\$22,995,409) current budgets (less substantial cost estimates of other departments not included). Implementation of Fiscal Year 2009-2013 activities will be dependent upon Council identification and approval of funding in future annual budgets. Potential alternative funding sources, including grants, to fund specific activities will be considered by separate actions. City-wide costs for the programs are estimated at \$320 million over the 5-year 2007 Municipal Permit cycle (less substantial expenditures to be required of other departments not included in this estimate).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Resolution R-296019 (January 28, 2002) approving 2002 Jurisdictional URMP. Ordinance O-18975 N.S. (September 10, 2001) regarding prior amendments to Storm Water Ordinance. The Natural Resources & Culture Committee voted 3-0 on November 14, 2007, to approve and forward the items to the full City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Outreach efforts to solicit input on the draft plans, including draft minimum BMPs for municipal, commercial, industrial, and residential sites/sources, included two public workshops, multiple meetings with stakeholders, two 30-day public comment periods, an Internet comment form, and three presentations to the former Public Utilities Advisory Commission's Storm Water Sub-Committee. Public notification methods included postcard mailings, newspaper notices, e-mail notices, notices on the City's Think Blue website, media releases, and flyers distributed at City public involvement meetings.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include commercial businesses and industries, including the building industry, residential homeowners, citizens of the City and other jurisdictions, and environmental organizations. The Development Services Department prepared a MND, which identified the following potential impacts: historical resources (archaeology), paleontological resources, and land use (Multiple-Habitat Planning Area Land Use Adjacency).

Sierra/Jarrell

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:10 p.m. - 2:20 p.m.)

MOTION BY MADAFFER TO CONTINUE TO TUESDAY, JANUARY 22, 2008, FOR FURTHER REVIEW. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-200: Thirteenth Lease Amendment to Add Space to City's Existing Lease at Civic Center Plaza. (Centre City Community Area. District 2.)

**STAFF'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2008-52) INTRODUCED, TO BE ADOPTED ON  
TUESDAY, JANUARY 22, 2008

Introduction of an ordinance authorizing the Mayor, or his designee, to execute and deliver, for and on behalf of the City of San Diego, a Thirteenth Amendment to Lease (Amendment) amending the certain Lease dated October 21, 1991, by and between the City of San Diego as tenant, and Civic Center Associates, LLC, a California limited liability company, as landlord, and relating to addition of approximately 3,385 square feet of office space to the Lease premises located in the Civic Center Plaza building at 1200 Third Avenue, San Diego, California, under the terms and conditions set forth in the Amendment;

Authorizing and directing, the City Auditor and Comptroller, to expend \$30,160.35 in Fiscal Year 2008 as required under the Amendment, and to make such fund transfers and re-allocations as may be necessary and prudent to effect such payment.

**NOTE:** 6 votes required pursuant to Charter Section 99.

**STAFF SUPPORTING INFORMATION:**

The City Treasurer will be utilizing the space which will enhance their operating efficiency by relocating the Revenue Collections Division from Executive Complex. This will, in turn, provide a vacant space that could accommodate a large group from the World Trade Center.

**FISCAL CONSIDERATIONS:**

Rent for the existing CCP lease is significantly below market rent of \$2.51 to \$3.00 per square foot for Downtown office space. With the addition of this space, the City occupies 91% of this building. The total funding for this space in FY 08 is \$30,160.35 with no increase in rent throughout the lease term. The \$30,160.35 cost will be funded from anticipated saving in Fiscal Year 2008 in Fund 100, Department 601, Org 2500, Object Account 4682.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:** None.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** None.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

The affected department's divisions will be in closer working proximity to other department staff and CAB. This increases operational efficiencies while utilizing a lower rent per square foot cost. Civic Center Associates, LLC.

Barwick

Aud. Cert. 2800348.

Staff: Mary Lou Houghton - (619) 236-6124  
Todd Bradley - Deputy City Attorney

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:24 p.m. - 2:26 p.m.)

MOTION BY FAULCONER TO INTRODUCE. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: Soledad Mountain Road Undergrounding Utility District. In the matter of the formation of an *Underground Utility District*, Council's action is on a resolution setting the date and time for a public hearing. (La Jolla Community Plan Area. District 2.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-450)            ADOPTED AS RESOLUTION R-303284

Adoption of a Resolution calling a public hearing to determine whether the public health, safety or general welfare requires the formation of Soledad Mountain Road Underground Utility District in the La Jolla Planning Area.

**STAFF SUPPORTING INFORMATION:**

REQUESTED ACTION:

Amend the Annual Allocation-Undergrounding of Utilities, project allocation for 2007 Calendar Year by removing the projects known as Sunset Cliffs Blvd (Coronado Ave to Newport Ave) and Fanuel Street (Grand to Reed) estimated at \$1,587,844 and replacing with Soledad Mountain Road (Pacifica to Ridgeway Row) at an estimated cost of \$2,337,695; setting January 29, 2007 for a public hearing to consider creating an Underground Utility District (District) and create said District.

STAFF RECOMMENDATION:

Amend the Annual Allocation of projects for 2007, set a public hearing date and adopt a resolution to create the District.

EXECUTIVE SUMMARY:

As part of the reconstruction efforts associated with the landslide that affected Soledad Mountain Road, SDG&E desires to place electric facilities underground between Pacifica Drive to just south of Palomino Circle at an estimated cost of \$647,799 which would be funded through

CPUC Rule 20A. SDG&E proposes that although it would be funded through the use of Rule 20 funds, SDG&E would not count those expenditures towards its required Rule 20 expenditure obligations as described in its franchise agreement with the City of San Diego.

Council District Two desires to extend the area to be undergrounded by extending the northern boundary to where the pole line terminates just south of Ridgeway Row. This additional segment would be funded with Rule 20A funds by amending the 2007 Annual Allocation of Projects to remove two projects that are of near estimated costs and replacing them with this project. Staff would recommend replacing the projects in the 2009 Annual Allocation of projects.

Staff has informed SDG&E that the undergrounding of utilities cannot be allowed in any way to delay the reconstruction efforts. SDG&E will coordinate their work with the roadway reconstruction so as not to cause any delays.

In accordance with San Diego Municipal Code (SDMC), Chapter 6, Article 1, Division 5, *Underground Utilities Procedural Ordinance* these actions will create the Soledad Mtn Rd, from Pacifica Dr to Ridgeway Row Underground Utility District and will underground all overhead utilities within the designated District.

The formation of this district will require by Ordinance the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary. The expense of the underground installation and removal of overhead facilities within the right-of-way (street and sidewalk area) will be the responsibility of the utility companies in accordance with California Public Utilities Commission (CPUC) Rules and Tariffs.

Replacement of street lighting, building permits, building and field engineering inspections, associated utility coordination of construction activities, and project management associated with these improvements, will be financed through City of San Diego Undergrounding Surcharge Fund 30100, contingent upon receipt of funds from San Diego Gas & Electric (SDG&E).

By Ordinance, creation of this Underground Utility District will require all property owner(s) within said District to perform all necessary trenching and other related work to convert their property to receive electrical, telecommunication and cable television from an underground service, including all necessary permits. However, per agreement with the City of San Diego, SDGE will offer to property owner(s) within the Underground Utility District, to perform all the work necessary to convert private property, including necessary conduits for telephone and cable facilities, at no cost to the property owner(s).

In order to take advantage of San Diego Gas & Electric's offer to perform this work, property owners are required to sign a Permit to Enter Form (PTE) and ensure their properties meet minimum conformance as outlined in the SDMC. Namely, that their electrical panels: (1) are deadfront operated, (2) have a grounding rod: and (3) have appropriate operating clearances.

FISCAL CONSIDERATIONS:

The estimated construction cost of \$2,263,489 for electrical utility work within the public right-of-way and private property, will be financed through the use of SDG&E Rule 20 (A), as directed by the CPUC, Case 8209. Costs to convert AT&T and cable television is financed directly by AT&T and the cable companies per applicable CPUC tariffs and City franchise agreements.

Other indirect costs such as administration, street light replacement, minor street improvements, and other related work is estimated at \$74,206 and will be financed through Undergrounding Surcharge Fund 30100, contingent upon receipt of funds from SDG&E. These expenditures have been approved or will be approved by subsequent actions.

PREVIOUS COUNCIL COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

With notification of the Public Hearing, property owners and residents will be mailed an informational brochure about the City's Undergrounding Program including information as to how to contact and get more information via the Underground Program Information Line and the Underground Program via the internet, where they can access a monthly project status and sign up for email updates from the Underground Program Staff.

During construction, e-mails will be periodically sent to those signed up, information regarding the status of their project, where the contractor is working and where he will be working next. Residents are provided door hangers with the contractors' names and contact number and the City's contact name, number and internet address prior to work occurring on private property. Community Planning groups are added to all customer contact mailings and are notified of pre-construction meetings to discuss community issues directly with the contractor. Customer satisfaction surveys are used throughout the process and at project completion to identify systemic issues and improve customer service.

KEY STAKEHOLDERS:

Residents, businesses, and utility companies.

Jarrell/Boekamp/NB

**NOTE:** This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15302(d), and Public Utilities Commission General Order 131-D dated August 11, 1995.

Staff: Nathan Bruner – (619) 533-3777  
Peter Mesich – Deputy City Attorney

**FILE LOCATION:** STRT-K-329(38)

**COUNCIL ACTION:** (Time duration: 2:27 p.m. - 2:30 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



**ITEM-202:** FY 2008 Small Business Enhancement Program Agreement with the Business Improvement District Council. (Citywide.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-458)            ADOPTED WITH DIRECTION AS  
RESOLUTION R-303285

Authorizing the Mayor, or his designee, to execute the FY 2008 Small Business Enhancement Program Agreement between the City of San Diego and the Business Improvement District Council to expend an amount not to exceed \$688,802 in Small Business Enhancement Program (SBEP) funds for the provision of economic development services, contingent upon certification of funds availability by the City Auditor and Comptroller;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$688,802 in SBEP funds for this purpose.

**STAFF SUPPORTING INFORMATION:**

On June 26, 1995, the City Council reduced the Business Tax Certificate fee for businesses with 12 or fewer employees from \$125 to \$34, and established a Small Business Enhancement Program (SBEP) funded by general fund revenues measured by \$20 of every small Business Tax Certificate. The purpose of the SBEP is to provide continuing support to small businesses in recognition of their vital economic, employment, service, and cultural roles, and their importance in sustaining and revitalizing older commercial and residential areas.

In order to avoid delays in the SBEP allocation process resulting from SBEP's unique appropriation formula and to provide for accountability, efficiency, and flexibility in the administration of the program, a Small Business Enhancement Program Policy was adopted June 8, 1999. Council Policy 900-15 incorporated a funding allocation formula. The formula specifically called for the funds to be allocated 50/50 between City-wide programs and Business Improvement District (geographic business-based) programs with administration ceded to the Economic Development Division's Office of Small Business and the Business Improvement District Council (BIDC) respectively with general oversight on Citywide programs to be provided by the Mayor's Small Business Advisory Board.

This funding split had been explicitly called out in previous Annual Budgets so that the funds for the BIDC were approved by Council as part of the budget and appropriation process. However, for FY 2008, the allocation to the BIDC was not specifically called out in the budget documents, and therefore, this agreement and authorization to expend the SBEP funds must be separately approved by the Council.

The BIDC uses the SBEP funds to provide services to its member organizations which oversee the City's Business Improvement Districts (BID's) and to benefit a variety of local chambers and micro-business organizations located in different commercial neighborhoods throughout the City. The BIDC is also the sponsor of City Care, a health insurance program established by the BIDC for small businesses registered with the City of San Diego. There are approximately 75,000 registered small businesses within the City, which equates to around \$1.5 million annually in SBEP funding on the basis of \$20 per small business, of which, half is allocated to the BIDC.

**FISCAL CONSIDERATIONS:**

This action approves the expenditure of SBEP Funds (budgeted in FY 2007 and FY 2008) in the amount of \$688,802.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In 1995, the Council approved the creation of the SBEP. Then, in 1999, the Council adopted Council Policy 900-15 and has approved the overall annual appropriation each budget cycle since that time.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The BIDC holds regular meetings and publishes regular reports on its activities which are distributed to the member organizations. The annual budget and work program are approved at the regular meetings.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Businesses within the respective BID's and areas served by local chambers are the key stakeholders and beneficiaries of business marketing and development. All small business may benefit from the BIDC health insurance program. Residents and property owners may also benefit from enhanced business services.

Kessler/Anderson

Aud. Cert. 2800402.

Staff: Meredith Dibden Brown - (619) 236-6485  
Michael D. Neumeyer - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:31 p.m. - 2:36 p.m.)

MOTION BY ATKINS TO ADOPT WITH DIRECTION TO REFER THE ITEM TO THE PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE TO CHANGE COUNCIL POLICY REGARDING MAIN STREETS. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-203: Shaw Lorenz, application to terminate the stay of expiration for Shaw Lorenz Project Approvals, Resolution No.R-302995, dated September 17, 2007, for the residential development within the Del Mar Mesa Specific Plan located on the southwest quadrant of Del Mar Mesa Road and Carmel Mountain Road within

the Del Mar Mesa Community Plan. (Del Mar Mesa Community Plan Area.  
District 1.)

Pardee Homes has requested that the City Council consider a resolution terminating the stay of expiration for the Shaw Lorenz Project Approvals consisting of Vesting Tentative Map No. 25674, Planned Development Permit No. 25675, Site Development Permit No. 25676, Coastal Development Permit No. 25677, and Neighborhood Use Permit No. 76234. The stay of expiration for the Shaw Lorenz Project Approvals was previously approved by City Council, Resolution No. R-302995 (Rev.), September 17, 2007, for the residential development within the Del Mar Mesa Specific Plan located on the southwest quadrant of Del Mar Mesa Rd and Carmel Mountain Rd within the Del Mar Mesa Community Plan. (Project No. 126895.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2008-536) ADOPTED AS RESOLUTION R-303286

Adoption of a Resolution by the Council of the City of San Diego, stating for the record that the approval of lifting the stay of the Shaw Lorenz Project Approvals, is a subsequent approval of the Project addressed in the Master Environmental Impact Report and therefore not a separate project under CEQA Guideline sections 15060 (c)(3).

Stating for the record that the information contained in the final Master Environmental Impact Report, including any comments received during the public review process, has been previously reviewed and considered by this Council and it is determined that this subsequent approval of the lifting the stay of the Shaw Lorenz Project Approvals does not involved change in circumstances, project changes, or new information of substantial importance which would warrant any additional environmental review.

Subitem-B: (R-2008-537) ADOPTED AS AMENDED AS RESOLUTION R-303287

Adoption of a Resolution by the Council of the City of San Diego, that the stay of the expiration of the Shaw Lorenz Project Approvals is hereby lifted. The City shall notify Pardee Homes in writing that the stay has been lifted and that Pardee Homes will have no more than 180 days after the effective date of this Resolutions (the date the stay was lifted) to exercise any and all rights under the Shaw Lorenz Project approvals.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Request to terminate the stay of expiration for Shaw Lorenz Project Approvals, Resolution No. R-302995 (Rev), dated September 17, 2007 (Attachment 1).

**STAFF RECOMMENDATION:**

Approve a resolution terminating the stay of expiration for Shaw Lorenz Project Approvals, Resolution No. R-302995 (Rev), dated September 17, 2007.

**EXECUTIVE SUMMARY:**

The Shaw Lorenz project for residential development in the Del Mar Mesa Community Planning area was approved by City Council on May 11, 2004. The project approvals consist of Vesting Tentative Map no. 25674, Planned Development Permit no. 25675, Site Development Permit no. 25676, Coastal Development Permit no. 25677, and Neighborhood Use Permit no. 76234. Pardee Homes, the Owner/Permittee for the Shaw Lorenz project, has applied for an Extension of Time (EOT) on the aforementioned approvals; however, on October 13, 2006, United States District Judge Rudi M. Brewster in the Southern District of California rendered a decision and issued a Decision and Injunction in the case entitled, "*Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*," Case No. 98-CV-2234-B(JMA) (Attachment 2). As a result of the issuance of the Decision and Injunction, Pardee Homes' Shaw Lorenz Project, as well as other development projects that refer to or rely upon the City of San Diego's incidental take permit and related MSCP Subarea Plan for impacts to the vernal pool habitat and vernal pool species, have been precluded from obtaining further discretionary or ministerial approvals from the City. On September 17, 2007, City Council approved Resolution No. R-302995 (Rev.) to stay the expiration of the Shaw Lorenz Project approvals until the Injunction is vacated or the Injunction or any modification thereof is no longer applicable to the Project. On November 5, 2007, the U.S. Fish and Wildlife Service (Service) completed the re-initiation of the Biological Opinion on the Shaw Lorenz Project and authorized the incidental take of San Diego fairy shrimp and vernal pool habitat species (Attachment 3).

Pardee Homes would no longer be relying on the City of San Diego's incidental take permit and related MSCP Subarea Plan for impacts to the San Diego fairy shrimp or other vernal pool species. Considering the Services' Biological Opinion authorizes the incidental take of the species independent of and without regard to the provisions of the City's MSCP, the Injunction no longer applies to the Shaw Lorenz Project, and therefore Pardee Homes is requesting that the stay of expiration be terminated.

This resolution to terminate the stay of the expiration date for the Shaw Lorenz Project No. 2873 approvals is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for purposes of CEQA review pursuant to State CEQA Guidelines Section §15060(c)(3).

**FISCAL CONSIDERATIONS:**

All costs associated with the processing of this project are recovered by a deposit account maintained by the applicant.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:** None.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** N/A

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

Pardee Homes, Owner

Broughton/Anderson/TD

**NOTE:** This activity is covered under Project No. 2873, Shaw Lorenz. The activity is adequately addressed to the environmental document and there is no change in circumstances, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for purposes of CEQA review pursuant to State CEQA Guidelines Section 15060(c)(3).

Staff: Tim Daly – (619) 446-5356  
Shirley R. Edwards – Chief Deputy City Attorney

**NOTE:** This item is not subject to Mayor’s veto.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Time duration: 2:36 p.m. - 2:40 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTIONS IN SUBITEMS A AND B, AMENDING SUBITEM B BY ADDING AS THE LAST SENTENCE IN THE “BE IT RESOLVED” CLAUSE: “SHOULD IT BE DETERMINED IN ANY LEGAL PROCEEDING BY A RULING SUBSEQUENT TO THIS CITY COUNCIL ACTION THAT DEVELOPMENT OF THE SHAW LORENZ PROJECT IS ENJOINED FOR ANY REASON OR CONTINUED TO BE ENJOINED, THIS STAY SHALL AUTOMATICALLY BE REINSTATED WITHOUT FURTHER CITY COUNCIL ACTION.” AND CLARIFY THE PREVIOUS STATEMENT BY REFERRING DIRECTLY TO THE UNITED STATES DISTRICT COURT CASE WHICH IS THE BASIS FOR INJUNCTION. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-204: American Tower Corporation-Mount Ada. An application for a wireless communication facility located at 6426 Mount Ada Road between Mount Rias Place and Mount Albertine Avenue. (Clairemont Mesa Community Plan Area. District 6.)

Matter of approving, conditionally approving, modifying or denying an application for a wireless communication facility consisting of an existing, expired 145 foot high monopole and a 572 square foot equipment shelter, originally approved by CUP No. 83-0629, which expired on November 20, 2004. The facility is located at 6426 Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue.

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.

(Continued from the meeting of October 15, 2007, Item 204, at the request of the applicant, American Tower Corporation for report from American Tower Corporation by 10/30/07 for Council and public review; last continued from the meeting of November 6, 2007, Item 332, at the request of the applicant, for full Council.)

**NOTE:** Hearing open. No testimony taken.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-188) CONTINUED WITH DIRECTION TO  
MONDAY, APRIL 14, 2008

Adoption of a Resolution certifying findings supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference with respect to Conditional Use Permit No. 292627/Site Development Permit No. 450714;

That Conditional Use Permit No. 292627/Site Development Permit No. 450714 is denied.

**OTHER RECOMMENDATIONS:**

Planning Commission on June 28, 2007 voted 5-0 to recommend denial; no opposition.

Ayes: Schultz, Garcia, Naslund, Ontai, Otsuji  
Recused: Griswold  
(vacant)

The Clairemont Mesa Planning Committee has recommended denial of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

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

**STAFF RECOMMENDATION:**

**DENY** Conditional Use Permit No. 292627 and Site Development Permit No. 450714.

**EXECUTIVE SUMMARY:**

On November 20, 1984, the City Council approved a Conditional Use Permit (CUP) for a 145 foot high monopole and a 572 square-foot equipment shelter on the south side of Balboa Avenue between Mt. Rias Place and Mt. Albertine Avenue at 6426 Mt. Ada Road. This was one of the

first telecommunication facilities within the City. Since wireless communications was in its infancy, the Council imposed a 20 year limit on the life of the CUP in order to allow the facility to be constructed, the technology to be implemented and a review to occur in the future when technology and/or regulations changed. The condition included language regarding an extension to the permit, which would be required to be reviewed at a Planning Commission and City Council public hearing prior to November 20, 2004. The Land Development Code does not have provisions to extend discretionary permits.

The 145 foot tall monopole is situated along the Balboa Avenue corridor in a commercial zone (CC-1-3) that borders multi-unit residential development with a large residential subdivision beyond. The Clairemont Mesa Height Limitation Overlay zone does not permit structures over 30 feet in height without City Council approval of a Site Development Permit (SDP). A SDP is a special permit used when a proposed development would have a significant impact on the surrounding area.

Section 141.0405 of the Land Development Code (Communication Antennas) requires wireless facilities to be integrated into the landscape or camouflaged from public view. This monopole is a significant visual impact on the horizon along Balboa Avenue and the surrounding residential community. Neither the findings for the CUP nor the findings for the SDP could be made in the affirmative; therefore staff recommended denial of the permits to the Planning Commission.

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

FISCAL CONSIDERATIONS:

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

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted 5-0 to recommend **DENIAL** of Conditional Use Permit No. 292627 and Site Development Permit No. 450714.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On March 21, 2006, the Clairemont Mesa Planning Committee voted 14-0-0 to recommend denial of Project No. 91178.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

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

Anderson/Boekamp

**LEGAL DESCRIPTION:**

6426 Mount Ada Road in the Clairemont Mesa Community Planning area.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301, Existing Facilities.

Staff: Karen Lynch-Ashcraft – (619) 446-5351  
Andrea Contreras Dixon – Deputy City Attorney

**NOTE:** See Item 205 on today's docket for a companion item.

**NOTE:** This item is not subject to Mayor's veto.

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:40 p.m. - 2:41 p.m.;  
2:54 p.m. - 4:28 p.m.)

Testimony in favor by Julian Quattlebaum, Dennis McColl, Jason Allen, and Suzanne Toller.

MOTION BY FRYE TO CONTINUE TO APRIL 14, 2008, TO ALLOW APPLICANT TO RETURN TO THE COMMUNITY PLANNING GROUP TO OBTAIN ADDITIONAL INPUT AND RETURN TO CITY COUNCIL. Second by Hueso. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-205: American Tower Corporation-30<sup>th</sup> Place. Appeal of Planning Commission's decision denying an application for a wireless communication facility located at 700 30<sup>th</sup> Place. (Southeastern San Diego Community Plan Area. District 8.)

Matter of the appeal by Robert Jystad, Channel Law Group, LLP on behalf of applicant American Tower Corporation from the decision by the Planning Commission denying 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 project site is located at 797 1/3 30<sup>th</sup> Place.

This project was determined to be categorically exempt from the California Environmental Quality Act on February 8, 2006, and the opportunity to appeal that determination ended February 23, 2006.

(Continued from the meeting of October 15, 2007, Item 203, at the request of the applicant, American Tower Corporation for report from American Tower Corporation by 10/30/07 for Council and public review; last continued from the meeting of November 6, 2007, Item 333, at the request of the applicant, for full Council.)

**NOTE:** Hearing open. No testimony taken.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2008- ) CONTINUED WITH DIRECTION TO  
MONDAY, APRIL 14, 2008

Adoption of a Resolution granting or denying the appeal and upholding or overturning the Planning Commission's decision denying Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.

**OTHER RECOMMENDATIONS:**

Planning Commission on June 28, 2007 voted 5–0 to deny.

Ayes: Schultz, Garcia, Naslund, Ontai, Otsuji  
Recusing: Griswold  
(vacant)

The Southeastern San Diego Planning Committee has been notified of this item and has not submitted a recommendation.

**STAFF SUPPORTING INFORMATION:**

**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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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.

On July 11, 2007, Robert Jystad, attorney for American Tower Corporation, appealed the Planning Commission decision based on the findings not being supported and on the basis that the decision is of citywide significance. The appellant asserts that American Tower has vested rights to renewal and/or approval based on the fact that they relied on this approval to build out their network. The appellant also asserts that Finding No. 3 can be made in the affirmative. Staff believes that because the CUP had a specific expiration date, it was Verizon's (tenant) responsibility and American Tower's due diligence to make provisions in the network to accommodate changes that were inevitable to this tower. It has been consistently acknowledged by staff that these first generation support structures would eventually have to be removed and replaced if technology had advanced sufficiently for the changes to be made. Twenty years have passed; technology has advanced and American Tower and Verizon must comply with the regulations in order to maintain a wireless facility at this location.

The City has approximately twenty existing monopoles, all of which were approved more than ten years ago. With the advancement of technology and design capabilities in the wireless industry, it has been the City's practice over the past ten years not to allow additional monopoles, but instead, to encourage and provide incentives to the carriers to minimize the visual impacts associated with wireless facilities.

American Tower has raised the issue of vested rights in the past and staff has argued, and the Planning Commission has confirmed that a contract was signed by the original applicant of record, in this case, Pac Tel Mobile Access (now Verizon), acknowledging that the Conditional Use Permit not only ran with the land, but also expired on November 20, 2004. Preparations and modifications in the network should have been made to accommodate the potential for a height reduction. Verizon has worked closely with the City for the past twenty years and has known that monopoles were eventually going to be phased out and replaced.

**FISCAL CONSIDERATIONS:**

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

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted 5-0 to recommend **DENIAL** of Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On March 27, 2006, American Tower met with the Technical Subcommittee of the Southeastern San Diego Planning Committee on 30<sup>th</sup> 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.

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.

Anderson/Boekamp

LEGAL DESCRIPTION:

The project is located at 700 30<sup>th</sup> Place within the Southeastern San Diego Community Plan, in the City and County of San Diego.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301, Existing Facilities.

Staff: Karen Lynch-Ashcraft – (619) 446-5351

**NOTE:** See Item 204 on today's docket for a companion item.

**NOTE:** This item is not subject to Mayor's veto.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:40 p.m. - 2:41 p.m.;  
2:54 p.m. - 4:28 p.m.)

Testimony in favor by Julian Quattlebaum, Dennis McColl, Jason Allen, and Suzanne Toller.

MOTION BY HUESO TO CONTINUE TO APRIL 14, 2008, TO ALLOW APPLICANT TO RETURN TO THE COMMUNITY PLANNING GROUP TO OBTAIN ADDITIONAL INPUT AND RETURN TO CITY COUNCIL. Second by Frye. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-250: SUBMISSION OF BALLOT PROPOSALS

City Council Policy 000-21 establishes the procedure for submittal of ballot proposals. The Council Policy states that members of the public shall submit proposals to the City Clerk, who shall then transmit them promptly to the Rules Committee for review and comment. The proposals must be submitted in time to allow the City Clerk to list on the Council Docket 127 days prior to the election the ballot proposals which have been referred to Council following Rules Committee review.

Therefore, the City Clerk’s Office has established the following administrative guidelines for the June 3, 2008 election:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	1/18/08	137	LAST DATE (10:00 a.m.) for public, departments and agencies to submit ballot proposals to City Clerk for review by Rules Committee
Wednesday	1/23/08	132	Rules Committee review
Monday	<b>1/28/08</b>	127	Council Docket (PUBLIC NOTICE) lists proposals referred by Rules Committee
Monday	<b>2/4/08</b>	120	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	2/25/08	99	Council adopts ordinances prepared by City Attorney

Friday	3/7/08	88	Last day for City Clerk to file with Registrar of Voters all elections material
Thursday	3/20/08	75	Last day to file ballot arguments with City Clerk

If you have questions, please contact the Office of the City Clerk at (619) 533-4025.

**ITEM-251: Notice of Pending Final Map Approval – La Palma.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “La Palma” (T.M. No. 13846/PTS No. 140198), located on the south side of La Palma Street between Fanuel Street and Gresham Street in the Pacific Beach Community Plan Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-252: **Notice** of Pending Final Map Approval – Carmel Valley Neighborhood 10 Units 5B and 12B South.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Carmel Valley Neighborhood 10 Units 5B and 12B South” (T.M. No. 232063/PTS No. 133222), located adjacent to Carmel Mountain Road westerly of Furlong Place in the Carmel Valley Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-253: **Notice** of Pending Final Map Approval – Black Mountain Ranch East Clusters Unit No. 1.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Black Mountain Ranch East Clusters Unit No. 1” (T.M. No. 99-1054/PTS No. 87849), located northeasterly of Carmel Valley Road and Camino Del Sur in the Black Mountain Ranch Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-254: **Notice** of Pending Final Map Approval – Carmel Valley Neighborhood 10 Unit 9 South.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Carmel Valley Neighborhood 10 Unit 9 South” (T.M. No. 232063/PTS No. 134793), located on the south side of Carmel Mountain Road easterly of Carmel Creek Road in the Carmel Valley Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-255: **Notice** of Pending Final Map Approval – 7538 Draper Avenue.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “7538 Draper Avenue” (T.M. No. 356243 PTS No.142470), located on the west side of Draper Avenue north of Pearl Street in the La Jolla Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-256: **Notice** of Pending Final Map Approval – Stella Condominiums.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Stella Condominiums” (T.M. No. 240730/PTS No. 85200), located on the southwest corner of Hancock Street and Wright Street, in the Midway-Pacific Highway Community Plan Area in Council District 2, a copy of which is available for

public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

**ITEM-257: Notice of Pending Final Map Approval – Carmel Valley Neighborhood 10 Unit 2A South.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Carmel Valley Neighborhood 10 Unit 2A South” (T.M. No. 232063/PTS No. 133224), located at the southerly terminus of Briarlake Woods Drive, southeasterly of Carmel Mountain Road and Carmel Country Road in the Carmel Valley Community Plan Area in Council District 1, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.

(2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.

(3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

**REPORT OUT OF CLOSED SESSION:**

None.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Council President Pro Tem Madaffer at 4:36 p.m. in honor of the memory of:

Robert Burgreen at the request of Council Member Atkins; and  
D'Maj Tyrone Smith at the request of Council Member Young.

FILE LOCATION:

AGENDA

COUNCIL ACTION:

(Time duration: 4:30 p.m. - 4:36 p.m.)