

# AGENDA NO.

3

*PLANNING COMMISSION*



*STAFF REPORT*

DATE: April 20, 2015

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department-Planning Division

SUBJECT: **CONSIDERATION OF A CONDITIONAL USE PERMIT, CUP14-00028, FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS COMMUNICATIONS FACILITY IN THREE ARCHITECTURALLY MATCHING RADIO FREQUENCY TRANSPARENT ROOFTOP ENCLOSURES LOCATED AT 2183 VISTA WAY – T-MOBILE AT 2183 VISTA WAY – APPLICANT: T-MOBILE**

## **RECOMMENDATION**

- (1) Confirm issuance of a Class One (1), Categorical Exemption, "Existing Facilities"; and,
- (2) Adopt Planning Commission Resolution No. 2015-P13 approving Conditional Use Permit (CUP14-00028).

## **PROJECT DESCRIPTION AND BACKGROUND**

**Background:** Currently, T-Mobile is operating a wireless facility located on the McDonalds building at 2185 Vista Way, under authority of CUP12-00037 (Resolution No. 2013-P22). The lease expires June 2015; hence this application for a new facility that would have essentially the same coverage radius as the current facility.

**Site Review:** The site overlooks Highway 78 at the Jefferson interchange. It is characterized by existing commercial land uses such as restaurants, fast food service and other retail uses. The subject building backs onto Vista Way. The 1.43-acre property is zoned CS-HO – Special Commercial/Highway Oriented, while its General Plan designation is SC – Special Commercial. Surrounding land uses include other retail commercial to the west, east and south, with residential to the north beyond Vista Way. The site itself is located on a hill that overlooks the Highway 78 corridor, making it a desirable site for wireless providers to locate.

**Project Description:** Conditional Use Permit No. CUP14-00028 represents a request by T-Mobile to establish and operate a wireless communications facility (WCF) at 2183 Vista Way. T-Mobile proposes to construct three radio frequency-transparent enclosures atop the existing commercial building at 2183 Vista Way into which will be installed three sectors of four antennas each, for a total of 12 antennas. One enclosure will be located on the northeast-central roof (Sector A), one in the east-central part of the building (Sector B), and one near the southwest corner (Sector C), (see photo simulations – Attachment 3 and pages A1 and A2 in the plans). The enclosures will appear to the casual passerby as penthouse structures, with matching roofline features, colors and texture as the existing building. The Sector B enclosure will also house a platform supporting two equipment cabinets and a GPS antenna behind the sector array.

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

1. General Plan
2. Zoning Ordinance
3. California Government Code Sections 65850 and 65964
4. FCC Regulations Applicability: Sections 332(c)(7) or 6409(a)

## **ANALYSIS**

### **KEY PLANNING ISSUES**

#### **1. General Plan Conformance**

The General Plan Land Use Map designation on the subject property is SC-Special Commercial. The project is consistent with this land use designation and the associated goals and objectives of the City's General Plan, as follows:

#### **Land Use Element**

##### **Goal 2.726: Communication Systems**

**Objective:** 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.

By means of a coverage gap analysis, the applicant has demonstrated that adequate signal coverage in the vicinity is contingent upon maintenance of the existing facility. The project ensures continued signal coverage for T-Mobile subscribers and other cellular telephone users in the area and thereby provides for the City's ongoing telecommunication needs.

The facility conforms visually to surrounding commercial land uses. Structures for Sectors A & C will be 16' wide, 8' deep and 7' above the current roof height, while the structure for Sector B will be 24'6" wide, 15'5" wide and 7 feet tall. Sector B's structure is, of necessity, larger than those for Sectors A & C because it will also house a platform supporting two equipment cabinets, and because it needs to be in scale with the front of the building.

The structures will be architecturally the same theme as the main building in roofline, texture, color and highlights. Visual impacts on adjacent properties and the public right-of-way would be negligible given the facility's architectural compatibility with the main building and other existing buildings in the complex. Approval of the project is conditioned to require that the aesthetic quality of the facility be maintained, thereby ensuring that the project will remain visually compatible with the subject site and surrounding properties.

Approval of the project is also conditioned upon the applicant's consent to allow, to the extent feasible, other communication providers to co-locate additional facilities within the proposed rooftop enclosures. Requests for such co-location would require City Planner review and approval through the Administrative Conditional Use Permit (ACUP) process.

Commercial properties have proven to be ideal locations for wireless communications facilities because the antenna use can easily be integrated into the design of the building without impacting on-site or surrounding land uses. The proposed antenna sectors will be completely concealed from public view behind RF transparent screening.

The Planning Division finds that the proposed project is consistent with General Plan policies pertaining to the efficient operation and aesthetics of communication systems within the City.

## **2. Zoning Compliance**

This project is located in the CS-HO – Special Commercial/Highway Oriented Zoning District and, with issuance of a conditional use permit, complies with the requirements of that zone.

As noted above, the project is subject to Article 39 of the City's Zoning Ordinance, which lists operation and maintenance standards, wireless communication facility standards, locational and site development standards, and safety and monitoring standards.

The proposed facility would be unmanned, requiring approximately one maintenance visit per month. Standard conditions of approval will ensure that the proposed facility remains in good repair and free of debris, litter, and graffiti, and that any damage or blight shall be corrected upon written notice by the City.

Among facility design standards is the requirement to employ camouflage design techniques in order to minimize visual impacts. As noted earlier, the proposed project will be placed in three architecturally integrated structures atop an existing rooftop behind RF transparent screening. These screening features have been designed to match in color, size, proportion, style, texture, and quality the exterior design and architectural character of the existing building.

Locational and siting standards establish an order of preference for properties on which wireless communications facilities are proposed. The most preferred locations for such facilities are City-owned sites and the least preferred locations are those within residential districts. The proposed project would be located within a commercial district, which is the third most desirable location out of seven. There are no residential districts near the project site. The location of the antennas behind screening would mitigate any potentially adverse visual impacts surrounding environment.

The zoning ordinance permits wireless communications facilities to exceed the maximum building height of the underlying zoning district by 10 feet. In the Special Commercial zone, the maximum allowed building height is 50 feet. The three enclosures which house the sectors of antennas will be mounted are 30 to 32 feet in height and will be the tallest features of the building. As designed and conditioned, the proposed antennas will not extend beyond the height of the enclosure walls.

At all times, wireless communications facilities are required to comply with the most current regulatory and operational standards including RF radiation exposure standards adopted by the Federal Communications Commission (FCC). As proposed, the project would be in compliance with FCC standards, with the exception of general population and occupational exposure limits at accessible rooftop walking/working surfaces.

### **3. State of California Government Code 65850**

California State Government Code 65850.6(b) states that a city shall not unreasonably limit the duration of any permit for a communication facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. The proposed site has been given a 10-year limit with conditions that assure the City of Oceanside has the ability to request technological enhancements and aesthetic analyses of the site if they are found to be necessary.

#### **4. FCC Regulations Applicability: Sections 332(c)(7) or 6409(a)**

This project falls under the provisions of FCC Section 332(c)(7) because a discretionary action is required on part of the City of Oceanside in order for the facility to legally operate within corporate limits. Section 6409(a) applies to existing facilities that are otherwise compliant with local regulations but only require minor changes that do not alter the character of the structure onto which they are attached (e.g., a building).

#### **DISCUSSION**

*Issue: Compliance with Federal Communications Commission (FCC) rules and regulations*

FCC guidelines establish separate maximum permissible exposure (MPE) limits for "general population/uncontrolled exposure" and for "occupational/controlled exposure." The general population/uncontrolled limits set the maximum exposure to which most people may be subjected. People in this group include the general public not associated with the installation and maintenance of the transmitting equipment. Higher exposure limits are permitted under the "occupational/controlled exposure" category, but only for persons who are exposed as a consequence of their employment (e.g., wireless radio engineers, technicians). To qualify for the occupational/controlled exposure category, exposed persons must be made fully aware of the potential for exposure (e.g., through training), and they must be able to exercise control over their exposure. In addition, people passing through a location, who are made aware of the potential for exposure, may be exposed under the occupational/controlled criteria. The MPE limits adopted by the FCC for occupational/controlled and general population/uncontrolled exposure incorporate a substantial margin of safety and have been established to be well below levels generally accepted as having the potential to cause adverse health effects.

The compliance documentation submitted by T-Mobile indicates that based on worst-case predictive modeling there are no areas at ground level that exceed MPE limits. At ground-level, the maximum power density generated by the antennas is 89.8 percent of the FCC's general population limit. At the rooftop-level walking/working surface the project exceeds general population and occupational MPE limits. The maximum power density generated by the proposed antennas at the roof-top is 1137.8 percent of the general population limit and 227.6 percent of the occupational limit. It is important to note that these over-exposed areas are in the air, at or away from the roof edge. On the roof, the highest exposure level is below the FCC's occupational limits, but still above the general population limits.

Telecom Law Firm, the City's RF consultant, reviewed the applicant's RF report. In their review they stated "The fact that a site creates a controlled access zone does not necessarily mean that it violates the FCC Rules. Rather, a controlled access zone means that the carrier must affirmatively restrict public access to that area so that

members of the general population (including trespassers) cannot unknowingly enter and be exposed to radio emissions in excess of those allowed by the Commission.” They also provided conditions of approval that will be incorporated into the resolution of approval.

*Recommendation:* A site is considered out of compliance with FCC regulations if there are areas that exceed the FCC exposure limits and there are no RF hazard mitigation measures in place. Signs are the primary means for control of access to areas where RF exposure levels may potentially exceed the general population and/or occupational MPE. In a review dated 11/20/2014 of the applicant’s radio frequency (RF) report on FCC compliance for this WCF, Telecom Law Firm, PC, the City’s third party consultant on RF issues, recommended the inclusion of four conditions of approval to address RF exposure. Based on their recommendations, the project has been conditioned to restrict public access to the wireless facility and incorporate signage to notify the public of the location of the antennas. Individuals entering the site or working near the antennas should receive RF safety training and be made aware of the areas exceeding the FCC’s MPE limits. With the implementation of the conditions of approval, Telecom Law Firm concluded that “the proposed emissions will comply with the FCC Rules.”

*Issue:* *Compatibility with surrounding land uses*

*Recommendation:* In evaluating the compatibility of the proposed project with the surrounding environment, staff has considered the visual impacts of the proposed antennas and ancillary facilities. Staff finds that the proposed project would not have adverse visual impacts on adjacent commercial buildings, nearby residential neighborhoods, or roadways due to the proposed camouflage design, the height of the proposed facility and the distance between the facility and the nearest residential properties. The previous facility located on a nearby fast-food establishment has been in existence for more than 10 years and no complaints have been filed with the City in regards to visual impacts.

For the reasons established above, it has been determined that the proposed wireless communications facility would be compatible with the surrounding land uses and would not diminish the aesthetic value of the surrounding area.

## **ENVIRONMENTAL DETERMINATION**

Planning Division staff has completed a preliminary review of this project in accordance with the California Environmental Quality Act (CEQA), 1970. Based on that review, staff finds that the proposed project constitutes operations within existing facilities that will not involve expansion beyond what exist on-site at this time, and the project is categorically exempt, Class 1, “Existing Facilities” (Section 15301).

**PUBLIC NOTIFICATION**

Legal notice was published in the newspaper and notices were sent to property owners of record within a 300-foot radius of the subject property, individuals and/or organizations requesting notification, the applicant and other interested parties. As of April 13, 2015 no communications supporting or opposing the request have been receive.

**SUMMARY**

The request for approval of the Conditional Use Permit to allow for construction and operation of a wireless communications facility is consistent with the requirements of the Zoning Ordinance and the land use policies of the General Plan. The project meets all applicable development standards and will not impact existing land uses in the immediate area. As such, staff recommends that the Planning Commission approve the project based on the findings and subject to the conditions contained in the attached resolution. Staff recommends that the Planning Commission:

- Confirm issuance of a Class One (1), Categorical Exemption "Existing Facilities"; and,
- Adopt Planning Commission Resolution No. 2015-P13 approving Conditional Use Permit (CUP14-00028) with findings and conditions of approval attached herein.

PREPARED BY:

SUBMITTED BY:

  
Martin Miller  
Consulting Assistant

  
Jeff Hunt  
Interim City Planner

Attachments:

1. Plans
2. Planning Commission Resolution No. 2015-P13
3. Maximum Permissible Emission (MPE) Analysis Report dated October 20, 2014
4. Review of MPE Analysis by Telecom Law Firm, P.C., dated November 20, 2014
5. Coverage Maps/Photo Simulations
6. Other Attachments (Application Page, Description and Justification, Legal Description, Notice of Exemption)



**PROJECT DESCRIPTION:**

- INSTALL 12 ANTENNAS ON ROOF LGS.
- INSTALL FPP SCREENS TO CONCEAL ANTENNAS
- AND RACK EQUIPMENT TO CONCEAL ANTENNAS
- INSTALL 2 EQUIPMENT CABINETS ON ROOF LEVEL.

**PROPRIETARY INFORMATION**  
 THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE PROPERTY OF T-MOBILE. ANY USE OF THIS INFORMATION FOR ANY PURPOSE WHICH RELATES TO T-MOBILE IS STRICTLY PROHIBITED.

DATE:	10/08/14	
ARCHITECT:	DMO	
DRAWN BY:	JP	
CHECKED BY:	BOK	
ISSUE STATUS:		
DATE:	DESCRIPTION:	BY:
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10/08/14	ISSUE 02	JP
10/08/14	ISSUE 03	JP
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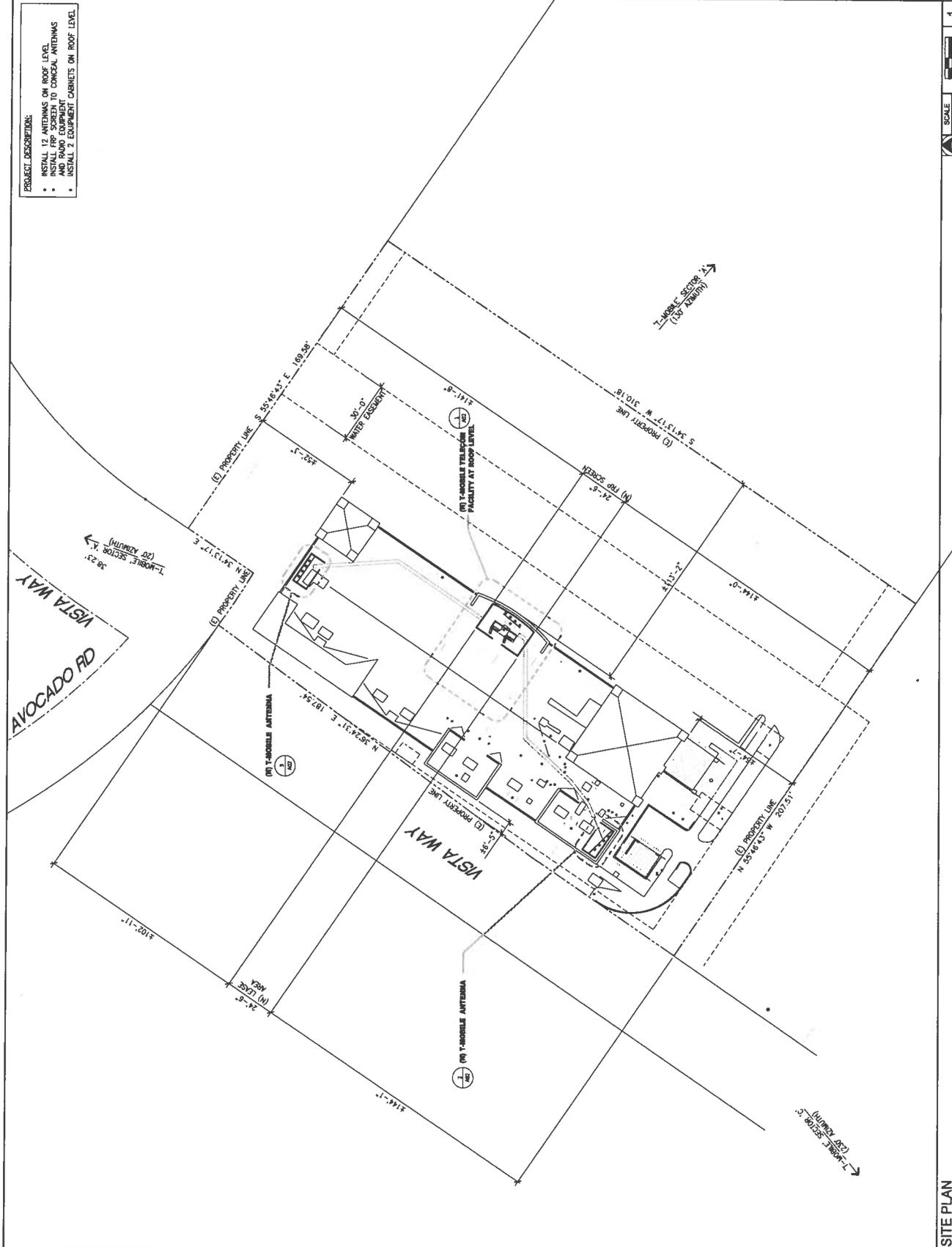
**T-Mobile**  
 stick together  
 10500 VISTA ROBERTO PARKWAY,  
 SUITE 200,  
 SAN DIEGO, CA 92121



PLANS PREPARED BY:  
**DCI PACIFIC**  
 A/E/C WORKS  
 ARCHITECTURE ENGINEERING CONSULTING  
 & EXECUTIVE PLANNING (A/E/C) FIRM  
 14072510001 | 10/08/2014

LOCKED:	
PROJECT NAME:	BROOKLYN BROS
PROJECT NUMBER:	SD02467
PROJECT ADDRESS:	2183 VISTA WAY, OCEANSIDE, CA 92054
SHEET TITLE:	SITE PLAN
SHEET NUMBER:	

**A1**



SCALE: 1" = 20'  
 SHEET NUMBER: 1

SITE PLAN

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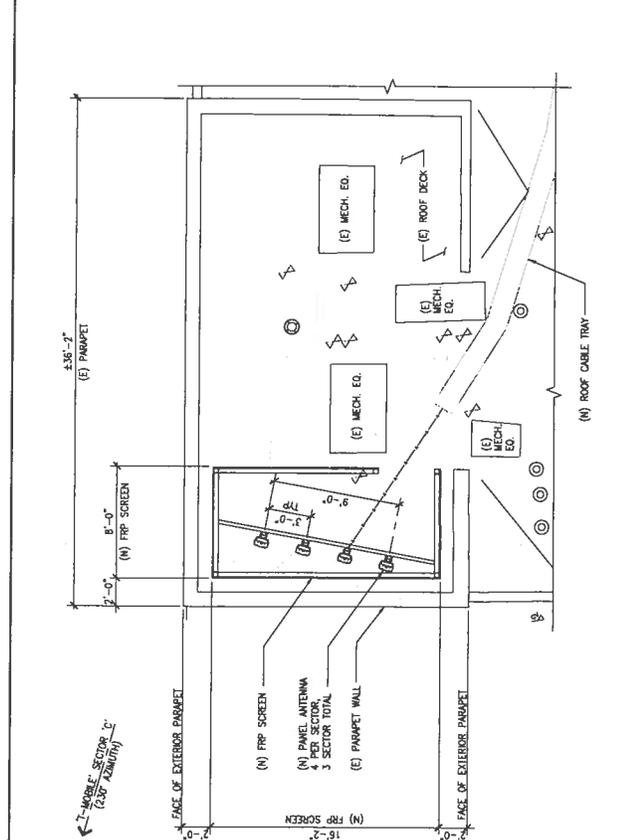
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OWNER:	IP	
DESIGNED BY:	BOK	
ISSUE STATUS:		
DATE:	DESCRIPTION:	BY:
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**F Mobile**  
 stick together  
 10000 VISTA GARDENWAY PARKWAY,  
 SUITE 200,  
 SAN DIEGO, CA 92121

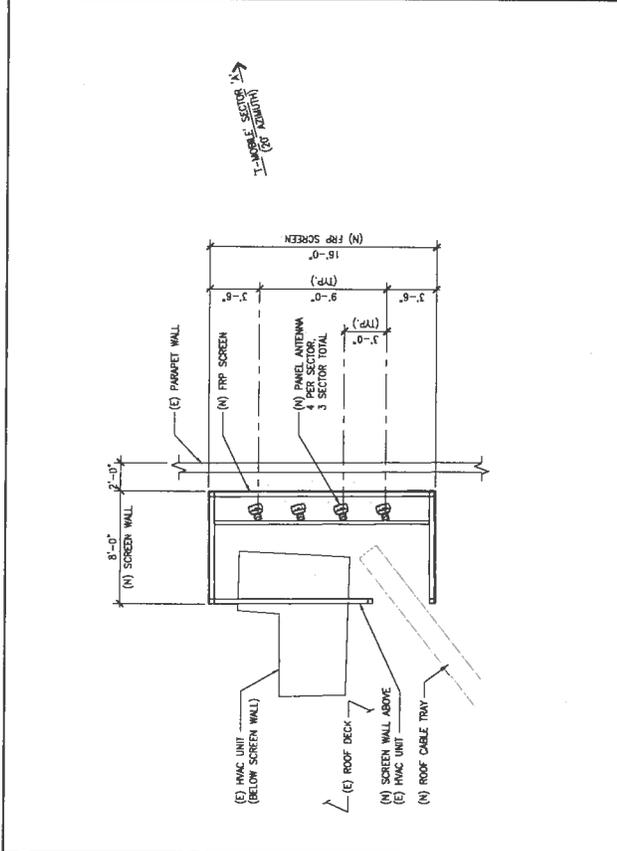


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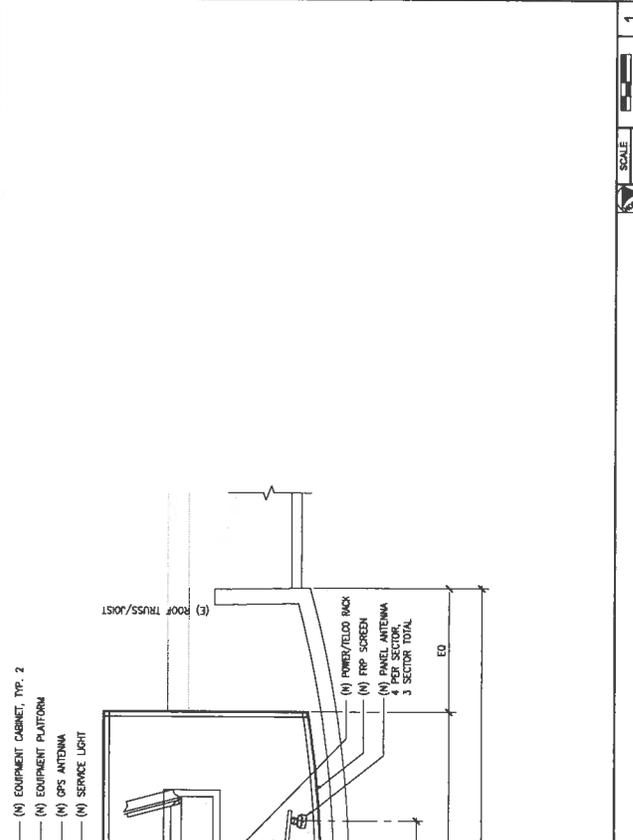
PROJECT NAME:	BROOKLYN BROS
PROJECT NUMBER:	SD02487
PROJECT ADDRESS:	2183 VISTA WAY OCEANSIDE, CA 92054
SHEET TITLE:	EQUIPMENT AND ANTENNA LAYOUT PLANS
SHEET NUMBER:	A2



ANTENNA LAYOUT PLAN @ SECTOR 'C'



ANTENNA LAYOUT PLAN @ SECTOR 'A'



EQUIPMENT/ANTENNA LAYOUT PLAN @ SECTOR 'B'

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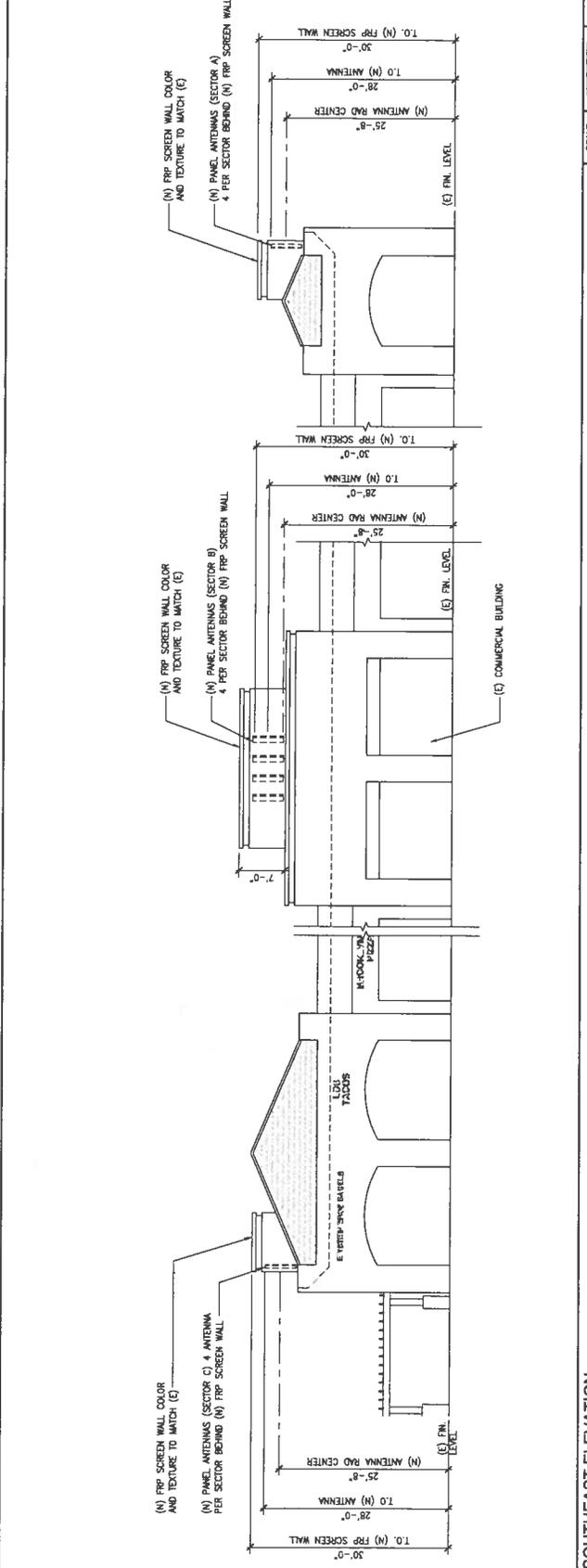
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 ARCHITECT: DMD  
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 ISSUE STATUS:  
 BY: P  
 DATE: 06/02/14 SHEET NO. P  
 DATE: 06/02/14 SHEET NO. P  
 DATE: 10/06/14 NEW FRP SCREEN WED VT

APPLICANT  
**T-Mobile**  
 stick together  
 10008 VISTA BONERENTO PARKWAY,  
 SUITE 200  
 SAN DIEGO, CA 92121

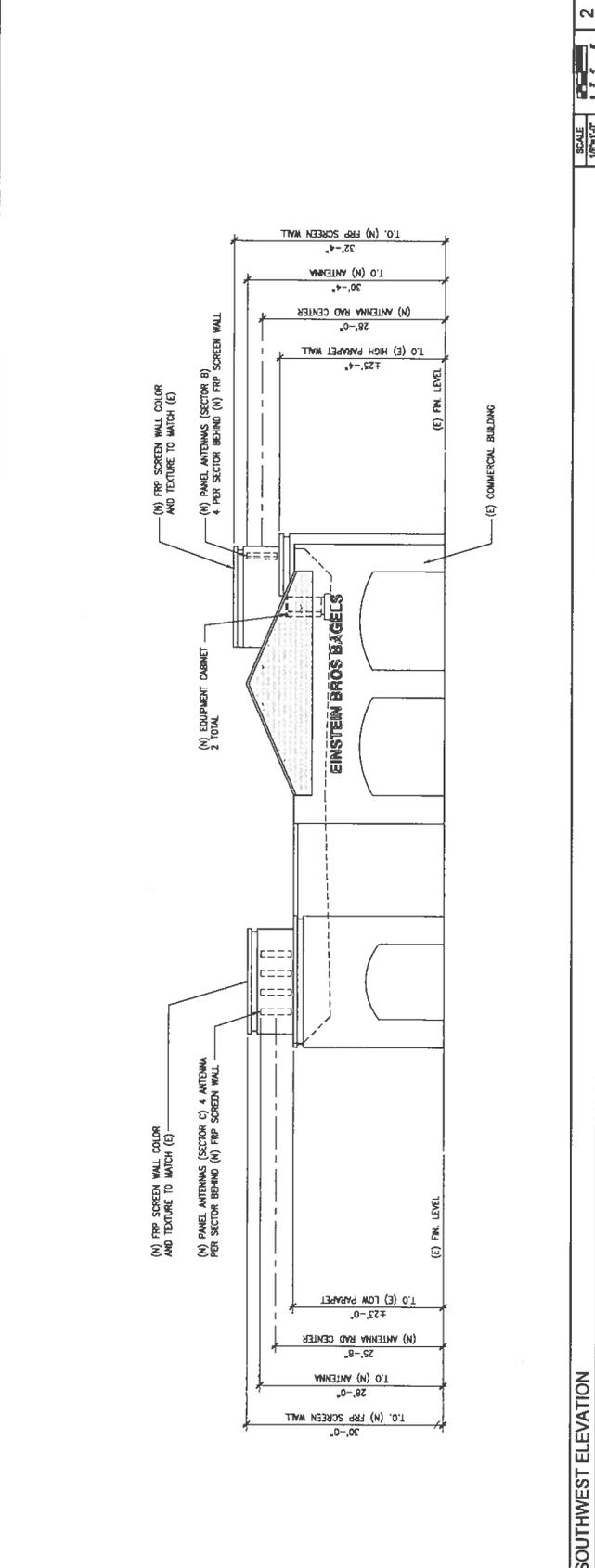


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 212.693.1000 WWW.AIEICWORKS.COM

PROJECT NAME:  
 BROOKLYN BROS  
 PROJECT NUMBER:  
 SD02467  
 PROJECT ADDRESS:  
 7185 VISTA WAY,  
 OCEANSIDE, CA 92054  
 SHEET TITLE:  
 ELEVATIONS  
 SHEET NUMBER:  
**A3**



**SOUTHEAST ELEVATION**



**SOUTHWEST ELEVATION**

SCALE: 1/8"=1'-0"





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PLANNING COMMISSION  
RESOLUTION NO. 2015-P13

A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF OCEANSIDE, CALIFORNIA APPROVING A  
CONDITIONAL USE PERMIT ON CERTAIN REAL PROPERTY  
IN THE CITY OF OCEANSIDE

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APPLICATION NO: CUP14-00028  
APPLICANT: T-Mobile West Corporation  
LOCATION: 2183 Vista Way

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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 a Conditional Use Permit under the provisions of Articles 39 and 41 of the Zoning Ordinance of the City of Oceanside to permit the following:

to construct three radio frequency-transparent enclosures atop the existing commercial building located at 2183 Vista Way into which will be installed three sectors of four antennas each, for a total of 12 antennas, and roof-mounted equipment cabinets;  
on certain real property described in the project description

WHEREAS, the Planning Commission, after giving the required notice, did on the 20<sup>th</sup> day of April, 2015 conduct a duly advertised public hearing as prescribed by law to consider said application; and

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project is categorically exempt from CEQA per Article 19, Section 15301, Existing Facilities; and

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

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

3 FINDINGS:

4 For the Conditional Use Permit CUP14-00038:

- 5 1.       The placement, construction, or modification of the wireless communications facility in the  
6 proposed location is necessary for the provision of wireless services to City residents,  
7 businesses, and their owners, customers, guests or other persons traveling in or about the  
8 City.
- 9 2.       The proposal demonstrates a reasonable attempt to minimize stand-alone facilities, is  
10 designed to protect the visual quality of the City, and will not have an undue adverse  
11 impact on historic resources, scenic views, or other natural or man-made resources. The  
12 project site is in a developed area in a rooftop of an existing commercial building. The  
13 proposed wireless communications facility will be completely concealed from public view  
14 behind radiofrequency (RF) transparent screening.
- 15 3.       The site was selected by the applicant because they are being forced to move from their  
16 present location at 2185 Vista Way. The proposed site will provide approximately the  
17 same coverage as the present location and allow continued operation of a wireless  
18 communications facility. Coverage maps were provided by the applicant demonstrating the  
19 need to maintain a facility in almost the same location on the service grid.
- 20 4.       All applicable requirements and standards of Article 39 will be met by the proposed project  
21 either as designed or as implemented in accordance with the Conditions of Approval.

22           NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
23 approve Conditional Use Permit CUP14-00028 subject to the following conditions:

24 Building:

- 25 1.       Applicable Building Codes and Ordinances shall be based on the date of submittal for  
26 Building Division plan check.
  - 27 2.       The granting of approval under this action shall in no way relieve the applicant/project  
28 from compliance with all State and Local building codes.
- 29

- 1 3. The building plans for this project shall be prepared by a design professional, licensed  
2 architect or engineer and shall be in compliance with this requirement prior to submittal  
3 for building plan review.
- 4 4. Compliance with the Federal Clean Water Act BMP's shall be demonstrated on all  
5 appropriate plans.
- 6 5. A separate/unique address shall be required to facilitate utility releases. Verification that  
7 the address has been properly assigned by the City's Planning Division shall accompany  
8 the Building Permit application.
- 9 6. As appropriate, complete soils report, structural calculations, & energy calculations or  
10 documentation shall be required at time of plan submittal to the Building Division for  
11 plan check.
- 12 7. The developer shall monitor, supervise and control all building construction and supportive  
13 activities so as to prevent these activities from causing a public nuisance, including, but not  
14 limited to, strict adherence to the following:
- 15 a) Building construction work hours shall be limited to between 7:00 a.m. and 6:00  
16 p.m. Monday through Friday, and on Saturday from 7:00 a.m. to 6:00 p.m. for work  
17 that is not inherently noise-producing. Examples of work not permitted on  
18 Saturday are concrete and grout pours, roof nailing and activities of similar noise-  
19 producing nature. No work shall be permitted on Sundays and Federal Holidays  
20 (New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day,  
21 Christmas Day) except as allowed for emergency work under the provisions of the  
22 Oceanside City Code Chapter 38 (Noise Ordinance).
- 23 b) The construction site shall be kept reasonably free of construction debris as  
24 specified in Section 13.17 of the Oceanside Municipal Code. Storage of debris in  
25 approved solid waste containers shall be considered in compliance with this  
26 requirement. Small amounts of construction debris may be stored on-site in a neat,  
27 safe manner for short periods of time pending disposal.

26 **Fire:**

- 27 8. Provide sheet index.
- 28 9. Add the following notes to the plans:
- 29

- Fire Department final inspection required.
- Battery Systems with an electrolyte capacity of more than 50 gallons for flooded lead acid, nickel cadmium and valve regulated lead acid, or 1000 pounds for lithium-ion must comply with California Fire Code Section 608.
- Visible hazard identification signs as specified in NFPA 704 shall be placed at entrance to the battery storage room.

10. Note type of battery proposed.

11. Add total quantity of electrolyte solution to the plans. Quantity includes all carriers in the building.

12. Provide NFPA placard reflecting electrolyte hazard on all entrances to the equipment room. Show sign locations on the elevation plan and provide sign detail. Indicate Hazard Categories as follows: Health = 3, Flammability = 0, Reactivity = 1, Special = W

**Planning:**

13. The Conditional Use Permit is granted for the following: equipment necessary to accommodate current generation wireless technologies and the continued operation of a relocated wireless communications facility on a commercial building. Facility consists of the construction of three radio frequency-transparent enclosures atop the existing commercial building at 2183 Vista Way into which will be installed three sectors of four antennas each, for a total of 12 antennas. One enclosure will be located on the northeast-central roof (Sector A), one in the east-central part of the building (Sector B), and one near the southwest corner (Sector C). The Sector B enclosure will also house a platform supporting two equipment cabinets and a GPS antenna behind the sector array. Any substantial change in the use or expansion of the wireless communications facility beyond that which is approved by the Planning Commission, shall require a modification to the Conditional Use Permit or new Conditional Use Permit.

14. Conditional Use Permit CUP14-00028 shall expire April 20, 2017 unless the applicant has obtained a Building Permit and has requested an initial building inspection.

15. Entitlements granted for Conditional Use Permit CUP14-00028 and approved by this resolution, shall be valid until April 20, 2025.

- 1 16. Unless expressly waived, all current zoning standards and City ordinances and policies in  
2 effect at the time of building permit issuance shall be met by this project. The approval of  
3 this project constitutes the applicant's agreement with all statements in the project  
4 Description and Justification and other materials and information submitted with this  
5 application, unless specifically waived by an adopted condition of approval.
- 6 17. The wireless communications facility permitted by this Resolution shall be erected,  
7 operated and maintained in compliance with Article 39.
- 8 18. The installation of any wireless communications facility shall be in compliance with all  
9 applicable provisions of the State Building Standards Code and any applicable local  
10 amendments thereto.
- 11 19. No wireless communications facility may, by itself or in conjunction with other wireless  
12 communications facilities, generate radio frequency (RF) emissions in excess of the  
13 standards for permissible human exposure, as provided by applicable federal regulations  
14 including 47 C.F.R. 1.1307 *et seq.*
- 15 20. Upon or prior to installation, and prior to activation, of the wireless communications  
16 facility, the applicant shall submit to the City certification in a form acceptable to the City  
17 that the facility will operate in compliance with all applicable Federal Communications  
18 Commission (FCC) regulations including, but not limited to RF emission limitations.  
19 Thereafter, upon any proposed increase of a least 10 percent in the effective radiated power  
20 or any proposed change in frequency use, the applicant shall submit updated certifications  
21 for review by the City. Both the initial and update certifications shall be subject to review  
22 and approval by the City Planner. At the City's sole discretion, a qualified independent RF  
23 engineer, selected by and under contract to the City, may be retained to review said  
24 certifications for compliance with FCC regulations. All costs associated with the City's  
25 review of these certifications shall be the responsibility of the applicant.
- 26 21. Within 30 calendar days following the installation of this wireless communications  
27 facility, the applicant shall provide FCC documentation to the City Planner indicating  
28 that the unit has been inspected and tested in compliance with FCC standards. Such  
29 documentation shall include the make and model (or other identifying information) of  
the unit tested, the date and time of the inspection, the methodology used to make the

1 determination, the name and title of the person(s) conducting the tests, and a certification  
2 that the unit is properly installed and working within applicable FCC standards.

3 22. The applicant shall maintain the most current information from the FCC regarding the  
4 allowable RF emissions and all other applicable regulations and standards. The  
5 applicant/operator shall file an annual report to the permit file advising the City of any  
6 regulatory changes that require modifications to the wireless communications facility and  
7 of the measures taken by the applicant to comply with such regulatory changes.

8 23. Absent any modifications to the wireless communications facility that would cause a  
9 change to the effective radiated power or frequency use, the applicant shall submit an  
10 annual letter to the City Planner certifying that no such changes have been made to the site  
11 and that the facility continues to operate within the range allowed by FCC regulations. Any  
12 substantial change in the type of antenna and/or facility installed in a particular location  
13 shall require the prior approval of the City Planner or his designee, unless the request  
14 qualifies as an eligible facilities request pursuant Section 6409(a) of the Middle Class  
15 Tax Relief and Job Creation Act of 2012 is applicable. Failure to obtain the prior  
16 approval of the City Planner or his designee may be grounds for institution of revocation  
17 proceedings as well as grounds to institute any other enforcement action available under  
18 federal, state, or local law.

19 24. Public access to the subject wireless communications facility shall be restricted. Required  
20 security measures shall be provided as follows:

- 21 a) Permittee shall keep all access point(s) the rooftop area locked at all times,  
22 except when active maintenance is performed on the rooftop area;
- 23 b) Permittee shall install and at all times maintain in good condition an "RF Notice"  
24 and "Network Operations Center Information" sign on the access point(s) to the  
25 rooftop area. Permittee shall install the sign(s) required under this condition so  
26 that a person may clearly see and understand the sign before he or she enters into  
27 the equipment rooftop area;
- 28 c) Permittee shall install and at all times maintain in good condition an "RF Notice"  
29 sign on behind and adjacent to each antenna sector (never in front, even if placed  
below the antennas). Permittee shall install the sign(s) required under this

1 condition so that a person may clearly see and understand the sign as he or she  
2 approaches the antennas; and

3 d) Permittee shall ensure that all signage complies with FCC OET Bulletin 65 or  
4 ANSI C95.2 for color, symbol, and content conventions. All such signage shall  
5 at all times provide a working local or toll-free telephone number to its network  
6 operations center, and such telephone number shall be able to reach a live person  
7 who can exert transmitter power-down control over this site as required by the  
8 FCC.

9 25. All required and proposed signage shall be shown on approved building plans.

10 26. The permittee(s) shall exercise a good-faith effort to incorporate the best available  
11 equipment technology to effect a reduction in the visual presence of the approved antennas  
12 and equipment. Any modifications requested to this facility shall permit the City Planner  
13 or his designee to review the existing facility to determine whether requiring new  
14 equipment or applying new screening techniques that reduce visual impacts is appropriate,  
15 if technically feasible. Upon the City's request and discretion, the permittee(s) shall be  
16 required to provide an independently prepared technical analysis demonstrating compliance  
17 with this condition. The permittee(s) inability to demonstrate the use of current  
18 technologies may be grounds for the institution of revocation proceedings of the  
19 Conditional Use Permit.

20 27. Co-location of wireless communications facilities pursuant to Article 39 shall be  
21 required whenever feasible. The permittee(s) shall exercise a good-faith effort to  
22 cooperate with other communication providers and services in the operation of a  
23 multiple-provider facility, provided such shared usage does not impair the operation of  
24 the approved facility. Upon the City's request and discretion, the permittee(s) shall  
25 provide an independently prepared technical analysis to substantiate the existence of any  
26 technical prohibitions against the operation of a co-use facility. The permittee(s)' non-  
27 compliance with this requirement may be grounds for the institution of revocation  
28 proceedings of the Conditional Use Permit.

29 ////////////////

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1 28. A Maintenance and Facility Removal Agreement shall be executed by the operator and  
2 the property owner. No permit shall become effective until such agreement has been  
3 executed. Said agreement shall bind the operator and property owner and their  
4 successors and assigns to the facility to the following:

- 5 a) Maintain the facility in good condition, which shall include but not be limited to  
6 regular cleaning, painting, and general upkeep and maintenance of the site;
- 7 b) Remove the facility when required by Article 39 or by any condition of approval,  
8 or when it is determined that the facility will not have been used during any  
9 current consecutive six-month period, or if the facility will be abandoned;
- 10 c) Pay all costs the City reasonably incurs to monitor a facility's compliance with  
11 conditions of approval and applicable law;
- 12 d) Reimburse the City for any and all costs incurred for work required by Article  
13 39, applicable law, or the conditions of a permit issued by the City for the facility  
14 which the operator and property owner fail to perform within 30 days after  
15 written notice from the City to do so or sooner if required by the City for good  
16 cause;
- 17 e) Where the City Planner or Planning Commission or City Council, as the case  
18 may be, determines that it is necessary to ensure compliance with the conditions  
19 of approval or otherwise provide for removal of the facility that is temporary in  
20 nature or upon its disuse, the operator or owner may be required to post a  
21 performance bond, cash or a letter of credit or other security acceptable to the  
22 City Planner in the amount of \$10,000, or such higher amount as the City  
23 Planner reasonably determines is necessary to ensure compliance with the  
24 maintenance and facility removal agreement.

25 29. The wireless communications facilities and the site on which it is located shall be  
26 maintained in good repair, free from trash, debris, litter and graffiti and other forms of  
27 vandalism. Any damage from any cause shall be corrected within five days of written  
28 notice by the City. Graffiti shall be removed as soon as practicable, and in no event longer  
29 than 48 hours after notice by the City.

- 1 30. The wireless communications facility shall be operated to minimize noise impacts to  
2 surrounding residents and persons using nearby facilities and recreation areas. All  
3 equipment that may emit noise in excess of the levels permitted by Article 38 of the City  
4 Municipal Code (noise ordinance) shall be enclosed. Backup generators shall only be used  
5 during periods of power outages or for testing.
- 6 31. Temporary power may be allowed during the initial construction or major repair of a  
7 Facility for the minimal amount of time necessary to complete the work. The operator shall  
8 provide a timeline to the City Planner and keep staff updated as to the time of completion.
- 9 32. The wireless communications facility shall be installed and maintained in compliance with  
10 the requirements of the Uniform Building Code, National Electrical Code, noise ordinance,  
11 and other applicable codes, as well as other restrictions specified in Article 39.
- 12 33. This Conditional Use Permit may be modified in accordance with the provisions of the  
13 Zoning Ordinance. Any application for a revision to Conditional Use Permit CUP14-  
14 00028 shall be evaluated against the existing land use policies and any site area and  
15 neighborhood changes.
- 16 34. The Conditional Use Permit may be called for review by the Planning Commission if  
17 complaints are filed and verified as valid by the City Planner or Code Enforcement Officer  
18 concerning the violation of any of the approved conditions or the project assumptions  
19 demonstrated under the application approval.
- 20 35. All costs reasonably incurred by the City in verifying compliance and in extending or  
21 revoking an approval shall be borne by the applicant and/or permit holder.
- 22 36. Failure to meet any conditions of approval for this development shall constitute a violation  
23 of this Conditional Use Permit. Conditional Use Permit CUP14-00028 may be revoked  
24 pursuant to Article 47 of the Zoning Ordinance.
- 25 37. If the operator of this facility intends to abandon or discontinue the use of this facility, the  
26 City shall be notified of such intention no less than 60 days prior to the final day of use.
- 27 38. If the use of this facility is discontinued, it shall be considered abandoned 90 days  
28 following the final day or use.

27 ////////////////

28 ////////////////

1 39. All abandoned facilities shall be physically removed by the operator no more than ninety  
2 (90) days following the final day of use or of determination that the facility has been  
3 abandoned, whichever occurs first. When a wireless communications facility has been  
4 abandoned, but not removed, the City may cause such facilities to be removed and charge  
5 all expenses incurred in such removal to the provider.

6 40. The wireless communications facility shall be subject to, and governed by, any and all  
7 licensing authority by any governmental agency having jurisdiction. The City's local  
8 approval of the facility shall not exempt the permittee(s) from any such pre-emptive  
9 regulations.

10 41. Prior to the transfer of ownership and/or operation of the use, the owner and/or operator  
11 shall provide a written copy of the application, staff report, and resolution for the project to  
12 the new owner and/or operator. This notification requirement shall run with the life of the  
13 project.

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1 42. A covenant or other recordable document approved by the City Attorney shall be prepared  
2 by the applicant and recorded prior to the issuance of building permits. The covenant shall  
3 provide that the property is subject to this resolution, and shall generally list the conditions  
4 of approval.

5 PASSED AND ADOPTED Resolution No. 2015-P13 on April 20, 2015 by the  
6 following vote, to wit:

7 AYES:

8 NAYS:

9 ABSENT:

10 ABSTAIN:

11 \_\_\_\_\_  
Louise Balma, Vice Chair  
12 Oceanside Planning Commission

13 ATTEST:

14 \_\_\_\_\_  
15 Jeff Hunt, Secretary

16 I, JEFF HUNT, Interim Secretary of the Oceanside Planning Commission, hereby certify that  
17 this is a true and correct copy of Resolution 2015-P13.  
18

19 Dated: April 20, 2015  
20

21 Applicant accepts and agrees with all conditions of approval and acknowledges impact fees may  
22 be required as stated herein:  
23

24 \_\_\_\_\_  
25 Applicant/Representative

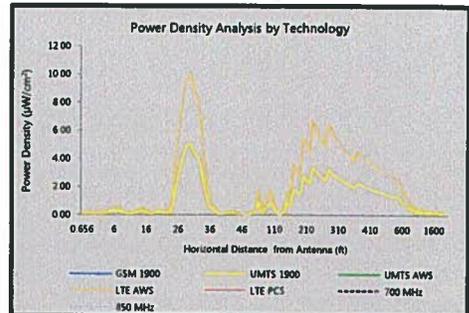
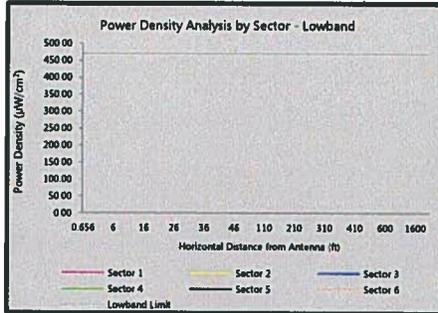
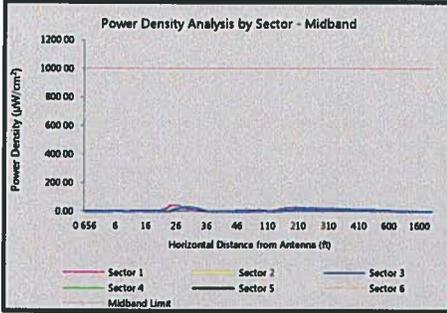
26 \_\_\_\_\_  
27 Date  
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29



# MAXIMUM PERMISSIBLE EMISSION (MPE) ANALYSIS REPORT

Report Date: 20-Oct-14

REGION: West	MARKET: San Diego	SITE ID: SD02467A	SITE TYPE: Non-Pole	COLOCATED: No
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Distance (ft)	Midband Frequencies - Calculated Power Density (µW/cm²)						Lowband Frequencies - Calculated Power Density (µW/cm²)						Midband Limit	Lowband Limit
	Sector 1	Sector 2	Sector 3	Sector 4	Sector 5	Sector 6	Sector 1	Sector 2	Sector 3	Sector 4	Sector 5	Sector 6		
0.656	0.56	0.41	0.41										1000	470
0.6561	0.56	0.41	0.41										1000	470
0.7	0.56	0.41	0.41										1000	470
0.8	0.56	0.41	0.41										1000	470
0.9	0.56	0.41	0.41										1000	470
1	0.56	0.41	0.41										1000	470
2	0.56	0.41	0.41										1000	470
3	0.65	0.41	0.41										1000	470
4	1.57	0.70	0.70										1000	470
5	2.30	1.48	1.48										1000	470
6	2.29	1.71	1.71										1000	470
7	1.68	1.70	1.70										1000	470
8	0.50	1.26	1.26										1000	470
9	0.45	0.60	0.60										1000	470
10	0.44	0.35	0.35										1000	470
11	0.81	0.33	0.33										1000	470
12	1.85	0.47	0.47										1000	470
13	1.98	1.02	1.02										1000	470
14	1.01	1.37	1.37										1000	470
15	0.41	1.48	1.48										1000	470
16	0.81	0.76	0.76										1000	470
17	1.46	0.30	0.30										1000	470
18	1.39	0.32	0.32										1000	470
19	0.79	0.93	0.93										1000	470
20	0.87	1.08	1.08										1000	470
21	6.87	0.84	0.84										1000	470
22	13.31	0.60	0.60										1000	470
23	20.98	0.66	0.66										1000	470
24	37.10	2.12	2.12										1000	470
25	40.48	10.14	10.14										1000	470
26	40.29	16.08	16.08										1000	470
27	34.97	22.24	22.24										1000	470
28	27.69	27.42	27.42										1000	470
29	17.82	30.12	30.12										1000	470
30	9.12	30.19	30.19										1000	470
31	8.70	26.38	26.38										1000	470
32	3.62	25.27	25.27										1000	470
33	0.84	20.16	20.16										1000	470
34	0.52	13.07	13.07										1000	470
35	0.96	6.73	6.73										1000	470
36	0.91	2.82	2.82										1000	470
37	0.82	2.70	2.70										1000	470
38	0.78	0.62	0.62										1000	470
39	0.44	0.38	0.38										1000	470
40	0.10	0.36	0.36										1000	470
41	0.10	0.70	0.70										1000	470
42	0.69	0.67	0.67										1000	470
43	0.66	0.60	0.60										1000	470
44	2.76	0.59	0.59										1000	470
45	2.64	0.32	0.32										1000	470
46	5.10	0.32	0.32										1000	470
47	4.92	0.07	0.07										1000	470
48	4.74	0.06	0.06										1000	470
49	6.90	0.50	0.50										1000	470
50	6.66	0.48	0.48										1000	470
60	2.10	5.36	5.36										1000	470
70	3.48	0.32	0.32										1000	470
80	7.78	2.64	2.64										1000	470
90	6.36	4.24	4.24										1000	470
100	2.86	5.14	5.14										1000	470
110	0.20	2.34	2.34										1000	470
120	1.08	0.18	0.18										1000	470
130	6.36	0.14	0.14										1000	470
140	5.52	0.78	0.78										1000	470
150	13.86	4.78	4.78										1000	470
160	12.22	4.20	4.20										1000	470
170	22.62	10.80	10.80										1000	470

Distance (ft)	Midband Frequencies - Calculated Power Density ( $\mu\text{W}/\text{cm}^2$ )						Lowband Frequencies - Calculated Power Density ( $\mu\text{W}/\text{cm}^2$ )						Midband Limit	Lowband Limit
	Sector 1	Sector 2	Sector 3	Sector 4	Sector 5	Sector 6	Sector 1	Sector 2	Sector 3	Sector 4	Sector 5	Sector 6		
180	20.22	9.64	9.64										1000	470
190	18.16	8.66	8.66										1000	470
200	26.62	16.36	16.36										1000	470
210	24.16	14.86	14.86										1000	470
220	22.02	13.56	13.56										1000	470
230	20.16	20.12	20.12										1000	470
240	18.54	18.48	18.48										1000	470
250	24.14	17.04	17.04										1000	470
260	22.32	15.78	15.78										1000	470
270	20.70	14.64	14.64										1000	470
280	19.26	19.24	19.24										1000	470
290	17.96	17.94	17.94										1000	470
300	16.80	16.76	16.76										1000	470
310	15.72	15.72	15.72										1000	470
320	18.16	14.76	14.76										1000	470
330	17.08	13.86	13.86										1000	470
340	16.10	13.08	13.08										1000	470
350	15.18	12.34	12.34										1000	470
360	14.36	11.66	11.66										1000	470
370	13.60	13.58	13.58										1000	470
380	12.90	12.88	12.88										1000	470
390	12.24	12.24	12.24										1000	470
400	11.64	11.64	11.64										1000	470
410	11.08	11.08	11.08										1000	470
420	10.56	10.56	10.56										1000	470
430	10.08	10.08	10.08										1000	470
440	10.32	9.62	9.62										1000	470
450	9.86	9.20	9.20										1000	470
460	9.44	8.80	8.80										1000	470
470	9.04	8.44	8.44										1000	470
480	8.66	8.08	8.08										1000	470
490	8.32	7.76	7.76										1000	470
500	7.98	7.44	7.44										1000	470
600	5.56	5.54	5.54										1000	470
700	4.08	4.08	4.08										1000	470
800	2.98	3.12	3.12										1000	470
900	2.36	2.36	2.36										1000	470
1000	1.92	1.92	1.92										1000	470
1100	1.58	1.58	1.58										1000	470
1200	1.32	1.32	1.32										1000	470
1300	1.14	1.14	1.14										1000	470
1400	0.96	0.96	0.96										1000	470
1500	0.84	0.84	0.84										1000	470
1600	0.74	0.74	0.74										1000	470
1700	0.66	0.66	0.66										1000	470
1800	0.60	0.60	0.60										1000	470
1900	0.54	0.54	0.54										1000	470
2000	0.48	0.48	0.48										1000	470

MPE ANALYSIS RESULTS		Midband Frequencies						Lowband Frequencies				Max power density dist' (ft)		Pass or Fail
SECTOR	TECH	RAD CENTER (ft)	TOTAL PCS EIRP (W)	TOTAL AWS EIRP (W)	CATEGORICAL EXCLUSION RESULT	MAX POWER DENSITY ( $\mu\text{W}/\text{cm}^2$ )	NEXT STEPS	TOTAL 700 MHz EIRP (W)	TOTAL 850 MHz EIRP (W)	MAX POWER DENSITY ( $\mu\text{W}/\text{cm}^2$ )	NEXT STEPS	Midband	Lowband	
1	GSM,U21,U19L21	25.00	3,042	6,083	Not Categorically Excluded	40.48	No further action needed	0	0	-	No further action needed	25	N/A	PASS
2	GSM,U21,U19L21	28.00	3,042	6,083	Not Categorically Excluded	30.19	No further action needed	0	0	-	No further action needed	30	N/A	PASS
3	GSM,U21,U19L21	28.00	3,042	6,083	Not Categorically Excluded	30.19	No further action needed	0	0	-	No further action needed	30	N/A	PASS

**MPE SUMMARY REPORT**

MPE RESULT: The site PASSED on the power density modelling.

NEXT STEP: Generate and save the MPE site report (PDF format) and no further action needed.

SIGN REQUIREMENTS (Note: The sign requirements below are from the result of the MPE analysis. Ability of an individual to come near the antenna can result in requiring signs also)

 Required on sector 1, 2, 3	 None required	 None required
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**Planning  
Memorandum**

To: Martin Miller  
From: Tripp May  
Reviewed by: Jonathan L. Kramer  
Date: November 20, 2014  
RE: CUP14-00028 (T-Mobile USA)  
2183 Vista Way, Oceanside, CA 92054

The City of Oceanside (“City”) requested a review of the T-Mobile USA (“T-Mobile”) permit request to construct and operate a new rooftop wireless site located at 2183 Vista Way.

**1. Current Project**

T-Mobile proposes to install and operate a rooftop wireless site that generally involves twelve panel antennas and two equipment cabinets. This section briefly describes the proposed site as depicted on the plans dated October 6, 2014, and submitted with the permit application.

On the rooftop, T-Mobile proposes to construct three separate mechanical screens to house and conceal the equipment. Each screen will contain four panel antennas and one will also house two equipment cabinets. T-Mobile proposes to paint, texture, and install molding on the mechanical screens to match the existing building.

**2. Section 6409(a) Analysis**

As a threshold matter, the City must determine whether Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. § 1455(a) (“Section 6409(a)”), governs this permit request. Generally, Section 6409(a) requires that local governments “may not deny, and shall approve,” certain requests to collocate with or modify an existing wireless tower or base station so long as that request will not “substantially change the physical dimensions” of the existing facilities.<sup>1</sup> Thus, Section 6409(a) may be outcome-determinative.

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Counsel for Government Agencies  
and Private Institutions

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Los Angeles, California  
90025-5379

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<sup>1</sup> Section 6409(a) states in full:

(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

To determine whether Section 6409(a) applies, the City must apply the two-prong test to the permit request as described below. The statute applies only when the:

- (1) applicant requests to collocate, remove, or replace transmission equipment from an existing tower or base station; and
- (2) proposed project will not “substantially change the physical dimensions” of that tower or base station.

Critically, Section 6409(a) applies only when the applicant demonstrates both prongs are true. The statute does not apply when the applicant desires to construct an entirely new wireless communication facility or when the applicant desires to modify an existing site that substantially changes the physical dimensions of the existing tower or base station. Thus, local governments should always apply these prongs in the correct order.

Here, Section 6409(a) does not apply to this permit request because T-Mobile did not submit an eligible facilities request. T-Mobile proposes to construct an entirely new rooftop site rather than collocate with or modify an existing wireless tower or base station. Accordingly, the City can conclude that Section 6409(a) does not apply without inquiry into whether the proposal would result in a substantial change.

We conclude that Section 6409(a) does not apply to this permit request because T-Mobile did not submit an eligible facilities request. This conclusion does not mean that the City should necessarily deny the permit request, only that federal law does not mandate approval. Accordingly, the City should review this permit request under its established wireless permit standards and procedures.

### **3. Significant Gap & Least Intrusive Means Analysis**

Under the federal Telecommunications Act of 1996 (“**Telecom Act**”) as interpreted by the Ninth Circuit Court of Appeals, a State or local government (1) must allow a wireless service provider to close a “significant gap” in the provider’s

---

(2) **ELIGIBLE FACILITIES REQUEST.**—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.**—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

own service, but (2) may require the provider to adopt the “least intrusive means” to close the gap. The provider bears the burden to demonstrate that a significant gap exists and, regardless of whether a significant gap exists, that its proposal represents the least intrusive means to achieve its service goals. This section discusses both issues.

### **3.1. Significant Gap Analysis**

To demonstrate significant gap in service exists, the applicant must show that a specific permit denial would actually or effectively prohibit that particular applicant from providing its own service.

The law does not precisely define what a “significant gap” means because this “extremely fact-specific [question] def[ies] any bright-line legal rule.”<sup>2</sup> A relatively weak coverage level might not rise to a significant gap in a sparsely populated area, whereas that same signal level might indicate a significant gap in lower Manhattan. Even in densely populated communities, small areas with less-than-perfect or even some small complete coverage gaps may not rise to a significant gap because “the [Telecommunications Act] does not guarantee wireless service providers coverage free of small ‘dead spots’ . . . .”<sup>3</sup> Therefore, contextual facts about the alleged gap area are important.<sup>4</sup>

To determine whether a significant gap exists, the courts in the Ninth Circuit analyze “context-specific factors” such as (1) whether the gap affects a significant commuter thoroughfare; (2) how many users the alleged gap affects; (3) whether the proposed site will fill a complete void or merely improve weak signal; (4) whether the alleged gap affects a commercial area; (5) whether the alleged gap threatens public safety; and (6) whether the applicant presented empirical or merely predictive evidence.<sup>5</sup> The Ninth Circuit identifies these factors as relevant but does not explicitly limit the analysis to these factors or consider any particular factor more important than the others.

Here, T-Mobile alleges a gap in its service coverage. Figure 1 reproduces a signal propagation map that depicts the current T-Mobile service coverage in the target area.

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<sup>2</sup> See *MetroPCS, Inc. v. City and Cnty. of San Francisco*, 400 F.3d 715, 733 (9th Cir. 2005).

<sup>3</sup> *Id.*

<sup>4</sup> See *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 727 (9th Cir. 2009) (citing *MetroPCS*, 400 F.3d at 733).

<sup>5</sup> See *id.* (collecting cases).

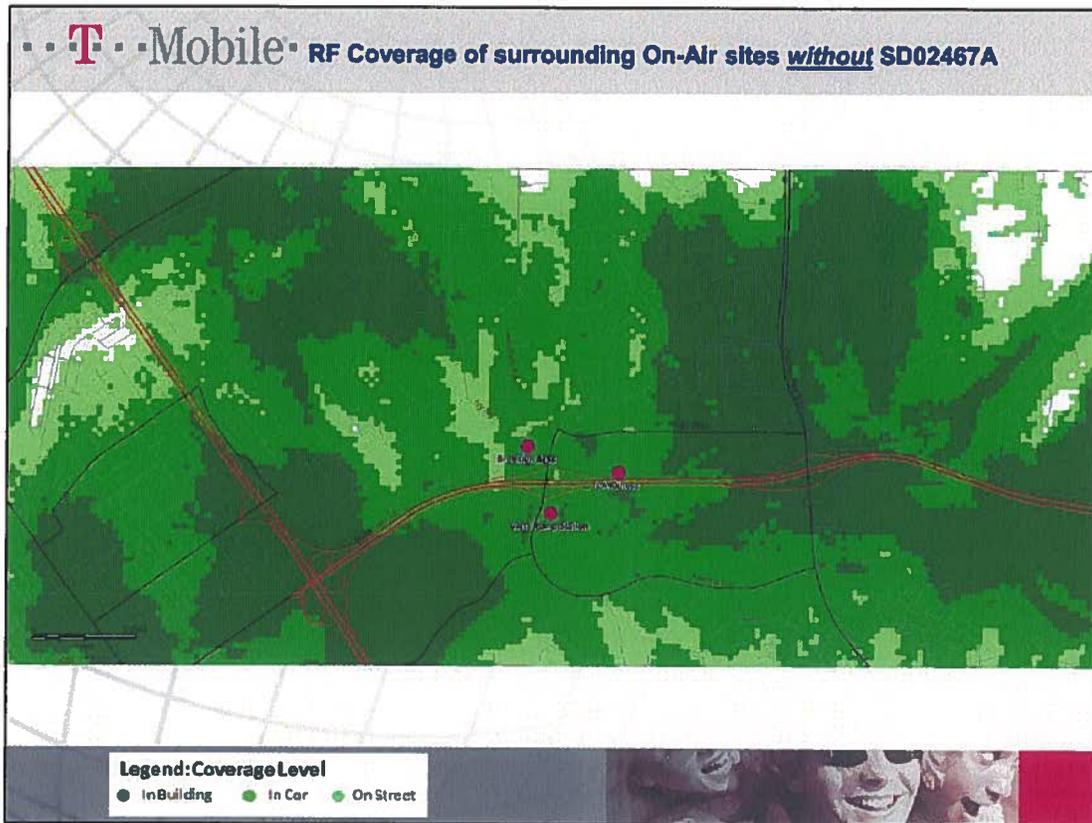


Figure 1: Current T-Mobile Service Coverage (Source: T-Mobile) .

Although T-Mobile does not allege in its application that a “significant” gap exists, certain deficiencies in the submitted signal propagation maps should be pointed out in the event that T-Mobile later claims that it does have a significant gap. We provide this critique as a means toward avoiding the need to request additional information in the future, should T-Mobile decide to allege a significant gap.

First, the signal propagation map in Figure 1 does not allow anyone to evaluate whether a gap (much less a “significant” gap) exists in T-Mobile’s service coverage because it does not contain any objectively verifiable signal levels. Instead, the map merely shows how T-Mobile subjectively characterizes its own existing service coverage.

Given that the City must generally rely on the carriers themselves for facts that support or refute the alleged gap and whether it rises to significance, the City should not accept mere subjective representations. Any carrier could potentially manipulate the information deficit and characterize objectively strong service as subjectively weak “Outdoor Service” to obtain preferential zoning exemptions under the Telecom Act. Rather, all characterizations about service coverage should

be required to use objectively verifiable signal levels (such as “dBm”) so that the City could have the opportunity to independently check those representations.

Second, neither the signal propagation maps nor the narratives submitted with the permit application allow the City to evaluate the other factors listed by the Ninth Circuit as relevant to distinguishing a mere gap to a “significant” gap. T-Mobile should consider supplementing its submissions with more facts about why the current levels of service in the area rise to a significant gap based on the factors identified above.

Accordingly, we recommend that the City conclude that T-Mobile did not demonstrate a significant gap. This conclusion does not mean that T-Mobile could never demonstrate a significant gap, but merely that these facts at this time do provide an objective and reliable basis to evaluate whether a gap exists. Moreover, this conclusion does not mean that the City must (or even should) deny the permit request. Rather, the City should continue to review this permit request under its discretionary process.

### ***3.2. Least Intrusive Means Analysis***

Regardless of whether a wireless service applicant demonstrates a significant gap in its own service, a State or local government may require that applicant to adopt the least intrusive means consistent with the local municipal code to achieve the applicant’s service goals. In this context, the “least intrusive means” means the location and design most consistent with the local values that a permit denial would serve. The Oceanside Municipal Code (the “Code”) expresses the local values that form the basis for this analysis.<sup>6</sup>

The Code sets out the preferred locations for wireless sites, in hierarchical order, as (1) municipally owned or controlled parcels; (2) industrial districts; (3) commercial districts; (4) public or semi-public districts; (5) open space districts; (6) agricultural districts; and (7) residential districts.<sup>7</sup> In addition, facilities must collocate when technologically feasible and visually superior.<sup>8</sup>

As to required design elements, the Code generally requires all building-mounted sites (1) match the color, size, proportion, style, texture and quality of the exterior design and architecture of the existing building and surrounding visual environment; (2) screen the equipment; (3) adopt camouflage that disguise the

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<sup>6</sup> See generally OCEANSIDE, CAL., CODE § 3901 *et seq.*

<sup>7</sup> See *id.* § 3912(A).

<sup>8</sup> See *id.* § 3912(C).

facility.<sup>9</sup> The City may require additional design elements to adequately conceal the site when readily visible from the residential or open space areas.<sup>10</sup>

Here, T-Mobile proposes a relatively preferable site location given that no municipally owned or industrial parcels appear in the immediate vicinity. Although Hosp Grove Park is across Highway 78, that park appears outside the City limits.

Although the design matches the color, texture, and architectural molding on the existing building, the City may find the mechanical screens out of proportion with the existing rooftop features. This is especially apparent in that the flat-topped mechanical screens will rise above the Spanish-tile roofing on the same building.

One potential means to obtain proportionality without a complete redesign would be to refinish the mechanical screens as cupolas with Spanish-tile rooftops to match the current roofing accents. Such design elements would not appear out of place at the same height and would improve the overall aesthetics compared to the plain mechanical screens with molding.

#### **4. RF Exposure Compliance Evaluation**

The FCC completely occupies the field of radio frequency (“RF”) safety standards in the United States. State and local governments cannot legally establish or enforce RF emissions standards—whether more strict, more lenient, or the same as the FCC standards. The FCC does, however, permit the City to determine whether a proposed wireless project meets the federal safety standards found at 47 C.F.R. §§ 1.1307 *et seq.* (“FCC Rules”) and FCC Office of Engineering and Technology Bulletin 65 (“OET 65”) RF safety requirements.

Wireless antennas generally do not require an in-depth environmental analysis when virtually inaccessible to the general public. The FCC Rules “categorically exclude” wireless antennas for “cellular radiotelephone services” when mounted (1) on a structure constructed solely to support wireless antennas and (2) more than ten meters AGL.<sup>11</sup>

Here, the FCC Rules do not categorically exclude the antennas because T-Mobile proposes to mount them on a structure not solely or primarily designed to support wireless antennas. Accordingly, an additional analysis is needed to demonstrate planned compliance.

T-Mobile submitted a *Maximim Permissible Emission (MPE) Analysis Report* dated October 20, 2013. The report concludes that the proposed emissions will

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<sup>9</sup> See *id.* § 3911(D)(1).

<sup>10</sup> See *id.* § 3911(D).

<sup>11</sup> See 47 C.F.R. § 1.1307(b)(1).

comply with the FCC Rules, and recommends that T-Mobile post signage to establish compliance with occupational exposure limits so long as it installs certain signage.

The report contains sufficient technical information for an independent analysis. Based on the proposed transmitter frequencies and power levels, a “controlled zone” will extend approximately 43 feet from the face of the antennas at approximately the same height.

The fact that a site creates a controlled access zone does not necessarily mean that it violates the FCC Rules. Rather, a controlled access zone means that the carrier must affirmatively restrict public access to that area so that members of the general population (including trespassers) cannot unknowingly enter and be exposed to radio emissions in excess of those allowed by the Commission. We therefore recommend that the City require, as conditions of approval, the following:

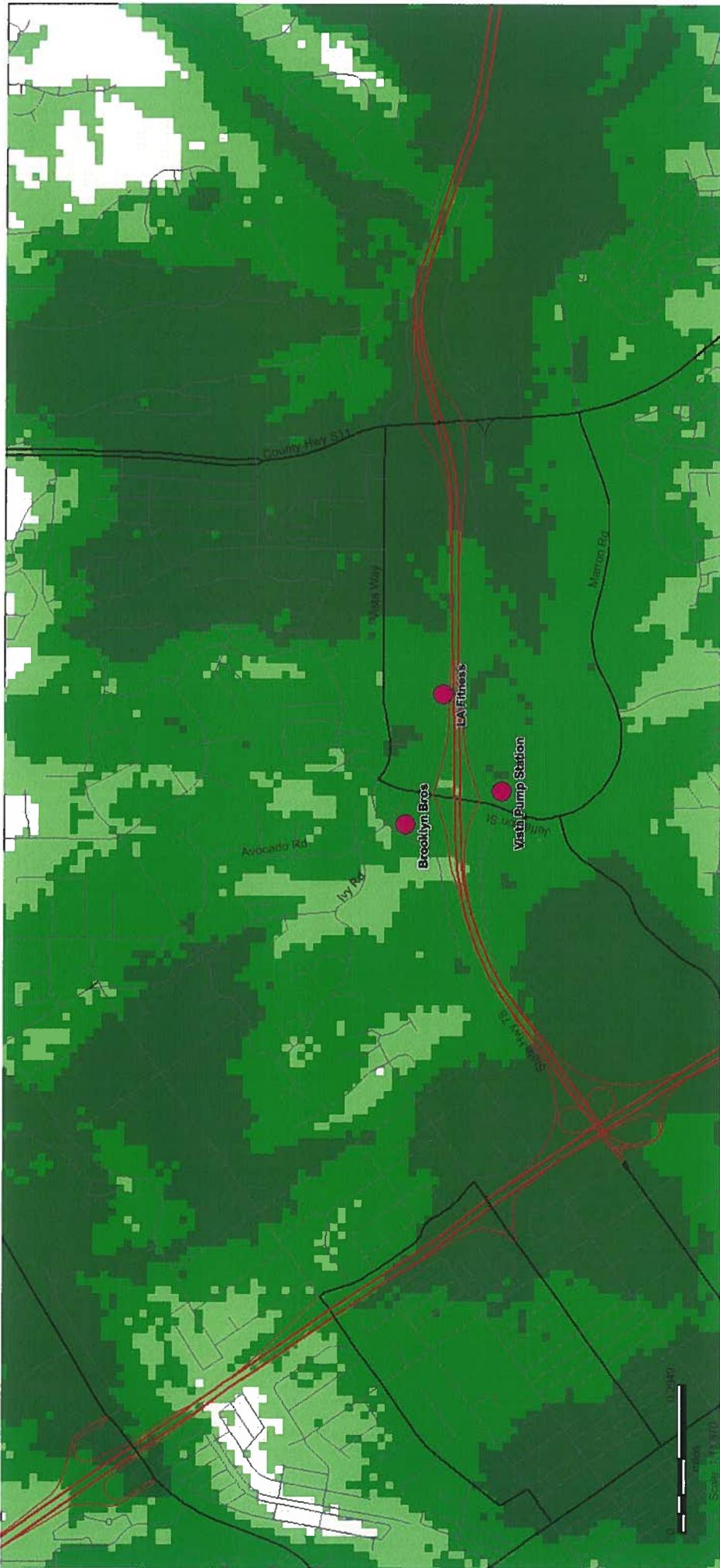
1. Permittee shall keep all access point(s) the rooftop area locked at all times, except when active maintenance is performed on the rooftop area;
2. Permittee shall install and at all times maintain in good condition an “RF Notice” and “Network Operations Center Information” sign on the access point(s) to the rooftop area. Permittee shall install the sign(s) required under this condition so that a person may clearly see and understand the sign before he or she enters into the equipment rooftop area;
3. Permittee shall install and at all times maintain in good condition an “RF Notice” sign on behind and adjacent to each antenna sector (never in front, even if placed below the antennas). Permittee shall install the sign(s) required under this condition so that a person may clearly see and understand the sign as he or she approaches the antennas; and
4. Permittee shall ensure that all signage complies with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.

If T-Mobile complies with the above conditions described in this memorandum, then the City will have no basis to deny or further condition the project on the basis of RF emissions.

## **5. Conclusion**

Subject to the recommended conditions in this memorandum, we conclude that the proposed emissions will comply with the FCC Rules. We also recommend that the City require T-Mobile to investigate potentially less intrusive designs (like the one recommended in this memorandum) that would be in better proportion with the overall structure.

# T-Mobile RF Coverage of surrounding On-Air sites without SD02467A

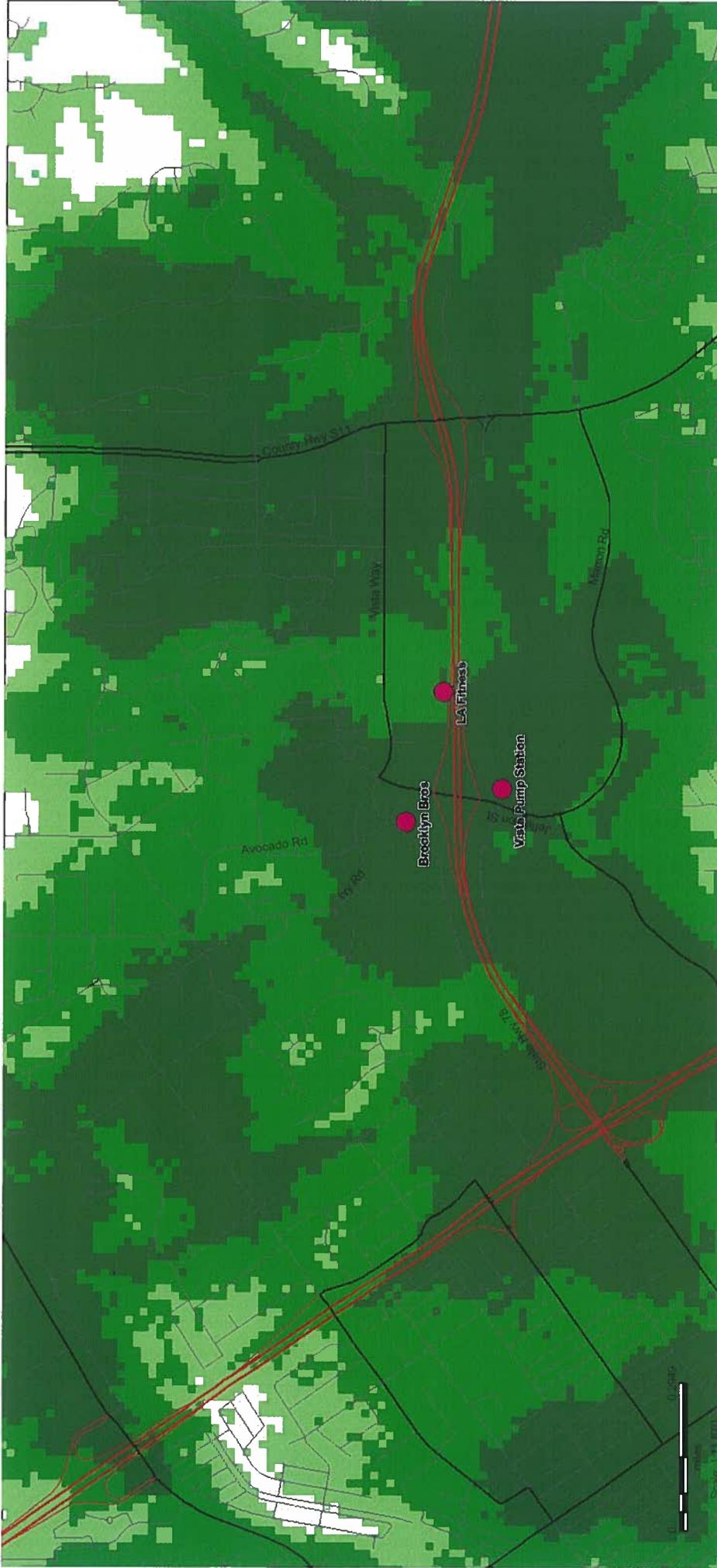


**Legend: Coverage Level**

- In Building
- In Car
- On Street



**T-Mobile** Coverage of surrounding On-Air sites with SD02467A (Brooklyn Bros)



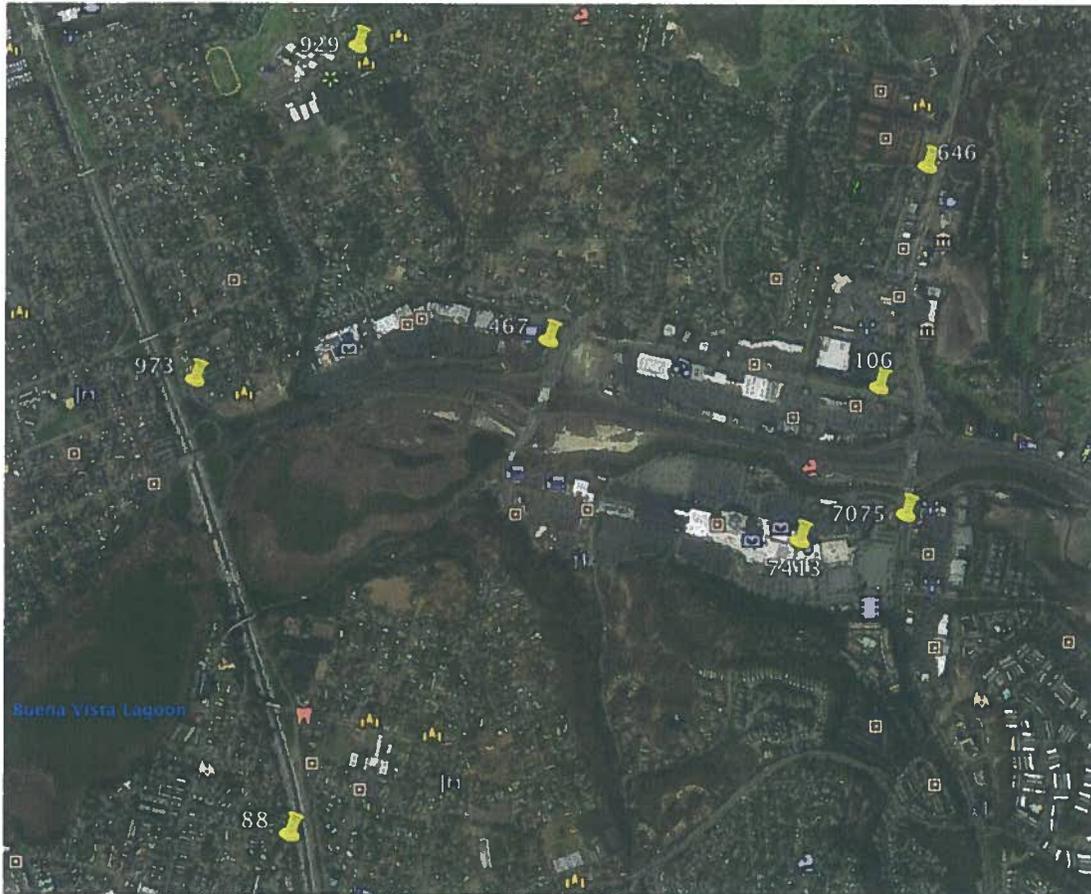
**Legend: Coverage Level**

- In Building
- In Car
- On Street

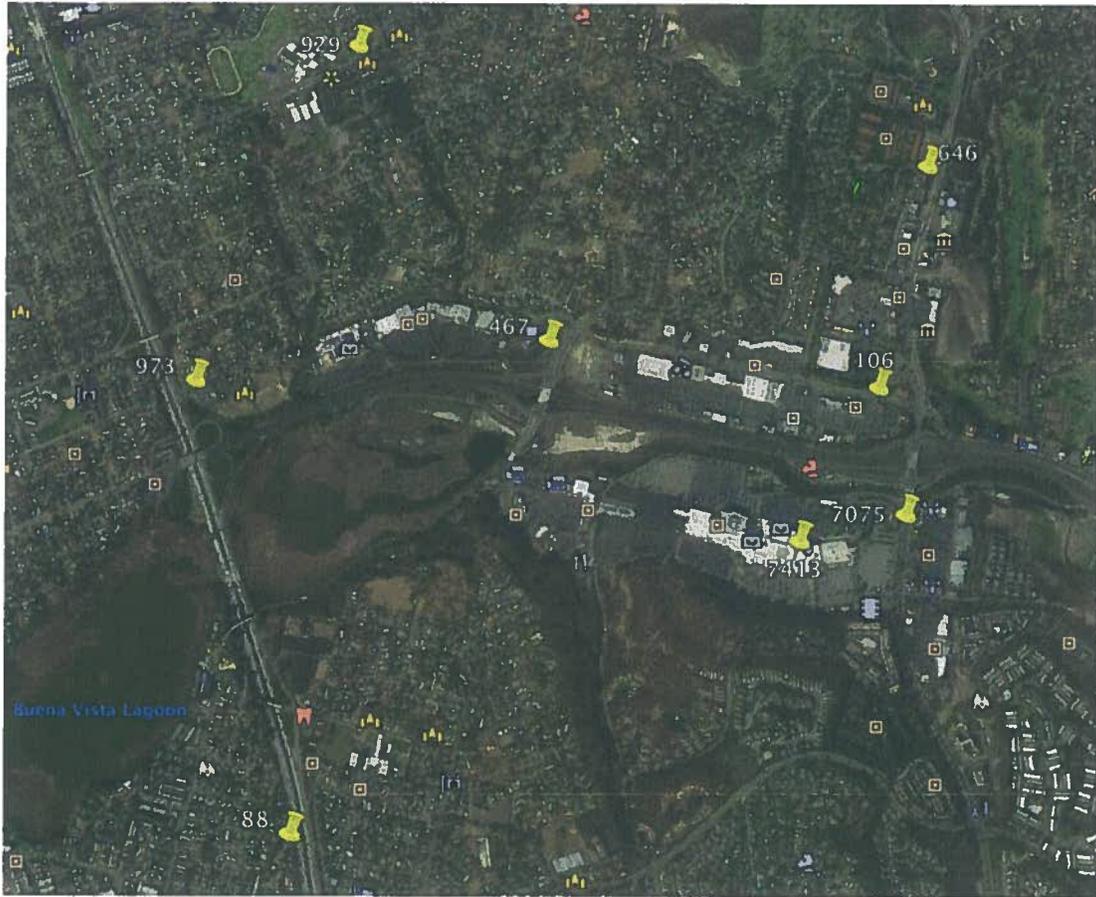


**T Mobile SD02467 Brooklyn Bros.**

**Overview Map with coverage objective for the proposed T-Mobile site and existing T-Mobile surrounding sites**



**T Mobile SD02467 Brooklyn Bros Coverage objective**



**T Mobile SD02467 Brooklyn Bros Photo Survey**



Entry sign to shopping center off Vista Way



View of south elevation of the Subject site where the south antenna and equipment structure is proposed



**View south from the subject building looking at the existing T Mobile site to be replaced by the proposed installation**



**View of the east elevation where the east facing antenna structure is proposed**



Looking east from the proposed location taken on the corner of Vista Way and Avocado



North west elevation when the west facing antenna structure would be placed



**View north from the west end of the proposed site location**



**West elevation of the proposed site location in the center of the picture**



**View west from the proposed site location at ground level**

# T Mobile SD02467 Brooklyn Bros



## Photo Simulation



Current view from south in parking lot



Photo Location



Proposed View with new FRP antenna structure

# T Mobile SD02467 Brooklyn Bros



## Photo Simulation



Current View from west on Vista Way



Proposed view looking east from Vista Way exiting the shopping center



Photo Location

# T Mobile SD02467 Brooklyn Bros



## Photo Simulation



Current View from Chevron Station at Jefferson & Vista Way



Proposed View from the nearby Chevron Gas station



Photo Location



Tim Henion  
DePratti Inc

**T- Mobile, SD02467, Brooklyn Bros  
2183 Vista Way, Oceanside, CA 92054  
APN 154-130-38**

## **PROJECT LOCATION**

The project is a replacement for an existing T Mobile site located In the SE corner of the *Pacific Coast Plaza* on the McDonalds Restaurant roughly 250' from the new proposed location. The lease on the McDonalds is up and the restaurant chain no longer wishes to leases to Wireless providers. This site is an existing Commercial Shopping Center (*Pacific Coast Plaza*) located at the intersection of Vista Way and Jefferson Drive in the City of Oceanside. The project site totals 1.12 acre in size. It is located on the south side of Vista Way just west of Jefferson Drive. Zoning of the site is SC-HO (Special Commercial Highway Oriented).

The proposed wireless facility is located on the rooftop of a large multi use building within Pacific Coast Plaza with core tenants being Einstein Brothers Bagels, Brooklyn Boys Pizza and Starbucks Coffee. The design incorporates the wireless facility into the buildings footprint with 3 rooftop extensions to house the antenna and equipment.

## **PROPOSED PROJECT**

T- Mobile requests approval to install three antenna sectors of 6 foot panel antennas each (a total of 12 antennas) mounted within three rooftop screen wall extensions located within the footprint of the existing building.

The existing 30' tall building will be modified with two antenna enclosures on the east and west ends at 30' top of screening and a third enclosure for antennas and radio equipment on the south side of the building with a top of structure height being 32'-0".

Equipment associated with the proposed facility will be installed on the roof also within the larger south facing enclosure dimensioned at 14'-5" x 24'-6" this enclosure is scaled to lend it to the existing stepped architecture on the highway facing elevation.

The east and west antenna enclosures being 16' wide by 8' deep will house the other two antenna sectors and with incorporate the relief detail along the top of the screen wall that exists throughout the building.

## **SITE SELECTION**

The wireless communication facility is proposed at this location in order to provide improved service for existing and future users within the vicinity of the proposed site. An existing gap in coverage exists along Hwy 78 and in the Wal-Mart Shopping center to the west and El Camino North center to the east as well as the residential area of Fire Mountain to the north. The attached figure shows the existing coverage in the area and identifies the gap in coverage.

The existing sites nearest to the coverage objective are to the west at the North Coast United Methodist Church at 1501 Kelly Street, this facility covers north and south on Interstate 5 and the west most portion of Hwy 78 on-ramps. The next site to the east is located at 2741 Vista Way which covers the Trader Joe and Target shopping centers and a portion of the El Camino North center.

These existing sites do not have the ability to provide coverage to the existing gap due primarily to intervening topography and neighboring buildings blocking the signal. The location of these surrounding sites is shown on the attached figure.

The existing zoning and land use within the proposed coverage area is either residential, or Special Commercial Highway Oriented. Existing land uses within the site area are shown on the attached figure.

The proposed site was selected because it met the City of Oceanside selection preference as below the maximum height and incorporating design into the buildings architecture, the building has existing structures with sufficient height to provide service over a large area and met the coverage objectives of the project.

The existing coverage for T-Mobile within the vicinity of the proposed site is shown on the attached RF coverage plots. T Mobile Currently has the two locations listed above. With the proposed facility in operation there is a significant increase both coverage and capacity in available coverage within the highly populated shopping area.

## **CO-LOCATION**

The City of Oceanside encourages co-location of telecom facilities to the fullest extent feasible. In the review of the search ring for potential candidates, opportunities for co- location were looked for. There are no existing telecommunications facilities within the designated search areas that would provide co-location opportunities.

## **FEDERAL COMMUNICATIONS COMMISSION COMPLIANCE**

The City of Oceanside has established standards for wireless communication facilities in Article 39 of the Zoning Ordinance. Section 3909 paragraph G states: No Wireless Communication Facility may, by itself or in conjunction with other Wireless Communication Facilities generate radio frequency emissions in excess of

the standards for permissible human exposure, as provided by applicable federal regulations including 47 CF.R. 1.1307 etseq.

Section 3914 paragraph B of the same article require that prior to activation of any wireless communication facility, the applicant provide the City with certification that the facility will operate in compliance with all applicable FCC regulations including, but not limited to radio frequency (RF) emission limitations.

Compliance with these established requirements as set forth in the City of Oceanside Zoning Ordinance will insure that the proposed facility operates in conformance with all applicable regulations.

### **REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT**

*Section 4105 of the Zoning Ordinance requires that proof be submitted in support of the following statements:*

*(a) That the proposed location of the use is in accord with the objectives of this ordinance and the purposes of the district in which the site is located.*

The proposal is permitted in the Zoning Ordinance by means of a conditional use permit. The proposed installation also meets the development standards for the SC-HO zone.

*(b) That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; Will not be detrimental to the public health, safety or 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 wireless communication facility as proposed and conditioned will be completed in accordance with the Oceanside Municipal Code, which is consistent with the Oceanside General Plan. The proposed facility is a stealth design and will be blend with existing structures on the property, so will have negligible visual impact on the surrounding area and will therefore preserve the aesthetic quality of the surrounding community. The project is constructed in accordance with FCC regulations for radio-frequency and does not therefore pose a detriment to the health and safety of the community, and it will be installed in accordance with all state and local building, fire, and electrical codes. Furthermore, the proposed wireless communication facility will enhance the quality of communications coverage available to the residents and commuters in the surrounding area and will therefore benefit the community.

*(c) That the proposed conditional use will comply with the provisions of this ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.*

**The proposed conditional use will comply with the provisions of the Oceanside Zoning Ordinance because the proposed wireless communications facility is allowed by conditional use permit in the Ordinance and the operational conditions set forth by the conditional use permit process will ensure that the proposed facility will remain in compliance with the Ordinance.**

## EXHIBIT "A"

**All that certain real property situated in the County of San Diego, State of California, described as follows:**

**Parcel A:**

**Parcel 14 of Parcel Map No. 17735, in the City of Oceanside, County of San Diego, State of California, filed in the office of the County Recorder of San Diego County, July 31, 1996 as Instrument No. 1996-0387495 of Official Records.**

**Parcel B:**

**Easements for ingress, egress, driveway use, parking, loading and unloading of commercial and other vehicles, installation and maintenance of signs and incidental purposes, for the enjoyment, comfort and convenience of customers, invitees, licensees, tenants, and employees of all business, occupants and owners of the buildings and or land, to pass over and through, and use the common area in the project including but not limited to the right to use driveways, roadways, walkways, parking spaces and other facilities constituting the common area, together with a non-repair, remove and replace common utility facilities within and upon the common area of the shopping center, at such places as may be necessary for the orderly development and operation of the shopping center, as conveyed, set forth and described in that certain Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements for Pacific Coast Plaza recorded July 31, 1996 as Instrument No. 1996-0387510 of Official Records in the office of the County Recorder of San Diego County, California.**

**Parcel C:**

**An easement for the purpose of maintaining the separation of buildings required to comply with building restrictions as defined and described in that certain agreement and easement not to build, recorded July 31, 1996 as Instrument No. 1996-0387506 of Official Records over Parcels 18 and 19 of Parcel Map No. 17735 above mentioned.**

Assessor's Parcel Number: **154-130-36**



# NOTICE OF EXEMPTION

City of Oceanside, California

Post Date:  
Removal:  
(180 days)

1. **APPLICANT:** T-Mobile
2. **ADDRESS:** 10509 Vista Sorrento Parkway, Site 206, San Diego, CA
3. **PHONE NUMBER:** Tim Henion, (503) 519-8591
4. **LEAD AGENCY:** City of Oceanside
5. **PROJECT MGR.:** Martin Miller, Consulting Assistant
6. **PROJECT TITLE:** T-Mobile @ 2183 Vista Way (CUP14-00028)
7. **DESCRIPTION:** A request for approval of a Conditional Use Permit CUP14-00028 to allow construction and operation of a new wireless communications facility at 2183 Vista Way, Oceanside, California. More specifically, the proposed project consists of the construction of three radio frequency-transparent enclosures atop the existing commercial building at 2183 Vista Way into which will be installed three sectors of four antennas each, for a total of 12 antennas. One enclosure will be located on the northeast-central roof (Sector A), one in the east-central part of the building (Sector B), and one near the southwest corner (Sector C). The Sector B enclosure will also house a platform supporting two equipment cabinets and a GPS antenna behind the sector array.
8. **ADMINISTRATIVE DETERMINATION:** Planning Division staff has completed a preliminary review of this project in accordance with the City of Oceanside's Environmental Review Guidelines and the California Environmental Quality Act (CEQA), 1970. Therefore, the staff has determined that further environmental evaluation is not required because:
  - The project is categorically exempt, Class 1, Existing Facilities (Section 15301); or,
  - The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA (Section 15061(b)(3)); or,
  - The project is statutorily exempt, Section , <name> ( Sections 15260-15277); or,
  - The project does not constitute a "project" as defined by CEQA (Section 15378).

\_\_\_\_\_  
Martin Miller, Consulting Assistant

Date: \_\_\_\_\_, 2015

cc:  Project file  Counter file  Library  
Posting:  County Clerk \$50.00 Admin. Fee