



THE CITY OF SAN DIEGO

## REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** November 26, 2008      **REPORT NO. PC-08-144**

**ATTENTION:** Planning Commission, Agenda of December 4, 2008

**SUBJECT:** T-MOBILE SOLEDAD - PROJECT NO. 127096. PROCESS 2 APPEAL TO PLANNING COMMISSION.

**OWNER/** City of San Diego/  
**APPLICANT:** Omnipoint Communications DBA T-Mobile USA, Inc.

### SUMMARY

**Issue(s):** Should the Planning Commission approve or deny an appeal of the Development Services Department's decision approving a Wireless Communication Facility (WCF) in the public right-of-way near the south-east corner of Thunderbird Lane and Soledad Road in the La Jolla community planning area?

### **Staff Recommendation:**

1. **Review and consider** Mitigated Negative Declaration No. 127096, previously certified by the Development Services Department; and
2. **Deny** the appeal and **approve** Neighborhood Use Permit (NUP) No. 436463.

**Community Planning Group Recommendation:** The La Jolla Community Planning Association voted to recommend denial of this project 10-1-1 in July, 2007 (Attachment 11).

**Environmental Review:** Mitigated Negative Declaration No. 127096 was prepared for WCF's proposed in the public right-of-way throughout the City. The document was previously certified by the Development Services Department.

**Fiscal Impact Statement:** T-Mobile is the financially responsible party for this project and is responsible for costs associated with processing this project.

**Code Enforcement Impact:** None.

**Housing Impact Statement:** Not applicable.

## **BACKGROUND**

Wireless Communication Facilities (WCF) are permitted throughout the City as a separately regulated use by the WCF regulations, Land Development Code (LDC) section 141.0420. This project was deemed complete April 7, 2007 and is subject to the previous regulations, "Communication Antenna Regulations," formerly under LDC 141.0405 (Attachment 21). In this case, the process level (Process 2) and approval (Neighborhood Use Permit) would be the same under both the current regulations (LDC 141.0420) and the previous regulations (LDC 141.0405). The difference between the two sets of regulations for projects proposed in the public right-of-way is "use." In 141.0420 (new code) the permits required are determined based on adjacent use, while 141.0405 (old code) is based on the zone. Council Policy 600-43 assigns preference levels to the locations of WCF's. This policy encourages that these facilities be located away from residential uses. Typically, WCF's proposed in non-residential zones, such as commercial or industrial, are considered more preferable than those located in residential zones. To encourage carriers to locate in non-residential zones, projects proposed in those areas are permitted with a lower process level (such as a Limited Use). Since this facility is proposed in the public right-of-way with below-ground equipment adjacent to a residential use, a Neighborhood Use Permit, Process 2 is required.

T-Mobile's technical analysis (Attachments 5, 6, and 7) demonstrates the need for this facility. Other locations were explored, but determined to not meet T-Mobile's coverage objectives.

The City is limited by both State and Federal law as to the regulations imposed on wireless carriers proposing projects in the public right-of-way (Attachment 22). At the Federal level, the Telecommunications Act of 1996 limits local jurisdiction's authority to approve or deny applications based on health concerns. At the State level, the City is limited by the Public Utilities Code. Section 7901 states that, "municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." This means that the City may regulate when construction takes place, how the facility is installed, and the location of the facility as long as the carrier's coverage objectives are met. The City is limited in regulating the aesthetic characteristics of these facilities.

## **DISCUSSION**

### **Project Description:**

This project proposes the installation of a 30 foot high light standard with three panel antennas and one GPS antenna attached to the pole. Equipment associated with the antennas would be located in an underground vault, with the exception of two air vents and a telco/power meter pedestal.

## **General Plan Analysis:**

The City's General Plan requires that wireless facilities be minimally visible and be visually respectful and compatible with the community. The antennas associated with this facility are proposed to be painted and textured to match the light standard on which they are mounted. The light standard will function as both a street light and a wireless facility. Based on the project's design, it is compatible with the City's General Plan.

## **Environmental Analysis:**

A Mitigated Negative Declaration (MND) was prepared for this project to address concerns related to noise. Specific measures are outlined in the Mitigation, Monitoring, and Reporting Program to mitigate potential noise impacts.

## **Appeals**

Two appeals of Staff's decision to approve Neighborhood Use Permit 436463 have been filed for this project. On October 1, 2008 Joseph LaCava, President of the La Jolla Community Planning Association, filed an appeal (Attachment 9) and on October 3, 2008 Michael and Rosa Lee Saliba also filed an appeal (Attachment 10). Both of the appeals cover similar issues which are discussed below, with Staff's response following each appeal issue.

- |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Appeal Issue 1:</u><br><i>Staff Response:</i> | "The application cannot be processed as a NUP."<br>A WCF in the public right-of-way adjacent to a residential use with underground equipment may be processed with a Neighborhood Use Permit, per LDC 141.0405.                                                                                                                                                                                                                                                                                 |
| <u>Appeal Issue 2:</u><br><i>Staff Response:</i> | "If the NUP is a valid process, the findings can not be made."<br>Staff has prepared a Resolution (Attachment 15) which makes the findings for a Neighborhood Use Permit in the affirmative.                                                                                                                                                                                                                                                                                                    |
| <u>Appeal Issue 3:</u><br><i>Staff Response:</i> | "The applicant has not exhausted all alternatives that would be less intrusive on the single family neighborhood." / "The investigation for alternative sites has not been exhausted."<br>T-Mobile has prepared a Site Justification Letter (Attachment 5), Coverage Maps (Attachment 7), and a Justification Map (Attachment 6) to demonstrate their need for this particular location. T-Mobile has stated that no other locations within their "search ring" are feasible for this facility. |
| <u>Appeal Issue 4:</u><br><i>Staff Response:</i> | "Not consistent with the City's <i>Wireless Communication Facility Guidelines</i> ..."<br>Page 11 of the guidelines (Attachment 19) discuss public right-of-way installations and the proposed facility complies with the guidelines.                                                                                                                                                                                                                                                           |

**Appeal Issue 5:**

“The application was denied by the La Jolla Community Planning Association (LJCPA), July 2007.”

**Staff Response:**

Staff is required to base a decision to approve or deny the proposed NUP based on the regulations of the LDC. As the project complies with the applicable regulations, Staff was not able to deny the project based on the LJCPA’s recommendation (Attachment 11).

**Conclusion:**

This project complies with the City’s Land Development Code, the Communication Antenna regulations, and the applicable land use plans. Therefore, Staff recommends approval of this project.

**ALTERNATIVES**

1. **Approve Neighborhood Use Permit No. 436463, with modifications.**
2. **Deny Neighborhood Use Permit No. 436463, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,



Mike Westlake  
Program Manager  
Development Services Department



Alexander Hempton, AICP  
Associate Planner  
Development Services Department

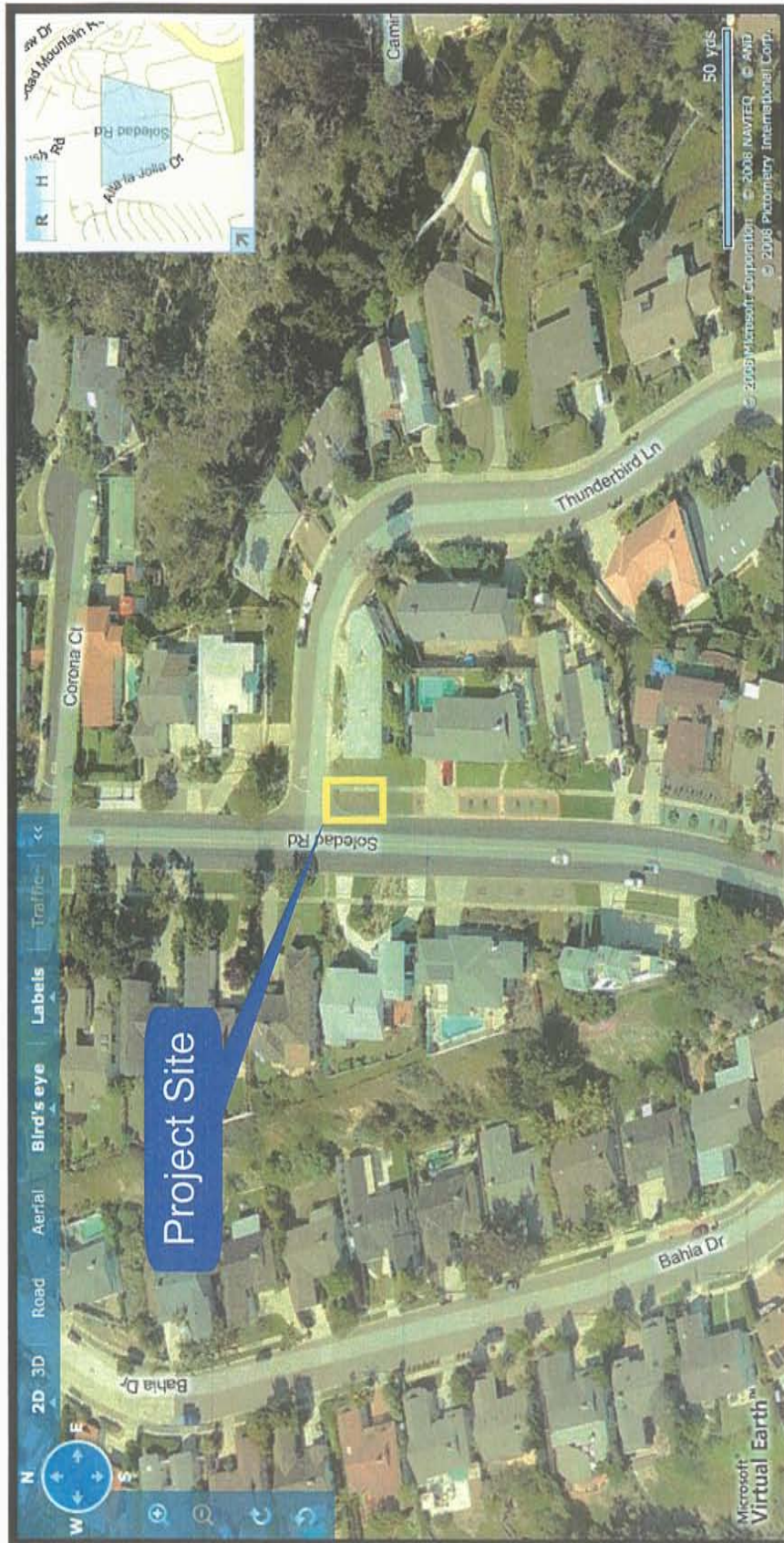
KB/AFH

**Attachments:**

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Site Justification Letter
6. Justification Map
7. Coverage Map
8. Photo Simulation
9. La Jolla CPG Appeal
10. Saliba Appeal
11. La Jolla Community Planning Association Minutes
12. Survey of Neighborhood Light Standards
13. Site Photos



14. Permit
15. Resolution
16. Right to Appeal Environmental Document
17. Planning Commission Appeal Hearing Notice
18. Notice of Decision (Staff Decision to Approve)
19. Wireless Communication Facility Guidelines
20. Petition
21. LDC 141.0405, Communication Antennas
22. Overview of State and Federal Law and Telecom in Right-of-Way
23. Memorandum of Law, City Attorney
24. Council Policy 600-43
25. Project Plans

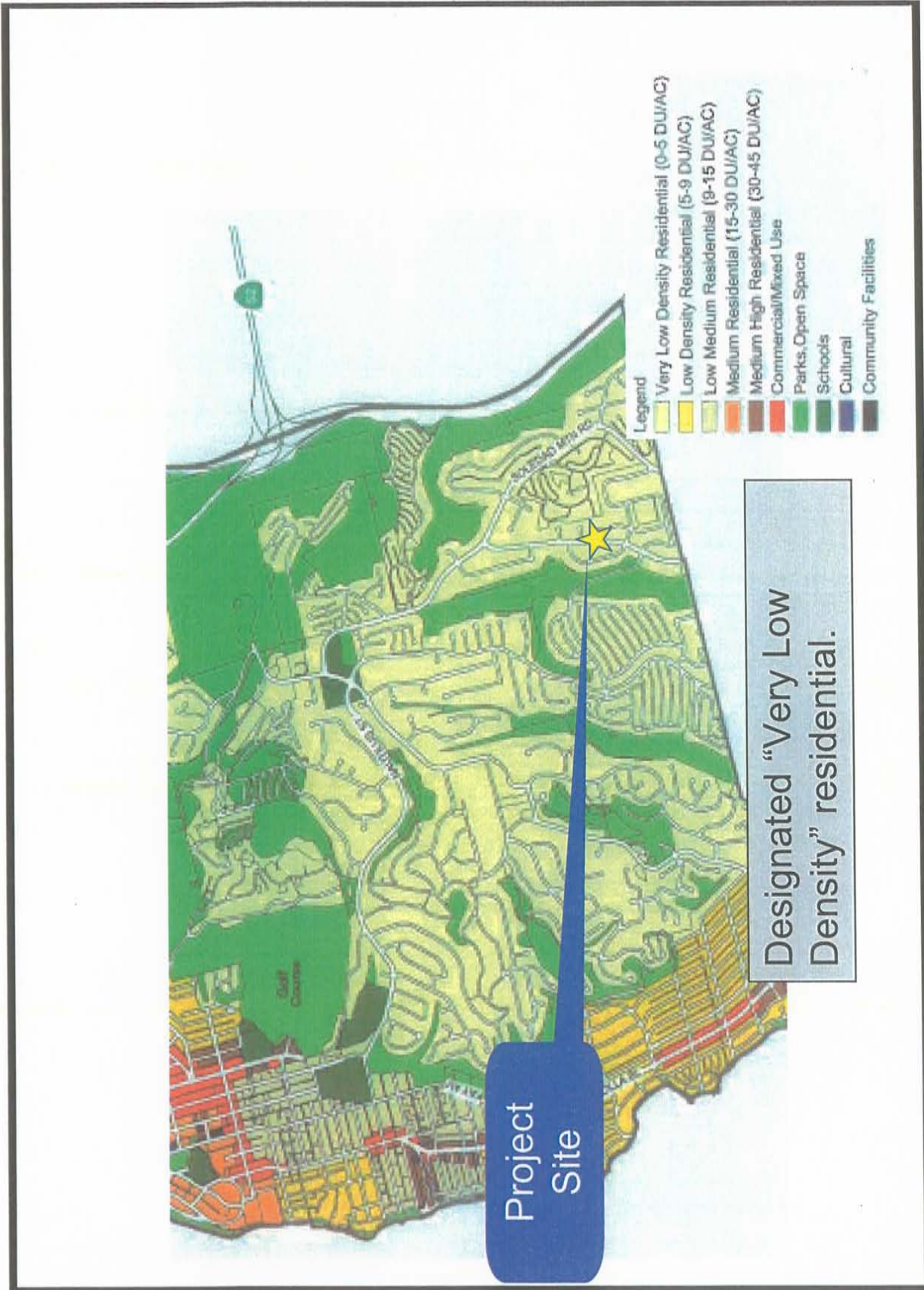


## Aerial Map

T-Mobile - Soledad - Project Number 127096

Public Right-of-Way near the South-East Corner of Thunderbird Lane and Soledad Road

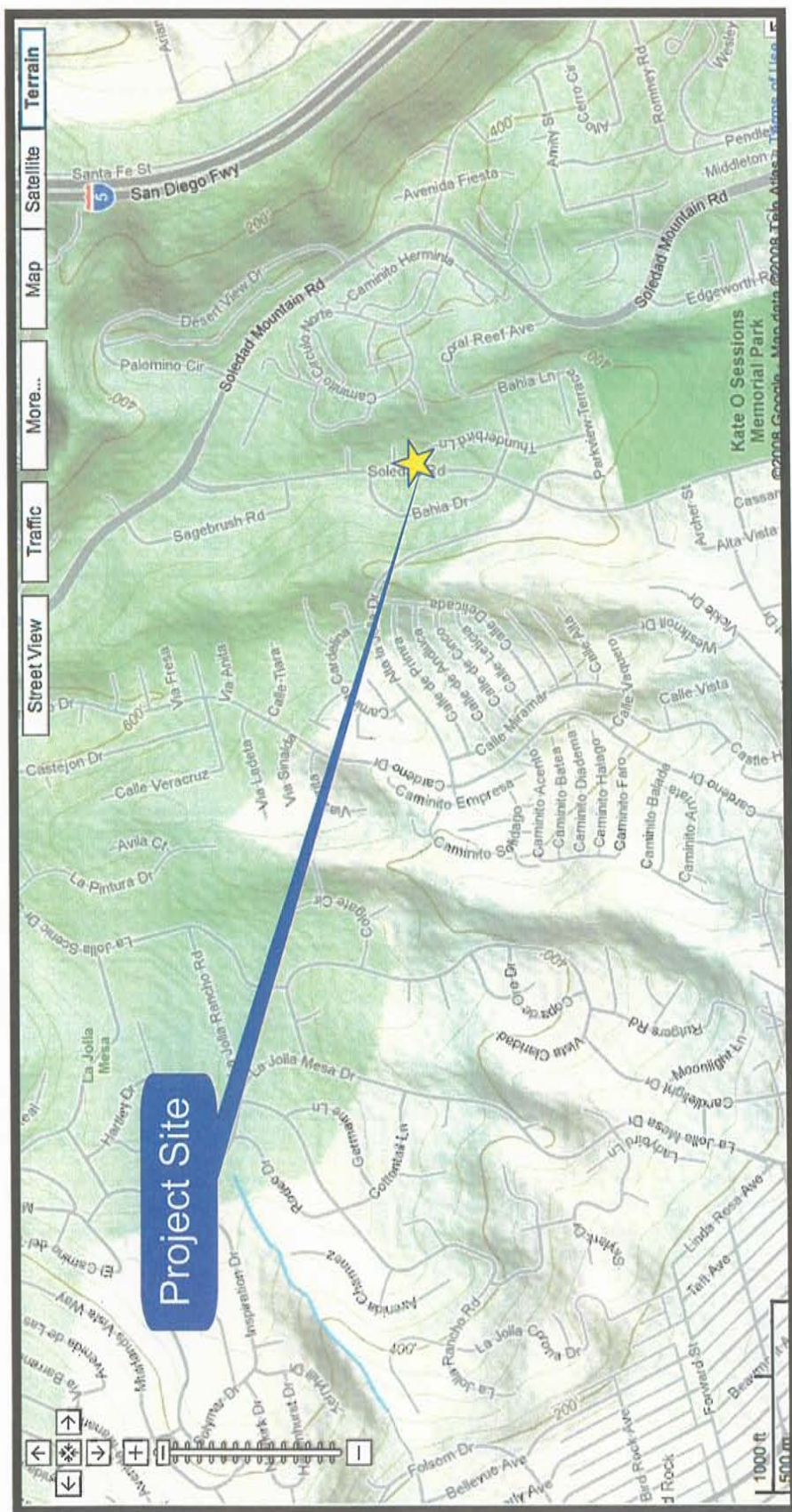




## Community Plan Land Use Designation

T-Mobile - Soledad - Project Number 127096





## Location Map

T-Mobile - Soledad - Project Number 127096

Public Right-of-Way near the South-East Corner of Thunderbird Lane and Soledad Road



<b>PROJECT DATA SHEET</b>		
<b>PROJECT NAME:</b>	T-Mobile – Soledad ROW	
<b>PROJECT DESCRIPTION:</b>	Wireless Communication Facility (WCF) consisting of three (3) panel-type antennas mounted on a new street light with a maximum height of 30'. Associated equipment is proposed to be located within an adjacent underground vault.	
<b>COMMUNITY PLAN AREA:</b>	La Jolla	
<b>DISCRETIONARY ACTIONS:</b>	Neighborhood Use Permit (Process 2)	
<b>COMMUNITY PLAN LAND USE DESIGNATION:</b>	Low Density Residential	
<p align="center"><b><u>ZONING INFORMATION:</u></b></p> <p align="center"><b>ZONE:</b> RS-1-4</p> <p align="center"><b>HEIGHT LIMIT:</b> 30 feet</p> <p align="center"><b>FRONT SETBACK:</b> n/a</p> <p align="center"><b>SIDE SETBACK:</b> n/a</p> <p align="center"><b>STREETSIDE SETBACK:</b> n/a</p> <p align="center"><b>REAR SETBACK:</b> n/a</p>		
<b><u>ADJACENT PROPERTIES:</u></b>	<b>LAND USE DESIGNATION &amp; ZONE</b>	<b>EXISTING LAND USE</b>
<b>NORTH:</b>	Residential RS-1-4	Residential
<b>SOUTH:</b>	Residential RS-1-4	Residential
<b>EAST:</b>	Residential RS-1-4	Residential
<b>WEST:</b>	Residential RS-1-4	Residential
<b>DEVIATIONS OR VARIANCES REQUESTED:</b>	None.	
<b>COMMUNITY PLANNING GROUP RECOMMENDATION:</b>	In July, 2007 the La Jolla Community Planning Association voted 10-1-1 to deny this project.	



**SITE JUSTIFICATION LETTER  
FOR  
T-MOBILE INSTALLATION  
AT SE CORNER OF SOLEDAD RD. & THUNDERBIRD LN.  
SAN DIEGO, CA 92037  
SD7007B SOLEDAD ROAD ROW**

**Site Location Justification:**

The site selection process consists of the following steps:

1. The RF Engineer is made aware of a coverage and/or capacity need in a geographical area.
2. The RF Engineer designs a general solution to solve the need including location, height of antennas, antenna count and the number of radios desired.
3. A search ring is issued to the real estate arm of the deployment department depicting an area within a radius to be investigated for a potential cell site.
4. The real estate department reviews potential sites that meet the general criteria set by the RF Engineer.
5. The project planner reviews the potential sites for conformance to the existing ordinances and municipal codes.
6. The sites are prioritized and a primary site is chosen.
7. A team of experts in the field of radio frequency, real estate, planning and zoning and construction visit the site and determine the design and ability to construct the potential site.
8. Zoning drawings are prepared and submitted to the local jurisdiction.
9. Once the local jurisdiction approves the site a building permit is obtained and the facility is constructed and turned on.

In the case of the submitted search area applied to this site development permit the search area is located in an area of primarily residential development and includes an area of open space. The proposal to install a light fixture with attached antennas offers a solution that meets the carrier's stated coverage needs as well as providing a significant enhancement for the surrounding community by potentially replacing the existing street light which is currently mounted to a wooden utility pole. The radio and power equipment installation within an underground vault will have a negligible impact with respect to concerns about aesthetics or noise.

**Site Design Justification:**

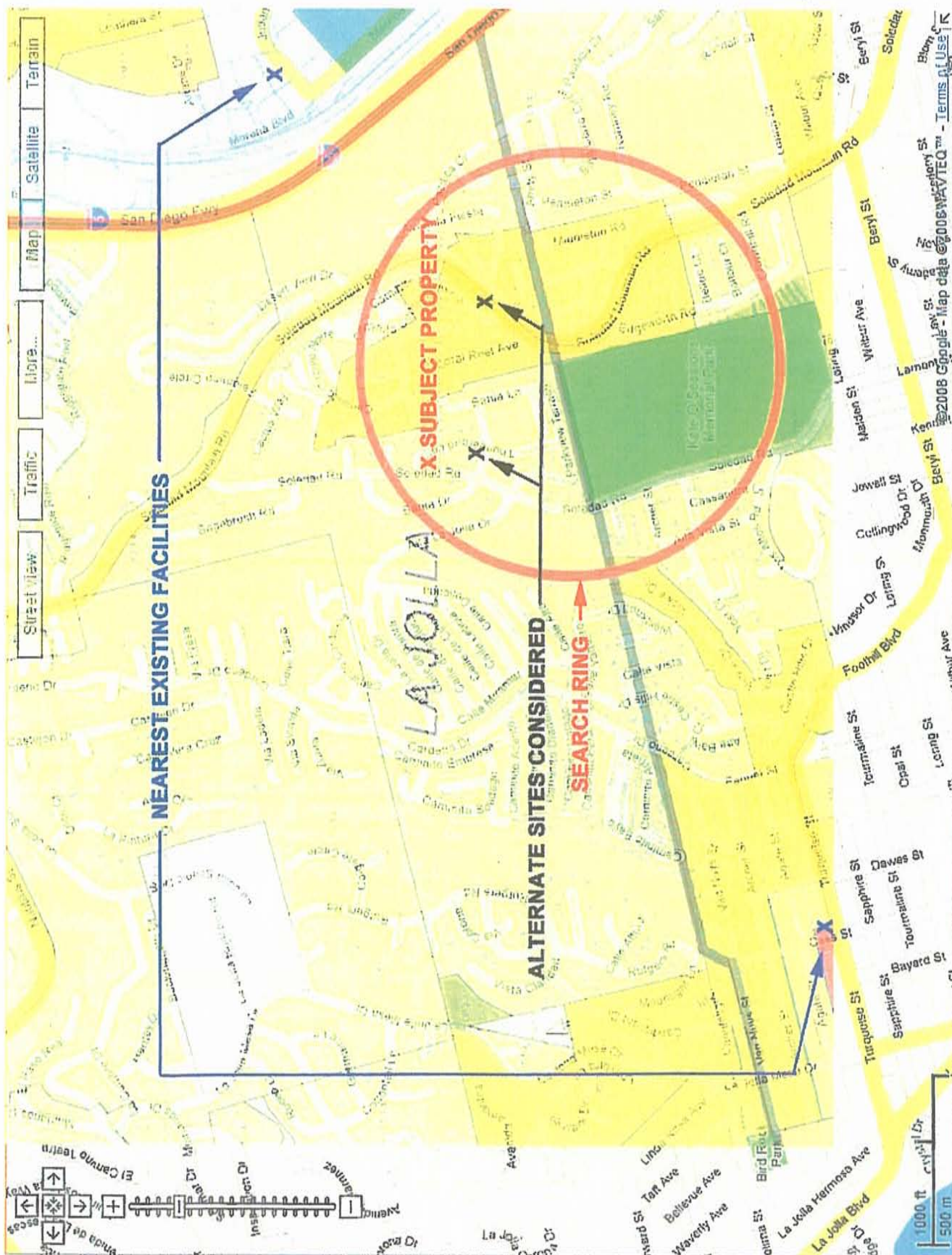
The proposed facility is designed to address an existing deficiency in coverage (as shown in the included coverage maps) along Soledad Road and the surrounding residential areas to all sides. The existing facilities within the carrier's network are not capable of adequately providing coverage to this area. The site is intended as a fill-in site, which along with the existing and proposed carrier sites in the general area will provide greatly improved coverage continuity.

The site design was chosen for its minimal impact to the overall aesthetics of the community, and the opportunity to integrate the facility as part of a beneficial enhancement to the community.

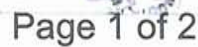
**Potential Site Investigation:**

The search ring for this installation exists in an area of primarily residential development, and also includes an area of open space (Kate Sessions Park). No known commercial development exists within the search ring. There are no existing or proposed telecom facilities within the search ring or immediate radius, thus there is no opportunity for co-location. The entire area within the search ring was investigated for suitability with respect to coverage needs and development potential. Although located within the search ring, the area adjacent to the OP-1-1 zone (Kate Sessions) was deemed by the RF Engineer as unsuitable for meeting coverage needs due to (1) a difference of more than 100' elevation between the highest end of the open space area and the proposed location (and primary coverage objective), and (2) the area being located with a less desirable proximity to existing and proposed facilities within the carrier's network than the proposed location. It was determined that a facility located in the area adjacent to the open space would not sufficiently address the objective of providing coverage along Soledad Road (below the intersection with Soledad Mountain Road) and the surrounding residential areas on all sides of Soledad Road. The alternate sites reviewed for this installation and identified by the RF Engineer as potentially viable back-up candidates were public right-of-way sites adjacent to residential areas similar to the proposed location. Specifically (as shown in the included Justification Map), (a) the ROW at the northwest corner of Thunderbird Lane and Bahia Way, and (b) the ROW area adjacent to the intersection of Soledad Mountain Road and Caminito Preciosa. Both of the alternate sites were determined to be inferior for meeting coverage objectives to the proposed site, and neither alternate site would meet the qualifications for being a higher preference location for a telecom facility. The only other identified alternative for suitably locating the facility within the coverage area would be to locate it within a residential property, which would be a lower preference location than the proposed site.

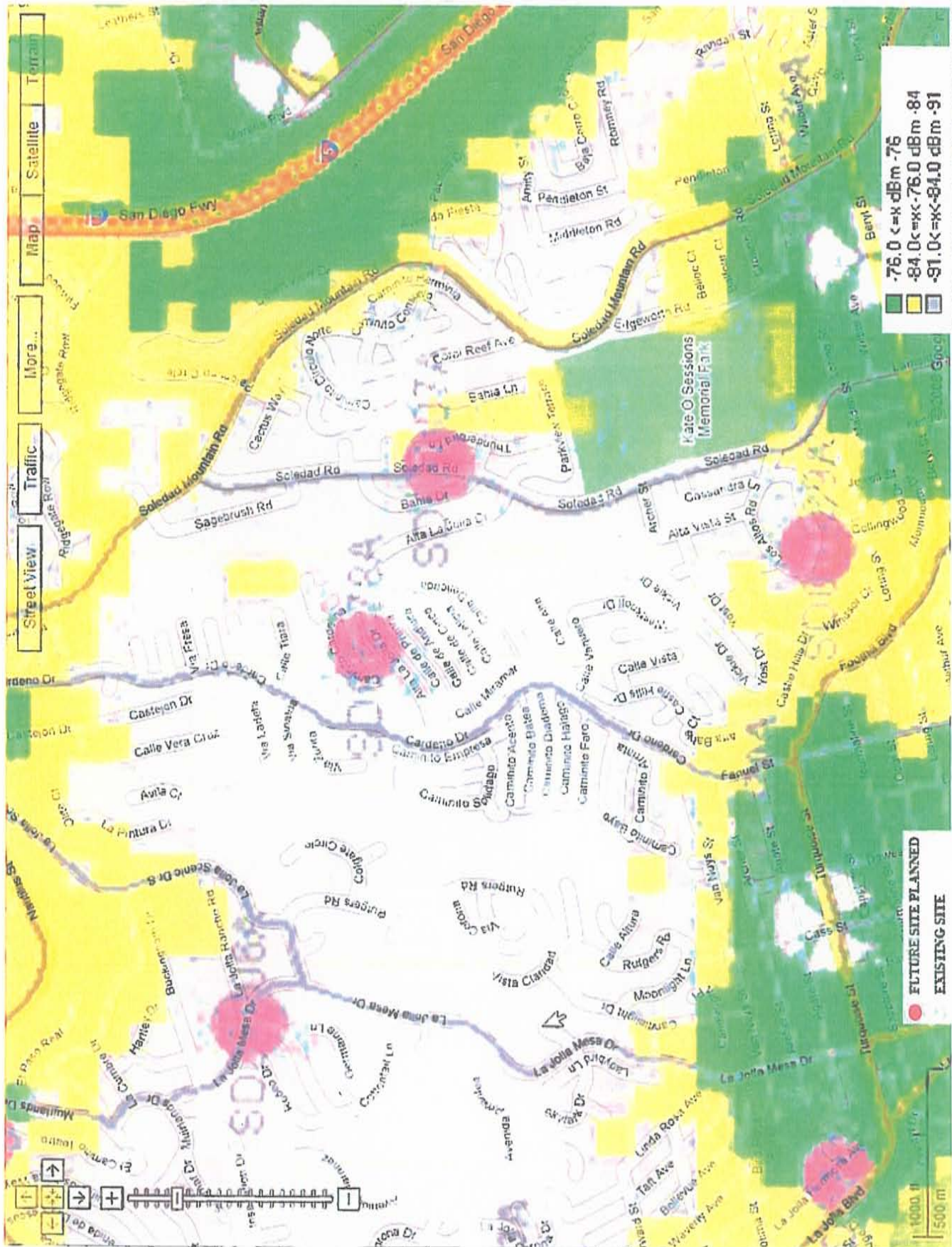












(WITHOUT) SUBJECT SITE COVERAGE



**SOLEDAD ROAD AND THUNDERBIRD LANE ROW  
LA JOLLA, CA**

**T Mobile  
SD 07007B**

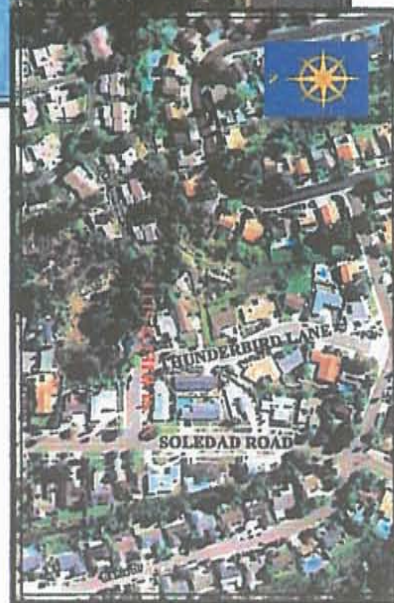
**LOOKING NORTHEAST TOWARD SUBJECT PROPERTY**



**SITE PRIOR TO INSTALLATION**



**SITE AFTER INSTALLATION**



**VICINITY MAP**



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

# Development Permit/ Environmental Determination Appeal Application

FORM  
**DS-3031**  
MARCH 2007

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  
La Jolla Community Planning Association (Joe LaCava, President)

Address City State Zip Code Telephone  
P. O. Box 889 La Jolla, CA 92038 858.456.7900

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

Mike Morganson, M&M Telecom, Inc., agent for T-Mobile

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Neighborhood Use Permit (NUP) / JO42-7653 / PN127096	September 26, 2008	Alex Hempton

Decision (describe the permit/approval decision):

APPROVAL of an application for a Wireless Communication Facility, 30-foot light std w/ 3 antennas attached to the top of the pole

**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.)

1. The application can not be processed as a NUP.

2. If the NUP is a valid process, the findings can not be made.

3. The applicant has not exhausted all alternatives that would be less intrusive on the single family neighborhood.

4. Not consistent with the City's "Wireless Communication Facility Guidelines"

and other issues that will be raised at the hearing.

The application was recommended for denial by the planning group (10-1-1, July 2007).

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

Signature: Joseph LaCava Date: 1 October 2008

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

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DS-3031 (03-07)



RECEIVED

ATTACHMENT 10

 City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 (619) 446-5210	OCT 03 2008 <b>Development Permit/ Environmental Determination Appeal Application</b>	<b>FORM DS-3031</b> MARCH 2007
	DEVELOPMENT SERVICES	

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  
Michael & Rosa Lee Saliba

Address City State Zip Code Telephone  
5582 Thunderbird Lane, La Jolla, CA 92037 (858) 864-8313

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

Mike Morganson, M&M Telecom, Inc., agent for T-Mobile

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: Neighborhood Use Permit (NUP) /JO42-7653PN127096	Date of Decision/Determination: September 26, 2008	City Project Manager: Alex Hempton
---------------------------------------------------------------------------------------------------------------	-------------------------------------------------------	---------------------------------------

Decision (describe the permit/approval decision):

Approval of applicant to install a Wireless Communication Facility, with above- and below-ground installations, and 30-foot pole with 3 attached antennae.

**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.)**

- The investigation for alternative sites has not been exhausted.
- There is a violation of Municipal Code for subject site selection.
- Inconsistent with San Diego City "Wireless Communication Facilities" guidelines.
- The application was denied by the La Jolla Community Planning Association, July 2007.
- Other considerations will be presented at the San Diego Planning Association hearing.

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

Signature:

*Michael & Rosa Lee Saliba*

Date:

*OCT 3, 2008*

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

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DS-3031 (03-07)

## **La Jolla Community Planning Association**

**President: Tim Golba Vice President: Lance Peto Secretary: Sherri Lightner**

### **REGULAR MEETING – July 5, 2007**

**Present:** Dave Abrams, Darcy Ashley, Orrin Gabsch, Lynne Hayes, Sherri Lightner, Phil McConkey, Marty McGee, Phil Merten, Michael Morton, Alice Perricone, Lance Peto, Robert Thiele, Ray Weiss, Rob Whittemore

**Absent:** Tim Golba, Todd Lesser, Mark Lyon, Paul Metcalf

**Late:** Abrams, Morton, Perricone, Weiss

#### **AGENDA ITEMS:**

**1. Welcome and Call to Order:**

**THE CHAIR, VICE PRESIDENT LANCE PETO, CALLED REGULAR MEETING TO ORDER 6:07 PM.**

**2. Request for Agenda Modifications**

- Add Item 5 to the Vice President's Report – Update on the Bylaws.
- Joe LaCava – Pull Items 10. B. – 3 through 7 from the agenda.

**3. Approval for the June 7, 2007 Minutes**

**Regular Meeting: No corrections were made.**

**APPROVED MOTION:** To approve the minutes for the Regular June 7, 2007 CPA Board. (McConkey/Hayes: 7-0-2) Abstentions: McGee and Thiele – Not present at the meeting.

**Affirmative Votes:** Ashley, Gabsch, Hayes, Lightner, McConkey, Merten, Whittemore

**Abstention:** McGee, Thiele

6:10 Morton and Weiss arrive.

**4. Vice President's Report – Lance Peto**

- 1.) CPC updates – No updates.
- 2.) Committee Appointments – The appointments (on the attached sheet) were presented.

**APPROVED MOTION:** The Board ratifies the CPA committee appointments. (Gabsch/Merten: 11-0-0)

**Affirmative Votes:** Ashley, Gabsch, Hayes, Lightner, McConkey, Merten, Morton, Weiss, Whittemore

**3.) Armstrong Residence Appeal and Hearing Date – Phil Merten**

On Thursday, July 12 at 9 AM, the Planning Commission will hear the variance application for the Armstrong Residence. At the Coastal Development Permit Review Committee (CDP) meeting the second week in June, the committee unanimously denied the variance request – not one of the four required findings could be made.

**4.) Children's Pool Lifeguard Tower update – Phil Merten**

The LJTC Parks and Beaches Committee (P&B) has been involved in communicating with City Staff re: the Children's Pool's Lifeguard station. The P&B meeting last week included participation of the CPA. The comments at the P&B meeting had a common theme. In order to give the lifeguards all the space and amenities they want and satisfy the community's desire for maximum physical and visual access at the site, the bulk of the station should be underground with the structures viewing functions the only thing above the ground. We need to begin to make the decision makers aware that we need an absolutely pristine solution for this beautiful site. With the seals this is the second most visited site in the City. We may need to fund raise to finance this. Want to slow this down so that we get a more acceptable design. The LJTC and CP are on the same page with this one.

- 5.) Bylaw Update – November 20, 2007 is the cut-off date for submitting revised bylaws for approval. The Bylaws committee will be reconvened shortly. Mr. Whittemore will be looking into the necessary changes. We want to get the revisions to the City ASAP. The committee remains at 18 members.**

**5. Treasurer's Report – Lynne Hayes**

**Previous ending balance: \$786.54 Collected at June Meeting: \$97.00 Expenses: \$51.64 Ending Balance: \$831.90**

**6. Public Comment**

The Chair announced that there are two time certain on the agenda: the City Attorney at 6:30 and UCSD at 7:00. We will take public comment until the time certain.

- **COMPACT** – No report – Gail Forbes not present.
- **Bird Rock Community Council** – Joe La Cava reported that July 19<sup>th</sup> is the date of the Taste of Bird Rock from 5 – 9 PM. Tickets are already on sale. They can be purchased at Bird Rock Coffee Roaster and the Bird Rock Mail Boxes Store. There are two construction projects underway in Bird Rock. Phase I (neighborhood traffic calming measures) will be completed by the end of August. Phase II will start in September and should be complete in 9 months. Long's has begun excavation.
- **UCSD Community Planner** – Anu Dehlouri – Agenda Item 12.

**Sheila Harden – Community Relations for CCDC (Center City Development Corporation).** Question – Why is not CCDC giving money back to the City of San Diego? Her answer is from Nancy Graham. Ms. Graham will come to one of our meetings to answer questions later this year. The loan money is Federal money, which the City cannot use. A repayment plan does exist. The City has chosen to keep their investment in CCDC – keeping the money in place. There are free tours on the 1<sup>st</sup> and 3<sup>rd</sup> Saturdays of the month from 10 AM to 12 Noon (619) 235-2222. Visit the website for additional information [www.ccdc](http://www.ccdc).

6:25 PM Abrams, Perricone

**Mary Coakley – Map Project Update** – The Preview of the Map event was a success – received \$55,000 from the Kumeyaay Nation. We hope to break ground in September with completion by Thanksgiving. We want to set up a website and are looking for a volunteer to help with this. The Map project will be at San Diego City Council on July 25. We would like the CP to send a letter of support for the project.

**MOTION:** The LJCPA President to send a letter to the City of San Diego expressing the LJCPA's strong support of the map project at the new restroom facility in Kellogg Park. (Merten/Ashley: 13-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Morton, Perricone, Thiele, Weiss, Whittemore

**Joy Sonyato (sp?)** – Expressed concern the Community Planning Groups (CPG) are in trouble. Would like to begin a dialogue with all of the CPG's

**Joe LaCava** – There seems to be a proliferation of vacation rentals in the single-family residential neighborhoods. Concern with the proliferation of commercial enterprises in the single-family neighborhoods.

**Orrin Gabsch** – The June meeting minutes we asked for the Noya Residence to be followed up on. Could we add it as an agenda item? Could the Parking Advisory Board be added as a regular agenda item to the CPA agenda? On July 19<sup>th</sup> the Park and Rec Board is conducting a citywide workshop on making the park requirements more flexible. Could the LJTC and CPA cooperate and make sure to attend?

**Mary Coakley** – We owe a huge debt to the Police, Lifeguard, and Park & Rec for the work they did on the 4<sup>th</sup> of July. After the fireworks Kellogg Park was a mess, but Park & Rec was out there at 5:30 AM the next morning and by 10 AM the Park was clean.

**Nancy Manno** – Request an agenda item be added for committee reports.

**Gentleman for the audience** – Does this group have any interaction with the PB (Pacific Beach) Planning Board? – Yes at the CPC meetings.

**Ed Ward** – Concern expressed about the Community Parking District Advisory Board's (CPD) 9 members and concern that 3 are from Promote La Jolla. Are there any members that are not on the PLJ Board? Response from Mr. McGee that other groups are represented.

**Darcy Ashley** – Comment about mini dorms.

**7. City of San Diego Planning Department: No report.****8. Keely Sweeney – CD 1 Representative for Council President Peters –**



**MINIDORMS** – on July 9 the San Diego City Council (SDCC) will be hearing 6 or 7 changes to the Municipal Code that DSD (Development Services Department) has been working on. If you have specific questions contact Ms. Sweeney.

**OVERSIZE VEHICLES** – Still working on the proposed ordinance. The 72-hour rule does not solve the problem. Attorney's office pointed out that Santa Barbara has had problems with enforcement because the signage was not sufficient.

**MOBILE BILLBOARDS** – Mobile billboards are on cars, trucks, airplanes, and possibly on the water. A City Attorney legal opinion will be sought on how to regulate them.

**TELECOMMUNICATIONS** – Jim Waring has requested a legal opinion on this matter.

**WATER & SEWER** – The SDCC has voted to return to bimonthly billing. Will go back to this in the spring of next year.

**Mr. Gabsch question on NEWSRACK ORDINANCE** – The ordinance is in effect now and the City will be ready to enforce soon. Response is complaint driven. Stickers that were to be placed on the permitted Newsracks are of concern because they may be peeled off. A suggestion from the audience was that the stickers could be scored with a razor blade to make removal/reuse of the stickers difficult.

**Mr. Merten question on LIFEGUARD TOWER** – Asked about the new design approach for the Children's Pool Lifeguard Tower. Scott Peters is worried about the timeline. They cannot hold off indefinitely. Hopefully when the architect comes back, it will be with a design, which is responsive to the community's concern. Mr. Beaver commented that about four years ago a committee of P&B was formed and chaired by Jerry Anderson. The committee attempted to minimize the footprint – not to the extent currently proposed but less than the City's original proposal. The City has now come back, ignoring all of that previous work to minimize the size. Mr. Whittemore asked what the timeline is for bonding – possibly the end of the year. The June ballot will include a Charter Amendment re: CPG's. Need to get the citizens to vote on the Charter. Mr. McGee wanted to know the timeline for bonding – Answer: there is no hard date. Mr. Weiss asked if a compromise on the design was possible. Not a question of the large ugly facility with the adequate sized lifeguard facilities. Hopes for a greatly improved project. Ms. Thorsen commented that the beach is unusable by people at present so there is no rush for the tower.

**MAYOR'S COFFEE** – The Mayor will host an open house coffee soon. The specifics will be available later.

9. Thyme Curtis - CD 2 Representative for Kevin Faulconer – Not present.

#### 10. COMMITTEE REPORTS & CONSENT ITEMS:

##### A) Coastal Development Permit Review Committee:

- (1) 7444 Miramar Street Vacation – Conditional approval at June 12, 2007 CDP meeting by a 5-4-0 vote. Pulled from the Consent Agenda. See Agenda Item 15.
- (2) Armstrong Residence, 5746 La Jolla Mesa Drive – Denied unanimously at the June 12, 2007 CDP meeting by a 9-0-0 vote. ON CONSENT.
- (3) T-Mobile La Jolla Soledad, 5595 1/3 Soledad Road - Forwarded at the June 12, 2007 CDP meeting to full CPA. Pulled from the Consent Agenda. See Agenda Item 14.
- (4) Jvirblis Residence, 625 Wreilton – Approved unanimously at the June 19, 2007 CDP meeting by an 8-0-0 vote. ON CONSENT.
- (5) Bache Residence, 347 Vista de la Playa – Approved unanimously at the June 19, 2007 CDP meeting by a 7-0-1 vote. ON CONSENT. Mr. Morton recused.
- (6) Hunt Residence, 6319 Camino de la Costa – Approved at the June 19, 2007 CDP meeting by a 5-2-0 vote. ON CONSENT.
- (7) Shaw Properties, 6633 La Jolla Boulevard – Approved unanimously at the June 19, 2007 CDP meeting by a 6-0-1 vote. ON CONSENT. Mr. Morton recused.
- (8) Fashion Walk Residence, 5930 Camino de la Costa – Conditional, unanimous approval at the June 19, 2007 CDP meeting by a 4-0-1 vote. ON CONSENT. Mr. Morton recused.

**APPROVED MOTION:** To accept recommendation of the CDP Committee on Items (2), (4) and (6) and forward recommendations to the City. (Merten/Hayes: 11-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, Merten, Morton, Perricone, Thiele, Weiss, Whittemore

**Stepped Out:** McConkey, McGee.

**APPROVED MOTION:** To accept recommendation of the CDP Committee on Items (5), (7) and (8) and forward recommendations to the City. (Merten/Hayes: 10-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, Merten, Perricone, Thiele, Weiss, Whittemore

**Recused:** Morton

**Stepped Out:** McConkey, McGee.

**B) Planned District Ordinance Review Committee:**

- (1) 1<sup>st</sup> Pacific Bank, 7817 Ivanhoe - Unanimously approved signage at the June 4, 2007 PDO meeting by a 6-0-0 vote.

**APPROVED MOTION:** To accept the recommendation of the PDO Committee and forward the recommendation to the City. (Hayes/Merten: 11-0-0)

**Affirmative Votes:** Abrams, Ashley, Hayes, Lightner, McConkey, McGee, Merten, Morton, Thiele, Weiss, Whittemore

**Recused:** Gabsch

**Stepped Out:** Perricone.

- (2) Vista Girard, 7449 Girard Avenue – Unanimously approved at the June 18, 2007 PDO meeting by an 8-0-0 vote.

**APPROVED MOTION:** To accept the recommendation of the PDO Committee and forward the recommendation to the City. (Hayes/Whittemore: 12-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Morton, Thiele, Weiss, Whittemore

**Stepped Out:** Perricone.

- (3) Olivetas Town homes, 7417 Olivetas – PULLED – still in committee review.  
(4) Bibby's Crepe Café, 723 Pearl Street – PULLED – still in committee review.  
(5) Massage Envy, 7650 Girard Avenue – PULLED – still in committee review.  
(6) Herschel Building, 7855 Herschel – PULLED – still in committee review.  
(7) Burger Sidewalk Café, 1101 Wall Street – Pulled – still in committee review.

**C) La Jolla Shores Permit Review Committee (LJSPRC)**

- 1.) Johnson Residence, 1857 Viking Way – Approved 4-0-0 at the June 26, 2007 meeting.

**APPROVED MOTION:** To accept recommendation of the LJSPRC Committee and forward recommendation to the City. (Hayes/Thiele: 12-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Morton, Thiele, Weiss, Whittemore

**Stepped Out:** Perricone.

- 2.) Szekely Residence, 8456 Westway Drive – Approved 4-0-0 at the June 26, 2007 meeting.

**APPROVED MOTION:** To accept recommendation of the LJSPRC Committee and forward recommendation to the City. (Hayes/Whittemore: 10-0-1)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Thiele, Weiss, Whittemore

**Recused:** Morton

**Abstention:** Weiss – friend of the Szekely's.

**Stepped Out:** Perricone.

- 3.) Rosen Residence, 2522 Calle del Oro – Approved unanimously 4-0-0 at the June 26, 2007 meeting.

**APPROVED MOTION:** To accept recommendation of the LJSPRC Committee and forward recommendation to the City. (Hayes/Morton: 11-0-0)

**Affirmative Votes:** Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Morton, Thiele, Weiss, Whittemore

**Recused:** Merten

**Stepped Out:** Perricone.

**D) Traffic & Transportation Board (T&T): No action items.**

**12. UCSD PROJECTS – Update on upcoming UCSD projects – Time certain 7 PM – Informational Presentation**

Anu Delouri (AD) and Milt Phegley (MP) of UCSD Community Planning presented a power point presentation. It is available on line at <http://commplan.ucsd.edu>. Questions were taken after the presentation.

Mr. Thiele – Is the new construction LEED certified building – in particular shouldn't all new buildings be at the LEED silver level? Response from MP: State funding is not there to maximize LEED. UCSD is required to look at it, but required to provide the buildings within the budget.

Ms. Thorsen – Question related to open space and traffic/parking impacts. Response from AD: The designated open space of 27% will not be affected. Response MP: LRDP (Long Range Development Plan) goal is to stay within certain traffic limits mandated by the community plan. There are powerful incentives to consider alternatives for traffic and parking issues. Response AD: Example of SDSU. Access to Light Rail has reduced the parking demand by 3000 spaces. Mr. Varon – MTS hub will be at UTC. Will the increase of the student population in on campus housing actually increase the demand for parking, because students bring cars? What is the current ratio of spaces to students? Resp: The parking ratio is about 0.35 to 0.4 per capita. There is a vacancy of 20% at peak occupancy. The LRDP EIR identified that there were about 1000 off-campus vehicles associated with the campus. In 2014 there will be trolley access to the campus (SANDAG). Mr. Lucas – Why are comments on UCSD proposals, like the Venter Project, ignored. Comments on the MND related to the Land Use Plan and the improper use were ignored in the responses received on the document. Why is the hearing date November 13, 2006 – that date is passed? Response MP: The date for hearing by the Regents is July; there must be an error in the cover letter. Ms. Thorsen: Related to the comment about SDSU – Why does SDSU think it is OK to continue to expand? Response MP: SDSU's growth is consistent with their LRDP update. The LRDP needs to be consistent with local community plans.

**11. CITY ATTORNEY MIKE AGUIRRE –Community Bill of Rights and Update on Cell Phone towers in Residential neighborhoods – Informational Presentation**

City Attorney Mike Aguirre spoke and then took questions. Would like to see the Community Planning Groups have more power similar to the planning groups in Los Angeles. He is requesting support for changes to the City's Charter, which would grant more power to the Planning Groups. The changes to Charter Section 227 have already been drafted. It guarantees an individual's right to participate in planning and to provide feedback to the SDCC on the budget and city services. The Charter change will give authority to the people. Would also like to include language in the Charter, which will require Community Plan updated every 10 years and allocates money to do it. Commented on the situation in Otay Mesa where the developers with projects (residential in industrial zones) in process with DSD were actually paying for the Community Plan, which would rezone industrial to residential. That contract was just cancelled.

We have just been asked to cut our water consumption by 20 gallons per day. We cannot grow by 300,000 people. We, as a City need to commit to sustainability, not growth. San Diego is long on development and short on infrastructure. We are overdeveloped with an attenuated infrastructure. SIO is involved in the Global Warming discussions. We need to get SIO to help us redo the General Plan to account for the effects of global warming. DSD needs to transition to planning and environmental protection. The developers have been running the City for a long time. We need to get the developers to work with the great research activities at SIO. San Diego is not in a growth mode. We should get the infrastructure together and invest in low-impact development. We need to get the financial resources to do the plan.

Cell towers – The general trend in law is not good. The case law is problematic to restrict the placement. Tom Selany in the City Attorney's office has been working on this issue. This is becoming a statewide issue – preempting local control.

Questions/Answers:

Corporate status is not a problem for Planning Groups. Must adhere to the requirements for planning groups.

What is happening with the differing positions – DSD and the City Attorney's office related to the base zone regulations for the La Jolla Shores Planned District? Call the office tomorrow for follow-up.

Will water use reduction help? We need to get recycling of water really going – not for drinking water. We are in a desert. We need to at least have secondary treatment and figure out something for recycling.

Need reservoirs? We do not have the capacity now for 300,000 more homes. Maybe we need to look at desalinization.

Does City government have a right to negotiate a contract, which benefits the City to the detriment of the public?

Mr. Weiss thanked Mr. Aguirre for the endorsement of SIO. Four more years like the last year then Lake Powell and Lake Mead will be dry.

Can we get a moratorium on placement of cell towers in the public right of way?

We need to get back more of our property tax money back. We get 17 ½ cents on the dollar. LA gets 30 cents on the dollar.

We built 299,000 airplanes from 1941-1945. Let's master this.

13. **Kusman Residence, 8335 Camino del Oro** –Pulled for Trustee review based on square footage. Approved 4-1-0 at the LJS PRC on May 22, 2007. Presentation by Matt Peterson followed by Comments from Rob Whittemore. Mr. Peterson described the proposed project. The lot is 6400 sq. ft. The project was first submitted in 2005 and was approved by the LJS PRC by a vote of 4-1 in May. It was pulled from the consent agenda for hearing at tonight's meeting. The subcommittee heard the project three times. The project has been redesigned and revised. The applicant met with Dale Naegle and City staff – Mr. Naegle is a LJS PRC member. The driveway on El Paseo Grande was eliminated and the other driveway was reduced to 12 feet. The walls were thickened. The FAR reduced from 0.85 to 0.76 ½. The landscape coverage is 30%. The roof deck was eliminated. The chimneys are at 30 feet. The existing house is at 19 feet. Mr. Whittemore commented that he asked to pull the project because of the FAR, which is larger than the permitted 0.58 for the 6400 sq. ft. lot. He had a discussion with Mr. Golba about the Brown Act and met with Mr. Peterson.

**APPROVED MOTION:** To approve the proposed project, since the findings can be made. (McGee/Thiele: 7-2-3)

**Affirmative Votes:** Abrams, Hayes, Lightner, McConkey, McGee, Perricone, Thiele

**No Votes:** Ashley, Lightner.

**Abstentions:** Gabsch, Weiss, Whittemore.

**Reasons:** Weiss: Can see both sides. Gabsch: Agrees with Weiss and concerned with the lack of neighborhood compatibility. Whittemore: Does not want to prejudice standing on the Baia residence project.

**Gone:** Morton.

**14. T-Mobile Soledad. Mike Morgansen**

Proposal is for a 30-foot tall light standard. There is a light pole on the other side of the street from this location. There are deficiencies in the coverage and there are no alternative sites that provide the necessary coverage. They cannot use the Mt. Soledad or Kate Sessions. Applicant presented a visualization of the installation and the coverage maps without and with the site. There was an opposition presentation by Rosa Lee Saliba, the adjacent property owner. This placement is contrary to goal of undergrounding all utilities. This is a major installation, not a minor installation. It is on a City scenic route. Workmen need to service the site – how noisy and intrusive will that be? Will the safety of children who play on the site may be negatively affected. Property values in the neighborhood will be negatively affected. Buyers are sensitive about certain features, including a telecommunications installation. These features affect the buyer's choice and the property owner will need to lower the price in order to attract buyers. Wants to see the study that shows they have tried other locations, not just taken the cheapest site. Michael Saliba – Have they considered the reservoir site? – Answer – could not negotiate lease at that site. The underground vault, which is part of this installation, will interfere with the water and sewer service at the home. The vault is 20 ft long by 12 ft wide by 10 ft. deep.

**APPROVED MOTION:** To deny the T-Mobile Soledad proposal as the findings for the Neighborhood Use Permit cannot be made. (Hayes/Whittemore: 10-1-1)

**Affirmative Votes:** Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Perricone, Thiele, Whittemore

**No Votes:** Abrams

**Abstention:** Weiss

**Gone:** Morton

**Discussion of the Motion:** How do competitors provide coverage? There is a problem for the other carriers. Can I get an antenna in my backyard? It is the last preference. Who gets the revenue from the installation? The City.

**Ms. Hayes called question**

**Affirmative Votes: Abrams, Ashley, Gabsch, Hayes, Lightner, McConkey, McGee, Merten, Morton, Perricone, Thiele, Whitemore**

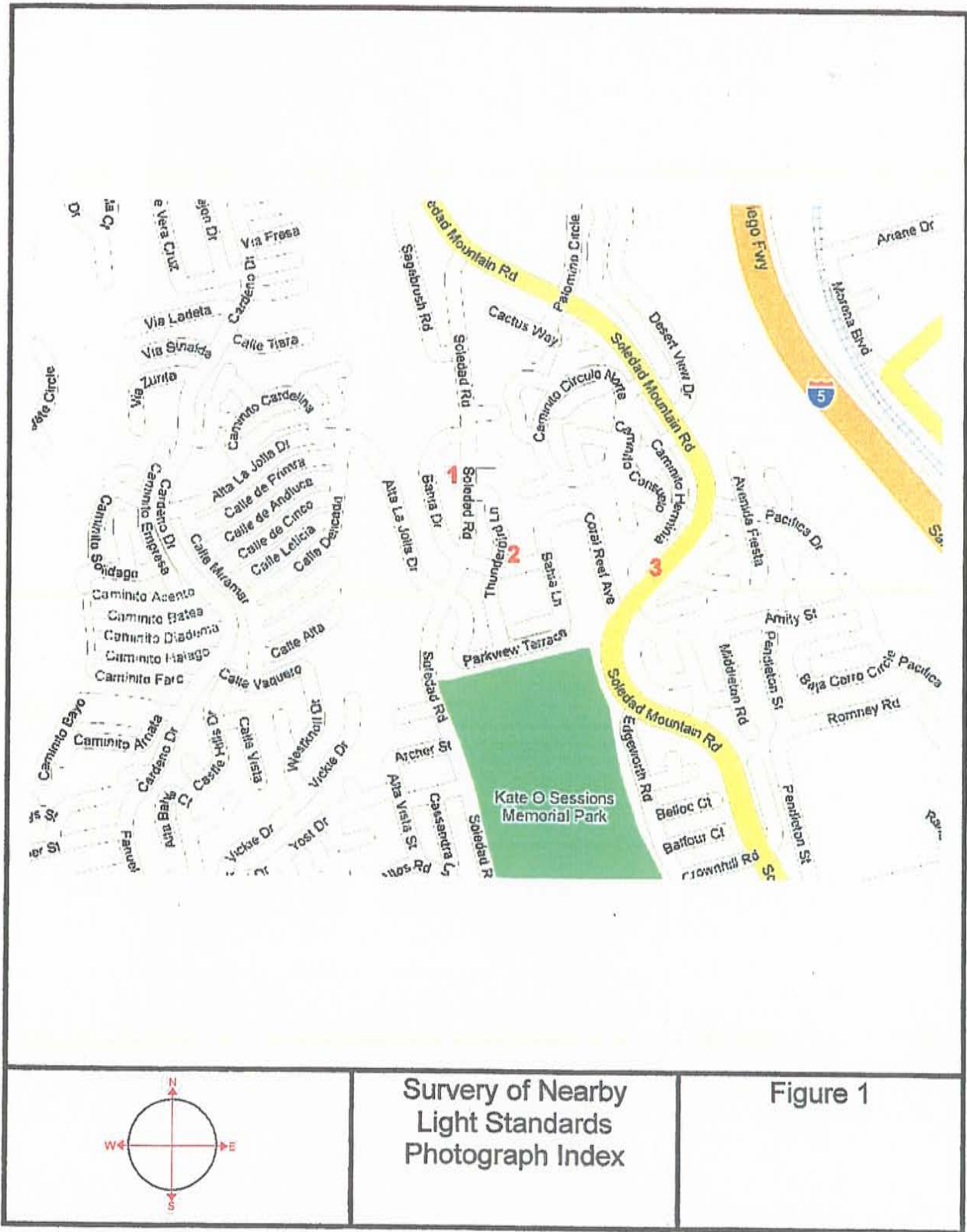
**Abstention: Weiss**

**The maker of the motion, Mr. Merten, withdrew another motion related to the possible approval of the installation by the City.**

**15. 7444 Miramar Street Vacation – Continued to the next meeting. Not sufficient time to hear.**

**Meeting adjourned at 9:10?? PM. Next regular meeting at 6:00 p.m. on August 2, 2007. Recreation Center Auditorium.**

**Submitted by Sherri Lightner, 7/14/07**







**LIGHT STANDARD ON WOOD POLE ACROSS STREET FROM SUBJECT PROPERTY**

1



**LIGHT STANDARD AROUND CORNER AT THUNDERBIRD & BAHIA**

2





**TYPICAL LIGHT STANDARD ALONG SOLEDAD MOUNTAIN ROAD**

**3**



**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-7653

**NEIGHBORHOOD USE PERMIT 436463**  
**T-MOBILE – SOLEDAD R.O.W. PROJECT NO. 127096**  
**PLANNING COMMISSION**

This Neighborhood Use Permit (NUP) 436463 is granted by the **Planning Commission** of the City of San Diego to THE CITY OF SAN DIEGO, Owner, and OMNIPOINT COMMUNUCATIONS, INC. DBA T-MOBILE, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0405. The site is located in the public right-of-way near the south-east corner of Thunderbird Lane and Soledad Road in the RS-1-4 zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to construct, operate, and maintain a Wireless Communication Facility (WCF) within the public right-of-way, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 4, 2008, on file in the Development Services Department.

The project shall include:

- a. A new 30' high light standard with antennas attached at the top of the pole with an underground equipment vault, air vents, and a telecom/electrical connection cabinet located adjacent to the pole;
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. This Neighborhood Use Permit [NUP] and corresponding use of this site shall expire on December 4, 2018. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit. A Wireless Communication Facility shall not operate without a valid permit.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building and public improvement permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

#### **ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

12. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in MITIGATED NEGATIVE DECLARATION NO. 127096 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in MITIGATED NEGATIVE DECLARATION NO. 127096



satisfactory to the Development Services Department and the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Noise

14. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

**ENGINEERING REQUIREMENTS:**

15. Prior to the issuance of any building permits, the applicant shall obtain a Nonexclusive Right-of-Way Use Agreement from the City of San Diego for the proposed work in the Soledad Road Right-of-Way.

16. Prior to the issuance of any building permits, the applicant shall obtain a Public Right-of-Way permit for the proposed work in the Soledad Road Right-of-Way. Applicant shall show all of the proposed work on City Standard "D Sheets" and upon completion and acceptance of the work by the City Engineer, the applicant shall as-built the drawings, all satisfactory to the City Engineer.

17. The applicant shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

18. Any party on whom fees, dedications, reservations or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

**TRANSPORTATION DEVELOPMENT REQUIREMENTS:**

19. The applicant shall obtain a "Public Right-of-Way Permit for Traffic Control" permit prior to any work within the public right-of-way to the satisfaction of the City Engineer.

20. The applicant shall protect any City property removed as part of the project and return said property to the satisfaction of the City Engineer.

21. The applicant shall provide a Public Improvement Plan including a Traffic Control Plan to the satisfaction of the City Engineer.

22. The applicant shall provide and maintain a telephone contact number available 24 hours/7 days a week clearly posted on the system to allow City staff to immediately contact the system provider to the satisfaction of the City Engineer.

23. The applicant shall install and maintain a separate power meter for the project to the satisfaction of the City Engineer.
24. The applicant shall inform the City and the City agrees to inform the applicant in the event of a knock over, to the satisfaction of the City Engineer.
25. A foundation analysis shall be required during the Public Improvement Plan Process.
26. The material of the proposed street light standard shall match the appropriate material shown in City of San Diego Standard Drawing SDE-101 or the existing street light standard that is to be replaced.
27. If the luminaire mounting height or length of mast arm of the proposed street light standard does not match City of San Diego Standard Drawing SDE-101 or the existing street light standard that is to be replaced, a lighting study and a Deviation From Standards Form shall be provided during the Public Improvement Plan Process, satisfactory to the City Engineer. If a lighting study is not required, the lamp type and wattage shall comply with The City of San Diego Street Design Manual, satisfactory to the City Engineer.

**LANDSCAPE REQUIREMENTS:**

28. Prior to issuance of construction permits for public right-of-way improvements, the Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall take into account a 40 sq. ft. area around each tree which is unencumbered by utilities or wireless facility equipment. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.
29. The existing plant material shall be accurately depicted on the Landscape Construction Documents. The plans shall comply with the City's Project Submittal Requirements. Existing trees and shrubs shall be identified with their common name, botanical name, and caliper size (for trees) or height and spread (for shrubs). Proposed and existing groundcover shall also be identified.
30. Existing underground utilities as well as those utilities associated with the wireless communication facility shall be shown on plans.
31. All disturbed planting areas shall be covered with mulch to a minimum depth of 2 inches, excluding slopes requiring revegetation and areas planted with ground cover or turf. All exposed soil areas without vegetation shall also be mulched to this minimum depth. [142.0413(B)]
32. All landscape and irrigation shall conform to the City of San Diego's Land Development Code, Landscape Regulations; the Land Development Manual, Landscape Standards, and All Other City and Regional Standards.



33. A final landscape inspection shall be conducted prior to the activation of this Wireless Communication Facility. The landscape and irrigation system shall be restored properly, to the satisfaction of the Development Services Department. All landscape and irrigation shall comply with the City's Land Development Code, Landscape Regulations, and Land Development Manual, Landscape Standards.

34. An irrigation plan shall be submitted as part of the Landscape Construction Document plan set, that demonstrates how the existing irrigation system will be modified to accommodate the new equipment and maintain the landscape material in a healthy growing condition.

35. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Permittee shall repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to use of the wireless communication facility.

36. Provide the following table on the plans. Proposed equipment shall be located so as to not impact existing trees, by adhering to the distances specified in the table below.

**MINIMUM TREE SEPARATION DISTANCE**

Improvement / Minimum Distance to Street Tree

Traffic signals (stop sign) - 20 feet

Underground utility lines - 5 feet

Above ground utility structures - 10 feet

Driveway (entries) - 10 feet

Intersections (intersecting curb lines of two streets) - 25 feet

Sewer Lines - 10 feet

**ITC-COMMUNICATIONS REQUIREMENT:**

37. Appropriate signs shall be installed to notify employees working on the light standard that a hazard exists and the location of the hazard. The carrier shall assess the level and location of the hazard and place the appropriate signs per CAL-OSHA requirements.

**PLANNING/DESIGN REQUIREMENTS:**

38. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

39. No portion or part of this facility shall exceed the 30 foot height limit.

40. Prior to the issuance of a right-of-way permit, the telecommunication provider shall provide certification describing evidence that the cumulative field measurements of radio frequency power densities for all antennas installed on the premises are below the federal standards.

41. Prior to obtaining a right-of-way permit the following items must be illustrated on the construction drawings; coax cable tray, meters, telco, A/C units, generator receptacles, cable runs, bridges, dog houses and external ports. These appurtenances must be minimized visually so as to avoid the effect of changing the outward appearance of the project from what was approved on the exhibits.
42. The applicant of record is responsible for notifying the city prior to the sale or takeover of this site to any other provider.
43. This wireless communication facility shall be removed or replaced if it is determined that the facility or components of the facility are obsolete.

**INFORMATION ONLY:**

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on December 4, 2008 by PC-XXXX.

Permit Type/PTS Approval No.: 127096/NUP 436463  
Date of Approval: 12/4/08

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

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Alex Hempton, AICP  
Associate Planner

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

---

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

**City of San Diego  
Real Estate Assets Department  
Owner**

By \_\_\_\_\_  
NAME  
TITLE

**Omnipoint Communications, Inc. DBA  
T-Mobile  
Owner/Permittee**

By \_\_\_\_\_  
Michael Rapfael  
Site Deployment Manager

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

PLANNING COMMISSION  
RESOLUTION NO. PC-XXXX  
NEIGHBORHOOD USE PERMIT - 436463  
**T-MOBILE – SOLEDAD R.O.W.**  
PROJECT NO. 127096

WHEREAS, THE CITY OF SAN DIEGO, Owner, and OMNIPOINT COMMUNUCATIONS, INC. DBA T-MOBILE, Permittee, filed an application with the City of San Diego for a permit to construct a Wireless Communication Facility consisting of a 30-foot high light standard with three (3) antennas and associated equipment (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 436463);

WHEREAS, the project site is located in the public right-of-way near the south-east corner of Thunderbird Lane and Soledad Road in the RS-1-4 zone of the La Jolla Community Plan;

WHEREAS, on September 25, 2008, the Development Services Department of the City of San Diego considered and approved Neighborhood Use Permit No. 436463 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 1, 2008, the La Jolla Community Planning Association appealed Neighborhood Use Permit No. 436463 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 3, 2008, Michael and Rosa Lee Saliba appealed Neighborhood Use Permit No. 436463 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on December 4, 2008, the Planning Commission of the City of San Diego considered Neighborhood Use Permit No. 436463 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 December 4, 2008.

FINDINGS:

Neighborhood Use Permit - Section 126.0205

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

The City of San Diego General Plan states that the visual impact of wireless facilities should be minimized. Wireless facilities should be concealed in existing structures when possible, or utilize camouflage and screening techniques to hide or blend them into the surrounding area. Facilities should be designed to be aesthetically pleasing and respectful of the neighborhood context. Mechanical and other equipment and devices should be concealed in underground vaults or other unobtrusive structures.

The La Jolla Community Plan states that the City should analyze for visual impact and ensure public review and comment for any telecommunications structures proposed to be located in residential areas. With regards to the placement of wireless facilities in these areas, the Citywide Telecommunications Policy (Council Policy 600-43) should be adhered to.

Additionally, the Telecommunication Act of 1996 limits authority to local jurisdictions to manage their public rights-of-way without creating separate telecommunication regulations. Management of the rights-of-ways is limited to preserving the physical integrity, controlling the orderly flow of vehicles and pedestrians and managing utilities. Similarly, the California Public Utilities Code provides municipalities with the right to exercise reasonable control over the rights-of-ways with respect to time, place and manner as it relates to wireless communication facility installations. These statutes address the traditional management of rights-of-ways, but do not provide for any type of aesthetic control.

For this project, T-Mobile's antennas have been incorporated into the design of a street light standard. In this way, a screening technique has been utilized to blend the antennas into the surrounding area. The facility is designed to mimic the color, texture, and shape of City light standards. The majority of the equipment associated with this facility is located in an underground vault, with the exception of two air vents and an electric and telco connection meter cabinet. Two trees are proposed to improve views of this facility.

This project has been presented to the local community planning group for public review and comment. The Council Policy 600-43 has been implemented in the processing of this project. While areas with residential uses are not the preferred location for wireless facilities, they are permitted in the public right-of-way with a Process 2 (Preference 2), Neighborhood Use Permit. This is a more preferable location, according to the Council Policy, than being located on a private residence, which would be a Process 4 (Preference 4), Conditional Use Permit. The ideal location for this project would be in the public right-of-way adjacent to a non-residential use. That location is considered a Process 1, Preference 1, Limited Use. In this case, T-Mobile was not able to locate a Preference 1 location that met their coverage needs.

**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) emissions to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require that T-Mobile perform a cumulative model RF test and submit the finding in a report to the City of San Diego prior to the issuance of a building permit.

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

This project complies with the applicable regulations of the Land Development Code (LDC), specifically the Wireless Communication Facility regulations, LDC section 141.0405.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Neighborhood Use Permit No. 436463 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 436463, a copy of which is attached hereto and made a part hereof.

---

Alex Hempton, AICP  
Associate Planner  
Development Services

Adopted on: December 4, 2008

Job Order No. 42-7653





THE CITY OF SAN DIEGO

Date of Notice: September 29, 2008

# **NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION**

**DEVELOPMENT SERVICES DEPARTMENT**

Job Order No. 427653

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**PROJECT NAME/NUMBER:** Wireless Facilities / 127096

**COMMUNITY PLAN AREA:** La Jolla and City Wide

**COUNCIL DISTRICT:** 1 and City Wide

**LOCATION:** 5595 1/3 Soledad Mountain Road, La Jolla, CA 92037 and City Wide

**PROJECT DESCRIPTION:** Approval of these process two permits, which could include a Neighborhood Use Permit and/or a Coastal Development Permit, would allow for the construction, operation and maintenance of unmanned, wireless communication facilities. For this Mitigated Negative Declaration to be utilized, the wireless facilities cannot result in any potential significant environmental impacts other than potential noise impacts, which would be mitigated to below a level of significance as outlined in this document. These projects would utilize vaults for their equipment, would be located adjacent to single-family residential homes, and would be located in public rights-of-way including areas devoid of potentially sensitive biological resources. As such, the proposed projects would not be located within or adjacent to the City of San Diego's Multi-Habitat Planning Area (MHPA). In addition these projects would not have any adverse impacts to Paleontological or Archaeological resources. The proposed project sites would be located within any community planning areas.

**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego Staff

**ENVIRONMENTAL DETERMINATION:** Mitigated Negative Declaration which incorporates the Mitigated Monitoring and Reporting Program number 127096.

**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego City Staff

**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:**  
By implementing the Mitigated Monitoring and Reporting Program, all significant environmental impacts would be mitigated for therefore eliminating the need for an Environmental Impact Report.

**DEVELOPMENT PROJECT MANAGER:** Alex Hempton  
**MAILING ADDRESS:** 1222 First Avenue, MS 501, San Diego, CA  
92101-4153  
**PHONE NUMBER:** (619) 446-5349

---

On September 25, 2008, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice OR 15 business days from the date of the environmental determination, whichever occurs earlier. Applications to appeal CEQA determinations made by the Planning Commission from a Process Two or Three Appeal under SDMC section 112.0506 must be filed in the Office of the City Clerk within 10 business days from the date of the Planning Commission's decision. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.



THE CITY OF SAN DIEGO

Date of Notice: November 19, 2008

# **NOTICE OF PUBLIC HEARING APPEAL TO PLANNING COMMISSION**

Job Order Number: 42-7653

As a property owner, tenant, or person who has requested notice, you should know that a public hearing will be held by the Planning Commission to consider an appeal of a staff decision to approve a Wireless Communication Facility consisting of a 30-foot high light standard with three antennas attached to the top portion of the pole. Equipment associated with the antennas is proposed to be located in an underground vault adjacent to the light standard. This facility is proposed to be located within the public right-of-way near the south-east corner of Thunderbird Lane and Soledad Road.

---

<b>DATE OF HEARING:</b>	<b>December 4, 2008</b>
<b>TIME OF HEARING:</b>	<b>9 a.m.</b>
<b>LOCATION OF HEARING:</b>	<b>202 "C" Street, 12<sup>th</sup> Floor, City Council Chambers</b>
<b>PROJECT TYPE/PROJECT NUMBER:</b>	<b>NEIGHBORHOOD USE PERMIT/127096</b>
<b>PROJECT NAME:</b>	<b><u>T-MOBILE SOLEDAD</u></b>
<b>APPLICANT NAME:</b>	<b>Mike Morganson, M&amp;M Telecom, Inc., agent for Omnipoint Communications DBA T-Mobile</b>
<b>COMMUNITY PLAN AREA:</b>	<b>La Jolla</b>
<b>COUNCIL DISTRICT:</b>	<b>2</b>
<b>CITY PROJECT MANAGER:</b>	<b>Alex Hempton, AICP, Associate Planner</b>
<b>PHONE NUMBER:</b>	<b>(619) 446-5349</b>

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The decision made by the Planning Commission is the final decision by the City.

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.

The certification of an Environmental Impact Report, adoption of a Mitigated Negative Declaration or Negative Declaration, or determination that the project is exempt from the California Environmental Quality may be appealed to the City Council **after all other appeal rights have been exhausted**. All such appeals must be filed by 5:00 PM within ten (10) business days from the date of the Planning Commission's certification/adoption of the environmental document. The proper forms are available from the City Clerk's Office, located on the second floor of the City Administration Building, 202 C Street, San Diego, CA 92101.

If you have any questions about this matter, 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

## ATTACHMENT 17

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.

Rev 6/1/04 dej





THE CITY OF SAN DIEGO

Date of Notice: September 26, 2008

# NOTICE OF DECISION

DEVELOPMENT SERVICES DEPARTMENT

Job Order No. 42-7653

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**APPROVAL TYPE(S):** Neighborhood Use Permit (NUP)  
**PROJECT NAME/NUMBER:** T-Mobile – Soledad/127096  
**APPLICANT:** Mike Morganson, M&M Telecom, Inc., agent for T-Mobile

**COMMUNITY PLAN AREA:** La Jolla  
**COUNCIL DISTRICT:** 2

**CITY PROJECT MANAGER:** Alex Hempton, Associate Planner  
**MAILING ADDRESS:** 1222 First Avenue, MS 501, San Diego, CA 92101-4153  
**PHONE NUMBER:** (619) 446-5349

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On September 26, 2008, Development Services Staff APPROVED an application for a Wireless Communication Facility consisting of a 30-foot high light standard with three antennas attached to the top portion of the pole. Equipment associated with the antennas is proposed to be located in an underground vault adjacent to the light standard. This facility is proposed to be located within the public right-of-way at 5595 1/3 Soledad Road. If you have any questions about this project, the decision, or wish to receive a copy of the resolution approving or denying the project, contact the City Project Manager above.

The decision by staff can be appealed to the **Planning Commission** no later than twelve (12) business days of the decision date. See Information Bulletin 505 "Appeal Procedure", available at [www.sandiego.gov/development-services](http://www.sandiego.gov/development-services) or in person at the Development Services Department, located at 1222 First Avenue, 3rd Floor, San Diego, CA 92101. The decision of the Planning Commission is final.

The certification of an Environmental Impact Report, adoption of a Mitigated Negative Declaration or Negative Declaration may be appealed to the City Council **after all other appeal rights have been exhausted**. All such appeals must be filed by 5:00 PM within ten (10) business days from the date of the Planning Commission's certification/adoption of the environmental document. The proper forms are available from the City Clerk's Office, located on the second floor of the City Administration Building, 202 C Street, San Diego, CA 92101.

This information will be made available in alternative formats for persons with disabilities upon request.



## Wireless Communication Facility Guidelines



Last Updated on: 06-04-2007



America's Finest City

THE CITY OF SAN DIEGO

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## INTEGRATE BLEND STEALTH CAMOUFLAGE

### Introduction

The following guidelines should be used in conjunction with the Wireless Communication Facilities regulations of the Land Development Code (section 141.0420), as well as any previous applicable regulations. These guidelines will be used as a tool for processing all new and expired permits and as minimum standards in determining the review time. Together with Council Policy 600-43, these guidelines prescribe clear, reasonable, and predictable criteria to assess and process applications in a consistent and expeditious manner.

Compliance with these guidelines will result in an accelerated review. Wireless proposals that do not comply with these guidelines will be subject to standard review timelines and may be recommended for denial to the decision maker.

### Design Guideline Objectives:

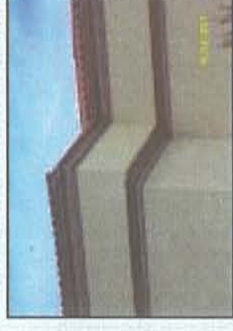
1. Provide a uniform and comprehensive set of guidelines for the design and review of wireless communication facilities.
2. Recognize that wireless communication facilities are necessary and vital for the communication needs of the residents, businesses, visitors and government of San Diego.
3. Ensure that all wireless communication facilities employ stealth design techniques.
4. Ensure that all wireless communication facilities minimize visual impacts on communities, neighborhoods, vistas and natural resources.
5. Promote consistent evaluation and uniform application of standards.
6. Applicable to all new wireless communication facility applications, including facilities that have expired and are required to apply for a new permit consistent with the regulations in effect at the time of application.
7. As of February 1, 2007, ministerial and discretionary projects that completely conceal all components of the wireless facility will not be subject to an expiration date.
8. Existing expired monopolies will be permitted to remain as-is until June 1, 2007 at which time a replacement facility must be approved and constructed in its place. Failure to remove the tower will result in assignment of the case to Neighborhood Code Compliance, which may include legal action.

## BUILDING COLLOCATIONS

Complete Concealment – Additions or modifications to buildings of this nature should always consider the existing bulk, scale, symmetry and design of the building.

- A. Use of existing building elements by proposing antennas behind existing building features such as a penthouse or parapet if available and existing building construction allows; or
- B. Addition of architectural features to building that allows placement of antenna behind or within structure.

1. Any façade replacements with Fiberglass Reinforced Plastic (FRP) screening (or similar) shall match the building exterior on which it is proposed. Figure 1-3.
2. Additions must be architecturally compatible with existing building and not create unnecessary bulk or create a visual impact.
3. Colors and textures must match existing building. Figure 1-3.
4. No visible transitions between old and new surfaces. Figure 4 is an example of design with poor transitioning.
5. No exposed construction braces. See Figure 5 for inappropriate rooftop addition with exposed construction braces.
6. Roof top additions must include four sides concealed on all 4 sides. See figure 6.
7. New architectural features such as columns, pilasters, corbels or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building. See figure 7-8.



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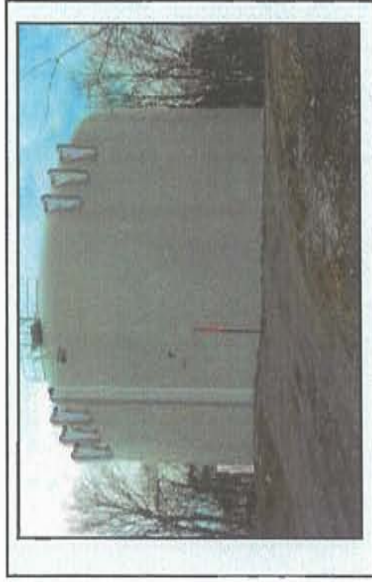


8. Faux chimneys must include architectural detail/trim, if such detailed exists on the building, or if it helps to improve the appearance of the building. See figure 9.

C. Modifications to concealed facilities that do not change the exterior appearance will not require review by Development Services.

Façade Mounted Antennas – These types of additions to buildings must consider scale and symmetry of the structure as well as minimizing bulk to the exterior.

*Examples of an appropriate façade mounted antennas on water tanks:*



A. Antennas mounted to the water tank/standpipe façade.

*Examples of inappropriate façade mounted antennas due to exposed cables and mounting brackets:*



- 5 -



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B. Antennas mounted to the façade of a building that are painted and textured to match the building

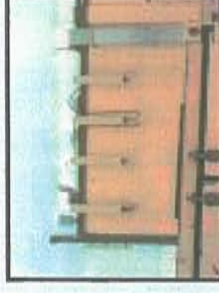
1. Utilize the smallest mounting brackets available in order to provide the smallest offset from the building. If the brackets are 4" then the space between the building face and the back of the antenna should not exceed 4".
2. Utilize skirts on sides and bottoms of antennas in order to conceal mounting hardware and minimize the visual impact of the antennas. See Figures 10-11.
3. Paint and texture antennas the same as the building surface. See Figures 10-11.
4. To the extent possible, employ symmetry and balance techniques for all façade mounted antennas.
  - o First provider on a structure will dictate antenna length, width and placement. All succeeding applications for façade mounts will be required to ensure consistency and symmetry in placing antennas on the exterior of the structure.
  - o No interruption of horizontal or vertical reveals.
5. Antennas should be no longer nor wider than the façade on which they are proposed.
6. No exposed cabling shall be permitted. See Figures 12 and 13. All exterior installed cables must be located within a cable tray, painted and textured to match the building.
7. No exposed mounting apparatus. See Figure 13.
8. No exposed pipes absent antennas. See Figure 13.



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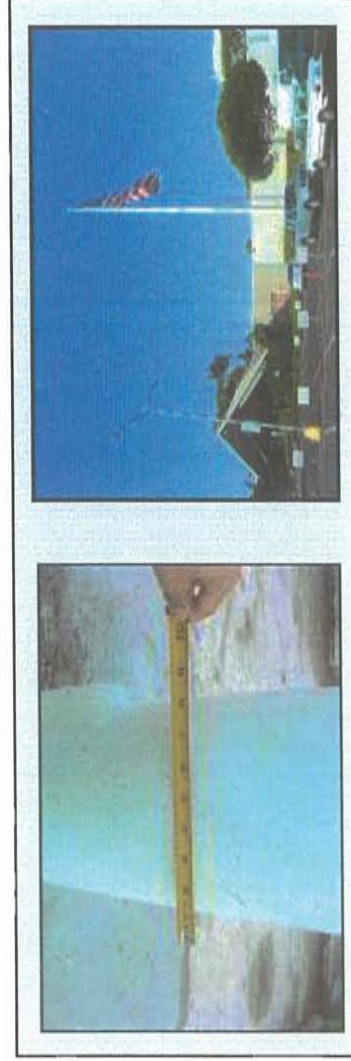
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## GROUND MOUNTED FACILITIES

This category includes flag poles, faux trees, towers, ball field lights, light poles, pipe mounts, and public right-of-way elements.

1. Comply with all development regulations for zone.
2. Design structures to the minimum height necessary, but apply for Planned Development Permit when height deviation is needed. Height deviations will be considered in exchange for a well designed, integrated project.
3. Structures need to be integrated architecturally into environment and harmonize with the property on which it is proposed.
4. Community Planning Group support of existing monopoles does not negate the need to comply with regulations.
  - a. Flagpoles
    1. Poles 30'-0" or less shall not exceed 9 inches in diameter.



2. Consideration will be given to poles higher than 30'-0" that exceed the 9 inch diameter limitation if it can be demonstrated that the flag pole is located in a suitable environment and appropriately tapered in order to maintain the appearance of an authentic flag pole.

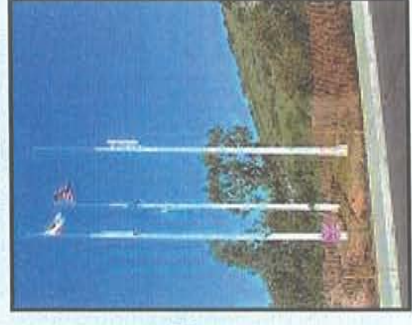
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16



17

# Tree Specifications

- a. Official manufacturer specifications and photos
- b. Distance the branches extend from the antenna face
- c. Branch count
- d. Overall branch density (minimum 2.5 per ft., measured from start of branches to top of tree)
- e. Beginning branch height
- f. Overall tree height and overall pole height
- g. Materials
- h. Cabling of the antenna (no overhead cabling)
- i. Sock details
- j. Color specifications
- k. Leaf detail (proposed leaf should be similar to surrounding mature or proposed tree species)
- l. Type of brackets

3. Antennas must be enclosed within pole/radome. Please see Figure 16 for an appropriate design for a flag pole. All antennas should be concealed unlike Figure 17 where the antennas are exposed.
4. Comply with US Flag Code. Figure 16 illustrates a pole with a non-proportional flag.
5. Utilize in conjunction with existing or added formal plantings.
6. Decorative ornaments shall be included in the overall height measurement.
7. All coax must be routed directly from the ground up through the pole. No doghouse will be allowed.
- b. Faux Trees
  1. Use in an existing landscape setting with trees at similar height and of the same species.
  2. If site is void of tall trees or landscape, create landscape setting that integrates faux tree with added similar species of varying heights.

Examples of appropriate faux tree:



18



3. Faux trees in non urban settings should be species regionally appropriate to San Diego that blends with established plant communities. Figure 18 illustrates an ideal tree location with appropriate existing landscaping with trees at similar heights.

4. Utilize trees that replicate shape, structure and color of live trees. Figure 19 illustrates only examples of trees staff would approve and does not take into account the tree settings.

5. Provide detailed specifications during plan review. (See Page 8)

6. Ensure that top branches of tree do not exceed allowed height. See Figures 20-21.

7. All coax must be routed directly from the ground up through the pole. No doghouse will be allowed. Unlike Figure 22.

c. Ball Field Lights

1. Utilize existing ball field lights, upgrade existing light standards or add ball field lights to a park planned for field lighting. See Figures 23-24.

2. Mount antennas as close as possible to the pole and below the light source.

3. Minimize visibility of coax cables by routing through pole and eliminating loops for cable entry and exit.

4. Paint antennas the same color as the pole.

5. All cables and conduit to and from the light standard is expected to be routed from underneath the caisson. No doghouse will be allowed.



19



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22

d. Light Poles

1. Use only in parking lots or along pedestrian paths. Not to be used as a means to gain height in areas where a light standard is unnecessary. See Figures 28.
2. Match design, material and color of existing light poles. See Figures 25-26.
3. Replicate height of existing poles.
4. If utilizing more than one pole, space appropriately throughout property.
5. All cables and conduit to and from the light standard is expected to be routed from underneath the caisson. No doghouse will be allowed. Unlike Figure 29.

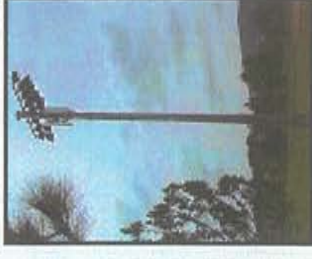
e. Pipe Mounts

1. Use in conjunction with backdrop (either hillside or structure) and sufficient landscape to screen antennas. See Figure 27.
2. Add landscape to screen if site is devoid of landscape



27

- 10 -



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f. Public Right-Of-Way

1. Replacement poles should match height, color and material of original poles.
2. Exterior panel antennas should not exceed the height of the pole. See Figure 30-31.
3. Utilize brackets that allow antennas to be mounted no more than 4" from the pole.
4. No looping cables.
5. All replacement or new poles must comply with all city ordinances and policies.

g. Towers

1. Design towers to architecturally blend with the building/structure/setting in which it is proposed.
2. Utilize the lowest height possible.
3. Be creative, but reasonable. The clock tower at Clairemont Town Square, the faux water tank on Black Mountain Road, Obelisk at 906 47<sup>th</sup> Street and the tower at Carlsbad, La Costa Towne Center are examples of towers that are in context to the surroundings.



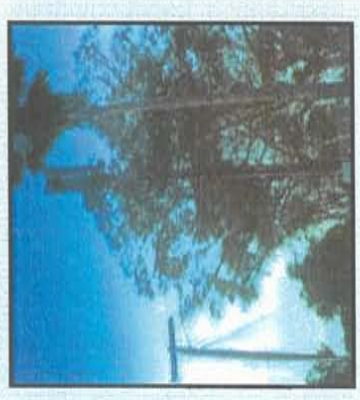
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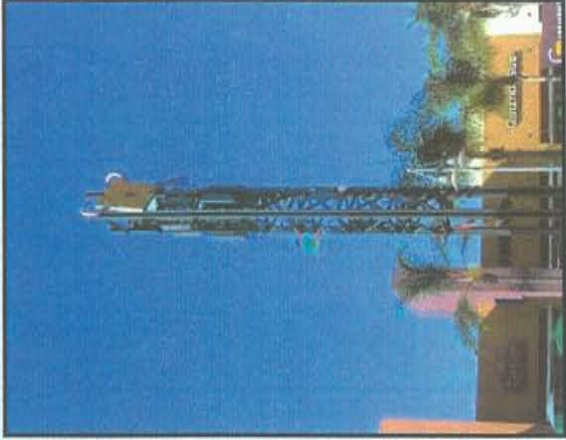
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31



-Carlsbad La Costa Towne Center-



-Clock tower at Clairemont Town Square-



-Faux Water Tank on Black Mountain Road-



-City Heights Identification Tower-



-Gompers Church, San Diego-



## ALL WIRELESS COMMUNICATION FACILITIES

### a. Landscape Requirements

1. Utilize landscaping to improve views from the public right-of-way and neighboring properties by screening, buffering, and blending Wireless Communication Facilities with the surrounding environment. All landscaping shall conform to the City's Landscape Regulations and the Land Development Manual: Landscape Standards. Landscape plans submitted to the Development Service's Department shall conform to the Land Development Manual: Project Submittal Requirements."
2. For discretionary projects, provide street trees, per the requirements of LDC 142.0409, Street Tree and Public Right-of-Way Requirements.
3. Landscape screening shall be provided around new exterior equipment enclosures. The plantings shall be evergreen and spaced to ensure 100 percent screening within two years of installation. (Land Development Manual: Landscape Standards, section 1.2)
4. When antennas are proposed to be located on artificial trees (i.e., "monopines"), the proposed artificial tree shall match the leaf shape, tree form and coloring of existing trees and any proposed live trees. Additional trees shall be added to create a grove-like environment.

## Did you know?

Tree "topping" is prohibited and can lead to many problems such as irregular and poorly attached sprouting branches, insect attack and disease or complete tree dieback, decline and death. Help us keep trees safe, healthy and beautiful.



5. Proposed landscaping shall be consistent with the existing landscape design and applicable permits. Facility design shall not result in the removal of any trees. However, trees may be removed and replaced in-kind.
6. When underground vaults are proposed, they shall be located to minimize disruption to the City's street trees. Adequate planting depth shall be provided between the top of the vault and the finished grade for proposed planting to grow in a healthy growing condition to match adjacent, existing planting. Any vegetation removed shall be replaced in-kind.
7. Any removal, replacement, or installation of street trees shall require review by the City's Urban Forester and the issuance of a 'No-Fee' Street Tree Permit, in accordance with Municipal Code section 62.0600. Care should be taken to not disrupt existing street trees. Any trees removed shall be replaced in-kind.

b. Cable Trays

1. Cable should be routed internally. If it can be demonstrated that the building construction does not allow internal routing, then cable tray must be minimum size necessary to accommodate cable.
2. Cable tray should be located inconspicuously and appropriately unlike Figure 33. Place in a corner of the building where it won't have a visual impact or make the cable tray a decorative element on the building.
3. When more than one cable tray is exposed on a building exterior, place and space consistently and appropriately.
4. All coaxial cable must be placed underground. No above ground cable or bridges.
5. All coax must be routed directly from the ground up through the pole.
6. All exterior mounted cable tray shall be painted and textured to match the existing building. See Figure 32.

c. Enclosures and Equipments

1. Architectural integration required. Notice how Figure 34 uses the same pattern and materials as the existing building.
2. Utilize similar building materials, color, accents and texture as primary building. If no buildings exist on site, ensure that building is designed to blend in to environment.
3. Minimize exterior appurtenances. Use screen wall and/or combination of landscape for screening purposes.



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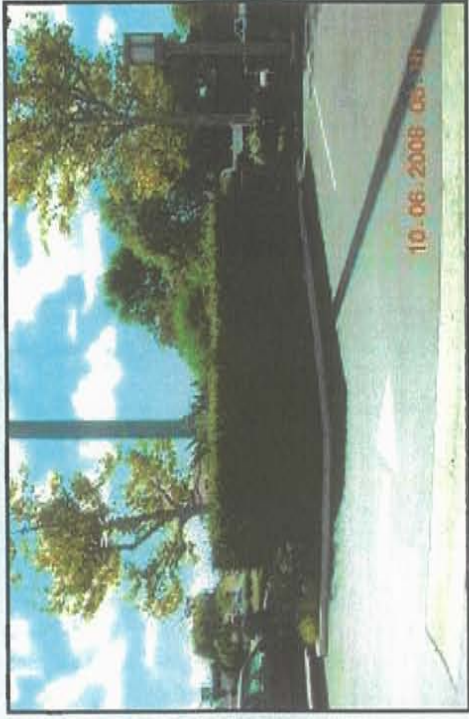
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Appropriate landscaping for exterior appurtenances:



4. Utilize open top with lattice accent in order to eliminate need for a/c units. See figure below for an example of the AC units enclosed on the roof of an open top enclosure.

*The AC units are located inside the highlighted area.*



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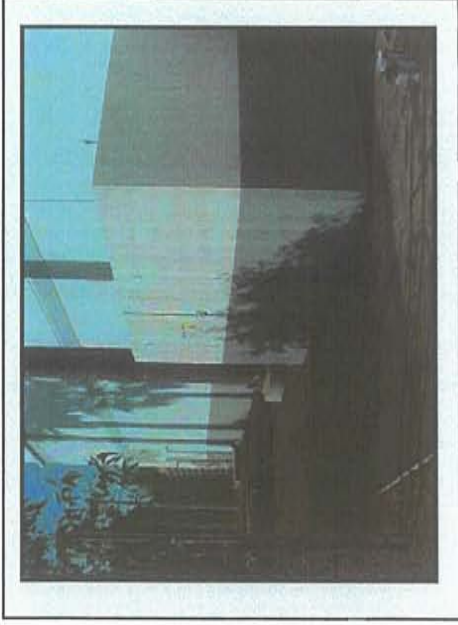
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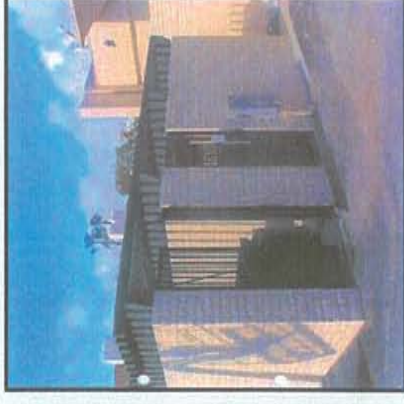
5. Utilize existing topography or landscape to minimize views of equipment.

Appropriate example of color and texture to match the existing building:

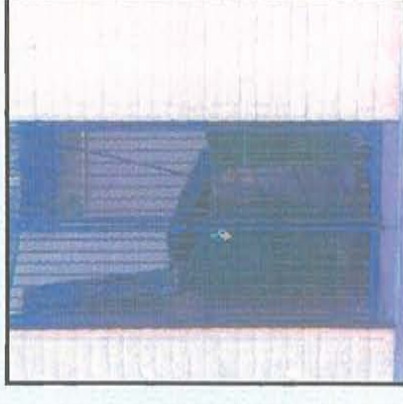


6. Gates should be constructed of similar or complimentary materials as the enclosure, but must maintain opaque qualities. Expanded metal with pinholes is an example. See Figures 38-40.
7. Fences shall be constructed of decorative materials that complement and blend with the surroundings. No chain link fence will be permitted.
8. Anti-graffiti finish shall be applied to all solid fences, walls and gates.
9. Chapter 14, Article 2, Division 9 of the Land Development Code requires that all roof top equipment be screened. In addition, wireless communication facilities must be architecturally integrated and appropriately placed on the roof top so as not to cause a visual impact. See Figure 41 for an example of a poorly integrated rooftop addition.

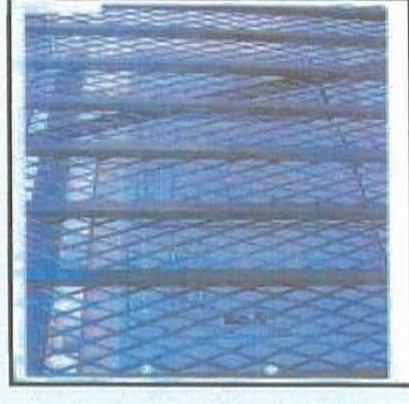
- 16 -



38



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40

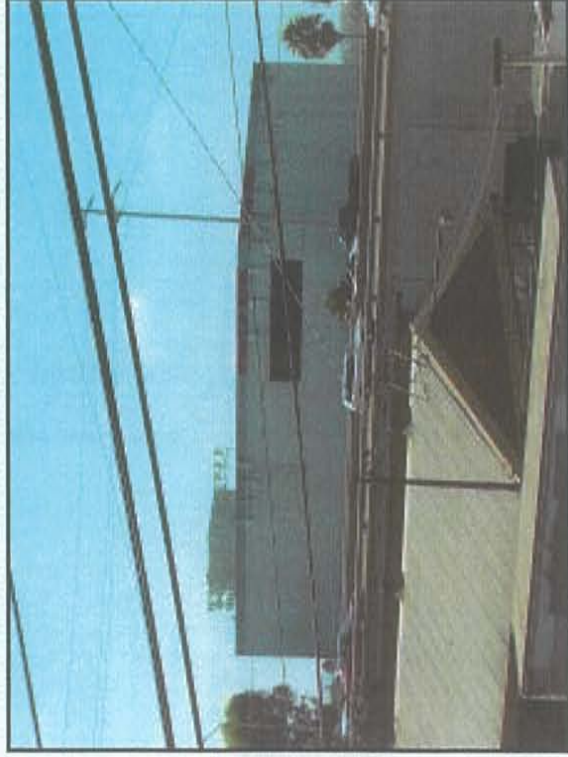




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THE CITY OF SAN DIEGO

41



d. Coastal Height

In the Coastal Height Limitation Overlay Zone on previously conforming buildings above 30 feet in height, the carrier must demonstrate that a significant gap in service coverage exists.

For buildings over 30 feet:

1. Antennas must be within the existing structural envelope of building, unless carrier can demonstrate that existing building construction does not allow.
2. Plans must demonstrate that proposal is the least intrusive method of installation in terms of aesthetics and height.
3. Each carrier is responsible for demonstrating that the initial exterior antenna installation on a building and all subsequent installations do not interfere with the overall aesthetics of the building in compliance with the goals and objectives of the Coastal Overlay Zone.

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## APPENDIX A

### A. Requirement and Resources

1. Council Policy 600-43, City of San Diego
2. Information Bulletin 536, City of San Diego
3. Justification Map



**Alexander Hempton - Objection to T-Mobile Project No. 127096, Signatures of surrounding neighbors**

---

**From:** <Randyhager@aol.com>  
**To:** <ahempton@sandiego.gov>  
**Date:** 6/8/2007 3:28:17 PM  
**Subject:** Objection to T-Mobile Project No. 127096, Signatures of surrounding neighbors  
**CC:** <MEscobarEck@sandiego.gov>, <KLynchAshcraft@sandiego.gov>, <JWaring@sandiego.gov>, <CGWilliams@sandiego.gov>, <salibamd@san.rr.com>

---

Mr. Alexander Hempton,

In response to your request (see below) for a copy of the signatures we have received of many of those who object to the subject project, I have attached scanned JPEG files of seven pages of these signatures.

Please add these names to those who oppose this project.

If you do not receive the attachments or cannot read them, please contact me.

Eugene R. Hager  
[randyhager@aol.com](mailto:randyhager@aol.com)

858-454-4135

Original Message—

**From:** Alexander Hempton [mailto:ahempton@sandiego.gov]  
**Sent:** Friday, June 08, 2007 8:09 AM  
**To:** salibamd@san.rr.com  
**Cc:** Cecilia Williams; Jim Waring; Karen Lynch-Ashcraft; Marcela Escobar-Eck  
**Subject:** Re: FW: Objection to T-Mobile Project No. 127096 Signatures of surrounding neighbors, now >100.  
**Importance:** High

\*\* High Priority \*\*

Dr. Saliba,

Thank you for your phone message and e-mails. If you would like to e-mail me a copy of the signatures, I will add them to the project's file. Once a decision is made on this project, we will notify you.

At that time, an interested party has the option of appealing the decision to the Planning Commission. The Planning Commission would then be the final decision maker.

We are currently waiting for T-Mobile to resubmit revised plans based on the City's last review of the project.

If you have any other questions, feel free to contact me.

Alex Hempton, Associate Planner  
City of San Diego | Development Services Department  
1222 First Avenue, 501 | San Diego, CA 92101-4155

Added to  
PTS 6/11/07  
127096

(619) 446-5349 | FAX: (619) 446-5499

Development Services: [http://www.sandiego.gov/development-services/  
Landscape Plan Review:](http://www.sandiego.gov/development-services/Landscape%20Plan%20Review)  
<http://www.sandiego.gov/development-services/industry/landscape.shtml>  
Telecom Plan Review:  
<http://www.sandiego.gov/development-services/industry/telecom.shtml>

>>> "Michael Saliba" <salibamd@san.rr.com> 06/08/07 8:01 AM >>>  
Dear San Diego Government Officials managing this T-Mobile Project No.  
127096

---

See what's free at [AOL.com](http://www.aol.com).

We Strongly Object the Installation of an Antenna Pole & Cellular Equipment Projected for Installation by T Mobile in Our Neighborhood on Mt. Soledad in La Jolla and Request That You Deny Approval for the Project:

ATTACHMENT 20

Name	Address	Phone
Michael J. Saliba	5582 Thunderbird Lane La Jolla CA 92037	858 454 2686
<del>Michael J. Saliba</del>		
Rosa Lee J. Saliba	5582 Thunderbird Lane La Jolla CA 92037	858 459 2267
<del>Rosa Lee J. Saliba</del>		
Bernays Levin	5573 Thunderbird Lane La Jolla CA 92037	
<del>Bernays Levin</del>		
Richard H. Levin	5573 Thunderbird Lane La Jolla CA 92037	
<del>Richard H. Levin</del>		
Robert Hafstrom	5555 Thunderbird Lane La Jolla CA 92037	
<del>Robert Hafstrom</del>		
LARRY D. Smith	5542 Thunderbird Lane La Jolla CA 92037	858 483 2558
<del>Larry D. Smith</del>		
Darlene Smith	5542 Thunderbird Lane La Jolla CA 92037	858 483 5255
<del>Darlene Smith</del>		
Brandon Osborne	5583 Thunderbird Lane La Jolla CA 92037	858-603-4590
<del>Brandon Osborne</del>		
LAVERNE HENRI	5696 SOLEDAD RD LA JOLLA CA 92037	858-457
<del>Laverne Henri</del>		
Lillian Gandy	LA JOLLA CA 92037	1016
<del>Lillian Gandy</del>		
Frank Butler	5545 Thunderbird Lane La Jolla CA 92037	858 459-1449
<del>Frank Butler</del>		
Quinn D. Butler	5545 Thunderbird Lane La Jolla CA 92037	858 270-8731
<del>Quinn D. Butler</del>		
Ron Butler	5545 Thunderbird Lane La Jolla CA 92037	(858) 459-1449
<del>Ron Butler</del>		
Nancy Adams	5583 Thunderbird Lane La Jolla CA 92037	(858) 270-8731
<del>Nancy Adams</del>		
LINDA JEANNE ADEN	2403 CORONA COURT LA JOLLA CA 92037	858-459-0551
<del>Linda Jeanne Aden</del>		

Name	Address	Phone
Charles D. Carter	5615 Soledad Rd. L.J. Co	858-454-1892
Ruth D. Carter	5615 Soledad Rd. La Jolla, Ca	858-454-1892
James D. Wells	5616 Soledad Road, La Jolla CA	858-459-8928
James D. Wells	5616 Soledad Rd. La Jolla CA	858-459-8928
Jeannette Thrush	5629 Soledad Road, La Jolla CA	858-459-6009
Donna Doyle	5677 Soledad Rd. L.J.	858-459-6504
Donald Doyle	5689 Soledad Rd.	858-454-1829
Debbie Merbach	5670 Soledad Rd.	858-459-4969
Patricia L. Yeaman	5602 Soledad Road.	858-459-2509
Kathleen P. Puch	5594 Soledad Rd.	858-459-2873
Larry Cassed	5594 Soledad Rd.	858-459-2873
NORBERT EMMER	5696 SOLEDAD RD	768-444-1016
CHUCK KENNEDY	2443 Corona Ct La Jolla	858-459-3541
Louanne Hahn	2391 Bahia Dr. La Jolla 92037	619-787-2948
Bassam Massaad	2401 Soledad Ct La Jolla CA	185874595222
Gloria Schultz	2421 SOLEDAD CT LA JOLLA	619/460705
2421 Soledad	2421 SOLEDAD CT	619/4609011
Kenneth L. Mummery	5602 Soledad Rd, La Jolla	858-459-2509
Richard L. Doyle	5677 Soledad Rd La Jolla	858-459-6504
Meghan Cox	5712 Soledad Rd La Jolla	858-454-2386
Wanda Hoge	5712 Soledad Rd LA JOLLA	858-454-2386
Paul Vincent	2442 Soledad Ct. La Jolla	858-454-1479
Paul Vincent	2442 Soledad Ct. La Jolla	858-454-1479
Mr. Hill	2422 Soledad Ct	858-459-6980
Al Roberts	5735 Soledad Rd	459-2210
Natasha Topolito	5747 Soledad Rd	456-8652
John Topolito	5747 Soledad Rd	456-8652
VCSmith	5781 Soledad Rd.	454-4362



Page 5 of 9

**We Strongly Object to the Installation of an Antenna Pole & Cellular Equipment Projected for Installation by T Mobile in Our Neighborhood on Mt. Soledad in La Jolla and Request That You Deny Approval for the Project:**

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Mary S. Kimmel	5535 Thunderbird Lane	858-274-6624
MARY S. KRIMMEL		
John A. Kimmel	5535 THUNDERBIRD LANE	858-274-6624
JOHN A. KRIMMEL		
<del>John A. Kimmel</del>	5515 Thunderbird Lane	858-483-2373
JOHN POON		
Ratan Poon	5515 Thunderbird Lane	858-483-2373
RATAN POON		
Daniel Poon	5515 Thunderbird Lane	858-483-2373
Daniel Poon		
Maria Verbruggen	1915 Balboa Way	858-483-0139
<del>Maria Verbruggen</del>	"	"
<del>Maria Verbruggen</del>	"	"
Karin Byrne	5525 Thunderbird Lane	858-699-0684
Karin Byrne		
Melissa Frederick	5530 Thunderbird Ln	(858) 551-9072
Melissa Frederick	La Jolla CA 92037	
Andrew H.	5505 Thunderbird Lane	(858) 490-0474
Fatty Cohen	5512 Thunderbird Lane	858-273-5370

**We Strongly Object to the Installation of an Antenna Pole & Cellular Equipment Projected for Installation by T Mobile in Our Neighborhood on Mt. Soledad in La Jolla and Request That You Deny Approval for the Project:**

Name	Address	Phone
EUGENE R. HAGER	2322 BAHIA DR 92037	858-454-4135
<del>Eugene R. Hager</del>		
Pauline Hager	2322 Bahia Dr.	(858) 454-4135
<del>Pauline Hager</del>		
MARGARET L. HARTER	2312 BAHIA DR.	858-459-3010
<del>Margaret L. Harter</del>		
E. Jean Lisle	2332 Bahia Dr.	(858) 454-5467
<del>E. Jean Lisle</del>		
Kelly Thomas	2307 Bahia Drive	858-459-3136
<del>Kelly Thomas</del>	"	"
RICHARD THOMAS	"	"
<del>Richard C. Thomas</del>	"	"
Kelly Lake	2321 Bahia Dr.	858 551-1627
<del>Kelly Lake</del>	"	"
STARA LAKE	"	858 551-1627
<del>Star Lake</del>		
Daniel R. Kronemyer	2342 Bahia Drive	858-459-8302
<del>Daniel R. Kronemyer</del>		
Cynthia Kronemyer	2342 Bahia Dr.	(8) 459-2629
<del>CYNTHIA KRONEMYER</del>		
Gus Vincent	2282 Bahia Dr.	459-0576
<del>Gus Vincent</del>	2282 Bahia Dr.	" "
Rayanna Vincent	"	" "
<del>R. Vincent</del>		
Donna L. Roberts	2205 Bahia Dr.	858-454-413.
<del>Donna L. Roberts</del>		



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Name	Address	Phone
Diane F. VanMatre	2223 Bahia Dr.	858-483-9117
<del>Diane F. VanMatre</del>		
Kristine Press	2247 Bahia Dr.	(858) 270-8891
<del>Kristine Press</del>		
Gary Press	2247 Bahia Dr.	(858) 270-8891
<del>Forrest C. Press</del>	2259 Bahia Dr.	(858) 490-9225
<del>Forrest C. Press</del>		
Gail Goldman	2259 Bahia Dr.	858-490-9225
<del>Gail Goldman</del>		
Mark A. Osman	2271 Bahia Dr.	Mark Osman (619) 518-2361
Julie M. Osman	Same	"
Julie M. Osman		858 454-2712
Don Sutton	2270 Bahia Dr	LT CA 92037
<del>Don Sutton</del>		
Marie Brunning	2352 Bahia Dr. La Jolla	CA 92037 (858) 243-265
<del>Marie Brunning</del>		
William Brunning	2352 Bahia Dr. La Jolla	CA 92037
<del>William Brunning</del>		858-454-4950

Page 9 of 9

- (B) Limitations on the number of on-premises fund-raising or social activities to a specific number of occurrences each year.

*(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)*

**§141.0405 Communication Antennas**

- (a) Section 141.0405 regulates the following communication antennas. Amateur (HAM) radio facilities or temporary telecommunication facilities necessitated by natural or man-made disasters are not regulated as communication antennas. Section 141.0405 does not apply to single dish antennas smaller than 24 inches in diameter or to remote panel antennas less than 24 inches in length and in width, except when associated with another telecommunication facility.

- (1) Minor telecommunication facilities: Antenna facilities used in wireless telephone services, paging systems, or similar services that comply with all development regulations of the underlying zone and overlay(s) and that meet the criteria in Section 141.0405(e)(1) or (2).
- (2) Major telecommunication facilities: Antenna facilities that do not meet the criteria for minor telecommunication facilities in Section 141.0405(e)(1) or (2).
- (3) Satellite antennas: Antennas capable of transmitting or receiving signals to or from a transmitter or a transmitter relay located in a planetary orbit. Satellite antennas include satellite earth stations, television-reception-only satellite antennas, and satellite microwave antennas.

- (b) General Rules for Telecommunication Facilities  
All telecommunication facilities must comply with the following requirements:

- (1) All approved telecommunication facilities must comply with the Federal standards for RF radiation in accordance with the Telecommunication Act of 1996 or any subsequent amendment to the Act pertaining to RF radiation. Documentation shall be submitted to the City providing evidence that the cumulative field measurements of radiofrequency power densities for all antennas installed on the premises are below the Federal standards.

- (2) Except in the event of an emergency, routine maintenance and inspection of telecommunication facilities located on residentially zoned *premises*, including all of the system components, shall occur during normal business hours between 8:00 a.m. and 5:00 p.m. Monday through Friday.
- (3) Antenna facilities or associated equipment proposed for installation in the *public right-of-way* are subject to the following regulations:
  - (A) Antennas or associated equipment located in *public right-of-way* which is adjacent to a residentially zoned *premises* may be permitted with a Neighborhood Use Permit.
  - (B) Antennas and associated equipment located in the *public right-of-way* adjacent to non-residentially zoned *premises* are subject to review and approval by the City Manager.
  - (C) All equipment associated with antenna facilities shall be undergrounded, except for small services connection boxes or as permitted in Section 141.0405(b)(4).
  - (D) A construction plan must be submitted to and is subject to review and approval by the City Engineer in accordance with Chapter 6, Article 2.
- (4) Antennas and associated equipment located in the *public right-of-way* may be placed above ground only if the equipment is integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color, and style), unique design solutions, enhanced landscape architecture, or complementary siting solutions to minimize visual or pedestrian impacts. These facilities may be permitted with a Conditional Use Permit decided in accordance with Process Three.
- (c) Temporary facilities that provide services to public events and are limited to a one-time maximum duration of 90 calendar days are subject to the temporary use permit procedures in Chapter 12, Article 3, Division 4.
- (d) All telecommunication facilities that are required to obtain encroachment authorization to locate on city-owned dedicated or designated parkland or open space areas shall comply with the following:



- (1) The City Manager shall determine that the proposed facility would not be detrimental to the City's property interest; would not preclude other appropriate uses; would not change or interfere with the use or purpose of the parkland or open space; and would not violate any deed restrictions related to City property, map requirements or other land use regulations.
- (2) The proposed facility shall be integrated with existing park facilities or open space; shall not disturb the environmental integrity of the parkland or open space; and shall be disguised such that it does not detract from the recreational or natural character of the parkland or open space.
- (3) The proposed facility shall be consistent with The City of San Diego Progress Guide and General Plan.

(e) Minor Telecommunication Facilities

Minor telecommunication facilities are permitted as a limited use or may be permitted with a Neighborhood Use Permit in the zones indicated with an "L" or an "N", respectively, in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (1) An antenna facility will be considered a minor telecommunication facility if the facility, including equipment and *structures*, is 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*.
- (2) In an effort to encourage collocation and to recognize that some telecommunication facilities are minimally visible, the following shall be considered minor telecommunication facilities:
  - (A) Additions or modifications to telecommunication facilities that do not increase the area occupied by the antennas or the existing antenna enclosure by more than 100 percent of the originally approved facility and do not increase the area occupied by an outdoor equipment unit more than 150 feet beyond the originally approved facility, if the additions and modifications are designed to minimize visibility.

- (B) Panel-shaped antennas that are flush-mounted to an existing *building facade* on at least one edge, extend a maximum of 18 inches from the *building facade* at any edge, do not exceed the height of the building, and are designed to blend with the color and texture of the existing building.
  - (C) Whip antennas if the number of antennas that are visible from the *public right-of-way* does not exceed six, if the antennas measure 4 inches or less in diameter, and if they have a mounting apparatus that is concealed from public view.
- (3) Minor telecommunication facilities are not permitted in the following locations:
  - (A) On *premises* that are developed with residential uses in residential zones;
  - (B) On vacant *premises* zoned for residential development;
  - (C) On *premises* that have been designated as *historical resources*;
  - (D) On *premises* that have been designated or mapped as containing sensitive resources;
  - (E) On *premises* within the *MHPA*; or
  - (F) On *premises* that are leased for billboard use.
- (4) The installation of a minor telecommunication facility shall not result in the elimination of required parking spaces.
- (5) Minor telecommunication facilities that terminate operation shall be removed by the operator within 90 calendar days of termination.
- (f) Major Telecommunication Facilities

Major telecommunication facilities may be permitted with a Conditional Use Permit decided in accordance with Process Three, except that major telecommunication facilities on dedicated or designated parkland and open space may be permitted with a Conditional Use Permit decided in accordance with Process Five, in the zones indicated with a "C" in the Use Regulations

Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (1) Major telecommunication facilities are not permitted in the following locations:
  - (A) On *premises* containing designated *historical resources*;
  - (B) Within viewsheds of designated and recommended State Scenic Highways and City Scenic Routes; or
  - (C) Within ½ mile of another major telecommunication facility, unless the proposed facility will be 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, and *accessory use structures*.
  - (D) Within the Coastal Overlay Zone, on *premises* within the MHPA and/or containing *steep hillsides* with *sensitive biological resources*, or within public view corridors or view sheds identified in applicable *land use plans*.
- (2) Major telecommunication facilities shall be designed to be minimally visible through the use of architecture, landscape architecture, and siting solutions.
- (3) Major telecommunication facilities shall use the smallest and least visually intrusive antennas and components that meet the requirements of the facility.
- (g) Satellite Antennas

Satellite antennas are permitted as a limited use subject to Section 141.0405(g)(2), and may be permitted with a Neighborhood Use Permit subject to Section 141.0405(g)(3), or with a Conditional Use Permit decided in accordance with Process Three subject to Section 141.0405(g)(4).

- (1) Exemption. Satellite antennas that are 5 feet in diameter or smaller are permitted in all zones and are exempt from this section.

- (2) Limited Use Regulations. Satellite antennas that exceed 5 feet in diameter are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.
  - (A) Satellite antennas are not permitted within the *MHPA*.
  - (B) Satellite antennas are not permitted on *premises* that have been designated as *historical resources*.
  - (C) Satellite antennas shall not exceed 10 feet in diameter.
  - (D) Ground-mounted satellite antennas shall not exceed 15 feet in *structure height*.
  - (E) Ground-mounted satellite antennas shall not be located in the *street yard*, *front yard*, or *street side yard* of a *premises*.
  - (F) Satellite antennas shall not be light-reflective.
  - (G) Satellite antennas shall not have any *sign copy* on them nor shall they be illuminated.
  - (H) Ground-, roof-, and pole-mounted satellite antennas shall be *screened* by fencing, buildings, or parapets that appear to be an integral part of the building, or by landscaping so that not more than 25 percent of the antenna height is visible from the *grade* level of adjacent *premises* and adjacent *public rights-of-way*.
- (3) Neighborhood Use Permit Regulations. Proposed satellite antennas that do not comply with Section 141.0405(b)(2) may be permitted with a Neighborhood Use Permit subject to the following regulations.
  - (A) Satellite antennas are not permitted within the *MHPA*.
  - (B) Satellite antennas are not permitted on *premises* that have been designated as *historical resources*.
  - (C) Satellite antennas shall not exceed 10 feet in diameter.
  - (D) Satellite antennas shall not be light-reflective.



- (E) Satellite antennas shall not have any *sign copy* on them nor shall they be illuminated.
- (F) The visual impacts of the antenna to adjacent *premises* and adjacent *public rights-of-way* shall be minimized by the positioning of the antenna on the site and the use of landscape or other *screening*.
- (4) Conditional Use Permit Regulations. Except for proposed satellite antennas which are *accessory uses* in industrial zones, proposed satellite antennas that exceed 10 feet in diameter may be permitted only with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations.
  - (A) Satellite antennas are not permitted within the *MHPA*.
  - (B) Satellite antennas are not permitted on *premises* or its appurtenances that have been designated as *historical resources*.
  - (C) The visual impacts of the antenna to adjacent *premises* and adjacent *public rights-of-way* shall be minimized by the positioning of the antenna on the site and the use of landscaping or other *screening*.

(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)

**§141.0406 Correctional Placement Centers**

Correctional placement centers may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) Correctional placement centers are not permitted in any of the following locations:
  - (1) Within the beach impact area of the Parking Impact Overlay Zone;
  - (2) Within 1/4 mile of any type of residential care facility, *social service institution*, welfare institution, or similar type of facility, measured from *property line* to *property line* in accordance with Section 113.0225;

**Wireless Communication Facilities  
in the Public Right-of-Way**

In the City of San Diego, Wireless Communication Facilities are regulated by the City's Land Development Code, section 141.0420 (formerly 141.0405), and City Council Policy 600-43. The City's regulatory authority is limited by the Federal Telecommunications Act of 1996 and the State's California Public Utilities Code.

The following are limitations imposed by the Federal Telecommunications Act:

**(i)** The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

**(I)** shall not unreasonably discriminate among providers of functionally equivalent services; and

**(II)** shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

**(ii)** 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.

**(iii)** 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.

**(iv)** 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.

**(v)** Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The following California Public Utilities Code addresses the right-of-way as follows:

**7901.** Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

**7901.1.**

- (a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.
- (b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.
- (c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

PAUL G. EDMONSON  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Casey Gwinn**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101-4100  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

**MEMORANDUM OF LAW**

**DATE:** November 09, 2001

**TO:** THE COMMITTEES ON NATURAL RESOURCES AND CULTURE  
AND LAND USE AND HOUSING

**FROM:** City Attorney

**SUBJECT:** TELECOMMUNICATIONS

At the Land Use and Housing Committee of September 19, 2001, the Committee conducted a workshop on cellular telephones. At the workshop, a number of issues concerning the Telecommunications Act were raised which were referred to the City Manager for future consideration. While the City Manager will report to the Committee on the issues identified, many of them contained legal implications. In anticipation of future workshops and other inquiries concerning telecommunications issues, this report provides a legal framework in which to address the issues raised during the September 19, 2001 workshop.

**I. INTRODUCTION TO TELECOMMUNICATIONS**

**A. Telecommunications Act of 1996**

Under the Telecommunications Act of 1996, 47 U.S.C. §§ 151-710 [the Act], the federal government has primary authority to regulate telecommunications services. The Act was intended "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced technologies and services . . . by opening all telecommunications markets to competition . . ." H.R. Conf. Rep. No. 104-458 at 208 (1996).

**B. Telecommunications in California**

Under federal and state law, local authority over land use and the use of public rights-of-way by telecommunication companies varies depending upon the intended use on the property. In California, there are five key statutes that must be harmonized by local authorities in their attempt to exercise local control. Two of the five are federal statutes found within the Act, at sections



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253 (removal of barriers to entry and local government authority to manage the public rights-of-way) and 332 (mobile services and preservation of local zoning authority). The other three statutes are located in the California Public Utilities Code, at sections 7901 (essentially granting telephone companies a statewide franchise to install telephone lines along public streets), 7901.1 (reserving local agencies the right to regulate time, place, and manner restrictions on access to public streets by telephone companies), and in the Government Code, at section 50030 (limiting permit fees to the reasonable cost of providing service).

**C. Definitions Under the Telecommunications Act**

To understand the Act, a few important terms must be defined.

- “Telecommunications” means “. . . the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153 (43).
- “Telecommunication service” means “. . . the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153 (46).
- “Telecommunications carrier” means “. . . any provider of telecommunications services . . .” 47 U.S.C. § 153 (44).
- “Wire communications” or “communications by wire” means the transportation of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services . . . incidental to such transmission. 47 U.S.C. § 153 (52).
- “Personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. § 332(c)(7)(C)(i).
- “Commercial mobile service” means, “. . . any mobile service . . . that is provided for profit and makes interconnect services available (A) to the public . . .” 47 U.S.C. § 332(d)(1). Common commercial mobile services include, but are not limited to, cellular telephone services, paging, and personal communication services.

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**II. OVERVIEW OF WIRE COMMUNICATIONS  
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**A. Federal Law**

Judicial action on local public rights-of-way has been governed by Section 253(a) of the Act, entitled "Removal of Barriers to Entry". To this end, and to advance the national policy framework, the Act, in part, forbids any state or local legal requirement that would "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). However, within certain parameters, the Act reserves the right of local authorities to regulate the use of the public rights-of-way:

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

47 U.S.C. § 253(c).

Courts across the nation are struggling with the appropriate interpretation of section 253(c). They seek to balance the local authorities' rights to obtain "fair and reasonable compensation" for use of public rights-of-way and to establish requirements for management of the public rights-of-way with those rights of the telecommunication services providers under the Act. When local authorities adopt public rights-of-way ordinances, telecommunications service providers typically allege the ordinances constitute "discriminatory" treatment, "a barrier to entry," or produce the "effect" of being a barrier to entry. Each case turns on individual state law, applied against the backdrop of the Act, and case results vary dramatically from state to state, circuit to circuit.

**1. Local Authorities Retain the Right to Manage the Public Rights-of-Way**

Under federal and state law, local authorities retain the authority to manage public rights-of-way. However, that authority is subject to much debate between telecommunication providers and local authorities. Unfortunately, the FCC, the federal courts, and Congress are equally unclear about the parameters of what constitutes appropriate rights-of-way management by local authority.

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**a. The FCC Decisions Related to Local Authorities Management of the Public Rights-of-Way**

*In In the Matter of TCI Cablevision of Oakland County, Inc.*<sup>1</sup>, the FCC has stated:

We recognize that section 253(c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way. We have previously described the types of activities that fall within the sphere of appropriate rights-of-way management in both the Classic Telephone Decision and the OVS Orders, and that analysis of what constitutes appropriate rights-of-way management continues to set the parameters of local authority. These matters include coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping track of the various systems using the rights-of-way to prevent interference between them.

However, the FCC expressed concern that some local authorities may be reaching beyond traditional rights-of-way management and imposing a "third tier" of telecommunication regulations, governing the relationship among telecommunications providers, or the rates, terms and conditions under which telecommunication services are offered to the public. *Id.* at para.105.

The FCC looked to the Act's legislative history for examples of proper rights-of-way management. For example, the FCC has cited Senator Dianne Feinstein who, during the floor debate on section 253(c), offered additional examples of the types of local restrictions that Congress intended to permit under section 253(c), including requirements that:

- (1) "regulate the time or location of excavation to preserve effective traffic flow, prevent hazardous road conditions, or minimize notice impacts;"
- (2) require a company to place its facilities underground, rather than overhead, consistent with the requirements imposed upon other utility companies;"
- (3) "require a company to pay fees to recover an appropriate share of the increased street repair and paving costs that result from repeated

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<sup>1</sup> *In the Matter of TCI Cablevision of Oakland County, Inc.*, CSR-4790, FCC 97-331, paragraph 103, citing *In re Classic Telephone, Inc.*, 11 FCC Rcd 13082, 13103 (FCC 1996).

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excavation;" (4) "enforce local zoning regulations;" (5) "require a company to indemnify the City against any claims of injury arising from the company's excavation."

*City of Auburn v. Qwest Corporation*, 247 F.3d 966 (9th Cir. 2001), Order and Amended Opinion, 260 F. 3d 1160, 1177 (9th Cir. July 10, 2001), cert. pending sub nom. *City of Tacoma v. Qwest Corporation*, No. 01-596 (U.S. filed October 9, 2001), quoting *In re Classic Telephone, Inc.*, 11 FCC Rcd 13082, P39 (quoting 141 Cong. Rec. S8172 daily edition June 12, 1995) (statement of Sen. Feinstein, quoting letter from the Office of City Attorney, City and County of San Francisco.)

**b. The Federal Courts**

In several decisions, the federal courts have also discussed the requirements that can be imposed by local governments consistent with the Act. For example, in *Omnipoint Communications, Inc., v. Port Authority of New York and New Jersey*<sup>2</sup>, the Port Authority denied Omnipoint access to the Lincoln and Holland Tunnels because the Tunnels already contained telecommunication providers. The district court found that the Port Authority properly exercised its rights to manage the public rights-of-way and therefore denied Omnipoint's request for injunctive relief on discriminatory grounds. The court held that under those particular circumstances, the Port Authority's failure to allow an additional telecommunication provider access rights in the public rights-of-way (the Tunnels) did not constitute discrimination under section 253 or section 332.

A New York federal district court reviewed one city's requirements for placement of equipment in public rights-of-way and approval process in detail, in *TCG New York, Inc. v. City of White Plains*, 125 F. Supp. 2d 81 (S.D.N.Y. 2000). The court used a two-step analysis, first reviewing the requirements and process to determine if they "prohibit or have the effect of prohibiting" the service provider from providing telecommunications services (section 253(a)), and then determining whether the requirements are permitted nonetheless under section 253(c). 125 F. Supp. 2d at 87 *ff.* Under the first step, the court found that "while the City's requirements admittedly do not impose an explicit prohibition on TCG, the regulations coupled with the City's long delay in moving forward with the approval process have effectively prohibited TCG from providing telecommunications services in White Plains." 125 F. Supp. 2d at 89.

The court held that most of the city's requirements for information fell within the safe harbor protection of section 253(c) because they managed the public rights-of-way. Those

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<sup>2</sup> *Omnipoint Communications, Inc., v. Port Authority of New York and New Jersey*, 1999 WL 494120 (S.D.N.Y. 1999).



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included information regarding the proposed franchise area, construction schedule, location of the telecommunications system, and ownership of the company and its affiliates. The city could not however, require a description of the telecommunications services to be provided, information regarding proposed financing for operation and construction, or proof of the applicant's legal, financial, and technical qualifications to hold the franchise. 125 F. Supp. 2d at 91-92. The court held that the city could require basic legal protections such as performance bonds, security, insurance and indemnification, provisions to ensure quality workmanship and construction, engineering site plan, provisions to minimize disruption of the streets, inspection of facilities in the rights-of-way, and inspection of books and records to the extent necessary to ensure accurate fee information. 125 F. Supp. 2d at 93-95. Nevertheless, the city was precluded by the Act from requiring city council approval based on broad public interest considerations. 125 F. Supp. 2d at 92-93. Finally, this court held that a city does not have the authority to grant or deny a franchise based on its own discretion. *Id.*

**2. Local Authorities May Charge Fair and Reasonable Compensation for the Use of the Public Rights-of-Way**

The courts have also addressed what can be charged by cities as "fair and reasonable compensation" that is also "competitively neutral and nondiscriminatory" under section 253(c) of the Act. In *White Plains* for example, the court held that the fees to be charged by the city could include "general revenues and other considerations not directly related to a municipality's expenses in maintaining the rights-of-way," such as "'rent' for the use of city-owned property for private purposes," within the meaning of "fair and reasonable compensation" under the Act. *Id.* at 96.

In 1999, the First Circuit Court of Appeals denied a preliminary injunction to a telecommunications provider alleging discriminatory treatment in requiring applications and fees as part of management of the rights-of-way. *Cablevision of Boston, Inc. v. Public Improvement Commission of the City of Boston*, 184 F.3d 88 (1st Cir. 1999). In that case, the City of Boston had allowed another company to pull cable through its existing electrical conduit without complying with the application process used for construction of new conduit. The court ruled that the nondiscrimination requirement of section 253(c) did not impose an affirmative obligation on local governments to "ensure a level playing field among telecommunications providers." 184 F.3d at 104. Rather, if a city "decides to regulate for its own reasons (e.g., to minimize disruption to traffic patterns), section 253(c) would require that it do so in a way that avoids creating unnecessary competition inequities among telecommunications providers." 184 F.3d at 105. *See also, Omnipoint Communications, Inc., v. Port Authority of New York and New Jersey*, 1999 WL 494120 (S.D.N.Y. 1999) (trial court denied preliminary injunction because requirements imposed by Port Authority for use of public rights-of-way in tunnels did not exceed the local agency's powers under the Act).

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In *TCG Detroit v. City of Dearborn*<sup>3</sup>, the Sixth Circuit Court of Appeals upheld the City's right to charge a franchise fee of four percent of gross revenues for laying fiber-optic cable in the city. The court held that the charge was "fair and reasonable" under section 253(c) of the Act. The court also found that the fee was nondiscriminatory under section 253(c), even though the local exchange carrier, Ameritech, was not, pursuant to Michigan law, subject to the fee. Ameritech had built its infrastructure many years earlier and held franchise rights under earlier laws giving it immunity from the new franchise fees. This state-granted immunity for Ameritech did not render the fee, as applied to TCG, discriminatory for purposes of section 253(c). 206 F.3d at 625.

### 3. Ninth Circuit Court of Appeals - Rulings in California

In the recently decided case, *City of Auburn*, the Ninth Circuit (which includes all California federal courts), departed from the reasoning of the First and Sixth Circuit Courts of Appeal discussed above by severely restricting the ability of local governments to impose regulations. The *Auburn* case arose out of an issue relating to Qwest's obligation, under state law, to pay the cost of relocating telecommunications facilities (wireline facilities) made necessary by right-of-way improvements. However, the litigation quickly expanded into a challenge by Qwest, claiming that the State of Washington's right-of-way ordinances were preempted under section 253 of the Act.

The Court's original opinion adopted the premise that preemption under section 253 was "virtually absolute" with respect to "telecommunications regulation." 247 F.3d at 980. As in *White Plains*, *supra*, the Court in *Auburn* conducted a detailed review of the City's franchise application process and authority to deny access to the public rights-of-way to an applicant. The *Auburn* court concluded that each of the various application requirements, when taken together, formed a barrier to entry in violation of the Act. 247 F.3d at 981. The court also concluded that the various requirements (e.g. financial, legal and technical qualifications for holding a franchise) regulated the telecommunications companies and were not directly related to rights-of-way management. Auburn's allegations that these requirements indirectly related to the use of the public rights-of-way were dismissed by the court as "too tenuous of a connection." 247 F.3d at 985.

In July 2001, after a motion for rehearing, the Ninth Circuit amended eight sections of its decision. The court modified its ruling and instead held that the effect of the franchise application requirements taken together, constituted a barrier to entry. *Id.* Amendment No. 5. The court further stated that a franchise is not *per se* preempted by the Telecommunications Act of 1996. *Id.* Amendments 5 and 6.

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<sup>3</sup> *TCG Detroit v. City of Dearborn*, 206 F.3d 618 (6th Cir. 2000).

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Relying upon the original *Auburn* decision, in May 2001, a federal district court struck down the City of Berkeley's telecommunication ordinance. *Qwest Communications Corp. v. City of Berkeley*, 146 F. Supp. 2d 1081 (N.D. Cal. May 23, 2001). The district court held that, "[t]he Ordinance vests significant discretion in the City to grant or deny permission to use its public rights-of-way based upon an open ended set of criteria and requirements." *Id.* at 1097.

**B. California Public Utilities Code**

Public Utilities Code section 7901 states that, "[t]elegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."<sup>4</sup> Thus, once a telephone service provider has obtained its certificate of public convenience and necessity [CPCN] from the California Public Utilities Commission, it has been granted a state wide franchise. With CPCN in hand, the telephone service provider may avail itself of the benefits under Public Utilities Code Section 7901. Under section 7901, local authorities are prohibited from requiring telephone companies to obtain a local franchise agreement or pay local franchise fees. Cal. Pub. Util. Code § 7901; *City of San Diego v. Southern California Telephone Corporation*, 42 Cal. 2d 110, 116 (1954). Notwithstanding the rights granted to telephone providers under section 7901, cities still retain "the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." Cal. Pub. Util. Code § 7901.1.

As noted above, the Ninth Circuit deviates in its interpretation of the Act from other federal circuits with respect to the limitations on local jurisdictions to regulate public rights-of-way. See *City of Auburn*, 260 F. 3d 1160; and *Qwest Communications Corp.* 146 F. Supp. 2d 1081. Congress and the FCC have provided some guidance to district courts and local authorities for acceptable rights-of-way management. However, local authorities are cautioned by court decisions that the more expansive the regulation over the telecommunication provider, the more likely the courts, especially the Ninth Circuit Court of Appeals, will find the regulation invalid.

**III. OVERVIEW OF WIRELESS ANTENNAS AND FACILITIES  
UNDER FEDERAL AND STATE LAW**

**A. Federal Law Relate to Zoning and Land Use Issues**

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<sup>4</sup> While on its face the grant extends to all "waters or lands within this State," it is actually limited to "lands which constitute a part of, or are necessarily held in conjunction with, the public roads, highways and waters." 28 Op. Cal. Att'y Gen. 215 (1956).

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Federal authority to regulate wireless service providers is primarily found in section 332 of the Act. Federal law generally preempts local regulation of wireless services. However, local authorities maintain some control over building and zoning issues. Local authorities are preempted from regulating facilities on the basis of radio frequency emissions to the extent that the emissions comply with FCC standards.

The Act reserves to local authorities zoning control over personal wireless service facilities. Specifically, "[E]xcept as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities." 47 U.S.C. § 332(c)(7)(A). The Act has two general limitations upon local authority. First, 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." Second, the regulation "... shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. section 332(c)(7)(B)(i). As with wired telecommunications, the scope of these restrictions has been subject to interpretation by the courts.

### 1. Unreasonable Discrimination Among Providers

Regulations imposed by local authorities for the placement, construction, and modification of personal wireless facilities "shall not unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(c)(7)(B)(i)(I). In the Conference Report to the Telecommunications Act of 1996, Congress stated the intent of the prohibition against discrimination is "to ensure that a State or local government does not in making a decision regarding the placement, construction and modification of facilities of personal wireless services ... unreasonably favor one competitor over another." *AT&T Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F. 3d 423, 426, n. 3. (4th Cir. 1998). Additionally, it is Congress' intent to "provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally application zoning requirements even if those facilities provide functionally equivalent services." *Id.*

Thus, the Act explicitly contemplates that some discrimination is allowed among providers of functionally equivalent services<sup>5</sup>. 47 U.S.C. § 332(c)(7)(B)(i)(I). Any such discrimination need only be reasonable. *AT&T Wireless PCS*, 155 F. 3d at 427. The fact that a decision has the effect of favoring one competitor over another, in and of itself, is not actionable under the Act. *Id.*

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<sup>5</sup> "Functionally equivalent services" generally refers to the technology utilized to provide the wireless service. [e.g., PCS vs. cellular technology.]



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## 2. Local Regulations that Prohibit or Have the Effect of Prohibiting Service

Regulations imposed by local authorities for the placement, construction, and modification of personal wireless facilities "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i)(II).

### a. Siting Decisions as a Prohibition on Service

Local regulations that prohibit or have the effect of prohibiting service are preempted by the Act. This preemption applies to regulations that result in either a blanket prohibition of providing services or which, when applied on a case-by-case basis, is a denial of every submitted application. *AT&T Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F.3d 423 (4th Cir. 1998). In other words, local authorities may not use siting decisions to deny wireless telecommunications service. "This does not mean that the denial of a permit for a particular site amounts to the denial of wireless services because services can be effected from numerous sites in various combinations, sometimes not even within the area to be served. It follows, therefore, that case-by-case denials of permits for particular sites cannot, without more, be construed as a denial of wireless services." *360 Degrees Communications Company of Charlottesville v. The Board of Supervisors of Albemarle County*, 211 F.3d 79, 86 (4<sup>th</sup> Cir. 2000); see also *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d at 428-29.

Certainly, local policies or general bans against any siting of wireless service facilities would violate section 332(c)(7)(B)(i)(II). Moreover, indications by a local government that repeated individual applications will be denied because of a generalized hostility to wireless services may also violate section 332(c)(7)(B)(i)(II). But whether a single denial of a site permit could ever amount in effect to the prohibition of wireless service is a difficult question that is decided on a case-by-case basis. *360 Degrees Communications*, 211 F. 3d at 86; and *AT&T Wireless*, 155 F. 3d at 428.

This does not mean, however that a wireless service provider could never establish that an individual adverse zoning decision has the "effect" of violating section 332(c)(7)(B)(i)(II). Rather, a wireless service provider would be required to prove to a court that this denial is representative of a local authorities' broader policy to preclude wireless service. *360 Degrees Communications*, 211 F. 3d at 86.

### b. Closing Gaps in Service

A local government may reject an application for construction of a wireless service facility in an under-served area without effectively prohibiting personal wireless services if the service gap can be closed by less intrusive means. *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F. 3d 9, 14 (1st Cir. 1999) ("Individual denial is not automatically a

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forbidden prohibition," but disallowing "the only feasible plan . . . might amount to prohibiting wireless service.").

Often wireless service providers seek to install an antenna in order to close a gap in existing service coverage. The doctrine of prohibiting "gaps" is designed to protect the users, not the carriers. *Cellular Telephone Co. v. Zoning Board of Ho-Ho-Kus*, 197 F. 3d 64, 70 (3rd Cir. 1999) ("there is a "gap" in personal wireless services when a remote user of those services is unable either to connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonable uninterrupted communication"). (Citation omitted.)

In *Sprint Spectrum, L.P. v. Willoth*<sup>6</sup>, the court held that the effect of local zoning policies and decisions have the effect of prohibiting wireless communication services only if they result in a "significant" gap in the availability of wireless services. "Where the holes in coverage are very limited in number or size (such as the interiors of buildings in a sparsely populated area, or confined to a limited number of houses or spots as the area covered by buildings increases) the lack of coverage likely will be de minimis so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service." *Id.* at 643-644.

The provider seeking to close the gap will be required to show the local authority "that 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. This will require a showing that a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g. that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antenna on existing structures, etc." *APT Pittsburgh Limited Partnership v. Penn Township Butler County of Pennsylvania*, 196 F. 3d 469, 480 (3rd Cir. 1999).

Following *Willoth* and *Ho-Ho-Kus*, the district court in *Airtouch Cellular v. The City of El Cajon*<sup>7</sup>, upheld the City's denial of Airtouch's application for a conditional use permit to construct and maintain wireless communication facilities on top of and adjacent to a water tower owned by Padre Dam Municipal Water District. The court found that "[s]ince the area at issue in this case is already served by other providers, the City's decision does not 'have the effect of prohibiting the provision of personal wireless services.'" *Id.* at 1167.<sup>8</sup>

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<sup>6</sup> *Sprint Spectrum, L.P. v. Willoth*, 176 F. 3d 630, 643 (2nd Cir. 1999).

<sup>7</sup> *Airtouch Cellular v. The City of El Cajon*, 83 F. Supp 2d 1158, (S.D. Cal. 2000).

<sup>8</sup> The Court noted that a provider denied the opportunity to build a wireless facility in an area already served by other carriers could still bring a discrimination claim under section

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**B. Radio Frequency (RF) Emissions Under Federal Law**

Federal law prohibits a local authority from regulating personal wireless facilities based upon radio frequency emissions. "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." 47 U.S.C. § 332(c)(7)(B)(iv).

The FCC standards regulate RF emissions from personal wireless facilities and preempt cities from regulating not only the "placement, construction and modification" of a personal wireless service facility based on RF emissions, but also the operation of such a facility. *Cellular Phone Taskforce v. FCC*, 205 F. 3d 82 (2d Cir. 2000). Thus, a local ordinance that prohibited a personal wireless service's antennas from operating in a manner that interfered with the city's public safety system was found preempted by federal law. *Southwestern Bell Wireless, Inc. v. Johnson County Bd. Of Commissioners*, 199 F. 3d 1185 (1999). While local authorities may not be able to regulate RF emissions, they may be able to impose a reasonable requirement upon a personal wireless facility operator to demonstrate its facility does not exceed FCC standards. This authority appears to flow from within the statute, "... to the extent that such facilities comply with the Commission's regulations concerning such emissions." 47 U.S.C. § 332(c)(7)(B)(iv).

**C. Moratorium Under Federal Law.**

Federal law does not specifically allow for or prohibit cities from adopting a moratorium for the construction of wireless facilities. The Act requires local governments to "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." 47 U.S.C. § 332(c)(7)(B)(ii). The Act expressly provides that the calculation of "a reasonable period of time" should "[t]ake into account the nature and scope of [the] request." *Id.*

In *Sprint Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036, 1040 (W.D. Wash. 1996), the court held that the City's six-month (effective for up to one year) moratorium on issuing permits for additional wireless communications facilities was not a prohibition on wireless

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332(c)(7)(B)(i)(II). See *APT Pittsburgh Limited Partnership v. Penn Township Butler County of Pennsylvania*, 196 F. 3d 469, 480 n.8 ("if it [the denial] has an effect of unreasonably discriminating between providers . . . [a] showing that the other provider is similarly situated, i.e. that the "structure, placement or cumulative impact" of the existing facilities makes them as or more intrusive [greater impacts] than the proposed facility").

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facilities, nor did it have a prohibitory effect. The court reasoned that "[i]t is rather, a short-term suspension of permit-issuing while the City gathers information and processes applications. Nothing in the record suggests that this is other than a necessary and bona fide effort to act carefully in a field of rapidly evolving technology." *Id.* at 1040.

In *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997), the court held that a six-month review period (non-moratoria) was reasonable, even though the usual duration of zoning procedures in the community was two to three months. In *SNET Cellular, Inc. v. Angell*, 99 F. Supp. 2d 190 (D.R.I. 2000), the court held that the 15-month period (non-moratoria) it took the board to reach its decision did not constitute an unreasonable delay.

Accordingly, if the City Council were to enact legislation imposing a moratorium, it must be reasonable. Moreover, the City must act during this time to modify its existing land use regulations.

**D. Denial By City Must be Supported By Substantial Evidence**

The Act requires any decision by local government to deny a request to "place, construct, or modify personal wireless service facilities" to be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. § 332(c)(7)(B)(iii). "Substantial evidence 'does not mean a large or considerable amount of evidence, but rather such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Cellular Telephone Co. v. Zoning Board of Ho-Ho-Kus*, 197 F. 3d at 71 (quoting, *Pierce v. Underwood*, 487 U.S. 552 (1988)). In other words, "substantial evidence is more than a scintilla of evidence but less than a preponderance." *Omnipoint Communications, Inc. v. City of Scranton*, 36 F. Supp. 2d 222, 228 (M.D. Pa. 1999) (citation omitted).

The court will review the written record as a whole in making its decision, including all evidence unfavorable to the agency's position. *Airtouch Cellular v. The City of El Cajon*, 83 F. Supp. 2d at 1164; *Omnipoint Corp. v. Zoning Hearing Board of Pine Grove Tp.*, 181 F. 3d 403, 408 (3rd Cir. 1999); *Cellular Telephone Co. v. Zoning Board of Ho-Ho-Kus*, 197 F. 3d at 71. The court must apply a common sense standard of reasonableness to the substantial evidence standard. The court is not bound to accept as substantial evidence impossible, incredible, unfeasible, or implausible testimony, even if it is not refuted or impeached. *Airtouch Cellular v. The City of El Cajon*, 83 F. Supp. 2d at 1164.

**E. Damages Based Upon a Violation Under Civil Rights Statutes (42 U.S.C. Sections 1983 and 1988)**

Some providers challenging the regulations of local governments have sought damages and attorney's fees under the civil rights statutes. The Third Circuit denied such a request holding



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that the Act "contains a remedial scheme which is sufficiently comprehensive to infer Congressional intent to foreclose a section 1983 remedy." *Omnipoint Communications Enterprises, L.P. v. Newtown Township*, 1999 WL 387205 (E.D. Pa. 1999). See also, *Omnipoint Communications Enterprises, L.P. v. Charlestown Township*, 2000 WL 128703 (E.D. Pa. 2000); *National Telecommunication Advisors v. City of Chicopee*, 16 F. Supp. 2d 117 (D. Mass. 1998). In *AT&T Wireless PCS v. City of Atlanta*, 210 F. 3d 1322 (11th Cir. 2000), vacated 223 F. 3d 1324 (11th Cir. 2000), and reinstated 250 F. 3d 1307 (11th Cir. 2001) (denying section 1983 damages and attorney fees.) The Ninth Circuit Court of Appeals has not ruled on this issue.

**F. "Compensation" for Wireless Facilities in the Public Rights-of-Way**

California Government Code section 50030 limits the *permit fees* for the placement, installation, repair, or upgrading of telecommunications facilities that can be charged by a city to a "telephone corporation" that has been authorized by the California Public Utilities Commission and Federal Communications Commission to provide telecommunication services. Permit fees "shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes." *Id.*

California Public Utilities Code section 234(a) defines "telephone corporation" to include "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." "Telephone line" includes wireless telephone transmissions. Cal. Pub. Util. Code § 233. Therefore, when it comes to use of the public rights-of-way, any permit fee charged by the City cannot exceed the reasonable cost of providing the service for which the fee is charged.

**1. Is California's statewide franchise (California Public Utilities Code section 7901) prohibition of wired telecommunication providers equally applicable to wireless telecom providers?**

Section 7901 was written to grant a statewide franchise to wire carriers and to remove local governments from the franchising process. However, the state's relationship to wireless carriers is distinctly different because a wireless telecommunication provider obtains their authorizations from the FCC alone, and not from California's Public Utilities Commission. Further, per section 332(c)(3) of the Act, California may not regulate the rates or entry into business of wireless carriers. Therefore, California may not "franchise" wireless providers in the sense it franchises wire carriers under Section 7901. In that respect, Section 7901 would not be "applicable to wireless telecom providers." However, that does not leave the City free to impose fees beyond reasonable costs, due to the intervention of Section 50030. Finally, the Ninth Circuit in *Auburn* found that certain ordinances adopted by Washington municipalities applicable to wireless telecom providers violated Section 253(c) of the Telecommunications Act. *City of*

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*Auburn v. Qwest Corporation*, 260 F.3d at 1174, (regulating the services or business operations of the service provider).

Separate from the issue of "fair and reasonable compensation" (discussed above) is the issue of non-discriminatory and competitively neutral compensation under section 253(c) of the Act. Imposing an identical public right-of-way fee on wireline and wireless carriers could be susceptible to challenge as being discriminatory or not competitively neutral under section 253(c). In essence, wireline providers' lines traverse the streets while wireless providers' public rights-of-way facilities, if any, are only located on specific, discrete sites; wireline providers inherently use much more public rights-of-way than wireless providers. Therefore, charging wireless providers the same (or greater) public right-of-way fee as wireline providers, would not satisfy the non-discrimination and competitively neutral requirements of section 253(c).

Neither California nor the Ninth Circuit has ruled upon this issue, but there are a couple of cases suggesting that this argument may be viable. In *AT&T Communications of the Southwest, Inc. v. City of Dallas*<sup>9</sup>, the district court held that a city's effort to impose on a wireless carrier the same gross revenue-based fee it imposed on the local telephone company was discriminatory under section 253(a). Similarly, in *PrimeCo Personal Communications, L.P. v. Illinois Commerce Commission*, 196 Ill. 2d 70 (2001), where the Illinois Supreme Court held that a state law allowing cities to impose a gross revenue-based public rights-of-way fee on both wireless & wireline carriers violated the Uniformity Clause of the state constitution as applied to wireless carriers because wireless providers did not use the public rights-of-way in the same manner as wireline providers.<sup>10</sup>

Based upon the foregoing, a cost-based fee per location would be appropriate under Government Code section 50030 so long as a cost-based fee is also being charged to wireline providers. Such a fee structure would avoid the blanket application of a single fee, that would likely be found to discriminate against wireless providers.

**A. Compensation for Wireless Facilities on City Property**

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<sup>9</sup> *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 8 F. Supp. 2d 582, further proceedings, 52 F. Supp. 2d 756 (N.D. Tex. 1998), further proceedings, 52 F. Supp. 2d 763 (N.D. Tex. 1999), vacated & remanded as moot, 243 F. 3d 928, on rehearing, 249 F. 3d 336 (5th Cir. 2001).

<sup>10</sup> While both of these cases are distinguishable (neither case was the fee based on wireless providers' installing their own facilities in the public right-of-way). Nevertheless, a California court might well find their reasoning attractive in the context of any attack on a public right-of-way fee that imposes the same fee (or greater) on wireless than wireline carriers.

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The fees that may be charged by the City to telecommunications providers for locating wireless facilities on property owned by the City but not within any public right-of-way are governed by California Government Code section 50030 and section 332(c)(7) of the Act. As discussed above, Government Code section 50030 limits the *permit* fees that can be charged by the City to “the reasonable costs of providing the service for which the fee is charged.”

At least one telecommunications service provider has argued that Government Code section 50030 limits the City to charging only cost recovery based fees and prevents the City from charging rent for use of its non-right-of-way property. Section 50030, however, specifically applies only to “permit fees.” Further, the legislation enacting that section included a finding by the Legislature that section 50030 “does not constitute a change in existing law.” Stats. 1996, c.300 (S.B.1896). Section 50030 was intended only to codify existing law that permit fees must be cost based, and to clarify application of that law to telecommunications installations. *Id.*

Any other fees to be charged by the City must “not unreasonably discriminate among providers” or “have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i). Rent charged by the City for placement of a telecommunication facility in, for example, a City park, is compensation for use of the property owned by the City. *See, in dicta, Quest Communications Corp. v. City of Berkeley*, 146 F. Supp. 2d at 1100. The fair market value, and thus the rent charged for use of a particular site, is likely to vary from location to location. That difference, however, is not “discrimination” under the Act if it is reasonably based on fair market values, and all providers are subject to the same fair market rates. *AT&T Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F.3d at 427 (any discrimination need only be reasonable).

Fees charged under existing City policy for facilities placed in parks include cost-recovery based permit and application fees, and a uniform fair market rent that is divided into an up-front payment of \$20,000 and an additional \$14,400 per year. According to the report to the Park and Recreation Board dated January 10, 2001, this rent amount is based on a market survey averaged to provide consistency among parks. This approach may also avoid claims of discrimination among providers, as each provider is charged the same amount. We are not aware of any court decisions directly addressing these issues.

**H. Does Preemption of Local Zoning Authority Violate the Tenth Amendment?**

In *Southwestern Bell Wireless, Inc. v. Johnson County Board of Commissioners*, 199 F.3d 1185 (10th Cir. 1999), the Tenth Circuit held that federal preemption of State or local

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government zoning authority did not violate the 10<sup>th</sup> Amendment.<sup>11</sup> However, in a divided Fourth Circuit opinion, each member of a three judge panel reached a different result. One justice concluded that preemption violated the 10th Amendment; a second justice concluded it did not; and the third justice did not reach the constitutional issue at all. *Petersburg Cellular Partnership v. Board of Supervisors of Nottoway County*, 205 F.3d 688 (4th Cir. 2000). There is no judicial guidance on the viability of this argument in the Ninth Circuit.

**IV. WOULD A PROHIBITION ON TELECOMMUNICATIONS FACILITIES  
IN OR ON PARKLAND VIOLATE THE TELECOMMUNICATIONS ACT?**

As stated above, a local government cannot use its zoning laws to effectively ban the provision of personal wireless services in a community. 47 U.S.C. § 332(c)(7)(B)(i)(II). At the same time, however, the Act preserves the right of the City to enforce its zoning laws, and to regulate the time, place, and manner of the installation, maintenance, operation, and repair of a provider's facilities. *AT&T*, 975 F. Supp. at 940, n.10; 47 U.S.C. § 332(c)(7)(A).

Necessarily then, the question of whether a prohibition of telecommunication facilities in parks violates the Act depends upon how the City is otherwise accommodating telecommunication services. For example, a zoning ordinance allowing telecommunication facilities only on privately-owned sites could violate the Act if such sites are not adequate to provide service to an area. Edward H. Ziegler, *Zoning for Cellular and Personal Wireless Facilities*, 21 Zoning and Planning Law Report 61 (West 1998). Impractical or infeasible regulations regarding the manner of installation, could have the same effect. *Id.* In order to show that a zoning regulation amounts to a prohibition of wireless services in a particular area and is in violation of the Act, a plaintiff must show that under the existing zoning rules, no sites are available or would be approved to provide wireless service to an area. *Virginia Metronet, Inc. v. Bd. of Supervisors of James City County, Va.*, 984 F. Supp. 966 (E.D. Va. 1998).

Assuming for the sake of discussion that sufficient alternative sites for telecommunication facilities existed under the City's zoning laws without including parks, then conceivably the City could prohibit facilities in parks. The difficulty in making such an assumption, however, is gauging the needs of the ever-changing and growing telecommunications industry in serving San Diego's varied developments and landscapes. In residential neighborhoods without much commercial or other private, non-residential development, the question would be particularly close unless telecommunication facilities are permitted on private residential property.

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<sup>11</sup> Barring the federal government from compelling state and local governments to administer a federal regulatory program. The Act reserves local authority over zoning issues.



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The City can, however, prefer some sites over others through its zoning ordinances. For example, in *Omnipoint Communications, Inc. v. City of Scranton*, 36 F. Supp.2d at 222, 233, the city's zoning ordinance expressed a preference for placement of communication antennae in non-residential buildings of more than five stories. Although the city granted another company a variance to place antennae on a residential building in excess of five stories, the court upheld the city's decision to deny a variance for a two-story residential building.

**V. ARE TELECOMMUNICATION FACILITIES LOCATED ON PARKLAND THAT  
HAS BEEN DEDICATED TO PARK AND RECREATIONAL  
USE CONSISTENT WITH SECTION 55 OF THE CITY'S CHARTER?**

Section 55 of the San Diego Charter provides that City-owned land that has been dedicated by the City for park use will be used only for park and recreational purposes unless a changed use or purpose has been authorized by the electorate.

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

San Diego Charter § 55. We are not aware of any decision by a California court deciding whether a telecommunications facility, or other similar utility, is a proper park purpose for dedicated parkland. Several courts have reviewed various proposed park uses and their analysis is helpful here. Additionally, this Office has over the years, issued several legal memoranda addressing the issue of proper park use, including placement of utilities in or on parkland.

The courts have taken an expansive view in defining what is a proper park and recreational use for parkland dedicated by a city. Although a dedication of park land by a private individual is construed strictly according to the terms of the grant and in favor of the intent of the grantor, a dedication by a city is construed less strictly because the city is the grantor. *Spires v. City of Los Angeles*, 150 Cal. 64, 66 (1906); *Slavich v. Hamilton*, 201 Cal. 299, 303 (1927); *City and County of San Francisco v. Linares*, 16 Cal. 2d 441, 444 (1940). Thus, the approach taken by the courts has been to look at the particular circumstances of the case, and determine whether the proposed use is inconsistent with the purposes of the dedication or substantially interferes with it. *Id.*; 11 McQuillan, *The Law of Municipal Corporations*, § 33.74 (3d ed. 1991).

In *Slavich*, for example, the California Supreme Court held that leasing park property to the highest bidder for the construction of a memorial building to be used primarily as a meeting

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hall by veterans organizations was consistent with park purposes. It would "not be such a diversion of the property from its use for park purposes" that it is inconsistent with park use. 201 Cal. at 309. In addition to being a monument to the cause of patriotism, the building itself would cover "a minor part" of the park, be of "beautiful ornamental and architectural design," and be surrounded by landscaping in common with the rest of the park. 201 Cal. at 307.

In *Linares*, the California Supreme Court held that an underground parking garage was an appropriate use for Union Square, a park that had been dedicated in 1850 by the Town of San Francisco. The question before the Court was whether this sub-surface use conflicted with the original dedication of the land for park use. 16 Cal.2d at 443-444. The Court found the sub-surface parking garage to be consistent with the use of Union Square as a park, even though the park would not be usable for ten months during construction, and even though the entrance and exit to the garage would take up six and one-half percent of the park. 16 Cal.2d at 447.

Consistent with the principles set forth above, this Office has opined that underground sewage and sludge lines are not inconsistent with a dedicated park purpose. 1990 City Att'y MOL 211. Although the surface of the park would be disturbed during construction, as in *Linares*, the disturbance would be temporary, and the completed project would not interfere with the park. *Id.* at 215. This Office has also opined that an above-ground clean-out maintenance station for an underground sludge line would not be proper if "visibly situated," but would be permissible if located underground such that it does not detract from or interfere with proper park use. 1994 City Att'y MOL 559.

As indicated in the case law and the prior memoranda issued by this office, whether a proposed use in a park is proper depends upon the particular facts of that situation. The first step in the analysis for any park in the City of San Diego is determining that the park has in fact been dedicated by the City or State for park and recreational use. If so, the proposed location and siting of the telecommunication facility in the park becomes crucial. A facility that is designed and sited so as not to detract from or interfere with the park or its uses, does not violate the dedication to park use or Charter section 55.

This standard is included in Part B.2. of Council Policy 700-06, Encroachments on City Property:

. . . The City may grant authorization for encroachment on dedicated or designated parkland and open space if it is determined by the responsible department that the requested action would not only meet criteria for General City property as stated above, but would also be consistent with City Charter Section 55; i.e., that it would not change or interfere with the use or purpose of the parkland or open space. . . . In addition . . . proposed

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telecommunications facilities must be disguised such that they do not detract from the recreational or natural character of the parkland or open space. Further, proposed telecommunications facilities must be integrated with existing park facilities, and must not disturb the environmental integrity of the parkland or open space.

The criteria that apply to "General City property" are listed in Part B.1:

. . . that the requested action would not violate any deed restrictions related to the City property, map requirements, or other land use regulations; would not be detrimental to the City's property interests; would not preclude other appropriate use; would be consistent with the City's General Plan; and would otherwise be prudent and reasonable.

Under Council Policy 700-06, the Park and Recreation Department is tasked with determining whether a proposed telecommunications facility meets these criteria, and for a minor telecommunications facility, whether encroachment should be authorized.

In the application of Council Policy 700-06, the phrase "would not change or interfere with the use or purpose of the parkland or open space," has been interpreted to mean that the equipment enclosure for a telecommunications facility can be placed above-ground within the park in an area that is not usable for and does not detract from any park purpose. We believe that this interpretation, taken with the other criteria of Policy 700-06, is consistent with Charter Section 55. As a matter of policy, however, a more conservative application of Charter Section 55 could require that all such equipment located in a park be placed underground. Also as a matter of policy, the Council could limit the placement of telecommunications facilities in parks. Any such policy, must however, be coordinated with the City's zoning laws, regulations, and policies regarding placement of telecommunications facilities within the City so as not to constitute a ban or prohibition on service under the Act.

**VI. ACCESS TO THE CITY'S SEWER AND  
STORMWATER COLLECTION SYSTEMS**

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Recently, a telecommunications company [Company] that is neither a "common carrier"<sup>12</sup> under the Act nor a possessor of a CPCN issued by the California Public Utilities Commission, proposed to install fiber optic cable in the City's sewer and stormwater collection systems. City Council expressed concern that allowing this Company to proceed with the installation could lead to the System being overrun with telecommunication wires and equipment.

The applicability of federal and state law to installation and operation of telecommunication lines in sewer and stormwater pipes has never been addressed by federal or California courts. Currently, there are no such completed installations in the United States. Existing litigation and case law centers around telecommunication lines installed beneath streets and on utility poles.

As stated above, section 253 only limits the City's authority to regulate providers of telecommunications services. This Company's offering to the City does not meet the above definition of "telecommunications service." The Company does not offer telecommunications services to the public, but instead will sell or lease capacity in its fiber optic network to telecommunication carriers who in turn will offer telecommunication services to the public. As such, the restrictions on local authority under the Act most likely do not apply to this Company's proposal.

This conclusion finds support in *Virgin Islands Telephone Corp. v. Federal Communications Commission*, 198 F. 3d 921 (D.C. Cir. 1999). The case involved a subsidiary of AT&T that constructs and maintains undersea fiber optic cable systems for lease to other carriers. The Virgin Islands Telephone Corporation challenged the subsidiary's application to operate a cable system in the Virgin Islands, alleging the subsidiary was a telecommunications carrier subject to stricter application requirements of the Act. The Court of Appeal disagreed, and determined the subsidiary was not a telecommunications carrier. The Court held that leasing capacity to other carriers is not a telecommunications service, and therefore the Act did not apply to the subsidiary's application.

Neither does state law limit local authority over the installation of telecommunication lines in the System. Section 7901 of the Public Utilities Code assures telecommunication companies access to the public right-of-way for installation and operation of telecommunication lines. The right-of-way includes public roads and highways, but not sewer or stormwater pipes in the right-of-way. Those pipes are City facilities. The City can refuse to permit all proposed installations of telecommunication lines in the System if it desires.

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<sup>12</sup> The terms "common carrier" or "carrier" means "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy . . . ." 47 U.S.C. § 153(10).

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An argument could be made that allowing Company to install fiber optic cable in the System converts those parts of the System into a right-of-way. See *Gulf Power Co. v. Federal Communications Commission*, 208 F. 3d 1263, 1281 (11th Cir. 2000), Carnes *dissenting* [If a utility allows even limited access to its poles for wire communications, it is subject to mandatory access for all pole attachments.] No California court has rendered a published opinion on the question.

The City nevertheless is granted broad discretion to manage the public right of way by Public Utilities Code section 7901.1(a) and section 253(c) of the Act. In *New Jersey Payphone Association v. Town of West New York*, 130 F. Supp. 2d 631, 637 (D. N.J. 2001), a town expressed alarm that if its exclusive franchise ordinance for pay phones was struck down, the right-of-way would be overrun with pay phones. The Court responded that the town's ability to manage the right-of-way and pre-approve pay phone sites was an obvious solution to the town's concerns. *Id.*

Similarly, in the proposed License with Company, the proposed route of the fiber optic network must be approved by the City prior to installation. The network cannot interfere with the conveyance of wastewater. Furthermore, installation in any sewer pipe may only be accomplished by means which do not penetrate the inner surface of the pipe or otherwise compromise the pipe's structural integrity. The City's authority to manage access to the System is stronger than its authority over public streets and parks because of the potential threat to health and safety involved with the conveyance of wastewater. Other limitations related to health and safety may be adopted by the City which would apply to all potential installations in the System.

## CONCLUSION

Local government is restricted by both federal and state laws in its ability to regulate telecommunication facilities. Nonetheless, local government may impose reasonable restrictions and fees directly related to management of public rights-of-way. In addition, on property that is owned by the City, but not a public right-of-way, the City may require reasonable compensation for use of the property. All regulations imposed by the City must not unreasonably discriminate between providers. The City retains the right to impose time, place, and manner restrictions on telecommunication facilities.

CASEY GWINN, City Attorney

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By

PAUL G. EDMONSON



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Deputy City Attorney

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CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

SUBJECT: CITY OF SAN DIEGO WIRELESS COMMUNICATION FACILITIES  
POLICY  
POLICY NO.: 600-43  
EFFECTIVE DATE: March 1, 2005

**BACKGROUND**

The City of San Diego has received numerous requests for Wireless Communication Facilities over the past seventeen years both on public and private property. The application process needs more coordination and consistency among City Departments. In light of this, a policy is desirable to establish the criteria by which applications are evaluated, processed, approved and denied.

**PURPOSE AND INTENT**

The purpose of this policy is to provide comprehensive guidelines for the review and processing of applications for the placement and design of Wireless Communication Facilities in accordance with the City of San Diego land use regulations. These guidelines are intended to prescribe clear, reasonable, and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing visual and land use impacts associated with Wireless Communication Facilities. The guidelines presented in this policy promote the use of camouflage design techniques and preferred locations to minimize the visual impacts to the surrounding community and preserve land uses within the City of San Diego. At the same time, the guidelines allow for the orderly and efficient development of wireless networks consistent with the rules and regulations promulgated by the Federal Communications Commission [FCC] pursuant to the Telecommunication Act of 1996 [TCA].

**APPLICATION OF THIS POLICY**

This policy contains the development guidelines that the City applies to all applications for Wireless Communication Facilities within the City of San Diego, including new proposals and amendments to existing Wireless Communication Facilities in all zones, overlays, planned districts and community plans. These guidelines ensure minimal land use impacts on the surrounding community by encouraging preferred locations, providing design guidelines, and monitoring health and safety issues within the limits of the TCA.

For applicants seeking placement of a Wireless Communication Facility on city-owned land, this policy should be used in conjunction with applicable Council Policies and Land Development Code section 141.0420. To the extent Council Policies conflict, this Policy supersedes any existing Council Policy as it relates to Wireless Communication Facilities.

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1. **Antenna** means a device or system used for the transmission and/or reception of radio frequency signals for wireless communications. It may include an omni-directional (whip), directional (panel), dish, or GPS antenna. It does not include the support structure.
2. **Cellular** means analog, digital signal, personal communications services (PCS) technology, and similar systems which exist now or may be developed in the future and exhibit similar technological characteristics.
3. **City Parks** means land dedicated for park or recreation purposes under Charter section 55; land set aside for park or recreation purposes in accordance with Charter section 55; or land conveyed by grant deed for park or recreation purposes.
4. **Collocation** means the sharing of a single Wireless Communication Facility, site, or location by more than one provider or by the same p provider for more than one wireless technology; also referred to as "site sharing."
5. **Controlling Department** means the City Department primarily responsible for using and managing a specific city owned parcel of land or facility.
6. **Wireless Communication Facility [WCF]** means the apparatus that includes the Antennas, support structures, and associated equipment for personal wireless services and information services.

**POLICY****A. General**

The City is the regulatory agency responsible for issuing permits for the development of Wireless Communication Facilities in the City of San Diego. For projects on private property the City acts only in its regulatory role; for City-owned property, the City has dual roles as property owner and government regulator. The City's Development Services Department [DSD] is responsible for design review, regulatory compliance, zoning administration, and permit processing of applications for Wireless Communication Facilities. For Wireless Communication Facilities proposed on property owned by the City, the City's Real Estate Assets Department [READ] is responsible for the negotiation and administration of sales and leases, including property used and managed by the City's Park and Recreation Department [P&R], Water Department, or other Controlling Departments of the City.

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In considering applications to lease City-owned property, it is the policy of the City Council to maintain control over the design and siting process and to generate revenues for park and recreational uses, Water Department uses, and the General Fund.

**B. Development Review Process**

1. In general, DSD is the lead department responsible for processing applications for Wireless Communication Facilities on non-city owned sites. DSD is the primary point of contact and will also coordinate with the applicant and the public processing of projects through the development review process in an orderly and efficient manner. READ is responsible for processing proposed projects involving city owned land or facilities from application to final City Council lease approval. This includes coordinating review by the Controlling Department and shepherding the project through the development review process. As part of the development review process:
  - a. All departments involved in the review and approval of a Wireless Communication Facility should be included on the distribution list for the project.
  - b. A copy of any discretionary application for a proposed Wireless Communication Facility in that council district should be sent to the City Council office representing the area within which the subject property is located.
  - c. As part of the initial routing, the recognized community planning group should be provided a copy of all applicable ministerial applications for a proposed Wireless Communication Facility within its community plan area, for information purposes only. The community planning group should also be provided any pending discretionary applications for its community consistent with Council Policy 600-24. The recognized community planning group adjacent to a regional park should also receive a copy of any application for the siting of a Wireless Communication Facility within the regional park where the Park Advisory Body is not the planning group.
  - d. Environmental review in accordance with the California Environmental Quality Act should occur for all Wireless Communication Facility applications qualifying for discretionary review.
  - e. The DSD Project Manager or the Controlling Department's Project Manager should perform a final inspection of all Wireless Communication Facilities prior to receiving final approval clearance from the Building Inspector to ensure conformance with any discretionary permits.
  - f. Each approved application for a Wireless Communication Facility should be entered into a City database to track the location of Wireless Communication Facilities in the City. The information may be displayed on the City's Web site.

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2. The Information Technology and Communications [IT&C] Department is responsible for advising the City Manager and the City Council on issues related to technical oversight and evaluation of proposed and developed Wireless Communication Facilities in the City of San Diego, including the following:
  - a. Radio frequency [RF] radiation studies, propagation studies, tower loading studies, inter-modulation studies, RF interference studies, and licensing and frequency issues.
  - b. Review of equipment to be used at a proposed Wireless Communication Facility, including transmitters, receivers, antennas, cabling, power sources, etc.
  - c. Evaluation of compliance with FCC rules and regulations as it relates to interference with City of San Diego communication facilities for Wireless Communication Facilities.
  - d. Review and verify applicant's proposed Wireless Communication Facility for compliance with FCC regulations related to RF emissions;
  - e. Coordination of the technical aspects of installation and maintenance activities on City Property.
  - f. The applicant shall be charged for all reasonable costs associated with review by IT&C, the Controlling Department and DSD.

**C. Processing of Applications for Wireless Communication Facilities on Non-City Property.**

DSD is the central processing authority and primary point of contact for all Wireless Communication Facility applications on non-city owned sites. All applications for Wireless Communication Facilities on non-city owned sites should be submitted to DSD for processing and tracking throughout the review process.

**D. Processing of Applications for Wireless Communication Facilities on City Property.**

All applications for Wireless Communication Facilities on City Property should be submitted to the Real Estate Assets Department to be processed and tracked throughout the entire application process. The Property Agent assigned to the project should forward an advance copy of the application to DSD prior to submittal for development review processing. READ is the primary point of contact and is responsible for negotiating and executing an agreement with the applicant for lease of City-owned property for a Wireless Communication Facility. The Controlling Department for the proposed site is responsible for review of the application to ensure current and future operational compatibility and compliance with design standards.



CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

1. Prior to execution of any lease for a Wireless Communication Facility on City-owned property, READ should obtain the review and approval of the Controlling Department and DSD. In addition, the lease agreement should contain all of the following:
  - a. Provisions addressing maintenance of the Wireless Communication Facility, adequate security, adequate insurance coverage, abandonment or decommissioning of the Wireless Communication Facility.
  - b. A term limiting duration of the agreement to the shortest practical term, with an option to extend the term only by mutual consent.
  - c. Market-rate rent based on a current independent fee appraisal of comparable market rents for similar facilities in Southern California or other comparable market area.
  - d. One-time Site Access Fees should be charged for the installation of wireless facilities on all City-owned property. The amount of these fees should be consistent and regularly updated.
  - e. Reasonable compensation for the use of city utility poles to mount Antennas.
  - f. Where the lease authorizes subleasing, the city should receive 100% of the Site Access Fee and 50% of the lease revenue generated from the site.
  - g. A processing fee adequate to cover the costs of processing and reviewing applications for Wireless Communication Facilities.
  - h. Assurance that the proposed Wireless Communication Facility will not interfere with City operations or public use of City-owned property.
2. Site Access Fees should be deposited into a special fund to be used primarily to benefit the property or adjacent community where the wireless facility is located. The appropriate stakeholder groups may make recommendations for the expenditure of the special fund. The appropriate Controlling Department should work with the stakeholder groups to prioritize these requests.
3. Rental Revenue. One half of the ongoing rental revenue should be deposited into the general fund and one half deposited into a special fund for the appropriate department. All expenditures will require prior written approval by the City Manager or designee.
4. Processing of Applications for Wireless Communication Facilities in City Parks. The City may grant authorization on dedicated or designated parkland and open space if it is first determined by the Park and Recreation Department that the requested action would not only meet the criteria of this Policy, but would also be consistent with City Charter Section 55.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

- a. **Design.** Proposed wireless communication facilities must be disguised such that they do not detract from the recreational or natural character of the parkland or open space. Further, proposed wireless communication facilities must be integrated with existing park facilities, and must not disturb the environmental integrity of the parkland or open space.
- b. **Site Visit.** For applications seeking placement of a Wireless Communication Facility in a City Park, READ should, early in the review process, schedule a meeting at the proposed site to identify and view the requested location. READ should provide notice of this initial site visit to the following groups:
  - a representative from the officially recognized Community Planning Group under Council Policy 600-24 for that area;
  - the Park and Recreation Department's Project Manager;
  - the Park and Recreation Department's Area Manager;
  - the Development Services Department's Project Manager;
  - the Information, Technology and Communications Department; and
  - the Planning Department's Community Planner.
- c. P&R's Project Manager should present the project for review and recommendation to the appropriate Park and Recreation advisory boards and committees.
 

For any Wireless Communication Facility proposed within an area in a City Park that is covered by an existing lease, the project will also be presented to the existing lessee for review and, where necessary, consent.

For any Wireless Communication Facility proposed within an area in a City Park that contains an existing encroachment managed by another city department, that department should also have the opportunity to review the project as a Controlling Department.
- d. Following action on the proposed project by the required boards and councils, the P&R's Project Manager will notify the applicant, READ, and DSD of the final action by the Director of P&R.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

- e. The Director of the Park and Recreation Department may limit the number of Wireless Communication Facilities allowed in any City Park and should not allow any applicant to site more than one Wireless Communication Facility in any City Park. Further, each applicant should be allowed only one equipment enclosure per City Park. Exceptions may be made for Wireless Communication Facilities in large regional parks on a case-by-case basis.
  - 5. All applicants proposing Wireless Communication Facilities on City-owned property including City Parks and public rights-of-way are required to obtain City authorization for use of the property which should also be reviewed by applicable Controlling Departments.
- E. Guidelines for Placement of Wireless Communication Facilities
- The following guidelines set forth four locational categories that correspond to the Process levels contained within the Wireless Communication Facilities regulations, Chapter 14, Division 1, Article 4 of the San Diego Municipal Code. These guidelines establish a hierarchy from most preferred location to least preferred location. Applications for sites in either Preference 2, 3 or 4 Locations should include additional information from the applicant substantiating why a Preference 1 Location was not utilized.
- 1. Preference 1 Locations. This category includes the most preferred locations for siting Wireless Communication Facilities. Applicants are strongly encouraged to site a facility in one of these zones or in the public right-of-way before pursuing a Preference 2 Location. These locations correspond to uses allowed as Limited Uses under the Wireless Communication Facilities regulations.
  - 2. Preference 2 Locations. This category includes areas that may be considered for siting Wireless Communication Facilities as long as the applicant submits adequate information demonstrating that a Preference 1 Location could not be used to meet the technical requirements for the facility thereby supporting a Preference 2 Location. These locations correspond to uses allowed with a Neighborhood Use Permit under the Wireless Communication Facilities regulations. Applicants are encouraged to locate in these areas before pursuing a Preference 3 Location.
  - 3. Preference 3 Locations. This category includes sensitive land uses and are less preferred for siting Wireless Communication Facilities. These locations correspond to uses allowed with a Conditional Use Permit, Process 3, under the Wireless Communication Facilities regulations. The applicant should demonstrate that sites within the Preference 1 and 2 Locations were explored in good faith and found unacceptable.

CITY OF SAN DIEGO, CALIFORNIA  
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4. Preference 4 Locations. This category includes highly sensitive land uses and is the least preferred for siting Wireless Communication Facilities. Applicants are discouraged from seeking placement of a Wireless Communication Facility in these areas. These locations correspond to uses allowed with a Conditional Use Permit, Process 4, under the Wireless Communication Facilities regulations. The applicant should demonstrate that sites within the Preference 1, 2, and 3 Locations were explored in good faith and found unacceptable.

F. Application Review By City Staff

The Development Services Department publishes an Information Bulletin which contains specific information on the submittal requirements for applicants proposing Wireless Communication Facilities. In reviewing and making recommendations on discretionary applications for Wireless Communication Facilities, staff should consider the following factors:

1. The nature of uses on adjacent and nearby premises;
2. Integration of the proposal with the existing building or environment;
3. Surrounding topography;
4. Existing landscaping;
5. Quality and compatibility of design and screening;
6. Impacts on public views and the visual quality of the surrounding area; and
7. Availability of other facilities and buildings for Collocation.

ATTACHMENTS:

1. Federal Communication Commission: A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance

HISTORY

Adopted by Resolution R-288406; 03/04/1997  
Amended by Resolution R-29165; 05/24/1999  
Amended by Resolution R-299512; 07/27/2004  
Amended by Resolution R-300185, 03/01/2005

GENERAL NOTES:

1. APPROVAL OF THESE PLANS BY THE CITY ENGINEER DOES NOT AUTHORIZE ANY WORK TO BE PERFORMED UNTIL A PERMIT HAS BEEN ISSUED.
2. UPON ISSUANCE OF A PERMIT, NO WORK WILL BE PERMITTED ON WEEKENDS OR HOLIDAYS WITHOUT PERMISSION FROM THE DEVELOPMENT SERVICES DEPARTMENT.
3. THE APPROVAL OF THIS PLAN OR ISSUANCE OF A PERMIT BY THE CITY OF SAN DIEGO DOES NOT AUTHORIZE THE SUBMIDER AND OWNER TO VIOLATE ANY FEDERAL, STATE OR CITY LAWS, ORDINANCES, REGULATIONS, OR POLICIES, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL ENDANGERED SPECIES ACT OF 1973 AND AMENDMENTS THERETO (16 UCS SECTION 1531 ET.SEQ.)
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SURVEY MONUMENTS AND/OR VERTICAL CONTROL BENCHMARKS WHICH ARE DISTURBED OR DESTROYED BY CONSTRUCTION. A LAND SURVEYOR MUST FIELD LOCATE, REFERENCE, AND/OR PRESERVE ALL HISTORICAL OR CONTROLLING MONUMENTS PRIOR TO ANY EARTHWORK. IF DESTROYED, SUCH MONUMENTS SHALL BE REPLACED WITH APPROPRIATE MONUMENTS BY A LAND SURVEYOR. A CORNER RECORD OR RECORD OF SURVEY, AS APPROPRIATE, SHALL BE FILED AS REQUIRED BY THE PROFESSIONAL LAND SURVEYORS ACT. IF ANY VERTICAL CONTROL IS TO BE DISTURBED OR DESTROYED, THE CITY OF SAN DIEGO FIELD SURVEY SECTION MUST BE NOTIFIED, IN WRITING, AT LEAST 3 DAYS PRIOR TO THE CONSTRUCTION. THE CONTRACTOR WILL BE RESPONSIBLE FOR THE COST OF REPLACING ANY VERTICAL CONTROL BENCHMARKS DESTROYED BY THE CONSTRUCTION.
5. IMPORTANT NOTICE: SECTION 4216 OF THE GOVERNMENT CODE REQUIRES A DIG ALERT IDENTIFICATION NUMBER BE ISSUED BEFORE A "PERMIT TO EXCAVATE" WILL BE VALID. FOR YOUR DIG ALERT I.D. NUMBER, CALL UNDERGROUND SERVICE ALERT, TOLL FREE 1-800-227-2600, TWO DAYS BEFORE YOU DIG.
6. CONTRACTOR SHALL BE RESPONSIBLE FOR THE POTHOLE AND LOCATING OF ALL EXISTING UTILITIES THAT CROSS THE PROPOSED TRENCH LINE AND MUST MAINTAIN 1' MINIMUM VERTICAL CLEARANCE.
7. CONTRACTOR SHALL SUBMIT TO THE CITY OF SAN DIEGO FIELD DIVISION, DEPUTY DIRECTOR HOSSEIN RUHI (619)-627-3201, A CONSTRUCTION PLANS TO PROTECT WATER MAINS PRIOR TO COMMENCING CONSTRUCTION.
8. CONTRACTOR SHALL REPLACE OR REPAIR ALL TRAFFIC SIGNAL LOOPS, CONDUIT AND LANE STRIPING DAMAGED DURING CONSTRUCTION.
9. CONTRACTOR SHALL NOTIFY THE CITY OF SAN DIEGO FIELD DIVISION, HANS TORABI (858)-627-3230 OR GEORGE QSAR (858)-627-3240 A MINIMUM OF 48 HOURS PRIOR TO COMMENCING WORK WITHIN 10' OF ALL SEWER, WATER AND STORM DRAIN MAIN INCLUDING ALL CROSSINGS.
10. THIS PROJECT WILL BE INSPECTED BY ENGINEERING AND CAPITOL PROJECTS DEPARTMENT, FIELD ENGINEERING DIVISION.
11. AS-BUILT DRAWINGS MUST BE SUBMITTED TO THE CITY RESIDENT ENGINEER PRIOR TO THE ACCEPTANCE OF THIS PROJECT.
12. "PUBLIC IMPROVEMENT SUBJECT TO DESUETUDE OR DAMAGE." IF REPAIR OR REPLACEMENT OF SUCH PUBLIC IMPROVEMENTS IS REQUIRED, THE OWNER (OMNIPONT DBA T-MOBILE) SHALL BE RESPONSIBLE TO OBTAIN THE REQUIRED PERMITS FOR WORK IN THE PUBLIC RIGHT-OF-WAY, SATISFACTORY TO THE PERMIT-ISSUING AUTHORITY.
13. PRIOR TO ANY DISTURBANCE TO THE SITE, EXCLUDING UTILITY MARK-OUTS AND SURVEYING, THE CONTRACTOR SHALL MAKE ARRANGEMENTS FOR A PRECONSTRUCTION MEETING WITH THE CITY OF SAN DIEGO FIELD ENGINEERING DIVISION (858) 627-3200.
14. THE CONTRACTOR IS RESPONSIBLE TO ATTEND THE CITY OF SAN DIEGO'S MONTHLY UTILITY COORDINATION COMMITTEE (CURRENTLY CHAIRED BY NATHAN BRUNER AT 533-3777) PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION SHOWN ON THESE PLANS. IT IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE THE CONSTRUCTION ACTIVITIES WITH THE CITY AND ALL OTHER CONTRACTORS SO THAT NO TRENCH IS CUT WITHIN ANY OF THE CITY STREETS THAT HAVE BEEN CONSTRUCTED, REPAIRED, OR SLURRY SEALED WITHIN THREE YEARS OF THE STREET CONSTRUCTION/RESURFACING DATE.
15. MANHOLES OR COVERS SHALL BE LABELED "NAME OF COMPANY"
16. CONTRACTOR SHALL IMPLEMENT AN EROSION CONTROL PROGRAM DURING THE PROJECT CONSTRUCTION ACTIVITIES. THE PROGRAM SHALL MEET THE APPLICABLE REQUIREMENTS OF THE STATE WATER RESOURCE CONTROL BOARD.
17. THE CONTRACTOR SHALL HAVE EMERGENCY MATERIALS AND EQUIPMENT ON HAND FOR UNFORESEEN SITUATIONS, SUCH AS DAMAGE TO UNDERGROUND WATER, SEWER, AND STORM DRAIN FACILITIES WHEREBY FLOWS MAY GENERATE EROSION AND SEDIMENT POLLUTION.
18. ALL KNOWN EASEMENTS ARE PLOTTED ON THE SITE PLAN

LEGAL DESCRIPTION

(IN STREET ROW- SOLEDAD ROAD ADJACENT TO LOT 82 SOLEDAD CORONA ESTATES, MAP No. 4008)

REFERENCE DRAWINGS:

30025 1 THRU 96 D

BENCH MARK:

NGS GPS MONUMENT NO. CRIN GPS MONUMENT S105  
ELEVATION: 726.06' (NAVD 88) MSL DATUM

GEOGRAPHIC COORDINATES:

NAD 83  
LATITUDE: 32° 49' 14.49"  
LONGITUDE: 117° 14' 26.39"

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ZONING CHANGE TABLE				
CHANGE	DATE	SHEET NUMBERS REVISED OR ADDED THIS CHANGE		

STREET DATA TABLE				
STREET NAME	CLASSIFICATION	DESIGN SPEED	ADT	R/W
BAHIA LANE				
PARKVIEW TERRACE				

SPECIAL NOTES:

THE FOLLOWING NOTES ARE PROVIDED TO GIVE DIRECTION TO THE CONTRACTOR BY THE ENGINEER OF WORK. THE CITY ENGINEER'S SIGNATURE ON THESE PLANS DOES NOT CONSTITUTE APPROVAL OR THESE NOTES AND THE CITY WILL NOT BE RESPONSIBLE FOR THEIR ENFORCEMENT.

1. CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING UNDERGROUND UTILITIES INCLUDING SEWER LATERALS AND WATER SERVICES TO INDIVIDUAL LOTS BOTH VERTICAL AND HORIZONTAL PRIOR TO COMMENCING IMPROVEMENT OPERATIONS.
2. CONTRACTOR SHALL MAKE EXPLORATION EXCAVATIONS AND LOCATE EXISTING FACILITIES SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT REVISIONS TO PLANS IF REVISION IS NECESSARY BECAUSE OF LOCATION OR EXISTING UTILITIES.
3. LOCATION AND ELEVATIONS OF IMPROVEMENTS, TO BE MET BY WORK, SHALL BE CONFINED BY FIELD MEASUREMENT PRIOR TO CONSTRUCTION OF NEW WORK.
4. GRADES SHOWN ARE FINISHED GRADES, CONTRACTOR SHALL DETERMINE NECESSARY SUB GRADE ELEVATIONS AND SHALL CONSTRUCT SMOOTH TRANSITION BETWEEN FINISHED GRADES SHOWN.
5. CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS OR PROPERTY; THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE ON THE OWNER OR ENGINEER.
6. CONTRACTOR SHALL BE TOTALLY RESPONSIBLE FOR COMPLIANCE WITH THE PROVISIONS OF THE STATE OF CALIFORNIA SAFETY ORDERS.
7. THE LOCATIONS OF ALL EXISTING UTILITIES SHOWN ON THESE PLANS ARE FROM EXISTING RECORDS AND CORROBORATED, WHERE POSSIBLE, WITH FIELD TIES. THE CONTRACTOR IS RESPONSIBLE FOR CONFIRMING THE LOCATIONS AS SHOWN, BOTH HORIZONTALLY AND VERTICALLY, PRIOR TO CONSTRUCTION. IF EXISTING LOCATIONS VARY SUBSTANTIALLY FROM THE PLANS, THE ENGINEER SHOULD BE NOTIFIED TO MAKE ANY CONSTRUCTION CHANGES REQUIRED.
8. CONTRACTOR SHALL PROVIDE TEMPORARY SUPPORT OF ALL SEWER AND WATER MAINS UNDER CROSSINGS IN ACCORDANCE PART 1 SECTION 2-5 OF THE STANDARD SPECIFICATIONS.
9. CONTRACTOR SHALL SUBMIT WORK PLANS FOR ALL BORE OPERATIONS, TWO WEEKS PRIOR TO COMMENCING WORK, TO CITY OF SAN DIEGO FIELD DIVISION.
10. CONTRACTOR SHALL PROVIDE AWS CERTIFIED WELDER TO PERFORM WELDS IN ACCORDANCE WITH AWS D1.1.
11. CONTRACTOR SHALL CONTACT GEOTECHNICAL ENGINEERING TO COORDINATE THE INSPECTION OF THE ON-SITE SOIL CONDITIONS TO VERIFY SOIL MEETS OR EXCEEDS REQUIREMENTS.
12. A CERTIFICATE OF SATISFACTORY COMPLETION OF WORK REQUIRING SPECIAL INSPECTION MUST BE COMPLETED AND SUBMITTED TO THE INSPECTION SERVICES DIVISION OF THE DEVELOPMENT SERVICES DEPARTMENT, CITY OF SAN DIEGO.
13. AN APPLICATION TO PERFORM OFF-SITE FABRICATION MUST BE SUBMITTED TO THE INSPECTION SERVICES DIVISION OF THE DEVELOPMENT SERVICES DEPARTMENT, CITY OF SAN DIEGO.
14. A CERTIFICATE OF COMPLIANCE FOR OFF-SITE FABRICATION MUST BE COMPLETED AND SUBMITTED TO THE INSPECTION SERVICES DIVISION PRIOR TO ERECTION OF PREFABRICATED COMPONENTS.

SDG&E NOTE:

CONTRACTOR MUST CALL UNDERGROUND SERVICE ALERT AT (800)-227-2600 FOR MARK OUT 48 HOURS PRIOR TO CONSTRUCTION. AFTER MARK OUT, CONTRACTOR MUST POTHOLE AND LOCATE ACTUAL LOCATION OF GAS LINE, IF CONTRACTOR NEEDS FURTHER ASSISTANCE FROM A SDG&E PROJECT COORDINATOR, CONTACT SUSANNE SHAW FROM SDG&E AT (760) 480-7679.

PROJECT SUMMARY

APPLICANT/LESSEE

OMNIPONT T-MOBILE  
10180 TELESIS COURT, SUITE 333  
SAN DIEGO, CA. 92121  
DEVELOPMENT MANAGER: MIKE RAPHAEL  
PHONE: (858) 334-6106  
NET OPS: OFER ELKAYAM  
PHONE: (858) 334-6145  
RF ENGINEER: CHERYL CHEN  
PHONE: (858) 334-6124

ZONING CONSULTANT

M&M TELECOM, LLC  
P.O. BOX 55  
POWAY, CA 92074  
PLANNER: MIKE MORGANSON  
PHONE: (760) 585-5104  
FAX: (760) 683-3237

PROPERTY INFORMATION

OWNER: CITY OF SAN DIEGO  
ADDRESS: SE CORNER OF THUNDERBIRD LN AND SOLEDAD RD  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO  
CONTACT: CAROL YOUNG  
PHONE: (619) 236-6081  
AREA OF CONSTRUCTION: 106 SF  
PRESENT OCCUPANCY TYPE: PUBLIC RIGHT-OF-WAY  
PRESENT OCCUPANCY TYPE: CITY OF SAN DIEGO  
(FOR MONOCYPRESS)  
NO. STORIES: N/A  
PROCESS: NUP (PROCESS 2)  
PROPOSED OCCUPANCY TYPE: TELECOMMUNICATIONS FACILITY  
PROPOSED CONSTRUCTION TYPE: II - NON RATED  
CURRENT ZONING: RS-1-4  
NEAREST ADJACENT A.P.N.: 358-273-01  
EXISTING FACILITIES: NO EXISTING TELECOM FACILITIES EXIST ON SITE OR IN IMMEDIATE VICINITY  
HANDICAP REQUIREMENTS: FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. HANDICAPPED ACCESS NOT REQUIRED.  
NOTES: ALL EASEMENTS ARE SHOWN ON THE SURVEY OR SITE PLAN.  
ANTENNA POWER LEVEL - 10 WATTS PER CHANNEL  
FREQUENCY: UPLINK-1870-1885MHZ  
DOWNLINK-1960-1975MHZ  
LEGAL DESCRIPTION: PUBLIC ROW

<b>OMNIPONT T-Mobile</b> 10180 TELESIS COURT, 3RD FLOOR SAN DIEGO, CA. 92121		<b>SAC Wireless</b> 11300 SORRENTO VALLEY RD., SUITE 230 San Diego, CA 92121 Office (858) 552-8398 Fax (858) 552-0184		SITE NAME: <b>SOLEDAD ROAD ROW SD07007B</b> SITE ADDRESS: 5582 THUNDERBIRD LANE LA JOLLA, CA. 92037 CITY OF SAN DIEGO	
REVISION	DATE	BY	PROJECT ENGR: WILL TATE		
90% ZONING	02/21/07	ES	DESIGNED BY: WILL TATE		
90% ZONING	03/02/07	EH	DRAWN BY: EDGAR SOLIS		
100% ZONING	03/28/07	EH	SCALE: AS SHOWN		
100% ZONING	08/08/07	ES	JOB NO.		
100% CITY COMMENTS	02/08/08	ES			
100% ZONING	08/11/08	ES			

WORK TO BE DONE:

THE SCOPE OF WORK CONSISTS OF THE INSTALLATION OF AN EQUIPMENT VAULT AND A STRONG BOX FOR UTILITIES WITHIN THE R.O.W., (3) NEW ANTENNAS MOUNTED ON A 30'-0" HIGH LIGHT STANDARD, AND TRENCHING FOR COAX CABLES AND UTILITIES WITHIN CITY PROPERTY. RESURFACING AND REPLACEMENT OF EXISTING FIBER WORKS DEMOLISHED DURING CONSTRUCTION, SAW CUTTING, TRAFFIC CONTROL, AND RE-STRIPING, WILL BE PERFORMED IN COMPLIANCE WITH THESE PLANS, SPECIFICATIONS, AND THE STANDARD DRAWINGS OF THE CITY OF SAN DIEGO.

STANDARD SPECIFICATIONS:

1. STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (2003 EDITION) INCLUDING THE REGIONAL AND CITY OF SAN DIEGO SUPPLEMENTAL AMENDMENT, DOCUMENT NO. AEC. 701041, JULY 1, 2004.
2. 1999 STANDARD SPECIAL PROVISIONS FOR SIGNALS, LIGHTING AND ELECTRICAL SYSTEMS OF THE CITY OF SAN DIEGO, DOCUMENT NO: 769842, FILED OCTOBER 22, 1999.
3. CALIFORNIA DEPARTMENT OF TRANSPORTATION, "MANUAL OF TRAFFIC CONTROLS FOR CONSTRUCTION AND MAINTENANCE WORK ZONE," (1996 EDITION), DOCUMENT NO. 769843 FILED JANUARY 24, 2000.
4. STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, STANDARD SPECIFICATIONS (JULY 2002), DOCUMENT NO: 769894, FILED JUNE 5, 2003

STANDARD DRAWINGS:

1. CITY OF SAN DIEGO STANDARD DRAWINGS, INCLUDING ALL REGIONAL STANDARD DRAWINGS, DOCUMENT NO: AEC. 701042, FILED JULY 1, 2004.
2. STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, STANDARD PLAN (JULY 2002), DOCUMENT NO: 769894, FILED JUNE 5, 2003

LEGEND:

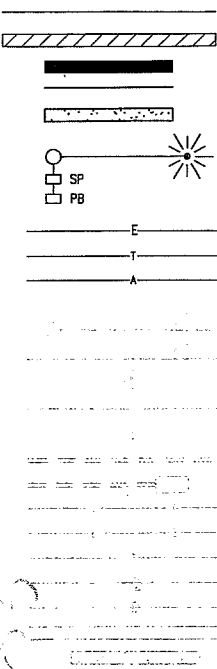
PROPOSED/REPLACEMENT ITEMS

UNDERGROUND COMMUNICATIONS CONDUIT  
TRENCH RESURFACING  
CURB AND GUTTER REPLACEMENT (TYPE "H")  
SIDEWALK REPLACEMENT\*  
UNDERCUT SEWER MAIN

STANDARD DRAWING OR DETAIL

SEE DETAIL, SHEET 2  
SDG-107  
SDG-100, G-2, G-11  
SDG-100, G-7, G-11  
S-12  
SDG-101

SYMBOL



NEW TRAFFIC SIGNAL LIGHT

NEW ELECTRIC

NEW TELCO

NEW COAX CABLE

EXISTING IMPROVEMENTS

EXISTING TRAFFIC SIGNAL LIGHT  
EXISTING WATER SERVICE  
EXISTING WATER MAN HOLE  
EXISTING SEWER SERVICE  
EXISTING SEWER MAN HOLE  
EXISTING STORM DRAIN  
EXISTING STORM DRAIN STRUCTURE  
EXISTING GAS  
EXISTING ELECTRIC  
EXISTING TELEPHONE  
CENTER LINE  
RIGHT-OF-WAY  
EXISTING CURB AND GUTTER (TYPE "H")  
EXISTING SIDEWALK

DECLARATION OF RESPONSIBLE CHARGE:

I HEREBY DECLARE THAT I AM THE ENGINEER OF WORK FOR THIS PROJECT, THAT I HAVE EXERCISED RESPONSIBLE CHARGE OVER THE DESIGN OF THE PROJECT AS DEFINED IN SECTION 6703 OF THE BUSINESS AND PROFESSIONS CODE, AND THAT THE DESIGN IS CONSISTENT WITH CURRENT STANDARDS.

I UNDERSTAND THAT THE CHECK OF PROJECT DRAWINGS AND SPECIFICATIONS BY THE CITY OF SAN DIEGO IS CONFINED TO A REVIEW ONLY AND DOES NOT RELIEVE ME AS ENGINEER OF WORK, OR OF MY RESPONSIBILITIES FOR PROJECT DESIGN.

DENIS MORGAN R.C.E. 53153  
R.C.E. EXPIRATION DATE: 09-30-09

DATE:

PERMIT NO. -  
CONSTRUCTION SITE PRIORITY -  
ENGINEERING PERMIT NO. -

PRIVATE CONTRACT

PLANS FOR THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT FOR:

<b>SOLEDAD ROAD ROW</b>				
CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 1 OF 10 SHEETS				W.O. NO. - P.T.S. NO. -
FOR CITY ENGINEER				V.T.M. N/A
DESCRIPTION	BY	APPROVED	DATE	FILED
ORIGINAL	SACW			
				NAD83 COORDINATES
AS-BUILTS				LAMBERT COORDINATES
CONTRACTOR		DATE STARTED		- 1 -
INSPECTOR		DATE COMPLETED		



## NOTE:

1. PROPOSED TRENCH RESURFACING SHALL BE FROM THE CITY OF SAN DIEGO STANDARD DRAWINGS SDG-107, SDG-108, SDG-116, SDG-117, SDG-118.
2. ALL EXISTING DAMAGED SIDEWALK, CURB, GUTTER, AND MEDIAN SHALL BE REPLACED PER CITY OF SAN DIEGO STANDARD DRAWINGS G2, G7, G11, SDG-100.
3. NO EXISTING TELECOMMUNICATIONS FACILITIES ON SITE

## NOTE:

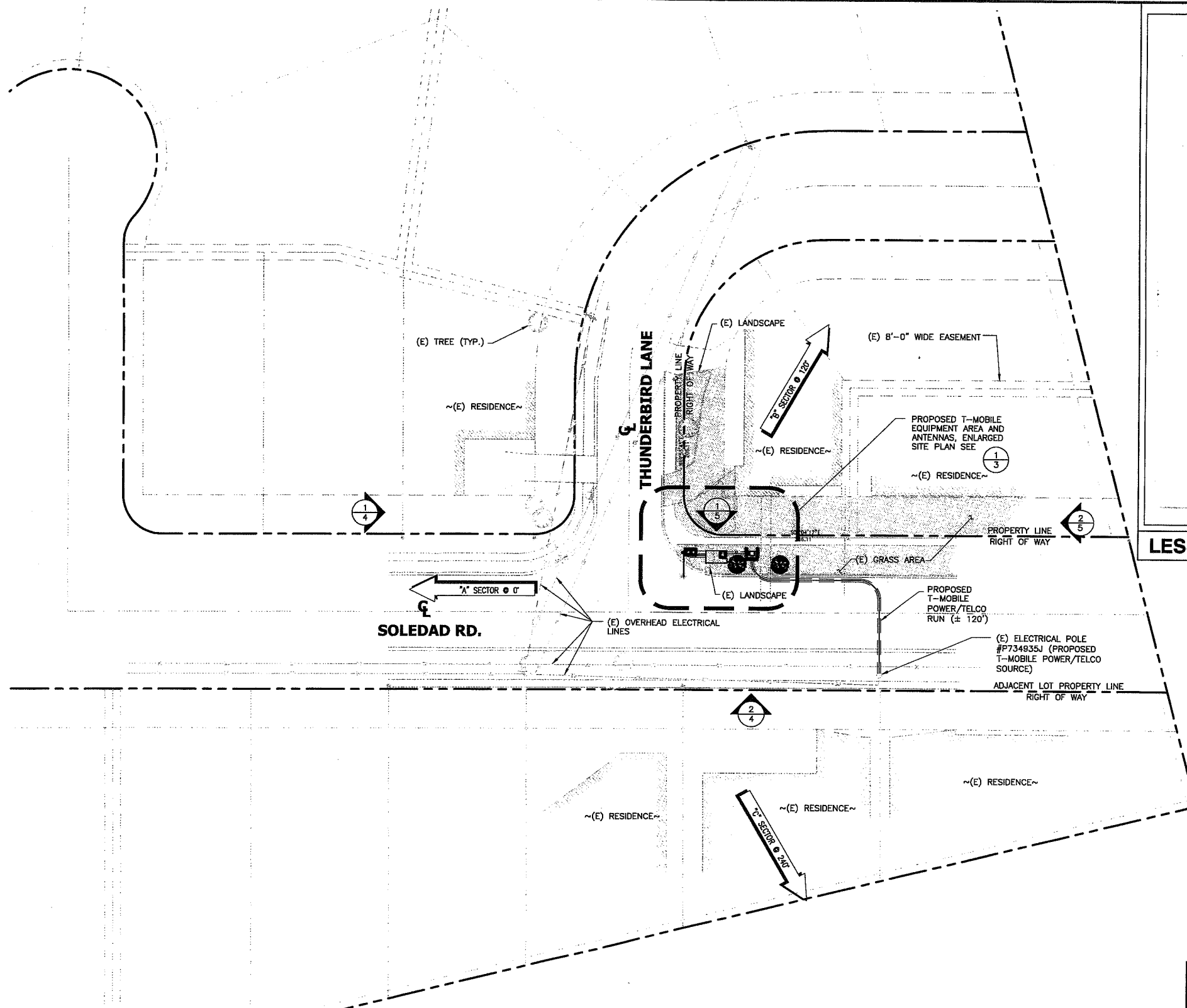
APPLICANT SHALL OBTAIN A NONEXCLUSIVE RIGHT-OF-WAY USE AGREEMENT FROM THE CITY OF SAN DIEGO FOR THE PROPOSED WORK IN THE SOLEDAD ROAD RIGHT-OF-WAY.

## NOTE:

APPLICANT SHALL OBTAIN A PUBLIC RIGHT-OF-WAY PERMIT FOR THE PROPOSED WORK IN THE SOLEDAD ROAD RIGHT-OF-WAY.

## NOTE:

PRIOR TO FINAL INSPECTION, CAL-OSHA APPROVED SIGNAGE WILL BE PLACED ON THE POLE NOTIFYING EMPLOYEES THAT A WIRELESS COMMUNICATION FACILITY EXISTS ON THE POLE.



# Lessee's Certificate Standard Wireless Facility Project for Post-Construction BMP's

I, the undersigned, as lessee of a portion of the property described as:  
SE Corner of Soledad Road & Thunderbird Lane, San Diego, CA 92037

(Address or legal description)

understand that, in accordance with the San Diego Municipal Code, Land Development Manual - Storm Water Standards, this project is required to "Identify Pollutants from the Project Area" and incorporate "Site Design" and "Source Control" BMPs.

I certify to the best of my knowledge, that the pollutants anticipated by the proposed land use are as follows:

Sediment  
Nutrients  
Trash & Debris  
Oxygen Demanding Substances  
Oil & Grease  
Bacteria & Viruses  
Pesticides

I/We will incorporate the following into the site design:

- Maintain pre-development runoff characteristics
- Minimize impervious foot print by constructing walkways, patios and driveways with permeable surfaces
- Conserve natural areas
- Use natural drainage systems as opposed to lined swales or underground drainage systems
- Drain roof tops, walkways, patios and driveways into adjacent landscaping prior to discharging to the public drainage system
- Preserve existing native trees and shrubs
- Prevent all slopes from erosion

Additionally, I/we will:

- Minimize the use of pesticides
- Use efficient irrigation systems and landscape design, incorporating rain shut-off devices and flow reducers as needed.

I/we will maintain the above Standard Permanent BMP's for the duration of the lease.

Lessee: MICHAEL T. RAPHAEL Company Name: OmniPoint Communications, Inc.  
(print name)

Lessee: Michael T. Raphael Date: 07-24-07  
(signature)

C:\NA\Facilities\sectors\sdg\SDG\_CAS\_Sample

## LESSEE'S CERTIFICATE

1

**DIGALERT**

DIAL TOLL FREE  
1-800-227-2600  
AT LEAST TWO WORKING  
DAYS BEFORE YOU DIG

UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA



### SITE PLAN

0 4' 8' 16' SCALE: 1/16" = 1'-0" (24x36)  
(OR) 1/32" = 1'-0" (11x17)

1

OMNIPONT

**T-Mobile**

10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA 92121

**SAC Wireless**

11300 SORRENTO VALLEY RD., SUITE 230  
San Diego, CA 92121  
Office (858) 552-9398  
Fax (858) 552-0184

SITE NAME: **SOLEDAD ROAD ROW  
SD07007B**

SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

REVISION	DATE	BY	PROJECT ENGR: WILL TATE
90% ZONING	02/21/07	ES	DESIGNED BY: WILL TATE
90% ZONING	03/02/07	EH	DRAWN BY: EDGAR SOLIS
100% ZONING	03/28/07	EH	SCALE: AS SHOWN
100% ZONING	08/08/07	ES	JOB NO.
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	

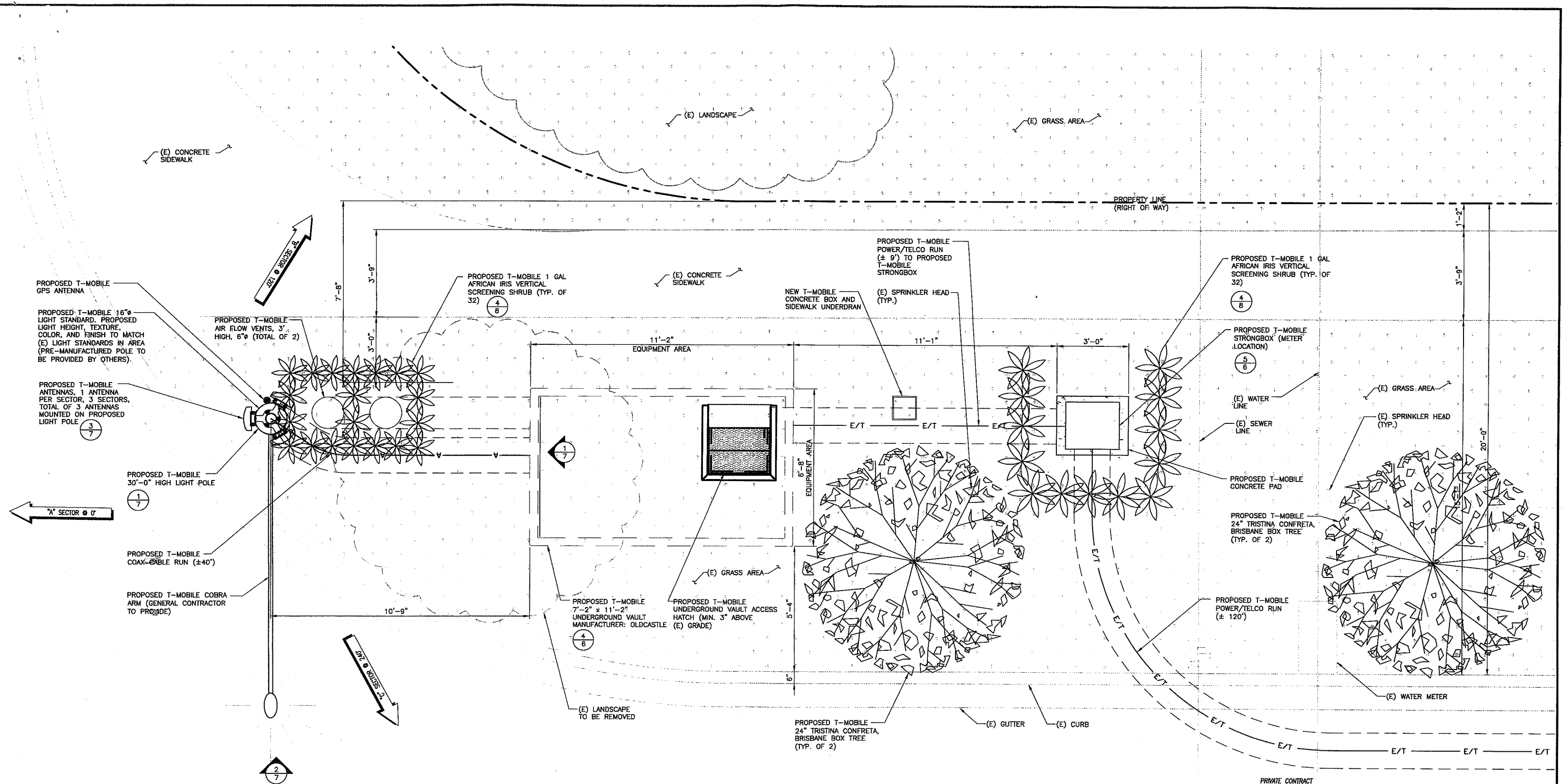
PRIVATE CONTRACT

SITE PLAN FOR:

SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 2 OF 10 SHEETS				W.O. NO. -
FOR CITY ENGINEER				P.T.S. NO. -
DESCRIPTION	BY	APPROVED	DATE	V.T.M. -
ORIGINAL	SACW			N/A
AS-BUILTS				
CONTRACTOR		DATE STARTED		
INSPECTOR		DATE COMPLETED		

- 2 -



NOTE:

1. NO EXISTING TELECOMMUNICATIONS FACILITIES ON SITE



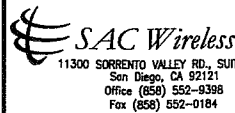
## ENLARGED SITE PLAN

0 1' 2' 3'	SCALE: 3/8" = 1'-0" (24x36)
	(OR) 3/16" = 1'-0" (11x17)

1



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SAN DIEGO, CA 92121



**SITE NAME: SOLEDAD ROAD ROW  
SD07007B**

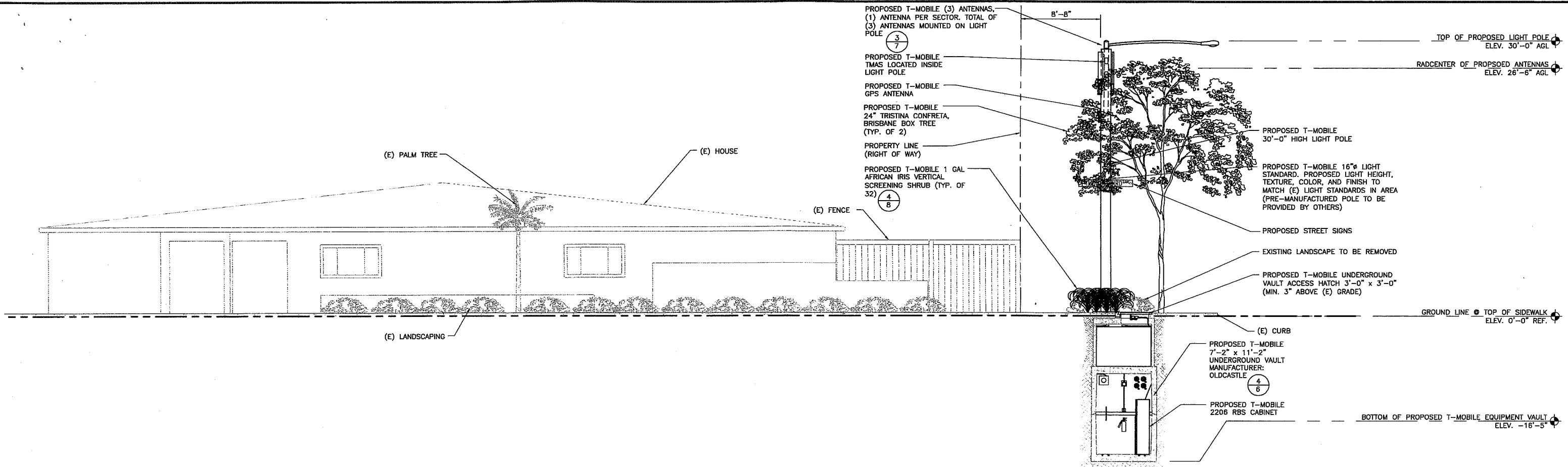
**SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO**

REVISION	DATE	BY	
90% ZONING	02/21/07	ES	PROJECT ENGR: <u>WILL TATE</u>
90% ZONING	03/02/07	EH	DESIGNED BY: <u>WILL TATE</u>
100% ZONING	03/28/07	EH	DRAWN BY: <u>EDGAR SOLIS</u>
100% ZONING	06/08/07	ES	SCALE: <u>AS SHOWN</u>
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	06/11/08	ES	JOB NO. _____

PRIVATE CONTRACT

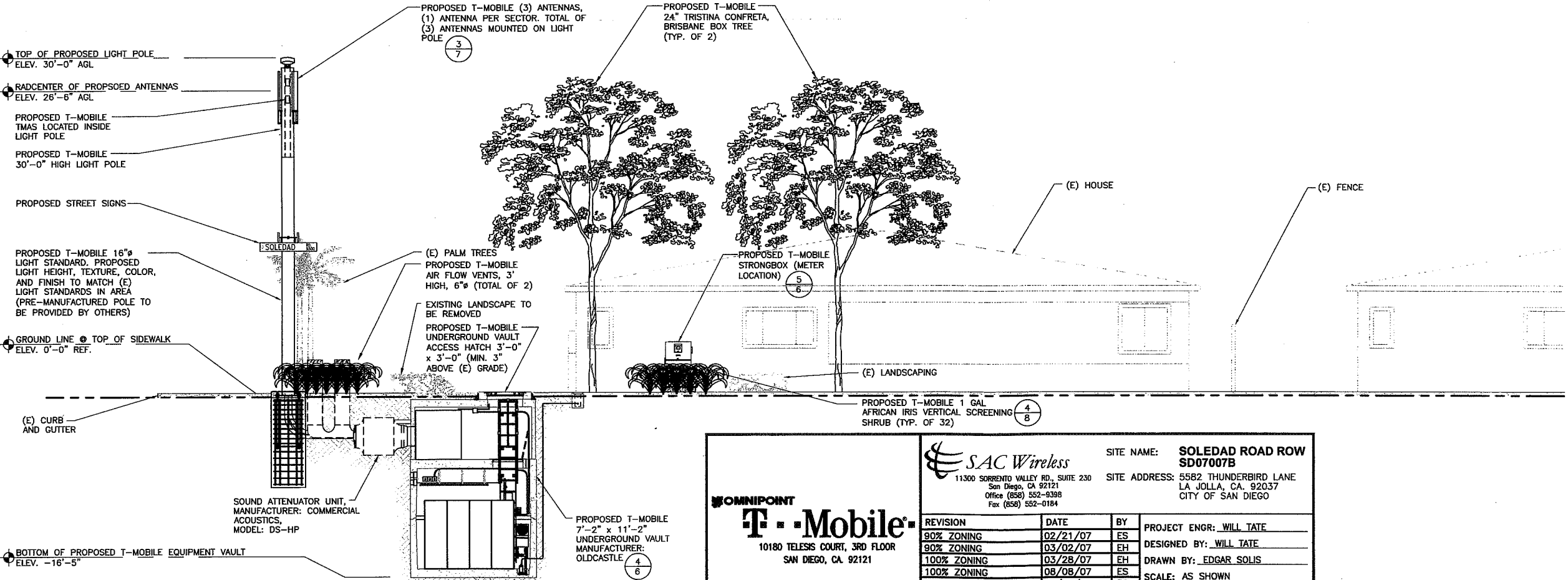
ENLARGED SITE PLAN FOR:  
SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 3 OF 10 SHEETS					W.O. NO. _____ P.T.S. NO. _____
FOR CITY ENGINEER _____ DATE _____					V.T.M. _____ N/A _____
DESCRIPTION	BY	APPROVED	DATE	FILED	
ORIGINAL	SACW				
AS-BUILTS					
CONTRACTOR _____ DATE STARTED _____ INSPECTOR _____ DATE COMPLETED _____					NAD83 COORDINATES _____ LAMBERT COORDINATES _____
					- 3 -



NORTH ELEVATION

0 1.5' 3' 5' SCALE: 3/16" = 1'-0" (24x36)  
(OR) 3/32" = 1'-0" (11x17) 1



WEST ELEVATION

0 1.5' 3' 5' SCALE: 3/16" = 1'-0" (24x36)  
(OR) 3/32" = 1'-0" (11x17) 2

10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA 92121

11300 SORRENTO VALLEY RD., SUITE 230  
San Diego, CA 92121  
Office (619) 552-6398  
Fax (619) 552-0184

SITE NAME: **SOLEDAD ROAD ROW SD07007B**

SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

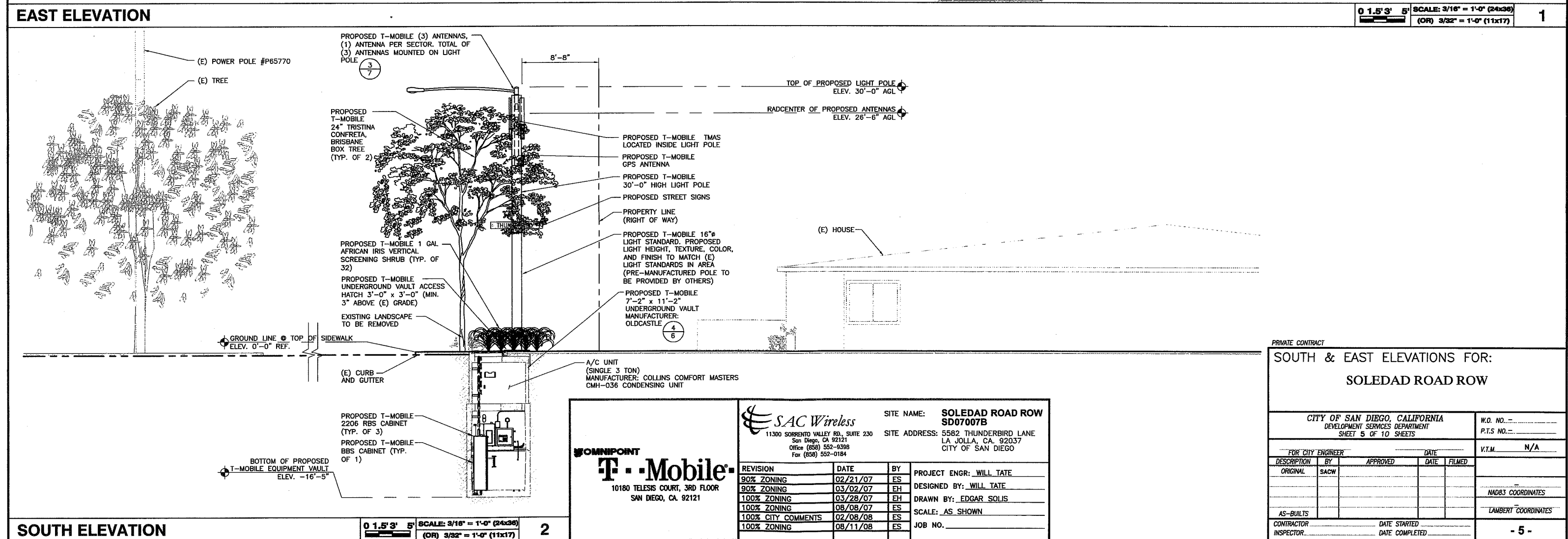
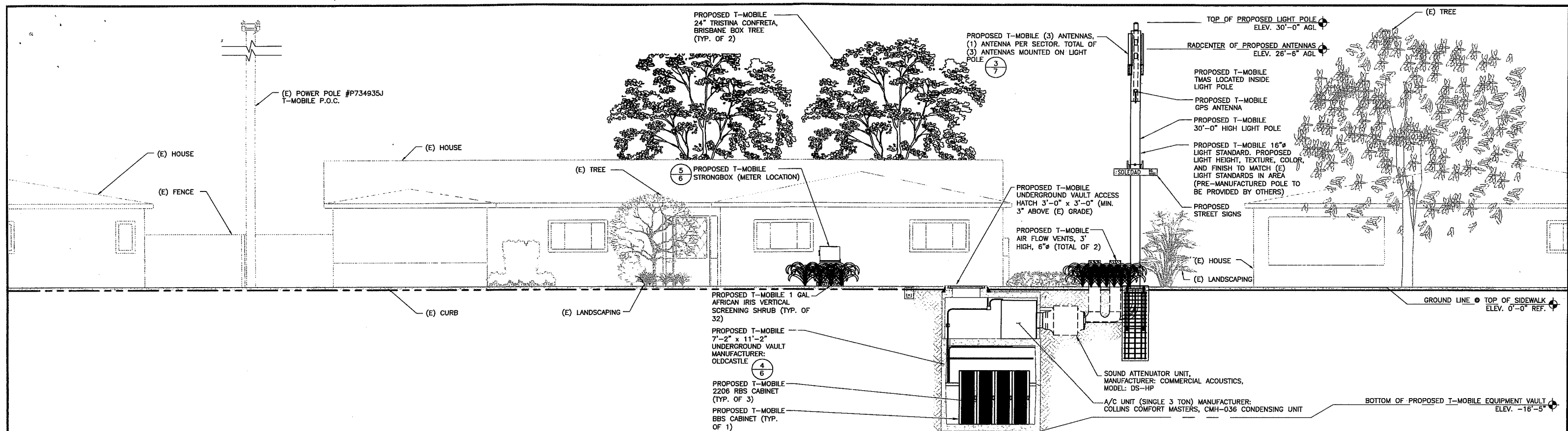
REVISION	DATE	BY	PROJECT ENGR: WILL TATE
90% ZONING	02/21/07	ES	DESIGNED BY: WILL TATE
90% ZONING	03/02/07	EH	DRAWN BY: EDGAR SOLIS
100% ZONING	03/28/07	EH	SCALE: AS SHOWN
100% ZONING	08/08/07	ES	JOB NO.
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	

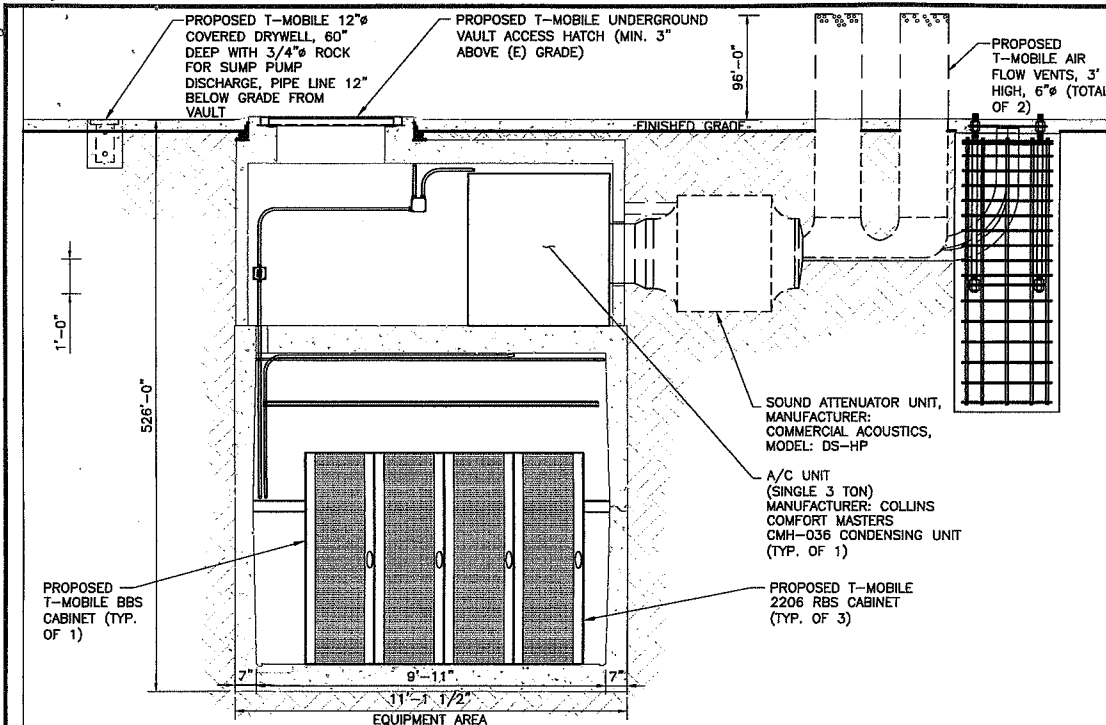
PRIVATE CONTRACT

NORTH & WEST ELEVATIONS FOR:  
SOLEDAD ROAD ROW

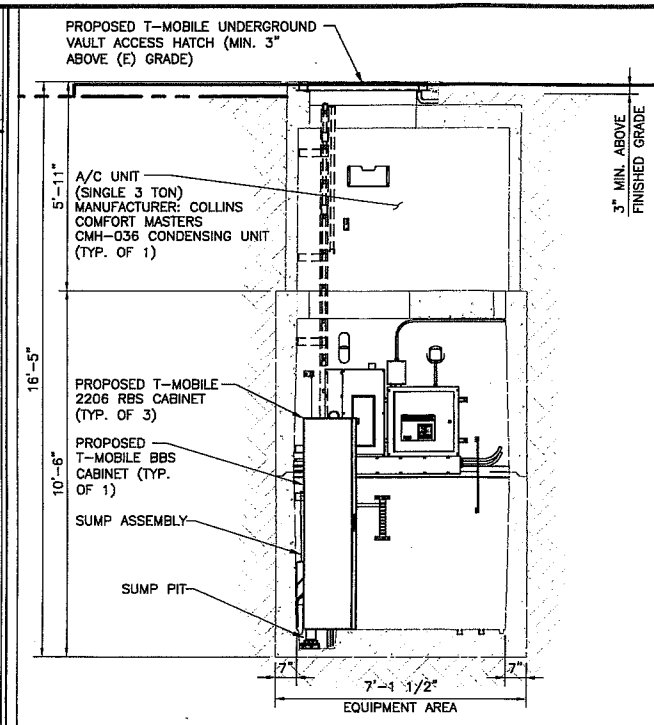
CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 4 OF 10 SHEETS					W.O. NO. _____ P.T.S. NO. _____
FOR CITY ENGINEER					DATE _____ V.T.M. _____ N/A
DESCRIPTION	BY	APPROVED	DATE	FILMED	
ORIGINAL	SACW				
					NAD83 COORDINATES
					LAMBERT COORDINATES
AS-BUILTS					
CONTRACTOR					DATE STARTED _____
INSPECTOR					DATE COMPLETED _____

- 4 -

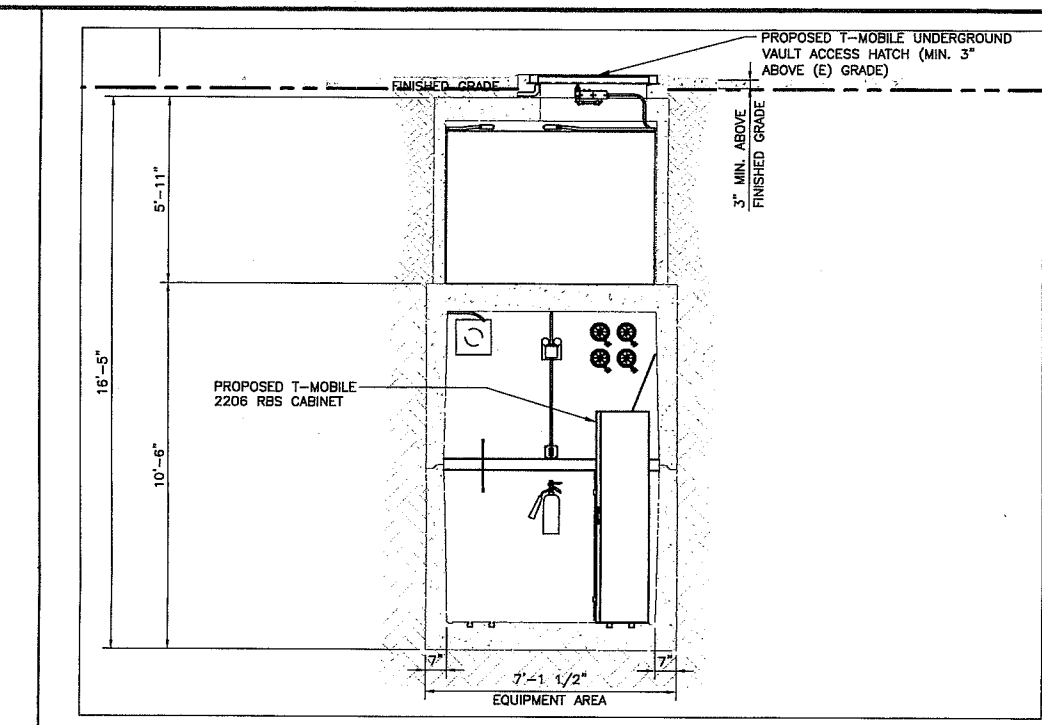




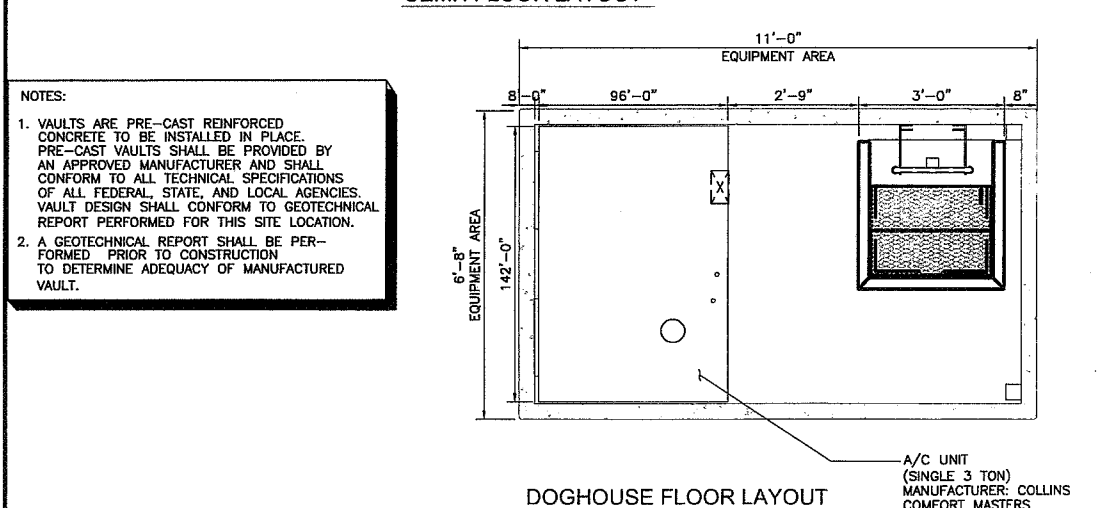
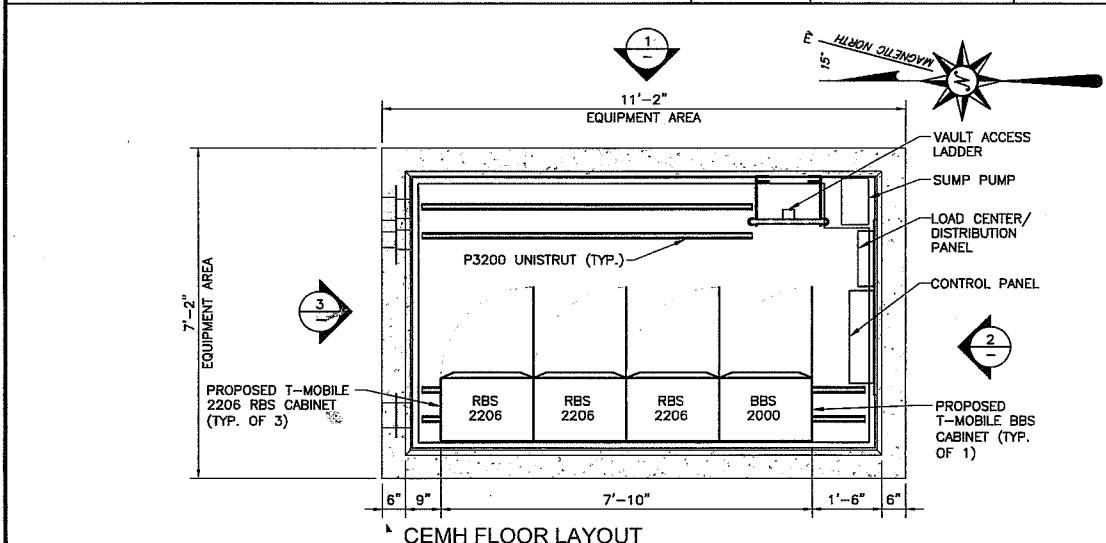
**EAST ELEVATION** SCALE: 3/8" = 1'-0" (24x36) (OR) 3/16" = 1'-0" (11x17) **1**



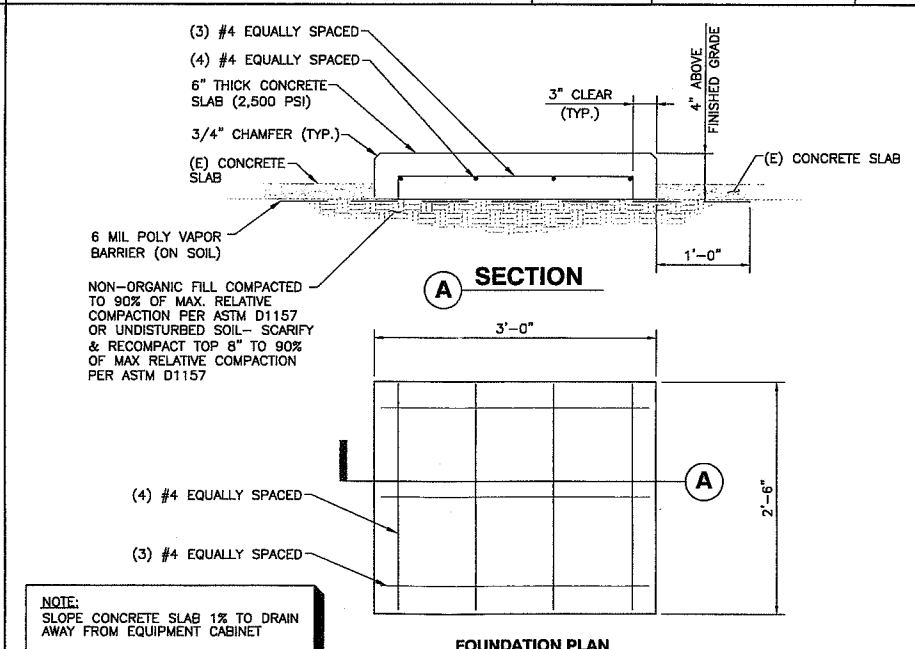
**SOUTH ELEVATION** SCALE: 3/8" = 1'-0" (24x36) (OR) 3/16" = 1'-0" (11x17) **2**



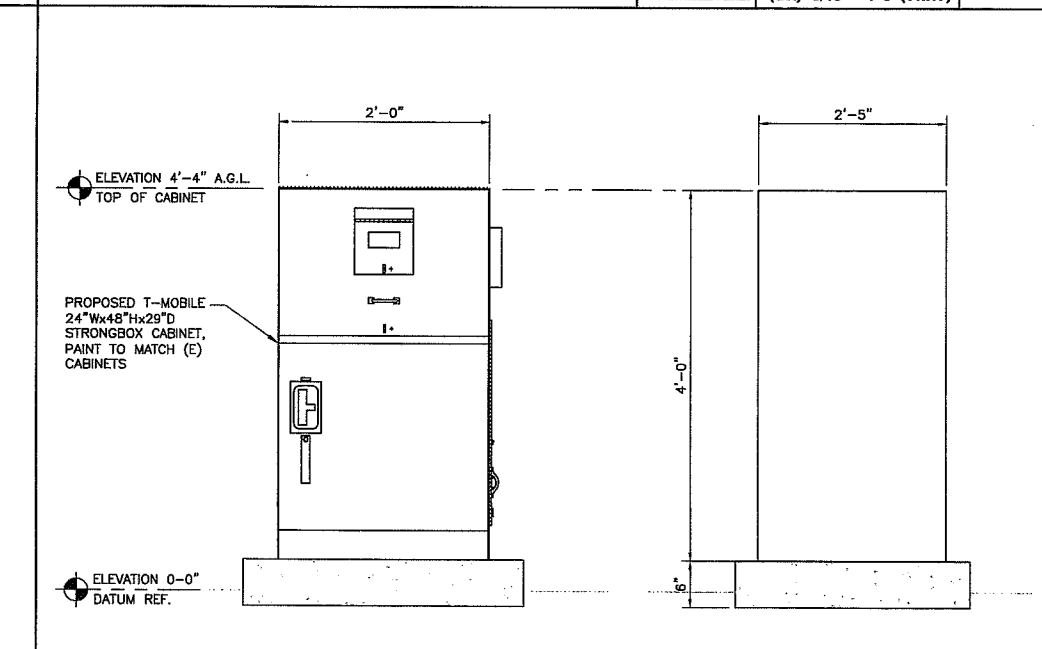
**NORTH ELEVATION** SCALE: 3/8" = 1'-0" (24x36) (OR) 3/16" = 1'-0" (11x17) **3**



**EQUIPMENT LAYOUT** SCALE: 1/2" = 1'-0" (24x36) (OR) 1/4" = 1'-0" (11x17) **4**



**STRONGBOX FOUNDATION** SCALE: 1" = 1'-0" (24x36) (OR) 1/2" = 1'-0" (11x17) **5**



**STRONGBOX ELEVATIONS** SCALE: 1" = 1'-0" (24x36) (OR) 1/2" = 1'-0" (11x17) **6**

**NOTES:**

1. VAULTS ARE PRE-CAST REINFORCED CONCRETE TO BE INSTALLED IN PLACE. PRE-CAST VAULTS SHALL BE PROVIDED BY AN APPROVED MANUFACTURER AND SHALL CONFORM TO ALL TECHNICAL SPECIFICATIONS OF ALL FEDERAL, STATE, AND LOCAL AGENCIES. VAULT DESIGN SHALL CONFORM TO GEOTECHNICAL REPORT PERFORMED FOR THIS SITE LOCATION.
2. A GEOTECHNICAL REPORT SHALL BE PERFORMED PRIOR TO CONSTRUCTION TO DETERMINE ADEQUACY OF MANUFACTURED VAULT.

**SAC Wireless**

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San Diego, CA 92121  
Office (656) 552-8398  
Fax (656) 552-0184

SITE NAME: **SOLEDAD ROAD ROW SD07007B**

SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

**COMPOINT**

**T-Mobile**

10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA. 92121

REVISION	DATE	BY	PROJECT ENGR: WILL TATE
90% ZONING	02/21/07	ES	DESIGNED BY: WILL TATE
90% ZONING	03/02/07	EH	DRAWN BY: EDGAR SOLIS
100% ZONING	03/28/07	EH	SCALE: AS SHOWN
100% ZONING	08/08/07	ES	JOB NO.
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	

PRIVATE CONTRACT

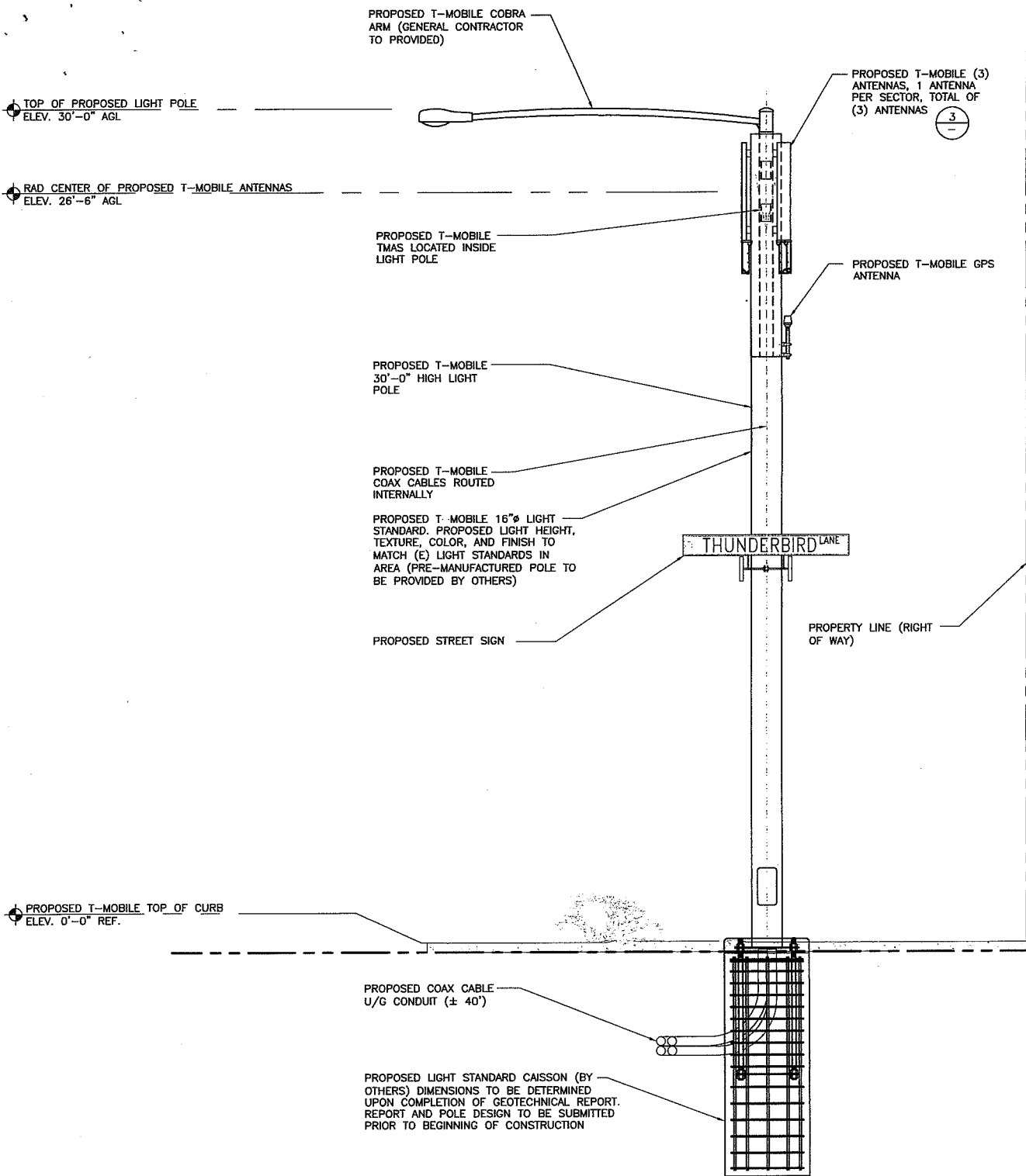
**VAULT DETAILS & EQUIPMENT ELEVATIONS FOR:**

**SOLEDAD ROAD ROW**

CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 6 OF 10 SHEETS				W.O. NO. _____ P.T.S. NO. _____
FOR CITY ENGINEER				V.T.M. N/A
DESCRIPTION	BY	APPROVED	DATE	FILED
ORIGINAL	SACW			
AS-BUILTS				
CONTRACTOR INSPECTOR				DATE STARTED _____ DATE COMPLETED _____

**- 6 -**





SOUTH ELEVATION

0 1' 2' 3' SCALE: 3/8" = 1'-0" (24x36)  
(OR) 3/16" = 1'-0" (11x17)

1

WEST ELEVATION

0 1' 2' 3' SCALE: 3/8" = 1'-0" (24x36)  
(OR) 3/16" = 1'-0" (11x17)

2

SAC Wireless  
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San Diego, CA 92121  
Office (619) 552-6398  
Fax (619) 552-0184

SITE NAME: **SOLEDAD ROAD ROW SD07007B**

SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

REVISION

90% ZONING	02/21/07	ES
90% ZONING	03/02/07	EH
100% ZONING	03/28/07	EH
100% ZONING	08/08/07	ES
100% CITY COMMENTS	02/08/08	ES
100% ZONING	08/11/08	ES

PROJECT ENGR: WILL TATE

DESIGNED BY: WILL TATE

DRAWN BY: EDGAR SOLIS

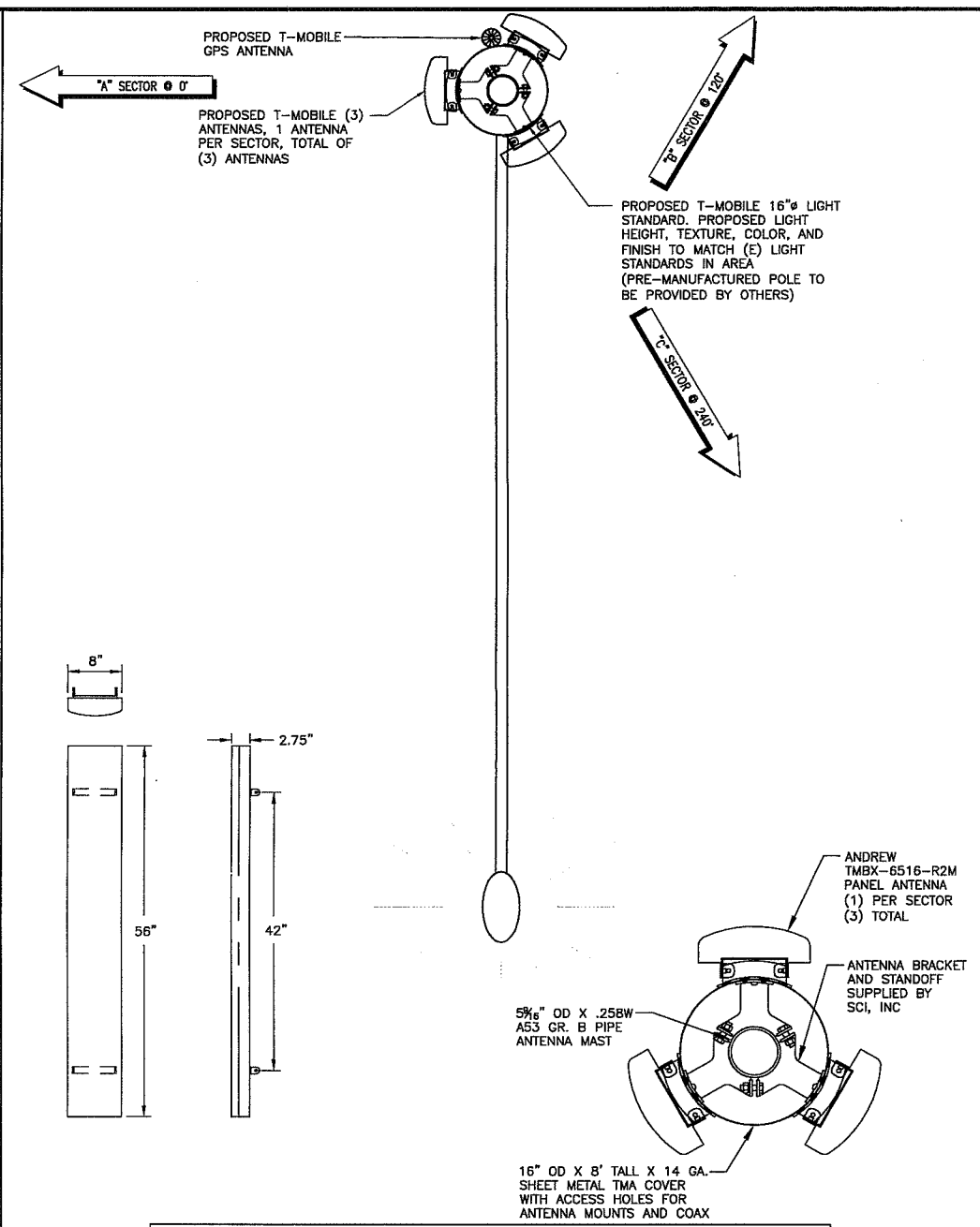
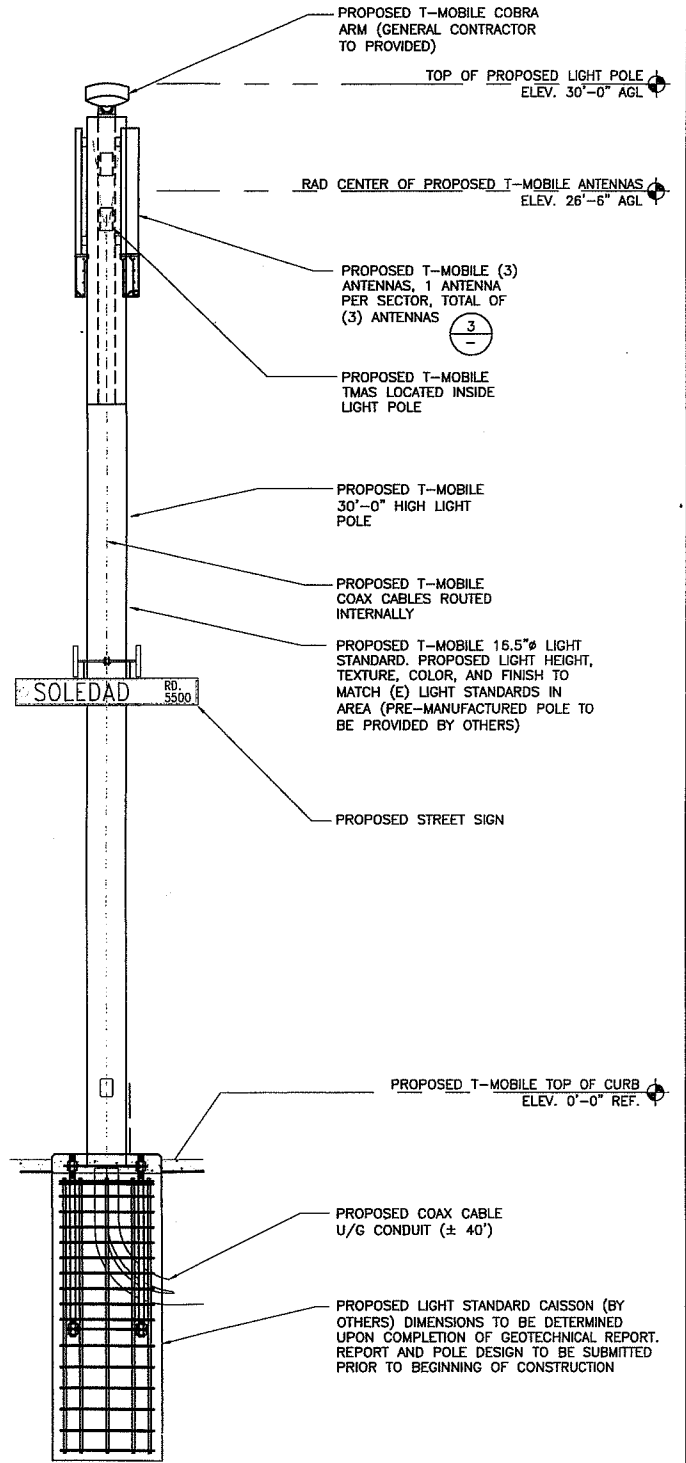
SCALE: AS SHOWN

JOB NO.

OMNIPONT

T-Mobile

10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA. 92121



ANTENNA & CABLE SCHEDULE									
	AZIMUTH	RAD CENTER	ANTENNA MFG & MODEL NO.	ANTENNA TYPE	PERMITTED # OF ANTENNA	FEEDER TYPE	FEEDER LENGTH	# OF FEEDER(S)	# OF TMA(S)
SECTOR A	0°	26'-6"	DR65-15-XXDPL2	-	1	1/2"	40'	4	2
SECTOR B	120°	26'-6"	DR65-15-XXDPL2	-	1	1/2"	40'	4	2
SECTOR C	240°	26'-6"	DR65-15-XXDPL2	-	1	1/2"	40'	4	2

ANTENNA LAYOUT 0 3' 6" 1' SCALE: 3/4" = 1'-0" (24x36)  
(OR) 3/8" = 1'-0" (11x17) 3

PRIVATE CONTRACT

ANTENNA & RF DETAILS FOR:  
SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA  
DEVELOPMENT SERVICES DEPARTMENT  
SHEET 7 OF 10 SHEETS

W.O. NO. \_\_\_\_\_  
P.T.S. NO. \_\_\_\_\_  
V.T.M. N/A

FOR CITY ENGINEER	DATE	DATE	FILMED
DESCRIPTION	BY	APPROVED	
ORIGINAL	SACW		
AS-BUILTS			

CONTRACTOR \_\_\_\_\_ DATE STARTED \_\_\_\_\_  
INSPECTOR \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

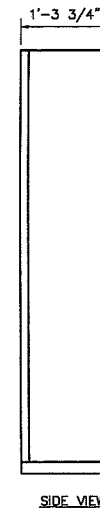
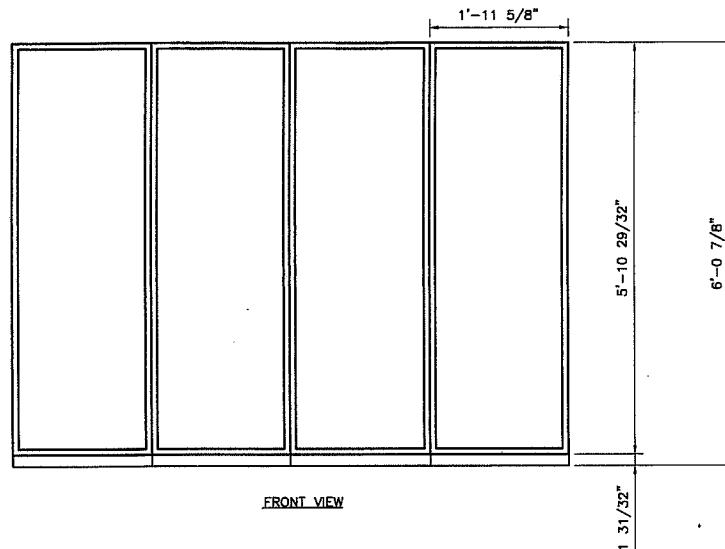
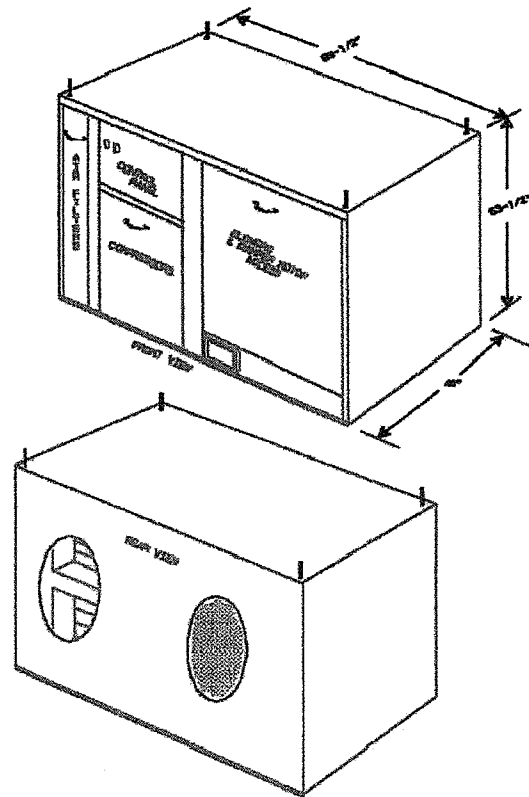
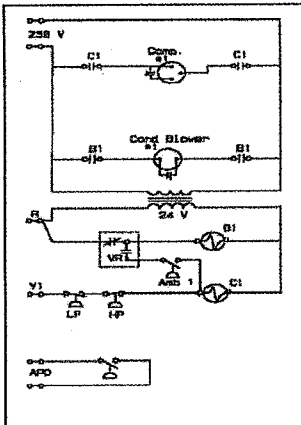
NAD83 COORDINATES  
LAMBERT COORDINATES

- 7 -

# WIRING SCHEMATIC

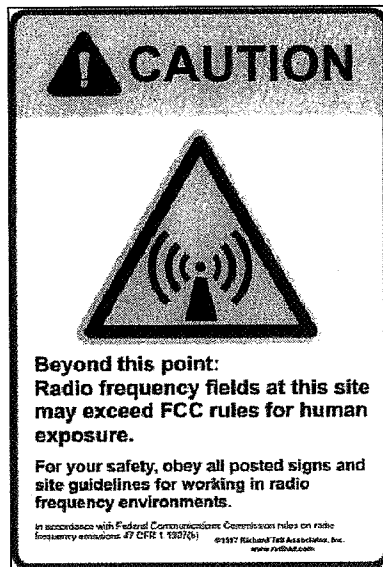
C Contactor  
B Condenser Blower Control  
R Low Voltage Power  
Y Cooling Command  
APD Air Pressure Differential Switch  
(Proves Ventilation)  
D Damper Control / Motor  
VR Ventilation Relay  
AMB Low Ambient Control

- Notes:  
1 24 v Power Supply for "D" is provided by external source.  
2 Damper must POWER CLOSE, and spring return to OPEN position.  
3 Damper Motor must be constantly powered for A/C mode, and receive No Power during Ventilation Mode.

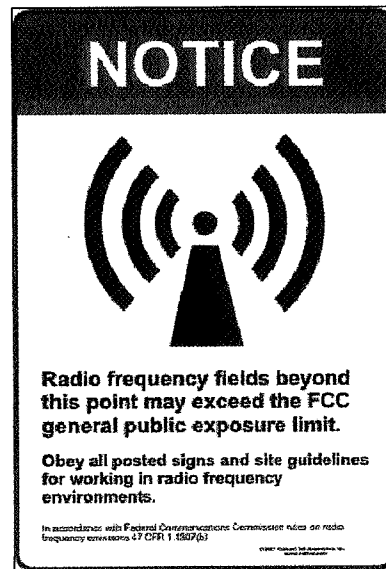


## HVAC UNIT DETAIL (MODEL: CMH-036)

2



RADIO FREQUENCY SIGNS TO BE POSTED NEAR ANTENNAS



RADIO FREQUENCY SIGNS TO BE POSTED NEAR ACCESS LADDER

## RF WARNING SIGNS

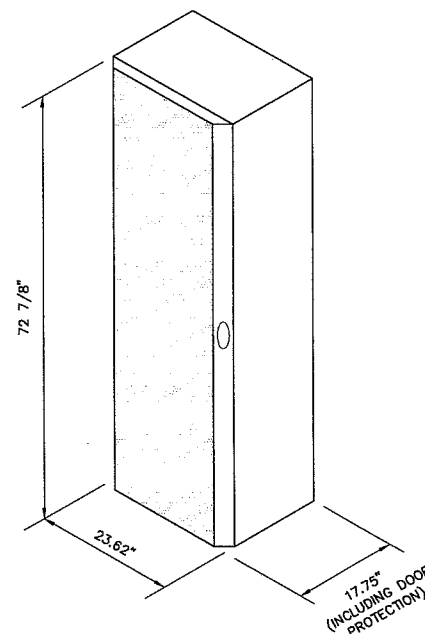
SCALE  
N.T.S.

3

## DETAILS

SCALE  
N.T.S.

4



ERICSSON RBS 2206  
RF/POWER CABINET

ERICSSON INDOOR DIMENSIONS	
CABINET	DEPTH x WIDTH x HEIGHT
INDOOR RBS 2206	15.75"x23.62"x72.83" (400mm x 600mm x 1850mm)
INDOOR BASE	15.75"x23.62"x2.00" (400mm x 600mm x 76mm)
BBS 2000 BATTERY BACK-UP	16.00"x28.00"x63.00" (406mm x 711mm x 1600mm)

NOTE-SEISMIC ZONE 3 & 4 ANCHORING SPECIFICATIONS SHALL BE PROVIDED BY ERICSSON.

ERICSSON INDOOR WEIGHT & FLOOR LOADING		
CABINET	APPROX. MAX. WEIGHT	MAX. FLOOR LOADING
INDOOR RBS 2206	507 LBS (230 KG)	196 LBS/FT <sup>2</sup> (958 KG/M <sup>2</sup> )
BBS 2000 BATTERY BACK-UP	1433 LBS (650 KG)	555 LBS/FT <sup>2</sup> (2709 KG/M <sup>2</sup> )

ERICSSON INDOOR MINIMUM CLEARANCES	
DIRECTION	MINIMUM CLEARANCE
CABINET REAR AND WALL	2" (50.4mm)
CABINET RIGHT/LEFT SIDE AND WALL	0" (0mm)
ABOVE THE RBS CABINET	18" (457mm) 9.84" (250mm) B/T TOP OF RBS CABINET AND CABLE TRAY
IN FRONT OF THE CABINET	40" (1016mm)
B/T RBS AND BBS	MAXIMUM SPACING 49.2' (15M)

PRIVATE CONTRACT  
DETAILS FOR:

## SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 9 OF 10 SHEETS				W.O. NO. .... P.T.S. NO. ....
FOR CITY ENGINEER				V.T.M. N/A
DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	SACW			
AS-BUILTS				
CONTRACTOR				DATE STARTED
INSPECTOR				DATE COMPLETED

- 8 -

SAC Wireless  
11300 SORRENTO VALLEY RD., SUITE 230  
San Diego, CA 92121  
Office (650) 552-0358  
Fax (650) 552-0184

SITE NAME: SOLEDAD ROAD ROW  
SD07007B  
SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

COMMPOINT  
T-Mobile  
10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA. 92121

REVISION	DATE	BY	PROJECT ENGR: WILL TATE
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100% ZONING	03/28/07	EH	SCALE: AS SHOWN
100% ZONING	08/08/07	ES	JOB NO. ....
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	

Table 1 MEASURED NOISE LEVEL OF AN OPERATIONAL UNDERGROUND FACILITY'S INTAKE AND EXHAUST VENTS										
	Octave Frequency (Hz)									
	31.5	63	125	250	500	1K	2K	4K	8K	dBA
Intake Vent Noise Level at 1-foot (dB)	N/A	71.2	70.2	61.0	57.6	55.2	51.0	49.6	46.4	61.0
Exhaust Vent Noise Level at 1-foot (dB)	N/A	74.6	73.2	67.1	52.5	52.1	46.7	45.3	39.2	62.1

Table 2 3-FOOT INDUSTRIAL ACOUSTICS TYPE "S" SILENCER INFORMATION										
	Octave Frequency (Hz)									
	31.5	63	125	250	500	1K	2K	4K	8K	dBA
3-Foot Type "S" < 1000 FPM	N/A	-7.0	-12.0	-16.0	-28.0	-35.0	-35.0	-28.0	-17.0	N/A

Table 3 CALCULATED NOISE LEVEL OF THE INTAKE AND EXHAUST VENTS WITH A SILENCER										
	Octave Frequency (Hz)									
	31.5	63	125	250	500	1K	2K	4K	8K	dBA
Intake Vent Noise Level at 1-foot (dB)	N/A	64.2	58.2	45.0	29.6	20.2	16.0	21.6	29.4	44.5
Exhaust Vent Noise Level at 1-foot (dB)	N/A	67.6	61.2	51.1	24.5	17.1	11.7	17.3	22.2	48.1

NOISE LEVEL TABLES

SCALE  
N.T.S.

1

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SAN DIEGO, CA. 92121

**SAC Wireless**  
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San Diego, CA 92121  
Office (658) 552-9388  
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SITE NAME: **SOLEDAD ROAD ROW  
SD07007B**  
SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

REVISION	DATE	BY	PROJECT ENGR: WILL TATE
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100% ZONING	08/08/07	ES	SCALE: AS SHOWN
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	JOB NO.

PRIVATE CONTRACT

NOISE LEVEL TABLES FOR:

SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA  
DEVELOPMENT SERVICES DEPARTMENT  
SHEET 9 OF 10 SHEETS

W.O. NO. -

P.T.S. NO. -

V.T.M. N/A

FOR CITY ENGINEER		DATE	
DESCRIPTION	BY	APPROVED	FILMED
ORIGINAL	SACW		
AS-BUILTS			
CONTRACTOR	DATE STARTED		
INSPECTOR	DATE COMPLETED		

NAD83 COORDINATES

LAMBERT COORDINATES

1. ALL LANDSCAPE AND IRRIGATION SHALL CONFORM TO THE STANDARDS OF THE CITY-WIDE LANDSCAPE REGULATIONS AND THE CITY OF SAN DIEGO LAND DEVELOPMENT MANUAL LANDSCAPE STANDARDS AND ALL OTHER LANDSCAPE RELATED CITY AND REGIONAL STANDARDS

2. ALL GRADED, DISTURBED OR ERODED AREAS THAT WILL NOT BE PERMANENTLY PAVED OR COVERED BY STRUCTURES SHALL BE PERMANENTLY REVEGETATED AND IRRIGATED AS SHOWN IN TABLE 142-04F AND IN ACCORDANCE WITH THE STANDARDS IN THE LAND DEVELOPMENT MANUAL [142.0411(a)].

3. IRRIGATION: AN AUTOMATIC, ELECTRICALLY CONTROLLED IRRIGATION SYSTEM SHALL BE PROVIDED AS REQUIRED FOR PROPER IRRIGATION, DEVELOPMENT, AND MAINTENANCE OF THE VEGETATION IN A HEALTHY, DISEASE-RESISTANT CONDITION. THE DESIGN OF THE SYSTEM SHALL PROVIDE ADEQUATE SUPPORT FOR THE VEGETATION SELECTED.



4. MAINTENANCE: ALL REQUIRED LANDSCAPE AREAS SHALL BE MAINTAINED BY ADJACENT LAND OWNER, LANDSCAPE & IRRIGATION AREAS IN THE PUBLIC ROW SHALL BE MAINTAINED BY ADJACENT LAND OWNER. THE LANDSCAPE AREA SHALL BE MAINTAINED FREE OF DEBRIS AND LITTER AND ALL PLANT MATERIAL SHALL BE MAINTAINED IN A HEALTHY GROWING CONDITION. DISEASED OR DEAD PLANT MATERIAL SHALL BE SATISFACTORILY TREATED OR REPLACED PER THE CONDITIONS OF THE PERMIT.

1

1. 1-GAL DIETES, AFRICAN ISRIS
2. 1-GAL AGAPANTHUS AFRICANUS, LILY OF THE NILE
3. 5-GAL PITTORPORUM TOBIRA, WHEELER DWARF

## 2

## 3

QTY.	MATURE SIZE	DESCRIPTION	DISTANCE	SYMBOL
32	2'-3' FT	PROPOSED DIETES IRIDIODES, AFRICAN IRIS VERTICAL SCREENING SHRUB	1'-0" O.C.	
1	EXISTING	EXISTING PITTOSPORUM TOBIRA 'WHEELERS DWARF', 6' X 6' TO BE REMOVED	N/A	
2	EXISTING	PROPOSED TRISTINIA CONFRETA BRISBANE BOX DECORATIVE TREE	21'-9" O.C.	

## 4

	1'	2'	3'
--	----	----	----

SCALE: 3/8" = 1'-0" (24x36)  
(OR) 3/16" = 1'-0" (11x17)

**F**

**PRIVATE CONTRACT**

LANDSCAPE DEVELOPMENT PLAN FOR:

SOLEDAD ROAD ROW

CITY OF SAN DIEGO, CALIFORNIA  
DEVELOPMENT SERVICES DEPARTMENT  
SHEET 10 OF 10 SHEETS

W.O. NO. \_\_\_\_\_  
P.T.S NO. \_\_\_\_\_

FOR CITY ENGINEER

V.T.M.	N/A
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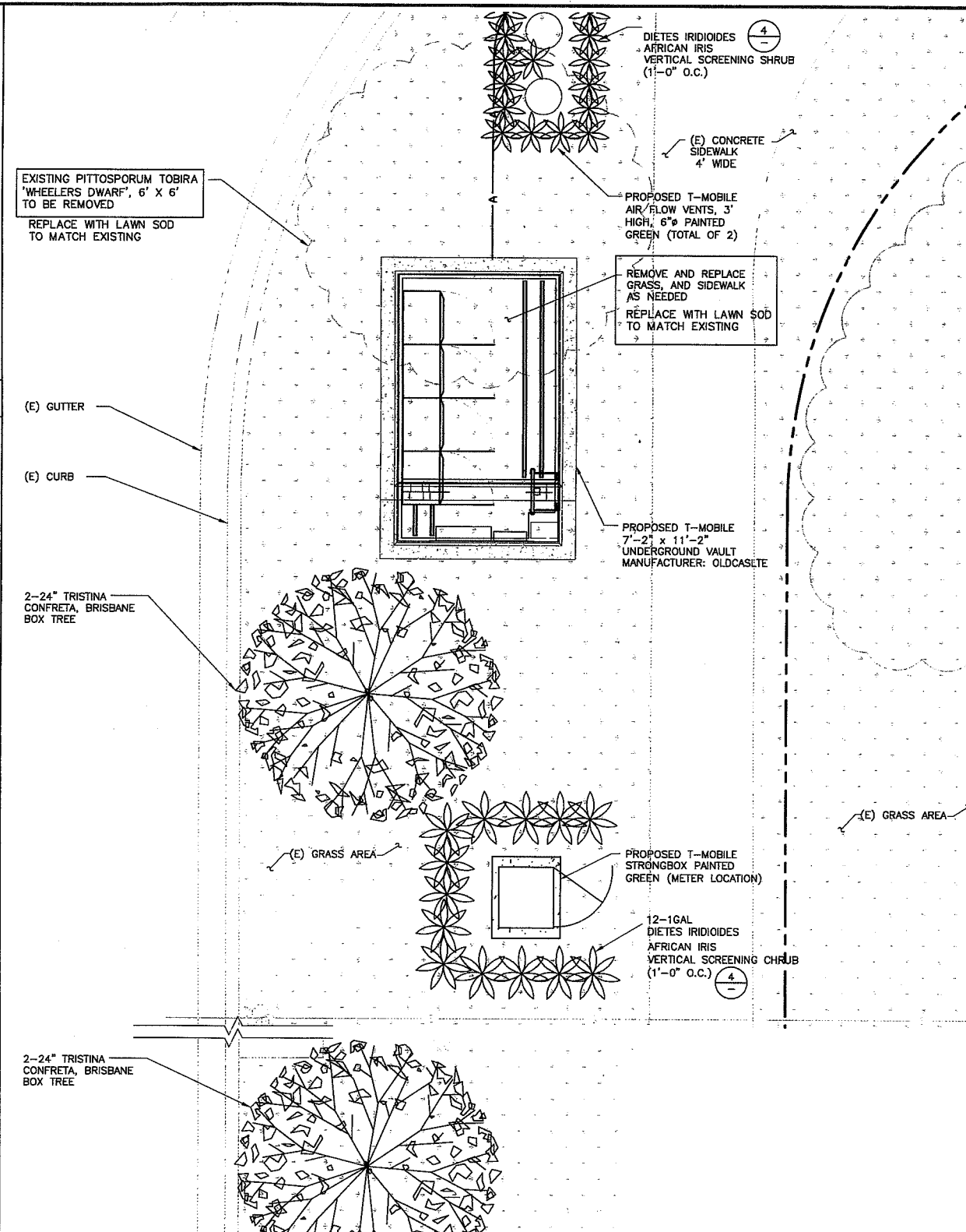
DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	SACW			
AS-R1111 TS				

NADR3 COORDINAT

LAMBERT COORDIN

CONTRACTOR _____	DATE STARTED _____
INSPECTOR _____	DATE COMPLETE _____

- 10 -



MINIMUM TREE SEPARATION	DISTANCE
10	10
15	15
20	20
25	25
30	30
35	35
40	40
45	45
50	50
55	55
60	60
65	65
70	70
75	75
80	80
85	85
90	90
95	95
100	100

IMPROVEMENT/MINIMUM DISTANCE TO STREET TREE  
TRAFFIC SIGNALS (STOP SIGNS)- 20 FEET  
UNDERGROUND UTILITY LINES- 5 FEET (10' FOR SEWER)  
ABOVE GROUND UTILITY STRUCTURES- 10 FEET  
DRIVEWAY (ENTRIES)-10 FEET  
INTERSECTIONS (INTERSECTING CURB LINES OF TWO STREETS)-25 FEET


## IRRIGATION NOTE:

EXISTING IRRIGATION IN PLACE CONTRACTOR TO  
MOVE HEADS AND READJUST AS NECESSARY TO  
HAVE 100% COVERAGE OF LAWN AND SHURBS.  
NEW HEADS MAY BE NECESSARY.



## MONNIPONT

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10180 TELESIS COURT, 3RD FLOOR  
SAN DIEGO, CA 92121

 **SAC Wireless**  
11300 SORRENTO VALLEY RD., SUITE 100  
San Diego, CA 92121  
Office (858) 552-9398  
Fax (858) 552-0184

SITE NAME: SOLEDAD ROAD ROW  
SD07007B

SITE ADDRESS: 5582 THUNDERBIRD LANE  
LA JOLLA, CA. 92037  
CITY OF SAN DIEGO

REVISION	DATE	BY	PROJECT ENGR: WILL TATE
90% ZONING	02/21/07	EH	DESIGNED BY: WILL TATE
90% ZONING	03/02/07	ES	DRAWN BY: EDGAR SOLIS
100% ZONING	03/28/07	EH	SCALE: AS SHOWN
100% ZONING	08/08/07	ES	JOB NO.
100% CITY COMMENTS	02/08/08	ES	
100% ZONING	08/11/08	ES	