

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: 10/20/2008
49th Day: 12/8/2008
180th Day: 4/18/2009
Staff: Charles Posner - LB
Staff Report: 12/18/2008
Hearing Date: January 7, 2009
Commission Action:

**W22a****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-07-375

APPLICANT: T-Mobile, USA

AGENT: Scott Longhurst, Trillium Companies

PROJECT LOCATION: Eastern edge of Pacific Avenue (4100 block – at Jib Avenue), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Installation of a 47.5-foot tall wood utility pole to support cell phone equipment and antennas. This is an after-the-fact application.

LOCAL APPROVAL: N/A

SUMMARY OF STAFF RECOMMENDATION

This is an after-the-fact application. In 2007, the applicant removed a 38-foot tall wooden guy pole from the City right-of-way at the 4100 block of Pacific Avenue in Venice, and erected a taller 47.5-foot high wooden utility pole in the same location within the existing concrete sidewalk (Exhibit #3). New cell phone equipment and antennas were then attached to the new utility pole (Exhibit #4). The new utility pole, which is on the east side of Pacific Avenue, stands apart from the power and telephone lines that run pole-to-pole on the west side of Pacific Avenue.

Although the City of Los Angeles has assumed coastal development permitting authority in the Venice coastal zone pursuant to Coastal Act Section 30600(b), the City will not require the applicant to obtain a local coastal development permit (or a public works utility permit) for the proposed project (Exhibit #5). The proposed development requires a coastal development permit from the Commission, pursuant to Coastal Act Section 30601, because it is located within 300 feet of the mean high tide line of the sea (Ballona Lagoon).

Staff is recommending that the Commission **APPROVE** a coastal development for the proposed development with special conditions. The special conditions, which begin on Page Three, require the applicant to cooperate with other communication companies in co-locating additional antennas and/or equipment on the project site in the future, and to require the applicant to modify the development if future technological advances would allow for reduced visual impacts. As conditioned, the proposed development does not adversely affect visual resources, public access and recreation, or the adjacent sensitive habitat area of Ballona Lagoon. **See Page Two for the motion to carry out the staff recommendation.** The applicant agrees with the recommendation.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/12/2001.
2. Coastal Development Permit 5-01-257/A5-VEN-01-279 (City of LA - Ballona Lagoon).
3. Coastal Development Permit 5-95-152 & amendments (City of LA - Ballona Lagoon).

STAFF NOTE:

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits. Pursuant to Coastal Act Section 30601, certain categories of development, including development located within 300 feet of the mean high tide line, also require a coastal development permit from the Commission.

In this case, however, the City of Los Angeles will not require the applicant to obtain a local coastal development permit (or a public works utility permit) for the proposed project (Exhibit #5). Therefore, since the proposed project constitutes "development" as defined by the Coastal Act, and it is located within 300 feet of the mean high tide line (of Ballona Lagoon), it requires a coastal development permit from the Commission pursuant to Section 30601 of the Coastal Act. The proposed project constitutes new development, rather than repair and maintenance or modification of an existing structure, because it involves the erection of a new pole and the installation of new cell phone equipment and antennae (the wooden pole that previously occupied the site was a guy pole without any attached equipment, power or antennae).

The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Los Angeles certified Land Use Plan (LUP) for Venice is advisory in nature and may provide guidance.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolutions to **APPROVE** the coastal development permit with special conditions:

MOTION: *"I move that the Commission approve with special conditions Coastal Development Permit 5-07-375 per the staff recommendation."*

The staff recommends a **YES** vote. Passage of the motion will result in **APPROVAL** of the coastal development permit application with special conditions, and adoption of the following resolution and findings, as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by an affirmative vote of a majority of Commissioners present.

I. Resolution: Approval with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Co-Location of Future Antennas

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall agree in writing to cooperate with other communication companies in co-locating additional antennas and/or equipment on the project site in the future, providing such shared use does not impair the operation of the approved facility. Upon the Executive Director's request, the permittee shall provide an independently prepared technical analysis to substantiate the existence of any practical technical prohibitions against the operation of a co-use facility.

2. Future Redesign

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall agree in writing that where future technological advances would allow for reduced visual impacts resulting from the proposed telecommunication facility, the applicant shall make those modifications which would reduce the visual impact of the proposed facility. In addition, the applicant agrees that if, in the future, the facility is no longer needed, the applicant shall abandon the facility and be responsible for removal of all permanent structures and restoration of the site as needed to re-establish the area consistent with the character of the surrounding area. Before performing any work in response to the requirements of this condition, the applicant shall contact the Executive Director of the California Coastal Commission to determine if an amendment to this coastal development permit or a new coastal development permit is necessary.

3. Permit Compliance

All development must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions imposed herein. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project is the installation of a 47.5-foot tall wood stand-alone utility pole to support cell phone equipment and antennas (Exhibit #4). This is an after-the-fact application. The project does not include any underground vault or above ground pedestal or cabinet as all of the cell phone equipment is attached to the pole. The new pole, which is set in the existing concrete sidewalk within the Jib Avenue right-of-way, is situated six feet east of the eastern curb of Pacific Avenue, and about forty-five feet west of the high tide line of Ballona Lagoon (Exhibit #3). The new pole is in the same location as a 38-foot high wooden guy pole that was removed in 2007 prior to installation of the cell phone antenna project.

The applicant asserts that the proposed facility is the smallest in size and shortest in height that it can be, and that it cannot be co-located with another existing site nearby or located elsewhere. The applicant states that the new cell phone antennae for this area could not be placed on a building because all the structures in the area are residential buildings, and that the existing line of utility poles on the western side of Pacific Avenue could not be used because there is no capacity on the poles for new antennae.

The City of Los Angeles has not required or processed any permit for the proposed project, but is aware of the facility's installation (Exhibit #5). The applicant has applied to the Coastal Commission for the necessary coastal development permit, although the applicant continues to assert that a coastal development permit is not required for this development.

B. Sensitive Habitat Areas and Marine Resources

The proposed project is located next to Ballona Lagoon, which the certified Venice Land Use Plan (LUP) designates as an Environmentally Sensitive Habitat Area (ESHAs - Exhibit #2). The new pole, which is within the Jib Avenue right-of-way, is situated about forty-five feet west of the high tide line of Ballona Lagoon. The proposed pole is not situated within the ESHA.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

In addition, to the ESHA policy of the Coastal Act, Section 30230 requires the protection of the marine resources and biological productivity in wetland areas like Ballona Lagoon.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The certified Venice LUP identifies Ballona Lagoon as an ESHA. The certified Venice LUP sets forth the following policies that require the protection of the habitat values in Ballona Lagoon and in the lagoon buffer strip, and require that uses adjacent to the lagoon (e.g., within the lagoon buffer strip) shall be compatible with preservation of the habitat.

Venice LUP Policy IV. B. 1. Ballona Lagoon.

a. Ballona Lagoon Enhancement Plan. The Ballona Lagoon shall be restored, protected and maintained for shallow tidal and intertidal marine habitat, fisheries and public access as provided in the Ballona Lagoon Enhancement Plan (See Coastal Commission Coastal Development Permit 5-95-152 and amendments). The plan is intended to improve water quality and tidal flushing; reduce the amount of garbage, sediment and other pollutants in the lagoon; maintain and expand habitat values for the endangered least tern, shorebirds and fisheries; restore native vegetation; protect banks from erosion; maintain and if possible increase the existing 50-year flood protection; and enhance public trails and interpretative overlooks without invading the privacy of adjoining residents. The goals and policies of the Enhancement Plan shall be carried out in a manner consistent with the policies of this LUP. The Ballona Lagoon tidal gates located beneath Via Marina shall be operated in a manner that

sustains and enhances biological productivity in the lagoon by ensuring maximum water circulation.

b. Permitted Uses. Only uses compatible with preservation of this habitat shall be permitted in and adjacent to the lagoon. Uses permitted in or adjacent to the lagoon shall be carried out in a manner to protect the biological productivity of marine resources and maintain healthy populations of marine organisms. Such uses as open space, habitat management, controlled nature study and interpretation, and passive public recreation such as birdwatching, photography, and strolling shall be encouraged and promoted. No fill shall occur in Ballona Lagoon unless it is consistent with Coastal Act Section 30233 and is the least environmentally damaging alternative. No untreated runoff shall be directed into the lagoon.

Venice LUP Policy IV. B. 2. Ballona Lagoon Buffer Strip.

The City shall implement methods of permanent protection of the lagoon, including acceptance of all outstanding and future offers to dedicate open space and public access buffer strips along the east and west banks.

c. West Bank Properties South of Ironsides Street to Topsail Street. These properties, commonly known as the Alphabet Lots, consist of the vacant lots located on the west bank of Ballona Lagoon between Ironsides Street and Topsail Street. The use of these parcels shall be permanent Open Space with restoration of the native vegetation. Non-intrusive public access may be permitted in a manner that protects the environmentally sensitive habitat areas (See also Policy I.A.4.d).

The proposed project is not situated within the ESHA. The proposed pole is located in the City right-of-way (Jib Street) and is set in the existing concrete sidewalk on the outer edge of the lagoon buffer where the lagoon buffer abuts Pacific Avenue (Exhibit #3). The certified Venice LUP designates Pacific Avenue as a Modified Secondary Highway. The Ballona Lagoon Enhancement Plan identifies the project site (the Jib Avenue right-of-way on the east side of Pacific Avenue) as the site of a future public interpretive sign and entrance to the west bank public access trail. The proposed project will not interfere with the future public interpretive sign or the entrance to the public trail.

The proposed project does not conflict with the ESHA protection and marine resource policies of the Coastal Act or the policies of the certified Venice LUP as the proposed project involves no filling of wetlands or displacement of any habitat. The proposed pole, which is in the same place as a pole that has been removed, is compatible with preservation of the habitat. Therefore, the proposed project, as conditioned by the permit, is compatible with the habitat and has been sited to prevent impacts that would significantly degrade the ESHA.

C. Visual Resources

Section 30251 of the Coastal Act requires that the scenic and visual qualities of this coastal area shall be protected.

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The proposed project's impact on visual resources will be minimal due to the project's proximity to existing development such as the nearby three-story residential structures and the utility poles and power lines that run along the opposite (west) side of Pacific Avenue. The proposed project does not block physical or visual access to Ballona Lagoon or the beach. No new ground level development (e.g., vaults or pedestals), except for the pole itself, is proposed. Therefore, the proposed project does not: a) obstruct a significant view to or along the coast; b) adversely impact public access to and use of the water; c) adversely impact public recreational use of a public park or beach; or d) otherwise adversely affect recreation, access or the visual resources of the coast.

While the proposed facility will not have significant adverse impacts on the visual quality of the area, the Commission is concerned that cumulatively, installation of additional similar projects in the area could have adverse impacts on visual resources. When reviewing cellular antenna facility sites, the Commission must assure that the facility is the smallest in size and shortest in height that it can be, that it cannot be co-located with another existing site nearby or located elsewhere, in order to reduce any potential adverse impacts on visual resources and public views to the ocean associated with such facilities. As demand for wireless communication facilities increases, it is likely that other service providers will be interested in placing additional structures, antennas and equipment in the project area, and the Commission is concerned that cumulatively, installation of additional similar projects in the area could have adverse impacts on visual resources. Co-location is the preferred way to provide future telecommunication services. If co-location is not possible, then the visual impacts of such structures must be mitigated either through project design or siting so as not to result in adverse cumulative visual impacts.

As such, Special Conditions One and Two are imposed on this permit. Special Condition One requires that the applicant submit a written statement agreeing to cooperate with other communication facilities in co-locating additional antenna on the proposed development, unless the applicant can demonstrate a substantial technical conflict to doing so. Special Condition Two requires the applicant to submit a written statement agreeing to remove the structure and restore this site in the future should technological advances make this facility obsolete. In this way, it can be assured that the proliferation of these types of facilities can be limited to appropriate locations, and that the area will not be littered with outdated and obsolete facilities in the future. Therefore, as conditioned, the Commission finds the project is consistent with Chapter 3 policies of the Coastal Act with respect to protecting visual resources.

D. Public Access and Recreation

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The public access and recreation policies of the Coastal Act require that maximum access and recreational opportunities be provided and that development shall not interfere with public access. The proposed project does not block physical or visual access to Ballona Lagoon or the beach. Therefore, as conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. Unpermitted Development

Prior to applying for this coastal development permit, the development on the site occurred without the required coastal development permit. The unpermitted development includes the removal of an existing guy pole and the installation of a new 47.5-foot tall wood utility pole to support cell phone equipment and antennas. Although unpermitted development has occurred, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval (or denial) of the coastal development permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) that conforms with Chapter 3 policies of the Coastal Act:

(a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. The proposed project, as conditioned, conforms to the policies of the certified Venice LUP. Therefore, approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

VENICE, CA



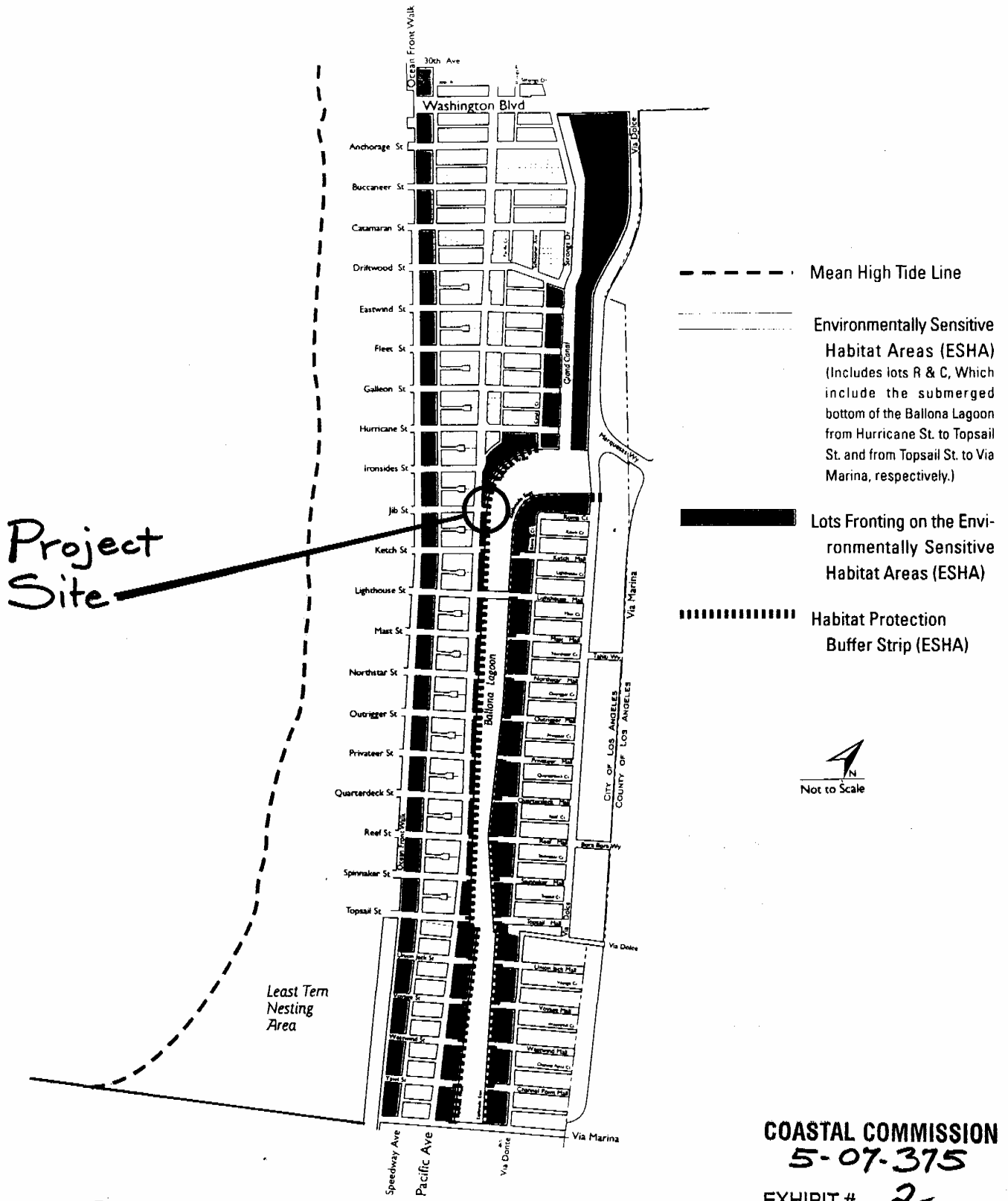
Pacific Ocean

Project Site



COASTAL COMMISSION
5-07-375

EXHIBIT # 1
PAGE 1 OF 1

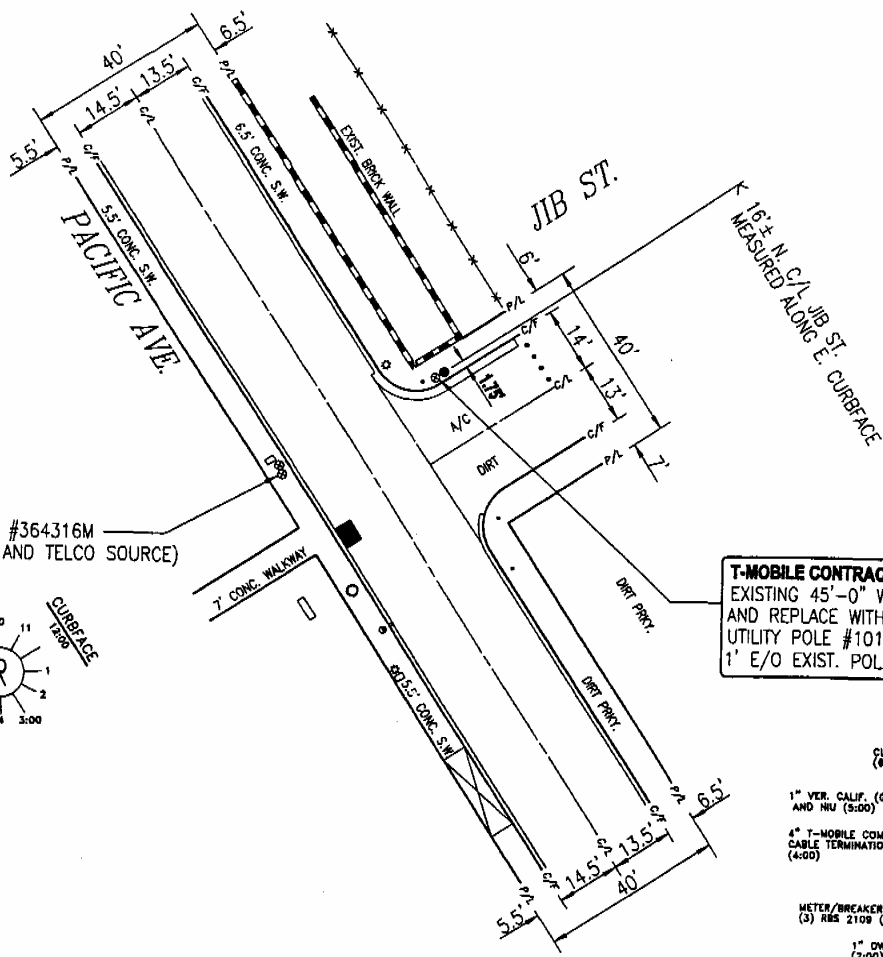


LUP
Exhibit 22c

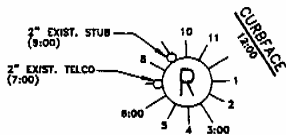
Environmentally Sensitive Habitat Areas

COASTAL COMMISSION
5-07-375

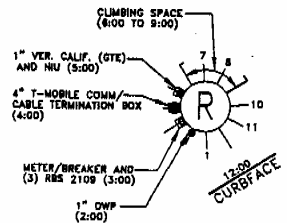
EXHIBIT # 2
PAGE 1 OF 1



EXIST. WOOD POLE #364316M
(T-MOBILE POWER AND TELCO SOURCE)



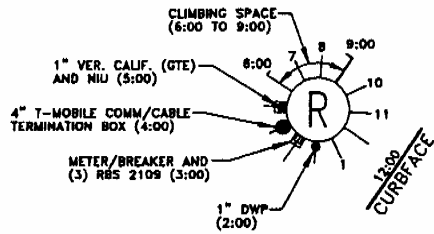
T-MOBILE CONTRACTOR TO REMOVE
EXISTING 45'-0" WOOD UTILITY POLE #371578M
AND REPLACE WITH A NEW 55'-0" WOOD
UTILITY POLE #10121PBM. NOTE: SET NEW POLE
1' E/O EXIST. POLE.



COASTAL COMMISSION
5-07-375

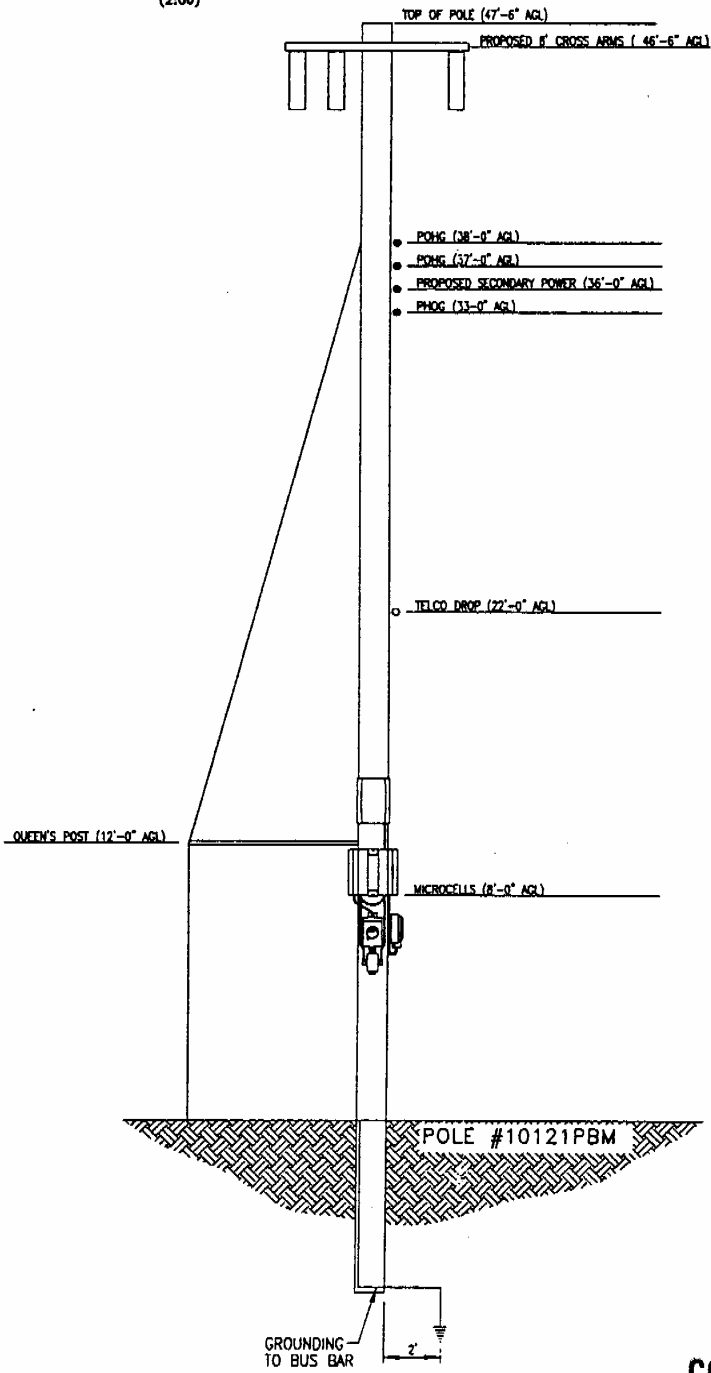
EXHIBIT # 3

PAGE 1 OF 1



NOTE TO CONTRACTOR:
 REVIEW SITE POLE MAKEREADY INFORMATION PRIOR
 TO POLE CONSTRUCTION.

47.5'



0'

COASTAL COMMISSION

POLE SCHEMATIC 5-07-375

EXHIBIT # 4
 PAGE 1 OF 1

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RECEIVED
South Coast Region
OCT 2 11 2008
CALIFORNIA
COASTAL COMMISSION

Date: OCT 16 2008

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

ATTN: Charles Posner, Coastal Program Analyst

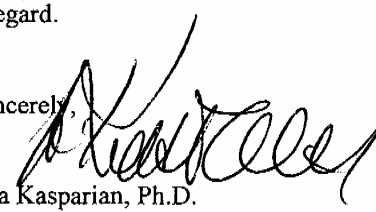
Re: T- MOBILE CELL PHONE TOWER PROJECT AT JIB / PACIFIC
COASTAL DEVELOPMENT PERMIT APPLICATION 5-07-375

Dear Mr. Posner:

The Bureau of Engineering received a request from the California Coastal Commission to determine if a local coastal development permit was required for the installation of a cell phone antenna mast at the corner of Jib and Pacific in Venice. The City Engineer has determined that a local coastal development permit is not required from the City Engineer, since the installation is exempt from the City Engineer's Coastal Development permitting requirements pursuant to Section 30600(b)(2) of the *Coastal Act*. The *Act* expressly excludes "any development by a public agency for which a local government permit is not otherwise required.

Please contact Jim Doty (485-5759), or William Jones (485-5760) in the Environmental Management Group, if you need any further information in this regard.

Sincerely,


Ara Kasparian, Ph.D.
Manager
Environmental Management Group

AJK/JED: wj-m604

Cc: 1) Anthony Munoz, Bureau of Engineering, W.L.A. District
2) Tuan Vo, Bureau of Street Lighting
3) Dirk Broersma, Department of Water and Power.
4) Scott Longhurst, Trillium Communications

COASTAL COMMISSION
5-07-375

EXHIBIT # 5

PAGE 1 OF 2

CITY OF LOS ANGELES
INTERDEPARTMENTAL CORRESPONDENCE

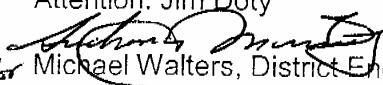
5-07-375
RECEIVED
South Coast Region

SEP 2 - 2008

Date: August 26, 2008
To: Ara J. Kasparian, Ph.D., Manager
Environmental Management Group
M.S. 939

CALIFORNIA
COASTAL COMMISSION

Attention: Jim Doty

From:  Michael Walters, District Engineer
West Los Angeles District

Subject: **Jib E/O Pacific T-Mobile Cell Phone Mast**

Upon a review of available resources and information, the following was found:

1. The subject pole is outside of the reserved right-of-way for the Bureau of Street Services.
2. The subject pole receives power from an overhead power line running to it from across the street. The pole receives its power from the Department of Water and Power, not through the Bureau of Street Lighting electrical system.
3. There are no power lines or conduit running from the pole into the ground.
4. The pole is considered a 'common utility pole' for which a Public Works utility permit would not have been required.

For the above noted items, it is this office's determination that a Public Works permit for the subject pole is not required.

Should you need additional information or clarification, please contact Anthony Muñoz at (310) 575-8530

ABM/abm/JibE/OPacific

Cc: Jeffrey La Dou, Bureau of Engineering, 201 N Figueroa St., 7th Floor, M.S. 503

William Jones, Bureau of Engineering, PWB, 6th Floor, M.S. 939

Chuck Posner
California Coastal Commission South Coast Area
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

COASTAL COMMISSION
5-07-375

EXHIBIT # 5
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