

DATE ISSUED: June 8, 2005 REPORT NO. 05-124

ATTENTION: Honorable Mayor and City Council
Docket of June 14, 2005

SUBJECT: Appeal of Environmental Determination for T-Mobile (Cingular) –
St. David’s, PTS No. 19148. Council District 6.

REFERENCE: Planning Commission Report No. PC-04-173

OWNER: Rector Wardens and Vestry Saint David’s Parish

APPLICANT: T-Mobile (formerly Cingular Wireless)

SUMMARY

Issues – Should the City Council AFFIRM the Planning Commission’s November 18, 2004 certification of Negative Declaration No. 19148 for T-Mobile (Cingular) -St. David’s, Project No. 19148?

Manager’s Recommendation: Deny the appeal and uphold the certification for Negative Declaration No. 19148.

Planning Commission Recommendation – On November 18, 2004, the Planning Commission voted 4-3 to approve the project and certify Negative Declaration No. 19148. Chairperson Lettieri, Commissioners Steele and Chase voted nay.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared and completed Negative Declaration No. 19148 for this project.

Fiscal Impact – All costs associated with processing this appeal are paid from a deposit account maintained by the applicant.

Code Enforcement Impact - None with this action.

BACKGROUND

The proposed project for which Negative Declaration No. 19148 has been prepared and previously certified by the Planning Commission on November 18, 2004, is a wireless communication facility consisting of a new 30-foot high monument structure housing 3 panel antennas and a new 162-square-foot equipment enclosure to be located at St. David's Episcopal Church at 5050 Milton Street. The 1.46 acre project site is zoned RS-1-7 (single-unit residential) and is designated 'School Site' and "Low Density Residential" within the Clairemont Mesa Community Plan. The project site is surrounded by residential development. The existing church complex was approved through a Conditional Use Permit (CUP) in 1995.

The wireless communication project was approved by staff on July 9, 2004 and was appealed by a group of neighbors concerned with issues including: aesthetics, noise, inappropriate use, design, health, inconsistencies with previous decisions on the church CUP, and possible impact on property values. After receiving the staff report and testimony from the appellants and interested parties on November 11 and November 18, 2004, the Planning Commission voted 4-3 to uphold staff's decision to approve the project and certify the Negative Declaration. On December 1, 2004, three of the original appellants appealed the Planning Commission's certification of the Negative Declaration.

An Environmental Initial Study was conducted and it was determined that the T-Mobile (Cingular) St. David's project would not have a significant environmental effect and a Negative Declaration was prepared. The document discussed health and safety, land use, visual quality and noise issues as potential issues. All of these issues were analyzed and a full disclosure was provided as part of the Negative Declaration. No public comment was received during the public review period.

CEQA Requirements for Environmental Documents

Pursuant to Section 21080 (c) of the California Public Resources Code regarding CEQA:

If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

- (1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.*
- (2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposal made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.*

CEQA Definition of Substantial Evidence

As defined in Section 15384 of the CEQA Guidelines:

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Staff's analysis, to determine that the Cingular St. David's project would not have a significant effect on the environment, was based on substantial evidence that included facts and documentation based on reasonable assumptions predicated upon facts. The Planning Commission approval, upon completion of the Initial Study, determined that no significant impacts would result from the proposed development, no mitigation would be required, and that a Negative Declaration was properly prepared in accordance with CEQA.

Appeal to City Council

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, the appeal process applies only to the environmental document. The Planning Commission's decision regarding the Neighborhood Use Permit, which was the result of an appeal of a staff decision to approve the project, is not appealable to the City Council.

Appeal Issues

The Negative Declaration was appealed on the basis of: 1) factual error concerning impact on humans and the environment; conflict with other matters and new information concerning: noise; decay of environmental quality; the environmental impact of antennas; and future collocation of antennas.

1) Factual Error Concerning Impact on Humans and Environment: This issue, related to the impact of the wireless facility on humans and the environment, has to do with the model radio frequency (RF) study that was submitted with the project and attached to the Planning

Commission Report. The appellant challenges information contained in the model study submitted by Cingular and prepared by Jerrold T. Bushberg, PhD. In light of the fact that the city is prohibited from basing decisions on wireless facilities on RF emissions, the city is limited to imposing reasonable requirements upon the applicant to demonstrate its facility does not exceed the Federal Communication Commission (FCC) standards. It is the city's objective to provide as much information as possible to keep the public informed about RF and as such, both the model study and the Negative Declaration provide general and specific information on the effects of RF emissions specific to the St. David's project. The following information is contained in the Negative Declaration, which discloses information on radio frequency:

EMF and Wireless Telephone Facilities

On February 8, 1996, the Telecommunications Act of 1996 was signed into law. Section 740 of the Act states as follows: "No state or local government or instrumentality thereof may regulate the placement, construction, and modification of 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."

Communication antennas emit varying levels of radio frequency (RF) energy. Below a certain threshold of RF power there is virtually no danger at any distance or direction from the transmitting antenna. Above that threshold, the installation is generally designed to ensure that the areas in which people are likely to be found are exposed to a minimum and safe level of RF energy. The American National Standards Institute (ANSI), and the Institute of Electrical and Electronic Engineers (IEEE) have established the standard for safe exposure levels of RF energy for wireless facilities. RF emission levels are usually expressed and measured as a "power density" which is described in terms of power per unit area. This is the power which flows outward from the transmitter and passes through a given area. Because the intensity of radiation diminishes at greater distances from the source, the exposure, even within the "beam," is reduced, and at sufficient distance presents no exposure danger. The accepted standard for safe exposure to RF energy from the proposed type of facility is 580 microwatts per square centimeter ($\mu\text{W}/\text{cm}^2$). The exposure level associated with most cellular facilities is about 0.01% of the accepted standard, or $5.8 \mu\text{W}/\text{cm}^2$ at 50 feet, which is well below the established safety level. If antennas would be placed in conjunction with other existing antennae at the same location, FCC rules require the total exposure from all facilities to fall within the guideline limits.

In accordance with the information contained in the Negative Declaration, the Bushberg study, which is based on worst case scenario calculations, illustrates that the maximum exposure from this facility would not result in power densities in excess of $6.0 \mu\text{W}/\text{cm}^2$ at any publicly accessible location. The conclusion is that the maximum exposure from this facility would be more than 160 times lower than the FCC public exposure standards. The wireless industry is licensed by the FCC and is required to comply with the FCC established standards for safe exposure to RF.

2) Noise

Due to the utilization of air conditioning units, a noise analysis was prepared for the project by URS, which concluded that the project would comply with the City's required night time limit of 40 dBA L_{eq} . San Diego Municipal Code Chapter 5, Article 9.5, Division 4 specifies limits for noise control. Sound limits from the air conditioning units shall not exceed the levels specified in the code, which are 50 dBA L_{eq} from 7 AM to 7 PM, 45 dBA L_{eq} from 7 PM to 10PM and 40 dBA L_{eq} from 10 PM to 7 AM. The equipment enclosure is proposed to be located on the eastern side of the existing church along Burgener Boulevard and will be designed to match the adjacent buildings. The air conditioning units are proposed on top of the enclosure and will be screened by a 7-foot high stucco parapet designed as part of the structure.

Although the air conditioning units would operate intermittently, the URS noise evaluated a worst case scenario assuming the air conditioning units operated 24 hours per day. The study was conducted by measuring another on-air Cingular site which determined a source sound level of 64 dBA L_{eq} at a distance of 10-feet for one unit operating. The north property line of the St. David's site is 53-feet from the shelter, the south property line is 183-feet from the shelter, the east property line is 31-feet from the shelter and the west property line is 377-feet from the shelter. Based on these distances, the calculated sound level at the property lines would be 40 dBA L_{eq} at the north property line, 39 dBA L_{eq} at the east property line and less than 35 dBA L_{eq} at the west and south property lines. As the Negative Declaration states, these levels are in compliance with the City of San Diego's required night time limit of 40 dBA L_{eq} .

The appeal states that the air conditioning units will generate a night time noise level of 47.5 dBA L_{eq} . However, based on the URS study, the air conditioning units would generate a calculated sound level at the north property line of 40 dBA L_{eq} . The existing ambient noise level on the eastern property line is 46.6 dBA L_{eq} . The study calculates that the air conditioning units in addition to the existing ambient noise level would result in a noise level of 47.5 dBA L_{eq} or .9 dBA L_{eq} above the existing noise level. The minimum change in the sound level of individual events that an average human ear can detect is approximately 3 dBA L_{eq} , therefore, any increase in noise would be negligible. As stated previously, the project is in compliance with the maximum 40 dBA L_{eq} noise level between the hours of 10 PM and 7 AM. It is important to note that the noise study assumed a worst case scenario with the air conditioning units operating 24 hours per day, 7 days a week when in reality they will operate only when the enclosure reaches certain temperatures.

3) Decay of Environmental Quality

The appeal states that pursuant to Chapter 6, Article 9, Division 1, subsection (b), of the San Diego Municipal Code, the project "impacts all that is healthful and pleasing to the senses and intellect of humans".

The Significance Determination Thresholds used by the City of San Diego for consideration of projects being reviewed under CEQA identifies impacts when a project would block public views from designated open space areas, roads, or parks or to significant visual landmark or scenic vistas. The proposed project would not result in such an impact as no designated view corridor is located on or adjacent to the site. A project may result in a significant impact if it

were determined to severely contrast with the surrounding neighborhood character through among other things, height, bulk, or architectural style. The project is designed to integrate with the church architecture. The antennas are completely enclosed within the monument structure and the equipment enclosure is designed to match the adjacent building. The project was determined to be in compliance with all development regulations of the zone and the community plan.

4) Environmental Impact of Antennas

The appeal states that the Negative Declaration did not “incorporate the latest pertinent technical or scientific information” and continues by stating that the document must be “factually accurate and consistent.

The Negative Declaration disclosed information regarding the Telecommunication Act and the Federal compliance guidelines. Please refer to the discussion in section 1 for further information.

5) Future Collocation of Antennas

The appeal states that the collocation of future antennas at the project location “needs to be evaluated as a whole.”

Per CEQA Guidelines Section 15355 “Cumulative impacts” refer to two or more individual effect which, when considered together, are considerable or which compound or increase other environmental impacts as follows:

- (a) The individual effects may be changes resulting from a single project or a number of separate projects.
- (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

CEQA requires a discussion of cumulative impacts when they are significant. The determination of cumulative significance calls for reasonable effort to discover and disclose other related projects. The direct and indirect impacts of each related project need to be identified and looked at comprehensively. CEQA provides various alternative methods to achieve an adequate discussion of cumulative impacts. Generally, the following apply for determining significant, cumulative impacts: 1) if there are known, documented, existing significant impacts occurring in a community, additional increments would exacerbate the impact; 2) if a community plan and/or precise plan identifies cumulative impacts in the community-wide Environmental Impact Report, individual project which contribute significantly to the community-wide impacts would be considered cumulatively significant; and 3) a large-scale project (usually regional in nature) for which direct impacts are mitigated by the collective number of individual impacts results in a

cumulative impact. The proposed project was researched and no direct or indirect impacts were identified, nor would the proposed project result in any cumulative impacts. Therefore, a Negative Declaration was determined to be the appropriate environmental document to prepare for the project. CEQA Guidelines Section 15064 (f) states that the decision as whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. 15064 (f)(3) state that if the lead agency determines that there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration.

The City has received no other applications for wireless facilities at this location. The Negative Declaration analyzed the Cingular project as a stand alone project and would analyze any future projects proposed at the site when they are submitted. Model studies submitted at that time would have to take cumulative RF emissions into consideration. Those studies would also be available to the public for review.

CONCLUSION

The primary focus of the appeal was the environmental effects of RF emissions, a subject the City has no permitting authority over, however, the Negative Declaration did discuss potential health and safety issues. The Initial Study did not identify any potential significant environmental impacts associated with the project; therefore, a Negative Declaration was prepared in accordance with the California Environmental Quality Act (CEQA). The appeal did not address the validity or adequacy of the environmental document, consequently, the relevancy of the appeal is difficult to justify. Staff therefore, recommends affirming the Planning Commission's certification of Negative Declaration No. 19148, under Section 21080 (c) of the State CEQA Guidelines

ALTERNATIVE

1. Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision maker, with any direction or instruction the City Council deems appropriate.
2. Grant the appeal and make a superceding environmental determination or findings.

Respectfully submitted,

Gary Halbert
Development Services Director

Approved: Ellen Oppenheim
Acting Deputy City Manager

KLA

Attachments:

1. [Project Location Map](#)
2. [Appeal Application](#)
3. [Ownership Disclosure Statement](#)

Rev 9-1-04 dcj