SAN DIEGO AREA

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7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4402

CALIFORNIA COASTAL COMMISSION

F 6a

Addendum

October 6, 2009

To:	Commissioners and Interested Persons
From:	California Coastal Commission San Diego Staff
Subject:	Addendum to Item F 6a, Coastal Commission Permit Application #A-6-OCN-07-018 (Sprint PCS), for the Commission Meeting of October 9, 2009

Staff recommends the following changes be made to the above-referenced staff report (language to be deleted is struck out and language to be added is <u>underlined</u>):

1. Modify the final paragraph on Page 10 continuing on to Page 11 as follows:

Given that these land uses are becoming increasingly common, the City and the Commission<u>staff</u> determined that an update to the City's certified LCP would be the most consistent method for facilitating these projects. In consultation with the appellant, the appeal was delayed until the City submitted and the Commission approved language that would address any concerns associated with these types of proposals. On January 24, 2008 the City submitted LCPA 1-08 (Telecommunication Facilities). Cited above is the modified language submitted by the City that was certified by the Commission at the June 2009 Commission hearing and now is the legal standard of review.

2. Modify the first paragraph on Page 13 as follows:

The appellant contends that the project cannot be found consistent with the City's LCP in that a policy was approved in 2006 limiting the height of development within this portion of the City to two stories and 27 feet in elevation. The existing building where the proposed antennas are to be located is a three story condominium development with a height of just over <u>403'</u> that was constructed prior to enactment of the Coastal Act and is thus a legal nonconforming structure. The approved development includes the placement of an equipment room, a transmission antenna and two host antennas. The host antennas consist of two sectors with one antenna per sector. One antenna is a flat panel; it will be located on the roof of the residential building and will be painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. The auxiliary equipment will be wall mounted inside a roof mounted utility room. The flat panel antenna will be the only visible portion of the cellular facility. It will be approximately one foot wide and will reach a height of 43'1", approximately 2.5' higher than the building's parapet.

3. Modify the fourth paragraph on Page 13 as follows:

The approved development includes the placement of a small equipment room, a transmission antenna and two host antennas, all of which could potentially result in impacts to coastal views. The equipment room will be located inside the existing structure, and the transmission antenna would be located inside an existing parapet wall. These components raise no concerns regarding impacts to coastal views. One of the antennas is a flat panel and will be located on the roof of the residential building painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. Thus, the roof flush mounted antenna is the only one with the potential for impacting coastal views. However, this antenna will be located on top of and at the center of a 40' tall building and is only 1 ft. in diameter and will only exceed the height of the building by 2.5 ft. Thus, it will not be visible from any surrounding areas and does not result in any impacts to coastal views.

4. Modify the first full paragraph in Page 14 as follows:

Lastly, the appellant contends that while the view impacts associated with the specific development may not be significant, in this particular case, the cumulative impacts, should other companies follow suit, may become significant. However, the City requires a Condition Use Permit for these types of developments that includes a series of findings that have to be made in order for the conditional use permit to be approved. The most important of these is discussed above. Specifically, a condition was approved that required the permittee to exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility. Therefore, any additional co-user facilities will have to consider and potentially eliminate the already existing antennas as an option for locating their Co-Use facility prior to proposing additional antennas or alternative locations. Further, this project and any subsequent project would again be required to obtain a variation for the height of the development. In granting variations, the City is required to make further findings in order to approve such a proposal. Thus, if other applicants propose additional antennas at this location, potential view impacts, both individual and cumulative, will be addressed at that time based on the site specific issues raised by that development.

5. Modify the second full paragraph in Page 14 as follows:

In conclusion, while the approved height is at a greater elevation than what is permitted within this subdistrict; all appropriate measures have been taken to reduce the potential coastal resource impacts to a level of insignificance, including the elimination of view impacts by locating the one <u>roof mounted visible</u> antenna at the center of the existing structure where it will not be visible. Thus, the project does not raise substantial issue with respect to the issues on which the appeal was filed.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA 7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4421 (619) 767-2370



F6a

Filed:February 6, 200749th Day:WaivedStaff:Toni Ross-SDStaff Report:September 16, 2009

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approved with Conditions

APPEAL NO.: A-6-OCN-07-018

APPLICANT: Sprint PCS

- PROJECT DESCRIPTION: Placement of a Telecommunication Facility on an existing residential building.
- PROJECT LOCATION: 999 North Pacific Street, Oceanside, San Diego County. APN 143-170-28, 143-170-97

APPELLANTS: Pamela Myers

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that <u>no</u> <u>substantial issue</u> exists with respect to the grounds on which the appeal has been filed. Since the appeal was filed, the City has submitted an LCP amendment which addresses telecommunication facilities (ref. Oceanside LCPA 1-08). The Coastal Commission approved the LCP amendment at its June 2009 hearing, therefore, the proposed telecommunication facility is consistent with the certified LCP. The Commission concurred with the Executive Director's determination that the action by the City of Oceanside accepting certification of LCP Major Amendment 1-08 was legally adequate in a previous action also at the October, 2009 hearing.

SUBSTANTIVE FILE DOCUMENTS: Appeal application signed by Pamela Myers, City of Oceanside Local Coastal Program Amendment 1-08 (Telecommunication Facilities), City Staff Report to the City of Oceanside Community Development Commission dated January 17, 2007, Signed Resolution # 07-R0673-1, Alternative Site Analysis report completed by Jacor Consulting, City of Oceanside Certified Local Coastal Program.

I. <u>Appellant Contends That</u>: The proposed development, as approved by the City, is inconsistent with the policies of the certified LCP pertaining to provisions protecting public views, as well as land use regulations pertaining to communication facilities in District 5 of the redevelopment section of the Downtown District. The City of Oceanside's Land Use Plan (LUP) prohibits the use of communication facilities within the approved permit location. The applicant also contends that while this cellular antenna may not significantly impact the public coastal views in the area, the cumulative effects of it, along with any additional facilities that may be installed in the future, will significantly affect public ocean views. Lastly, the appellant contends that the project is inconsistent with the certified height restriction of 27', including any appurtenances, within Sub-District 5, of the Downtown District.

II. <u>Local Government Action</u>. The City of Oceanside approved a Regular Coastal Development Permit and a Variation on January 17, 2007. The approved permit included over 20 special conditions. The most applicable of the special conditions were designed to decrease visual impacts associated with the facility, and to assure proper repair and maintenance are provided throughout the lifetime of the facility. An additional special condition requires that the permittee shall exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility.

III. <u>Appeal Procedures/Substantial Issue Analysis</u>. After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, certain proponents and opponents (as indicated below) will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. During the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. title. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

- 1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
- 2. The extent and scope of the development as approved or denied by the local government;
- 3. The significance of the coastal resources affected by the decision;
- 4. The precedential value of the local government's decision for future interpretations of its LCP; and
- 5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City of Oceanside does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

<u>MOTION</u>: I move that the Commission determine that Appeal No. A-6-OCN-07-018 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

<u>RESOLUTION TO FIND SUBSTANTIAL ISSUE</u>:

The Commission hereby finds that Appeal No. *A-6-OCN-07-018* does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. <u>Project Description/Permit History</u>. The City of Oceanside approved a permit to install a telecommunication facility located at 999 N. Pacific Street. The subject site consists of 26 residential buildings with a total of 550 units (known as North Coast Village), constructed on a 14 acre site prior to the Coastal Act. The beach-fronting site is located immediately south of the San Luis Rey River outlet. The property is zoned "D" Downtown District, Subdistrict 5. The telecommunication facility is a repeater site and

consists of two sectors with one antenna per sector. One antenna is a flat panel; it will be located on the roof of the residential building and will be painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. The auxiliary equipment will be wall mounted inside a roof mounted utility room. The flat panel antenna will be the only visible portion of the cellular facility and will reach a height of 43' 1", approximately 2.5' higher than the building's parapet.

The approved project includes a variation to exceed the maximum height of 27 feet. The top of the existing building parapet is 40'6" and the project proposes one antenna that is approximately 1' wide and projects an additional 2.5'.

Because the approved project resulted in a development requiring a variation for height and potential concerns regarding impacts to coastal views, the applicant completed and submitted an alternatives analysis to the City of Oceanside. Site selection criteria include limitations imposed by surrounding topography, successful radio testing of the proposed site, availability of electrical and telephone services, lease availability, and the ability to obtain local permits. The applicant submitted an Alternative Site Analysis evaluating three alternative placements. The first two considered were other condominium developments located at 121 South Pacific St. and 910 Pacific St. However, due to topography and physical distance these sites were eliminated. Also considered was the placement of the facility within a Right of Way or co-located with an already existing facility. This option was also eliminated to due to lack of any feasible Right of Way space, or any existing Co-User facilities.

2. <u>Allowable Land Use.</u> The appellant contends that the project, when defined as a communication facility, is not a permitted use at the approved location. Specifically, the appellant contends that the City's Land Use Matrix for the Downtown District, as incorporated into its LCP through the Zoning Ordinance, does not allow communication facilities at this specific project location (Subdistrict 5). The City's certified zoning ordinance defines and allows various forms of telecommunication facilities within the City of Oceanside. These zoning ordinances state:

City of Oceanside Zoning Ordinances for Downtown District:

Section 4a, Article 450 G. Communication Facilities:

450 Commercial Use Classifications

G. <u>Communications Facilities</u>. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; and telegraph offices.

Reception Antenna and Co-User Communication Facilities shall also be defined in Subsection 1(a-d) below:

a. Reception Antenna and Co-User Communication Facilities - Definitions

a. Reception Antenna - An antenna that is designed and used only for the purpose of receiving broadcast and subscriber services such as radio, television, microwave communication. Typical antenna types include skeletal-type and dish antennas.

b. Co-User Communication Facility - Antennas and facilities that are part of a system or network of voice, data, or information transmission, relay, and reception, and which are conducted through the licensed use of an allocated portion of the global electromagnetic spectrum. Services typically provided by these facilities include wireless telecommunication, paging systems and data-link systems. Specifically, a Co-User Communication Facility is shared by more than one communication system, or is a facility which is shared by a communication facility and another independent use or activity.

1. Minor Co-User Facility - A co-user communication facility with as many as 5 whip or pole antennas.

2. Major Co-User Facility - A co-user communication facility with more than 5 whip or pole antennas or a co-user facility consisting of antennas which are not whip or pole types of antennas.

c. Pole Antenna - An antenna with a rod-like shape.

d. Monitoring Antenna - An antenna that is used to monitor or track the operation of a same-site communication facility.

Article 12 - Downtown District - Commercial Section of Article 12 - Land Use Matrix- Permitted Uses:

P-Permitted U-Use Permit C-Administrative Use Permit *-Not Permitted V-Visitor Serving Uses

																						1	1
Subdistrict	1	1a	2	3	4a	4b	5	5a	6a	6b	6c	7a	7b	8a	8b	9	10	11	12	13	14	15	V
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Animal product																							
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through/drive up	U	U	U	U	*	*	*	*	*	*	*	*	U	*	*	U	*	*	*	*	*	*	v
Self-service ATM	С	С	С	С	*	*	*	*	*	*	*	*	С	*	*	С	*	*	*	*	*	*	v
Catering Service	С	С	С	*	*	*	*	*	*	*	*	*	*	*	*	С	*	*	*	*	*	*	
Commercial																							
Recreation &																							
Entertainment	U	*	U	*	*	*	*	*	U	U	U	*	U	*	*	U	U	*	U	*	*	*	v
Communication																							
Facility	U	U	U	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	U	*	*	
Major Co-User	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U
Facility																							
Minor Co-User	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U
Facility																							
Reception	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р
Antennas																							

Article 12 - Downtown District -1232 Reception Antennas and Co-User Facilities: Purpose and Siting Criteria.

- A. Purposes. This section is intended to promote and provide for the following:
 - 1. To establish a zoning permit and land use review process consistent with the City's Telecommunication Policies and which accommodate the public's ability to access communication, broadcast, and subscription services which are transmitted through the global atmospheric radiofrequency spectrum.
 - 2. To maintain certain aesthetic values and land use compatibility through a land use review process for certain types of these facilities that may have potential impact upon public welfare.
 - 3. To regulate the siting of telecommunications facilities so as to comply with the limitations, constraints and policies set forth in relevant federal and state telecommunications law.

B. Reception Antennas: Siting Criteria. A reception antenna is permitted on any structure if it complies with each of the following criteria:

1. Maximum Number. The maximum number of reception antennas is limited to two per structure.

- 2. Minimum Setbacks.
 - A. Interior side and rear property line 10 feet.

B. Corner-side property line - zoning district standard.

C. Reception antennas may not be installed within the front yard setback of the underlying zoning district.

3. Maximum Size.

A. Roof-mounted antenna - 4 feet diameter for dish and 60 cubic feet for skeletal type.

B. Ground-mounted - 5 feet diameter for dish type and 60 cubic feet for skeletal-type.

4. Maximum Height.

A. Roof-mounted -

1. Skeletal-type antennas - 1- feet above the district height limit.

2. Dish mounted - no higher than the principal or predominant roofline of the structure.

B. Ground-mounted - 12 feet above grade.

Additional height may be authorized through an administrative conditional use permit issued by the Planning Director in accordance with the provisions of Article 41 of this ordinance.

5. Surface Materials and Finishes. Reflective surfaces are prohibited.

6. Screening: The structural base of a ground-mounted antenna, including all bracing and appurtenances, but excluding the antenna itself, shall be screened from the views from neighboring properties by walls, fences, buildings, landscape, or combinations thereof not less than 5 feet high.

7. Cable Undergrounding. All wires and cables necessary for operation of the antenna and its reception shall be places underground, except for wires or cables attached to the exterior surface of a structure.

C. Communication Facilities. Siting Criteria. Communication facilities may be installed and operated within any zoning district subject to the following categorical standards and processes.

1. Minor Co-User Communication Facilities. Co-User facilities consisting of a limited number of whip or pole antennas and monitoring antennas shall be allowed subject to the following limitations:

A. Antenna Type. Permitted antennas are limited to pole and monitoring antennas/

B. Maximum Number.

1. Pole Antennas - one per 1,000 square-feet of roof area up to a maximum of 5 antennas.

2. Monitoring Antennas - one per every permitted communication facility.

C. Maximum Height.

1. Pole Antennas - 10 feet above height of a building or co-user facility.

2. Monitoring Antennas - 1-foot above height of co-user facility.

D. Maximum Antenna Size.

- 1. Pole antenna 4 inches diameter.
- 2. Monitoring antennas 1 cubic foot.

E. Appearance. Antennas must be colored or painted to blend with the predominant background features (e.g., building, landscape, sky).

2. Administrative Conditional Use Permit Requirement. Major Co-User Communication Facilities, and within the coastal zone, Minor Co-User Facilities. In accordance with the requirements specified within Article 41 of this Ordinance, the Planning Director may approve the siting, development, and operation of a Major or Minor Communication Facility through an administrative process. The Planning Director's decision may be appealed to the Planning Commission. A permit issued pursuant to this section shall be subject to the requirements set forth in Subsections 3(A-F) below:

3. Standard Conditions of Approval. The following standard conditions of approval shall apply to all minor and major communication facilities:

A. The Conditional Use Permit shall be limited to a term of 5 years. However, the CUP may be renewed in accordance with the provisions of the Zoning Ordinance.

B. Upon one year of facility operation, and upon any change-out of facility equipment, the permittee(s) shall provide to the Planning Director a statement of radio-frequency radiation output and output compliance with the limitation of governing licensing authorities.

C. The permittee(s) shall exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the approved antenna and facility equipment. The change-out and retro-fit of equipment shall be conducted by the permittee(s) after such equipment becomes available and exhibits common use at similar facilities. Upon the City's request and discretion, the permittee(s) shall be required to provide an independently prepared technical analysis demonstrating compliance with this condition. The permittee(s) inability to demonstrate the use of current technologies may be grounds for the revocation of the CUP.

D. The permittee(s) shall exercise a good-faith effort to cooperate with other communication provides and services in the operation of a co-user facility, provided such shared usage does not impair the operation of the approved use. Upon the City's request and discretion, the permittee(s) shall provide an independently prepared technical analysis to substantiate the existence of any practical technical prohibitions against the operation of a co-use facility. The permittee(s)' non-compliance with this requirement may be grounds for the revocation of the CUP.

E. The approved communication facility shall be subject to, and governed by, any and all licensing authority by any governmental agency having jurisdiction. The City's local approval of a communication facility shall not exempt the permittee(s) from any such pre-emptive regulations.

F. The approved facility shall address the appearance of the entire site and shall upgrade or repair physical features as a means of minimizing view impacts to the community. Such techniques shall include, but shall be limited to, site landscaping, architectural treatments, painting, and other methods to minimize visual impacts to the public streetscape.

Previous to this appeal, the City of Oceanside had not updated its LCP to accommodate advances in technology such as cellular communication facilities, etc., and none of the definitions incorporated into its LCP adequately defined the Co-User Communication Facilities developed to promote better reception on cellular phones. In this absence, the definition that most closely fit these types of developments was the general Communication Facilities definition. As the appellant contends, Communication Facilities are not a permissible use within Subdistrict 5 of the Downtown District.

Given that these land uses are becoming increasingly common, the City and the Commission determined that an update to the City's certified LCP would be the most consistent method for facilitating these projects. In consultation with the appellant, the appeal was delayed until the City submitted and the Commission approved language that would address any concerns associated with these types of proposals. On January 24, 2008 the City submitted LCPA 1-08 (Telecommunication Facilities). Cited above is the

modified language submitted by the City that was certified by the Commission at the June 2009 Commission hearing.

In summation, the modified language includes an updated definition for Communication Facilities, which incorporates four new definitions to better define various types of antennas including; Minor and Major Co-User facilities, and, Reception, Monitoring, and Pole Antennas. The modified language also updates the City's Downtown District Land Use Matrix, to permit, through Regular, Administrative and Conditional Use Permits, these types of Reception Antennas and Co-User Facilities. Finally the modified language includes siting criteria and standard conditions of approval to locate and administer the approval of these types of communication facilities, while minimizing potential impacts.

With the updated language, the proposed communication facility would most appropriately be defined as a Minor Co-User Communication Facility. The updated Land Use Matrix conditionally permits these types of developments in all of the Downtown area Sub-Districts, and thus the approved Co-User Communication Facility would now be a permitted use. Further, and as stated above, the Conditional Use Permit requires specific siting criteria to be followed and a number of conditions to be placed on any proposed development. These siting criteria and standard conditions of approval were incorporated into the proposed project's initial review, and as such, the initial project is consistent with this recently certified language, modified through the approval of Oceanside LCPA 1-08.

The Commission determined that the LCP amendment was consistent with the City's certified LCP and ultimately the Coastal Act with the incorporation of various suggested modifications; these modifications are reflected in the policies listed above. As certified by the Coastal Commission, all coastal resources have been protected and any coastal impact concerns addressed. Therefore, the appellant's contentions regarding whether or not these types of developments are permitted uses has been adequately addressed through the City of Oceanside's approved LCP amendment 1-08 and incorporated into the project's approval, and, therefore the appeal does not raise a substantial issue with respect to the issues on which the appeal was filed.

3. <u>Public Views/Scale of Development.</u> The appellant contends that the project will result in impacts to public views as the development is located immediately adjacent to the beach and will be located approximately two and a half feet higher in elevation than the tallest portions of the current development. The appellant further contends that the City's certified LCP prohibits developments of any kind, including antennas, with an elevation higher than 27' within Subdistrict 5 (project location). The City does have specific policies addressing height and the protection of public ocean views, which state:

City of Oceanside LCP Land Use Policies for Visual Resources:

Policies.

[...]

4. The city shall maintain existing view corridors through public rights-of-way.

[...]

8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

<u>City of Oceanside LCP – Design Standards for Preserving and Creating Views</u>

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized deserve consideration in the design and location of further coastal improvements.

Zoning Ordinance - Article 12 - "D" Downtown District

D Downtown District: Additional Development Regulations

(N)(1)(e) Within Subdistrict 5 the area located on the west side of North Pacific Street between Surfrider Way and Breakwater Way the maximum height shall be limited to two-stories or 27-feet whichever is less. The exceptions to height limitation provided by Section 3018 shall not apply to any development within this area.

Zoning Ordinance - Article 30 - Site Regulations

3018 Exceptions to Height Limits

Towers, spires, cupolas, chimneys, elevator penthouses, water tanks, flagpoles, monuments, theater scenery lofts, radio and television antennas, transmission towers, fire towers, and similar structures and necessary mechanical appurtenances covering not more than 10 percent of the ground area covered by the structure to which they are accessory may exceed the maximum permitted height in the district to which it is located. Such exceptions shall be subject to the following regulations:

A. A structure may exceed the district height limit by 10 feet and a use permit may be approved for features extending more than 10 feet above the base district height limit.

B. The Strand is subject to the height limitations of Proposition A, passed April 13, 1992, and no exceptions are permitted.

The appellant contends that the project cannot be found consistent with the City's LCP in that a policy was approved in 2006 limiting the height of development within this portion of the City to two stories and 27 feet in elevation. The existing building where the proposed antennas are to be located is a three story condominium development with a height of just over 43' that was constructed prior to enactment of the Coastal Act. The approved development includes the placement of an equipment room, a transmission antenna and two host antennas. The host antennas consist of two sectors with one antenna per sector. One antenna is a flat panel; it will be located on the roof of the residential building and will be painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. The auxiliary equipment will be wall mounted inside a roof mounted utility room. The flat panel antenna will be the only visible portion of the cellular facility. It will be approximately one foot wide and will reach a height of 43'1", approximately 2.5' higher than the building's parapet.

Based on the project's inconsistency with the previously mentioned height restriction, staff agrees with the appellant that the project could be interpreted as inconsistent with the certified LCP in that the proposed antenna will exceed the height of the building by approximately 2.5'.

However, staff has reviewed the project and has concluded that the project as approved by the City of Oceanside does not result in a visual impact such that the project should be raised to the level of significance required to find substantial issue. The primary concern associated with the height of the antennas is their potential impacts to coastal views. Between the applicant's submittal and the City's required conditions, all coastal view concerns have been addressed to a level of insignificance.

The approved development includes the placement of a small equipment room, a transmission antenna and two host antennas, all of which could potentially result in impacts to coastal views. The equipment room will be located inside the existing structure, and the transmission antenna would be located inside an existing parapet wall. These components raise no concerns regarding impacts to coastal views. One of the antennas is a flat panel and will be located on the roof of the residential building painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. Thus, the flush mounted antenna is the only one with the potential for impacting coastal views. However, this antenna will be located on top of and at the center of a 40' tall building and is only 1 ft. in diameter and will only exceed the height of the building by 2.5 ft. Thus, it will not be visible from any surrounding areas and does not result in any impacts to coastal views.

The applicant has considered three alternative options for locating the communication facility. All three of the provided alternative locations were not feasible and were therefore eliminated. Furthermore the City required a series of Special Conditions to address the concerns regarding the protection of coastal views. These Special Conditions include the requirement of the permittee to exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the

approved antenna and facility equipment. The approved special conditions also allow the Community Development Commissioner to review the Conditional Use Permit if any complaints are filed concerning the violation of any approved conditions. Both of these conditions will serve to minimize any potential view impacts associated with the specific development.

Lastly, the appellant contends that while the view impacts associated with the specific development may not be significant, the cumulative impacts, should other companies follow suit, may become significant. However, the City requires a Condition Use Permit for these types of developments that includes a series of findings that have to be made in order for the conditional use permit to be approved. The most important of these is discussed above. Specifically, a condition was approved that required the permittee to exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility. Therefore, any additional co-user facilities will have to consider and potentially eliminate the already existing antennas as an option for locating their Co-Use facility prior to proposing additional antennas or alternative locations. Further, this project and any subsequent project would again be required to obtain a variation for the height of the development. In granting variations, the City is required to make further findings in order to approve such a proposal. Thus, if other applicants propose additional antennas at this location, potential view impacts, both individual and cumulative, will be addressed at that time based on the site specific issues raised by that development.

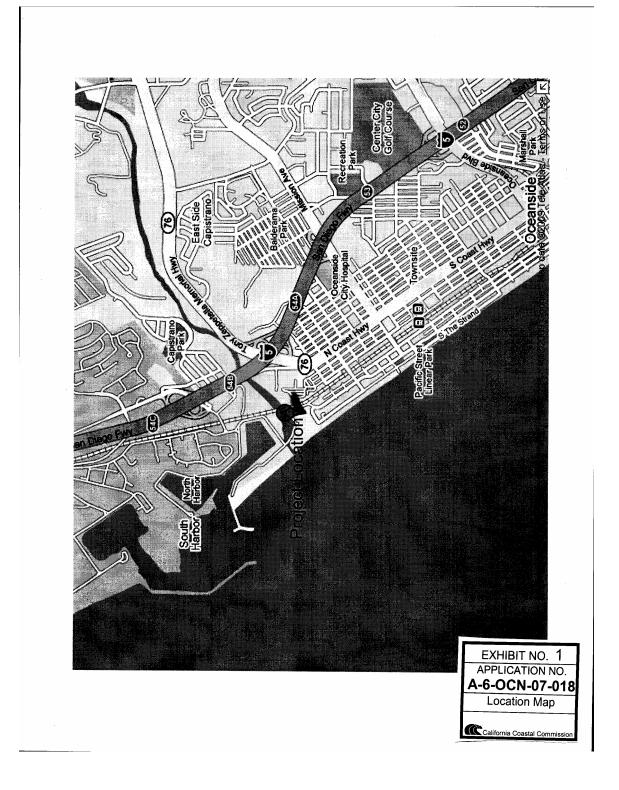
In conclusion, while the approved height is at a greater elevation than what is permitted within this subdistrict; all appropriate measures have been taken to reduce the potential coastal resource impacts to a level of insignificance, including the elimination of view impacts by locating the one visible antenna at the center of the existing structure. Thus, the project does not raise substantial issue with respect to the issues on which the appeal was filed.

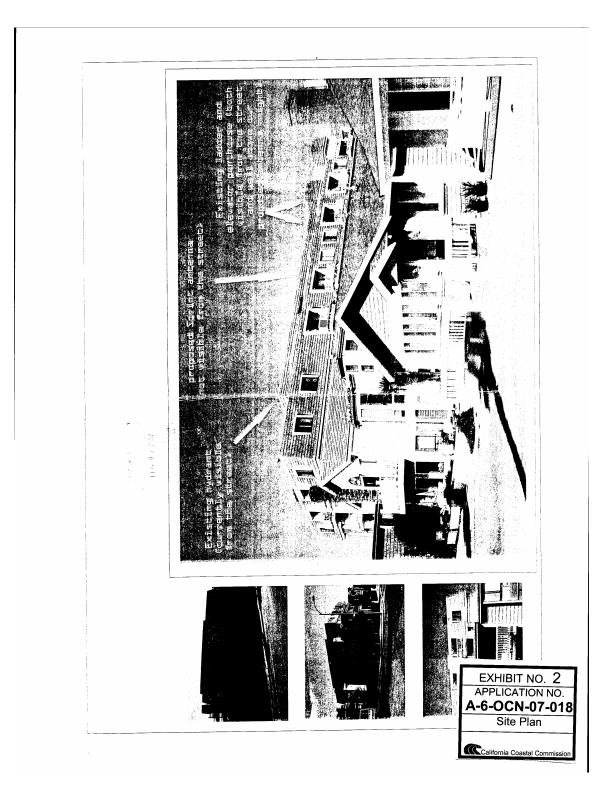
Therefore, the Commission finds that the allegations made by the appellant do not raise a substantial issue with regard to the project's consistency with the certified LCP.

4. <u>Substantial Issue Factors.</u> As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The Commission typically reviews appealed projects based on five criteria that help define whether or not a project raises substantial concerns regarding the project's consistency with a local government's certified LCP and ultimately the Coastal Act. These factors are listed on page three of this staff report. The factors applicable to this specific appeal can be summarized as: the significance of coastal resources affected, the project's precedential value, and whether the concerns raise only local issues, or issues of regional and statewide significance. The proposed project permits the development of a Co-User Telecommunication Facility. The proposed development will include the placement of an equipment room, a transmission antenna and two host antennas. The host antennas consist of two sectors with one antenna per sector. One antenna is a flat panel; it will be located on the roof of the residential building and will be

painted to match the existing building. The other antennas will be flush mounted on the mansard parapet's cedar shingles. The auxiliary equipment will be wall mounted inside a roof mounted utility room. The flat panel antenna will be the only portion of the cellular facility that will be higher than the existing building, and it will reach a height of 43' 1," approximately 2.5' higher than the building's parapet and located in the center of the condominium building's roof. While the antenna technically exceeds the permitted height limit for the area, no portion of the proposed telecommunication facility will be visible from any surrounding location and as such, no significant coastal visual resources will be affected. Furthermore, the City has updated its certified LCP to better define, permit and regulate these types of developments, specifically within the coastal zone. Based on the foregoing considerations, the objections to the project do not raise any substantial issues of regional or statewide significance. Lastly, because the project is only approvable because it doesn't result in any impacts to coastal resources, there will be no important or potentially deleterious precedent set that could result in impacts to coastal resources.

(G:\San Diego\Reports\Appeals\2007\A-6-OCN-07-018Telecomm facilities.doc)





STATE OF CALIFORNIA - THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor CALIFORNIA COASTAL COMMISSION
CALIFORNIA COASTAL COMMINISCICIA SAN DIEGO AREA 7375 METROPOLITAN DRIVE. SUITE 103 SAN DIEGO, CA 92108-4421 (619) 767-2370
APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Please Review Attached Appeal Information Sheet Prior To Completing This Form.
SECTION I. <u>Appellant</u>
Name, mailing address and telephone number of appellant:
PAMPLA MYEIS 910 North Dacific St. #35, OCEANSIDE, CA 92054 (760) 721-8090 Zip Area Code Phone No.
SECTION II. <u>Decision Being Appealed</u>
1. Name of local/port government: <u>City of Oceanside</u>
2. Brief description of development being appealed: Installation of a telecommunication facility on an existing high density residential building at North Coast Village, building "A"
3. Development's location (street address, assessor's parcel no., cross street, etc.): <u>999 North DACIFIC ST. Ocuanside</u> <u>on top of the roof of building "A", which is South</u> of Breakwak (San piego county) CAPNGS 143-140-28, 143-140-97, way. 4. Bescription of decision being appealed:
Approval; no special conditions:
b. Approval with special conditions:
c. Denial:
Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.
TO BE COMPLETED BY COMMISSION: EXHIBIT NO. 3
APPEAL NO: $A-6-0cN-07-0/8$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$ DATE FILED: $2/5/07$
DATE FILED:

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l	APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)
!	5. Decision being appealed was made by (check one):
i	aPlanning Director/Zoning cPlanning Commission Administrator
	bCity Council/Board of dOther Supervisors
	6. Date of local government's decision: <u>January</u> 17 ⁴ 2007
	Supervisors 6. Date of local government's decision: <u>January 17th</u> 2007 7. Local government's file number (if any): <u>Application NO. 6-</u> 0CN-07-010 LOCAL Permit # RC-204-05. SECTION III. <u>Identification of Other Interested Persons</u>
	SECTION III. Identification of Other Interested Persons
	Give the names and addresses of the following parties. (Use additional paper as necessary.)
	a. Name and mailing address of permit applicant:
	b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
	(1) Sharon Lucarelli 910 North Dacific St. # 4 oceanside: CA 97054
	(2) <u>Shirley Smith VAN Dusen</u> <u>910 North Pacific St. # 32</u> Oceanside, CA 92054
	(3) Tessara Anchales 910 North pacific st. # 45 Oceanside, CA 92054
	(4)

SECTION IV. <u>Reasons Supporting This Appeal</u>

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

and a set	Note: I Submitted my letter dated Jan. 17th, 2007 (3 pages), examples of cell facility designs passed I week after the council passed sprints resolution, and I picture of the purposed site, and two clear overheads of maring towers cell APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3) facilities to be KIGC, a copy of the agenda item 13 from city Over the pic of cupariside cornel meeting. State briefly your reasons for this appeal. Include a summary of North description of Local Coastal Program, Land Use Plan, or Port Master Coast village Plan policies and requirements in which you believe the project is to show the inconsistent and the reasons the decision warrants a new hearing.
	The prosect is inconsistent with our recently passed
	LOCAL COASTAL PLAN Amendment which states that NO Structure
	or building can go above 27ft. This cell facility & Antenna's
	or building can go above 27ft. This cell facility & Antenna's Will damage the ensegment of coastal Zonenscenic resources to
	and from the PACIFIC OCEAN. The prosect is inconsistant With Oceansides LAND use PIAN which States that No cell facility
	is allowed in subdistrict 5. Further more NO provisions or exceptions
	were made by our council with viden our LCPA for prosects in the pipeline a note: Additional information / supporting documents
	Will be drached at a later date. Note: The above description heed not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may
	submit additional information to the staff and/or Commission to support the appeal request.
	SECTION V. <u>Certification</u>

The information and facts stated above are correct to the best of my knowledge. \frown

Signed) are	lg D	· Asyens
Appellant	for Agen	it 7	j.
Date	Feb	5+4	2007

<u>Agent Authorization</u>: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed_____ Appellant

Date_____

0016F

	a resolution to approve installation of a Tele-Co residential building at 999 N. Pacific St. In Subdistrict 5 of the Coastal Zone City of Oceanside January 17 th , 2007	FEB 0 5 2007
Dear Honorable Mayor Wood	s, Council Members Sanchez, Kern, Chavez and	CALIFORNIA COASTAL COMMISSION SAN DIEGO COAT DISTRICT
Facility (containing 4 antenna	w know that I and many of my neighbors oppose s, not three as mentioned in the staff report) whi c Street,(across the street from our condo comp s a total of 550 units.	e the purposed Cell Phone ch would be located at on top
Ordinance (# 2006-ORO375- say's that buildings or structur includes the Repeal Section 3 television antennas, transmiss essence, nothing above this 2	06-R0339-1) and Local Coastal Plan Amendmer 1) was unanimously approved by the RDRC, RA res shall be limited to Two ^{***} Stories or 27 Feet v 1018 of Article 30 "Exceptions to Height Limitatio sion towers, mechanical appurtenances and sim 17-foot height limit! The purposed structure is ab ave a height of 42 feet and two inches!	C and the Council which which ever is less and it also ns", to not allow for radio or ilar structures etc. In
Currently, under Article 12 "D" Land Use Regulations "D" doe	' Downtown District- A communication facility isr wntown district (pg. 12-5)	't permitted under <u>Proposed</u>
Under Oceanside's current Zo considered a non-conforming	ning Ordinance; Article 3, section 330, Definition use and a non-conforming structure.	ns- The Cell Facility would be
is regulated under " <u>Utilities Ma</u> on surrounding uses shall be utilities or similar facilities of p	s Zoning Ordinance; Article 4 "Residential Use C ajor" (Pg. 4-3 item S and 12-4). A structure that regulated under this classification because it is g ublic agencies or public utilities. In addition, it s re not permitted unless determines to be consist commission".	may have a significant effect generating communication tates, "above ground
Oceanside must "Preserve the pollution of the air and the boo	dinance, Part 1-General Provisions, Article 1 Se e character and quality of residential neighborho dies of water." Article 1 Section 130 "Purposes" 3 d promote the maximum aesthetic values for all	ods" and "Prevent the B(G), and preserve the natural
With this said, the purposed p CEQA, a Variance, a Conditio	roject is asking for a "Certification Of Exemption nal Use Permit (C.U.P) and a Regular Coastal F	" under the provisions of Permit.
15332(b); In Fill Development on a project site of no more th Facility is surrounded by high area. The actual true languag	xemption, staff puts it under Categorical Exempt Projects, which states: The purposed developm an five acres <u>substantially surrounded by urban</u> residential housing only! Staff wrote that the site e states that it must be substantially surround at this project can qualify for any Article 19 CEC	ent occurs within city limits <u>uses.</u> The purposed Cell e is "within" an urbanized ed by urban uses
	1	

Environmental Impacts concerns:

- Significant Effect- There is reasonable possibility that the activity will have a significant effect on the environment due to its location in a High Density Residential Neighborhood.
- **Cumulative Impact** Are significant when the cumulative impact of successive projects of the same type in the same place i.e. Shared Usage/Co-user Facility. These Future expansions will have a detrimental and significant effect on our environment. What is the cumulative power density of these purposed antennas? What would it be if other co-users piggy backed on this site?
- This will increase our air pollution, visual pollution, and possibly noise pollution. It will cause our neighborhood air quality to be reduced significantly by increasing the emissions of Radio Frequency Radiation Output.
- We already have air and noise pollution from trains, planes, motorcycles, cars, pedestrians, skate boarders etc. This project involves the expansion of an existing use i.e. High Density Residential! We don't want any more in our neighborhood!
- This is an environmental sensitive area; we have many birds in the area due to our wetlands and the San Luis Rey River.
- This purposed Cell Facility is not compatible with our neighborhood and surroundings and will be detrimental to the public health, safety and welfare of persons residing and/or working in and adjacent to the subject site.
- Cell towers/facilities are emitters of Electro Pollution. They distribute ionize pollution in the air and people inhale them and this is causing an increase in lung cancer, ADD, autistic, Parkinson's, Alzheimer's disease and others. They also discharge radiation and this will affect the quality of life!
- We will be exposed to long-term, low level, non-thermal exposure to radio frequency radiation output! And just like Asbestos, which caused cancer after some 30 to 40 years later, so too, it will be found and documented that long-term radiation exposure from cell facilities will cause human disease!

Additional questions and concerns:

- What were the other alternatives to this site?
- Will their be signs posted on the roof etc.?
- NCV is 550 units; this purposed site has probably 200 units. Some antennas will be located next to
 accessory structures like outdoor patios. Also, NCV is a complex that has all wood shingles, thus
 the entire building can catch fire!
- Only NCV board approve this cell Site (3-0), and not the majority of the Home Owners.
- No meetings were held with the adjacent neighbors or neighborhoods by either NVC board or H.O.A nor a Sprint representative!
- Time of Lease? When will it expire? What happens at the end of the lease? Will it be expanded?
 What will be the procedure?
- Will NCV have to get a business License if approved?
- Devaluation of our property values because it must be disclosed on real estate transactions. The majority of the population doesn't want to live near a Cell Facility!
- It will set a precedent in our neighborhood and Coastal Zone
- What are the Radio Frequencies etc. that it will put out and how far?
- The project consists of 4 antennas, not three as mentioned in the staff report. One antenna will host many channels and as user demand increases channels can be split, thus increase!



If you approve this Project:

- Have a "clause" to be able to enforce or revoke the lease, permit, license, certificate, or entitlement etc. for use if the cell Facility is found to have significant Environmental Impacts, health effects, public nuisance etc.
- Don't allow Cogeneration of Projects at the cell facility. But, if you do, make sure they comply with all applicable State, Federal, and local Air Quality Laws, and result in no noticeable increase in noise to near by residential neighbors/structures.
- Require applicant to provide annual Radio Frequency tests of the site to confirm the antenna system will be in compliance with FCC standards per estimated frequencies, and at the site distances.
- Make Sprint prove they are in compliance with the FCC. Have the FCC come out and inspect.

Under the federal guidelines you can't say no [to Sprints application] but you can determine where they go." We would like the purposed Cell Facility to be placed on a Commercial or City building or Structure. Perhaps even the New Time Shares, Hotel or New Community Building at the Harbor (Across from Harbor Beach). The Community Building will be rented out on an as needed basis, and no employees or people will be spending entire shifts or a great deal of time there, unlike like the people who will be sleeping at NCV, or in our neighborhood where many people like myself are permanent residents or other people who will stay for long periods of time. Please choose another area for this Cell Facility and in our High Residential Area!

The California coastal Act states that new development <u>shall protect special communities</u> and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses. Our neighborhood is this "special" community! Furthermore, It states: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Lastly, 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 <u>visually compatible</u> with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In conclusion, I ask you to maintain our open space character of our neighborhood. We don't want to be looking at another Marina Towers! Please protect our Environment. Please protect our mental and physical health. Please protect the public! Please uphold your vote last year by not allowing any building or structure to go above our height limit of Two Stories or 27 feet!

For these reasons and more, I ask that you <u>do not</u> grant them their Certificate of Exemption for the California Environmental Quality Act (CEQA), a Regular Coastal Permit, a Variation or a C.U.P.

Sincerely,

Pamela Myers 910 N. Pacific St. # 35 Oceanside, CA 92054 CDC: Consideration of a resolution approving a Conditional Use Permit (C-203-05), Variation (V-207-06) and Regular Coastal Permit (RC-204-05) to allow for the installation of a telecommunication facility on an existing residential building located at 999 North Pacific Street – Coast Village Sprint – Applicant: Sprint PCS L.L.S.

- A) Chairperson opens public hearing
- B) Chairperson requests disclosure of Commissioner and constituent contacts and correspondence
- C) Secretary presents correspondence and/or petitions
- D) Testimony, beginning with Shan M. Babick, Associate Planner
- E) Recommendation adopt the resolution

14. City Council: Introduction of an ordinance of the City Council of the City of Oceanside adding Chapter 9B to the Oceanside Municipal Code establishing franchise and PEG fees and customer service penalties for state franchise holders providing video service within the City of Oceanside

- A) Mayor opens public hearing
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence
- C) City Clerk presents correspondence and/or petitions
- D) Testimony, beginning with Michael Sherwood, Chief Information Officer
- E) Recommendation introduce the ordinance

GENERAL ITEMS

General Items are normally heard after any 6:00 p.m. Public Hearing Items. However, if time permits, some General Items <u>may</u> be heard prior to any 6:00 p.m. Public Hearing Items, following the Consent Calendar.

None

MAYOR AND/OR COUNCILMEMBER ITEMS

15. Request by Mayor Wood for presentation by Major General Michael R. Lehnert regarding operations of predatory lenders within the City of Oceanside, and direction to staff

CITY COUNCIL REPORTS

- 16. Mayor Jim Wood
- 17. Deputy Mayor Rocky Chavez
- 18. Councilmember Jack Feller
- 19. Councilmember Jerome M. Kern
- 20. Councilmember Esther Sanchez



CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

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