



DATE: August 19, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division

SUBJECT: **APPEAL OF PLANNING COMMISSION RESOLUTION NO. 2009-P18 DENYING WITHOUT PREJUDICE ADMINISTRATIVE USE PERMIT (ACUP-12-08) FOR A CO-USER COMMUNICATION FACILITY DISGUISED AS CHIMNEYS AND LOCATED ON THE ROOF OF A HOUSE LOCATED AT 6543 INDIAN TRAILS WAY – APPELLANT /APPLICANT: AT&T MOBILITY, LLC – CINGULAR WIRELESS**

SYNOPSIS

The item under consideration is an appeal filed by Mr. Kevin Sullivan on behalf of the applicant AT&T Mobility requesting consideration of Planning Commission Resolution 2009-P18, which denies without prejudice Administrative Conditional Use Permit ACUP-12-08.

The proposal is to construct and operate a communication facility, where an equipment shelter would be located within an existing avocado grove and the antennas would be located behind fake chimneys that are constructed on the roof of an existing single-family residence located at 6543 Sleeping Indian Road.

Staff has reviewed the issues raised by the appellant and finds that land use goals and development regulations have been addressed by the project's design and conditions of approval. It is staff's recommendation that City Council overturn Planning Commission Resolution No. 2009-P18 and affirm the City Planner's action approving the proposed co-user communication facility.

BACKGROUND

On June 3, 2008, staff accepted a submittal for a co-user communication facility located at 6543 Sleeping Indian Road, ACUP-12-08.

On January 26, 2009, the City Planner administratively approved ACUP-12-08 pursuant to Section 4102 and Section 3025 of the Zoning Ordinance with specific conditions limiting the height of the antenna disguise.

On February 5, 2009, Pete Penseyres timely filed an appeal of the administrative action.

On April 6, 2009, the Planning Commission adopted Resolution No. 2009-P18 which overturned the City Planner's approval of ACUP-12-08 and denied without prejudice the proposed co-user communication facility by a 4-1-1 vote.

On April 15, 2009, Mr. Sullivan timely filed with the City Clerk an appeal of the Planning Commission's action.

On June 10, 2009, the applicant's representative (Mr. Ted Marioncelli), Mr. Pete Penseyres, Mr. Bud Schurmeier, Mr. Bill Vernon, and Mr. and Mrs. Gordon Robotta met with staff to discuss the proposed application, the possibility of revising the proposal, and wireless service coverage in the area. Mr. Vernon and the Robottas do not have wireless service where they live in the Morro Hills area.

On July 31, 2009, the applicant's representative met again with staff to discuss additional project conditions. Mr. Marioncelli agreed to conditions limiting the height of the disguise, the number of chimneys, and the authentic reproduction of the existing chimney's appearance, so that the antennas are situated behind what would otherwise appear as a chimney on the roof of a home.

Site Review: The General Plan Land Use designation for the project site is Agriculture. The property is located within the Agricultural Zoning District and is developed with a single-family detached dwelling. The existing house straddles the ridgeline of the hillside. The lot's terrain is characteristic of the surrounding area with steep slopes and dramatic views to the north, west and south. Surrounding land uses include crop production (e.g., avocado groves) and single-family homes on 2.5-acre or larger lots.

The existing residence consists of a garage and home that are attached by a covered breezeway. The multi-hipped roof encompasses all residential improvements and provides a unifying appearance to the existing residence. An existing chimney is located on the south side of the structure's roof. The existing chimney is approximately 15 feet above the existing grade and has a 1.5-foot tall spark arrestor above the chimney. Therefore, the overall height of the chimney with the spark arrestor is approximately 16.5 feet.

Project Description: The project application is comprised of one component, an Administrative Conditional Use Permit, as follows:

Administrative Conditional Use Permit ACUP-12-08 represents a request to allow the installation and operation of a co-user communication facility pursuant to Section 3025.D *Communication facilities siting criteria*.

The project is a co-user communication facility consisting of six antennas installed within newly constructed fake chimneys located on the roof of an existing residence; construction of a 275-square-foot equipment shelter; and installation of 400 AMP electrical service and Telco service connection. The chimneys were proposed to be 16.75 feet and 18 feet tall, measured from existing grade. The City Planner's approval

requires a that the antenna disguise be constructed to appear consistent with the existing chimney and spark arrestor.

The antenna disguise is required to have the same finish details as the existing chimney, including overall height, a spark arrestor and material having the same appearance, color, finish, and texture as the existing masonry chimney. The equipment shelter shall have the same finish details as the existing residence.

In response to the Planning Commission's concerns, staff recommends that the City Council adopt additional conditions. These additional conditions would clarify the scope of the proposed antenna disguise. The height of the chimneys would be limited to 17 feet. The location of the proposed westerly antenna array would be required to be relocated and situated approximately 50 feet to the west of the location shown on the exhibits submitted for consideration. Antenna arrays would not be allowed above the existing garage.

Environmental issues: The proposed project has been reviewed pursuant to the California Environmental Quality Act (CEQA) and the project is exempt under the provisions of CEQA Class 1 15301(b) Categorical Exemption for existing facilities.

ANALYSIS

Appeal filed by Kevin P. Sullivan on behalf of AT&T Mobility

Listed below are the issues raised by Mr. Sullivan, along with staff's response. As designed and specifically conditioned, the project is consistent with the Land Use Element of the General Plan, Zoning Ordinance, and CEQA statutes.

Issues

1) The Planning Commission decision was improperly based on health concerns related to RF emissions.

Pursuant to Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996, "No ... local government ... 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."

The Planning Commission resolution to deny the proposal without prejudice provided the applicant with alternative design solutions and/or locations that would have the effect of reducing the proposed communication facility's visual impact upon the community. The Commission's decision was supported by written findings that describe the visual impact of the proposed communication facility.

2) The Planning Commission ignored AT&T's evidence of a significant gap in coverage or service in the area.

The Planning Commission considered the maps provided by the applicant's representative and testimony from the public including Mr. Pete Penseyres, who appealed the Record of Administrative Approval for ACUP-12-08. It was evident during the public hearing that conflicting coverage information was provided by the applicant and the public's testimony. Staff has surveyed reception in the Morro Hills Neighborhood and found that the quality of reception varies greatly.

On June 21, 2009, the applicant provided updated coverage maps that are attached to the staff report. These maps show the existing coverage in the area; and extrapolate how coverage would change with constructing the proposed co-user communication facility. Maps also show how coverage will change with the construction of the Guajome Park communication facility and how coverage would change using alternative sites, such as the Indian Trail Way Water Tank, a different residence (Williams), the Morro Reservoir, Sleeping Indian Cinder Cone, and the Mellano Farms. There are existing communication facilities at the Morro Reservoir and the Mellano Farms.

3) The Planning Commission improperly based its decision on private real estate covenants and restrictions.

The proposed site is one lot within a thirteen-lot subdivision called "Sleeping Indian Hill," Map No. 8310, which is subject to a covenant that covers a variety of private agreements between the owners of the thirteen lots. The City does not take action on private agreements between property owners. The Sleeping Indian Hill covenant prohibits commercial land uses on the property within the subdivision; communication facilities are not specifically prohibited by the Sleeping Indian Hill covenant. Crop production is evidenced within the area.

While testimony from the public included references to the homeowners' agreement and the South Morro Hills Association's position on the proposed use, the motion to deny without prejudice and the adopted findings do not reference the homeowners' association's agreements.

4) The Planning Commission improperly ignored AT&T's substantial evidence that no alternative site could fill the coverage gap.

The applicant's representative and the appellant provided substantial testimony and the Planning Commissioners inquired vigorously about the suitability of alternative sites within the area. The staff report included coverage maps prepared by the applicant. The location and feasibility of other locations was vigorously discussed during the hearing. The Commissioners inquired about the suitability of locating the antennas on Indian Hill and a municipal water tank. In both instances, the applicant explained that the land contours prevented those sites from successfully connecting their broadcast with other communication sites in the area.

5) The Planning Commission decision was inconsistent as to the scrutiny and regulations applied to AT&T compared to other telecommunication facility applications.

Similar to other proposed communication facilities, the Planning Commission's findings are its assessment of the proposal's compliance with regulations for communication facilities. These findings are pursuant to Section 3025 of the Zoning Ordinance and Section 4105 of the Zoning Ordinance that require findings for conditional use permits. The Commission considers the proposal's compliance with the General Plan Community Development Goal, Objective 2.726, and its policies which seek to provide for the efficient and aesthetic functioning of communication systems within the City.

The Planning Commission received staff's recommendations in the form of a report in advance of the public hearing. Within the staff report and during the oral presentation, staff provided written examples of the proposed project's compliance with local development regulations for communication facilities located within the Agricultural District. The application and staff's analysis of development and land use regulations is consistent with historic practices.

FISCAL IMPACT

Not applicable.

COMMISSION OR COMMITTEE REPORT

The Planning Commission considered the filed appeal on April 6, 2009. After hearing considerable public testimony from area residents, the appellant, the applicant's representatives, and staff, the Commission adopted Planning Commission Resolution No. 2009-P18 on a 4-1-1 vote with one Commissioner voting no, one Commissioner absent, and one Commissioner abstaining because of a potential conflict of interest.

The motion to deny the proposal without prejudice was made based on the following three findings: (1) the proposed disguise for the communication facility does not visually conform to the surrounding area and therefore, does not conform to the General Plan Land Use Objective 2.726 for Communication Facilities. (2) The proposed communication facility does not incorporate the best available equipment technology to effect a reduction in the visual presence of the antenna and facility equipment. The physical features of the disguise do not minimize view impacts to the community. Several area residents gave testimony that the proposal provided substantial visual impacts, made suggestions for the reduction of the view impact (including alternative sites combined with other co-user opportunities), and provided testimony that service coverage was present within the surrounding area. The proposal is not in accord with the objectives of the Zoning Ordinance Section 3025 and the purposes of the district in which the project site would be located. (3) The proposed conditional use does not comply with the provisions of Section 3025 of the Zoning Ordinance, including specific

regulations to address the appearance of the entire site and to effect a reduction in the visual presence of the antennas and facility equipment.

CITY ATTORNEY’S ANALYSIS

Under the provisions of Article 46 of the City Zoning Ordinance, the City Council has final authority in the approval, modification or denial of the Administrative Use Permit proposed ACUP-12-08 co-user communication facility.

Consideration of the matter should be based on the testimony and evidence presented at the public hearing. After conducting the public hearing, the Council shall affirm, modify or deny the project. If the City Council reverses or modifies the Planning Commission decision, it shall state the specific findings for reversal or modification. The resolution has been reviewed and approved as to form.

RECOMMENDATION

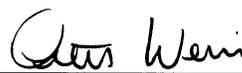
The application ACUP-12-08 for a co-user communication facility, as conditioned, meets or exceeds the policies of the General Plan and the regulations of the Zoning Ordinance. Staff finds that disguising the appearance of the antennas as chimneys satisfies local regulations. Furthermore, as conditioned, the reduction in height and the relocation of the chimneys originally proposed over the garage will render the antennas invisible from all public rights-of-way and from the residential property to the west of the project site. As such, staff recommends that the City Council overturn the Planning Commission’s action, affirm the City Planner’s approval of the co-user communication facility as amended, and adopt the resolution approving the project.

PREPARED BY:

SUBMITTED BY:



Juliana von Hacht
Associate Planner



Peter A. Weiss
City Manager

REVIEWED BY:

Michele Skaggs-Lawrence, Deputy City Manager
George Buell, Development Services Director
Jerry Hittleman, City Planner



ATTACHMENTS:

1. Site Plans and July 21, 2009 Communication Service Coverage Maps
2. City Council Resolution
3. Planning Commission Resolution No. 2009-P18
4. Record of Administrative Approval ACUP-12-08
5. Mr. Kevin Sullivan’s appeal of the Planning Commission’s action



PREPARED FOR



6925 LUSK BOULEVARD
 SAN DIEGO, CA 92121

APPROVALS

R.F.	DATE

PROJECT NAME

LONDON RANCH

PROJECT NUMBER

NS0004-02

6543 INDIAN TRAIL WAY
 FALLBROOK, CA 92028
 SAN DIEGO COUNTY

DRAWING DATES

12/1/05	REVISED (S)
04/08/06	PLANNING SUMMARY (P)
05/16/06	REVISED 2D (C)
07/09/06	PLANNING COMMENTS (C)
10/09/06	PLANNING COMMENTS (C)
10/09/06	PLANNING COMMENTS (C)

SHEET TITLE

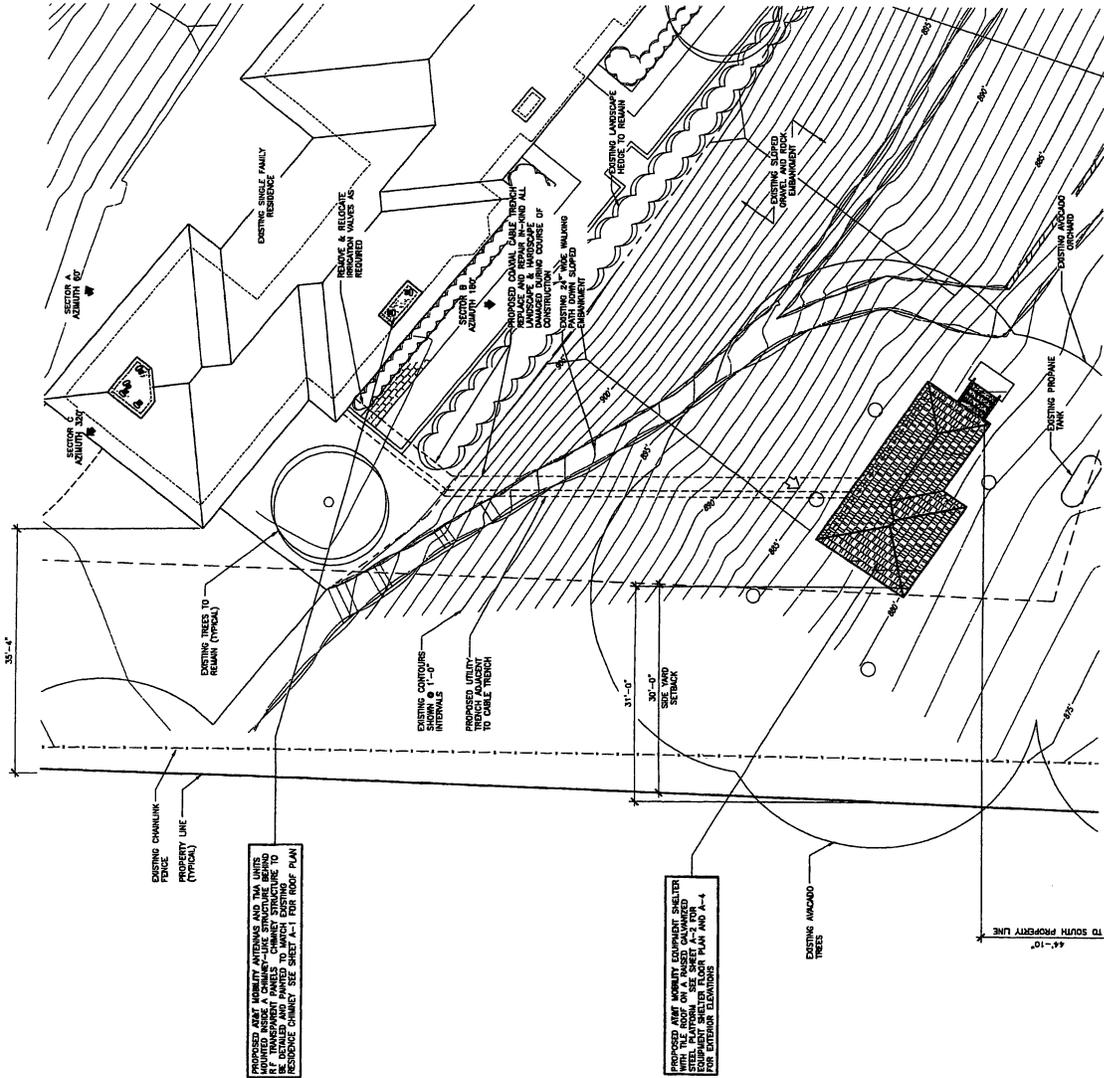
**ENLARGED PARTIAL
 SITE PLAN**

APPROVED BY THE
 CITY PLANNER

DATE: 10/10/06
 DRAWN BY: [Signature]

PROJECTS:\atmobility\6543 INDIAN TRAIL WAY\050401.dwg

A-0.1



ENLARGED PARTIAL SITE PLAN
 SCALE: 1/8" = 1'-0"

APPROVALS

TITLE	DATE
DESIGN	DATE
CONSTRUCTION	DATE
SITE ACQUISITION	DATE
CIRCULAR APPROVAL	DATE
LANDSCAPE APPROVAL	DATE

PROJECT NAME
LONDON RANCH

PROJECT NUMBER
NS0004-02

5643 INDIAN TRAIL WAY
 FALLBROOK, CA 92028
 SAN DIEGO COUNTY

DRAWING DATES

09/19/08	PRELIM 2D REVIEW (M)
10/17/08	REVISION 2D (M)
10/17/08	TITLE AND PLOT (M)
10/17/08	REVISION 2D (M)
12/04/08	REVISION 2D (M)
12/04/08	REVISION 2D (M)
12/11/08	REVISION 2D (M)
01/16/09	REVISION 2D (M)
02/10/09	PLANNING COMMENTS (M)
10/09/08	PLANNING REVISIONS (M)

SHEET TITLE
ROOF & ANTENNAS PLAN

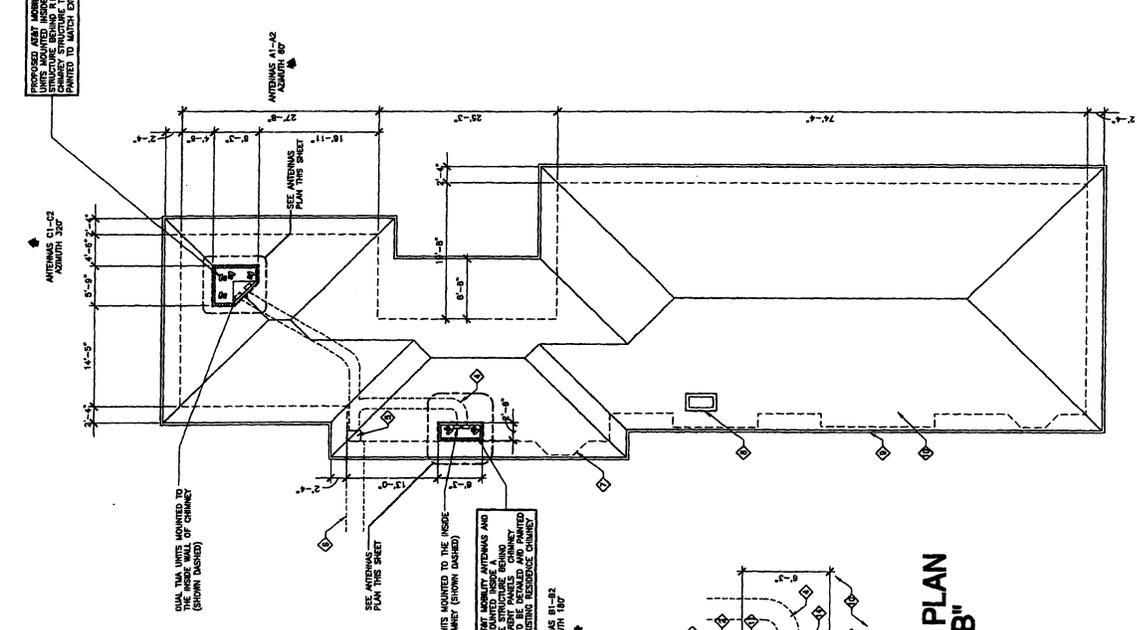


ANTENNA PLAN SECTOR "A" & "C"
 SCALE 1/4" = 1'-0"

KEYED NOTES:

- 1. PROPOSED A&T MOBILITY ANTENNAS
- 2. PROPOSED OF TRANSPARENT BRICK LITE PANELS AND SUPPORT POST
- 3. PROPOSED E-911/GPS ANTENNA MOUNTED TO FACIA
- 4. PROPOSED COAX CABLE TRAY MOUNTED IN ATTIC SPACE TO EXISTING VERTICAL COAX CABLE CHASE INSIDE EXISTING CLOSET @ GRADE LEVEL
- 5. PROPOSED COAX CABLE TRENCH
- 6. OUTLINE OF EXISTING EXTERIOR WALL (SHOWN DASHED)
- 7. EXISTING MAGNIFY CHIMNEY
- 8. EXISTING GUTTER AND DOWNSPOUT
- 9. EXISTING TILE ROOF
- 10. EXISTING TMA UNITS MOUNTED TO THE INSIDE WALL OF CHIMNEY (SHOWN DASHED)
- 11. PROPOSED TMA UNITS MOUNTED TO THE INSIDE WALL OF CHIMNEY (SHOWN DASHED)
- 12. EXISTING ROOF FRAMING
- 13. WOOD STUD FRAMING WITH BRICK VENEER
- 14. PROPOSED COAX CABLE CONDUIT ELEVATE (SHOWN DASHED)
- 15. PROPOSED METAL CAP TO MATCH EXISTING COLOR AND SHAPE

NOTES:
 1. ROOFING TILE SHALL MATCH EXISTING NO EXCEPTIONS
 2. ALL TMA UNITS MOUNTED INSIDE CHIMNEY SHALL BE CLASS A
 3. ALL TMA UNITS MOUNTED INSIDE CHIMNEY SHALL BE CLASS A
 4. ALL ROOFING WORK SHALL BE INSTALLED BY
 5. OTHER APPROVED CONTRACTOR. SEE P. ROOFING, TUCUMCACA



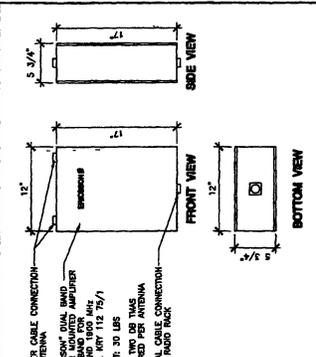
ROOF PLAN
 SCALE 1/4" = 1'-0"

ANTENNA AND COAXIAL CABLE SCHEDULE

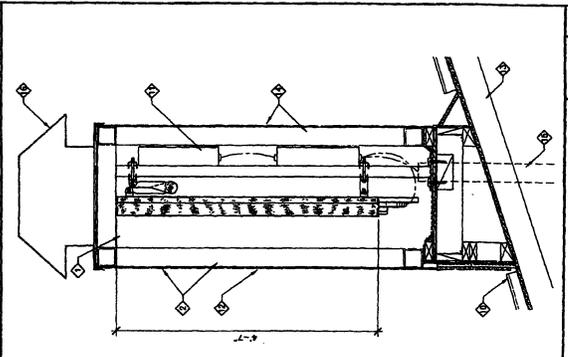
SECTOR	ANTENNA	ANTENNA MODEL NUMBER	POINT	SIZE	TYPE	FROM SITE
A1	NORTH	PORCELMAX 7750	0'	0"	7/8"	
A2	SOUTH	PORCELMAX 7750	0'	0"	7/8"	
B1	EAST	PORCELMAX 7750	0'	0"	7/8"	
B2	WEST	PORCELMAX 7750	0'	0"	7/8"	
C1	NORTH	PORCELMAX 7750	0'	0"	7/8"	
C2	SOUTH	PORCELMAX 7750	0'	0"	7/8"	

USE OF EXPANDABLE SPRAY FOAM IS PROHIBITED
 EXPANDABLE SPRAY FOAM INSULATION/SEALANT IS PROHIBITED FROM USE IN ANY AREA AROUND ANY NEW, EXISTING OR FUTURE COAXIAL CABLE OR ANTENNA. EXPANDABLE SPRAY FOAM INSULATION/SEALANT IS PROHIBITED FROM USE IN ANY AREA AROUND ANY NEW, EXISTING OR FUTURE COAXIAL CABLE OR ANTENNA UNLESS SPECIFICALLY APPROVED BY THE A&T MOBILITY SERVICE CONSTRUCTION MANAGER.

- 1. FIELD VERIFY ALL CABLE LENGTHS PRIOR TO ORDERING CABLE
- 2. VERIFY ROUTE AND LENGTH OF CABLE PRIOR TO CUTTING. ADJUST INDICATED ROUTE AS REQUIRED TO CLEAR EXISTING OBSTRUCTIONS AND MAINTAIN REQUIRED CLEARANCE OF EXISTING EQUIPMENT
- 3. VERIFY MODEL NUMBER OF ANTENNA WITH A&T MOBILITY.



- 1. MOUNT TO SCREEN WALL OR ANTENNA MOUNTING PIPE WITH FULL BAND PIPE
- 2. MOUNT TMA FROM ANTENNA WALL TO DISTANCE FROM ANTENNA



TYPICAL ANTENNA MOUNT
 SCALE 1/4" = 1'-0"

APPROVALS

R.F.	DATE
ZONING	DATE
CONSTRUCTION	DATE
SITE ACQUISITION	DATE
COUNCIL APPROVAL	DATE
LANDLORD APPROVAL	DATE

PROJECT NAME
LONDON RANCH

PROJECT NUMBER
NS0004-02

6543 INDIAN TRAIL WAY
 FALLBROOK, CA 92028
 SAN DIEGO COUNTY

DRAWING DATES

11/1/08	REVISED PER PLAN 20 (04)
04/09/08	REVISED PER PLAN 20 (04)
05/16/08	REVISED TO (04)
07/10/08	PLANNING COMMENTS (04)
10/29/08	PLANNING RESUBMITTAL (04)

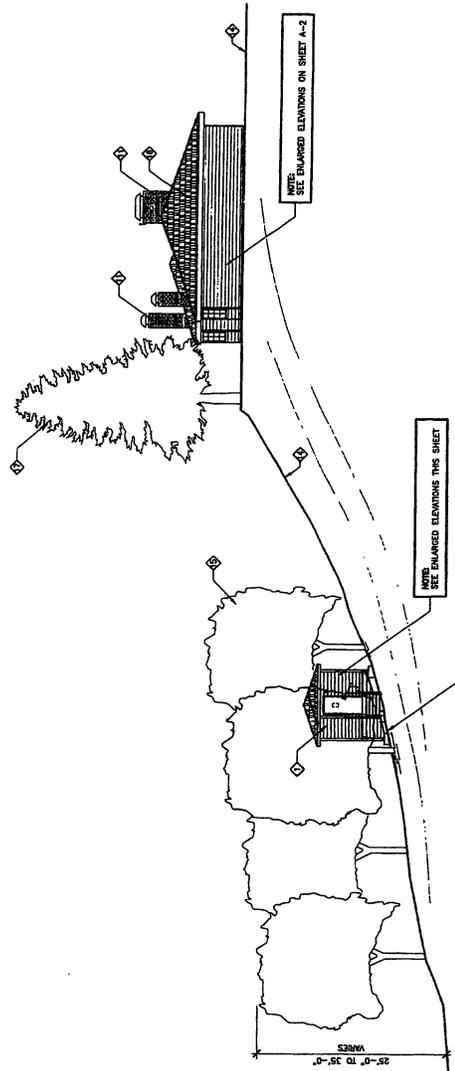
SHEET TITLE
SITE SECTION AND EQUIPMENT SHELTER ELEVATIONS

CITY PLANNING
 DATE: 10/29/08
 DRAWN BY: [Signature]

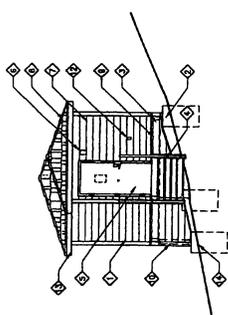
PROJECT: Mobility\01\0204\01\0204.dwg

EQUIPMENT SHELTER PLAN NOTES:

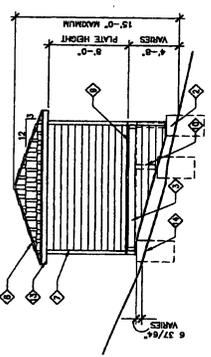
- ◆ PROPOSED AIR MOUNTED EQUIPMENT SHELTER ON A INSIDE GALVANIZED STEEL PLATFORM WITH ATTACHED LACE SHIRT
- ◆ PROPOSED CONCRETE CURB (APPROXIMATELY 24" x 14" DEEP)
- ◆ PROPOSED GALVANIZED STEEL PLATFORM FRAME AND GALVANIZED STEEL "TRIP STRUT" DECKING BEHIND SHIRT
- ◆ PROPOSED GALVANIZED STEEL WINDSTOP AND "TRIP STRUT" STEPS
- ◆ PROPOSED STEEL DOOR AND FRAME WITH AIRTIGHT SOURCE
- ◆ PROPOSED EXTERIOR WALL MOUNTED LIGHT FIXTURE
- ◆ PROPOSED STEEL FRAMES CONCRETE CURB AND STEEL WELDS AT 1/4" O.C. WITH SHIP-LAP 1/2" THICK PLYWOOD EXTERIOR LAM. SINK PAINTED WHITE TO MATCH EXISTING RESIDENCE
- ◆ PROPOSED TILE ROOF TO MATCH EXISTING RESIDENCE
- ◆ PROPOSED GALVANIZED STEEL BEAM (TYPICAL) BEHIND SHIRT
- ◆ PROPOSED STEEL TUBE POST (TYPICAL) BEHIND SHIRT
- ◆ PROPOSED AIR MOUNTED ANTENNAS & TIA UNITS MOUNTED INSIDE CHIMNEY LIKE STRUCTURE ON ROOF OF EXISTING RESIDENCE CHIMNEY
- ◆ EXISTING AIR MOUNTED EQUIPMENT SHELTER SHALL BE PROVIDED BY AIRTIGHT MOBILITY FOR INSTALLATION BY GENERAL CONTRACTOR
- ◆ PROPOSED PASCAL AND GUTTER
- ◆ EXISTING GRASS
- ◆ EXISTING ANAHEIM TREE TO REMAIN (TYPICAL)
- ◆ EXISTING SINGLE FAMILY RESIDENCE
- ◆ EXISTING TREE (APPROXIMATE HEIGHT 40'-0")
- ◆ PROPOSED ROOF DOWNSPOUT TO SPLASH BLOCK



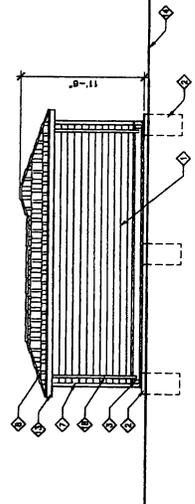
SITE ELEVATION SECTION
 SCALE: 1" = 10'



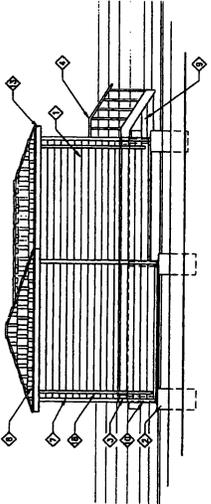
EAST ELEVATION
 SCALE: 1" = 10'



WEST ELEVATION
 SCALE: 1" = 10'



NORTH ELEVATION
 SCALE: 1" = 10'



SOUTH ELEVATION
 SCALE: 1" = 10'

PREPARED FOR



6925 LISK BOULEVARD
 SAN DIEGO, CA 92121

APPROVALS

TYPE	DATE
ZONING	
CONSTRUCTION	
SITE ACQUISITION	
CIRCULAR APPROVAL	
LANDLORD APPROVAL	

PROJECT NAME
LONDON RANCH

PROJECT NUMBER
NS0004-02
 6543 INDIAN TRAIL WAY
 FALLBROOK, CA 92028
 SAN DIEGO COUNTY

DRAWING DATES

08/02/05	PRELIM SURVEY	AK/AD
10/01/05	FINAL SURVEY	JD
01/03/06	FINAL SURVEY	JD
02/02/06	NEW TITLE REPORT	VS
04/02/06	CLIENT'S COMMENTS	RB

SHEET TITLE

TOPOGRAPHIC SURVEY

CITY PLANNING DEPARTMENT
 APPROVED BY THE CITY PLANNING DEPARTMENT
 DATE: 08/02/05
 SIGNATURE: [Signature]

PROJECT: \unlms\lms\01\lms\01\lms02.dwg

C-2

Access Easement
 TO BE DETERMINED

Lease Area
 TO BE DETERMINED

Geographic Coordinates
 TO BE DETERMINED

Date of Survey
 APPROXIMATE: 2005
 APPROXIMATE: 2005

Basis of Bearings
 TO BE DETERMINED
 TO BE DETERMINED

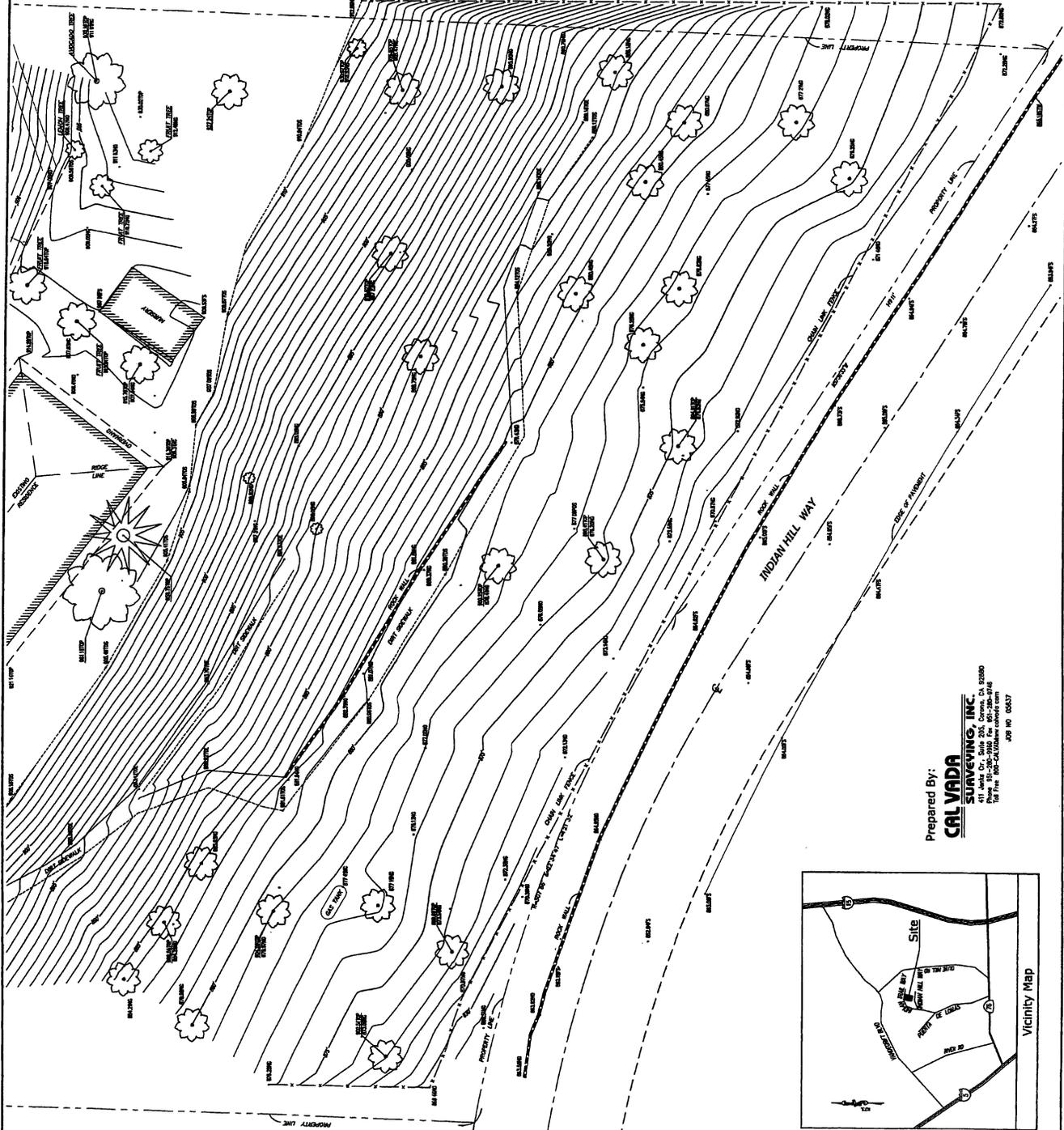
Bench Mark
 TO BE DETERMINED
 TO BE DETERMINED



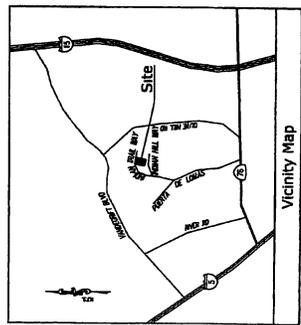
GRAPHIC SCALE
 1" = 100 FEET

Legend

---	ADJACENT PROPERTY
---	TOP OF ELEVATION
---	TOP OF SLOPE
---	TOP OF SLOPE
---	WINDMILL
---	WINDMILL
---	CONCRETE PAVEMENT
---	CONCRETE PAVEMENT
---	ASPHALT DRIVEWAY
---	ELECTRIC MAST
---	EDGE OF PAVED
---	DATE
---	DATE
---	PROPERTY LINE
---	PROPERTY LINE



Prepared By:
CAL VADA SURVING, INC.
 411 JARVIS DRIVE, SUITE 205, FALLBROOK, CA 92008
 Phone: 619-594-5100 Fax: 619-594-5118
 E-Mail: info@calvada.com Website: www.calvada.com
 JOB NO. 06037



1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY
3 OF OCEANSIDE, CALIFORNIA OVERTURNING
4 PLANNING COMMISSION RESOLUTION NO. 2009-P18
5 AND APPROVING AN ADMINISTRATIVE
6 CONDITIONAL USE PERMIT FOR A CO-USER
7 COMMUNICATION FACILITY LOCATED AT 6543
8 INDIAN TRAILS WAY ON CERTAIN REAL PROPERTY
9 IN THE CITY OF OCEANSIDE

10 **(Appellant/Applicant: AT&T Mobility, LLC)**

11 WHEREAS, there was filed a verified petition on the forms prescribed by the
12 Planning Commission requesting an Administrative Conditional Use Permit (ACUP-12-
13 08) under the provisions of Articles 14, 30, and 41 of the Zoning Ordinance of the City of
14 Oceanside to permit the installation and operation of a co-user communication facility
15 located at 6543 Indian Trails Way on certain real property described in the project
16 description.

17 WHEREAS, the City Planner, after giving the required notice, did on the 26th day
18 of January, 2009, publish a Record of Administrative Action approving ACUP-12-08; and

19 WHEREAS, on the 5th day of February, 2009, an appeal of the Record of
20 Administrative Action was timely filed by Pete Penseyres with the Development Services
21 Department/Planning Division; and

22 WHEREAS, the Planning Commission on the 6th day of April, 2009, held a duly
23 noticed public hearing, heard and considered evidence and testimony by all interested
24 parties concerning an appeal of the City Planner's administrative action, and adopted by a
25 4-1-1 vote Resolution No. 2009-P18 denying without prejudice ACUP-12-08; and

26 WHEREAS, on the 15th day of April, an appeal of Planning Commission
27 Resolution No. 2009-P18 was timely filed by Kevin Sullivan with the City Clerk's Office;
28 and

WHEREAS, the City Council of the city of Oceanside on the 12th day of August,
2009, held a duly noticed public hearing and continued this item to the 19th of August,
2009; and

1 WHEREAS, the City Council of the City of Oceanside on the 19th day of August,
2 2009, held a duly noticed public hearing and heard and considered evidence and testimony
3 by all interested parties concerning the appeal of Planning Commission Resolution No.
4 2009-P18, and;

5 WHEREAS, pursuant to the California Environmental Quality Act of 1970, and
6 State Guidelines thereto; this project has been found to be categorically exempt per Article
7 19 from environmental review pursuant to Gov't Code Section 15301(b) for infill
8 development; and

9 WHEREAS, studies and investigations made by the City Council and in its behalf
10 reveal the following facts:

11 FINDINGS:

- 12 1. The existing location of the use is in accord with the objectives of the Zoning
13 Ordinance and the purposes of the Agricultural (A) District in which the site is
14 located. The co-user communication facility complies with the objectives of the
15 Zoning Ordinance and will not have a negative impact on agricultural uses,
16 residential development, future communications facility land uses, or other land
17 uses. This proposal satisfies all development standards of the Agricultural (A)
18 District and Section 3025 of the Zoning Ordinance. The six panel antennas will be
19 concealed behind a faux chimney that mimic the appearance of an existing
20 chimney attached to the existing residence.
- 21 2. The location of the site and the proposed conditions under which the co-user
22 communication facility would be operated and maintained is consistent with the
23 General Plan, the Agriculture (A) land use designation and will not be detrimental
24 to the public health, safety, welfare of persons residing or working in or adjacent to
25 the neighborhood of such use, and will not be detrimental to properties or
26 improvements in the vicinity or to the general welfare of the City. The proposed
27 co-user communication facility satisfies the General Plan Land Use Objective
28 2.726. The proposed improvements visually conform to the surrounding residential

1 and agricultural land uses. The scope of the proposal includes disguising the
2 antennas behind architectural features and constructing an equipment shelter
3 having the same architectural finishes as the existing residence.

4 3. The proposed conditional use will comply with the provisions of the Zoning
5 Ordinance, including any specific condition required for the proposed conditional
6 use in the Agricultural (A) District. The co-user communication facility is a
7 conditionally approved use in the Agricultural (A) District. The use is a compatible
8 land use within the area, which consists of other communication facilities,
9 agricultural uses, and residential land uses.

10 4. The applicant has provided maps the model the existing communication service
11 coverage in the area and how service will change when the proposed antennas
12 operate from 6543 Sleeping Indian. The modeling establishes that there are service
13 coverage gaps within the vicinity and that the proposed co-user communication
14 facility will augment the service area covered.

15 5. The applicant has considered alternate sites in the area and has demonstrated their
16 preference for the proposed site. Alternative sites are less suitable, because some
17 are situated at a lower elevation and would not improve the availability of
18 communication services in the area. Other alternative sites have proven unavailable
19 for lease agreements with the applicant.

20 WHEREAS, the documents or other material which constitute the record of
21 proceedings upon which the decision is based will be maintained by the City of Oceanside
22 Planning Division, 300 North Coast Highway, Oceanside, California 92054; and

23 NOW, THEREFORE BE IT RESOLVED that the City Council of the City of
24 Oceanside does:

- 25 1. Hereby overturn Planning Commission Resolution No. 2009-P18.
- 26 2. Affirm the Record of Administrative Action approving Administrative
27 Conditional Use Permit (ACUP-12-08) with the following additional conditions of
28 approval:

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a) GPS antennas shall be situated so as not to be visible to persons standing on the ground.

b) A chimney disguise shall be limited to a maximum height of 17-feet in height above grade.

c) Constructing an antenna array over the existing garage is prohibited.

d) The disguise shall include vertical elements that are designed to be similar to the existing chimney. The appearance the disguise shall consist of four vertical surfaces that are oriented in right-angle to each other.

e) A maximum of six panel antennas shall be permitted at this site.

PASSED and ADOPTED by the City Council of the City of Oceanside, California this ____ day of _____, 2009, by the following vote:

AYES:

NAYS:

ABSENT:

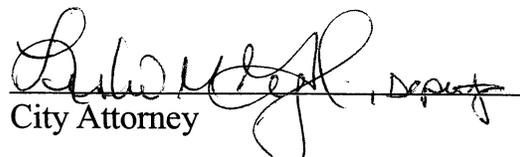
ABSTAIN:

Mayor of the City of Oceanside

ATTEST:

APPROVED AS TO FORM:

City Clerk


City Attorney

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PLANNING COMMISSION
RESOLUTION NO. 2009-P18

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DENYING WITHOUT PREJUDICE AN ADMINISTRATIVE CONDITIONAL USE PERMIT FOR A CO-USER COMMUNICATION FACILITY ON CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO: ACUP-12-08
APPLICANT: AT&T Mobility, LLC - Cingular Wireless
LOCATION: 6543 Indian Trails Way

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting an Administrative Conditional Use Permit (ACUP-12-08) under the provisions of Articles 14, 30, and 41 of the Zoning Ordinance of the City of Oceanside to permit the following:

installation and operation of a co-user communication facility;
on certain real property described in the project description.

WHEREAS, the City Planner, after giving the required notice, did on the 26th day of January, 2009 administratively approve ACUP-12-08; and

WHEREAS, on the 5th day of February, 2009, an appeal of the City Planner's decision was timely filed by Pete Penseyres with the Development Services Department/Planning Division; and

WHEREAS, the Planning Commission of the City of Oceanside on the 6th day of April, 2009 held a duly noticed public hearing and heard and considered evidence and testimony by all interested parties concerning the appeal of the approval of the above identified Administrative Conditional Use Permit, and;

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project has been found to be categorically exempt per Article 19 from environmental review pursuant to Gov't Code Section 15301(b) for infill development; and

WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes effective 10 days from the date of its adoption in the absence of the filing of an appeal or call for review;

1 WHEREAS, studies and investigations made by this Commission and in its behalf reveal
2 the following facts:

3 FINDINGS:

- 4 1. The proposed disguise for the communication facility does not visually conform to the
5 surrounding area and therefore, does not conform to the General Plan Land Use Objective
6 2.726 for Communication Facilities.
- 7 2. The proposed communication facility does not incorporate the best available equipment
8 technology to effect a reduction in the visual presence of the antenna and facility
9 equipment. The physical features of the disguise do not minimize view impacts to the
10 community. Several area residents gave testimony that the proposal provided substantial
11 visual impacts, made suggestions for the reduction of the view impact (including
12 alternative sites combined with other co-user opportunities), and provided testimony that
13 service coverage was present within the surrounding area. The proposal is not in accord
14 with the objectives of the Zoning Ordinance Section 3025 and the purposes of the district
15 in which the project site would be located.
- 16 3. The proposed conditional use does not comply with the provisions of Section 3025 of the
17 Zoning Ordinance, including specific regulations to address the appearance of the entire
18 site and to effect a reduction in the visual presence of the antennas and facility equipment.

19 WHEREAS, the documents or other material which constitute the record of proceedings
20 upon which the decision is based will be maintained by the City of Oceanside Planning Division,
21 300 North Coast Highway, Oceanside, California 92054; and

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1 NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of
2 Oceanside does hereby overturn the Record of Administrative Action approving ACUP-12-08 and
3 denies without prejudice Administrative Conditional Use Permit (ACUP-12-08).

4 PASSED and ADOPTED Resolution No. 2009-P18 on April 6, 2009, by the following
5 vote, to wit:

6 AYES: Troisi, Balma, Parker and Bertheaud

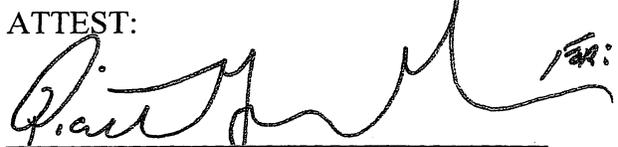
7 NAYS: Neal

8 ABSENT: Rosales

9 ABSTAIN: Martinek

10 
11 _____
12 Claudia Troisi, Chairperson
13 Oceanside Planning Commission

14 ATTEST:

15 
16 _____
17 Jerry Hittleman, Secretary

18 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that
19 this is a true and correct copy of Resolution No. 2009-P18.

20 Dated: April 6, 2009



DATE: April 6, 2009

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF AN APPEAL OF THE CITY PLANNER'S APPROVAL OF AN ADMINISTRATIVE CONDITIONAL USE PERMIT (ACUP-12-08) TO ALLOW A CO-USER COMMUNICATION FACILITY DISGUISED AS CHIMNEYS AND LOCATED ON THE ROOF OF A HOUSE LOCATED AT 6543 INDIAN TRAILS WAY. THE PROJECT SITE IS SITUATED WITHIN THE AGRICULTURAL DISTRICT AND WITHIN THE MORRO HILLS NEIGHBORHOOD. – CINGULAR/6543 INDIAN TRAILS WAY – APPLICANT: AT&T MOBILITY, LLC - CINGULAR WIRELESS. – APPELLANT: PETE PENSEYRES**

RECOMMENDATION

Staff recommends that the Planning Commission by motion:

- (1) Reject the appeal and affirm the City Planner's determination that the project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301(b) for existing facilities; and
- (2) Reject the appeal and affirm the City Planner's approval of Administrative Conditional Use Permit ACUP-12-08 by adopting Planning Commission Resolution No. 2009-P18 with findings and conditions of approval attached herein.

PROJECT DESCRIPTION AND BACKGROUND

Background: On June 3, 2008, Planning Staff accepted a submittal for a co-user communication facility at 6543 Sleeping Indian Road. This submittal was a substantial revision from the applicant's previously proposed stand-alone communication facility (C-49-05) at the same address. Due to the scope of the revised proposal, Staff requested, and the applicant concurred, that application C-49-05 be withdrawn and replaced by ACUP-12-08.

On January 26, 2009, the City Planner administratively approved ACUP-12-08 pursuant to Section 4102 and Section 3025 of the Zoning Ordinance.

On February 5, 2009, Pete Penseyres timely filed an appeal of the administrative action by submitting 28 signatures from concerned residents of property within 1,500 feet of the project site. These signatures represent 32 percent of the 88 properties situated within the notice area.

Site Review: The project site, 6543 Indian Trails Way, is situated within the Agriculture Land Use designation and the Agricultural District, as shown on the Zoning District Map. The surrounding land uses are primarily crop production, for example avocado groves, and single-family homes on 2.5-acre or larger lots. The existing house on-site straddles the ridgeline of the hillside. Characteristic of the surrounding area, the lot's terrain is steep and provides dramatic views to the north, west and south.

The existing residence consists of a garage and home that are attached by a covered breeze way. The multi-hipped roof encompasses all residential improvements and provides a unifying appearance to the existing residence. An existing chimney is located on the south side of the structure's roof. The existing chimney is approximately 15 feet above the existing grade and it has a 1.5-foot tall spark arrestor above the chimney. Therefore, the overall height of the chimney with the spark arrestor is approximately 16.5 feet.

Project Description: The project application is comprised of one component, an Administrative Conditional Use Permit, as follows:

Administrative Conditional Use Permit ACUP-12-08 represents a request to allow the installation and operation of a co-user communication facility pursuant to Section 3025.D *Communication facilities siting criteria*.

The project is a co-user communication facility consisting of six antennas installed within two newly constructed faux chimneys located on the roof of an existing residence; construction of a 275-square foot equipment shelter; and installation of 400 AMP electrical service and Telco service connection. The two faux chimneys were proposed to be 16.75 feet and 18 feet tall, measured from existing grade. The City Planner's approval requires a lower overall chimney height that is consistent with the existing 16.5-foot tall chimney and spark arrestor. The antenna disguise is required to have the same finish details as the existing chimney, including a spark arrestor and material having the same appearance, color, finish, and texture as the existing masonry chimney. The equipment shelter shall have the same finish details as the existing residence.

The project is subject to the following City Ordinances and Policies:

1. General Plan Land Use Element
2. Zoning Ordinance
3. California Environmental Quality Act (CEQA)

ANALYSIS

KEY PLANNING ISSUES

1. General Plan Conformance

The General Plan Land Use Map designation for the subject property is Agriculture (A). The proposed co-user communication facility conforms to the goals, objectives, and policies of this designation as follows:

Land Use Element II. Community Development

Goal: The continual long term enhancement of the community through the development and use of land which is appropriate and orderly with respect to type, location, timing, and intensity.

Objective 2.726 Communication Systems: To provide for the efficient and aesthetic functioning of communication systems within the City.

Policies:

- A. The City shall encourage planning for the future communication system needs of individual land developments or uses and the City in general.
- B. Communication facilities shall be required to conform visually to surrounding land uses and/or natural features.
- C. The City shall require the consolidation and joint-use of communication facilities and structures whenever possible.

The proposed co-user communication facility satisfies the General Plan Land Use Objective 2.726. The proposed improvements visually conform to the surrounding residential and agricultural land uses. The scope of the proposal includes disguising the antennas behind architectural features and constructing an equipment shelter having the same architectural finishes as the existing residence. The communication facility's integration with the existing roofline is an opportunity to establish a joint-use (residential and communication facility land uses). As such, the application conforms to the Community Development Goal, Communication System Objective and policies of the Land Use Element of the General Plan.

2. Zoning Ordinance Compliance

The project site is situated within the Agricultural (A) District and is subject to the regulations of the Zoning Ordinance, including Articles 14, 30, and 41. The co-user communication facility complies with the regulations of the Zoning Ordinance and will not have a negative impact on agricultural uses, residential development, future communications facility land uses, or other land uses. Table 1 schedules applicable regulations and compliance of the proposed application.

Table 1: Section 3025.D.4 Communication facility siting criteria

Regulation	Co-user communication facility
A. CUP term limit ...	Recommend a 10-year term limitation. See condition #17.
B. Following one-year of operation, an RF study is required ...	A standard condition of approval for communication facilities. See condition #18.
C. Incorporating best available equipment technology ...	A standard condition of approval for communication facilities. See condition #21.
D. Cooperating with other communication providers ...	A standard condition of approval for communication facilities. See condition #21.
E. Communication facility is subject to all licensing authorities	A standard condition of approval for communication facilities. See condition #22.
F. Facility shall address the appearance of the entire site	The applicant proposes to disguise the antennas and communication equipment.

The application addresses the appearance of the entire site; for example, the antennas will be installed behind faux chimneys and the computers will be installed within a small outbuilding that has similar finish details to the existing residence (exterior siding, color, roof pitch). This proposal satisfies all development standards of the Agricultural (A) District and Section 3025 of the Zoning Ordinance.

DISCUSSION

Appeal filed by Mr. Pete Penseyres

Listed below are the issues raised by the appellant, along with staff's response to each issue. As designed and conditioned, the project proposes a complete disguise of the antennas and is consistent with the Land Use Element of the General Plan and Zoning Ordinance.

Issue: The proposed location of the use is not in accord with the objectives of the Zoning Ordinance and the purposes of the Agricultural District in which the site is located.

Response: Communication facilities may be installed and operated within any zoning district subject to the categorical standards and processes set forth in Section 3025.D *Communication facilities siting criteria*. The application has been conditioned to comply with the requirements of this section of the Zoning Ordinance.

Issue: *The location of the site and the proposed conditions under which the co-user communication facility would be operated and maintained is not consistent with the General Plan, the Agricultural land use designation and will be detrimental to the public health, safety and welfare of persons residing or working in or adjacent to the neighborhood of such use, and will be detrimental to properties or improvements in the vicinity or to the general welfare of the city.*

Response: The co-user communication facility as designed and as conditioned does comply with the Community Development Goal of the General Plan, its objective and policies regarding communication systems. The design completely obscures views of the antennas and the associated communication equipment. No public views will be impacted by the construction of the chimney disguise, which will camouflage the appearance of the antennas within the architecture of the existing residence. An FCC licensed communication facility, such as this one to be operated by AT&T, has demonstrated that they will abide by federal communication laws and provide communication services without injury to the public health.

Issue: *The proposed conditional use will not comply with the provisions of the Zoning Ordinance. The use is not a compatible land use within the area; it does not consist of other communication facilities.*

Response: The application documents and conditions of approval satisfy the regulations of the Zoning Ordinance for a co-user communication facility within the Agricultural District. Other communication facility applications have previously been found compatible with the Agriculture land use designation; for example, stand-alone communication facilities located on Sleeping Indian Road. Staff notes that the proposal is to disguise the appearance of the antennas by blending their appearance with the existing residential development on-site. As such the project complies with the regulations of the Zoning Ordinance.

Issue: *The applicant has not demonstrated the facility is needed to provide coverage.*

Response: The applicant has submitted service coverage maps depicting the quality of service before and after the installation of the antennas. The maps show limited AT&T service at this site presently and that after the installation of the antennas, service will be substantially improved to the north, south, and east of the project site. Some areas that currently do not receive AT&T service will have reception after the antennas are installed.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt, Class 1, Existing facilities pursuant to Section 15301(b) for existing facilities of both investor or publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services.

PUBLIC NOTIFICATION

Legal notice of the Notice of Administrative Action was published in the North County Times and notices were sent to property owners of record and occupants within a 1,500-foot radius of the subject property, to individuals and organizations requesting notification, and to the applicant.

Legal notice of the Planning Commission hearing to consider the appeal of the City Planner's approval was published in the North County Times and notices were sent to property owners of record and occupants within a 1,500-foot radius of the subject property, to individuals and organizations requesting notification, and to the applicant.

As of March 23, 2009, staff has received one telephone call from Mr. Bill Vernon in support of the project.

SUMMARY

The application ACUP-12-08 for co-user communication facility, as conditioned, meets or exceeds the policies of the General Plan and the regulations of the Zoning Ordinance. Staff finds that disguising the appearance of the antennas within faux chimneys satisfies local regulations. As such, staff recommends that the Planning Commission:

-- Affirm the City Planner's approval of Administrative Conditional Use Permit (ACUP-12-08) by adopting Planning Commission Resolution No. 2009-P18.

PREPARED BY:

SUBMITTED BY:



Juliana von Hacht
Associate Planner



Jerry Hittleman
City Planner

REVIEWED BY: 
Richard Greenbauer, Senior Planner

JH/JH/fil

Attachments:

1. Site Plans, Radio Frequency Study, Coverage, and photo simulations of the proposed project
2. Planning Commission Resolution No. 2009-P18
3. Record of Administrative Approval and ACUP-12-08
4. Acceptance of Administrative Appeal for ACUP-12-08



RECORD OF ADMINISTRATIVE APPROVAL

City of Oceanside, California

- 1. APPLICANT:** AT&T Mobility, LLC Cingular Wireless
- 2. APPLICANT ADDRESS:** 6925 Lusk Boulevard, San Diego, CA 92121
- 3. REP./PHONE NUMBER:** Karen Adler, PlanCom Inc/760-715-3416
- 4. PROJECT MANAGER:** Juliana von Hacht, Associate Planner
- 5. APPLICATION LOG NO. & NAME:** ACUP-12-08 Cingular 6543 Indian Trails Way
- 6. LOCATION/ADDRESS:** 6543 Indian Trails Way
- 7. DESCRIPTION:** Consideration of a co-user communication facility consisting of six antennas installed within newly constructed faux chimneys located on the roof of an existing residence; construction of an equipment shelter; and installation of 400 AMP electrical service and Telco service connection.

The existing residence, located at 6543 Indian Trails Way, consists of a garage and home that are attached by a covered breeze way. The multi-hipped roof encompasses all residential improvements and provides a unifying appearance to the existing residence. An existing chimney is located on the south side of the structure's roof. Height regulations limit architectural features, like chimneys, to a maximum height of 46 feet above grade. The existing chimney is approximately 15 feet above the existing grade. It has a 1.5 feet tall spark arrestor above the chimney. Therefore, the overall height of the chimney with the spark arrestor is approximately 16.5 feet.

The applicant proposes to construct two faux chimneys. One would be situated on the south side of the existing structure and have a maximum height of 16.75 feet. The other would be over the existing garage, facing-north, and have a maximum height of 18 feet. By condition, the proposed antenna disguise is required to have the same finish details as the existing chimney. Finish details would include a spark arrestor (proposed metal chimney cap to match the existing chimney cap's color, shape, and finish) and material having the same appearance, color, finish, and texture as the existing masonry chimney.

The applicant proposes to install four antennas within the proposed faux chimney over the existing garage's roof. Two antennas would be installed within the other (south-facing) faux chimney.

The proposed equipment shelter by condition would be required to have the same finish details as the existing residence. Finish details would include similar siding material (for example, color, texture, features, and shape) and a hipped roof clad with the same

roofing material as found on the primary residence. The structure has a maximum height of 15 feet and approximately 275 square feet of floor area.

FINDINGS

For Administrative Conditional Use Permit (ACUP-12-08):

- 1) The existing location of the use is in accord with the objectives of the Zoning Ordinance and the purposes of the Agricultural (A) District in which the site is located.
 - The co-user communication facility complies with the objectives of the Zoning Ordinance and will not have a negative impact on agricultural uses, residential development, future communications facility land uses, or other land uses. This proposal satisfies all development standards of the Agricultural (A) District and Section 3025 of the Zoning Ordinance. The six panel antennas will be concealed behind a faux chimney that mimic the appearance of an existing chimney attached to the existing residence.
- 2) The location of the site and the proposed conditions under which the co-user communication facility would be operated and maintained is consistent with the General Plan, the Agriculture (A) land use designation and will not be detrimental to the public health, safety, welfare of persons residing or working in or adjacent to the neighborhood of such use, and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.
 - The proposed co-user communication facility satisfies the General Plan Land Use Objective 2.726. The proposed improvements visually conform to the surrounding residential and agricultural land uses. The scope of the proposal includes disguising the antennas behind architectural features and constructing an equipment shelter having the same architectural finishes as the existing residence.
- 3) The proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the Agricultural (A) District.
 - The co-user communication facility is a conditionally approved use in the Agricultural (A) District. The use is a compatible land use within the area, which consists of other communication facilities, agricultural uses, and residential land uses.

ADMINISTRATIVE DETERMINATION

Article 41 "Use Permits and Variances", Section 4102 of the Oceanside Zoning Ordinance grants the City Planner express authority to administratively approve certain

types of use permits. Staff has determined that the proposed project qualifies for administrative approval under Section 3025.C and 3025.D. Furthermore, staff has reviewed the project for consistency with applicable provisions of the General Plan, Oceanside Zoning Ordinance and the California Environmental Quality Act (CEQA). Based on this review, the City Planner finds that the proposed project is consistent with the General Plan and Oceanside Zoning Ordinance. The City Planner administratively approves ACUP-12-08 on January 26, 2009, subject to the following condition(s):

Building:

1. Applicable Building Codes and Ordinances shall be based on the date of submittal for Building Division plan check. (Currently the 2007 California Code of Regulations)
2. The granting of approval under this action shall in no way relieve the applicant/project from compliance with all State and Local building codes.
3. The building plans for this project are required by State law to be prepared by a licensed architect or engineer and must comply with this requirement prior to submittal for building plan review.
4. All electrical, communication, CATV, etc. service lines within the exterior lines of the property shall be underground (City Code Sec. 6.30).
5. All outdoor lighting must comply with Chapter 39 of the City Code (Light Pollution Ordinance). Where color rendition is important, high-pressure sodium, metal halide or other such lights may be utilized and shall be shown on building and electrical plans.
Compliance with the Federal Clean Water Act (BMP's) must be demonstrated on the plans.
6. The developer shall monitor, supervise, and control all building construction and supporting activities so as to prevent these activities from causing a public nuisance, including, but not limited to, strict adherence to the following:
 - a. Building construction work hours shall be limited to between 7 a.m. and 6 p.m. Monday through Friday, and on Saturday from 7 a.m. to 6 p.m. for work that is not inherently noise-producing. Examples of work not permitted on Saturday are concrete and grout pours, roof nailing and activities of similar noise-producing nature. No work shall be permitted on Sundays and Federal Holidays (New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day) except as allowed for emergency work under the provisions of the Oceanside City Code Chapter 38 (Noise Ordinance).

- b. The construction site shall be kept reasonably free of construction debris as specified in Section 13.17 of the Oceanside City Code. Storage of debris in approved solid waste containers shall be considered compliance with this requirement. Small Amounts of construction debris may be stored on site in a neat, safe manner for short periods of time pending disposal.
7. Separate/unique addresses shall be required to facilitate utility releases. Verification that the addresses have been properly assigned by the City's Planning Division must accompany the Building Permit application.
8. A complete Soils Report, Structural Calculations, & Energy Calculations/documentation will be required at time of plans submittal to the Building Division for plan check.
9. Documentation of properly recorded easements (for access and utilities) is required for plan check review.
10. Verification of County Health Dept review/approval for the new structure in relation to existing septic system must be submitted to the Building Division with the plans submittal. LPG/Propane tank locations, setbacks to new structure, and capacities must be shown on the Plot Plan.

Planning:

11. This Administrative Conditional Use Permit (ACUP-12-08) approves only the following, as shown on the plans and exhibits presented for review and approval: installation of six antennas within newly constructed faux chimneys located on the roof of an existing residence; construction of an equipment shelter; and installation of a 400 AMP electrical service and a new Telco service connection. No deviation from these approved plans and exhibits shall occur without City Planner approval. Substantial deviations shall require a revision to the Conditional Use Permit or a new Conditional Use Permit.
 - a. One of the two faux chimneys shall be situated on the south side of the existing structure and shall be designed to appear consistent with the existing chimney to the satisfaction of the City Planner.
 - b. The second faux chimney shall be located over the existing garage, facing-north, and shall be designed to appear consistent with the existing chimney to the satisfaction of the City Planner.
 - c. The proposed antenna disguise shall have the same finish details as the existing chimney. Finish details include a spark arrestor and brick cladding which matches the color, finish, and texture of the existing masonry chimney.

- d. Four antennas shall be installed within the faux chimney over the existing garage.
 - e. Two antennas shall be installed within the other (south-facing) faux chimney.
 - f. The proposed equipment shelter shall have the same finish details as the existing residence. Finish details would include similar siding material (color, texture, et al) and a hipped roof clad with the same roofing material as found on the primary residence. The structure has a maximum height of 15 feet and approximately 275 square feet of floor area.
12. Prior to the transfer of ownership and/or operation of the site, the owner shall provide a written copy of the application and record of administrative approval to the new owner and or operator. This notification's provision shall run with the life of the project.
 13. Failure to meet any conditions of approval for this development shall constitute a violation of the Administrative Conditional Use Permit ACUP-12-08.
 14. Unless expressly waived, all current zoning standards and City ordinances and policies in effect at the time Building permits are issued are required to be met by this project. The approval of this project constitutes the applicant's agreement with all statements in the *Description and Justification* and their submission of all informational materials. These materials and information shall be binding upon the use and operation of the facility, unless specifically waived by an adopted condition of approval.
 15. The equipment shelter shall be maintained in a like-new condition at all times. Maintenance shall include, but is not limited to, resurfacing and repainting the façade as necessary. Upon the City's request and discretion, the permittee(s) shall provide an aesthetic analysis, including current, detailed photographs, to substantiate the like-new appearance of the proposed project, within 60 days of the request. The permittee(s)' non-compliance with this requirement shall be grounds for the institution of revocation proceedings of the Conditional Use Permit
 16. The physical aspects of co-user communication facility, as they pertain to location, size, height, and general appearance shall replicate the information shown on the approved plans, the applicant's description and justification statement, and all other material submitted for the approval of the project by the City Planner and shall be represented on the plans submitted for Building permits.

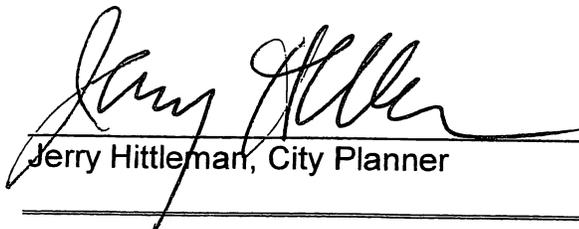
17. The Administrative Conditional Use Permit ACUP-12-08 shall be limited to a term of 10 years. However, ACUP-12-08 may be extended in accordance with the provisions of the Zoning Ordinance.
18. Upon one year of facility operation, and upon any change-out of facility equipment, the permittee shall provide the City Planner a statement of radio-frequency radiation output and output compliance with the limitations of governing licensing authorities.
19. Any exterior changes at the site shall require Building Permits or documentation of permit exemption. All building plans shall be reviewed and approved by the Planning Division prior to issuance of Building Permits.
20. All equipment change outs shall require Building Permits or documentation of permit exemption. All building plans shall be reviewed and approved by the Planning Division prior to issuance of Building Permits.
21. The permittee shall exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the approved antennas and facility equipment. The change-out and retrofit of equipment shall be conducted by the permittee after such equipment becomes available and exhibits common use at similar facilities. Upon the City's request and discretion, the permittee shall be required to provide an independently prepared technical analysis demonstrating compliance with this condition. The permittee's inability to demonstrate the use of current technologies shall be grounds for the institution of revocation proceedings of the Administrative Conditional Use Permit.
22. The approved communication facility shall be subject to, and governed by, any and all licensing authority by any governmental agency having jurisdiction. The City's local approval of a communication facility shall not exempt the permittee from any such pre-emptive regulations.
23. A covenant approved by the City Attorney shall be prepared by the applicant and recorded within 45 days of project approval. The covenant shall provide that the property is subject to this approval and the conditions of approval. Failure to record a covenant shall be grounds for the institution of revocation proceedings of the Administrative Conditional Use Permit ACUP-12-08.
24. Additional or future antennas shall be located within the two faux chimneys. The construction of other antenna disguises or associated equipment shelter(s) shall require a new use permit or a revision to an existing use permit.
25. The use of a generator at this site has not been proposed. Prior to installing and or operating a generator, ACUP-12-08 shall be revised to include parameters for

the operation of a generator. A noise analysis shall be submitted for review and consideration.

Water:

26. The developer will be responsible for developing all water and sewer utilities necessary to develop the property. Any relocation of water and/or sewer utilities is the responsibility of the developer and shall be done by an approved licensed contractor at the developer's expense.
27. The following condition shall be met prior to the approval of engineering design plans: No trees, structures, or building overhang shall be located within any water or wastewater utility easement
28. The following condition shall be met prior to the approval of engineering design plans: If landscaping is required as part of this development and the property does not have a separate irrigation system, then a separate irrigation meter and connection is required. If, on the contrary, the property were to have an existing separate irrigation system and the intent is to connect to this system, then an agreement letter between the developer and the property owner shall be provided to the Water Utilities Department indicating the property owner's permission for an irrigation service tie-in.

APPROVED AND ADOPTED this 26th day of January, 2009:



Jerry Hittleman, City Planner

Pursuant to the Oceanside Zoning Ordinance Article 41 Section 4104(A.), Administrative Decision, the City Council has delegated administrative approval authority to the City Planner for certain types of Use Permit Applications. Any aggrieved person may file an appeal of the City Planner's administrative approval. Pursuant to Article 46 Section 4603 "Time Limits for Appeals and Calls for Review," and 4604, "Initiation of Appeals and Calls for Review" of City Planner decisions, any appeal of the City Planner's decision must be filed in writing with the Planning Division within ten (10) days of the January 26, 2009 date. The appeal period for this administrative approval shall end on February 5, 2009 at 5:00 p.m. The filing of an appeal stays the administrative approval until Planning Commission determination on the appeal.

Attachments:

1. Notice of Administrative Action
2. Site Maps/Floor Plans
3. Notice of Exemption

cc: Record of Administrative Approval file
Project file ACUP-12-08 Cingular Wireless 6543 Indian Trails Way

RECEIVED

APR 15 2009

OCEANSIDE CITY CLERK

PRAIRIE SCHWARTZ HEIDEL

A LIMITED LIABILITY PARTNERSHIP

LAWYERS

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E-MAIL
KSULLIVAN@PSHLAWYERS.COM

April 15, 2009

Via Hand Delivery

Ms. Barbara Riegel Wayne
City Clerk
300 North Coast Highway
Oceanside, CA 92054

**Re: AT&T Mobility, LLC; Appeal of Planning Commission Decision On
City ACUP-12-08.**

Dear Ms. Wayne:

Our firm represents AT&T Mobility, LLC ("AT&T"), regarding its telecommunications facilities proposed to be located at 6543 Indian Trails Way in Oceanside. AT&T applied to the City of Oceanside for approval of the telecommunications facilities under ACUP-12-08.

On January 26, 2009, the City Planner administratively approved ACUP-12-08 pursuant to Section 4102 and Section 3025 of the Zoning Ordinance. An appeal of the City Planner decision was timely filed, and a hearing on the appeal relating to ACUP-12-08 was held before the City Planning Commission on April 6, 2009.

The Planning Commission decided on April 6, 2009, to grant the appeal regarding ACUP-12-08 and effectively to deny AT&T's application for proposed telecommunications facilities. That decision was wholly improper.

This letter constitutes an appeal of the April 6, 2009, Planning Commission decision on this matter. The bases for the appeal are stated below.

**1. The Planning Commission Decision Was Improperly
Based On Health Concerns Related To RF Emissions.**

The Planning Commissioners' discussion of ACUP-12-08 dwelled on supposed health concerns about radio frequency ("RF") emissions from the proposed telecommunications facilities, and its decision was clearly based significantly on those purported health concerns related to RF emissions.

Such discussion by, and basis for, the Planning Commission decision is illegal and improper under federal law. Local agencies are prohibited from regulating the placement or

Ms. Barbara Riegel Wayne
April 15, 2009
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construction of telecommunications facilities based on the alleged or perceived effects of RF emissions if the facilities comply with Federal Communications Commission ("FCC") regulations. 47 U.S.C. section 332(c)(7)(B)(iv). The May 27, 2008, letter from Dr. Bushberg that was submitted to the City in early June 2008, clearly established that AT&T's proposed facilities amply comply with all applicable FCC regulations relating to RF emissions. The Planning Commission ignored this substantial evidence and therefore had no basis on which to regulate or deny the proposed facilities on RF emissions grounds.

2. The Planning Commission Ignored AT&T's Evidence Of A Significant Gap In Coverage Or Service In The Area.

At the April 6, 2009, hearing, AT&T presented substantial evidence about its coverage gap in the area where the proposed facilities were to be located. The Planning Commission improperly ignored this substantial evidence.

3. The Planning Commission Improperly Based Its Decision On Private Real Estate Covenants and Restrictions.

In addition, the Planning Commission based its decision, in part, on purported private real estate restrictions that supposedly related to the proposed site for the facilities -- even after City Staff told the Commission that its decision must be based only on public planning regulations contained in the City's Code. Such a basis for the decision exceeds the Commission's authority. AT&T provided substantial evidence that it fully complied with all applicable public planning regulations regarding ACUP-12-08.

4. The Planning Commission Improperly Ignored AT&T's Substantial Evidence That No Alternative Site Could Fill The Coverage Gap.

At the April 6 hearing, AT&T presented significant evidence and materials about how the proposed site for the facilities best addressed the coverage gap in the area. The Commission majority wholly ignored this evidence. Instead, the Commission vaguely directed AT&T to "work with the neighbors" to find an alternative site. Such direction is without any basis or guidance in the City Code.

While not required to do so, AT&T provided an alternate site analysis with its application. The City regulations for telecommunications facilities do not require an alternative site analysis be performed for an application. Moreover, no parameters exist in the City regulations as to how any further alternative site analysis should be conducted.

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5. The Planning Commission Decision Was Inconsistent As To The Scrutiny And Regulations Applied To AT&T Compared To Other Telecommunications Facility Applications.

The Planning Commission's attempt to regulate ACUP-12-08 based on unfounded health concerns about RF emissions, private real estate covenants, questions about whether a coverage gap exists, vague alternative site analysis requirements, and other matters is inconsistent with how the Commission has reviewed and approved other telecommunications facility applications. No other applicant has been required to adhere to uncodified standards and therefore AT&T's treatment was improperly discriminatory and arbitrary.

* * * *

Thank you for your consideration of this letter. Please notify me when a hearing before the City Council will be scheduled on this matter.

Sincerely,

PRAIRIE SCHWARTZ HEIDEL
A Limited Liability Partnership



Kevin P. Sullivan
Partner

Copy: Kevin McGee (via email only)
Darrell Daugherty (via email only)
Ted Marioncelli (via email only)

SOUTH MORRO HILLS ASSOCIATION

A Non-Profit Corporation
P.O. Box 296
San Luis Rey, CA 92068-0296

REC'D JUN 25 2009
RECEIVED

JUN 30 2009

CITY MANAGER OFFICE

June 24, 2009

Mayor Jim Wood
Vice Mayor Rocky Chavez
Council Member Jack Feller
Council Member Jerry Kern
Council Member Esther Sanchez

Received

JUL -2 2009

Planning Division

Oceanside City Council
300 North Coast Highway
Oceanside, CA 92054

Subject: Project Application ACUP 12-08, AT&T/Cingular Cell Facility

It is the understanding of the Board of the South Morro Hills Association that AT&T has appealed the April 6, 2009 decision of the Planning Commission to deny the subject project without prejudice. The Board requests your assistance to uphold the Planning Commission decision. Key factors supporting that decision and still relevant to our concerns include:

- The project does not comply with the City General Plan Section 2.726 (Communication Systems) and Zoning Ordinance Regulation 3025 (Reception Antennas and Communication Facilities) that require the "consolidation and joint-use of communication facilities and structures whenever possible", and requires that "communication facilities conform visually with surrounding land uses and/or natural features" in order to "maintain certain aesthetic values and land use compatibility".
- The project does not comply with neighborhood CC&Rs. Our neighborhood is composed of several subdivisions with separate CC&Rs regulating land uses, commercial activities, nuisance, and aesthetics. The majority of property owners within the pertinent subdivision is opposed to the project, and provided the City with a petition with more signatures than required to successfully appeal the Planning Staff's original Administrative Approval to the Planning Commission.
- The SMHA Board has a broader concern regarding protection of the aesthetics of the ridgeline of the Sleeping Indian hill formation, which has local historical significance. The general membership successfully opposed a cellular tower on the ridgeline in 1989, generating a petition with over 240 signatures within the neighborhood and surrounding area. A key factor of that opposition was concern of negative visual effects associated with proliferation of antennas on the ridgeline. The Mayor of the City of Oceanside wrote a letter and greatly assisted the success of that opposition by pointing out that a number of suitable alternative sites were available in the vicinity of that proposed project. Since then, several telecommunication facilities have been located without opposition in our neighborhood and surrounding area. While the currently proposed project substantially differs in design from

the 1989 proposed project, there is ongoing concern regarding locating antennas on the ridgeline of the Sleeping Indian formation.

- AT&T has not demonstrated need for the project with factual data. Members of our neighborhood provided evidence at the Planning Commission meeting that the AT&T coverage plots were inaccurate and underrepresented existing cellular coverage and signal strength in our neighborhood. It is likely to be unfeasible to eliminate all coverage gaps because our neighborhood and project area has hilly terrain with elevation changes on the order of several hundred feet.
- It does not appear that AT&T has evaluated use of alternative sites that may better conform with City policy that gives priority to co-locating telecommunication facilities. Several existing cellular facilities are located on Sleeping Indian Road, lower Wilshire Road, and on a local water tank. We request assurance that multi-use telecommunications alternatives are evaluated before allowance of a single-entity use facility such as the proposed "chimney antennae", which can only accommodate one telecommunications provider.
- The Planning Commission's denial of the project without prejudice was made with the suggestion that AT&T "work with the neighbors". City Planning Department Staff have requested that AT&T reduce the size (height and volume) of the "chimney antenna" to minimize negative effects to the character of the neighborhood.

The Board of the South Morro Hills Association respectfully requests the City Council not be swayed by AT&T's appeal and to require that they appropriately evaluate alternatives consistent with City policies and regulations pertinent to location and design of telecommunication facilities. We understand the importance and appreciate the benefits of telecommunications service in our neighborhood and do not wish to discourage AT&T's enterprise or efforts. Nor do we wish to interfere with rights to enterprise by individual property owners consistent with the character of the neighborhood. However, we agree with the Planning Commission that further evaluation and coordination should occur prior to approval of the AT&T proposed project.

Sincerely,



Suzy S. Martinek
President, South Morro Hills Association

DIRECTORS

Suzy S. Martinek, President George Murray, Vice President Peggy Vasquez, Treasurer Tisha Bullock, Secretary
Gerald Church, Ex-Officio Vicki Thompson Neil Nagata Susan Fons Karen Green Ken DePesa